

Acceptance Speech of the *Owada Memorial Chair*

Hisashi OWADA

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I Introductory Remarks

Honourable Professor Hester Bijl, *Rector Magnificus, Leiden University*,  
Honourable Professor Takumi Moriyama, Dean of the Graduate School of Arts and  
Sciences, Tokyo University,  
Honourable Professor Dominique Moïsi, Guest Speaker for this Inaugural Session,  
Distinguished Guests,  
Ladies and Gentlemen,

It is indeed a great privilege and a personal pleasure for me to be present at the creation of the *Owada Chair*, a chair named after me and established under the joint sponsorship of the two great Universities of Leiden and Tokyo. Today, I stand here at this inauguration ceremony of the Chair, awe-struck by the great honour bestowed upon me through the establishment of this Chair by the two great universities in commemoration of my work at the International Court of Justice as its Judge and its President, as well as my contributions in international studies over the years at these academic institutions.

In light of this background of the Chair, we have agreed between our two universities to entrust the Chair with the task of engaging in the research and study under the theme of “Interface between International law and International Relations”.

Allow me to say that we are extremely fortunate to have Professor Dominique Moïsi to address this complex subject as the first Principal Speaker of the Owada Chair at this Inaugural Session. Professor Moïsi will need no introduction as he is so well known as a prominent political scientist, and highly esteemed for his words of wisdom on many issues of the world. What is not so well known perhaps is that he is one of my best friends, and that I respect him so much for his insight and integrity as a human being. By listening to him, you will be enlightened on what to think about and how to think about in relation to

any problems in the current international relations.

## II The Reason Why This Theme Has Been Chosen

It is commonly accepted that the basic framework of modern international society as we know it now has its origin in the Peace of Westphalia in the middle of the 17<sup>th</sup> century. This peace, which successfully put an end to the long years of civil wars and conflicts that had been plaguing the entire region of Western Europe for so long in the wake of the movements for the religious Reformation, was indeed an epoch-making event in the history of modern international society. It literally changed the face of the world as it existed in those days. The political system that emerged from this Peace of Westphalia was fundamentally different from the political system that had prevailed in much of Western Europe of the Middle Age, which had consisted *grosso modo* in the hierarchical network of feudal lords with their kingdoms, duchies, and principalities controlled under the religious supremacy of the Catholic Pope and secularly under the sovereign authority of the Holy Roman Empire. In contrast, the new system that came to evolve in the aftermath of the Peace of Westphalia through the process of reconciliation between the two foes of the Catholics and the Protestants with their dogma, fought *inter alia* through the Thirty Years War, was a new international system of society consisting of sovereign states as its component members, each with total independence from each other. This new system of governance was based on the principles of absolute sovereignty within the respective realms of the component members, of complete equality among these sovereign States, and of non-intervention within the realm from outside, while their mutual relations *inter se* outside their respective realms were to be conducted under an anarchical (i.e. non-hierarchical) system of governance, functioning as it did on the principle of their mutual consent. It is remarkable that this same “Westphalian system of governance”, created to regulate human activities in society of the 17<sup>th</sup> century, has survived four hundred and forty years, continuing to constitute the basic normative framework of international society for regulating the conduct of States in the world of the 21<sup>st</sup> century.

It should not be too difficult to identify thus a fundamental dichotomy between this juridico-institutional framework of society, in which human activities are basically

regulated through national sovereignty of States on the one hand, and the socio-economic reality of this society today, where these human activities are conducted well beyond the sovereign confines of national borders of States. Moreover, the catastrophes that hit all human beings alike, such as natural calamities, contagious epidemics, and global climate changes, are occurring all over the world and cannot be contained within the narrow confines of the sovereign borders of nation States. These global issues can no longer be dealt with effectively by independent exercise of sovereign power of nation States. This impact of globalization is all embracing, and not limited to economic and social areas of human activities. Even on political terms, the days are long gone when the war, i.e. a sovereign exercise of force by a nation State regarded as “an extension of diplomacy in a different form” as Clausewitz famously opined, to the extent that the ensuing human calamities resulting from this “exercise of sovereign power” cannot be tolerated by the standard of civilization that the humanity as a whole has come to attain through the following centuries since the days of the Peace of Westphalia. It has now become evident that the *ancient regime* of the Westphalian legal order can no longer hold water in its original form.

The history of the development of international law since the latter part of the 19<sup>th</sup> century is a clear testimony to this evolution of wisdom of human society in coping with this dichotomy and demonstrate in concrete terms the progress achieved in the consolidation of human conscience within the community of civilized nations. This was done, in particular, in the form of humanization of the laws applicable to war, such as the four Hague Conventions, and eventually in the abolition of war as means of pursuing national policies in the Kellogg-Briand Pact.

In spite of all these efforts, however, the 20<sup>th</sup> century, described as the “Century of Wars”, came to witness two World Wars that literally brought the entire global community into calamities and destruction. It is this sober reflection that led the nations to give up the naïve notion that peace, stability and prosperity of human society can be achieved and sustained within this anarchical system of governance without supervening authority in power. It was an aspiration to create a more organized international system of governance able to cope with this situation that led to the establishment of the League of Nations. It could be said to have been an attempt for creating a better organized international

society, while accepting the inherent limitation arising from the basic traits of the Westphalian order. However, the miserable failure that fell upon the League of Nations in the inter-war period compelled the victorious powers in the World War II to embark upon a more ambitious scheme of the system of governance, which led to the creation of the United Nations. This new organization, focusing on the creation of effective authority on the strength of voluntary cooperation of five victorious nations, endowed with certain, though limited, executive power to ensure peace in the form of special status given to the Permanent Five of victorious powers. However, this “unity in will” achieved during the World War II, was the key to the effectiveness of this hybrid system of governance between the traditional non-hierarchical international system and the hierarchical system of governance of the domestic society.

