



The illusion of International Law

International Law- an object of celebration

1998 saw the "international community" commemorating 50 years since the signing of the Universal Declaration of Human Rights (UDHR). The commemorations were sombre rather than jubilant, reflecting the disillusionment at 50 years of shattered expectations. The Declaration is flagrantly flaunted. US, and the like, mask their violations of this document, along with others that encapsulate the strange beast known as the "International Law" (IL). In July of the same year 120 nations backed the establishment of a permanent international criminal court. At the same time, the big players in the Bosnian human rights abuse bonanza were safeguarded, whilst trials without teeth were performed on their small-time, scapegoat, foot-soldiers. Augusto Pinochet was arrested in unprecedented circumstances which raised questions about the enforceability of IL. The progressive tightening of the screw of sanctions on the Iraqi people continued, culminating in the horrific bombardment known as Operation Desert Fox.

Natural relationships and conventions

Every state naturally forms agreements with other states according to its interests. This type of relationship occurs by mutual consent and has always existed between human communities. Rudimentary traditions can be traced back to four millennia BCE. These covered activities such as the sending of emissaries, formalities involving the initiation and cessation of hostilities, and the arrangement of truces during holiday (holy day) periods. Indeed the modern day Olympic Movement celebrates just such a lull in hostilities amongst the ancient Greeks.

The pagan Arabs had several inter-tribal conventions, such as not hindering the visitors to the Ka'aba. This was not law as such. This was merely a convention, agreed upon due to the repetition of this action. Study of the Seerat of Rasool-Allah shows Arab tradition to be important in moulding the political landscape of the Peninsula. This being important in understanding many verses of Quran and incidences in the Seerah. For example, events of pre and post the Treaty of Hudaibiyah (where Muslim's passage of pilgrimage was prevented) should be understood in light of what was customary amongst the tribes. The Muslim's plight gained sympathy from the tribes around the Peninsula.

The Islamic State and international tradition

Rasool-Allah acknowledged the phenomena of international tradition. On the occasion when two emissaries were sent from Musaylimah al-kadhdhaab reading a message that started; "From Musaylimah Rasool-Allah to Muhammad Rasool-Allah..." He replied to this ***"if it were not for the conventional security granted to envoys I would have cut off your heads."***

Another Arab convention was not to fight during the sacred months. When an expedition of 'Abdullah Ibn Jahsh killed Amru Ibnul Hadhramy, imprisoned two men from Quraysh and seized a caravan for Quraysh, the Quraysh rallied opposition against the Muslims. They promulgated to the Peninsula that Muhammad and his Companions had violated the sanctity of the sacred months. According to them, he had breached the Arab conventions. Allah (swt) settled the issue through revelation. This boosted the morale of the Muslim and poured scorn on the Quraysh's ridiculous accusations.

"They will ask you concerning fighting in the sacred month. Say, fighting therein is a grave offence, but graver is it in the sight of Allah to prevent access to the path of Allah, to deny Him, to prevent access to the sacred Masjid and drive out its people therefrom. Tumult and oppression are worse than killing. Nor will they cease to fight you until they turn you back from your deen if they can." [TMQ 2:217]

International Law is distinct from international tradition

The naïve not only takes IL as an article of faith but also worships its very being, considering it sacrilege to act outside IL. "International law is at the very apex of all legal systems, that it is a source of legitimacy for all municipal systems of law." (Kelsen H, Principle of international Law, 1966). To assess the reality of IL, we must review the very fundamental basis of law and then extend this to the international situation. Laws must firstly come from a lawmaker that has legitimacy in the eyes of those who follow the law. With Muslims the law-maker is Allah (swt) and by definition we have submitted ourselves to His (swt) command. Secondly the laws must be acceptable to its adherents. As Muslims we believe that Allah gave us an acceptable code, compatible with the human constitution. Allah (swt) knows best our make-up. In the realm of public life another issue must be considered; enforceability. The laws of public life, in any state, need some form of enforcement, without which laws become merely theoretical.

International law is not universal

The track record of UDHR speaks for itself in terms of its acceptable universality and implementation. Moreover, the issue of enforceability exposes IL to be illusory. There is no international policeman. There is no credible international court with meaningful authority. Case after case have proved IL to be a Barmecide feast. As with "ethical foreign policies" and a "Third Way" economy, IL is another example of meaningless psycho-babble. What these oxymorons also share is that they allude to muddled beguiling principles.

