



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

Peking University – Faculty of Law

**“My first Eight months as
the Legal Counsel of the United Nations”**

Lecture

by

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Vice-Principal YU,
Vice-Principal WU,
Vice-Dean WANG,
Distinguished Members of the Faculty,
Dear Students,
Ladies and Gentlemen,

[Introduction]

It is a great pleasure to be here at Peking University, the most prestigious academic institution in the People’s Republic of China. Thank you very much inviting me. I am always very happy when I get the opportunity to address students and to discuss with them. You are the future of your country! And you can contribute to shaping international law far beyond your own country.

At the outset, I wish to express my sincere gratitude to the leadership, the faculty and the students of Peking University for the very warm and cordial way that you have received me here. As you may know, this is my first official mission as the Legal Counsel of the United Nations to China. I will take home very fond memories of this country

and its people.

[China and International Law]

Before going into the substantive part of my lecture here this afternoon, allow me briefly to speak about the relevance of international law for China, in particular in the context of the United Nations, and the role that China plays.

The People's Republic of China is a permanent member of the Security Council of the United Nations. With this privilege come certain special responsibilities. The discussions and decisions in the United Nations in general and in the Security Council in particular have important political dimensions. However, in this political context there is in my view – a growing relevance of international law. Let me try to explain this:

The United Nations is a rules-based Organization and the Charter of the United Nations is the constitution of the international community. So let us take a look at what the Charter says about international law:

In its preamble it is said that the peoples of the United Nations are determined “*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.*” Furthermore, Article 1, paragraph 1 of the Charter states that one of the purposes of the United Nations is “*to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.*” Pursuant to Article 13, paragraph 1 of the Charter, the General Assembly may initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification.

Great efforts are made by States to abide by the commitments they make under international law, and, if differences occur, States make their best efforts to settle them by using the peaceful means that exist.

Furthermore, if a State is accused of a violation of international law, the State shows great concern and attempts to defend itself against the allegation; to be suspected for, or accused of, a violation of international law has become an embarrassment, and if it occurs, it often draws

criticism against the Government by the general public at the national level.

Today, international law, especially treaty law, increasingly affects the daily lives of people and businesses around the world. Because of today's interdependency of continents, trading blocks, States, businesses and ordinary people, there no longer exists such a thing as a fully sovereign State. No State can get along just by itself and no State can survive outside the international community.

The period from 1990 to 1999 had been declared the United Nations Decade of International Law which in the words of the General Assembly – and I quote - “*contributed significantly to the strengthening of the rule of international law.*” The Secretary-General identified in early 1999 the consolidation and the advancement of the international rule of law as the second most important objective of the Organization, after peace and security.

An Action Plan for an Era of Application of International Law had been developed, elements of which include:

- encouraging the participation in multilateral treaties;
- assisting States to prepare necessary implementation legislation;
- training of judges, practicing lawyers and others who are involved in the application of the law; and
- educating and informing the general public about international law and about means of recourse against violations of this law.

The work of the United Nations is organized around three fundamental pillars, enshrined in the Charter: peace and security, development and human rights. These three pillars are linked and closely interconnected.

The knowledge of and respect for international law is central to the work of the Organization across the three pillars. Advancing international law is core to the mission and mandate of the United Nations.

As I mentioned earlier, a permanent member of the Security Council, China has a special role in international relations and special responsibilities. And because this is so, I would like to see China projecting its voice and participating actively in the discussion of international law issues. It has many outstanding international lawyers.

I wish to mention just two striking examples: the Chinese member of the International Court of Justice, Ms. XUE Hanqin, and the Chinese member of the International Law Commission, Mr. HUANG Huikang.

I am very pleased to see China is becoming increasingly involved with the International Court of Justice. The recent participation on the Kosovo proceedings is a case in point. This reflects a growing trend of expanding the role of the Court, one which is most welcome. States entrust the Court with more complicated, politically sensitive legal issues allowing the ICJ to become more dynamic and requiring it to produce its decisions more quickly. I am pleased to see that China has joined this trend.

China has always been a strong proponent in the peaceful settlement of disputes. The peaceful settlement of international disputes is one of the key elements of the rule of law at the international level.

In accordance with Article 33 (1) of the Charter of the United Nations, Member States have access to a variety of mechanisms and instruments to solve their disputes, including negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements.

Many States refer their disputes to the judicial settlement. Among the judicial mechanisms available, the International Court of Justice, the principal judicial organ of the United Nations, plays the leading role. The unique mandate of the Court that “comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force” makes it a universal judicial forum capable of judicial settlement of any legal disputes between the States. I am pleased to see that China supports this development.

