

CHANGING DYNAMICS OF INTERNATIONAL LAW IN POST COLD WAR ERA

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ABSTRACT

The aim of this paper is to evaluate new challenges to development of International Law in Post-Cold War period. It is contended that some great opportunities have been opened for rapid progress of International Law due to Global interdependence in economic, technological sectors and global impact of Environmental Pollution. The paper will discuss theoretical implications of crystallization of amorphous contents of International Law in the light of Realist, Liberal and Constructivist Theory. The paper will also challenge the extremity regarding existence of sovereignty in International Relations. It is stated that more focus need to be on divergences and convergences in interests of individual states and humanity in light of threat of technological destruction and environmental pressure. The paper will focus on the impact of hegemonic actor on functioning of International Law. The dynamics of Nuclear Proliferation and its role in distribution of power among major players will also be briefly discussed. The large scale damage to life and property in form of civil wars and genocides will be briefly evaluated to understand if there is any progress in sanctity attached to each and every human life in real conduct of international relations.

KEYWORDS: *Crystallization of International Law, Relative Universality of Law, Amorphous nature of International Law, Hegemonic Dictation of Policy, Limits of Sovereignty, Technological Exploitation of Law, Natural Law, Constructivism, Ecological Critique of International Law, Non-State Actors.*

The discipline of International Law has seen massive development in the 20th century. Once it was merely treated as “Vanishing point of Jurisprudence” by none other than great jurist Holland and was treated as non-existent or merely insignificant in the entire discourse of Analytical Jurisprudence. It was Oppenheim who first gave serious and comprehensive treatment to the discipline in the 20th century dealing with major developments that happened in the nineteenth century although legendary jurists Hugo Grotius, Emer de Vattel, Dionisio Anzilotti are credited for developing the field in the initial stages. Oppenheim defined International Law as “name for the body of customary and conventional rules which are considered legally binding by civilized States in their intercourse with each other”.

The two great World Wars of the twentieth century resulting in large scale destruction of human lives and property compelled the nations to set up an organization that could better regulate the conduct of nations. Reduction of Anarchy in International Relations was no longer an empty and meaningless metaphor. It was question of Great Choice between possible annihilation and existence immortalized by dark and miserable future predicted by great scientist Albert Einstein, “I do not know what weapons will be used in the Third World War,

but I am sure that the Fourth World War will be fought with bows and arrows.” This led to development of United Nations and acceptance of Universal Declaration of Human Rights by major countries.

The twentieth century witnessed unprecedented growth of regionalism which can be understood by the concept of “functional integration” developed by David Mitrany. The increase in cooperation in some core sector led to development of close, interconnected and interdependent regional market. The regional economic unit induced closer political ties and enabled development of “security community” to use term used by Karl Deutsch. E.U., ASEAN and NAFTA are some great developments in the regionalization of International Politics. This has reduced Anarchy in the conduct of international players and increased the mutual trust among them. The need to standardize and systemize the norms related to the conduct of international relations has led to the codification of customs and development of new mutually accepted principles, rules and regulations. International Law has greatly advanced due to this phenomenon.

The technological advancement combined with collapse of Soviet Union led to increased globalization

and liberalization. This has increased interdependence of global economies on each other. This has also caused increased crystallization of behavior of different states in form of conventions and treaties. The long term interest of state demands them to follow such rules as far as possible and avoid application of self-desire inspired capricious decision in every cases.

Environmental Pollution has emerged as Global problem in recent times. The harm it is feared to cause in form of flood, drought, reduced fertility of soil, air borne diseases, ozone layer depletion makes it certain that nature respects no man defined sovereignty. This has induced states to come together and discuss the nature and magnitude of the problem and come with a universally acceptable solution. This has led to numerous conferences related to ecological disturbances and enabled development of International Law in this field.

There is considerable suspicion regarding the Universality in application of International Law among different scholars of International Relations. The scholars of Realist School of thought still contend that real power interest rules the roost and international law is merely a cloak for pursuing policies related to National Interest of every player. With emergence of United States as a great hegemonic power after demise of U.S.S.R., it is contended that U.S. foreign policy is above the dictates of International Law. The U.S. invasion of Iraq in 2003 amidst lack of any evidence in U.N. Report and dissent of states of Security Council is an example in this regard.

