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This Congress meets in a climate which is in some respects considerably better than that prevailing a few years ago. The Palme Commission on Disarmament and Security Issues starts its final statement issued in Stockholm on April 14, 1989, with the observation that:

It concludes its work at a time when reason and common sense seem at last to be taking hold in the world. Long and bloody conflicts in several regions are ending. The prospects for halting the arms race have rarely appeared so promising. There seems to be a greater spirit of cooperation among countries. The United Nations is again being used as an important instrument for peace.¹

The final statement of the Palme Commission continues:

The current situation stands in striking contrast to the state of the world in 1980. At that time, relations between the United States and the Soviet Union were deteriorating, rapidly, heading toward a struggle reminiscent of the darkest moments of the Cold War. As the major powers froze negotiations and exchanged insults, conflicts raged in East and South Asia, in the Persian Gulf, in several parts of Africa, and in Central America. Arms negotiations were stalled, as nations in all areas of the world accelerated their military programs. As arms races heated up, the danger of nuclear war seemed less and less an abstract idea, and more and more a possibility.²

One of the decisive factors that improved the international political climate was the emergence of a new and enlightened leadership in the Soviet Union. The two superpowers have become increasingly aware that they can no longer afford to spend extravagant resources for a crazy and senseless arms race without doing irreparable harm to vital economic and social needs of their societies and to the viability of their political systems. This is progress, and it appears that the world looks a little safer.

THREATS TO PRESENT AND FUTURE GENERATIONS

However, there is at the same time a growing concern that a whole range of imminent long-term threats are putting the very survival of present and future generations in serious jeopardy. The notion of threats to

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1. The Palme Commission on Disarmament and Security Issues, *A World at Peace: Common Security in the Twenty-First Century* 5 (Stockholm Apr. 14, 1989) [hereinafter *Palme Commission*].

2. *Id.*

human dignity and to the survival of humanity is definitely not a parochial sentiment but represents the deeply felt concerns of broad constituencies of national and international public opinion. Let me share some statements with you which reflect these concerns.

In December 1988, at the occasion of the 40th anniversary of the Universal Declaration of Human Rights, a group of lawyers from various continents and from countries with different legal, political and social systems, came together in this country, in the cities of Maastricht and Utrecht, to assess the present significance of the Universal Declaration. In the joint statement drawn up and known as the "1988 Maastricht-Utrecht Statement on the Universal Declaration of Human Rights," the following text figures prominently as an expression of present day concern which definitely had not the same urgency and the same dramatic significance at the time when the Universal Declaration was drafted. The text reads:

As a living instrument the Universal Declaration permits and compels addressing the new threats to human dignity and to the survival of humanity. These threats are:

- Excessive armaments and nuclear weapons which may lead to mass destruction;
- excessive extraction of natural resources and destruction of the environment;
- economic injustices which cause deprivation, hunger and mass poverty; and
- potential dangers to the human species as result of developments in science and technology.

These new threats not only affect the human rights of millions of individuals but the very existence of groups, individuals and humanity as a whole. Therefore, all individuals and collective entities have a right to effective protection against these threats. Governments have the collective responsibility to ensure human survival and development.³

A draft document for the World Convocation on Justice, Peace and the Integrity of Creation of the World Council of Churches, to be held in Seoul, Korea, from 6 to 12 March 1990, identifies the perilous threats which face the life of today's world on the basis of the following realities:

- Every *minute*, the nations of the world spend 1.8 million U.S. dollars on military armaments;
- every *hour*, 1,500 children die of hunger-related causes;
- every *day*, a species becomes extinct;
- every *week* during the 1980's, more people were detained, tortured, assassinated, made refugees, or were in other ways violated by repressive governments than at any other time in history (with the exception of World War II);

3. Maastricht-Utrecht Statement on the Universal Declaration of Human Rights No. 3, ¶ 4, to be published in 7 NETH. Q. HUM. RTS. (1989).

