

# Denis Halliday - *Why International Law embarrasses the UN*

Erskine Childers Lecture, Friends House, London.  
Thursday 6th June 2002.

**Denis Halliday**, former United Nations Humanitarian Co-ordinator in Iraq (1997-1998) will give Action for UN Renewal's Erskine Childers Memorial lecture on **Thursday 6th June 2002 at Friends House, Euston Road, London.**

The title of the lecture is '**United Nations: The Embarrassment of International Law**'; and the meeting was chaired by **Jenny Tonge, MP**, Shadow Minister for Development for the Liberal Democratic Party.

After a 34-year career with the UN (rising to the Assistant Secretary-General level) **Denis Halliday** resigned in October 1998; to enable him to speak out publicly about the terrible impact of UN economic sanctions on the people of Iraq, free from the constraints imposed on him by his UN post. In 2000 Denis Halliday was jointly nominated for the Nobel Peace Prize with **Kathy Kelly** of *Voices in the Wilderness*, the campaign against sanctions on Iraq

Below is the draft text of the lecture.

**Check Against Delivery**

## **United Nations: The Embarrassment of International Law**

**Mr. Chairman,**

**Ladies and Gentlemen**

**Friends**

Many years ago, Secretary-General **Dag Hammarskjöld** said he saw the United Nations as "a venture in progress towards an international community living in peace under laws of justice". I suspect that he would be disappointed at the progress the UN has made since. He might well note that the "law of Justice" - international laws - are indeed in place, but sadly rejected, violated with impunity, or simply neglected, by many member states. Security Council failure to respect the provisions of international law, flowing from the Charter, now sadly embarrasses the United Nations and its member state. Conspicuous is the absence of balanced application - domestically, internationally and most damagingly via decisions of the Security Council.

Nevertheless the United Nations remains the most essential instrument for world peace and security. Global interdependence is an integral reality of the same. International law and its proper application by member states of the UN are essential to that productive interdependence - that peace and security. The Security Council is charged with that responsibility - the maintenance of that global well-being for all - North and South.

Inequalities amongst nations and their peoples are only too apparent inside the United Nations, inside the Council, and throughout the world. We are all too familiar with the terrible impact of: North-driven globalization; ethnic strife; genocide; the internally displaced; refugees; military aggression in several forms; modern warfare and its high level bombing of civilians; exploitation of the environment; abuse of non-renewable natural resources; and application of double standards in foreign policy and the work of the Security Council, to list a few.

In short, and it is bizarre, in the year 2002, the ancient notion of "might being right" is alive and well, and perceived by some to be acceptable! Speaking from my layman's viewpoint, and from my own experience serving the United Nations - recognizing that 34 years does not an expert make - in particular in respect of the workings of the Security Council, this is where I would like to focus this evening. It is international law and its proper application that must drive the work of the United Nations - not the "might" and national interests of some, the most powerful, member states.

A sole hyper-power is dangerous. Rejection of international law is both arrogant and irresponsible. And despite the inherent weaknesses of the Charter, the peoples of the world need the United Nations to function - not as intended in 1945 - but more in the best interests of all the peoples and all states around the world.

This is not a "feel-good" lecture on the United Nations and yet I am the first to underline the good work that is being accomplished everyday by agencies and bodies within the UN family. Instead - still a believer in United Nations value-added - I want to share some personal thoughts on the UN and its application of international law. Let's look at what is the reality of application today; some of the consequences and what we might want to consider doing about creating positive change. Or can we indefinitely ignore corruption of the Charter, already imperfect, by the Permanent Members? I do not believe we can.

However, first let me say that one of the reasons I was pleased to accept the invitation to deliver the Erskine Childers lecture for 2002 is that over many years I had the pleasure to work with Erskine himself.

I first met him in Bangkok, Thailand when he headed up an innovative project of his own making funded by the United Nations Development Programme to demonstrate the importance of communications and information in the successful implementation of development assistance projects. He showed most effectively that flows of information within-country between the parties concerned such as government, community and individual were invaluable for success.

Later in UNDP headquarters in New York, again I had the pleasure of working with Erskine when as head of UNDP information services, he bought fresh capacity to information in support of development activities within the UN system of organizations itself. And finally, when I was assistant Secretary-General for UN Human Resources Management, I met with Erskine as he collaborated with Sir Brian Urquart on a number of think pieces. Let me say quickly, I was tapping his brain, not he mine!

