

Constraints on the Use of Force: The Role of International Law

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Abstract

Throughout human history organizations have been established to settle disputes peacefully. They have met with limited success. The UN's failure to prevent the Gulf war is an example. Given the end of the Cold War and intermittent successes of the UN, the task becomes to find additional ways to create and secure a peaceful world. Suggestions include: reshaping international law norms to focus more on creating peaceful settlement of international disputes—shifting the focus towards prevention, utilizing the full potential of institutions like the United Nations and also nongovernmental bodies, and recognizing the ability of Super Radiance coherence-creating groups to bring about profound changes in human consciousness.

Introduction

The Gulf war serves as a case study to explore the mechanisms needed to strengthen the existing international regime on the use of force. In reviewing this case study, I wish to shift the focus to even broader questions of international law and international institutions in a historical context, especially regarding constraints on the use of force.

The Development of Institutions to Settle International Disputes

Violence and war are recurring phenomena in human history. The Gulf crisis was the 151st war just within the last few decades. At the close of the 19th century there were some noteworthy efforts toward peaceful settlement of international disputes. A Permanent Court of International Arbitration was established, and an attempt was subsequently made by the League of Nations for the first time in human history to regulate and control violence. This was a preliminary and rudimentary attempt at a concerted

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effort to minimize the use of force in the international arena. The attempt was not successful for various reasons: the U.S. did not participate in the League of Nations, there were normative ambiguities in the charter of the League, there was not enough emphasis on peaceful settlement of disputes, etc. After that, during the 1920s, the Kellogg-Briand Pact was another attempt on the part of some countries to outlaw war. However, the act of outlawing war by a decree did not alone prevent wars.

Finally, the United Nations came into being in 1945. The UN represented an effort not to simply talk about outlawing war, but to ensure that the use of force was prohibited with certain exceptions: i.e., in cases requiring collective self-defense or when the UN as a collective entity would take on the responsibility to maintain and restore international peace and collective security.

What is meant by collective security? It means that the five major powers at the time of the founding of the UN—the United States, the Soviet Union, China, England, and France—are to take concerted action through the Security Council after they determine that an act of aggression or threat to or breach of peace has occurred. The action, purportedly reflecting the will of the world community, is aimed at the maintenance and negotiation of international peace.

The United Nations' effort has not been an unqualified success either. The UN Charter still contains normatively ambiguous language, although it is more precise than that of the League of Nations. In addition there are problems with the veto power as such.

The Cold War that plagued humanity for a number of decades set in on the heels of the drafting of the UN Charter. Following the Second World War, the honeymoon between the Soviet Union and the U.S. was short-lived, and the Cold War cast long shadows for a number of years. The UN response to the Korean War, as an exception to the usual proceedings in the Security Council, became a reality because of the Soviet absence from the Security Council meeting when the Council decided to take action against North Korea for its aggression against South Korea.

The UN Charter procedures did not succeed in preventing war and restoring peace. There were some efforts at finding peace through diplomatic means and ideological means and through economic sanctions. But none of the mechanisms for peaceful settlement of international disputes—diplomatic efforts, conciliation, mediation, good offices, arbitration, adjudication—were given a proper place in the settlement of disputes by nation-states. They were simply ignored.

The Role of the UN in the Gulf Crisis

The Security Council is the last resort for collective use of force, and it acted in the Gulf war after Iraq invaded Kuwait. Within hours the Security Council had adopted a resolution warning Iraq that it ought not to continue in its aggressive policies and designs and demanding that it withdraw from Kuwait immediately. When Iraq did not comply, sweeping economic sanctions were taken against Iraq. Finally, a resolution was adopted by the Security Council authorizing member states to use force in order to implement the other resolutions. The Allied forces took military action against Iraq, forcing it to withdraw from Kuwait.

In reviewing the UN response to the Iraqi invasion, it is obvious that diplomacy was

not given a chance. International law forbids the use of force until all peaceful means have been exhausted, and in this case peaceful means were not given a chance. People forget that, with patience and perseverance, economic sanctions have been effective in the past in Rhodesia and in South Africa: People who have been reviewing the use of economic sanctions in the international arena tell us that these sanctions have indeed worked. However, it seems that a decision had been made in Washington that we needed to go war; we needed to teach Saddam Hussein a lesson.

