

1 THE ROLE OF THE UNITED NATIONS IN A FRAGMENTED GLOBAL ORDER: IS THE UNITED NATIONS STILL RELEVANT?

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Good evening everyone. It is indeed a great pleasure and an honor to stand before you today to talk about a very topical issue; one that has touched the lives of so many people throughout the world and in so many different ways. The United Nations may not be the most perfect institution, but it has certainly contributed to improving the human condition worldwide, and if there were no United Nations, we would have had to invent one. The United Nations is the only institution with the diversity and global reach that comprises the entire international community and can address all issues affecting our planet today.

I am particularly grateful for the invitation extended to me by members of the CLASS Scholarship Committee to deliver this Open Doors lecture at the University of the Virgin Islands, an institution which was so important in changing the direction of my life and contributing to who I am today. I want to thank the faculty, staff, and the administration of President Hall for the fine work they do every day in educating the next generation of Caribbean and world leaders. I would also like to thank some of the former professors of UVI who gave me the confidence and encouragement to pursue my dreams: Dr Arnold Highfield, Dr Isaac Dukmann, Dr Tom Reeves, and Dr Jules.

I would also like to say thank you to a few people in the audience who have also contributed to the person I am today: my friends Attorney Patricia Welcome, Eric Leblanc, Eddie Bruce, Ras Bobby and Hugh Denis.

Most importantly, I would like to give a special thank you to my sisters Andrea Victorine, Sylma Lavenir, Catherina Isaac, and Ezra Bastien. Of course, I want to dedicate this lecture to the memory of my mother, Benedict Thomas, who passed away in July 2015, but will never be forgotten. My mother braved these shores for a better life for her children and without her I would not be standing here today. Thank you everyone.

Now let me address the topic we came here for tonight: the role of the United Nations in a fragmented global order. Is the United Nations still relevant?

THE INTERNATIONAL LEGAL ORDER AND THE ORIGIN OF THE UNITED NATIONS

The creation of the United Nations was a novel idea and an extraordinary opportunity for mankind to avoid a repetition of the devastation of World War II. No longer would the world stand by and allow a state to invoke its sovereignty to commit such wanton destruction and mass atrocities with impunity. The idea of a United Nations was declared following a summit in Quebec between Prime Minister Churchill of Great Britain and President Franklin D. Roosevelt of the United States. In the Atlantic Charter they decided to establish an international organization that would prevent such a catastrophe from recurring in the future. However, the United Nations was not without its flaws.

The concept of a United Nations was a compromise between two competing political ideals: liberalism/Kantian internationalism, and realism. In the end both ideas were incorporated into the United Nations Charter. Liberalism is reflected in the Articles of the Charter which promote human rights and fundamental freedoms, the rule of law, and international cooperation; whereas realism is reflected in the concept of a great power concert which grants the Security Council unchecked powers to maintain international peace and security. The idea of a United Nations is also an American creation. Churchill deferred to the United States, as he did not want the US Senate to reject the new organization, as it did with the League of Nations.

To prevent the United Nations from going the way of the League of Nations, the framers of the Charter of the United Nations gave the Permanent Members of the Security Council (known as the P5) an absolute veto on all substantive issues brought before the Council. The veto virtually paralyzes the Security Council from carrying out its mandate. It also prevents the Security Council from taking action against the P5 or their allies. The veto has given *carte blanche* to Russia, the United States, Britain, France, and China to use military force against weaker states with impunity. This explains why the US could invade Grenada, Panama, and Iraq, and how Russia could invade and annex parts of Ukrainian territory without any consequences. In the United Nations system, the Security Council operates above the law, and there is nothing the international community can do about it. I will say more about the Security Council shortly.

The end of World War II left Europe severely weakened and politically incapable of managing world affairs. The mass atrocities carried out by the Nazi regime were unprecedented in human history, and raised many concerns about a post-war order that would prevent a repeat of such atrocities, not only in Europe, but throughout the world. The end of the war also gave rise to a new bipolar world order dominated by the United States and the Soviet Union. This unique situation gave impetus for the creation of the United Nations system.

