

GOLDEN GATE UNIVERSITY

School of Law

San Francisco, Friday, April 1, 2011

THE 21st ANNUAL FULBRIGHT SYMPOSIUM

ON

HARMONY AND DISSONANCE IN INTERNATIONAL LAW

CONFERENCE REPORT

BY

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I. INTRODUCTION

The President, Golden Gate University, Dr. Dan Angel

The Dean of the School of Law, Dru Ramey(Unavoidably Absent)

The Special Guest of Honor, His Excellency, Robert G. Aisi, Permanent Representative of Papua New Guinea to the United Nations Organization representing the Keynote Speaker, Sir Arnold Amet, Minister of Justice and Attorney General of Papua New Guinea

Chief Consuls and Consul Officers of Foreign States

Fulbright Scholars,

Faculty and Staff,

Law Students,

Ladies and Gentlemen,

The title of this Conference Report is **“Harmony and Dissonance in International Law.”** The conference, as can be seen from the rich program already distributed, is designed to cover a great many interesting areas of international law and related areas that fall within the main theme of the conference. After all, the topics to be presented need not be connected to the general theme of the conference; what is required is that they be current, and of general interest to the conference participants.

Issues relating to harmony and dissonance in international law are not new. Numerous events that take place at the international arena at the moment and on a daily basis call the attention of interested observers of international affairs to this important question. Problems of international law surrounding the conference theme are arguably as old as the discipline of international law itself. Fortunately we have passed the stage when

there was the doubt that the international legal system is indeed an independent legal system. Over the centuries up to contemporary times, many competing notions of international law have emerged. The consequence of these new conceptions has thrown vigorous challenges to the nature of international law and its entrenched normative character. International law was essentially meant to be a legal vehicle for the conduct of the external affairs of the so-called civilized nations in the name of sovereignty. Since then, some huge gaps of questions and issues remain where the impact of international law is minimal, or is still developing. Examples galore - critical perspectives of the future of international law touching on decolonized states; issues of third world and developing countries; question of international economic regulation; challenges in gender equality, etc. continue to present challenges to contemporary international law.

I have chosen as the starting point of my discussion to raise some salient critical questions about international law that touch on harmony and dissonance in the legal system for a closer and more rigorous academic examination. Namely: whether there is international law that must serve social purpose and advance the important goals of peace, equality and freedom, and not simply, a set of principles directed towards the maintenance of minimal order necessary for the co-existence of states; whether there is an emerging proliferation of international laws; does international law have any history, and if so, should it be taught?; has international law really any future given some current developments arising from the conduct of some nation States that tend to disobey or refuse to recognize the importance of the rule of international law or disregard the sanctity of obligations incumbent upon them under international law, thereby contributing to the dichotomy between harmony and dissonance in the law? The questions listed above, though not exhaustive, need to be

pondered over and some answers attempted so as to shed some light on the direction of the nature of international law.

In selecting the questions, we have thought about the tests marking the existence or lack of it of any given legal system, the international legal system inclusive. Three criteria can be used to evaluate the appropriateness or otherwise of these test questions: 1) do States rely, to a major extent, on the rule of international law for the regulation of their relationships and resolution of international problems; 2) has there been a transformation of international law whereby international lawyers are beginning to think about and describe the discipline differently? and 3) are international lawyers not expected to know and respect the basic and fundamental general principles of international law?

To the first question whether there exists international law that must serve social purpose and advance the important goals of peace, equality and freedom, and not simply, a set of principles directed towards the maintenance of minimal order necessary for the co-existence of states, an appropriate beginning will be to discuss the concept and nature of law itself. Without embarking on the never ending debate for a universal definition of “law”, it may be useful for the present purpose to mention that there is a variety of schools of thought on the definition of “law”. Austinian theory of law, defining ‘law’ as a “command” issued by one political superior to another political inferior or subordinate, with a sanction attached in the event of failure to obey or abide by the “command” may not correctly fit the nature of international law. International law is not a command in the sense of Austin’s definition of law. There is no political hierarchy, neither a political superior nor subordinate. All States are equal in the eyes of international law. For this reason, it is neither correct nor

realistic to continue to endorse a limited and narrow positivist sense of law while dealing with international law.

It was commonly held that international law which was essentially based on European principles and notions should be recognized as a world legal order binding on Nation States irrespective of the apparent differences in their ideological, cultural, and historical and many other backgrounds in their relationship with one another. However, contemporary international law has come a very long way through various means of evolution and expansion. No serious international lawyer can doubt that international law originates from different major sources of international law that are outlined under Article 38(b) of the Statute of the International Court of Justice. The sources include: custom, treaties, general principles of law, judicial decisions, and the works and writings of highly qualified scholars and publicists in international law. In like manner, little doubt exists that the subjects of international law have grown to include a host of many other lesser entities other than States who exert significant influences in shaping the progressive development of international law, and that the subject of international law is not entirely reserved for the sovereign state which is obviously the major subject of the law.

It is my considered opinion that international law should no longer be based on the so-called “principles of law recognized by civilized nations.” If contemporary international law is to pursue the direction of harmony and less of dissonance, it should be based on the recognition of the many different human “civilizations” and legal cultures that regulate the affairs of the world’s diverse populations, cultures and backgrounds. The international law that must serve a social purpose and ensure peace, fairness, equality and freedom must of

necessity recognize the diversity of worldwide values. The jurisprudence of contemporary international law ought to, and should recognize the reality of the fact that there are now many other new actors and communities other than States whose activities on the international plane have a lot to contribute to its future growth and development.

The next important question is whether international law has history and if so, should the history of international law be studied? Some international lawyers associate the origin of international law to the Westphalia order and the emergence of the international system of States (1648), or the balance of power after the Congress of Vienna (1815), the result of the First World War (League of Nations), or other systems of international relations in human history many thousands of years ago. To others, the history of international law started with the San Francisco Conference that produced the Charter of the United Nations in 1945. Yet, in the opinion of some other international lawyers, international law has no history as there is no precise date or event from which international law actually commenced.

I am of the opinion that international law has history that should be taught and studied. We cannot talk about international law as a discipline without agreeing first on the definition of what the legal system means and its origin. Writings on the doctrines relevant to international law go back to the Greek and Roman periods of history. There was also evidence of state practice even though some international lawyers hold the view that the history of international law does not necessarily coincide with the history of its doctrine.