Included in my thoughts for tonight are some ideas, that he and Brian Urquart developed in their book published in 1999 entitled "A WORLD IN NEED OF LEADERSHIP: TOMORROWS UNITED NATIONS". Inter alia, what this publication addresses are various means to enhance the effectiveness of the UN, including the concept of one term Secretary-General selected in a thorough and rational manner on the basis of identifiable criteria. And of course, that kind of revolutionary change we have yet to see. And we sadly have to acknowledge that most member states, certainly the powerful veto members, do not appear to want an independently strong Secretary-General who might just take initiatives, or use his power under Article 99 of the Charter to publicly admonish and demand compliance with the obligations of membership.

I think that Erskine would agree with me that global well-being, in the broadest sense, demands that we, and the member states, must learn to perceive internationally. And that includes awareness of, and commitment to, the obligations that the United Nations imposes and the importance of strength, authority, integrity and effectiveness. And a future of global peace and security for all, without a legally functioning, morally strong and fully participatory UN is unlikely, perhaps impossible.

We need to remember that the UN is the only legitimate world body intended to legislate, promote and demand respect for human rights and the well being of all men and women, North and South, without regard to race, sex, language, or religion, as set out in Article 1 of the Charter. These are goals that I imagine all of us in this room share. But the UN and its ability to serve those ends are in great danger.

Recently we have witnessed the humiliation of the Secretary-General and the Security Council by outright rejection of the Resolution to have an investigation of the tragedy of Jenin in the occupied territories of Palestine. We should not forget the deliberate by passing of the UN in the form of the NATO attacks on Kosovo. We see Iraq having little choice but to refuse reentry of UN disarmament inspections given American intentions to attack militarily once again, Washington legislation calling for the overthrow of its head of state and the disgraceful record of UNSCOM functioning as an intelligence source. Can we ignore the illegal aggression on the people of Afghanistan undertaken without any discussion by Security Council under Chapter VII of the Charter, a prerequisite for any such military action, and in violation of defensive-only constraints set out in Article 51?

My talk this evening is somewhat intended to unsettle your thinking, to have you consider the necessity of reform in respect of the United Nations, in particular the Security Council. And then do something about it. And I am hopeful that some of you are in positions, or will be in positions someday, to do just that.

One of my own failures, frequently reinforced by my daughter, Fransisca, is that my generation has neglected many aspects of the global environment. I am sure that you are all sensitive to the need for environmental protection and monitoring. Today, we are also guilty of neglecting the United Nations to the extent that we now have evidence of an urgent requirement of oversight. I refer to active monitoring of the most important and fundamental work of the organisation, namely peace and security - the unique mandate of the Security Council. Just as we neglect the corruption of the global environment, we are also neglecting the corruption and proper functioning of the Security Council. Certain member states are treating the mandate of the Council and its proper application of international law as carelessly as many of us treat the environment and the earth's scarce natural resources.

You well know the history of the UN and its origins in 1945 after the appalling horrors of World War II. You know that the victors of the war established the UN to tackle worthy goals. Unfortunately, they also determined to protect their own national interests and desire for control. Another League of Nations, of which the USA was not a member, was to be avoided. This was done inter alia through the establishment of veto power and permanent membership of the Security Council for the chosen few i.e. the victorious nations of the War. It was done with the participation of only some 50 independent states. Happily, thanks to the end of most colonial regimes, today the UN has 188 member states; 189 next September with the addition of Switzerland. Whether these member states are truly independent or not, I leave you to decide. It is difficult to define independence in the context of economic and military domination by a few powers - wedded to the "might is right" concept.

Despite the hidden agendas, and not so hidden agendas of 1945, enlightened work was accomplished in San Francisco when the charter was adopted and again in 1948 when the Universal Declaration of Human Rights was established. In addition, the General Assembly throughout the 1950s and 1960s played a key role as the venue and instrument for the global process of decolonisation. However, the unmonitored and unrepresentative power of the Security Council today is undermining much of that hopeful and participatory beginning.

To add to that over, the years the role and core importance of the fully representative General Assembly has been diminished. This is also true of the International Court of Justice - the World Court. The important work of the Economic and Social Council has been neglected as development assistance and cooperation have been consistently underfunded. Instead, billions of US

dollars are invested in military research and development, manufacture and sales, by the same five Permanent Members of the UN Security Council entrusted with the maintenance of peace and security.! Back to back with this madness, the most basic human rights of billions are neglected, and I refer to the rights to development, food, health care, education, employment and housing. Even the right to live, and have hope, cannot be taken for granted in our sorry world.

