

**International Law Day (26 October 2020)**

**“The UN@75: International Law and the Future we want”**

**The United Nations, International Law and Climate Change: Looking back/Moving forward**

Patrícia Galvão Teles

Professor of International Law, Autonomous University of Lisbon

Excellencies

Distinguished delegates

Ladies and gentlemen

It is with great honour that I have accepted the invitation to participate in this virtual event devoted to commemorating 75 years of the United Nations.

My intervention shall focus one of the key priorities identified in the global UN75 survey: climate change. It will highlight also certain areas where two priorities – climate change and human rights - intersect.

Before starting, allow me to clarify that I will not attempt to deal with the specifics of the climate change legal regime. I propose, instead, to take a macro approach to see how the UN and international law have been able to address climate change – which has been termed the defining challenge of our times - and how it will have to continue to do so.

Mr. Chairperson,

Let me begin with some introductory remarks.

The United Nations is the most ambitious and long living project for peace, dignity and development, humanity has ever had. It might not be perfect, but I remain convinced of its fundamental utility as a venue where the international community can work together.

Since its foundation 75 years ago, the Organization has lived under crisis and criticism. Yet, looking back, its achievements and impact are remarkable.

Not only the UN has endured longer than any other international project before, it has made a definitive mark on the international legal order, changing the existing landscape in a dramatic way – with new legal principles contained in the Charter and developed further by the Organization – and contributing to a significant development of international law, regarding both general international law and its many specialized fields.

Mr. Chairperson,

This has certainly been the case with regard to the legal regime developed to tackle climate change. The UN and Member States have been working together to prepare the world for this new reality in the Anthropocene.

International law is a powerful vehicle for change and the UN has been a catalyst for that change as a global legal forum. Human rights and self-determination are important testimonies of that. And so is now climate change.

When the UN was created in 1945, climate change was not part of the international agenda. It is now beyond doubt that it is real, already happening, and human activity is largely responsible for it.

But even if in 1945 there was no mention in the Charter, the Organization has unquestionably recognized climate change as a fundamental challenge, and it has contributed to the development of international law as an important tool to tackle such challenge.

Since the 1980s, there has been increasing awareness of the looming impact of climate change on the environment and human life as we know it and of the complex challenges it poses, with global and intergenerational impacts, and long term and potentially irreversible consequences.

Since the 1990s, the Intergovernmental Panel on Climate Change (IPCC) – which is the United Nations body for assessing the science related to climate change – has been providing policy makers with regular scientific assessments.

The solution has been clear for quite some time now: aggressive action must be taken to curb greenhouse gas emissions and transition towards a zero-carbon society.

At the same time, with such a complex, long term and global challenge, only a global response can help to alleviate the its consequences. As the UN Secretary-General António Guterres has noted, climate change is the biggest collective action problem, but it can also be seen as an opportunity for multilateralism to prove its value.

Mr. Chairperson,

Having an international legal regime for combating climate change, takes a global incentive of trust and reciprocity.

Most of that international legal regime developed so far has been treaty based, adopted under the auspices of the United Nations.

The UN climate change regime forms the core of international climate change law and UN treaties have attracted significant interest:

- The 1992 UN Framework Convention on Climate Change has 197 parties;
- The 1997 Kyoto Protocol had 192 parties. The Doha amendment of 2012 has now 146 parties;

- The 2015 Paris Agreement has 189 parties. With 175 signatures at the opening signature ceremony, this has been the international treaty in history that has drawn the highest number of signatures in one single day.

These instruments together provide the international climate change law regime based on 4 fundamental aspects: 1) mitigation; 2) adaptation; 3) financial and other means of support for mitigation and adaptation; and 4) international oversight to promote implementation, compliance and effectiveness.

Mr. Chairperson,

The goal of combating climate change as a central priority for the UN has also been reaffirmed politically in the 2030 Agenda for Sustainable Development (in paragraph 14 and Goal 13) and in the 2019 Climate Action Summit.

In the Declaration on the Commemoration of the 75<sup>th</sup> Anniversary of the United Nations, adopted just last September, a strong commitment was made in paragraph 8 to protecting our planet.

Mr. Chairperson,

Scientists, including through the most recent reports of the IPCC, have been warning that we are now at the “critical decade”. Transformative changes to combat global warming and climate change have a window of opportunity in the next 10 to 15 years.

Besides action at the political level, international law should continue to contribute to help curbing the adverse effects of climate change.

Professor Christina Voigt, a leading academic in Climate Change Law, has argued that international law has a Short-Term and a Longer-Term Role.<sup>1</sup>

In the Short-Term, there is a need for effective implementation of existing treaties, a point that was also highlighted by the Secretary-General’s Report of 2018 on “Gaps in International Environmental Law”.<sup>2</sup>

In the Longer-Term, Professor Voigt refers that international law would need to unite and guide actors, public and private, in the system-wide reorganization and reformation across sectors and borders to promote and enforce global sustainable development, not only in the silo of international environmental law but integrated into all areas of international regulation including trade, investment, human rights, etc.

To quote Professor Voigt: *“international law and law-makers can, should and must aspire to create a better, sustainable world – in the same spirit which informed the drafters of the UN*

---

<sup>1</sup> Christina Voigt, “Climate Change, the Critical Decade and the Rule of Law”, *ANZSIL Conference Keynote* (2019).