The role of international law in any particular region of the world is of particular interest and importance, not necessarily to that region, but to the entire world at large. It is through their experiences in international law and relations for a long period that State practice or customs of the major civilizations (Chinese, Mongol, Persian, Ottoman, Islamic, Central Asian, Caucasian, Indian and African) can be learned and better appreciated. In order to douse the rising signals of efforts to re-write international law by some scholars, renewed attention to the study of the history of international law should form an important part of our teaching syllabus. Happily, there is some reported progress with respect to the production of two excellent treatises on international law in the ancient world of Central and Eastern Europe. Important studies of the history of international law in other regions of the world should be encouraged. Researching the history of international law may not be enough if it is not combined with pedagogy. A student's proper understanding of international law whether private or public requires a good comprehension of the history and developments in the field.

As the world moved into the twenty-first century, questions of state lawlessness in many areas of international relations regrettably appear to be on the increase. Lawlessness should not be an option for any state. This is because there is no credible substitute for international law in the maintenance of international peace and tranquility. There is an inherent tension between States in the pursuit of their national interest hence the need and the effort for an adoption of standard international mechanism for maintenance of peace and justice.

Many issues relating to international law as law have manifested themselves in many respects. First, such manifestations are noticeable in the concepts of sovereignty, democracy, immunity, universal jurisdiction, accountability and so on. Second, modern international law also manifests itself in the area of trial of war crimes. What would have been a historical achievement in the pursuit for universal justice recorded with the establishment of the International Criminal Court to augment the existing ad hoc international war tribunals, turned out otherwise. Regrettably, the United States of America which is the sole super power at the moment has for national interest considerations, withdrawn from the treaty establishing the International Criminal Court which is supported by majority of the States of the international community. Diplomacy and international justice should not be in conflict, but rather, be complementary to each other. Governments, big or small, developed or developing, democratic or monarchical, cannot consider themselves exempt from the application of international law which is legally binding on all the subjects of that law. All States are equal before international law which should be applicable to other subjects of the law.

The crisis in international law has been ascribed to the emergence of the new Afro-Asian and Latin American States. This position presupposes that the so-called new States never had their own independent and pre-existent sense of law, nay international law; that the character of international law is what the West European scholars have conceived it to be; and that these new States therefore either lack respect for international law, or accept it only for financial and other self-aggrandizing reasons and considerations.

The above pre-suppositions ignore an important fact that law is culturally contexted. Those new nations have their own independent conception of international law, practiced long before their colonization by the West. As they gain official membership in the international community, the content and character of international law should naturally reflect the reality and change accordingly.

II. WHAT EXPLAINS THE DICHOTOMY BETWEEN HARMONY AND DISSONANCE IN INTERNATIONAL LAW?

1. Introduction

It seems to me that most of the current conflicts in international law arise from the non-democratic nature of international law itself. International law like any other legal system is non-democratic. Many a time incidents of double standard are noticeable in the application of the rules of that law. In his 1993 inaugural lecture titled: “*Democracy in International Law*”, James Crawford outlined six features of classical international law to illustrate the undemocratic nature of the law:

“First, international law assumes that the executive has comprehensive power in international affairs. Generally, head of State and Minister of foreign affairs, have powers to commit the State internationally, trumping up international law obligations which may affect the rights or claims of individuals without their consent, and even without their knowledge.”

“Second, national law, no matter how democratically established, is not an excuse for failure to comply with international obligations.”

“Third, the individual’s lack of autonomous procedural rights in international law on question of remedies.”

“Fourth, the principle of non-intervention extends to protect even non-democratic regimes in relation to action taken to preserve their own power against their own people.”

“Fifth, the principle of self-determination is not permitted to modify established territorial boundaries without considering the current wishes of its inhabitants.”

“Sixth, the seeming unlimited powers of a government to bind the state for the future”¹²³

The above itemized non-democratic principles notwithstanding, the content of international law has changed significantly during the past fifty years. This change was brought about as a result of the successful negotiation and adoption of many multilateral treaties dealing with several issues that are important to mankind. Such questions include: human rights, the environment, trade, investment, outer space, international crime, disarmament. Furthermore, the way the nature of international law is thought about has dramatically changed. Two very important notions, namely *jus cogens* and obligations *erga omnes* have become of utmost importance.

Traditionalists of international law regarded the rules of the system as being neutral and equal in status. States have to expressly give their consent to such rules either by treaty, or by constant and uniform usage evidenced by State practice. It was not the business of other States how a particular State treated its own nationals. This was based on the understanding that a State retained exclusive jurisdiction over persons and events within its

¹²³ See, James Crawford, *Democracy in International Law*, Cambridge University Press, 5 March, 1993.

own territory. Most, if not all these have changed in contemporary international law. Some rules of international law, especially rules governing the use of force and human rights, are described as *jus cogens* or peremptory rules of international law. No State has a right to derogate from such rules. They belong to a higher status in the hierarchy of other rules of international law. Thus, there are now on the one hand obligations that involve only the parties to a dispute and on the other, obligations that concern all states – obligations *erga omnes*.

The International Tribunal for the former Yugoslavia clarified the doctrine of *jus cogens* based on the context of the prohibition on torture in *Prosecutor v. Furundzija*, Case No. 17-95-17/IT, Judgment of the Trial Chamber. 10 Dec. 1998 at para. 153:

Because of the importance of the values it projects, [the prohibition of torture]has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than the treaty law and even “ordinary” customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with same normative force. (Footnotes omitted).

What may be debatable is whether the municipal courts of nations would strictly follow a *jus cogens* norm if it is found to be in conflict with national law.

Not too long ago, the United States Interrogation Memorandum was declassified exposing the use of unconventional harsh techniques in the interrogation of terror suspects.

Do the harsh methods of interrogation particularly water-boarding and other kinds of inhuman methods violate customary international law? Should a Head of State's war time authority supersede international law on permissible means of interrogation of criminal suspects provided their intention is not for torture? Is it sufficient to posit that customary international law is not federal law and therefore the President is free to override international law at his discretion? It is noteworthy that the United States Military has banned the use of water-boarding which has been condemned by rights groups as torture.

