

4 Looking Forward in the Spirit of Asser: Identifying Developments in the Global Society that Need to Be Addressed in International Law

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Abstract

The Article is focused on three distinct questions: Looking to the future: What are the lessons learned from Tobias Asser? What are the phenomena most likely to require specific attention and maybe rule-making at the international level in the coming hundred years? And what action is needed at the international level to address the phenomena identified? Regarding the first question, the Article maintains that the main lesson from Tobias Asser is that we must be observant and foresighted and that it is important to identify and analyse existing and coming phenomena, determine how to address them in the most appropriate and practical manner – and then act accordingly. In response to the second question the following phenomena are identified: the world population and its impact on our living conditions; the need to strengthen human rights and the rule of law; empowerment of women; the environment; disarmament; poverty; disease; the financial crisis; terrorism; transnational crime; corruption; and the information society. As regards the third question, it first identifies the need for a well managed and coordinated legislative system both at the national and the international level 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. A particular challenge is to convince policy-makers that this is a matter that must be given high priority in the immediate future. It then goes on to identify what action is needed with respect to each of the phenomena identified. The Article concludes by emphasising that the intention is not to strike a pessimistic note by raising all the issues identified. On the contrary, it is important to look forward with optimism. But at the same time we must discuss these phenomena

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and take appropriate action – in particular practical action. Here, we should be wise to study the contribution of Tobias Asser and the way in which he proceeded.

1 Introduction

As it appears from the program, I have been asked to present “some promising, inspiring and innovative challenges in the field of international relations and international law.” I will try my best. However, it is important to be realistic and not gloss over the challenges that could have very serious consequences, if not properly and effectively addressed.

I have chosen to speak on the topic *Looking Forward in the Spirit of Asser: Identifying Developments in the Global Society That Need to Be Addressed in International Law*. I will do so in three parts framed as three questions:

- Looking to the future: What are the lessons learned from Tobias Asser?
- What are the phenomena most likely to require specific attention and maybe rule-making at the international level in the coming hundred years?¹
- What action is needed at the international level to address the phenomena identified?

2 Looking to the future: What are the lessons learned from Tobias Asser?

Let us now look at the first question: What are the lessons learned from Tobias Asser? Tobias Asser (1838-1913) was active in a completely different time. The relations between states were not so developed in those days. Basically, states were sovereign in the Westphalian sense and whatever happened at the national level were an internal matter and a matter for “the sovereign” – in other words those who ruled. There had been revolutions in Europe, and the U.S. was recovering from the Civil War that had ended in 1865.

At the same time, there was increased cross-border interaction between persons, physical as well as legal. Communications intensified, people travelled, contacts were made, family and business relations developed.

Tobias Asser identified these elements and took action which eventually led to the establishment of the Hague Conference in 1951, nearly 40 years after his death. A noteworthy line in the 1911 Ceremony speech is the reference to his description in the year 1900 of the international organisation that he had in mind. He said that it would contribute greatly to the codification of international civil law “without interfering with the complete autonomy of the nations in the domain of legislation”.

In a moment, I will suggest that the distinction between national and international norms will be less prominent as time passes and that the freedom of the

1 This period was actually suggested to me by one of the organizers.

national legislator to act will be more and more circumscribed as a consequence of obligations under international law. However, at the time, Tobias Asser's approach was the right one.

We have listened to the keynote speech by Judge Peter Tomka, Vice-President of the International Court of Justice, a presentation of Tobias Asser's pivotal role in international law in diplomacy by Arthur Eyffinger, the "Introduction to Asser's legal heritage: developments and accomplishments 1911-2011", and to three panels focusing mainly on private international law.

Listening to the introduction, I noted some catchwords: diplomacy; international spirit; globally shared values; peaceful settlement of disputes; rule of law and respect for the law; practitioner; and politics and law.

As a practitioner, I believe that these elements are just as relevant, if not more relevant today as they were in Tobias Asser's time. With respect to the element last mentioned – politics and law – it is important to stress this interrelationship. In a sense, the most sophisticated way in which to express a political will is to transform it into legislation in conformity with one's national constitution and relevant international law.

With respect to the first panel – Towards a Third Hague Peace Conference? – I noted Professor Nico Schrijver's cautious approach, with which I agree entirely. He noted that in 1915, there was no established world organisation while, today, we have the United Nations. He also emphasised that all states must be able to participate in a world conference.

