

*Winston A. Tubman**

I am always happy to visit American law schools and similar places to talk about the United Nations. Two weeks ago I was in Orange County in California. We had a much bigger group, more than a thousand people gathered to hear many speakers from far and wide talk about the United Nations, this being the United Nations' 50th Anniversary. This would surprise you if you are a reader of newspapers like the New York Times or the like and formed your impression of the United Nations based on what you read. The impression one gets from the media is that the American people are very unhappy about the United Nations; that it is a big waste of money about which they would like to do something radical, including having the U.S. withdraw from the United Nations. Sometimes you get that impression from the American media. But when you go into the American heartland, so to say, the difference is clear: the American people are greatly interested in and supportive of the United Nations. Unfortunately, many American politicians disregard this concern, choosing instead to distort the history and image of the United Nations for their own partisan political purposes.

The American people remain deeply interested in the United Nations. They were, after all, the people who primarily established the League of Nations, you will recall. That organization did not work because domestic isolationists prevented the United States from becoming a member, a failing which one historian has called "the most fatal of several grave weaknesses which made it impossible for the League to satisfy the expectations it has aroused." The American people, at the end of the Second World War, acted again and were instrumental in setting up the United Nations and this time, wisely, followed through; and from Korea to the Gulf War and so much in between is now part of the annals of history.

If America had not been involved in founding the United Nations, think of what the United Nations might have looked like. You would have founding father Churchill on the one hand and Stalin on the other hand. What kind of world order do you think they would have been building? We certainly would not have had the achievement of decolonization when we did

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nor would we have tackled apartheid, poverty and many of the other issues of interest to third world countries on which we are focused in the United Nations today. While some of the other founding fathers were thinking preservation or acquisition of empire, President Roosevelt was talking about self-determination; later in 1948 with the Universal Declaration of Human Rights, his widow Eleanor Roosevelt brought new purpose and impetus to the United Nations. The people from the Third World remain very interested in such issues, those that the Americans have been championing since the founding of the United Nations.

Now, my own country, Liberia. We were not one of those countries established as a result of the United Nations decolonization effort. In fact, Liberia was a founding member of both the League of Nations and the United Nations, in the first instance at independence age 72, and in the second at independence age 98. Today, regrettably, Liberia is regarded as one of the failing states of the world. And so, with the end of the Cold War, one wonders what is to become of the world's small countries? Where has all the effort to build a world of small as well as large independent nations led? Where have we gotten and how do we go from here into the Twenty-First Century?

We have come to the end of another major war: the Cold War has ended. Just like in 1945 when we were at the end of World War II, mankind needs to establish new infrastructures and approaches for keeping peace in the world, just as was done in 1945 when the United Nations was established for the same purpose. Shortly after the U.N. Charter was signed, the Cold War set in. The mechanisms of the Charter could not be applied, and the Security Council could not discharge its primary functions of maintaining international peace and security. The rivalry between East and West led to a stalemate, and various improvisations had to be developed to cope with situations that had not been envisioned under the Charter. For example, the United Nations was effectively neutralized in its peace-keeping role. In 1990, when the Cold War ended, at last the Charter mechanism for peacekeeping could be used in the way that was envisaged. Thus, we were able through applying those mechanisms to deal with at least one form of conflict, the conflicts between states.

Take the Gulf War. Wasn't it amazing that suddenly you have the United States with the United Nations' blessing leading a coalition, including Arab states, going against an Arab state? Here was a clear case where there was a violation of international law. Everybody, even states that had earlier been declared terrorist states by the United States, were all able to be brought together by the United States in order to repel Iraqi aggression in Kuwait.

So, for state against state conflict, we are now able to deal with it effectively through the Charter. However, there is another kind of conflict that has increased greatly in numbers since the end of the Cold War. I am speaking of conflicts that are happening within states. Currently, we do not seem to make sufficient distinction between such conflicts and those between states. The mechanisms of the Charter that we used or developed during the Cold War period to deal with the conflicts between states are the same mechanisms we are trying to use in dealing with the new conflicts within states. I had a chance to look at this a bit more closely, given that what I do for the United Nations is work with peacekeeping operations. I became involved with the one in Somalia.

