

LAW AND JUSTICE IN THE GLOBAL ENVIRONMENT; CHALLENGES AND RESPONSES

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Abstract

The rapid expansion of the scope of International law in the past few decades has had a significant impact on States. Law and justice stands prominently in this respect. Adoption of international standards within domestic jurisdictions and scrutiny of law enforcements within domestic jurisdictions by the international community has remarkably grown. This has restricted the traditional concept of Sovereignty. The international community has identified areas of international concern and has taken giant strides in promoting protective measures through law enforcement. Some of the areas that have come within this scope are Human Rights, Humanitarian Law, Restriction of destructive armament, and Global environment. Accountability of individuals and the right of individuals to enforce claims against State entities are been considerably developed. Domestic legal structures and enforcement need to be restructured and revised to meet international standards and international scrutiny. This paper would consider challenges faced by States in the Global environment in light of the above aspects

Transcribed plenary speech of Rear Admiral (Retd) Mr. Palitha Fernando, PC

With the new millennium and with the changing world, law and justice have several challenges to meet. As you know, the difference between the domestic area and the international territory is fast diminishing. What we considered to be a sovereign state with all powers is now diminishing because there is a lot of international focus on the domestic affairs of any state.

What I wish to say is that I feel in the years to come, this is going to expand further and the domestic arena is going to constantly be under the supervision and focus of the international community. I believe it is a welcome move because with the expansion of international law which was once considered to be a system which deals with states is expanding its area and scope fast. Because of that today the individuals, national organizations and most other areas have come within the scope and focus of international law.

We also know of Monism and Dualism. We speak of dualist states and our own state is one of them, where we do not consider international conventions as our own law, unless it is absorbed into our legal system by legislation. But we see a shift from the dualist approach in the commonwealth countries, which follow the common law system. Sri Lanka was itself a colony of the British, as a result of which we too inherited the dualistic system but today we see that we too are moving slightly toward the monist system, where we consider international law with more generosity, and consider international conventions and think that

international conventions should be applicable in the legal system of our country even though we have not totally divorced ourselves from the dualist system.

So in a situation like this, the challenges we are going to face in the future are tremendous. When I looked at the topics to be covered by some of the lecturers today, I see we will be dealing with human rights. Human right is an area where international focus is expanding very fast. As a result of that human rights has become one of the most important topics ever discussed, and also topics which concern the international community in a big way. Today we cannot think of any form of international dealings without human rights coming forward. With the 20th century what happened was there were institutions which dealt with international law and those helped find those responsible for violations in those areas. Whenever an individual was to be treated for a violation of international humanitarian law, or a violation of human rights it was always done by a tribunal like the Nuremberg trials and the Tokyo tribunals. But now we see with the creation of the international criminal court by the Rome statute there's a permanent international criminal court imposing criminal liability on individuals in the area of human rights. I think this is a step that we have taken forward but unfortunately Sri Lanka has not ratified the Rome statute yet. Though Sri Lanka has not ratified this statute, we are aware of the international repercussions as far as human rights violations are concerned where the international criminal court has jurisdiction to try persons who cannot be tried by the domestic system. This I think is a move in the correct direction because human rights are considered to be important. Immediately after WWII, when the leaders got together to decide as to what steps they should take to prevent a WWIII and found that HR violations were the root cause for both WWI and WWII. That was the commencement of the UDHR. Commencing from the UDHR, up to the international criminal court created by the Rome statute, I think we have come a big way, and that is going to be one of the greatest challenges in the years to come. Wherever HR violations take place or wherever HR violations are highlighted the international community is going to take the steps that they are able to take in terms of the new provisions including the Rome statute where the international criminal court was created.

