

KEY NOTE SPEECH BY DR SIMONE BORG, AT THE UNVEILING CEREMONY OF THE CLIMATE CHANGE INITIATIVE MONUMENT, UNIVERSITY OF MALTA, 21ST APRIL 2009.

**COMMEMORATING THE 1988 MALTESE INITIATIVE
ON GLOBAL CLIMATE CHANGE.**

YOUR EXCELLENCY UNITED NATIONS SECRETARY GENERAL, HON DEPUTY PRIME MINISTER, HON MINISTERS, EXCELLENCIES, CHANCELLOR, PRESIDENT OF COUNCIL, RECTOR, DISTINGUISHED GUESTS, LADIES AND GENTLEMEN.

I FEEL IMMENSELY HONOURED AND PRIVILEGED TO HAVE BEEN ASKED TO ADDRESS SUCH AN EMINENT GATHERING AT THIS CEREMONY. THIS IS INDEED A MEMORABLE MOMENT WHERE WE COMMEMORATE THE CONTRIBUTION MADE BY A MEMBER OF OUR ALMA MATER, WHICH SPEARHEADED MALTA'S INITIATIVE ON THE PROTECTION OF THE GLOBAL CLIMATE FOR PRESENT AND FUTURE GENERATIONS.

THE EVOLUTION OF THE SPECIES AND THE HISTORY OF CIVILIZATION DEMONSTRATE THE INEXTRICABLE LINK BETWEEN CLIMATE AND THE QUALITY OF LIFE ON EARTH. YET DESPITE THIS STARK TRUTH, IT WAS CONSIDERED AS POLITICALLY AND LEGALLY INCONCEIVABLE UP TO A COUPLE OF DECADES AGO, TO CALL FOR THE REGULATION OF ANTHROPOGENIC ACTIVITIES THAT AFFECT CLIMATE IN A NEGATIVE MANNER. LACK OF SCIENTIFIC EVIDENCE WAS NOT THE ONLY IMPEDIMENT IN THIS REGARD, INTERNATIONAL LAW ITSELF WAS (AND TO A CERTAIN EXTENT REMAINS) ILL-EQUIPPED TO ADDRESS STATE ACTIVITIES AFFECTING NEGATIVELY AN INTANGIBLE NATURAL RESOURCE, WHICH SPANS ACROSS AND BEYOND THE NATIONAL TERRITORIES OF STATES.

IN THE MID 1980S HOWEVER, THE SCIENTIFIC AND LEGAL-POLITICAL FORA WORKED IN TANDEM TO CONCLUDE THE VIENNA CONVENTION ON THE PROTECTION OF THE OZONE LAYER AND ITS MONTREAL PROTOCOL. STATES REGULATED FOR THE FIRST TIME, ANTHROPOGENIC ACTIVITIES THAT HAD THE POTENTIAL TO DEGRADE A SEEMINGLY IMPERVIOUS NATURAL RESOURCE, WHICH TRANSCENDED AREAS FALLING BOTH WITHIN AND BEYOND NATIONAL JURISDICTION. IT THUS SERVED TO HIGHLIGHT THAT INTERNATIONAL COOPERATION IS THE WAY FORWARD TO CIRCUMVENT THE SHORT COMINGS OF AN INTERNATIONAL LEGAL REGIME THAT TENDS TO INTERPRET STATE SOVEREIGNTY IN A MANNER, WHICH DISREGARDS THE INTERNATIONAL REPERCUSSIONS OF STATE ACTIVITIES. THIS FORMIDABLE CONCERTED EFFORT BECAME A TREND SETTER AND EARMARKED A NEW INTERNATIONAL IMPETUS TOWARDS THE CONSERVATION OF THE PLANET.

WITHIN THIS SCENARIO, IN 1987, A MEETING WAS HELD IN VILLACH, AUSTRIA AND BELLAGIO, ITALY, WHICH DISCUSSED THE EMERGING GENERAL CONSENSUS WITHIN THE SCIENTIFIC COMMUNITY REGARDING THE LINK BETWEEN FOSSIL FUELS AND THE WARMING OF THE EARTH'S ATMOSPHERE.

IT WAS HOWEVER THE INCREDIBLE FORESIGHT OF DAVID ATTARD, WHO HOLDS THE CHAIR OF PROFESSOR OF INTERNATIONAL LAW AT THIS UNIVERSITY, TO HIGHLIGHT THE NEED OF TACKLING CLIMATE CHANGE AS A RESULT OF ANTHROPOGENIC ACTIVITIES, FROM A POLITICAL AND LEGAL PERSPECTIVE. DRAWING UPON THE SUCCESS OF THE VIENNA CONVENTION AND THE MONTREAL PROTOCOL, HE EMBARKED ON A MISSION TO CONVINCE FIRST THE MALTESE GOVERNMENT, THEN THE INTERNATIONAL COMMUNITY TO RESPOND TO THE SCIENTIFIC COMMUNITY'S WARNINGS. //

IN AUGUST 1988, WRITING IN THE TIMES OF LONDON, PROFESSOR ATTARD SUGGESTED THAT THERE IS THE NEED OF, "A COMPREHENSIVE GLOBAL STRATEGY TO PROTECT CLIMATE AS PART OF AN EFFORT TO ENSURE THAT OUR PLANET REMAINS FIT TO SUSTAIN HUMAN LIFE." FURTHERMORE HE ELABORATED ON THE REQUIREMENT TO DEVELOP BOTH INTERNATIONAL LAW PRINCIPLES AS WELL AS AN ADEQUATE MECHANISM, TO PROTECT CLIMATE.

PROF. ATTARD ADVISED DR. EDWARD FENECH ADAMI, THEN MALTA'S PRIME MINISTER, HOW MALTA COULD TAKE THE INITIATIVE OF BRINGING THE PHENOMENON OF CLIMATE CHANGE CAUSED BY ANTHROPOGENIC ACTIVITIES, TO THE ATTENTION OF THE INTERNATIONAL COMMUNITY OF STATES. HE STRESSED THAT SINCE THE ISSUE NEEDED TO BE ADDRESSED ON A MULTILATERAL BASIS, THE UNITED NATIONS GENERAL ASSEMBLY WOULD BE THE MOST APPROPRIATE FORUM WHEREIN AN EFFECTIVE AND COMPREHENSIVE GLOBAL STRATEGY TO THIS EFFECT, COULD BE FORMULATED.

IN MY VIEW - THE MALTESE GOVERNMENT SHOWED TREMENDOUS POLITICAL COURAGE WHEN ON THE 22ND AUGUST 1988, IT DECIDED TO SUPPORT THIS INNOVATIVE PROPOSAL. I SAY THIS NOT ONLY BECAUSE IT ACTED, AT THAT TIME, IN THE FACE OF SCIENTIFIC UNCERTAINTY BUT ESPECIALLY BECAUSE OF THE INEVITABLE POLITICAL OPPOSITION OF MUCH LARGER STATES. IT MAY BE USEFUL TO RECALL THAT THE END OF THE COLD WAR BROUGHT WITH IT THE NEED FOR MALTA TO ASCERTAIN ITS IDENTITY BOTH AS A NEUTRAL STATE AND IN ITS BID TO JOIN THE EUROPEAN UNION. IN THE PREVIOUS YEARS, MALTA HAD SOUGHT SOME BILATERAL ALIGNMENTS THAT LED TO ITS ISOLATION FROM THE SAME POLITICAL AND ECONOMIC GROUP OF STATES IT WAS NOW SEEKING TO BECOME PART OF.

FURTHERMORE, BEING A SMALL STATE, MALTA NEEDED TO MOBILIZE ADDITIONAL HUMAN RESOURCES, IN ORDER TO PILOT THE CLIMATE PROPOSAL THROUGH THE UNITED NATIONS GENERAL ASSEMBLY SUCCESSFULLY. IN THIS RESPECT, THE STRONG COLLABORATION BETWEEN THE MINISTRY OF FOREIGN AFFAIRS AND THE UNIVERSITY'S ACADEMIC EXPERTISE PROVED INDISPENSABLE IN SURMOUNTING THESE SET BACKS.

IT WAS 21ST SEPTEMBER 1988, MALTA'S INDEPENDENCE DAY, WHEN THE GENERAL COMMITTEE OF THE UN GENERAL ASSEMBLY AGREED TO ACCEPT MALTA'S REQUEST ON THE AGENDA OF ITS 43RD SESSION. AFTER INTENSE BILATERAL AND MULTILATERAL CONSULTATIONS MALTA PRESENTED THE TEXT OF A DRAFT RESOLUTION, WHICH WAS SUBMITTED FOR CONSIDERATION IN THE SECOND

COMMITTEE, RESPONSIBLE FOR ECONOMIC AND ENVIRONMENTAL AFFAIRS. A LARGE NUMBER OF DELEGATES AND INTERNATIONAL ORGANISATIONS EXPRESSED THEIR APPRECIATION FOR THE INNOVATIVE AND TIMELY INITIATIVE TAKEN BY MALTA. RESOLUTION 43/53 ENTITLED: "PROTECTION OF GLOBAL CLIMATE FOR PRESENT AND FUTURE GENERATIONS OF MANKIND," WAS THEN UNANIMOUSLY ADOPTED IN THE PLENARY MEETING OF THE GENERAL ASSEMBLY ON THE 6TH DECEMBER 1988.

THE REST IS HISTORY. RESOLUTION 43/53 BECAME SYNONYMOUS WITH THE CLIMATE CHANGE NEGOTIATIONS AND CHARTERED THE EARLIEST STEPS FOR MULTILATERAL ACTION. INDEED IT WAS USED AS A BASIS FOR FORMULATION OF STATE OBLIGATIONS WITH RESPECT TO PROTECTION OF CLIMATE AND REPRESENTED THE GENESIS OF THE CLIMATE CHANGE CONVENTION.

THE RESOLUTION DETERMINED THAT NECESSARY AND TIMELY ACTION SHOULD BE TAKEN TO DEAL WITH CLIMATE CHANGE WITHIN A GLOBAL LEGAL FRAMEWORK REFLECTING THE ORIGINAL PROPOSAL MADE BY PROF ATTARD. THE RESOLUTION ALSO SIGNIFICANTLY INSTRUCTED THE INTER-GOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), WHICH WAS JUST BEING SET UP, TO INITIATE A COMPREHENSIVE SCIENTIFIC AND INTER DISCIPLINARY ANALYSIS OF THE PROBLEM.

THE COOPERATION BETWEEN THE MALTESE GOVERNMENT AND THE UNIVERSITY'S ACADEMIC INPUT REMAINED STRONG EVEN AFTER THE RESOLUTION WAS ADOPTED. PROF. ATTARD CONSISTENTLY ADVISED THE MALTESE GOVERNMENT ON ITS POSITION TO INSIST ON THE ADOPTION OF AN INTERNATIONAL TREATY. ON 6TH FEBRUARY, 1989, ON BEHALF OF MALTA, HE PRESENTED A REPORT// TO THE IPCC ENTITLED 'POSSIBLE ELEMENTS FOR A CONVENTION ON CLIMATE CHANGE'. SUPPORT AND APPRECIATION FOR MALTA'S POSITION WAS REFLECTED IN THE ELECTION OF PROF ATTARD AS CHAIRMAN OF THE IPCC LEGAL COMMITTEE. HIS PIONEERING WORK IN THIS CAPACITY WOULD LATER BE RECOGNIZED BY THE PRESENT CHAIRMAN OF IPCC AS HAVING CONTRIBUTED TO THE PANEL BEING AWARDED THE NOBEL PRIZE FOR PEACE TOGETHER WITH AL GORE IN 2008.

DESPITE SOME SOLID OPPOSITION FROM INFLUENTIAL STATES POLITICAL PRESSURE TO GO FOR A CONVENTION WAS RIFE AND ON 21 DECEMBER 1990, THE UN GENERAL ASSEMBLY ADOPTED RESOLUTION 45/212 ESTABLISHING THE AN INTERGOVERNMENTAL NEGOTIATING COMMITTEE WITH THE TASK OF CONCLUDING A CONVENTION BY JUNE 1992, IN TIME FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT.

THE INTERNATIONAL COMMUNITY SUCCEEDED IN NEGOTIATING THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) WITHIN THE STIPULATED DEADLINE UNDER THE ABLE CHAIRMANSHIP OF MONSIEUR JACQUES RIPERT FROM FRANCE AND ALSO OF ANOTHER FELLOW COUNTRY MAN, MR. MICHAEL ZAMMIT CUTAJAR WHO SERVED AS EXECUTIVE SECRETARY TO THE INTERNATIONAL NEGOTIATING COMMITTEE AND THE UNFCCC FOR MANY YEARS. TODAY HE IS MALTA'S AMBASSADOR ON CLIMATE CHANGE. MR ZAMMIT

CUTAJAR'S IMPECCABLE REPUTATION IS REFLECTED IN HIS ELECTION AS THE CURRENT CHAIR OF THE AD HOC WORKING GROUP ON LONG TERM COOPERATIVE ACTION UNDER THE CONVENTION.

BESIDES THE REMARKABLE HISTORIC DEVELOPMENTS TRIGGERED OFF BY THE MALTESE INITIATIVE, THERE WAS YET ANOTHER INNOVATIVE ELEMENT INHERENT TO IT, WHICH IN MY OPINION MAY BE OVERLOOKED. THESE LAST FEW YEARS THE INTERNATIONAL COMMUNITY HAS STRIVED TO LIMIT ANTHROPOGENIC ACTIVITIES CAUSING CLIMATE CHANGE VIA MARKET-BASED MECHANISMS UNDER THE KYOTO PROTOCOL TO THE CLIMATE CHANGE CONVENTION. IT HAS HOWEVER, IN MY OPINION, LARGELY SIDELINED THE REGULATORY BASIS FOR PROTECTING GLOBAL CLIMATE NAMELY, THE NEED THAT STATES MUST PRIMARILY ACKNOWLEDGE THEIR COMMON INTEREST IN SAFEGUARDING CLIMATE FROM CHANGE. THIS IS IN FACT WHAT THE MALTESE INITIATIVE ORIGINALLY AIMED FOR.

IT IS WORTH NOTING THAT THE FIRST PARAGRAPH OF THE OPERATIVE PART OF THE RESOLUTION 43/53, REFERS TO 'CLIMATE CHANGE AS A COMMON CONCERN OF HUMANKIND.' THE ART OF NEGOTIATION LIES IN THE INGENUITY OF SEEKING LEGAL TERMS THAT EFFECTIVELY TARGET THE REGULATION OF THE ISSUES AT STAKE, VIA A METHODOLOGY ENDORSED BY THE PARTIES CONCERNED. PROF ATTARD HAD PROPOSED THAT CLIMATE CHANGE COULD BE TERMED AS A "COMMON CONCERN" OF HUMANKIND AS THIS REFLECTS THE CAUSE OF SUCH CHANGE, NAMELY THE EMISSION OF FOSSIL FUELS WITHIN NATIONAL TERRITORY. THE OBJECTIVE OF MALTA'S PROPOSAL WAS TO SPUR THE INTERNATIONAL COMMUNITY TO REGULATE HUMAN ACTIVITIES THAT HAD GLOBAL REPERCUSSIONS UPON CLIMATE AND WERE THEREFORE OF INTEREST TO ALL STATES. ANTHROPOGENIC ACTIVITIES THAT CAUSED CLIMATE CHANGE WERE OF DETRIMENT TO THE INTERNATIONAL COMMUNITY AS A WHOLE AND ALL STATES HAD AN INTERNATIONAL OBLIGATION TO MITIGATE THE DAMAGE THEY CAUSED.

AS EARLY AS 1988, PROF ATTARD IN CLOSE COOPERATION WITH DR MOSTAFA TOLBA, THEN THE EXECUTIVE DIRECTOR OF UNEP FORMULATED THE CONSTITUENT LEGAL ELEMENTS, WHICH WOULD RECOGNIZE CLIMATE CHANGE AS COMMON CONCERN OF HUMANKIND. ON ONE HAND, THE PRINCIPLE REFERS SPECIFICALLY TO THE PROTECTION OF A COMMON RESOURCE THAT CANNOT BE SUBJECTED TO THE SOVEREIGNTY OF ANY STATE BUT WHOSE VULNERABILITY REQUIRES A CONCERTED EFFORT FROM ALL THE MEMBERS OF THE INTERNATIONAL COMMUNITY. IN MY VIEW, IT CAN BE CONSIDERED AS A FINE TUNED VERSION OF THE RES COMMUNIS STATUS OF GLOBAL NATURAL RESOURCES, IN THE LIGHT OF THE CONTEMPORARY DEVELOPMENTS. SUCH A STATUS DETERMINES WHAT KIND OF CONSERVATION MEASURES ARE REQUIRED TO ENSURE CONSERVATION IN THE CASE OF CLIMATE CHANGE. FURTHERMORE IT PRESENTS THE BASIS FOR ENCROACHING FURTHER UPON THE "RESERVED DOMAIN" OF STATES WHEN INTERNATIONAL LAW REQUIRES THE REGULATION OF ACTIVITIES CAUSING CLIMATE CHANGE WITHIN THEIR TERRITORY OR CARRIED OUT UNDER THEIR CONTROL.

THIS DEMONSTRATES THAT THE COMMON CONCERN PRINCIPLE ALSO EMBODIES

BOTH INTRA AND INTER GENERATIONAL RIGHTS. IN SUM, PROTECTING CLIMATE FROM CHANGE DUE TO ANTHROPOGENIC ACTIVITIES IS AN OBLIGATION WHICH DEVELOPED STATES HAVE TOWARDS LESS DEVELOPED ONES AND WHICH THE PRESENT GENERATION HAS VIS A VIS FUTURE GENERATIONS. THE PRINCIPLE OF COMMON CONCERN WAS EVENTUALLY INCORPORATED IN THE PREAMBLE OF THE CLIMATE CHANGE CONVENTION AND THE 1992 UN BIODIVERSITY CONVENTION. FURTHERMORE INTRA AND INTER GENERATIONAL RIGHTS WERE ENDORSED AS KEY ELEMENTS OF SUSTAINABLE DEVELOPMENT IN AGENDA 21, AT THE UN CONFERENCE ON ENVIRONMENT AND DEVELOPMENT.

DISTINGUISHED GUESTS, THE MALTESE INITIATIVE DEMONSTRATES THAT ACADEMICS HAVE AN INDISPENSABLE ROLE IN NURTURING GOVERNMENTS AND POLICY MAKERS TO IDENTIFY THE GLOBAL PROBLEMS THAT FACE HUMANKIND AND IN PROPOSING METHODOLOGIES TO ADDRESS THEM IN THE “SPIRIT OF BROTHERHOOD” AS REFERRED TO IN THE COVENANT OF HUMAN RIGHTS.

INTERNATIONAL LAW IS NOT CAST IN STONE AND WE HAVE SEEN STATE PRACTICE INCH ITS WAY AROUND EXISTING LEGAL BARRIERS THAT STAND IN THE WAY OF ACHIEVING EFFECTIVE PROTECTION OF CLIMATE FROM ANTHROPOGENIC CHANGE. THIS PRACTICE IS DRIVEN BY INITIATIVES LIKE THE ONE PROPOSED BY MALTA WHICH STEERS INTERNATIONAL LAW INTO NEW LEGAL TERRITORY, BASED ON SCIENTIFIC KNOWLEDGE WHICH DEMONSTRATES THE STRONG LINKAGE BETWEEN SUSTAINABLE DEVELOPMENT AND THE HUMAN ENVIRONMENT.

PROF ATTARD’S INNOVATIVE CONTRIBUTIONS HAVE SERVED BOTH HIS COUNTRY AND THE INTERNATIONAL COMMUNITY IN THEIR QUEST TO PROTECT GLOBAL CLIMATE. HE LEAVES IN THIS RESPECT A LEGACY FOR PRESENT AND FUTURE ACADEMICS AT THE FACULTY OF LAW: AN ADMIRABLE CONTRIBUION TO THE CODIFICATION OF INTERNATIONAL LAW. I URGE THE UNIVERSITY OF MALTA, THE CRADLE OF THIS INITIATIVE, TO PURSUE THE STUDY AND DEVELOPMENT OF CLIMATE CHANGE LAW AND POLICY AS ONE EXAMPLE IN ITS QUEST TO ATTAIN ACADEMIC EXCELLENCE.

I AM PROUD TO SAY THAT I HAVE FOLLOWED THE COURSE OF THIS INITIATIVE SINCE ITS INCEPTION: FIRST AS A STUDENT, THEN AS A DIPLOMAT INVOLVED IN THE CLIMATE CHANGE NEGOTIATIONS ON BEHALF OF MALTA AND NOW AS A PRACTIONER AND ACADEMIC SPECIALIZING IN INTERNATIONAL LAW. FROM MY EXPERIENCE I CAN SAY, THAT NO MATTER HOW MODEST THE ORIGINS OF SUCH INITIATIVES ARE, THE ACHIEVEMENTS WE COMMEMORATE TODAY CONSTITUTE THE PERFECT EXAMPLE OF THE MULTIPLIER EFFECT WHICH, COURAGE, FORESIGHT AND DIALOGUE MAY PRODUCE EVEN WHEN EMANATING FROM A SMALL ISLAND STATE.

IN THIS RESPECT OUR ALMA MATER HAS PLAYED AND CONTINUES TO PLAY AN IMPORTANT ROLE IN THE FORMULATION, ADOPTION AND IMPLEMENTATION OF OUR COUNTRY’S POLICIES. IT WOULD THEREFORE BE BENEFICIAL TO THE

INTERNATIONAL COMMUNITY IF THE UNIVERSITY OF MALTA WAS TO CONTINUE IN ITS EFFORTS TO PROMOTE THE STUDY AND DEVELOPMENT OF CLIMATE CHANGE LAW AND POLICY.

MAY THIS COMMEMORATION THEREFORE NOT ONLY EXPRESS OUR APPRECIATION FOR REMARKABLE PAST EVENTS BUT ALSO OUR COMMITMENT TOWARDS AN INDUSTRIOUS AND EXCITING FUTURE.