

**Forum Global Issues**

***“International Law in Flux”***

**Conference Organised by the Federal Foreign Office and  
the Hertie School of Government**

**Keynote Address**

**by**

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

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Mr. Chairman,  
 Professor Zürn,  
 Excellencies,  
 Fellow panellists,  
 Ladies and gentlemen,

First of all, my most heartfelt thanks for the invitation to this the 14<sup>th</sup> Forum on Global Issues. It is an honour for me to deliver the keynote address on this occasion and to participate in one of the panels.

The Forum serves as a platform for the Ministry for Foreign Affairs for the dialogue between the Government and civil society: non-governmental organisations, foundations, churches, business associations and enterprises – and why not former legal advisers? It focuses on global problems in the broad perspective.

The series of topics that has been discussed in the previous Forums since 1999 is impressive: globalisation, population growth, gender equality, the UN after the Millennium Summit, new global partnerships, the medialisation of world politics, as well as the timely topic football, globalisation and foreign policy, to mention but a few.

The theme of the present Forum – International Law in Flux – is also a challenge. And someone who after 42 years in public service all of a sudden finds himself active in civil society – among other things I am a consultant at Mannheimer Swartling, Sweden's largest law firm, and actively engaged in the work of the International Bar Association – will certainly present it as a challenge in particular to governments.

The Conference takes place in Berlin. It would therefore have been appropriate to address the audience in German. Nevertheless, I will make the presentation in English since this is the language in which I am most familiar with the nomenclature – as a matter of fact more familiar than in my mother tongue, Swedish.

This keynote presentation of “*International Law in Flux*” will be in three distinct parts: (1) Reflections on the topics of the first three panels of this Forum, and (2) The need for the rule of law at the national and international level. The third part, which draws on the other parts, contains its core message: (3) There must be an end to the double standards in the application of international law!

### **1) Reflections on the topics of the first three panels**

*Panel 1: Equal rights for unequal partners? Towards new forms of statehood and sovereignty*

These are important questions. New non state actors have an increasing impact on decision-making in contemporary society. A growing number of international norms are tying the hands of the national legislators. Some States create problems for the international society because they fail to maintain law and order in a positive sense at the national level.

Some States are even named “rogue states”. Personally, I do not favour that expression. Who is a rogue state? There are some who would answer that question in a manner that might surprise those who are quick to name others by that epithet.

The present unipolar system represents a challenge both to the State in question and to the rest of the world. The question could be put whether we are approaching an institutionalized inequality among States.

But does the situation really differ so much from what we have experienced in the past?

Human beings have always wrestled with these kinds of questions. The sovereign state is often seen through the prism of the peace of Westphalia. And it is true that the Charter of the United Nations takes as a point of departure the sovereign equality of all its Members.<sup>1</sup>

But State sovereignty today must be understood against the general message of the UN Charter and the development of international law – in particular human rights law and humanitarian law.

Basically, sovereignty in today’s world should be exercised in the interest of the people. The foremost duty of any government is to strengthen democracy and the rule of law. The dilemma is that there are still too many States that are not democracies, and as long as such States have an influence on the decision-making of international institutions, in particular the UN, we have a problem.

The main challenge, in my view, is to find ways to overcome this dilemma. This should not be done through efforts to exclude certain States from the international community but by including them and trying to influence them and convince them of the benefits of joining the community of democratic states.

It is also important to look into the rear mirror. There has always been talk about a changing world and the need for new solutions. A review from this perspective of the titles of writings on international law at the beginning of the last century is an interesting exercise.

In my view, we should not listen to the siren song by some who claim that States should abandon multilateral solutions and act on their own. Events over the last few years have demonstrated that this is not to the benefit of humankind. We should also not forget that the geopolitical centre has a tendency to shift over the years. But human needs are the same.

Therefore, the lodestar should be multilateralism based on the system of collective security as laid down in the Charter of the United Nations.<sup>2</sup> This is not to say that the United Nations does not need reforming. Which organisation does not? But when you study this question closely, you will inevitably come to the conclusion – as I never fail to emphasise – that it is the Member States that really needs reforming.

What Member States should be striving for is the observance of the principles of the rule of law (“Rechtsstaat”) both at the national and international level. This requires

equality before the law and respect for the norms agreed upon. There are rules in the UN Charter that forbid the use of force against the territorial integrity or political independence of any state unless certain conditions are met. These rules must be respected.<sup>3</sup>

The fact that there are new actors in the playing field should be welcomed. The contributions by civil society and the non-governmental organisations are of particular importance. These actors actually contribute to strengthening the system of governance both at the national and international level.