You remember General Mohammed Aidid; he had a quarrel or fight with the United Nations and Pakistani peacekeepers were killed. The Security Council was incensed by this and wanted to find out what happened. A Commission was established to go into Somalia to find out. We had on this commission two generals—peacekeeping generals, one from Ghana and one from Finland, and the third member was the Chief Justice of Zambia. I was the legal advisor to this group, sent to Somalia to investigate. We began by talking to the Americans who were leading the peacekeepers, to find out what had happened. Instantly, the peacekeeping generals on the Commission were aghast to hear Americans talk.

From the outset, as the Americans began to explain to us what had happened, they would draw lines and say, “and the enemy was here” and “we were there.” The peacekeeping generals could not understand. How could United Nations peacekeepers have enemies? To them, United Nations peacekeepers do not have enemies; they wear blue helmets, their vehicles are painted white, and they are neutral.

So the members of the Commission of Inquiry wondered how peacekeepers could go into a situation like Somalia and start branding some of the people in combat there as enemies? Well, for the Americans, that is exactly how they saw the problem. They saw their task as one of peace enforcement under Chapter VII of the Charter; they did not see it as the traditional peacekeeping that the United Nations had become used to. They saw their mission in Somalia requiring them to take actions as military in nature. That is what they as soldiers knew how to do and that is what they would do.

At that time in the United Nations, there was a certain lack of clarity concerning what approach to take regarding peacekeeping. You can see that from the Secretary-General’s Agenda for Peace and the changes that were subsequently made in its addendum. When the Agenda for Peace was

published there was a feeling, born out of the euphoria that followed the end of the Cold War, that United Nations peacekeepers could go into countries where there was internal conflict, such as in Somalia, and take enforcement action, if the other slower, persuasion-based traditional peacekeeping measures were not going forward. So in Somalia, the Americans considered themselves as United Nations peacekeepers to be in the peace enforcement mode.

However, remember that the Americans' first reason for becoming involved in Somalia was for bringing in humanitarian relief. When they were in that particular mode no attempt to disarm the warring factions was made. The emergency required that the food and humanitarian needs get out to the population as quickly as possible to halt the famine. If the peacekeepers had to use force at all it would be only to clear the supply lines to get the relief through.

But when the Somalia effort changed from the UNITAF, the United States-led multilateral force, to UNOSOM, a mandate fully under the United Nations, the task was broadened to include disarming the factions. That was when the problems began. The United Nations, having gone in there as a peacekeeper in the traditional neutral role to carry out a peacekeeping assignment, suddenly had a changed mandate, a mandate of peace enforcement. The United Nations peacekeepers were now doing something beyond supplying humanitarian relief; suddenly they were trying to impose a settlement on the Somalis.

Now, in my view, there was really nothing seriously wrong with trying to impose a settlement in Somalia. However, there were too many contradictions. If the United Nations was supposed to be neutral then it had not only to be seen as neutral, but to act neutral; if it was in there, having determined that a particular line had to be followed to curb or punish aggression, the aggressor having been identified, then it had to be clear on where the line was drawn, who was the aggressor, whom to fight and whom to support. There was no clarity on these issues, nor was there certainty as to who among the Somalis were pursuing the United Nations line or even what that line was among various troop contributing countries. For the United Nations to go into situations like Somalia and say they will be neutral regardless, then end up not being neutral is a sure-fire formula for failure, because it is an approach which mixes up all the lines. That is what we had in Somalia. It looked as if the United Nations was taking sides at the same time it was supposed to be neutral.

The confusion in Somalia seriously interfered with the accomplishment of the United Nations' objective. I believe that was the case and as someone from Liberia where a similar problem exists, it is particularly painful because, since Somalia, the United Nations has been most reluctant to become effectively involved in African conflicts. The United Nations was dealing with a conflict inside Somalia as it would deal with a war or aggression by one state against another, and the mechanisms the United Nations has were not designed to deal with such conflicts.

