

## Concluding Remarks

*Rüdiger Wolfrum*

This has been a very interesting day with extremely valuable contributions. Although my expectations were quite high, the result is even better. Therefore, my concluding remarks are certainly tentative and open for challenge and correction.

Already yesterday I was asked: “What is the purpose of this seminar?” I could have said: “Look, we are an institute for doing fundamental research. And the only justification we have for doing research and having such a conference is curiosity”. But I will give you four reasons, four reasons why I believe that this seminar was useful or even called for.

First of all, I believe that it is essential, or at least necessary, to fathom where we stand in respect of this principle referred to as solidarity – being referred to in statements of the General Assembly, the Security Council, in the context of the European system and very much in literature, but also in other regions. You find solidarity for refugees in the African Charter and many African constitutions. Africa has its own system for the protection of refugees, which is much more solidarity-oriented than our system and has a more humanitarian approach. And if you go through international instruments pertaining to other regions, you would find further examples. That was my first argument.

Secondly, I want to stimulate research in that respect. Later, I will indicate areas where further research can, should or should not be done.

Thirdly, I am taking up the words from Dr. Dann: “We want to develop a tool, one among others, which one may use to assess international law”. And one may use it in the context of legitimacy. Please consider this seminar as a continuation of the seminar on legitimacy in 2006. You may remember that one may judge the legitimacy of a measure or an act against the procedure in which it was adopted or on the basis of its re-

sult. If you consider the result as being relevant, meeting the standards of solidarity would be one of the parameters one might take into consideration.

Fourthly and finally, it is possible, empirically, to establish common features or leading features within a particular regime. This would be a tool to differentiate one regime from another. The consequential question would be: "Which are the consequences you draw from qualifying a regime being based upon solidarity?" Perhaps you would say: "None", but I have the view and the feeling that there might be consequences.

Further research should be undertaken to define the notion of solidarity. I would like to follow Laurence's definition, namely, mutual assistance as the first element within a system which shares common values. Jochen Frowein has put it differently stating that every community in the true sense of the meaning has to imply the principle of solidarity. Otherwise, since the entities within the community need a mechanism to harmonise their activities, this community will not survive. Dinah Shelton has advanced another chain of thinking in that respect, namely – and this was endorsed by Yoram Dinstein – that communities – you said it about the human race – have a mechanism of self-preservation. As we humans have the mechanism to preserve our species, so have communities a certain tendency for self-preservation. In that respect solidarity is the most important stabilising element.

What are the other roles of the principle of solidarity? The writers who have been referred to are Christian Wolff, Emer de Vattel and Johann Caspar Bluntschli, and it is interesting to note how Christian Wolff developed the principle of solidarity. Christian Wolff belonged to those who tried to explain international law without referring to the bible. Nevertheless, here he used an expression from the bible, namely that every single human being owes a certain obligation to assist one's next. And he said if that is an individual obligation, the same applies for States. The same approach has been adopted by Vattel and later by Bluntschli, however, it is not totally clear whether Bluntschli or Vattel considered solidarity as a legal obligation. This idea has been forgotten, but as it has been pointed out by several that within the French Revolution with *fraternité*, there was a certain reference to solidarity. It was Jean-Pierre Cot who indicated that the principle of solidarity was not so much coined in legal terms as the principle of *liberté*, for example. There are, however, also in international law, at least in regional contexts, references to solidarity I already alluded to, but also in international agreements such as the Convention against Desertification which

uses the word solidarity explicitly. Therefore, one should go through international law to see to what extent these international agreements or customary international law either explicitly refer to solidarity or where you can argue by looking into these agreements that they are structured or based upon the notion of solidarity.

Now let me come to the crucial question. First, I would say that solidarity is certainly not a principle which governs international law as such. That would be hardly sustainable, as clearly shown by our first speaker. The following presentations followed exactly the same path and therefore, this seminar as a unit gave a very clear picture of where we have this structure. Philipp Dann, by looking into the regime of development assistance, distinguished between horizontal and other forms of solidarity. And here the question came up first: "To whom solidarity is owed: to the other State, to another population, or to the community, or to individuals?" Let me put that aside for this is an intriguing question that raises certain further elements. Laurence has also looked into the responsibility to protect and showed the interaction with the principle of solidarity. For me, her presentation was kind of a test case for solidarity. And she went through the definition which I used at the beginning of this concluding observation, and established that there is the obligation or the responsibility for assistance as a value-based system and that there are mutual rights and obligations. The result of her presentation was quite clear, namely, that if this regime would ever enter into hard law we would face a change in the perception of the international law. For out of a sudden, we would not only have the obligation or the responsibility of a State, to adhere to human rights with respect to its own citizens in its territory, but we would go beyond that. In environmental law, intergenerational equity came into play. This has been well elaborated by Dinah. Further examples are argued by Hanspeter Neuhold that Chapter VII of the UN Charter is based upon solidarity. I also would like to refer to the Law of the Sea Convention in two cases: Part XI on deep sea-bed mining has definite elements of solidarity, but also the very traditional obligation to render assistance in case of a natural or other emergency for ships is built thereupon.

Let me come to my next point: Who is the addressee? I briefly touched upon that already. Is it State to State, State to the community, or State to the population? In respect of the last point, the argument has been made that this is being undermining the status or the role of the State. If there was a responsibility to render assistance to the population of a given State against the wish of the government, is this undermining the

role of the State? What is a State there for? Let us not render the State absolute. The State is a servant to the population and should not be in the position to stop the assistance which could have been rendered.

What is the relationship of this principle to other principles? Legitimacy – I have already touched upon that. Solidarity may be another mechanism to enforce legitimacy. I would not say legitimacy always requires solidarity, but this may be an additional tool.

To be qualified as a legal principle, there must be some form of mutual rights and obligations. This has nothing to do with reciprocity. Certainly, solidarity is something else and more than cooperation. Cooperation is lacking at least one of the three elements. Cooperation takes place outside a value-oriented system. And here, I see a difference to reciprocity. Reciprocity means that “one fulfills an obligation in the expectation that the other one is doing the same”. If that is not working, then the obligation becomes void. This, I strongly emphasise, is not the case with solidarity. Here the action of the other side is not a precondition for fulfilling its solidarity obligations.

Let me finally say two things. To say what the principle of solidarity is achieving or what it is not achieving would, in my view, go too far. I do not consider the principle of solidarity as a legal principle from which one may deduct concrete rights or obligations. Certainly neither in international law, in general nor in particular regimes. In that respect I would consider the principle of solidarity as a misconception. You cannot say: “There is solidarity, therefore you have to do that and that”. Whether international law will develop into this direction is a totally different question. I believe Laurence has made quite clear that this is even doubtful under the notion of the responsibility to protect and this responsibility is perhaps less than a legal obligation.

Having said what solidarity is not, now let me try to establish what it is. First, I take it that the principle of solidarity may be inherent in some regimes, but not in every regime. This principle gives us a better understanding of the content and structure of a particular regime. As such, it is a tool for the interpretation. Secondly it may be used to fill gaps or to modify inconsistencies. Also, it may be a tool to more properly differentiate between various legal regimes and to give an assessment of newly developing regimes. But in that respect, I consider the principle of solidarity rather as a mechanism for a better understanding of the international law and in the medium-term, perhaps as a means for progressive development of international law. Thank you very much.