Sompong Sucharitkul Center for Advanced International Legal Studies
Presents

International Law in a Multipolar World

The 23rd Annual Fulbright Symposium on International Legal Problems

Friday, April 12, 2013  9:00 a.m. to 5:00 p.m.

Room 2203, 536 Mission Street, San Francisco, CA 94105

Keynote Speaker:
Professor Dr. Michael van Walt van Praag

Professor van Walt van Praag is a visiting Professor at the Institute for Advanced Study at the School of Historical Studies in Princeton, NJ; Executive President of Kreddha, an international non-governmental organization which he founded in 1999 for the prevention and resolution of violent intra-state conflicts; and an international lawyer specializing in intra-state conflict resolution. He previously served as advisor and consultant to numerous governmental and non-governmental organizations in peace talks in regions ranging from Chechnya to Papua New Guinea. Professor van Walt van Praag has held visiting teaching and research positions at Stanford, UCLA, Indiana, Jawaharlal Nehru University, and Golden Gate University School of Law.

Questions? Brad Lai, Program Coordinator at blai@ggu.edu or (415) 369-5356

In Cooperation with:

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ABA Section of International Law

Golden Gate University School of Law

No financial support has been provided by the Fulbright Programs for this event.
Dr. Christian Nwachukwu Okeke
Golden Gate University School of Law
San Francisco, California

Dear Professor Okeke,

I am pleased to join your colleagues, students and many admirers in recognizing your outstanding accomplishments and influence in the field of International Law. Your leadership and dedication have earned deep respect and affection from all whose lives you have touched.

Your career teaching international legal studies in Africa and Europe as well as North America has helped foster global understanding and brought a unique perspective to your students. You are preparing a new generation of leaders who will be responsible for shaping our future and making the world a better place.

Congratulations again on the recognition you so richly deserve, and thank you for your extraordinary contributions to International Law at Golden Gate University, and beyond.

Best regards,

Nancy Pelosi
NANCY PELOSI
Democratic Leader
GREETINGS FROM THE MAYOR

On behalf of the City and County of San Francisco, it is with great pleasure that I welcome you to the 23rd Annual Fulbright Symposium on International Legal Problems sponsored by Golden Gate University (GGU) School of Law’s Sompong Sucharitkul Center for Advanced International Legal Studies being held on April 12, 2013.

The Symposium provides a forum for engagement and debate among scholars, practitioners and other professionals working in international and comparative law and related fields. It also offers law faculty and students a rare opportunity to interact with Fulbright scholars, diplomatic and consul officers, and other international law experts. This year’s Symposium focuses on the theme of the evolution of “International Law in a Multipolar World” and will be held here in San Francisco, the City where the Charter of the United Nations Organizations was signed 65 years ago.

I commend Professor Dr. Christian Nwachukwu Okeke and GGU’s graduate law programs in organizing this important event which benefits both law students at GGU and their colleagues from neighboring law schools, as well as other members of the San Francisco community. Congratulations to all those that have made this event a true success!

With warmest regards,

Edwin M. Lee
Mayor

1 Dr. Carlton B. Goodlett Place, Room 200, San Francisco, California 94102-4641
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REGISTRATION

Continental Breakfast: Law Dean’s Conference Room (Room 2310) 8:30 a.m. – 9:00 a.m.

MORNING SESSION 9:00 a.m. – 10:00 a.m.

Master of Ceremonies: Adjunct Professor Dr. Remiguis Chibueze, Attorney at Law; Adjunct Professor of Law, Golden Gate University School of Law

Opening Remarks: Dean Rachel Van Cleave, Dean and Professor of Law, Golden Gate University School of Law

Welcome: Professor Jon H. Sylvester, Professor of Law, Associate Dean for Graduate Law Programs, Director of LL.M. in Taxation Program, Golden Gate University School of Law

Introduction: Professor Dr. Christian N. Okeke, Professor of Law; Director, L.L.M. & S.J.D. in International Legal Studies Programs; Director, Sompong Sucharitkul Center for Advanced International Legal Studies, Golden Gate University School of Law

KEYNOTE SPEAKER: “THE MISSING PEACE: International Law of Intrastate Relations.”
Professor Dr. Michael van Walt van Praag
Visiting Professor, Institute for Advanced Study at the School of Historical Studies

BREAK 10:00 a.m. – 10:15 a.m.

Conference Report: 10:15 a.m. – 10:35 a.m.
Controversial Issues of Contemporary International Law in a Multipolar World
Professor Dr. Christian N. Okeke
MORNING PANEL

Moderator: Professor Peter Keane, Dean Emeritus and Professor of Law, Golden Gate University School of Law

The Grounds of Interconnection between International Environmental and International Economic Law in the Context of Russian Concept of International Law
Dr. Daria Boklan, Associate Professor, Russian Academy for Foreign Trade

Contemporary Constitutional Changes in a Multipolar World: Any Role for International Law?
Assistant Professor Kateřina Uhlířová, International Public Law, Department of International and European Law, Faculty of Law, Masaryk University, Czech Republic

Is Existing International Environmental Law Adequate in Addressing the Challenge of Global Climate Change?
The Honorable Senior Judicial Magistrate Farjana Yesmin, Senior Judicial Magistrate, Mymensingh, Dhaka, Bangladesh; Fellow, 2012-2013 Golden Gate University School of Law/International Women Judges Graduate Fellowship Program (LL.M. in Environmental Law)

Attributing Responsibility Under International Humanitarian Law to Organized Armed Opposition Groups
Adjunct Professor Warren Small, Attorney at Law; Adjunct Professor of Law, Golden Gate University School of Law, Santa Clara University School of Law, Monterey College of Law, and Monterey Institute of International Studies

A Case for Individual Standing in International Law
The Honorable Nick O. Agbo, Former Member, Federal House of Representatives, Federal Republic of Nigeria; S.J.D. Candidate, Golden Gate University School of Law

Is a Multipolar World a Concern to International Law?
Adjunct Professor Dr. Remiguis Chibueze, Attorney at Law; Adjunct Professor of Law, Golden Gate University School of Law

Rapporteur: Adjunct Professor Dr. Zakia Afrin, Adjunct Professor of Law, Golden Gate University School of Law; Legal Program Manager at Maitri (Nonprofit serving Domestic Violence Survivors)

LUNCH BREAK: GGU Center on the 6th Floor

LUNCH BREAK: 1:00 p.m. – 2:00 p.m.
AFTERNOON PANEL 2:00 p.m. – 5:00 p.m.

Moderator: Adjunct Professor Dr. Art Gemmel, Adjunct Professor of Law & Senior Fellow, Sompong Sucharitkul Center for Advanced International Studies, Golden Gate University School of Law

*Islamic Militance and the Uighur of Kazakhstan: Recommendations for U.S. Policy*
Professor Andreas Borgeas, Professor of International & Comparative Law, San Joaquin College of Law; Fulbright Alumnus

*It is Africa: Selective Prosecutions at the International Criminal Court (ICC)*
Mr. Eustace Azubuike, Research Assistant and S.J.D. Candidate, Golden Gate University School of Law

*Kenya's Encounter with the International Criminal Court*
The Honorable Lady Justice Mary Kasango, Lady Justice, High Court, Kenya; 2013 LL.M. in Intellectual Property Law Program Candidate, Golden Gate University School of Law

*Promoting Accountability of Government Officials in Foreign Direct Investments Aimed at Curbing Transnational Corruption: The Importance of Public Participation*
Ms. Delisile Xolile Ntshalintshali, 2013 LL.M. in International Legal Studies Program Candidate, Golden Gate University School of Law; Recipient, 2012 Fulbright Scholarship Award

*Climate Change and Sustainable Development of Nigeria*
Dr. Sunday Gozie Ogbodo, Senior Lecturer and Deputy Coordinator of the Post-Graduate Program, Faculty of Law, University of Benin

*Antarctic Governance: From ATCM to A Permanent Antarctic Organization?*
Professor Dr. Li Chen, Professor of Law, Fudan University School of Law; 2012-2013 Fulbright Visiting Research Scholar, Center for Oceans Law and Policy, University of Virginia School of Law

Rapporteur: Adjunct Professor Dr. Sophie Clavier, Adjunct Professor of Law, Golden Gate University School of Law; Associate Professor of International Relations, San Francisco State University

Closing Remarks: Professor Dr. Christian N. Okeke 5:00 p.m. – 5:05 pm

Please enjoy some wine and cheese outside Lecture Hall at the end of the Symposium

No financial support has been provided by the Fulbright Program for this event
Dr. Amr El Attar (Fall 2012)
"Enforcement of International Arbitration Awards: A Comparative Study Among Egypt, US, and The Gulf Cooperation Council Countries"

Dr. Cosmin Corendea (Fall 2012)
“Human Security in the Pacific: Economic and Environmental Refugees of the Sinking Islands”

Dr. Veena Anusornsen (Fall 2012)
“Arbitrability and Public Policy in Regard to the Recognition and Enforcement of Arbitral Award in International Arbitration: The US, Europe, Africa, Middle East, and Asia”

Dr. Desire Woi (Fall 2012)
“The New Corporate Law of the Countries of the OHADA Zone: A Comparative Study with Delaware Corporate Law”

Dr. Chih-Hong Tsai (Fall 2012)
"Towards Closer Economic Cooperation Across The Taiwan Strait"

Dr. Natharika Chan (Fall 2012)
“A Comparative Study of the Mortgage-Backed Securities in the Securitization Transaction: Focusing on True Sale”
IN-COOPERATION WITH
The American Bar Association (ABA) Section of International Law

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American Society of Comparative Law (ASCL)

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The cost for both sessions will be $60 (All day)/$30 (Half day)
Please make checks payable to Golden Gate University

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http://law.ggu.edu
(Opening Remarks)
Dean Rachel Van Cleave
Dean and Professor of Law, Golden Gate University School of Law

J.S.M., Stanford University School of Law (1994)
J.D., Hastings College of Law, University of California (1989)
B.A., Stanford University (1986)
Universitá degli Studi di Bologna, Bologna, Italy (1984-85)

Rachel Van Cleave is Dean and Professor of the School of Law. She began at GGU Law as a professor in 2004 and served as Associate Dean of Academic Affairs from 2008-2012.

Dean Van Cleave earned her B.A. at Stanford and J.D. at UC Hastings College of the Law. She clerked at Baker and McKenzie and served as a federal clerk for Fifth Circuit Judge Sam Johnson. In addition to early roles as a legal research and writing instructor at Santa Clara and a Teaching Fellow at Stanford Law School, where she also earned her J.S.M., Van Cleave was a Visiting Professor at the University of Richmond School of Law and UC Hastings.

As a Fulbright Fellow, she conducted research at the Italian Constitutional Court on changes to the Italian criminal justice system, and later returned to Italy to research reforms in Italian rape law. She has published 15 law review articles and four book chapters.

Dean Van Cleave has taught both core courses and original seminars that integrate research and writing with real world problems—courses like her Katrina and Disaster Law Seminar. Through the Law and Leadership program, she has helped students to develop and exhibit leadership through meaningful projects. In addition to her scholarship and teaching, Dean Van Cleave has spearheaded substantive curricular reforms to enhance GGU Law’s focus on skills training and to prepare our students for successful practice.

(Welcome)
Professor Jon H. Sylvester
Professor of Law, Associate Dean for Graduate Law Programs, Director of LL.M. in Taxation Program, Golden Gate University School of Law

M.J., U.C. Berkeley, Graduate School of Journalism (1975)
B.A., Stanford University (1973)
Jon H. Sylvester has been a law professor teaching Contracts, Remedies, International Business Transactions and other commercial law courses for nearly 30 years. He currently serves as Associate Dean for Graduate (post-J.D.) Legal Studies at Golden Gate University School of Law, where he has been a member of the full time faculty since 1994. He has also taught at several other schools including Loyola Law School of Los Angeles, the Thurgood Marshal School of Law at Texas Southern University in Houston, U.C. Hastings College of Law, the University of San Francisco School of Law, the Law Faculty of the University of Nairobi in Kenya, and the University of International Business and Economics in Beijing.

Professor Sylvester earned his undergraduate degree at Stanford University and a master's degree in journalism from the University of California at Berkeley. He worked as a television news writer, producer and reporter before earning a J.D. at Harvard Law School. He then practiced law with the Washington, D.C. offices of two New York firms. He has been a member of the California Bar since 1981, and the District of Columbia Bar since 1982.

As a commercial arbitrator, Professor Sylvester has handled cases involving real estate; partnership agreements and dissolution; franchise agreements; insurance; banking, securities and financial matters; professional services fee disputes; intellectual property; high technology; construction; executive employment and compensation; health care; international business transactions and a variety of other claims.

Professor Sylvester has authored or co-authored numerous articles regarding contract law, arbitration, and various international issues including development and international debt. He has taught in and/or directed legal education programs in China, Costa Rica, Indonesia, Kenya, Malta and Turkey, and has traveled to more than 50 countries.

(Master of Ceremonies for the Morning Session)
Adjunct Professor Dr. Remigius Chibueze
Attorney at Law; Adjunct Professor of Law, Golden Gate University School of Law

S.J.D., Golden Gate University (2006)
LL.M., Golden Gate University (2003)
LL.M., University of Alberta, Canada (2000)
B.L., Nigerian Law School, Lagos (1993)
LL.B., University of Benin, Nigeria (1992)

Adjunct Professor Dr. Remigius Chibueze is in private practice in Oakland and serves as a consultant to some Nigerian companies with business interests in the United States. Dr. Chibueze teaches the Jessup International Law Moot Court Competition, the S.J.D. Dissertation Seminar, and International Investment Law at Golden Gate University School of Law. Dr. Chibueze also taught an Intellectual Property Seminar at John F. Kennedy University School of Law. He is a member of the California State Bar and Solicitor and Advocate of the Supreme Court of Nigeria. He has published academic works in International Law, International Commercial Arbitration and International Criminal Law. His research areas include International Law, International Criminal Law, International Human Rights Law, International Commercial Arbitration, and International Intellectual Property Law.
Prof. Dr. Christian Nwachukwu Okeke

Professor of Law, Director of LL.M. & S.J.D. International Legal Studies Programs, Director of the Sompong Sucharitkul Center for Advanced International Legal Studies, Golden Gate University School of Law

Doctor in de Rechtsgeleerdheid, Free University of Amsterdam
LL.M., (magna cum laude) Kiev State University, Ukraine

Dr. Christian Nwachukwu Okeke is a Solicitor and Advocate of the Supreme Court of Nigeria, practiced with the law firm of Ilegbune, Okeke & Co. in Nigeria, and consulted for The Law Offices of Dr. Jude A. Akubuilo in Los Angeles. He is Former Deputy Vice-Chancellor of Enugu State University of Science and Technology in Nigeria, and was the Pioneer Dean of two Schools of Law, Nnamdi Azikiwe University, Awka, Nigeria (formerly Anambra State University of Technology) and Enugu State University of Science and Technology, Enugu, Nigeria.

Dr. Okeke is the author of *Controversial Subjects of Contemporary International Law and Theory and Practice of International Law in Nigeria* and numerous books, book chapters, and review articles in the field of international law. He is currently Pro-Chancellor and Chairman of the Governing Council, Godfrey Okoye University, Enugu, Nigeria. Dr. Okeke has taught courses in international legal studies at various universities in Africa, Europe and North America for 25 years.

A book of essays in honor of Dr. Christian Nwachukwu Okeke was published by Vandeplas Publishing: *Contemporary Issues on International and Comparative Law: Essays in Honor of Professor Chris Okeke* (2009). The book has 27 chapters and explores the broad range of legal, personal, social, political and historical foundations of international law and covers many important subjects in comparative law. The authors are drawn from varying cultures across the oceans of the world, representing diverse legal philosophies and corresponding practices. The noted editor of the book is Justice Centus Nweze, an erudite judge and international law scholar of the Nigeria Court of Appeal. The writer of the foreword is His Excellency Judge Abdul G. Koroma - a two-term erudite judge of the International Court of Justice at The Hague.

**Keynote Speaker**

Prof. Dr. Michael C. van Walt van Praag

Visiting Professor, Institute for Advanced Study at the School of Historical Studies

Doctor in de Rechtsgeleerdheid, Rijksuniversiteit Utrecht (1986)
Meester in de Rechten, Rijksuniversiteit Utrecht (1980)
LL.M., Wayne State University (1979)

**Topic:** THE MISSING PEACE: International Law of Intrastate Relations

Prof. Dr. Michael van Walt van Praag is a Visiting Professor of Modern International Relations and International Law at the School of Historical Studies Institute for Advanced Study in Princeton, New Jersey. He specializes in intra-state conflict resolution and has served as mediator and advisor in peace processes in regions ranging from Chechnya to New Caledonia. He is currently the Executive President of Kreddha, an international, non-governmental organization for the prevention and resolution of violent intra-state
conflicts, which he co-founded in 1999. He served as UN Senior Legal Advisor to the Foreign Minister of East Timor, Dr. Jose Ramos Horta, during the country’s transition to independence as part of UNTAET, and has for many years served as a legal advisor to His Holiness the Dalai Lama’s Office on international matters.

Dr. Michael van Walt van Praag graduated in law from the University of Utrecht, where he also obtained his doctoral degree in Public International Law, and he practiced law with the law offices of Wilmer, Cutler & Pickering in Washington D.C. and London and Pettit & Martin in San Francisco and Washington D.C. He has held visiting teaching and research positions at Stanford, UCLA, Indiana, Jawaharlal Nehru University, and the Golden Gate University School of Law. He has authored and edited numerous books and articles on a variety of topics related to intrastate conflict and the relations of peoples and minorities to states. His most recent contribution was to the African Union’s handbook on ‘Managing Conflicts,’ published in English, French and Arabic. He is now engaged in work on the causes of conflicts and obstacles to their resolution, focusing in particular on the ways in which history is perceived and mobilized by the antagonistic parties.

(Moderator for the Morning Session)
Professor Peter Keane
Dean Emeritus and Professor of Law, Golden Gate University School of Law

J.D., Southern Methodist University
B.A., City College of New York

Dear Emeritus and Professor Peter Keane served as the Dean of Golden Gate University School of Law from 1998 to 2003. He previously served as Vice-President of the State Bar of California, President of the Bar Association of San Francisco, Chief Assistant Public Defender in the San Francisco Public Defender's office (1979-1998), San Francisco Police Commissioner, and Assistant Professor at UC Hastings College of the Law.

Professor Keane is an internationally known legal analyst for broadcast media, and has appeared on CBS Evening News, CNN, BBC, ABC World News, Larry King Live, Nightline, Burden of Proof, MSNBC InterNight, NPR All Things Considered, CBS television and radio in San Francisco, and other news programs throughout the world. He hosted "Keane on the Law," a weekly program on KPIX radio in San Francisco 1994 to 1997.

Professor Peter Keane is the author of “San Francisco's Handgun Control Ordinance and of California's Proposition 190” amending the California Constitution and reforming the State Commission on Judicial Performance. He is a member of California and Texas State Bars.
**Dr. Daria Boklan**  
Associate Professor, Russian Academy for Foreign Trade, Moscow, Russia

Ph.D., Institute of State and Law of Russian Academy of Science (2004)  
Specialization in law with honors, Moscow State Law Academy (1999)  
Kiev State University, Faculty of International Relations (1995)  
Physical and mathematical lyceum, Kiev, Ukraine (1992)

**Topic:** The Grounds of Interconnection between International Environmental and International Economic Law in the Context of Russian Concept of International Law

Dr. Daria Boklan holds a Ph.D. from the Institute of State and Law, Russian Academy of Science. Dr. Boklan is currently a lecturer in international law and law of the WTO in the Russian Academy for Foreign Trade, and she has more than 20 academic publications in international law, international economy law and international environmental law.

