Chapter IV  The Primacy of International Law over Force

I. Introduction

The sustained and continuing validity of the general principles of International Law provides the foundations for the application of its norms. In this turmoiled beginning of the XXIst century, there is growing need to reaffirm, in particular, the primacy of International Law over force. Such reassertion is, in my view, an ineluctable duty of every jurist, who cannot contribute with his silence to the apparent attempts at deconstruction of International Law in our days. It is a duty to be performed even more vigorously at a difficult moment of world crisis such as the present one, – reflecting a deep crisis of values, – in which the international system itself is threatened with rupture by the unwarranted use of force, outside the framework of the U.N. Charter.

II. The Crystallization and Continuing Validity of the Principle of Non-Use of Force

May I begin by recalling a recent episode. In the evening of 25 February 2003, in face of the announcement of a forthcoming armed attack against Iraq by a self-designated “coalition of States”, I convened a public ceremony at the headquarters of the Inter-American Court of Human Rights [IACtHR] in San José of Costa Rica, to reaffirm a long-standing and deeply-rooted belief in the primacy of International Law over force. The Court’s room of public hearings was over-crowded.¹ In my address that evening, I saw it fit to point out that

“In this same room, yesterday, we witnessed a historical public hearing before the Inter-American Court. Amidst news of the imminence of a new war (…), the Delegations of twelve Latin American countries appeared before this Court, as intervening States (Mexico, Honduras, Nicaragua, El Salvador, Costa Rica) or as observers (Uruguay, Paraguay, Dominican Republic, Brazil, Panama, Argentina and Peru), in

¹ With the presence of Ambassadors and other representatives of States, international organizations and non-governmental organizations. The proceedings of that memorable ceremony have been published by the IACtHR (cf. n. (2), infra).
advisory proceedings [on The Juridical Condition and Rights of Undocumented Migrants], thereby renewing their faith in Law. While in other latitudes there was and there is talk of the use of force, we here renew our faithfulness in Law (in the headquarters of our Court in a country which has opted for not having an army). ²

In other parts of the world, international lawyers likewise expressed their hope that International Law would prevail, and the armed attack would not take place, ³ with all its negative consequences for the international legal order. Most regrettably it did, in breach of Article 2(4) of the U.N. Charter, commonly regarded, in historical perspective, as one of the most important provisions of the U.N. Charter. ⁴ The long history behind the fundamental principle of the prohibition of threat or use of force, may here be briefly recalled, in a moment of outburst of generalized violence all over the world, of unilateralisms and indiscriminate use of force, presenting a considerable challenge to all those who deposit their confidence in the law of nations.

In fact, over a century ago, the two Hague Peace Conferences, of 1899 and 1907, respectively, contributed to awaken the conscience of all nations to put an end to such indiscriminate use of force. In fact, the I Hague Peace Conference of 1899 ended with an eloquent declaration, which retains its topicality, to the effect that

---

