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HUMANIZATION OF PUBLIC INTERNATIONAL LAW THROUGH ITS RULES

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Humanization of International Law. The Role of the United Nations

An outline

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1. "*We, the Peoples of the United Nations*". These are the appealing opening words of the United Nations Charter. They were designed to mark the notable attempt of the founding fathers to make a shift of paradigm in international law and organization: from national and international security of States to human security as well.

2. Whereas the international political architecture of the 19th century Concert of Europe, the ensuing two Hague Peace Conferences and the post-WWI League of Nations focused nearly exclusively on States and their interstate institutions, the newly-established United Nations of 1945 was aimed to pursue a peoples' oriented-approach, with full respect for the inherent human dignity and human rights. No doubt, the horrifying atrocities of the Second World War were at the root of this new mission.

Inception of the humanization of international law

3. Early examples include the UN Charter (preamble, arts 1 (3), 55 and 56), the Universal Declaration of Human Rights (1948), the Anti-Genocide Convention (1949) and the Constitution of UNESCO (Art. 1, 1945).

Human rights as the supreme expression of the humanization of international law

4. Hersch Lauterpacht at the Hague Academy in 1947 referred to: "the worth and the status of the individual as the ultimate unit of all law". Therefore, international law started to focus on the plight of the individual, wherever he or she may be located.

5. The initial idea of the UN Commission on Human Rights was to establish one universal Bill of Rights, consisting of a Declaration, one Human Rights Treaty and one Supervisory Body. Unfortunately, this idea for such a triptych human rights bill had to be aborted because of the rise of the Cold War. Nonetheless, unprecedented progress in human rights standard-setting could be achieved, resulting in more than a dozen global human rights treaties and even a higher number of supervisory bodies and special procedures.

6. What in my view matters most in this respect, is the instrumental role of international law in extending the entire human rights catalogue of human dignity, human rights and freedom for all for the first time in world history to *all* human beings, whatever their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Art. 2, Universal Declaration).

7. Obviously, this did not happen overnight and could only be painstakingly achieved through a long process of standard-setting: from the Universal Declaration in 1948, through the Anti-Racial Discrimination Convention as the first global human rights treaty in 1965 and many treaties to follow (e.g., for women, children, disabled people), to the important proclamation in the Vienna Declaration of 1993 that all human rights are "indivisible, interdependent, inalienable and universal".

Humanization through the development of international criminal law

8. The reverse side of the human rights coin is that both States and other individuals must observe human rights. Next to accountability of States for violation of human rights, individual criminal accountability arose, especially for international crimes of serious concern.

9. In a way this is part and parcel of the humanization of international law, in the sense that it is acknowledged that many violations of human rights are caused by the acts or omissions of other human beings. This realization crystallized into the establishment of the post-WWII war crimes tribunals of Nurnberg and Tokyo and the various ad hoc international criminal tribunals during the 1990s.

10. The development of supranational criminal law culminated with the adoption of the Rome Statute for the International Criminal Court in 1998 and its entry into force in 2002.

Responsibility to Protect as a new part of the international law of peace and security

11. For long a strict interpretation of the original principles of sovereignty, non-interference in each other's internal affairs and the prohibition to use force in international relations prevailed over global protection of human rights.

12. During the post-Cold War period this view became qualified. Increasingly, State sovereignty was interpreted as also implying responsibility and that the primary responsibility for the safety and well-being of the population lies with the state itself. In the words of the influential International Commission on Intervention and State Responsibility (ICIIS, 2003) this means: "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 atrocity crimes, the principle of non-intervention yields to the international responsibility to protect".

13. On the occasion of the 60th anniversary of the United Nations in 2005, the General Assembly endorsed this new doctrine of the Responsibility to Protect (A/RES/60/1, 2005, paras. 138-139). In the view of the Assembly, "each individual State has the responsibility to protect its

population from genocide, war crimes, ethnic cleansing, and crimes against humanity" (first pillar: sovereignty as responsibility). If a State is unable or unwilling to halt or avert these, the international community, through the United Nations, has the responsibility to "help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (second pillar: supplementary responsibility of the international community). The international community is to take timely and decisive action, in accordance with the UN Charter, whenever a State is manifestly failing to meet its responsibilities (third pillar: collective responses).

14. The responsibility to protect doctrine has been applied with respect to the situations in Darfur in Sudan (2005), Libya (2010-11) and Côte d'Ivoire (2011). In subsequent cases (e.g., Syria and Mali), it could not be applied because of a paralysed Security Council.

Common heritage of humankind and the law of the global commons

15. The common heritage principle was introduced in the context of the law of the sea and the legal regime for the Moon and its natural resources. It is meant to replace the "first come, first served"-principle by an international regime aimed at non-appropriation, sharing of benefits, use for peaceful purposes only and taking into account the needs of present as well as future generations of humankind. As such the common heritage is part and parcel of the humanization of international law and aimed at safeguarding and sustainable planetary management of the areas, natural systems and natural resources beyond the limits of national jurisdiction.

16. Through the (weaker) legal concept of common concern of humankind efforts are being made to apply some of its features to natural wealth and systems which are wholly or partly within national jurisdictions, such as biological diversity, the climate system, tropical rainforests and other transboundary resources.

Humanization of international law or anthropogenic obsession?

17. The nearly exclusive focus on the interests of humankind, and on humanity as a global

value, meets increasing criticism from movements advocating a *cosmologie générale* and a holistic view on nature and all species living on Mother Earth (see also the books by C.A. Walckenaer, *Cosmologie, Ou, Description Générale de la Terre*, 2018, and A. Kirsch, *The Revolt Against Humanity. Imagining a Future Without Us*, 2023).

18. The impact this revolt could have on new directions in the humanization of international law is an equally fascinating as imaginative topic for further discussion.