INTERNATIONAL LAW AND GLOBAL SECURITY: An Kaleidoscopic Analysis

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"God himself is not secure, having given man dominion over his work."
Helen Keller

ABSTRACT

Principles and rules of international law are of great significance for the establishment of effective international security. International security in the broad sense of the term constitutes a specific system of intergovernmental relations, a system which will be observed only if it expresses mandatory rules of conduct by a state, while the latter is nothing other than the principles and rules of international law. The principles and rules of international law that enter into a system of international security indicate the boundaries of conduct by states, beyond which the actions of one state may do detriment to the security of others. The traditional concept of international security applies only to the renunciation of military force and issues directly related to this, such as peaceful resolution of disputes, sovereign equality, territorial integrity, etc. Principles of international law of the same name are formally articulated in the UN Charter, which also contains specified powers of the UN Security Council pertaining to maintaining international peace and security. This paper has discussed some major and most important concept pertaining to International Security.

Key Words: International Law, Security, Safety, Armed Conflict, Territorial Conflicts & Establishments.

1. Introduction to Concept of Security:

Asking what security means raises issues about the philosophy of knowledge, especially those concerning epistemology (how do we know things?), ontology (what phenomena do we think make up the social world?) and method (how we should study the social world). If we accept the notion that security is an essentially contested concept then, by definition, such debates cannot be definitively resolved in the abstract. Instead some positions will become dominant and be enforced through the application of power. With this in mind, security is most commonly associated with the alleviation of threats to cherished values; especially those which, if left unchecked, threaten the survival of a particular referent object in the near future. To be clear, although security and survival are often related, they are not synonymous. Whereas survival is an existential condition, security involves the ability to pursue cherished political and social ambitions. Security is therefore best understood as what **Ken Booth (2007)** has called, *'survival-plus,'* 'the "plus" being some freedom from life-determining threats, and therefore some life choices'.[2]

In the mean process of giving definition to the term 'Security' terms, it is possible to identify two prevalent philosophies of security, each emerging from fundamentally different starting points. *(I)* The first philosophy sees security as being virtually synonymous with the accumulation of power. From this perspective, security is understood as a commodity (i.e. to be secure, actors must possess certain things such as property, money, weapons, armies and so on). In particular, power is thought to be the route to security: the more power (especially military power) actors can accumulate, the more secure they will be. *(II)* The second philosophy challenges the idea that security flows from power. Instead, it sees security as being based on emancipation; that is, a concern with justice and the provision of human rights. From this perspective, security is understood as a relationship between different actors rather than a commodity. These relationships may be understood in either negative terms (i.e. security is about the absence of something threatening) or positive terms (i.e. involving phenomena that are enabling and make things possible). This distinction is commonly reflected in the ideas of 'freedom from' and 'freedom to'. Understood in a relational sense, security involves gaining a degree of confidence about our relationships that comes through

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[2] Paul D. Willams, Security Studies An Introduction 5-10 (2008)

sharing certain commitments, which, in turn, provides a degree of reassurance and predictability. This view argues that it is not particular commodities (such as nuclear weapons) that are the crucial factor in understanding the security–insecurity equation but rather the relationship between the actors concerned. Thus while US decision-makers think Iran's possession of nuclear weapons would be a source of considerable insecurity, they do not feel the same way about the nuclear arsenals held by India or Pakistan.[3] Consequently, in the second philosophy, true or stable security does not come from the ability to exercise power over others. Rather, it comes from cooperating to achieve security without depriving others of it.

There are a lot other definitions advanced by authors and Jurists in attempt to define the concept of Security which are often limited to the traditional connotations of it. Security is an elastic and diverse concept that can be understood in different forms, depending on its objects: the perception of threats, the protected values, and the means through which these values can be protected.[4] But the changing perception of security threats that already emerged in the 1980s, [5]and ways in which these threats are addressed, has led to comprehensive and scientific studies of security concept.[6] While the multidimensionality of security is now widely acknowledged in the discourse of security whole

Definition of International Security:

International security is concerned with the preventative measures of dispute among states and the protection of people from violence.[7] International security now extends well beyond peace building and armed conflict. It now includes topics including such human rights, the environment, and world economic governance. Researchers are currently arguing significant global issues affecting our survival, such as global warming, pandemics, and economic systems. International security refers to the methods meant to protect and solve issues, as well as to keep people safe along with their society. This could include military activities, building peace, building capacity, and diplomacy treaties and conventions.