Another area where China’s approach to international adjudication appears to be changing is in the field of international investment protection. China has one of the most extensive network of Bilateral Investment Treaties (BITs) and it is noteworthy that a new generation of Chinese BITs now provide significantly greater opportunity for investors to refer disputes with host States to international arbitration. This is a wise move as it allows for legal certainty and attracts investment to China.

As the Legal Counsel of the United Nations I am following these developments with great interest.

[The role of OLA]

Let me now say a few words about the role of my office, the Office of Legal Affairs, in the United Nations.

The Office was established in 1946. It's overall purpose is to support the accomplishment of the objectives of the United Nations by providing advice to the principal and subsidiary organs of the United Nations and by promoting among Member States a better understanding of and respect for the principles and norms of international law.

What this means in practice is that the approximately 180 staff of some 60 nationalities provide a unified central legal service for the Secretariat and the principal and subsidiary organs of the United Nations. Put more plainly, the Office is the in-house Counsel to the Secretary-General, to the senior management and to the wider UN system.

It is a great privilege to be entrusted with this role and it is one that we treat with the responsibility it deserves. The work that crosses my desk on a daily basis is varied and often urgent. Naturally, our role requires us to carry out this work on a confidential basis. Like legal advisers in many walks of life we must often operate outside the public domain.

Lawyers in my office address questions which you would expect to arise in the United Nations Office of Legal Affairs. Questions relating to peacekeeping operations, international criminal justice, international humanitarian law, and oceans and law of the seas are staple work for us. However, some of the questions we deal with might surprise you. Contracts of more than \$4 billion annually, procurement policy, privileges and immunities, international trade law and a system for handling internal disputes and disciplinary matters for a staff of more than 60,000 also greatly occupy our work days.

It is vital for decision makers in all of these areas of work to understand the legal implications of their choices, and to arrive at legally sound decisions. I have found that they very much want to understand the legal context, even if it might not always immediately the path to where they wish to go. I also find that decision makers are conscious that when they seek early legal advice their policy choices are greater.

In the period since the Secretary-General honoured me with the appointment as Legal Counsel by the Secretary-General, my office has been called upon to provide legal advice on many of the most pressing

political issues of the day, including peacekeeping in Africa, the upheaval in Ukraine and, most recently, the question of whether humanitarian access to the Syrian Arab Republic requires that State's consent.

There are three issues in the area of my responsibility that I wish to elaborate a bit further on:

- (1) the issue of the removal of chemical weapons in Syria;
- (2) international criminal justice; and
- (3) some legal aspects of modern UN peacekeeping.

[Syria/Chemical Weapons]

Let me start with the removal of chemical weapons in Syria.

In briefing the Security Council on 16 September 2013 on the conclusions of the UN Mission to investigate the allegations of the use of chemical weapons in the Ghouta area of Damascus, the Secretary-General stated that "this is the most significant confirmed use of chemical weapons against civilians since Saddam Hussein used them in Halabja in 1988....After two-and-a-half years of tragedy, now is the moment for the Security Council to uphold its political and moral responsibilities and demonstrate the political will to move forward in a decisive manner".

In his statement to the General Assembly on 17 September 2013, the Secretary-General reiterated that there must be a robust effort to bring perpetrators to justice for the serious international crimes that have been committed since the beginning by all parties to the conflict. He also recalled that the High Commissioner for Human Rights has repeatedly called for a Security Council referral of the situation in Syria to the International Criminal Court.

In both statements, the Secretary-General welcomed Syria's accession to the Chemical Weapons Convention and the framework agreement reached by the Russian Federation and the United States regarding the elimination of Syrian chemical weapons programme.

With the adoption of OPCW Executive Council decision EC-M-33/DEC.1 and UN Security Council resolution 2118 (2013) on 27 September 2013, the UN and OPCW acted quickly and in close cooperation, to implement their respective roles and responsibilities

including by establishing a Joint OPCW-UN Mission for the elimination of the Syrian chemical weapons programme.

Working closely with the OPCW Legal Office, the UN Office of Legal Affairs jointly elaborated and put in place the necessary legal instruments between the UN and the OPCW, including the Supplementary Arrangement to the Relationship Agreement between the OPCW and the United Nations, as well as the successful negotiation and conclusion of the tripartite status-of-mission agreement with the Government of the Syrian Arab Republic (SOMA).

