The Hague Institute for the Internationalisation of Law
The Law of the Future Scenarios Project

Challenges to Legal Systems – Law of the Future
Track I: Constitutional / institutional / administrative law

The Increased Interconnection between International and National Law and the Need to Coordinate the Legislative Process in the Future

by

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1 Introduction

To address the topic Challenges to Legal Systems – Law of the Future in a meaningful way it is necessary to develop different scenarios. The reason is that the law by definition must respond to the need to regulate different phenomena in a society at any given time.

One way of looking to the future could be to use the collective security prism employed by the United Nations High-level Panel on Threats, Challenges and Change. The Panel defined six main clusters of threats in the near future: economic and social threats, including poverty, infectious diseases and environmental degradation; inter-State conflict; internal conflict, including civil war, genocide and other large-scale atrocities; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime.[1]

In the past, this author has focused on some of these challenges. By way of example could be mentioned: the need to protect human rights in an atmosphere where they will come under stress because of climate change in combination with a growing world population, including the obvious link to the empowerment of women;[2] the

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[1] UN Doc. A/59/565 available at <http://www.un.org/secureworld/report.pdf> accessed 27 July 2010
[2] Hans Corell, 'Protecting Human Rights: The Role of the United Nations – Major Challenges.' Address at the Human Rights Week 2010, organised by Amnesty International, Law Students' Network at Oslo University, on 19 February 2010 available at <http://www.havc.se/res/SelectedMaterial/20100219unandhumanrights.pdf> accessed 27 July 2010

connection between the protection of the environment and the rule of law;[3] and the need for a world free from nuclear weapons.[4]

In addition, in view of the tensions that will be generated by climate change and its effects on the environment, combined with a rapidly growing world population, it is necessary to have an organisation that can offer a forum for dealing effectively with these and other questions related to international peace and security. The need for a well functioning United Nations is one of the greatest challenges that lie ahead.[5]

A particular challenge in this connection is whether the UN Security Council will be able to shoulder its responsibility for the maintenance of international peace and security. To be able to do so, the members of the Council must realise the importance of a multilateral system under the rule of law and the specific role that they must play in this respect.[6]

Seen in this perspective, one of the determining factors for the future development will be the ability of leading politicians at the national level to realise that a multilateral rules-based international society is the only way ahead and that they have a critical role to play in the work towards this common goal. The key dilemma will be whether they will be able to play this role or, with respect to some leaders, if they even want to play this role.

For politicians in democratic societies the challenge will be to convince the electorate that this common goal must be the primary lodestar while at the same time they must be able to retain the support of their voters. The level of vulgarity in the political debate in some quarters in later years is a great source of concern here.

The non democratic societies present an even greater challenge – to all of us. How do we convince the leaders of such societies to work towards this common goal when they realise that they will likely not remain in power if international law and in particular human rights law were respected in their countries?

The focus of this presentation will, however, not be on all these challenges but on a challenge common to them all – a question of an overarching nature that must be addressed. To establish and maintain a proper rules-based system it is necessary to develop a system in which the quality and the consistence of the norms can be

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[3] Hans Corell, 'The Right Climate for the Rule of Law' In: International Bar News April 2008 available at <http://www.havc.se/res/SelectedMaterial/20080421corellrightclimateforrol1.pdf> accessed 27 July 2010

[4] Hans Corell, 'Is It Possible to Outlaw Nuclear Arms?' In: NOW IS THE TIME TO PROHIBIT NUCLEAR WEAPONS! A special edition of the journal of the Swedish section of International Physicians for the Prevention of Nuclear War. LÄKARE MOT KÄRNVAPEN 2010 # 120: 6-9 available at <http://slmk.org/wordpress/wp-content/uploads/2010/03/Lakare-mot-Karnvapen-120-ENG.pdf> accessed 27 July 2010

[5] Hans Corell, 'Who Needs Reforming the Most – the UN or its Members?' In: Nordic Journal of International Law, Vol. 76 (2007) No. 2-3 (p. 265-279) available at <http://www.havc.se/res/SelectedMaterial/20071108corellwhoneedsreforming.pdf> accessed 27 July 2010

[6] Hans Corell, 'Security Council Reform: Rule of Law More Important Than Additional Members' Letter dated 10 December 2008 to the Governments of the Members of the United Nations available at <http://www.havc.se/res/SelectedMaterial/20081210corellletteroutnmembers.pdf> accessed 27 July 2010

ascertained. Hence the title: *The Increased Interconnection between International and National Law and the Need to Coordinate the Legislative Process in the Future*.