Future Constraints upon the Use of Force

In my view, Article 2.4 of the UN Charter, which prohibits the use of force by one state against another, is going to get a resurrection; it will have new life infused in it after what happened in Kuwait. It is realistic to argue that as the Cold War has ended, as the Warsaw Pact no longer even exists, and as the East and West are no longer on a collision course, a new thinking must permeate the international arena, because the old "evil empire" no longer exists. Under its own weight, the Soviet Union's economic and political system has crumbled and collapsed, and today we have a new era demanding new thinking.

The question seeking an answer is, how will this new thinking affect the use of force in this new era if recent trends continue? Some countries fear that in this era of superpower cooperation, both superpowers might feel unrestrained in the use of force to impose their version of an international order. They anticipate problems, for as the Cold War is over, and the superpowers are no longer adversaries, neither will challenge the other, and, in the absence of an effective challenge, bullies can roam in the world arena imposing their will on the rest.

That at least is one scenario, and not an attractive one. Several other scenarios are also possible, under which there is an increased rather than a constrained use of force. To illustrate, one could argue that there remains only one superpower, and hence it will be unrestrained in the use of force. Recent examples of this are the U.S. invasions of Grenada and Panama. Another scenario could be that states use force against their neighbors, and even regional bullies might flex their muscles.

Take the example of the Liberian civil war: where was the U.S.? Or in the Greek-Turkish conflict in Cyprus: where was the UN? After the Iraqi invasion of Kuwait, the U.S. certainly did take a lead, the UN did act, since the invasion occurred after the end of the Cold War. But I would argue that there are plausible scenarios under which states might use as much or more force than in the past, because there might be no fear of intervention or counter-intervention by either of the superpowers. Such use of force would not be seen by a superpower to be instigated by the other, and hence it would not intervene, unless it perceived its vital interests to be at stake. Similarly, if only one superpower remains, it might not consider its vital interests affected.

Successful Efforts of the United Nations

I would, however, rather assume that this era of cooperation would allow settlement of disputes by peaceful means because of the enlightened self-interest of both the U.S. and the Soviet Union. Also, the UN has been successful in the last few years in addressing several conflicts. Some of these controversies could have become disputes and could

have resulted in bloody conflicts, but were resolved because of the UN. These include the conflicts in Namibia, which was formerly South West Africa. Today we do not hear much about Namibia, which at one point was a source of mounting international tension. It was the UN's effort that enabled Namibia to be an independent country today.

Likewise, the end of the Afghanistan conflict is due in part to the work of the UN. In Central America, there are efforts on the part of the UN along with those of the Organization of American States to bring about peace and stability in the region. We still have a long way to go there, and a long way to go in Cambodia, but the fact is that there have been many positive steps taken under the auspices of the UN in the past eight years in order to bring about these changes. It is interesting to note that it was around the mid-1980s, when the Super Radiance group here at Maharishi International University reached the 1,600 threshold for North America, that these changes started taking place.

In the last seven to eight years there have been successful efforts that ought not to be forgotten. Historic changes took place in the last two years after the fall of the Berlin Wall, and we hardly remember it anymore. We have taken these dramatic changes for granted. All of a sudden, all the Eastern European countries, like a wild fire, were caught up in the desire to be free. It was a very joyous and wonderful experience for all of us.

Preventive Approaches to World Peace

People have now been asking what further changes need to be made to bring about a peaceful world. There are of course many institutional changes that can be brought about to strengthen the UN. There are very specific issues that can be addressed. For example, there is a lot that can be done in the area of prevention. The UN has until now acted like a fire brigade, trying to put out fires that have come up. But it has not been able to do much for prevention, for peacemaking, for peacekeeping. The UN Secretary-General's role as a main actor in using peaceful means for the settlement of disputes has yet to be fully explored.

I would like to give an overview of the new thinking that has emerged in the realm of international law and in the UN to strengthen the existing norms against the use of unauthorized violence. As Professor Markides pointed out, we need to talk in peace language and not in war language (Please refer to Markides's article in this issue). But international law norms and the current efforts are still primarily geared to fighting war and not to creating peace. International law norms ought to focus much more on creating peaceful settlement of international disputes.

