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International Law Approaches the Twenty-First Century: A U.S. Perpective on Enforcement

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INTRODUCTION

INTERNATIONAL LAW APPROACHES THE TWENTY-FIRST CENTURY: A U.S. PERSPECTIVE ON ENFORCEMENT

*Ambassador Madeleine K. Albright**

INTRODUCTION

I am delighted to have the opportunity to introduce to the readers of the *Fordham International Law Journal* the discussion of such a timely topic as the role of international law in the twenty-first century. I am particularly pleased to note that this issue is dedicated to Jimmy Carter, a President who did and continues to do so much to uphold and advance the principles of international law.

I want to begin by thanking the editors and readers for the work you have done and are doing to promote the rule of law and to advance our understanding of it. During this century, we have transformed utterly the daily environment in which we live. We have realized many of the dreams — and some of the nightmares — of our greatest scientists. We can transplant hearts, split the atom, and dial Mongolia direct. We have reinvented the world, but a glance along the horizon from Korea to the Balkans to Rwanda will remind us how far we still are from the ideal of an international civil society, and how important it is that steady, sustained efforts in that direction be made.

A half century ago, U.S. statesmen and scholars influenced deeply the drafting of the U.N. Charter. They were determined, in the memorable words of that document, "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind . . . [and] to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."

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* U.S. Permanent Representative to the United Nations; Member of the Cabinet of U.S. President Bill Clinton. This Introduction was adopted from a Keynote Address on April 7, 1995, at the annual convention of the American Society of International Law.

The drafters of the document were not naive people. They were grimly realistic. They had seen after World War I the price of failing to organize the peace. They had seen after Munich what happens when commitments are not kept. They were eyewitnesses to the devastation of war. The document they authored has not been — nor could it be — in itself a guarantor of peace or law, just as our Constitution could not, in itself, guarantee union or liberty or justice. Such documents require interpretation; the principles require codification as they are applied to one set of issues and then another; and above all, the principles require enforcement.

This year marks the U.N. Charter's fiftieth year. It is an appropriate time to take stock of the advances in international law. Over the last five decades, we have adopted literally hundreds of multilateral conventions, codifying both new law and the customary rules that merit treaty-based authority. These include the Geneva Conventions, the diplomatic and human rights conventions, arms control agreements, environmental treaties, trade agreements, and conventions directed at the twin plagues of narcotics and terrorism.

Within the past year, I have had the honor to sign on behalf of the United States three codifying instruments: conventions to protect U.N. peacekeepers; to articulate the Law of the Sea; and to enumerate the Rights of the Child. Earlier, we had sent to the Senate for its advice and consent the Chemical Weapons Treaty, the Start II Treaty, and the Convention on the Elimination of All Forms of Discrimination Against Women. Meanwhile, we are working hard to gain backing for the indefinite and unconditional extension of the Nuclear Non-Proliferation Treaty, and to achieve a truly comprehensive ban on nuclear tests.

The need to continue codifying international law is apparent, and the Clinton Administration is leading that effort where it is in the interests of U.S. citizens to do so. But an even greater challenge for us now — and, in many respects, an even greater opportunity — is enforcement. Although international law is often caricatured as elusive and abstract, there is nothing abstract about its enforcement, at least not from my vantage point at the Security Council. In fact, the implementation of Chapters Six and Seven of the U.N. Charter, which deal with the settlement of disputes and responses to aggression and other

breaches of the peace, lies near the heart of international politics today.

We are privileged to live at a time when the enforcement of international standards of behavior through the actions of the Security Council is more possible, widespread, and varied than it has ever been. It is also perhaps more necessary than it has ever been. Although we are opposed by no superpower, threats and conflicts continue to arise that engage our interests, even when they do not endanger directly our territory or citizens. We live in an unsettled age, beset by squabbles, wars, unsatisfied ambitions, and weapons that are more deadly and more widely available than ever in history.