The prosecution of torture in the context of *jus cogens* has become a customary norm of international law. Very recently, the former United States President George W. Bush had to suddenly cancel his planned trip to Switzerland for fear of prosecution for authorizing the use of inhuman methods by the United States Military in the interrogation of suspects during his presidency. It is a fact that over eighty countries among the one hundred and ninety three members of the United Nations Organization, as well as activists within those countries have signified their willingness and readiness to prosecute President Bush for war crimes and for violation of a peremptory norm of international law if he sets his feet in their countries. It can be validly argued that the prohibition of torture has ripened to a *jus cogens* norm under contemporary international law. No State or its head of State is permitted to derogate from a universally accepted *jus cogens* norm of international law. The fact that such a large number of countries are willing to prosecute President Bush clearly signals the positive revival of the 'Universal Jurisdiction' principle of international law by which all States are enjoined to prosecute and punish all heinous crimes against humanity which contravene international law.

The primary aim of today's symposium as borne out of the rich array of diverse scholarly papers listed in the program, is to subject international law and its future direction to a very serious critical re-examination in order to reconcile the conflicts existing in defining and applying international legal principles and norms . It is encouraging that we have started very well and have been treated by Sir Arnold Amet to a well-researched thought-provoking paper by our distinguished special guest keynote speaker who struck at the nerve center of the problem of terrorism and international law.

We should count ourselves most fortunate to be able to learn not only from him, but also hope to learn from our Distinguished Consoeurs here present about the positive areas discernible from the international institutional fronts, and general areas of disappointments in the field of contemporary international law. On an occasion like today, and considering the limited time available speaking to the important theme of harmony and dissonance in international law, one wonders how many of the many pressing and interesting issues of international law we can have the time to discuss adequately.

2. Origins of International Human Rights Legal Development

There are many theories of human rights. While individual rights may be easy to ascertain, what comes under international human rights umbrella governed by international law may not be very easily determined. Do the rights include such things as life, liberty, equality, property as well as human necessities such as food, water, shelter, employment, education or information? What is meant by the idea of rights and where do the rights and freedoms come from?

International law ordinarily governs the relationships and conducts between States and other subjects of international law. Human rights law cuts across State boundaries and aims at ensuring that those rights that are universally recognized by every person irrespective of nationality are respected and upheld.

Where, after all, do universal human rights begin? In small places, close to home- so close and so small that they cannot be seen on any maps of the world. Yet the world of the individual person; the neighborhood he lives in, the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world. ----- *Eleanor Roosevelt*

Historically, the European Convention on Human Rights (1950) was among the first international human rights treaties to be adopted and over the years has come to influence international human rights law more generally. Until 1948, the treatment by a state of its nationals had generally been viewed as a domestic matter outside the realm of international law. In 1948 the United Nations adopted the non-binding Universal Declaration of Human Rights, but it was not until 1966 that the United Nations Declaration was implemented by two binding treaties, namely: International Covenant on Civil and Political Rights, December 16, 1966; and, International Covenant on Economic, Social and Cultural Rights, December 16, 1966.

Since the European Convention on Human Rights, other regions of the world have followed suit. Thus, reference can be made to the ASEAN, Inter-American, and African regions of the world that have also embraced the development of human rights systems seriously. It appears that the United Nations, and indeed, most regional bodies of the world have recognized the importance of the development of human rights and humanitarian law, yet many disappointments still remain in certain areas because of the politics “*in*” international law.

Even though war as a means of settlement of international disputes between people has been long proscribed under international law, national and international armed conflicts still remain the order of the day. The keynote speaker treated some aspects of this problem fairly very extensively in paper on terrorism and international law.

What is certain is that international human rights law is based on the foundation of State responsibility or the legal obligations of States. International law on State responsibility outlines the rules for holding States responsible for violations of international law.

The law of State responsibility for international human rights obligations makes sure that there is always an actor (subject) responsible for upholding human rights standards. This is the case even when private actors that do not have direct relationship with the State are involved. States clearly have a duty to ensure that private actors do not directly violate human rights. States are obligated to prevent private actors from acting contrary to international human rights law.

3. Drawbacks and Challenges

Certain scholars query strongly whether humanitarian intervention is a disguise for military intervention. Humanitarian law has and should have an application even in peace time. Without the United Nations' authorization by way of an affirmative resolution of the Security Council, NATO's humanitarian intervention in Kosovo was vehemently condemned in certain quarters as contrary to international law, but acclaimed as the right course of action in modern international law by others. The establishment of an Agency for Humanitarian Affairs and Assistance in the practice of the United Nations further buttresses the fact that modern international law generally approves of humanitarian intervention. While we subscribe to the view that humanitarian law is vital, regardless of the existence of hostilities or armed conflicts of whatever type, we strongly hold the position that the decision on its application be evenly measured devoid of any double standards.

International human rights law emphasizes tolerance, promotion of equality among peoples, nations and individuals and exclusivity across the world. Regrettably, it is disappointing that these standards do not always apply to the discipline and system of human rights law. Instead, what exists is a hierarchy in international human rights system. For example, two African scholars have pointed out that there is evidence of a one-way traffic, with Western scholars giving the impression that they feel they have little to learn from African institutions and their experiences:

“By constructing the Third World in virtually absolute terms, as a hellish place, the Western ‘teacher’ of human rights, i.e. the international human rights education enthusiast, justifies and secures her or his own experience

and position, as well as secures the unidirectional flow of human rights knowledge from the Western world (the teachers) to the Third World (the students).”

There is no doubt that African and other Third World regional institutions of the world have made significant and important contributions in the development of humanitarian law. A case in point is The African Charter on Human and People’s Rights adopted on June 27, 1981 which evidences the inclusion of some innovative and important provisions. So also, is The African Charter on the Rights and Welfare of the Child adopted in July 1990 and entered into force 29 November, 1999 which elevates the ‘best interests’ principle above that found in the UN Convention on the Rights of the Child. African institutions on human rights constitute a mixture of a variety of good experiences from which human rights can be developed within existing frameworks. The institutions offer some examples of progressive development of international human rights law.

The most critical challenge of international human rights development lies in the double standard noticeable in its practical application. Many now cannot deny the failure of the U.N. and the international community to respond and act in relation to Africa; for example, in relation to the genocide in Rwanda and the allegations that had the same occurred anywhere other than Africa, action would have been taken promptly. Apart from Bosnia, other countries in civil wars in which the UN Peacekeeping failed in recent memory were all in Africa. Specific examples where the international community showed lack of readiness to respond were the break-away Biafra, Somalia, Rwanda, Angola, Ivory Coast, Egypt and Tunisia.

