

## **INTERNATIONAL LAW IN 2005**

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What does the New Year hold in store for law? In this and my next article I will look at likely developments in international and domestic law. Starting with the first of these, the horizon looks at first sight to be bleak indeed. The United States electorate has returned to the White House for another four-year term an administration that has at least partly made its name – and its local reputation – by subverting the very idea of international law. The situation in Iraq is likely to worsen before it gets better, and there is also to be taken into account the desire of a strengthened Sharon government to impose a final ‘peace’ in the occupied territories, in open defiance not just of the international community but also the whole framework of international law which has dogged that nation’s actions since its inception.

None of this bodes well. On the other hand, if it is true both that the US remains a country with a capacity for medium to long term rational planning, and that the only way to address the world’s many global problems is via multilateral agreement, then it must be the case that something recognisably akin to international law will reassert itself during 2005. On these twin hypotheses, facts on the ground, whether they are meteorological, terrorist-inspired or financial (or in some form or other all three of these) are bound to induce a change of direction which, even if does not lead to a signing up to Kyoto or the International Criminal Court, will eventually shift the focus of US foreign policy back into something akin to an engaged vein. The greatest risk to this happy change of perspective is that the highly politicised team that run the Bush White House, appalled at the prospect of having no election left to fight, attempts to turn this second term into an election platform for a new candidate, a third Bush perhaps or more likely a Bush-lite such as Condoleezza Rice. If such a pitch for the perpetual politicisation of the presidency is made, it will be interesting to see whether the current President acquiesces in the abasement of his office that this would necessarily involve or whether he is in fact – as so many now claim, not least the UK prime minister – made of sterner stuff.

The other fascinating story to follow will be at the UN. The US-led invasion and subsequent occupation of Iraq were thought by many to have put the whole international order, and in particular the United Nations, under a strain so intolerable that it was bound to break up. It was always possible, however, that the real danger during the past few years lay not in resisting American power but in camouflaging it with some transparently fake international legitimacy. Perhaps it is President Chirac we have to thank, perhaps others, but the Security Council did not buckle, and the result is that it has had no responsibility for events over which it would in any case have had no control. Under an increasingly assertive Secretary General, the Organisation seems to be regaining its voice, and perhaps even its confidence. The report issued at the start of December by Kofi Annan's High Level Panel on Threats, Challenges and Change may come in time to be viewed as a crucial turning point. Certainly it will set the tone for developments at the UN during 2005.

The panel was asked by the Secretary General 'to assess current threats to international peace and security; to evaluate how...existing [UN] policies and institutions have done in addressing those threats; and to make recommendations for strengthening the United Nations so that it can provide collective security for all in the twenty-first century'. The Report's focus is on reinvigoration, both of the UN's core purpose and of its institutions. The key argument is for a broader and more comprehensive concept of collective security, one that appreciates the interconnectedness of contemporary threats to security, an approach that sees terrorism, civil wars, and poverty not in isolation one from the other but as inextricably linked. This leads the Panel to a fresh emphasis on development as an indispensable foundation for any renewed vision of collective security; tackling extreme poverty and disease is necessary in order to destroy before they start the civil conflict that such conditions make almost inevitable.

The people rather than national focus of the Report is what marks it out as an especially progressive intervention, but this is not to say that states do not matter: the Panel has eschewed the fantasy of global government in favour of a more pragmatic model which recognises that States are in the front line and that the United Nations must do more to support them in their multi-front campaigns for better collective security. But the group (which included distinguished US and UK members in Brent

Scowcroft and David Hannay respectively) is emphatic that unilateral use of force is wrong in all circumstances save those very narrow exceptions that are to be found in Article 51. If no imminent attack is in the offing and if the Security Council cannot be persuaded to agree to sanction military action then that is that. 'For those impatient with such a response, the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all.'

The usual critique from states inclined to reject a report like this would be along the lines of 'put your own house in order and we will start to listen'. It is a fair point, and one that the High Level Panel has directly addressed. Perhaps the most interesting sections of the whole document relate to its proposal for the proper governance of the UN itself. Here words are distinctly not minced. 'The General Assembly has lost vitality and often fails to focus effectively on the most compelling issues of the day.' The Security Council needs 'to be more proactive in the future' and does not do nearly enough in co-operation with regional and sub-regional organisations. The most biting criticism is reserved for the Commission on Human Rights, which 'suffers from a legitimacy deficit that casts doubt on the overall reputation of the United Nations' and which as a result needs to be radically reformed.

The Panel was not as clear as might have been hoped on some aspects of its reform agenda, with differences of view arising in particular over the precise way in which the Security Council's composition should be recalibrated to take account of an international situation far different from that which pertained in 1945. It would be a great pity if the failure of unanimity on this point alone were to undermine the Report as a whole. It has the potential to act as a rallying point for a return to old style international idealism, albeit tempered by the experiences of the past sixty years of *realpolitik*. The first signs are good. In the aftermath of the Report's publication, there emerged depressingly predictable allegations of corruption and wrongdoing against the Secretary General, accompanied by calls for his resignation from conservative US politicians. The General Assembly's response was to give Kofi Annan a remarkable standing ovation of nearly a minute's duration. Among those standing in

the Assembly was US diplomat Mr Patrick Kennedy. The White House has however issued no statement of support in Mr Annan, unlike both the Security Council and the EU. Mr Kennedy's action 'was merely a sign of respect' said a US official. Perhaps the tensions in the Bush second term are already becoming evident before it gets under way.