At the University of Denver Law School, as in many other law schools, we now have a course on international conflict resolution and management, and increasingly the focus in that course is shifting towards prevention. I believe much more can be done with international law norms by focusing our attention on preventive efforts.

Second, we need to utilize the full potential of the existing international and regional institutions, such as the United Nations and other intergovernmental bodies, and also nongovernmental bodies, to address the formidable challenges facing humanity. In his address to the UN General Assembly in December of 1988, President Gorbachev

announced many new initiatives that are refreshing, bold, and constructive. He emphasized diversity and underscored the need for new international relations. He asked for worldwide collaboration in space exploration and environmental protection, strengthening of the UN Security Council and the International Court of Justice, development of international law, and the creation of two new international agencies, one to manage the debt crisis and the other to address threats to the environment. We have just heard that the World Bank has taken a lead in finding ways to alleviate global poverty, and is also working at the present time on environmental issues in the developing countries. I think that is a very promising development.

Prevention through Confidence-Building Measures

The focus in the last few years in terms of prevention has been on “confidence-building measures,” a buzz word for the idea that we ought to do everything we can to build confidence between and among states so that there will be no need for war. By addressing surface issues, as we have done until now, we have not been very successful in preventing international violence. As I mentioned, in the past few years there has been an effort to go beyond that and to inquire into the causes of war. Here we have only touched upon the critical issues: the Third World’s problems, the environmental issues, the need to do more in the international economic arena and to perhaps restructure international economic institutions.

But again we are talking only about institutions. When we discuss the question of creating a climate with confidence-building mechanisms in the international arena, the most important confidence-building mechanism would be to change people’s action and behavior. What can be done to accomplish this? Drs. Orme-Johnson and Hagelin (Please refer to Orme-Johnson’s two articles and Hagelin’s article in this issue) have eloquently explained the mechanism of how this can be accomplished, and I cannot do justice to the presentations by summarizing their recommendations in just a few words. However, the essence of their addresses is that by bringing about a change in human consciousness one could certainly influence collective consciousness in a positive way. This would lay the foundation for the changed climate which promotes and enhances confidence-building measures.

Conclusion

Based upon this changed climate, the existing international norms can be strengthened, and positive international institutional changes can also take place, the kind of changes that an international lawyer such as myself is able to suggest and willing to assist in fashioning. But in this scenario, let us not forget that the members of the Super Radiance coherence-creating groups are the architects of peace.

Discussion

Rod Grubb's Presentation

John Hagelin, Maharishi International University. Dr. Grubb's talk was a provocative and stimulating review of the fundamental problems manifesting today in our world, as well as the apparent obstacles to resolving these problems and developing a new world order. I was reminded of an analogy Maharishi Mahesh Yogi frequently uses. If one looks at a tree and notices that all the leaves and flowers are withering, it may seem like a hopeless task to attend to each of these individually—a task that could easily exhaust all of one's available resources. Such a situation inspires one to seek a more fundamental approach. In the case of a tree the approach would be to locate an aspect of the tree that is more fundamental than its external expressions—the underlying level of nourishment, or the sap. By attending to that more fundamental level, the entire structure of the tree and all its diverse components are nourished, and a state of vitality and wholeness is restored.

This is the principal approach in Maharishi's world-wide Transcendental Meditation movement; nourish the individual at the most fundamental level of mind, body, and behavior, which is the level of consciousness itself. I think that a consciousness-based approach, an approach whereby the comprehension of the individual citizens of the world is systematically expanded, is going to create a fertile field on which all other, specific approaches to these seemingly intractable problems will begin to bear fruit.

In the past four to five years, Maharishi has expanded his focus to include not only this most fundamental level, but the level of resolution of specific problems as well. He has launched various programs, such as the global green revolution and industrial revitalization projects in Third World countries, to reeducate and mobilize the human resources of these countries in order to become more self-sufficient—to create new sources of income for communities and nations as a whole.

Certainly a two-fold approach would be the most effective in addressing the problems that Dr. Grubb brought out so strongly today. The first would be a universal approach of developing world consciousness by creating coherence at the most fundamental level of collective consciousness, reconnecting the awareness of the world family to its unified source in the unified field. The second, simultaneous approach would be for experts to continue to work on resolutions to the specific problems of hunger, poverty, and violence. Both approaches are necessary.

