

Major International Law Issues at the United Nations between 1994-2004

**Short Address to a meeting organized by the Permanent Observer of the
Asian African Legal Consultative Organization to the United Nations**

by

**Hans Corell
Former Under-Secretary-General for Legal Affairs
and the Legal Counsel of the United Nations**

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Distinguished participants in the meeting organized by the Asian African Legal Consultative Organization,

When, in March 1994, I took up my position as Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations there was a remarkable development in the field of international law – in particular international criminal law.

In 1992-93, I had been a war crimes rapporteur in Bosnia-Herzegovina and Croatia for the Conference on Security and Co-Operation in Europe (CSCE). In February 1993, my two co-rapporteurs, Helmut Türk of Austria and Gro Hillestad Thune of Norway, and I had presented a proposal for an international war crimes tribunal for the former Yugoslavia. The proposal had been forwarded to the United Nations, where the subject matter was on the agenda of the Security Council. On 22 February 1993, the Council decided to establish the International Criminal Tribunal for the Former Yugoslavia (ICTY).

When I arrived in the UN, this tribunal was being organized. A month later, in April 1994, the genocide in Rwanda erupted. This led the Security Council to establish the International Criminal Tribunal for Rwanda (ICTR). The UN Office of Legal Affairs was therefore deeply involved in organizing the first two international criminal tribunals after Nuremberg in the 1940s. This was a major international law issue for several reasons.

First, the atmosphere in the UN had changed after the fall of the Berlin Wall in 1989. In particular, members of the Security Council had started cooperating in a manner that had not happened before. The fact that the Council could unite behind the resolutions establishing the ICTY and the ICTR was a remarkable development.

Furthermore, the fact that the Council considered itself competent to establish courts of this nature was an important development in international law. I viewed this against the background of Article 15 of the International Covenant on Civil and Political Rights. According to the first paragraph of this article, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. And then there is the second paragraph, which reads:

Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

To me this meant that there would be no question about the criminal responsibility of perpetrators any longer. If crimes were committed, the UN Security Council could always take action after the fact by establishing courts like the ICTY and ICTR.

In November 1994, the United Nations Convention on the Law of the Sea (UNCLOS) entered into force. During the preceding months the Office of Legal Affairs had been charged with the task of negotiating a solution to Part XI of UNCLOS, a very interesting experience. This had resulted in the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. The consultations were successful, in no small part because of the very constructive and active contribution provided by Satya Nandan of Fiji. He later became the first Secretary-General of the International Seabed Authority.

Within the UN Office of Legal Affairs the entry into force of the UNCLOS meant that we became involved in the establishment of the three organs of the Convention: the International Seabed Authority in Kingston, Jamaica, the International Tribunal for the Law of the Sea in Hamburg, Germany, and the Commission on the Limits of the Continental Shelf. The Commission meets in New York and is served by the Division for Ocean Affairs and the Law of the Sea, which is part of the UN Office of Legal Affairs.

Another major development at this time was the manner in which the Security Council dealt with the situation in Iraq. A particular legal issue was the effects of the sanctions on the population in the country.

On 14 April 1995, acting under Chapter VII of the UN Charter, the Security Council adopted resolution 986, establishing the Oil-for-Food programme. The purpose of this resolution was to provide Iraq with another opportunity to sell oil to finance the purchase of humanitarian goods, and various mandated United Nations activities concerning Iraq. The programme was intended to be a temporary measure to provide for the humanitarian needs of the Iraqi people.

The task of negotiating the agreement between the UN and Iraq relating to the practical arrangements for the operation of this programme fell upon me. My counterpart was Ambassador Abdul Amir Al-Anbari. The negotiations led to the signing of a Memorandum of Understanding between the United Nations and the Government of Iraq on 20 May 1996. The first Iraqi oil under the Oil-for-Food programme was exported in December 1996 and the first shipments of food arrived in March 1997.

As is common knowledge, the programme was very difficult to manage, and there were weaknesses that gave room to corruption and mismanagement. A thorough investigation was performed by the so called Volcker Committee, which in 2005 issued several reports regarding the programme and the manner in which it had been manipulated.

For my part I can only say that it was very sad that the programme was not managed in accordance with the rules that had been established by the Security Council and the Memorandum of Understanding between the UN and Iraq. It is, however, a fact that the programme with a turnover of some 65 billion US dollars fed the Iraqi population for a period of seven years.

In 2003, the Security Council decided to terminate the programme and ordered the UN to hand over the residual money on the bank accounts established for holding the funds, the so-called Iraq Account, to "the Authority" representing the occupying powers in Iraq. The transfer was made in November 2003. The sum was some 8 billion US dollars. No one has been able to explain exactly where this money went.

On 1 January 1997 our colleague Kofi Annan became Secretary-General of the United Nations. This meant radical changes in many respects, not least in the legal field.

On 17 November 1989, the UN General Assembly had adopted resolution A/RES/44/23 by which it declared the period 1990-1999 the United Nations Decade of International Law. In the Office of Legal Affairs we had worked out a plan of action to implement this resolution. Eventually the Senior Management Group that Kofi Annan had established when he took office, adopted this plan, which was then confirmed by Kofi Annan in June 2000: *Strategy for an Era of Application of International Law*.

The plan contained nine main items: (1) Encouraging Participation in Multilateral Treaties; (2) Assist Education in States to Prepare Necessary Implementing Legislation; (3) Training of Judges and Practising Lawyers; (4) Training of Others who are Involved in the Application of the Law; (5) Education; (6) Informing the General Public about International Law and about Means of Recourse Against Violations of this Law; (7) Encouraging Acceptance of Dispute-Resolution Mechanisms; (8) Education of United Nations Staff; and (9) Advocacy for Better Implementation of International Law.