Admittedly, the title does not ring with the grandeur that may be expected from someone discussing the law of the future. But the reality is that the subject matter is a major challenge. It is a common denominator in all efforts in the legislative field. And it is vital that persons at the policy level are made aware of this challenge and that it is not simply a technical matter.

2 The challenge

The challenge is rooted in the relationship between norms adopted at the national level and norms adopted at the international level. It also concerns the interrelation between norms in the latter category. In this context reference is often made to the "proliferation" of international norms, both binding norms and so-called soft law.

This author touched briefly on the topic at a Conference in Berlin in September 2006, organised by the Federal Foreign Office of Germany and the Hertie School of Government.[7]

At the time, the International Law Commission (ILC) was studying the topic from the point of departure of fragmentation of international law.[8] In September 2006, this author suggested that irrespective of the final outcome of that work, the matter raised would present a major challenge to the international community in the future. States should therefore already now discuss, preferably in the context of the report of the ILC, how to deal with the phenomenon.

Later in the same year, the work of the ILC Study Group was presented in the form of a report containing 42 conclusions.[9] The ILC took note of the conclusions and commended them to the attention of the General Assembly. It also requested that the analytical study finalized by the Chairman of the Study Group, Professor Martti Koskenniemi, be made available on the website of the Commission and also be published in its Yearbook.[10] On 4 December 2006, the General Assembly took note of the 42 conclusions of the Study Group together with the analytical study on which they were based.[11]

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[7] Hans Corell, 'International Law in Flux'. In: *14. Forum Globale Fragen: Völkerrecht im Wandel.* Auswärtiges Amt, Berlin. Bonifacius GmBH, Paderborn (2006) (p. 101-110). See <http://www.havc.se/res/SelectedMaterial/20060908corellintllawinfluxfinal.pdf> accessed 27 July 2010

[8] 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

[9] Report of the International Law Commission UN Doc. A/61/10, paras. 233-251. See <http://untreaty.un.org/ilc/reports/2006/2006report.htm> accessed 27 July 2010

[10] Ibdm para. 239. The study and the conclusions are now available at, respectively <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G06/610/77/PDF/G0661077.pdf?OpenElement> and <http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/1_9_2006.pdf> accessed 27 July 2010

[11] UNGA resolution A/RES/61/34

The two documents constitute an important and extremely useful contribution to the understanding of how the international legal system works. A reading of them is highly recommended.

In this context, attention should be drawn to the following two paragraphs in the analytical study:

> 481. One aspect of globalization is the emergence of technically specialized cooperation networks with a global scope: trade, environment, human rights, diplomacy, communications, medicine, crime prevention, energy production, security, indigenous cooperation and so on – spheres of life and expert cooperation that transgress national boundaries and are difficult to regulate through traditional international law. National laws seem insufficient owing to the transnational nature of the networks while international law only inadequately takes account of their specialized objectives and needs.
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> 487. But in addressing the problems at this level – conflicts as they arise – will mean that they are addressed in a formal and open-ended way, as matters of legal technique rather than substantive (legal-political) preference. The report has, in a way, bought its acceptability by its substantive emptiness. Yet this "formalism" is not without its own agenda. 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. - - - - - If international law is needed as a structure for coordination and cooperation between (sovereign) States, it is no less needed in order to coordinate and organize the cooperation of (autonomous) rule-complexes and institutions.

The following two paragraphs in the report of the ILC are also of particular interest in this connection:[12]

> 249. The justification for the Commission's work on fragmentation has been in the fact that although fragmentation is inevitable, it is desirable to have a framework through which it may be assessed and managed in a legal-professional way. That framework is provided by [the Vienna Convention on the Law of Treaties of 1969 (VCLT)]. One aspect that unites practically all of the new regimes (and certainly all of the most important ones) is that they claim binding force from and are understood by the relevant actors to be covered by the law of treaties. This means that the VCLT already provides a unifying frame for these developments. As the organ that once prepared the VCLT, the

[12] Report of the International Law Commission (n 9)

> Commission is in a privileged position to analyse international law's fragmentation from that perspective.
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> 250. In order to do that, the Commission's Study Group held it useful to have regard to the wealth of techniques in the traditional law for dealing with tensions or conflicts between legal rules and principles. What is common to these techniques is that they seek to establish meaningful relationships between such rules and principles so as to determine how they should be used in any particular dispute or conflict. The following conclusions lay out some of the principles that should be taken account of when dealing with actual or potential conflicts between legal rules and principles.