Few of the controversies that arise are as clear as that of Iraq's invasion of Kuwait, where the aggression was overt, the stakes included oil and the possibility of a madman equipped with nuclear arms, the military terrain was favorable, the enemy was isolated, the finest armed forces in the world — ours — were fully engaged, and the bills were being paid by someone else. Increasingly, threats to international order are not clear, but devilishly complex: violence caused not by international aggression, but by civil war; fragile cease-fires that do not hold; or ethnic fighting that spills unpredictably across national lines.

Enforcement is complicated not only by the nature of the threats to international peace that we face today, but by internal tensions and conflicts, some as old as international law itself, that influence the daily business of foreign affairs. For example, we respect the principle of national sovereignty but find ourselves confronted by humanitarian emergencies within states to which we may sometimes see a need to respond — with or without the endorsement of the local regime.

We respect the prohibitions in the U.N. Charter about the use of force, but note the Charter's recognition that there will be times when force is essential to uphold the law. We must decide time and again whether we have a better chance of altering the behavior of a state through friendly persuasion or through isolation; by negotiation or coercion. The debate rages — in dealing with a regime that is soft on terrorism or hard on human rights, which is better: the carrot or the stick?

We must measure always the benefits of enforcement against a continuum of interests and costs, especially if a military

response is required. In trying to save lives, we must also consider the lives we put at risk. It is a truism, but one that is nevertheless often misunderstood, that effective enforcement depends less on what institutions do than on what the members of those institutions have the *will* to do. And what states have the will to do depends on what is in their interests to do. Thus, those who expect automaticity or perfect consistency in the enforcement of international law will be disappointed.

In spite of these obstacles to effective enforcement, the Clinton Administration does believe that we have an historic opportunity to make progress towards enhanced respect for international law, and that a realistic appraisal of U.S. interests dictates that we seize that opportunity. We live in a nation that is democratic, trade-oriented, respectful of the law, and possessed of a powerful military whose personnel are precious to us. We will do better and feel safer in an environment where our values are widely shared, markets are open, military clashes are constrained, and those who run roughshod over the rights of others are brought to heel. In this interdependent age, we cannot build this kind of environment unless we tighten the enforcement of international law and the principles enshrined in the U.N. Charter.

UNITED NATIONS PEACEKEEPING

The enforcement of international law requires, first, that we strengthen United Nations peacekeeping. From our perspective, near the end of the millennium, we can look back at centuries of international efforts to deter conflict through a combination of force and law. Before the United Nations, there was the League of Nations; before that the Congress of Vienna; before that the Treaty of Westphalia; before that the medieval nonaggression pacts; before that the Peloponnesian League. Still, no perfect mechanism for collective security has been found. We have little basis in the behavior either of people or of nations to believe it ever will. It is our lot to work with imperfect tools.

Tools can be sharpened, however, and we are endeavoring with other U.N. members and the U.N. Secretariat to make peacekeeping more effective. Our goal is a system that works when we expect it to work, and often enough to be useful; a system of peace operations that do not go on forever, do not cost

too much, do not risk lives unnecessarily, and do give peoples wracked by conflict a chance to get back on their feet. This is necessary and realistic, and it is happening.

Since 1990, U.N. peacekeeping has gone from a standing start to an around-the-clock organization that is more integrated, professional, capable, and that has been getting results. It has shown the ability, under the right conditions, to nurture new democracies, as in Namibia, El Salvador, and South Africa; to demobilize rival factions, as in Cambodia and Mozambique; to meet urgent humanitarian needs, as in Liberia and Rwanda; and to maintain cease-fires in strategic parts of the globe. Even where it has been unable to fulfill ambitious mandates, as in Somalia and Bosnia, it has saved hundreds of thousands of lives.

Unfortunately, there are those in the U.S. Congress who would kill U.N. peacekeeping rather than work to strengthen it. The House of Representatives has approved a bill, part of the so-called "Contract with America," that would disregard our obligations under the U.N. Charter, virtually end U.S. payment of peacekeeping assessments, and make it impossible for the United Nations to plan, pay for, or sustain peace operations. If this isolationist view should prevail, and peacekeepers are withdrawn, we could expect wider war in the Balkans, higher tensions in tinderbox regions such as Cyprus and the Middle East, a renewed threat to democracy in Haiti, and a further series of humanitarian disasters in Africa.