The argument that these actors and, in particular, powerful transnational enterprises undermine the authority of national governments is often made. But this challenge should be met by the strengthening of the sovereign state. As a matter of fact, where problems occur, the reason is more often than not that the state is weak – or even failing.

Irrespective of whether there will be new forms of statehood, there are some basic elements that simply cannot be entrusted to any other body than institutions of a sovereign state: exercise of legislative authority, national security, law enforcement, etc. For these purposes States actually need strengthening. However, this strengthening should not be seen as competition with other actors but as a necessary contribution to the components of a modern democratic society.

Having said that, I would like to focus on a question of a more constitutional nature, namely the relationship between the norms adopted at the national level and norms adopted at the international level. Reference is often made to the “proliferation” of international norms, both binding norms and so-called soft law. If we are not careful, there will be problems here.

Some authors discuss the hierarchy of international norms. At the national level, this is the natural approach. It is obvious that a constitution trumps rules at a lower level in the legislative hierarchy. At the international level, the question becomes more complex.<sup>4</sup>

As former Legal Counsel of the UN it would be my duty to point to Article 103 of the UN Charter which prescribes that, in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter shall prevail.

However, this rule does not provide an answer to the general question how to determine the interrelationship between international norms. From my many years in the Ministry of Justice of my own country I recall the meticulous work that was laid down in order to ensure that proposals for new legislation did not violate the Constitution or were inconsistent with our legal system.

In Sweden there is even a Law Council, composed of Justices of the Supreme Court and the Supreme Administrative Court, who’s duty it is to review proposals for legislation. This scrutiny shall concern *inter alia* the way in which the proposal relates to the Constitution and to the legal system in general.<sup>5</sup>

Scrutiny in this detail is simply not possible at the international level. There are several reasons for this, perhaps most importantly, that every organ entrusted with a mandate to negotiate international agreements, in particular international conferences, believe themselves to be sovereign and might be reluctant to look at instruments adopted in other forums. An additional problem is that instructions to national delegations in such negotiations often emanate from different ministries at the national level. The lack of coordination often starts already here.

And this is where I see a real problem for the future.

Obviously, a prerequisite must be that the law reflects the needs of contemporary society. The development of international law over the past century has been tremendous with a crescendo towards the end of the period. It is evident that new phenomena will occur that require new rules at the international level. This should not be seen as negative. On the contrary, this should be viewed as strengthening the development towards an international society under the rule of law. New rules are also an inevitable consequence of globalisation and new needs.

However, an increasing number of international agreements will pose a risk that obligations will be contradictory. This will, in turn, lead to difficulties when the obligations are to be implemented and applied. If the system becomes too inconsistent, there will be negative effects on the respect for the norms agreed upon.

Another consequence of all these international commitments is that the national legislator will have less freedom to legislate. Precisely because of this, a well-known phenomenon that arises at the national level is transferred to the international level. Let me illustrate.

The first question one should ask at the national level when someone suggests that new rules are needed is: are they really necessary? If the new rules are deemed necessary, the next question should be: what existing rules can be abolished at the same time?

If, after this scrutiny, new rules are adopted, they must dovetail with the legal system as whole.

The same scrutiny should be applied at the international level precisely because of the expansion of the body of norms at this level. The distinction between national and international norms will be less prominent and, as already mentioned, the freedom of the national legislator will be more and more circumscribed.

Now you may ask why I am highlighting this question in a context where you may think that the focus should be on more lofty matters. Is this not just a technical matter? But mark my words: this question – even if it seems technical on its face – needs careful attention. Just as the national legal system needs maintaining, in particular through abolition of obsolete rules, so will the international system need a similar attention. The body of international agreements will have to be systematically reviewed to ascertain that it is up-to-date and coherent. We must be careful to maintain the quality of the system.

The International Law Commission (ILC) is studying the topic from the point of departure of fragmentation of international law.<sup>6</sup> Irrespective of the final outcome of that work, the matter that I have raised here will present a major challenge to the international community in the future. States should already now discuss, preferably in the context of the report of the ILC, how to deal with the phenomenon.