The first conclusion among the 42 that appear in the report of the Study Group reads:

> International law is a legal system. Its rules and principles (i.e. its norms) act in relation to and should be interpreted against the background of other rules and principles. As a legal system, international law is not a random collection of such norms. There are meaningful relationships between them. Norms may thus exist at higher and lower hierarchical levels, their formulation may involve greater or lesser generality and specificity and their validity may date back to earlier or later moments in time.

The common denominator among the 42 conclusions is basically that they address situations where tensions or conflicts between legal rules and principles are at hand. It is of great importance that States and other actors concerned seek guidance in this material when such situations occur – as they will; they are inevitable.

The question is, however, whether one should leave it at that. Even if the conclusions amply demonstrate that conflicts between legal rules and principles can be solved, such situations nevertheless represent uncertainties, frustrations and delays. For several reasons it is obvious that the greatest efforts must be made both at the national and the international level to avoid such situations. If nothing is done in this respect, one can for the future foresee an increasing number of situations where it will be necessary to resort to the kind of conflict solving that is discussed in the ILC report. This may in turn have very negative effects on the respect for existing norms.

It is therefore absolutely necessary to continue working in a direction towards avoiding situations of the kind that the ILC Study Group has correctly identified.

At the national level there is a natural hierarchy of norms. A constitution obviously trumps rules at a lower level in the normative hierarchy, and within this hierarchy there would be several layers. Federal states represent a special challenge in this respect. As it appears from the analytical report of the ILC Study Group, the situation is sometimes even more complex at the international level.

A common requirement in the legislative process at the national and the international level must be to ensure that new rules are in conformity with the fundamental rules that apply. At the national level, this means that rules must be in conformity with the

constitution and the legal system as a whole, including obligations flowing from international law, specifically treaties to which the State is a party. At the international level, new treaties must be in conformity with international norms of a higher standing, e.g. *jus cogens* or the Charter of the United Nations, and the legal system in general.

Furthermore, with the increasing volume of international norms there is a corresponding need for an examination of the interrelationship between different norms at this level. At the same time the effect of the development of such norms is that the way in which national legislators can exercise their powers is gradually circumscribed. Either there might be treaties or *jus cogens* norms that set the limits, or there may simply be "political realities", not least as a result of globalisation, that may have to be taken into consideration in the legislative work.

The challenge here is therefore to establish a system of checks and balances that can be applied in a more or less seamless way in relation to both the legislative work at the national level and the corresponding work at the international level.

3 Requirements in the legislative process at the national level

As it appears from the foregoing, there are two main aspects that must be taken into consideration in the legislative process at the national level: the constitutional aspect and the consistency aspect. The borderline between the two may not always be clear, and the necessary standards require an almost seamless approach.

The constitutional aspect

The legislative process at the national level is of course directly dependent on the constitutional system. In some states there are elaborate constitutions, accompanied by a well developed constitutional practice. In other States there may not even be a written constitution. Irrespective of how the system works, there has to be a method for ascertaining that proposed legislation is in conformity with the norms that apply at this level.

An important question here is how this method is implemented. If the draft legislation is prepared in a government office, there would have to be a central function that can assist the legal offices in the different ministries in this respect. This applies *mutatis mutandis* in case the main work is done within the elected national assembly. In some systems, this supervisory task may be performed by an Attorney General.

Methods must also be developed to make sure that legislation proposed at other levels is subjected to a similar examination. By way of example could be mentioned state legislation in a federal system or rules adopted at a lower constitutional level within a nation State, e.g. in municipalities and communes, on the basis of delegated legislative authority.

One important aspect is that the constitutional review must not only focus on the national constitution. Obligations flowing from important international treaties to which the state is a party must also be taken into consideration. This applies in particular to treaties in the field of human rights and humanitarian law. Even case-law

from international human rights courts and similar international guidance must be taken into consideration here.

By way of example could be mentioned that in legislation regarding inheritance, sale of goods, land law, customs, etc. there could be provisions that might risk conflicting with rules on fundamental human rights. Basically, such conflicts could occur in most, if not all, legal fields. In order to fully comprehend this connection, it is necessary to have an understanding of how human rights norms work and where, typically, there is a risk that human rights obligations may be violated through legislative acts.

