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“Who Needs Reforming the Most – the UN or its Members?”

Address by

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Ms. Michelle Graham, Chair of the International Law Section of the San Diego County Bar Association,

Distinguished members of the Faculty and of the Bar,

Colleagues, students, friends,

First of all, allow me to thank you for inviting me to deliver this address. And special thanks to Professor Slomanson, who took the initiative and who organized my visit to this wonderful city of San Diego.

Over the years, I have had the privilege of addressing many different audiences. To speak to audiences where there are students present and to participate in discussions with them is always a challenge. Such events are important. Students represent the new generation. Who knows, among you might very well be some of the leading politicians, scientists, artists, businessmen, lawyers and civil servants of the next generation.

My message today concerns matters of great consequence – and I must be frank. Otherwise I would compromise my “integrity in the sense of respect for law and respect for truth”. The words quoted are from a famous speech on the duties of the international civil servant by Dag Hammarskjöld, Secretary-General of the United Nations 1953-1961.¹

I should also make clear that I retired from public service – 42 years in all – in 2004. I am presently a consultant at Sweden’s largest law firm Mannheimer Swartling.² Therefore, I speak in my personal capacity only.

As always, you should listen with a critical mind. And I welcome critical questions. But, hopefully, I will be able to convince you through the strength of the arguments. I also hope that at least some among you will never forget what I have to say today. From my own experience as a student I recall that there were those moments when somebody said something that would forever etch itself into my memory.

The title of my address is: *Who Needs Reforming the Most – the UN or its Members?*

The formulation is not chosen just to provoke. The intention is that it should convey a message that reflects the realities behind the criticism that is often directed against the United Nations.

In my presentation I will make three main points:

- First, that the United Nations is an indispensable Organization for the maintenance of international peace and security in an increasingly globalized world;
- Second, that the United Nations could certainly do better, but that much of the criticism of the Organization should be directed at its Members; and
- Third, since I am addressing an American audience, that the United States carries a heavy responsibility for the present shortcomings of the Organization.

In a few concluding remarks I will attempt to put all this in a more general global perspective.

- The United Nations is an indispensable Organization for the maintenance of international peace and security in an increasingly globalized world

Let us first look at the United Nations as an organization. Since we are in California, it is natural to recall the fact that the UN was founded at a conference in San Francisco in 1945. We do not have time to look into the details of this process today. Many books have been written about it. One of the most recent books, which I can recommend, is by Stephen C. Schlesinger.³ No doubt you are aware that the United States of America was the major engineer behind the formation of the United Nations.

“Determined to save succeeding generations from the scourge of war”, the peoples of the United Nations adopted a Charter. It entered into force on 24 October 1945 and lays down certain purposes and principles.⁴

The purposes, which can be found in Article 1, are to maintain international peace and security; to develop friendly relations among nations; to achieve international cooperation in solving international problems, and to be a centre for harmonizing the actions of nations in the attainment of these common ends.

In Article 2 the Members of the UN pledge to act in accordance with a number of principles. Among the most prominent are: the sovereign equality of all its Members; the pledge to fulfill in good faith the obligations laid down in the Charter; that they shall settle their international disputes by peaceful means; and that they shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.

Surely, the Organization should be criticized for not being able to fulfill all these goals. As a matter of fact, during the Cold War, the United Nations was not functioning in the way the framers of the Charter had intended. But when the Berlin Wall came down in 1989, the situation suddenly changed.

The Security Council, in particular, was able to act in a manner that was completely different from what had been the case during the previous years. The initial unity in the early 1990's in the handling of the crises in the former Yugoslavia and in the Gulf region testifies to this.

However, this unity quickly vanished. Among other things, the Organization must be criticized for failing to address the situation in Rwanda in 1994, in Kosovo in 1999, and, presently, in the Darfur province of the Sudan.

The inability to address promptly and impartially the situation in the Middle East this summer is another case in point. Certainly, the efforts by states to help out must be recognized. But what happened in the Middle East this summer is the result of a situation that has been allowed to develop over many years. We are reaping the harvest of the inability of major players on the international arena to address it.