**Assistant Professor Kateřina Uhlířová**  
International Public Law, Department of International and European Law, Faculty of Law, Masaryk University, Czech Republic

Ph.D. Candidate, Faculty of Law, Masaryk University, Brno, Czech Republic (2007–Present)  
LLM (Res), School of Law, University of Wales, Aberystwyth, United Kingdom (2006–07)  
Erasmus-Socrates Exchange Student, School of Law, University of Wales, Aberystwyth United Kingdom (2004–05)  
Mgr. (summa cum laude) (equivalent to LL.M.), Academic Merit Scholarship, Faculty of Law Masaryk University, Brno, Czech Republic (1999–05)

**Topic:** Contemporary Constitutional Changes in a Multipolar World: Any Role for International Law?

Assistant Professor Kateřina Uhlířová is a Lecturer at the Masaryk University, Faculty of Law in Brno, Czech Republic. She teaches International Public Law (in Czech language), International Criminal Law, International Humanitarian Law, International and Domestic Law in International Tribunals, and Jessup Moot Court (in English). She previously interned as a law clerk at the Office of the President at the International Criminal Tribunal for the former Yugoslavia in The Hague and the War Crimes Chamber of the Court of Bosnia and Herzegovina in Sarajevo. Professor Uhlířová has lectured in various countries including the USA, the UK, Belgium, Germany, Italy, the Netherlands, and Kosovo. Professor Kateřina Uhlířová has published both in the Czech Republic and abroad (USA, United Kingdom, Belgium, Australia, Greece and India). She is a recipient of the Helton Fellowship awarded by the American Society of International Law.
The Honorable Senior Judicial Magistrate Farjana Yesmin
Senior Judicial Magistrate, Mymensingh, Dhaka, Bangladesh; Fellow, 2012-2013 Golden Gate University School of Law/International Women Judges Graduate Fellowship Program (LL.M. in Environmental Law)

LL.M., Candidate, Golden Gate University
LL.M., University of Dhaka, Bangladesh (2006)
LL.B., University of Dhaka, Bangladesh (2005)

Topic: Is Existing International Environmental Law Adequate in Addressing the Challenge of Global Climate Change?

The Honorable Senior Judicial Magistrate Farjana Yesmin received a Bachelor of Law degree and a Master of Laws degree in International and Comparative Law from Faculty of Law, Dhaka while working as Junior Advocate. After completion of her LL.M. degree, she decided that in spite of her Bar Enrollment, and even though she still loved practice in court as a lawyer, she wanted to write and/or evaluate law as a whole rather than supporting one side and denying the other.

Magistrate Yesmin sat for the Judiciary examination in 2007 and got an appointment as an Assistant Judge on May 22, 2008 in Dhaka Judge Court. As a female member of Bangladesh’s Judiciary, she is an ex-officio member of the International Women Judges Association. She received the Golden Gate University International Women Judges Graduate Fellowship Award 2012-2013.

While working on her Masters in International and Comparative Law she participated in a research project on riverbank erosion in two districts of Bangladesh, published as a book, *Life on Swing Human Rights of the Riverbank Erosion Induced Displacees*. Magistrate Yesmin personally contributed two chapters to the book. This research work inspired her to study environmental law at Golden Gate University School of Law.

Magistrate Yesmin ranked first in the combined national merit list of the country (92.20% marks) in Higher Secondary School Certificate Examination (H.S.C), 2001 from Jhenidah City College and was awarded the Talent Pool Scholarship by the Ministry of Education, Government of Bangladesh, the ProthomAlo Award, the SikkhaBichitra Award, and the Dhaka Chamber of Commerce & Industry award. She stood fourth in the combined national merit list of the country (83.10% marks) in Secondary School Certificate (S.S.C) Examination, 1999 from Kanchan Nagar Model High School and received the same awards.

The Honorable Senior Judicial Magistrate Farjana Yesmin attended Kathmandu School of Law, Nepal in September 2007, Government Law College, Mumbai, India in February 2007 and Department of Development Studies, University of Dhaka in March 2012, and received additional awards.
Adjunct Professor Warren Small
Attorney at Law; Adjunct Professor of Law, Golden Gate University School of Law, Santa Clara University School of Law, Monterey College of Law, and Monterey Institute of International Studies

J.D., Golden Gate University School of Law (1996)
M.A., Political Science (International Relations), Stanford University (1992)
Air War College, Air University (1984)
M.S., Oceanography, U.S. Naval Postgraduate School (1979)
B.S., Building Science, Rensselaer Polytechnic Institute (1969)

Topic: Attributing Responsibility Under International Humanitarian Law to Organized Armed Opposition Groups

After spending twenty-five years in the U.S. Navy as a commissioned officer, Adjunct Professor Warren Small earned his J.D. from the Golden Gate University School of Law, where he specialized in International Law. He joined the adjunct faculty of the Golden Gate University School of Law in 1996 to complement his private practice in domestic and international intellectual property matters as well as domestic and international business formation and business transactions. Adjunct Professor Small is also a member of the adjunct faculty of the Monterey Institute of International Studies and the Monterey College of Law where he teaches several courses in international law.

Adjunct Professor Small frequently delivers guest lectures on international legal issues arising from operations sponsored by the Department of Defense and has been a regular presenter at the ASIL Regional Meetings on the topic of the Law of Armed Conflict. Professor Small teaches International Legal Studies, and Intellectual Property courses at Golden Gate University School of Law. His course offerings include International Patent Law, Copyright Law of the United States, Intellectual Law for the Solo Practitioner, The Law of International Armed Conflict, Contemporary Issues in International Law, the Law of the Sea, and Pacific Rim Trade Seminar.

The Honorable Nick O. Agbo
Former Member, Federal House of Representatives, Federal Republic of Nigeria; S.J.D. Candidate, Golden Gate University School of Law

S.J.D., Candidate, Golden Gate University School of Law
LL.M., in Taxation, Golden Gate University School of Law (2003)
L.L.B., University of Calabar, Nigeria (1989)

Topic: A Case for Individual Standing in International Law

The Honorable Nicholas Onyebuchi Agbo, Esq. obtained his law degree from the University Calabar, Nigeria in 1989. He attended the Nigeria Law School, Lagos and was admitted to the Nigerian Bar in 1990. He started his legal career as a litigator with the Federal Ministry of Justice, Office of the Director of Civil
Litigations, Lagos. He was elected to the Federal House of Representatives of Nigeria in 1992 where he represented Enugu South Federal Constituency in the National Assembly. After serving in the House of Representatives, he moved into private legal practice in Abuja, Nigeria. He later migrated to the United States where he attended Golden Gate University School of Law for his LL.M. degree and is currently a S.J.D. candidate of the same university.

The Honorable Agbo worked as a Research Assistant and later as an associate attorney. In 2005, he founded and became principal partner of the Law Offices of Agbo & Associates. In 2010, he became a founding member of International Legal Strategists Group (Intelstrag LLP) from where he was called to serve as the Chairman of Presidential Taskforce on Power, and Special Adviser to the President on Power, Professor Bart Nnaji. In 2011, he became the Special Assistant to the Honorable Minister of Power from where he moved into private practice upon the resignation of the Minister of Power in August of 2012.

The Honorable Nick Agbo has a great passion for the intellectual development of the youth and as such has made impressive strides in this area of interest. He has donated books, computers and other learning materials to higher institutions in Enugu, such as Enugu State University of Science and Technology, Godfrey Okoye University as well as the state government, and his home community of Akwuke Awkunanaw. The Honorable Nick Agbo enjoys reading, writing, and sports and is married with children.

(Rapporteur for the Morning Session)
Adjunct Professor Dr. Sophie Clavier
Adjunct Professor of Law, Golden Gate University School of Law; Associate Professor of International Relations, San Francisco State University

Ph.D., (Doctorat d'Universite), International Public Law, University of Paris (2004)
M.A., International Relations, San Francisco State University (1993)
S.J.D., (Diplome d'Etudes Superieures), International Public Law, Université of Paris- Institut des Hautes Etudes Internationales (1986)

Dr. Sophie Clavier is Associate Professor of International Relations at SFSU and Adjunct faculty at Golden Gate University. She teaches classes in international relations, teaching courses on world law and conflict resolution, including International Law, International Organizations, and International Criminal law, and has received multiple awards for her teaching. Dr. Clavier is an expert on international affairs, especially regarding issues of war and peace, how international law applies to international trade and the World Trade Organization, the trial of terror suspects, armed conflict and the use of force, representation of countries in the mass media, relationship between U.S and France, and French domestic politics. She has spoken on these topics at numerous conferences, newspaper, television, radio and public lectures including CBS news, the SF Chronicle, the Commonwealth Club of Northern California, the International Law Society, and the World Affairs Council – Marin Chapter.

Dr. Sophie Clavier’s most recent publications include, "Objection Overruled: the Binding Nature of International Norms Prohibiting Discrimination Against Homosexual and Transgendered Individuals" in

(Moderator for the Afternoon Session)
Adjunct Professor Dr. Art Gemmel
Adjunct Professor of Law & Senior Fellow, Sompong Sucharitkul Center for Advanced International Studies, Golden Gate University School of Law

S.J.D., International Legal Studies, Golden Gate University School of Law
LL.M., Comparative and International Law, Santa Clara University School of Law
J.D., Lincoln Law School
B.A., Hunter College

After completing extensive arbitral research in China, Adjunct Professor Art Gemmell received an S.J.D. in International Legal Studies from Golden Gate University School of Law. Dr. Gemmell has studied International Law at Oxford University, Aberdeen University (Scotland), and at L’Institut International des Droits de l’Homme in Strasbourg, France. He is the recipient of a Practice Diploma in International Arbitration from the College of England and Wales and is a member of the Chartered Institute of Arbitrators. Dr. Gemmell also teaches at Santa Clara University School of Law. The J. William Fulbright Foreign Scholarship Board (FSB), Bureau of Education and Cultural Affairs of the Department of State (ECA), and the Council for International Exchange of Scholars (CIES) has approved Adjunct Professor Dr. Art Gemmell for candidacy on the Fulbright Senior Specialists Roster.

Professor Andreas Borgeas
Professor of International & Comparative Law, San Joaquin College of Law; Fulbright Alumnus

J.D., Georgetown University Law Center
M.A.L., Harvard University
B.A., Northern Arizona University

Topic: Islamic Militance and the Uighur of Kazakhstan: Recommendations for U.S. Policy

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Topic: It is Africa: Selective Prosecutions at the International Criminal Court (ICC)

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Topic: Kenya’s Encounter with the International Criminal Court

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On her return to Kenya, she was called to the Kenyan Bar after attending the Kenya School of Law. She has other work experience as a part time lecturer at the Kenya School of Law where she taught Trust Accounts until she was appointed as a High Court judge. She had her own law firm under the name Muhanji-Kasango Advocates, and practiced law in that firm as a sole proprietor with one other associate lawyer. She operated that law firm until her current appointment as a High Court judge.
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Topic: Promoting Accountability of Government Officials in Foreign Direct Investments Aimed at Curbing Transnational Corruption: The Importance of Public Participation

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Topic: Climate Change and Sustainable Development of Nigeria

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A renowned and internationally acclaimed scholar, Dr. Ogbodo has written on many areas of law and development with special emphasis on the legal and social factors hampering the development of developing countries, particularly, Nigeria. Dr. Ogbodo has also appeared in international and local media to discuss and analyze contemporary issues of national and international implications. Dr. Ogbodo’s area of expertise is developmental law, which fuels his passion for the endless inquiry of the role of both national
and international law in enhancing development in developing countries. In the course of this academic voyage, Dr. Ogbodo has on several occasions examined the roles of the government as well as the international financial institutions in enhancing the growth of the developing states. Of particular concern to Dr. Ogbodo is the paradoxical state of development of Nigeria. He is of the view that it is unacceptable in law and equity for a country blessed with such enormous human and natural resources to be at such a poor state of development. He believes that such an economic aberration must be rectified with the sustainable aid of the law.

**Professor Dr. Li Chen**

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**Topic: Antarctic Governance: From ATCM to A Permanent Antarctic Organization?**

Professor Dr. Li Chen is a professor of international law at the Law School of Fudan University in Shanghai. She is the councilor of China Private International Law Association and Shanghai Law Society. Professor Chen specializes in Private International Law, International Economic law and Antarctic governance. In recent years, she has finished two research programs sponsored by the government which focused on the reform of Chinese arbitration law and possible solutions of China’s non-market economy status under the international trade remedy laws. Professor Chen’s current research on *Antarctic governance and the U.S. –China Cooperation under the Antarctic Treaty System* sponsored by Fulbright Program is part of her research project sponsored by China National Fund of Philosophy and Social Science. Her publications include two monographs and more than 40 articles.

Professor Chen teaches Private International Law, Introduction to International Economic Law and International Commercial Arbitration to both undergraduate and graduate students at Fudan Law School. She has been awarded several governmental level prizes due to her teaching and research performance. She was the visiting scholar of Max Planck Institute for Comparative and Public international Law (Germany in 2001), and Center for Oceans Law and Policy of University of Virginia (Fulbright Visiting Research Scholar, 2012-2013).

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THE MISSING PEACE: International Law of Intrastate Relations

Dr. Michael van Walt van Praag

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Introduction

A few years ago, Professor Cherif Bassiouni, a leader in the field of international criminal law, spearheaded a collaborative research project on conflicts and justice worldwide. The team of 41 researchers found that 313 conflicts had taken place between 1945 and 2008, which resulted in between 92 and 101 million people being killed - twice as many as in the First and the Second World War put together. Of course, the figure has gone up since 2008, with the conflicts in Libya, Syria, Mali, and the ongoing ones in Afghanistan, Iraq and elsewhere. And it does not include people who died as a consequence of conflicts, which would bring the total number to between 184 and 202 million.

This number is especially significant considering the enormous effort that has been made to prevent and resolve conflicts, or wars, starting in 1944, including the founding of the United Nations, with all its agencies and the International Court of Justice and the development of a new body of international law. How might our failure to prevent or swiftly resolve these conflicts be explained?

A closer look reveals that the overwhelming majorities of armed conflicts in the past decades have been, and continue to be, intra-state as opposed to conflicts between States. Most of these conflicts relate to the power to govern a State or a portion of that State, and their underlying causes often involve the violation of human rights, including issues of linguistic, cultural or religious rights of certain groups of the population, the abuse of power by rulers and questions of political representation, land rights and uneven distribution of resources.

One type of intrastate conflict is fought over who wields power in the central government of the State, often pitting an oppositional party or rebel movement against an incumbent determined not to relinquish or share the instruments of power. Another type involves the government of a State on one side and a group within that State, be it a people, an indigenous people, a tribe, a minority or the population of a distinct region within the State (referred to hereinafter collectively as ‘population group’), on the other. Such conflicts are identity based and parties fight over the exercise of authority, for example in the political, economic, cultural or religious spheres. They fight over control over territory, environmental issues and security matters and, more broadly over autonomy and -- in some cases-- independence. Both types of conflict often also concern ownership or exploitation of natural resources and may involve powerful transnational corporations not just as stakeholders, but as actual parties to the conflict. It is this second type of conflict --that between a government and a population group—that is the focus of my remarks today, although some of the points I will make may be relevant to both types of intrastate conflict.

I am not telling you anything new of course, when I say that the current international legal system is not sufficiently equipped to address these types of conflicts. We know that, in particular, two important pillars of that system, which are based on the core concept of the sovereignty of territorial States, are detrimental to the prevention and resolution of intrastate conflicts. Namely: 1) the exclusive right of States to participate as actors in the system and 2) the prohibition of interference in the internal affairs of those States.
Much has been done and achieved that makes these principles less uncompromising and therefore opens the way to addressing intrastate conflicts more effectively. The application of aspects of international humanitarian law to non-international armed conflicts and the expansion of human rights law and the growth of instruments for its application are examples. So are the growing body of minority rights standards and the emerging indigenous peoples rights law, which are of direct relevance to the kinds of intrastate conflicts that we are concerned about here. And most recently, the adoption of the statute of the International Criminal Court and of the Responsibility to Protect (RtoP) principle, all serve to expand international law into what was once considered the exclusive jurisdiction of sovereign States.

But we are not done yet. Effective prevention and resolution of intrastate conflicts requires operating from a different paradigm as we further modify and expand international law. A paradigm where not the State and its sovereignty, but the safety and well being of individuals and population groups are central, and where States and their governments are not only viewed but also treated purely as instruments, could serve this central purpose. Operating from this paradigm demands the empowerment of individuals and population groups. It also leads to attention for accountability of non-State actors, including corporate financial actors and transnational corporations that contribute to the causes of violent conflicts or to their prolongation. It is my thoughts on the changes in international law and the nature of access to international mechanisms, including courts, that flow from this paradigm that I want to share with you today.

In the political sphere, the shift away from unipolarity seems evident. But what will emerge in its place is not clear, and a meaningful discussion of multipolarity would require agreement on the meaning of this contested term and its many ramifications. Poles have primarily been defined by military, economic and strategic power and influence, but an argument can be made that other criteria, such as cultural - and some have suggested moral ones - count as well. Similarly, the polarity discussion has largely focused on States, but as Richard Higgott and others have argued, poles do not need to be States and might well include centers of power or influence of a different kind, such as corporate and financial ones. I will not attempt here to provide an answer or a theory but will limit myself to suggest that multipolarity of any kind is likely to entail uncertainty if not instability.

In relation to States, if unipolarity encouraged the sole super power to act with less regard for international law, it is conceivable that in a multipolar world more States will be tempted to do so unless other poles have an interest and capability to prevent or censure such behavior or international law is strengthened in ways that respond to the new realities that are emerging. Either way, international law, in my opinion, will not lose its importance provided it is able to make itself relevant to the aspirations that are most critical to the people in the world, their safety and wellbeing. In order to make itself relevant in this way, international law needs to shift from a focus of protecting the State, to the extent this no longer serves us, to protecting the people from the unfettered self interest of ruling elites of States, who are often what we really should talk about when we refer to ‘States’, power, decision-making, and even interstate relations.

At any rate, I believe that we are entering a period in which the importance of the role of international law and its preeminence should not be allowed to decline provided it can retain and, more importantly, enhance its relevance. At a basic level, one of the most important functions of international law is to be in the service of the maintenance of peace among human communities, however we define, structure and label them. In other words, international law exists for an important part to prevent the outbreak of violent conflict and to manage and resolve non-violent conflict. In order to do so effectively, it needs to be equipped to address the conflicts we experience in the world today.
I have chosen to speak about the international law of intrastate relations and, in particular about intrastate conflict prevention and resolution, which is my area of specialization, because I would like to take the opportunity I have been given of addressing a distinguished international gathering such as this one to share my thoughts on this topic in the hope both, of persuading you of the usefulness of the approach I am proposing, or of provoking some discussion and perhaps the generation of new ideas, and of learning from your expertise. Judging from your backgrounds and the topics of your presentations today, I expect to learn a great deal.

It occurred to me when reading and thinking about the meaning of a multipolar world, that it is tempting to think in Machiavellian terms of grand strategic moves of major competing players on the world’s chess board - to think, therefore, only of the exercise of power and influence outside of the player’s own boundaries and functional spheres. But the conflicts we experience today are relatively local, and therefore risk being overlooked or dismissed in the grander scheme of things. Moreover, these conflicts do not directly affect most of your lives or my life, nor those of most political decision-makers, international officials, top corporate leaders and elites in a large part of the world. Some of us have of course had deeply personal experiences of such conflicts. Even so, our society and environment – certainly here—does not encourage a feeling of connectedness to, let alone co-responsibility for, the tremendous suffering and misery caused by war.

For this reason too, I felt it important to focus my remarks today on this topic. I am hoping that by doing so you will incorporate some of the issues I am addressing in your deliberations today and in your thoughts on solutions for today’s emerging multipolar world tomorrow.

The Changing Face of the Law

When it comes to conflicts within States, international law has and continues to undergo change.

International Humanitarian Law, also called the Law of War or the Law of International Armed Conflict, has progressively expanded its field of application. The narrow concept of war was broadened with the 1949 Geneva Convention’s common Article 2 and again with the 1977 Additional Protocol I which added wars of national liberation to its application. And the second Additional Protocol explicitly extends the application of essential aspects of humanitarian law to internal disturbances and tensions, going well beyond the provisions of Article 3 common to the four Geneva Conventions.

Human rights law is of course one of the most basic ways in which international law ‘involves itself’ in the area of relations between the State and its citizens. It therefore represents a narrow exception to the exclusive domestic jurisdiction of States. Since the adoption of the Universal Declaration of Human Rights, this exceptional area has been broadened to include both individual and – to a minimal extent-- collective rights. It has, moreover opened the way for individuals to be recognized as subjects of international law to a very limited degree, as holders of certain rights, and also for equally limited participation in international fora by non-governmental organizations (NGOs) representing some of their interests.

The international community has been very reluctant since the Second World War to recognize group identities and rights as well as to allow access by minorities and peoples to international organizations and mechanisms. Instead, it has opted for improving individual rights of persons belonging to minority groups.
The 1992 Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities established rudimentary standards for minority protection, based and building on the rights of individuals belonging to minorities provided for in Article 27 of the ICCPR. As the rising number of conflicts in the territory of the former Soviet Union and the former Yugoslavia in the 1990’s revealed the critical importance of the management of relations between majority and minority population groups within States, this area of the law and diplomacy received increased attention. The Organization on Security and Cooperation in Europe (OSCE), in particular, worked on improving the standard setting and actively engaged in the prevention and resolution of conflicts involving minorities within States where this would endanger international peace.

