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INTERNATIONAL LAW AND EFFECTIVENESS IN THE POST COLD WAR ERA

Remarks by Dr. Danilo Türk, Former President of Slovenia at the Gala Dinner of the ILA/ASIL Conference, Washington DC, 11 April 2014

Honorable Professor Ruth Wedgwood, President of the American Branch of the ILA and President-Elect of the ILA,

Honorable Lord Mance, Chair of the ILA Executive Committee,

Distinguished colleagues, ladies and gentlemen,

It is a great honor and privilege to address this important, global gathering of international law specialists meeting at this, first-ever joint conference of the International Law Association and the American Society for International Law. The conference has already been described as historical. I am convinced that your discussions over the past days - and the outcomes of these discussions - will fully justify this description.

The presence of the great jurists who received awards and honors tonight - Alain Pellet, Cherif Bassiouni, Fatou Bensouda and the winners of the certificate of merits - underscores further the special importance of this evening and of this conference. Let me add my voice to the many expressions of congratulation heard tonight.

Ladies and gentlemen,

The general, overarching subject of the conference is the question of effectiveness of international law, a fundamental question always worthy of an in-depth discussion among legal scholars and practitioners.

The venue for this discussion could not be more appropriate. Washington, DC is not only the capital of the US and the seat of great economic, political and military power. Washington is also a place where some of the most important ideas of international law were developed and have guided the progressive development of the entire system of international law.

Only a few miles away from here, in Dumbarton Oaks, in Washington, a comprehensive draft of the Charter of the United Nations was prepared in the summer of 1944, almost exactly seventy years ago. The work accomplished then led to the adoption of the UN Charter, without a doubt the most important instrument of international law of the past century and arguably the most important international treaty ever drafted.

It is appropriate that at our meeting, seventy years later, we pay tribute to the drafters of the UN Charter, and in particular to Leo Pasvolsky of the US Department of State, the spiritus agens of that process. Dumbarton Oaks Conference remains an important source of inspiration for international lawyers today and will remain such in the future.

The result of that Conference, the UN Charter, has stood the test of time and remains the centerpiece of the entire international system today. However, its effectiveness has often been challenged and many of the expectations of its authors unfulfilled.

The problem of effectiveness has been a persistent companion of the United Nations since its early days, in particular in matters of maintenance of international peace and security. Critical commentators have rightly pointed out that even when the Organization properly exercised its procedural potential it was often unable to face the fundamental political issues that had to be resolved. This sentiment has existed from the beginning and grew as the cold war paralyzed the mechanisms of the United Nations.

But this aspect is not the only perspective from which one can assess the effectiveness of the system established by the UN Charter. It is remarkable that in the past seven decades, even at the time of the cold war constraints, the international cooperation and international law steadily progressed and the United Nations served as a most important vehicle of this progressive development. Seen in retrospect, the evolution of the second half of the 20th century has proven right those scholars and practitioners of international law who helped to use the UN system with a view to developing international rules of global cooperation. This work has produced major results in the field of economic and social cooperation, human rights, resource administration, environmental protection, peacekeeping and in other areas. It helped in the creation of a system that one of the prominent American scholars aptly described as the “common law of mankind.” This was and continues to be a highly productive way to use the achievements of Dumbarton Oaks and San Francisco for the benefit of mankind and to strengthen the effectiveness of the United Nations.

Today we live in a world which is sometimes described with the words “post - cold -war”. Later this year the world will celebrate the 25th anniversary of the fall of the Berlin wall and will recall the spirit of optimism prevailing at the time.

Much will be said about the new openings and real improvement that happened during the time of the last generation. In most of the Central and Eastern Europe the anniversary will be celebrated as the symbol of freedom and prosperity. At the global level there will be good reasons to recall the achievements of the accelerated pace of globalization associated with the post cold war era. Many of these achievements belong to international law and its institutions. Their range is very wide - from the exuberant expansion of the number and effects of the bilateral investment treaties and the creation of the World Trade Organization in the economic field to the establishment of the office of the UN high commissioner for human rights and the International Criminal Court in the field of protection of human rights.

Moreover, the post cold war era has offered several examples of a new creativity in the interpretation of international law. The interpretation of Article 41 of the UN Charter as the basis for the creation of international criminal tribunals was a very visible example of political and legal creativity. The rebalancing of the respective roles of the regional organizations and the UN Security Council in matters of maintenance of international peace and security - with the greater emphasis on the regional organizations is another example. The expansion of techniques of work of the UN High Commissioner for human rights is yet another. And there are many others. All of them demonstrate the ability of the post cold war era to generate incremental strengthening of effectiveness of international law and its substantive expansion.

