

Session 3: The UN Reform and Global Governance

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Thank you very much. We follow the proper approach: we had an anatomy lesson and then we passed to examining pathology. We had a biopsy here; although the biopsy was done in July, as you say, you were a good Cassandra it was not too difficult. We will have to see in due course what the reaction to this medical consultation is: it may be 'try again, Charlie Brown' or perhaps 'we have to change approach completely and see from which angle we come in'. Well, thank you very much. Now I turn to Professor Thakur for his intervention. Thank you.

PROF. THAKUR

Thank you Mr. Chairman, I have been a bit foreshadowed so, while I agree with much of the diagnosis and analysis on some issues, I disagree and disagree very profoundly on others and I will speak about those in detail. If we say that the atmosphere had been poisoned, that the Security Council idea was a failure, it seems to me that we are addressing the symptoms and ignoring the problem that underlies them. The Security Council issue is extremely important and that's why the failure was so poisonous. But I will come back to that. I have changed quite considerably what I am going to say from when I arrived as a result of the discussions yesterday and then again this morning.

But let me actually begin with governance. To me governance refers to the complex of power, control, authority, how they are exercised and the relationship between the holders, the wielders and objects and how these are mediated and transformed all the time. Good governance incorporates very familiar concepts like transparency, accountability, participation and so on and so forth, certain principles and values, and institutions and structures in which these values are embedded. Global governance, of course, can be good or bad, there is nothing inherently good about it, it can also be bad. At the national level governance is government plus other institutions, and, of course, at the global level it is government *minus*: a set of structures and processes that go on, even in the absence of government, and there are elements of government and control which you alluded to yesterday as well.

Now, with that as a background the problematique of global governance can be stated very simply. The evolution of institutions of international governance have lagged behind the rapid emergence of collective problems often with cross-border dimensions, so we have a crazy quilt pattern of international authorities and the inter-governmental institutions that are as a whole insufficient in number, inadequately resourced and sometimes incoherent in their separate policies and impacts. As a result there is a fundamental paradox: the policy authority for tackling global problems and mobilizing the necessary resources is still vested in the states, while the source, scale and potential solutions to the problems are global. So, how we bridge this gulf, that is the problem and paradox of global governance. The United Nations cannot displace the responsibility of local, state and national governments and regional authorities, but it can and should be the *locus* of multi-lateral diplomacy and collective action to solve problems shared in common by many countries. Therefore, global governance has multiple actors, multiple sectors, multiple layers and multiple policy domains. That is the first comment.

Second comment: no organization is or should be for ever. The origins of any particular organization lie in specific historical and contingent circumstances and the question for all organizations is not whether but when and under what circumstances they will dissolve, and whether they will disappear with a big

bang or die bit by bit. Let me remind you that when the Second World War broke out no-one formally informed the League of Nations, it faded into history. I'm reminded, after yesterday and today's discussion, of a poem by W.B. Yates, I think it's *The Second Coming*: "things fall apart, the centre cannot hold, mere anarchy is loose upon the world". I think we run the risk of that, apocalyptic though it sounds. I will come back to that.

In terms of the expectations and the results, I wrote a newspaper article in which I said that we could have had a San Francisco moment, but in fact we had an Einstein moment. San Francisco in the sense of momentous and decisive results as in 1945, Einstein in the sense, if you remember his definition of madness, of doing something over and over again but expecting a different result each time, which is very the anatomy of reform that we have heard from Ed Luck.

What is the United Nations? I think it is at least three different things. First of all, it is an organization, it's a bureaucracy, it's an international civil service, and there are different parts of the UN system with different constituencies, different balance-of-interests and perspectives. UNCTAD is one, the Human Rights Commission is another, the Secretariat is another, the General Assembly is another etc. etc. Second, it is an inter-governmental organization by and for member states. But third, and I think most importantly, it is an idea, it is a symbol, it is an imagined and constructed community of strangers, bound by a sense of solidarity. And in that sense the idea of the United Nations will live on because we are never going to give up as a human race, even though its particular bureaucracy and inter-governmental manifestations might change and disappear and that is the continuity we have, not from the Second World War but from the Hague Conferences of one hundred years ago. And that ideal survives.