Furthermore, the question of personal criminal responsibility has been raised in the past in relation to atrocities committed in the former Yugoslavia, Rwanda, Sierra Leone and Cambodia and was again emphasized by the Security Council in June this year.⁵ An International Criminal Court has been established. But who talks about taking effective measures to bring to justice those responsible for the crimes that obviously have been committed by both sides across the Blue Line and elsewhere in the Middle East this summer?

Taking a closer look at the UN we should, however, not be too critical. The Organization has actually done much good. Many peacekeeping operations have been successful, and other efforts by the United Nations have alleviated hardships in many parts of the world.

We must also not forget that the UN is part of the United Nations System,⁶ which is an impressive group of agencies and programmes that are involved in almost every kind of human activity, be it humanitarian assistance through the World Food Programme, health care under WHO, childcare by UNICEF, civil aviation through ICAO, postal and telecommunications under the auspices of UPU and ITU, just to mention a few.

For us present here today it is natural to look at the legal field. One of the functions of the United Nations General Assembly is to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification.⁷ Over the years, an impressive body of law has been developed under the auspices of the United Nations. The actors are mainly the International Law Commission, the United Nations Commission on International Trade Law (UNCITRAL) and the Sixth (Legal) Committee of the General Assembly.

But also other actors should be mentioned, e.g. the Commission on Human Rights⁸ and the Third Committee of the General Assembly, as well as numerous conferences organized under UN auspices.⁹

As I said when I bid farewell to the United Nations in 2004,¹⁰ the impressive body of international law that we now have developed together is a common heritage that can be handed down to coming generations. In particular, the achievements over of the past 10-15 years have been remarkable.

Landmark events, to mention but a few, include the entry into force of the United Nations Convention on the Law of the Sea in 1994 and the establishment of its three institutions, including the International Tribunal for the Law of the Sea; the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda in 1993 and 1994; the negotiation of the Rome Statute of the International Criminal Court in 1998, and its entry into force in 2002; the strides taken in the field of international commercial law, including e-commerce, etc.

It goes without saying that the United Nations has a very important role to play in this field also in the future. However, much more focus should be on the implementation of this body of law.

In September 2005, the General Assembly adopted the so-called Summit resolution. In this resolution Member States recommitted themselves to actively protect and promote all human rights, the rule of law and democracy.¹¹

Also the Security Council has shown activity here. On 22 June this year, the Council held a day-long open debate on the Council's unique role in promoting and strengthening the rule of law in international affairs. A statement by the President of the Council adopted by this body on the same day – a so-called Presidential Statement – commences:¹²

“The Security Council reaffirms its commitment to the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world.”

Obviously, states must now live up to these commitments. In my view, much more attention should be given to the rule of law at the national and international level, in particular in view of the challenges ahead. I will revert to this in my concluding remarks.

But even if the UN stands to be criticized, the question should be put: Were would the world be today if there was no United Nations?

- The United Nations could certainly do better but much of the criticism of the Organization should be directed at its Members

Let us now look at the question of UN reform and the criticism against the Organization.

Over the last few years there has been an intense debate on how to reform the United Nations. Upon taking office in 1997, the present Secretary-General Kofi Annan started reforming the Secretariat. Several steps have been taken after that, including in

accordance with a resolution adopted by the General Assembly in September 2005.¹³ This resolution was based on a report by the Secretary-General – *In larger freedom: towards development, security and human rights for all* – published in March 2005.¹⁴

Among the most prominent reforms lately could be mentioned the establishment of the Peacebuilding Commission in June 2006 and the reform of the Human Rights Commission, which is now transformed into the Human Rights Council, operating under different rules.¹⁵

The latest development in UN reform appears in General Assembly resolution A/RES/60/283, which is based on a report by the Secretary-General – *Investing in the United Nations: for a stronger Organization worldwide: detailed report* – presented in March 2006.¹⁶

As every organization, the United Nations must be subject to constant reform. And it can always be argued that it could do better. But it is important to keep in mind that the United Nations consists of six main bodies. One of these bodies is the Secretariat with the Secretary General at its head as the Organization's chief administrative officer.¹⁷

Apart from the International Court of Justice, the other main bodies are composed of Member States. Most prominent among them is the General Assembly, in which every Member is entitled to participate. Most powerful is the Security Council with its fifteen members, of which five are permanent.

