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Reflections on the Right to Peace

Jorge Madrazo-Cuéllar, Consul of Mexico in Seattle and former Attorney General of Mexico, spoke with the Section on 11/24/2003. His remarks are reprinted here by permission.

I would like to begin these reflections by thanking the Washington State Bar Association for the invitation to share this valuable time with you. I hope it is just the first of many future meetings together.

As Consul of Mexico and as a lawyer, I consider a collaborative relationship between this Bar and the Consulate as clearly strategic, in virtue of the many difficulties that my compatriots face in seeking access to justice.

I have always considered that lawyers should be true agents of social change and if we work together it will be possible to fully accede to justice.

The topic that has been chosen for this first meeting is the Right to Peace, a topic that is much more complicated in light of the events of September 11, 2001 and the resulting national and international consequences.

When the end of the Cold War heralded the possibility of advancing internationally in the consolidation of a culture of peace, the terrorist attacks on New York and Washington occurred and this has signified an important break in the dynamic with which there had been many advances in cultural and human rights internationally.

Apart from Iraq, at this time there are situations of war or post war in more than 30 countries in the world, of which the United Nations only has a relative presence in 15 of them.

From my point of view, it is very fortunate that there is initiative within this Bar to discuss the matter, as many times it is the crisis and the gravity of the challenges and problems that also allow advances in the search for solutions, as much academic and doctrinal as real and pragmatic.

The reflections which I will formulate are based fundamentally on two sources, the first academic, which

is reflected in two articles I published in 1994 and 1996, whose titles are: "Violence and Human Rights" and "Human Rights and the Culture of Peace," respectively. The second source is my professional experience as national Ombudsman of Mexico, Commissioner for Peace in Chiapas, and Adviser to the International Red Cross Committee in Geneva, Switzerland.

In spite of the fact that peace is the fundamental value that inspired the San Francisco Charter that founded the United Nations, and later the Universal Declaration of Human Rights, the so-called Right to Peace is considered part of the third generation of human rights, that is to say, subsequent to the international movement for civil and political rights (first generation), and economic, social, and cultural rights (second generation).

The United Nations has taken it upon themselves to deny the possibility of making any type of division or classification of internationally recognized human rights, in such a way that our reference is only for academic purposes.

Effectively, the fifth point of the Vienna Declaration that brings together the resolutions of the World Conference on Human Rights of 1993 established:

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

However, we should say that these third generation rights, also called solidarity rights, among which are included, apart from the right to peace: the right to

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Seattle Human Rights Day

by Paul Schlossman

The Seattle Human Rights Day for 2003 was held December 10 at the Arctic Building.

The event is notable for its perspective toward a unified human-rights theory, such that domestic and international human rights are one thing, as Vaclav Havel and Martin Luther King have written.

The keynote speaker at Human Rights Day was Sherman Alexie, the distinguished writer, poet and filmmaker. Mr. Alexie is a member of the Spokane and Coeur D'Alene tribe, situated in Eastern Washington and Idaho. Mr. Alexie's film, "Smoke Signals," presented a story of economic and social pressures which have been part of reservation life for Native Americans.

Awards recipients also included Roy G. Farrell, MD, who has been a CLE presenter at the World Peace through Law Section. Dr. Farrell is president of Physicians for Social Responsibility. His internationalist specialties include his provision of medical relief in places such as Armenia and Iraq, and his public speaking about international conflict resolution and nuclear armaments.

Reading Notes

by Paul Schlossman

These books are recommended. Robert Jackson is a professor at the University of British Columbia who has written *THE GLOBAL COVENANT*, published by Oxford. The word "magisterial" applies. The book is even more lucid and comprehensive about definitions and meanings to be associated with international law, international balance of power, and human rights than the next book, by Michael Walzer, *JUST AND UNJUST WARS*, which is often considered definitive in the field of finding meaning, if any, in the term "just war."

I discovered Michael Walzer's *JUST AND UNJUST WARS* through following the illustrious career of a high school friend, Eric Maskin. Both are at the (few in number, mighty in impact) Social Science School, IAS, Princeton. Professor Walzer's book, which seemed to ramble in the first read but now seems quite coherent, reflected a decisive resurgence of political philosophical reasoning about the security contingencies of international relations. The book was published just after the Viet Nam War. Professor Walzer was part of a group constituting the "progeny" of John Rawls, among whose contributions was the recentering of political philosophy, and related moral evaluations, in the philosophy curriculum.