*Panel 2: “War on terrorism”: Suppression of terrorism as “war” or fighting crime?*

Here I can be brief. I will simply refer to the Madrid Agenda adopted by the Madrid Summit on Democracy, Terrorism and Security. The Summit took place in Madrid from 8-11 March 2005, i.e. one year after the terrorist attack on the city. It was organised by The Club of Madrid, an association of former heads of state and government in democratic states.<sup>7</sup>

The Madrid Agenda contains a number of principles and recommendations.<sup>8</sup> Under the title “A Comprehensive Response” the Agenda states that we owe it to the victims to bring the terrorists to justice. Law enforcement agencies need the powers required, yet they must never sacrifice the principles they are dedicated to defend. Measures to counter terrorism should fully respect international standards of human rights and the rule of law.

Allow me to quote the following from the Agenda’s statement with respect to confronting terrorism:

“Democratic principles and values are essential tools in the fight against terrorism. Any successful strategy for dealing with terrorism requires terrorists to be isolated. Consequently, the preference must be to treat terrorism as criminal acts to be handled through existing systems of law enforcement and with full respect for human rights and the rule of law.”

In the months leading up to the Madrid Summit, more than two hundred scholars and expert practitioners explored the issues of democracy, terrorism and security. They were organised in working groups. Each working group issued a final paper containing principles and recommendations. May I quote the following principle from the working group on legal responses to terrorism, which I had the privilege of coordinating:<sup>9</sup>

“To describe combating terrorism as a ‘war’ is not only misleading – it is dangerous. The term ‘war on terrorism’, instead of ‘fight against terrorism’, plays into the hands of perpetrators of terrorism. At the same time, it confuses the terminology applied in international humanitarian law and jeopardizes the applicability of human rights standards.”

The members of the working group thought that it is contrary to the basic principles of democracy and international law for any persons not to fall under the protection of law. This would apply, for instance, to practices such as indefinite detention without access to judicial review, extrajudicial execution, and inhuman and degrading treatment in the course of interrogations, conducted either domestically or in third countries after extra-legal rendition.

The members of the working group emphasized that a forceful response to terrorism is not undermined by the rule of law. On the contrary, the rule of law is the appropriate framework for the response. To apply the terminology “war on terrorism” entails the possibility that human rights standards that should be applied in these cases may be indefinitely suspended. The reasoning of the working group was expressed in a number of recommendations.<sup>10</sup>

I thought it was important to share these references with you on this occasion. We should be very clear on this point. To suppress terrorism is not a war. You cannot conduct a war against a phenomenon. As a matter of fact to name the fight against terrorism a “war” was a major disservice to the world community including the State from where the expression emanates. The violations of human rights standards that have occurred in the name of this so called war – no matter how necessary it is to counter terrorism – have caused tremendous damage to the efforts by many to strengthen the rule of law.

A particular concern is that terrorist organisations take advantage of the fact that some States do not have full control of their territory. But recently we have also experienced that terrorist networks establish themselves in the most organised societies and consist of persons who have been brought up in these societies. I am aware that this aspect is presently discussed in Germany.

This again poses additional challenges. It also emphasises the need to address the causes of terrorism. These matters were discussed in other working groups preparing for the Madrid Agenda. The papers from those working groups provide important guidance in this context.<sup>11</sup>

*Panel 3: New rules for the use of force? Interventions beyond classic conflict situations*

The point of departure for this discussion should definitely be the rules in the UN Charter that forbid the use of force against the territorial integrity or political independence of any state unless certain conditions are met. In particular, these rules must not be dismissed with a disdainful assertion that one is not going to ask for a “permission slip” to defend the security or one’s own country.<sup>12</sup>

These rules were elaborated by persons with experiences from two world wars, and they should not be easily abandoned. As a matter of fact, it is when international peace and security are threatened that these particular rules are needed and should be respected. In such situations it is important to make clear before action is taken whether the situation at hand is one of self-defence or not. If it is not, it is for the Security Council to authorise the use of force.

In the material disseminated before this Forum, the question is put whether these rules are sufficient. I believe Member States should be very careful not to open a Pandora’s Box here. We should in this context note that the Summit Resolution contains a reaffirmation that the relevant provisions of the UN Charter are sufficient to address the full range of threats to international peace and security.<sup>13</sup>

It is true that the language of Article 51 of the UN Charter has been of concern: self-defence is not permitted unless “an armed attack occurs”. However, this matter has been addressed by the High-level Panel on Threats, Challenges and Change. In their report, the Panel makes a statement that I believe is broadly accepted: “[A] threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it and the action is proportionate.”<sup>14</sup>

Of particular concern in this context is the US National Security Strategy adopted in 2002.<sup>15</sup> According to this strategy the US would feel free to use force without a clear mandate from the Security Council. As I have pointed out on other occasions, this attitude flies in the face of the UN Charter and its system of collective security, in particular Article 51 on self-defence. The US position creates uncertainty among other players on the international arena.

