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## International Law between Might and Right

Excellencies, ladies and gentlemen, good morning.

Allow me to start by thanking Thierry de Montbrial and Mostafa Terrab for the very great pleasure they have given me today by offering me, firstly the opportunity to tell you once more welcome to a land, where dialogue is not an empty word and secondly, the joy of sharing with you, not any learned ideas but the simple convictions, impressions and perhaps the emotions of an Arab, African, Muslim woman, i.e. a Moroccan woman, who is fully aware of her rights and obligations in the face of an international system of law that stands “between might and right”! Despite the fact that we are not bound by the Chatham House rule, I may be incautious enough to depart from the diplomatic correctness imposed on me by my new role and to speak with the freedom of the academic I shall always be. I would like to plead, in a first point, for a return to true multilateralism, even though I question the likelihood of its happening in practice! In a second point, I will underline the link between the law of peace and the law of development and the right to development. This Human right has been made even more complex by environmental questions.

The environment illustrates indeed, the essence of the whole problem of worldwide regulation.

I will briefly conclude on this last item.

Allow me, before addressing these questions to begin by making a brief comment on the paradox, just mentioned by Mr Moreau-Defarges.

On the one hand, the rapid development of international law in the 20th century has been remarkable. Let’s not forget this phenomenon, with its unprecedented negotiations, which led to the conclusion of the Convention on the Law of the Sea, for instance, or of the Agreements governing international trade! Defining, maintaining, changing and amending the rules that govern all the



problems we face today – in finance, commerce, trade, security, aid, etc. – form the backbone of international activity and cooperation. Yet, the weakness of our international regulatory system, which has been described as anomie since Durkheim, is notorious, on the other hand.

There is a tremendous gap, between the fundamental changes, which are taking place and the ability of international law to manage all this “hyper-complexity”, to manage in fact the acceleration of history – rather than its end, as some have been a little too swift to say! Upheavals - I don't think that's an overstatement- with the emergence of new powers, these formidable non-territorial players, for instance, which pose huge challenges to the preservation of our individual and collective security, do alter the rules of the game. We thus see whole areas, that are extremely hard to tackle in terms of regulation, although they are key issues for humanity, such as advanced technology and the Internet, and places like the oceans, which are being taken over by either pirates or plastic, and sometimes both.

I – A return to multilateralism?

We are certainly pleased that the election of Barack Obama has marked the end of American unilateralism and to some extent, the return of the United States to the UN fold. But does this necessarily represent a resurgence of multilateralism? Of course not. Because the room made available for the countries of the South is still unacceptable. Moreover, we can neither forget nor go along with the lack of legitimacy of the Security Council, which, as has already been noted, still governs an extremely significant area of international life.

In this respect, I would like to emphasise that the arrival to power of President Barack Obama has raised high hopes of a resolution to the Near East conflict. This is central for our topic, in order to put an end to the daily violations of international law and human dignity. I would have been more than happy not to have to mention the famous “double standards” applied to Israel and to the Arabs, in the implementation of international law and by certain powerful States' practice. Alas, the world of Orwell, where “all are equal but some are more equal than others” still resonates. We see total impunity of Israel, for Security Council resolutions not implemented, bilateral agreements violated, regardless of the good faith with which they were supposed to have been concluded and of course, the Palestinians' fundamental rights violated on daily basis...!

I hope that President Obama will throw all his weight behind encouraging the protagonists to enter into a fair and equitable peace, which has been over 60 years in coming. It will take a lot more to make up for the acknowledged deficits in both legitimacy and international legality that have undermined the very basis of international law and significantly reduced its credibility.

### - G 20 Governance!

With regard to this last remark, allow me to say just a few words on the problem of the G20, which has already been widely discussed. The groups' approach, adopted by the most powerful nations to debate between them and "settle" certain key questions, is probably seen as a way to get rid of the inefficiency of the machinery of the UN, which I admit is extraordinarily cumbersome. I believe however, that we are entitled to ask the question: is it ethically tenable, legally acceptable or politically defensible? When we know that, with the financial crisis, hope was great to see a return to ethical behaviour capable to put an end to the drift and excesses of the current system! When we know, as it has been abundantly made clear, that the return of national governments is conclusive. Unless, as in the scenario outlined by Hubert Védrine yesterday, we were to create a virtuous circle, whereby a responsible leadership and the participation of the key players, could secure the "inclusion" of the absent actors through protecting their specific and legitimate interests, since they cannot speak directly for themselves! Even in this purely hypothetical-case scenario, there would still be two questions to be asked, for justice and equity sake. Must we, in the name of opportunism, pragmatism and efficiency, forget or violate some of the fundamental principles of international law, namely equality of sovereign states and States' consent? Can we really adopt these methods, when setting examples has a fundamental role to play in international law? Particularly at the very moment when we would like to see certain countries submit to the imperative of international legality and embrace democracy and the rule of law in their own countries! In any case, unfortunately, there is nothing to suggest that we are moving towards such a positive scenario. What are we left with?

