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Globalization of International Law In A Contemporary International Community

Sompong Sucharitkul
Golden Gate University School of Law, ssucharitkul@ggu.edu

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GLOBALIZATION OF INTERNATIONAL LAW IN A CONTEMPORARY INTERNATIONAL COMMUNITY

The existence of an international legal system governing the conduct of relations among nations can scarcely be doubted in this day and age, when all States appear to remain firmly supportive of the rules of international law which regulate their mutual relations.

No one, indeed not even a greatest power, has dared claim that it was entitled or empowered to violate at will any rule of international law, however fundamental, with immunity and without sanction. Yet many a State would not hesitate, when affected, to allege that another State, regardless of strength, size or military might, has actually used force or threatened to use force against its territorial integrity or political independence.

The fact that on 17 March 1988 the General Assembly of the United Nations took the time and trouble to adopt a detailed draft resolution prepared by a Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force,[1] stands as eloquent testimony indicating an urgent need to examine the question whether so fundamental a rule of international law as the obligation of every State to refrain from the use or threat of force against another State is of universal application. Should the finding turn out to be negative, a further enquiry could be made whether the privileged few who might suffer the illusion of being above or outside the law might not be persuaded to return to the prevailing legal order. Clearly, the task of restoring law and order for the international community is everybody's business.

Strictly speaking, no nation, however infinitesimal or colossal, be it a micro-State or a Super Power, could claim exemption from the unceasing application of any rule of international law. Yet, in a preamble to Resolution 42/22, the General Assembly expressed <u>deep concern</u> "at the continued existence of situations of conflict and tension and the impact of the persistence of violations of the principle of refraining from the threat or use of force on the maintenance of international peace and security as well as the loss of human life and material damage in the countries affected, the development of which may thereby be set back". It further stressed "the need for all States to desist from any forcible action aimed at depriving peoples of their right to self-determination, freedom and independence, and reaffirmed "the obligation of States to settle their international disputes by peaceful means".

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[1] See Resolution 42/22 : Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations.

In this resolution, the General Assembly solemnly declares that :

I

1. Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or from acting in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and of the Charter of the United Nations and entails international responsibility.

2. The principle of refraining from the threat or use of force in international relations is universal in character and is binding, regardless of each State's political, economic, social or cultural system or relations of alliance.

3 No consideration of whatever nature may be invoked to warrant resorting to the threat or use of force in violation of the Charter.

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6. States shall fulfil their obligations under international law to refrain from organizing, instigating, or assisting or participating in paramilitary, torrorist or subversive acts, including acts of mercenaries, in other States, or acquiescing in organized activities within their territory directed towards the commission of such acts.

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II

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16. States shall abide by their commitment to the principle of peaceful settlement of disputes, which is inseparable from the principle of refraining from the threat or use of force in their international relations.

17. States parties to international disputes shall settle their disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered. For this purpose they shall utilize such means as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, including good offices.

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Two distinct observations need be made in this connection. First, a declaration such as the one cited above was adopted in the form of a resolution of the General Assembly of the United Nations. At least in form, it lacks the apparent binding character of a treaty and to many minds unfamiliar with United Nations affairs, the principles enunciated need not entail the force of law, nor be binding on States which have voted for the resolution. Much less could it be said to bind the State which may have abstained or even voted against the whole of the resolution or its relevant paragraphs. On the assumption that the Declaration was unanimous or adopted without a vote, an argument could still be made that it was not law, let alone universal. Such a facile statement is clearly unsubstantiated. The effect of a rule of law is not reduced because it has taken the form of a declaration adopted in a resolution. The principle of non-use of force derives its binding force from Article II, paragraph 4, of the Charter, an unequivocal and unambiguous treaty obligation on the part of every member State of the United Nations. In addition to being declaratory of existing rules of international law, the obligation of every State to refrain from the threat or use of force has received judicial endorsement in the recent decision of the International Court of Justice in Nicaragua v. United States of America, 27 June 1986. [2]

It follows in the second place that no State could claim exemption from the prohibition of the use or threat of force. The fact that reference was made in the preambles of the Declaration to the persistent violations of rules of international law in international relations does not in any way minimize their obligatory character. Just as the mounting statistics of crimes in a given society is no indication of its lack of law, nor proof of its lawlessness. As long as there is society, there is law, and as long as there is a rule of law, there is a distinct possibility of its violation. Such is a situation in the international community as well as in national societies.

The only difference that may continue to exist between the rules of international law and the rules of municipal law lies in the degree of effectiveness of their enforcement. While it is clear that a rule of international law is of universal application without exception or exemption and as such is in no way dissimilar from a rule of municipal law which applies to everyone within the confines of a national territory, there is more readily available in national jurisdiction an enforcement measure. An apparent weakness remains in the enforcement of a rule of international law in the event of its violation, especially when an enforcement measure is being invoked against a State which is endowed with a power to veto the application of such a measure.