Precisely! This is a very important element since many states would have great difficulties in establishing a presence in The Hague for a conference dealing with topics that are or should be on the agenda of the United Nations. One such matter is definitely how to reform the Security Council.

However, this does not mean that the important topics suggested by Lector Joris Voorhoeve should not be effectively addressed in the appropriate forums: a treaty against small arms; the establishment of an anti-corruption court; and the legal clarification relating to the use of unmanned aerial vehicles.

In the third panel – International Arbitration in the 21st-Century – Professor Filip De Ly made positive references to the UNCITRAL Model Law on International Commercial Arbitration (1985). I was very pleased to note this and would like to add that the United Nations Commission on International Trade Law, its secretariat being part of the UN Office of Legal Affairs, is one of the best functioning commissions in the UN. The reason for this is that states tend to send delegates to the meetings of UNCITRAL who have practical and relevant experience in the subject matters that the Commission deals with.

As we have noted, Tobias Asser's focus was not only on private international law. He was also foresighted with respect to the need for an orderly development of relations among states and was instrumental in organising the Hague Peace Conferences in 1899 and 1907.

As it will appear, my main focus will be on public international law since we can learn from Tobias Asser also here. He has actually been described as the ultimate link between private international law and public international law.²

The main lesson that I draw from Tobias Asser is that we must be observant and foresighted and that it is important to identify and analyse existing and coming phenomena, determine how to address them in the most appropriate and practical manner – and then act accordingly.

3 What are the phenomena most likely to require specific attention and maybe rule-making at the international level in the coming hundred years?

I now come to the second question: What are the phenomena most likely to require specific attention and maybe rule-making at the international level in the coming hundred years?

In responding to this question, it is necessary to set the scene. One way of doing this could be to do as the former Director General of the International Atomic Energy Agency (IAEA) Mohamed ElBaradei when he gave the keynote address at the opening ceremony of the Annual Conference of the International Bar Association in Dubai in November 2011.³ In his address, he referred to an increasingly globalised world where no country alone can solve on its own the issues that emerge while at the same time the governance mechanisms are lagging behind, be they the UN or some other organisation or group of states. He then went on to say:

“The fact that we don’t have the kind of mechanism to govern on the basis of fairness, equity, justice, has led us to a world when you have three billion people, half humanity, that live on less than \$2.5 a day. We have one billion people who go to bed hungry every night. We have spending of \$1.5 trillion on armament last year, while we spent \$120 billion on financial development assistance. So we spent 12 times more on armament than on development aid and we spent \$8 billion on 16 peacekeeping operations run by the UN. In other words, we spent 200 times more on armament than we spent on peacekeeping all over the world.”

This is indeed a very sombre scenario. And even if there are many positive trends that could be mentioned as well, it is important to emphasise that if the elements that he referred to are not solved in a reasonable manner, they constitute a serious threat to humankind in the future.

2 See the Foreword in A. Eyffinger, *Dreaming, the Ideal, Leaving the Attainable* – T.M.C. Asser [1838-1913] Founder of The Hague Tradition (T.M.C. Asser Press, The Hague, 2011).

3 Available at <www.ibanet.org/Article/Detail.aspx?ArticleUid=D2215C36-2805-4274-B732-BEF51F62A8D4>, visited on 23 April 2012.

This dilemma has certainly been identified in the past. A few days ago, I had the honour of lecturing at the Dag Hammarskjöld University College of International Relations and Diplomacy in Zagreb on the topic *Dag Hammarskjöld, the United Nations and the Rule of Law in Today's World*.⁴

On that occasion, I recalled that the Preamble of the Charter of the United Nations states that the responsibility of the Organization is “to save succeeding generations from the scourge of war”. I then referred to Dag Hammarskjöld’s final Annual Report to the General Assembly in 1961, where he argued that this objective was to be progressively achieved via the international community’s realization of four fundamental principles, namely:

- equal political rights, both in terms of sovereign equality and individual respect for human rights and fundamental freedoms;
- equal economic opportunities, thereby promoting higher standards of living through the creation of conditions conducive to development and economic and social advancement;
- a firm rule of law framework underlying the actions and activities of the international community; and
- the prohibition of the use of force contrary to the common interest of the international community.