So, therefore, let us now look at the Members of the United Nations – 192 in all. There are presently some 120 representative democracies in the world. The remaining states represent various stages on a scale where you would find right out dictatorships on one end and countries in transition to democracy on the other. The U.S. administration has taken upon itself to name some of the UN Members “rogue states”.

Interestingly, the Charter still contains the so-called “enemy clauses”. The enemies are not mentioned by name, but everybody knows who the post World War II “enemies” are: Germany, Italy and Japan. These three states are today among the warmest supporters of the United Nations, and together they contribute more than 34 per cent of the UN budget!

This is an excellent example of the dynamics within the United Nations. Next time the UN Charter will be opened for amendments, the “enemy clauses” will disappear. This is already agreed. Somebody suggested to me that the clauses should be substituted with clauses on “noncompliant states”. Unfortunately, there are quite a few candidates for this denomination.

So, when you criticize the UN, it is important to correctly identify the entity within the Organization that should be criticized in a particular case. Let me illustrate by referring to the Oil-for-Food Program for Iraq (OFFP).

The initiator of the OFFP was not the Secretary-General or the Secretariat as the critics sometimes suggest. The basis of the OFFP was Security Council resolution 986 (1995). Entrusted with the task of negotiating the Memorandum of Understanding that governed the execution of the OFFP – signed on 20 May 1996 – I often asked myself whether the Council really understood what an extraordinarily difficult task they had laid upon the Secretary-General and the Secretariat.

What should be noted in particular is that, at least at times, there were different opinions among the members of the Council about the manner in which the sanctions against Iraq should be implemented. At the same time, the OFFP allowed for circumvention. There is talk of “scandal”.

In my opinion, the investigations show that the Secretariat could have done better.¹⁸ Furthermore, it is unacceptable that three UN officials are suspected or have been convicted of criminal acts relating to the OFFP. That is three too many! But do these findings amount to a “scandal”? And do they warrant the vicious attacks on the Secretary-General’s person that have occurred? I think not!

What is always lost in this context is that the OFFP actually fed a population of some 25 million people for seven years. Its turnover was 65 billion U.S. dollars!

Furthermore, those who are so eager to talk in terms of “scandal” should look at the Security Council and ask why the Council did not want to discuss the reports from the Secretariat about suspicions that the OFFP was circumvented and that Saddam Hussein was lining his pockets. Or they should put the states and enterprises against the wall – those that are suspected of having acted in cahoots with Saddam Hussein.

We should also ask where the remaining funds in the Oil-for-Food Account went when the OFFP was terminated.¹⁹ This sum amounted to some 8 billion U.S. dollars. In accordance with a decision by the Security Council, this amount was handed over to the U.S. administration as occupying power in Iraq in 2003.²⁰ Where did these 8 billion U.S. dollars go?

A critical scrutiny of how the Member States of the United Nations perform leads to the conclusion that too many of them simply do not live up to the purposes and principles laid down in the Charter. This indicates that there is great need for reform at the national level in many states.

The question is then where to begin. The answer should be simple: With the states from which one has reason to expect better – the states that belong to the so-called Western and Others Group (WEOG), among them my own country Sweden and the U.S.. The reason why we should begin here is that if these states do not perform, they cannot credibly demand that other states should abide by the law.

- The United States carries a heavy responsibility for the present shortcomings of the Organization

Since I am addressing an American audience, it is natural to look at the U.S. in this context. The reason is that the U.S. – today the most powerful nation in the world – has not lived up to its international commitments in the way one has reason to expect from a democracy and a state under the rule of law. Experiences over the past few years also show that not even the most powerful state can act on its own at the international level. Sometimes also the U.S. has to rely on the United Nations.