Scope of International Law

As it has been stated that International Law is not regarded as supreme law by all the thinkers. The Realists and Liberals vary regarding the basic pattern of International Politics. The Realists find International Relations as conflict based while Liberals are prone to find great scope for cooperation in international affairs. Thus, Liberals support great extent of institutionalization of international relations in the form of developed international law while Realists refuse to attach much importance to International Law as they insist that relative gain inhibits institutionalization. The Constructivists contend that International Relations is not as objective as contended by Realists and Liberals, but it is inter-subjective. They say that reality is shaped and moulded by interaction between different players. The different players are both inter-related and inter-dependent on each other. There is no doubt regarding the material objective condition of international affairs but the actors are no

longer treated as prisoners of objective necessities. They are believed to be powerful enough to develop their own perspective of overall reality as per their cognitive structure and self-interests. The Post-Modern discourse tends to make Reality highly fluid and unstable giving each player great amount of independence to define Narrative of any given Text in their own way. It is thus charged with lack of objectivity and improper understanding of process enabling the mutually shared meaning among the players. The Constructive discourse is credited with adopting the middle way between Objectivity and Subjectivity and thus avoiding the extremes between objective approach of Realism and Liberalism on one hand and Post-Modern Discourse on the other.

The Constructive approach helps us to understand the opportunities and challenges before International Law. If different players are able to come close together and agree upon the common problems and need to develop a mutually acceptable solution, there is great scope for development of International Law. This happened in Europe after Second World War when different countries agreed in true sense to avoid the forces which could create another War like situation in Europe and rather concentrate on combating against expansion of Communism. This led to development of European Economic Community and further took form of European Union. There was such development in South East Asia and North America as well where ASEAN and NAFTA grew into a strong Regional Organization.

The limits in development of International Law arises when states are unable to attain domestic stability as in case of Middle East and African countries or they are unable to come out of the shadow of any contentious issue like Kashmir Problem in case of India and Pakistan. Lack of Consensus can result in formation of domestic law particularly in Non-Democratic regimes, but it cannot cause law formulation and Obligation at International level because there is no Sovereign above the States. International Law becomes very weak and the force of "Pacta Sunt Servanda" (Agreements must be kept) loses its significance. There is continuous breach of International Guidelines and humanitarian norms are sidelined.

International Law requires that nations are able to submit their faith on each other and able to develop a long term convergence of interests. It cannot develop from a vacuum. There is need of great economic understanding, a sense of social community, relevance of cultural diversity enriching mankind, rational vision to avoid the

unprecedented escalated violence in case of heightened tension due to great strides in military technology in the past hundred years or so. There is need to break the shackle of powerful lobbyists who have everything to gain and nothing to lose from increased level of tension resulting in arms race and unstable conditions allowing them to intervene for their selfish interests.

Power Imbalance in Post-Cold War Period

The end of Cold War resulted in rise of United States as sole hegemon or far more strong power than other great powers. This caused Skew in balance of power in international affairs to such an extent that U.S. was able to dictate the terms and conditions to many poor countries which had to accept them in terms of Structural Adjustment Programs. The sovereign decision making power of many countries existed only in name as they were compelled by economic and political reasons to accept the harsh conditions of market economy. The entire logic of collective security was brushed aside by U.S. in case of Iraq War in which case U.S. supported its attack on basis of Unilateral Strike.

International law like all other modern laws demands that all should be bound by its rules and regulations. If it allows exceptions to powerful states, it lose its command not just in their case but also in eyes of all countries which try to rely more on their own military capability and alliance type formation rather than mere nominal force of International Law.

International Law recognizes equal sovereignty of all states. However, great power imbalance between states allows major power to intervene in domestic affair of individual weak state in name of democracy and human rights. The application of intervention is highly selective depending upon the selfish interests of great power and this practice often compels weaker states to accommodate the demands of powerful conditions as far as possible sacrificing the genuine interests of its citizens.

This trend has reduced accountability to law and caused powerful vested interests to use the high sounding principles as a cloak to further their own causes. This has caused disturbance in many regions resulting in large scale death, destruction of property and displacement. International Law has been reduced to mute spectator in many such cases.

Crystallization of International Law in Post-Cold War period

International Law in traditional sense was mainly based on customs. The accepted practices observed by states in their interaction with other states became part of international law. Custom can serve as great source of law in case of static world order. But when World order has become dynamic and informed by great changes in small period of time, problems arises at much faster pace than development of standardized conduct among states. In such cases, only Legislation can fill necessary gap.

The twentieth century was marvelous in terms of ratification of charters and conventions by most of the states of the world. This becomes more spectacular if we take large number of newly independent states into account. The new states ensured that they will play positive role in development of new principles of International Law. Increased number of actors often feared to increase dissent often acted in direction of greater consent and agreement regarding terms of International Law.