These consequences are not acceptable. The isolationist tide must be turned back. U.N. peacekeeping contributes to a world that is less violent, more stable, and more democratic than it would otherwise be. It provides the U.S. President with an option between unilateral action and standing aside when emergencies arise. Furthermore, it is an important tool for the enforcement of international standards and law around the world.

SECURITY COUNCIL SANCTIONS

A second valuable enforcement tool used increasingly by the Security Council is economic sanctions. The Security Council derives legal authority to impose sanctions from Article 41 of the U.N. Charter. Enforcement becomes the responsibility of every Member State. Sanctions may be used in response to illegal actions to protest or punish such actions and to prevent their

repetition. Frequently, sanctions serve also as a symbol of international unity and resolve in the face of lawless conduct.

The Charter envisions the use of sanctions as a non-violent means of enforcing Security Council decisions. Experience tells us that sanctions can influence behavior if enforcement is determined and the international resolve is strong. Sustaining sanctions can be complicated, however, by the expense of enforcement, by the costs of foregone commerce, especially to neighboring states, and by adverse humanitarian consequences.

One of our priorities over the past two years has been to streamline and improve the effectiveness of sanctions regimes in order to make them a less blunt instrument of policy. We have worked particularly hard to develop a consistent and fair approach to making exceptions to sanctions on humanitarian grounds.[1] Each sanctions regime includes an exception, but its application depends on decisions of the sanctions committee in New York. Every year, the committee reviews a flood of appeals, many of which are justified, others of which are designed merely to circumvent the sanctions regime.

From the point of view of enforcing international law, sanctions have their value and their limits. To be effective, they must be more than a reflex borne of frustration, a rain dance we perform when we are unable to make it rain. Ultimately, sanctions may increase public cynicism unless they have clear goals clearly explained; are targeted precisely as possible; and are enforced.

Since the end of the Persian Gulf War, strict economic and weapons sanctions have been in place against Iraq. The Iraqi government complains that these sanctions have imposed unacceptable hardships upon its people. So far, however, Saddam Hussein has turned down proposals that would allow him to sell oil to buy food and medicine. His regime also continues to invest huge sums in the construction of lavish residential and infrastructure projects that benefit few people.

Overall, Iraq's compliance with U.N. resolutions since 1991 has been meager, sporadic, selective, and incomplete. Iraq has imported a huge quantity of biological medium, a growth cul-

1. A good example of our effort minimize unnecessary harm is a recent resolution of the Security Council allowing the export of diphtheria anti-serum from Belgrade. The serum is not available elsewhere and was needed to counter an outbreak of diphtheria in the New Independent States.

ture needed for biological warfare. Iraq has not provided a convincing explanation of why it imported this material, what the material was used for, and why it has not been able to turn large amounts of the material over to the United Nations Special Committee ("UNSCOM"). Until these matters are resolved, we must proceed on the assumption that the missing material is intended for use in the production of biological weapons. Furthermore, the *London Sunday Times* is in possession of apparently genuine documents that indicate Iraq is pursuing a nuclear weapons program. The International Atomic Energy Agency is also studying this topic.

The Iraqi government also continues to commit gross violations against human rights in defiance of the U.N. Charter and Security Council Resolution 688. It has failed to provide a satisfactory accounting of Kuwaiti prisoners and those missing in action; it has failed to return military equipment stolen from Kuwait; and, in October 1994, it deployed Revolutionary Guard forces in an aggressive manner, again threatening the peace and stability of the region. The United States paid a high price, as did our allies, when Saddam Hussein invaded Kuwait. We are determined that he never have a second chance.

Meanwhile, the sanctions regime aimed at Serbia/Montenegro and Serb-controlled territory in Bosnia and Croatia is the most extensive undertaking in the history of U.N. sanctions enforcement. We participate actively. Our purpose is to pressure the Serb leadership to accept peace and to encourage its allies in Bosnia and Croatia to do the same. Last September, in response to the closure by Belgrade of the border between Serbia/Montenegro and Bosnian Serb territory, the Security Council eased certain cultural, sports, and air transport sanctions against Serbia/Montenegro. These sanctions will be reimposed, however, if the Serb pledge to stop cross-border trade is violated.

