

**THE HAGUE INSTITUTE FOR GLOBAL JUSTICE**

**ACHIEVING SUSTAINABLE PEACEBUILDING:  
RETROSPECT AND PROSPECT**

*The Role of the Rule of Law in Achieving Sustainable Peacebuilding*

**Keynote Speech**

**by**

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Mayor van Aartsen  
President Williams,  
Excellencies,  
Ladies and gentlemen,

First, I would like to thank the Hague Institute for Global Justice for inviting me to speak on this occasion.

The topic of our conference today is *Achieving Sustainable Peacebuilding: Retrospect and Prospect*.

During the course of the day, we will hear about lessons learned from UN peacebuilding, the challenges and obstacles of democratic peacebuilding, the role of civil society in peacebuilding, the cases of Afghanistan, Iraq and Libya, the role of regional organizations, the role of the private sector, and the future of the global peacebuilding architecture.

I have been asked to address the topic *The Role of the Rule of Law in Achieving Sustainable Peacebuilding*. In my brief keynote speech I will focus on three main points:

- A few words about what we mean by the rule of law;
- The rule of law as the common denominator in peacebuilding; and
- The United Nations and the rule of law.

I will conclude with a few reflections on the situation on everybody's mind at present: the state of affairs in Syria and the failure of the Security Council to address this situation properly.

#### What do we mean by the rule of law?

With respect to the first question – what we mean by the rule of law – I believe that it is appropriate to start by making a reference to the definition provided in Secretary-General Kofi Annan's report in 2004 on the rule of law and transitional justice in conflict and post-conflict societies.<sup>1</sup> There the rule of law is defined as:

“a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

There are also other definitions. One is formulated by the World Justice Project (WJP), which leads a global movement to strengthen the rule of law for the development of communities of opportunity and equity.<sup>2</sup>

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<sup>1</sup> Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, UN doc. S/2004/616\*, available at <http://unrol.org/files/2004%20report.pdf>.

<sup>2</sup> See <http://worldjusticeproject.org/>.

According to the WJP the rule of law is a system in which four universal principles are upheld:

1. The government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicized, stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

Among its different activities, the WJP has developed the Rule of Law Index. In this index, these four principles are further developed in nine factors. If you have not already done so, I recommend that you visit the WJP Rule of Law Index which is easily accessible on the web.<sup>3</sup> The latest issue presents the result for 97 countries, accounting for more than 90 per cent of the world's population.

As for me, I have constantly argued that four elements are necessary to achieve the rule of law: (1) democracy; (2) proper legislation meeting relevant international standards; (3) the institutions to administer this law; and (4) individuals with the necessary knowledge and integrity to handle this administration.

#### The rule of law as the common denominator in peacebuilding

With respect to my second point – the rule of law as the common denominator in peacebuilding – let me suggest the following point of departure. Coming originally from the judiciary in my own country Sweden and ending up as the Legal Counsel of the United Nations, I am of the firm conviction that looking at conflicts around the world the common denominator is the same: no democracy and no rule of law. Where these elements are absent, the potential for conflict is always present.

Let me say for the sake of clarity that we should in no way believe that all is well in states where there is democracy and the rule of law. Unfortunately, this is not so. The rule of law must always be defended. It is a constant process that in a sense will never be completed.

It is also important to remind ourselves that the process which has led these countries to where they are has been a very long journey indeed. Democracy and the rule of law have to be developed from the grassroots level, and there must be a general understanding in a country that these components are necessary to create a system where people can live in dignity.

We should also remind ourselves that even democracies and states under the rule of law can fall out of the framework. A sad example is the development that led to the Second World War. The events in Europe in the last century should serve as a constant reminder that also highly developed societies can go astray. The unbelievable and unprecedented atrocities that

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<sup>3</sup> See <http://worldjusticeproject.org/rule-of-law-index>.

were committed at that time were orchestrated by leaders who came to power through democratic processes.

If we now turn to peacebuilding, by definition we are faced with a situation where there has been a conflict precisely because of lack of democracy and the rule of law. Since these elements are necessary to build peace, the daunting task is to develop democracy and the rule of law in situations that are extremely volatile. Developing democracy and the rule of law is not something that can be done overnight. On the contrary, as I just mentioned, in the countries where these elements are present, they have been developed over very long periods of time.

It is also important to bear in mind that one-size-fits-all does not work here. Outside actors, be they representatives of states, international organizations, the business community or civil society, should naturally engage and assist in various ways. However, it is vital to be aware that national traditions and customs may be critical factors in this context.

Here, it is important to make a clear distinction. This argument is often used by leaders, who realise that they will be out of power if international standards on human rights are applied. But it can also be advanced with reference to local traditions which may have served the society well until unscrupulous dictators and warlords destroyed that delicate system. I have had the privilege of discussing this with traditional chiefs in Africa.

At the same time, there could be parallels with other countries, even between countries that may be far apart both culturally and geographically. During the past five years I have served as the Legal Adviser to the Panel of Eminent African Personalities, chaired by former UN Secretary-General Kofi Annan and engaged in the Kenya National Dialogue and Reconciliation. One situation that struck me in that context was that the issues relating indigenous populations and land can be similar in countries far apart. When I learned more about the Maasai population in Kenya, I saw similarities between the Maasai and the Sami people in my own country.

