

Concluding Remarks

BRIDGET ARIMOND:

¶1 According to the programs that you all have in front of you, what I am supposed to do now is to introduce Douglass Cassel once again to make some concluding remarks.

¶2 But before I do that, I want to acknowledge a group of people who did a lot to bring this conference to fruition, and I have in mind here the students at Northwestern Law with the Journal of International Human Rights.

¶3 And if you can hear me out there, I would like to call to the podium Eric Husketh, one of the students, so that he can make a few concluding remarks.

ERIC HUSKETH:^{*}

¶4 Ladies and gentlemen, if you would just indulge me for a minute . . .

¶5 My name is Eric Husketh. I am a third-year student here at the law school, and I am one of the Managing Editors of the Journal of International Human Rights.

¶6 I would like to extend to all of you on behalf of the journal our thanks for coming, both to our audience and to our invited guests, some of whom really had to work to get here, and we noticed, and we really appreciate that.

¶7 We would also like point out that we will be publishing the proceedings of the symposium as a special symposium issue partly thanks to the heroic efforts of our court reporter and editorial staff mom, Ms. Delayne Johnson.

BRIDGET ARIMOND:

¶8 She is actually the mother of one of the staff members, not just the metaphorical mother of the entire journal.

ERIC HUSKETH:

¶9 We are an online journal. If you would like to look at what we have already published and look out for the symposium issue, we are ready accessible at www.law.northwestern.edu/JIHR, as in “Journal of International Human Rights.”

¶10 We at the Journal write about human rights and hope to work in human rights because we believe, in a nutshell, that these things matter. And most of us also believe that despite its obvious failures, some of which we have been discussing the past two days, the United Nations is essentially the best attempt our human race has ever made at realizing the dignity and safety and security of all human beings everywhere, and that is why we organized this symposium.

^{*} J.D. 2005, Northwestern University School of Law. Mr. Husketh served as a Managing Editor of the Journal of International Human Rights, 2004-2005, and took on the burden as the Journal’s primary liaison with the Center for International Human Rights in planning this symposium.

¶11 That said, we could not have done any of this without the help of one person in particular, and that is Dhana-Marie Branton, who is sitting in the back of the room. Come up here.

BRIDGET ARIMOND:

¶12 This is of course, the surprise portion of the conference.

ERIC HUSKETH:

¶13 Dhana has worked so tirelessly on planning this event that when I went back to count the e-mails that she and I exchanged over this symposium, I lost count and gave up.

¶14 If you are here today, and you all are, in one way or another, you are here because of Dhana. And we thank you so much. Dhana is taking a very well-earned vacation starting this afternoon, so we gave her a little something to have some fun with during her days off.

¶15 And that is it for me. I will introduce you now to a man that needs slightly less of an introduction. He is the director of the Center for International Human Rights, the faculty adviser of the Journal of International Human Rights and essentially the arm twister and force behind getting all these distinguished guests here and producing a wonderful symposium, and he is also the mentor and friend to all Northwestern law students who believe in human rights. That is Doug Cassel.

¶16 Thank you. Doug.

DOUGLASS CASSEL:

¶17 Well, I am “a” mentor and friend, not “the” mentor and friend.

¶18 In addition, on behalf of Bridget Arimond and Steve Sawyer on the staff and faculty of our center, I would like to count all the wonderful speakers who have joined us in the last few days as *mentors pro temporium*, if I can go back to the Latin theme which has permeated this conference.

¶19 I go often to conferences and give speeches around the world where I am introduced as an “expert” in the field of international human rights. After listening to the wonderful people who have joined us in the last couple of days, it is humbling to think of oneself as an expert on anything because we have heard a richness of experience, of quality, of intellect, of depth of commitment from so many people.

¶20 And we have also heard what we really hoped for in this conference, and that was a diversity of views on each of the major questions that confront us. And when you realize that people of goodwill, of high intellect, of profound commitment to human rights and to the well-being of humanity can reach different conclusions on very important policy issues, it is a humbling reminder that none of us has a monopoly on either virtue or wisdom.

