

RELATED UN EXTERNAL INITIATIVES

This subsection of the IO Watch archive is a lesser one, but is included because it is a significant counterpoint to the other more substantive sections on the rule of law in the UN. It outlines briefly the emerging and increasingly extensive UN role in advising, supporting, and exhorting its Member States and global civil society toward standards and goals that the UN blatantly ignores in its own operations, i.e., the hypocrisy issue.

The UN has long sought, with uncertain impact, to be the "moral authority" and spokesperson for all mankind, through its stream of non-binding General Assembly resolutions on all subjects, its many global special conferences, its long succession of "years" declared to advance this or that cause, its leaders' pronouncements, and, most recently, its new Global Compact campaign. In the 21st century, the UN has added a strong emphasis on "good governance", corruption-fighting, responsive institutions, and the rule of law to promote global development and combat poverty.

"Commission on global governance urges world conference to reform international relations", International Documents Review, **13 February 1995**, pp. 1-2,

Dale, Reginald, "A new debate on 'global governance'", International Herald Tribune, **25 July 2000**,

Crossette, Barbara, "Bad governments help keep countries poor, UN asserts", International Herald Tribune, **April 28, 2000**, and

"Phoney democracies", The Economist, **June 24th, 2000**, p. 17.

Further, Secretary-General Annan urged in 2000 that weak states must be strengthened, anachronistic hierarchies changed, and decision-making structures revised to support a robust international legal order. All this should lead to greater participation, accountability, and transparency to open up international public processes -- including the UN -- to civil society, the private sector, and other groups.

"We the peoples: The role of the United Nations in the twenty-first century: Report of the Secretary-General ", UN document A/54/2000, **2000**, paras. 41-46.

Of particular interest, of course, is the increasingly widespread recognition that corruption poisons economic, political, and social processes worldwide, and the UN's growing role in this area. For several decades the United Nations has held global congresses on combating crime and corruption, and Secretary-General Boutros Ghali told the 1995 global congress on combating crime and corruption that the UN would "continue to play a major catalytic role in this field" and work to "reinforce ... national efforts." An ECOSOC resolution asked him to undertake joint international activities against mounting corruption problems, and provided a draft international code of conduct for public office holders.

"Rising crime is impairing development and well-being of humanity, states Secretary-General in message to Ninth UN Crime Congress", UN document SG/SM/95/105 of **28 April 1995**, and

"Action against corruption", and Annex "Draft international code of conduct for public office holders", Economic and Social Council resolution 1995/14 of **24 July 1995**.

Subsequently, and until very recently, however, the UN has concentrated on technical cooperation and advisory services in crime prevention and criminal justice. In 1999, however, it devoted its 10th UN Crime Congress to broad reflections on crime and justice in the 21st century.

"Vienna: 10th UN Crime Congress: Making concerted efforts to combat organized crime", International Herald Tribune, **14 April 2000**.

In recent years, global anti-corruption leadership largely passed from these UN conferences to the World Bank, civil society groups like Transparency International, and the Organisation for Economic Cooperation and Development (OECD).

"Stop the rot: A new treaty ... is just the beginning of the fight against corruption", and "A global war against bribery", Economist, ?? **1999**, pp. 19-23 and 25,

Stuart C. Gilman, "An idea whose time has come: The international experience ... in developing anticorruption systems", Public Integrity, **Spring 2000**, pp. 135-155,

"Anti-Corruption Resource Center" of the World Bank Group, www.worldbank.org/publicsector/anticorrupt/ , and Transparency International, www.transparency.org/

However, recently the modest UN anti-corruption efforts were jarred by some Member States into more vigorous activity to exert its universality, through a new global anti-corruption convention. In November 2003, the General Assembly unanimously adopted a treaty designed to strengthen international cooperation and make it harder to hide stolen assets. The new U.N. Convention Against Corruption took less than two years to negotiate, an exceptional pace for such UN activities.

Secretary-General Annan called the new treaty "a remarkable achievement" that "sends a clear message that the international community is determined to prevent and control corruption." Speaking to the General Assembly before its adoption of the Convention, he said:

"It warns the corrupt that betrayal of the public trust will no longer be tolerated. And it reaffirms the importance of core values, such as honesty, respect for the rule of law, accountability and transparency, in promoting development and making the world a better place for all."

