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ENGAGING WITH INTERNATIONAL LAW

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Abstract This article considers the positive evolution of international law in the past century, and the emergence of a rules-based multilateral system under the UN Charter, which has, *inter alia*, enabled formerly colonised peoples to exercise their right to self-determination and prohibited the use of force in international relations. The author reaffirms his faith in the ability of international law to provide a common language for the international community to face successfully common challenges, such as poverty, global warming, and the protection of privacy rights in the era of social media and artificial intelligence. Looking beyond traditional beneficiaries and duty-bearers of international obligations, the author makes a case for all actors to engage in respecting, upholding and promoting international law.

Keywords: public international law, human rights, rule of law, maintenance of international peace and security, multilateralism, globalisation, global commons, corporations.

I. INTRODUCTION

In recent years, political discourse in nationalist quarters seems increasingly to be focused on disengaging from international law and on a world view which holds that international law and international institutions pose a challenge to State sovereignty and act in opposition to 'the will of the people'. Therefore, the time may be ripe to revisit some fundamental questions and considerations surrounding the importance of continued engagement with international law and commitment to a multilateral rules-based order.

This article addresses three questions: 'Why should we engage with international law?', 'Who should engage with international law?' and, finally, 'How should we engage with international law?'.

The overarching conclusion reached is that international law is essential to the peaceful progress of humanity and to our ability to address issues of

* Judge Yusuf is the President of the International Court of Justice. This article is based on a lecture the Judge gave at the London Conference on International Law on 3 October 2019. The theme of the Conference was 'Engaging with International Law'. He is very grateful to Mr Anthony Wenton, Researcher at the British Institute of International and Comparative Law, for his kind assistance in transforming this speech into an article.

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common concern for all of us. Furthermore, there is no contradiction between sovereignty and international law. To the extent that engagement with international law might place restrictions on some aspects of the autonomy of sovereign States; such loss is vastly outweighed by the long-term benefits of engagement.

II. WHY ENGAGE WITH INTERNATIONAL LAW?

There are several reasons to engage with international law. First, there is a very personal reason for the author of this article, which is the following. He was born after the Second World War, and is contemporaneous with the United Nations Charter; the establishment of the International Court of Justice; the decolonisation of peoples previously under foreign domination, including those of the author's own country Somalia, and many other African States; and the adoption in 1948 of the Universal Declaration of Human Rights.

The milestone achievements of this period marked a fundamental break with the past and the fate that befell millions of people in previous generations born when African peoples were being enslaved and placed outside the legal order; when African Empires, Kingdoms and States were not considered to be subjects of international law, but *terrae nullius* to be conquered and occupied at will, and were denied the protection of international law; when war was considered a legitimate tool for the settlement of disputes among States; when the laws and policies of the most powerful nations prevailed at the international level; and when millions of human beings were sent to gas chambers in Europe, and the world had nothing to say in defence of their humanity.

For this author and for many of those who were born in the last 70 years, be it in Africa, Asia, Europe or the Americas, respect for the international rule of law, respect for the principle of equal rights and self-determination of peoples, the prohibition of the use of force among States by the United Nations Charter, the outlawing of genocide and the protection of human rights has meant freedom, independence, prosperity and peace among nations, but also, for many, simply staying alive. That is more than enough reason to engage with international law.

While acknowledging the great achievements of the last 70 years, one must, of course, be wary of sounding naïve at a time when great humanitarian catastrophes persist in many parts of the world. However, it is obvious that the evolution of international law in the UN era has seen a paradigm shift towards a rules-based multilateral system in which the preservation of peace and the protection of universal human rights are matters of fundamental international concern. Our task is to ensure that this progress continues and to proactively guard against any backsliding to anachronistic and discredited policies of unilateralism. It is submitted that the best way to do that is through a renewed engagement with international law.

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A second reason to engage with international law relates to the law itself. It should be recalled that in 1945, the States that emerged from the Second World War made a fundamental choice through the United Nations Charter. They chose the rule of law to govern international relations. This choice did not come into existence overnight, nor was it a sudden or abrupt decision. It was a result of the evolution of human civilisation.