Obviously this must be changed. Remarkably, the head of the World Bank acknowledges that poverty, which undermines these same human rights, is the root cause of terrorism. Why did the Security Council fail to discuss that reality after 11 September? Why do major member states think that more violence such as we have seen in Afghanistan and Palestine will bring an end to terror? Why is it that the vulnerability the North now suddenly feels, does not lead to a new understanding? - an understanding that billions throughout the South feel the same life threatening vulnerability every day? And are we surprised by the violent cry for recognition and attention that terrorism represents.

It is because, the permanent members of the Security Council, the largest arms traders, have not learned the importance of investing in live people and vital communities? That seems incredible. It should be obvious that they need to splurge on conflict prevention in its various forms, instead of spending billions of dollars on war, aggressive interventions and often belated peace keeping. Peace keeping which, by definition, represents UN failure to anticipate and assist in resolution of differences before they grow out of control. The UN must invest in people before the damage is done, before ethnic strife has killed, before genocide, and before the refugees and displaced persons have been wrenched from their homes and livelihoods. Is this so complicated?

Member states with global and exploitive ambitions must be convinced by their friends and Northern allies to have an Organisation capable and primed to intervene non-violently even though that will hurt their profitable arms trade. They need to allow the UN to use its moral authority to establish respect for civil, political and other human rights, to draw down on the benefits of cultural, religious and social differences, in keeping with the Spirit of the Charter.

You will agree, I believe, that investment needs to be used to create prosperity and provide hope. Investment is poorly used when intended to increase demand for arms manufacture and sales; to open opportunities to test new dreadful weapons, including so-called smart bombs and depleted uranium; to facilitate conditions of irreparable damage to the environment; and in possibilities to exploit cheap labour and thereby set aside the economic and social rights of others. Investment should better be used to encourage and enhance social, political and economic improvements consistent with the Universal Declaration of Human Rights. Let's put our money into education, for example. Do we doubt that such an investment would reap extraordinary rewards for us all? Aggression under the guise of humanitarian intervention, or the American "war on Terror", the terrible consequences of which we have witnessed recently in Afghanistan and in Palestine, is not a productive investment for any country.

The neglect of Chapter VI and abuse of Chapter VII of the Charter by permanent member states has become increasingly questionable. And "questionable" is too gentle a word - I should say that it has become increasingly frightening for the smaller member states. And we should all be frightened. Frightened by the deadly military reaction - via State terrorism - to crisis that should be addressed non-violently by the international community under Chapter VI. And we cannot afford to forget that the vast majority of member states represented in the General Assembly have no involvement in Security Council decisions and their implementation and impact on civilians in particular. Simple international publicity, exposing consequences, double standards and incredibly Security Council commission of crimes against humanity, might suffice to diminish and ultimately end the corruption of the Charter. Public international embarrassment might curb the excesses of the Permanent Members.

For example, currently we see everyday double standards of application in the Middle-East resulting from vested interests of one or more Permanent Members. Some "friends" can reject UN Resolutions with impunity, whilst other member states do so at dreadful cost to their innocent civilian populations, punished by the UN through neglect, sanctions and often warfare. I need not name names - you will find candidates of your own!

We have seen the terrible results of failure of UN member states to acknowledge genocide - as determined by the Convention - in the case of Rwanda. The UN did no better for the thousands killed in Sebrinicia.

And as I have mentioned, we have witnessed the careless high level bombing attacks on Afghanistan, by 15,000 foot heroes, with loss of civilian life. An attack never considered nor approved by the Security Council under Chapter VII of the Charter.

And most recently we have seen America prevent the United Nations from protecting the people of Palestine from state terrorism and military invasion of Palestine space. We watch as massive destruction of human rights takes place before our TV eyes. We have UN member states that seem unwilling to comprehend the root causes of suicide bombing - the desperation of the weak, marginalized and forgotten - and thereby end the deaths of innocent Israeli civilians. Instead we see the continuation of military aggression and use of sophisticated weapons against an almost unarmed populace, responsibility for the safety of whom the UN is charged. And as mentioned, we have witnessed the almost unbelievable rejection by Israel, supported by the USA, of a Security Council resolution calling for an examination of the tragedy of Jenin.

I hardly need to remind you of the failure of the UN to stop, or even address the crimes against humanity committed by the UN-backed American coalition during the Gulf War. Are we to understand that the illegal invasion of Kuwait is justification for the Basra road massacre, or the employment of Depleted Uranium? Nor do I need to remind you of UN failure to intervene in the invasion of Lebanon, in refugee-camp massacres, the 22 year long illegal occupation of southern Lebanon combined with

repeated punitive air attacks on civilian infrastructure in breach of the Geneva Conventions and Protocols

The common factor in these neglectful cover-up situations is the vested-self interest of Permanent Members of the Security Council. The same member states entrusted to defend the word and spirit of the Charter, not diminish it. And certainly not actively corrupt it.