¶21 If one writes that lesson large, it might also be a humbling reminder that perhaps no nation, no government has a monopoly on either virtue or wisdom, and that alone might suggest the need for a United Nations organization on the theory that through dialogue, not only trans-Atlantic dialogue, such as we are having in this fourth transatlantic dialogue conference, but also the kind of multilateral dialogue that takes place in the

United Nations, with all of the defects that it has and all of the individual agendas and interests that are being pursued by particular nations, with the very fact of multi-lateral dialogue might actually be a positive contribution to the policy deliberations of this superpower and of other governments.

¶22 I will not speak at length on the thanks that are richly deserved by Dhana, by the students who played a tremendous role in organizing the conference, by all of the speakers, all of whom deserve to be named honorary members of the United States Mail Service for having overcome sleet and snow and wind to bring their speeches here to Chicago, and also our marvelous partners at Leuven University. And I am delighted not only that Paul Lemmens and Jan Wouters have participated as moderators and speakers, but that in a few minutes Jan Wouters may add some concluding observations.

¶23 There will be no conclusions of this conference because there has been appropriately a diversity of views, so there would not be any one set of conclusions. Nor could there be a summary in a short period of time because too much has been addressed and properly so.

¶24 So in these concluding reflections, I will offer only some purely personal reflections on the three themes that I suggested at the outset I suspected would be recurring during the conference. What is the value of the United Nations to the United States and to the world? Under what circumstances ought preventive use of force to be permitted against non-imminent threats to security? And, what is the meaning of the collective responsibility to protect in cases of human rights crisis.

¶25 On the first point, I am not going to speak about the value of the United Nations to the world, because I think most of the world recognizes that the United Nations is a valuable organization and most governments recognize that for their own purposes.

¶26 The real dilemma, the real question, the real paradox is whether an international institution and international rules can be a value to the superpower in a situation where there is enormous disproportion of military and economic power, the question I posed at the outset.

¶27 We were reminded by a couple of the speakers yesterday that in 1945 when the United Nations was established, there was then a tremendous disproportion of power in the world, and the United States then, as now, was far and away the most powerful military and economic force on the planet, and yet President Truman decided that we ought to be part of the United Nations organization and not try to act unilaterally or solely through ad hoc alliances and coalitions.

¶28 We were reminded this morning by Ambassador Shattuck that John Kennedy forty years ago said that the United States cannot do everything; there must be a world solution to the world's problems but that we can and should play a leadership role.

¶29 I think much of the future effectiveness of the United Nations will depend on whether the United States chooses to take a leadership role not in the sense of being the answer-man for every problem that comes up but leadership in supporting the United Nations as an important instrument of international policy in dealing with these and other problems.

¶30 Part of the answer of the value of the United Nations to the United States was given, I think, very eloquently yesterday by Ambassador Luers who ticked off at the conclusion of his remarks a whole series of ways in which the UN is useful even to the superpower, and I will not repeat those.

¶31 I think it was also given by President Bienen in his assessment yesterday afternoon when he pointed out that we certainly can now see in retrospect – some of us thought we saw it ahead of time – in the case of the Iraq intervention, that the United States has paid a very heavy price for trying to go through an ad hoc coalition without the broad support and legitimacy at least internationally, if not in Iraq, that UN endorsement would have brought.

¶32 I think it is important to remember what Ambassador Luers told us yesterday, that we cannot simply scrap the United Nations or so marginalize it as to render it irrelevant and expect to start up some new organization that will be free of all the deficiencies of the United Nations. That is simply not possible, politically or realistically in today's world – so what do we do with the United Nations whose defects are being shown even now in its failure to respond in a timely and effective way to the deaths of tens of thousands of people in Darfur, to give only one example.