By way of example: a government is in the process of proposing legislation to regulate the right to purchase real estate; it is considered necessary to establish specific conditions that buyers must fulfil before they are allowed to purchase certain categories of real estate. The obvious questions that must be put are: How are these conditions formulated? Do they entail a risk for discrimination? Who decides whether the conditions are met? Can a refusal to purchase be appealed against before a court of law?

These examples are mentioned just to illustrate the complexity in determining whether a proposed piece of legislation risks conflicting with obligations under international human rights law. Similar tests must be made in many different directions. To perform this task it is necessary to establish institutions or functions with very good knowledge of how the national legal system works and interacts with the international system. The key issue here is to be able to identify elements in the national legislative process that may have to be subjected to a closer examination from a constitutional viewpoint.

The consistency aspect

The point of departure in dealing with the consistency aspect at the national level is actually a policy question. The test just described – that the rules proposed are in conformity with the constitution in the sense understood in the present context – does not answer the fundamental question that must always be put at the outset in the legislative process: are the contemplated new rules really necessary?

To someone who has been involved in legislative work over many years it is obvious that a critical approach is of the essence here. In some situations it may be tempting for policy-makers to advance ideas for new legislation that may not be so well considered and perhaps conceived in a very short time perspective. The first condition must therefore be that contemplated rules respond to a genuine need.

If the case is proven and the new rules are deemed necessary, it is extremely important not to forget the next question that must be put: what existing rules can be abolished at the same time?

This element may to some seem overzealous. But the experience of the present author is that this aspect cannot be over-emphasised. It is in the process of developing new legislation that those involved have to review existing rules, if any, in the same field and rules in related legal fields. An expertise is developed that should be used also to

assess to what extent existing rules can be abolished or amended or maybe even amalgamated with the proposed new legislation.

If this work is not performed, there is a clear risk that the statute book will contain provisions that after some time will be completely obsolete. But their presence on the statute book leaves the prudent lawyer and others concerned no other option than to look into the matter to see whether the rules are still relevant. This creates frustration, unnecessary work and, in the long run, a risk for disrespect of the legal system.

In case the test is passed and a genuine need for new rules is identified it is necessary to develop a method for ascertaining that the legislation to be adopted is vetted so as to ensure that it also dovetails with the national system as a whole. In the latter respect experience shows that legislation in a particular field of law may have profound effects also in other fields of law.

A common feature in preparing proposals for legislation is to ask a commission, in some cases maybe even a standing law commission, to prepare the necessary drafts. This work may be performed on the basis of clear terms of reference laid down by the government. It is a common feature that such commissions would approach their work with great circumspection and examine what effects the proposal would have on existing legislation also in other fields.

Another element when new legislation is introduced is the need for consequential amendments to existing legislation. Without going into detail in this fairly technical area, suffice it to say that the process of preparing legislation at the national level must be highly dynamic with a view to creating a system that is consistent and does not create unnecessary conflicts between existing norms.

4 Requirements in the legislative process at the international level

Also at the international level there are two main aspects that must be taken into consideration in the legislative process. They mirror the situation at the national level: the constitutional aspect and the consistency aspect. With the increasing internationalisation of law, the legislative process at the international level will gradually be more intertwined with the corresponding process at the national level.

The constitutional aspect

As stated by the ILC Study Group (see section 2 above), international law is a legal system within which norms exist at higher and lower hierarchical levels. In this sense there is a similarity with the corresponding constitutional system at the national level. However, one should be careful not to draw the analogy with the hierarchical nature of domestic legal systems too far.

The main sources of international law are set out in Article 38 of the Statute of the International Court of Justice: treaties, custom, and general principles of law. Some of these rules are more important than others and this explains why it is appropriate to speak about a hierarchy.

First and foremost among these rules are the ones recognized as superior because of their importance and content combined with the universal acceptance of their superiority. Reference is made to Article 52 of the VCLT on *jus cogens*:

> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

According to the Study Group the most frequently cited examples of *jus cogens* norms are the prohibition of aggression, slavery and the slave trade, genocide, racial discrimination, apartheid and torture, as well as basic rules of international humanitarian law applicable in armed conflict, and the right to self-determination.