We have a failed state in Liberia, that is to say, there is really no effective government for the whole country. There are warlords running the show, violently holding most of my country hostage. What does the international community do? What can Liberia, a Charter Member of the United Nations, expect from the United Nations? Should the U.N. treat that situation as if it were dealing with a normal state and say, "well, we need the consent of the state before we can do anything!" The West African countries in the Economic Community of West African States (ECOWAS) have been trying now for close to five years to deal with the Liberian conflict. Each time they think they are making some advance, a new Liberian warlord emerges and they have to deal with him. Of course, the warlord is not really representing anybody but himself. As such he is not prepared to give in to the wider demands and needs of the community. So, when the United Nations looks at a problem like that, and simply says, "so long as the Liberians are not serious, so long as they do not agree to behave themselves, there is really nothing we can do," this kind of post Cold War conflict, the conflict within a state, will go on endlessly.

That is a serious problem. The wars that are raging in these countries like Liberia are due precisely to the causes just indicated. Thus, if you say to Charles Taylor, the major warlord in Liberia for example, or General Aidid in Somalia, "The people in Liberia/Somalia are starving and we the United Nations want to assist them with food and medicine and restore order and governance. But you must stop behaving badly so that we can do it. If you do not behave yourselves we will not come in or to the extent we have a presence we will leave." What do you think a Taylor or Aidid will say? What do you think they will do? Of course, they will not behave themselves, because they have been told (1) that the United Nations will not go in or will leave if it is given no cooperation and (2) that the United Nations will not confront or fight them even when it does go in. So the Taylors and Aidids wait for that. And meanwhile, others seeing a situation where warlords are being rewarded find an incentive for acting in the same manner. Thus these conflicts spread.

So for these new types of conflicts that have arisen at the end of the Cold War there is an urgent need to find a way of dealing with them. The United Nations cannot deal with them in the way that it has been doing up to now without allowing millions of people to perish in countless endless civil wars. Furthermore, the United Nations cannot fight a guerilla war using organized armies. Even the mightiest army of the day saw that in Vietnam. Things will not be different because the conflict is in Liberia or Somalia. And in any case, even if the United Nations consented to fight such a war could it rely on American soldiers from Utah or Georgia? How long could such soldiers go on fighting these wars which do not end so easily, but go on, and on and on. Where no American national interests are at stake, as in Liberia or Somalia, there will be no political support in the United States for such missions and they will not be funded by the United Nations.

So perhaps the only way forward is for the United Nations to find ways to use people who have an abiding stake and interest in the situation in countries like Liberia when they are in conflict. Who are these people? They are those who belong to the country and who will have to stay there always because, increasingly, they have nowhere else to go. They have an incentive for trying to restore peace in their own country.

This is not the same thing as the Regional option which says: "oh let the region handle it," because in these conflicts the region too is seen not only as an outsider but an interested outsider. I know this was true in the Liberian case, where the United Nations has taken the position of letting the West African Region take care of the conflict.

The most powerful state in West Africa is Nigeria. Before we in West Africa got to the stage where Nigeria was able to spearhead a regional peacekeeping effort in Liberia, Nigeria had already become identified with one of the warring Liberian parties. So by the time she began to wear a peacekeeper's hat and sought to perform the role of peacekeeping, she was already greatly suspect in the eyes of some of the other Liberian warring factions. In fact, the only intervention that the United Nations has subsequently made in the tragic situation in Liberia has been to support the flawed regional effort.

The United Nations has gone to Liberia and said, "O.K. we will support the region, whatever the region does," but there are serious shortcomings with the region's approach. Those, like the United States, who would be most forthcoming with help for Liberia have not done so speedily or adequately partly due to bad relations with Nigeria. In such a situation, of course, the region as well as the United Nations, which plays only a

peripheral and subsidiary role, cannot solve the problem. In such circumstances it would be farcical were it not tragic when the Liberians are told by the United Nations: "well, you Liberians have to be serious if you want the United Nations to stay in Liberia; if you don't get serious, the United Nations will withdraw." Withdraw what? Much of the small United Nations monitoring group of about 300 military and civilian monitors that was sent has already been withdrawn. There are about 90 of them still there and I am told that the United Nations is threatening to withdraw even that small number.

