

In previous issues, *PRAVADA* has carried articles on the linkages between human rights, national sovereignty and foreign aid. We continue the discussion below by reproducing, from the *Review of the International Commission of Jurists*, a recent speech by former U.N. Secretary-General Javier Perez de Cuellar. He talks of the way in which international obligations regarding human rights and international law affects current concepts of national sovereignty.

## SOVEREIGNTY AND INTERNATIONAL RESPONSIBILITY

**T**hroughout my term as Secretary-General of the United Nations I have sought to promote a partnership between the Secretariat and the intellectual community, for it has been my conviction that the United Nations should have access to the best thinking and the best ideas if it is to succeed in its global mission on behalf of peace based on justice, social progress, development and respect for human rights and fundamental freedoms. You will therefore understand my pleasure at being here with you today in this great university and for the opportunity to join you in a process of reflection on a topic that is of great importance to the future evolution of the international community: the relationship between sovereignty and international responsibility.

What I wish to say to you today about sovereignty and international responsibility is quite simple, namely that sovereignty and international responsibility are different sides of the same coin. They are intricately connected and one goes with the other. Let me explain what I have in mind.

In the Declaration on principles of international law concerning friendly relations and co-operation among States, which it adopted in 1970, the General Assembly interpreted the Charter's principle of the sovereign equality of States to mean that all States have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. In particular, sovereign equality includes the following elements:

- States are juridically equal.
- Each State enjoys the rights inherent in full sovereignty.
- Each State has the duty to respect the personality of other States.
- The territorial integrity and political independence of the State are inviolable.
- Each State has the right freely to choose and develop its political, social economic and cultural systems.
- Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

Sovereignty has as its fundamental objective to enable each people to chart its own course and to realize its full potential. However, the world has reached a stage where the full potential

of any people can only be realized through international co-operation for mutual benefit and the common welfare. International co-operation requires rules of conduct and standards of behavior which are the essence of international responsibility.

The very core of the concept of sovereignty is regulated by international standards. Let us recall in this connection the stirring words of Article 21 of the Universal Declaration of Human Rights, which proclaims:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Let us recall further that Member States of the United Nations have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for, and observance of, human rights and fundamental freedoms.

The international standards thus prescribe that sovereignty shall reside in the people and that governments shall pursue strategies of governance aiming for the realization of human rights - strategies of governance that should never involve departures from fundamental rights. What this requires is that the constitutional, legislative, judicial and administrative orders of Member States shall be inspired in their conception and guided in their implementation by the international standards of human rights; that a culture of human rights should be striven for in each country through education and the dissemination of information on human rights; and the special arrangements shall be instituted to protect vulnerable parts of the population whose rights may be in danger. The enhancement of human rights thus contributes to the enrichment of popular sovereignty.

If the character, aims and standards of internal sovereignty are thus internationally defined, the external manifestations of sovereignty are similarly regulated. The first proposition that we may make about the external manifestations of sovereignty is that it should seek to promote the goals and principles of the United Nations Charter. This is an inescapable consequence



of the solemn commitment which each of the Member States of the United Nations has undertaken by virtue of their acceptance of the Charter. From this follows another essential proposition, namely that each government is open to scrutiny by the United Nations and is internationally accountable for its efforts to live up to the precepts of the Charter. An international responsibility to the United Nations is thus an inherent adjunct to the sovereignty of every Member State.

The General Assembly codified this principle in the Declaration on friendly relations which I referred to earlier. It affirmed that every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the United Nations Charter; to fulfil in good faith its obligations under the generally recognized principles and rules of international law; to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law. In particular, the General Assembly underlined the principle that states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations. The General Assembly elaborated this principle as follows:

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

The General Assembly insisted, further, on the duty of States to co-operate with one another for the advancement of the common welfare. It declared that States have the duty to co-operate with one another, generally; to co-operate with other States in the maintenance of international peace and security; and to work together for the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all. It is interesting to note the General Assembly's pronouncement that Member States of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter. States, the General Assembly specified, should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

Each sovereign government also has an international responsibility to participate in and contribute to the maintenance of a global watch over the common welfare. The threats which humanity faces are many, including environmental, political,

economic, social and humanitarian. Weapons of mass destruction can annihilate life on the planet; environmental deterioration affects all of our lives; international and internal conflicts, natural and man-made disasters all have the potential to exact high human and material costs. States can no longer be permitted to contribute to or ignore such dangers. All are responsible for the maintenance of an effective global watch. This is an international responsibility shared by every government, every people and every organ of society. The sovereignty that resides in the people can neither be used against the people, nor for the destruction of the patrimony of humanity.

The sovereignty that resides in the people and seeks to promote the welfare of the people cannot ignore the sufferings of people, whether inside or outside its borders. Sovereignty and solidarity are thus parallel concepts. One dimension of international responsibility that impacts upon sovereignty flows from our shared humanity and by our natural desire to come to the aid of people in need wherever they are. Sovereignty and humanitarianism thus also have a close nexus.