Similar nonchalant attitude was for a long time meted to the serious Darfur human crisis and the Southern Sudanese independent question. Gladly enough, the people of Southern Sudan voted overwhelmingly to establish an independent sovereign State in a United Nations supervised national referendum.

The main issue arises whether the reason for failure of the United Nations to intervene and arrest the ugly situations was because of the inevitable consequences of structural difficulties such as lack of consent of the warring parties for peacekeeping operations? While this may be so, there is also the possibility of Security Council's interest or disinterest combined with organizational dysfunction on the part of the UN Secretariat operations. For human rights development to be wholesome and progressive, neglect and derision of mechanisms of non-western systems like Africa and elsewhere must be avoided at all costs. The double standard approach in handling humanitarian crisis in some areas of the world by the international community is regrettable. It illustrates further the widening gap in the attitudes and practices of States that have in turn negative consequence for general international law development. Cases in point are Egypt, Bahrain, Tunisia, Ivory Coast etc.

4. Encouraging Signs of Progressive Development in the Field of Human Rights Movement and Development during the 21st Century

The high harvest of 29 female heads of State and Government currently in office, including leaders of self governing external territories is very healthy and useful for the better development of the international community. The statistics of their ascendancy to high public office since 1952 has been reasonably stable. Thus, 1952(1); 1972(1); 1980(1) 1997(2);

2000(1); 2005 (1); 2006 (1); 2007(3); 2008(2); 2009(4); 2010 (8); 2011(2). European nations are at the lead, followed by South and Central America countries, then Asia and Africa in that order.

This progressive trend in the important area of women in governance is very important and encouraging for the international community. Further, it has strong positive implication for international law development. It is now widely accepted that women can be important instruments of change for the bridging of gaps in peace, security and development strategies in the world. It must be recalled that on 26-27, 2009, the Sompong Sucharuitkul Center for Advanced International Legal Studies hosted an international conference on Women as Instruments of Change for the Bridging of Gaps in Peace, Security and Development Strategies in Africa which attracted about a dozen First Ladies from different countries in Africa, particularly from Nigeria. At the end of the said conference they issued a very powerful communiqué with a memorable pithy message for practical future action.

FEMALE HEADS OF STATE AND GOVERNMENT CURRENTLY IN OFFICE

(including leaders of Self-governing External Territories)



1952- Queen Elizabeth II of the United Kingdom of Great Britain and Northern Ireland, Head of the Commonwealth, Supreme Governor of the Church of England, Duke of Normandy, Lord of Mann, Paramount Chief of Fiji and Queen of Canada, Australia, New Zealand, Jamaica, Barbados, the Bahamas, Grenada, Papua New Guinea, the Solomon Islands, Tuvalu, Saint Lucia, Saint Vincent and the Grenadines, Belize, Antigua and Barbuda, and Saint Kitts and Nevis

Until 1953 her title was Queen of Great Britain, Ireland and the British Overseas Dominions. She is head of state in 15 countries apart from Great Britain and as [Head of the Commonwealth](#) she is the front person of the organization of many other former British colonies and territories. Her reign takes place during a period of great social change, she has carried out her political duties as Head of State, the ceremonial responsibilities of the Sovereign and an unprecedented programme of visits in the United Kingdom, Commonwealth and overseas. Elizabeth Alexandra Mary is the mother of three sons and a daughter. Married to Phillip Mountbatten, former Prince of Greece. (b. 1926-).



1972- Queen Margrethe 2 of Denmark, Supreme Commander of the Armed Forces and Head of the Evangelical-Lutheran Church

The Rigsfælleskab - or Commonwealth of the Realm - includes the external territories of The Faero Islands and Greenland. She has engaged in translation work and made her mark artistically in several genres. She has made a point of knowing and reaching out to all parts of the realm, and the Faeroe Islands and Greenland are favourite destinations. The Queen has also succeeded in giving her traditional New Year Message a strongly personal touch, which has helped to consolidate her popularity. She succeeded her father, Frederik 9, and married to Count Henri de Laborde de Monpezat, Prince Henrik. Margrethe Alexandrine Þorhildur Ingrid is mother of two sons. (b. 1940-)

1980-Queen Beatrix of the Netherlands



Queen Beatrix Wilhelmina Armgard is also Princess van Oranje-Nassau, Princess van Lippe-Biesterfeld [etc, etc, etc](#). The Kingdom of The Netherlands includes the external territories of Aruba and The Nederlandse Antillen. She succeeded upon the abdication of her mother, [Queen](#) Juliana, and she closely follows affairs of government and maintains regular contact with ministers, state secretaries, the vice-President of the Council of State, the Queen's Commissioners in the provinces, burgomasters, and Dutch ambassadors etc. She meets the Prime Minister every Monday. Much of her work consists of studying and signing State documents. She regularly receives members of parliament, as well as other authorities on social issues. Widow of Prince Claus of the Netherlands, Jonkheer von Amfeld (1926-2002), and mother of 3 sons. (b. 1938-)

1997- President Mary McAleese, Ireland



She was Professor of Law and 1993-97 Pro-chancellor of University of Belfast. The eldest of nine children, she grew up in Northern Ireland and her family was one of many adversely affected by the conflict. She is an experienced broadcaster, having worked as a current affairs journalist and presenter in radio and television with Radio Telefís Éireann. She has a longstanding interest in many issues concerned with justice, equality, social inclusion, anti-sectarianism and reconciliation but never engaged in party politics. During the 1997-elections 5 candidates were female and there was only one token male candidates finishing a distant last. (b. 1951-)

1997- Governor-General Hon. Dr. *Dame* C. Pearlette Louisy, St. Lucia



A former civil servant, she a non-political appointee. (b. 1946-)

2000- President Tarja Halonen, Finland



Social Democrat member of Parliament 1979-2000, 1984-87 Chairperson of the Social Affairs Committee and Member of the Presidium of the Parliament, 1987-1990 Second Minister of Health and Social Affairs (Health Minister) and 1989-1991 Minister of Nordic Co-operation, 1989-91 Co-leader of Soumen Sosialidemokraattinen Pulolue, The Social Democrats. 1990-1991 Minister of Justice, 1995-2000 [Minister of Foreign Affairs](#). (b. 1943-)