The domestic laws have seen dominance of vested interests in form of lobbying. The International Law by its very existence in anarchical structure witnesses considerable conflict of interests of different states. The Nuclear Proliferation Treaty, for example, is discriminatory in its very clauses where it differentiates between Nuclear Weapon States and Non-Nuclear Weapon States. The nature of International Law thus continues to exist in its amorphous form. It fails to develop into proper set of rules and regulations which becomes obligatory for all the states. The rules become tool for promotion of national interests. They are observed and broken as per the whims and caprices of individual states.

International Law can crystallize into well-developed set of rules only if they are consistently followed in reciprocal terms. Lack of reciprocity breeds pure rational decision making guided by selfish, short-termed egoistic interests. It generates a sort of Prisoner Dilemma where Decision makers are compelled to accept a non-optimal solution due to lack of certainty of effective cooperation from the other side.

The amorphous nature of international law is not neutral phenomenon. The amorphous nature enables powerful interest to misuse their power as there is no legal provision which can cause universal condemnation of their improper harmful acts. For instance, lack of fixed

deadline for complete disarmament keeps states trying to develop more and more weapons and this allows nuclear arms' lobby to generate huge profits.

The amorphous nature is linked with differing justifications of intervention which enables the selective enterprises like arms' company, natural resource based firm, construction firms to make huge profits. This can be connected with great intervention of external powers in Middle East in recent years and also support of some dictatorial regimes in Latin America in the past as they secured material gains for such powerful lobbies.

International Law dominated by Discourse of Natural Law

The natural law supported the proposition that there were some principles inherent in nature itself (particularly human nature) that have to be given shape of law. These principles have to be universally followed by all the societies.

The International Law discourse is heavily dominated by natural laws in the sense that some values are deemed to be compulsory for all states. These values are not allowed to be affected by particular cultural and social demands of any given region. This is positive development to the extent that it puts pressure on even ruthless dictators to respect the sanctity of human life and avoid the inhuman acts against weaker sections to great extent.

The Natural Law discourse is vague, so its influence on International Law causes the latter to become uncertain and easily malleable to interest of powerful countries. Democracy is defined as per the demands of self-interests of the powerful to support or oppose a given regime. The Human Rights discourse is also used to settle scores against a state as violation of human rights is more certain and universal than any of its definition. The violation can be easily exaggerated to declare the given regime illegitimate.

The Natural Law theory is universal and fails to account for particular greatness and limitations of any given region. The acceptability of given political model or given political values must suit the genius of people before it can be successfully followed in practice in any particular state. Lack of familiarity and taste for any such development can only cause regression and instability in the region.

Ecological Dimensions of Contemporary International Law

The contemporary International Law is surrounded by great challenge to develop a commonly accepted goal of ecological conservation and sustainable development. There has to be fixed target which must be followed by all the states. The International Law has to ensure wise utilization of natural resources which can both conserve environment and ensure development of poor countries which can remove poverty and enable people to be supplied with basic essentialities of life like food, cloth and shelter.

The international Law remains stunted because of disagreement between industrialized North Block and less developed South Block. The latter block wants Common but Differentiated Responsibility as it does not want to forego its opportunity of development and contends that it is neither responsible for pollution in past two hundred years nor has it benefitted in any way by such environmental exploitation in these years.

The contemporary state centric Westphalian system of International Relations fails to give critical decision taking powers to International Organizations concerned with environmental problems. They contend that they have better expertise in this field and hence can take better decisions. It is submitted that these players should not enjoy critical powers in any case as they can be easily used by Developed States to advance their own selfish interests and prevent people of poor from fulfilling their just aspirations.

Dilemma of Sovereignty

The existence of Sovereignty is one of the most perplexing problems of Politics. The Treaty of Westphalia provided that states are sovereign powers. The large scale massacre caused by states like Hitler's Nazi regime and Ottoman Emperor in Armenia caused states to evolve international principles regarding humanitarian rights. Thus people were given stake against the state as far as protection of some fundamental rights concerning existence are concerned. Thus dilemma as to ultimate supremacy of state or its citizens developed.

There is attempt to balance state's sovereignty and people' rights in United Nations Charter and different Conventions passed by United Nations. It provides for equal sovereignty of all states and non-intervention in domestic affairs of each state. The Human Rights Charter provides for basic rights of individuals and Convention on

the Prevention and Punishment of Crime of Genocide compels state to respect life and existence of every group.

The divergent forces of individual rights and state's domestic supremacy has generated major debate between Right to Protect and Principle of Non-intervention. There is lack of well-defined Charter or Convention based legislative texts and Judicial Precedents that can provide for solution in any given case. There does not exist any formula which can state the critical level to which violation of rights can be tolerated. If the limit is very small, then there can be intervention in any case as some form of rights' violation is inevitable. If the limit is too much, then there is fear of large scale massacre of people in unstable, volatile states.

