



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2003/NGO/44
28 February 2003

ENGLISH AND SPANISH
ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 17(a) of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS:
STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement* submitted by Federation of Associations for Defence and Promotion of
Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated
in accordance with Economic and Social Council resolution 1996/31.

[30 January 2003]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

The status of International Law and the threats it suffers

Compliance, implementation and internal coherence of the international legal system are relatively threatened. With the new century, the recent historic events have stressed a trend initiated in the last decade of the 20th Century: the tendency of some States to breach essential norms of International Law, while at the same time trying to justify and legitimize such breach. This could lead to a certain involution in the content of the international legal system. From the Federation of Human Rights Associations we want to publicly denounce this situation calling upon States to be conscious of it in order to avoid unwanted situations for the international society.

In 1945, States established the United Nations Organization determined “to save succeeding generations from the scourge of war”, “to reaffirm faith in fundamental human rights”, “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained” and “to promote social progress and better standards of life in larger freedom”. Then, States were trying to consecrate new values as inspiring elements of the new world order. The biggest flaw of the international legal order, as it is well known, is the absence of a centralized executive power. This is the last chink of State sovereignty that impedes moving from an international society to a real international community. But in spite of it, certain elements of such community do exist when we see the presence of some values that have, as an ultimate goal, the protection of human-kind as a whole; values that could be the content of an international public order. Thus, human dignity, peace, equal sovereignty and the self-determination of peoples, the preservation of the environment and the right to economic and social development. Some of these values have translated into preemptive norms: the principle of due respect to human dignity; the principle of prohibition of the threat and use of armed force; the principle of equal sovereignty of States or the principle of self-determination of peoples. It is undeniable that, since 1945 and up to the present moment, due to State practice, an international legal order featuring humanization, socialization and democratization has been formed.

Nevertheless, when certain States tend to adopt policies and behaviors that are contrary to these common values, even contrary to some of these structural principles... which are the consequence? Since those who breach cannot always be sanctioned, one of the main consequences is the dissonance between the legal order and the society it intends to rule. And when any legal order does not correspond to the behaviors within its society, either the Law changes to match the new aspirations; or the members of the society redress their behavior. There are many demonstrations of this dissonance, but the most serious ones, taking into account the relevance in the international society of the subject that undertakes them, could be:

- Against humanization of international law, the trend towards the development of anti-terrorist and national security legislation that tend to undermine human rights and fundamental freedoms, while imposing excessive or arbitrary restrictions.
- Against the peace-making function of international law, the non-use of the collective security system of the Charter of the United Nations, as happened in Kosovo and is about to happen in Iraq; as well as the proliferation of the production and stockpiling of nuclear weapons

- Against socialization provided by international law, the support to a global economic system where individual economic growth (that favors multinational enterprises without measure) supersedes the basic interest on the human being.

At the same time, we perceive a trend toward moving from multilateralism to a particularism that loses sight of the interests of the international community as a whole. The UN itself, created to be a center for harmonizing the actions of the nations in the attainment of the values established in San Francisco, is used for particular hegemonic interests. In such manner, the democratizing function of contemporary international law and universal international organizations loses much of its strength. It seems as though the vision of the UN as an instrument of constructive international cooperation, stressed by Secretary General Dag Hammarskjöld, is being definitively forsaken.

The situation is critical. We are witnessing a return to a nineteenth-century situation that we thought was overcome forever. The current trend does not move towards a global government, but towards an international society of diverse alliances of States, with a power, the United States, clearly dominating over the rest. This prying of the involution of international law, with features of humanization, socialization and democratization receding, is only that: a prying. We must be cautious and establish that the changes in international law, through practice, take their time: they need a general, uniform and constant practice. We are in front of the attitude of some States. Not of all of them. For this reason, we publicly ask before this international forum to be conscious of this critical moment and a subsequent modification of the policies and behaviors of the relevant States. Thus, for instance,

Concerning the protection of the value of human dignity the Federation shares the worries expressed in the common declaration of 10 December 2001 by 17 special rapporteurs and independent experts of the Human Rights Commission, observing that the new anti-terrorist and national security legislations are being implemented against certain specific groups (migrants, asylum and refuge seekers, certain religious and ethnic minorities, human rights workers, political activists and media professionals). The Federation recalls that, according to international law itself, States may, in exceptional circumstances, suspend certain guarantees. But it reaffirms –in the sense mentioned by the Human Rights Committee- that such suspensions can only be applied before exceptional situations and complying with strict formal and substantive conditions. Likewise, certain essential rights, understood as basic norms of humanity, cannot be suspended under any circumstance, not even in a situation of full-fledged armed conflict.

Concerning the protection of the value of peace in the international legal order, the Federation recalls that current legal rules do not allow any “right of preventive self-defense”. Among other reasons because article 51 of the Charter refers only to “armed attacks” as a cause for self-defense while excluding, unlike art. 2.4, any reference to the threat of force. We insist that no international uniform, general and constant practice allows any State to lawfully anchor this pretended right in a customary norm. We insist, besides, that Resolution 1441 (2002), of 8 November, adopted by the Security Council, qualifies itself as “a final opportunity (for Iraq) to comply with its disarmament obligations under relevant resolutions of the Council” (paragraph 2) and that “false statements or omissions in the declarations submitted (by Iraq) shall

constitute further material breach of Iraq's obligations" (paragraph 4). Nevertheless, the eventual use of force against Iraq is not automatic, since the adoption of this or any other measure must be evaluated by the Security Council following a joint report by UNMOVIC and IAEA. Let's recall, as the European High Representative for the Common Foreign and Security Policy, Javier Solana, has said, "The crisis with Iraq must be treated within the frame of the UN".

Concerning the socializing character of international law, we recall the principles of indivisibility, equality and universality of human rights; as well as the need to mobilize the international community, including States and International Organizations, in order to establish such a social and international order where fundamental rights and freedoms can be effective, according to article 28 of the Universal Declaration of Human Rights. A globalization that does not respect human rights nor favor the development of the poorer States is contrary to the values of the international legal order. Besides, we state the need for transnational enterprises, and in general all private economic actors, to assume their responsibility before the grave problems of Humanity and to commit themselves to participate in the requirements of international law. In this sense, the Federation supports in an express manner the task of the Working Group on the working methods and activities of transnational corporations.

Therefore, we publicly ask in this international forum, to the represented governments, to be conscious of this critical situation and the urgent modification of the policies and behaviors that threat the values of the current international legal order, in order to strengthen it and improve it.