I am rediscovering the New York Times which combines its own story, as reporter of the international scene, with the stories which it reports. It is a powerful argument against paperless journalism.

Another recipient of a Human Rights Day award was Rita Zawaideh. Ms. Zawaideh has been active in programs supplying humanitarian aid in the Middle East, as well as in advocacy for minority rights in Seattle.

The event was chaired by Joanne Dufour, of the United Nations Association, with the committee for the event consisting of the UNA, the Seattle Human Rights Commission, and the Seattle Office for Civil Rights.

Valuable literature distributed at the event included a pocket-sized copy of the Universal Declaration of Human Rights, published by the Human Rights Resource Center, University of Minnesota. This branch of the University of Minnesota focuses on publishing and distributing large quantities of literature pertinent to international human rights.

The event was made even more enjoyable by the hassle-free transit of your reporter to the event via the Amtrak Cascades train from Chehalis. Why cannot all American trains be like this one?

Anne Heindel on the International Criminal Court

WPTL Section Meeting – January 26, 2003

At the January 26 meeting of the World Peace through Law Section, it was unfortunate that General Lowenberg was unable to attend. Your newsletter editor visited with General Lowenberg at Camp Murray in December 2000, and was amazed at the scope of responsibilities with which General Lowenberg is engaged.

In any case, a useful section meeting was held through the agency of video on computer, and we replayed the Anne Heindel presentation of September 15, 2003 on the International Criminal Court.

Ms. Heindel's expertise and clarity were even more notable on this second hearing. Furthermore, in the discussion which followed, it became clear that the importance of the Court is not unparalleled by the complexity of the issues which surround it.

In her remarks, Ms. Heindel noted that:

"The momentum for a permanent International Court accelerated with the creation of ad hoc tribunals for Rwanda, because of genocide, and for Yugoslavia, on grounds of the genocide, termed "ethnic cleansing, which occurred in Yugoslavia."

The charter and jurisdiction of the ICC pertains to the "mass, systematic violations of humankind's worst crimes."

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Editorial Comment *by Paul Schlossman*

My grandfather liked to say when he engaged in a discussion: "I agree with what you say, but taken from a broader point of view, ..." Then he injected his (other and differing) view point.

Another point of view can be approached in recent months through study of Foreign Affairs Magazine. Here two articles on China are particularly instructive. One concerns diplomatic policies of the Chinese government. One concerns the economic powerhouse which Chinese society has become in this new century. This newest phase of the modern, post-Communist, free-market, high-technology economy spells power.

Power has the usual dimensions: international and domestic, legal and political and military, economic and social.

The common good, Scott Buchanan wrote in *So Reason Can Rule*, has four interdependent parts: "Peace, order, freedom, justice, are the four constituent parts of the common good." For Buchanan, the moral foundation of the law is the common good. Buchanan also wrote about power in the same book. And there is the problem of power. Shall power, as it arises in any nation, converge with the common good and serve it? Shall power cause law and international law to flourish, or be abused?

A useful list of views and developments culled from the international press and literature may include these points: 1) November 2003 saw intense debate between China and Taiwan over a potential for change in Taiwanese law such that there would

be a more direct assertion of independence. (source: The New York Times) 2) In *THE IDEAS THAT CONQUERED THE WORLD*, Professor Michael Mandelbaum has referred to the Taiwan situation as the point on earth with the highest potential for peace to fail. 3) One of the salient points of the Foreign Affairs articles was: A key role in causing some reduction in tensions vis a vis North Korea was the diplomatic entrance of Beijing (*FOREIGN AFFAIRS*, NOVEMBER/DECEMBER, 2003, Page 1. 4) The law-creating and law-driven international institutions, for many decades not embraced by Mainland China, are now increasingly part of the international calculus for China (*FOREIGN AFFAIRS*, page 1).

The "Peace Dividend" of the 1990s had a powerful component in terms of legal philosophy and belief. Czech Republic President Havel, e.g., spoke in methodical detail of building international civil society. Structures of law, international law, civil society, co-existence, cooperation, and human rights, that had eluded governments for decades now seemed available and even engineerable. The blueprint could be and would be drafted and implemented – it seemed that way, during the last decade.

The Foreign Affairs and New York Times articles on East Asia indicate a requirement for a very broad and encompassing vision of human flourishing, peace-seeking, and international law in terms of the quest for the common good. We cannot look only and solely to the questions which have arisen concerning Iraq and other matters associated with the Middle East.

