

U.N. Legal Counsel Patricia O'Brien: The protection of human rights is for all

The rule of law, international criminal justice and accountability, and the concept of the responsibility to protect were the three primary areas covered by United Nations Under-Secretary-General for Legal Affairs and Legal Counsel Patricia O'Brien during her keynote address at the American Society of International Law Midyear Meeting and Research Forum hosted by Georgia Law last fall.

According to O'Brien, the U.N. was created not only to save succeeding generations from "the scourge of war and to reaffirm faith in fundamental human rights" but also, as the international body's preamble states, its role is to "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."

Furthering the organization's mission in relation to the rule of law is the Universal Declaration of Human Rights, which was adopted in 1948 by the U.N. General Assembly. Its preamble reads: "[I]t is essential, if man is not to be compelled to have recourse ... to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

O'Brien said the rule of law is the "bedrock" upon which all of the rights enumerated in the declaration rely for their protection and enforcement.

"We live in an era in which international law is no longer only the business of international courts and institutions. In the decades following the UDHR, states have entered into numerous



Patricia O'Brien, U.N. legal counsel, delivered one of two keynote addresses at the American Society of International Law Midyear Meeting and Research Forum hosted by Georgia Law last fall.

Photo by Bob Brussack (L.D./76)

treaties upon which individuals can directly rely to enforce their rights."

She added that since countries have binding obligations under such instruments, international law has taken on a greater role in national and regional courts.

"In many ways, the rule of law at the international level is the domestic rule of law writ large," O'Brien said. "It addresses the exercise of power and the relationship between the individual and the state. It, of course, goes further and regulates the relationship of states with each other.

Observance of the rule of law is just as important on the international plane as on the national."

According to the U.N., the rule of law refers to a principle of governance according to which all persons, institutions and entities, public and private, including the nation itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

"The enormous strides taken in the field of international criminal justice in the last 20 years have been driven by the desire for accountability," O'Brien said. "And, proceedings in which heads of state have been held accountable for serious international crimes illustrate the fundamental tenet of the rule of law that no one is above the law."

As legal counsel at the U.N., O'Brien's task is to support the secretary-general's commitment to strengthening the rule of law and the pursuit of justice as well as to ensure accountability for mass atrocities and other serious violations of international human rights law.

—continued next page

“Observance of the rule of law is just as important on the international plane as on the national.”



The world comes to Athens for midyear meeting

Last fall, the international legal community came to Atlanta and Athens when Georgia Law hosted the Midyear Meeting of the American Society of International Law, which has nearly 4,000 members from more than 100 nations.

Several Georgia Law faculty members and alumni were instrumental in making this multifaceted, three-day event a success. The conference included a research forum, a career mentoring program and a meeting of a newly formed group – ASIL Southeast.

Woodruff Chair in International Law Diane Marie Amann and 1975 alumnus Charles A. "Charlie" Hunnicutt co-chaired the meeting, while Associate Professor Harlan G. Cohen, Assistant Professor Timothy Meyer, Talmadge Chair Peter B. "Bo" Rutledge and Sibley Professor in Corporate and Business Law Larry D. Thompson assisted with various segments of the gathering.

Two keynote addresses headlined the event. They were delivered by United Nations Under-Secretary-General for Legal Affairs and Legal Counsel Patricia O'Brien and U.S. State Department Legal Adviser Harold Hongju Koh.

Special tributes in memory of Dean Rusk, a former Georgia Law faculty member who was ASIL's honorary president while serving as U.S. Secretary of State, and Louis B. Sohn, who was ASIL's president while serving as the inaugural holder of the law school's Woodruff Chair in International Law, were given.

“This topic, in one way or another, permeates my activities on a daily basis,” O’Brien said. “The 1990s and the early 2000s were historic periods in international criminal justice, when new international criminal tribunals were established to ensure accountability for genocide, war crimes and crimes against humanity. . . . These institutions have made a valuable contribution to the rule of law at the international level, including through the development of an impressive body of jurisprudence.”

O’Brien added that the international community must keep faith with ad hoc and other U.N.-supported tribunals to ensure these justice-seeking bodies have the political and financial support necessary to sustain and complete their work.

She said the International Criminal Court, with strong support from the U.N., is at the heart of the efforts of the international community to ensure accountability and to end impunity while also seeking to strengthen the rule of law.

As defined by O’Brien, the ICC provides the opportunity and the vehicle for our generation to significantly advance the cause of justice and, in so doing, to reduce and prevent unspeakable suffering.

“However, I take every opportunity to emphasize the role of the states,” she said. “International criminal justice is based on the principle of complementarity. It is incumbent on states, first and foremost, to prosecute international crimes,” she said.

Only when national judicial systems are unable or unwilling to investigate or prosecute should international courts be involved, she explained.

The Responsibility to Protect initiative, which was unanimously “embraced” by more than 150 heads of state and government in 2005, declares that each individual country has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and that the international

community, through the United Nations, has a parallel responsibility to help protect populations from those crimes.

According to O’Brien, this relatively new policy has been highly relevant in recent conflicts in the Côte d’Ivoire, Libya and Syria.

Central to this policy is the premise that state sovereignty – the cornerstone of international relations – includes responsibility toward a country’s people as well as certain international privileges.

O’Brien said Responsibility to Protect principles reflect the recognition of the changing nature of conflict since the drafting of the U.N. charter in 1945.

“Today, most conflicts occur within states rather than between them. It signifies a broad acceptance of fundamental principles of human rights and . . . affirms states’ obligations under international law to prevent, prosecute and punish these atrocity crimes.”

The “added-value” of the Responsibility to Protect concept, as O’Brien explained, is that it encapsulates the moral and legal imperatives of the international community and illustrates a marked shift in perspective, imposing on states a moral responsibility to act.

“Where national authorities are failing to protect their populations, the international community has committed to take collective action through the Security Council,” O’Brien said. Additionally, “International assistance serves to reinforce, not to undermine, national sovereignty while helping governments to provide additional protection and security to their populations.”

O’Brien concluded with a broad-based call for support of the Responsibility to Protect tenets and stated that these obligations are “anchored in international law” and “reflect the obligations of humanity.”