

## BUILDING THE CATHEDRAL

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Thank you for the generous introduction and the great honor of this degree from the venerable Paszmany Peter University. It is humbling to receive such a high distinction, which inspires a desire to annotate my professional biography to recognize those who contributed to each of the achievements for which I have been credited. I recall Nobel Peace Prize recipient Lord Noel Baker, who was 94 years old when I met him at a conference in 1978. Seated beside him at lunch, I awkwardly and rather uncomfortably mentioned that I knew of his Peace Prize and had been told the year he received it, but I was quite young at the time and therefore did not know exactly WHY he was so honored. He replied with a twinkle in his eyes "It was because I have had the good fortune during my lifetime to work for and with the most extraordinarily talented individuals," he paused a moment and added "... beginning with Lloyd George." Although I am far from being able to reach back a century, I too must recognize that I have had the good fortune to work with extraordinarily talented individuals as well, from the late Alexandre Kiss to several persons in this room, Gyula Bandi, Peter Kovacs and Marcel Szabo in particular. Thank you.

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During the international crises that seem endlessly to emerge around the globe, such as those now in the Ukraine and Syria, it is tempting to become discouraged about the strength or even the existence of the international rule of law. Building a peaceful and just global order undoubtedly remains a work in progress. The defects in and weaknesses of the international system are readily apparent. Less obvious, perhaps, is the progress that has been made over the past six decades in developing and implementing international norms to address fundamental needs and values such as human rights and environmental protection. It may be useful and even important, therefore, to reflect on the achievements to date and how the existing foundation of international law can be strengthened.

We remain in the founding decades of many international institutions. The United Nations is younger than I am, which could mean either I have become old or it is young. Either way, the UN's purposes and principles are lasting ones: eliminating armed conflicts, promoting respect and observance of human rights, fostering international cooperation to solve common problems, and upholding the international rule of law. Building on these goals, there exists today a broad legal framework on many transboundary issues, with increasing levels of compliance, a matter that is at least in part the result of legitimacy and the authority of law.

When the United Nations was created there were two international tribunals, the International Court of Justice and the Permanent Court of Arbitration, neither of which was over-burdened with cases. Now there are more than forty international

courts and tribunals with unprecedented, growing caseloads. More importantly, studies indicate that compliance with international judgments is comparable to that of many of the highest national courts. Jurisdiction has expanded, with many of the tribunals affording standing to individuals, companies and groups, most importantly the human rights commissions and courts. Other recently created international courts reflect Justice Jackson's correct observation during the Nuremburg trials that states do not violate international law, individuals do. The International Criminal Court and various ad hoc or mixed tribunals for the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia can now prosecute individuals for the commission of international crimes.

Looking back, there has rarely, if ever, been a period of such rapid global change as the twentieth century. The telegraph and telephone, followed by radio, aviation, and television made it possible to communicate and travel rapidly across borders. The inherent attributes and potential reach of these inventions necessitated global cooperation, leading to the formation of the first permanent international institutions. Much of the resulting international regulation we take for granted today, being able to pick up the telephone and directly call almost any place in the world or fly from one country to another with, as the pilots always remind us, "a choice of many airlines" registered in different countries.

The first decades of the United Nations system and regional organizations like the Council of Europe, Organization of American States and European Union were largely devoted to elaborating and giving effect to fundamental new principles in the aftermath of World War II. Among these, self-determination and human rights became, in the words of John Humphrey, the "golden threads" running through the UN Charter. Beyond insisting that human rights must be a matter of international concern and colonial territories must become free, international organizations also became the venue for negotiating rules and regulations to govern a host of newly-emerging issues. When it became possible to exploit off-shore oil resources, agreement had to be reached on whether or not a state's coastal jurisdiction should extend to its continental shelf or whether exploitation should be open to all states. The launch of Sputnik required states to give thought to the legality of satellites passing overhead and to elaborate rules to govern activities in outer space, resulting in a remarkable degree of international cooperation based on the agreements concluded in the 1960s. Today we struggle with questions about whether or how the Internet should be regulated to counter international crime and how the international community can respond to terrorism, as well as the threat of global epidemics like SARS and avian flu. The web of global interrelationships is a fact known to all heads of state and government.

Also well known is the fact that every legal system must content with law-breakers. The test of the rule of law does not come in ordinary times; it comes when it is inconvenient, costly or society is under threat. Most nations' records are not good in this regard and it is critical to recognize that the failure is usually of law generally, not just international law. Constitutions are suspended or given restricted application, dissidents are exiled or made to disappear, and disfavored minorities are harassed or killed. It is perhaps demanding too much to expect international law to be respected by those who willfully disregard their own national laws and constitutional

limitations and those who fail to distinguish threats to their political survival from threats to the national security. Claims that a head of state or government is above the law generally do not stop at international law but demand unlimited executive powers unrestrained by the legislature, the judiciary, or for that matter, conscience or morality. History tells us that countries and empires come and go. Those who can impose their will by force today will not necessarily have the power to do so tomorrow. The rule of law is a necessary protection for those weak today and for those who may be weak tomorrow.