The devastation of the First World War opened the eyes of many political leaders on the need to cooperate in the development of new rules to regulate the conduct of States. This resulted in the establishment of the League of Nations. The Covenant of the League of Nations required States to submit disputes for arbitration, judicial settlement or to enquiry by the Council of the League, before resorting to war.[1] In 1928, the General Treaty for the Renunciation of War (the Kellogg-Briand Pact) was another important step towards prohibiting war in international law. The parties to the Pact declared 'in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another'.[2]

It is beyond the scope of this article to discuss the causes of the Second World War. However, it is clear that much of the blame for the failure of the League of Nations and the Kellogg-Briand Pact to prevent the War can be attributed to a lack of sustained engagement with a system of international relations based on law and the rise of nationalist and isolationist policies, exacerbated by the Great Depression. Nonetheless, the foundations of a multilateral rules-based order had been built and in 1945 the United Nations Charter proclaimed that 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'[3] Mankind had finally come to the realisation that the old system which had made war permissible to right wrongs was not only barbaric and brutal, but fundamentally unjust. 'Might is right' has never helped humanity to live together in peace or in harmony.

President Eisenhower put it very succinctly in his State of the Union Address of January 1959, when he declared that it was the intention of the United States Government to 'intensify efforts … to the end that the rule of law replace the obsolete rule of force in the affairs of nations'.[4] The obsolete rule of force had to be set aside.

[1] Covenant of the League of Nations (adopted 28 June 1919, entered into force 10 January 2020) 225 CTS 195.

[2] General Treaty for the Renunciation of War as an Instrument of National Policy (adopted 27 August 1928, entered into force 24 July 1929) 94 LNTS 57.

[3] Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter) Art 2(4).

[4] D Eisenhower, 'Annual Message to Congress on the State of the Union' (9 January 1959) <http://www.let.rug.nl/usa/presidents/dwight-david-eisenhower/state-of-the-union-1959.php>.

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The embodiment of the rule of law in the United Nations Charter went hand in hand with a significant increase in the number and scope of rules applicable to the relations between States. That increase was due to the conclusion of international agreements in a wide range of fields, from aviation to telecommunications, from labour standards to trade and investment, from human rights to humanitarian law, and all the way to environmental law and to the protection of biological diversity. It also gave rise to thousands of treaties establishing cooperation among States both at the bilateral and multilateral level.[5] The old billiard ball model for State coexistence, which consisted in the simple juxtaposition of sovereignties, was replaced by a web of rules protecting common interests and shared values that have given rise to the idea of a 'community-based' law of cooperation.[6] This shift was made possible by the robust commitment of States, immediately after the Second World War, to the establishment of a rules-based multilateral system based on the principles of the United Nations Charter.

It must, however, be acknowledged that the task remains incomplete. We have not yet achieved a full shift from a 'society' to a 'community of nations'. Despite the reference in many multilateral instruments to the 'common concern' of humanity,[7] we see major initiatives launched by international organisations to address this 'common concern' amputated, curtailed, or outright rejected when they collide with individual State interests (sometimes interests of the moment) of powerful stakeholders. To the extent that each member is prone to pursuing its own interests and State relations are predicated on self-serving reciprocal exchanges and short-term bilateral deals, rather than actions undertaken in the interest of the whole, the expression of 'common concern' will remain just an expression. Today the world is faced by issues that cannot be solved by the actions of one State, however powerful that State might be. One might think here of the kind of collective action required to deal with issues such as the protection of the oceans, the preservation of biological diversity and the fight against global warming. These issues must be tackled as community problems; they require 'community-based' solutions. In the words of Judge Weeramantry, in his separate opinion in *Gabčíkovo-Nagymaros*:

[5] Under art 102(1) of the UN Charter '[e]very treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it'. As of 2020, the UN Treaty Series runs to over 2900 volumes, containing over 158,000 bilateral and multilateral treaties <https://treaties.un.org/Pages/Overview.aspx?path=overview/overview/page1_en.xml>.