Another development is the discussion of the concept “responsibility to protect”. The latest development appears in the Summit Resolution, where the Member States declare that they are prepared to take collective action on a case-by-case basis should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>16</sup>

However, recent experiences prove that is not always easy for the State community to muster the forces that are necessary for providing this protection. The situation in Darfur is a case in point. The difficulty for the UN in getting sufficient troop contributions for UNIFIL is another.

These efforts are not without complications from another point of view. It is now clear that what must be provided to address a situation is not only troops to maintain peace and security or to implement a peace accord. The situation on the ground is often such that there is no authority that can impart necessary administration. If this is the case, those who are mandated to act must also provide administrative assistance.

The experiences from Kosovo and East Timor are telling. In these situations the UN even had to govern the provinces, including providing for the administration of justice.

These are difficult tasks and require completely different competences from what used to be the case in peace operations. Of special importance is that any administration provided by the UN conforms to the standards prescribed by international law, in particular human rights standards.

## **2) The need for the rule of law at the national and international level**

One of the functions of the United Nations General Assembly is to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification.<sup>17</sup> Over the years, an impressive body of law has been developed under the auspices of the United Nations. The actors are mainly the ILC, the United Nations Commission on International Trade Law (UNCITRAL) and the Sixth (Legal) Committee of the General Assembly. But also other actors

should be mentioned, e.g. the Commission on Human Rights<sup>18</sup> and the Third Committee of the General Assembly, as well as numerous conferences organised under UN auspices.

Much could be said about this activity and its result, but a short keynote address is not the appropriate time for an exposé that by necessity would be wide-ranging.<sup>19</sup> Suffice it to say that the United Nations has a very important role to play in this field also in the future.

The point I would like to make here is that much more focus should be on the implementation of this body of law. In other words, much more attention should be given to the rule of law at the national and international level. Let us therefore see what improvements could be made in this field in the years to come.

No doubt, the United Nations has a vital role to play also in this context. Secretary-General Kofi Annan is very much aware of this. Shortly after he took office he invited all Under-Secretaries-General to a retreat to identify the most pressing issues that we should engage in, bearing in mind the new millennium ahead. The retreat ended with two items at the top of our agenda: first, international peace and security and, second, the rule of law.

Kofi Annan has been faithful to these conclusions. Whenever there was an opportunity, he reiterated the message of the necessity of building an international society based on the rule of law. Gradually, the rule of law has become part of the day-to-day activities of the United Nations. The so called Brahimi report focused on it.<sup>20</sup> In 2003, at the initiative of the United Kingdom, the rule of law was introduced as a distinct item on the agenda of the Security Council. In September 2004, the Secretary-General devoted his address to the General Assembly to the rule of law,<sup>21</sup> following a report to the Security Council on the topic.<sup>22</sup>

In the Summit resolution Member States recommitted themselves to actively protect and promote all human rights, the rule of law and democracy.<sup>23</sup> On 22 June this year, the Security Council held a day-long open debate on the Council's unique role in promoting and strengthening the rule of law in international affairs. A Presidential Statement adopted on the same day commences:<sup>24</sup>

“The Security Council reaffirms its commitment to the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world.”

States should now be held to account.

It should by now be clear to everyone that the rule of law is necessary to create a society in which human beings can live in dignity with their human rights protected. At the same time it is important that we recognise that the rule of law as it is understood today can only exist in a democracy.

We also know that there is a need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation in order to achieve sustainable peace and that it is necessary to assist countries emerging from conflict.

However, the question that I raise whenever I have an opportunity is if we should not more actively and systematically engage in enhancing the rule of law in general. This applies, in particular, to countries that need assistance before a conflict erupts. As we have just seen, every country falling short in this respect is a potential source of conflict that eventually can threaten international peace and security.

It should be commonly understood that these conflicts are invariably caused by the absence of the rule of law and lack of protection of human rights. Therefore, Member States should make a determined effort to systematically address this deficiency.

