CONFERENCE ON SPACE LAW AND SPACE APPLICATIONS
FOR DISASTER MANAGEMENT IN THE ASIA PACIFIC REGION
Chiangmai, Thailand, 20-22 November 2007

The Evolving Role of the United Nations in the Law-Making Process In Regard to Disaster Management

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Excellencies,
Distinguished Participants,
Ladies and Gentlemen,

As an international organization of universal character, the United Nations Organization has been playing a leading and effective role in the process of international law-making in the context of the peaceful uses of space and outer space. It is my pleasant task to present to you an over-all picture of the actual and gradually evolving role of the United Nations in the codification and progressive development of pertinent rules of international law in general. Two confreres, Dr Riffi Temsamani Said of the Royal Center for Remote Sensing in Morocco and Professor Ricky Lee of Flinders University in Australia, respectively will present more specialized reports on the role of the UN Committee on the Peaceful Uses of Outer Space (UN COPUOS) and that of the UN Platform for Space-based Information for Disaster Management and Emergency Response (UN-SPIDER).

I. THE BINDING CHARACTER OF INTERNATIONAL LAW

As a prelude to closer appreciation of the role of the United Nations in the law-making process, it is significant to underlie to true character of international law for our purpose, regardless of its diverse sources: treaties, customs, general principles of national or municipal law, and judicial decisions as well as the writings of the most highly qualified publicists as subsidiary means to identify rules of international law.

I beg to recall to Distinguished Participants the true character of international law qua law, as it is understood today, in no way differently from what it was perceived in the 1950's, in my days of legal studies at Oxford and Paris in Europe or at Harvard Law School in the United States for that matter. One of my International Law Professors was Sir Humphrey Waldock, who was able to bring to his class room so vividly the arguments and reasoning of the International Court of Justice in the many cases in which he happened to represent the United Kingdom, such as the Corfu Channel Case, the Anglo-Iranian Oil Company Case and the Norwegian Fisheries Case. Among other positions, Sir Humphrey served as Chairman of the European Human Rights Commission, Chairman and Special Rapporteur of the International Law Commission, and ultimately President of the International Court of Justice,

To cite a leading example of Professor Waldock's teachings, the various phases of the Corfu Channel were exposed to his pupils, from the jurisdictional issues, as Albania was not even a Member of the

United Nations, to the merits of the Claim and the Counter-Claim, as well as the final phase of the assessment of compensation. Both Parties, the United Kingdom and Albania, could be said to have been successful to a large extent in the claim and in the counter claim. The United Kingdom right of passage was reaffirmed, while Albania's allegation of British violations of Albanian territorial waters was also established. In the counter claim, however, the Court indicated that judicial determination of violations constituted satisfaction for Albania. The United Kingdom was in turn awarded, for the losses and injuries suffered as the result of explosion of the mines, a substantial amount of compensation in pound sterling, of which not a single penny was paid to the United Kingdom, there being no enforcement measure in international law at that time, nor indeed is there likely to be one today with very few exceptions.

In the cases before the US-Iran Claims Tribunal, for instance, payment of an Award could be made by order of the Tribunal, but only one-sidedly in favour of the successful U.S. claimants against Iranian assets frozen by President Carter's decree kept in an escrow available at the disposal of the Tribunal with the consent of Iran according to the Algiers Accord in 1980.

Further examples are furnished by the establishment of the United Nations Compensation Fund as part of the United Nations Compensation Commission (UNCC), operating under supervision of the Governing Council, represented by Members of the Security Council, in conformity with Security Council Resolutions since 1991, and drawn from the proceeds of one third of each half-yearly sale of Iraqi crude oil, as and when authorized by the Security Council.

In more ways than one, the Security Council has perfected the practice of arrogating to itself, in the field of maintenance of peace and security, the power to adjudicate the liability of the State invading and occupying another adjacent State, as in the case of Iraq and Kuwait, while assigning the function of assessment of compensation to the different panels of the UNCC.

For all this, it can be observed, as rightly put by Professor Ko Swan Sik in his inaugural address at Erasmus University in Rotterdam in 1990, almost two decades ago, that international law is binding on States and all other subjects of international law. It is in this light that the binding character of international law should be understood, with or without the availability of enforcement measures backed up by the Security Council. In several ways, unlike national or municipal law that by definition is accompanied by the availability of enforcement measures, successful cases of enforcement of international awards and decisions are fewer and much slower in actual evolution.

As such, *ab initio*, international law was very European and unusually "soft", compared to national law with readily available measures of enforcement and sanctions, but in more fields than one it has become hardened, more internationalized, and more and more humanized, and as such more tolerable from global perspectives. For these reasons, new rules of international law currently in the offing or in the making are necessarily "soft" in their binding character. The passage of time and maturity will serve to harden them in due course. This process is inevitable as international law is consensual in character in the first place. It can neither come into being nor continue to flourish without the will or consent of States.

II. THE PRICIPAL ORGANS AND SUBSIDIARY BODIES OF THE UNITED NATIONS

A. Security Council

As has been observed, the Security Council, as one of the five Principal Organs of the United Nations, not only can, but has indeed played, a substantial part in the making of international law. Its decisions are generally binding on all States and other subjects of international law. It has come as no surprise that with the new approach to the more sparing use of veto, the role of the Security Council is on the increase. This was within the purview of the authors of the UN Charter.

B. Secretary-General

Every principal organ of the United Nations other than the Security Council also has a more or less active role to play in the process of international law making, especially the Secretary-General of the United Nations, and the Under-Secretary-General for Legal Affairs, as depositary of Treaties and Conventions, particularly the codification division, serving directly also as secretariat of the International Law Commission in New York as well as in Geneva, while the UN European Headquarters has an Office in Vienna which serves as secretariat for UNCITRAL.

C. International Court of Justice

The International Court of Justice has a direct part to play in the identification and application of existing rules of international law. Although in principle, under Article 59 of the Statute of the Court, decisions of the Court are not binding except as between the Parties to the dispute and in respect only to the subject-matter of the dispute, in practice decisions of the Court are highly respected and normally followed and cited with persuasive authority by parties to subsequent disputes. International law does not recognize any doctrine of precedent, nor any rule of *stare decisis*, but a series of judicial assertions may serve to concretize emerging rules of customary international law, being part of the process of formation of case-law or *jurisprudence*. Even an advisory opinion of the Court may be considered absolutely binding on the UN body that requests the opinion.

D. Economic and Social Council (ECOSOC)

The role of ECOSOC in the process of law-making is more visible in the field of economic and social developments, as in the context of environmental law and human rights as well as humanitarian law, and not without the participation and collaboration of NGOs accredited to the ECOSOC with consultative status, notably the International Committee of the Red Cross (ICRC), whose imprimatur is distinctive in regard to the codification of the Geneva Conventions of 1949 or the Laws of War and the Protocol and the problems of environmental damage in the event of an international armed conflict.

E. Trusteeship Council

The Trusteeship Council has served as guardian of the rights of non-self-governing territories and peoples and in the context of the granting of independence. It has been playing an active role in the implementation of Resolution 1514 of the General Assembly since the early sixties.

F. General Assembly

By far the most directly concerned with the task of promoting progressive development of international law and its codification is the General Assembly by virtue of Article 13 (1) (a) of the UN Charter. Thus the General Assembly has adopted so many resolutions that may be regarded as declaratory of existing rules of international law. It can assume the role of codification as in the establishment of the working group to study the principles of friendly relations and cooperation among States under the Charter of the United Nations, culminating after ten years of studies and deliberations in the adoption of

Resolution 2625 on the Principles of Friendly Relations. Incidentally, youthful and inexperienced in 1960, I was drafted by Sir Francis Vallat of the United Kingdom to chair the Free World Group which did succeed in replacing the proposal for the studies and codification of the Principles of Peaceful Co-existence by the creation of a Working Group on the Principles of Friendly Relations and Cooperation under the Charter of the United Nations.

It is easy to say that General Assembly resolutions have no legislative effect. They do not directly make law, but they may provide confirmed evidence of the existence and applicability of rules of international law. Customs do not cease to be binding simply because they have been incorporated or embodied in a codification instrument compiled by the General Assembly in the form of a regularly adopted resolution, as in the adoption of the draft articles on State Responsibility and on Jurisdictional Immunities of States and their Property, prepared by the International Law Commission, or as a result of the conclusion of a Codification Conference, such as the Geneva Conventions of 1958 on the Territorial Sea and Contiguous Zone, on the High Seas, on Fishing and Conservation of the Living Resources of the Seas and on the Continental Shelf. The UN Convention on the Law of the Sea 1982 was prepared by the United Nations itself in the form of a composite text.

G. Law-Formulating Bodies

The United Nations as a world organization has created a number of subsidiary bodies, such as the International Law Commission whose statute was drafted by the Sub-Committee of the Sixth (Legal) Committee of the General Assembly and the UN Commission of International Trade Law (UNCITRAL), the former being the normal channel for the process of law formulation in international law in general and the latter for the international commercial law or *lex mercatoria* and model laws, in a way not dissimilar from the role played by UNIDROIT, an inter-governmental organization, in the unification of private laws, or the Hague Conferences on the Unification of Rules of Private International Law, another NGO.

According to the Statute of the International Law Commission, the Commission can contribute to the codification and progressive development of international law. It has done so generally as a normal method of work by appointing Special Rapporteurs for each of the topics considered ripe for codification by the Sixth Committee of the General Assembly, as in the Law of Treaties, Diplomatic and Consular Relations. In the early days of the Commission, Special Rapporteurs were appointed from among European Members of the Commission or from the Western hemisphere, including Latin America. Gradually, as international law became more universalized, African and Asian Members were subsequently recognized as potential candidates for such a responsible mission. I considered myself fortunate to have been the first Asian to merit such recognition, while El Erian of Egypt and Mohammed Bedjaoui of Algeria had earlier received that recognition. It is through the work of the Special Rapporteurs that codification conventions have been prepared.

The task of the Commission is not confined to codification but may also include progressive development. Nor under the same Article 1 of the Statute is the Commission precluded from entering the field of private international law, as it did in the draft articles on Jurisdictional Immunities of States and Their Property, prepared and completed by myself and approved at first reading by the Commission in 1986, at second reading in 1991 with Ambassador Ogiso of Japan as

succeeding Special Rapporteur. The draft Articles were finally adopted as UN Convention by the General Assembly in 2004 after further studies and comments by a working group.

"Codification" of international law in this context is used for convenience under Article 15 of the ILC Statute as meaning the more precise formulation and systematization of rules of international law in the fields where there already has been extensive State practice, precedent and doctrine. "Progressive development" is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which international law has not yet been sufficient developedly in the practice of States.

H. Other Specialized Norms-Formulating Bodies

Other norms-formulating bodies forming part and parcel of the United Nations and its Specialized Agencies have been functioning in full steam in their preparation of new rules or codification of newly emerged rules and practice of States in various fields, such as Fisheries Management, Environment, Human Rights, and Commodity Agreements, not to mention the peaceful uses of outer space, by all the norm-formulating bodies, apart from the United Nations itself, both within the United Nations families and beyond. Among these should be mentioned AEA, FAO, WHO, WMO, UNESCO, WIPO, GATT, WTO, UNCTAD, UNEP, and ILO. Regional Committees and Organizations have also been working in their respective geographical region or regions, such as the Asian African Legal Consultative Organization (AALCO) and the *Consejo Juridico Inter-Americano de la OEA.* For Non-Governmental Organizations (NGOs), mention should also be made of the periodic issuance of INCOTERMS by the International Chamber of Commerce (ICC), among other non-governmental norm-formulating agencies.

III. CONCLUDING OBSERVATIONS

These in a nutshell are the sum-totals of the role of the United Nations in the formulation of modern rules of international law in general. It should be added that apart from the principal organs of the United Nations and their subsidiary bodies enumerated and discussed in brief, there have been countless other study groups performing similar role, although more or less specific but nonetheless deserving of attention. More particularly, Distinguished Participants will shortly be receiving further reports on two other UN bodies, the UN COPUOS and the UN-SPIDER.

Thank you for your attention.

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