<sup>2</sup> “Gaps in International Environmental Law and Environmental related Instruments: Towards ad Global Pact of the Environment” (A/73/419).

*Charter. The path towards transformative change is not an easy one, but the alternative is worse; much worse."*

Mr. Chairperson,

Without question, international law will have to continue to be better implemented and developed to tackle the challenge of climate change.

As Professor Nilufer Oral,<sup>3</sup> another eminent scholar in Climate Change Law, has argued, international law should be part of the tools of adaptation and response measures, by devising legal solutions to help States and affected communities to cope with the adverse impacts of climate change.

Mr. Chairperson,

Looking to the near future, the 5<sup>th</sup> Anniversary of the Paris Agreement this year should serve as an important symbol for keeping up and increasing the momentum for its implementation.

Important major conferences scheduled to take place between 2020 and 2022 should also continue to give the necessary political impetus for the development of an international legal regime to fight climate change in its diverse impacts as, for instance, the Ocean Conference, the Biodiversity Conference and the Stockholm +50 Conference.

The current negotiations in the framework of an intergovernmental conference for an internationally legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the BBNJ process) can also yield important results in what concerns the role of the oceans for mitigating climate change.

International Courts and Tribunals may also very likely in the future be called to provide guidance on existing law, through contentious cases and advisory opinions.

And the same for regional and national courts. Climate litigation is already a reality. Some of this litigation on climate change arises also in connection with human rights.

Recent landmark decisions have been pronounced by Dutch, Irish and Colombian courts. The European Court of Human Rights, the African Court on Human and People's Rights and the Inter-American Court of Human Rights have also started developing jurisprudence in these matters.

In non-judicial international bodies, such as the UN Treaty Bodies, set up by the different human rights conventions, petitions connecting human rights and climate change are a recent

---

<sup>3</sup> Nilufer Oral, "International Law as an Adaptation Measure to Sea-level Rise and its Impacts on Islands and Offshore Features", *The International Journal of Marine and Coastal Law* (2019).

development that merits attention. This is the case, in particular, of the Human Rights Committee and the Committee on the Rights of the Child.

Mr. Chairperson,

Most of these developments have happened in other UN fora (or outside the UN) and not in the 6<sup>th</sup> Committee, the Legal Committee of the of the General Assembly that you currently chair.

In spite of this, the 6<sup>th</sup> Committee can also have a meaningful contribution.

It has currently before it a set of “Draft Articles on the Protection of Persons in the event of Disasters” prepared by the International Law Commission. Disasters cover climate change related events such as slow onset events as droughts and sea-level rise. If adopted as a Convention, these Articles would reinforce the framework for international cooperation in dealing with disasters and the applicable principles to adequate and effective responses.

Mr. Chairperson,

Further to what has just been mentioned, the 6<sup>th</sup> Committee has shown recently that is very aware of the climate change challenge and of the role international law can play to help fighting it.

Member States in the 6<sup>th</sup> Committee strongly supported the decision of the International Law Commission to include the topic “Sea-level rise in relation to International Law” in its long-term programme of work in 2018 and in its active agenda in 2019. The Federated States of Micronesia also made a proposal to that effect, in a very important instance where a Member State made a formal proposal for an ILC topic.

As the ILC is starting to work on this topic, in a Study Group of which I have the honour to be one of the co-chairs, the 6<sup>th</sup> Committee has shown great interest and commitment to the topic. Member States have engaged both formally and informally in a productive dialogue with the Commission and the Study Group and there are ample reasons to believe there is great interest in the study the ILC is preparing on the sub-topics of law of the sea, statehood and protection of persons affected by sea-level rise.

This last topic of “Protection of Persons affected by sea-level rise” that I have the responsibility to lead in the Study Group is a pertinent example of how the two priorities identified in the UN75 Global Survey - climate change and human rights – intersect. Sea-level rise, being one of the adverse impacts of climate change, has the potential to impact negatively in the human rights of the populations affected.

And as in any crises, like the current Covid-19 pandemic, it is the most vulnerable groups in the most vulnerable countries that are more severely affected. It is my sincere conviction that the 6<sup>th</sup> Committee will give an important contribution to the identification of the legal problems raised by sea-level rise and the possible legal solutions, including in what regards principles applicable to the protection of persons affected by sea-level rise.

Mr. Chairperson,

The global consultation launched in 2020 to mark the 75th anniversary, represents the most ambitious effort to date to understand expectations of international cooperation and of the UN. The answers from over a million people from all countries provide unique insights into what the public wants at this challenging time for the world.

Key findings show that:

- Across regions, ages and social groups, respondents were broadly united in their priorities for the future.
- Looking to that future, the overwhelming concerns are, among others, the climate crisis and human rights.

Concerning the UN:

- Over 87% of respondents believe global cooperation is vital to deal with today's challenges.
- Looking to the future, 74% see the UN as "essential" in tackling those challenges.

Mr. Chairperson,

It is our collective responsibility to heed to those expectations from "we the peoples of the United Nations", to quote from the first line of the Preamble of the Charter.

When one opens the UN website today, at the very top the motto "Peace, Dignity and Equality on a Healthy Planet" appears.

The addition of this fourth pillar – a Healthy Planet – is a recognition of the importance the UN attributes to combating climate change and that today - more than ever – this pillar is indispensable if we want to continue pursuing living in Peace, Dignity and Equality.

Thank you.