

CELSO LAFER

Professor of Philosophy of law at University of Sao Paulo. Former Foreign Minister of Brazil

The first point I would like to stress is that the challenges of international law are related to the challenges of coherent governance. I emphasise the word 'coherence' because one of the characteristics of present-day international law is its fragmentation into many specialised fields that are not coherently organised by a general international law capable of structuring the interactions and interdependencies of the many fields that produce the many norms mentioned by our chairman. The domains of international law, in short, do not operate in an appropriate network. It is as though we had many computer programs that do not interact adequately if at all.

This is the case even where translation is concerned. The WTO has three official languages, English, French and Spanish, but most of the negotiations are done in English, and most of the disputes are settled in English. The language brings its culture with it, so common law characteristics are more prominent than previously, when the Uruguay round came to a conclusion. That is why there are problems of coherence in the understanding of the law, related to the difference of legal culture conveyed by different languages.

The reasons for the complexity of the international agenda are related to the diplomatic challenge of shaping a global system by discovering shared interests in spite of the asymmetries of power and the heterogeneity of values. Therefore, taking this in consideration, I will reorganise this agenda to explain why international law has become so fragmented.

One of the items of the present international agenda is related to the politics of identity and recognition, and this brings into question the ability of a principle such as self-determination to deal with this new challenge that affects the stability of the present-day international-state system. The second issue is the normative aspirations of the world order, including human rights, democracy, forms of international cooperation and everything that is linked to these ethical aspirations and how their effectiveness faces the selectivity of power politics. Here one can also say that there is a difference between what can be done at regional and at international level, and that in itself is a very important issue of governance. I would also like to make the point that in terms of coherence all those who deal with international human rights would like to have in judicial and quasi judicial mechanisms of international dispute settlement an extensive interpretation of human rights, while if you are dealing with trade dispute settlement, for instance, in the WTO strict interpretation is

preferred. Therefore, there are two attitudes regarding interpretation, and that is one aspect of the problem of fragmentation that I have mentioned at the outset.

The third item of the agenda relates to war and peace and the issues of security we have mentioned. I would like to point out that one of the changes that has occurred is related to the fact that the risks of diffuse tensions and conflicts have increased after the end of the Cold War, magnifying uncertainties. Therefore, the context of the Non-Proliferation Treaty (NPT), which was created in the context of defined polarities based on deterrence, has changed. The only aspect I would like to stress is that there is no chance of a successful discussion of non-proliferation without an effective discussion of nuclear disarmament. There is an awareness that we should think of a world that is free of nuclear weapons. Kissinger's article with Perry and others, Obama's speech at Prague and the recent Security Council resolution show that the possibility of overkill looms high in the fear of all. I will observe here that in terms of coherence and governance there is obviously a need for collective security, but there is enormous difficulty in reaching a shared view of what is a threat to collective security.

The fourth item of the agenda I would like to mention covers those issues we have been discussing, trade, economics, finance, the G7, G8, G20, and the management of risks. You have risks that are both related to politics and security and to the economy. I find it difficult to think of appropriate models for discussing these many issues. One of the important changes in international law has been the dispute settlement system of the WTO, because it has created an enormous body of jurisprudence, and it is trying to deal with many issues. Those involved in environmental, labour, and human rights issues would obviously like to have access to the WTO's dispute settlement system, but the fragmentation of the international law obstructs this possibility.

Finally, the fifth item is the environment and sustainable development. The Rio conference of 1992 was significant, as it was the first global conference after the end of the Cold War, and the structure was no longer the polarisation of East and West as it had been previously. That led not only to the Rio Declaration, the Climate Change Convention and the Biodiversity Convention, but also to Agenda 21, which was devised as a sort of social contract for the 21st century in order to deal with all the connections our previous speaker mentioned, such as development, peace, water etc. However global the issue of environment is, the scope of agreed cooperation, up to now, is clearly inadequate for the purposes of governance.

Let me conclude by saying that there are also the issues related to science and technology and the capability of international law to deal with the challenges of a continuous transposition of what were natural barriers. Biotechnology is an example. In short, if we want to consider the issues of global governance, we must bear in mind that rules are extremely important, as without them there is no predictability. One of the basic issues related to governance is the possibility of the rule of law. One of the challenges we face in the area of international law is not only the classical challenge of international law as a provisional rule of law, but also fragmentation - a fragmented, post-modern international law that does not have a mechanism to appropriately provide the interaction between the many fields of normativity.