The standards relating to national minorities adopted by the OSCE’s Conference on the Human Dimension in 1990 and subsequent sets of recommendations developed under the auspices of the OSCE High Commissioner on National Minorities on language and education rights of national minorities and on their effective participation in public life, have all contributed to an understanding of the importance of recognizing the legitimate needs and interests of distinct population groups within States. The High Commissioner’s mandate and his intensive silent diplomacy to prevent the outbreak of violent conflicts involving minorities as well as the involvement of the OSCE in efforts to resolve the conflicts in Chechnya, South Ossetia, Abkhazia, Nagorno Karabakh and Transnistria, are further evidence of the recognition, at least within the OSCE area, of the importance of this issue to the maintenance of peace.

Within the UN framework, attention for the place and rights of minorities in States also increased and very limited access has been provided by the creation of the Forum on Minority Issues and by the appointment of the Independent Expert on Minority Issues.

A similar development has taken place with respect to the law regarding the rights of indigenous peoples and their relations with the States they live in. The adoption by the UN General Assembly, after decades of work in the various human rights bodies of the UN, of the Declaration on the Rights of Indigenous Peoples in 2007 was a milestone in the recognition of the distinct rights and place in international law of indigenous peoples. In contrast with the law relating to minorities, indigenous peoples are recognized as distinct groups that possess rights, and therefore have a certain collective international legal personality.

The creation of the Permanent Forum for Indigenous Issues and the appointment of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples have both created avenues for limited access of indigenous peoples’ organizations and representative bodies to the UN system. Although these mechanisms do in practice serve to draw attention to potential conflicts involving indigenous peoples, neither of them is mandated to engage in conflict prevention or resolution.

A recent development that has pushed the boundaries of international law into the sphere of domestic jurisdiction, is the creation of the International Criminal Court (ICC). The ICC’s statute provides it with jurisdiction where genocide, war crimes and crimes against humanity, as well as the crime of aggression are committed. The inclusion of these crimes under international law, especially the first three that are most relevant to the topic of this lecture, is of course not new, given the Genocide Convention and the precedents of the Nuremburg and Tokyo Tribunals and more recently the tribunals on Former Yugoslavia and Rwanda. Nevertheless, the creation, by treaty, of a permanent court with the competence to prosecute and try suspects, including government officials while in office, for crimes committed within their State is groundbreaking –despite the reaffirmation of the principle of non-intervention in the preamble. With respect to war crimes, the Rome Statute makes specific provisions for
protracted intrastate armed conflicts. It is important in this respect that the procedure for seizing the Court is not State focused only, since the prosecutor can investigate crimes *propriae motui* on the basis of information available to her or him, furnished by non-State parties and others.

And the encroachment does not end there. One of the potentially most far reaching developments has been the unanimous adoption of the Responsibility to Protect (RtoP) principle at the 2005 World Summit. Its re-affirmation in subsequent UN Security Council resolutions and, following the release of the Secretary General’s report on the matter, by the General Assembly since then has arguably made this a norm that profoundly affects the seemingly unassailable principle of non-intervention in the domestic affairs of sovereign States. It holds the promise to prevent at least the more extreme and massive assaults by a State on the people within its boundaries as well as by non-State actors where the State is incapable or unwilling to protect its people.

The Responsibility to Protect principle, as reflected in the UN World Summit Outcome Document and relevant Security Council and General Assembly resolutions, consists of the following basic principles: (1) that each State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and therefore must prevent these crimes, a task which the international community should ‘encourage and help’ States to fulfill; and (2) that the international community has the responsibility to take timely action to protect populations from those crimes, and where necessary even to intervene militarily (under Chapter VII of the Charter) where the authorities of the State in question are ‘manifestly failing to protect’ them.

This formulation is more limited than that proposed by the International Commission on Intervention and State Sovereignty (ICISS), on which the UN debates and decisions were based, but both affirm the principle that State sovereignty entails responsibility and that prevention is the most important dimension of this responsibility. The conclusions of the ICISS, however, that “where a population is suffering serious harm, as a result of internal war, insurgency, repression or State failure, and the State in question is unwilling or unable to halt or avert it, the principle of nonintervention yields to the international responsibility to protect” was narrowed by the UN member States to apply only to those mass atrocity crimes enumerated in the UN RtoP-related resolutions.

This being as it may, and although the UN reaffirmed the principles of State sovereignty and non-intervention in its resolutions, it has at the same time asserted the conditionality of these principles on the State’s ability and willingness to protect. And the International Court of Justice, for its part, has since confirmed that States have a positive legal obligation to take all measures reasonably available to them to prevent such crimes, at least in relation to genocide.

Because the RtoP norm rests and builds on existing international law, some scholars have suggested that in substance it provides little that is new. A mandate for the international community to intervene, even militarily, already existed under Chapter VII of the Charter, and they question whether the RtoP principle even affects the law on humanitarian intervention. In my view, the *explicit* articulation of the responsibility of States to protect their own populations as “a defining attribute of sovereignty and statehood” is *very significant*, and the RtoP principle arguably provides the Security Council the mandate to intervene in internal situations on humanitarian grounds alone, rather than having to show that a situation endangers international peace before it can act. This is of considerable consequence. Having said that, of course the RtoP norm is a new and still emerging norm, and its interpretation and exercise is still a subject of considerable debate.
And finally, the current negotiations for the conclusion of the Arms Trade Treaty at the UN headquarters in New York represent yet another step in restricting the actions of sovereign States in the interest of protecting people from abuse by their government authorities.

What we may be witnessing is a shift from the “persistence of the core idea, going all the way back to the Peace of Westphalia in 1648, that sovereignty means, above all else, control of a State’s territory, unfettered by external constraints,” iii to the concept of the State as an instrument at the service of its people and its sovereignty as a responsibility to the people, and specifically a responsibility to protect them. But, as I said before, we are not there yet.

The founders of the UN were very preoccupied with preventing States from waging war against each other and took far-reaching steps to restrict their freedom to this end. But, as Gareth Evans points out, “notwithstanding all the genocidal horrors inflicted during the Second World War, they showed no particular interest in the question of what constraints might be imposed on how States dealt with their own populations.” iv This may be a little harshly stated given the adoption of the Universal Declaration of Human Rights at that time, but the point is otherwise well taken. And so the incredibly tenacious belief in the principle that “nothing contained in the [UN] Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state,” v has prevailed since. Kofi Annan tried to break through the sovereignty-intervention debate by articulating a reconceptualization of sovereignty in terms of “individual sovereignty” vi and of the State as an instrument at the service of its people, a notion I am expanding on here because his articulation conspicuously leaves out groups, suggesting an assumption that all that is needed is protection of individuals.

The attention since the adoption of the UN Charter has been on individual rights and the need to protect the individual due to the political sensitivity of the issue of group rights. Yet this is something we cannot afford to continue to skirt, especially in view of the role group identity plays in intrastate conflicts. And let us not forget that the whole concept of genocide and ethnic cleansing, which are key crimes which the RtoP and the ICC were created to address, are based precisely on the recognition of the importance of protecting the group. Indeed, the very concept of ‘genocide’ developed by Raphael Lemkin and which lies at the base of the law of genocide (codified in the Genocide Convention) “captured some of the momentous quality of actions that are aimed not just at destroying individuals but whole national, racial, ethnic, or religious groups –targeting, as Lemkin put it, the essential foundations of their life as such groups.” vii

Having said that, the reference in the UN resolutions to the responsibility to protect ‘populations’ of a State, in the plural, and the UN Secretary General’s Special Adviser on the Prevention of Genocide’s characterization of genocide as an extreme form of identity-based conflict, may suggest some acknowledgement of the importance of population groups in addressing the causes of conflicts and therefore also in their prevention and resolution. Since so many intrastate conflicts, and the atrocities and suffering they bring, take place between States and peoples or minorities or between population groups within States and are, at the core, identity based, we must integrate the protection of population groups into the changes taking place in international law. Not just where this manifests as mass atrocity crimes of genocide and ethnic cleansing, but all attacks on population groups –whether cultural, religious, ethnic, linguistic, racial, or other—because of who they are. And by the same token, the responsibility of the State to protect individuals should not be limited to mass atrocity crimes either.

The concepts and principles underlying the RtoP must therefore be considered universally applicable and not only tied to the somewhat exceptional situations of ‘mass atrocity crimes’ that warrant intervention under the RtoP adopted by the UN.
Prevention

There is consensus that prevention is of fundamental importance. What this necessarily entails is addressing the root causes of conflicts before they turn violent or even before they manifest at all if possible - not waiting until the storm of mass atrocities has gathered. What prevention also entails, is addressing the causes of conflict in peace processes, in the content of peace agreements and in the implementation of those agreements. And I wish here once again to draw attention, albeit briefly, to the importance of granting access for population groups to international conflict prevention and resolution mechanisms and, more broadly, to decision-making at the international level. So let me say a couple of things in this regard.

Mediated intrastate peace efforts are increasingly focusing on autonomy and power sharing arrangements as a preferred solution to intrastate conflicts. With respect to the type of intrastate conflicts that I am focusing on today, autonomy arrangements hold the promise to satisfy both the State and the population group or groups' needs and to address the causes of conflicts without the necessity to break up the State. These arrangements can be tailor fitted and be limited or broad, transitional solutions or permanent solutions, albeit flexible.

I personally believe that well crafted autonomy arrangements that satisfy the most important needs of all parties have the potential to be excellent solutions to many intrastate conflicts. However, current practice shows that 1) the majority of intrastate peace agreements containing autonomy arrangements are not, or not well, implemented, and 2) even when they are, the autonomy arrangement's fragility surfaces when the central or the autonomous authorities assert power beyond the delicate balance inherent in such asymmetric structures. Both scenarios lead to renewed tensions and, sometimes, armed conflict.

Some of the reasons for non-implementation of peace agreements have to do with post-armed conflict institutional fragility. Of particular relevance to our topic, however, is the lack of political will to implement by relevant players on both sides, sometimes occasioned by changes of government or leadership, but also because of vested interests in the continuation of the conflict or some part of it. Non-State armed groups may want to retain the capacity to defend themselves militarily against challenges to their authority, while governments and their leaders may be reluctant to devolve power as part of an agreement.

One ingredient in the strategy for intrastate conflict prevention and for better implementation of intrastate peace agreements is making use of select UN and other fora and of international courts and tribunals to help peacefully resolve intrastate disputes.

There is today no ready way for non-State parties and States to bring a dispute between them before an international court or tribunal (let alone disputes between non-State parties). Considering the bad record of intrastate peace agreement implementation, international and regional courts could contribute to conflict prevention in a major way if their jurisdiction extended to intrastate disputes, including those relating to the interpretation and implementation of peace agreements and autonomy arrangements.

I headed an initiative by Kreedha a number of years ago to address this issue. We turned in particular to the Permanent Court of Arbitration (PCA) in the Hague to propose that it accept jurisdiction for disputes between States and non-State parties regarding the implementation of peace agreements concluded by them. As a result, today, parties to an intrastate peace agreement can include a clause in their agreement that enables each of them to refer disputes arising out of the implementation or non-implementation to the PCA. The first such case was successfully brought before the PCA by the non-state party to the 2004 North-South Sudan Comprehensive Peace Agreement with respect to the border.
demarcation in the Abyei region. This has created a useful precedent and is thus a step in the right direction, but one that needs to be institutionalized and broadened to the International Court of Justice and regional courts. Jurisdiction should, moreover, extend to cases where corporations are parties to conflicts or potential conflicts, as is increasingly the case.

This is but one example. For conflict prevention to succeed parties to potential conflicts must have avenues for dialogue, possibly facilitated, and mechanisms for resolving disputes among them. They should be encouraged to meet and dialogue and co-decide issues of mutual importance in international fora, as well as to resolve their disputes using international mechanisms, where national ones do not provide conducive means to do this. The exclusion of population groups and autonomous sub-state entities from such effective participation is a shortcoming of the international legal system.

**Paradigm Shift**

We can suggest more arguments, but what we really need to do is make a paradigm shift—or perhaps more accurately we need to complete the paradigm shift that we are in the process of undergoing—to a place where the State and its sovereignty—with all the rights and privileges and protections that entails—are no longer central. Instead, the safety and wellbeing of individuals and population groups are central, and States and their governments are not only viewed but also treated purely as instruments to serve this purpose. The corollary of such a transformation must be that the safety and wellbeing of individuals and population groups must not be pursued in any way to the detriment of the safety and wellbeing of other individuals and groups within or outside the State.

The other consequence of such a shift is that the voices of the individuals and population groups must be given a meaningful place in decision-making at the international level. For if States have the exclusive power to decide, as they have had, most worthy initiatives that would spring from attempts to operate from the new paradigm would be stifled or watered down in efforts to retain the power of States befitting the traditional conception, and therefore effectively prevent the operationalization of the new paradigm. By the same logic, in the international judicial field the change must also be acted upon, and access provided to non-State parties, carefully, in ways that will help prevent and resolve intrastate conflicts.

I have not tackled the question of the place and role of transnational corporations in intrastate conflicts and intrastate relations, not for lack of importance. Indeed their importance is only accentuated by the realization that some of these non-State actors constitute actual poles, in other words important centers of power or influence, in the emerging multipolar world. Their lack of accountability under international law for their roles in conflicts should be of concern to us all. But it is a major topic to which I cannot do justice in this lecture and which I will leave for another occasion. But here too, the non-interference principle and the exclusive rights of States—also with respect to corporations—is an impediment.

As we have seen, the law has undergone considerable change since the Charter’s adoption. But we also note that as a matter of practice the international community has intervened where the political will existed to do so. But often not before unacceptably large numbers of people had to suffer and die. Powerful States also intervene on their own or with allies, regardless of the rules of international law, in order to protect their own interests if they can get away with it. So the prohibition of intervention in a State’s domestic affairs is not as starkly black and white in practice as its predominance in law suggests, and this results in ambiguities. My point here is that we need a clear and coherent body of international law that has population groups and individuals, and their relationship to the State in which they live at the heart of the system. Not States, State interests, and State sovereignty alone. The State structure and
international system should facilitate peaceful relations among all population groups within States and across boundaries, not only among those that hold power. And democracy—though of critical importance—is not sufficient.

Anne-Marie Slaughter and William Burke-White also argue for a change in the international legal system, but do so on the basis of different but equally important arguments:

[i]he process of globalization and the emergence of new transnational threats have fundamentally changed the nature of governance and the necessary purposes of international law in the past few years. From cross-border pollution to terrorist training camps, from refugee flows to weapons proliferation, international problems have domestic roots that an interstate legal system is often powerless to address. To offer an effective response to these new challenges, the international legal system must be able to influence the domestic policies of states and harness national institutions in pursuit of global objectives.viii

Now then, in conclusion: we noted how the creators of the UN Charter and the Universal Declaration of Human Rights reframed and re-conceptualized international law with the overriding purpose to end wars among States, precipitating the development of a whole new body of law leading up to what we have today. So too, we must take what we have, preserve the achievements to date, and reframe and re-conceptualize it, this time from the standpoint of the new paradigm in which individuals and population groups are central, so as to effectively respond to today’s challenges, including that of intrastate conflicts, the ‘scourge of war’ the founders of the UN did not address.

From this reconceptualization there can emerge the body of law I call international law of intrastate relations, consisting of all that already exists in international law that relates to this subject matter (some of which I have highlighted today) as well as new law, to be created with the participation of non-State actors. I visualize a whole new field of international law, of specialization, of law school courses and text books. A field that will advance and expand once the new paradigm has caught on.

What I am proposing is not that far fetched, considering the developments I sketched earlier and the considerable shifts that are taking place as we speak. Holders of State power will resist it and its consequences for some time, but let us not forget that international law is not only theirs to make: it is the result of the interplay of State treaty making and State practice, of decisions of international courts and, to a lesser degree, national courts and of scholarship: opinio juris. And we have our role to play in all these fields.

Surely, we do not need to wait for a new catalyst in the form of yet greater mass atrocities to address the underlying problems. The death and suffering intrastate conflicts throughout the world continues to inflict is sufficient incentive. Thank you.

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iv. *Idem*

v. UN Charter Article 2(7).


GOLDEN GATE UNIVERSITY

School of Law

San Francisco, April 12, 2013

THE 23rd ANNUAL FULBRIGHT SYMPOSIUM
CONFERENCE REPORT ON
CONTROVERSIAL ISSUES OF CONTEMPORARY
INTERNATIONAL LAW IN A MULTIPOLAR WORLD

By
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Controversial issues of contemporary international law in a multipolar world attempt to discuss and analyze briefly, in their relative degrees of importance, some issues and changes that have affected and continue to affect international law and its progressive development. The structure of international law can no longer be reasonably or adequately defined or described strictly in the traditional manner delimiting only the jurisdiction of States. As we predicted elsewhere over four decades ago, it is now a fact that contemporary international law regulates in varying degrees the relationship of many other subjects of international law between themselves and their relations with States.\footnote{Chris N. Okeke, The Proliferation of New Subjects of Contemporary International Law Through Their Treaty-Making Capacities, Rotterdam University Press, 1973.} It is true that the nature and development of international law has continued to be mired in controversy.

The question whether international law is law is now overburdened. In our minds, it is a trivial dispute about the meaning of words rather than about the nature of things. This thinking is so because the facts which set international law apart from municipal law are clear and well known. The only question to be settled is whether we should observe the existing convention or ignore it which is for each State or person to settle for him or herself.

Our report is concerned with highlighting selected recent developments and actions by some States, or groups of States, as well as other actors, which have continued to thrust more challenges on the progressive development of contemporary international law. Certain behaviors on issues raise serious questions as to whether there are possible deliberate attempts by some powers to re-write international law completely? Is international law still a legal system that is intended to regulate the actions of all States and other subjects of the law, irrespective of their differences in size and capability? Or, are States unilaterally re-designing international law to suit their individual purposes?
International law has experienced profound transformations in the course of the last two centuries. Among such transformations, none has been more significant or far-reaching than the fact that international law has changed from the law of a family of nations based on Western Christendom into the law of a universal world community. This community has fundamentally changed the composition and distribution of influence which makes it even more necessary to have a legal system with sufficiently broad and deep foundations that are effective enough to commend the allegiance of the community.

To the best of our knowledge, there is lack of basis in international law whereby the Head of State of a sovereign country, or a group of Heads of States of countries, can legitimately question and condemn the Head of State of another sovereign country as illegitimate. More troubling is to blatantly order and proceed to not only support but facilitate a regime change in a Third sovereign State. We consider it appropriate to briefly re-examine the concept of sovereignty, which continues to be the cornerstone of international law.

1. Re-assessing the Concept of Sovereignty in International Law

The notion of sovereignty and its continued viability as a principle of international law cuts across many, if not all, the activities of States and other subjects of international law. The issue of the status of sovereignty as a concept in modern international law is the most controversial problem of international law in a multipolar world. It forms a starting point in the examination of other relevant important matters examined in the conference report. If sovereignty is still a viable principle, which we submit it should be, for how long, and in what form should it continue to exist?

The General Doctrine of Sovereignty

Sovereignty constitutes the fundamental basis upon which the whole structure of international law is built and stands at the present time. The problem of sovereignty of States occurs in all fields of international law. Sovereignty is often considered to be the

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3 Id.
essence of the State, at least from the point of view of law. It is interwoven with the problem of the sovereign equality of states, since there is no organic bond between sovereignty and equality in the practice of international law.

The international community exists as one in which all the sovereign states are legal persons on the basis of the principle of sovereign equality. The nature of this community does not allow the occupation of a superior position juridically by any one State so as to regulate and dictate all international relationships. Dominance, if it exists, is *de facto* not *de jure*; and even so, no state today could afford to do so successfully without cooperation with other States.

Thomas Hobbes in his famous work ‘Leviathan’ held the view that sovereignty was an essential principle of order. He believed that men need for their security, a common power to keep them in awe and to direct their actions to the common benefit.⁴ For him the person or body in whom this power resides, however it may be acquired, is the sovereign. In his view, law neither makes the sovereign nor limits its authority. It is might that makes the sovereign. Law is merely what he commands. Moreover, since the power that is the strongest clearly cannot be limited by anything outside itself, it follows that sovereignty must be absolute and illimitable.⁵ In our opinion, his view about sovereignty as he characterized it by identifying sovereignty with might instead of legal right as to remove it from the sphere of jurisprudence where it now properly belongs and transfer it to that of politics, where it can only be a source of error is a position that would in modern times be rated as totalitarianism pure and simple.

