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Symposium on Solidarity as a Structural Principle of International Law, Max Planck Institute for Comparative Public Law and International Law, 29 October 2008

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On 29 October 2008, a symposium called "Solidarity: A Structural Principle of International Law" was held at the Max-Planck-Institute of Comparative Public Law and International Law in Heidelberg, Germany. Nearly 80 people including scholars, practitioners and researchers of more than 20 nationalities participated in the symposium. As laid down by Armin von Bogdandy in his opening address, the aim of the symposium was to discuss what constitutes the notion of solidarity in international law, whether the concept of solidarity could be characterised as one of the structural principles of international law, where it could apply to and to what extent it has already become a binding norm. *Karel Wellens, Philipp Dann, Laurence Boisson de Chazournes* and *Dinah Shelton* elaborated on the concept of solidarity from different perspectives, ranging from the theory of international law, the law of development cooperation and the responsibility to protect to intergenerational equity, and each talk was followed by a discussion with the floor.

The first presentation was given by *Karel Wellens* and entitled "Solidarity as Structural Principle of International Law: Expanding Role and Inherent Limits". Wellens dealt with the principle of solidarity as a descriptive as well as a prescriptive norm in international law, summarising its origins, assessing the role it plays in various areas of international law and giving an outlook on its future developments. He placed the principle of solidarity within the normative framework of the constitutionalist school, based on the distinction between international community and international society and its origins in the ethics of international law since Emer de Vattel. Wellens proceeded to explore its expansion beyond the maintenance of peace and security, where it is deeply rooted, into the emerging field of international disaster law. As a result of the mostly non-binding provisions in the field, Wellens concluded that solidarity functions more as an inspirational than structural principle; its impact on the body of regulation nonetheless, affirms its constitutional character also in the field of international disaster law. In his assessment of other branches of international law, as the international humanitarian law, the international trade law and the law

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of State responsibility, Wellens found the principle of solidarity developed to various extents of a constitutional, but still mostly inspirational. He suggested that the lack of "widespread institutionalised mechanisms" to implement the principle constitutes the major hindrance to become a fully-fledged structural principle and has yet to be achieved. However, at the same time Wellens observed that the shaping impact of the principle of solidarity qualifies it already as a structural principle of international law.

In the second presentation "Solidarity as Guiding Principle for Institutional Development Assistance", *Philipp Dann* analysed the normative operation of solidarity within the field of international development law. Using solidarity rather as a tool to assess the character of international development assistance and the law of institutional development cooperation than as a legal concept, he defined solidarity along three dimensions on the basis of its meaning in the domestic context: the assistance to advance a common goal, the equality among the partners involved, and the mutuality of obligations. He found all three parts of his "working definition" included in the non-binding law of international development, notably the Millenium Declaration and its follow-up documents, the Monterey Consensus and the Paris Declaration, though the term "solidarity" itself is evoked but rarely. Dann then proceeded with a comparison of the concrete development laws of the European Union and the International Development Association/World Bank. The results he reached showed a mixed picture of the extent to which the principle of solidarity has been realised in binding law. While the World Bank has integrated mostly the aspects of mutuality and assistance to advance a common goal, the European Union rests only upon the equality of donor and recipient. Dann identified especially the uneven representation of donors and recipients in the decision framework of the World Bank as the major limitation to equality and hence a fully-fledged solidarity, while the European Union development law in the context of the EC-ACP Cotonou Agreement's shortcoming is due to its lack of transparency in the application of standards and the absence of mutuality. Hence he concluded that in the context of the law of institutional development cooperation, solidarity is "more promise than principle".