This problem of indetermination of proper balance had caused justification of Taliban forces in 1980's as far as it suited the U.S. interests as all its violations of rights could be termed as normal deviations. The U.S. could however remove Saddam Hussain from power even though his regime had no Weapon of Mass Destruction on pretention of alleged cases of human violations. The real interest however lay in Petro-Dollar Economics. Similarly, the anti-Gaddafi forces were supported by French and U.S. forces although any case of Human Rights' violation was not new for his long termed regime from 1969 to 2011.

The dilemma of sovereignty coupled with ill-fated interventions cause large scale death of people and great displacements and damage to entire area. The current refugee crisis in Europe can be traced to this irrational, hasty, myopic solution of this great dilemma.

Impact of New Technology on International Law

This is era of great technological advancement. The Information revolution has ensured rapid flow of information greatly reducing time-space factor, while Revolution in Military Affairs has enabled technologically advanced states to start and finish war with minimum war casualties on their side. The rapid growth in Bio-Technology and Nano-Technology will further widen the gap between states in technological aspect.

The technological aspect is double edged sword as far as evolution of International Law is concerned. The greater communication can reduce the misunderstanding and increase a type of consensus among common people of different countries regarding basic humanitarian principles of International Law. The latest example is the

great positive public support for Syrian refugees in Europe after photograph of dead child on the shore was widely circulated through social networking sites. The greater reach of technology has potential to demystify the political conduct of major actors causing them to change their traditional duplicity. The Emancipatory role of technology in its capacity to demystify reality was stated by great thinker of Frankfurt School, Benjamin Franklin.

The technological revolution has increased the grip of powerful countries. The great development in oil exploration technology has encouraged U.S. to meddle more in Gulf Region in the past. Revolution in Military Affairs has reduced the cost of war, at least in perception of military strategists. The Snowden affair has clearly showed that right to privacy and special rights and privileges of Head of States and Diplomats are greatly violated by Central Intelligence Agency. The entire International Politics can be easily controlled by Great Powers which was not possible in earlier centuries. The norms of International Law cannot become universally applicable if few powerful interests can violate any terms and conditions as per their sweet will. The threat of nuclear escalation is another side of technological development. The need to avoid nuclear proliferation in hands of irrational, non-state actors at all cost is major challenge in age of highly advanced information technology. The legality of trade of civilian nuclear technology under I.A.E.A and N.S.G. guidelines is also vulnerable as civilian technology can be easily advanced to develop nuclear weapons. The safeguard and supervision provisions can also be misused to violate internal sovereignty of a state. The International Law, though considerably developed in this regard, must address all these problems in non-discriminatory framework informed with spirit of equal treatment of all states.

CONCLUSION

The paper seeks to locate new developments in international law in post-cold war period. It focuses on hegemonic status of United States, rapid technological advancements, Nuclear Proliferation and ecological problems. It attempts to use concept of crystallization of amorphous contents of law, theory of natural law and the great conflicting position over sovereignty to do justice with changing dynamics.

The end of an era is marked by polarized opinion by opposing camps. The Soviet supporters tended to see it as beginning of age of "American Hegemony" while U.S.

inclined thinkers called it as end of history (Francis Fukuyama) and final and complete victory of liberal democratic system. The true glory of International Law can happen only when there is greater balance of power and no single power is able to dictate policy to other states. The Washington Consensus and Structural Adjustment Programs show lack of concern for basic demands of people of developing countries.

International Law has seen rise in influence of Non-State Actors like Multi-National Corporations who are able to influence policy of weak and poor states as per their aim of maximum profit generation. The Environmental organizations are doing some positive work as they are trying their best to inform people regarding environmental degradation and deleterious effects of Climate Change.

The dominance of International Politics by staunch Realists wearing the masks of hypocritical Liberals has caused the dismemberment of many states which is accompanied with rise of powerful, ideologically driven violent groups and organizations which are committing murder arson and rape on large scale. These groups advocate utopia based on extermination of great majority of "other" where their perceived system will rule the roost. The International Law has failed to protect the life and property of people in such violent regions where ineffective control of state authority has generated government versus anti-government struggle and inter-group wars on large scale.

The proper development of International Law not just in volume and content, but in terms of greater moral legitimation and effective implementation requires cooperation between different states and reduction in power and dominance of powerful vested interests who tend to influence policy making at all levels from behind the curtain. This century of great technological advancement requires human beings to dispel darkness of earlier centuries to attain peaceful international order, otherwise it will be also be "century of great misery".

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