In the rule of law, I included also a fifth element, namely peaceful settlement of disputes. I do so also now, in particular since we are in the world’s stronghold for precisely this principle.⁵

These principles, formulated by Dag Hammarskjöld 50 years ago, can well serve as a reminder when we embark upon identifying developments in the global society that need to be addressed in international law.

Another way to set the scene is to do as I suggested in an article – *The Increased Interconnection between International and National Law and the Need to Coordinate the Legislative Process in the Future* – that I contributed to a publication initiated by the Hague Institute for Internationalisation of Law.⁶

In this article, I used 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: (1) economic and social threats, including poverty, infectious diseases and environmental degradation; (2) inter-State conflict; (3) internal conflict, including civil war, genocide and other large-scale

4 Available at <www.havc.se/res/SelectedMaterial/2011129daghhammarskjold.pdf>, visited on 23 April 2012.

5 Note in this context the Keynote Address by Judge Tomka, *For a More Peaceful International Society: The Role in Development of International Dispute Settlement*.

6 S. Muller, St. Zouridis, L. Kistemaker, M. Frishman (eds.), *The Law of the Future and the Future of Law* (Torkel Opsahl Academic EPublisher), freely accessible as e-publication (ISBN 978-82-93081-27-2), at pp. 177-193 (printing range pages 209-225).

atrocities; (4) nuclear, radiological, chemical and biological weapons; (5) terrorism; and (6) transnational organized crime.⁷

Let us now look at some of the developments that need to be taken into consideration in this context. Many of these are all well known. Nevertheless, it is important to reiterate them and make a systematic analysis.

The world population and its impact on our living conditions: The world population is today 7 billion. By mid-century, it is expected to be 9.3 billion. Interestingly, we were some 2 billion when the UN was established in 1945.

Strengthening of human rights and the rule of law: No doubt, there has been a remarkable development in this field in later years. However, much remains to be done. A very sad observation is that human rights violations are sometimes committed by states from which we have reason to expect a better performance.

Empowerment of women: First, this is one of the most important elements in our efforts to strengthen human rights. However, it is also a decisive factor in dealing with the population issue.

Environment: The risk for environmental degradation is well known. The efforts to address this development have hitherto not been very successful. It is yet too early to predict the outcome of the on-going 17th Conference of the Parties to the United Nations Framework Convention on Climate Change in Durban.

There is also a close relationship between the environment, the growing world population and human rights. Environmental degradation will obviously lead to human suffering. It might also lead to increased long-range international migration which by definition carries with it a risk for further violations in countries where these migrants may not be welcome. The connection with the climate change is also obvious since rising sea levels and desertification are potential contributors to such migration.

Disarmament: Suffice it in this context to refer to the statement by Mohamed ElBaradei just quoted. In particular, there is a need for decisive action in the field of nuclear disarmament.

Poverty: Also here, I refer to the statement by Mohamed ElBaradei just quoted. Addressing poverty is one of the Millennium Development Goals.⁸ In spite of positive trends, too many people in the world still live under very poor conditions. There is still famine in many regions, and the access to water is increasingly becoming a major issue.

Disease: Here we have a major problem that causes so much suffering among humans all over the world. However, the populations in developing countries are in a more serious situation. HIV/AIDS and malaria are cases in point.

7 UN Doc. A/59/565 available at <www.un.org/secureworld/report.pdf>, visited on 23 April 2012.

8 See <www.un.org/millenniumgoals/>, visited on 23 April 2012.

The financial crisis: The financial situation has all of a sudden surfaced as a major challenge to all of us. We all have in fresh memory the 2008 crisis, and there are now major problems in Europe that affect not only the countries in the Eurozone.

Terrorism: Sadly, this horror is all too well known. Many efforts have been made to analyse the reasons why certain people engage in terrorism. An interesting example is the efforts undertaken by the Club de Madrid, which is an organisation of former heads of state and government. On 11 March 2005, exactly one year after the terrorist attacks in Madrid, they adopted the so-called Madrid Agenda Against Terrorism.⁹ They also addressed the misnomer 'war on terror', which has caused great damage by confusing the distinction between human rights law and humanitarian law. I will revert to this.