As a matter of fact, my greatest disappointment upon leaving the United Nations after 10 years as its Chief Legal Officer was not the states that the U.S. had named “rogue states”. Obviously, there are many states that have a long way to go before they can be recognized as trustworthy UN Members. No, it was the United States that was my greatest disappointment.

For someone like me who has always looked to the United States as a bulwark – a democracy and a state under the rule of law that twice in the past century assisted us in Europe when we were in difficulties – it is completely incomprehensible that the U.S. administration did not see the window of opportunity that opened up when the Berlin Wall came down and the communist empire disintegrated. Instead of using this momentum, unprecedented in history, to set the example through strict adherence to the law, the U.S. administration started acting on its own, often applying the law as it saw fit.

The UN Charter has a special standing in public international law. Its Article 103 trumps other international obligations, stating that “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and the obligations under any other international agreement, their obligations under the present Charter shall prevail”.

The position of the present U.S. administration seems to be that there is nothing exclusive about the UN as regards American interests and that the UN is only one of the tools that America, its allies, and other democracies use cooperatively on the basis of shared values.

Certainly, there are many tools. And there is nothing wrong with that. But this philosophy calls in question the U.S. commitment on a core point; it would seem that the U.S. does not want to recognize Article 103 of the UN Charter. But this very important provision, recognized also by NATO, is fundamental to the system of collective security at the heart of the UN Charter. This is why the UN sometimes is – and must be – exclusive and why the UN Charter must prevail.

This applies, in particular, to the rules relating to the Security Council, the organ on which Member States have conferred “primary responsibility for the maintenance of international peace and security.”²¹ It goes without saying that its five permanent members – China, France, the Russian Federation, the United Kingdom and the United States of America – have a special responsibility here.

Regretfully, this is where the UN has failed the most. The Council's authority is at stake. Changing the Council's composition – the most contentious issue in the ongoing UN reform discussions – will not make a difference in this respect unless it is coupled with a change of attitude. If not, the question is whether a reform on this point really serves international peace and security.

Since the establishment of United Nations in 1945, the UN Charter regulates the use of force to maintain international peace and security. It is permitted only in two situations: in self-defence under Article 51 or with the authorization by the Security Council under Chapter VII of the Charter.

These provisions notwithstanding, the United States (admittedly with the support of the United Kingdom; there is reason to believe that they very much regret this support today) attacked Iraq in March 2003. There was no permission from the Security Council to use force in the situation at hand. And it was certainly not a case of self-defense. Consequently, it was a clear violation of the UN Charter.

I am not for a moment defending Saddam Hussein or his regime. (I have actually met with Saddam Hussein in Baghdad in February 1998. This was on the occasion when Secretary-General Kofi Annan managed to negotiate an agreement with the Iraqi president that the UN weapons inspectors would be allowed to inspect also his palaces.²²) But it is important to demonstrate to the whole world that when action is taken against a Member State this is done in accordance with international law, in particular if it involves the use of force. We can now see the consequences.

Let me reiterate: The point of departure is that the UN Charter forbids the use of force against the territorial integrity or political independence of any state unless certain conditions are met.

These rules were elaborated by persons with experiences from two world wars, and they should not be easily abandoned. As a matter of fact, it is when international peace and security are threatened that these particular rules are needed and should be respected. In such situations it is important to make clear before action is taken whether the situation at hand is one of self-defence or not. If it is not, it is for the Security Council to authorize the use of force.

It is true that the language of Article 51 of the UN Charter has been of concern: self-defence is not permitted unless “an armed attack occurs”. However, this matter has been addressed by the High-level Panel on Threats, Challenges and Change. In their report, the Panel makes a statement that I believe is broadly accepted: “[A] threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it and the action is proportionate.”²³

Another matter of concern in this context is the U.S. National Security Strategy adopted in 2002.²⁴ According to this strategy the U.S. would feel free to use force without a clear

mandate from the Security Council. As I have pointed out on other occasions, this attitude flies in the face of the UN Charter and its system of collective security, in particular Article 51 on self-defence. The U.S. position creates uncertainty among other players on the international arena.