Definition of International Law:

A set of standards stipulated upon with states in their foreign affairs is usually regarded as binding legal by all those states. [8] International law is a law that regulates how states collaborate with each other. These regulations are designed to protect the environment, safeguard the seas, protect the human rights, and contribute to economic development. Numerous international bodies (including the International Criminal Court) have guidelines in place that prevent specific patterns of actions. The body of international law is composed of treaties, conventions, declarations, agreements, customs, and other sources. This body of law is created through the negotiation and signing of treaties and it is enforced through judicial proceedings.

2. The Role and Relevance of International Law in Global Security Discourse.

The basis for the binding nature of international law[9] concerning global security has long occupied international lawyers[10], while scholars of international relations and political science have become concerned with the impact of international law upon state behavior, in particular whether states comply with its norms, even against their interests. These questions have mirrored shifting understanding of security. That during the Cold War, prevailing realist views perceived the state as a unitary and monolithic entity. These proponents of the Geo-Political model rejected the relevance of international law, arguing that state were single-minded in pursuing their interests; security was understood largely in terms of national security supported by military power and in particular, the concept of deterrence. Deterrence was maintained through the possession of nuclear weapons by the five permanent members of the UN Security Council (SC) and defensive alliance whereby non-nuclear states were perceived to shelter under the nuclear umbrella of the nuclear weapon states.[11] But circumstances have completely changed. The world is currently experiencing challenges, such as a combination of global crises and instability. Due to the confluence of risks and insecurity, traditional response tools have had limited effectiveness in dealing with contemporary crises. High-intensity conflict and unrest can be found around the world, with variable severity depending on the geographical

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[3] Abraham, Itty (1998),The Making of the Indian Atomic Bomb: Science, Secrecy and the Postcolonial State (London: Zed Books).

[4] D.A. Baldwin, 'The Concept of Security', Review of International Studies 1997-23, pp. 5-26. Cf B. Buzan, People, States and Fear: The National Security Problems in International Relations, Brighton: Wheat sheaf, 1983, p.6. (Stating that security is an 'essentially contested concept')

[5] J.T. Mathews, 'Redefining Security', Foreign Affairs 1989-68(2), pp. 162-177; R.H. Ullman, 'Redefining Security', International Security 1983-8, pp. 129-153.

[6] B. Buzan and L. Hansen, The Evolution of International Security Studies, Cambridge: Cambridge University Press, 2009

[7] Buzan, Barry, and Lene Hansen. "The Evolution of International Security Studies." Cambridge Core, Cambridge University Press, 2009, https://www.cambridge.org/core/books/evolution-of-international-security-studies/BB04557E83B673F58799E2B62FA83DA1

[8] Traisbach, Knut. "International Law (Introduction)." SSRN, 24 Apr. 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2872862

[9] International Law comprises treaties, customary international Law and general principles of law; Statute of the International Court of Justice, 26 June 1945 article 38(1). There is also a significant body of what is often referred to as 'soft law' e.g., non binding UN General Assembly and Human Rights Council resolutions, codes of conduct and guidelines.

[10] The two rival doctrines for the basis state' legal obligations derive from the 'natural rights' of states and state consent (voluntarism); for example, Clapham, Andrew 2012. Brierly's Law of Nations.

[11] In the words of the 1996 ICJ: 'In order to be effective, the policy of deterrence, by which those states possessing or under the umbrella of nuclear weapons seek to discourage militarily aggression by demonstrating that it will serve no purpose, necessitates that the intention to use nuclear weapons be credible' *Legality of the Threat or Use of Nuclear Weapons,* ICJ Reports 226, advisory opinion of 8 July 1996, Para 48.

location or state.[12] Security has traditionally been understood in relation to state sovereignty and its territorial integrity, as expressed in Article 2(4) of the UN Charter. However as technological advancements has enabled exploration and exploitation beyond state borders, security concerns have extended geographically and spatially to different maritime zones, outer space, the Arctic, Antarctica and even Cyber Space.