In civil society, initiatives are being taken. In October 2005, the International Bar Association launched a *Global Campaign to Promote the Rule of Law* and in November 2005, a *Global Rule of Law Movement* was launched at a meeting in Washington DC. These initiatives will be followed up at a symposium in Chicago next week, organised jointly by the International Bar Association and the American Bar Association. Also others are active in this context.<sup>25</sup>

In my view it is now time to make a global and systematic effort to enhance the rule of law. Four elements are necessary to achieve the rule of law: democracy; proper legislation; institutions to administer this law; and individuals with the necessary integrity to handle this administration.

In another context I have suggested that the rule of law status in individual Member States should be systematically assessed and that the United Nations could act as a hub for such assessments and related information.

It should be understood, though, that establishing a rule of law system in a country is a major challenge – a most important investment. It should be compared to creating a main infrastructure component at the national level, like roads and railroads, the electrical grid, or the like. At the same time legal technical assistance can only be given through limited and focused projects.

It is my belief that more funds for legal technical assistance would be forthcoming if additional credible and cost-effective projects could be identified. Therefore, there should be more focus on legal technical assistance in the future. I also believe that more Official Development Assistance (ODA) should be directed to this activity. Maybe the Government of Germany, which is already funding legal technical assistance, may wish to look into this matter and raise it with other governments.

### **3) There must be an end to the double standards in the application of international law!**

Here I will be very brief. It is not necessary to explain in detail what a well-informed general public all over the world can see for itself. Suffice it to point to the actions taken by some Member States, including permanent members of the Security Council, against Iraq in March 2003. Suffice it to point to the situation in Darfur and most recently in the Middle East.

With respect to the Middle East the efforts by States to help out must be recognised. But what happened there this summer is the result of a situation that has been allowed to develop over many years. In a sense, we are reaping the harvest of the inability of major players on the international arena to address it.

Furthermore, the question of personal criminal responsibility has been raised in the past in relation to atrocities committed in the former Yugoslavia, Rwanda, Sierra Leone and Cambodia and was again emphasised by the Security Council in June this year. An International Criminal Court has been established. But who talks about taking effective measures to bring to justice those responsible for the crimes that obviously have been committed by both sides across the Blue Line and elsewhere in the Middle East?

It is often argued that international law is not all that clear and that one should be careful not to oversimplify. Indeed, this is true. But in many cases the law is crystal clear. And in addition: it is even simple common sense.

One of the root causes to the problems that we face in the world today is that international law is not applied equally to all. Until this occurs, we are doomed to repeat the mistakes of the past.

May I respectfully suggest that the Government of Germany is particularly well placed to raise this matter with influence and credibility in the international community.

Ladies and gentlemen,

I have come to the end of my presentation. You will note that I have not discussed what international law can do to help solve the global problems. This is for the simple reason that the last panel of this Conference will deal with that question. I will revert to it in that context.

Thank you for your attention!

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<sup>1</sup> Article 2, paragraph 1 of the UN Charter.

<sup>2</sup> Cf. para. 72 of General Assembly resolution A/RES/60/1(the Summit Resolution):

“We therefore reaffirm our commitment to work towards a security consensus based on the recognition that many threats are interlinked, that development, peace, security and human rights are mutually reinforcing, that no State can best protect itself by acting entirely alone and that all States need an effective and efficient collective security system pursuant to the purposes and principles of the Charter.”

<sup>3</sup> Article 2, paragraphs 4 and 7 and Article 51 of the UN Charter.

<sup>4</sup> See for example the essay by Dinah Shelton, *Normative Hierarchy in International Law*. In: American Journal of International Law, Vol. 100 No. 2 April 2006:291-323.

<sup>5</sup> The Swedish Instrument of Government, Chapter 8, Article 18.

<sup>6</sup> Fragmentation of international law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi. UN docs. A/CN.4/L.682 and A/CN.4/L.682/Add.1. Of particular interest in this context is the following excerpt from the first document, para. 487:

“The very effort to canvass a coherent legal-professional technique on a fragmented world expresses the conviction that conflicts between specialized regimes may be overcome by law, even as the law may not go much further than require a willingness to listen to others, take their points of view into account and to find a reasoned resolution at the end.” (Emphasis added)

<sup>7</sup> See <http://summit.clubmadrid.org/>

<sup>8</sup> The Madrid Principles

“Terrorism is a crime against all humanity. It endangers the lives of innocent people. It creates a climate of hate and fear, it fuels global divisions along ethnic and religious lines. Terrorism constitutes one of the most serious violations of peace, international law and the values of human dignity.