The process of globalization of international law may be said to have begun if not yet completed. Nevertheless, the internationalization of its implementation or execution may be found wanting. As long as the interests of States continue to conflict, there is a need to apply as well as to enforce uniform rules of international law in respect of all activities of States. International law thus globalized still needs to be further

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[2] See International Court of Justice, Reports of Judgements, Advisory Opinions and Orders, 1986, (Merits, Judgement).

strengthened by equality of enforcement and sanction which should be applicable to every State regardless of its size or power within the World Organization. It goes without saying that enlightened governments need no reminder of their obligation to respect the rules of international law and not merely the willingness and ability to ensure their observance and to enforce compliance exclusively by all others.

The world in which we live to-day would be and could be a much happier place for all if by a process of enlightenment States that remain in a privileged position should see their way to refrain from violating rules of international law so clearly defined and universally recognized, or else to abstain from nullifying otherwise available enforcement measures against such violations.

In other field of activities where the rules of international law may be said to be less clear or not as fundamental and hence their violation less flagrant, globalization of new rules of international law has met with some resistance from reactionary quarters.

The process of globalization has to be synchronized with the codification and progressive development of international law, including the process of modernization which implies abrogation of anachronistic rules and outmoded regulations requiring considerable changes and updating.

Having established that a rule of international law is of universal application in the contemporary world where no State could claim to remain outside its ambit, the next step remains be taken in obviating attempts by a few States to obstruct or disrupt the process of international law-making. These few States have consistently violated some rules of international law while alleging at times either that they have not violated any rules in fact, or alternatively that such rules are not yet rules of international law inspite of their own earlier acceptance of the rules and regardless of universal recognition. It is possible for any State to contend that it has never consented to a new rule or revision of an old rule of international law with different contents. One of the more frequent arguments has been that new rules or better and more just rules are not to be generally applicable unless and until they are approved by all existing members of the international community. Without such universal or unanimous approval, no new rule of international law could be said to have come into existence.

Such a view may be plausible for those who prefer to live in the past colonial days when gun-boat diplomacy was at its peak and when might was still right. In those days, it was alleged that unanimity was required to establish a legal order or any rule of international law. Unanimity might today appear as such to be nothing more than a relic of the veto power now reserved for a privileged few in limited areas of enforcement measures and in the maintenance of international peace and security. As has been seen, the use or rather misuse or abuse of such unearthly power has retarded the progress of mankind in several dimensions of international development and the anomalous situation has so far been tolerated and endured by States lacking such formidable power purely because it was so agreed by all member States from the beginning. Since then, there has been a fundamental change of circumstances which would go a long way to militate against future use or abuse of such power.

To extend this unpopular practice of veto which has been so much abused

in the past to other fields of human activities in the future under the guise of unanimity would be utterly absurd. A State would then be able to say, possibly with self-conviction, that a rule of law accepted by the whole world is not law because such rule has not received its explicit approval. This could be invoked in every case whenever it is not in the interest of a particular State to abide by a rule of international law. Much worse has been the contention by one lone State not only that it has not violated a rule that all other States have recognized as law, but also that on the contrary all other States have violated an old anachronistic custom long abandoned by the community of nations. Such a contention is often heard from States with vested interest or under pressure from certain sectors within their national provinces. For instance, in regard to the common heritage of mankind, a notion globally acknowledged and endorsed without any opposition or protest, a State or two have been heard to contend, not that it or they do not recognize the validity or sacrosanctity of the common heritage of mankind, for such a contention would have had no credibility and would have reflected poorly upon the contenders, but rather that pending the establishment of an international authority, it or they may arrogate to itself or its group the power to explore, exploit and distribute the wealth of the common heritage of mankind in any manner it pleases without regard for the international community or the conscience of mankind.

This last contention poses an even more serious threat to humanity and to mankind as a whole. It is not inhuman to be tempted by greed and lust for power and States acting exclusively through the medium of man do not always succeed in resisting such temptations. Only through education can enlightenment be achieved, which could ensure peace and cooperation on a global scale. The task of globalization of rules of international law including their modernization and the ceaseless process of humanization must continue unabated if we truly want peace and cooperation which in the longer run would be more beneficial and more durable than domination, hegemony or subservience of man to man or State to State. Equality of man is to be reflected in the equality of States and not in their subjugation. Globalization of international law must be relentlessly pursued if the contemporary pluriform world is to survive with peace and dignity.

SOMPONG SUCHARITKUL
Cleveringa Professor
Fellow in Residence of NIAS

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