— every *month*, the world's economic system adds over 7.5 billion U.S. dollars to the catastrophically unbearable debt burden of over \$1,500 billion now resting on the backs of the people of the Third World;

— every *year*, an area of tropical forests, three quarters the size of Korea, is destroyed and lost;

— every *decade*, the sea level will rise by about 1.5 meters as a result of present global warming trends, portending disastrous consequences for our planet and especially for the coastal areas.⁴

While I am of course aware that the focus of this Congress is on nuclear weapons and the law, we cannot ignore the fact, which is also reflected in the range of subjects assigned to this morning's working groups, that the threats posed by production, possession, deployment and potential use of nuclear weapons are intimately related to other threats to humankind. In the report of the Independent Commission on International Development Issues, under the Chairmanship of Willy Brandt and entitled "North-South: a program for Survival," political and military securities are rightly brought in close relationship with other factors that constitute root causes of large-scale instability and human suffering. The Brandt Commission stated:

Our survival depends not only on military balance, but on global co-operation to ensure a sustainable biological environment and sustainable prosperity based on equitable shared resources. Much of the insecurity in the world is connected with the divisions between rich and poor countries — grave injustice and mass starvation causing additional instability.⁵

In a similar vein, the Palme Commission on Disarmament and Security Issues stated in its most recent report on Common Security in the Twenty-First Century:

... [S]ecurity is a broader and more complex concept than protection from arms and war. The roots of conflicts and insecurity include poverty, economic disparities within nations and between them, oppression, and the denial of fundamental freedoms. Unless problems of social and economic underdevelopment are addressed, common security can never be truly attained. New threats to security also are emerging from environmental problems and the degradation of certain ecosystems. Against these threats to humanity's survival, the adversaries in the East-West conflict no longer stand on opposite sides; they often confront the same dangers — dangers they share as well in North-South relations. In this respect, common security could evolve from a concept intended to protect against war to a comprehensive approach

4. World Council of Churches, *Towards an Ecumenical Theological Affirmation on Justice, Peace and the Integrity of Creation 2* (Mar. 6-12, 1990) (First Draft for the World Convocation on Justice, Peace and the Integrity of Creation).

5. NORTH-SOUTH: A PROGRAMME FOR SURVIVAL 124 (1980).

to world peace, social justice, economic development and environmental protection.⁶

COMMON RESPONSIBILITY

The Charter of the United Nations has laid down, in its description of the purposes and principles of the World Organization and in its institutional framework, the fundamentals of a global peace strategy. The United Nations system constitutes the major forum and the major instrument for international cooperation. It is also through the United Nations that the international law of cooperation is shaped. This international law of cooperation is based on the premise of common needs and common interests which can only be properly handled through joint efforts. We note with satisfaction that after a period which was marked by a grave erosion of the principle of multilateralism and multilateral cooperation, the improved international climate gave new impetus to multilateral cooperation. The opportunities to strengthen the position and the authority of the United Nations are now more propitious than before.⁷

One of the main characteristics of the law of international cooperation is the imperative notion of common responsibility. The peace strategy of the United Nations Charter requires concerted efforts on the part of the international community and of the international organizations that form the structural and constitutional framework of this community. But, it cannot be denied that nation states are still the main constitutive elements and the main actors, and that the duty to cooperate in good faith rests in particular with them.⁸

At the same time, we see the notion evolving in international law that obligations and entitlements are no longer the sole attributes of states but first and foremost pertain to human beings and to peoples.⁹ The right to survival is not meant as the survival of states but as the survival of peoples, persons and ultimately humanity as a whole. Similar observations can be made with respect to the right to peace and the right to development. Modern international law is in many respects a people-oriented law, with people as beneficiaries and duty bearers. Modern international law is also being developed to protect and preserve common principles, common values and what is understood as the common heritage of humankind and the common heritage of this planet. A common

6. Palme Commission, *supra* note 1, at 7.

7. See also Franck, *Soviet Initiatives: U.S. Responses — New Opportunities for Reviving the United Nations System* No. 3, 83 AM. J. INT'L L. 531 (1989).

8. See also the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR (1883d plen. mtg.), at 1 (1970). See the principle relating to "The Duty of States to cooperate with one another in accordance with the Charter." *Id.* at 7.

9. See Kiss, *L'Etat Moderne et le Droit International*, in *LA CONCEZIONE DEL DIRITTO E DELLO STATO, NELL'ERA DI RIVENDICAZIONE DELLA DIGNITA DELLA PERSONA UMANA* 71 (1988).

responsibility is not only resting upon states but on all organs of international and national society as well.