Prior to the creation of the United Nations the world existed under the Westphalian legal order. The Peace of Westphalia, which settled the Thirty Years War, was a unique solution to a particular European problem. It abolished the authority of the Holy Roman Empire over Europe, and established a system of sovereign states with no high authority over the affairs of these new entities. The state becoming the sole actor in international affairs and international law at the time was designed to regulate relations among European states. Non-European territories were considered *terra nullius*, or virgin territories, and their peoples were objects instead of subjects of international law. The individual had no internationally guaranteed rights under international law, and how a state treated its nationals was an internal matter. Although some European states intervened in the Ottoman Empire to protect Christians, humanitarian intervention was the exception, not the norm.

Westphalia promulgated a series of rules to protect the sovereignty of states. These rules included the equality of all states; the sovereignty and territorial integrity of the state and its institutions; non-intervention in the affairs of other sovereign states; protection of religious minorities; the right of self-determination; diplomatic immunities for the state, its officials and organs; freedom of the seas; free trade; and the right to self-defense. States were free to go to war and to conquer non-European peoples and their territories without any consequences. Westphalia established rules to govern relations among European states and for European peoples. The peoples of Africa, Asia, and the Americas were considered uncivilized and not equal in status to Europeans. The Westphalian legal order provided the legal justification for slavery, colonialism, and racism.

The United Nations is a successor to the League of Nations which was established after World War I. The League failed for a variety of reasons. The US Senate did not ratify the League Covenant, hence the United States did not join. The Soviet Union, Japan, and Italy were expelled for invading Finland, China, and Ethiopia, respectively. The link between the League and the Versailles Peace Treaty led to the punitive measures imposed on Germany. Finally, there were competing conceptions between Britain and France of the League's mandate. Britain wanted a diplomatic organization, whereas France wanted a strong organization to deter future German aggression. The League of Nations collapsed after Germany invaded Czechoslovakia, which set off World War II.

The United Nations legal order was intended to improve on the League's deficiencies, but not to replace the Westphalian system. Instead the United Nations preserved the Westphalian concept of sovereign statehood, but expanded it to include the entire world. The UN banned the use of threat of force; it granted the right of self-determination to all peoples, particularly non-self-governing territories. The United Nations wanted to grant legal protection under international law to all peoples. The United Nations made it possible to dismantle colonialism peacefully, and to extend the same diplomatic status to all new states and their officials. The United Nations made it possible for the colonized and the colonizer to be seated as equals at the diplomatic table. That is a major accomplishment, which I will discuss later. At

its core, the United Nations legal order is predicated on the principles of sovereign equality of states: non-intervention; peaceful settlement of disputes; the non-use or threat of force in international relations; the right to self-defense; and the promotion of human rights.

Unlike the Covenant of the League of Nations, there is no provision in the Charter for states to withdraw or be expelled. A state can be suspended from participation in General Assembly activities for failing to pay its membership dues, or for egregious conduct (for example in the case of South Africa), but remains a member of the United Nations. The United Nations simultaneously recognizes the human rights of individuals and the rights of states. It is these two conflicting ideals that are at the core of the United Nations identity. The Preamble of the Charter of the United Nations begins with the phrase “We the Peoples of the World...”, and not we the states of the world. However, the peoples of the world are represented by their states, not independently.

The United Nations is not a supranational organization; its authority is contingent on the mandate given to it by the Security Council and the General Assembly. It has no independent powers except those delegated to it by member states. In light of this constitutional arrangement, the United Nations has been able to create an independent legal personality for itself, separate from its membership. The United Nations can sign treaties with member states, particularly when it deploys peacekeeping missions in states, or send teams of experts to provide technical assistance to governments or to conduct independent inquiries. However, the sovereign state is still the dominant actor in international relations, and the principle of sovereignty restricts what the United Nations can and cannot do as an institution. The United Nations is a political institution, and its activities reflect the global distribution of power existing after World War II.