[6] See G Abi-Saab, 'Cours général de droit international public' (1987) 207 Recueil des Cours de l'Académie de Droit International 103–4.

[7] See in particular environmental treaties such as the Convention on Biological Diversity (1992) 'Affirming that the conservation of biological diversity is a common concern of humankind'; United Nations Framework Convention on Climate Change (1992) 'Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind'; and the Paris Agreement (2015) 'Acknowledging that climate change is a common concern of humankind'.

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> we have entered an era of international law in which international law subserves not only the interests of individual States, but looks beyond them and their parochial concerns to the greater interests of humanity and planetary welfare . . . .

Speaking more specifically about international environmental law, Judge Weeramantry emphasised the 'need to proceed beyond weighing the rights and obligations of parties within a closed compartment of individual State self-interest, unrelated to the global concerns of humanity as a whole'.[8]

The third reason why we should engage with international law is that humanity has often experienced in the past the nefarious effects of the use of power unbridled by law. With the growing web of multilateral treaties among nations, described above, many of them undergirded by customary norms, and with the establishment of the International Court of Justice and other adjudicatory bodies for the settlement of disputes, international law has become a real legal system. This system is characterised by a high degree of predictability and stability, in which, as observed by Robert Jennings and Arthur Watts, 'every international situation is capable of being determined as a matter of law'.[9] For the first time in human history, we have all come to recognise and rely, even in our everyday lives, on a rules-based international system which is universal in scope and around which cooperation among all nations is organised and implemented.

This is so despite the fact that there is no central legislator, nor a legislative body strictly speaking, but a decentralised system of production of norms. However, without the continuous engagement of States to update the system and to ensure that it does not fall out of touch with reality, there is a risk that certain rules may become outmoded or inadequate for their purpose. Consequently, it is only through such engagement that the evolution of the law with changing historical, social and political circumstances can be assured. This was the case immediately after the two world wars. It was also the case in the aftermath of decolonisation in the 1950s and 1960s.

To conclude on this point, it bears repeating that international law today is a system from which we all benefit on a daily basis, but which is not often visible to most of us, except when some part of it is breached by the actions of a State or a group of individuals or corporations, particularly when such actions are amplified through the media. Neither everyday compliance with international law and its application by States, international organisations and adjudicatory bodies, nor the benefits derived from it by individuals on a daily basis are publicised or regularly covered by the media. However, compliance with such rules occurs every day in inter-State relations throughout the world. We also see them applied on a daily basis in areas such as international travel and transportation, global telecommunications and trade, transborder investment

[8] *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* (Judgment) [1997] ICJ Rep 7. Separate opinion of Vice-President Weeramantry at 118.

[9] R Jennings and A Watts, *Oppenheim's International Law* (9th edn, Longman 1992) vol 1, 13.

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and financial transactions, and investor–State dispute settlement, as well as in the actions of intergovernmental and non-governmental organisations relating to human rights and humanitarian and refugee law. As long as these rules continue to be applied every day in so many fields affecting our lives, engagement with international law will need no justification but may always require explanation and awareness raising.

III. WHO SHOULD ENGAGE WITH INTERNATIONAL LAW?

Who should engage with international law? The short answer is that those who enjoy rights under international law, those who have obligations under this legal order, those whose legal situations are regulated by international law, and those whose conduct can interfere with the implementation of international legal rules should engage with international law.

The list is therefore broad and wide-ranging. It includes the usual suspects: States, their organs and international organisations. But it also covers actors whose subjectivity under international law has long been debated, including non-State armed groups, such as rebels, militias or insurgents, and individuals, corporations, civil society and other non-governmental organisations.

It is perhaps superfluous to say that States should engage with international law. They are the primary subjects of international law. However, with the recent rise of 'sovereigntist' political doctrines, it is important to underline that there is no contradiction between State sovereignty and international law. The heart of the sovereigntist argument is that the expansion of international law places increasing restrictions on the State's freedom of action in an increasing range of fields, including in domestic affairs such as the way a State treats its own citizens. Moreover, the power to interpret and enforce these obligations and even to create new obligations is often delegated to international bodies, which, it is argued, do not possess the accountability and legitimacy of domestic law-making processes and institutions.