Libya also is the subject of sanctions due to its refusal to hand over for trial the individuals indicted for the bombing of PAN AM 103 in 1988. Since that time, Libya has proposed a variety of schemes for a trial, all of which have in common their lack of compliance with the resolutions of the Security Council that require a trial either in the United Kingdom or the United States. The United States has pushed hard to maintain sanctions to keep the pressure on Qaddaffi regime, and we would prefer

stronger ones, including an arms embargo, if the Libyan leadership remains intransigent.

In addition, Haiti, as Iraq before Operation Desert Storm, illustrates both the importance of sanctions as a sign of international resolve, and their insufficiency at times as a means of altering behavior. For three years, the Security Council and the Organization of American States pursued a peaceful and just end to the Haitian crisis. The international community tried condemnation, persuasion, isolation, and negotiation. At Governor's Island, the Haitian military's leader signed an agreement that would have allowed the restoration of the democratically-elected government, but then refused to implement it. Sanctions were imposed, suspended, re-imposed, and finally strengthened. The illegitimate leaders were given every opportunity to leave.

One of the problems with which we had to cope throughout the Haitian crisis was the hardship that the sanctions caused to the innocent people of Haiti. We regretted those hardships deeply, but our resolve was strengthened by the vigorous support for sanctions expressed by the democratically-elected President, Father Aristide, and by evidence that many Haitians were willing to pay a high price in personal sacrifice to have the government for which they voted restored. Moreover, a herculean effort was made to provide food and medicine directly to the Haitian population through the humanitarian exceptions to the sanctions regime.

The decision to seek Security Council support for the restoration of democratic rule to Haiti by force if necessary reflected the extraordinary set of circumstances that existed: the blatant illegitimacy of the de facto leaders; the brutal repression; the violation of a U.N.-brokered agreement; the risk of renewed attempts at flight by desperate people aboard unseaworthy vessels; the expulsion of human rights monitors; the insufficiency of sanctions; and the existence of strong support regionally and overseas for decisive action. By going to the Security Council, the United States strengthened its hand diplomatically; reassured Haitians who were understandably ambivalent about the possible presence of foreign troops on their soil; established a useful precedent for monitoring by the United Nations of a coalition action; and paved the way for the transition that has now occurred from the multinational force to a U.N. force.

At the end of March of this year, I visited Haiti with President Clinton. Obvious problems remain, but we were told repeatedly by the soldiers with whom we spoke and by the Haitians themselves that the President had made the right decision. An enormous transformation is taking place. Fundamental to it is the effort to place the law on the side of the people of Haiti for perhaps the first time in that nation's history. Furthermore, Canada is deeply involved, training police and helping with judicial reform.

The road ahead in Haiti remains uphill. Real democracy does not take root overnight. The steps we have taken thus far, however, have honored our values, eased a humanitarian crisis, and enabled Haiti, in the words of the U.N. Charter, to pursue "social progress and better standards of life in larger freedom."

INTERNATIONAL CRIMINAL TRIBUNALS

In addition to peacekeeping and sanctions, a third enforcement tool is gaining prominence: the ad hoc tribunal for war crimes and other violations of international humanitarian law. Currently, there are two such tribunals: for Rwanda and the former Yugoslavia. The efforts by the United States to establish, organize, finance, and assist these tribunals have been unmatched by any other government.

I need not recount the suffering that has been visited upon the people of the regions for which these tribunals were created. The images are seared in our brains. This is not "heat of battle" violence, and the victims were not — in the terminology of the soldier — collateral damage. The victims were men and women, boys and girls, targeted intentionally not because of what they had done, but for who they were.

There are those who ridicule the effort to prosecute those responsible for these crimes; those who say that assembling the physical evidence, apprehending suspects, and obtaining credible testimony will be too difficult, too time-consuming, and too expensive. Some suggest it may interfere in Rwanda with the repatriation of refugees and in Bosnia with efforts to negotiate peace.

