

‘International Law, the United Nations and the Future(s) of Multilateralism’

Transcript

Professor Sir Malcolm Evans

again, thank you very much for the opportunity to speak at this event today. Thank you also very much for the possibility of having a really rather dramatic way of stepping onto the stage, waiting in the wings for once. It's really quite something. And other lights have gone on, otherwise, if ever I would, without time to say, would have been shrouded in more mystery, darkness and obscurity than it probably will be anyway. And so I hope that turning on the lights in a nice way might be a little bit of a metaphor about shedding light on a few issues. The topic has been explained to you. International law, and I should say at the outset I am a public international lawyer by background, the United Nations and the future and the S in brackets, which may or may not be on your programme, future stroke futures of multilateralism is, in my view, important. And really, what do I want to spend a little bit of time talking about today? I'll be honest, is not always going to be perhaps what everyone expects to hear. And indeed, it is in many ways, a number of things which I really rather wish I didn't feel motivated to say. But sometimes you do feel that looking around the world, seeing what is going on, seeing what is going on within the United Nations and beyond means that we do need to step back a little and think. in perhaps unorthodox and sometimes uncomfortable ways about some of the solutions to the problems which we all know that we have and which have already we have had an important outline of here this morning. Now, In recent times it has become almost a trope to claim that multilateralism is dying and dead, etc, etc, and that we are spinning over into new polarities in international order, etc, etc. Let me give you at least one form of comfort before we start. Multilateralism is going nowhere. Multilateralism has always been with us and it always will be with us. And so at one level we do not need to worry about from an international perspective the idea of engaging with the problems that we have in the world today through a multilateral lens. And I'll explain why in a moment. But at the same time, We also need to realise that multilateralism has also existed alongside other forms of isms, notably bilateralism and unilateralism. These are not alternatives. They always interrelate with each other and play off each other in order to try to achieve outcomes in problems. Clearly, at times, sometimes, unilateral action will take priority over bilateral, multilateral, but the idea that all these take place as, shall we say, alternatives to each other or in vacuums

simply is not true, and it is also, if we stop to think about it, reflective in the way that we all live our lives on a daily basis too. I think one of the reasons why we worry about multilateralism is that we are tending to be focusing and confusing multilateralism with working through international organisations. And we tend to, when we use the word, or when many of us use the word multilateral, we don't really mean working multilaterally, we mean working through international organisations which are multi-member, as if that then is the focus of multilateralism. And frankly, that is not entirely true. International institutions and international organisations are a form of multilateralism. They are created in order to be a means of achieving multilateralism. But in and of themselves, they are not in some platonic ideal world what multilateralism is. Multilateralism is basically very simple. It's a group of different disparate parties getting together in order to bring about outcomes rather than something being done by a state itself or by two states or two entities getting together. The words is in the by and multi. And it's really not much more difficult than that. And it is for that very reason that we, I can say with confidence that multilateralism isn't going anywhere. We always look to different configurations of groups, of institutions and of relational interests to try to effectively address the problems that we face both at all levels, on an international level, the level at which I work. As has been said in the introduction, I'm a head of an Oxford house within the collegiate university, within our own personal lives, within anything. It is the interplay between the different relationships that help bring about change. And where multilateral institutions slot within that, is, in some ways, I think, the heart of the problem that we need to wrestle with today, and indeed the heart of the problem which I believe the UN does face, and we need to be honest that there is a problem with the UN in facing effectively these problems. But I did say that we tend to think about the UN and multilateralism just to remind ourselves there are, of course, a huge number of multilateral institutions. And most of them, most of the time, work pretty well. And so also, when we talk about a crisis of multilateralism, we do need to be quite focused about what we mean. Which bit of multilateralism do we not think is working well? You know, the International Meteorological Association works just fine. International Telecommunications union works just fine. The World Trade Organization works just terribly and so on and so forth. Some do it well, some do it badly, that changes over time too. Now no international, multilateral international institution and organization, let's be clear about it, has got a right to exist. It didn't spring from nowhere. They were created out of a perceived need in order to bring about something. They have an origin. They have a history. They have a purpose. And as an international lawyer, the one thing that becomes quite clear is that if they are not working well enough for long enough, then they begin to cease to exist. because they are there for a purpose. Are they delivering the outcomes that they are designed to do? And so those working in, for and supportive of multilateral institutions do need to be constantly reflective about whether they are truly delivering the outcomes which they are and were designed to deliver. Are they addressing the problems that need to be addressed in the