It is respectfully submitted that the obligations assumed by States through international agreements are not incompatible with their sovereignty. As was observed by the Permanent Court of International Justice in the *Wimbledon* case, the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act is itself an attribute of State sovereignty:

> The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty.[10]

[10] *Case of the S.S. 'Wimbledon' (United Kingdom and others v Germany)* (Judgment) PCIJ Rep Series A No 1, 25.

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In any case, the sovereignty of States is a sovereignty under, and not above, the international rule of law. All States have to conduct themselves in their relations with each other within a legal framework, which is, of course, international law. To use the words of Judge Anzilotti:

> [i]ndependence . . . is really no more than the normal condition of States according to international law; it may also be described as sovereignty (suprema potestas), or external sovereignty, by which is meant that the State has over it no other authority than that of international law.[11]

Nowhere is the purported tension between sovereignty and international law more pertinent than when we consider the delegation of powers to international bodies. International organisations are often portrayed nowadays as potential threats to national sovereignty, particularly when they have the authority to make decisions that States are legally bound to implement. This is certainly a mistake. When the International Court of Justice acknowledged in the Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations* that international organisations enjoyed international legal personality, it took the time to clarify that this statement did not mean that an international organisation is a 'State', nor 'a super-State', whatever that expression may mean.[12] States enter into international agreements in which they consent to delegate certain powers to international organisations and to be bound by decisions made by those organisations. This act of consent is itself an attribute of State sovereignty. What is more, such delegations of authority are almost always capable of being revoked; thus, States are only bound so long as they consent to be bound. In reality, the scope of engagement and the powers of international organisations are dependent on their Member States. International organisations are governed by the 'principle of speciality', that is to say, they are invested by the States which create them with limited powers in their areas of competence.[13]

If one takes as an example the Universal Postal Union (UPU)—recently the subject of much press coverage—it is one of the oldest international organisations, having been created in the nineteenth century. It was established by the Berne Postal Convention of 1874 concluded among 22 nations.[14] According to the UPU, the Convention:

[11] *Customs Regime between Germany and Austria* (Advisory Opinion) (1931) PCIJ Series A/B no 41, 51.

[12] *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174, 184–185.

[13] See in this regard *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Advisory Opinion) [1996] ICJ Rep 66, 78 [25].

[14] Treaty concerning the formation of a general postal union (adopted 9 October 1874).

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> succeeded in unifying a confusing international maze of postal services and regulations into a single postal territory for the reciprocal exchange of letters. The barriers and frontiers that had impeded the free flow and growth of international mail had finally been pulled down.[15]

Far from being a threat to national sovereignty, the UPU offers a helping hand to sovereignty and to fruitful cooperation among nations. It was in that spirit that an agreement was reached on 26 September 2019 on the recent controversy regarding its rules. This agreement will seemingly enable the United States of America to remain a member of the UPU and to continue to benefit from its services.[16]

It is also in that spirit of aiding cooperation that intergovernmental organisations have contributed and continue to contribute to the development of international law. They are not only the guardians of internationally agreed standards in their area of specialty, but have also been delegated by States certain standard-setting powers to further advance and update the rules applicable to their activities. Thus, unless their actions are undermined by the assertion of individual interests of States, particularly the most powerful ones, the engagement of these multilateral institutions with international law to foster their objectives and their consequent contribution to its development is part and parcel of their mission and of their *raison d'être*. Indeed, delegating authority to international organisations can be an efficient means for States to achieve goals that they could not achieve on their own.[17] Furthermore, involvement in setting the parameters of the mission of an international organisation can be a way for States to increase their international influence over the long term and also to reduce the risk of international law developing in unexpected ways.

Turning now to human rights and the position of the individual in international law, it is worth recalling that international law rules, even if they were primarily conceived for relations among States, are ultimately concerned with the individual human being, the ultimate addressee of all legal rules. Thanks to the large number of treaties concluded both at the regional and international level, the question of the protection of fundamental human rights no longer falls under the *domaine réservé* of States.[18]

If we take the example of African States, there was a period, immediately after independence, when the violation of human rights was exclusively viewed through the prism of colonial domination, foreign aggression or apartheid in South Africa, while the acts of home-grown dictatorial and

[15] Universal Postal Union, 'About History' <http://www.upu.int/en/the-upu/history/about-history.html>.

