

The Future of Knowledge: Current Challenges and Perspectives for International Law

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ABSTRACT: The dynamic of changes of the International Society increased dramatically in the past 50–100 years. Fundamental changes touched also the domain of International Law, as created after 1945 by the relevant international actors through the United Nations, Law which regulates the current international relations. Norms and fundamental principles of International Law, considered for a long time as immutable, are subject of serious challenges generated by new balances of power in the world, the complex process of Globalization, by terrorism, illegal migration etc. Temptations for instance to revert back the fundamental “acquis” of the European Union, such as European integration, fundamental rights and liberties, the moral Judaic–Christian foundation of Europe etc. into an updated version of a Europe of sovereign states on Westphalian model became a reality. The reconfiguration of the Global system and the future of knowledge from this point of view will imply a serious effort for the renewal of the fundamental legal concepts, but mainly a new quality and vision of the international political leadership. For generating once again progress, these changes should nevertheless not renounce to what was fundamentally acquired, to the essential principles and values embodied by the Humanity in the new born post–War society and its International Norms.

KEY WORDS: knowledge; international society; International Law; international relations; UN Charter; European Union; USA; Russia; predictability; challenges; terrorism; refugees; changes.

The thirst for knowledge represents human being’s inner need which prompted mankind to seeking progress and allowed it

to evolve. Or to regress, depending on how it understood to use its discoveries. Regardless of whether such thirst for knowledge was based on philosophical, religious, social progress or political ideas, it could always survive in a context of freedom of thought as an inherent dimension of the human being, whether acknowledged or not in the domestic or international laws throughout various historical periods, permitted or restricted in its expression outside human being, but at all times very much alive within.

The dynamics of mankind's evolution cannot be possibly compared to what was known only 50 or 100 years ago. The speed of sound is now considered a merely modest reference if we think of the speed of communication via Internet. A fourth industrial revolution is currently mentioned—a revolution of knowledge—of the instant exchange of information and data, of the penetration of advanced technologies in our day to day life.¹ The phrase “the future starts today” has been replaced with “the future is already here.”² All this testifies in brief that the pace of changes triggered by knowledge, research and innovation runs infinitely faster than it did at the dawn of the “modern international society.”

From this perspective, a distinct realm is that of the international regulations of the global society, in other words the Public International Law, a domain traditionally considered essential for the stability, peace and progress of the international society and a branch of the Law having gone through substantial transformations and evolutions over the last 70 years, after the WWII. Such evolutions witnessed the introduction of UN Charter and the establishment of the United Nations Organization, the adoption of certain fundamental principles of the International Law which, *inter alia*, confirmed the exclusion of any aggression and war from the accepted legitimate means for settling international disputes, the adoption on 10 December 1948 of the Universal Declaration of Human Rights and of an entire set of international universal or regional conventions enshrining and safeguarding the human fundamental rights and freedoms, among which, at European level, a special importance being placed on the European Convention on Human Rights and the jurisdictional mechanism considered to be the most effective in this field, namely the European Court of Human

Rights,³ the establishment of the International Humanitarian Law and so on.

To what extent is today's International Law exposed to this precipitated dynamics of change? Is it still in line with the political, social and global security developments? What is the actual impact of today's geopolitical developments on the International Law?

In order to provide answers, one must understand the specificity of the International Law. Generally, international rules are built to govern international relationships, to establish mandatory rules, rights and obligations for the subjects of International Law (states, international organizations and, more and more often lately, individuals), but also for the non-state entities, in order to establish what is permitted and what is forbidden.⁴ Its emergence, existence and amendment are prompted by material and social factors such as social conscience, international public opinion, international habits or customary practices being ultimately expressed in writing in the form of international treaties resulting from a process of codification of what may often be deemed as already representing an unwritten rule applied in practice for some time. International rules may be codified in writing also due to the need to govern new or ongoing international realities, which at times are either positive (e.g. spatial law regulation), or negative (e.g. countering international terrorism; prohibition of anti-personal mines etc).