way that they have moved and modulated over time? And all states will continue to assess their participation, their commitment to, whether it is practical, rhetorical or frankly non-existent, on the basis, whether we like it or not, of what their national interests broadly conceived, often very broadly conceived, is in relation to this. For example, the UK frequently, in my view, incommendably and rightly, stresses its commitment to a rules-based international order. Inevitably, if that is the policy that you're taking and that is your position, even if you are not necessarily getting the outcomes that you might wish, your commitment to the system of the rules-based order is such that you are going to put up with those little perturbations when the decisions and the results don't go your way because it is so important to you that is the matrix within it works. Although, to be blunt, whether we like it or not, they're kind of on tipping points. To use a language we all use, there may be again a moment when the game isn't worth the candle anymore for those who are making the decision whether to participate. And it is against that background that we need to look at and understand the role of the UN in relation to multilateralism if we are going to take full advantage of the opportunities which I genuinely believe that the UN offers for us. So when we speak of this crisis of multilateralism, what we often mean, and in my view too often mean, is actually about the UN. It seems to be, I need to say absolutely at this point I'm a great supporter of the UN. I always have been. I have worked at very many levels. I have established the United Nations associations organisations. I was chair of the thing in Wales. I was currently on the UNA advisory board. I had worked with the UN. I was the elected member of a UN committee on a human rights committee dealing with torture and torture prevention. I have spent a lot of my professional life working in support of, for and with the UN. And just like anybody who has got that level of commitment and exposure to something, you are often a critical friend and there are times when the friendliness will spill over perhaps the more criticism, but that is because of the way it is. The other thing that should be said about the UN and multilateralism, which is a problem I think for the UN, is it is arguably one of the most visible signs of multilateralism in an institutional context. And also it doesn't help in some ways if it makes the greatest claims. If we look at the founding charter of the United Nations, gosh, what a claim it makes. We, the peoples of the world, we are going to do all these things on behalf. These are monumental claims that, and let's face it, the institution didn't make. The states that founded it made on behalf of the institution. So it eases the air to a huge amount of expectational, let's call it expectation, that has been hard baked into what the the United Nations is today. Now, one of the troubles for this is that I think we tend to think that when there is a problem, we expect the UN to be able to deal with it because it's at the apex of the system. And this then does no justice to all the very many other international organisations that exist, that in, let us call it, the multipolar world of multilateral diplomacy will weave their way between, let us call it, incidents, crisis, problems in order to try to find the best vehicle in which to solve the problem. What happens within the United Nations we see a lot about. But also think about the

way that when you're trying to deal with international problems you move between different organisations. In Europe itself, as we all know, we have the European Union, the Council of Europe, the Organisation on Security and Operation in Europe. We have NATO, we have the UN and we have many other sub-regional organisations of the same ilk. Exactly the same is true in Africa, exactly the same is true in the Americas. And it is the interweaving of these different ones all the time to try to find the ones that deliver the best outcome that is actually one of the hallmarks of effective multilateralism. So multilateralism is complicated. It does And achieving it through international organisations such as the UN is as much of anything else a technique of engagement rather than the inevitable point of engagement. And so again, something for us to bear in mind. So it is unwise to limit one's evaluations of a state's commitment to multilateralism by its willingness to work within a particular organisation at a particular moment in time. We may regret the decision of some states, and I will not name them, to decide that for whatever reason this isn't the vehicle for which they wish to work at a given moment, but it doesn't necessarily mean that they're giving up on multilateralism. it may be that they are making a decision that it is to be charted and navigated through other mechanisms. Against all that background, and just to cement the point, let's just ask again the difficult and obvious question. Has anyone in this room, I don't expect you to put a hand up, has any of you ever cancelled a subscription for a service or a membership that you no longer want or like? Yes, of course you have. Well, Actually, it's not a bad example. If you are a membership of something or an organization or you have a subscription or you're doing something and you no longer like what it is, I think we all know that we cease to get involved with it. And like anyone, and I've run academic journals and others, and when you see your membership subscription or what you do decline, what do you do about it? you actually wonder whether you're providing the right service, whether you're attracting the users, what do you do to reclaim your position with those, or to attract new people who will be attracted to what you do? Well, in a sense, international organisations and the UN could be seen in a not dissimilar light. And if there is a crisis where some states are choosing to withdraw from international organisations or are no longer channelling their multilateralism through the, let us call it some of the traditional means, one of the things they should be doing is looking a little bit about how they go about doing what they're doing, to see if they're doing it well enough to be able to continue to attract the interest and the support and indeed delivering the outcomes and delivering the people what it is they are looking for. looking for engaging with them. And if I'm being completely robust and blunt, I think a major part of the problem which is affecting the UN, because indeed we are trying to look at how the UN can be a vehicle for progress going forward, is that it is possibly not taking this element of its own future as seriously as it should. Does it really need to understand that it needs to look at itself in order to understand why it is losing traction and it is losing traction rather than criticising those all the time who are simply turning away from it? There may be a reason why that is happening and the degree of