[16] Universal Postal Union, 'US Officially Revokes Intent to Withdraw from Postal Union during Washington D.C. Visit of UPU's Director General' (16 October 2019) <http://news.upu.int/no_cache/nd/us-officially-revokes-intent-to-withdraw-from-postal-union-during-washington-dc-visit-of-upus-director-general/>.

[17] *Injuries Suffered* (n 12).

[18] *Nationality Decrees Issued in Tunis and Morocco* (Advisory Opinion) [1923] PCIJ Rep Series B No 4, 24.

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oppressive regimes were overlooked by African intergovernmental organisations such as the Organization of African Unity, the predecessor of the African Union. However, following the entry into force of the African Charter on Human and Peoples' Rights in 1986,[19] the African Commission on Human and Peoples' Rights was able to make the following powerful statement in the context of a case concerning the people of Darfur in Sudan:

> There is a school of thought . . . which believes that the 'right of a people' in Africa can be asserted only vis-à-vis external aggression, oppression or colonization. The Commission holds a different view, that the African Charter was enacted by African States to protect human and peoples' rights of the African peoples against both external and internal abuse.[20]

The development of international law in the area of human rights over the last century has not only conferred rights on individuals. Rights have also come with responsibility and obligations, especially international criminal responsibility. One may recall the famous statement of the Nuremberg Tribunal, according to which 'Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.'[21]

Based on this principle of international criminal responsibility, international law has witnessed first ad hoc criminal tribunals, such as the Nuremberg and Tokyo Tribunals and, more recently, the ICTY and the ICTR, before the adoption in 1998 of the Rome Statute establishing the International Criminal Court. At the same time, the number of international crimes has expanded, adding to the classical prohibitions of piracy and slavery, crimes such as crimes against humanity, the crime of genocide, war crimes and the crime of aggression.[22]

Now one may ask: how about other non-State actors? How about corporations? How about insurgents and rebels? How about civil society and non-governmental organisations? It is, of course, not possible to address all of these actors in this article. Thus, the author will restrict his analysis to one pressing area where there is a clear mismatch between rights and obligations: the position of corporations under international law. Over the last century, international law has increasingly granted rights to corporations, ranging

[19] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

[20] *Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v Sudan*, Comm No 279/03-296/05, [27 May 2009] para 222.

[21] *The United States of America, The French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics v Hermann Wilhelm Göring et al*, Judgment of 1 October 1946, in *Trial of the Major War Criminals before the International Military Tribunal* (Nuremberg 1947) vol 1, 223.

[22] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

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from certain rights similar to 'human rights'[23] to a variety of rights under bilateral and multilateral investment treaties. This has not been followed, however, by a clarification of their obligations, and even less so by the establishment of remedies in case of violations of international law.

It might be time to take a closer look at this, at least for two reasons. One is climate change. It is impossible to fight global warming successfully without the involvement of major corporations, particularly those active in fossil fuel production linked to greenhouse gas emissions. The second is the current inability of international law to grapple with the impact of rapid technological advances on human rights and freedoms. Today, individual freedoms, individuality and privacy are at risk of being affected or even manipulated by technological tools and social media platforms. Human rights and freedoms are not at risk here because of the State, but because of private entities.

In Europe, there are rigorous new privacy rights now, thanks to the General Data Protection Regulation adopted by the European Union.[24] But how about the rest of the world? How do we protect personal data from being commoditised and traded every day without informed consent? How can we protect individuals against the dark side of technology? In the view of this author, it can only be done through the rule of law. Legal defences need to be built against abusive behaviour arising from the use of such technological tools.