2005- Federal Chancellor Angela Merkel, Germany

1990 Deputy Spokesperson of the Government of the DDR, 1990-98 Deputy Chairperson of CDU, 1991-94 Federal Minister Women and Youth and 1994-98 Federal Minister of Environment, Protection of Nature and Reactor Safety, 1993-2000 Chairperson of CDU in Mecklenburg-Vorpommern, 1998-2000 Federal Secretary General and since 2000 Federal Chairperson of CDU and 2002-05 also Parliamentary Leader. Bundeskanzlerin in a Grand Coalition between CDU/CSU and SPD. Née Kasner and married secondly to Joachim Sauer, no children. (b. 1954-)



2006- President Ellen Johnson-Sirleaf, Liberia

1972-73 and 1977-79 Secretary of State of Finance, 1979-80 Minister of Finance, 1980 President of the National Bank, 1980-85 worked for the World Bank, 1985-86 in house arrest after her return, 1990-92 Leading member of exile-government of Amos Sawyer in United States of America, 1992-97 African Director of the UNDP (United Nations Development Program). From 1997 Leader of the Unity Party. Presidential Candidate in 1997, Candidate for the Chairmanship of the National Transitional Government in 2003 and finally won the presidential elections in November 2005. She is divorced, mother of a number of children, and grandmother. (b. 1938-)



2007- President Pratibha Patil, India

Deputy Minister 1967-72 and Cabinet Minister 1972-83 and Congress Leader and Leader of the Opposition 1979-80 in Maharashtra, Deputy Chairperson of the Union Upper House, the Rajya Sabha 1986-88, Governor of Rajasthan 2004-07. Married to Devisingh Shekhawat, a former Mayor of Amravati. (b. 1934-)



2007- President Cristina E. Fernández de Kirchner, Argentina

Won the first round of the presidential elections in October 2007 as candidate for Partido Justicialista. She was Member of the Assembly of Santa Cruz 1989-95 and 1. Vice-President of the Assembly in 1990, National Senator 1995-97 and again since 2001, National Deputy 1997-2001. President of the Senate Committee of Constitutional Affairs since 2001. Her husband, Nestor Kirchner was President until 2007.. Mother of 2 children. (b. 1953-)



2007- Governor General Dame Louise Lake-Tack, Antigua and Barbuda

A former nurse and magistrate from 1995. (b. 1944-)



2007- President Borjana Kristo, The Federation of Bosnia (Bosnia-Herzegovina)

2003-07 Minister of Justice of the Bosniak-Croat Federation an entity in The Republic of Bosnia-Herzegovina. The former Vice-President of the Parliament, Spomenka Micic, was elected one of the 2 Vice-Presidents of Federation in 2007. (b. 1961-)



2007- Premier Viveca Eriksson, Åland (Finish External Territory)

Chairperson of the Liberal Parliamentary Group 1999-2001, Member of the Speaker's Conference 1999-2000, Chairperson of the Finance Committee 1999-2001, first Vice-speaker 2000-01 and 2005-07, Speaker 2001-05 and Party Chairperson from 2004. (b. 1956-)



2008- Governor-General Dr Quentin Bryce, Australia

Former lawyer, academic and human rights advocate, Federal Sex Discrimination Commissioner, founding chair and Chief Executive Officer of the National Childcare Accreditation Council and Governor of Queensland 2003-08. (b. 1942-)



2008- Leader of the Government Antonella Mularoni, San Marino

As Secretary of Foreign and Political Affairs she also functions as Leader of the Government even though the Captain Generals are both Heads of State and Government. She was Political Secretary to the Minister of Finance 1986-87, Director of the Office for relations with the associations of San Marino citizens living abroad 1987-90, Deputy Permanent Representative to the Council of Europe, 1989-90, Barrister and public notary in the Republic of San Marino 1991-2001, Member of the General Grand Council 1993-2001 and again from 2008, and Judge of the European Court of Human Rights 2001-08. (b. 1961-)



2009- Prime Minister *Sheikh* Hasina Wajed, Bangladesh

President of the Awami League from 1981, Opposition Leader 1986-87 and 1991-96 and 2001-06 and Prime Minister 1996-2001. Also in charge of a number of other portfolios including that of Defence during both of her tenures as chief of Government. (b. 1947-)



2009- Prime Minister Jóhanna Sigurðardóttir, Iceland

Johanna Sigurdarsottir was Deputy Chairperson of the Social Democrats 1984-93, Chairperson 1994-99 of the National Revival Party until she rejoined the Social Democrats, becoming its leader in 2009. Vice-President of the Lower Chamber 1979 and 1983-84 and Vice-Chairperson of the the Alþing 2003-07, Minister of Social Affairs And Health 1987-91 and Minister of Social Affairs 1991-94 and 2007-09. First married to Þorvaldur Steinar Jóhannesson with whom she has got 2 sons, and in 2010 she married her registered partner since 2002, the author Jónína Leósdóttir, who is mother of 1 son. (b. 1942-)



2009- Prime Minister Jadranka Kosor, Croatia

Vice-President of the Sabor 1995-2000 and Deputy Chairperson of HDZ 1995-97. Minister of War Veterans from 2003, Minister for Family and Inter-Generation Solidarity 2003-08 and responsible for Foreign Policy and Human Rights. Presidential Candidate 2005. (b. 1953-)



2009- President Dalia Grybauskaitė, Lithuania

1994-1995 Extraordinary Envoy and Plenipotentiary Minister at the Lithuanian Mission to the EU and Deputy Head Negotiator for the Europe Agreement with EU, 1996-1999 Plenipotentiary Minister at the Embassy in USA, 1999-2000 Vice-Minister of Finance and 2000-01 Vice-Minister of Foreign Affairs and Deputy Head of the EU Accession negotiations, 2001-04 Minister of Finance and 2004 EU-Commissioner of Financial Programming and Budget 2004-09. Won 69% of the votes in the presidential elections. Unmarried and no children. (b. 1956-)