PURPOSES AND PRINCIPLES OF THE UNITED NATIONS

The purposes of the United Nations are to maintain international peace and security; encourage the principles of peaceful settlement of disputes and the non-use of force in international relations; promote respect for human rights and fundamental freedoms; facilitate friendly relations and cooperation among states; promulgate the rule of law in international relations; facilitate the resolution of conflicts; and contribute toward the progressive development of international law. The United Nations provides a forum for states to settle their differences. It cannot impose its will on states. States come to the United Nations for help, not the other way around. However, to understand the United Nations, one must understand its power structure and governance.

THE STRUCTURE OF THE UNITED NATIONS

The Security Council is the most powerful organ of the United Nations. It comprises fifteen members, five of which are Permanent Members with a veto power.

The non-permanent members are distributed based on the United Nations regional map. There are two member states from each region and they are each elected for a two-year term. Under Article 24 of the Charter, member states grant the Security Council the authority to maintain international peace and security on their behalf; and all states are required under Article 25 to comply with measures adopted by the Security Council under Charter VII for maintaining international peace and security. Under Chapter VII of the Charter (Articles 39–51), the Security Council determines a threat to the peace, breach of the peace, or an act of aggression, and is authorized to take the necessary measures to restore or maintain international peace and security. Because of the Cold war rivalry between the USA and the USSR, the Security Council was only able to invoke Chapter VII three times: against North Korea in 1950, Rhodesia in 1966, and South Africa in 1974. The Security Council implements its mandate without any oversight from the General Assembly or the International Court of Justice (ICJ). Measures adopted by the Security Council are not subject to judicial review by the ICJ or to scrutiny by the General Assembly. The Security Council has the absolute authority to identify any issue as a threat to international peace and security, and take whatever measures it deems necessary to stop it.

In the Lockerbie case, filed by Libya against Britain and the United States, Libya requested an interim measure from the Court to delay a Security Council demand that it surrender two of its nationals suspected of the Pan Am Flight 103 bombing over Scotland (Resolutions 731 and 748). The ICJ declined the request on the grounds that the Court did not have the legal authority under the Charter regime to stop the Security Council from carrying out its mandate. The Court also determined that Libya's legal obligations under the Charter of the United Nations take precedence over all other obligations (Article 103). The Security Council can therefore take any measure it deems necessary for maintaining international peace and security, with the exception of those that violate fundamental principles of international law or the purposes and principles of the Charter. Even in such cases, there is no avenue for judicial review within the United Nations system itself. The European Court of Justice, the European Court of Human Rights, and the Supreme Court of the United Kingdom have all made pronouncements that challenged the legitimacy of Security Council resolutions to violate fundamental principles of the European Convention on Human Rights. These cases referred to the placement of European nationals on the anti-terrorism sanctions regime, as required by Security Council resolution 1267 (1998), which was expanded in the wake of the 2001 terrorist attacks on the United States.

In recent years the Security Council has taken some extraordinary and controversial measures to maintaining international peace and security, which many observers have deemed *ultra vires*, that is to say, the Security Council acting outside its mandate. These include the creation of the two *ad hoc* tribunals, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR); the authorization to use military force to remove the military dictatorship of Haiti in 1994 (Resolution 944); Resolutions 1368 and

1373, adopted following the September 11 attacks on the US, in which the Security Council forced all states to implement anti-terrorism measures consistent with anti-terrorism conventions that had not been ratified by member states, including the US; Resolution 688 (1991), which provided a quasi-legal justification for the United States and its allies for the establishment of no-fly zones over northern and southern Iraq; and Resolution 1441 (2001), which called on Iraq to comply with all existing Security Council resolutions, even those not legally binding. And of course, the sanctions regime imposed on Iraq (the “Oil for Food” Program) paralyzed Iraq’s economy and brought tremendous human suffering on the people of Iraq. Security Council Resolution 1441 was the basis for the United States invasion of Iraq in 2003. This was an aggressive war which had no legitimacy under international law or the United Nations Charter. Those responsible for initiating the war should be held accountable for crimes against humanity and war crimes by the International Criminal Court.