Together, we also negotiated and concluded a tripartite exchange of letters with the Government of the Syrian Arab Republic regarding the Multinational Maritime Transport Operation led by Denmark and Norway with the generous and indispensable support of the Governments of the People's Republic of China and the Russian Federation who have provided a maritime security escort.

As you can imagine, there are high risks in respect of safety and security arising from operating in a conflict zone as well as additional risks associated with the potential exposure to or contamination by chemical agents or weapons. There are also potential risks for public health and the environment.

As such, we sought and successfully obtained strong liability clauses in the tripartite SOMA which minimized UN and OPCW exposure to potential liability by confirming Syria's responsibility to deal with, and to hold the UN and OPCW, harmless for third party claims to the largest extent possible.

Similarly, the UN and OPCW have also maintained that the States Parties/Member States undertaking the removal and maritime transport of the Syrian chemical weapons must agree among themselves on questions of possession, jurisdiction and control and the related questions of liability for, and mitigation of, security and other risks, including in respect of damage to public health and the environment.

The Joint Mission has thus encouraged the Syrian Government as well as other Member States involved in the removal, transport and or destruction activities to ensure due regard for public health and environmental standards and to heed WHO and UNEP guidance in that regard.

With over 90% of the chemical weapons destroyed or removed, and notwithstanding the remaining production facilities that must also be destroyed, we can look at the success of the elimination process thus far not only as a great example of what is possible when UN system organizations work together when they have a clear mandate but also as a tribute to the unprecedented unity of purpose thus far maintained by Member States and their willingness to provide the necessary financial and in kind resources to achieve that mandate.

[International Criminal Justice]

Let me now provide you with an overview of our activities in the field of international criminal justice.

The unwavering support for our system of international criminal justice is an institutional legacy of the UN's Office of Legal Affairs that I am proud and eager to maintain.

The Secretary-General's is totally committed to bringing about an "age of accountability" through the strengthening of the rule of law, the pursuit of justice and the determination to end impunity for war crimes, crimes against humanity, genocide and other serious violations of international humanitarian and human rights law. A vital part of my work is to support the Secretary-General on this goal. It is an issue which my team and I address on a frequent basis in many different ways

Supporting international criminal justice and in particular the ICC also reflects my deepest personal convictions.

The United Nations promotes accountability for serious crimes of international concern in many ways, principally through the work of the two *ad hoc* tribunals, the International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda and, now, their residual mechanism; through the work of the three United Nations-backed courts and tribunals - the Special Court for Sierra Leone, the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia; and, also, through the cooperation and support that it provides to the International Criminal Court. Even to simply reflect on the length of this list of entities and the breadth of the terrible crimes they seek to address tells us how far we have progressed in the past two decades in the area of international criminal justice.

The United Nations and the International Criminal Court are two separate organizations, each independent of the other, each with its distinct mandate. At the same time, their objectives are closely aligned. Both work for the maintenance of international peace and security. And both seek to promote and encourage respect for human rights and personal freedoms.

It was fitting, therefore, that the Rome Statute provided for the Court and the United Nations to be brought into relationship. This important step was brought about with the conclusion of the Relationship Agreement between the two institutions in October 2004. Later this year we will mark a decade of close cooperation with the ICC.

Since its historic establishment some 12 years ago, the ICC has continued the growing effort to ensure accountability for serious crimes of international concern.

In doing so, the Court has made a signal contribution to advancing the purposes of the Charter.

The International Criminal Court is the centrepiece of our system of international criminal justice. I do not doubt for a moment that this is a great responsibility for an organization to carry. However, despite the challenges that it faces, I am confident that, already, after this short period, the world is better off for its establishment. The Court serves as a vehicle for the international community to advance the cause of justice and, in doing so, to reduce and prevent unspeakable suffering.

In the time available to us I cannot go into great detail on all of our UN-established or UN-backed courts and tribunals. However, allow me briefly to mention the work of the Extraordinary Chambers in the Courts of Cambodia. I

The Extraordinary Chambers in the Courts of Cambodia are at a critical phase of their work.

Judgment is currently reserved in the first phase of the trial in respect of the remaining senior leaders of the Khmer Rouge regime. The ECCC's investigations of a two further cases are also at a critical stage this year.

I visited the ECCC in January this year. While it has to be accepted that justice is being delivered so very late compared to that

administered by the other UN and UN-assisted courts, justice is finally being served for the crimes of the Khmer Rouge. Victims are receiving some recognition for the crimes they suffered three decades ago.