Transnational crime: A very serious threat identified also by the United Nations High-level Panel on Threats, Challenges and Change.¹⁰ Reference can also be made to the United Nations Convention against Transnational Organized Crime (2000) for the purpose of promoting cooperation to prevent and combat such crimes more effectively.¹¹

Corruption: Again, a well-known phenomenon, which is like a poison that destroys so many of our efforts to establish the rule of law and to assist developing countries in enhancing government and achieving better living conditions for their populations. Reference is made to the United Nations Convention against Corruption (2003).¹²

The information society: In this field there has been a tremendous development over the last decades. The volume of information accessible through the Internet and the means of communication that the web offers are unprecedented. Recent examples of the way in which the web can be used to coordinate action are the events commonly referred to as the Arab Spring.

4 What action is needed at the international level to address the phenomena identified?

Let us now examine the third question: What action is needed at the international level to address the phenomena identified?

9 See <summit.clubmadrid.org/agenda/the-madrid-agenda.html>, visited on 23 April 2012.

10 See *supra* note 7.

11 See <www.unodc.org/unodc/en/treaties/CTOC/index.html>, visited on 23 April 2012.

12 See <www.unodc.org/unodc/en/treaties/CAC/>, visited on 23 April 2012.

4.1 The need for a well managed and coordinated legislative system Here, I would like to take as a point of departure a matter that might come as a bit of a surprise to the audience. I would like to refer again to the article that I contributed to the publication initiated by the Hague Institute for Internationalisation of Law.¹³ The conclusions in this article are the following.

There will be an increasing legislative activity in the future both at the national and the 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. This is not purely a technical matter. 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. Based on my experience, including some 13 years with almost exclusively legislative work in the Ministry of Justice in my country and my international experience thereafter, I constantly warn against overregulation. In addressing the phenomena that we are discussing here an important initial question is: do we really need new rules or can we solve the problem in another manner?

Another conclusion is that national legal systems need to be maintained through the abolition of obsolete rules. Similarly, attention must be given to identifying obsolete rules at the international level. We must realise that the body of international agreements will keep growing, and eventually there will be treaties that should be abolished since their existence on the books may cause confusion or uncertainty. We can therefore foresee a need for a systematic review of the existing body of treaties will materialize. States must ascertain that the system is up-to-date and coherent.

This means that 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.

My final conclusion in this context is that there is a particular challenge in convincing the policy-makers 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. As lawyers we have a duty to take resolute action and explain the subject matter to the policy-makers we serve.

Let us now see what action is needed with respect to the phenomena identified.

¹³ See *supra* note 6.

4.2 The world population and its impact on our living conditions
As previously noted, the world population is expected to be 9.3 billion by mid-century. According to the UN Population Division, it is expected to stabilise somewhere at that level for the foreseeable future.¹⁴ The question is, however, whether the world can sustain so many people, in particular if they adopt the style of living that we have developed in our part of the world.

The question is whether this element can be addressed through international law. Basically, it is an ethical question where we must realise that more advances must be made under the second principle identified by Dag Hammarskjöld. The means are probably new inventions in combination with family planning. In this latter regard, we must not forget that it is a human right to marry and to found a family.

4.3 Strengthening of human rights and the rule of law
In this field, the international rules needed already exist. Here, it is a clear matter of implementation. Basically, what it boils down to is democracy and the rule of law. A systematic approach is needed and for progress we need both political will and adequate systemic resources. Other important requirements are knowledge and education.

But what about dictatorships, you may ask. Here, it is important to focus on the role of the UN Security Council. Every dictatorship is a threat to international peace and security, and it is the Council that is entrusted with the primary responsibility for the maintenance of international peace and security. A systematic approach by the Council is necessary on the basis of its ultimate duty to intervene under the concept Responsibility to Protect, endorsed by the Council itself.¹⁵

A crucial requirement for a positive development in this field is that the members of Council and in particular the permanent five members set the example.

Imagine the impact if the five permanent members got together to consider how best to fulfil the duty entrusted to them by the UN Charter. I reiterate the concerns that I expressed and the proposals that I made in a letter to the members of the United Nations on 10 December 2008 under the title *Security Council Reform: Rule of Law More Important Than Additional Members*.¹⁶

In this letter, I suggested that the permanent five members, who because of their veto power can block any amendment to the UN Charter, rather than con-

14 See <www.un.org/esa/population/>, visited on 23 April 2012.

15 See in particular paragraphs 138 and 139 in General Assembly resolution A/RES/60/1 and Security Council Resolution 1674 (2006) of 28 April 2006.