It is sad that the present U.S. administration does not seem to have learnt the lessons from history and in particular the lessons from World War II. I often quote President Dwight D. Eisenhower in this context. In his Second Inaugural Address on 21 January 1957, the President and former general said:

“Yet this peace we seek cannot be born of fear alone: it must be rooted in the lives of nations. There must be justice, sensed and shared by all peoples, for, without justice the world can know only a tense and unstable truce. There must be law, steadily invoked and respected by all nations, for without law, the world promises only such meager justice as the pity of the strong upon the weak. But the law of which we speak, comprehending the values of freedom, affirms the equality of all nations, great and small.

We recognize and accept our own deep involvement in the destiny of men everywhere. We are accordingly pledged to honor, and to strive to fortify, the authority of the United Nations. For in that body rests the best hope of our age for the assertion of that law by which all nations may live in dignity.”²⁵

Just so that the picture is clear: In March 2003, two permanent members of the Security Council attack Iraq in violation of the UN Charter. At a presentation in the Council, the world’s most powerful state provided information that later proved not to be true. There was no clear permission by the Council to use force. Nevertheless, they attacked. Later it would emerge that the decision to attack Iraq was actually taken at a much earlier stage. In reality, what the UN thought about it did not matter.

The fact that the U.S. administration in this way has demonstrated that it is prepared to put itself above the law when it suits its interests sends a terrible message to the world.

There are also other elements that should be mentioned in this context. Abu Ghraib will for a long time cast a somber shadow over the American intervention in Iraq. Guantánamo has become a stain on the Star Spangled Banner.

A new law has been adopted to meet the criticism of the treatment of the prisoners at Guantánamo. Many American experts maintain that this legislation does not fulfill the demands that must be met by a state under the rule of law and which follow from binding international agreements. The President of the International Committee of the Red Cross has expressed concerns.²⁶

I am not certain that the American public realizes how much this and other acts have damaged the standing of United States in the world. In Europe and certainly in my own country, there are many steadfast friends of the United States. And I am definitely among them. In conversations also with U.S. supporters the focus is very much on the present U.S. policies. Many follow the development with disbelief.

But you can find these reactions in many other places in the world. I happened to be in Thailand at the end of last month. On 29 October, I found a very critical op-ed in Bangkok Post under the title “Will the real America stand up?” It contained a reference to the following quote from an American source, a brother of a U.S. soldier who lost his life in Iraq: ²⁷

“Somehow America has become a country that projects everything that it is not and condemns everything that it is.” ²⁸

Looking at the situation in the world today, it is obvious that one of the most important things we should be striving for is the observance of the principles of the rule of law both at the national and international level. This requires equality before the law and respect for the norms agreed upon.

At the international level, international law must be respected, and in particular the UN Charter and its rules that forbid the use of force against the territorial integrity or political independence of any state, unless certain conditions are met. ²⁹

At the national level, at least four elements are necessary to establish a society under the rule of law: (1) democracy; (2) proper legislation; (3) institutions to administer this law; and (4) individuals with the necessary integrity to handle this administration. It will take a long time before all countries have reached this stage. When, for example, will China be there?

Also other elements are necessary, one of them being a free and independent Bar. I welcome the presence of members of the Bar on this occasion and commend the work by the ABA and its members in this field. And since there are also representatives of the American Society of International Law present, let me say that I have always admired and respected your work both at home and abroad.

Exactly two weeks ago, I was invited to address a high level Forum in the Lao Democratic Peoples Republic. Some 250 high-level representatives from the parliament, the government, the judiciary, the Prosecutor’s Office, and the Bar participated. The effort by this one-party state to establish a system under the rule of law is commendable, but like so many other states they still have a long way to go. And even longer if their role models fail!

A year ago, I was addressing a seminar in an Arab country – professors of law and political science. When we discussed the rule of law they complained bitterly of the double standards that they thought that the powerful states applied.