So, clearly, the impact that the United Nations is able to make on resolving the kind of internal conflict as is present in Liberia is not going very far and it is not going fast. Therefore, what needs to happen with these kinds of conflicts is for the United Nations to explore ways by which it can engage local people in or from the countries concerned. They should be empowered to take upon themselves peacekeeping tasks which are not going to see quick results but will be very drawn out and will require a lot of sacrifice. Such local people need and must be given material and moral assistance from the United Nations and other interested outsiders in order to be able to carry out the struggle.

You hear much nowadays on why the United Nations must provide humanitarian relief and engage in nation building. All these things, good as they may be, cannot happen or be sustained until you have put in place the framework to establish order, peace, and stability in the given area. The international community must establish priorities regarding objectives, as well as the means by which such objectives will be pursued. The best and primary means by which the United Nations can influence development in the various developing countries with internal conflicts is by equipping, strengthening, and using the states themselves. Therefore, if the state is collapsing, as in Liberia, the instruments by which the United Nations can be most effective in solving the problem is by making it possible for the purposes and principles of the Charter to be fulfilled and not impeded. The humanitarian concerns and other principles which have enabled the United Nations to do many good things in the world during the last fifty years ultimately must be implemented in failed states by the people of such countries themselves. You cannot send in foreign troops and rely on them because the ability to sustain such a commitment in the sending countries for a long period does not exist. As we heard earlier today, when American soldiers get killed in Somalia, the whole atmosphere in America regarding United States support for that kind of mission changes. The troops are withdrawn.

That is what happened; that is why the United Nations withdrew from Somalia and as a result and consequence of that withdrawal from Somalia, when genocide in Rwanda started shortly thereafter, there was a great reluctance and failure by the United Nations to act. A few peacekeepers died in Somalia, and subsequently we had a case where close to a million people were massacred in Rwanda while the United Nations stood by stymied and unable to act. After Somalia, there was no will in the United States and ultimately in the international community to deal with genocide in Rwanda.

Between the time the Agenda for Peace was drawn up and the subsequent peacekeeping experiences took place (in Somalia especially), the Addendum was published, setting forth a different view. The view now taken is: "It is too difficult for the United Nations to do peace enforcement, we do not have the means and mechanisms in the United Nations. Most especially, there is no support for peace enforcement in the major countries that pay most of the costs or commit the troops. Therefore, the United Nations should stay out of peace enforcement."

If this is the new approach, it seems to me that this is not the answer. Coming as I do from a country where the problem of a failed state is real, the United Nations is in effect abdicating its responsibilities by telling us, "Well we cannot do anything for you people in Liberia; you or your region have to sort things out for yourselves." If, in the new period that we are entering following the end of the Cold War, that is to be the United Nations' position, then darker and more dangerous times lie ahead for countries like Liberia.

There are other troublesome things that have come about for people in poor countries since the Cold War ended. Take the imposition of sanctions, for instance. That is another area that I have been involved with at the United Nations. You all know that sanctions were imposed against Iraq. After Iraq was expelled from Kuwait, the question was, "How long can the sanctions continue?" How long should sanctions be allowed to hurt the totality of the Iraqi people, simply to punish or get rid of Saddam Hussein? Are the sanctions having the desired effect? Is this the way the United Nations should permit itself to be known to the ordinary and innocent people in countries like Iraq? Should the United Nations continue to impose sanctions, even when these sanctions are not having the desired effect?