In a classical monograph of International Law, Ian Brownlie reminds us of the distinction drawn in the relevant international doctrine between the sources or material sources of International Law (social and material conditions triggering the emergence of Law) and the formal sources (actual legal forms taken by rules of international law in international treaties, international customary practices, case law of international courts of justice etc.)⁵ It is an established fact that including in the formal sources of International Law the regulatory needs naturally deriving from the material sources above takes some time to be contemplated and assimilated by the law-making political factor, and objectively involves a time gap between the emergence of the need for international regulation and the actual codification of the International Law. The specificity of international regulations requiring the states' laborious unification

of wills, nurturing different interests and evaluations, explains the length and complexity of the process of negotiation in respect of the adoption of a new international treaty. Apart from this, there is the opposition between Law and politics in international which more than once were conflicted due to the temptation to favor the “law of the force” over the “force of the Law,” and then there is also the partial overlapping between the International Law and the International Morality,⁶ in order to understand that international rules have a rather conservative nature. The codification process may require time and international political effort to reach a compromise and for this reason there is a tendency towards its stability and predictability. Such conservative nature was in our view fully justified for a long period of time after the War but it is obviously becoming an impediment in the context of contemporary exceptional dynamics, setting many of the current international regulatory mechanisms and systems into opposition with the need for a more rapid alignment of the International Law to the present realities and particularly to the future perspectives.

It therefore clearly follows that *the history of international relations faced and still faces a gap and even a hiatus between mutations, repositioning of certain centers of international power, between the reconfiguration of international geopolitical balances and the evolution of International Law, the emergence of the new rules governing such international relationships. The evolution of international relationships, the knowledge of future developments achieved through the assessment of the political, economic and security etc. interests of major international players, brings forward the adoption of new international rules.* From this perspective, one may find interesting the analysis provided by the contemporary doctrine⁷ on the relationship between Diplomacy and International Law. Traditionally, Diplomacy, operating at the borders between Politics and Law and between the domestic needs and interests of the states and an explanation thereof by means of an international language, namely the language of International Law, is used by the states with a view to promoting and presenting their international interests and conducts as founded on the rules of International Law. This is because the power of International Law, universally

established after 1945, generally determines the states to make use of it instead of entering into a conflict with it. In practice, a series of examples are known in the international relationships of the latest decades where the states were tempted to comply with their own interpretation of the International Law and not necessarily with the original meaning of the rules which allowed the own interests of such states and ad-hoc interpretations to gradually and formally become new rules of International Law. The Diplomacy promoted by the states in terms of the prevalence in particular circumstances of the Politics over the Law has led to the reinterpretation of the rules in the field of humanitarian interventions, which are more broadly understood as having a legal basis despite the limitations imposed by the concept of state sovereignty, prohibition of war or other limitations originally enforced in the UN Charter.⁸

Therefore, there is a *fundamental change of the concept of knowledge in contemporary international relationships. The original objective established under the UN Charter, to know, to understand and to peacefully use the future international phenomena within stable, predictable parameters regulated under the rules of International Law is transformed by the accelerated developments and dynamics of contemporary international society, that is the realities, the new power relationships, the tough competition in a world marked by scarcity lead to a reinterpretation of the Law making the knowledge of the international regulatory reality and of the rules governing the evolution of international society more unpredictable and thus more difficult.* We are basically in the presence of a *disruption of the international system which diminishes its predictability in the face of the well-known world economic crises, severe security crises generated by a level of terrorism not known before by mankind, such as ISIS/DAESH or the conflicts in Middle East or Eastern Europe (Ukraine/Russian Federation), the increase of the economic and social polarization between the world regions or the waves of refugees or the illegal immigration encountered in Europe or in certain countries of the extended Middle East region.* All these factors make the future world architecture and the new international rules infinitely more difficult to understand. It is not a coincidence that we currently witness a fiercer competition or an increased gap

within the framework generously regulated by the international rules for the progress of humanity, between the positive and the negative use of knowledge, as it is the case of cybernetics which has revolutionized the contemporary world and the cybernetic war aggressively promoted lately by states or non-state entities. The same considerations apply to the exploitation of the outer space, either for peaceful reasons or for military conflicts, the freedom of thought or of religion, applied either to achieve beneficial or detrimental purposes etc. We are ultimately in the presence of a new world order, not reasonably defined yet, which exited long ago the bipolar system of power (which offered however stability to international society despite the cyclical tensions between the two relevant power players), has gone beyond the unipolar system represented by the USA and is currently facing several types of challenges directed at the player mentioned by different state entities (Russia, China etc) or non-state entities (mainly characterized by terrorism). And again it is not a coincidence that within this process of configuration of the new world order, there is an increased renunciation of the traditional role of Diplomacy understood as highly stable and institutionalized, skilful at negotiations and mediations, respectful towards international rules and steadfast in the face of change in international environment, in favor of a Diplomacy reflecting the redistribution of Power in international environment and currently using new practices based less on the rules of Law and more on the rules deriving from the new balances of Power.⁹

To have a true and fair view of the serious challenges that the current international system is facing it may be useful to provide a few relevant examples.