From the history of the existence of States, one can see that the bearers of sovereignty (kings, governments) etc. have shown this awareness of being within the State by exercising supreme power over its territory and its inhabitants. This power is independent of any other state.⁶ Belief in the absolute sovereignty was pronounced amongst the rulers of the

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⁵ Id.
⁶ There are two concepts which are often used alternatively in relation to sovereignty, namely independence and self-determination. Although the two are related somehow, they should be kept separate in
16th and 17th centuries. Writers of that time favored the view that sovereigns had absolute power inside a State, and absolute freedom of conduct in their relationships with one another.

A doctrine of sovereignty which has obtained greater currency is the so called Vattel7 doctrine. This doctrine maintains that international law is the body of rules governing the intercourse of independent States and that sovereignty means the supreme power of the State inside its territory and its independence from any external authority. Sometimes this is called the classical or traditional doctrine of international law. Georg Wilhelm Hegel (1870-1831) may be considered to be a great philosopher who contributed in the highest degree to the German doctrine of sovereignty. He thought absolute power in the world is incorporated in the State, a sovereign entity, which is independent of all other states. The law of nations is real law only if it emanates from treaties as an expression of the will of the State. This view of course cancels itself out as it means that a State is bound by a treaty which it concluded with another State only for a period of time depending on the will of the State. Power is for Hegel a symbol of law. The States are always free to have the recourse of war since war is the highest manifestation of sovereignty.8

Presently, there are two major contending perceptions of the concept of sovereignty. One perception is that of the United States while the other is European, represented mainly by the French approach. The United States’ view of sovereignty while holding on to the Westphalia perspective, insists on a firm belief in the country’s right to exceptionalism.9 By maintaining this position the United States assumes that its sovereignty is not and cannot be subordinate to any international law norm to which it does not explicitly adhere.10 Thus, international law is relegated to an inferior or secondary status that justifies the reasons for America’s non-ratification of important multinational treaties like the Convention on the

7 In terms of time, Vattel’s doctrines came earlier than Hegel’s.
10 Id.
Rights of the Child, the Kyoto Protocol, or the Rome Statute establishing the International Criminal Court. It also legitimizes the breaching of international law and the use of unilateral military action, including drone strikes the legality of which will be further briefly discussed in the report. All of these actions follow national policies based on sovereignty in an effort to defend it from the threat of international law.11

By contrast, the Europeans seem to be moving away from the traditional view of sovereignty and replacing it with ideas or notions of pooled sovereignty. Sovereignty is pooled because in many instances States’ legal authority over internal and external matters are transferred to the community as a whole, authorizing action through procedures not involving State vetoes.12 Unlike the United States, the French have adopted a monist approach to international law instead of the increasingly dualistic approach of the United States.

Qualified Sovereignty

We have traditionally used the notions independence and sovereignty without attempting to differentiate them; but it now seems desirable to do so by way of concluding this section. Independence and sovereignty can be seen as external and internal aspects of the State. Understandably, independence is the external and international characteristic of a fully sovereign State. It describes legally the right of the State generally to conduct its own affairs without direction, control or interference by any other authority.

Independence may be attained by any of three processes. The first is the transfer of sovereign power by the metropolitan power to a dependent territory. Examples of this are the separation of Iceland from Denmark in 1928 and that of Brazil from Portugal in 1825. The second process, where the dependent territory is not part of the metropolitan territory, is by unilateral declaration of independence, an example of which was the case of Rhodesia, now Namibia. The third process, where the territory is not ‘dependent’ but part of the same

11 Id.
entity, is by an act of secession as was the case when Norway seceded from Sweden in 1905, Biafra from Nigeria (1967-1970), Eritrea from Ethiopia, or Bangladesh from Pakistan (1970).

Within the framework of international law, a State may by voluntary action impose or accept limits upon its exercise of sovereignty, though it will be difficult to determine how far such a limitation can be accepted without appearing to have lost its independence. The Permanent Court of International Justice (PCIJ) has addressed this problem on more than one occasion. In the Wimbledon Case, the court distinguished restrictions upon sovereignty from its abandonment – i.e., loss of independence.

Now, it has become only too clear that sovereignty is an essential and indispensable concept of internal political order. Absolute sovereignty no longer serves the purpose of international relations. Those who derive the concept of subjects of international law mainly from sovereignty seem to have adopted a correct starting point, which can be used to some advantage. That advantage is guided by examining the question of other subjects of international law, so long as it is borne in mind that the extreme view of the absolute sovereignty of states as the only subjects of international law would not correspond with the admitted fact that other subjects do exist.

International law must serve a social purpose and advance the important goals of peace, equality, and freedom; it is not simply a set of principles directed towards ensuring the minimal order necessary for the co-existence of states. Our discussion of the doctrine of sovereignty, which undoubtedly forms the basis on which modern international law lies, has made it too evident that this element as it is presently understood and applied amongst the

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13 In the case of Wimbledon in 1923, the PCIJ had to decide the question whether the right of passage through the Kiel Canal was an improper limitation upon the exercise by Germany of sovereignty over its territory. Article 380 of the Treaty of Versailles provided that there should be a right of free passage for all vessels through the Kiel Canal in peace and in war. The Wimbledon was a vessel carrying arms to polish forces engaged in fighting the Russians. Germany argued that to require her to let the vessel pass through the Kiel Canal was to compromise her right as an independent and sovereign state to observe neutrality in face of the hostilities then in progress. The Court rejected this argument in the light of the clear provisions of Article 380 of the Treaty of Versailles which was a treaty of obligation accepted by Germany.

14 Id.

actors in international law is not absolute. Yet, the importance of the concept of sovereignty in international law is not in doubt. A contemporary position on the theory of sovereignty which strongly contests the correctness of reposing absolute power in any specific State, person, or body to us satisfies the modern needs of international life. Sovereignty is an important status by which a state vindicates its existence as a member of the international system. In the contemporary setting of international relations, the only way States can realize and assert their sovereignty is through active participation in the various international bodies that regulate and order the international system. All States should take seriously the building of a more modern, strong and sustainable international legal framework which they must respect as a matter of legal obligation and on the basis of the universal principle of sovereign equality of States, if international law is to be saved from destruction.

2. The Legality of Drone Strikes under International Law

There has been a heated controversy surrounding the very worrisome increase in drone strikes by certain States in recent times that call for a critical examination of the legality of such practice under international law. One of the universally accepted and fundamental principles of international law, which is based on sovereignty, relates to the question of non-interference or intervention in the internal affairs of other States. Ideally, democracies do not wage war on each other. All the attempts so far at collective security have focused on the avoidance of international armed conflict. Regrettably, very limited concern has been shown for the internal conditions within States, which are a major cause of wars. According to Professor James Crawford, “all states may claim to be ‘peace-loving’ that does not help if they do not agree as to which peace it is that they love. Any form of collective security has to have at least a basic on what it is that is to be secured: what counts as aggression, what as self defense?”

Drones have become some country’s global fighting machines. The targeted killing policy which has become the United States principal method of response to terrorism after the 9/11 attack against the country was adopted by President George W. Bush, but has now been executed extensively by the Obama administration. It is reported that as of August 2011, the number of deaths caused by drone air strikes is between 1,100 and 1,800 militants. In addition, many innocent civilians have been killed through drone air strikes.

The morality of the U.S. drone campaign, and its legality under domestic or international law, is the subject of current bitter debate. It has been alleged that the U.S. government’s targets using drone attacks have broadened beyond the scope of the 2001 authorization. The danger is that if drone strikes are not internationally regulated, and other States were to claim the same broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos. According to reports in the New York Times and elsewhere, the Obama Administration conducts so-called signature strikes, which are aimed not at specific high-level targets but at any person or people whose behavior conforms to certain suspicious patterns.

The United States may be the market leader in the use of drone technology, but there are more than 50 States with the technology that can be easily converted into an active drone arsenal. The international legal question on drone attacks is still unclear. Thus, the United Nations Organization has set up a Panel to investigate the rise in drone strikes.

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17 It has been reported that ten years ago the United States Pentagon had about 50 drones in its fleet, currently it has some 7,500. More than a third of the aircraft in the United States Air force’s fleet are now unmanned. The U.S. military reported carrying out 477 drone attacks in Afghanistan in the first 11 months of 2012, up from 294 in all of 2011. Since President Obama took office, the U.S. has executed more than 300 covert drone attacks in Pakistan, a country with which United States is not at war. The Pentagon is planning to establish a drone base in northwestern Africa. For a comprehensive discussion of the rise of the drones, SeeTime Magazine, February 11, 2013.

18 Id.

19 The criticism was leveled by Jameel Jaffer, director of the ACLU’s Center of Democracy.

20 Time Magazine note 13.

21 The spotlight is mainly on the United States, Britain, and Israel.

22 A prominent British Human Rights lawyer, Mr. Ben Emmerson leads the U.N. Panel to conduct a nine-month study on drone strikes. According to him, the panel would look at “drone strikes and other forms of remotely targeted killing,” including a wide array of so-called standoff weapons used in modern warfare, like ground-launched missiles and similar weapons fired from manned aircraft.
Even if it is likely that the form of warfare using drones has come to stay, it will be wrong and unacceptable for the international community to allow the world to fall into this precipice without an agreement between States as to the circumstances in which drone strike targeted killings are lawful, and on the safeguards necessary to protect civilians.\textsuperscript{23}

The use of drone strikes by States has been condemned at the United Nations Human Rights Council in Geneva mainly by a group of nations critical of the American use of drones, led by China, Russia and Pakistan. It has been strongly suggested that “double tap” drone attacks, involving a second missile attack on a target, could be described as war crimes because they have been reported in some instances as having killed mourners at funerals for people killed in the initial strike, or tribal elders meeting at the target sites. Right now the U.S. is the only nation that operates drones on a large scale, but that will change. Estimates have it that there are 76 other countries either developing drones or shopping for them; both Hezbollah and Hamas have flown drones already.\textsuperscript{24} The use of drone technology which is for now mostly in the military sphere will later enter civilian hands. It will be hard to say what the consequences may be.

Ultimately, it will be in the interest of states and the international community to cooperate in working together toward adopting a multinational treaty on the use of drones as a means of warfare. For the moment, we submit, based on the existing principles of international law, that it is illegal for a State to invade the territory of another State in any form without authorization and with impunity, even by using drone technology. Such acts are in clear violation of the sovereignty of the States so affected. The acts are in effect in a violation of international law.

\textsuperscript{23}Ben Emmerson, at a news conference granted to The New York Times, January 24, 2013.

\textsuperscript{24}Time Magazine op. cit.
3. AFRICOM, Its Meaning, Objective and Role in Africa

One of the most disturbing and questionable governmental moves in contemporary international relations by an advanced country after the end of the cold war, is the United States of America’s imperial agenda for Africa through its establishment of US African Command (AFRICOM). Its mission and objectives are suspicious and require some critical examination in the context of international law in regard to its effect on the sovereignty of the countries of the continent. An important linchpin of the British imperial success during its colonial extravaganza in Africa and elsewhere was prefixed on the infamous principle of “indirect rule.” As one writer rightly observed, “the huge swaths of that empire were conquered, not by British soldiers, but by soldiers recruited elsewhere in the empire”25 The usual expectation is that the dirty work of imperial control could be conducted without spilling too much of the white man’s blood. Could the mission of AFRICOM have been founded on the same British colonial imperial principle? Is a new cold war emerging and principally being waged by two major powers (United States and China) targeted at another political and economic exploitation and domination of the continent?

The idea of AFRICOM was hatched during the George W. Bush Presidency following the aftermath of the terrorist attack on the United States in 2001. But AFRICOM has been expanded during the last four years of President Obama’s administration. The situation becomes more interesting when the elaboration of the scheme is being executed by a President of African descent against his own brothers and sisters. In February 2007, the White House announced the formation of the US African Command (AFRICOM), a new unified Pentagon command center in Africa. The new formation was presented as a humanitarian mechanism in the global war on terror. But actually the real objective is the procurement and control of Africa’s oil and its global delivery systems.26 The most

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25 Dan Glazerbrook, The Imperial agenda of the US’s Africa Command marches on, Guardian.co.uk, Thursday 14 June, 2012.
26 The Western and Sub-Saharan Africa have attracted a rapid increase of the presence of US military forces. The area is projected to become as important a source of energy as the Middle East. However,
significant and growing challenge to US dominance in Africa are China’s increased trade activity and investments in the continent. Consequently, the political implication of an economically emerging Africa in close alliance with China is resulting in new cold war in which AFRICOM is designed to achieve military dominance over Africa.

While the official explanation of the objectives of AFRICOM is “to contribute to increasing security and stability in Africa-allowing African States and regional organizations to promote democracy, to expand development, to provide for their common defense, and to better serve the people,” US officials have been more straightforward in articulating the true aims of the program. It would seem that the idea of AFRICOM is that it will not be the US or European forces fighting and dying for western interests in the coming colonial war against Africa, but Africans. The US soldiers employed by AFRICOM are not there to fight, but to direct with the hope that African Union’s forces can be subordinated to a chain of command headed by AFRICOM.

The killing and removal of President Gaddafi of Libya from the world scene - an avowed and most dedicated pan-Africanist after Kwame Nkrumah of Ghana, who was the brain and major financier of the formation of African Union, was without the loss of a single US or European soldier. Whatever one thought about the man, it is clear that his vision of Africa was genuine and honest and different from the subordinate supplier of cheap labor challenge to US domination and exploitation is coming from the people of Africa-most especially in Nigeria where seventy percent of Africa’s oil is contained. The citizens of the Niger Delta region, the main seat of Nigerian oil deposits have not benefited even though they sit on top of vast natural oil and natural gas deposits. The Nigerian people’s movements are demanding self-determination and equitable sharing of oil-receipts. So are environmental and human rights activists that have documented atrocities on the part of multinational oil companies and the military in this region of Nigeria. Resistance of these groups against these activities have become proactive by attacks on pipelines and oil facilities as well as kidnapping of oil personnel which have resulted in drastic curtailment of oil production. Within six months in 2006, there were nineteen attacks on foreign oil operations and over $2.187 billion lost in oil revenues representing 32% of the country’s oil revenue generated that year.

27 Vice Admiral Robert Moeller declared in a conference in 2008 that AFRICOM was about preserving “the free flow of natural resources from Africa to the global market.” In 2010, it was published in a Foreign Policy Magazine that AFRICOM’s job is to protect American lives and promote American interests. Obviously the aim is to use military power to win back the leverage once attained through financial monopoly.

28 The disturbing increase in the number of dead American and European soldiers in Iraq and Afghanistan have reminded politicians from those countries that colonial wars in which their own soldiers are killed do not win them much popularity at home. Let the British and American soldiers be safely extricated while a proxy force of allies kills the opponents of the new regime on their behalf.
and raw materials that AFRICOM was created to maintain. With AFRICOM waxing stronger and stronger, and its strongest opponent killed, the African Union now faces the biggest choice in history: is it to become a force for true continental integration and independence, or merely a conduit for continued western Euro-American military aggression against the continent for their new bid for economic and military domination of the continent in the twenty first century?

4. The Proliferation and Politics of Permanent and Ad Hoc Tribunals and Surrender of National Jurisdictions to Foreign Judicial Authorities

In an effort to forge proper mechanisms for the settlement of international disputes amicably in international relations, there has been a proliferation of international courts and tribunals. This trend has become greater with a seeming increase in conflicts and hostilities across the world at national, international and transnational levels. In particular, it is important to find the best approach to try war criminals that perpetuate heinous crimes against humanity for the purpose of justice. In order to achieve the main objective, States in certain circumstances must necessarily have to surrender national criminal jurisdictions to foreign judicial authorities.

The politics and patterns of these courts and tribunals differ according to the regions of their locations. The term justice used in this context must be seen in a multiple sense of meanings: as equality in the distribution or application of rights between strong and weak, rich and poor, man and woman, and black and white.

On top of these Courts is the International Court of Justice at The Hague. Under the Court’s Statute, it deals with virtually all questions of law and the interpretation of international laws and legal instruments which are submitted to it by States that are parties to the disputes involved. All the International Courts and Tribunals29 without exception are created by political bodies and processes. Political interests of States and international organizations concerned are taken into consideration in the formation and establishment of

29 Examples are the International Criminal Tribunals for the Former Yugoslavia, Iraq, Rwanda, Cambodia, Sierra Leone, and International Criminal Court created by the Rome Statute.
the bodies. The establishment by treaty of the International Criminal Court (ICC) as a permanent court with the authority to prosecute and try war crimes and other such atrocities was probably one of the most significant developments in the field of international criminal law. The Court at its inception was popularly hailed as a very progressive step in the right direction.

However, of special interest in contemporary times would be how to make a plausible explanation as to why it appears that the majority of the international war crimes tribunals, including the ICC, have recorded most, if not all, indictments of war criminals and other alleged offenders only from the least powerful nations of the world, particularly Africans? Gladly, two of the papers, particularly the paper by Mr. Eustace Azubuike, which are slated for presentation at this conference discuss the International Criminal Court as it relates to the prosecution of mainly Africans. The second paper by The Honorable Lady Justice Mary Kasango will discuss Kenya’s encounter with the International Criminal Court.

5. State Recognition and Admission to the United Nations: The Palestine Case

The question of recognition in international law is still mired in controversy and uncertainty, and presents an area of complexity in the current international law regime. Notwithstanding the fact that the Montevideo Convention on the Rights and Duties of States has outlined the requirements of Statehood, and perhaps by implication, the conditions for recognition, politics has continued to have a great influence on the recognition in international law. Statehood, recognition, and admission to the United Nations are all interconnected, since it is only an entity that qualifies as a State that can be admitted to the United Nations. In addition to possessing the characteristics of a State, such an entity must be recognized, at least by a great number of other States for it to seek admission to the United Nations. But, it must be recognized that there is constant inter-play of international law, international politics and ideology. The Palestinian case presents a good example of the controversy and politics surrounding matters of Statehood.
The Montevideo Convention outlines the qualifications of statehood to be: 1) permanent population, 2) defined territory, 3) government, and 3) capacity to enter into relations with other states. Traditionally, there are two theories of recognition in international law. According to the first, the Declarative Theory, which states that once a state meets the conditions for statehood, that state should earn recognition from other states. By virtue of this postulate, a state may be in existence irrespective of whether or not other states recognize its existence. This is because recognition is merely declaratory of an already existing statehood. The second theory is the Constitutive Theory, the postulate of which is that an entity acquires statehood when it is recognized by other states. In other words, recognition is indispensable to the acquisition of statehood. An entity is not a state if it is not recognized by other states.

When the Montevideo Convention criteria for statehood are applied to Palestine, it would appear that Palestine meets each of the four conditions. However, arguments have also been proffered to the contrary, that is, that Palestine does not meet the criteria. On the issue of recognition, in November 1988, Palestine declared its independence, and currently, not less than 114 states have recognized the newly proclaimed state of Palestine and its government- the Palestine Liberation Organization (PLO). The United States refused to recognize the declaration of independence by Palestine, and to buttress its position, moved to close down the PLO mission at UN headquarters in New York. The UN has not really helped matters affecting the real status of Palestine. It seems to be taking positions that are anything but consistent. While Palestine has not been officially admitted to the UN in accordance with Article 4 of the UN Charter, the General Assembly has accorded it an Observer status, with many of the benefits accruing to States. Thus, the PLO has participated in deliberations and conferences of the UN.

We have long held the view that the question of the legal status of unrecognized states in international law touches on a wide range of interesting jurisprudential issues
connected with the theory and practice of contemporary international law. 30 A State may exist without being recognized, and if it does exist, in fact, then, whether or not it has been formally recognized by other states, has a right to be treated by them as a State. The act of recognition expresses the intention, on the part of the recognizing State, to observe in regard to the new state all rights and duties as prescribed by international law.

**UNESCO Admits Palestine**

In late October 2011, the biennial General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) voted to admit Palestine as a member state of the organization. Under the Article II(2) of the UNESCO Constitution, 31 “states not members of the United Nations Organization may be admitted to membership of the Organization, upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference.” The vote in the General Conference was 107 in favor, 14 opposed, with 52 abstentions. Under Article IV(C) 8(a) of UNESCO’s Constitution, abstentions do not count as votes, so the vote satisfied the requirement for admission. The General Conference’s vote triggered an immediate suspension of U.S. payments to UNESCO.32 Under U.S. Public Law 103 – 236, the United States shall not make any voluntary or assessed contribution to any affiliated organization of the UN which grants full membership as a State to any organization or group that does not have the internationally recognized attributes of statehood, during the period in which such membership is effective. However, the correctness of the US position on the statehood status of Palestine in international law becomes doubtful as has been pointed out earlier. Both the Director-General of UNESCO, Irina Bokova, and the Secretary-General of the United Nations Organization, Ban-Ki-moon, expressed concern about the potential challenges that may arise.