¶33 One answer I would give is to lower expectations as others have suggested. To say that the United Nations is a valuable organization, a useful organization, a necessary organization is not to suggest that the United Nations can somehow rise so far above the agendas of its member states that it is going to behave in the idealistic way set forth in the Charter. We have to be realistic about what the United Nations can do. It is not going to be able to act in many situations where we wish it could and would. But that does not mean that it is not a useful organization.

¶34 The second point is notwithstanding the group dynamic issue that Dr. Rothstein appropriately raised, the United Nations is basically a front man for its member states and particularly its more powerful member states. And we need to stop blaming the United Nations every time it does not act when, in fact, the real sources of failure of its action are the member states.

¶35 And Rwanda is a case in point there. Nobody should blame the United Nations for not intervening in Rwanda. They should blame Bill Clinton, and they should blame several other leaders of governments who had the military capability but not the political will to intervene to save eight hundred thousand human beings.

¶36 Now, in saying that, I do not want to get too sanctimonious, because it is somewhat easy to say today they lacked the moral courage to save the lives of eight hundred thousand human beings. At the time they were making these decisions, they probably did not realize the magnitude of the consequences of their failure, but nonetheless, it seems to me they knew enough that they should have acted, and that is when I place blame on the governments and not the United Nations per se.

¶37 The United Nations cannot act where the major governments will not give it the support it needs.

¶38 The United Nations organization was not set up to be an autonomous center of political will to go out and do the things the member states did not want it to do. It was set up to be a club of governments, and the Secretary-General of the United Nations, notwithstanding his impressive title, was not set up to be a commander in chief or a president with all the powers of decision that that implies. He was set up to be sort of the equivalent of a town manager.

¶39 The third point is that the United Nations must be reformed. If it continues along its current structure with its current track record, it is headed only toward further marginalization, so in that regard I think the report of the High-Level Panel is crucial.

The report of the Jeffrey Sachs panel is extremely important, and what will happen during the debates and deliberations in the year 2005 will be critical in terms of whether the United Nations can play a valuable role in the future.

¶40 On the second theme, the use of preventive force against non-imminent threats, the High-Level Panel Report appears to reaffirm a sort of strict construction of the Charter, one that I have been publicly advocating for years, namely, that the use of force is permissible only in two circumstances: one, when authorized by the United Nations Security Council to deal with a threat to international peace and security, and second, in self-defense.

¶41 And with regard to self-defense, there is a great deal of language in the High-Level Panel Report that appears to say that self-defense can be used only against an actual attack or an imminent attack but that a preventive use of force against a non-imminent attack cannot be done unilaterally in self-defense but can be done only with the authorization of the Security Council.

¶42 On the other hand, we have heard from Lord Hannay who did have to leave before the concluding sessions because he is off to address similar address in Ottawa today, but we did hear from Lord Hannay the analogy, I think an appropriate analogy, yesterday, which is the members of the Panel, these are experienced people and real world practitioners, practical realistic folks, did not entertain the illusion that they could take the little fusion strings of UN rules and tie down the Gulliver giant of the superpower in the situation where the superpower feels very strongly that in its own self-defense or for its own security interest that it needs to act unilaterally.

¶43 In the recent presidential campaign, neither John Kerry nor George Bush was willing to accept that proposition, and I expect it will be a long time before we see any American president or serious presidential candidate who would accept a UN veto over US national security interests. One can agree with that or disagree with it, but it is a reality, and in the face of that reality, it may be that the Panel went as far as it could.

¶44 It wrote a report which rhetorically attempts to reduce as much as possible the scope of unilateral action. Indeed, if you read it as I initially did and many others have read it, it appears to rule out unilateral action for preventive military action against non-imminent threats altogether, and yet Sir David strongly hinted yesterday that if you read it very carefully, there is a bit of a loophole because it says what you do is you go to the Security Council. If they give you your authorization, then fine. And if they do not, you go back and you do some more negotiations and you do some persuasions, you do some deterrents, you do what you can, and if all that fails, the report says, "In the end, military action can be revisited. Military option can be revisited."