Congressman McDermott Selected for 2004 Ralph J. Bunche Award

by Jack Smith

Congressman Jim McDermott received the majority of votes cast in the Section's selection of the recipient of the 2004 Ralph J. Bunche Award.

This Award is presented annually by the section to honor an individual or group that has made a notable contribution to the advancement of international peace. Although McDermott was selected for a career dedicated to Peace within our World, discussion of this year's nomination focussed on his vigorous fact-finding, advocacy, and leadership in opposition to the conflict (WAR?) in Iraq.

The Award nomination process extended for several months and, for the first time in recent memory, in-

cluded mail-in ballots in the newsletter to all Section members. This process encouraged broad participation and discussion. The threats to Peace this year resulted in a number of strong candidates for the coveted award. Most active section members have expressed their concurrence and pleasure with the final selection.

The Award will be presented at a luncheon Friday, April 30, 2004 in downtown Seattle. All are invited and pre-registration is strongly advised. For more information, see the website or contact the WSBA at questions@wsba.org.

development, the right to be different, to having a healthy and ecologically balanced environment, and to benefit from the common wealth of humanity are different from the others because in order to fulfill them requires not only the will of the State or of the people, but the fundamental will of the international community.

These third generation rights, says Ambassador Hector Gross Espiell, are rights which are at the same time individual and collective and correspond to the needs always revolutionized by human beings.

On the other hand, the relationship between Law and Peace is so close that Hans Kelsen said, "*The Law is, in essence, an order to preserve peace.*" Rightly so, Gross Espiell states that human rights and peace are concepts that are unavoidably tied together.

One of the great heroes of Mexico, from the era of the Republic, majestically defined the relationship between law and peace. The great Benito Juarez said: "Among man and among nations, respect for the rights of others is peace."

The Armand Hammer Conference for Peace, which took place in Oslo in 1978, defined the right to peace in the following manner:

"The right to peace is one of the fundamental rights of man. All nations and human beings, without consideration of race or creed, language or sex, possess an inherent right to live in peace. Respect for this right, as well as other rights of man, in the common interest of humanity, constitute an indispensable condition for the progress of all large and small nations in all sectors, in all domains."

The right to peace has a double dimension, that is to say, it is a domestic right, but at the same time it is international law. In this way, a violation of the right to peace is constituted as much from violence within the State, or internally, as well as external violence resulting from international armed conflicts.

As far as national legislations, I admit my ignorance on how the Constitutions of distinct countries organize and regulate the right to peace. I can only say that in terms of the Constitution of Mexico, article 89 establishes the duties and obligations of the President of the Republic. In the tenth clause it states: In conducting interna-

tional affairs, the head of the executive branch of Government will observe the following principles: the self determination of the people; the no-intervention; the peaceful solution to controversies; the proscription of the threat or the use of force in international relations; equal standing of all States; international cooperation for development; and the struggle for peace and international security.

Possibly after analyzing these constitutional principles, the difficulties Mexico faced in the Security Council of the United Nations with regards to the war in Iraq can be better understood.

On the international level, apart from what I have already shown with respect to the United Nations

charter and the Universal Declaration of Human Rights, the Right to Peace is foreseen and contemplated in numerous UN resolutions.

On December 15, 1978 the General Assembly adopted Resolution 33/73 titled the Declaration on the Preparation of Societies for Life in Peace. In its first article, this Declaration states:

"Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect for that right, as well as for the other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields."

On November 12, 1984, the General Assembly adopted the Declaration on the Right of People to Peace. This is a truly short declaration but of fundamental importance which states:

"Reaffirming that the principle aim of the United Nations is the maintenance of international peace and security.

Bearing in mind the fundamental principles of international law set forth in the Charter of the United Nations.

Expressing the will and the aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a worldwide nuclear catastrophe.

Upcoming Events

March 22 Section Meeting

April 26 Section Meeting

April 30 Ralph J. Bunche Award Luncheon

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Convinces that life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations.

Aware that in the nuclear age the establishment of a lasting peace on Earth represents the primary condition for the preservation of human civilization and the survival of mankind.

Recognizing that the maintenance of a peaceful life for peoples is the sacred duty of each State,

1. *Solemnly proclaims that the peoples of our planet have a sacred right to peace;*
2. *Solemnly declares that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State;*
3. *Emphasizes that ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations;*
4. *Appeals to all states and international organizations to do their utmost to assist in implementing the right of peoples to peace through the adoption of appropriate measures at both the national and the international level."*

In the cultural and educational scope the right to peace has also had very important expressions. In the founding Constitution of UNESCO it was written: "Since wars begin in the minds of men, it is the minds of men that the defenses of peace must be constructed."