2010- President Roza Otunbayeva, Kyrgyzstan



Other versions of her surname are Otunbaeva or Otunbajewa. 1983-86 Secretary of the Municipal Communist Central Committee of Frunze, 1986-89 Deputy Prime Minister and Foreign Minister in the Kyrgyz SSR, 1991 Ambassador of the USSR to Malaysia, 1992 Kyrgyz Deputy Premier Minister and Minister of Foreign Affairs, 1992-93 Ambassador to USA and Canada and 1994 to Turkey, Foreign Minister 1994-96, Ambassador to the United Kingdom of Great Britain 1996-2003, Deputy Head of the United Nations special mission to Georgia 2002-04, Acting Foreign Minister 2007, Parliamentary Leader of the Social Democrats 2009-10 and Interim Head of State and Government from April 2010 after the former President was ousted and in May she was named President for the term ending in December 2011. (b. 1950-)

2010- President Laura Chinchilla Miranda, Costa Rica



Vice-Minister of Security 1994-96, Minister of Public Security, Interior and Police 1996-98, 1. Vice-President and Minister of Justice 2006-08 and Acting Minister of Security in 2008. Resigned to become Liberal Party Presidential Candidate for the 2010-elections which she won. (b. 1959-)

2010- Prime Minister Kamla Persad-Bissessar, Trinidad and Tobago



Attorney General (second in Cabinet) 1995-06 and 2001, Minister of Legal Affairs 1996-99 and 2001 and Minister of Education 1999-2001. First appointed acting premier on the absence of the Premier in September 2000. Leader of The United National Congress and Opposition Leader 2006-07 and 2010 and Political Leader from 2010. (b. 1952-)

2010- Prime Minister Mari Kiviniemi, Finland



MP from 1991, Deputy Parliamentary Leader of the Center Party in 2003, Party Vice-Chairperson 2003-08 and Party Chairperson from 2010, Political Advisor of the Prime Minister 2004-07, Minister of Foreign Trade and Development Aid and Minister at the Prime Minister's Office 2005-06 and Minister of Public Administration and Local Government 2007-10. Mother of 2 children. (b. 1968-)



2010- Prime Minister Julia Gillard, Australia

MP from 1998, Manager of Opposition Business in the House of Representatives 2003-06 and Deputy Leader of Labor 2006-10, Deputy Leader of the Opposition 2006-07 and Leader of Labour from 2010, Deputy Prime Minister and Minister for Education, Employment and Workplace Relations and Social Inclusion from 2007-10. Her parents immigrated to Australia from Wales. She lives with her partner and has no children. (b. 1961-)



2010- Prime Minister Iveta Radičová, Slovakia

Iveta Radicova is Professor of Sociology and Political Sciences at the Comenius University in Bratislava, from 2005 Director of the Institute of Sociology at the Slovak Academy of Sciences, 2005-06 Minister of Labour and Social Affairs, MP from 2006 and Deputy Leader of the Democratic and Christian Union–Democratic Party 2006-10 and Party Leader since 2010. Presidential Candidate for all the opposition parties in 2009 and finished second in the second round of voting, and in 2010 the opposition 4-party coalition won the elections. (b. 1956-)



2010- Prime Minister Sarah Wescott-Williams, Sint Maarten (Self-governing Part of the Kingdom of the Netherlands)

Ca. 1995-2009 Commissioner of General Affairs, Education etc., 1999-2009 Leader of the Government, Social and Cultural Development, Finance, Juridical Affairs, Emergency Services, Information, Communication and Protocol, Strategic Policy, Planning and Development of Sint Maartin which was part of the Netherlands Antilles until 2010 when it became a self ruling entity within the Kingdom of the Netherlands. She is Leader of the St. Maarten Party



2010- Premier Paula A. Cox, Bermuda (British Dependent Territory)

Succeeded her father, Eugene Cox as Minister of Finance when he died in January 2004. 1998-2002 Minister of Labour and Home Affairs and Public Security, 2002-04 Minister of Education, 2002-03 Minister of Development, 2003-04 Attorney General and Minister of Justice. Minister of Finance since 2004, Deputy Leader of the Progressive Labour Party and Deputy Premier 2006-10, Party Leader and Premier from 2010. (b. 1969-)



2011- President Dilma Vana Linhares Rousseff, Brazil

Dilma Rousseff is a former student leader who fought Brazil's military dictatorship as a guerrilla during the early 1970s and an economist. Secretary of Mines, Energy and Communication of Rio Grande do Sul 1993-94 and 1999-2002, Minister of Mines and Energy 2003-05 and Minister and Secretary General of the Presidential Staff (Cabinet Chief) 2005-10. (b. 1947-)



2011- President of the Confederation Micheline Calmy-Rey, Switzerland

Former President of the Socialist Party of Genève, she was President of the Grand Conseil of Genève 1993, Councillor of Finance 1997-2002, Vice-President of the Cantonal Government 2000-01 and President of the Cantonal Government 2001-02. Federal Foreign Minister since 2003 and Vice-President in 2006 and 2010 and President in 2007. Eveline Widmer-Schlumpf was elected Vice-President for 2011, the first time two women would fill the two highest post in the country. (b. 1945-)

The program of our conference displays many women that are participating actively in various capacities today. Senator Hilary Clinton's ascendancy to the very important position of United States Secretary of State and America's topmost diplomat portends well for the positive future of American diplomacy in contemporary international affairs. It is noteworthy that she is the next female to succeed Madeline Albright – a Jewess and Condoleezza Rice- and African American.

5. Brief Review of the Works of the UN Human Rights Council

About three years ago, specifically on March 15, 2006, the United Nations General Assembly created by G.A. Rs. 60/251 the Human Rights Council to replace the UN Commission on Human Rights which came under attack in recent years. There is no doubt that the future of international law shall significantly depend on the success of the activities of the Council. As the Council is a new body, it has embarked on a number of experiments. Apart from setting up a number of Committees, it has also created monitoring groups for

particular hot spots across the world to focus on human rights observations in specific conflict areas of significant unrest such as Darfur, Democratic Republic of Congo, Somalia, Chad, East Timor, Lebanon, Myanmar and Cambodia. The Council condemned recently the human rights breaches being committed in the countries of North Africa and Parts of the Middle East.

The notable UN Committees on Human Rights include: Committee on the Elimination of Discrimination against Women, Committee on the Elimination of Racial Discrimination, and Committee on the Rights of the Child. The Declaration of the Rights of the Indigenous Population is an important addition to the new generation of group rights.