Finally, Security Council Resolution 1973 authorized NATO to use all necessary means to protect Libyan civilians during the uprising against the Gaddafi regime. Gaddafi was captured and executed by Libyan rebels backed by the US, Britain, and France. The death of Gaddafi raises a very serious issue regarding the extent to which the Security Council can authorize the assassination of a head of state. This gives you a brief synopsis on the role and powers of the Security Council under Chapter VII of the Charter. What is important to note is that as the world becomes more interdependent and the line between domestic and international politics becomes blurred, the Security Council’s mandate has expanded to include matters that were once considered within the exclusive domestic jurisdiction of states, but are now seen as threats to international peace and security. These include human rights abuses, health pandemics, organized crime, terrorism, piracy, human trafficking, internal armed conflicts, plundering of a country’s natural resources, poverty, and natural disasters.

A more disturbing trend in the Security Council is the lack of transparency and accountability. The Security Council meets in secret for most of its deliberations. More importantly, the Permanent Members of the Security Council meet informally prior to tabling any resolution. Unless there is a consensus on the Resolution, it will not be brought to the full body for debate. Sometimes certain members will table a Resolution even though they know in advance that it will be vetoed. However, it is done for propaganda purposes or to score political points. The P5 also uses the Security Council as an instrument to advance their own foreign policy agendas, and many of the decisions taken by the Council have nothing to do with the interests of the United Nations, but rather, the interests of one or more Permanent Members of the Security Council. Hence the Security Council is quick to act when there is a consensus among the five Permanent Members that the United Nations ought to do something. The United States is the biggest contributor to the United Nations regular budget and its peacekeeping budget, hence the United States wields enormous power and influence in the United Nations.

The General Assembly (GA) is the second most important organ of the United Nations. It comprises 194 member states, and each state has one vote. The General Assembly has the power to debate any international issue and to make recommendations to its members. The General Assembly has the power to appoint the Secretary-General; to admit new members; to appointment of all members of the International Court of Justice; to pass the budget of the United Nations; to invite any individual or group to participate in its activities; and to contribute toward the progressive development of international law. Under the Uniting for Peace Resolution of 1950, the General Assembly can take up an issue that threatens international peace and security if the Security Council is in deadlock as a result of an exercise of the veto by one or more Permanent Members. Although Article 11 of the Charter grants the General Assembly only the power to make recommendations, some resolutions of the General Assembly are considered binding by nature of its authority: the budget, personnel appointments, and membership of new states. The General Assembly represents the collective conscience of the international community, hence when the Assembly adopts a resolution it can become instant customary international law, or it can raise awareness on the issue that subsequently will result in adoption of a convention. The various human rights conventions are notable for being first adopted as General Assembly resolutions, which later became law. Assembly debates generate ideas which ultimately become international law. The Law of the Sea Convention; the Rome Statute for the International Criminal Court, which was a request from Trinidad and Tobago; the Vienna Convention on the Law of Treaties; the Vienna Convention on Diplomatic Relations; the Vienna Convention on Consular Relations, which seeks to protect the rights of foreign nationals arrested abroad; and the Kyoto Protocol are all ideas that were addressed in General Assembly debates.

The General Assembly has also been most responsible for the growth in membership of the United Nations from 51 states to 194 today. The General Assembly's pronouncement in Resolution 1514 of 1960, which affirmed the rights of colonial peoples to self-determination, instantly delegitimized European colonialism and paved the way for the peaceful dismantling of all colonial and racist regimes in Africa, the Caribbean, and Asia. The General Assembly has also worked aggressively to create a more inclusive international community and to give a voice to those living under oppression or those who are victims of state sponsored violence or extra-judicial killings. It is the work of the General Assembly that led to the liberation of Zimbabwe, Namibia, and eventually South Africa. The Assembly is a political body, and occasionally it can serve as a propaganda machine. However, one should not underestimate the power of the General Assembly as a universal body.