For the international Law system built after 1945, the observance of sovereignty, territorial integrity and states independence constituted one of the fundamental principles which allowed for no derogation. Such principle was provided in the United Nations Charter¹⁰ and was supplemented by the obligation to “maintain international peace and security,” defined simultaneously by the same Charter as Purpose and Principle,¹¹ by the Principle to “settle international disputes by peaceful means”¹² and by the Principle to “refrain from the threat or use of force.”¹³

Subsequently, international treaties or other fundamental political documents reaffirmed or enriched¹⁴ these fundamental principles of contemporary International Law. In this regard, the Russian Federation's military aggression against Ukraine started in 2014 sanctioning the illegal attachment of Crimea, a territory pertaining to the sovereign state of Ukraine, could have been hardly predicted, given that such military action took place in a 21st century Europe, a Europe based on values and principles, unable to conceive of a possible outbreak of a new war in contemporary times. The violation of the territorial integrity and sovereignty of a European state, Ukraine, member of the European Council and associated to the European Union through a permanent member of the Security Council posed a huge challenge to the international legality and the state of international peace and security enshrined as a Purpose of the UN Charter. The motivation offered by Moscow, among others, was Russia's "serious concern" for the "fate" of its Russian co-nationals, citizens of Ukraine, who would have suffered a "repressive treatment" by the new power in Kiev installed after the popular revolution which ended in bloodshed in Kiev's Maidan and had a pro-European orientation. Russia has claimed a right of international interference in favor of its co-nationals who lived in another state, a right which however is not provided in the International Law. The actual and well-known reason obviously departs from the claimed reason and concerns in fact Russia's geopolitical interests, thoroughly tested by the strategic reorientation of Ukraine towards the European Union, but also Moscow's desire to get a higher profile as a new important global player able to challenge and destabilize the American international "leadership." The reaction of the western and democratic world, initially cohesive and coherent in condemning the Russian political and military action, was materialized by qualifying the attachment of Crimea as an "aggression."¹⁵ It is worth while mentioning in this context, as an irony of history, that the first definition of the term "aggression" in International Law was stipulated in the 1933 London Protocol on defining international aggression at the proposal of the Romanian Ministry for Foreign Affairs, Nicolae Titulescu (twice elected President of the League of Nations in 1930 and 1931), a proposal co-initiated by the Commissar

for Foreign Affairs of the U.S.S.R, M. Litvinov. Moreover, this treaty is also known as Litvinov–Titulescu Protocol. Mention should be made that 80 years after the essential contribution of the Soviet Moscow' Minister for Foreign Affairs to the international legal condemnation of aggression, Vladimir Putin's Moscow is condemned internationally as aggressor for the exact same type of actions incriminated in 1933. The condemnation of the Russian aggression against Ukraine was followed by a discontinuation of the cooperation between the European Union and NATO on the one hand and the Russian Federation on the other hand, as well as by the enforcement of a mechanism of political and economic sanctions meant to determine the Russian authorities to refrain from occupying a foreign territory. In practical terms, two years after the Russian military action, the reaction of the democratic international society for the restoration of certain fundamental principles of International Law was actually ineffective. Moreover, Russia succeeded in dividing the European states,¹⁶ which act inconsistently in respect of the continuation of the sanctions imposed by the EU, due to their specific political and economic interests in their relationship with Moscow. This obviously leads gradually to a consolidation of Russia's *de facto* authority over Crimea and to the idea that a change of borders by military force in the 21st century is possible. The *conclusion* that follows is that *the very foundation of the International Law, which previously had an undisputed reputation in the international society, neither allowed a prediction related to the prevalence of force over the rule nor was it able to prevent a violation of the International Law or lead to the reinstatement of the international lawfulness, at least so far.* This means that the *process of knowledge and understanding of the manner in which the international relations are developing in the contemporary society lost the predictability previously provided by the established framework of the basic rules of International Law.*

A second illustration relevant in our view, concerns the European Union typology, its evolution in the past decades and the deep changes triggered by the multiple challenges posed nowadays which complicate the path to uncovering the future political, strategic and regulatory profile of the European Union. In other words, the direction it has embarked upon.