Therefore, it is important that states look upon themselves first and address their own shortcomings before they criticize other states and the United Nations.

Now some of you may say: He has not even mentioned 9/11 and the “war against terrorism”! Maybe he does not understand what this meant to us in the United States?

Let me therefore be clear: Yes, I am a Swede. But I am also a New Yorker having lived there for 10 years between 1994 and 2004 – a fantastic experience, a privilege!

I saw the towers ablaze. I experienced it all – including the threat against the UN building, which we had to evacuate. My wife and I went down to ground zero some days later to bow our heads and pay our respect – both of us fighting to hold our tears back.

But one does not fight terrorism by losing one’s legal compass. “War on terrorism” is a dangerous misnomer. This matter was discussed specifically by the Madrid Summit on Democracy, Terrorism and Security. The Summit took place in Madrid in March 2005, i.e. one year after the terrorist attack on that city. It was organized by the Club of Madrid, which is an association of former heads of state and government in democratic states.³⁰

In the months leading up to the Madrid Summit, more than two hundred scholars and expert practitioners explored the issues of democracy, terrorism and security. They were organized in working groups. Each working group issued a final paper containing principles and recommendations. May I quote the following principle from the working group on legal responses to terrorism, which I had the privilege of coordinating and which included also American experts:³¹

“To describe combating terrorism as a ‘war’ is not only misleading – it is dangerous. The term ‘war on terrorism’, instead of ‘fight against terrorism’, plays into the hands of perpetrators of terrorism. At the same time, it confuses the terminology applied in international humanitarian law and jeopardizes the applicability of human rights standards.”

The members of the working group thought that it is contrary to the basic principles of democracy and international law for any persons not to fall under the protection of law. This would apply, for instance, to practices such as indefinite detention without access to judicial review, extrajudicial execution, and inhuman and degrading treatment in the course of interrogations, conducted either domestically or in third countries after extra-legal rendition.

The members of the working group emphasized that a forceful response to terrorism is not undermined by the rule of law. On the contrary, the rule of law is the appropriate framework for the response. To apply the terminology “war on terrorism” entails the possibility that human rights standards that should be applied in these cases may be

indefinitely suspended. The reasoning of the working group was expressed in a number of recommendations.³²

Based on this extensive preparatory work, the Summit adopted the Madrid Agenda on 11 March 2005. It contains a number of principles and recommendations.³³ Under the title “A Comprehensive Response” the Agenda states that we owe it to the victims to bring the terrorists to justice. Law enforcement agencies need the powers required, yet they must never sacrifice the principles they are dedicated to defend. Measures to counter terrorism should fully respect international standards of human rights and the rule of law. On confronting terrorism it says:

“Democratic principles and values are essential tools in the fight against terrorism. Any successful strategy for dealing with terrorism requires terrorists to be isolated. Consequently, the preference must be to treat terrorism as criminal acts to be handled through existing systems of law enforcement and with full respect for human rights and the rule of law.”

This approach is also the overarching strategy in the work of the United Nations to counter terrorism. Reference is made to the report of the Secretary-General - *Uniting against terrorism: recommendations for a global counter-terrorism strategy* – published in April 2006,³⁴ and to the many resolutions adopted by the General Assembly in particular during the last year.³⁵

In particular, I should like to draw your attention to General Assembly resolution A/RES/60/288 on the United Nations Global Counter-Terrorism Strategy, adopted on 8 September 2006, and its Plan of action, section IV: “Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism”.

- **Concluding remarks**

Allow me now a few concluding remarks.

I have already explained why there has been so much focus on the U.S. in this address. Obviously, there are many other states that must also do better. Among them are those that need assistance. Among them are those that are recalcitrant. But just imagine the strength of the United Nations if it had the wholehearted support of the United States of America!

The UN should certainly be criticized when it is appropriate. But one must be clear about where the criticism should be directed. Should one criticize the Secretariat, the General Assembly, the Security Council, or another UN body? One must also be aware that the criticism by some Member States is sometimes just a pretext to draw attention from the Members' own shortcomings.

