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**Speech**

**by**

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**International law: our common good**

It is not easy to speak as Legal Counsel of the United Nations at a time when the world is facing the most serious global peace and security crisis in decades, as well as an alarming food crisis. More personally, belonging to a generation for which multilateralism and globalization appeared to be the only viable option, it is even more difficult to conceive of a failure of the basic framework of international relations which was progressively built during the 20<sup>th</sup> century.

This is why I wish to seize the opportunity of being in this extraordinary academic forum to reflect on the topic that the





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International Law Association chose for this year's session, "International Law: our common good".

Let me start by noting that expressions like "global commons" or "common goods" seem to be getting some renewed attention in multilateral fora. Also, the Secretary-General delivered his message few days ago on "Our Common Agenda". The term "global commons" has been used in different senses in United Nations documents:

- There is a traditional, narrow use that is limited to resources beyond national jurisdiction and open to all States: the high seas, the atmosphere, outer space, and Antarctica.
- There is then an expanded concept of the term which would include resources that, even if subject to national jurisdiction, are of interest or value to the welfare of the community of nations, in particular environmental resources. In this sense, for example, the rainforests or resources related to the maintenance of biodiversity could be included.
- Finally, there is the even broader sense in which "global commons" seems to be used to refer to resources or values with respect to which there is a global interest, for example, education, the reduction of inequality and, why not, respect for international law.

Which brings me to address more specifically the question of international law as a common good.

Ladies and Gentlemen,





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In spite of the challenges that multilateralism is facing, it is important to counter sentiments that we now hear everywhere being expressed regarding a supposed general decline in respect for international law.

Such reflections are not novel. We have heard rumours of the death of international law before and, like Mark Twain's supposed demise, they have been "an exaggeration". For instance, in the 1960s and 1970s, when the newly independent States were challenging what had formerly been thought of as established international law. Also, after the 9/11 terrorist attacks. And after the military intervention in Iraq in 2003. The decline or decreased use of the International Court of Justice has also been declared in the past, including in academic circles. And yet, as I just mentioned, the number of cases the Court is actually seized of has increased. And these are cases coming from all regions of the world and relating to major contemporary crises.

Yet international law has always survived. The established rules are challenged. But those who challenged them do so, not by rejecting the notion that there is any international law, but by articulating what they claim the law to be, or at the very least what they think the law should be. Others respond, also in the language of international law. The existing rules are reaffirmed. Or they change and adapt. But there is always international law.

Thus, what is sometimes perceived as a crisis of international law is often "simply" a lack of consensus among Member States about





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the current state of the law or about the direction in which it should develop.

One might even say that periodical crises are an inherent part of international law, for as long as the world faces new challenges or new perspectives open up on existing ones.

International law is, at the very least, the basic common language that States use when they talk to each other and, in that regard, our common good.

If there is a crisis of multilateralism, then, that does not imply a crisis of international law, or that international law is no longer an appropriate tool for the conduct of international relations. It is actually the other way round: international law provides stability, even when and where other processes and tools fail.

The ongoing armed conflict in Ukraine and the situation that led to it are no exception. The Russian Federation has justified its actions in terms of international law; and others have also justified their responses in terms of international law. However, using the language of international law does not necessarily mean that its use is legally sound. Still, it is an endorsement of the existence of international law as a process, a tool and, as I just mentioned, a common language.

The principal organs of the United Nations, when they speak, use the language of international law as well. The International Court of Justice is an obvious case. But it is far from being the only one.

Intergovernmental organs also speak international law. They do so in abstract declarations that are specifically aimed at





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articulating their understanding of the state of international law. The so-called Friendly Relations Declaration, adopted by the General Assembly in 1970, is but one example.

But they also do so when responding to specific situations.

The Security Council has done so on a number of occasions, in particular under Chapter VII of the Charter. Among others, it has determined that a particular use of force was unlawful: for example, the Iraqi invasion and occupation of Kuwait or Israel's attack on nuclear installations in Iraq in 1981. It has interpreted what would constitute a threat to the peace, as for example regarding terrorist acts. And it has also referred to specific acts that would constitute a violation of international humanitarian law in the context of the protection of civilians.

The role of the General Assembly in articulating international law views is also an old question from an international law perspective. Strong legal positions have been expressed in General Assembly resolutions in a number of occasions, for example with regard to *apartheid* in South Africa. The most recent ones are those related to the situation in Ukraine.

The General Assembly, meeting at the 11th emergency special session, adopted a resolution entitled "Aggression against Ukraine" on 2 March 2022, with 141 votes in favour, 5 against and 35 abstentions, which deplored "in the strongest terms the aggression by the Russian Federation in violation of Article 2(4) of the Charter". The General Assembly also deplored its decision related to "certain areas of the Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter".