It is widely known that the European project known as the European Union is part of a Westphalian legacy, that is a Westphalian world of sovereign states bordered by frontiers.¹⁷ It is this world which invented International Law in Europe and spread it worldwide, a Law that was and still is, by and large, a Law of the states, conceived by the states and created for the purpose of regulating inter-state relationships.¹⁸ The same Europe moved on however, in two major stages, towards the Political Project of a united Europe, originally, after 1945 in the West-European area, prompted by the Founding Fathers of the European Communities, and subsequently, after the fall of the Communist system in Central and Eastern European as well. The concept of a federal Europe based on a system of shared democratic values, thorough domestic integration and international opening, has been supported for decades in particular owing also to the outcome of the globalisation process which makes the international society ever less Westphalian.¹⁹ However, despite the decades of promoting the integration of the institutions, of political and economic decision-making mechanisms and of domestic markets, despite the worldwide expansion and the outline of a profile aspiring towards unity, the severe shocks and challenges that the European Union is facing lately revealed the bounds and even the steps back it has to take in the European construct, the selfishness we thought long buried of the European states and which surface now as alive as ever. The Treaty of Lisbon signed in 2007 pointed out the inability of a “united Europe” to decide, for instance, on the creation of a genuine common foreign and security policy, a common defence policy, the appointment of a proper EU minister for foreign affairs and of a foreign service and so on. The dilemma of a perpetual cruising between an integrated and supranational Europe and the preservation of certain distinct prerogatives of the sovereign states, between the “EU” and the “inter-government” method had not been yet topped in 2007, in times of peace. Therefore, it is all the more easier to imagine that now, in times of “war”, at a time when the trend of reinstating the Westphalian sovereign system of the states is clearly revealed, the future knowledge of where a united Europe would head for is growing ever more complicated or rather unpredictable.

Under the circumstances, there is legitimacy in the following questions raised by the present-day political, economic, security and value crises EU has to face and to which there are no coherent answers yet meant to safeguard the future of the European project:

— Does International Humanitarian Law still operate today in the times of atypical military conflicts? And this reference includes both the hybrid war fought by Russia in South-Eastern Ukraine and before that in Crimea, but also to the bloodshed warfare in Syria, Libya, Iraq etc.;

— Is the limitation of the fundamental human rights and freedoms as they have been understood and promoted for decades in the European area a realistic solution in the light of the fight against terrorism? And what is more, a terrorism which has, in truth, turned more sophisticated and more “domestic” due to the inflow of “foreign terrorist fighters”²⁰ and, consequently, more difficult to combat than the “international” one;

— Does International Humanitarian Law still operate in the light of mass migration phenomenon in the European area? Can we still count on the freedom of movement from the inside of the European Union between the member states as on a fundamental right? How far do the limitations of International Humanitarian Law go in the nowadays practice of the states against the uncovered and far more unbending prerogatives of the concept of sovereignty? All these questions are raised in a context where the system of International Humanitarian Law which did not seem to ever be susceptible to change, beginning with the 1949 Geneva Conventions,²¹ is “frozen” by the very European “progressive” states, while lots of individuals in a desperate run for their lives and away from bloodbath conflicts of Syria or Libya are turned by European politicians from “refugees” into “illegal immigrants,” with all treatments enforced on them, as it is the case of the well-known Agreement executed in March 2016 between the European Union and Turkey;

—Which is the legal, political or moral solution to the tension between the right of the refugees or the asylum seekers to the protection of their own cultural identity and the necessity of the host states to protect the cultural identity of its their own societies and citizens?

—How up to date can the previously established system of European values be anymore, beginning with the moral Christian–Jewish foundation of the European society?²² An illustration of international notoriety has been recently offered by a restrictive or even repressive practice promoted—however surprising as it may be—by Norway, an European country with a long and established constitutional and democratic tradition and for a long while now acknowledged as a Christian country, namely by the child welfare service of Norway—Barnevernet, which had a brutal and abusive intervention by taking away children from their natural parents to place them in foster care to “surrogate families,” all in the name of certain concerns regarding an education model labelled as “radically Christian and indoctrinating” which the parents were said to resort to against their own children.²³ This situation actually emphasizes a manifest violation of the freedom of thought and religion and equally of the inviolability of one’s private and family life as such are guaranteed in all international treaties of Human Rights or even in the Norwegian domestic laws, violations which occur in a lay society which shows articulate signs of fundamentalist secularisation.

