Transforming the Future: The Making of International Law – Panel Discussion 1/13/2021

Moderator:
Daniel Stewart: Founder and Executive Director of IILA.

Panelists:
Professor Dire Tladi: University of Pretoria, Member of the International Law Commission (ILC), former Legal Adviser, Department of International Relations and Cooperation, Republic of South Africa

Ambassador Marie Jacobsson: Legal Adviser, Ministry of Foreign Affairs, Sweden; former member of the ILC

Professor Diane Desierto: Keough School of Global Affairs, University of Notre Dame; Member, UN Working Group on the Right to Development

Ambassador Dr. Michael Kanu: Deputy Permanent Representative, Permanent Mission of Sierra Leone to the United Nations

Opening Remarks
Marryum Kahloon: International Arbitration Associate at Gibson Dunn, New York.

Marryum Kahloon began the panel by discussing the nature of international law. International law is unique because law-making occurs in both formal settings—treaty conferences or expert bodies—and informal settings—the day to day decisions that affect customary international law or general principles. The panel aimed to discuss the concrete hurdles or obstacles for the equal participation and equal impact of all peoples across the globe that the international law-making process currently faces.

Daniel Stewart then spoke of how his experiences, such as working for the United Nations, exposed the challenges and obstacles to the full participation of different groups in international law-making. These experiences, in part, led to his founding of IILA.

Question to all panelists: What is your perspective on the current state of international law-making? How has the process evolved or remained the same over time? What are some of the concrete hurdles for the full and equal participation of all voices in the international law-making process?

Professor Dire Tladi:
Professor Tladi framed the question as to whether international law-making reflects equal participation—whether all voices are heard. There are a number of different perspectives to analyzing this question—including culture, gender, developed versus developing country (the most dominant theme), religion, and State versus non-State actor. The answer to this question, regardless of perspective, is an emphatic no. There is no real debate as the answer is so obvious.

Professor Tladi used examples from the main organs of the United Nations (UN) to demonstrate the issues of unequal participation in international law-making. The analysis began with the work of the International Law Commission (ILC), a UN subsidiary organ of which Professor Tladi is a member. Within the ILC, written observations are largely provided by developed States rather

than developing States. An example of this observation can be seen within the topic of migration. Migration is an issue that deeply affects developing States. Only one African State provided written observations during an ILC opportunity to finalize decisions regarding the expulsion of "aliens." This example represented the general lack of input that the views of African and developing States have within the ICL due to a lack of written observations. A shift has occurred over the last couple of years as ILC has begun to rely on oral statements as well as written observations. This shift has helped to reduce the issue of unequal participation in international law-making as it gave all States, regardless of development status, an opportunity to be heard.

Differences in the quality of reports and statements were another issue within the ILC that exemplified the inequality of international law-making. Most African States prepared their statements during the week of the Sixth Committee. In contrast, the written reports and oral statements of developed States usually go through a rigorous development process that involves input from various government factions beforehand. For example, during one Sixth Committee meeting, a delegate from a developing State asked Professor Tladi to share his oral statement in order to help the delegate prepare their own. Therefore, even with oral statements, the true and considered views of the represented State are not often reflected. Rather it could possibly be the ideas and views of a legal advisor who is speaking with a delegate beforehand.

Professor Tladi then shifted to analyze the participation of ILC members—specifically the Special Rapporteur. Since 1946, there have been around sixty-three Special Rapporteurs. Seven of them have come from Africa—which is shocking considering the continent of Africa has fifty-four States. Nine have come from Latin America and the Caribbean—an area made up of thirty-three States. Five have come from Asia—an area including fifty-three States. More than half of the Special Rapporteurs have come from Western Europe—a total of twenty-nine States. Nine have come from Eastern Europe—which is made up of twenty-eight States. These statistics illustrate the disproportion of Special Rapporteur-ships that are given to delegates from developing States.

Professor Tladi made clear that issues surrounding the participation of African ILC members are self-inflicted wounds. The reality is that members from developing States are generally not active within the ILC. Therefore, part of the blame for the lack of equality within international law-making is at the fault of developing States.

Professor Tladi then spoke about the UN Security Council (UNSC). The main role of the UNSC is to make laws. In the past, the UNSC had two main constraints: a narrow subject area of jurisdiction (peace and security) and a limited function to address specific situations for immediate response. Both of the constraints have now been removed. Now, the UNSC is an immense body with unconstrained power. The only issue with the modern UNSC is within its dynamics. Overall, the composition of the UNSC is clearly inclined towards developed rather than developing States.

Ambassador Marie Jacobsson:

Ambassador Jacobsson began her analysis by considering the classical and traditional view of law-making—States create law. States create law through international agreements, bilateral agreements, or the at regional level (which is not binding for third parties).

In order for all voices to be heard, those who represent the State must be representative of the State's population—a concept that needs to be implemented in the international community. Ambassador Jacobsson used a gendered lens to further analyze the issue. For example, it is not sufficient to have one woman as the head of a delegation. Rather it is who is able to penetrate a State's decision-making processes, what a State pronounces in negotiation, or what States participate in the formulation of customary law that should be analyzed. If women's voices are not incorporated at the grassroots level, then they will not be heard in the formal law-making processes—whether that be national and international.

Ambassador Jacobsson agreed with Professor Tladi that there had been a gender imbalance within ILC. Some States continue to nominate only men to serve in a representative capacity within the ILC, members of courts, or members of special bodies of human rights. Women consist of fifty percent, or even more, of most States. However, this is not reflected within international law-making. This lack of a proper representative gender reflection is especially important in issues that relate to the formation of international peace and security, such as peacebuilding processes. Very few women are involved in the formulation of peace treaties. For example, those active in the conflict are usually the ones involved in the ceasefire negotiations. Those active in conflicts are most often men, leading to the exclusion of women in the decision making and negotiation processes of a ceasefire. States need to be pressured to include women in the law-making process, beginning at the grassroots level, in order to solve the lack of proper gender reflection within the international law-making community.

States have an obligation to ensure that women are part of the formation and performative processes of law-making. CEDAW upholds women's rights to formulate government policy. The treaty clearly expresses that party-States must ensure that women have the right to participate in the formulation and implementation of government policy. It also upholds the duty of party-States to ensure that women are "on equal terms with men." Without discrimination, women should have the opportunity to represent their government at the international level and participate in the work of international organizations. Overall, CEDAW is often forgotten and does not make a strong enough impact within the international community. Even if all States in the international community agree to CEDAW, international law-making will not reflect gender-inclusive participation unless women are ensured equal participation in the processes from the beginning to the end.

Professor Diane Desierto:

Professor Desierto focused her analysis on two issues: the democratization of sources for State practices and customary law and whether sources are properly assessed when cited for the purposes of international law. The inspiration for this analysis stemmed from former President Rosalind Higgins' 1991 Hague Academy Lectures and the subsequent lectures by Professor Michael Reisman that questioned how we visualize the international system. This question views the international system as law-making through arbitral, judicial, and treaty-making processes. Professor Michael Reisman visualized the international system as an archipelago of islands in which one may have more dominance than another.

In light of this analysis, Professor Desierto agreed with the other panelists that the current state of international law-making does not allow for the equality of all voices. This answer is obvious given that the international law system was born from a situation of asymmetry, despite the aspiration of equality within the UN Charter. The present inequalities within the system are inherent to the system.

Professor Desierto found that there are three main obstacles to solving the two issues she focused her analysis on. The first obstacle is conceptual and surrounds the differing theories for the selection of formal and material sources. These theories are accordingly reflected reasonings and practices that surround treaty-making practices.

The second obstacle is structural. Some institutional mechanisms—such as ones from the UN or international organizations focused on trade, finance, or investment—were formed to privilege and value certain voices over others. This structural obstacle is much different from an Aristotelian concept of democracy that ensures all participants have a voice—similar to social media culture. There are gatekeepers that decide who is allowed to participate. These gatekeepers make decisions on who to include or exclude based on functional choices and the level of expertise certain players have.

The third obstacle is ideological. There are authoritative decision-makers within the international system that determine which practices and sources are relevant. It is possible for those such as

international lawyers to visualize the international community. However, it is unsure as to whether these international lawyers truly understand the issues with commonly used dichotomies such as a developing versus developed country or the Global South versus Global North? For example, the archaic characterization of Global South and Global North fails to acknowledge the individual diversities of States. The international community has fallen into convenient categories of core versus periphery, leading to a lack of consideration for diversity. Professor Desierto shared that the lack of diversity is seen in her experiences working with the UN Working Group on the Right to Development. Within this group, she found that some voices were more resonant than others. In one particular session, Global North States disagreed with the creation of a legally binding instrument and decided not to participate in the discussion. In another session, the Representative for Indigenous Peoples noticed that decisions were being made for them by States who do not recognize their legitimacy or fundamental human rights.

Professor Desierto also questioned how the international community should look at ICJ cases that do not explicitly articulate theories or methods for a taxonomy regarding relied upon sources. Within the last ten years, the ICJ began to refer to the practices of other international tribunals and treaties. However, this expansion mainly focused on the methods that came from developed States. Having formerly clerked at the ICJ, Professor Desierto used to wonder why is there an Anglophone and Francophone dominance when it comes to research? Why is there such a reliance on international counsel and state agents to bring sources that they deem relevant to treaty practices? These issues created a self-perpetuating loop of the type of information that is brought to the ICJ—most international counsel and state agents have been trained in Anglophone and Francophone schools of thought. For example, there is almost never any reference to information produced from the region of Oceania on subjects that most affect the State— like climate change. This is alarming as member States within Oceania are entitled to equal treatment. The issue of diversity and equality is even worse in arbitral tribunals. This is because, unlike the ICJ, arbitral tribunals do not have any structural or geographic representation requirements. This lack of representation requirements manifests in the sources that arbitral tribunals predominantly refer to. These sources usually come from North American and European (G20) nations—especially when these sources are aimed to support issues such as investment arbitration. Once again, a self-perpetuating loop continues based on the stagnation of the people who are designated counsel, assisting the arbitrators, and who are the arbitrators themselves.

In conclusion, Professor Desierto offered two tentative views on why equality within international law-making is an ongoing problem. The first is that the international system has never seriously addressed the issues regarding the lack of access made available to non-State actors. Some opportunities in investment and trade have attempted to formalize the ability of non-disputing parties to present their views, but this has never truly been participatory. So far, there has not been a concerted effort to give non-State actors a voice within the international system. The second point is representation. The historical asymmetries of a State achieving voice or obtaining meaningful opportunities in the international system must be taken into account. The perennial exclusion of States outside of the framework has never been seriously addressed by any international institution. Professor Desierto recognized that there is no deliberative mechanism that enables participation when there is a dysfunction or breakdown in political representation. This inequality is furthered by the common practice of corporations having a louder voice than directly-effected local communities regarding lobbying rules. There no channels of communication when it comes to the development decision-making. Until we address the conceptual, structural, and ideological problems in a more intentional manner, reconceptualizing international law will very much remain a mythic exercise.

Ambassador Dr. Michael Kanu:

Ambassador Kanu focused his analysis on the current state of international law-making to the processes of the UN. The UN is recognized as the legitimate institution for creating global legal order for future international cooperation. UN intergovernmental conferences remain a primary modality for international law-making and must be treated with a global perspective. Therefore, Ambassador Kanu centered his discussion on the ongoing UN Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) negotiations.

The UN enjoys a legitimacy cloak within international law-making. Ambassador Kanu argued that this legitimacy cloak is fraught with historical and organizational challenges. These challenges inadvertently encourage the development of a limited doctrinal vision and an equally limited reference to the evolutionary and realistic nature of the international community. This cloak of legitimacy was developed alongside the international community's complicity in the colonization project and full knowledge that developing States were being excluded from the law-making process.

The UN's legitimacy is aided by the organization's universal nature. This nature is supported by the UN principle of only allowing each member-State one vote—ensuring that every member-State has an equal opportunity to participate in the international law-making process. This one State, one vote principle also allows developing States that lack economic, global, military, or political bargaining power an opportunity to influence treaties—a formal source of international law.

Ambassador Kanu then shifted focus to analyzing the ongoing BBNJ negotiations in order to answer the question of whether there is equal participation within international law-making. Answering this question requires analyzing the concrete hurdles to equal participation and impact within the UN. It also requires analyzing which States have an easier time shaping international law within the UN, despite its universal nature.

Ambassador Kanu argued that UN conferences test the resilience and resources of member-States. Resolution 72/249 of December 24, 2017 led the UN General Assembly to convene an intergovernmental conference. The purpose of this intergovernmental conference was to consider the recommendation of the preparatory committee (established by Resolution 62/292 of June 19, 2015) calling for the elaboration of the BBNJ texts. At that time in the negotiation, there were not any issues surrounding an absence of legitimacy or a possible non-acceptance of the outcome. However, some issues have arisen surrounding particular issues, such as the choice of a governing legal regime. Why is this the case? The answer may lie in the working methods and procedural matters of negotiation. These factors, if not followed consistently, often determine the trends of a negotiation. This is why negotiators devote a great deal of time and effort to ensure that they have their preferred organizational and procedural rules.

Ambassador Kanu argued that it is a test of the resiliency and resolve of a State's political systems to follow through with UN processes. These processes include the introduction of an item by a group of States, negotiations, and post-adoption procedures. For most small and developing States, the pool of expertise is limited and overburdened. For example, small and developing States usually send the same representatives to deal with ICC issues, international criminal law and justice issues, and biodiversity issues.

Ambassador Kanu then spoke about how equity must be emphasized when discussing the idea of equal opportunity within international law-making. Equity can be exemplified in the pulling of resources to interest and regional groups and the opportunity for non-State actors to have a role in the international law-making process. The pulling of resources allows for economies of scale and a level of devotion that nurtures consistency and resilience. An increase in non-State participation in the international system can support transparency and the facilitation of intersectional work in discussion—particularly when it comes to issues surrounding regulating the global commons.

Ambassador Kanu then addressed the ILC and its relation with the Sixth Committee—specifically how small and developing States interact with the work of the ILC. In an academic contribution to commemorate the 70th anniversary of the ILC, Ambassador Kanu wrote a paper to examine how much the development and codification processes of international law have involved and incorporated the perspectives and needs of small and developing States. Ambassador Kanu measured the levels of participation of small and developing States. Ambassador Kanu was able to prove that the envisioned symbiosis and optimal actualization of the engagement principle of international law-making has been inhibited by the current working relationship between the ILC and Sixth Committee. This inhibition is fueled by the lack of capacity and resources of small and developing States to effectively participate and follow through with the work of the ILC.

Ambassador Kanu then recited a 2018 quote from a Sixth Committee debate of an ILC report that discussed the challenges faced by State parties—which included a focus on the issues specific to developing States.

> "The ILC relies on the feedback of member States to progress its work. It is indeed obliged to do so by virtue of the provisions within its statute. This requires the ILC to circulate questionnaires to governments, request from the latter text of laws decrees of judicial decisions, other documents relevant to the topics being discussed, as well as to invite comments on the drafts of its work. For the ILC receiving comments and information from member States is fundamental to its work. However, it is important to take into consideration issues of capacity—whereby some member States, including the African States and small island developing States, can be at a disadvantage when it comes to the timely compilation of documents and adequate follow-ups on ILC requests."

Ambassador Kanu argued in his paper that the substantive work of the ILC is influenced by numbers. For example, regarding international law's treatment of elevating sea levels, the ILC syllabus made clear that the number of States which call for the inclusion of the topic and the number of States that expressed the importance in the topic impacted its consideration. Substance is linked to numbers. Since 2012, there has been a constant cohort of member States participating in ILC debates—the majority of these States are developed. There is a serious deficiency in the level of engagement—such as submissions of written comments and observation—by small and developing States.

States can engage in the international law-making process when they are able to participate within the UN effectively. However, active participation does not prevent the logistical and practical hurdles that have the potential to threaten the UN's legitimacy. Threats to legitimacy must always be taken into account when considering the future of the international law-making process.

Daniel Stewart then moved to the round table segment of the panel.

Question to all panelists: There appears to be a major slowdown in multilateral treaty-making. Is this an issue to be worried about? If yes, do you see it as harming certain States or groups more than others?

Ambassador Dr. Michael Kanu:

Ambassador Kanu agreed that there has been a slowdown in the international community in multilateralism and multilateral treaty-making. However, this slowdown may not be true for the UN as there are ongoing negotiations occurring for the BBNJ, and there is engagement within the First and Sixth committee on issues relating to cybersecurity.

In the political context, there are threats to the direction of multilateralism. These threats have the potential to strongly affect multilateral treaty-making within developed States, as they are usually

readily available to participate in the process. In comparison, small and developing States require resources to marshal the development of customary international law. Gathering these resources may be too burdensome for small and developing States—for example, it may be difficult for a small and developing state to respond to every invitation for time-sensitive comments on substantive issues relevant to the international community. Ambassador Kanu also noted that the slowdown in multilateralism might also be the result of the international community's lack of enthusiasm to engage in the treaty process because of the high levels of scrutiny that surrounds the process. For example, the Sixth Committee convenes to analyze the work that is done by the ILC.

<u>Question to Professor Diane Desierto:</u> Professor Desierto spoke of the non-engagement of Global North States when issues that mainly affected developing States were discussed within the UN Working Group on the Right to Development. In comparison, Ambassador Kanu raised issues that surround developing States that make them less able to participate in the multilateral treaty-making process. Therefore, is this process more of a stalemate on both sides? Can you think of any solutions for this problem other than addressing the obvious structural issues?

<u>Professor Diane Desierto:</u>

Professor Desierto agreed with Ambassador Kanu's view that there are certain issues that have arisen where there is considerable State action across-the-board throughout many countries, regardless of the demographics. Professor Desierto is less troubled by the slowing pace of multilateralism because international law-making is a tool. Some States may fail to come to a decision on certain issues. For example, there has been an impasse for the last twenty years within the WTO Doha Development Round to address issues pertaining to trade and the environment, human rights, and labor. As a reaction to these failures, States who are most affected have increasingly relied on nested solutions through regional treaty-making—making use of Article 24 Agreements that aim to reach sustainable development goals through the proper creation and design of treaties.

Professor Desierto agreed that an impasse does exist in multilateralism. There will always be issues that are of concern to certain States as opposed to others. When speaking about issues of representation, Professor Desierto broke down the issue into two categories: community or State representation. Communities are supposed to be the ultimate addressees of the international law-making process. Professor Desierto is more concerned with the issues surrounding increasing participation levels of international law-making at the community level.

<u>Question to Ambassador Marie Jacobsson:</u> Is there a way to require State representatives at the international level to be representative of the voices they serve? How do we ensure that when laws are being made, representatives are truly speaking for their constituents?

<u>Ambassador Marie Jacobsson:</u>

Ambassador Jacobsson first agreed with Ambassador Kanu's emphasis of equity over equal opportunity within the international law-making process. Ambassador Jacobsson then commented on Professor Desierto's thoughts by adding that more courts have recently recognized a community's right to stand before a court.

Overall, Ambassador Jacobsson is less concerned with the slowdown of multilateral treaty-making. She is more concerned with States withdrawing from multilateral treaties. These withdrawals set a bad precedent within the international community. For example, a major State's withdraw from a major multilateral treaty signals to party-States that cooperation is optional and withdrawal is

tolerated. Domestic and international law rest on the principle that laws are not fair weather. States cannot decide when to and when not to abide by laws it has committed to uphold.

<u>Question to Professor Dire Tladi:</u> Does an emphasis on equal opportunity within international law-making get in the way of laws being created?

<u>Professor Dire Tladi:</u>

Professor Tladi first addressed the issue of the slowdown in multilateral treaty-making. First, he is not confident that the premise of a slowdown in multilateralism is truly correct. In order to properly address this issue, there must be a focus on a specific time period. Is the comparison between the rate of multilateralism today and the rate from ten years ago? An answer to this issue depends on what time period is selected. If based on the specific time frame selected, there does appear to be a slowdown in multilateral treaty-making, Professor Tladi does not see an issue with this. Based on his anecdotal experience, developing nations are eager to engage in the multilateral treaty process. However, the initial draft provisions of a treaty are more often than not dramatically different than the end result. These changes are a result of the negotiation process that can shift dramatically depending on the goals of the involved States. For example, Professor Tladi was involved in the initial rise of the BBNJ negotiations that Ambassador Kanu is currently working on. At the beginning of the negotiation in 2005, the BBNJ focused on the common heritage of mankind. Today, this issue is not addressed by the current version of the BBNJ. Also, there is variation in the number of multilateral agreements being signed and the number of multilateral agreements that are being promulgated. Overall, a possible slowdown in multilateralism does not seem to be harmful, at least to developing States.

Professor Tladi disagreed that an emphasis on equal opportunity within international law-making prevents laws from being created. Representation and equal opportunity are imperative to the international law-making process. For example, draft Article 7 on Immunities would have been adopted had the ILC had the same members it was composed of the year prior. The current composition of the ILC has more women. The decisive role played within the ILC regarding Article 7 was made by these women. Professor Tladi also emphasized the importance of Special Rapporteur selection. All Special Rapporteurs are influenced by the culture of their State. Culture can influence the focus of a Special Rapporteur's commission.

<u>Question to all panelists:</u> What does silence mean in the international law-making process? How can silence be interpreted? Is silence based on a lack of care or a lack of resources? Do linguistic barriers increase silence? What practical suggestions do you have?

<u>Ambassador Marie Jacobsson:</u>

Ambassador Jacobsson spoke of how to incorporate the views of communities are considered in the domestic law-making process. There is reason to focus on the domestic law-making process because decisions made domestically have the potential to impact a State's actions in the international law-making process. When working in the international law-making process, Ambassador Jacobsson consulted with various government departments as well as with NGOs. This broad outreach has been a tradition within the Swedish law-making process. In a broader scheme, Nordic States have a tradition to collaborate before making comments to the ILC. Ambassador Jacobsson recommended that other States adopt these strategies to increase uniformity and efficiency.

Regarding the issues of silence, Ambassador Jacobsson urged that silence should not be taken as acceptance or consent within the international community. It is not acceptable, from the point of law or policy, for silence to be taken as acceptance or consent. Outreach—which can be achieved

through researching the legislation of a silent State or visiting a silent State—can solve issues surrounding silence.

<u>Question to Professor Diane Desierto:</u> How the structural challenges within international law-making connect to the practical challenges? How can policy initiates become more practical when considering common issues—such as a State's capacity, language barriers, or silence?

<u>Professor Diane Desierto:</u>

Professor Desierto acknowledged that participation has many gradations. For example, in the environmental space, progress has increased as agreements provide for a systemic approach to participation that is dependent on the nature of the question that is put forward. There are systems structures for determining participation.

Regarding the question of silence, Professor Desierto discussed her work assisting the Association of Southeast Asian Nations. ASEAN is a hybrid organization that includes both developed and developing States. Within ASEAN, silence is not performative. ASEAN's charter states that consensus on all decisions is required. Consensus cannot be met if there is silence on the part of any member State. This formal institutional mechanism provides a space for members to elicit the views of the silent members in order to move forward within the international law-making process. Overall, Professor Desierto would not treat silence or participatory behavior as any form of consent.

Professor Desierto recognized that it is a continued working process to address the issues regarding the differences in language and legal systems that affect the international community. As a practical solution, Professor Desierto urged for the information produced in the process of law-making should be as accessible and transparent as possible.

<u>Question to Ambassador Dr. Michael Kanu:</u> What are the best ways to enhance the capabilities of small and developing States?

<u>Ambassador Dr. Michael Kanu:</u>

Ambassador Kanu first discussed the idea of equity within the international law-making process. Decisions regarding equity can be made based on the measured interest of a State in a specific issue or a State's consistency in attending to a certain issue. Ambassador Kanu then discussed the idea of legitimacy within international law-making. The participation of small and developing States in the treaty-making process can increase their representation within the international community. This participation can also increase the legitimacy of an international institution as there is strength in numbers.

Ambassador Kanu then spoke of the international community's push for a multilateral investment court. It is proposed that this institution would be based in a host State for a quarter of the year. During this stay, the court would be able to embrace the expertise and resources of the host State. This concept of a rotating host State is drastic because most international institutions are based in the same location. This sameness led to the current situation where there is a dominance of a few cultures, languages, and schools of thought within the international law-making community. The rotating host State concept would help to combat the diversity issues that are prominent within the international community.

Ambassador Kanu also spoke of the UN General Assembly's discussion of the issues of access relating to ICJ clerkships. Currently, there is an imbalance that favors universities in developed States to select ICJ clerks. Generally, universities in developed States have more resources to prepare and send clerks to the ICJ. Therefore, this issue is fueled by an imbalance of resources. There needs to be

a consideration of equity in order to properly develop opportunities for potential clerks from developing States to solve this issue.

Question to Professor Diane Desierto: What is the best way to transform the challenges of the international law-making process?

Professor Diane Desierto:

Professor Desierto urged that the global health and climate issues that will present themselves in the next ten years are massive. At the moment, the demand for legitimately and universally excepted international law is stronger than it was in the postwar era that spurred the development of the UN. Now, it is important to ensure that there is proper representation within the international law-making process as the current realities of cross-border regulations have the potential to directly impact lives on an unprecedented scale. Thoughtful attention must be paid to the communities that will be hit the hardest when future global crises arise.

The Covid-19 crisis has brought to light current issues that plague the international community. Multilateral responses to the pandemic reveal a massive deficit in information, transparency, and opportunity to engage in the policy-making process. There needs to be a concerted effort by all international organizations to rethink, perhaps from a social sciences perspective, how their practices reify challenges to intersectionality. These issues should be dealt with in the present in order to prepare for larger issues that the international community will face in the future.

Ambassador Marie Jacobsson:

Ambassador Jacobsson trusted that small steps could help to address the future global challenges that the international community will face. For example, the treatment of human rights has drastically changed over the years for the better. Initially, the topic was a domestic and internal matter. Today, human rights are a topic that is discussed at the international level. Over time, the ILC has expanded the amount of interaction and participation that NGOs may have within the commission. Domestic and regional courts have made progress over time to expand who is allowed to bring claims forward. Ambassador Jacobsson has faith in the new generation to recognize and correct the current deficiencies within the international community.

Professor Dire Tladi:

Professor Tladi spoke on the concept of pooling resources as a possible solution to the current inequality issues within the international law-making process. There are benefits to States pooling resources as it can allow a State that would otherwise go unrepresented to contribute to the law-making process. However, Professor Tladi argued that the pooling of resources is not a viable permanent solution to the inequality within international law-making because it dilutes the impact of already under-represented States. Professor Tladi then shared an anecdote that led him to believe that the current issues to equality were not just impacted by the availability of resources but also which States have access to the table where behind-the-scenes decision-making takes place.

Closing Remarks

Daniel Stewart gave closing remarks thanking the co-organizers and panelists of the event.