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30 Chris N. Okeke, infra note 2. In discussing the personality of unrecognized states in international law, with particular reference to Rhodesia as an illustration at the time, we concluded that so far international law has not settled enough as to define the scope of contacts which states are permitted to engage in their relationships with unrecognized states and governments. It was also our submission, based on extensive research and analysis, that even unrecognized states are states under international law and enjoy some level of international legal personality.

31 Available at http://unesdoc.unesco.org/images/0012/001255/125590e.pdf.

32 The United States of America pays 22 percent of UNESCO’s budget, which was projected at $65 million doe 2012-2013. Provisions of U.S. Law adopted in the 1990s prohibit paying appropriated funds to the United Nations or any specialized agency that admits Palestine to full membership.
to the universality and financial stability of the Organization. Ban-Ki-moon, in particular, warned of the adverse implications for other UN agencies of loosing U.S. financial support should Palestine gain full membership.

6. Brief Comments on Some Selected Burning and Current Issues Challenging International Law and World Peace

Before concluding our report discussing issues and activities that continue to impact international law and its progressive development, we have decided to call attention to some very recent happenings that are of interest to international peace and security. A number of them are positive, while some are negative and worrisome.

Korean Peninsular Crisis

Let us start with the negative side - the ugly development in the Korean Peninsular where North Korea is on the brink of war with South Korea. So far, North Korea has carried out a third nuclear test in defiance of the United Nations warnings. The latest nuclear test led to an imposition of fresh harsh sanctions by the UN. Also, the North Korean move has prompted criticism from an important ally, China. It equally attracted condemnation from some other parts of the world. North Korea has threatened attacks almost daily since it was sanctioned by the UN.

In response to the NK third nuclear test, the US-South Korean military carried out military exercises as well as flying US B-2 bomber sorties over South Korea during military exercises which angered the North Korean Government even further. Already, some major powers, particularly, Russia, United Kingdom and China have been appealing for maximum caution and restraint on all the parties concerned to be measured in their rhetoric and actions.

There is a consensus from a number of outspoken States that there is great need to prevent any conflict in the area. Such countries as the United Kingdom of England and Northern Ireland, Russia and lately China have voiced their caution on the international consequence of any outbreak of war in the region.
While sounding a note of caution is necessary, it is more important to address and tackle the main root causes of the conflicts between the parties involved before things become complicated.

**The International Criminal Court (ICC)**

Another recent development that has pushed the framework of international criminal law to an appreciable level is the application of the Rome Statute of the International Criminal Court to Illegal Natural Resources Exploitation. Contemporary African conflicts, such as the case of the Democratic Republic of the Congo, have become increasingly distinguishable by the tight connection between war and various forms of illegal natural resource exploitation, particularly targeting valuable mineral resources. Illegally exploited natural resources have become one of the greatest threats to regional peace and human security on the continent of Africa.

One must note the unprecedented recent shift in the conduct of the United Nations Security Council with regard to the resolution of international conflicts. Not long ago, the United Nations Security Council authorized the use of force by its soldiers when it sent an intervention brigade to the Congo with an unprecedented mandate to take military action against rebel groups to help bring peace to the country’s conflict–wrecked eastern part of the country. The authorization of the intervention brigade is unprecedented in UN peacekeeping history because of its offensive mandate. The resolution was sponsored by France, the United States and Togo. By that resolution, the brigade was given a mandate to operate “in a robust, highly mobile and versatile manner” to ensure that armed groups cannot seriously threaten government authority or the security of the civilians.

**The Arms Trade Treaty**

Another encouraging and very positive development in the international system at the moment is the work of the United Nations with regard to the regulation of arms trade. The regulation of arms trade and the reduction in arms sales will certainly ease global
tensions. There has been a landslide vote at the United Nations General Assembly in adopting the important international legal instrument.

ACKNOWLEDGEMENTS AND GRATITUDE

I have the honor to express my gratitude to Dean Rachel Van Cleave for her kind opening statement, Professor Jon Sylvester, Associate Dean for Graduate Law Programs for his thoughtful welcoming remarks and for opening the 23rd Annual Fulbright Symposium. It is with a great feeling of pride and gratitude that I formally welcome into our midst our Special Guest of Honor, Keynote Speaker and good friend, Professor Dr. Michael van Walt van Praag. I offer him special thanks for taking time off from his very busy schedule to speak at our event. I thank him for his very erudite presentation.

The Sompong Sucharitkul Center for Advanced International Legal Studies has kept alive as much as possible, the staging of very successful and high standard Annual Fulbright Symposia for the past twenty three years. We have succeeded in attracting notable world renowned jurists to GGU. Some of them served as keynote speakers, while Fulbright and other local and foreign scholars handled different important international legal topics. For the record, the previous keynote speakers I invited during my tenure so far as the Director of the Center include: His Excellency, former ICJ Judge Abdul G. Koroma (2008), Distinguished Professor Dr. Sompong Sucharitkul (2009), Professor Michael K. Ntumy (2010), Sir Arnold K. Amet (2011), Professor Kofele-Kale (2012) and Professor Michael van Walt van Praag (2013). He has joined this impressive list of international jurists and scholars who have come to share their wealth of international law experiences with us. Each brought the full weight of their great intellectual and judicial aura to Golden Gate University School of Law.

The Chair of the morning session needs no formal introduction. He has been a great pillar and strong supporter of our international programs starting from when he was the Dean of the Law School. I refer to none other than the Golden Gate University School of
Law revered and respected Dean Emeritus and Professor Peter Keane. Professor Keane is an acknowledged national and international commentator on current national and international legal issues. He will be moderating this morning’s session where qualified international law scholars and their colleagues on other related fields will present their individual papers. I thank all the presenters very much and hope for a future of continued support for the development of the programs of the Department and the Center.

Golden Gate University School of Law has worked very hard for the past twenty three years in its effort to disseminate the principles of international law among legal scholars of all nationalities. Our main task lies and still remains in the internationalization of the concept of legal education in the United States of America.

Among those who have made great and significant contribution to the success of the work of the Center and growth of our international law programs are: Dr Sophie Clavier, Dr. Art Gemmell, Dr. Remigius Chibueze, Dr. Zakia Afrin, Dr. Hamed Adibnatanzi, and Professor Warren Small. They have devoted their time to upholding the International Rule of Law through their dedicated teaching and guidance of the international law students at GGU. Each of the professors plays a key role every year during this annual Fulbright ritual, serving either as presenters, session moderators, rapporteurs or in some other vital capacity to make the meeting both successful and memorable. This fact is evidenced in this year’s program. I thank Professor Zakia Afrin specially for accepting to serve as the Rapporteur for the morning session. I also thank Professor Sophie Clavier for agreeing to handle the afternoon session as the Rapporteur.

The organization of this year’s Symposium could not have been possible without the strong support of the administrative staff of the Graduate Law Programs comprised of Margaret Alice Greene, Director of Graduate Law Programs; John Pluebell, Assistant Director, International Student & Scholar Services, Natascha Fastabend, Senior Program Coordinator, Brad Lai, Program Coordinator, as well as Kathryn Kaminski, Office Assistant. Every invited participant must have by now met Mr. Brad Lai in person. He has worked very
tirelessly to ensure that he was in constant touch with all the invited speakers and conference attendees, informing them on the details of our needs to organize the conference.

We also enjoyed the able assistance of a team of many GGU international law students who volunteered to make sure that the conference is successful. They were drawn mainly from the members of the International Law Student Association as well as from our own pool of LL.M. and S.J.D. students. In a special way, I remain heavily indebted to the student editors of the Annual Survey of International and Comparative Law led by Ms. Oraneet Orevi. These students have been of tremendous help to us with the substantial editorial work of the accepted articles for the production of the 19th volume of the Annual Survey of International and Comparative Law Journal which is in the process of production at this point in time.

This Conference is staged by the Sompong Sucharitkul Center for Advanced International Studies and Golden Gate University School of Law. In this endeavor, we enjoyed the cooperation of the ABA Section of International Law and Golden Gate University International Law Student Association, as well as other co-sponsors. We heartily express our debt of gratitude to all of them.

I feel very happy that the culture of integrating theory with practice through the invitation of Consuls General, Consuls and Honorary Consuls of foreign States in California to our annual academic discussions is steadily yielding a bounty harvest. In our midst today we have such eight distinguished personalities, namely: The Honorable Ambassador & General Consul General of the Republic of Kenya to California, Dr. Wenwa Akinyi Odinga Oranga, accompanied by the Honorable Deputy Consul of Kenya, Mr. Kevin Muiruri; The Honorable Consul General of the Republic of Indonesia, Sinambela Asianto; The Honorary Consul General of Namibia, Pastor Moises Guerrero; The Honorable Deputy Consul General of the Philippines, Jamie Ramon Ascalon; The Honorable Consul General Ambassador of Greece, Ioanna Andreas; The Honorable Deputy Consul General of Germany, Bernhard Abels; The Honorable Consul General of Chile, Ortega Klose Rolando.
Golden Gate University gratefully appreciates your presence and the invaluable input you make to our discussions at these intellectual conferences, particularly as they officially have to deal with the practical implementation of some of the many international law principles and norms in the execution of your daily duties.

**CLOSING OBSERVATIONS**

We have come, as it seems, full circle. I have deliberately generated many controversial but important issues of international law relevance in this report. The intention is to provoke healthy discussions on the reinterpretation of international law in a multipolar world. Where is international law headed in the future? Regrettably, I cannot confirm or give any definitive answer one way or another with some degree of certainty.

However, I feel convinced that new international law derives its sources from areas other than the traditional sources. I strongly believe that new international law raises new subjects other than States to the legal system- a view that I have consistently held for about thirty-eight years, when the topic formed the central theme of my doctoral dissertation. I see an international lawyer as a conscious social actor. His task just like that of every lawyer is to contribute to reaching acceptable solutions to social problems. A lawyer is essentially a social engineer, a mediator between disputing parties and a manager of disagreements.

I continue to hold the opinion that the prospects for the progressive development of international law in the world lie in those who teach, adjudicate, execute, research, and publish in the area. They play a very critical and useful role. There is still much reliance by many jurists on academics and commentators who greatly influence the development of international law. So too, do those who serve in a representative capacity of their countries as ambassadors and consular officers influence the development of international law.

The forces which shape international law, like the forces which shape international relations, are many and complex. In spite of the criticisms of the possibility of law, there is no alternative to despair. An attitude of nonchalance and disobedience for international law apparent from the conduct and statements of some States will not terminate international
law from being in existence. The economies, societies and cultures of different nations of the world have become increasingly interconnected. These must as of necessity be regulated and serviced by international law.

All national and international law societies should re-double their efforts in promoting the study and dissemination of principles of international law. In a like manner, I strongly urge all regional international law associations or groups to double their efforts in promoting the study and progressive development of the law of contemporary international law as it affects the world’s huge population, enormous resources and resulting ethnic warfare and slaughter.

When I was considering which topics and speakers to accept for this symposium, it occurred to me to think of the interconnectedness of each subject matter with any other(s), bearing in mind that even where two topics seem to be similar, the presenters are likely to offer different approaches and emphasis, thereby giving room for a healthy exchange of ideas among the assemblage of fine minds.

I hope that the convergence of different topics in the program which boarder on human rights and humanitarian law, criminal law, as well as hard core international law doctrines and principles will cross-pollinate each other in such a way that we come out of this symposium richer and wiser in understanding different aspects of the international legal system and its direction in a multipolar world.

Sovereignty is an important status by which a State vindicates its existence as a member of the international system. To date, no better legal doctrine has emerged to take its place. In the contemporary setting of international relations, the only way most States can realize and assert their sovereignty is through active participation in the various regimes and bodies that regulate and order the international system. Ultimately, connection to the rest of the world and the political ability to be an effective actor within it are more important than any tangible benefits arising from compliance with international law. The right time has come for all States of the world to take seriously the building of a more modern, strong and
sustainable international legal framework which they must respect as a matter of legal obligation and on the basis of the universal principle of sovereign equality of States, if international law is to be saved from imminent death.

C. Nwachukwu OKEKE

San Francisco, April 12, 2013.
The Grounds of Interconnection between International Environmental and International Economic Law in the Context of Russian Concept of International Law

Dr. Daria Boklan

Associate Professor, Russian Academy for Foreign Trade
The grounds of interconnection between international environmental and international economic law in the context of Russian concept of international law

By Dr. Daria Boklan

Abstract

Today under the conditions of still continuing global economic crisis, many States are trying to protect their economic sovereignty. Rather often they firstly sacrifice environmental interests. Interconnection between international environmental and international economic law (as elements of the international legal system) is essential both for the law-making and for the law-enforcement process. Natural resources are one of the main economic values of any State. Illegal offence against natural resources of the State should be qualified as a violation of the territorial integrity of that State. Adverse impact upon any State’s environment should be considered as the offence against its sovereignty. On the other hand, all States have equal rights to their own economic development.

The problem at issue is particularly topical for Russia. On the one hand, natural resource sectors of the Russian economy still remain to be the most attractive for foreign investors. On the other hand, the ecosystems themselves, located in the territory of Russia are of a great value both for Russia and for the global community. The concept of sustainable development is in the focus of interconnection between international environmental and international economic law, which influences international legal regulation of international trade, investment, and financial relations.

In particular, multilateral environmental agreements (hereinafter MEA) and multilateral agreements of World Trade Organization (hereinafter WTO) often regulate similar relations, between one and the same subjects. Norms of certain multilateral agreements within the WTO stipulate environmental measures. At the same time, nearly 20 MEA contain provisions, which influence international trade and investment issues. This argument is evidenced by the decisions of the Dispute Settlement Body of the WTO.
From the economic point of view, the more efficient activity is such, which is not bound with the risk to cause transboundary environmental harm or at least bound with less environmental harm. States are obliged to guarantee that the economic activity under their jurisdiction and control should be executed with due consideration of other States’ interests and those of the global community on issues of environmental protection and prevention of transboundary harm. The problem of environmental protection of transboundary harm, caused by economic activity, which is not prohibited by international law, is a global problem. Most of the States executing international economic relations cause transboundary environmental harm to other States and suffer transboundary pollution themselves.

With the help of the interconnection between international environmental and international economic law, the regulation of international relations arising from causing transboundary environmental harm by economic activity and also its minimizing and most importantly its prevention, should become more efficient.
The grounds of interaction between international environmental and international economic law in the context of Russian concept of international law

Daria Boklan (PHD (Law), Associate Professor of the Russian Academy for Foreign Trade, Moscow, Russia)

Environmental protection is not only social, but also an economic objective

- Volume of fish consumption is 17 kilos for one person per year (Official FAO cite. http://www.fao.org/fishery/topic/2888/ru)
- Population decline of blue-finned and red tuna since 1970 is 80%
- 630 million tons of hazardous wastes is produced every year (Official cite of Basel Convention http://www.basel.int)

International legal regulation is one of the most efficient means to overcome a problem of exhaustion of natural resources

- International legal regulation system is most integral system of regulation of global connections.
- International legal regulation is more stable and less dependent on political disturbances.
- International legal regulation has clear content and binding force.
According to Russian legal doctrine the elements of the international legal mechanism are:

- Legal rule
- Legal relation
- Enforcement of legal rule

According to Russian concepts special parts of International law include:

- International law of human rights
- Law of international organizations
- Law of foreign relations
- Law of international treaties
- International marine law
- International law of the air
- International law of outer space
- International environmental law
- International economic law
- Law of peaceful setting of international disputes
- Law of international security
- International humanitarian law
- Law of international responsibility
- International criminal law

Rule-making of international environmental law and international economic law should be primarily aimed at:

- Environmental protection
- Economic development
Principle of state sovereignty over national resources is a special principle of international environmental and international economic law

- All states have a right to free and independent development of the economy and exploitation of natural resources.
- This freedom is limited by obligation not to cause harm to the environment and economic development of other states.
- Third countries can have right of resource development under condition of consent of the state under sovereignty of which these natural resources are subjected.

There are 17 millions square km of virgin ecosystems (tundra, forest-tundra, boreal forest, peat bogs) on the territory of Russia.

Russia has the biggest fresh water capacity in the world (20%)
Concept of sustainable development is the basic element of interaction of international environmental law and international economic law.

- Population decline of sturgeon in the Caspian Sea is from 114.7 million (1983) to 42.1 million (2012).

**WTO and sustainable development**

- Marrakesh Agreement establishing WTO
- General Agreement on Tariffs and Trade
- Agreement on Technical Barriers to Trade
- Agreement on Sanitary and Phytosanitary Measures
- Agreement on Agriculture
- Agreement on Subsidies and Countervailing Measures
- Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods
- General Agreement on Trade in Services

**Settlement of Disputes in WTO**

- United States – import prohibition of certain shrimp and shrimp products

[Image: http://www.saveplanet.su]
Multilateral environmental agreements, containing trade restrictions

- Framework Convention on Climate Change (UNFCCC), New York, 1992.

Convention on Biological Diversity (CBD), Nairobi, 1992.

Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES)


Bilateral level (USA-Russia)

- Agreement on trade relations between USSR and USA (1990)

Liability for transboundary harm is stipulated by international treaties

- Convention on Third Party Liability in the Field of Nuclear Energy of 29th July (1960)
- Vienna Convention on Civil Liability for Nuclear Damage (1963)
- International Convention on Civil Liability for Oil Pollution Damage (1969)
- Convention on the Transboundary Effects of Industrial Accidents (1992)

Prevention of transboundary harm, caused by economic activity is a global problem
Conclusions

- In terms of interaction of international environmental law and international economy law the main goal is to develop economic relations on the one hand and to protect the environment on the other hand.
- Interaction of international environmental law and international economy law not only creates conflict, but helps more efficient and comprehensive regulation of international relations.
- Interaction of international environmental law and international economy law as elements of international law system is necessary for law-making and law-enforcement process.

- We can see the lack of theoretical and practical experience of states in the sphere of enforcement of international legal mechanisms for the prevention of transboundary harm caused by economic activity and liability for such harm.
- International legal mechanisms can be efficient enough on the condition of conclusion of a universal multilateral international treaty based on the principle of prevention of transboundary harm caused by economic activity.
- International legal liability for transboundary harm caused by economic activity is one of the most advanced instruments for protection of environment and economic development at one and the same time.
Contemporary Constitutional Changes in a Multipolar World: Any Role for International Law?

Assistant Professor Kateřina Uhliřová

Assistant Professor of International Public Law, Department of International and European Law, Faculty of Law, Masaryk University, Czech Republic
CONTEMPORARY CONSTITUTIONAL CHANGES IN A MULTIPOLAR WORLD:
ANY ROLE FOR INTERNATIONAL LAW?

By Assistant Professor Kateřina Uhlířová

Abstract

This paper examines several recent attempts that various states have made to support the rule of law by importing international law into domestic law. More specifically, this paper focuses on a new wave of introducing references to international law in national constitutions.

Previously, it was the region of the former Soviet republics and Central and Eastern Europe, which has become “a major laboratory of constitutional works”. More recently, we can witness important constitutional changes in various African (South Africa, Kenya) and Arab (Tunisia, Egypt, Libya) countries. Constitutional changes often occur in states that are in transition after a violent conflict or an authoritarian past or states that are in a time of political or economic transition not necessarily accompanied by violent conflict.

In any case, however, these situations present unique glimpses into “constitutional moments” that often elevate the role of international law (notably international human rights law and international criminal law) in a domestic legal order. The aim of this paper is to examine often still undergoing constitution-drafting processes in some of these countries and to determine factors which play an important distinct role in the “penetration” of international law into national constitutions.

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Is Existing International Environmental Law Adequate in Addressing the Challenge of Global Climate Change?

The Honorable Senior Judicial Magistrate Farjana Yesmin

Senior Judicial Magistrate, Mymensingh, Dhaka, Bangladesh; Fellow, 2012-2013 Golden Gate University School of Law/International Women Judges Graduate Fellowship Program (LL.M. in Environmental Law)
Human beings are just one component of the wider natural systems (the environment) that combine to create and sustain life on Earth. These natural systems are the very infrastructure and resources of human civilization. Global climate change poses the most immediate and far reaching threat to their functioning, and already adversely affects the environment, individuals and populations around the world through: increased incidents and intensity of natural disasters such as hurricanes; tornados; flooding; enormous changes in precipitation patterns and; massive alterations of habitats and ecosystems such as coral reefs, mangroves and salt marches.