Now in that sense and in terms of the discussion we had yesterday on the European Union, it is a great normative project, with major stresses and strains. Let me just mention five.

One has already been mentioned and that is, the use of force: we no longer have agreement internationally on the circumstances under which we can authorize force and use force and the agency that has the right to authorize this force and the procedures. This is a subject that is dear to my heart because I was one of the commissioners on the International Commission on Intervention and State Sovereignty and I was one of the three principal authors of "*The Responsibility to Protect*". So I will refrain from the temptation to speak at length about that, but the basic point is, if we are going to have agreement on the international taming of the use of force, then: (i) states must give up their right to go to war and use force whenever they want, whether internally or externally, and (ii) they must agree to use force and put force at the disposal of an international authority. Neither of these conditions is being met; both have been, in fact, disappearing and we have various examples of that.

The second major problem we have is the growing gulf between legality and legitimacy. The legal authority and the legal right to make decisions are still vested in particular fora and institutions, but increasingly more and more significant constituencies are rejecting the legitimacy of what these decide. That is a major stress for the Security Council. It has a legal competence, but the United States and the United Kingdom and others rejected that. In other cases, when it does make decisions the target may reject its legitimacy on that issue - and I'll come back to that as well - but the basic problem is there is a growing doubt and it's not simply with respect to using force, we have the Kyoto protocol, we have the Whaling Commission. Different but key objects of many of these international regimes, simply reject the legitimacy even though they are legally authenticated outcomes of procedures that we accept; and that is a very important fact.

Third, the gulf between the United Nations and the United States. The United Nations has an image of itself that few other people and countries subscribe to

anymore: as a virtuous power, essentially as a benign imperialist power, doing good, incapable of doing bad, and simply because it wants to do something it has a right to be able to do it. The quotation we have from Hans Blix's lecture comes from John Bolton: we don't need any external validation, there are our internal constitutional procedures that validate any decision we take. But of course, if every other country starts doing that then indeed mere anarchy will be loosed upon the world. But can you have a situation where the United States decides by itself, when, how, for how long to opt out of any regime, while insisting that every clause of that regime was applied to everyone else, which is exactly what it is doing with NPT. That sort of division is simply not sustainable and yet the United States had been central to the UN enterprise even at the normative level and much of the problem arises because the United States is going back from what it itself institutionalized and instilled in the UN system and elsewhere in terms of values and procedures. So they can't exist without the United States but we have a problem that the United States rejects our legitimacy in terms of exercising discipline, international discipline, on American behavior in world affairs.

Fourth - and this is something that hasn't come out except unintentionally - I'd like to emphasize very strongly the growing divide within the UN community between the industrialized countries and the developing countries. While the United States feared being infected by the United Nations, many countries think the United Nations has been reduced to being a front organization for the United States. We had hints of that in statements from Ambassador Ricupero. There is that bit of fear - and there's a real basis to it: for the developing countries the United Nations has been their organization, and how are they going to keep control over it?

Fifth and last, the rule of law: international law, like all law, is an effort to align power to justice. Law mediates relations between the powerful and the weak, the rich and the poor, the large and the small. You take that away and you descend from the rule of law to the law of the jungle. Now of course the lion will be very happy but not all of us are lions. Some of us are smaller beings in the jungle, and there is an element of that and the Secretary General has made this point in number of his statements.

So there are these big strains and stresses. I think we have to recognize that these are serious issues, they're not marginal any more and the idea that we can simply persist and go on with business as usual is living in a fool's paradise. We can't. I think the Secretary General was right in saying that there is a serious crisis, they may not be able to resolve it but we take the consequences, not others. So these are the big questions.