Another instance of sanctions I have become involved with at the United Nations concerns Libya. I have gone on United Nations delegations to talk with the Libyan Government on a least five occasions, bearing special

messages from the United Nations Secretary-General to the Libyan leader. Colonel Khadafi cannot understand why the United Nations imposes sanctions on Libya when there has been no legal disinterested adjudication against Libya. Why should allegations, that in his view are unfounded, made by the United States and the United Kingdom be accepted on their face as true? He argues that there is just an accusation against Libya and the evidence adduced has yet to be passed upon by a court of law. Yet the Security Council has already imposed sanctions. According to the Libyans, those sanctions have already caused them great losses in terms of money, malnutrition of its citizens, lack of medical attention and retardation of their economy—all as a result of sanctions imposed by the Security Council which acted without the benefit of any hearing.

How can these kinds of sanctions which penalize the masses be continued in the United Nations' name under the new emerging world order without harming the United Nations' standing in the eyes of ordinary citizens? It is true that short of using armed force, ways have to be found to deal with recalcitrant and oppressive regimes which victimize their own people; but when such difficult situations develop, it is not appropriate for the United Nations simply to impose sanctions, merely at the behest of powerful states and seemingly for their own national interests. The impartiality and objectivity of the United Nations could thereby be brought into question.

Another method of keeping law and order in the post-Cold War world has been to establish judicial tribunals like the ones mandated to try persons guilty of violating international humanitarian law in the former Yugoslavia and in Rwanda. We still have to see how far those tribunals will succeed; but three years since the endeavor was begun we have yet to see the first trials commence. When those trials go through, if they do go through, we will be left with the question of whether the Security Council will be able politically to invoke the enforcement mechanism that will be necessary to punish those adjudged as having committed war crimes. And if in the meantime there arises the possibility that the conflicts in the former Yugoslavia or Rwanda can be resolved diplomatically, will that possibility be held up or jeopardized in order that the punishment of the war criminals can go forward? There is also a big question as to why some countries have tribunals while others where similar atrocities took place have none.

These are very difficult questions and answers are not easy to find. The United Nations cannot skirt these questions and yet claim to be relevant even if it can say, "we are providing humanitarian relief" or "the situation would be worse without United Nations presence" or "so long as we are imposing

sanctions we are addressing the problem.” That is not enough. What is more essential is that the United Nations, while avoiding harm to the innocent, should deal with the real issues that underlie the conflicts within states by working with the people in the countries concerned and empowering them morally and materially to reestablish order and restore peace in their country.

Then, when peace comes, there arises the question of when or how free and fair elections will be organized for the people to choose democratic governments. That will be the second phase; first, however, peace, law and order have to be established. And this is the period during which United Nations input is crucial. It first must grapple with the law and stability issues; regrettably, things are not moving very well in that area. So long as the United Nations is thinking and acting in terms of the traditional mode of peacekeeping where you have one state attacking another, and the United Nations stepping in to try to keep them apart, this “new” kind of conflict will not be contained. We are dealing with conflicts within countries, not between countries; therefore, they must be dealt with by different and more appropriate means.

I know that many people argue that if the United Nations gets involved in these countries, this would be meddling in their internal affairs and the Charter proscribes intervention in matters of domestic jurisdiction. In the case of Liberia, for example, the conflict, true enough, *began* in the country but it spread quickly. Already that conflict has spread around the West African region and has seriously destabilized other countries and led to the overthrow of at least one government, the government of Sierra Leone. That is the cancer of destabilization at work. Therefore, under the Charter we are no longer dealing with just a domestic Liberian matter; the peace of the whole region of West Africa is at risk and, therefore, the interests of the international community may already require that Chapter VII of the Charter be invoked, allowing the Security Council to become involved to protect international peace and security. Such situations like the one in Liberia that have festered too long with horrendous loss of lives and mass destruction must be looked into by the Security Council appropriately, otherwise the entire West African region will be destabilized.

Finally, a word about the spread of weapons is necessary. Where do the guns and ammunition that are being used in these in-country wars come from? They are coming largely from the developed countries. The arms registry established in the United Nations does not deal with small arms. We have to find ways by which small arms, the assault weapons that are being

heavily trafficked in the Third World where they are causing massive loss of life and disturbing the peace, can be curbed.