But it is important to bear in mind that we cannot talk about UN reform only in the abstract and without looking at other realities. At the forefront, we find globalization. As a matter of fact, an enormous geopolitical shift is under way. China and India, in particular, are on the rise, and the predictions are that in some 40 years China alone will have bypassed the U.S. in terms of Gross Domestic Product.³⁶

There world population is growing. We are presently some 6.5 billion people on the globe. Predictions are that we will be 9.1 billion at mid-century.

Global warming results in desertification and the melting of the icecaps with the result that the sea level will rise. If you have not seen Al Gore's "An Inconvenient Truth" you should. Admittedly, some of it is domestic party politics. I do not want to get into that; it would not be appropriate. But the scientific part reflects results produced by serious scientists. It is true that all scientists do not agree with the conclusions, but the signals are serious enough and they are there for everyone to see.

Another important source that is recommended for critical study is the Arctic Climate Impact Assessment (ACIA), which you can find on the Web.³⁷ Irrespective of whether the development will be exactly as predicted, this and similar reports send a powerful wake up signal.

I understand that the State of California and some other States have acted on their own to reduce carbon dioxide emissions within the U.S.. This should be commended.

If we translate all this into security terms, it represents a potential threat to international peace and security of great significance, in particular if states do not bow to the dictates of the law.

With respect to the United States, we should remember that it is a multifaceted society. Like so many, I am convinced that the U.S. administration will rediscover the philosophy and again demonstrate the statesmanship that led to the creation of the United Nations. The U.S. administration will no doubt realize that it is in the interest of the United States of America to take the lead by setting the good example. Maybe some of you present in this room will be part of this effort one day.

Thank you for your attention!

¹ See *inter alia* Eric Stein. Mr. Hammarskjold, the Charter Law and the Future Role of the United Nations Secretary General. In: *American Journal of International Law*, Vol. 56, No. 1 (Jan., 1962), pp. 9-32.

² <http://www.mannheimerswartling.se/gn/en/index.html>

³ See Stephen C. Schlesinger, *Act of Creation – The Founding of the United Nations*. Westview Press 2003, p. 15. See also <http://www.trumanlibrary.org/ww2/stofunio.htm>

⁴ <http://www.un.org/aboutun/charter/>

⁵ S/PRST/2006/28.

⁶ <http://unsystemceb.org/>

⁷ Article 13, paragraph 1 of the UN Charter.

⁸ This body has now been transformed into the Human Rights Council. See General Assembly resolution A/RES/60/251. The first meeting of the Council was convened on 19 June 2006.

⁹ Reference is made to the International Law website <http://www.un.org/law/> and the Human Rights website <http://www.un.org/rights/>

¹⁰ http://www.un.org/law/counsel/english/Vienna_24_2_04final.pdf

¹¹ General Assembly resolution A/RES/60/1. See in particular paragraphs 11, 16, 21, 24 (b), 25 (a), 119 and 134.

¹² S/PRST/2006/28. See also <http://www.un.org/News/Press/docs/2006/sc8762.doc.htm>

¹³ General Assembly resolution A/RES/60/1.

¹⁴ A/59/2005.

¹⁵ <http://www.un.org/peace/peacebuilding/> and <http://www.ohchr.org/english/bodies/hrcouncil/>

¹⁶ UN Doc. A/60/846 and Add. 1-4. See also <http://www.un.org/reform/>

¹⁷ Article 97 of the Charter.

¹⁸ See *inter alia* the reports by the Volcker Commission at <http://www.iic-offp.org/documents.htm> Reference is made, in particular, to the final report *Manipulation of the Oil-for Food Programme by the Iraqi Regime* at that site. See also the Secretary-General's comments at <http://www.un.org/News/Press/docs/2005/sgsm10189.doc.htm>

¹⁹ See paragraph 17 of Security Council resolution 1483 (2003). The Development Fund for Iraq was in reality controlled by the U.S. and the UK as occupying powers under unified command (the "Authority"), see paragraph 13 of the preamble of the resolution.

