

INTRODUCTION

1) It is a great privilege to attend this important Summit, which commemorates the 8 hundred years anniversary of the Magna Carta, the first piece of legislation that sought to establish limits on the power of the state vis-à-vis its subjects.

2) The norms contained in the Magna Carta were the very seed of the “Rule of Law” as we know it today.

3) It is fair to say that, without this Great Charter, other major milestones such as the Habeas Corpus Act, the Constitution of the United States of 1787, the French Declaration of Rights of the Man and the Citizen of 1789, and the Universal Declaration of Human Rights of 1948 would not have come to pass.

4) The Rule of Law is not an easy concept to define. The Constitution of Brazil, in its first Article, refers to it as a fundamental principle of the Brazilian State.

5) But what is the Rule of Law? Given I am in the United Kingdom, let me adopt the definition proposed by Lord Bingham's in his book *"The Rule of Law"*:

"All of the persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publically made, taking effect (generally) in the future, and publically administered by the courts."

6) Today, these concepts are embedded in every democratic constitution, guiding the state's actions not only on the domestic level, but also regarding its international relations.

7) In his book, Lord Bingham proposes 8 principles which, in his view, describe what the Rule of Law means in our times.

8) Of greater relevance for us today is his 8th principle, namely: *"That the Rule of Law requires compliance by the state with its obligations in international law as in national law."*

9) As noticed by Hans Kelsen and other eminent scholars, to preserve the functioning of any legal system, there must be mechanisms to enforce the law and, ultimately, to punish those responsible for its breaches.

10) This brings us to our topic in this Summit: “Sanctions and the Rule of Law”.

11) In a general sense, all measures designed to enforce the law can be seen as sanctions.

12) But more technically, the enforcement of law by means of a non-forcible manner, especially in an international context, may be divided into two legal regimes: (i) counter-measures (those taken by States) and (ii) sanctions (those enforced by International Organizations).

13) Allow me now to deal with our topic from a practical perspective, by briefly describing 4 cases involving Brazil, International Organizations of which it is a Member, and sanctions

UNITED NATIONS

14) Starting from the multilateral level, Brazil, as a founding member of the United Nations, is bound by the obligations provided under its Charter. This includes a duty to comply with the Security Council decisions.

15) Recently, in the temporary absence of President Dilma Rousseff and her legal substitutes, I had the honor to serve as President of Brazil for a couple of days.

16) During that period, I signed, among others, a Presidential Decree that gave domestic effect to Resolution 2111 (2013) of the UN Security Council, which established an arms embargo on Somalia.

17) This is, in my view, a good example of the kind of sanction that may be applied to enforce de Rule of Law internationally.

WORLD TRADE ORGANIZATION

18) Still on the multilateral level, I recall that Brazil is also one of the founding Members of the World Trade Organization (WTO), which is recognized for its unique system for settling trade disputes.

19) In essence, this system is a mixture of negotiations, 2 degrees of adjudication (Panel and Appellate Body), traditional arbitration and enforcement mechanisms.

20) If a decision of a Panel or the Appellate Body (known as a Report) is not complied with by the offending State, the injured State may apply counter-measures such as suspend concessions and obligations under a trade agreement against the offending State.

21) In 2014, Brazil benefited from the WTO dispute resolution system. I refer to the so-called *Cotton Dispute*, a dispute brought by Brazil against the United States in 2002 concerning subsidies granted by some agriculture programs to American cotton producers.

22) After a final decision of the Appellate Body in 2008, and failure of the United States to comply with the Report, in 2009 the WTO arbitrators authorized Brazil to impose counter-measures against the US which, at the time, would have affected at least 800 million dollars of American trade, including intellectual property rights.

23) In 2010, to avert the imposition of the retaliatory measures, the United States entered to a framework agreement with Brazil to negotiate modifications to its agricultural programs.

24) As a result of the agreement, the US paid more than 700 million dollars as compensation to Brazilian cotton producers, partly directed to a private fund set to finance technical assistance and research projects benefiting Brazilian cotton producers.

THE ORGANIZATION OF AMERICAN STATES

25) I now move to the regional level to underline Brazil's participation in the Organization of American States (OAS) and its Humans Rights protection system, composed by the Inter-american Commission of Human Rights and the Inter-american Court of Human Rights.

26) Regarding Brazil's relationship with the Inter-american Court, I would like to highlight the case *Gomes Lund vs Brazil*, which dealt with the country's responsibility for the arbitrary detention, torture, and disappearance of 70 individuals during counter-insurgent operations by the Brazilian army, between 1972 and 1975, during the military regime that begun in 1964 and lasted until 1985.

27) In November 2010, the Court, among other findings, ruled that Brazil's *Amnesty Law*, by preventing the prosecution of the persons involved with violations of human rights in the aforementioned military operation, was "*incompatible with the American Convention and void of any legal effects*".

28) As a result of the judgment, the Brazilian National Congress enacted a law on access of information (Law n° 12.527/2011).

29) The purpose of this law was to oblige the Government to grant access to the public of documents concerning human rights violations and other wrongdoings perpetrated by state agents.

30) Brazil also set up a *National Truth Commission*, which last December delivered a full report on gross human's rights violations perpetrated between 1964 and 1988, shedding light on this important part of Brazil's history.

31) Although the question regarding Brazil's *Amnesty Law* is still pending a definitive solution, the latest Court's Resolution on the implementation of the decision on the case *Gomes Lund vs Brazil* demonstrates that the country is making considerable progress in complying with all of the Court's rulings on the matter.

MERCOSUR AND UNASUR

32) Finally, I would like to comment on the participation of Brazil regarding sub-regional international organizations, such as the Southern Common Market (MERCOSUR) and the Union of South American Nations (UNASUR).

33) In 2012, MERCOSUR and UNASUR dealt with a case considered to be a violation of their democratic principles: the removal of Paraguay's President Fernando Lugo and his replacement by Vice-President Federico.

34) Lugo had been subjected to an impeachment in Paraguay's Parliament, further to "summary trial" of less than 36 hours.

35) Such procedure was found by UNASUR and MERCOSUR to be a clear violation of the due process of law and the right to an adequate defense.

36) As a result, Paraguay was suspended from both Organizations, until the democratic election of President Horácio Cartes in 2013.

CONCLUSION

37) Allow me to finish with a few concluding remarks.

38) We have reached a time in our history where States can no longer solve all of their problems by themselves.

39) The challenges of security, health, overpopulation and pollution, to mention only a few, can only be addressed collectively in the international sphere.

40) For commerce to prosper, for democracy to flourish and for human rights to be protected, the Rule of Law has to be obeyed.

41) To that extent at an international level, a State or an International Organization must be able to rely upon non-forcible counter-measures and sanctions.

42) This is premised on the basis that these measures are:

(i) carried out within the limits of international law; (ii) applied in a proportionate way; and (iii) do not violate basic economic, social and cultural rights of the offending State.

43) After all, an unlawful act by a State should not be met with the unlawfulness of another, because, as we all know, sanctions are not a form of legal revenge.

Thank you all for listening to me.