Before doing so, how do you proceed to deal with nation building questions while the war is ongoing and afterwards? If we have not found the means by which to stop these intra-state conflicts, is it reasonable to talk about nation building already? Many people in the United States became opposed to the United Nations agenda in Somalia, not just because American soldiers were killed and their mutilated bodies dragged in the street, but because they were asking how economic development that had failed to materialize in Somalia for so many years of peacetime could be achieved by the United Nations in a war situation. How realistic was it to endeavour to stop the conflict and simultaneously rebuild Somalia? How does one select which country will be rebuilt by the United Nations?

Since most of the countries of Africa require developmental aid, should the way to secure development aid become one where an armed conflict must first occur? Must a country become a failed and broken state in order to be rebuilt? Clearly, there has to be a more equitable and structured way by which the developmental needs of the poor countries can be addressed in the post-Cold War period. The so-called nation building effort which some propose in the context of peacekeeping or peace enforcement exercises is not an appropriate way. Because, when such nation building measures do not succeed and especially when peacekeepers are killed, the question of financing and continuing such missions becomes an insurmountable issue even though the sums of money involved are small.

Many observers have pointed out that the whole budget of the United Nations is less than what it takes to operate the New York City Police Department. Clearly, the reluctance to fund the United Nations is not because of the huge costs or even the instances of waste involved; the real problem I think is that so long as people do not feel that the United Nations can become more effective in resolving the vexed global problems of war and peace and development and justice, many countries will continue to have serious problems paying their assessed contributions even including monies that they already owe. Political reasons mainly are offered by some countries objecting to the soaring United Nations costs, but when, as in the Gulf War, the United Nations was able to undertake in a workable framework a successful military effort, no one raised the question of the cost. If the United Nations cannot achieve good results in peacekeeping operations, then the question of financing will continue to haunt the Organization.

The complaints are not altogether unwarranted. If the United Nations spent upwards of \$2 billion in Somalia and at the end about a hundred peacekeepers are dead and the United Nations is pulling out, it is hard to sell that to tax payers as a useful way of spending scarce tax dollars and sacrificing the lives of young soldiers. Everyone would like to have success all the time, but that is not possible; therefore, the United Nations must have priorities plus a strategy and a mechanism that allow it to come to grips effectively with the problem of the current era. It must stop getting involved in all cases and situations, attempting to do too many things all at once but not really succeeding in any. The focus of the United Nations' critics has not been on the areas where the Organization has had success. Take the success story of Mozambique, for example. No one hears about it, but one hears about Somalia all of the time.

Therefore, we need to find a better way by which the United Nations can deal with the increasing number of situations in the developing world where the state itself and its mechanisms have collapsed. In Mozambique there was war—fatigue, as someone pointed out this morning, when the United Nations stepped in, therefore peace came. Furthermore, the state mechanism in Mozambique had not collapsed completely. In Somalia and in Liberia, there is really no normal state mechanism to work with. In such cases, the United Nations, if it is to be effective, must find a means by which in partnership with people from the countries concerned, the principles of the Charter and the United Nations can be realized in such countries.

At the end of the Cold War, a new world order has emerged. The United Nations was very effective in bringing about the end of the colonial period. We must not undermine that achievement by making the United Nations itself a new colonial power. What we can do is find ways by which, working with people of the countries in crises and conflicts, their problems of security, governance, and peace are solved by the people themselves. How do you choose whom in the country to help? That will always be a problem. The United Nations may even be forced to support local warlords, because the first objective has to be the restoration of law and order. Once order has been restored and the weapons withdrawn, then conditions will be created in which the people of the country concerned can exercise their right of free choice as to the government they would like. Only then will the country be able to move to the next phase. But if you fail to stop the killing and to restore order, the intra state wars of the post-Cold War period will go on endlessly.

In conclusion, peacekeeping in the traditional sense will not keep the peace and restore order within states where there is conflict. The United Nations must be able to act forcefully, and it should do so in keeping with the principles of the Charter working through the people of the country in conflict themselves. The aim should be to restore order as quickly as possible and hold elections, thereby allowing the people of the country to choose their own leaders and take charge of their destiny.