What this analysis aims at is obviously to catch a snapshot view of the present day and moreover, of international society’s outlooks. We are living in times of deep turmoil and unrest which cast their dramatic mark on the system of international relationships changing it from what it used to be after 1945 when it was created. The stability and predictability of this system vouched for under the great political decisions made after the WWII within the United Nations or at a regional level, as it was the case of the European continent, but also the international regulatory architecture and the great fundamental principles of International Law, are put through the mill today while the solutions to be found will definitely require an effort of concept

innovation and codification in terms of law. Such legal changes could only reach a positive outcome if proper political endeavours are put into the process which means powerful political leaders promoting a political vision capable of generating progression and not regression, enhanced solidarity and reduced selfishness. It is a fact that for quite a while now Europe has faced a deficit in terms of vision and political “leadership” as the leaders nominated by the European nations in the latest elections may hardly equal the “Founding Fathers” of the united Europe. The future of knowledge of the international society and its new rules seems rather prone to uncertainties and numerous challenges generating dilemmas and difficulties. Mankind however has always found resources for progress. What is of the essence for the future is for the same Mankind to be wise and strong enough to not surrender its fundamental assets gained throughout its evolution, core principles and values presently pervading the international rules which were also conceived in times of trouble when the international society regained its breath after the most terrible and bloody world war ever known to mankind.

NOTES

¹ Adrian Stanciu, *The future is already here*, 16. 02.2016, Cariereonline.ro

² Adrian Stanciu, op. cit., quoting the Canadian essayist William Gibson

³ Titus Corlăţean, *European and International Protection of Human Rights*, Second Edition. Revised. (Bucharest: Universul Juridic, 2015), 92.

⁴ Malcom N. Shaw, *International Law*, Sixth Edition. Third printing. (New York: Cambridge University Press, 2010), 1.

⁵ Ian Brownlie, *Principles of Public International Law*, Fourth Edition. (Oxford: Clarendon Press, 1990), 1–3.

⁶ Shaw, 2–4.

⁷ Ian Hurd, “International Law and the Politics of Diplomacy,” in *Diplomacy and the Making of World Politics*, (Cambridge Studies in International Relations) Ed. Ole Jacob Sending, et. al. (Cambridge: Cambridge University Press, 2015), 31–54.

⁸ Ibid., 43

⁹ Ole Jacob Sending, Vincent Pouliot and Iver B. Neumann, “Introduction, Diplomacy and the Making of World Politics,” in Ole Jacob Sending, Ibid., 21.

¹⁰ “Article 2.4. “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political

independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” See: <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (Last accessed on April 26, 2016)

¹¹ “CHAPTER I PURPOSES AND PRINCIPLES Article 1 The Purposes of the United Nations are: 1. To maintain international peace and security..”; “Article 2 The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles: ..3.. in such a manner that international peace and security, and justice, are not endangered.” See: <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (Last accessed on April 26, 2016)

¹² “Article 2.3 All Members shall settle their international disputes by peaceful means.” See: <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (Last accessed on April 26, 2016.)

¹³ “Article 2.4 All Members shall refrain in their international relations from the threat or use of force.” See: <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (Last accessed on April 26, 2016)

¹⁴ The principle of “inviolability of frontiers,” “CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE FINAL ACT HELSINKI 1975 , . . . Declaration on Principles Guiding Relations between Participating States The participating States: . . . III. Inviolability of frontiers—The participating States regard as inviolable all one another’s frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State.” See: <http://www.osce.org/mc/39501?download=true> (Last accessed on April 26, 2016)

¹⁵ Council conclusions on Ukraine—FOREIGN AFFAIRS Council meeting Brussels, 3 March 2014—The Council adopted the following conclusions: “1. The European Union strongly condemns the clear violation of Ukrainian sovereignty and territorial integrity by acts of aggression by the Russian armed forces as well as the authorization given by the Federation Council of Russia on 1 March for the use of the armed forces on the territory of Ukraine. These actions are in clear breach of the UN Charter and the OSCE Helsinki Final Act, as well as of Russia’s specific commitments to respect Ukraine’s sovereignty and territorial integrity under the Budapest Memorandum of 1994 and the bilateral Treaty on Friendship, Cooperation and Partnership of 1997 . . .” See: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/141291.pdf (Last accessed on April 26, 2016)

¹⁶ Maxime Lefebvre, *La politique étrangère européenne*, 2-e edition. (Paris: Presse Universitaire de France, 2016), 55.

¹⁷ Lefebvre, 5–8.

¹⁸ *Ibid.*, 8.

¹⁹ *Ibid.*, 12.

²⁰ *Ibid.*, 5–8.

²¹ *Ibid.*, 8.

²² Lex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State*, Second Edition. (Oxford: Oxford University Press, 2015), 139–145, 282–297.

²³ Bodnariu Case (father—Romanian, mother—Norwegian, 5 underage children with dual citizenship Romanian—Norwegian), a family attending a Christian Neo-Protestant Church and residing in Norway; See: <https://www.facebook.com/Norway-Return-the-children-to-Bodnariu-Family-744234959015965/?fref=nf>; <http://bodnariufamily.org/> (Last accessed on April 26, 2016)