

Transnational Lawyers for Government Organization **Frans Limahelu**

1 Tension between United Nation and Government organization

I want to recall when United Nation was established during the Word War II, January 1, 1942 with the spirit that Government should continue (1) *fighting together* against the (2) *Axis Powers*. At that moment the spirit was encountered by fighting hand in hand against axis power and representative of 26 nation knew who is exercising axis power, so that an organization is needed to implement the spirit and specify its organized role.

Nowadays United Nation is very huge organization with very complicated and painstaking process decision making and subsequently several regional organization, such as the European Community, emerged as a mean to fulfill the regional efforts for economic, finance and industrial. The European Community was different from other international organization, that European Court decision which some Directives made by the Community Council of Ministers could have direct effect in the member states and thus become part of the national law without further action to implement them. The Factortame case in UK (P.S. Atiyah : 1995: 95-98) is that an English Court had declared an Act of Parliament to be unenforceable in law, it means that English law is now subject to European Community Law. Since the Euro dollar had been decided as the currency for the European Community, this organization is moving toward a Federal Europe.

Another high profile organization of very elite nation emerge, namely G 7, which regulate world economic, finance and industrial aspect. Those new organizations will change the role of United Nation on the one hand and Foreign Act of State, Prerogative Rights of Foreign States on the other hand. The latest blow which will effect those

organization is Iraqi - Terrorism connection, which erupts state and United Nation tension of the organization and will change world outlook.

2. Judiciary and the Foreign Act of State

Since the Iraqi – Terrorism connection, problem arose of the term ‘act of State’ and traditionally denotes ‘an executive or administrative exercise of sovereign power by an independent state with his duly authorized agents or officers, but in this problem the term is related to powerful independent states, if such acts of State from a foreign country come to be considered in the courts of a country or the International Court of Justice, the question arises whether and to what extent the court is permitted and consequently bound to inquire into their validity, legality, propriety. Has the court power to listen to the Prime Minister of a foreign State is said to have ultra vires or to be based on facts which, in truth, did not exist ? Thus the judge may be asked to grant an injunction excluding its effects and to consider it as irreconcilable with the International public policy. The central problem of judicial power is related to (1) the anti-democratic characteristic and (2) liberty – welfare of the international or world society. The anti-democratic characteristic concerns the resolution of what has been called the “Madisonian dilemma”. A Madisonian democracy, such as the United States, emphasizes that majorities generally are entitled to rule simply because they are majorities, but it also emphasizes that individuals, even when in minority, must have some protection from majority control. The dilemma is that neither the majority nor minority can be trusted to draw the line, because tyranny either by one or by the other inevitably would follow. If the majority is given the right to decide whenever there is a conflict, no minority right can exist, but if

the minority is given a veto, there is no longer majority rule (David Crump: 2001: 255-256). The Iraqi-Terrorism connection is a problem of liberty and welfare of the international or world society. These values is interwoven, but the question is which one is important ? Is it liberty of a member state of United Nation to act or world society to investigate the Iraqi –Terrorism which lead international friction; and the welfare of the world society.

3. World Order and power struggle

This sub title is an illustration of law/world order and reality/power and maybe it intermingles, so that it goes together hand in hand or it is related. The question is whether World order is the outcome of power struggle rather than world order as the fundamental legal aspect and legal arguing. It seems that there is no place for lawyers to stand up for legal dispute in world order cases. Are lawyers writing down or articulating decision which was made by those who are in power and Witteveen said “We (lawyers) are makers of text and remakers of culture (Witteveen: 2001: 397). The power struggle is more or less legal science battle ground but not using armaments- ruining the world. If it is used, then it is the failure and end of legal science, because one party/nation is well educated and his opponent is a very strong religious without worrying about death but will motivate to continue their struggle. Both party/nation are intellectuals and well organized, aiming to be well known and being a world leader with different social and cultural background.

Law is by and large a character building with the kind of training that affirms the power of the individual imagination: the possibility of an originality that can work a change in

cultural circumstances. The task of lawyers is not simply describe the law, but to make it and remake it in practice and the critical reader is not to understand and describe the poem but to give it a new place in his or her own world.

Is world order a symbol, so that each person, lawyer and politician/readers will argue the meaning and implementation of world order. Is world order only words that a person articulate words in a poem (Witteveen: 2001: 425)

“A sentence uttered makes a world appear
Where all things happen as it says they do;
We doubt the speaker, not the tongue we hear:
Words have no word for words which are not true.”

As closing remarks, what we have learned is what the completely unjust government or public person is really like. He simply does not care at all about what happens to other people as a result of his own or anyone else conduct. The unjust government or public person is thus depicted as either bold enough to deprive others of their dignity and life or indifferent to it (Wittwveen: 2001: 424).