The General Assembly is assisted in its work by a number of subsidiary organs, including the International Law Commission (ILC) and the Economic and Social Council, which handles all human rights related issues for the GA. The ILC works on codifying customary international law and creating new international law in

areas where the law is outdated, or where new developments in international affairs require new international conventions to regulate that particular issue area.

The Office of the Secretary-General (SG) is the weakest political body in the power hierarchy in the United Nations system. The SG is more a secretary than a general. He does not command any troops, and his resources are limited. The only power granted to the SG is in Article 99, which allows him, at his discretion, to bring to the attention of the Security Council any issue he considers a threat to international peace and security. The SG, however, rarely invokes this power for fear it may compromise the neutrality of his office. The SG is selected by the Security Council and appointed by the General Assembly. There is an unspoken rule that only nationals of non-major powers can serve as SG. The position has rotated between the five geographic regions of the world. No woman has served as SG; however, that is likely to change when the UN replaces Ban Ki-moon in 2017. The process tends to be highly politicized, as the major powers want to make sure the candidate is not independently-minded, and will not try to steer the UN into a direction that conflicts with their own interests. Although peoples around the world look to the Secretary-General for global or regional solutions, the office is limited in its ability to solve the world's problems. The power of the Secretary-General is contingent on what is delegated to him by the Security Council and the General Assembly. The role of SG depends on the person holding the office.

Finally, the International Court of Justice (ICJ) is the principal judicial organ of the United Nations. Its power is to settle legal disputes between states, either by referral, by treaty, or through the compulsory jurisdiction clause. Its decisions are final and there are no appeals. There are fifteen judges on the court, one each from the five permanent members, and ten from the five regions of the world. They serve for nine years and can be reappointed. Member states of the United Nations are automatically members of the ICJ. The Court has no enforcement powers and must rely on the Security Council to enforce its judgments. It is expected that all parties to a dispute before the court will comply with its decisions. Occasionally states have failed to appear before the court in a dispute brought against them. For example, the US did not appear when Nicaragua filed suit against the US for its support for the Contra rebels. A case can be withdrawn at any time on the request of the parties. For example, Dominica withdrew a case against Switzerland after I criticized the suit in an article as frivolous and unsustainable. It costs hundreds of thousands of dollars to take a case to the ICJ.

The Court has settled a number of contentious cases which either led to war between the parties, or could have led to a deterioration of relations between the parties. Most notable are the disputes between Burkina Faso and Mali; Nigeria and Cameroon; the Democratic Republic of the Congo (DRC) and Uganda; DRC and Rwanda; Guinea and DRC; Benin and Niger; Burkina Faso and Niger; Belgium and Senegal; the Republic of Georgia and the Russian Federation; Cambodia and Thailand; the United States and Iran; the United States and Nicaragua; the United States and Mexico; Nicaragua and Colombia; and Nicaragua and Costa Rica.

The Court's judgments have contributed to the development of international law in areas such as diplomatic law; the use of force; the law of the sea; international humanitarian law; state responsibility law; the status of colonial boundaries; and human rights law, to name some examples.

The Court also provides advisory opinions to the General Assembly and the Security Council. These are not legally binding, but the Court's interpretation of the law becomes law within the United Nations system. The Advisory Opinions on the status of Namibia, Western Sahara, and more recently, the Israeli Security Wall, have made sound contributions to the development of international law against colonial occupation and to human rights law. In sum, the ICJ settles legal disputes between states, articulates international law, and in so doing, contributes to the progressive development of international law. The ICJ is not affiliated to any of the new tribunals that have been established in the last 25 years. However, the Court does work closely with these other international courts, especially in sharing of evidence. Occasionally the Court makes reference in its judgments to decisions of other international tribunals. The ICJ does not have jurisdiction to hear cases from individuals. Many American prisoners on death row have written to the Court seeking redress; the Court politely informs them that it does not have the jurisdictional basis to adjudicate their complaints.