How can the law part of international law be further developed? The development of international human rights law perhaps provides an example for other still-emerging topics, such as international environmental law. The first step had to be standard-setting, to list and define human rights. From 1948 until the late 1960s the United Nations focused its attention on listing those rights whose protection should be guaranteed by all states under international supervision. The importance of achieving early agreement on the content of human rights and state obligations cannot be over-emphasized. It recast human rights policy as international law, making it more difficult for states to ignore human rights claims internally. It also made it easier to conclude the nearly 100 human rights agreements in force today.

Regional bodies took up the human rights challenge and drafted agreements listing the same internationally-guaranteed human rights. The European system began with the creation of the Council of Europe by ten Western European states in 1949. Article 3 of the Council's Statute provides that every member state must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. The Inter-American system proclaimed the "fundamental rights of the individual" as one of the basic principles of the Organization of American States. The 1948 American Declaration on the Rights and Duties of Man, adopted six months before the UDHR, gives definition to the general commitment to human rights. Such regional systems crucially focused on the creation of procedures of redress, establishing control machinery to supervise the implementation and enforcement of the guaranteed rights. The jurisprudence of global and regional human rights bodies has become a major source of national law among the member states.

Of course there have been failures to prevent or halt many situations of massive abuses, including genocide. The reasons are many. First, there are legal restraints. Human rights law has been hampered by traditional concepts of state sovereignty and domestic jurisdiction, as well as by the consent-based nature of international obligations that prevents enforcement of norms against nonconsenting states. This legal barrier is reinforced by the conflict of interest inherent in a system where those governments engaged in violating human rights participate in standard setting, compliance monitoring, and enforcement. At an extreme, this leads to challenges to the normative basis of human rights governance from ruling elites who seek to retain power, despite their participation in drafting normative instruments guaranteeing such rights and their subsequent voluntary consent to them through treaty ratification.

Second, and more generally, most states exhibit a reluctance to criticize others for human rights violations, unless there are independent political reasons to do so, such

as ideological conflicts or unfriendly relations. In many cases, the reluctance stems from concern about reciprocal complaints – there being no state free of human rights problems – but it also derives from the multifaceted nature of international relations. States balance consideration of human rights issues with other international concerns, including trade, military and strategic policy, and foreign investment. When respect for human rights does become a cornerstone of bilateral and multilateral relations, particularly on the part of a powerful state or a group of states, it can have a significant positive impact on compliance with human rights norms.

Finally, human rights governance is limited by its own design, which had in mind restraining powerful government agents. It has not succeeded in addressing the massive violations that occur in weak or failed states where anarchy and civil conflict prevail, because violations by nonstate actors that cannot be controlled by a state generally fall outside the scope of most human rights law. International human rights institutions and systems are seen to lack the power to step into failed states and have been so far unable to develop new institutions and procedures to prevent or remedy violations in anarchical states or those in which internal armed conflicts are occurring. Even where there are functioning states, deregulation and privatization have created powerful nonstate actors outside the governance structure. The future of human rights will need to address all these issues to maintain the progress achieved over the past half century.

There are other ways in which the international rule of law can be enhanced, most importantly by enforcing the domestic rule of law. Building strong, independent and competent judiciaries in each state is critical. Excessive claims of executive power should be challenged and resisted by legislatures and the public. While lawyers must not have the arrogance of thinking that they can solve every societal problem they should also not settle for too little. As Margaret Mead said: “do not make the mistake of thinking that concerned people cannot change the world; it is the only thing that ever has.”

Finally, I cite A. H. Robertson, who served as director of human rights at the Council of Europe, later becoming secretary-general of the International Institute of Human Rights in Strasbourg. When young lawyers and activists would express frustration with the slow pace of progress in international human rights law, especially in compliance and enforcement, Bill Robertson would point to the magnificent Strasbourg cathedral, a glorious monument painstakingly constructed over more than 350 years. As he noted, none of the stonemasons, sculptors, or makers of stained glass windows who began this project could see more than the barest outlines of how the Cathedral would eventually rise above the city hundreds of years in the future. Each made a contribution, however, believing in the goal and that it would someday be reached. The Cathedral has stood now for more than five hundred years – no single day passing without some further adjustment or repair or addition being needed. It remains a work in progress. The international rule of law represents another lofty ambition in human history and each person has a contribution to make to this work in process. It is both a privilege and the responsibility of present and future generations.

Thank you.