As we all have the right to live in a safe, secure, healthy, clean and sustainable environment if such rights are affected by human induced activities that result in climate change, it will negatively impact on a range of other fundamental human rights including among others: the right to self-determination; the right to take part in cultural life; the right to use and enjoy property; the right to social security; the right to an adequate standard of living satisfactory for health and well-being; the right to clean, potable or fresh water; the right to the highest attainable standard of physical and mental health; the right to development and even; the right to life itself.

The reality is international environmental law does not force any legal obligation on present generations to take the instant steps needed to protect future generations from the risks of climate change. The current rules of the 1992 UN Framework Convention on Climate Change and the 1997 Kyoto Protocol, the only treaties in force that address climate change explicitly, are not adequate to mitigate climate change. General principles of customary international environmental law are unlikely to provide a basis for effective legal action against States that refuse to cooperate in addressing climate change.
The problem is in establishing that unrestrained GHG emissions are, in fact, a violation of existing international law should be solved immediately otherwise the whole world community will face a dangerous situation which we can’t even imagine. Most importantly, new mechanisms with new laws are an immediate demand of the international community.
Global Climate Change?

- Climate is changing.
- Earth is warming up.
- Overwhelming scientific consensus that it is happening, and human induced.
- Chances for ecosystems to adapt naturally are diminishing.
- Greatest threats facing the planet.

Earth is warmer today around the world than at any time during the past 1000 years, and the warmest years of the previous century have occurred within the past decade.
Effects of Global Climate Change

- Extreme weather
- Volcanoes/Earthquakes
- Acidification
- Oxygen depletion
- Sea level rise
- Ocean temperature rise
- Food supply
- Migration and conflict

Sea Level Rise
(One of the most significant impacts of Global Warming)

- As water gets warmer, it takes up more space. Each drop of water only expands by a little bit, but when you multiply this expansion over the entire depth of the ocean, it all adds up and causes sea levels to rise. Sea levels are also rising because melting glaciers and ice sheets are adding more water to the oceans.
- Current sea-level rise potentially impacts human populations (e.g., those living in coastal regions and on islands) and the natural environment.

Main factors contributed to observed sea level rise:

- The first is thermal expansion: as ocean water warms, it expands.
- The second is from the contribution of land-based ice due to increased melting.
Evidence of Sea Level Rise
- Over the past 100 years, the average sea level around the world rose by nearly 7 inches.
- If people keep adding greenhouse gases to the atmosphere, the average sea level around the world by the end of this century (the year 2099) could be anywhere from 7 to 23 inches higher than it was in 1990.
- Sea levels could rise even more if the big ice sheets in Greenland and Antarctica melt faster.

Sea Level Rise and its Impact on Small Island and Low Lying Developing Countries
- Although climate change is a global phenomenon, its consequences will not be evenly distributed.
- Developing countries and small island nations in particular will be the first and hardest hit.
- For small coastal states and particularly small island states in the Caribbean, Pacific, and Indian oceans (Holland, Belgium, Congo, Bangladesh, Maldives, Seychelles, Virgin Islands, Bermuda), the dangers of climate change are immediate and threaten their very existence.

Why?
- Small size
- Remoteness
- Geographical dispersion
- Vulnerability to natural disasters
- Fragile ecosystems
- Low Lying coasts
- Constraints on transportation and communication and for many limited freshwater supply, mean that they are extremely vulnerable to even the smallest changes to the global climate.
Bangladesh

- Bangladesh is a disaster prone country.
- Bangladesh’s geographical vulnerability lies in the fact that it is an exceedingly flat, low lying, alluvial plain covered by over 230 rivers and rivulets with approximately 710 kilometers of exposed coastline along the Bay of Bengal.
- As a result of its geography, Bangladesh frequently suffers from devastating floods, cyclones and storm surges, tornadoes, riverbank erosion and drought as well as constituting a very high-risk location for devastating seismic activity.
- Sea level rise will cause river bank erosion, salinity intrusion, flood, damage to infrastructures, crop failure, destruction of fisheries, loss of biodiversity etc. along this coast.
- World Bank (2000) projections showed 10 cm, 25 cm and 1 m rise in sea level by 2020, 2050 and 2100 which will affect 2%, 4% and 17.3% of the total land mass respectively.

Maldives
Maldives

As the flattest country on earth, the Republic of Maldives is extremely vulnerable to rising sea levels and faces the very real possibility that the majority of its land area will be underwater by the end of this century. Sea level rise is likely to worsen existing environmental stresses in the Maldives, such as periodic flooding from storm surges, and a scarcity of freshwater for drinking and other purposes.

Given mid-level scenarios for global warming emissions, the Maldives is projected to experience sea level rise on the order of 1.5 feet (half a meter)—and to lose some 77 percent of its land area—by around the year 2100. If sea level were instead to rise by 3 feet (1 meter), the Maldives could be almost completely inundated by about 2085.

The Maldivian government has identified many potential strategies for adapting to rising seas, but is also considering relocating its people to a new homeland.

More than a third of the world's people live within 62 miles of a shoreline. Over the coming decades, as sea levels rise, climate change experts predict that many of the world's largest cities, including Miami and New York, will be increasingly vulnerable to coastal flooding.

But Bangladeshis don't have to wait decades for a preview of a future transformed by rising seas. From their vantage point on the Bay of Bengal, they are already facing what it's like to live in an overpopulated and climate-changed world. Water tables are falling, coastal aquifers overdrawn, river flooding become more destructive, and cyclones batter their coast with increasing intensity—all changes associated with disruptions in the global climate. (National Geographic Magazine, April 2013 Issue)

Existing International Environmental Law

The current rules of the 1992 UN Framework Convention on Climate Change and

The 1997 Kyoto Protocol, the only treaties in force that address climate change explicitly.
Is it Adequate?

Existing international environmental law is not adequate to address the challenges of global climate change. First, international environmental law does not impose any legal obligation on present generations to take the immediate steps needed to protect future generations from the risks of climate change.

Second, general principles of customary international environmental law are unlikely to provide a basis for effective legal action against States that refuse to cooperate in addressing climate change.

Third, general principles of environmental law derived from the world’s different legal systems and addressed to climate are likely to be viewed as too exceptional or inchoate to serve either present or future generations effectively against the hazards of climate change.

Finally, Kyoto Protocol and UN Framework Convention only bind.

Present Scenario

- At the 2012 Doha Climate Change talks, parties to the Kyoto Protocol agreed to a second commitment period of an amendment to the Protocol that takes the form of an amendment to the Protocol. The 37 countries with binding targets in the second commitment period are Australia, China, European Union, Japan, Russia, Ukraine, Belarus, Croatia, Iceland, Kazakhstan, Norway, Switzerland, and Ukraine.

- However, a last minute objection at the conference by Russia, Ukraine, Belarus, and Kazakhstan indicates that they will likely withdraw from the Protocol or not ratify the Protocol amendment. Collectively, these countries will reduce their emissions 18% below their 1990 level between 2013-2020.

- The targets may be strengthened by 2014. The emissions targets specified in the second commitment period will apply to about 35% of greenhouse gases emissions and cover about 19% of the world’s population.

Frustration

- The U.S. signed the Protocol, but did not ratify it.

- The Canadian government announced its withdrawal from the Kyoto Protocol on 12 December 2011, effective 15 December 2012.
Immediate Step

- The problem is in establishing that unrestrained GHG emissions are, in fact, a violation of existing international law and should be solved immediately otherwise the whole world community will face a dangerous situation which we can’t even imagine.
- New mechanisms with new laws are just the immediate demand of international community.

THANK YOU FOR YOUR ATTENTION!!

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Attributing Responsibility under International Humanitarian Law to Organized Armed Opposition Groups

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ATTRIBUTING RESPONSIBILITY UNDER INTERNATIONAL HUMANITARIAN LAW TO ORGANIZED ARMED OPPOSITION GROUPS

By Professor Warren Small

Abstract

As legal scholars, we struggle with the question of international law’s ability to provide justice and stability in an increasingly complex international system characterized by astounding technological advances in communications and industrial capabilities, rapidly increasing populations, steadily decreasing and overstressed natural resources, growing gaps between developed and less-developed nations, continuous threats to the human rights of the inhabitants of this system, and a continuous movement toward a multipolar world. Quite naturally, when discussing the continuing evolution of the international legal order in an increasingly multipolar world, our attention is typically directed to the actions of states which are trying to fashion or influence that evolving legal order to better suit their national interests. However, when discussing the evolution of International Humanitarian Law and the Law of Armed Conflict (“IHL-LOAC”) in a multipolar world, we must also direct our attention to non-state actors; in particular, we must address how evolving IHL-LOAC principles and instruments must recognize and account for the presence of armed opposition groups such as Al Qaeda and Hezbollah in armed conflicts and extend the protections and obligations inherent in IHL-LOAC to these groups as well.

This paper argues that bringing armed conflicts involving non-state actors under the protective cover of IHL-LOAC would be a much-needed extension of the realization that the very nature of armed conflict is evolving more rapidly than the ability of IHL-LOAC to keep pace with those changes. It points out how the Additional Protocols to the Geneva Conventions served to recognize that armed conflicts other than a traditional state-versus-state model warranted the protections and obligations afforded by IHL-LOAC as well and suggests that applying IHL-LOAC to armed conflicts involving all types of armed opposition groups would be the next logical step in the evolution of this body of law.
The benefits as well as the problems with expanding the coverage of IHL-LOAC are discussed in detail. While recognizing that international law depends upon the consent of states to be bound by an international agreement, the paper argues that the unique concepts of individual or personal responsibility and accountability found in the principles of IHL-LOAC extend the coverage of its instruments to the citizens of the states thus bound. It argues that violations of humanitarian principles occur in all armed conflicts and that the perpetrators of such transgressions in armed conflicts currently covered by the principles and instruments of IHL-LOAC are increasingly held accountable for their actions. Given the large number of armed conflicts involving armed opposition groups and the astounding number of violations of humanitarian principles occurring in these conflicts, there exists a compelling argument to hold these perpetrators accountable under IHL-LOAC as well.

The paper also confronts the drawbacks inherent in imposing an international legal norm upon those having no say in its structure. It recognizes that many armed opposition groups are loosely organized and have little or no regard for humanitarian law principles. It recognizes that applying IHL-LOAC to such groups essentially promotes the members to a stature typically reserved for those following the principles of IHL-LOAC.

The paper concludes that given the increase in atypical or asymmetrical armed conflict and given the increasing participation of an increasingly disparate group of irregular fighters who violate IHL-LOAC principles with alarming regularity, there simply must be some accountability under IHL-LOAC for the actions of the participants. In sum, there should be no safe haven for perpetrators of these violations.

The paper provides a series of recommendations including a new Additional Protocol to the Geneva Conventions dealing with armed conflicts involving non-state actors such as these armed opposition groups. It calls for standardization of pertinent terminology. It calls for increased cooperation among the various judicial bodies and institutions established to adjudicate violations of IHL-LOAC. Finally, it asks us to revisit the fundamental purpose of humanitarian law to ensure that we realize why we have IHL-LOAC.
and why it should be universally applied to all armed conflicts, including those involving non-state actors such as armed opposition groups.
A Case for Individual Standing in International Law

The Honorable Nick O. Agbo

Former Member, Federal House of Representatives, Federal Republic of Nigeria; S.J.D. Candidate, Golden Gate University School of Law
A CASE FOR INDIVIDUAL STANDING IN INTERNATIONAL LAW

By the Honorable Nick O. Agbo, Esq.

Abstract

This paper begins with the examination of the early recognition of the legal personality of the individual to sue or be sued before international tribunals. As the world moves away from the cold war era in which international relations were dominated by the struggle for power between the United States of America and the Soviet Union, to a new world in which other world powers seem to be emerging such as China and India, there can be no doubt that the world is going through a fundamental change.

Apart from India and China, other Asian and African countries are beginning to assert strong voices on the international stage, and with it is the continuous increase on the influence of individuals and other non-state actors in international law. In recent times we have seen the conviction of James Ibori, the former Governor of Delta state of Nigeria in a British court (after he had been acquitted of all charges in the Nigerian court), the United States District court’s exercise of jurisdiction in the case of Saro Wiwa vs. Shell Nigeria and the recent judgment of a Dutch court in favor of the four farmers that instituted the action. There is also the case of Bowot vs. Chevron Nigeria brought under the United States’ Alien Tort Law Act (28 U.S.C. §1350).

This paper concludes that in the present global situation of multipolarism, and given the opportunities provided by The United States’ Alien Tort Law Act (28 U.S.C. §1350) and the Torture Victim Prevention Act (28 U.S.C. §1350), individual standing in international law is inevitable, and should be vigorously encouraged, especially for third world nationals where factors ranging from corruption to weakness in governance deprive the citizens of access to justice.
Is a Multipolar World a Concern to International Law?

Dr. Remiguis Chibueze

Attorney at Law; Adjunct Professor of Law, Golden Gate University
School of Law
There is no doubt that the events of the 21st century demand collaborative efforts on the part of the international community to deal with rising global issues. It is indisputable that global issues such as terrorism, nuclear programs in North Korea and Iran, human rights abuse, global warming/climate change, the global financial crisis, etc, demand a collective and collaborative effort on the part of all nations. This is so, in part, because of the level of resources required to address these problems, and the limited or dwindling resources of the few nations and institutions that have been responsible for promoting solutions to these issues.

It seems, therefore, that the need for a joint effort to address global issues is behind the popularity of a multipolar world. A notion, international law commentators have found very attractive and have embraced without circumspection.

The paper looks at what do we mean by a multipolar world. What changes have occurred to create a multipolar world beyond the need for collaboration? What is the role played by China and Russia in the emergence of the so called multipolar world? This paper also examines the proposal to restructure the United Nations Security Council to accommodate new powers (Germany, Japan, India, Brazil, and arguably, South Africa) and explores how the possible restructuring of the UNSC will affect the development, promotion, and application of international law. Should international law be concerned?
Is a Multipolar World a Concern to International Law?

Remigius Chibueze

What Does Multipolar World Mean?

Polarity refers to the distribution of power in the international community.
What Kind(s) of Power?
- Economic,
- Military and;
- Political powers

What kinds of polarity exists?

Unipolar World
- A unipolar world exists where there is one hegemonic (dominating) state that holds a significant amount of power economically, militarily and politically.
Bipolar World

- A bipolar world on the other hand occurs when two states hold such dominating power which inevitably results in confrontation between the two parties (ex. Cold War).

Multipolar World

- A world having or conceiving of multiple centers of power or influence leading to a multiple approach to global issues.

Multipartner World?

- "We will lead by inducing greater cooperation among a greater number of actors and reducing competition, tilting the balance away from a multipolar world and toward a multipartner world," [Hillary Clinton, former U.S. Secretary of State]
What kind of world was created by the United Nations in 1945?

UN Charter, Preamble

- We the peoples of the United Nations (all states – UN Member States) determined;
- to reaffirm faith in the equal rights of men and women and of nations large and small,
- We the peoples of the United Nations (all states – UN Member States) determined;

UN Charter, Preamble

- And for these ends, to unite our strength to maintain international peace and security, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,
- **Have resolved to combine our efforts to accomplish these aims**
What changes have occurred to create a multipolar world?

Cold War - Bipolar
- Struggle for global leadership between the United States and the Soviet Union
- On December 25, 1991, the Soviet Union ceased to exist, eliminating the second “pole” and launching a debate about the new world order.

Post-Cold War - Unipolar
- United States [as the dominant force], its Western allies, and their shared economic and geopolitical interests were largely unchallenged in the international arena.
Beginning of Multipolar - China/Russia Relationship

- Fear of U.S. unipolarity inspired China and Russia to sign a "Joint Declaration on a Multipolar World and the Establishment of a New International Order" in Moscow April 23, 1997.

China/Russia Relationship

- China’s decision to assert its own interest on a global scale
- Growth of Russian economy and new found faith in leadership

Emergence of New Economies

- Economic integration (WTO and Trade Agreements) led to economic balancing and development of military capacity
- The emergence of new economies such as Brazil, India, Germany, and Japan
Emergence of New Economies

- These new powers and other States in Asia, Latin America, the Middle East, and Africa are increasingly active voices in international institutions, such as – the IMF, the World Bank, and the WTO, and questioning the dominance of the West in these organizations

American’s Woes

- America’s faltering economy and a feeling of being overextended abroad
- General feeling of uneasiness with U.S.’ questionable actions on its war on terror

What does multipolar world mean:

- The "decline of the West" and ascent of China, India, Brazil, and resurgence of Russia.
Restructuring United Nations Security Council

Restructure for Power?
- Restructure United Nations Security Council to reflect today’s global power structure rather than that of postwar 1945
- All of the new economies – India, Brazil, Germany and Japan, as well as South Africa want to be permanent members of the UNSG

Restructure for Representation
- Restructure United Nations Security Council to reflect geographical representation consistent with equality of states
- Europe comprises less than 10% of the world’s population but has a 40% vote in the UNSC
Restructure for Representation

- India is a country of over 1 billion people
- Latin America has over 560 million people and
- Africa over 1 billion
- Japan is the United Nations’ second largest contributor to the UN
- These countries and continents get no veto on matters of war and peace

Using Veto Power

- Semi-permanent members without veto powers?
- New permanent members with veto powers?
- Allow veto only to peacekeeping and enforcement measures
- Requiring two vetoes instead of one

Chances of Success

- U.S. is receptive to an enlarged security council – President Obama in November 2010 promised India a permanent seat at the UNSC
- American exceptionalism
- Will Russia or China be willing to support Japan or India membership?
Should we be concerned?
Does this pose particular challenges for international law and institutions?

Affect of Multipolar World on International Institutions

- How does a multipolar world affect international law issues such as:
  - the use of force and the law of armed conflict,
  - governance and democracy,
  - human rights law,
  - environmental law,
  - trade law,

Security Council and Client States

- “The shameless protection by P5 countries of client states from international censure did not end with the Cold War.” [Middle East Professor Stephen Zunes of the University of San Francisco]
Security Council and Client States

- China’s interest/view of the role of international law
- Russia’s interest/view of the role of international law
- China’s and Russia’s questionable human rights records

What do you think now about the fate of international law in a Multipolar World?
Islamic Militance and the Uighur of Kazakhstan: Recommendations for U.S. Policy

Professor Andreas Borgeas

Professor of International & Comparative Law, San Joaquin College of Law; Fulbright Alumnus
ISLAMIC MILITANCY AND THE UIGHUR OF KAZAKHSTAN: RECOMMENDATIONS FOR U.S. POLICY

By Professor Andreas Borgeas

Abstract

Kazakhstan is a country with enormous strategic opportunities. Pursuing a secular, multi-vectored foreign policy, which requires constant calibration between China, Russia and the US, Kazakhstan is a major player in the energy markets and has emerged as the dominant power in Central Asia. Understanding Kazakhstan’s security and economic relations with China, especially in terms of energy deals, counterterrorism cooperation, and Uighur relations, is essential towards advancing US strategic interests in the region.

This research sought to examine the potential for the spread of Islamic militancy amongst the Uighur of Kazakhstan. The extent to which extremists in Kazakhstan pose a realistic threat to Kazakhstan and China’s national security were determined by assessing the religious traditions and ideological motivations of the Uighur with their present compatibility for Islamic militancy; specifically, whether the prevailing Islamic practice has been made fundamental, and, if an Uighur identity exists, whether it is bound by Islamic ambitions that may manifest in widespread terrorist activity. The results of these findings were used to determine, ultimately, whether militant Islam in Kazakhstan is a fringe and localized presence, or if it has sufficient appeal for popular support.

The author concludes that the threat of Islamic militancy amongst the Uighur in the Republic of Kazakhstan will likely remain a fringe and localized threat, and does not have sufficient appeal for popular support. The historically moderate Sufism of the Hanafi sect is unlikely to be compatible in Kazakhstan with the imported strains of fundamentalist Islam. While significant sympathies may exist with their Xinjiang counterparts, Uighur-Kazakhs do not largely identify themselves in an actionable way with part of any unrealized Uighuristan or East Turkestan community, in part because Uighur-Kazakhs are divided by deep ideological and identity differences. Finally, it is likely that China’s massive investment into the Kazakh energy market will inevitably force a long term security alignment with Beijing.
Yet the author suspects Kazakhstan’s economic capabilities and the multi-vectored balance it attempts to seek with its neighbors and other powers, means it will likely not allow itself to become a subordinate of Beijing.

**Recommendations for US Policy Community**

The author makes the following recommendations for the U.S. policy community: to encourage the legalization in Kazakhstan of political parties associated with the Islamic faith; to encourage Kazakhstan to allow more for the study of Islam, and for efforts to be made by the state to help financially support these institutions; to encourage Kazakhstan to initiate a more accountable process before extraditing Uighur-Kazakhs to China; and to encourage Kazakhstan to implement more preventive rather than suppressive tactics in its efforts to combat terrorism.
Islamic Militancy and
The Uighur of Kazakhstan:
Recommendations for U.S. Policy

Yale Journal of International Affairs (2013)

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Central Asia
ISLAMIC MILITANCY AND
THE UIGHUR OF KAZAKHSTAN:
RECOMMENDATIONS FOR U.S. POLICY

By Andreas Borgeas

Abstract—The spread of Islamic militancy amongst the Uighur of Kazakhstan is of particular importance to understanding Kazakhstan’s security and economic relations with China, Russia, and the United States, and, ultimately, to the advancement of U.S. strategic interests in the region. Significant scholarship has been developed in the last decade oriented toward the Uighur in neighboring Xinjiang, China, but relatively little has been devoted to an in-depth examination of the Uighur dynamic in Kazakhstan. This paper investigates this topic through original research that examines the extent to which Uighur extremists in Kazakhstan pose a realistic threat to Kazakhstan’s national security. It specifically asks whether the prevailing Islamic practice amongst the Uighur in Kazakhstan has been made fundamental, and, if an Uighur identity exists, whether it is bound by Islamic ambitions that may manifest in widespread terrorist activity. This study finds that militant Islam amongst the Uighur in Kazakhstan remains a fringe and localized presence, which will struggle to gain sufficient popular support for historical and contextual reasons. Even so, the United States can take specific steps to help Kazakhstan ensure that Islam remains a moderate—rather than extremist—force in the country.

Kazakhstan’s Uighur Minority

The Uighur represent an ancient Turkic civilization that evolved from a confederacy of early Tiele tribes around Mongolia into a prominent empire known as the Uighur Khaganate. At its height in the eighth and ninth centuries, the Uighur Khaganate

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spanned from Central to Eastern Asia, but, as the empire diminished in power, most Uighur settled in the historic lands of the central Silk Road network.

In more recent times, the Uighur people have been circumstantially separated between Kazakhstan and China. With a population of ten to eleven million, modern Uighurs generally identify themselves as ethnically, culturally, and sometimes politically separate from Han Chinese and even from their steppe cousins in Central Asia. Unknown thousands fled from their historical homeland in China's Xinjiang province during the 1950s and 1960s to neighboring Soviet Kazakhstan where they remained for decades during the Sino-Soviet split. In the wake of the Soviet collapse and Central Asia's Islamic revival in the early 1990s, many Uighur-Kazakhs actively sought to reconnect with Xinjiang. While that reconnection with Xinjiang held different familial, historical and religious meanings, some Uighur have resorted to violence as a means toward achieving, with Xinjiang, an independent Islamic Uighuristan or East Turkestan.¹ Counterterrorism cooperation, therefore, is a major component of Kazakhstan-Chinese relations and Kazakh state security policy.

Kazakhstan’s Counterterrorism Framework

Kazakhstan is a secular republic. It neither identifies nor recognizes religion within its constitution. While followers of the Muslim faith comprise a majority of the population, President Nazarbayev fashioned the country as one tolerant of all religions and ethnicities. Even during the post-Soviet Islamic revival when Central Asia reconnected with its Islamic identity after seventy years of containment and foreign-sponsored Islamic missionaries showered the region with religious investments, Kazakhstan experienced far less activism premised on the Islamic faith than did other Central Asian republics, especially Uzbekistan and Tajikistan. Many political theorists attribute this tempered response to the tolerant traditions of Kazakhstan’s nomadic culture, moderate Sufi practices, cultural Russification, and sizeable Christian population. At the turn of the century, however, Kazakhstan began to perceive Islamic radicalism as a destabilizing element in the region as well as a domestic threat. Islamic terrorism, as it soon became known, emerged as an unconventional and asymmetric security challenge that would require comprehensive measures to prevent potentially destructive acts perpetrated by a few.

Nazarbayev recognized that the cultivation of foreign investment in Kazakhstan was premised on a secure and stable state. He therefore made counterterrorism efforts a top state priority. The hallmark of Kazakhstan’s counterterrorism policy is evident in its multi-vectored approach toward international relations. After independence, Nazarbayev received much needed assistance and foreign investment from China, which he later formalized into a strategic partnership. Nazarbayev even conceded land in previously disputed borders to China in hopes of courting a powerful ally to balance Russian influence. He also aimed to solidify Kazakhstan’s security posture and exert influence through its roles in international organizations such as the Shanghai Cooperation Organization (SCO), the Organization of Central Asian Cooperation (OCAC), and the Commonwealth of Independent States (CIS). Since then, security
While the United States is a relative newcomer to Kazakhstan, it has managed to achieve important diplomatic and security partnerships, including the negotiated dismantling of Kazakhstan's nuclear complex and, most recently, cooperation in the war on terror.

A striking characteristic of Kazakhstan's counterterrorism framework is the manner in which it has developed. As a result of close coordination with Russia, China, and the United States, its sister republics in Central Asia, and international organizations, Kazakhstan has been able to synchronize its articulated understanding of terrorism, the groups, and types of activities. Until the late 1990s, Kazakhstan, like many other countries, lacked a modernized legal and security framework to combat terrorism. It therefore built upon and borrowed initially from the Russians and the CIS to form the basis of its parallel legislation. For instance, Kazakhstan's Criminal Code and Law on Measures to Combat Terrorism borrowed heavily from their Russian counterparts. Kazakhstan continued to develop its legal framework convention through UN and regional organization resolutions that introduced new categories of offenses, including advocacy, participation, and financing. In doing so, Kazakhstan's security framework developed more legal consistency with its regional and foreign allies.

Like those of Russia and China, Kazakhstan's security policies are more suppressive than they are preventive, such as those promoted by the United States and NATO. Suppression policies are oriented toward eliminating the opportunity for terrorists to carry out attacks, while prevention is oriented toward mitigating social, religious or economic factors that motivate of terrorism. For example, the revised Law on Counter-action to Extremism sought to reduce religious freedoms, including the requirement for the registration of religious groups and missionaries, and the means to delegitimize selected religious elements. Countermeasures such as these can compound sentiments of extremism by exacerbating the underlying grievances that drive terrorism. While
some of these security policies have been rebuked by the West, Kazakhstan’s security prerogatives still take precedence over its gradual incorporation of democratic principles. These circumstances suggest Kazakhstan’s security practice can only be sustained if its capabilities continue to exceed terrorist threats, meaning the possibility of domestic terrorism and more transnational problems with neighboring China involving the Uighur remains high.

Research Process and Results

To better understand how the extremist Islamic threats may develop in Kazakhstan and to determine the best way to develop policies that can effectively staunch these threats, I conducted field work focused on the Uighur community in Kazakhstan as a researcher at the U.S. Embassy in Astana. My research consisted of analyses focused on religious ideology, political process, and context opportunity theories and drew significantly on in-person interviews with private citizens and government officials. Personal interviews of members of Kazakhstan’s Uighur community, included questionnaire polling based on three categories (peasant, merchant, and professional) with third-party interpretation and translation services. Polling combined both quantitative and qualitative aspects of data collection. My research also incorporated earlier scholarship, including field research on the Uighur in China’s Xinjiang Uighur Autonomous Region. Findings can be categorized as answers to a series of related questions:

Is the Islam commonly practiced in Kazakhstan considered fundamental?

The prevailing practice of Islam in Kazakhstan is not considered one of the sects commonly associated with fundamentalist beliefs (e.g., Hanbali [Salafi]). Kazakhs and Uighur-Kazakhs are predominantly Sunni Muslims of the Hanafi school of jurisprudence, and more particularly adhere to Sufi traditions. The Hanafi school is a moderate interpretation of Islam and Sufism is known for its tolerance of other forms of worship along with assimilating elements of mysticism from the region’s pre-Islamic past. Kazakhs also practice customary law (adat) less so than Sharia Islamic law, and incorporate that into their common version of Islam.⁴

How have the different interpretations of Islam developed in Central Asia?

Islam was introduced into Central Asia by the Arabs in the seventh century. Here it developed in two markedly different directions, one being the more tolerant and mystical Islam of the nomads (i.e., Kazakh and Kyrgyz tribes), and the other the more traditional and institutional Islam of the settled oasis communities (i.e., Uzbekistan and Tajikistan). “Beyond the oasis towns and valleys, the spread of Islam on the Central Asian steppe was slow and sporadic. Islam did not come to the Kazakh steppe until the 17th century.” ⁵ The nomadic way of life did not lend itself to established institutions and clergy, opting instead for Sufism’s more personal communion without strong reliance on priests and scholars. Islam has been described as an “urban religion,” which is why “[e]ven today the nomadic Kazakh, Kyrgyz, and Turkmen tribes are far less Islamized—and much less susceptible to Islamic radicalism—than their counterparts in the settled oasis areas.” ⁴
Where do the strict interpretations of Islam originate and where are they practiced?

The more radical versions of Islam were introduced into Central Asia from a variety of foreign sources, including Afghanistan, Pakistan, and Saudi Arabia. For example, Wahhabism and Deobandism of the Hanbali (Salafi) school of jurisprudence originate from Saudi Arabia and Pakistan, respectively, and their introduction into Central Asia came about as a result of the Soviet-Afghan campaign and during the region's Islamic revival. These strict interpretations of Islam are known to be practiced in Uzbekistan, the Ferghana Valley (apportioned by the Soviets into Uzbekistan, Kyrgyzstan, and Tajikistan), and small portions of Southern Kazakhstan.

Can Islamic institutions reduce the appeal of radicalism in Kazakhstan?

Kazakhstan is known for having few political, educational, and financial Islamic institutions. Kazakh policy is to deny registration to Islamic political parties and, despite recent improvements, the country is still underserved by Islamic educational institutions. Both of these practices foster strong underground foreign-influenced activities and they encourage students to study abroad, which may increase their chances of encountering radical strands of Islam. Further, liberalization allowing for Islamic bank and religious endowment projects, while promising benefits for communities, is suspected of unintentionally attracting financing from elsewhere in the Islamic world with more radical religious tendencies. Finally, Kazakhstan does not fund any religious institution, including the state's Spiritual Association of Muslims, and the religious administrators (muftiyats) are highly dependent on the support of foreign, and often fundamentalist, donors from Saudi Arabia, Pakistan, and Turkey. Stable democracies, as they do come about in Central Asia, will be fundamentally different than those of the West, but still must be anchored in institutions that promote the rule of law, civil liberties, and freedom of expression. The development of institutions, whether of domestic or foreign origin, will therefore have a deep impact on Kazakhstan. Significant scholarly research indicates that state-sanctioned Islamic institutions that promote civil liberties inversely impact Islamic radicalism principally on the basis that government sanctions on organized groups can cause those groups to institutionalize underground. And what lies beneath more often becomes distorted without the scrutiny of public dialogue and accountability.

Central Asian Muslims commonly understand the principles of worship, but often lack an intimate appreciation of the social aspect of political Islam and Sharia law. Accordingly, if young, impressionable students without formal education on Islam are first taught the conservatively interpreted principles of Sharia by an unaccredited teacher in an underground setting, the implications are as remarkable as much as
they are predictable. One must only look at the phenomena of the madrassa culture that flourished in Pakistan following the Soviet-Afghan campaign that facilitated the rise of the Taliban to see how extremism can arise out of grassroots, unofficial Islamic educational institutions. Thus, state-sanctioned Islamic educational institutions are central in facilitating opportunities for the public to learn various compatibilities of Islam within a modern and moderate context.

Can Uighur activism premised on the Islamic faith gain popular traction in Kazakhstan? Uighur activism premised on the Islamic faith will likely not gain popular traction in Kazakhstan for two main reasons: (1) the moderate brand of Sufism popularly practiced in Kazakhstan is generally incompatible with Islamic fundamentalism; (2) Uighur in Kazakhstan are divided along identity lines beyond those of religion.9

The Islamic belief popularly practiced amongst the Uighur in Kazakhstan is the moderate brand of Sufism, in contrast to conservative Wahhabism. Sufism is influenced by ancient mysticism and is tolerant of other forms of belief. It is not only accepting of other religious expression but incorporates other non-Islamic elements from the Uighur’s ancient past. The Islamic faith amongst the Uighur in Kazakhstan, therefore, is neither conservative nor fundamental. Second, local conceptions of identity are too diverse for the creation of an overarching Uighur identity bound by Islam. Polling and interviews conducted by this author in a number of Uighur communities in southeast Kazakhstan provide evidence for these claims. Three categories of people — peasant, merchant, and professional10 — were asked to rank the order in which they identify to the following groups: Uighur, Kazakh, Muslim, pan-Turk, local identifier. The study revealed that what it means to be Uighur is significantly different among the three social groups. The local identity is stronger than the state identity because local traditions and community loyalty likely yield stronger ties. While this has not lead to the wholesale opposition to the Uighur label, local loyalties periodically prove incompatible with the concept of greater allegiance. It was found that peasants, whose sphere of interaction and travel is limited to the region, identify more strongly with Islam and make little distinction between Uighur and Muslim. In contrast, they strongly distinguish themselves from Turks, because Turks are from Turkey while they are Uighur from Kazakhstan. Merchants, however, who trade throughout the area and rely upon the existing economic system, identify themselves first as citizens of the Kazakh state. Finally, Uighur professionals identify more with notions of pan-Turkism or Turkestan, but tend to support a secular social system.

Of the three, peasants identified most strongly with Islam and appear to be most likely to create religious alliances. Yet because most peasants remain isolated and exhibit strong local loyalties, they are unlikely to mobilize into a national or transnational Islamic movement, let alone a radical one that resorts to terrorism to affect change. Merchants, especially those reliant on trade, view positive relations with the state as
essential to their financial security. It is unlikely these commerce-dependent merchants would involve themselves in Islamic activities that might threaten the state or bring its security instruments to bear on them. While the professional community remains the most vocal, its agenda considers Islamic fundamentalism an obstruction to the form of secular nationalism to which it is oriented. It is therefore highly unlikely that professionals would participate in militant activism in the name of Islam. These findings suggest that Uighur in Kazakhstan are a divided people and have interests too diverse to be unified by Islam. The message of militant Islam, therefore, will likely not gain popular appeal among the Uighur in Kazakhstan.

Conclusions

The threat of Islamic militancy amongst the Uighur in the Republic of Kazakhstan will likely remain a fringe and localized threat, and does not have sufficient appeal for popular support. The historically moderate Sufism of the Hanafi sect is unlikely to be compatible in Kazakhstan with the imported strains of fundamentalist Islam. While significant sympathies may exist with their Xinjiang counterparts, Uighur-Kazakhs do not largely identify themselves in an actionable way with part of any unrealized Uighuristan or East Turkestan community, in part because Uighur-Kazakhs are divided by deep ideological and identity differences. Finally, it is likely China’s massive investment into the Kazakh energy market will inevitably force a long-term security alignment with Beijing. Yet Kazakhstan’s economic capabilities, and the multi-_vectored balance it attempts to seek with its neighbors and other powers, means it will likely not allow itself to become a subordinate of Beijing.

U.S. engagement in Kazakhstan, as much as it should be encouraged for purposes of spreading Western democratic principles, will not reasonably have equal standing with neighboring Russia and China. Their respective commercial and strategic opportunities will remain more significant. The key for the United States, then, is to maintain a strong economic and political presence to make certain President Nazarbayev’s multi-vectored foreign policy continues with his successor and to ensure the country remains positioned to serve as a reliable ally and alternative to Kazakhstan amidst their still unfolding political agendas. U.S. policy interests are well served by promoting a healthy Kazakh economy, strengthening the capacity of its people and civil institutions, and helping implement measures to avoid the radicalization of segments of its society. With these considerations, the following recommendations are made to U.S. policy makers.

Recommendations for the U.S. Policy Community

1. Encourage the legalization in Kazakhstan of political parties associated with the Islamic faith.

U.S. foreign policy places a premium on promoting democracy and the rule of law. In the case of Kazakhstan, the state denies registration to any potential Islamic political parties and in doing so risks disenfranchising moderate Muslim elements from the political process, forcing political activities underground and increasing the potential appeal of
more radical Islamic thought. Islam will undoubtedly continue to play an important role in Kazakhstan's future, especially after Nazarbayev's tenure, and the opportunity for sanctioned Islamic parties would likely not be antithetical to a secular democracy. Kazakhstan's tradition of a tolerant form of Islamic belief and practice should provide an adequate basis for this experiment to provide a much needed democratic outlet.

2. **Encourage Kazakhstan to sponsor the study of Islam by financially supporting officially sanctioned Islamic educational institutions.**

Studies have indicated that the significant shortage of formal Islamic educational institutions in Kazakhstan may have serious implications for Kazakhstan's security by promoting the formation of underground, fundamentalist schools. Having more accredited institutions decreases the likelihood of students learning in informal underground madrassas by unaccredited instructors and with questionable curricula. Further, since Kazakhstan does not offer financial support to religious schools, the muftiyats become highly dependent on public support and foreign donors, thus becoming susceptible to foreign influences that perhaps even dictate the kind of religious instruction provided. By increasing formal religious schooling opportunities, it will also decrease the demand for students to study abroad who may return to promote an imported strain of radical thought.

3. **Encourage Kazakhstan to initiate a more accountable process for the extradition of Uighur-Kazakhs to China.**

A common sentiment among the Uighur is the fear that Kazakhstan will oblige the security demands of China, irrespective of the merits for extradition, and that Uighur prisoners will be subjected to torture and other inhumane treatments. The question that arises, therefore, is why Kazakhstan has not yet demanded more prisoner safety guarantees as well as heightened demonstrations of proof that are normally associated with foreign extraditions. Without such protections Uighur-Kazakhs may be categorically swept into the dragnet of China's larger “blowback” counteraction practices, which date back to the Afghan campaign when China trained Uighur fighters to wage jihad against the Soviets only to have their returning nationals take aim at the Chinese state. In this security context, Uighur-Kazakhs may fear that Islam and militancy are viewed as one and the same in China, and to be a Uighur in China is suspiciously close to being an Islamic militant. In effort to assuage those fears under the guise of promoting sovereignty, Kazakhstan needs to implement a more factually justifiable process with detailed legal procedures before extradition could be effected. Prisoner safety guarantees should also be pursued. Both should help establish better confidence building measures in the practice of extradition and partially help disassociate the radical Islamic factor from the Uighur equation.

4. **Encourage Kazakhstan to implement more preventive tactics in its efforts to combat terrorism.**

Terrorism will likely never be eradicated by solely suppressive or preventive policies, if at all, but gains should be significantly higher if a comprehensive approach is used that incorporates both. Repressive state tactics that target religious groups and freedom of expression often alienate moderate elements, which are the very segments that
ANDREAS BORGEAS

can discourage extremism. Kazakhstan’s security policies, therefore, should focus on
the underlying causes of radicalism, which are known to be unemployment, limited
professional and educational opportunities, religious and social repression, and an
exclusionary political process.

Continuing Research

Areas ripe for future research include: how migration patterns, and the manner in
which Uighur groups came to Kazakhstan, have shaped the Uighur identity and to what
extent loyalties may exist toward their brethren in Xinjiang; how the larger Kazakh
population view the Uighur, their suspected ties to militant groups, and what role they
should play in the future of Kazakhstan; and how the larger Kazakh population would
view plans for the State to legalize the existence of political parties associated with the
Islamic faith. 

-Daniel Tam-Claiborne served as Lead Editor for this article.

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academia, medicine, law) (most individuals in government related services such as tourism, oil/hydrocarbon, and military
were excluded from poll).
It is Africa: Selective Prosecutions at the International Criminal Court (ICC)

Mr. Eustace Azubuike

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IT IS AFRICA: SELECTIVE PROSECUTIONS AT THE INTERNATIONAL CRIMINAL COURT (ICC)

By Mr. Eustace C. Azubuike

Abstract

When the preparatory work toward the establishment of the ICC was concluded, and subsequently in 2002 the ICC officially came into force, hopes were high both in the southern and the northern poles that impunity could no longer thrive. However, recent events at the ICC leave one to wonder whether the ICC has a global reach or if it is an instrument to hunt Africa. In a research study conducted recently by an African writer, it was reported that “sixteen cases in seven situations have so far been brought before the ICC. Available evidence indicates that all the situations for which warrants of arrests have been issued by the ICC Pre-trial Chambers, or for which prosecutions have commenced or completed, originate in Africa.” This revelation is very disturbing, as it seems to undermine the perception of the ICC as having a global reach in terms of prosecution of crimes of international concern. The trend of prosecuting only Africans before the ICC flies in the face of other comparable situations of international crimes outside Africa that have yet to engage the attention of ICC.