introspection and self-reflection as well as self-promotion may be something that it needs to be doing too. And one can think of some clear examples of this. We all know, or I'm sure many of us will know, there is a huge funding crisis affecting the United Nations at the moment with states not paying their contributions. Absolutely, there is a crisis in that regard. Of course, the answer to this is states should pay their contributions, not actually stepping back and having a good look on what is it being spent on. Are we actually spending the money on the right things? Are the processes that we are doing the right processes? Is there good levels of stewardship of the monies which are devoted to the UN? Because although at one level the amount of money that comes to the UN looks quite small, from other perspectives it is really very large. And for myself, for someone who's worked within the apparatus of the UN, I'm afraid to say the amount of fiscal waste within it is truly enormous. I was shocked that it's over 10 years ago now, the UN High Commissioner for Human Rights, when making a very powerful and very important case for the better resourcing of the UN human rights system, which I was 100% behind, produced A fascinating and fairly terrifying document showing what the basic costs of certain basic functions of the UN actually were. Have any of you got any idea how much he then recorded it cost to produce one page of 500 words of official UN documentation 10 years ago? Two and a half thousand dollars. So every time you see one of these endless 100 page UN reports on this, that and the other, in physical production that has cost quarter of \$1,000,000. when translated into the six official UN languages, laid out, proofread, etc, etc. That's the cost. There are very many who think that this is sort of unnecessary. And these are also things which are, I have to say, recognised within the system in order to try to divert money away from good operational outcomes into things which are, shall we say, not so useful, maybe it's time to mix, I'll give some examples about that too. So, there are those elements of it. Another criticism that is often made against the UN is why it isn't too effective. One is the underfunding, or received underfunding. The other is, quote, its political nature. When you must forgive me for this, why shouldn't it be political? It is a political organisation. it was established to be a political organization. It goes with the territory that when you establish an interstate, intergovernmental organization, it is going to act politically. In a sense, no, not in a sense, it was designed to do this in order to bring about its aims of securing international peace and security, its primary purpose, and the promotion and protection of fundamental human rights. And so to to this argument that the UN often acts in true political way from the clock is somewhat a strange one in my view because politics and the interplay between states is literally baked into the heart of the UN and its organisation as we know through the Security Council, the operations of the General Assembly. And so of course it is a political organisation. that political organisations can act in very many different ways. And if you were going to be an effective political organisation, there is sort of one thing that you absolutely have to do to be perceived as effective, or at least as a protective institutional forum for political multilateralism. And that is to be properly reflective of

