

C.V. Starr Lecture
International Law in Diplomacy, Some Reflections
October 25, 2006

During his C.V. Starr Lecture on October 25, 2006, Andrew J. Jacovides of Cyprus – who is a former (and one of the longest-serving) ambassadors to the United States – spoke about the role that international law plays in the conduct of diplomacy, and also described his direct experiences in dealing with many topical issues in international law. “International law principles and rules played a substantial role in my diplomatic work,” said the Ambassador Jacovides whose wide-ranging diplomatic service included three terms on the UN International Law Commission, the UN Compensation Commission, and serving as ambassador to Germany, among many other prestigious assignments.

He first discussed the difficulties faced by diplomats in trying to combat terrorism through the use of international law. Ambassador Jacovides said that this particular topic did not lend itself to “easy treatment” because “despite intensive efforts in various forums,” the world community still cannot, up to this very day, agree on a definition for terrorism. “One’s terrorist is someone else’s freedom fighter,” he noted. Despite this obstacle, Ambassador Jacovides said that, over the years, the UN has managed to adopt 13 non-binding agreements, which he says provides a “solid legal basis for common action against terrorism.” (Some of these agreements include measures to prevent terrorist financing, travel, and access to weapons of mass destruction.) He also noted the recent adoption of the “United Nations Global Counterterrorism Strategy,” which some legal analysts have described simply as bringing together all of the important existing UN anti-terrorism measures under a single framework. While calling on the UN member nations to “consistently, unequivocally, and strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever, and for whatever purposes . . . ,” the ambassador said that the strategy still did not define “terrorism.”

In the realm of international criminal law, Ambassador Jacovides noted that he was a pioneer supporter of the establishment of an international criminal code and tribunal “long before it became fashionable.” While over 100 nations did sign and ratify the international agreement creating the International Criminal Court (which came into operation in 2002), he said that the “jury is still out” concerning its effectiveness, but that he had high hopes for the newly-established body. He added that while the ICC treaty does not include acts of terrorism within its jurisdiction of prosecutable offenses, he said, “I have no doubt that actions such as those of September 11 would come squarely within the jurisdiction of the ICC under ‘crimes of humanity.’”

During his talk, Ambassador Jacovides also suggested that the legal content of the principle of *jus cogens* (i.e., the peremptory norms of international law from which no derogation can be allowed by agreement or otherwise) needs to be appropriately defined in order to promote the rule of law in diplomacy. While most nations around the world condemn practices such as slavery and genocide (among many others), the ambassador said that “there exists no definitive statement of what norms are peremptory, or where they may be found.” As a result, he said that “there is a need to define the content or the exact parameters of what comes under the rubric of *jus cogens*.” Without framing these parameters, many legal analysts believe that nations will continue to interpret international law in ways which will justify their actions.

The ambassador said that this debate was especially necessary in light of the U.S.-led invasion of Iraq in 2003, which involved varying interpretations of provisions in the UN Charter and Security Council resolutions. For example, he said that while legal bodies such the International Court of Justice have “tended toward a strict interpretation of international law [including those codified by the UN], other legal experts have argued that, because of the dangers brought about by international terrorism [for instance], “a strict interpretation is no longer applicable.” The case of the American invasion of Iraq, said the ambassador, revolved around the interpretation of two articles of the UN Charter – Articles

2.4 (which prohibits the use of force by member nations) and Article 51 (which allows countries to defend themselves if an armed attack occurs). After Iraq refused to comply with various UN resolutions calling for that country to open facilities suspected of manufacturing weapons of mass destruction, some proponents of an invasion called for a different interpretation of Article 51, arguing that the evolving dangers of warfare (which could include the use of nuclear weapons) allowed countries to launch pre-emptive strikes even before an armed attack occurred. Though Ambassador Jacovides did not take a particular stand concerning the legality of the American-led invasion, he said that “in case of a disputed rule, the machinery provided by . . . the International Court of Justice . . . [and] other means of third-party dispute settlement . . . should be resorted to, if we are to apply the rule of law and not the law of the jungle.”

Ambassador Jacovides (who is currently an arbitrator at the International Centre for Settlement of Investment Disputes or ICSID) also commented on the nature of international arbitration and the increase in the number of international tribunals. He generally supported the work carried out by international arbitration panels in resolving disputes between foreign investors and their host states. These arbitration agreements, for instance, provide “prospective investors with the assurance that legal disputes arising out of investments . . . could be adjudicated before an international tribunal” rather than the courts of developing countries, which some critics say are corrupt and inefficient. (Experts say that scores of developing countries strongly depend on foreign investment to support their economies.) Ambassador Jacovides also said that these arbitration tribunals looked “at the broad picture in order to reach a just and fair result, beyond narrow legalism and technicalities.” But along with their strengths, he noted some problems. The ICSID Convention, for example, does not define “investment.” Furthermore, the ambassador said that the explosion of the number of tribunals and commissions increased the chances that “different tribunals might take different positions on the same issue of international law.”