There are also other elements to be noted in establishing the hierarchy, notably the Charter of the United Nations and its Article 103, and rules specifying obligations owed to the international community as a whole, obligations *erga omnes*.[13]

Attention should also be paid to special regimes – *lex specialis* – that might contain requirements to be observed.

All this means that there are certain types of international rules that may not be derogated from. In formulating legislation at the international level, n.b. in treaty-making, it is therefore necessary to observe this distinction between different categories of norms and that there may be limits to what is permitted in a particular negotiating process.

The field of human rights law represents a special case in point. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both from 1966, are now ratified by 160 and 166 States, respectively.[14] At the same time the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948 has gradually acquired the status of customary international law.

There are also the regional regimes for the protection of human rights, such as the European Convention on Human Rights 1950, the American Convention on Human Rights 1969, and the African Charter on Human and Peoples' Rights 1981.

With respect to the European Convention it is clear that this treaty is not, and has not been conceived as a self-contained regime in the sense that recourse to general law would have been prevented. On the contrary, as identified by the ILC Study Group, the Court makes constant use of general international law with the presumption that the Convention rights should be read in harmony with that general law and without an *a priori* assumption that Convention rights would be overriding.[15]

[13] Reference is made to observations 31 to 42 by the Study Group. (n 8)
[14] United Nations Treaty Collection on 27 July 2010
[15] Report of the Study Group of the International Law Commission, para. 164 (n 8)

It should be noted, however, that this applies to a situation where a case is before an international court. It is quite another matter what weight should be given to existing human rights norms in the international legislative process. This author believes that a keen eye should be kept on obligations under human rights law irrespective of the topic which is on the agenda in a particular treaty negotiating process. There is certainly no merit in creating international norms in a particular field of law that *a priori* risk being in violation of fundamental human rights norms.

In the report of the ILC Study Group reference is made to the technique of interpreting the European Convention on Human Rights as "an instrument of European public order (*ordre public*) for the protection of individual human beings".[16] Such an approach would no doubt be appropriate also for other bodies interpreting treaties in the field of human rights. Against this background it goes without saying that particular attention must be paid to human rights obligations irrespective of the subject matter of the negotiations at hand. This means that it is necessary to seek advice from experts in human rights also in negotiations that concern e.g. trade law, transport law or environmental law.

In sum, from a constitutional viewpoint the legislative process at the international level presents challenges that are very similar to the corresponding challenges at the national level. For this reason it is important that there is an appropriate process for ascertaining that instructions given to national delegations that engage in negotiations at the international level are properly formulated. In the preparation of such instructions the appropriate constitutional expertise at the national level should be consulted.

The consistency aspect

An examination of contemplated norms from the consistency aspect is of great importance also at international level. An examination in the same detail as at the national level may, however, not be possible here.

First, it should be noted that every international body entrusted with a mandate to develop international agreements, in particular international conferences, believe themselves to be sovereign and might be reluctant to look at instruments adopted in other forums. This attitude is no longer tenable. To ensure consistency there must be an attitude of openness and an understanding of the fact that there are fully legitimate rules adopted by other bodies and that there is an interest, not least from a national viewpoint, to make certain that the new rules under negotiation do not conflict with norms adopted by other bodies.

An additional problem is that, depending on the subject matter, instructions to national delegations in international negotiations often emanate from different ministries or government agencies at the national level. A first step that should be taken is therefore to review how this activity is performed at this level. If there is not already a central function for this coordination, such a function should be established.

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[16] Particular reference is made to *Cyprus v. Turkey*, Judgment of 10 May 2001, ECHR 2001-IV, p. 25, para. 78.

But the overriding problem is generated by the fact that the areas covered by treaties established under the auspices of the United Nations and a host of other international organisations cover such an enormous area that it is difficult to get a complete overview. This must however not lead to the conclusion that things should be allowed to develop without at least an attempt to create such an overview.

Even if this activity takes place at the international level the control of the legislative process at the international level is basically in the hands of national delegations. It is therefore necessary that the relevant coordination expertise is developed at the national level. Since a corresponding overview function would have to be established at that level with a focus on national legislation, these two activities should actually be conducted jointly, based on the same requirements.

Establishing a system of the kind outlined above is to a large extent a matter of resources. In many developing countries there is an obvious need for assistance in this respect. Such assistance is closely related to the kind of legal technical assistance that is already provided by States, intergovernmental organisations and non-governmental organisations and should therefore be viewed as part and parcel of the latter.