IV. HOW TO ENGAGE WITH INTERNATIONAL LAW?

The recent debate in the United Kingdom's House of Commons on the Vienna Convention on the Law of Treaties and the *clausula rebus sic stantibus* provided an excellent illustration of how to engage with international law. It was fascinating to watch that debate on television. It is this kind of debate in national parliaments that can bring to life the importance of international law to the man on the street.[25]

[23] See the *Sunday Times* and *Daily Mail* cases before the European Court of Human Rights.

[24] *EU General Data Protection Regulation (GDPR):* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L119/1.

[25] This debate concerned whether the United Kingdom would ever realistically be able to meet the high threshold required to engage Article 62 of the Vienna Convention on the Law of Treaties and unilaterally withdraw from the 'Backstop' to the proposed EU Withdrawal Agreement. Vienna Convention on the Law of Treaties (entered into force 27 January 1980) 1155 UNTS 331 Art 62(1) states: 'A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: (a) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and (b) The effect of the change is radically to transform the extent of obligations still to be performed under the treaty.'

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International law, as a horizontal system of cooperation, depends on the reliability of commitments undertaken by States. First and foremost, therefore, obligations have to be complied with. Free consent, *pacta sunt servanda* and good faith are essential to the integrity of the law. In its comments on the final draft of the Vienna Convention on the Law of Treaties, the United States of America observed that the *pacta sunt servanda* rule was 'the keystone that supports the towering arch of confidence among States'.[26] This basic rule of general international law requires that treaties are performed in good faith.[27] The importance of the principle of good faith is also evidenced by its inclusion in foundational instruments of modern international law. In particular, the United Nations Charter,[28] the Declaration on Friendly Relations[29] and the Vienna Convention on the Law of Treaties.[30]

However, confidence and good faith must be shown not only in the interpretation and application of treaties, but also in their negotiation and conclusion. It does not help confidence in the system if a State negotiates in earnest with all others, but afterwards either refuses to sign the resulting agreement or withdraws from such agreements before the ink has dried on its signature. Rather, negotiations have to be meaningful and conducted as a genuine attempt to reach agreement.[31]

As the Court pointed out in the *Nuclear Tests* cases, trust and confidence remain indispensable in international relations, in particular in this age when cooperation in many fields is becoming increasingly essential.[32]

Today we see a disquieting return to unilateralism in world affairs. Unilateralism is the complete antithesis of a culture of multilateralism and a meaningful engagement with international law, even more so when

[26] Comments to Waldock Report VI, 'Art. 55. Pacta sunt servanda' (1966) 2 UNYBILC 59, 60.

[27] This customary international law rule is codified in Article 26 of the Vienna Convention on the Law of Treaties, which states that '[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith'.

[28] Art 2(2): 'Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.'

[29] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970). 'Good faith' is referred to no less than nine times, including 'Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.'

[30] Preamble, arts 26, 31, 46 and 69.

[31] See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v *Russian Federation)* (Preliminary Objections) (Judgment) [2011] ICJ Rep 70, 132–133 [157]–[160]. See also *Mavrommatis Palestine Concessions* (Judgment) [1924] PCIJ Rep Series A No 2, 13.

[32] *Nuclear Tests (Australia v France)* (Judgment) [1974] ICJ Rep 253, 268 [46]. The critical importance of good faith is also referred to in the landmark ICJ cases of *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Jurisdiction and Admissibility) [1984] ICJ Rep 392, 418; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, 264; and *Pulp Mills (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, 67.

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unilateralism is invoked to justify the adoption of coercive measures or to forcefully request other States to change their conduct.

Bilateralism is certainly better than full-blown unilateralism. Nonetheless, it still remains a very primitive manner of engaging with international law. Regulating global issues through a web of bilateral agreements has been tried in the past; it failed.[33] At best, bilateralism leads to a fragmented legal order composed of contradictory international legal obligations. The difficulties experienced by the Tokyo codes to regulate international trade through bilateral agreements should serve as a lesson in this regard. Predictability, stability and certainty of the rule of law cannot be promoted through a web of bilateral treaties.[34]

A second manner by which States can engage with international law is through a firm commitment to binding international dispute settlement. International tribunals and courts are the pillars of the rule-of-law edifice at the international level. It is, of course, not possible to have a rule of law without courts. International courts and arbitral tribunals have acquired a proven track record in the settlement of disputes and in the development of the law.