What I believe is one of the greatest challenges we have to face in the new millennium, one of the greatest challenges in global law and justice and protection of HR, guaranteeing of HR to the citizens of your whole country. This is one aspect that will be highlighted and I see that there is a speaker for this particular topic and I'm sure she will deal with this in greater detail. Two aspects that I see as areas where there will be a lot of development and responses are the global environment where there is a duty by the international community and the members of all domestic states to take all possible steps to protect the global environment. I will refer to you an advisory opinion given by the international court of justice. This was about the use of nuclear power. The dissenting decision by one of the SL judges, justice Weeramantry where he said that the use of nuclear power would be illegal in terms of international law. The basis upon which he expressed this opinion was that the use of nuclear

power would have a devastating effect on the environment, and that cannot be done because we have a duty towards the future generations and also towards the members of the international community. This was dissenting, so the majority judgement did not follow this judgement, but in this minority judgement he has highlighted a fact that it is absolutely necessary that we be mindful of the impact nuclear weapons would cause on the environment. So, I thought I would highlight to you in my speech because this again is going to be one of the greatest challenges that we have to meet in the years to come, where as you know these days a lot of discussion is taking place about the nuclear tests that have been conducted by some countries and whether they are in violation of the international conventions by which they are bound. So this area is going to be one of the greatest challenges that we have to meet since the use of nuclear weapons is going to be a potential threat in the years to come and pose potential danger to all mankind. As a result of that it is necessary that we look at this matter in this new millennium when we speak of global justice in order to prevent any activities taking place in those areas.

Another aspect that would be extremely important when we speak of the global environment and the law and justice in the global environment other than the protection of HR, and the guarantee of HR to all, I think, is where development comes in.

Wherever there is development, there is caused some sort of damage to the environment. There is a judgement of the international court of justice in *Hungary V Slovakia*, a case in which the judges of the international court of justice discussed the importance of development. Devoid of development we cannot think of moving forward, and development is extremely necessary. But in that particular judgement 2 important concepts were highlighted and those 2 concepts have entered into the judicial systems of members of the international community including SL. The first is sustainable development. Sustainable development is something that we ought to take care of because unless there is sustainable development, development is indeed of no use. In this judgement, specific attention has been paid to development and also how much its impact upon the world's resources would be. It was a long time ago that Mahatma Ghandi when he was questioned on something he said, said "the resources of the world would be sufficient to satisfy the needs of the people, but not the greed of the people". That exactly is what is highlighted in this judgement where they say sustainable development, the process of development, should be formulated by legal principles. The law should step in wherever they find that development is going to cause a problem in the resources of the world. This was a case where there was a dam erected and the damage it was going to cause was immense and the international court of justice proceeded on the basis that there is no provision to object to the development where it causes some sort of damage to minimise the damage as much as possible to regulate such activities by legal provisions. So sustainable development is going to be a world concept in the near future. It is gained ground already and is going to be emerging as a concept that is absolutely necessary in the areas of development.

The other area that I wish to concentrate upon is a new area which has also been highlighted in some judgements of the international court of justice, now intergenerational justice. Intergenerational justice is that we ought to consume our resources keeping the future generations in mind. We are the custodians the world today and when it comes to the world tomorrow, we ought to remember that there is a generation unborn who would be entitled to depend upon those resources. The very important concept of intergenerational justice that is highlighted and has been pointed out that this intergenerational justice is accepted. What it means is that what would be of the future generation supposing we did not have them in mind in the world development effort in today's world. International law comes in all these areas. It is devoid from domestic law, as you all are aware. When it comes to international law where we come into dualism and we accept monism as one of the areas where international law must be accepted by the global community. In that attempt I'm sure that the impact on HR, on the natural resources of the world and the protection of the global environment are going to be of utmost importance and when we speak of today's topic; challenges and responses of the global environment, we are not the domestic environment because whenever we take steps In the domestic environment it is absolutely necessary that we keep in mind that whatever we do will have an impact on the global environment also. So, as I stated at the commencement of my presentation, the concept of absolute sovereignty is fast diminishing. The concept of dualism is fast diminishing and today we are gradually going towards an international environment within which there should be a place regulated by international law in which a safer world would be created, not only for the generation living, but also to the future generations to come.