Jim Wurst, UN Wire, **November 3, 2003**.

The UN's top crime fighter, Antonio Maria Costa, also emphasized that "The convention has teeth. It is binding in many respects." Of course, IO Watch must point out, once again, the enormous gap between this forceful UN leadership rhetoric and the UN corruption problems discussed throughout this archive, not least in Mr. Costa's own office in Vienna. For these reasons, the new UN Convention on Corruption is discussed further in the concluding major section on Recent Developments under Other Major Problems. One can only hope that the Convention's "teeth" may someday begin to bite firmly in the UN Secretariat.

Secretary-General Annan has also often emphasized the critical importance of governance and rule of law themes, especially since the UN's Millennium Summit. This included his firm admonition that "Member states had better deliver on their promises" concerning this "grand design to change the world." In an appearance before the UNDP executive board in September 2000, he stated that

"... good governance comprise[s] the rule of law, effective state institutions, transparency and accountability in the management of human affairs, respect for human rights and the participation of all citizens in the decisions that affect their lives. ...

I hope that I have said enough to make it clear why UNDP is so central to the whole mission of the United Nations, and to me personally. Through UNDP, the UN is present all over the world and is seen to be dealing with the actual problems faced by the great majority of the world's people."

"Annan, aides lose no time in Summit follow-up," Earth Times News Service, **September 12, 2000**.

IO Watch believes that it is only right that the UN Secretariat itself start to "deliver on its promises," especially on broad "rule of law" issues in three main areas.

The **first area** is institutional development and good governance work. The UN, through the UNDP and the Secretariat's Department of Economic and Social Affairs, now bills itself as

the largest multilateral provider of technical assistance for governance and democracy. Other UN and UN system agencies such as UNICEF and the ILO have also worked in these areas. Secretary-General Annan told over 100 national delegations at a Fifth Global Forum on Re-inventing Government in Mexico City in November 2003 that:

"The public sector must challenge itself continuously to improve the way it does business."

"Governments agree to bolster public sector," PA Times (USA), **December 2003**, p. 7.

UNDP has, for instance, helped reformulate municipal law in dozens of countries to make governments more accountable and transparent. It examined key factors of good governance in its 2002 human development report. There was a considerable gap in the report, however, in describing how the UN itself is responding to these imperatives. One can only hope that the UNDP will soon turn its growing expertise and analytical attention to the UN's own shortcomings in this field.

"Building more democratic international institutions", in Human Development Report 2002: Deepening democracy in a fragmented world, UNDP, Oxford University, New York and Oxford, **2002**, pp. 112-117.

The **second area** is human rights. The first fifty years of implementation of the Universal Declaration of Human Rights of 1948 passed rather slowly. But the UN has become very active in supportive and advisory human rights activities worldwide in the past half-dozen years, as the formidable old concepts of "national sovereignty" ("don't you dare meddle in our domestic affairs, however dubiously or outrageously we handle them") have diminished . . . somewhat.

However, the UN has its own serious problems to resolve, especially in its UN Commission on Human Rights, which for the past few years has been engaged in a continuing struggle to see who will dominate its work -- the Member States committed to human rights expansion and application, or those committed to continuing human rights restriction. (This important ongoing battle will be described in more detail and on a continuing basis in this archive's subsection of Human Rights under UN Performance Problems .)

In addition, although the UN now asserts that it has taken major steps to "mainstream" human rights concerns and emphasizes throughout its programmes, this archive, under the Staff Rights? subsection, has testified to the fact that the Secretariat has gravely failed to address the fundamental human rights of one

abused minority right in front of it -- the UN staff -- with obvious debilitating impact on its credibility in human rights matters, and the health, morale, and integrity of the international civil service

"New human rights chief pledges 'Bridge-Building: Q & A: Mary Robinson,'" International Herald Tribune, **September 24, 1997**.

The **third area** of IO Watch attention will be devoted to the most closely-related UN recent initiatives of all, those concerning UN efforts to advise and lead the world in expanding the rule and institutions of law. Initially, IO Watch would note the following UN pronouncements and activities:

In his 2003 annual report, Mr. Annan stated that he had made strengthening international law a UN priority, especially by promoting Member States' participation in the international legal order. He noted, however, that this would not be an easy process:

"Last year ... the World Summit on Sustainable Development ... resulted in the performance by 48 states of a total of 83 treaty actions relating to 39 treaties in the area of economic development and environmental protection. ...