This paper seeks to carry out a deeper study into the cases that are before the ICC, with an emphasis on the identity, nationality or other background of the accused persons. It will also explore the cases involving Africans with the view to finding if they all meet the threshold for the exercise of the ICC’s jurisdiction. The paper will posit that an unfair focus by the ICC on one region poses many dangers to the work of the ICC, such as the damage it causes to the credibility of the ICC, the aggravation of political, social, economic, and other problems in the African region; the unnecessary international tensions resulting from a perception of the ICC as a tool of the West; and the danger of allowing criminals to escape prosecution. A suggestion will be made on how the ICC can eschew unnecessary politics that can mar the efforts of the international community at bringing perpetrators of crime to justice.
Kenya's Encounter with the International Criminal Court

The Honorable Lady Justice Mary Kasango

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KENYA'S ENCOUNTER WITH THE INTERNATIONAL CRIMINAL COURT

By The Honorable Lady Justice Mary Kasango

Outline

2. The country and its institutions before 2007 general elections.
3. Post 2007 elections and the country’s encounter with the International Criminal Court.

Introduction

The paper examines whether Kenya’s encounter with the International Criminal Court (ICC) following the 2007 general elections was inevitable for the country. The paper begins looking at the birth of the nation of Kenya after its independence from Britain in 1963 and considers what became of the euphoria of self-rule. It will look at the political climate that followed the country’s independence and consider the question, did the politicians live up to what the fight for independence seemed to promise.

The country’s institutions will be looked at with a particular emphasis on the Kenyan judiciary and ask, did the institution meet the expectations of the people. The build up to the 2007 general elections will be considered as well as the boiling point of the country after the, alleged, results of that election were announced.

Bearing in mind what the actual or the perception of the people was of the failed institution, was the encounter with ICC bound to happen? Some of the reforms that have been undertaken following the post 2007 general election violence will be considered, again with particular emphasis on the Kenyan judiciary.

The paper will look at the judicial process of the ICC as it relates to Kenya and ask, with the reforms now undertaken by the country whether such encounters with the ICC will be avoided in the future.
Promoting Accountability of Government Officials in Foreign Direct Investments Aimed at Curbing Transnational Corruption: The Importance of Public Participation

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In contemporary times the world has progressed to the extent that one can say borders no longer exist, taking into account the easiness in communication through the use of internet and telecommunications, the transfer of money through the banking systems, good transportation networks, and most importantly the liberalization of trade among other developments. The fusion of the world’s industries and services owes its existence to what has been termed globalization. In as much as globalization has made peoples’ lives easier, it has also brought about unwelcome challenges. Specifically, the way in which globalization facilitates the migration of both people and businesses makes it difficult to regulate these people and their activities. One important area of concern observed with regard to the liberalized trade in particular is corruption.

Corruption is a major challenge to most countries in the world. African countries in particular are still struggling with ways to eradicate or at least minimize corruption, and transnational corruption has added to the woes of these countries. Developed countries like the United States for example have responded swiftly to the challenges of transnational corruption by enacting legislation to criminalize global corporate bribery, such as the Foreign Corrupt Practices Act. Despite this, corruption still pervades the business world- thereby thrusting great challenges on governments and business practitioners. Corruption has a link with human rights, in that when governments spend public funds in shady circumstances, this depletes the resources that are meant to cater to the needs of the citizens.

This article is focused on corrupt practices by government officials and foreign investors either as individuals or multinational corporations. In particular, the paper will discuss the role of international law in addressing this problem and calls for the collaboration of states to curb transnational corruption. The paper will argue that allowing public
participation in investment treaty negotiations as well as publication of treaties is one way of promoting accountability of public officials. Thus, the paper will, as a recommendation, discuss various ways on how the public can get involved in treaty matters, with the aim of minimizing transnational corruption.
Climate Change and Sustainable Development of Nigeria

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Abstract

Nigeria’s vision is to be one of the fastest developing economies in the year 2020. Unfortunately, Nigeria flares an estimated 2.5 million cubic feet of gas each day which amounts to almost 40 percent of the total gas consumed in Africa. Thus, the country is one of the leading emitters of carbon dioxide, a veritable source of climate change.

This paper will argue that the negative consequences of climate change are inimical to sustainable development. Further, the paper will fault the sincerity of the vision and assert that the leadership of the country owes a duty to both the present and future generations to develop the country sustainably.
CLIMATE CHANGE AND NIGERIA’S SUSTAINABLE DEVELOPMENT OF VISION 20-2020.

PRESENTED BY

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INTRODUCTION

Nigeria’s economic background.
• Crude oil was discovered in 1956.
• Currently, one of the leading exporters of crude oil in the world.
• Current production capacity of 2.4 million barrels a day with an estimated earning of $282 million (approximately N42 billion).

• Since 1956, it has failed to harness the associated gas from oil production.
• Currently, it flares an estimated 2.5 million cubic feet of gas each day which approximates to almost 40 percent of the total gas consumption in Africa.
Gas flared translates to over 400 million tons of carbon dioxide into Nigeria’s environment.
• Nigeria ranks as the 6th leading gas flarer in the world.
• The economic, social and health consequences of gas flaring are enormous.

The Concept of Sustainable Development.
• Process of development involves the tripartite constituents of man, the physical components and the environment.
• Development entails the harnessing of the environmental resources with enormous consequences for the environment.

• Sustainable development is an attempt to strike a balance between development and environmental protection.
Sustainable development is defined as “the development that meets the need of the present without compromising the ability of the future generation to meet its own needs” (The Brundtland Report).

Concept is premised on the Precautionary Principle. The principle states that allowances must be made for scientific uncertainty where serious or irreversible harm may arise.

**Nigeria Vision 20-2020 (NV 20:2020).**

Launched on June 14, 2010 by President Goodluck Ebele Jonathan, aimed at propelling the country into the league of the world’s 20 leading economies by year 2020.
The comprehensive development vision is anchored on two specific targets-
- GDP of not less than US $900 billion.
- Per capita income of not less than US $4,000.

The two main objectives are as follows:
- Make efficient use of human and natural resources to achieve rapid economic growth and;
- Translate the economic growth into equitable social development for all citizens.

The development aspirations are anchored on four dimensions:
- Social- building a peaceful, equitable, harmonious and just society;
- Economic- developing a globally competitive economy;
Institutional- having a stable and functional democracy;

Environmental- achieving a sustainable management of the nation’s natural resources.

Climate Change.

• Main cause of climate change has been attributed to “higher concentrations of the greenhouse gases in the earth’s atmosphere leading to increased trapping of the infrared radiation”. (Michael Kerr, Tort Based Climate change Litigation in Australia).

• Major greenhouse gases contributing to climate change includes carbon dioxide, methane, nitrous oxide and chlorofluorocarbon (CFCs).

• The chief sources of carbon dioxide in Nigeria include the burning of fossil fuels like oil, coal, natural gas and deforestation.
Just as it is with gas flaring, Nigeria also leads in deforestation.
Between 2000-2005, Nigeria cleared 55.7 percent of the forests.
Nigeria is one of the leading generators of two major causes of climate change ie: burning of fossil fuel and deforestation.

Challenges to Development.
Over-dependence on oil revenue.
Lack of integration of economic, environmental and development goals.
Limited focus on ‘environmental protection’ to the exclusion of ‘environmental management’.

Lack of, and the poor maintenance of development infrastructures like roads, steady electricity supply, telephones, water, etc.
Pervasive influence of corruption in the polity.
Poverty and illiteracy.
Lack of environmental awareness.
Recommendations and Conclusion.

- **Recommendations:**
  - Diversification of Nigeria’s economy from over-dependence on oil revenue.
  - Integration of economic, environmental and development goals in order to promote sustainable development.
  - Policy shift from ‘environmental protection’ to ‘environmental management’.
  - Adoption of the principle of Closing the Loop, shifting emphasis from industrial waste to its secondary use.
  - Provision and maintenance of development infrastructures like roads, steady electricity supply, telephones, water, etc.
  - Concerted effort to eradicate corruption from the polity.
In the current absence of these ‘building blocks’, Nigeria's aspirations in the Vision 20-2020 will remain a mirage. Contrariwise, if the country addresses these recommendations, coupled with consistent focus, the goals may be attainable in the long run.
Antarctic Governance: From ATCM to A Permanent Antarctic Organization?

Professor Dr. Li Chen

Professor of Law, Fudan University School of Law; 2012-2013 Fulbright Visiting Research Scholar, Center for Oceans Law and Policy, University of Virginia, School of Law
ANTARTIC GOVERNANCE: FROM ATCM TO A PERMANENT ANTARTIC ORGANIZATION?

By Dr. Li Chen

Abstract

The Antarctic Treaty System (ATS) with its core being the 1959 Antarctic Treaty has played an important role in the international governance of Antarctica and safeguarding the Antarctic peace and order. It has been deemed as the model of international cooperation and coordination. The Antarctic regime has undergone the process from a “decentralized approach” to the partial institutionalization and even to the overall institutionalization during the past 53 years. Under the current Antarctic Regime, The Antarctic Treaty Consultative Parties (ATCPs) and the Antarctic Treaty Consultative Meeting (ATCM) as the decision-making power, the CCAMLR and CEP as the specialist subsidiary bodies implementing the 1980 CAMLR and 1991 Madrid Protocol under the ATS, as well as the Secretariat of the Antarctic Treaty as the permanent administrative organ have constituted the basic elements of an intergovernmental organization. The emergence of a permanent international organization—Antarctic Organization will not only clarify or identify the international legal status of the Antarctic Regime, benefit the integration of the current inner institutions, including the CCAMLR, CEP and the Secretariat, but also promote the interaction between the Antarctic regime and other international organizations, such as the United Nations, SCAR or other NGOs, and finally further process the transparency, legitimacy and effectiveness of the Antarctic governance.
Antarctic Governance: From ATCM towards a Permanent Antarctic Organization?

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General Introduction

- The Antarctica is under the governance of the Antarctic Treaty System (ATS) which set Peace, Science and Environmental Protection as the principal values.
- Evolved over 50 years, the ATS has proved successful in maintaining the peace and security of the Continent, the Model of International cooperation.
- However, the Antarctic governance still faces great challenges with climate and geo-political changes as well as the global energy deficiency.

General Introduction

- The ATS, as the legal instruments for Antarctic governance, has evolved over 50 years since the effectiveness of the 1959 Antarctic Treaty.
- The ATS includes not only the basic treaties which set the rules of legal status of Antarctica, the science research, environmental protection, and Antarctic tourism, but also a great deal of Measures, Recommendations, Decisions and Resolutions adopted at successive Consultative Meetings (ATCM) in furtherance of the principles and objectives of the Treaty.
Governance principles and legal regime on Antarctica

- Freezing territorial claims (Art.4)
- Principle of peaceful use and demilitarization (Art.1)
- Free science expedition and research (Art.2)
- Decision making mechanism (Art.9)
- Environmental protection. (Madrid Protocol of 1991)

The Institutional Development of ATS

- Decentralized Approach under the 1959 Antarctic Treaty: ATCPs & ATCM
- Partial institutionalization within ATS: CCAMLR & CEP
- The institutional development of ATS: Establishment of Secretariat of Antarctic Treaty
- Towards a Permanent Antarctic Organization?

De-Centralized Approach under the 1959 Antarctic Treaty

- ATCM is the primary forum for the representatives of parties to the Antarctic Treaty to exchange information and formulate measures, decisions and resolutions to further the principles and objectives of the treaty. The outcomes of treaty meetings are adopted by consensus of the consultative parties.
- From 1961 to 1994 the ATCM generally met once every two years, but since 1994 the meetings have occurred annually. The ATCM is hosted by the Consultative Parties according to the alphabetical order of their English names.
- The meeting consists of representatives of: ATCPs; NCPs; Observers including SCAR, CCAMLR, and COMNAP as well as invited experts such as ASOC, IAATO, IOC, IPCC, IHO, IMO, UNEP, WMO, WTO, etc.
De-Centralized Approach under the 1959 Antarctic Treaty

Measures, Decisions and Resolutions, which are adopted at the ATCM by consensus, give effect to the principles of the Antarctic Treaty and the Environment Protocol and provide regulations and guidelines for the management of the Antarctic Treaty area and the work of the ATCM. Decisions, which address internal organizational matters of the ATCM, and Resolutions, which are hortatory texts, are not legally binding on contracting parties. In contrast, Measures are legally binding on the consultative parties once they have been approved by all consultative parties.

Only the consultative parties take part in decision-making. Other participants in the meeting, however, may contribute to the discussions.

De-Centralized Approach under the 1959 Antarctic Treaty

- The ATCM is chaired by a representative of the host country. Between the opening and closing plenary sessions, most of the work of the meeting takes place within the Committee for Environmental Protection (CEP) and various Working Groups. In recent years the following working groups have been established:
  - Working Group on Legal and Institutional Affairs,
  - Working Group on Tourism and Non-Governmental Activities,
  - Working Group on Operational Matters.

The Legitimacy and Effectiveness of ATCPs and ATCM

The main challenges to the legitimacy and effectiveness of ATS and its decision making mechanism:

- Decision making Mechanism: the relatively small management group has been criticized in the past as comprising a hegemonic consortium of world power
- “Common Heritage of Mankind”: During the 1970s and 1980s, calls for the internationalization of Antarctica were articulated within the broader context of developing states’ demand for a New International Economic Order
- “Question of Antarctica”: In 1983, Malaysia placed the subject of Antarctica on the UN General Assembly’s agenda (remained on the general Assembly agenda until 1990)
The implication of Legitimacy

Legitimacy of an international regime can be defined as the persuasive force of its norms, procedures and role assignments. As such, legitimacy is manifested in a degree of positive attitude to the regime: a regime is legitimate when specific rules are accepted by various actors because they recognize the normative basis, the procedure through which they are adopted and implemented, and the positions of actors in terms of rights and obligations.

The implication of effectiveness

In international law, ‘effectiveness’ may refer to the legal status of a rule, meaning that it is binding upon those addressed by it; or, when linked to implementation of rules, to their impact on the relevant factual situation…there is wide agreement that the effectiveness of international regimes must be related to their results or consequences.

The legitimacy and effectiveness of ATCPs and ATCM

- The preamble of 1959 Antarctic Treaty: "ensuring the use of Antarctica for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations";
- After the 1990s, with the enactment of 1991 Protocol, The ATCPs became preoccupied with protecting the Antarctic environment, rather than the exploitation of mineral resources;
- The parties to the Antarctic Treaty today represent over 80 percent of the world’s population, which further diminishes the "internationalization versus exclusive club" polarization;
- The duties ATS generates are owed erga omnes and bind all members of the international community (customary international law)
The legitimacy and effectiveness of ATCPs and ATCM

- **Openess of membership of ATS and ATCM:** ATS is open for accession by any state, besides 12 original treaty States, any "latecomers' who demonstrated interest in Antarctica "by conducting substantial scientific research activity" could become ATCPs. (Art.9)
- **Democracy and transparency of ATCM:** Decision making by consensus; interaction between ATCPs and other inter-governmental organizations or NGOs; the establishment of Secretariat;
- **UN No. 60/47 Resolution of 2005:** "Question of Antarctica" will not be discussed in the UN Assembly agenda; Malaysia's (other developing states) accession to 1959 Antarctic Treaty in 2011.

Partial Institutionalization under ATS-CCAMLR

- **Commission of the CCAMLR (Convention on the Conservation of Antarctic Marine Living resources 1980)**
- **The first int'l body created within the ATS, which shall have legal personality (Art.8) and shall enjoy privileges and immunities in the territory of States Parties on the basis of an agreement between the Commission and State party concerned.**
- **CCAMLR is an international commission with 25 Members, and a further 10 countries have acceded to the Convention. Based on the best available scientific information, the Commission agrees a set of conservation measures that determine the use of marine living resources in the Antarctic.**

Partial Institutionalization under ATS-CCAMLR

The key institutional components of CCAMLR are:
- **the CCAMLR Convention** which entered into force on 7 April 1982
- **a decision-making body, the Commission**
- **a Scientific Committee** which advises the Commission using the best available science
- **Conservation measures and resolutions**
- **CCAMLR's Membership and provisions for international cooperation and collaboration**
- **a Secretariat based in Hobart, Tasmania, that supports the work of the Commission.**
Partial Institutionalization under ATS-CRAMRA

CRAMRA (The Convention on the Regulation of Antarctic Mineral Resource Activities) 1988 (has not come into force) established the most sophisticated institutions within ATS

- a Commission (Art.18)
- two Committees (A Scientific, Technical, and Advisory Committee under Art.23 and a regulatory Committee under Art.29)
- a Secretariat (Art.33)
- a Arbitral Tribunal (Art. 1 of the Annex to CRAMRA)

Partial Institutionalization under ATS-CEP

- CEP (The Committee for Environmental Protection)
- CEP was established by Article 11 of the Environment Protocol. Article 12 provides that the Committee's functions are "to provide advice and formulate recommendations to the Parties in connection with the implementation of this Protocol, including the operation of its Annexes, for consideration at Antarctic Treaty Consultative Meetings." The first meeting of the Committee was in 1998.
- The Committee consists of representatives of the parties to the Environment Protocol and normally meets once a year in conjunction with the ATCM. CEP meetings are also attended by various experts and observers.

Institutional development of ATS-Secretariat of the Antarctic Treaty

The establishment of Secretariat:

- South Africa's proposal to establish a permanent Secretariat in 1961;
- 1991 Bonn consensus on the necessity for establishment of the Secretariat (three considerations);
- 2001 XXIVth ATCM's final decision to establish a permanent Secretariat in Buenos Aires
- On 1 September 2004, the Secretariat of Antarctic Treaty was established in Buenos Aires
The main functions of the Secretariat

- Supporting the annual Antarctic Treaty Consultative Meeting (ATCM) and the meeting of the Committee for Environmental Protection (CEP).
- Collecting, storing, archiving and making available the documents of the ATCM.
- Providing and disseminating information about the Antarctic Treaty system and Antarctic activities.

The legal personality of the Secretariat

- International legal personality has been defined as determining who is a "subject of international law so as itself to enjoy rights, duties or powers established in international law, and generally, the capacity to act on the international plane" (Robert Jennings and Arthur Watts, Oppenheim’s International law, vol. 1 [London: Longman, 1992], at 119).
- The int'l personality of an organization must be expressly granted according to the will of its founder members;
- Where the organization meets an established criteria, it may be objectively viewed as a legal person without reference to the will of its founders.
- Modern prevailing view: compromise between "implied power" or "presumptive personality": either of express or implied granted.

Limited legal personality of the Secretariat

- The Final report of the XXIV ATCM held in July 2001: The ATCPs will have to consider whether the secretariat should be invested with legal capacity within the host country only;
- Both XXIV ATCM/ WP035 and XXIV ATCM/ WP037 stated that "the secretariat shall enjoy, in the capacity of its host state, such legal capacity as may be necessary to perform its functions" including: (1) contract; (2) acquire and dispose of immovable and movable property; (3) institute administrative and legal proceedings and (4) conclude a Headquarters Agreement with the Host State, with the prior approval of the ATCM.
- The limited legal personality restricted to the host state will prevent the Secretariat from carrying out many of its specified functions. Considering the rotating nature of the ATCM, in other ATCM countries.
Towards a permanent Antarctic Organization?

- Besides CCAMLR, ATCM and CEP are only international forums within ATS; The Secretariat is also absent of International legal personality.
- Proposals to establish an Antarctic Organization by UK, Norway and Chile (but opposed by New Zealand and Uruguay) in 2002

The necessities for an Antarctic Organization

- CCAMLR & CEP’s limited competences
- Limited legal personality of the Secretariat
- The establishment of Antarctic Organization will not challenge the “freeze principle” of ATS and the “invested interests” of sovereignty claimants
- Under the current Antarctic Regime, ATCPs and ATCM as the decision-making power, the CCAMLR and CEP as the specialist subsidiary bodies implementing the 1980 CAMLR and the 1991 Madrid Protocol under the ATS, as well as the secretariat as the permanent administrative organ have constituted the basic elements of an intergovernmental organization

The necessities for an Antarctic Organization

- A permanent Antarctic Organization will clarify or identify the int’l legal status of the Antarctic Regime, benefit the integration of the current inner institutions, promote the interaction between the Antarctic Regime and other international organizations, such as UN, SCAR and other NGOs, further process the transparency, legitimacy and effectiveness of the Antarctic governance.
The End

Thank you for your patience and attention!