Also in the declarations for the teaching of human rights, and in the declaration for the media, UNESCO recognized the right to peace as a right of all people.

On January 15, 1998 the General Assembly of the United Nations through Resolution 52/13 asked the Secretary General of the UN as well as the Director-General of the UNESCO for a program of action for a culture of peace; one in which a culture of peace would be promoted as an integral focus for the prevention of violence and armed conflicts.

Finally, it should be noted that the General Assembly of the UN approved the year 2000 to be declared

"The International Year for the Culture of Peace," which had as its objective strengthening respect for cultural diversity and promoting tolerance, solidarity, cooperation, dialogue, and reconciliation, based on activities in the national and international communities.

It doesn't stop being paradoxical that the following year, on September 11, after the International Year for the Culture of Peace, the world changed in such a dramatic way.

I will conclude this presentation by speaking about the elements, which in my opinion, should be considered in order to advance in a culture of non-violence. But before this, I would like to make some brief, strictly legal comments, on the dimension of the right to peace and on those who are the holders, that is to say, the subjects of this right, or if you would like, those that should benefit from the right to peace.

The notable Uruguayan Ambassador and scholar Hector Gros Espiel, has studied this matter in depth. Gros says that in accordance with different cases and situations, the holders of this right can be the national States, the peoples, the individuals, and the humanity.

The States have a right to peace when it comes to the right to live together and to develop a peaceful international community, in which the use of force by the states is illegal, except in the case of legitimate defense, and when it is necessary to solve conflicts and differences by peaceful means. Along with this international right to Peace, States have the reciprocal duty to not resort to force, nor threaten the use of force against territorial integrity or the political independence of other States.

The right to peace is also a right of the peoples, that is to say, of the distinct ethnic communities that live within a National State. There are some countries that are uni-national, that is to say, that only one people with one ethnicity or history makes them up, so that people and nation are the same thing. But there are other countries like Canada, The United States, and Mexico that are pluri-national, in other words we are made up of 2 or more peoples with different ethnic and historical origins. The province of Quebec in Canada, the Native American peoples in North America, and the 56 indigenous cultures of Mexico are all good examples in this category.

Also individuals, all human beings, have the right to peace and this becomes clear with the declaration of 1978. However, if individuals have the right to peace, this means that, for example, the individuals would have the right to reject participation in a violation of peace, or political aggression, including when it is promoted by the same State in which the individual is a national.

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It also demonstrates the right of individuals to participate in peaceful movements and general support for activities promoting peace. More complex is the conclusion that once the individuals are holders of the right to peace, they also have the right to conscientious objection, and with that they are able to reject military service because this constitutes preparation for war, and furthermore, individuals could reject participation in the military of their Country. On this point there are many different opinions and the debate is not closed. For example, Gros Espiel would agree with this conclusion if it were about a war of intervention but against it if it were a legitimate exercise of national defense.

Finally, the right to peace also has as its holder the humanity. Gros said that humanity as a holder of international law came about in 1967 with the approval of the Treaty on Outer Space, which is said to belong to humanity. Shortly after, formal talks began on the Common Wealth of Humanity in the depths of the sea. For Dr. Gros Espiel legally, the International community, as an entity distinct from the States, the individuals, and the people, would represent humanity.

The most recent developments on the matter of peace have not come up in the legal or human rights forums of the UN but in the UNESCO, that is to say, in the areas of education and culture. In this Organization what has most recently been written and recognized is about the culture of peace, or of non-violence.

In 1996, in my work on human rights and the culture of peace, I wrote that the construction of a culture of peace should begin with the clarification of various premises, among them:

- a) Violence is not inherent to the human being, but is a cultural expression, which is why it does result in being naïve to attempt to reduce it to its minimum expression. The Declaration of Seville on Violence established that it is scientifically incorrect to say that War or other aggressive behavior is genetically programmed into our being.
- b) Conflict and controversy have always been present in interpersonal, intercommunity, and international relationships; but before the presence of conflict, one cannot fall into the fatalism of saying that the

conflict may only be resolved violently. On the contrary, there is an existing conviction that conflicts can, and should be resolved through peaceful means.