Many States fail to sign or ratify treaties, however, ... because of a simple shortage of technical expertise necessary for the performance of treaty actions. Some also lack the expertise to enact the necessary laws to implement the treaties that they have signed or ratified or to train the personnel required to apply those laws. In order to address those needs, I ... [have sought to offer appropriate technical assistance.]"

"Report of the Secretary-General on the work of the Organization," UN document A/58/1, **2003**, paras. 191-192.

The 2003 report of the UNA/USA on issues before the General Assembly noted that international laws comes from a wide variety of sources, including UN bodies, especially legislative organs under the General Assembly, tribunals to adjudicate civil claims between states, and tribunals to adjudicate criminal charges against individuals. Among interests of newer interest to international accountability issues in 2003 were:

"Criminal charges against individuals.

... the most significant advances in international law now involve not disputes between states, but rather criminal charges against individuals ... [emerging] from violations of international human rights and humanitarian laws that are so serious as to incur individual criminal sanctions. Those violations include crimes against humanity, genocide, and serious war crimes. ...

In addition, ... international criminal law also prohibits the crime of aggression. Unlike the other offenses, however, the crime of aggression regulates not an individual's conduct during armed conflict, but rather the decision to engage in armed conflict. Also unlike the other offenses, the crime of aggression remains undefined. The Security Council has historically held the power to determine when aggression has occurred, and the Council's permanent members have resisted sharing that authority."

Chapter 7: "Covering legal ground", by Neal Higgins, in A global agenda: Issues before the 58th General Assembly of the United Nations: 2003-2004 edition, Angela Drakulich, ed., An annual publication of the United Nations Association of the United States of America, UNA/USA, New York, Oxford, 2003, pp. 217-253 [233-234]

Articles in 2001 and 2002 on UN advice and assistance to judicial processes in Cambodia provided an interesting (initial) coda on the UN Secretariat's view of its role in advising countries in judicial processes, despite its own sorry internal system. The second quote, by the Secretariat's top legal official, who was an active participant in the UN's so-called "administration of justice" system, is of particular relevance to the UN hypocrisy issue:

"After months of haggling over details, the National Assembly [of Cambodia] at last passed legislation this week that will enable a special tribunal to shed light on the darkest chapter of Cambodian history.

It has taken two years for the UN's legal experts and the government of Hun Sen to agree on a framework for the new court. Some UN lawyers and human rights organizations still claim that its complex provisions fall short of international standards.

....

The legislation still has to [be approved]. After that it will be scrutinised by the UN too. There could be sticking points. Mr. Hun Sen has frequently accused the UN of trying to dictate the terms of co-operation, thus souring relations with a UN legal team in New York that often seems out of touch with Cambodian political and cultural sensitivities.

The Cambodian model -- assuming that it works and proves it is able to carry out its task both cheaply and efficiently -- could influence the way the UN handles future tribunals. A similar framework is already being talked about for Sierra Leone."

"Trials in Cambodia: Better late than never: A tribunal to investigate Khmer Rouge crimes takes shape", The Economist, **July 14, 2001**, p. 58.

"The International Criminal Court will soon come into being ...

... so it may seem strange that in February, after more than four years of talks, the United Nations Secretary-General decided to withdraw from negotiations with the Cambodian government on establishment of a court to try the leaders of the Khmer Rouge regime. ...

[In] our discussions ... the issue became whether the UN could participate in a national court as envisaged by the government ...

When ... it appeared that the UN was being asked to be part of a court that would fall short of necessary international standards of independence, impartiality and objectivity, the secretary-general decided to end UN participation.

He ... strongly believes that the UN should not be part of a court that would fail to provide victims ... with the credible justice they deserve. In addition, UN affiliation to such a court could set a precedent for lowering international standards.

we made assiduous efforts to develop a Cambodian court ... that would meet international standards of justice. ...

Under the [proposed] scenario, the United Nations name would have been attached to a judicial process over which it would have had little or no control."

Hans Corell, "No justice for victims of the Khmer Rouge: Why the UN backed off," International Herald Tribune, **19 June 2002**. [emphasis added]

[Note: The author was until 2004, the UN Under-Secretary General for legal

affairs.]