International security in context of international law is still in its formative stages and, at the present stage of development, is primarily found in the United Nations (UN) collective security system. This is based on the norm of non-use of armed force under Article 2(4) of the UN Charter and the institution of the UN Security Council vested with the primary responsibility for the maintenance of international peace and security under Article 24 of the Charter.[13] And According to Article 1 of the UN Charter, "one of the purposes of the United Nations is to coordinate or resolve situations which may cause conflict and breach the peace by peaceful means, in accordance with the principles of justice and international law."[14] The rule of law must guarantee that all states apply and respect the principles of international law and justice equitably. The Charter establishes the legal framework for international law to maintain international security. It provides guidelines for the design of international peace and security. It provides a means for states to establish the mutuality of sovereign equality, agreement on the coherence and credibility of their activities within the framework of international law to resolve conflicts.

Thus, collective security or global security is a product of international law, based on the delegation of power by sovereign states to a collective entity,[15] providing the normative foundation for and means of regulating the behavior of sovereign states and conflict among them. Collective security provides institutionalized procedures for legalizing collective response, designed at least originally to address traditional, military-oriented threats to the maintenance of international peace and security. International law emerged as an important role in the world because of its effectiveness. Today's international law is the most acceptable way to balance world peace and ensure the security of societies.

Some of its key functions include ensuring international security:

a) Implementation of international peace and security.

b) Ensuring fundamental freedoms and human rights through international security.

c) Refraining of the risks and utilization of force by a state against the territorial integrity or political independence of a state.

d) Ensuring the right of self-determination to people.

e) Promoting international cooperation in solving international problems of an economic, social, cultural or humanitarian nature.

f) Settlement of international disputes by peaceful means.

International law plays an important role in the states, even though it is not always closely associated with them. The majority of the treaties established by the United Nations form the basis of the law that governs international security. International law is based on agreements and conventions between states. In order to ensure international security, a number of challenges have been addressed. Terrorism, global warming, and nuclear proliferation are among the challenges. The United Nations is now the only body with the authority and resources to address global issues and challenges. It is unique in its capacity to bring various nations and organizations together to solve common challenges. The United Nations serves as a framework for dealing with global issues that are too enormous for any single state to handle. This enables a more coherent response

And aids in the protection of civilians. The United Nations was established to promote international security and safeguard human rights, as well as to build the framework for international law. However, challenges to the sovereign-centered collective security have arisen, particularly after the end of the Cold War, due to the diversity of perceived security threats, the rise of transnational security concerns, the greater role played by non-state actors, and the alleged ineffectiveness of existing international arrangements in responding to dynamic security challenges[16].

3. Expanded Concept of International Security:

As discussed above, the idea of international security evolved through the development of a collective security system, particularly under UN authority. The key to that development lies in the concept of a threat to the peace, a breach of the peace, and an act of aggression under Article 39 of the UN Charter. The fact that the Security Council's practice enlarged the concept of a threat to the peace is well documented.[17] One might the view that such practice simply represents the Security Council's broader understanding of International Security.

In the year 2000, the Security Council discussed the impact of HIV/AIDS on peace and security in Africa under the Council Presidency of US Vice-President, Al Gore.[18] This marked the first time that the Security Council dealt with a health issue as a Security concern. In 2007, the UK government circulated a concept paper as the basis for an open debate in the Security

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[12] Gelsdorf, kirsten. Global Challenges and Their Impact on International Humanitarian Action 2010.

[13] M. Koskenniemi, 'The Place of Law in Collective Security', Michigan Journal of International Law 1996-17,p. 456

[14] Savitri, K. "The United Nations charter framework for conflict resolution : procedures and practices of pacific settlement of disputes." India quarterly, vol. 53, no. 3/4, 1997, pp. 61–100, http://www.jstor.org/stable/45072899. Accessed 17 may 2022.

[15] A. Orakhenshivili, Collective Security, Oxford: Oxford University Press, 2011, p. 2.

[16] M.-F. Cuéllar, 'Reflections on Sovereignty and Collective Security', Stanford Journal of International Law 2004-40, pp. 230-239

[17] K.Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future, "Journal of Conflict & Security Law 2003-8 pp. 15-70.

[18] UN Doc S/PV.4087, 10 January 2007.

Council, while explored the relationship between energy, security and climate.[19] Although no action has been taken as result of those discussions to date, commentators have suggested that non- traditional security threats, such as public health threats, environmental degradation and climate change, should be accommodated with the purview of the Security Council through expansive reading of its mandate for the maintenance of international peace and security.