16 Available at <www.havc.se/res/SelectedMaterial/20081210corelllettertounmembers.pdf>, visited on 23 April 2012.

sidering at the present stage additional members of the Council, should adopt a binding declaration containing the following four elements:

- 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.

4.4 Empowerment of women

Empowerment of women must be through dedicated work in many fields, such as reproductive health, addressing maternal mortality and morbidity, stewardship of natural resources and empowerment in the economic, educational and political fields. The education of the girl child is often emphasised in this discussion. Reference can here be made to work of the United Nations Population Fund.¹⁷

It is sometimes suggested that religion, and in particular Islam, prevents affirmative action here. Having discussed this matter with Moslem friends on many occasions, I have noted that the answer is always the same: the obstacle is not religion but tradition.

4.5 Environment

Is it possible to solve the environmental issues through international law? Surely, binding legal rules can be employed in certain areas. However, ultimately this is a question of human behaviour – an ethical question. Education is absolutely necessary.

If we look at the question of environment and energy, is it likely that those of us who have the greatest impact on the environment are prepared to change our way of living? The attitude is more *Après nous le deluge* – After us the flood.

17 See <www.unfpa.org/gender/empowerment.htm>, visited on 23 April 2012.

What is needed here is perhaps not primarily more international law but inventions to solve the energy supply. And here it is regrettable to see that some people, including prominent politicians, behave like ostriches with their heads in the sand.

4.6 Disarmament

The need for a small arms treaty has already been mentioned. Even if the number of victims to small arms is staggering, it is the nuclear arms that constitute the main threat to humanity. Here, I would like to reiterate the recommendations by the InterAction Council of June 2008:¹⁸

- Accepting the vision of a nuclear weapons free world and urging the nuclear weapon possessing powers to take the lead in a renewed effort in the disarmament process by phasing out nuclear arsenals and avoiding the development of new systems that would instigate a renewed arms race;
- Demanding that all nuclear weapon states make a declaration that they will refrain from the first use of weapons of mass destruction;
- Urging all states to accede to the Nuclear Non-Proliferation Treaty and to abide by their obligations under that treaty and for nuclear weapons to be taken off hair trigger alert to avoid war by accidents or misunderstandings;
- Urging the entry into force of the Comprehensive Test Ban Treaty and calling attention to the Intermediate-Range Nuclear Forces Treaty and the possibilities for creating a dialogue between all nuclear weapon states in this context; and
- Negotiating a treaty providing a verified ban on the production of fissile material for weapons to prevent more enriched uranium and plutonium from being produced for weapons grade.

4.7 Poverty

Addressing poverty is first and foremost an ethical question. Solving this matter through international law may not be the most effective method. Rather, it is a matter of education and lifestyle. One way of pointing to the discrepancies here is to compare the CO₂ emissions per capita in the world every year. By way of ex-

18 See the Final Communiqué from the 26th Annual Plenary Session of the InterAction Council of Former Heads of State and Government, held in Stockholm, Sweden, on 25-27 June 2008, addressing Present State of the World, Restoring International Law, and Managing International Financial Markets, <www.interactioncouncil.org/final-communicu-29>, visited on 23 April 2012.

ample, in 2008 this figure was 18,0 metric tonnes per capita in the U.S., while the corresponding figure in India was 1,5 tonnes.¹⁹

During a visit to the Gulf region a few years ago, I got another reminder of the discrepancies. A sign proclaimed that in this state 74 million gallons of desalinated water was used per day to water the golf courses and the gardens.

4.8 Disease

Again, we must ask if disease can be solved through international law. Basically, this is a matter of resources and availability of treatment. However, there are certainly legal elements also in this field, for example, the so-called TRIPS, which are addressed in the Agreement on Trade-Related Aspects of Intellectual Property Rights.