It is heartening that numerous non-governmental organizations, and also professional groups and associations, have become increasingly aware of this common responsibility and are giving concrete expression of this awareness in their activities. Eminent scientists put in good conscience, to themselves and to the world, pertinent questions about the effects of their research on humanity and on the natural and biological environment. These questions touch upon issues of fundamental existence and survival. There are leading economists who are questioning the priorities which are dictated by rampant militarism and by uncontrolled demands of the military-industrial complex.¹⁰ The same economists have offered schemes for the conversion of military expenditure to civilian production. We as lawyers are gathering here in pursuance of our efforts to see nuclear arms outlawed and to give normative content to the right to peace, the right to survival and the right to development as a basis for international cooperation.

In the following part of this presentation, I would like to elaborate on three issues which require the constructive and cooperative efforts of lawyers in the furtherance of international peace and human dignity. The first aspect, already commented upon, relates to the creation and the functioning of structures for international cooperation aimed at strategies for peace and justice. The second aspect concerns the elaboration of principles and rules for normative behavior, notably the formulation of rights and duties. In light of this morning's agenda, the *piece de resistance* will be, in this context, a discussion of norms with regard to the right to survival, the right to peace and the right to development, with special reference to weapons of mass destruction. The third aspect pertains to the need to monitor compliance with principles and rules of normative behavior.

STRUCTURES FOR PEACE AND JUSTICE STRATEGIES

Lawyers have largely contributed to the development of the law of international organizations. In these days of an improved international political climate, renewed efforts should be focused on strengthening the rule of law and the role of law in matters of international cooperation.

The Palme Commission, in its recent report, pleads for the transformation of the current international system to one grounded more firmly on the rule of law on the basis of three simultaneous and mutually reinforcing developments.¹¹ First, the development of patterns of behavior in which disputes are resolved peacefully in accordance with the U.N. Charter. A variety of peaceful means are available: mediation, arbitration, diplomatic negotiations, and others. Second, the strengthening of interna-

10. Tinbergen, *What Road to Survival?*, WORLD PRESS REV. 25, Aug. 1984.

11. Palme Commission, *supra* note 1, at 8.

tional institutions, including the International Court of Justice; arbitration and mediation agencies; regional political and economic organizations; and, of course, the United Nations itself as well as its subsidiary bodies. In this respect, the role for the U.N.-Secretary-General can be an important one with a view to anticipating and forestalling conflicts. For this purpose, the Secretary-General should have the necessary means and personnel at his disposal to monitor the world situation with the assistance of military observers, fact-finders and experts. The final means for strengthening the present international system is the mobilization of public opinion. It is obvious that here private organizations and professional associations, like the International Association of Lawyers against Nuclear Arms, can play a vital role. They are natural allies and partners in all structures of international cooperation for justice and peace.

PRINCIPLES AND RULES OF NORMATIVE BEHAVIOR

Before reviewing the right to survival, the right to peace and the right to development as principles and rules for the normative behavior of states and all other national and international actors, we have to make three preliminary observations. First, it is evident that whatever be the legal quality of these rights, inasmuch as they distinguish themselves more by their moral appeal than by their legal enforceability, they raise important issues when one arrives at establishing and defining a hierarchy of norms. At least with regard to the right to survival and its component elements, which we will discuss in a moment, the imperative character in terms of *jus cogens* commends itself in a forceful manner. In the same vein, the qualification of *erga omnes* obligations, as articulated by the International Court of Justice in the case of the *Barcelona Traction, Light and Power Company*, comes to our mind.¹² My second preliminary observation is in fact more elementary and perhaps over-obvious. The right to survival, the right to peace and the right to development would all become illusory and devoid of any meaning in situations and circumstances where resort could be taken to the use of weapons of mass destruction. However, as we noted before, these rights are also threatened by other factors and circumstances than an outbreak of a nuclear holocaust. My third preliminary observation brings back to our minds the vision outlined by Franklin D. Roosevelt in his famous message of the "Four Freedoms."¹³ There he spoke of freedom from want and freedom from fear which, in addition to the traditional freedom of expression and freedom of worship, should be the foundation of a world for present and for future generations. Roosevelt had a similar vision in mind in terms of individual and collective rights as we wish to express through the notions of the right to survival, the right to peace and the right to development.

12. *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, 1970 I.C.J. 3 (Judgement of Feb. 5, 1970).

13. See VAN BOVEN, *DE VOLKENRECHTELJKE BESCHERMING VAN DE GODSDIENSTVRIJHEID (INTERNATIONAL PROTECTION OF RELIGIOUS LIBERTY)* 67 (1967).

Since the Four Freedoms were proclaimed by Roosevelt in 1941, we have tried to give some further normative content to these rights and freedoms.