So, the challenge in the situations we are discussing now is to strike the right balance, to engage in discussions with the local population, and in particular with emerging leaders.

When I said that the first element among the four that in my view constitute the rule of law is democracy, I am fully aware that democracy cannot always come first. It is absolutely necessary to engage in rule of law work even if there is no democracy. In such situations it may be necessary to establish some kind of transitional government, where leadership is entrusted to persons who command respect and confidence in broad layers among the population.

When I am discussing this situation with military and civilian personnel who are being trained for service in UN missions, I am always stressing the importance of interaction with the local population and the imperative of identifying local leaders who may be suitable to take on leadership roles, be it at the national, regional or local level, until a full-fledged democratic system is developed.

Another major challenge in peacebuilding is the attitude within religious or ethnic groups and tribes, not least in relation to empowerment of women which is a critical component in peace building. I am sure that we are going to hear about this when we discuss the situations in

Afghanistan, Iraq and Libya. I always listen with great respect to people with experience from the field.

There are certainly common denominators in peacebuilding operations. But there are also differences that can be significant. What has struck me is that the tribal element is still very much at the forefront in Africa. By way of example, the main reason for the post-election violence in Kenya in late 2007- early 2008 was tribalism.

An important element in coordinating rule of law work in peacebuilding is to identify the actors and who is best placed to assist in different activities. The assistance from states and international organizations is an obvious component. However, I always stress the significant contributions made by the business community and the non-governmental organizations.

With respect to the business community, the Global Compact and Corporate Social Responsibility should be borne in mind. As a matter of fact, there could be situations where a sensitive and responsible approach on the part of the business community can actually contribute to preventing conflict. In this field we have seen a tremendous development since Kofi Annan launched the Global Compact in 1999.

The non-governmental organizations provide a multifaceted group of actors that can assist in similar ways. In this context, we should never forget that the rule of law is not limited to activities by authorities like the police, prosecutors and the judiciary. On the contrary, in a developed society most people acting in the rule of law field, for example as decision-makers in applying existing legislation, are not even lawyers. This is how it should be.

Let me mention here that the Dag Hammarskjöld Foundation, together with the Geneva Peacebuilding Platform convened a group of peacebuilding experts in May this year to explore key issues and challenges and lessons on *inclusivity* in peacebuilding processes. They shared real-life experiences from Kenya, Somalia, Burundi, Nepal, Guatemala, Iraq and other areas. Some key points raised during the discussions included:

- There here is a need for generating greater buy-in among decision-makers for bringing inclusivity to the center of peacebuilding processes;
- It is important to find a balance in engaging with the state, civil society and communities when supporting peacebuilding – one set of actors should not be prioritized over the others;
- International actors need to recognize that their role should be limited to one of a catalyst and facilitator in peacebuilding processes at the local and national level; and
- Multiple peacebuilding processes are needed simultaneously at different levels in order to achieve sustainable peace.<sup>4</sup>

Finally in this context, there is also another critical element, namely the challenge for those at the receiving end to accept the assistance in an organized manner. For a lawyer with experience from the legislative field it is obvious that even in a modern well-organized democracy there is a limit to how much e.g. a national legislative assembly can deal with at one and the same time. This difficulty is multiplied in a situation where, by definition, the receiving end is in the process of organizing itself and is very vulnerable. This means that there is need for sensitivity within the donor community. And it is important that in a

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<sup>4</sup> See <http://www.dhf.uu.se/events/seminars/including-local-voices-in-peacebuilding/>.

peacebuilding situation assistance is organized in a manner that the receiving end is not overburdened.

### The United Nations and the rule of law

Let me now turn to the United Nations and the rule of law. Suffice it to say at the outset that this question has attracted tremendous attention within the organization over the last few years, notably after the fall of the Berlin Wall. The matter has been on the agendas of both the General Assembly and the Security Council for quite some time now.

Much could be said about this topic and all the work that has been done in this field. However, in this brief keynote speech I would like to focus first on the latest development and then on another element that is of crucial importance for the credibility of the United Nations and its ability to “save succeeding generations from the scourge of war”, to quote the preamble of the UN Charter, namely the way in which the Security Council discharges its mandate under the Charter.

The latest development with respect to the rule of law in the United Nations is the declaration that was adopted on 24 September 2012 by the High-level Meeting of the UN General Assembly: *Declaration on the Rule of Law at the National and International Levels*.<sup>5</sup>

In this declaration, the members of the United Nations reaffirm their solemn commitment to the purposes and principles of the UN Charter, international law and justice, and to an international order based on the rule of law, “which are indispensable foundations for a more peaceful, prosperous and just world.”

They recognize that the rule of law applies to all states equally, and that all persons, institutions and entities, public and private, including the state itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law.

They also reaffirm that human rights, the rule of law and democracy are interlinked and mutually reinforcing. They emphasize the importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding and stress that justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations. They also reaffirm that states shall abide by all their obligations under international law.