Now the next problem: should there be a relationship between an international organization and the underlying structural distribution of power? Of course there should be, and in that sense the points you're making, Mr. Chairman, are very valid. The changes have been profound since 1945 and they're not reflected in the existing international structure. The result of that is both to delegitimize and to make the institutions and structures dysfunctional. They simply cannot work like this. I agree with the importance of politics but politics has not stayed stagnant since 1945 either. Please don't tell me that the UN system and community and structures accurately reflect the politics of the world today; they do not and that is a problem, not a solution.

Then, the Security Council: is it essential or indispensable to the reform project or has it been a distraction and a diversion from the reform of the UN system? I think that the Security Council suffers from five significant legitimacy deficits, only one of which is performance; it also has a representational deficit, it has a procedural deficit, it has a responsibility deficit in that it is not responsible to the General Assembly or to the people of the world, and it has an accountability deficit in that it's not accountable to a world court. So you have the American definition of tyranny in the Security Council: one body that exercises legislative, executive and judicial powers and

now it directs state authorities. "you will enact this law with regards to terrorism" - by what right does the Security Council say that, especially to democratic states? And if it does become effective and assertive and intrusive, do we really believe that the rest of the world will simply lie back and think of the Queen, and not demand that the other four legitimacy deficits are also addressed? Again, if you believe that, you are living in a fool's paradise. People will not accept that condition, they will rebel and the whole enterprise will fall apart on that basis. That was the Security Council reform. If the United Nations is going to be effective, it is central to the whole question. The question of outcome: I do not think I will go into that.

Let me move to some concluding comments. One thing I *would* like to say: the Human Rights Commission. I wish I could agree with Ambassador Ricupero on that. I think the problem is we are mistaking the symptom for the cause. Human Rights is fundamentally and centrally about citizens and their claims against governments first, and I guess I thought of that precisely because the United Nations is an inter-governmental organization. Human rights is essentially too problematic in that sense. As an inter-governmental organization we are asking governments to empower the citizens against themselves, and changing The Human Rights Council I don't think is going to address that fundamental problem.

So let me, as I said, come to my concluding points. I think it will be clear that from my point of view the outcome was disappointing on security, although perhaps less so on development. The interesting thing is, what is the explanation for that? You can have a cynical explanation, you can have a charitable explanation; and for me, as a serving UN official, unlike Ambassador Ricupero who is now liberated from that, it's not clear between the two which is more despairing. The cynical explanation is, of course, that all member countries have retreated into the trenches, absorbed in national interests that are very important to them, while demanding that everyone else should think of the international interest. Well it doesn't work like that and we see the outcome there. All sides did that, let me be very clear on that, not just the United States, not just India or Italy, all sides did that.

The charitable interpretation is that the sense of shared values and solidarity that makes up an international community may have frayed a thread too far. The membership hasn't just quadrupled since 1945, the nature of the membership states, the responsibility that states now have with respect to a range of interests and policies, is far more complex and challenging than they used to have in 1945. There are also many more non-state actors, so the totality of inter-actions in the policy space that comes up, that we talked about yesterday, is in fact far more congested. It maybe that no single organization any more can accommodate and encapsulate all those interests and perspectives, and therefore the modesty of the outcome may reflect not so much a betrayal of the sense of international solidarity, as a loss of that sense of international solidarity.

Remember that at the end of the day all these battles and in-fighting over common rules on the use of force, and jurisdiction over this clause and that comma and that square bracket, in the end those are all actually battles over policy and issues. We do have there, as Professor Luck says, significant divergence of interest and perspectives and it is not possible maybe for the UN any more to simply ignore those and just carry on. If that is the case, then instead of having exalted expectations of what we want from the United Nations, maybe we will have to go back to the soft bigotry of low expectations: let it become a humanitarian organization, let it become an after-sales delivery service. But let us take away any notion that the primary responsibility is the maintenance of international peace and security.

Thank you.