Terrorism is an attack on democracy and human rights. No cause justifies the targeting of civilians and non-combatants through intimidation and deadly acts of violence.

We firmly reject any ideology that guides the actions of terrorists. We decisively condemn their methods. Our vision is based on a common set of universal values and principles. Freedom and human dignity. Protection and empowerment of citizens. Building and strengthening of democracy at all levels. Promotion of peace and justice.”

<sup>9</sup> The Madrid Summit Working Paper Series, Volume III – Towards a Democratic Response , page 13.

<sup>10</sup> Reference should here be made to recommendations 1.4 and 1.10 through 1.13 of the working group:

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1.4 States should take the necessary measures to ensure that acts of terrorism are defined as offences under national law and punishable by effective, proportionate and dissuasive criminal penalties. States should also take the necessary measures to ensure that legal persons can be held liable, without excluding criminal proceedings against natural persons who are perpetrators, instigators or accessories in acts of terrorism.

1.10 In preventing and suppressing terrorism, States should scrupulously observe and guarantee human rights and humanitarian law standards and respect for the rule of law. In particular, States should comply with the international standards of treatment of individuals suspected of or charged with acts of terrorism as well as procedural safeguards for suspects and defendants.

1.11 States should observe that there are absolute human rights, from which no derogation is possible, such as the prohibition of torture, and relative human rights, such as freedom of expression, which may be restricted only to the extent that is strictly justified in accordance with international human rights standards.

1.12 In accordance with applicable international law, States should, as soon as reasonably possible, give humanitarian access to persons arrested for or charged with acts of terrorism to their State of nationality and international humanitarian agencies such as the International Committee of the Red Cross (ICRC). International humanitarian agencies should be given access to stateless persons.

1.13 States should give persons arrested, charged, or otherwise deprived of liberty for acts of terrorism access to legal representation and to consular officers of the State of their nationality in the case of foreign persons, and should provide legal counsel for such persons.

<sup>11</sup> Available at <http://summit.clubmadrid.org/>

<sup>12</sup> “America will never seek a permission slip to defend the security of our country.” President George W. Bush in his State of the Union Address on 20 January 2004.

<sup>13</sup> Cf. para. 79 of General Assembly resolution A/RES/60/1 (the Summit Resolution):

“We reaffirm that the relevant provisions of the Charter are sufficient to address the full range of threats to international peace and security. We further reaffirm the authority of the Security Council to mandate coercive action to maintain and restore international peace and security. We stress the importance of acting in accordance with the purposes and principles of the Charter.”

<sup>14</sup> Cf. UN Doc. A/59/565, para 188: “- - - However, a threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it and the action is proportionate. - - -”

<sup>15</sup> <http://www.whitehouse.gov/nsc/nss.html>

“The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”

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<sup>16</sup> Cf. para. 139 of General Assembly resolution A/RES/60/1(the Summit Resolution).

<sup>17</sup> Article 13, paragraph 1 of the UN Charter.

<sup>18</sup> This body has now been transformed into the Human Rights Council. See General Assembly resolution A/RES/60/251. The first meeting of the Council was convened on 19 June 2006.

<sup>19</sup> Reference is made to the International Law website <http://www.un.org/law/> and the Human Rights website <http://www.un.org/rights/> .

<sup>20</sup> UN doc. A/55/305 – S/2000/809.

<sup>21</sup> Available at <http://www.un.org/apps/sg/sgstats.asp?nid=1088>

<sup>22</sup> Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies. UN doc. S/2004/616\*.

<sup>23</sup> General Assembly resolution A/RES/60/1. See in particular paragraphs 11, 16, 21, 24 (b), 25 (a), 119 and 134.

<sup>24</sup> S/PRST/2006/28. See also <http://www.un.org/News/Press/docs/2006/sc8762.doc.htm>

<sup>25</sup> The International Legal Assistance Consortium (ILAC) and the Hague Institute for the Internationalisation of Law (HiiL) could be mentioned as examples. But, above all, governments, including in particular the Government of Germany, engage in this work. So do intergovernmental organizations. The World Bank, the Council of Europe, the European Union and the International Development Law Organization (IDLO) are among them.