The challenge here is to examine what different techniques are available and to see whether these techniques fit in a particular national legal environment. As a matter of fact it would be difficult to assist countries in developing their legislative processes in a meaningful way if the aspects now discussed are not taken into consideration.

5 How can one achieve better coordination?

A point of departure must obviously be that existing rules reflect the needs of contemporary society. The development of international law over the past century has been tremendous with a concentration towards the end of the period.

It is evident that new phenomena will occur that require new rules at both the national and the international level. This is in the nature of things.

New rules are an inevitable consequence of globalisation and new needs. To adopt new rules as necessary should be viewed as strengthening the development towards an international society under the rule of law. As emphasised by the ILC Study Group, the subject matters cover wide areas and in some cases the norms are developed by other actors than the States.

Against this background it is important to emphasise that the States must ascertain that they continue having the lead role in developing international law. The close connection between treaty-making, the most prominent method of creating international law, and national legislation is obvious. The lodestar must be the democratic society under the rule of law. In such a society the laws are made by an assembly elected by secret ballot.

One particular effect of this development must however be highlighted in this context: an increasing number of international agreements will pose a risk that

obligations will be contradictory if the process is not well coordinated. This will, in turn, lead to difficulties when the agreements are to be implemented and applied.

It is true that the conclusions of the ILC Study Group provide useful guidance here. But as indicated above an increasing recourse to conflict settlement in the normative area would have negative consequences. If the system becomes too inconsistent and cumbersome there is a risk that it will be disregarded – be seen as irrelevant. This will have very negative effects on the respect for the norms agreed upon.

This means that the same scrutiny of contemplated rules that is recommended at the national level should be applied also at the international level precisely because of the expansion of the body of norms at this level. Furthermore, the distinction between national and international norms will be less prominent as time passes and, as already mentioned, the freedom of the national legislator to act will be more and more circumscribed as a consequence of obligations under international law.

The question is how to achieve the necessary coordination. Admittedly, what has been said in the preceding sections is fairly elementary to someone experienced in legislative work. But in some countries the system may not be so well developed. Furthermore, the need for a careful coordination may not be fully understood by the policy-makers who are dependent on a well functioning legislative system.

It goes without saying that the reasoning above is merely a sketch, and that it is almost impossible to reflect on the particularities of all the different national systems. In addition, there are legislative processes that have not even been touched upon in this brief presentation, e.g. the process developed within the European Union. However, this makes it all the more important to discuss the questions raised and compare notes to see whether there are lessons learned that could be used for the common good of the whole international community.

One approach would be for the Legal Advisers of the Ministries of Foreign Affairs from across the world to study the question and discuss it within the framework of the informal consultations that they now conduct on a yearly basis in October on the margins of the meetings of the Sixth Committee of the United Nations General Assembly. Maybe a common understanding could be developed with a view to addressing the challenge in a systematic and coordinated manner.

6 Conclusions

The conclusions to be drawn are that there will be an increasing legislative activity in the future both at the national and international level. The interrelationship between the norms established at these two levels will be even closer. In addition, it will be gradually more difficult to distinguish between the two categories.

It is important to realise that this is not purely a technical matter. On a closer look it is apparent that it is the substance that is at the forefront. And this requires a well managed and coordinated legislative system both at the national and the international level.

In addition, a national legal system needs maintaining through the abolition of obsolete rules. Similarly, attention must be given to identifying obsolete rules at the international level. The body of international agreements will keep growing, and eventually there will be treaties that should be abolished; their existence on the books may cause confusion or uncertainty. Therefore, gradually the need for a systematic review of the existing body of treaties will materialize. States have an interest in ascertaining that the system is up-to-date and coherent.

Consequently, the system must be well managed and coordinated in the sense that the need for rules in a particular field should be constantly tested, that new rules are adopted only as and when necessary, and that obsolete rules should be taken off the books. Even if this kind of activity seems technical on its face, it is in fact substantive and needs careful attention. In both cases it is a matter of maintaining the relevance and the quality of the system.

A particular challenge is to make the policy-makers realise that this is a matter that must be given high priority in the immediate future. If the system becomes too unwieldy, there is a clear risk for serious consequences both at the national and the international level. A systematic approach is of the essence, and it is the duty of lawyers to take resolute action explaining the subject matter to the policy-makers they serve.

31 July 2010

This paper is available under “Selected Material 2004 -” and “Public International Law” at http://www.havc.se