I mention these cases of double-standard and national self-interest in Council decision-making to underline the dangers now, and ahead. If we are to have in the coming decades, a United Nations that protects the best interests of the majority of people throughout the world, North and South, as opposed to protecting the vested interests of Northern powers, reform has to be undertaken.

And clearly reform itself will not suffice unless there is significant attitude-change on the part of member states, particularly the veto wielding five. I am not advocating world Government. I am calling for recognition that no one country is above, or immune to the requirements and obligations of international law. Respect for such law ultimately best serves, and protects, all member states despite the need for periodic compromise and adjustment of domestic law. When we have rejection of such law by the permanent five, and in particular by the United States, we have a situation which undermines the efforts and moral authority of the UN to have other less powerful member states comply.

This crisis of rejection applies to such fundamental provisions of international law as: the Rights of the Child; the Convention on Land Mines; the Kyoto Accords; the Convention on Germ Warfare; the Laws of the Sea; the International Criminal Court to mention a few. You will appreciate that not only is American leadership undermined by its unwillingness to be part of such global legal provisions, but more importantly the credibility of the UN itself is undermined. How threatening, how embarrassing for the world body to have its most powerful member states not endorse such important international legal provisions.

Congressional rejection of UN provisions and international conventions, and its willingness to disregard UN Security Council Resolutions is most damaging. A situation not helped by having an unfriendly host country - an issue Erskine Childers addressed - openly criticize and threaten the Organisation, and certain member states wishing to appear at UN Headquarters. And all this, when failing to pay financial assessments, endlessly hammering the UN for its bureaucracy and undermining - and effectively removing - its Secretary-General when dissatisfied.

The voices of the South must be heard in the Security Council and the power of the more representative General Assembly needs to be restored. The World Court needs a greater role with binding decision making. The weakening of the independence of the UN has led to a crisis of confidence in the Organisation today that is very apparent, particularly as one travels and speak with people in Europe, the Middle-East and throughout much of the South.

If we are to obtain enhanced credibility for the UN, the Security Council cannot remain unrepresentative. It cannot continue to be manipulated by a few. It must be restructured. It must have full and effective representation of all the countries of the world North and South. The majority of people, including the great and small countries of the world, must have rotational permanent and equal presence on the Council. In my view, we must have permanent seats for elected regional representation, that is for the member states of Central and South America, Southern and South-East Asia and of course, proper permanent representation of Sub-Sahara Africa and the Middle-east.

We must change to old boys club of Five into a non-veto holding chamber, where the voices of the south will be permanently present, and more importantly heard and respected. That will not change decision making. That will provide added strength and wisdom to the Council. That will bring viewpoints to bear that remain largely unheard today. And we must demand only one standard of application for all, including the veto-powers, with respect for the intent and spirit of the Charter, the Universal Declaration of Human Rights and other aspects of international law.

These changes need to be combined with an oversight authority to monitor the performance of the Council, the quality of decisions, their compatibility with the Charter itself and other international legal provisions.

If we do not move the UN in this direction, much of the world will continue to question its very legitimacy and its decisions, which impact so widely and sometimes so dangerously, on countries that have no access to the decision making processes. And without this legitimacy, the role of the Security Council and the UN itself is undermined. This will take the UN to a situation more untenable than we have today - where the failure of the Permanent Members and other states to respect international law not just causes great embarrassment, but damages the importance, credibility and authority of the United Nations.

I believe that those of you, associated with the United Nations, who want to see an Organisation that is respected and whose decisions re compatible with the Charter, must recognize the responsibility that each one of us has for the restoration of credibility. We all must do our part to bring the UN back from the brink - because that is where it is today. We need to work for a membership of states and participation of civil society that revitalizes and enhances the Organisation, and accepts the obligations of the Charter and other aspects of international law. The resolutions of the Council and the GA must be compatible with the spirit and intent of the Charter, and so must the consequences of these decisions as they apply top member states and their peoples.

We need to work towards remaking the United Nations in the spirit of the preamble to the Charter, and I quote ..... faith in fundamental human rights, in the dignity and the worth of the human person, in equal rights of men and women and of nations large and small .....

Thank You,

Denis J. Halliday

May 2002