Operation Desert Fox: an example

Operation Desert Fox was met with a mixed response from the international community. There was disparity within the Security Council itself. France, Russia, China and other members all opposed it. Based on Article 39 of the UN Charter: "The Security Council shall determine the existence of any threat to peace, breach of peace, or act of aggression." Clinton and Blair violated the written law of the Charter by acting bilaterally. Acting in this manner they demonstrated the abject insignificance of the Charter. Theoretically, the US and UK should be punished for violation of the Charter. Even within the Labour Party, the very party of government, there was disparity. Countless articles, letters to the editor and interviews appeared by PMs and Ministers voicing different opinions on the international legitimacy of the bombing. We should not see the bickering and arguments as a ludicrous travesty of the law. We should see these shenanigans as evidence that IL as merely an illusion. The same arguments may be applied to the US's unilateral bombing of Sudan and Afghanistan.

The Pinochet case: a second example

The incompatibility of individual national laws and International Law has been demonstrated by the Pinochet fiasco. This has epitomised the fallacy of IL. The case's complexities pushed legal minds into overdrive on three continents. The case centres about two thorny issues. Firstly, whether Pinochet enjoys "sovereign immunity" as a former head of state, and whether his crimes are covered by the concept of "universal jurisdiction" which overrides the very narrow definitions of "jurisdiction" that individual countries impose on themselves for dealing with crimes that occur outside of their borders.

Sovereign immunity is actually an ancient international tradition paralleled with diplomatic immunity. It is thought to have evolved to allow nations to deal freely without legal impediment. Nowhere in British law does it explicitly state that this immunity extends to a former, as opposed to a current head of state. Pro-Pinochet lawyers extrapolated this to former rulers. However, many international lawyers have disputed this interpretation. They cite treaties stating that absolutely nobody has immunity from prosecution for so called "crimes against humanity". The lack of sovereign immunity is stated in the Nuremberg Charter (which Britain had a key role in drafting). The Nuremberg and Tokyo war crime courts (and the subsequent UN resolutions affirming these decisions as law), both of which Britain has ratified, state that any public official can be prosecuted. Legal scholars have argued that these principles have been reiterated explicitly in the statutes of the Yugoslav and Rwandan tribunals. An article appears stating this in the treaty agreed in Rome, in July 1998, to set up a permanent international criminal court.

The issue of universal jurisdiction has only rarely been invoked. In the case of Klaus Barbie, France's court of appeal endorsed the idea of "universal jurisdiction" in explicit terms.

In the final analysis of all the legal complexities, it seems that Pinochet probably will never sit trial and certainly will never be punished with a universally expected punishment. The fate of Pinochet does not lie with jurists and judges but with politicians. The subject of international relations is bigger than treaties and agreements. It is for this reason that his case has raised many important issues for other former rulers. Based on the Pinochet precedent, Bush could be tried for the invasion of Panama, or Henry Kissinger for the bombing of Cambodia. Libya could seek the arrest of Reagan for the bombing of Tripoli. Lithuania could bring charges against Gorbachev for civilian assaults in 1991 etc, etc.

The Islamic State will disregard the written International Law

Although IL does not exist its rhetoric certainly does. For this reason it is necessary to understand that the idea itself is unequivocally wrong. If countries must coexist under one umbrella, the laws they abide by must be truly universal. However, in reality what values are truly universal? Freedom is not, Democracy is not, a single definition of Human Rights is not. If there is no consensus on the most axiomatic question about the purpose of our lives, what common ground can there possibly be? The smoke screen of IL and human rights ironically becomes an excuse of oppression.

The Islamic State must expose the fallacious nature of IL to other nations

IL and its vehicles are used to manipulate other states and secure the interests of those nations at the helm on the United Nations. The threats posed and the problems caused by IL can not be solved by reformation of the law, since it is its very conception which is putrid. This is the only way to incite other nations to disenfranchise from the IL. This will ensure the abolition of IL; the annihilation of all of its structures, the severance of its tentacles and the long overdue punishment of its guardian agents.

Once this is done, the nations can then engage according to a contemporary international tradition. International tradition is something that Rasool-Allah used to his advantage. His political astuteness enabled the Islamic State to achieve dominance, a matter that international law will never permit. We learn from this lesson that the Islamic State in the modern age can also manipulate the established norms that exist between nations. The Khaleefah must be politically astute enough to use the intentional conventions to benefit the states' international standing; without falling into error and political suicide by submitting to International Law.

"And never will Allah permit the disbelievers to have authority over the believers."
[TMQ 4: 141]

Salim Fredericks