Between the new UN Secretary General Mr. Ban Ki Moon and the UN Human Rights Council, efforts are still being made to address serious human rights breaches based on certain reports submitted to the Council. A few examples are as follows: the UN Investigator found that American Officials were refusing him access to US –run detention facilities in Iraq. UN Human Rights Council denounced Cameroon Government's ill treatment of the Mbororos in the country, following allegations of breach of respect for their human rights and fundamental freedoms as indigenous people of Cameroon. The UN Anti-Torture investigator reported that Nigeria's national police force is committing widespread and systematic torture during investigations and in prison cell.

The effectiveness of the Council is closely being watched by the international community in view of the mounting criticism of the Commission's work for being narrow in

its emphasis- virtually an exclusive focus on the Israeli- Palestine issue. It is strongly hoped that the new Human Right's Council is not just an old wine in a new bottle.

III. PRESIDENT BARACK OBAMA ADMINISTRATION'S FIRST VETO OF UN SECURITY COUNCIL RESOLUTION

With a seeming increase in conflicts and hostilities across the world at national, international and transnational levels how to contain and deal effectively with different kinds of conflicts has become problematic and thrown even more challenges in addition to the existing ones on the international legal system. The patterns of these crises differ according to the regions of their locations. The method of handling some of these crises by the world body further illustrates the harmony and dissonance in international law. The Obama Administration exercised its first U.N. Security Council veto to kill an Arab-backed resolution calling West Bank settlements 'illegal'. The other 14 Security Council members voted in favor of the resolution. It is debatable whether the American veto advances the effort for peace between Israel and Palestine. We hold the view that the exercise of veto by the US does not support the peace process because the veto encourages Israel to continue with the building of settlements expansion, and thus complicate the Middle East situation the more.

IV. UNITED NATIONS SECURITY COUNCIL RESOLUTION 1973 AGAINST LIBYA

At its 6498th meeting, the United Nations Security Council adopted Resolution 1973 by 10 votes and 5 abstentions. Since then different interpretations have been given to the said resolution. There is the contention that the UN Security Council authorized unlimited use of force in Libya which sounds doubtful. The language of the resolution allows “all necessary measures to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya.” Furthermore, any military measure must immediately be reported to the UN Security Council.

The majority argue that the resolution demonstrates the UNSC and international community’s commitment to protecting civilians from harm. The UNSC has authorized Member States of the United Nations a limited derogation from the prohibition against the use of force to protect direct threats against Libyan civilians. The UNSC Resolution has specifically excluded “a foreign occupation force of any form on any part of Libyan territory.” The enforcement of the no-fly zone through the pre-emptive strikes against anti-aircraft military infrastructures seems to exceed the authority vested by the UNSC Resolution. Some scholars argue that the derogation has gone too far and could be violative of international law principles of non-intervention in a conflict that could be categorized as purely internal sovereign matter.

Sometimes certain sanctions may seem to violate international law, in particular, international humanitarian law and human rights law. In discussing the sanctions regime of the UN during his tenure as the Secretary General, Kofi Annan stated as follows:

“Let me conclude by saying that the humanitarian situation in Iraq poses a serious moral dilemma for this organization. The UN has always been on the side of the vulnerable and the weak, and has always sought to relieve suffering, yet here we are accused of causing suffering to an entire population: We are in danger of losing argument or the propaganda war-if we haven’t lost it-about who is responsible for this situation in Iraq –President Saddam? Hussein or the UN” (citation omitted).

The UNSC Resolution under discussion also imposed arms embargo, ban on flights, asset freeze, travel restrictions. There is an appointment of a panel of experts charged to make a report within 90 days on the progress of the implementation of the resolution. The arms embargo, asset freeze, and travel restrictions are the “smart sanctions” designed to precisely target sanction measures against the elite and ruling members of the Libyan regime.

The UNSC sanctions being applied and enforced against the civilian population of Libyan Arab Jamahiriya Republic at the moment raise question of crimes against humanity when it ignores similar breaches of international law in some other countries (Israel, Uzbekistan, Belarus, Mexico, Yemen, Bahrain, Burma, Congo, Cote d’Ivoire) and so forth and so on.

The Panelists, participants and the international community are called upon to examine the effect of the UNSC resolution 1973 on the civilian population of Libya. Some critical questions must be addressed. Is it truly possible for precision strikes against targets to protect civilian population? Is the collateral damage resulting from an international coalition

bombing campaign itself more dangerous and harmful to the Libyan civilian population? Is it possible to protect civilians through an air warfare campaign? Can the Libyan civilian population be practically protected without deploying ground troops? I am hopeful that participants at today's conference would discuss these issues carefully in some setting and find some reliable answers to them.

V. ACKNOWLEDGEMENTS AND GRATITUDE

I have the honor to express my gratitude to Dr. Dan Angel, President of Golden Gate University for his welcoming remarks and for opening this year's Fulbright Symposium. The very warm greetings he extended to our very distinguished guests and conference participants are highly appreciated.

It is with a great feeling of pride and gratitude that I once again salute the Special Guests here today. I am delighted and happy that His Excellency, Ambassador Robert G. Aisi, the Permanent Representative of the Papua New Guinea at the United Nations Organization in New York has come to deliver the keynote address on behalf of Sir Arnold Amet. I thank him specially for accepting to come at short notice. There is no doubt that he had to shelve many other important duties on urgent crucial international problems facing the United Nations at this point in time to come deliver the keynote address.

The Sompong Sucharitkul Center for Advanced International Legal Studies has kept alive, as much as possible, the staging of very successful and high standard Annual Fulbright Symposia for the past twenty one years. In my fourth year of service as the second Director of the Center and the LL.M S.J.D. Programs in international legal studies, I have been

privileged to bring notable world renowned jurists to GGU. Some of them served as keynote speakers while Fulbright and other local and foreign scholars handled different important topics. The keynote speakers that have spoken during this period are: His Excellency, Judge Abdul G. Koroma (2008), Distinguished Professor Dr. Sompong Sucharitkul (2009), Professor Michael K. Ntuny (2010). This year, His Excellency Ambassador Aisi representing Sir Arnold Amet has joined the impressive list of keynote speakers. Each of the keynote speakers brought the full weight of their great intellectual and judicial aura and perspective of the respective topics to Golden Gate University. The effort in seeking out such great legal minds to kick off our conference is to maintain the good legacy already established at the Center over so many years and to keep it high and alive.