¶45 But, what the report does not say exclusively in that particular sentence is that the revisiting requires a second trip to the Security Council. It leaves it open. It is a creative diplomatic ambiguity. It allows the United States Government a way to accept the Panel Report and at the same time it allows others, perhaps, to argue that that sentence should be interpreted to mean not a unilateral use of force but a collectively authorized use of force. An example of the creative diplomatic ambiguity that may be the best that they can do in the real world of power imbalance.

¶46 A collective responsibility to protect. The High-Level Panel endorses a collective responsibility to protect when various criteria are met ultimately for military intervention to deal with mass atrocities. Rwanda shows us that there is a need for it. Darfur, in my

opinion, and I am not quite sure I would be as modest about this as Human Rights Watch, Darfur in my opinion shows us that military intervention is necessary. Too many people have already died. It is time to stop quibbling; it is time to start acting, but that is not possible diplomatically or politically at the moment.

¶47 What I think is very important in the endorsement of military intervention in humanitarian crises or human rights crises by the High-Level Panel Report is their limitation, and their limitation is that it should be done only with approval by the UN Security Council and – and I think this is a necessary partner to that recommendation – they ask each of the five veto powers to adopt a policy of abstaining from the use of veto in any case of mass killing.

¶48 So that what they are really saying is, “Let it go to a vote in the UN Security Council. If you get that vote, go ahead and there should be no veto.” Whether the P5 will be willing to accept that recommendation, we shall see, but if both of those prongs of the recommendation were adopted, it may be the best solution.

¶49 On Darfur we have heard a lot of talk about the need for accountability and prosecution before the ICC or some other form or some other criminal jurisdiction, and I agree with all of that, of course, but I think it is important to remember the experience we had in both Yugoslavia and Rwanda. What was that experience?

¶50 The experience was that the international community was not willing to take timely military action to prevent mass slaughter in either country. And so as a sop to public opinion, it created international criminal tribunals to prosecute the horse after the horse was already out of the barn.

¶51 Now, I am not against international criminal tribunals or other forms of prosecution, we need those, but they cannot be used as an excuse for the inaction up front while the killing is taking place or before it takes place to stop eight hundred thousand deaths in Rwanda, to stop – I do not remember how many deaths in Yugoslavia, and to stop tens of thousands of deaths already in Darfur.

¶52 So while we should pay attention to the issue of criminal prosecution of the criminals in Darfur, we should not allow that to be the only debate. The debate has got to continue over what can be done in a real way to stop the killing and the dying now, and that is not an easy debate when you have, as we have heard, China and Russia both prepared to veto any effective action. Let me conclude by suggesting that Darfur may be an example that illustrates, once again, the value of transatlantic dialogue, and if I may suggest, transatlantic partnership.

¶53 With regard to criminal prosecution in Darfur, I agree strongly with – I can not remember whether it was Ambassador Scheffer who made the suggestion, but the EU really needs to take the lead on it. This is the worst possible time for the United States to be taking the lead on prosecuting senior leaders of an Arab Muslim nation in the wake of Iraq and also particularly when one of the clearly logical vehicles for doing that is the International Criminal Court, and the United States, as we all know, is opposed to the ICC.

¶54 So if prosecution is going to take place, it may well be that it is going to have to be before the ICC, and the only way that is going to happen is if the US takes the step back, abstains assuming that appropriate conditions are met for effective prosecutions, and Europe takes the lead in somehow trying to persuade Russia and China not to block it.

¶55 On the other hand, in the case of effective action to intervene, not criminal prosecution, but some form of intervention beginning with effective sanctions that should have been imposed many months ago, and possibly including military action as well, there it may well be that the Europeans have neither the will nor the disposition to carry the ball as far or as fast as it needs to be carried, and there may be a greater role for the United States on that side.

