

United States Mission to the United Nations

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Statement by Ambassador John C. Danforth, U.S. Representative to the United Nations, on Justice and the Rule of Law, in the Security Council, October 6, 2004

Thank you, Mr. President.

This subject, “Justice and the Rule of Law,” is so quintessentially British that there is no wonder this month’s presidency chose it as the subject for open debate.

In the U.S., first year law students study English common law; and American concepts of law, government and individual rights, not to mention our language, literature and basic values derive from our British heritage. Some of those points might be disputed on the other side of the Atlantic, but over here, Mr. President, your offspring are eternally grateful.

Today, I want to highlight one aspect of the rule of law: the importance of transparency. Transparency is a true engine of the rule of law, and can promote a responsive and trusted judicial system in both stable societies and those scarred by conflict.

For the rule of law to grow in a society, the people must know the law. The law must be transparent to all citizens. That means the judicial system – courts, police, prisons – must be open and visible.

Making the law available means educating the citizenry. It means that judges must reach and publish reasoned decisions in cases. Star chambers are incompatible with the rule of law.

The law may seem to require special expertise to understand. And if the law is not accessible to the ordinary citizen, if the ordinary citizen cannot know the law, then the rule of law will be far out of reach. Knowledge and openness are the best bulwarks against arbitrary decision-making, whether by courts or by governments.

The United Nations in particular should marshal its resources to help societies emerging from conflict to develop their national judicial capacities in a manner that is accountable to their citizenry.

But the rule of law cannot only be imposed by international bodies, to make the rule of law effective, citizens must know their own government. They must understand how it works and how to influence it. Where legal and judicial matters necessarily involve certain confidences and restraints on sharing of information, absolute secrecy can encourage corruption.

Transparency is an engine to a modern economy and to participating in the global economy. Access to information technologies plays an important role in open and free societies, both to

stimulate economic activity and to provide citizens with information to know and monitor their government, including the judicial system.

Therefore, in addressing the problems of countries that have been engulfed in conflict and are seeking to build stable, peaceful, and prosperous societies, we should assist with developing a judicial system based on transparency and openness.

Mr. President, the Secretary General's Report on the Rule of Law (S/2004/616) has some valuable insights and recommendations. It rightly stresses the imperative of respect for the rule of law in any democratic, peaceful and prosperous society. It underlines the importance of fair criminal justice. It catalogues useful actions the UN Secretariat can take to make itself effective in promoting the rule of law and helping countries build the institutions necessary to have the rule of law.

The United States has long supported efforts to hold responsible perpetrators of atrocities, such as genocide, crimes against humanity, and war crimes. We have supported efforts to create the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, when countries were not willing or able to exercise national jurisdiction. In Iraq we are supporting Iraqi led efforts to create the Iraq Special Tribunal. In Sudan, we have repeatedly urged greater action to stop the atrocities.

We note, of course, that the report expresses some views we do not share. The report does not properly respect national decisions about criminal justice, particularly sentences a particular society may deem appropriate. And, as this Council and the wider membership of the United Nations know full well, the United States has fundamental objections to the International Criminal Court created by the Rome Statute. Our problems with the ICC concern the rule of law. We believe the Court should not have jurisdiction over citizens of States that are not parties to the Rome Statute. We believe that the Rome Statute does not reflect due process of law, as we understand it, because, among other things it allows multiple jeopardy and does not provide for jury trials as our Constitution requires. We believe the ICC runs a high risk of politicization and is not accountable. And we believe this ICC clashes with the international system of the UN Charter. It should come as no surprise therefore that we do not endorse the report's embrace of the ICC. We can accept the Presidential Statement today, because it respects our inability to support the ICC and does not explicitly or implicitly endorse the ICC.

Mr. President, I commend the United Kingdom for its historic leadership on the subject you have brought to the Council for its attention.

Thank you, Mr. President.

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