International Progress Organization Organisation internationale pour le progrès

# RESPONSIBILITY IN INTERNATIONAL RELATIONS

## «THE IMPERIAL ROUNDTABLE»

## *INTRODUCTORY REMARKS*

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Dear colleagues!

I am pleased to welcome you at Hotel Imperial, in Vienna's historical center. At long last, we meet at the place we had chosen three years ago – to discuss a topic that has become even more urgent in the circumstances of what some fashionably call *die Zeitenwende* of 2022.

I am glad and grateful that most of the colleagues we invited before the onset of the pandemic are here with us today. Unfortunately, the geographical inclusivity which we hoped for (between East and West) has again become difficult to ensure – not because of a health emergency, but due to new political rifts, globally, and especially in Europe.

This should not discourage us, however, to proceed with the task of clarifying a foundational notion of world order:

"International responsibility" has a dual meaning, and at two distinct levels: namely, as obligation and accountability – of the state as well as of the individual – with *moral* and *legal* connotations.

In our projects since the early 1980s, the International Progress Organization has mainly dealt with the *legal aspects* of accountability, with a focus on the *inconsistency* of the existing system of norms: (1) in determining the responsibility of states for their actions, and (2) in defining the criminal culpability of those who have ordered or perpetuated acts that amount to international crimes.

As regards states, there is the concisely drafted text of the International Law Commission (ILC) on "Responsibility of States for Internationally Wrongful

Acts" (2001), which was taken note of, but not formally endorsed, by the General Assembly of the United Nations; and there exists, first and foremost, the United Nations Charter, an instrument that commits all member states to respect the principle of equal rights and to settle their international disputes by peaceful means. While the text of the ILC is a *statement of principles*, including an injured state's right for reparation by the state that has committed an "internationally wrongful act," the United Nations Charter declares it as one of the organization's main "Purposes" to take *effective measures* for the prevention of threats to the peace and for the suppression of acts of aggression. In reality, however, the Charter protects some of the most powerful countries, the Security Council's permanent members, from any enforcement action against their own internationally wrongful acts in the domain of security and peace. Thus, the Charter from the outset has undermined the international rule of law and eroded the concept of state responsibility. Except for acts of, so-to-speak, "moral" condemnation by way of General Assembly resolutions, the United Nations can only idly stand by when a permanent member decides to impose coercive measures or use force unilaterally, in violation of international law. The wording of Article 27, Paragraph 3 of the Charter is antithesis par excellence to the notion of international responsibility. The invasions of Iraq in 2003 and of Ukraine in 2022 are just two of the many examples of the state of anarchy in relations between sovereign states, which our organization has addressed in many conferences and expert meetings in the last four decades.

Power trumps law not only in the domain of state responsibility where an unrestrained drive for dominance has threatened global stability and peace

since the early days of intergovernmental organization. To a considerable extent, international criminal justice also has had to operate under the influence and constraints of power politics. This is true for the criminal tribunals established by executive fiat of the Security Council, as it has been the case, again to a considerable extent, for the International Criminal Court (ICC). Its statute is somewhat dysfunctionally connected – or tied – to the dynamics of power in the Security Council, whether in relation to the Court's jurisdiction over the crime of aggression or to the bizarre authority of non-State Parties of the ICC to confer upon the Court jurisdiction over situations on the territory of states that are not Party to the Statute, to mention just two of several loopholes where unaccountable power directly impacts on the Court. Because the linkage effectively inserts double standards in the Court's operation, it *erodes* the idea of personal criminal responsibility under the Rome Statute. Another loophole is opened by the highly problematic provision of Article 116 of the Rome Statute about so-called *voluntary contributions* "from Governments, international organizations, individuals, corporations and other entities."

Allow me, on this occasion, a brief historical reminiscence, or digression. In our organization's earlier meetings in the last half-century, we repeatedly addressed these issues under the aspect of a just and stable world order. As consultative organization of ECOSOC, the Economic and Social Council of the United Nations, we submitted specific proposals for reform of the UN system all of which are documented in our publications. On this occasion, I would particularly like to remember the cooperation and support we received from individuals who had attended the founding conference of the United Nations

in San Francisco, namely *Elisabeth de Miribel* (personal assistant to General Charles de Gaulle during the wartime years); the great American-Jewish advocate for peace in the Middle East, *Alfred Lilienthal*; and *Harold E. Stassen*, 25th Governor of Minnesota and one of the U.S. signatories of the UN Charter in 1945. With his "Draft Charter Suggested for a Better United Nations," he greatly contributed to our efforts in the 1990s as co-founder of the CAMDUN initiative ("Conferences on A More Democratic United Nations"), the second meeting of which we hosted at the United Nations Office at Vienna in 1991. I also would like to pay tribute to our close friends, the late *Ramsey Clark*, consecutively Assistant Attorney General and Attorney General of the United States in the Kennedy and Johnson administrations, and *Seán MacBride*, Nobel Peace Laureate and President of the International Peace Bureau. They were among the most enthusiastic supporters of our efforts in the field of law and justice. I also vividly remember the contribution of New York lawyer *Mary M. Kaufman* who joined us in an international tribunal and panel of jurists in 1984. Ms. Kaufman did so as advocate of international criminal justice who had made an outstanding contribution as member of the prosecution team of the U.S. Military Tribunal in Nürnberg (in the *I.G. Farben* case). She is also remembered for her contribution to the development of the "Nürnberg Principles" in regard to the concept of individual criminal responsibility.

More than two centuries ago, the Vienna Congress invoked the "principles of humanity and universal morality" as guidelines for what would amount, in today's language, to the "responsibility of states" and their leaders in a most comprehensive sense. Obviously, the "Concert of Europe," after 1815, failed

to implement these noble principles. In spite of the lofty doctrine of "humanitarian intervention" or "Responsibility to Protect" (R2P), implementation seems to be a step too big even for today's international community.

If not by the Vienna Congress – the acts of which were, just as those of today's powers, tainted by what 19th century strategists had described as *realpolitik* – we may get inspiration from the more recent Vienna Convention on the Law of Treaties (1969). In view of its affirmation of the *pacta sunt servanda* rule, many consider the Convention an important document also in relation to the concept of state responsibility.

In conclusion: We should not be discouraged by the state of affairs. It is important that we continue the debate under the new geopolitical circumstances, whether diagnosed as "Zeitenwende" or not, and that we can do so – *sine ira et studio* – in a scholarly framework that covers international law, including human rights law, political science, international relations theory, history, and sociology. I look forward to our discussions and thank you again for having accepted our invitation.

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