An issue here is how to ensure that patent protection for pharmaceutical products does not prevent people in poor countries from having access to medicines while at the same time maintaining the patent system's role in providing incentives for research and development into new medicines.²⁰

4.9 The financial crisis

No doubt, there is room for tremendous improvement in this area. There is definitely a need for a more effective surveillance and direction of international financial markets. Let me again refer to the InterAction Council and reiterate some of the measures they consider necessary:²¹

- Subjecting all investment banks, hedge funds, private equity funds, financial institutions and instruments to the supervision and regulation as apply to the normal banking system and promoting transparency;
- Restoring adequate capital ratios of financial institutions to restore confidence in the international financial markets and to ensure market stability; and
- Addressing questionable transactions via tax-exempt and control-free financial havens through a global agreement to take national action to prohibit banks from lending to private financial institutions registered in tax havens without financial surveillance regimes.

19 The World Bank, *CO₂ emissions (metric tons per capita)*, <data.worldbank.org/indicator/EN.ATM.CO2E.PC>, visited on 23 April 2012.

20 See e.g., the World Trade Organization, *Understanding the WTO – Intellectual property: protection and enforcement*, available at <www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm>, visited on 23 April 2012.

21 See *supra* note 18.

With respect to the present crisis in the Eurozone it is obvious that determined action is needed that may have to materialise in legally binding norms.

Based on my experiences from the process of identifying a bank to hold the Iraqi Oil-for-Food account as required by Security Council resolution 986 (1995), I believe that it is also necessary to address a sad reality, namely that otherwise well-reputed banks may hold assets of dictators and warlords. Maybe this is an area where the Security Council could take an initiative. Surely, the Security Council could order banks that hold such assets to disclose this information subject to judicial review.

4.10 Terrorism

From a legal point of view it is extremely important to emphasise that terrorism is fought through enforcement of criminal law. The misnomer “war on terror” has caused great damage by confusing the distinction between human rights law and humanitarian law. To quote again the Madrid Agenda Against Terrorism:²²

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

This was echoed by the InterAction Council in their 2008 Communiqué where they stress that it is important to recognise that terrorism is not a war but should be treated as criminal acts to be handled through existing systems of law enforcement and with full respect for human rights and the rule of law.²³

In one of the policy papers to the International Summit on Democracy, Terrorism and Security in Madrid in March 2005 the working group which I had the privilege of chairing stated that it is contrary to the basic principles of democracy and international law for any persons not to fall under the protection of law. This would apply, for instance, to practices such as indefinite detention without access to judicial review, extrajudicial execution, and inhuman and degrading treatment in the course of interrogations, conducted either domestically or in third countries after extra-legal rendition.

The working group added that a forceful response to terrorism is not undermined by the rule of law. On the contrary, the rule of law is the appropriate framework for the response. To apply the terminology “war on terrorism” entails the

22 See <www.summit.clubmadrid.org/agenda/the-madrid-agenda.html>, visited on 23 April 2012.

23 See *supra* note 18.

possibility that human rights standards that should be applied in these cases may be indefinitely suspended.²⁴

In the lecture that I delivered in Zagreb a few days ago,²⁵ I mentioned that I was extremely concerned when I read New York Times on 14 November 2011. According to the paper, three of the contenders for one of the political parties' nomination for president have come out in favour of authorising water boarding in order to extract information – in other words torture.²⁶ This development should be followed closely. After all, we live in the 21st-century!

4.11 Transnational crime

Here, reference is again made to the United Nations Convention against Transnational Organized Crime. The challenge is to implement this convention effectively. With reference to what I said about the Security Council under “The financial crisis” in the foregoing, I would like to draw particular attention to article 12, paragraph 6 of the Convention according to which each State Party for the purposes of articles 12 and 13 of the Convention shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. In that context States Parties must not decline to act on the ground of bank secrecy.

4.12 Corruption

Reference is again made to the United Nations Convention against Corruption. In a message at the opening of the high-level political conference for the purpose of signing the Convention in Merida, Mexico, in December 2003, Secretary-General Kofi Annan said:²⁷

“I urge all States to ratify the Convention at the earliest possible date. Let us bring it into force as a matter of urgency. If fully enforced, it can help to ensure that the weak and vulnerable are protected from the greed of corrupt officials and unscrupulous profiteers. It can help ensure that, in today’s fast-moving world, the poor do not become poorer. And by removing an important obstacle to development,

24 See the Madrid Summit Working Paper Series Volume III – Towards a Democratic Response which addresses the role of international institutions, legal responses, democracy promotion, human rights and civil society. Available at <<http://media.clubmadrid.org/docs/CdM-Series-on-Terrorism-Vol-3.pdf>>, visited on 23 April 2012.