- c) A culture of peace can be based in the universal values of respect for life, liberty, justice, solidarity, tolerance, and equality between women and men.
- d) The Culture of Peace should be based on a model of economic development that integrates the concept of sustainable human development, in other words, as the UNESCO states, *"There is not lasting peace without sustainable development, an endogenous development that eradicates the roots of frustration and eradicates poverty and exclusion."*

The culture of peace, I wrote in 1996, is not a moment, or an activity, it is not even a succession of events, but a process that should be constructed; a never-ending process that goes from the simple to the complex; from the

common to the different.

The culture of peace may only be constructed through accords that do not implicate the homogenization of society nor believing that differences have been resolved by magic, but supposing that without being identified with the interests of any specific sector, assumes the fundamentals of each one and transcends them all. Coming to an accord as a method can only be based on dialogue, negotiation, and tolerance.

The culture of peace as a form of social and political life together should be characterized by the following:

- 1) By overcoming poverty, and particularly extreme poverty.
- 2) By the constant search for the fair distribution of income and wealth;
- 3) By the existence of models for economic development that share the practice of sustainable human development;
- 4) By having an effective administration of justice and proper law enforcement;

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On the Web

- Section Homepage: <http://www.wsba.org/lawyers/groups/worldpeace>
- Section Links: <http://groups.yahoo.com/group/wsba-worldpeace/links>
- Join Our Listserve: <http://groups.yahoo.com/group/wsba-worldpeace> (click on blue button)

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- 5) By the permanent existence of the Rule of Law and because this does not only intermittently or eventually appear;
- 6) By practice and experience in the use of the method of peaceful solution of conflicts;
- 7) By the permanent practice of democracy;
- 8) By the complete and full respect for all internationally recognized human rights;
- 9) By having a relationship with nature that guarantees her conservation and the renovation of natural resources;
- 10) By the conviction that the essential objective of national security is the security of the people, the individuals, and the citizens in full exercise of their rights.

I would like to conclude these reflections expressing that I believe terrorism to be the maximum level of violence, which brings about the nullification of human rights. Not even War is as appalling as terrorism; while the former has rules, reflecting on the Four Conventions of Geneva and its two protocols, terrorism does not have any rules. While in War primarily soldiers and combatants are killed or wounded, by terrorism those who lose their lives and their health are innocent civilians that are not related with the cause of the conflict.

I am also convinced that violence only gives birth to more violence and produces vicious cycles that prove to be very difficult to break.

Legitimate internal and international defense is a logical response, but necessarily temporary and transi-

tional. The definitive solutions are only reached using the elements of the culture of peace.

As a lawyer and as a defender of human rights, I conclude by stating that I am convinced that soon we will be living in an era of the return to humanism in which the dignity of the human being will be the true measure of all things. If War is born in the mind of men and women, we will work on their minds today in order to leave our children a world of peace.

The great scientist, Albert Einstein once said: *"Peace cannot be kept by force. It can only be achieved by understanding."*

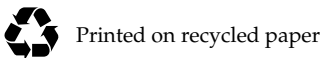
Thank you
Jorge Madrazo
24 November 2003

For More Information:

- Declaration on the Right to Peace:
<http://www.unhcr.ch/html/menu3/b/73.htm>
- Universal Declaration of Human Rights:
<http://www.un.org/Overview/rights.html>
- More about Consul Madrazo:
http://www.sre.gob.mx/seattle/ing_consul.htm
- For a recording of this speech: contact the
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Anne Heindel on the International Criminal Court from page 2

The jurisdiction of the Court includes the power to “investigate individuals, not states, not corporations.”

The jurisdiction of the Court is “complementary to national and regional justice systems.”

“Prosecution will be only of war crimes committed on a mass scale, and pursuant to a systematic state policy.”

“Prosecutions are to occur “only when a state is so lawless it no longer has a functioning justice system.”

“The Court is not designed to occupy the field... but only to fill in gaps [in the operations of other local, national, or regional courts.”

“The Paris and Canadian Bar Associations have led an effort to develop a specialized defense counsel group,

...experienced to provide defense for the relevant claims.”

“A permanent court is necessary because the political will may not be available to create an ad hoc tribunal [for war crimes, crimes against humanity, genocide] in every case where this is needed.”

Anne Heindel was the featured speaker at the WPTL Section’s monthly meeting on September 15, 2003. Ms. Heindel currently serves as Deputy Convenor for the American Non-Governmental Organizations Coalition for the International Criminal Court (AMICC), a program of the United Nations Association of the United States of America, acting as legal advisor on international criminal law issues and representing the United Nations Association at meetings on the International Criminal Court (ICC). More information is at <http://www.amicc.org>.

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Newsletter Contributions

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