the constituency that you are trying to address through this mechanism. And one of the problems that the UN has is that, in my view, and not everyone would agree with this, is the UN increasingly is ceasing to be as reflective of the changing political realities, whether we like it or not, which are affecting the world around us today. Now the UN has not been static. It bears reminding ourselves that when it was established, it was not available to all states. You couldn't, not all states, automatically were member of the United Nations. You had to, of course, choose to sign up to the UN Charter and to ratify the Charter, but you could only do that if you seriously, or at least purportedly so seriously, subscribe to the values of the United Nations. and were considered by the other members to be a state that could participate within it and take their benefits from its membership because you ascribe to the values that were set out in the United Nations Charter. For that very reason, a considerable number of states were not able to join in the early days of the United Nations, and they only joined 10 or 15 years later, such as those who had been defeated in the Second World War. We tend to forget that for many years membership of the United Nations was seen as voluntary. States would make a prudential decision about whether they would or wouldn't be a member of the United Nations. and particularly many neutral states around the world felt that becoming a member of the United Nations would in some ways risk their political neutrality and so would be something that they did not wish to do. It often surprises people to realise that Switzerland didn't join the United Nations till about, was it 1999 or 2000? Even though some of its key political institutions were actually based in Switzerland, but it wasn't a member because it didn't think it necessary. Now what we've seen over the years is a change, rather than the United Nations being an international organization focused on key core values which members subscribe to and which should be reflected in its operation and in its working as an organization. it has somehow been changed. And as an international lawyer, one can see how it has changed. Membership of the United Nations has now become not a marker of one's commitment to either particular processes or values, but has become a marker of your existence as an international entity. If you're a member of the United Nations, you are seen to be in a legitimate state. If you are not, you are perceived as not. Hence, so much of the discussions about whether certain, certain countries can or cannot be members of the United Nations, whether they should or shouldn't be, etcetera, etcetera. It has become a mark of something other than what it was originally set out to be. Now I'm not saying that that's illegitimate, I'm not saying that that's wrong, but I'm just charting the fact that what we see today and what flows to a membership of the United Nations is in some ways of a very different order than what it was previously. Now that goes to the way that the UN actually works and functions. And we see this, I think, in the way that at the political level and at the political organisation within the UN, that there has been once again a change. What we now increasingly see, or that I increasingly see, when we look at the work of the United Nations within its political organs, is rather it being a place where states go to in order to try to de-escalate

problems, find solutions to problems or mediate their problems. It is becoming a place where states go in order to air their problems and in order to try to get political cover for the positions that they are trying to accept, trying to project. You are not going to the United Nations, you do not go to the United Nations Security Council for a resolution in order to help de-escalate a problem. You tend to go to the United Nations in order to get a resolution that you will believe will support your political position outside of the forum. And so rather than being seen as a place where you go to try to solve a problem, it is increasingly becoming a place that states go to, I have to say, to exacerbate them. And that, I think, is a problem. Now, to a degree, that has always been the case with the political fora, as you would expect, such as the UN Security Council and indeed the General Assembly. Speaking as a public international lawyer, what is to me more disconcerting is the way that has now spilled over into other fora within the UN and particularly the International Court of Justice. where states, for good or ill, increasingly try to take cases before the international court, not in truth because they've got any particular interest in what the court may or may not say, frankly, in 10 or 15 years' time about the resolution of a particular conflict or how a conflict may be resolved, but what it might say in the here and now about that conflict and whether they can get particular measures or orders by it in order to try to assist the differing, the different contestants, in that in that in what is ultimately a political and rather, forum. As a result, it is not difficult to see why even the legal end of the UN spectrum has, for these reasons, become perhaps more political than was previously the case. We're all used, I imagine, these days to the words lawfare and we see this alive and well. The tragedy is with the extent to which it then runs the risk of undercutting what the UN can do extremely well. And let us be clear, it can and does do an awful lot extremely well indeed. One of the other issues which I think that if we're being honest about the future of the UN is that if it is simply seen as a forum where all the states of the world can come together and play out their multilateralism, Does it still have a role in actually, should we say, projecting particular values that membership actually has? Should it consider simply expelling members who no longer sign up to its core values or are seen to be flouting some of its fundamental principles? Some international organisations do, others do not. And there are arguments both ways. But one of the things, and I speak here as an international lawyer, that I do find increasingly troublesome, not only about the, should we say the work of the UN, but also of my own discipline of public international law, is the way in which it is increasingly, rather than being a vehicle to hold states to account, for when they are in flag of violation of international rules and international order, its precepts become shields behind which they can hide from what I would consider to be the legitimate criticism of other states. Now, many of us will be familiar with this. There is this old mantra, particularly those who are working in the human rights world, about non-interference in the internal affairs of other states. In other words, you can do what you like within your own country, you can treat your people as terribly as you like, but if anybody else says anything about it, well that's unlawful interference and