In this regard, it is now increasingly clear, as I stated in my last Annual Report, that "the protection of human rights is one of the keystones of peace. I am convinced that this is now more an exercise in harmonious international influence and pressure - through appeals, reprimands, admonitions or condemnations and, as a last resort, an appropriate United Nations presence - than what was regarded as permissible under traditional international law. It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity."

The nexus between sovereignty and humanitarianism introduces us to the notions of the international rule of law, the peaceful settlement of disputes and the role of the International Court of Justice. A sovereignty that resides in the people and wishes to advance the welfare of the people, a sovereignty that is guided by humanitarian values should lead us away from violent methods for the resolution of disputes. Rather they should lead us to the promotion of confidence-building measures, of arrangements to detect and to avert problems, of the observance of the norms of international law and of respect for the decisions of the International Court of Justice. Sovereignty and international responsibility thus lead us back to the international rule of law.

Sovereignty, international responsibility and the international rule of law direct us, next, to the role of international institutions such as the United Nations. By promoting the rule of law, by fostering the peaceful settlement of disputes, by facilitating international co-operation for the enhancement of mutual welfare, international institutions, such as the United Nations, emerge into focus for what they really are: instruments to enrich the patrimony of each people, instruments to maximize



the yields from the exercise of popular sovereignty. International responsibility thus entails that sovereignty be exercised in such a manner as to facilitate the role of the United Nations and that, still more, everything possible be done to strengthen the role of the United Nations.

For when the United Nations is strong, each of its Member States is strong. When the United Nations is strong, each

people is strong. When the United Nations is strong, small and weak States can be protected. When the United Nations is strong, the sovereignty of the people is reinforced. Sovereignty and international responsibility thus require support for the United Nations and its sister institutions.

## THE SRI LANKAN CONFLICT AND STANDARDS OF HUMANITARIAN LAW

*The following extracts are from an appeal made by Asia Watch, an international human rights organization based in New York, to the Sri Lankan government and the LTTE leadership. It appeared in Asia Watch Newsletter, April 23, 1992.*

Since the end of January 1992, the Liberation Tigers of Tamil Eelam (LTTE) has engaged in a series of ambushes and larger offensives against the military in the northeast, some near areas housing newly returning refugees. The army has responded in kind, with raids described as "test" operations throughout the northeast. Despite news that the government and military may be divided on the desirability of a large-scale offensive, many people familiar with the situation in Sri Lanka have expressed concern that political pressures are building on the Sri Lankan government to undertake such an offensive against remaining strongholds of the LTTE in the north, mainly the Jaffna peninsula. *Asia Watch* is deeply concerned for the safety of noncombatants as military operations proceed and possibly escalate. During past offensives, combatants on both sides have committed gross abuses against civilians and engaged in indiscriminate attacks on residential areas.

In the interests of protecting noncombatants, *Asia Watch* appeals to the armed forces in the current conflict — both the central government and its armed opposition, especially the LTTE — to respect international standards on the conduct of warfare, particularly those designed to protect people who are not or are no longer taking an active part in the conflict.

Since the conflict in Sri Lanka is no longer an international one, the armed forces must adhere to the standards governing non-international, or internal, conflicts. These standards are found principally in common Article 3 of the Geneva Conventions of 1949 ("common Article 3") as well as in the Second Additional Protocol of 1977 ("Protocol II") to the 1949 Geneva Conventions. Sri Lanka has ratified the Geneva Conventions, and Article 3 by its terms applies to all parties to the conflict, that is, both government and rebel forces. Although Sri Lanka has not ratified Protocol II, many of its provisions are binding

as a matter of customary international law. This appeal draws on both sets of standards.

Common Article 3 makes clear that its application to rebel groups is not an endorsement of their legitimacy. As the International Committee of the Red Cross (ICRC) states in its authoritative *Commentary*, "the fact of applying Article 3 does not in itself constitute any recognition by the *de jure* Government that the adverse Party has authority of any kind."

The duty to uphold the standards of Article 3 is "absolute for each of the Parties, and independent of the obligations on the other Party." (ICRC *Commentary*). That is, one side's violations do not excuse violations by the other. Article 3 applies both to regular forces and to less formal units operating under their direction or control.

Article 3 protects all "persons taking no active part in the hostilities." That includes the entire civilian population and individual civilians. (Those who assume the role of combatant forfeit this protection while they are actively involved in hostilities). Article 3 also protects members of the armed forces of either side to the conflict who have surrendered or laid down their arms or are no longer able to engage in combat by reason of injury, illness, capture or any other cause. Article 3 expressly provides that all such people should be treated humanely, without adverse distinction based on race, color, religion or faith, sex, birth or wealth, or "any other similar criteria."

### II. Application to the Sri Lankan Conflict

The following acts that have characterized the Sri Lankan conflict are prohibited by the laws of war:

