

SPEECH BY H.E. JUDGE PETER TOMKA, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, ON THE OCCASION OF THE UNVEILING OF THE STELE OF HAMMURABI

28 April 2014

Dear Minister Zebari,
Excellencies, Ambassadors,
Distinguished Guests,

It is a great honour for me, Mr. Minister, to greet you today on behalf of the International Court of Justice. We are honoured and pleased to have you as our guest; what is more, your visit here today is a testament to Iraq's commitment to the promotion of international justice and the peaceful settlement of disputes.

Mr. Minister, you have the honour of representing a State steeped in history and a land extremely rich both in culture and tradition. This is not surprising since Iraq is situated in what was once ancient Mesopotamia, which has been described as the "Cradle of Civilization". There is no question that your country was home to some of humanity's earliest settlements; the vestiges of the world's great civilizations can still be admired in Iraq today. Equally rich as your nation's culture and history is its long-standing legal tradition which, of course, is of particular interest to us at the Court. Thus, it is with a sense of historical wonder and profound respect for the diverse legal traditions of the world that we accept your most gracious gift. The Court is deeply honoured to have received this wonderful stele of Hammurabi, which is emblematic of Iraq's long-standing and rich legal tradition. We are most grateful to the Republic of Iraq for having bestowed this honour upon the Court.

As students, scholars and practitioners of international law, we are often called upon to rely on the codification of existing rules of international law in the course of our work; for instance, the codification projects carried out by the International Law Commission have been particularly illuminating in advancing the work of the Court and beyond. Therefore, it goes without saying that your gracious present to the Court carries distinct significance and resonance within these walls. As is well known, the Code of Hammurabi — which was enacted by Hammurabi, King of Babylon, and the sixth ruler of the Amorite dynasty, and promulgated sometime circa 1750 BC in what is modern day Iraq — constitutes one of the earliest known legal codes. Yet, despite having been produced so long ago, the Code of Hammurabi has nonetheless — and undeniably — wielded an enduring and lasting influence on legal systems across the globe.

It has been said of Hammurabi that he

“was a practical codifier rather than a revelatory mediator of law. His code was an effort to fuse into a workable whole the ancient inheritance of Sumerian-based jurisprudence and the Semitic talion law . . . of the Akkadian superstratum. The result is not a model of economy or arrangement or logical organization, but the code of Hammurabi constitutes nevertheless the first great legal monument in the history of mankind.”¹

¹*The New Encyclopedia Britannica* (1992), Vol. 20, 598.

Written in the Akkadian language, the Code has been described as “the most complete and perfect extant collection of Babylonian laws”² and elsewhere as “the largest and most impressive collection of ancient Mesopotamian laws”³, and as “the longest and best organized of the law collections from Mesopotamia”⁴. The Code was carved on a large stone (“stele” or “stela”) of diorite which was found in 1901-1902 by Jean-Vincent Scheil, in Susa. The original is displayed in the Louvre in Paris. Yet, while it originally codified laws applicable in the Babylonian realm, the legacy of Hammurabi’s Code has been much more pervasive; in many ways, it has served as a template or inspiration for legal provisions commonly found in various legal systems. Furthermore, copies of the Code have been found from at least a thousand years after its enactment, which some consider as demonstrating that it “was both an influence on and a reflection of contemporary literary, political, as well as legal thought”⁵. More importantly, some authors have suggested that the Code was a “model for other later law collections”⁶.

It could be argued that the Code’s very structure somewhat resembles a progression followed by some international instruments, with which international lawyers are familiar, namely: a prologue, a collection of “laws”, and an epilogue. Its core is usually regarded as containing approximately 282 articles governing a wide array of legal issues, including provisions pertaining to commerce, family law, criminal law, property and slavery. Even a cursory review of the contents of the Code reveals that the Babylonians introduced several new legal concepts, many of which have been espoused by other civilizations. Examples include: the notion that legal protection should be afforded to lower classes of people, which in today’s systems sometimes translates into legal protections for socio-economically disadvantaged and/or disenfranchised groups; the idea that social justice should be actively pursued; the now well-ingrained principle that the State constitutes the authority entrusted with the enforcement of the law; and the now widespread notion that the punishment must fit the crime.

Indeed, it is interesting to underscore that in some respects, the Code was quite forward-looking for its time, enshrining, for example, provisions enabling women to divorce their husbands for cause. While the Code differentiates between classes of persons, with punishment sometimes differing depending on status, in other parts the Code ensures the protection of the weak by restricting the possibility of the stronger members of society abusing their powers. By way of overarching objective, the Code makes clear that it was designed to ensure justice throughout the kingdom. In fact, the prologue captures these concerns of justice and public order aptly. It highlights that Hammurabi was “to make justice prevail in the land, to abolish the wicked and the evil, to prevent the strong from oppressing the weak”⁷. In laying down Hammurabi’s mandate, the prologue further indicates that “[w]hen the god Marduk [, who was the patron god of Babylon,] commanded me to provide just ways for the people of the land (in order to attain) appropriate behaviour, I established truth and justice as the declaration of the land, I enhanced the well-being of the people”⁸.

Along similar lines, the wording of the epilogue of the Code echoes the same commitment to justice, the protection of weaker members of society, and access to the law. It states the following:

²*Ibid.*, Vol. 5, 669.

³Klaas R. Veenhof, “Before Hammurabi of Babylon: Law and the Laws in Early Mesopotamia” in F.J.M Feldbrugge (ed.) *The Law’s Beginnings* (2003), 138.

⁴Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (2nd ed.,1997), 71.

⁵*Ibid.*, 74.

⁶Marta T. Roth, “Mesopotamian Legal Traditions and the Laws of Hammurabi” (1995) 71 *Chicago-Kent Law Review* 13, 21.

⁷Translation in Roth, above note 4, 76 (i 27-49).

⁸Translation in *ibid.*, 80-81 (v 14-24).

“In order that the mighty not wrong the weak, to provide just ways for the waif and the widow, I have inscribed my precious pronouncements upon my stela . . . in order to render the judgments of the land, to give the verdicts of the land, and to provide just ways for the wronged . . .

Let any wronged man who has a lawsuit come before the statue of me, the king of justice, and let him have my inscribed stela read aloud to him, thus may he hear my precious pronouncements and let my stela reveal the lawsuit for him; may he examine his case, may he calm his (troubled) heart . . .”⁹.

The wording in the epilogue and the existence of several copies of the stela led one commentator to conclude that there was a real desire for dissemination and the possibility of consultation of the Code¹⁰. In this light, the Code might therefore be viewed as an early forerunner to the rule of law requirement that laws be accessible to those they govern. According to recent and authoritative accounts on the matter, the accessibility of the law no doubt constitutes one of the central components of the rule of law. Moreover, on the international plane, as in domestic settings, the availability of independent and impartial tribunals — where rights can be asserted and disputes adjudicated — is equally essential in ensuring the perennity and viability of the rule of law. One recent and widely read study on the topic proposes that the “core of the existing principle is . . . that all persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts”¹¹.

Another vital aspect of the rule of law is often thought to reside in the constancy and predictability of the law, including in the context of the settlement of international disputes. In the corpus of international jurisprudence, for example, the Court, when it carries out its work, ensures that its case law remains coherent, cogent, and to the extent possible, that it generates predictable outcomes as regards the law, thereby striving toward greater unity in the application of international legal rules and principles.

Interestingly, one glance at the epilogue of the Code suggests that Hammurabi himself was very much alive to these concerns, and was animated by a desire to instil some sense of jurisprudential stability when promulgating the Code. In this regard, the epilogue provides that:

“May any king who will appear in the land in the future, at any time, observe the pronouncements of justice that I inscribed upon my stela. May he not alter the judgments that I rendered and the verdicts that I gave . . . may he heed the pronouncements I have inscribed upon my stela, may that stela reveal for him the traditions, the proper conduct, the judgments of the land that I rendered, the verdicts of the land that I gave and may he, too, provide just ways for all humankind in his care.”¹²

More than ever today are the goals of promoting and strengthening the rule of law of critical importance to both the United Nations framework and the mission of this Court. In 2005, the UN General Assembly adopted the *World Summit Outcome* document, in which States “recogniz[ed] the need for universal adherence to and implementation of the rule of law at both the national and international levels” and reaffirmed their commitment to “an international order based on the rule of law and international law, which is essential for peaceful coexistence and

⁹Translation in *ibid.*, 133-134 (xlvi 59-78 and xlvi 3-19).

¹⁰Dominique Charpin, *Writing, Law, and Kingship in Old Babylonian Mesopotamia* (trans. Jane Marie Todd, 2010), 78.

¹¹Tom Bingham, *The Rule of Law* (2010), 8.

¹²Translation in Roth, above note 4, 135 (xlvi 59-94).

co-operation among States”. I must stress, however, that “the rule of law” cannot be reduced to a mere buzzword, which now permeates political and legal discourse on the international plane; it rather comprises a real and vital set of objectives, chief amongst them being the pacific settlement of disputes, and embodies all that is noble about the mission of international law. What is more, it encapsulates that discipline’s profound commitment to core values that are often mirrored in domestic conceptions of the rule of law.

One has to look no further than the preamble of the Charter to see that this instrument strives “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained” and “to promote social progress and better standards of life in larger freedom”. Similarly, a key principle is laid down in Article 1 of that instrument and remains intimately tied to the Court’s function, in that the principal judicial organ of the United Nations must “bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

Mr. Minister,
Distinguished guests,

Let me reiterate the Court’s profound gratitude upon receiving this gift from the Republic of Iraq, a magnificent stele of Hammurabi. For the brief reasons that I have canvassed, this gift is emblematic not only of Iraq’s rich history and culture, but also of its legal tradition. It is to be stressed that other eminent contemporary publicists have also furthered this rich legacy, and supplemented the contributions of Iraq to international law. In particular, I have in mind the distinguished international lawyer, Mustafa Kamil Yasseen, whose many accomplishments include: serving as Member of the UN International Law Commission from 1960-1976, being its Chairman in 1966 and Chairman of its Drafting Committee in 1973; heading the Iraqi delegations at the second UN Conference on the Law of the Sea and the third Conference on the Law of the Sea, the UN Conference on Diplomatic Relations, and the UN Conference on the Law of Treaties, including presiding its Drafting Committee; chairing the Drafting Committee of the Sixth Committee of the UN General Assembly in respect of the Convention on Special Missions in 1968-69; being appointed Member of the Permanent Court of Arbitration; being elected as a Member of the Institut de droit international; and delivering on three occasions lectures at the Hague Academy of International Law, the last ones on the interpretation of treaties. His untimely passing away and internal political factors deprived him of a chance of reaching the Bench of the International Court of Justice. He would certainly have deserved it.

Mr. Minister, by way of conclusion I wish only to remark that the location for the stele of Hammurabi has been chosen judiciously. It shall stand, in all its majesty, by the main entrance of the Judges’ Building, commonly called the “New Wing” of the Peace Palace; this is a path travelled by Members of Court on a daily basis when arriving at the Court and leaving its premises. In many ways, therefore, the stele of Hammurabi, and all that it embodies, will stand guard as a dedicated watchman at the door, reminding us all to do our best to uphold the values enshrined in the UN Charter. A faithful vigil of sorts for the causes of justice, legal stability and the rule of law, the stele shall act as a constant reminder of the noble judicial office we have all taken on as Members of the principal judicial organ of the UN. Thus, in the spirit of Hammurabi’s legacy, we shall continue adjudicating disputes submitted to the Court with dedication, in utmost impartiality, independence, and in accordance with international law. Thank you.
