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How Robust Must International Law Be?

Sanford Silverburg

Catawba College

Salisbury - NC, USA

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Abstract:

There is an examination of the political, economic, social, and humanitarian status of the globe. The intent is to determine the extent to which extraordinary degrading conditions in the world that can be ameliorated by the application and enforcement of international law. Substantial literature will be cited that support the exposed conditions which have a deleterious effect on humans. As a final note and conclusion, the study shows there is an imperative demand that subjects of international law, particularly states, and international organizations, comply with principles of international law and ensure its enforcement for the benefit of the international community.

Keywords: International Law, Reactive Proposals.

The reward for a good deed is another good deed; the reward for a transgression is another transgression.(1)

(1) PIRKEI AVOT 4:2.

Introduction:

The legal community responds to law and its regulatory character, whether domestic or international, and this is in itself an abstraction implying that without institutions that make that guideline understood and somehow applied, remains an ethereal esoterica.

Our primary concern here is to examine the political, economic, social, and humanitarian status of the globe and to determine, as best as we can, the extent the extent to which extraordinary degrading conditions can be ameliorated by the application of international law to reduce to some degree deleterious acts. The record of human behavior and activity seems to suggest that recidivism of terrible acts operate on a continuum, from simple to flagrant. However, recognition of the sets of intolerable behaviors over the time record attempts to dampen and remove irresponsible actors or punish them in accordance with designed legal measures to fit what appears to be criminal and illegal -at some point in time- regardless of the lack of prior attention.

To this end we essentially seek some exorable measure that would have some traction. Much credit is given to Professor Bianchi whose experience and professional record are recognized here and are employed as support to our endeavor. Bianchi, following the development of international law and its prescient appreciation of what needs to be done, set out an agenda to wit: 1) Create a situation where non-government organizations assume an international legal personality; 2) Bend normative values to changes in the evaluation of mores and priorities; 3) Introduce "soft law" as a possible agency of norm creation; 4) Understand the problem of enforcement in a dualist environment; and 5) Introduce the general nature of accountability with reference to individuals and transnational corporations.

The manner in which international law has been structured and subsequently applied has much to do with how academicians and

international lawyers have found ways to adjust to emergent conditions in the world.

In accordance with this perspective, our approach will follow as close as possible the material found in Chart 1. It is neither to say nor is it an oxymoron to claim that in the constantly changing nature of the structure and operation of the international system, there is a mix of the certainty with some features that remain in motion.

There is, without any contrary objection, a definite role for those who operate in the area of international law to upgrade the quality of life on the globe as found in the operation of the related political world.

There is and has been an evolutionary trajectory to the pattern of international law that leads to paradigmatic changes.

Marti Koskenniemi, no friend to the traditional understanding of international law, makes the distinctive argument that international law is "vulnerable to the contrasting criticisms of either being an irrelevant moralist Utopia or a manipulable façade for State interests."

We thus find ourselves in a precarious position, some would say audacious, to broadcast a prescription for a cause not completely known.

We dare say what we feel we must encounter and accomplish, and therefore enter into a dark cave.

Chart 1: Political Approaches Governed by International Law

Regressive----------Status Quo----------Aggressive

Challenge



Status Quo

Conditions on the

Globe

G L O B A L

Some Degree of Turbulence

International Law and the Fit:

States and its agents have a wide spectrum of interaction inter partes. Historians have written extensively on the ultimately destructive nature of politics with the initiation of violent conflict. Following World War II, the collective sentiment of the bulk of the world's nations attempted to create an international organization bent on moving toward a structured environment dedicated to avoiding—or hopefully—condemning and outlawing such behavior. States' decision makers, moving beyond their representative governing systems' national interest, have the option of cooperating with potentially conflicting political bodies and face the prospect of coercive actions taken under the aegis of international law.(1) One commentator has noted thusly:

> The law-giver cannot promulgate laws when he has no hope that most of the community will obey, if not gladly, then at least of their own accord. He must also presume that the judges and guardians of the law will contribute to that general tendency of compliance, and without excessive recourse to procedure, prisons, and punishment.(2)

Perhaps the key element making international law a functional reality is enforcement. It is necessary to recognize that individuals whose interests and goals are inhibited by rules, regulations, or laws are often prone to avoid these constraints by searching for means to bypass those deterrents. As an example, following the structural demise of the Soviet Union (and its reemergence as the Russian Federation)and the related collapse of the

(1) On such action is the employment of sanctions. *See* JEREMY MATAM FARRALL, UNITED NATIONS SANCTIONS AND THE RULE OF LAW (2007); For an overall appraisal, *see* Gillian Triggs, *Public International Law: Is It Fit For Purpose?* 7 LEGAL INFO. MGT. 113-123 (2007).

(2) Charles Boassen, *The Place of International Law in Peace Research,* 5 J. PEACE RES. 28 (1968).

Cold War, the illicit arms trade surged with the availability of weapons from the former Soviet Union. In spite of a United Nations resolution,[1] banning arms trading, countries like Yemen and Somalia, both of which were recipients of the Soviet's largesse, were in a unique position to involve in a lucrative sub rosa industry. The matter brought the intention of the Security Council to create a monitoring group to surveil the effects of arms trafficking violations.[2] Admittedly, regardless of well-intentioned legal attempts, the arms trade operates with rank efficiency.

Reactive Proposals:

To be sure, alternative measures to remove the incentives for non-pacific agendas have been undertaken. The basic question remains as it has historically been: Why is there any form of recidivism? The issue is while punishment follows an illegal course of action, it is in evidence that similar acts reoccur. Those acts can be obviated given a set of certain conditions, often not in existence. So, given a rational choice decision, the value of the goal might not seem worthwhile due to the risk required to achieve the end.[3]

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(1) UN Resolution 733, S/RES/733, 47 U.N. SCOR at 55, U.N. Doc. S/RES/1733 (1992), followed by UN Resolution 1519, S/RES/1519 (2003), with an explanatory statement in United Nations Press Release SC/7957, Dec. 16, 2003. *See also* KENNETH W. HUNTER AND TIMOTHY MACK. INTERNATIONAL RIGHTS AND RESPONSIBILITIES FOR THE FUTURE 78 (1996) and NEIL FENTON. UNDERSTANDING THE UN SECURITY COUNCIL: COERCION OR CONSENT 67 (2004).

(2) *See in particular* para. 74 in the Security Council operation as reported in the Report of the Monitoring Group, UN Doc. S/2003/223, March 25, 2003, and the Report of the Monitoring Group on Somalia Pursuant to Security Resolution 1587, UN Doc. S/2005/625 (2005).

(3) This is a powerful and contestable assumption. *See* PayamAkhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?* 95 AMER. J. INT'L L. 8, 7-31 (2001).

One cautionary approach to prevent reoccurring behaviors is deterrence,[1] an idea that is subsumed under the umbrella notion of prevention of illegal acts. Underneath this set of ideas are the subthemes of punishment, education, rehabilitation, and pressure (assuming leverage exists).

Conclusion:

To the extent that the globe is subject to a significant display of what could be perceived as criminal erga omnes obligations, it becomes incumbent on the purveyors of international law not only to address what appears to be disruptive to humanity and solvable human misery, but also engage in the most courageous manner reasonably possible to seek an advantage beyond cross-cultural communications. Similarly, it is not too much to demand that public officials in suitable roles act accordingly, properly and with due concern all with alacrity .It is commonly proclaimed by critics of international law that this body of law cannot be enforced, but unpunished crimes do not vitiate the law. "How is all of this to be done one may ask? This becomes the proverbial question of the day. From the secure position of an external observer, I find it difficult to believe—or choose not to—that what can be cobbled among the world's politicos to serve this need is not available. For indeed, it is recognized by some of the world's most respected scholars on international law that it can.[2] Having proclaimed this position, it is necessary to offer an associated condition, namely that it is not a reasonable expectation that much of the law will be or can be

(1) THE IMPACT OF INTERNATIONAL LAW ON INTERNATIONAL CO-OPERATION: THEORETICAL PERSPECTIVES (EyalBenvenisti and Moshe Hirsch eds., 2004): Colin Gray, *Gaining Compliance: The Theory of Deterrence and its Modern Application,* 29 COMP. STRAT. 278, 278-283 (2012); George W. Downs et al., *Is the Good News About Compliance Good News About Cooperation?* 50 INT'L ORG. 379-406 (1996).

(2) THE PURSUIT OF A BRAVE NEW WORLD IN INTERNATIONAL LAW: ESSAYS IN HONOUR OF JOHN DUGARD (TiyanianaMaluwa et al. eds., 2017); Jasmine Rayée, "The Future of International Criminal Justice," ASIL Cables, Apr. 30, 2017, *available at* https://www.asil.org/blogs/future-international-criminal-justice/.

absolutely effective.

We have heard from the Honorable Rosalie Silberman Abella, a Justice on the Supreme Court of Canada, a remarkable statement of international law's potential to wit:

> Since 1945, the global community has demonstrated an enormous capacity for constructing legal systems and institutions to enhance and advance international law. Many areas of international law are free from controversy and generally effective: telecommunications and broadcasting; the inter- national postal system; laws on shipping and bills of exchange; international travel; passport and customs control; international financial transactions; international trade, services, and ideas; diplomatic and consular relations; and the mutual recognition of marriages, divorces, and university degrees. They are a less visible, but nonetheless significant, series of successes for international law.(1)

One example, albeit a domestic example, that indicates that norms within a strongly structured cultural system can adjust to modernity either because of intimidation or a pragmatic reorientation, is in the Saudi Arabian situation created by its Crown Prince Mohammed bin Salman to allow its female citizens to operate a motor vehicle.(2)

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(1) Rosalie Silberman Abella, *International Law and Human Rights: The Power and the Pity,* 55 McGILL L.J. 2010 (2010).

(2) Royal Order to Adopt the Provisions of the Traffic Law and Its Executive Regulation, Including the Issuance of Driving Licenses for Males and Females Alike, 4691 Um al-Qurá, 7 Muharram 1439 Hijri, corresponding to Sept. 26, 2017, *available at* https://www.uqn.gov.sa/articles/150649923329 7012200,This measure was part of a larger Saudi program, "Vision 2030." Kingdom of Saudi Arabia.

We can assure that international law will evolve continuously more effectively to meet similarly emerging and engaging challenges to dislocations from stable situations.(1) We have witnessed that evolution, in any of its forms, is not constant. It is recognized that progress can and does skip a generation. International law, at least from its outset, was concerned with the banality of armed conflict and believing that "civilized" folk could agree to resolve issues through some form of negotiation.(2)The world can be a savagely uncaring place. However, as Hughes and Seligman have so cogently pointed out, in the modern age, violent conflicts so often occur on the heels of failed conversations over the resolution of a previous conflagration.(3) There then was the warning by Lana Ljuboja who opined: "Until the day when the international community can demonstrate that those who ultimately bear the responsibility for the violations of the most fundamental rules for the protection of human being[s] are brought to justice, history will repeat itself."(4) Enforcement, as the target for all who hold international law in disdain, as a form of coercion or cooperation, is a signal to the world regarding the level and extent to which international law can be a deterrent or a means of punishment. In a shortened conclusion, while international legal agents and their procedural instruments cannot adequately solve problems altogether, there is sufficient incentive to press forward to become the Platonic guardians for the global polity.

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(1) Christian Tomaschat writes in support of this hopeful plan in *International Law: Ensuring the Survival of Mankind on the Eve of a New Century,* 281 RECUEIL DES COURS 9-438 (1999).

(2) PROMOTING PEACE THROUGH INTERNATIONAL LAW (Cecilia M. Balliet and KjetilMujezinović Larsen eds., 2015).

(3) MATTHEW HUGHES AND MATTHEW S. SELIGMAN. DOES PEACE LEAD TO WAR? PEACE SETTLEMENTS AND CONFLICT IN THE MODERN AGE (2002).

(4) Lana Ljuboja, *Justice in an Uncooperative World: ICTYand ICTR Foreshadow ICC Ineffectiveness*, 32 HOUS. J. INT'L L. 768 (2009).

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الكيفية الوجوبية لتدعيم القانون الدولي؟

سانفورد سيلفربورج

كلية جاتاوبا

ساليسبوري، ولاية كارولانيا الشمالية - الولايات المتحدة الأمريكية

ملخص البحث:

إن دراسة الوضع السياسي والاقتصادي والاجتماعي والإنساني في العالم يؤدي بجميع الأحوال إلى معرفة وتحديد مدى التهديد بالظروف المهينة وغير العادية في العالم والتي يمكن تحسينها بتطبيق قواعد القانون الدولي. حيث تسرد هذه الورقة البحثية قدرا كبيرا من الأدبيات القانونية الدولية، والتي بدورها تدعم مختلف الظروف القاسية التي تعرضت لها البشرية. وعليه،تشمل الورقة البحثية في طياتها الحديث عن نزع السلاح، والعقوبات كوسيلة لإجبار الدول على التعاون، ولا سيما من قبل الدول التي تنتهك وبشكل اعتيادي مبادئ القانون الدولي، والقانون الجنائي الدولي، حيث أن النزاعات المسلحة المستمرة تتخذ كشكل أساسي في الصراع بين الدول، كما يعتبر الصراع الداخلي كالحرب الأهلية جزء من ذلك الصراع. كما تغطي هذه الورقة البحثية الحديث عن حقوق الإنسان، كما هو مفهوم حالياً وتطبيقه، وتمدده المنطقي، كما تعتبر الظاهرة الحالية المتمثلة في الهجرة واللاجئين من المنتجات النهائية المحتملة للصراعات. وكملاحظة أخيرة، هنالك اقتراح أساسي بأن تلك المواضيع الهامة المذكورة يجب أخذها بعين الأعتبار لضمان إنفاذ مبادئ القانون الدولي، والتي بدورها جاءت لصالح المجتمع الدولي ككل.

الكلمات الدالة: القانون الدولي ، مقترحات رد الفعل