The ECCC is conducting the trial of the most senior surviving members of the Khmer Rouge regime. Many commentators consider this the most significant international criminal trial in the world at the moment. Everything must be done to ensure that the ECCC will be allowed to complete its judicial mandate. The ECCC has already made an important contribution to the development of international criminal justice. The ECCC is an indispensable element of our system of international criminal justice. It must be allowed and encouraged to complete its work.

[Legal Aspects of Modern UN Peacekeeping]

And this brings me to the final part of my lecture: Legal Aspects of Modern United Nations Peacekeeping.

UN Peacekeeping has been part of the UN's mandated activities since its earliest years and is an aspect of the UN's work with which people across the world most readily associate with the Organization. In the last two decades it has rapidly evolved. In the past it has been viewed — perhaps not entirely accurately — as the traditional model of troops or military observers monitoring ceasefires and borders following inter-State wars. This has evolved to a situation where UN operations often combine interdependent military, police and civilian components with complex mandates, primarily responding to situations of intra-State conflicts — conflicts that have just ceased, conflicts that are believed to be imminent or even that are ongoing. By any measure, we have witnessed significant changes in UN peacekeeping.

Since 1999, the Security Council has increasingly authorized peacekeeping operations to use force beyond self-defence, in particular, for the protection of civilians facing imminent threat of physical violence.

[MONUSCO]

Perhaps the most noteworthy example of these developments involves our activities in the Congo.

The Organization's peacekeeping operation in the Democratic Republic of the Congo - MONUSCO - has been the subject of a great deal of political and legal discussion during the past twelve months. To explain: in the spring of 2012, a large number of soldiers deserted from the Congolese army and joined a rebellion mounted by the so-called M23 movement. In November 2012, the M23 took control of Goma, close to the border with Rwanda.

In light of this development, the Security Council took the step of establishing, within MONUSCO's military component, a special unit specifically tasked with mounting "targeted offensive operations", either unilaterally or jointly with the Congolese army, "to prevent the expansion of all armed groups [in the eastern DRC]; to neutralize these armed groups; and to disarm them".

This is not the first time that the Organization has fielded an operation that has been authorized by the Security Council to take the initiative in the use of armed force. Indeed, the operation in the DRC itself already has had a mandate that has allowed it to do this for certain purposes and in certain circumstances for a number of years. However, it is the first time that the Security Council has specifically and expressly tasked a United Nations peace operation with carrying out "offensive" operations.

As a result of this development, my Office has had to deal with a wide and very interesting range of legal questions over the past year.

[CAR]

In April of this year, we saw the establishment of the newest peace operation, in the Central African Republic.

For more than a year, the situation in that country has been marked by widespread breakdown of law and order. Atrocities are being committed countrywide; there are targeted killings against Muslims and Christians; and approximately a quarter of the population has been displaced or fled the country.

The African Union has deployed an armed operation, French forces are supporting it and the European Union is also preparing to deploy a force in support.

The new United Nations operation, MINUSCA, has begun operations

with a civilian component only. On the military and police side, it will take over from the AU operation later this year, in September. Indeed, it is anticipated that many of the troops and police serving in the African Union operation will be “re-hatted” as UN peacekeepers.

My Office has been involved, as it often is, in the planning for this operation through the provision of legal advice.

As was the case with the UN peace operation in Mali that was established last year, we will be faced with a range of issues of a kind that are becoming increasingly frequent in the field of United Nations peacekeeping:

- the conclusion of arrangements for the provision of support to a military operation led by a regional organization — here, the African Union and its force, MISCA - which will continue to operate until the autumn, when the UN force will commence military and policing operations;
- compliance in that connection with the Human Rights Due Diligence Policy on UN Support to non-UN Security Forces — a policy, pioneered by my Office, that seeks to avoid the UN becoming complicit in violations of international humanitarian, human rights and refugee law;
- the re-hatting as UN peacekeepers of contingents from a non-UN operation, and compliance in this connection with the Organization’s human rights screening policy — a policy that seeks to avoid the UN unwittingly taking human rights abusers into its ranks;
- and cooperation between a UN operation and non-UN armed forces deployed in the same theatre of operations — here, the French forces, which will continue to operate alongside and support the UN operation.

With experience of these diverse, complicated and new questions, we are becoming more familiar with these subjects. However, they involve complex and searching issues which present careful legal scrutiny and explanation.

[Conclusion]

This brings me to the end of my lecture today.

I hope that I have succeeded in providing you with a glimpse of what the work of an international lawyer at the United Nations looks like today.

If you consider embarking on a career in the practice of international law, the Office of Legal Affairs is – in my admittedly biased view – a very interesting option.

Thank you very much for attention. You have all my best wishes for your studies and future career.