### - Exclusion and terrorism

With "outcasts" who seem forced back into a position of making claims or proclaiming defiance: Ever-more virulent demands and ever-more violent, ever-more diffuse defiance in an explosive and fragmented environment, with the return of culture and religion as the ultimate mode of contesting the established order, whether be it national or international.

Violence does sometimes take the extreme form of terrorism. Just two very brief remarks on this subject, as time is limited. We unfortunately know that interpreting international relations, almost exclusively through terrorism has diverted attention, finance and resources away from both human rights and development, whilst we know that the link development/security is core to peace.

Secondly, any attempt to suggest that exclusion creates a fertile soil that allows extremists to federate the demands and discontent of – it must be said – Arab and Muslim young people, who are largely as angry as unemployed is automatically seen as a justification for terrorism! That is far from being the case. It is a necessary exercise to identify precisely the root causes of the problem and respond to them with a whole range of measures to contribute to better prevention.

## II – The link between the law of peace, the law of development and the human right to development

Turning now to the second point in our analysis, it should be sufficient to recall the striking phrase used by Pope Paul VI, when he stated that “development [was] the new name for peace”, to persuade ourselves of the necessity to establish a close link between the law of peace, the law of development and the right to development. The vital link between peace, security and development is now well established. The World Organisation has made, since its creation, tremendous endeavours to that end.

The right to development is an individual and collective human right that makes effective, among other things, people’s right to self-determination. Let me illustrate this, if only briefly, given that we are running short of time, with Morocco’s initiative in relation with the Sahara. This proposal, which grants the Sahara a considerable degree of autonomy, is fully compliant with international law. Contrary to what some people have suggested, the referendum is not, by any means, the only method for exercising the right to self-determination in current international law practice. The Moroccan initiative has been welcomed by many states and international players as a constructive way of settling the question peacefully and as a means of making a significant contribution to regional and world peace. Security Council Resolution 1754, which takes note of the Moroccan proposal, “[congratulates]” in §4 of the preamble the “serious and credible efforts made by Morocco to move towards a settlement”. 1

The autonomy project, proposed by Morocco implies active participation of the local populations. Indeed, giving the concerned populations a real stake in their own societies, may mean better governance of the democratic process which is underway in the Kingdom and represents certainly the valid and viable basis for long-term security.

- The final aspect is a really “hot topic” right now. Against a background of pressing environmental questions, with climate change at the forefront, development law and the right to development are becoming extraordinarily complex to achieve and implement. We know the extent to which developing countries, including the poorest of them, are bearing the brunt of the global effects of the over-consumption of the industrialised countries and the overexploitation of fragile ecosystems. In addition, many of them are paradoxically “condemned” to destroy their own environment, in order to survive. The question we need to be asking on the eve of the Copenhagen Summit is: what kinds of answers will the main players offer to these nagging questions? Looking beyond the “carbon” solutions imagined for the rich, which still need further adjustments, how can we ensure, for example, that developing countries have access to non-polluting technologies? What financial support will be available to help them meet the staggering costs of adapting to or preventing climate change?



Simply to maintain its food security, Morocco, for example to adapt to climate change, would have to spend over \$70 million a year, under the “wettest” scenario and over \$90 million under on the “dry” one!<sup>2</sup>

How can we ensure sustainable development with all the rights and obligations associated with it? We might ask, along with René-Jean Dupuy, “How to achieve it without an element of constraint, substituting obligation to charity and affirming a right that offers its holders a real claim?”

We can only hope that “beating” people’s consciences, as he had hoped, will result in producing this salutary burst of mobilization for better governance of a much fairer and more equitable system, which still needs to be built!