It is a great honour for the United Kingdom to be the only Permanent Member of the United Nations Security Council that has consistently maintained and continues to maintain its acceptance of the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute. Of course, it would be much better if the declaration of acceptance was not riddled with so many reservations. Furthermore, it is unfortunate that on numerous occasions the United Kingdom has added new reservations in order to exclude the Court's jurisdiction over a particular matter.[35] Nonetheless, this declaration testifies to the United Kingdom Government's commitment to the international rule of law, of which it has historically been one of the tireless architects.[36]

Commitment to the judicial settlement of international disputes needs to be reaffirmed and strengthened. Fortunately, the confidence of States in the work of the Court has been steadily increasing in the last two decades. Today, there are 16 cases pending before the Court. These cases involve 26 nations from all parts

[33] Before the Treaty of Peace of Aachen, multilateral treaties were devised as a set of bilateral engagements. See Treaty Peace of Aachen (Aix-la-Chapelle) (1748) 38 CTS 297.

[34] See World Trade Organization, 'The GATT Years: from Havana to Marrakesh' <https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm>.

[35] Most recently, in 2017, the United Kingdom amended its declaration to exclude jurisdiction over nuclear weapons or nuclear disarmament disputes, unless the proceedings also involve the other four Nuclear Non-Proliferation Treaty Nuclear-Weapons States and they also accept the Court's jurisdiction in the case. See A Duncan, 'Amendments to the UK's Optional Clause Declaration to the International Court of Justice: Written statement – HCWS489' (Foreign and Commonwealth Office, 23 February 2017) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-02-23/HCWS489>.

[36] ICJ, 'Declarations Recognizing the Jurisdiction of the Court as Compulsory: United Kingdom of Great Britain and Northern Ireland' (22 February 2017) <https://www.icj-cij.org/en/declarations/gb>.

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of the world: five European countries, six African countries, nine Latin and North American countries, and six Asian countries. The last case to be submitted to the Court concerned the dispute between Guatemala and Belize concerning Guatemala's Territorial, Insular and Maritime Claim. What is unique about this case is that the two governments decided to consult their respective populations through referendums on whether or not their 200-year-old territorial and maritime dispute should be submitted to the Court for settlement. The peoples of both countries overwhelmingly expressed their confidence in the Court and approved the submission of the case to it, which occurred in June 2019.[37]

This article now turns to how non-State actors, including private individuals, rebel groups, corporations and non-governmental organisations, may engage with international law.

The manner in which a non-State actor engages with international law will largely depend on its sphere of action. Drawing inspiration from categories that have been elaborated in the field of human rights law,[38] it is submitted that all of us should, individually or collectively, promote, uphold and respect international law to the extent of our sphere of action.

The main way in which non-State actors can engage with international law is through upholding and promoting international law. Upholding international law makes sense when legal obligations are not formally binding on a given entity, natural or legal person, but are somehow relevant to its conduct. It means that such entities should align their conduct with the substantive and procedural guarantees contained in those treaties, even if formally they are not bound by human rights treaties.

This idea was well captured in the United Kingdom's Civil Service Code of 1996, which provided that:

> Civil servants should serve their Administration in accordance with the principles set out in this Code and recognising . . . the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice.[39]

The author notes that this provision is no longer part of the law, as the reference to 'international law and treaty obligations' has since been withdrawn from the Code. An identical reference was also withdrawn from the Ministerial Code of Conduct in 2015, and domestic litigation to have it reinstated was not successful. However, this does not mean that civil servants and ministers of

[37] 'The Court Seised of a Dispute between Guatemala and Belize' (International Court of Justice Press Release, 12 June 2019) <https://www.icj-cij.org/files/case-related/177/177-20190612-PRE-01-00-EN.pdf>.

[38] See African Commission on Human and Peoples' Rights, *Social and Economic Rights Actions Centre and the Centre for Economic and Social Rights v Nigeria*, Comm No 155/96 (2001) paras 44–47.