However, the Security Council's embrace of a boarder conception of international security is not a straightforward. During the 2000 debate on the impact of HIV/AIDS on peace and security in Africa, some states expressly identified those as non-traditional issues as "Virulent seeds of Conflict", emphasizing the direct link between those issues and the mandate of the Security Council.[20] The attempt to draw the Security Council's attention to non-traditional security threats met strong hostility during the 2007 debate on the relationship between energy, security and climate. Having considered climate change to be a development issue, the Group of 77, China and Russia criticized this debate as the "ever-increasing encroachment by the Security Council on the roles and responsibilities of other principal organ of the United Nations".

There is a good legal reason for taking such a cautious attitude, for international intuitions are required to operate within the competence defined by the provisions of their constitutive instruments.[21] Thus, the expansion of the concept of international security will entail one of the two consequences

    a) Posing challenges to the jurisdictional limits of international intuitions and organs, such as the Security Council
    b) Requiring a wider range of mechanisms to respond to diverse security threats than the collective security system.

However on a much wider connotation the Concept of International Security shades over many other minute concepts like Human Security and Regime Security and many more.

4. Actors Shaping International Law & Global Security:

Historically, the individual sovereign states are the main actors in international law. Among the near two hundred, sovereign nation states, each is given its own ability to govern the people that reside within their borders. Still yet, international law has evolved into a relationship, not only between these nation states, but also international organizations, non-governmental organizations, corporations, sub-national governments, and the people that consist of each of these groups. As *Mark Weston Janis* states in *International Law* "International agreements often serve as a sort of international legislation where states explicitly agree to make rules to govern their own conduct, as well as the activities of their individual and corporate nationals.[22] Two main dynamics are at work in the international level. The first is the state-centered "great power dynamics". And the second is pluralist "global governance" in which a plethora of different actors exist alongside states. A main feature of the latter, non-state actors increasingly engages and creates synergy and partnership with governments and inter-governmental institutions. They have rendered the politics and the international system much more complex than the previous times. They are everywhere ranging from philanthropic foundations to think-tanks, banks, big financial actors etc.[23] The new irreversible norm is hybrid politics of coalescing and integration between governmental and non-governmental actors, which further bring in it opportunities, benefits, risks and costs. In this system, state and non-state actors need each other to further their objectives. Even the greatest power needs to engage possibly with non-state actors.

From quantitative perspective, the sheer number of these actors has increased significantly in the last few decades together with the total development of globalization. They have acquired and continue to perform many functions that were carried out until recently by governments, by public authorities. To give some examples, they bring constituent issues to the public agenda, lobby policy makers, provide funds for both private and public spheres, formulate regulatory decisions, monitor their respective international agreements, resolve disputes and so on and so forth. They are in different formats, from NGOs to tech companies. Non-state actors do not always operate alone. They increasingly develop forms of cooperation international institutions and national governments with different goals. They find in practice overlapping grounds to develop political or tactical convergence or to pursue similar short-term goals. At the international level, one example of such cooperation is the so-called multi-stakeholder initiatives based on spontaneous collaboration, participation to ownership, power sharing, better potential to learning, and finally common action. However, it is not only in the international institutions level that these kinds' corporations take place. Even the most traditional state-centric organizations like NATO are engaged and strive to develop a much better cooperation with NGOs.[24]

An interesting example of this cooperation can be cited as the conduct of foreign policy through NGOs in third countries, a come-back of a Cold War tradition. It is possible to say that this exercise has garnered recognition by all states with different reactions. As a backlash, many governments pass laws against foreign funded NGOs. However, major powers are now actively engaged in developing their foreign policy through the collaboration and the synergy with non-state actors. It is not any more a matter of American and European democracy promotion or foreign policy by engaging NGOs. Development of such "public partnerships" has further repercussions we need to consider. The most important one is entrance of a kind of intervening, transnational variable into the domestic balance of power, favoring either the government or the opposition. Sovereignty loses its meaning in classical terms, becoming one interdependent by degrees. This is common experience in all countries, more or less.

In nearly all states, there is a government, a majority or minority, and an opposition. Both try to take advantage of the opportunities provided from foreign actors to win the game at the national level. Power brokerage is not made solely internally. But further negotiations take place at international level.