The year of 1998 was a dramatic year from a legal point of view. The following three issues should be mentioned.

First: The Secretary-General decided to go to Baghdad to negotiate an agreement with Saddam Hussein that gave the UN Weapons Inspectors access to his palaces. Kofi Annan had prepared himself in detail before he engaged in this effort, including contacting the major players in the Security Council about his intentions. He also asked Lakhdar Brahimi, former Foreign Minister of Algeria, and me to assist him. In February 1998, we flew to Paris, where President Jacques Chirac received us and provided us with an aircraft that could take us directly from Paris to Baghdad. In Baghdad, Kofi Annan negotiated first with Deputy Prime Minister Tariq Aziz and then, on 22 February, with Saddam Hussein.

To make a long story short, the result was an agreement regulating the inspection of Saddam's palaces. It was signed by Kofi Annan and Tariq Aziz on 23 February 1998. To my great relief, the Security Council *endorsed* the agreement on 2 March 1998. Reference is made to resolution 1154.

Second: In June-July 1998 the Rome Conference on the establishment of the international criminal court was convened. This was a major effort that had been planned for many years by the UN General Assembly.

There are books written about the Conference that was a great success. During the five Conference weeks the participating states managed to negotiate what is commonly referred to as the Rome Statute of the International Criminal Court. As the Representative of the Secretary-General at the Conference I was very proud of the Secretariat, led by Roy S. Lee as Executive Secretary and Manoush Arsanjani as Secretary of the Committee of the Whole.

The Rome Statute was adopted on 17 July 1998. It was signed on that day and the day after on Capitol Hill in Rome. The requirement of 60 ratifications for the entry into force of the Statute was a fact on 11 April 2002, which meant that the Statute entered into force on 1 July 2002.

Third: In August 1998, the Security Council requested the Secretary-General to organize the transfer of the so-called Lockerbie suspects from Tripoli in Libya to the Netherlands for trial before a Scottish court sitting in that country. After careful preparations during the autumn of 1998 my Libyan counterpart, former Foreign Minister Kamal Hassan Maghur, and I could perform the transfer on 5 April 1999 with highly professional assistance by the Italian Air Force and Security Services.

In 2000 the Government of Sierra Leone requested that a special court should be established to address serious crimes against civilians and UN peacekeepers committed during the country's civil war. The UN Office of Legal Affairs was charged with negotiating an agreement to this effect. The negotiations were very positive and resulted in the Agreement between the United Nations and Sierra Leone on the Special Court for Sierra Leone (SCSL) in January 2002.

In 2001, a catastrophic event took place in New York. It is commonly referred to as 9/11. This entailed very serious consequences also for the United Nations. An immediate effect, apart from the security aspects, was the following. On 11 September 2001 we had no president in the General Assembly. President Harri Holkeri's term had expired in the afternoon on the day before. And his successor, Han Seung-soo of South Korea, was to be elected in the afternoon of 11 September.

However, on 11 September the UN building was evacuated. In spite of this, we managed to organize a meeting with Harri Holkeri and Han Seung-soo to discuss how to proceed. The discussion resulted in a decision that the General Assembly should meet at 3 pm the day after to elect the President. At this discussion I met for the first time the incoming president's Chef de Cabinet. His name was Ban Ki-moon. Since there is a close cooperation between the presidency of the General Assembly and the Office of Legal Affairs, there were many contacts with him during Han Seung-soo's presidency.

As I just mentioned, on 1 July 2002 the Rome Statute entered into force. This entailed a period of intense work in the Office of Legal Affairs leading up to the election of the judges and the preparation for their work once elected. On 11 March 2003, the judges were sworn in.

At this time the Office of Legal Affairs had been engaged for many months in very complex negotiations with the government of Cambodia for the establishment of the Extraordinary Chambers of the Courts of Cambodia (ECCC). In February 2002 the Secretary-General had withdrawn from the negotiations since he had lost confidence in the process. However, in December 2002 we were forced back to the negotiating table by the General Assembly through resolution 228. This resulted in an agreement which was signed in Phnom Penh on 6 June 2003. For my part I am of the firm opinion that the ECCC should never be used as a model for any future effort of this nature.

In early 2003, a very serious event occurred with very critical legal consequences. I refer to the attack on Iraq by the United States and the United Kingdom in March 2003. It is absolutely clear that resolution 1441, adopted by the Security Council on 8 November 2002, did not authorise the use of force in case Saddam Hussein did not abide by his obligations. It is evident that the British understood that a new resolution was needed, and their Permanent Representative at the UN, Ambassador Jeremy Greenstock, made intense efforts to secure support for a resolution, authorising the use of force against Iraq. However this did not come forth. At the same time Hans Blix, who was now the Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) reported that he had no signs of Saddam having weapons that would fall under the authority of the inspectors.

And yet, the two permanent members of Security Council attacked Iraq. All the 15 ambassadors of the Council asked to see Kofi Annan to seek his advice. We were four under-secretaries-general present during those consultations.

Eventually this led to the Security Council adopting resolution 1483 on 22 May 2003, confirming that the United States and the United Kingdom were occupying powers in Iraq. It specifically called upon them to comply fully with the obligations on occupying forces imposed by the Geneva Conventions of 1949 and the Hague Regulations of 1907.

My firm opinion was and is that the attack was a flagrant violation of the UN Charter, at that by two Western democracies. I certainly wondered what my colleague in London, Sir Michael Wood, thought about the situation, in particular since his deputy Ms. Elisabeth Wilmschurst had resigned because of the behaviour of her government. I was very gratified to see that Sir Michael was of the same opinion as I when the report of the Chilcot Inquiry was published in 2016.

Within the time available to me, these were a few issues from the period 1994-2004 demonstrating the diversity of the legal matters with which the United Nations is confronted.

Thank you for your attention!