In the third presentation "Responsibility to Protect: Reflecting the Principle of Solidarity?", *Laurence Boisson de Chazournes* addressed the responsibility to protect as a manifestation of the notion of solidarity. After having developed a value-based notion of solidarity, she examined the roles of solidarity in the responsibility to protect, the interaction of both in the field of international humanitarian law and the consequence of inaction of solidarity where State responsibility might come into play. Boisson de Chazournes defined the notion of solidarity on the base of four elements: the assistance to realise a common objective, the moral obligation to provide assistance, the importance of a common value system on which the international community is grounded, and the distinction between beneficiaries and providers of solidarity. She characterised the responsibility to protect as the responsibility of States to prevent humanitarian catastrophes by the most appropriated means in subsidiary manner primarily by the State in question and, if needed, by the international community. Based on these definitions, Boisson de Chazournes observed that

solidarity can operate along two lines horizontal (State-to-State), as well as vertical (State-to-population), while the responsibility to protect is limited to the vertical operation. She argued that the responsibility to protect could be linked to solidarity because of its aim to achieve the common goal of providing humanitarian assistance to populations. Such link is based on the shared value system of human security and fuelled by the resulting moral obligation for States that possess the necessary means to act accordingly. She further elaborated the vertical operation of solidarity in the case of non-international conflicts, where States have to assume responsibility for all violations of humanitarian law, even when committed by non-State actors. She gave an example that the Security Council's duty to act in cases of large-scale infringements of humanitarian law is a manifestation of the notion of solidarity and the responsibility to protect both of which are broader notions. She concluded that the responsibility to protect as a legal expression of solidarity can be instrumental to protect shared values of a human rights nature without relying on mutual or self-interests.

The fourth and last presentation was given by *Dinah Shelton* and named "Intergenerational Equity: Reflecting the Principle of Solidarity?" In her presentation, Shelton examined "solidarity among generations" in both domestic and international contexts. She found the question of solidarity across generations in areas such as economic wealth and development, culture and knowledge, life and well-being, and natural resources. In international law, expressions of intergenerational equity can be found in provisions of the Charter of the United Nations, a number of international conventions as well as non-binding international instruments in the field of natural and cultural resources. Shelton defined intergenerational equity as burden- and benefit-sharing aimed to achieve the highest level of distributive justice possible among all present and future generations. The principles that could determine equity among generations are, according to Shelton, the formal equality of outcomes, the protection of entitlement, difference in capacities, difference in needs and different historical responsibilities. The last principle adds the concept of collective justice to the concept of distributive justice. Shelton further assessed different ways to implement the concept of intergenerational equity and suggested that the public trust doctrine long-established under domestic laws of common law countries could effectuate the principle of intergenerational equity in international law. Going one step further, she proposed to grant rights to generations as such rather than indistinguishable future individuals. By admitting such rights, environmental rights would contribute more effectively to preserve the environment, rather than focusing on the damage caused to persons or property. Shelton underlined the advantages of this approach by referring to recent rulings by some domestic courts. Shelton observed that the consideration of the moral principle of solidarity would become indispensable in searching for a just global society as the interdependence of States and complexity of problems increase. She also argued that the principle of intergenerational equity could induce a wider participation by letting those States who have no direct interests be aware of interests of their future generations. Shelton ended her presentation by emphasising that equitable approaches not only serve to morality and justice, but also

contribute to solve issues of common concern and ensure compliance with norms of international law by all States.

In his concluding remarks, *Rüdiger Wolfrum* summarized the symposium and pointed out the necessity to research further on the definition of solidarity, how the value-based notion of solidarity plays a role in hard law, the addressee of the principle of solidarity and the relation of solidarity to other principles such as legitimacy and reciprocity. He concluded that the principle of solidarity is not a legal principle from which concrete rights and obligations are deducted, but the principle of solidarity can serve as a tool for interpreting certain regimes of international law as well as an instrument for a progressive development of international law. Although there was no consensus among the participants on whether solidarity can be characterized as one of the structural principles in international law, let alone whether it has become a legal principle in international law, the symposium was successful in drawing a complex picture of operations of solidarity in different branches of international law. The forthcoming proceedings of the symposium have been edited by Rüdiger Wolfrum and Chie Kojima and will be published from Springer together with two additional contributions from the participants of the symposium: "Military Intervention Without Security Council's Authorisation as a Consequence of the 'Responsibility to Protect'" by Tania Bolaños and "Common Security: The Litmus Test of International Solidarity" by Hanspeter Neuhold.