However, at the same time, the world will be aware of paradoxes and bitter ironies of the history of past two and a half decades. The post cold war era has been the time of vicious ethnic and religious conflicts, the time of massive atrocities, violations of human rights and genocide.

And these tragedies took place in the era in which human rights were expected to prevail. What a bitter irony!

Some of the problems of effectiveness of international law present themselves in a new form. The post cold war era has witnessed disintegration of states, sometimes as a prelude to armed conflict and massive violations of human rights. Important changes of political perception have taken place. While during the cold war the principle of territorial integrity of states was perceived as a *conditio sine qua non* of normality as well as for the settlement of all political problems related to the state, the post-cold-war era brought new realities. In a number of situations self determination of peoples and the dissolution of a multiethnic state became the elements of solution to a political problem. This phenomenon has typically characterized central and eastern Europe and has been seen in parts of Africa. And it has been most often accompanied by the use of force and massive violations of human rights.

All this has made the operation of diplomatic mechanisms more difficult and more complex.

Is this phenomenon limited by geography and in time or is it likely to characterize a longer post cold war period and spread to other parts of the world? How should the evolution of international law help in resolving problems arising from the exercise of the right of peoples to self-determination, while at the same time protecting states from chaotic processes of disintegration? The world needs better answers to these questions than the ones available today.

For international law specialists questions such as these represent a call for an intellectual mobilization. The world needs better international mechanisms for protection of minorities and a more effective and possibly more intrusive work of international institutions expected to deal with phenomena that lead to disintegration of states.

The questions of power sharing or, possibly, federal arrangements in multi ethnic and multi religious states require more imaginative formulae than the ones generally used today. International law should be able to help. Questions which have traditionally belonged to internal politics and constitutional law are becoming increasingly international and a legitimate subject of the future progressive development of international law. Moreover, they also represent a test of effectiveness of international law which ought to be able to address the burning needs of our time.

And then, linked to this objective need of our time, there is the question of our own level of ambition, the level of ambition of international jurists. When legal expertise and advice exist, they have to be offered to policy makers actively and persistently. When the historic and political circumstances reveal the absence of adequate legal responses, stronger efforts are needed for their creation. Let us be guided by the example of the key players at Dumbarton Oaks seventy years ago.

And let this example guide us in our thinking about the problem of effectiveness of international law in general. The existing normative and institutional order, even where well

developed, is not always effective. In many situations international law cannot be expected to function automatically. In fact, the problem of effectiveness is most often not a problem of law in the technical sense - although legal imperfections and lacunae can have a significant adverse impact. In its deepest meaning, the effectiveness of international law is a problem of politics and anthropology and, at the legal level, a problem of interpretation.

Political wisdom and statesmanship, the key factors in decision making, are not incompatible with international law. Quite to the contrary, the most difficult situations of international crises, in those parts of the world where history has cast its longest and darkest shadows, like Eastern Europe and the Middle East, require that political wisdom and international law converge in a prudent international discussion and in carefully considered judgment of policy makers. There is no substitute for sensibility and acuteness of political judgment to be exercised by decision makers. And such a judgment must be informed by international law.

Obviously, this realization is not new. However, it is especially relevant in our post cold war era when the number of political players has grown and when the plurality of actors and their interest-based perceptions make the assessment of any political problem more difficult than before. Moreover, in our media driven world there is no shortage of rhetoric and imagery, supporting a variety of lines of analysis and courses of action, including very inaccurate or inadequate ones. The decision makers have to be careful in the way they conduct their debate. They must not allow their prejudices or rhetoric to diminish their ability to listen to convincing, if unwelcome argument and to think thoroughly about the potential solutions.

At the same time, the decision makers are expected to think about their responsibility for the international order and international law as well as about the long term effects of their decisions.

At the present juncture, two and half decades after the ending of the cold war, the time is ripe for a serious reflection and for a new global, strategic compact among the major powers of our time with a view to enabling a peaceful and productive development of the international system in the future. Such a compact was due but could not materialize in the immediate aftermath of the cold war. However, the intervening decades and the political crises of our time have brought additional wisdom. Perhaps the time is ripe now. If that is the case, the creative spirit of Dumbarton Oaks could again be of significant help and international law would be moved to new levels of effectiveness.

Let me conclude,

International law is a precious instrument of international cooperation and its scope continues to grow. As before, it has to facilitate civilized solutions to the problems of our time, including the solutions to the most sensitive problems of international peace and security. Its effectiveness needs to be strengthened. A creative role of jurists in this effort is irreplaceable. This is why our conference is so important. I wish you all the success in the many areas of your work and a pleasant evening tonight.

Thank you.