KEY PROVISIONS OF THE CHARTER OF THE UNITED NATIONS

ARTICLES 2 (3), 2 (4), 2 (6), AND 2 (7); ARTICLES 11, 33 AND 52–54; AND CHAPTER VII

In order to have a better understanding of the role of the United Nations, one must understand the key provisions of the Charter, most notably, Article 2. Article 2 (1) affirms the sovereign equality of states; Article 2 (3) calls on all states to settle their disputes peacefully; and Article 33 provides a list of peaceful procedures for states to select from. Article 2 (4) is the most important article of the Charter and enjoys the status of customary international law. Article 2 (4) prohibits the threat or use of force in international relations, or against the territorial integrity or political independence of member states, or in any other manner inconsistent with the purposes and principles of the Charter. This was reiterated in General Assembly Resolution 2625 of 1975 on Friendly Relations and Cooperation Among States. The International Court of Justice also reaffirmed the status of Article 2 (4) in its judgment in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*. Article 2 (6) calls on the Security Council to ascertain that non-member states of the United Nations comply with measures adopted under Chapter VII for maintaining international peace and security. Article 2 (7) restricts the United Nations from intervening in matters that are essentially within the domestic jurisdiction of member states. That prohibition can only be overridden if the Security Council determines an internal issue threatens international peace

and security, such as mass killings or the mass displacement of civilians. Chapter VII is very important, as it gives the Security Council the mandate to maintain international peace and security. Measures adopted under Chapter VII are legally binding on all states. Those include military and non-military sanction measures. Article 52 provides for the creation of regional arrangements, which is not defined. Article 53 encourages the Security Council to utilize regional arrangements for settling regional disputes. Article 54 allows for regional arrangements to participate in the settlement of regional disputes. However, any use of military force must receive prior approval from the Security Council. Article 51 preserves the right of states to individual or collective self-defense, if an armed attack occurs, and up until the Security Council has taken the necessary measures for maintaining international peace and security. Article 51 does not allow for anticipatory self-defense or pre-emptive self-defense, as was the case in the US invasion of Iraq in 2003.

These articles of the Charter are at the core of how the United Nations operates. It would be difficult to understand how the United Nations works without understanding fully the legal basis of the UN.

ACHIEVEMENTS OF THE UNITED NATIONS

Among the notable achievements of the United Nations can be listed the following:

- *The peaceful decolonization* of Africa, Asia, and the Caribbean, and their integration into the community of nations; and the peaceful integration of the former Soviet Republics into the international system.
- *The promulgation of human rights norms*, including the Universal Declaration of Human Rights; the Genocide Convention; the Torture Convention; the International Covenant on Civil and Political Rights (ICCPR) and the Protocol to Abolish the Death Penalty; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the Convention Against All Forms of Racial Discrimination; the Refugee Convention; the Convention Against Forced Disappearance of Persons; the Convention for the Protection of Migrant Workers; and the Convention on the Rights of the Disabled.
- *Peacekeeping missions*, which have been established in over fifty instances. The idea began with the Suez crisis of 1956 and continues today. The most recent peacekeeping missions include Angola, Mozambique, DRC, Afghanistan, Central America, Haiti, Cambodia, Namibia, Rwanda, Bosnia, the Central African Republic, Sudan, and Somalia.
- *International humanitarian law*, including the Nuremberg Charter; the Geneva Conventions of 1949 and the Additional Protocols I and II of 1977; the Convention on Cluster Munitions; the Landmines Convention; the Convention on Certain Conventional Weapons; the Chemical Weapons Convention; and the Biological Weapons Convention.