¶56 Whether all of that is true, I do not know.

¶57 What I am certain of is that dialogue across the Atlantic not only at the level of governments who talk with each other anyway, of course, but at the level of people who are concerned as you all are, and I am tremendously impressed at how many people have been occupying these chairs now for about forty-eight hours straight.

¶58 You could have flown to Vladivostok and back during the time you were sitting here. But by people who are concerned about international affairs, that we too have dialogue with people across the Atlantic. I, frankly, was surprised even though Paul Lemmens and I are good friends, and we have co-taught a course together, and we do the summer course together every year, I was quite surprised if not taken aback, Paul, by the tone of your presentation on Darfur.

¶59 And I think it is an indication of just how important it is to hear other points of view. Because I know you are every bit as committed to human rights as I am. And so to listen to your point of view on Darfur, I think is very valuable for me, and I think that is just one indication of why these transatlantic dialogues are useful.

¶60 So I will not extend my remarks further except to say thank you all for coming.

¶61 There will be a transcript prepared. We will be disseminating it in various ways, and obviously each of the issues that we have begun to discuss today has a lot more to be said about it during the course of the coming year when UN reform will at least be on the agenda. We do not yet know whether it will be the outcome of this year-long discussion that has been scheduled.

¶62 Jan, did you want to add anything?

JAN WOUTERS:

¶63 Very briefly because I realize the hour is late.

¶64 Ladies and gentlemen, these have been two extremely fascinating and rewarding days.

¶65 You may remember that we organized the first three of these transatlantic dialogue conferences in Brussels in the European Parliament. These were different but related conferences, on terrorism, capital punishment, and international criminal justice.

¶66 Once you have participated in those conferences and in this fourth great conference, you are really struck by the fact that there is such a thematic, concise unity of our dialogues, which are always situated in that broad triangle of human rights, international law, international criminal law, and the underlying values and interests in the transatlantic dialogue. You are also always struck by the quality and the level of the speakers and of the participants. This conference, I think, was definitely a new climax in that process due to its unique blend of high-level speakers and the unique participation of you, the public. I think we ought to be extremely grateful for that.

¶67 Also, I think that we, as Europeans, should draw conclusions and lessons from this type of conference, because we have heard over the last two days some critique on the

US Government. I think that we Europeans should not be amused by this criticism, but we should also draw some lessons from this so that we take seriously our own responsibilities as the European Union and as Europeans. I think the European Union can learn from these experiences. We are always prone to speak about our commitment to multilateralism, but I think this conference teaches us some very good lessons. It tells us that we have to be consistent in our actions; we have to match our words with the necessary action; we must try, as Europeans, to be partners for world peace, not just for regional peace in Europe, for a better international community, for a safer world; and we must recognize the common responsibility to protect. I am looking forward to a more comprehensive common stand of the Europeans in that respect.

¶68 I was told by Lord Hannay that we may expect a common position of the European Union under the common foreign security policy with regard to the main recommendations of the High-Level Panel Report. I will be looking forward to that, although I guess at least one point will not be the subject of that position: whether any European member should become a permanent member on the Security Council.

¶69 I think there may still be some loopholes in that common position, but this conference and the insight we acquired here teach us Europeans that we should not stick to lofty statements, but that we should really act, and that we should make a priority of certain matters, especially in terms of giving operational force to a number of human rights initiatives.

¶70 Please allow me, from the Leuven side of this venture and on behalf of our Leuven law faculty, to express our sincere gratitude to Northwestern's law faculty for taking the lead this time in this Fourth Transatlantic Dialogue and for doing such an excellent job. We look forward to many transatlantic dialogues in the years to come, and I think we accepted an offer yesterday to have the next dialogue in Cancun.

¶71 Thank you very much, Doug, and your team for all of this, and thank you for your kind hospitality. Thank you.

DOUGLASS CASSEL:

¶72 The meeting is adjourned.