This supposedly effective mechanism of collective security to endow the Permanent Five with some executive power to act in concert in the name of the international community, however, collapsed when the “unity in will” failed to bear fruit in the form of “unity in action”.

If the history of development of international legal order as shown above were to be criticized for having been too *utopian an attempt* based on the historical analogy of the evolution of hierarchical system of governance in the domestic legal order, it became almost inevitable that by contrast, an *apologian attempt* to accept the realities of international relations essentially as the history of struggle for power came to flourish in the name of “geopolitics of international relations”.

What I wish to emphasize here, however, is that an approach to view the main trend in the history of modern international society in such simplistic light would have the risk of taking back the world of today to the world of the days preceding to the Peace of Westphalia and to deny the true history of progress of mankind, i.e. the history that the humankind has succeeded to overcome, through human wisdom and aspiration for progress, the beastly conditions of primitive society which Thomas Hobbes described as the world of *homo homini lupus*. It is evident that such a view of the contemporary world cannot offer a viable framework for a new world order that can cope effectively with the current realities of the globalized world, faced with its historical problems arising from the legacies of colonialism, and its new problems of globalization that affect all human

beings living together on this globe. In a nutshell, what is required of the international community at present is to strive for creating a social framework of the global community on the basis of shared universal values among its members. This new process could be compared to the old process of the Peace of Westphalia, which succeeded in securing a new world order (though in the context of the European world) with its universally shared system of values. In a word, what is required may well be an effort to accomplish a new “Peace of Westphalia” on a global scale, through reconciliation of various roots of conflicts emanating from ideological, religious, ethnical and other differences and divergences.

### III Contemporary Relevance of The Program

Given the history of evolution in the world scene that followed the end of the Cold War, it may be understandable that some in the west should have entertained a false expectation that at last the demise of the Cold War had brought about “a new international order” to a world that would share the same universal values under the democratic system of governance. There was indeed a moment when some within the west had dreamed that the final victory of the West in the Cold War (despite the fact that this was not the victory of the West but the loss of the East) would mean the “end of history” in the Hegelian sense, and tried to act on the conviction that the future of world history would move in that direction (see e.g. *M.E.Sarotte, NOT ONE INCH - America, Russia, and the Making of Post-Cold War Stalemate, 2021*). What emerged in reality in the wake of the demise of the Cold War, however, was neither a unipolar world built on such universal values, nor a multipolar world hanging on precarious balance of power between these poles, but a confused world without a pole and in disorder, where sovereign nations would go out to seek for their own parochial interests. The invasion of Kuwait by Iraq of Saddam Hussein, and the commission of Genocide crimes in the former Yugoslavia are all illustrations of such examples. As a result, a serious challenge has surfaced to the basic framework of international order that had so carefully been consolidated over the centuries of human efforts.

It is in this perspective that the recent outbreak of hostilities in Ukraine is a shocking evidence of this challenge. I say this not so much on the legalistic ground that the Russian

invasion into sovereign territory of Ukraine was a patent aggression as such in the classical sense of that term; this is all the more shocking, for the reason that the Russian action has meant a complete rejection of the very basis of legitimacy of the novel system of governance built into the collective security mechanism under the United Nations Charter by one of the most powerful of the founding fathers of this architecture. As I said earlier, this innovative system was devised with a view to providing some supra-national authority to the Permanent Five of the Security Council, acting *de facto as the* executive agent of the international community for the maintenance of international order. The Russian invasion has completely destroyed the trust of the international community in entrusting this legitimacy to the Permanent Five for enforcing the collective security system under the Charter. This destruction of the trust of the international community is to my mind the most serious permanent damage done to the innovative system of governance created under the Charter.

#### IV What Can We Achieve in This Programme?

Faced with this reality of international relations of today, what do we intend to do in this programme?

As is clear from what I have tried to sketch, *an apologetic approach* that tends to accept the reality of power politics in international relations as absolute, and to focus its attention on the analysis of the factors (mainly geopolitical) that affect the course of events, is not going to be of much help to us in trying to sketch a course map for arriving at feasible conditions for creating a better future for the international order. By contrast, an exclusively *utopian approach* that would merely prescribe a given situation to be governed by some rational rules of international norms, without a sufficient analysis of a number of relevant factors, rational or otherwise, that affect the scene, cannot offer an effective prescription to the political malaise that develops.

It is for these reasons that I venture to suggest multi-faceted approaches, amalgamating different interdisciplinary analyses from legal, geopolitical, historical, and other socio-cultural angles. For the same reason, it would also seem highly profitable to try to assemble together students with different social and cultural backgrounds from the East and from the West, and to have in-depth debates based on their different perspectives

with each other. I very much look forward to rich intensive debates among the students and young researchers from the two universities with their different social, cultural and historical backgrounds to bear on this fascinating topic of emotion as an important element in international relations.