The Chair of the morning session needs no formal introduction. He has been a great pillar and strong supporter of our programs starting when he was the Dean of the Law School and since I took over as the Director of the Center. I refer to the Golden Gate's School of Law revered and respected Emeritus Dean and Professor Peter Keane, an acknowledged national and international commentator on current national and international legal issues. He is evidently very well qualified and suited to moderate our morning session at which qualified scholars will present their individual papers. Another great supporter of the Center's programs is Professor Bart Selden who has stood stoically behind Golden Gate University School of Law as one of the worthy pioneers during the teething period of the development and advancement of the School's department of international legal studies programs.

I thank all of them very much and hope for a future of continued support for the programs of the department and the Center.

Golden Gate University has worked very hard for the past twenty one years in its effort to disseminate the principles of international law among legal scholars of all nationalities. Our main task lies and still remains in the internationalization of the concept of legal education in the United States of America. In this regard, Professor Jon Sylvester, Associate Dean, Graduate Law Programs has worked very hard to keep the flag flying and to ensure that the ship remains successfully afloat. I thank him immensely.

Among the other Adjunct Professors who have made significant contributions to the growth of our programs over the years are: Barton Selden, Sophie Clavier, Warren Small, Art Gemmell, Remigius Chibueze, Zakia Afrin, Michelle Leighton, Timothy Simons, Hamed Adibnatanzi, Judge Ruth Astle, and Nancy Yonge. They have devoted their time to upholding the International Rule of Law through their dedicated teaching and guidance of students at GGU and in producing future internationalized American scholars. Each of the professors plays key role every year during this annual Fulbright ritual, serving either as presenter, session moderator, or rapporteur, or in some other vital capacity to make the meeting both successful and memorable. This fact is evidenced in this year's program. I thank Professor Selden specially for accepting to play an important role which he had excellently performed in most of the past twenty one years. He is our able Rapporteur for the morning session while Professor Sophie Clavier will handle the afternoon session as the Rapporteur.

Permit me to state that the organization of this year's Symposium could not have been possible without the strong support of the hard core administrative staff of the Graduate Law Programs comprised of Margaret Alice Greene, Director of Graduate Law Programs, John Pluebell, Assistant Director, International Student's Services, Natascha Fastabend, Program Coordinator, Graduate Law Programs, Brad Lai, Program Coordinator, Graduate Law Programs, and Adriana Garcia Dawson, Office Assistant, Graduate Law Programs. We also enjoyed the able assistance of a team of many bright volunteer students drawn mainly from the membership of the International Law Student Association as well as LL.M. and SJD students. I remain heavily indebted to all of them.

This Conference is co-operation with the Section of International Law of the American Bar Association and co-sponsored by the American Branch of the International Law Association, Golden Gate University School of Law, and Golden Gate University International Law Student Association. We heartily express our debt of gratitude to all the co-sponsors of today's academic meeting and to all of you that contributed in one form or another to make it a success and a reality.

The first Annual Fulbright Symposium at Golden Gate University, School of Law was inaugurated in 1991. Since 1996, the annual symposium had always attracted many Fulbright Professors or Research Scholars to participate in the academic discussions of the papers presented. This year we are happy to have three Fulbright Scholars who will make presentations on important subjects of international law piercing through the likely future development of the law and highlighting the harmony and dissonance in the system.

It is pertinent also to note at this point that during the last few years of my directing the organization of this annual conference, we have had the honor of participation of some Consuls General, Consuls and Honorary Consuls of some foreign countries based in California. Today with us are the representatives from the Consulates of Chile, Poland, Switzerland, Papua New Guinea, Philippine and Canada. They are all heartily welcome.

Golden Gate University gratefully appreciates your presence and the invaluable input you make to the discussions at these intellectual conferences, particularly as you officially have to deal with the implementation of some of the many international law principles and norms in the execution of your daily duties.

VI. CONCLUSION

Our conference survey has attempted to advance the main aim of the 21st Annual Fulbright Symposium by raising various controversial issues aimed to provoke healthy discussions. Good discussions are also expected of the rich array of many controversial topics listed in our crowded conference program. And controversy is, after all, to be welcomed.

New international law derives its sources from other areas other than the traditional sources. Also, new international law admits of other subjects of the legal system. I see an international lawyer as a conscious social actor. His task just like that of every lawyer is to contribute to reaching acceptable solutions to social problems. A lawyer is essentially a social engineer, a mediator between disputing parties and a manager of disagreements.

I strongly hold the view that the prospects for the progressive development of international law in the world lie in those who teach, adjudicate, research and publish in the area. They play a critical role. There is still much reliance by many jurists on academics and commentators who greatly influence the development of international law significantly and effectively. So too, do those who serve in a representative capacity of their countries as ambassadors and consular officers influence the development of international law.

As I conclude the survey, I urge this august body of fine minds to glean from the proceedings that will follow, and always remember that the forces which shape international law, like the forces which fashion international relations, are many and complex. In spite of the criticisms of the possibility of international law and many charges levied against its effectiveness, there is no alternative available to the international community. An attitude of nonchalance and disobedience for international law apparent from the conduct and statements of some States should not and will not terminate international law from being in existence. More than ever before, the economies, societies and cultures of different nations of the world have become increasingly more inter-connected.

Majority of the topics in the program may be looking at matters familiar to the international lawyer in new ways which, if sometimes unorthodox, are sincerely felt and honestly very persuasively set forth. I feel that all ideas to be presented at the symposium are important and beneficial in themselves. It is my hope that they should contribute in forming the basis for the continued progressive development of international law and for the fostering of individual freedom and peace among nations.

All national and international law societies should re-double their efforts in promoting the study and dissemination of principles of international law. Gladly enough, the American Society of International Law has been very supportive of this effort for more than a century now. It is strongly to be hoped that the Society will remain dogged in this worthy fight for as long as it takes to make every subject of international law accept and respect the principles and the rule of international law in the conduct of their activities.

The right time has come for all States of the world to take seriously the building of a more modern and sustainable international framework on the basis of the universal principle of sovereign equality of States.

Nwachukwu OKEKE

San Francisco, April 1, 2011.