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As to the Secretariat, and in particular the Secretary-General, while States have from time to time contended that it is not for the Secretary-General to make interpretations of international law or to assess if States are implementing or complying with it, he nevertheless plays an important role. In particular, he speaks where others may not be in a position or willing to do so.

I have advised the Secretary-General on his authority to make public statements characterising the actions of specific States as unlawful and, in exercising that authority, his duty to be impartial, but not neutral.

On Ukraine, the Secretary-General has, like his predecessors, reaffirmed his role as a guardian of the Charter.

In this regard, it appears that the Secretary-General is in a unique position to call upon States to comply with their obligations under international law, and to resolve their disputes in accordance with international law. The Secretary-General, as well as previous Secretaries-General, has done so in a wide range of contexts. Their calls, and reminders, for States compliance with international law have not only been made publicly but have also been made away from the public eye and to those directly concerned as part of the behind-the-scenes political activity of the Secretary-General.

I understand that the frustration is immense nowadays as we are confronted with major violations of the most basic rules of international law. But we need to recall that international law is most of the time a tool that is used and respected by States and other international actors. Also, that the role of international law





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is more important now than ever, as we confront existential problems that no State can handle on its own and that can only be resolved through the negotiation of specific multilateral agreements.

Ladies and Gentlemen,

For the last seventy-seven years, the United Nations has demonstrated its unique role both as a place where international law, particularly in the form of multilateral treaties, is developed, and as an actor directly participating in the making and interpretation of international law.

The United Nations continues to offer a unique platform and international law framework to address contemporary global challenges. Article 1(4) of the Charter provides that one of the purposes of the United Nations is to be a “centre for harmonizing the actions of nations”. The Sixth Committee, open to all Member States, is the primary forum for the consideration of legal questions in the General Assembly. The International Law Commission, established by the General Assembly and composed of 34 independent experts, is entrusted with the mandate of making recommendations for the purpose of “encouraging the progressive development of international law and its codification”. Other intergovernmental bodies, like the Human Rights Council or UNCITRAL, contribute to normative developments in specific thematic areas and in accordance with their mandates.





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The ongoing discussions within United Nations intergovernmental bodies on a number of issues of global concern, such as the use and misuse of information and communication technologies,<sup>1</sup> show Member States' commitment to the United Nations as a place of choice. Again, the discussions in the framework of the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction underscore the importance of the United Nations as a unique forum specifically for the development of international law. And I could go on.

But in the interest of time, I will conclude.

Queridos colegas,

Things are certainly not as they should be. Being in Lisbon, I can only but quote Fernando Pessoa's *Livro do Desassossego (Book of Disquiet)*: "Trago comigo as feridas de todas as batalhas que evitei... Em mim o que há de primordial é o hábito e o jeito de sonhar." [*"I bear the wounds of all the battles I avoided. My muscles are sore from all the effort I have never even thought of making".*] Multilateralism and the United Nations similarly bear the wounds of the battles they have avoided.





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The Secretary-General, in his Global Wake Up Call of July 2020, had already sounded the alarm, when he noted that “[t]oday’s multilateralism lacks scale, ambition and teeth — and some of the instruments that do have teeth show little or no appetite to bite, as we have seen in the difficulties faced by the Security Council [...] A new, networked, inclusive, effective multilateralism, based on the enduring values of the United Nations Charter, could snap us out of our sleepwalking state and stop the slide towards ever greater danger.”

Indeed, there is no alternative, if we are not all to face the grave and perilous consequences of international disorder. And the United Nations remains the only universal platform with the mandate to maintain international peace and security.

As the Secretary-General noted on 25 February 2022, “it is important to remember that the UN is not just the chamber behind me. It is tens of thousands of women and men around the world. Feeding the hungry. Vaccinating children. Promoting development. Protecting civilians in peacekeeping operations. Mediating conflicts. Supporting refugees and migrants. Advancing human rights. Standing, delivering, extending a lifeline of hope.”

In other words, the United Nations remains a major actor for the weak and forgotten; and it is sometimes the only actor assisting in certain countries — an institution that is ready and able to go where others are not.





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And international law provides the necessary framework, the processes and the tools.

This is why it is important that we continue believing in what we do, as international lawyers and as international civil servants, even in dark times and when we feel discouraged. [I would say that it is even more important then!] I actually keep asking my staff, in particular these days: do you still believe in what you do?

And they do. They do because there are some certainties, for instance that collective action is needed to address climate change, pandemics and cybercrime. And also to secure and maintain peace. And they/we know that international law is instrumental.

And, as Albert Camus noted, “[I]a tragédie n’est pas une solution” et “[I]a vraie générosité envers l’avenir consiste à tout donner au présent”. [*“Tragedy is not a solution”, and “[r]eal generosity towards the future lies in giving all to the present”*].

Thank you.