25 See *supra* note 4.

26 See *The Torture Candidates*, available at <www.nytimes.com/2011/11/15/opinion/the-torture-candidates.html?_r=2>, visited on 23 April 2012.

27 See <www.untreaty.un.org/ola/media/info_from_lc/corruption_message.pdf>, visited on 23 April 2012.

it can help us achieve the Millennium Development Goals, and improve the life of millions around the world. Let me assure you that the United Nations will continue to do its part, working with Governments and civil society in this momentous global struggle.”

Personally, I made an appeal to judges worldwide to join hands, at the national level and across borders, in a common effort to eradicate corruption within our own profession.²⁸

The suggestion that an anti-corruption court should be established deserves further attention.

4.13 The information society

The development here is of course extremely positive. However, we have to be watchful. I referred to the Arab Spring, which of course is a very positive development. But information technology could be used in the same way for the opposite purposes – to mobilise action against organised democratic societies under the rule of law. Furthermore, we should be aware that hate speech and instructions on how to make bombs and apply other methods that terrorists use are spread through the web.

It is interesting to note that in the past, whenever a communications system has been invented, states have come together to conclude the necessary agreements to regulate them: post, telegraph, telephone, railways, shipping, civil aviation, etc. However, in the case of the Internet, the most effective communications system so far, this has not been possible. Basically, the system is governed through the Internet Corporation for Assigned Names and Numbers (ICANN).²⁹ It is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet’s unique identifiers, but it does not control the content on the Internet.

There is also another challenge, namely that we risk being overburdened with information. In the future, it may be difficult to distinguish relevant information from all the rubbish that will be circulated on the web. Maybe it will be necessary to invent search engines to assist in this distinction. A well-known expression from the past is “to find a needle in a haystack”. In tomorrow’s world of megabytes, gigabytes and terabytes it might be more relevant to talk about “finding a bit in a terabyte”.

28 See <www.untreaty.un.org/ola/media/info_from_lc/corruption_appeal.pdf>, visited on 23 April 2012.

29 See <www.icann.org/en/groups/board/governance/charter-27mar03-en.htm>, visited on 23 April 2012.

4.14 Education

Another requirement that is of crucial importance for the future is a satisfactory educational system. In spite of all the information that is easily available today it is frightening to see the level of ignorance that seems to exist even in countries where one has reason to expect better. The level of vulgarity in the political debate in some quarters is frightening. We therefore need educators who can inform the general public and see to it that the educational system and our schools guarantee that young people are provided with sufficient knowledge in history; the basics of democracy, human rights and the rule of law; social relations; geography; and environment. These elements are absolutely necessary to guide human beings through life, which is a school in itself.

The need for education cannot be emphasised enough. Maybe more efforts should be made to elaborate standard educational material that can be used in many countries. Ignorance of these topics constitutes a great danger. It is likely that tensions will rise in a world where people will be competing for limited resources. We must therefore make every effort to ascertain that the masses are not led astray by demagoguery. Otherwise there is a risk that we may be returning, if not physically so mentally, to the caves from where we came.

4.15 Statesmanship

Finally, we need statesmen, including women. A fundamental requirement is here that those entrusted with political responsibility at the highest level learn from history, including in particular from their predecessors. By way of example in this context, I recommend reading the Final Communiqués from the Annual Plenary Sessions of the InterAction Council of Former Heads of State and Government.³⁰

My own conclusions in the article that I contributed to the publication initiated by the Hague Institute for Internationalisation of Law are the following.³¹

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.

30 See Final Communiqués, <www.interactioncouncil.org/final-communicu-s>, visited on 23 April 2012.

31 See *supra* note 6.

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?

5 Conclusion: The Asser connection

It is not my intention to strike a pessimistic note by raising all these issues. On the contrary, we must look forward with optimism. But at the same time it is important that we discuss these phenomena and take appropriate action – in particular practical action. We must definitely see to it that such discussions are not avoided simply because they are controversial, or may cause embarrassment.

In looking forward, we should be wise to study the contribution of Tobias Asser and the way in which he proceeded. It is said about Asser that he was always pragmatic, never being lost in idealism.³² May I close the note that, personally, I have nothing against idealism – provided that it is realistic!

32 See *supra* note 2.