The *right to survival* is obviously related to and largely covered by the right to life, provided the latter is interpreted in a sufficiently comprehensive manner. Moreover, the notion of the right to survival conveys in a clearer sense that the rights to life are at stake, not only the rights of present generations but also those of the future. The right to survival finds a clear expression in international instruments which were drawn up in the fresh recollection of those horrendous practices which denied life and existence to whole groups of people. The Convention on the Prevention and Punishment of the Crime of Genocide (1948) is of course the most striking example of such an international instrument, and the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) may also be mentioned in this context. In view of Africa's history, it is not by accident that the African Charter on Human and Peoples' Rights explicitly brings out the right of all peoples to existence as a survival condition.¹⁴ It is also not by accident that in the draft declaration on the rights of indigenous peoples, which is presently being elaborated in the United Nations with participation of representatives of indigenous peoples themselves, emphasis is put on survival conditions in terms of right to self-determination and right to land.¹⁵ Past and present practices of genocide and ecocide affecting large numbers of indigenous peoples explain this approach and this orientation.

For present purposes, it is appropriate to pay due attention to the interpretation formulated in 1982 by the Human Rights Committee with regard to Article 6, relating to the right to life, in the International Covenant on Civil and Political Rights. The Human Rights Committee is a body composed of independent experts with recognized competence in the field of human rights whose task is to monitor the implementation of the International Covenant. In its general comments relating to Article 6 of the Covenant, the Human Rights Committee not only deals with such aspects as arbitrary killings by security forces and the disappearance of persons, but also, with measures to reduce infant mortality and to increase life expectancy, especially by adopting measures to eliminate malnutrition and epidemics. The committee gave its general comments a still broader scope by observing:

[W]ar and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations, the threat or use of force by any state against another state, except in exercise of the inherent right of self-defence, is already prohibited. The Committee

14. African Charter on Human and Peoples' Rights, art. 20.

15. See first revised text of the Draft Universal Declaration on the Right of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/33 (1989) (prepared by the Chairman-Rapporteur of the Working Group on Indigenous Populations, Mrs. Erica-Irene Daes).

considers that states have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermo-nuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life. In this respect, the Committee notes, in particular, a connection between article 6 and article 20, which states that the law shall prohibit any propaganda for war (paragraph 1) or incitement to violence (paragraph 2) as therein described.¹⁶

Three years later, in 1985, the Human Rights Committee took the unique decision to make a further interpretative statement with respect to Article 6 of the International Covenant on Civil and Political Rights which brings us to the heart of the theme of this Congress. I now quote paragraphs 3, 4, 6 and 7 of this general comment of the Human Rights Committee:

3. While remaining deeply concerned by the toll of human life taken by conventional weapons in armed conflicts, the Committee has noted that, during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.

4. The Committee associates itself with this concern. It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.

6. The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.

7. The Committee accordingly, in the interest of mankind, calls upon all states, whether parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.¹⁷

It should be noted that this text was adopted by consensus. The Human Rights Committee is, this should be recalled, not an academic body but an organ composed of 18 lawyers from different political, legal and social systems whose duty is to interpret and monitor the provisions

16. Report of the Human Rights Committee, 37 U.N. GAOR Supp. (No. 40) (1982). See General comment 6(16) (art. 6), ¶ 2.

17. Report of the Human Rights Committee, 40 U.N. GAOR Supp. (No. 40) (1985). See General comment 14(23) (art. 6), ¶¶ 3, 4, 6 and 7.

of the International Covenant on Civil and Political Rights. The text I quote represents therefore a good deal of legal authority and deserves close attention.

When we review the *right to peace*, the just-mentioned comment of the Human Rights Committee is equally relevant. I will not further elaborate on the link between that text and the right to peace but briefly refer to human rights instruments that are particularly pertinent with respect to the right to peace. We are all familiar with the famous preambular paragraph of the Universal Declaration of Human Rights, stating, "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."¹⁸ Moreover, one of the means and methods included in the U.N. Declaration on Social Progress and Development (1969) for attaining the goals of this Declaration is formulated in Article 27, which identifies as policy objectives:

(a) The achievement of general and complete disarmament and the channeling of the progressively released resources to be used for economic and social progress for the welfare of people everywhere and, in particular, for the benefit of developing countries;