Kenneth L. Cavanaugh, Maharishi International University. It is very fortunate that there are individuals in the world who are so deeply concerned about improving human law and have so much to offer, and that they have come together here for this conference. It gives great hope for the world that such creative minds are putting their attention on how to bring fulfillment to the family of man and on how to strengthen institutions that will prevent war and minimize the role of conflict in international affairs.

With respect to Dr. Grubb's concern for promoting development in the developing countries of the world, I want to say that the fundamental need from the perspective of Maharishi's Vedic Science and Technology is, by cultivating the full development of human consciousness, to enliven the most important resource of every nation: its human

resources and the creativity of nature that is lively deep within the consciousness of every individual. This is the approach which can offer fulfillment to all the other approaches that are being taken by international institutions such as the World Bank, the UN and the UN Development program. When this approach is incorporated into the activities of those organizations, their achievements will be much greater, and they will enjoy great fulfillment.

Ved Nanda's Presentation

Kenneth L. Cavanaugh, Maharishi International University. Dr. Nanda called for two main objectives: strengthening existing norms to curb violence and create peace for the world and strengthening the UN and other international institutions to contribute to that end. I would like to revive a suggestion that has been made in the past in this regard and that is to strengthen the peacekeeping role of the UN by constructing within the framework of the UN a coherence-creating group of at least 7,000 peacekeepers, practitioners of Maharishi's Transcendental Meditation and TM-Sidhi program, who would create coherence in collective consciousness and create the foundation for a more stable, just, and peaceful world order.

From the perspective of Maharishi's Vedic Science and Technology, the basis of conflicts and war is stress and tension in the collective consciousness due to the violation of natural law. Without dealing with the fundamental cause of war, conflict, oppression, and injustice in the world, other efforts will not find success. I think the UN can make a great contribution to world peace by offering its auspices to create such a coherence-creating group in the world. This is the greatest thing that could be done to strengthen that institution, which, as Dr. Nanda correctly observed, has been acting like a fire brigade instead of a fire marshal: putting out the "fires of conflict" everywhere rather than preventing them, although there have been some successes in recent years.

I welcome his emphasis on confidence-building measures through changing people's attitude and behavior and his appreciation of the potential of this technology of consciousness as a means to change people's attitude and behavior from the very fundamental of behavior, pure consciousness.

With respect to human rights, from the perspective of the Vedic Science paradigm brought to light by Maharishi that we are elaborating here at Maharishi International University, full human development is the birthright of every human being in the world. I think that a program to bring enlightenment to every individual in the world would be the basis for enlivening respect for all human rights. It is the most fundamental human right, and I think that developing higher states of consciousness in every human being in the world will ensure that all human rights will be protected and nourished. After all, the promotion of human happiness, prosperity, and peace is the ultimate purpose of all our activity.

William P. Goldstein, Maharishi International University. I had the privilege to study with Dr. Nanda at the University of Denver and during that time my vision of the world was transformed. Dr. Nanda is someone who, despite his great accomplishments in the field of international law, retains a profound humility. If we at this University are the architects of world peace, and I will graciously accept that compliment, I would like

to ask him how we can take our grand architectural scheme, this vision, which seemingly includes the control point for transforming global consciousness, and integrate it into existing peacekeeping institutions and structures. Are we best served through the use of international, governmental, nongovernmental organizations, or are we best off leaving these organizations to their own devices and simply proceeding with what we are doing? We could proceed along all paths, but I would like Dr. Nanda's response to this question.

Ved Nanda. Thank you. It was suggested earlier to persuade decision-makers and in that way have an opportunity to more widely disseminate this technology and the theory which supports it. In my work, I am deeply impressed by the profound changes brought about by international human rights groups. They are nongovernmental, and yet they have brought about changes regardless of the orientation of the decision-makers regarding human rights rules. Amnesty International is one example and I could mention other international human rights law groups. Even in our own federal courts we have international rights law being accepted and applied, thanks to the work of these nongovernmental organizations.

Regarding Mr. Goldstein's question, as an architect himself, he knew the answer. One has to pursue it on all three fronts. If I had to choose one out of the three, I would say that what you are doing now is most important. Out of the other two, I would not bank on governmental or intergovernmental agencies; I'd bank on nongovernmental organizations and their work