[39] Civil Service Code 1996, given effect by the Civil Service Order in Council 1995.

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the United Kingdom are not required to uphold international law. Indeed, in its ruling on the domestic litigation, the Court of Appeal explained that 'the Deletion involved no change in substance'. This was because the Code still contained 'the duty to comply with the law' and this duty inherently includes the obligation to comply with 'international law and treaty obligations' even if these terms are not expressly referenced.[40]

History teaches us that the manner in which humanity engages with international law depends on the nature and scale of the challenges that it faces. When faced with the cruelty and inhumanity of slavery in the nineteenth century, States adopted in 1890 and 1926 binding legal instruments to prohibit slavery and to cooperate with a view to its suppression.[41] When faced with the death of 75 million civilians during the Second World War, States adopted the Fourth Geneva Convention in 1949 devoted to the protection of civilians in times of international armed conflicts.[42] When faced with the uprising, opposition and rebellion of peoples all over the world against colonialism, States established the right of peoples to self-determination, which enabled colonial peoples to accede to independence and facilitated the process of decolonisation.[43] When non-international armed conflicts became the leading type of conflicts, they adopted Additional Protocol II, which extends to these types of conflicts the elementary considerations of humanity.[44]

We need to act in the same way today against climate change and the erosion of biodiversity. These growing challenges facing today's international community are well known. We need to act to adopt multilateral rules to counter them. There is no other way to tackle them, except through multilateral cooperation and through the adoption of multilateral rules, not unilateral actions. It is through such multilateral rules that we can at least

[40] *R (on the application of Gulf Centre for Human Rights) v Prime Minister and another* [2018] EWCA Civ 1855.

[41] General Act of the Brussels Conference Relating to the African Slave Trade (adopted 2 July 1890, entered into force 31 August 1891) (1890) 173 CTS 293; International Convention for the Abolition of Slavery and the Slave Trade (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253.

[42] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

[43] Self-determination as a political concept has a long history. However, it is in the period since 1945 and the adoption of the UN Charter that self-determination has become a legally binding right under international law. See in particular, arts 1(2) and 55 of the UN Charter, which make clear that a purpose of the UN is to develop peaceful and friendly relations among nations and that achieving this in turn depends upon ensuring respect for equal rights and self-determination of peoples; operative paragraph 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 Dec 1960) (adopted by 89 votes to none; 9 abstentions); Art 1(1) of both the International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1996) 993 UNTS 3 and the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

[44] Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 12 December 1977, entered into force 7 December 1978) 1125 UNTS 609.

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address in part challenges of this kind, be they climate change, extreme poverty, global terrorism or the erosion of biodiversity. In this regard, we also need more education and training in the field of international law, and particularly humanitarian and human rights law. If we observe today the conflicts around the world, we see that there are increasing violations of humanitarian law and human rights law in such conflicts. As stated in the UNESCO Constitution 'since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed'.[45] It is in the minds of men and women that the defences of peace through international law must be erected. Unfortunately, not enough resources are devoted to such education today. Imagine if those who sell weapons could include in each package a manual on the laws of war or train the acquiring party in humanitarian and human rights law. I am quite confident that it would make a lot of difference.

V. CONCLUSION

Engaging with international law does not necessarily mean promoting the status quo. Similarly to many other human endeavours, international law is perfectible and some of the criticisms against international law might even be well founded. The rules-based international system may need improvement in certain aspects and, perhaps, to see its coverage expanded in order to address efficiently some of the common concerns of humanity. A legal system cannot be better than the social consciousness that it reflects. However, international law is an essential part of the progress of humanity. We owe much of the progress of the last 70 years to its development. International law gives us a shared lexicon accepted by States and other actors in the international system. It offers us, for the first time in human history, a stable and predictable system of settling disputes between States without having to have recourse to violence and brutality. It is a framework through which rational people can find innovative ways to tackle our common challenges. It can help us avoid future bleak episodes for humanity, if we all commit to engage with it.

[45] Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) (adopted 16 November 1945, entered into force 4 November 1946) 4 UNTS 275.

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