The Clinton Administration does not believe the difficulty of the Tribunals' work should bar the attempt to secure justice. Some indictments have already been handed down, and there

will be more. Governments will be obliged to hand over for trial those indicted who are within their jurisdiction. The Tribunals are empowered to request the Security Council to take enforcement action against any government that fails to hand over indicted persons. The indicted themselves will face the choice of standing trial or becoming international pariahs, trapped within the borders of their own lands, subject to immediate arrest should they leave.

President Clinton wrote recently that it is because of his personal commitment to the Tribunal for the Former Yugoslavia that

> in the latest [negotiating] proposal put forward by the Contact Group, we emphasized that nothing should be done to affect our commitment to the Tribunal and that all parties should cooperate in its efforts. In particular, the Serbs should not interfere with its operations and should not expect to fully rejoin the international community until they fully comply with the Tribunal's requests.[2]

The United States supports strongly the commitment of Judge Goldstone, the Prosecutor of the Tribunals, to pursue any suspect, regardless of his or her rank, position, or stature, wherever the evidence leads. There is not, and there should never be, any statute of limitations on the force and effect of the Tribunals' indictments.

Establishing the truth about what happened in Croatia, Bosnia, and Rwanda is essential not only to justice, but to peace. Responsibility for the atrocities committed does not rest with the Serbs or the Hutus or any other people as a group. Rather, it rests with the individuals who ordered and committed the crimes. True reconciliation will not be possible in those societies until the perception of collective guilt is expunged and personal responsibility is assigned.

On a related matter, the United States is committed also to a thorough, constructive, and timely examination of the proposal for an international criminal court. We believe strongly in the prosecution of war crimes, international terrorism, and narcotics trafficking. We want to ensure, however, that an international criminal court complements national investigations and

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2. Letter from U.S. President Bill Clinton to U.S. Rep. Steny Hoyer [D-MD] (Mar. 1, 1995).

prosecutions and does not undermine them. Serious issues are raised by the final Draft Statute of the International Law Commission. These issues must be examined among governments before the possibility of a diplomatic conference is considered by the General Assembly.

Over the past two months, teams of U.S. experts have consulted directly with many governments, including Canada, to review the issues and search for common ground. Furthermore, the United States took the lead in organizing the discussions held at the United Nations in April. No other government has examined the proposal for an international criminal court in greater depth and consulted with more governments than has the United States under the Clinton Administration.

CONCLUSION

On the day the U.N. Charter was signed, President Truman told the delegates assembled in San Francisco that:

> If we had the charter a few years ago — and above all, the will to use it — millions now dead would be alive. If we should falter in the future in our will to use it, millions now living will surely die.[3]

Two months earlier, and fifty years ago, the U.S. Sixth Armored and Eightieth Infantry Division marched into Buchenwald and the Allied Twenty-First Army Group, British and Canadian, liberated Belson-Belson. What they found there provides more eloquent testimony than any words could about the importance of law to the survival of civilized society.

Clearly, it was not enough to say, after World War II, that the enemy had been vanquished — that what we were against had failed. We had to build the foundation of a lasting peace. Together, the generation of Truman and Marshall and Eisenhower and Vandenberg designed a framework of law, principle, power, and purpose that would one day defeat Communism and promote democratic values and respect for human rights around the world.

Today, we are called upon to develop a new framework for protecting our territory, our people, and our interests. In devis-

3. President Harry Truman, Address at Closing Session of United Nations Conference, San Francisco, California (June 26, 1945).

ing that framework, we will build on the firm foundation provided by the U.N. Charter and other sources of international law. We will seek to extend the sway of civil society; to codify new standards; and to summon the will to enforce with greater consistency and effectiveness standards long established.

We have a responsibility in our time, as our predecessors did in theirs, not to be prisoners of history, but to shape it; to build a world not without conflict, but in which conflict is effectively contained; a world not without repression, but in which the sway of freedom is enlarged; a world not without lawless behavior, but in which the law-abiding are progressively more secure.

That is a task in which we all have a role. That is our mandate in this new era.