As I have said in another context, this is a very clear message indeed.<sup>6</sup> But what counts is that the members of the United Nations now live up to what they have declared so that the declaration does not become empty words. The Western democracies must take the lead by demonstrating that they do live up to the undertakings in the declaration.

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<sup>5</sup> A/RES/67/1.

<sup>6</sup> Reflections on International Criminal Justice: Past, Present and Future. Keynote Address at a Symposium on the International Criminal Court at Ten, held at Whitney R. Harris World Law Institute and Washington University School of Law, St. Louis, MO, on 12 November 2012, available at <http://www.havc.se/res/SelectedMaterial/20121112corellkeynoteicj.pdf>.

On 14 December 2012, the General Assembly adopted another resolution that should be mentioned here: *The rule of law at the national and international levels*.<sup>7</sup> In addition to recalling the 24 September declaration this resolution contains many important elements to be borne in mind in general. More specifically, it stresses the importance of restoring confidence in the rule of law as a key element of transitional justice.

The second element in this part of my presentation, namely the way in which the Security Council discharges its mandate under the UN Charter, is of fundamental importance. Therefore, I keep reiterating my criticism in the hope that others will join so that those responsible at the highest level among the permanent five members of the Security Council will finally demonstrate the necessary statesmanship and make a change before it is too late. Let me point to the present situation in Syria as an example of the shortcoming.

### The situation in Syria

In a letter to the governments of the members of the United Nations on 10 December 2008 under the title: *Security Council Reform: Rule of Law More Important Than Additional Members*, I suggested that the five permanent members of the Council should make a solemn declaration of the kind that would be binding under international law.<sup>8</sup> In this declaration they should pledge:

- To scrupulously adhere to the obligations under international law that they have undertaken and in particular those laid down in the Charter of the United Nations;
- To make use of their veto power in the Security Council only if their most serious and direct national interests are affected and to explain, in case they do use this power, the reasons for doing so;
- To refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state unless in self-defence in accordance with Article 51 of the Charter of the United Nations or in accordance with a clear and unambiguous mandate by the Security Council under Chapter VII; and
- To take forceful action to intervene in situations when international peace and security are threatened by governments that seriously violate human rights or fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity or when otherwise the responsibility to protect is engaged.

The first three pledges fall squarely within the framework of an international society under the rule of law as defined in the General Assembly resolution of 24 September 2012!<sup>9</sup>

The fourth pledge relates to the Summit Outcome Document of September 2005, where the General Assembly declared that “we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly

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<sup>7</sup> A/RES/67/97.

<sup>8</sup> Available at <http://www.havc.se/res/SelectedMaterial/20081210corelllettertounmembers.pdf>.

<sup>9</sup> Supra note 4.

failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>10</sup> This provision was reaffirmed by the Security Council in resolution 1674 (2006) of 28 April 2006.

Taking the present situation in Syria as an example, the sad conclusion must be that the Security Council has failed miserably. As I have suggested on a previous occasion, if the Council already at the outset had sent a strong, unanimous message to the parties that what is happening in Syria is totally unacceptable in modern day society, maybe the tragedy in Syria could have been avoided.<sup>11</sup>

In welcoming us to this conference, Mayor Jozias van Aartsen referred to an event in the Peace Palace yesterday in connection with the Centenary of this extraordinary building: the Secretary-General of the United Nations, Mr Ban Ki-moon, pleaded with the members of the Security Council to explore all diplomatic options to bring all Syrian parties to the negotiation table, stressing there is no military solution to the crisis.<sup>12</sup> But this is what the Security Council should have done vigorously from the very outset!

And where is the next Syria? It could be anywhere where democracy and the rule of law are absent! Addressing the situation in Syria as it is now, is addressing the symptoms of what is wrong: the inability of the permanent members of the Security Council to demonstrate statesmanship and exercise their duty under the UN Charter in a responsible manner. The members of the UN have conferred on the Security Council the primary responsibility for the maintenance of international peace and security. This was done to ensure prompt and effective action.<sup>13</sup>

Finally, on a positive note, it gives me great pleasure to mention a newly published booklet: *Rule of Law – A guide for politicians*. This deliberately short guide – some 40 pages only – is a joint effort by the Hague Institute for Internationalisation of Law and the Raoul Wallenberg Institute for Human Rights and Humanitarian Law at the University of Lund, Sweden. The original language is English. Translations into Arabic, Bahasa Indonesia, Chinese, Farsi, French, German, Japanese, Portuguese, Romanian, Russian, Slovenian, Spanish, and Swedish are or will shortly be available on the websites of the Institutes.<sup>14</sup> Please use this guide in peacebuilding!

Thank you for your attention!

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<sup>10</sup> A/RES/60/1, para. 139.

<sup>11</sup> Supra note 5.

<sup>12</sup> See <http://www.un.org/apps/news/story.asp?NewsID=45723&Cr=syria&Cr1=#.UiCVbSrIbVU>.

<sup>13</sup> Article 24 of the UN Charter.

<sup>14</sup> See <http://www.hiil.org/publication/rule-of-law-for-politicians> or <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians/>.