(b) The adoption of measures contributing to disarmament, including, *inter alia*, the complete prohibition of tests of nuclear weapons, the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and the prevention of the pollution of oceans and inland waters by nuclear wastes.¹⁹

The important 1986 Declaration on the Right to Development, to which I will make further reference in a moment, also highlights the importance of the establishment, maintenance and strengthening of international peace and security and of achieving general and complete disarmament under effective international control, and seeks to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of developing countries (Article 7). Furthermore, the right to peace finds expression in the 1984 Declaration on the Right of Peoples to Peace as stated in the preamble in the awareness "that in the nuclear age, the establishment of a lasting peace on Earth represents the primary condition for the preservation of human civilization and the survival of mankind."²⁰ Since we reviewed a number of collective aspects relating to the right to peace and identified some of the links that exist between the right to peace, the right to survival and the right to development, I would also like to mention a corollary effect of

18. Universal Declaration of Human Rights of 1948, *adopted* by the General Assembly on Dec. 10, 1948.

19. United Nations Declaration on Social Progress and Development, art. 27, G.A. Res. 2542, 24 U.N. GAOR (1829th mtg.) at 14 (1969).

20. Declaration on the Right of Peoples to Peace, G.A. Res. 11, 39 U.N. GAOR (57th mtg.) at 2 (1984).

the right to peace on the level of the individual person in as much as he claims his entitlement to exercise the right of conscientious objection to military service. It is a substantial progress that the United Nations Commission on Human Rights has given in recent years, after this issue was blocked for a long time, a formal recognition to the right of conscientious objection to military service.²¹

As regards the *right to development*, we should be guided by the important 1986 Declaration on this subject. The Declaration describes development as a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. The Declaration stresses that the human person is the central subject of development and should be the active participant as well as the beneficiary of the right to development. I mentioned already, when reviewing the right to peace, that both the right to development and the right to peace are closely interlinked and that, as the Declaration on the Right of Development correctly puts it, international peace and security are essential elements for the realization of the right to development. A security system that relies on weapons of mass destruction is not conducive for the realization of the right to development. As the Palme Commission stated:

Security cannot in any real sense be said to exist at a personal or national level in a condition of chronic underdevelopment. Poverty itself is insecurity. Poverty is insecurity because of the fear of hunger, disease and early death that afflicts the hundreds of millions.²²

MONITORING MECHANISMS; DEMOCRATIC PROCESSES

It is in the general interest, and lawyers would be the last to disagree, that rules and principles as well as concrete undertakings should be complied with. There is a need for effective control mechanisms, at national and international levels, to monitor disarmament and arms control arrangements. It is a process that the superpowers, and also other nations, are now more than in the past willing to accept an enhanced role of the United Nations, including effective supervisory mechanisms as a security device in their mutual interest.²³ Such control mechanisms can also have important preventive effects on the development of new weapon systems, irrespective of which category they may belong. We should insist on the rules laid down in Article 36 of 1977 Additional Protocol I to the Geneva

21. See Right of Conscientious Objection to Military Service, U.N. Doc. E/CN.4/46 (1987), U.N. Doc. E/CN.4/59 (1989).

22. Palme Commission, *supra* note 1, at 27.

23. See the Aide Memoire of the USSR, "Towards Comprehensive Security Through the Enhancement of the Role of the United Nations," 43 U.N. GAOR Annex (Agenda Item 73) at 2 (1988).

Conventions of 1949 to the effect that:

In the study, development, acquisition or adoption of a weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.²⁴

This leads me to emphasize that control and transparency are essential ingredients of democracy. It is a matter of the greatest concern that in most societies, or perhaps in virtually all countries, everything regarding research, development, production and trade of weapons is surrounded by walls of secrecy. The reasons for this are obvious, but this state of affairs does not make the world a safe place. To a large extent, the vital issues of decision-making and the processes leading to military build-up are withdrawn from effective democratic and public control. It was Eisenhower, who in his 1961 farewell address, warned against this state of affairs. He said:

In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties and democratic processes.²⁵

As lawyers, as responsible citizens of our countries and, more in general, as persons concerned with human dignity, we cannot be indifferent to the question of liberties and democratic processes within our nations. We face here an essential human rights issue which is worth defending.

24. D.D. EISENHOWER, *THE WHITE HOUSE YEARS, WAGING PEACE 1956-1961*, at 616 (1965).

25. 1977 Additional Protocol I to the Geneva Convention of 1949, art. 36.