you've really got to go away because that is entirely my prerogative what I do. Now from a legal perspective, that has not been true for a very, very, very long time. Except in the political fora, that still carries a great deal of weight. And so we are increasingly entering into that troublesome world, which for me, I suppose, raises the question of whether or not we are actually hitting that tipping point where continued fidelity to some of our key international organisations is not delivering sufficient in order to justify themselves. It's not when it is failing to solve problems but when it is actually giving succour to those who are the root cause of many of the problems and giving them a defence against which many of us might consider to be legitimate criticism and legitimate criticism that needs to be made of them and of what they are doing. There is a delicate balance there, but it is one that everyone has to be able to step back and be willing to assess. If international fora, if the United Nations is going to be able to continue to play what I consider to be the vital role that it should be playing, these are again some of the things that we need to be thinking of. And a final point before I draw to a point where I can perhaps take some questions and reflections, goes even further again into the business of what the UN looks like today. I mentioned earlier that one of the things which has become a hallmark of the modern United Nations is participation is seen as a hallmark of being a participant, a hallmark of being a state of individual. Everything turns on that. And so you've got to be, to use that old adage, in it to win it, or at least in it to be legitimate. Okay, That also means that those who are in it have got vested interest in trying to make sure that those who they don't want to be legitimate, as I think some of us know, are outside of it. But it also means that those states and entities which perhaps once upon a time had a practical, legal and effective functioning significance are again very reluctant ever to be allowed to leave. In other words, it becomes ossified. The idea of a state used to be a fairly fluid notion. Frankly, states came and went. I was, in the early years of my research, I remember being in, interviewing or speaking with an 80-year-old man who was living in Bratislava. And he said, do you know what, he said, I had lived in six different countries during the course of my life. and I am still living throughout that time in the house I was born in. That was quite stark, shifting boundaries, shifting states coming, literally states coming, states going, life going on around that, clearly a very troubled time in a very troubled place. But nevertheless, when we look around the United Nations today, I'm tempted to use that word. We all know that there are states who are fully represented with full diplomatic privileges and capacities and votes within the United Nations, which are, how can I put this without being quoted outside this room, strange inclusions. There are entities which we know function in the real world as states, not only in name but in practice, which are not there. because it is inconvenient for other reasons to recognise that they are there because they basically sit within the territory of other states and there are far more of these than you would think. If when we have heard already some of the problems of climate, movement, environmental change, One of the things I also do a lot of work on the law of the sea. One of the great concerns moving forward is the effect of sea level

rise on island states, whether they will cease to exist, let alone be eroded by rising sea levels. One of the questions that then flows from that is, well, what happens if any of the island states are in fact inundated and cease to exist? Well, all the debate at the moment is what can we do to ensure that they still exist as a state even if they have no territory. Perhaps their people can go and live somewhere else. We can give them a form of recognition, even if they have no territorial possession, etc., etc. The best model, of course, would be the Holy See, which is international personality, but no formal territory in that way. And there are others too. So there are models. But once again, The question is, how can we preserve the concept of this entity which exists, even if it is no longer functioning as a state within the global community, whereas at the same time there are others who we all know are and are not admitted there because again, that's sort of inconvenient. And the more that this goes on over time, and it is going on more and more over time as there are powerful groups in very many countries, separatist movements, people straining in order to try to get recognition for themselves, for their people as geopolitics and other things turn around them who would like to be able to have that voice but they are locked out by the members of the existing club. If that continues, if the very membership of the United Nations over time no longer continues to reflect the realities of the way in which the peoples of the world configure themselves for those purposes, then that is going to be a very real challenge of a different sort of order to the United Nations in its future. And on a troubling note, as I conclude, do remember All major global, international, multilateral institutions of this nature or systems have been born out of political cataclysm. The Second World War spawned the United Nations. The League of Nations was spawned by the First World War. Before that, the Concert of Europe was spawned by the Napoleonic Wars. The state of the Hague Conferences of the late 1890s were spawned by the central European turmoils that were taking place in the 1870s and 1880s. What we really don't want, and we really must work constructively to try to prevent, is a situation in which by the failure of international organisations to be honest about themselves and to reconfigure the way in which they structure to be truly able to deliver on their founding goals, they lose their resonance, they lose their relevance and the world heads towards another form of cataclysm that will then doubtless spawn another attempt to do what has not been done this time round. We owe it to everybody to do what we can in order to try to stop that happening. But I think we also, the UN therefore owes it to itself as well as for everybody else to be honest about what it needs to do to play its part within that process. But multilateralism is not going anywhere. Thank you.