²⁰ See Development Fund for Iraq - Statement of Cash Receipts and Payments - For the period from 22 May 2003 to 31 December 2003 (with Independent Auditors' Report) at <http://www.globalpolicy.org/security/issues/iraq/dfi/2004/0715receipts.pdf>

²¹ Article 24 of the Charter.

²² Reference is made to Security Council resolution 1154 (1998).

²³ Cf. UN Doc. A/59/565, para 188: ”- - - However, a threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it and the action is proportionate. - - -“

²⁴ <http://www.whitehouse.gov/nsc/nss.html>

“The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”

²⁵ See e.g. <http://www.yale.edu/lawweb/avalon/presiden/inaug/eisen2.htm>

²⁶ Guantanamo tribunals spur Red Cross concern. In: *Financial Times*, 20 October 2006.

²⁷ <http://www.truthdig.com/>

²⁸ Kevin Tillman, *After Pat’s Birthday*. Available at http://www.truthdig.com/report/item/200601019_after_pats_birthday/

²⁹ Article 2, paragraphs 4 and 7 and Article 51 of the UN Charter.

³⁰ See <http://summit.clubmadrid.org/>

³¹ The Madrid Summit Working Paper Series, Volume III – Towards a Democratic Response , page 13.

³² Reference should here be made to recommendations 1.4 and 1.10 through 1.13 of the working group:

1.4 States should take the necessary measures to ensure that acts of terrorism are defined as offences under national law and punishable by effective, proportionate and dissuasive criminal penalties. States should also take the necessary measures to ensure that legal persons can be held liable, without excluding criminal proceedings against natural persons who are perpetrators, instigators or accessories in acts of terrorism.

1.10 In preventing and suppressing terrorism, States should scrupulously observe and guarantee human rights and humanitarian law standards and respect for the rule of law. In particular, States should comply with the international standards of treatment of individuals suspected of or charged with acts of terrorism as well as procedural safeguards for suspects and defendants.

1.11 States should observe that there are absolute human rights, from which no derogation is possible, such as the prohibition of torture, and relative human rights, such as freedom of expression, which may be restricted only to the extent that is strictly justified in accordance with international human rights standards.

1.12 In accordance with applicable international law, States should, as soon as reasonably possible, give humanitarian access to persons arrested for or charged with acts of terrorism to their State of nationality and international humanitarian agencies such as the International Committee of the Red Cross (ICRC). International humanitarian agencies should be given access to stateless persons.

1.13 States should give persons arrested, charged, or otherwise deprived of liberty for acts of terrorism access to legal representation and to consular officers of the State of their nationality in the case of foreign persons, and should provide legal counsel for such persons.

³³ The Madrid Principles

“Terrorism is a crime against all humanity. It endangers the lives of innocent people. It creates a climate of hate and fear, it fuels global divisions along ethnic and religious lines. Terrorism constitutes one of the most serious violations of peace, international law and the values of human dignity.

Terrorism is an attack on democracy and human rights. No cause justifies the targeting of civilians and non-combatants through intimidation and deadly acts of violence.

We firmly reject any ideology that guides the actions of terrorists. We decisively condemn their methods. Our vision is based on a common set of universal values and principles. Freedom and human dignity. Protection and empowerment of citizens. Building and strengthening of democracy at all levels. Promotion of peace and justice.”

³⁴ UN Doc. A/60/825.

³⁵ At <http://www.un.org/terrorism/res.htm>

A/RES/60/288 The United Nations Global Counter-Terrorism Strategy

A/RES/60/158 Protection of human rights and fundamental freedoms while countering terrorism

A/RES/60/78 Measures to prevent terrorists from acquiring weapons of mass destruction

A/RES/60/73 Preventing the risk of radiological terrorism

A/RES/60/43 Measures to eliminate international terrorism

³⁶ See for example Keystone India. Published in BusinessWeek August 22/29 2005.

³⁷ Available at <http://www.acia.uaf.edu/>