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[19] Latter dated 5 April 2007 from the Permanent Representative og the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the SC, UN Doc S/2007/186, 5 April 2007.

[20] D.P Fidler, 'The UN and the Responsibility to practice Public Health' 2005-2 pp. 58-59

[21] G.Prins *Threats without Enemies: Facing Environmental Insecurity, London: Eathscan 1993, p.23.*

[22] International Law, PP. (13, 14).

[23] Cali, B. (2010). *International law for international relations* Oxford [UK: Oxford University Press.

[24] Hurd, I. (2011). *International organizations: politics, law, practice*. Cambridge, U.K Cambridge University Press

There are different mechanisms that can be identified in this kind of dynamic. One classical mechanism is Keck and Sikkink's "boomerang effect." It's a kind of liberal rosy understanding in which there is a minority in an undemocratic country, like the women under Taliban. They can go and ask for support from the EU or from friendly governments and finally put pressure on government to dismantle the barriers that would not be possible otherwise. An inverse, outside-in example is that foreign NGOs, foreign governments, foreign international organizations who rely on local actors, local opposition, and local minorities can push their political agendas. EU democracy promotion can be cited as an example. This form of foreign intervention can get a little bit darker and a bit unclear. Foreign governments can rely also on local military actors, local rebel group, and militias to bring on their interests. According to cyber operation records, there are almost 20 countries that have used these kinds of proxies for their foreign policy objectives almost 200 times in the last decade.

Another practice is that the governments' reliance on like-minded governments, foreign NGOs, foreign groups to smash and criminalize and sometimes even kill the opposition to further put pressure on local minorities or oppositions. Syria and Yemen are good examples to that.

However, this is not only bilateral and bi-directional. In some cases, foreign actors supporting local opposition, foreign actors supporting local governments enter into political competition themselves in a way upsetting entire dynamics. They will not act alone but they will act in networks. So, by bringing one NGO, the local actor actually brings an entire network or group of NGOs to its side. Most of these activities or some of these activities are carried out in a covert fashion. All in all, the system is very complex. It is imperative for political leaders and political scientists to have a better understanding of these dynamics both in empirical and normative terms. The issue enters into collision with our traditional understanding of national self-determination and sovereignty. However, without understanding this, it will not be possible to understand the international system completely.[25]

5. Conclusion and Author's View over the Applicability of the UN made International Law concerning Global Security.

The development of international relations provides a basis for a broader approach to international security. It is impossible today to discuss international security without addressing issues of disarmament and arms limitation. Economic, environmental, and humanitarian issues are also encompassed within the domain of international security, since the world cannot be safe if there occur hunger and disease, environmental disasters, and violations of fundamental human rights and freedoms. Limiting these phenomena is hardly of less significance than limiting arms.

The basic principles for such a broad approach to international security are contained in the UN Charter. In particular, the authorities of the UN General Assembly and Security Council in matters of disarmament and arms limitation are formally articulated in the UN Charter, while international economic and social cooperation contains a linkage with the need for establishment of peaceful and friendly relations between nations

The fundamental principles contained within the UN Charter, however, do not resolve all the problems of a diversified reality and frequently constitute merely a point of departure for moving forward and for reaching new agreements on the road toward international security. UN practical efforts are proceeding precisely along the path of formulation of new agreements and recommendations on various specific issues pertaining to international security. The norms of these agreements and recommendations create a second, in relation to the UN Charter, more specific stratum of international legal order, which is grounded on the purposes and principles of the UN Charter.

The basic principles of the UN Charter, such as sovereign equality, renunciation of force, the territorial integrity of states, peaceful settlement of disputes, noninterference, self-determination of peoples and nations, and respect for human rights and fundamental freedoms are all directly related to international security. But almost all these principles are stated extremely tersely in the UN Charter, and subsequently have been further developed in a number of UN General Assembly resolutions as well as in other documents.

The powers of the UN General Assembly and Security Council pertaining to disarmament and arms limitation merely point out the importance of actions in this area but do not of themselves resolve these problems. It has been the practice of states to draw up various treaties in this area.

The central forum for the development of principles and rules of international law is the United Nations. Under the auspices of the United Nations and in its organs and institutions many international law instruments are undertaken. In addition, significant processes can go forward on a regional basis. The European process on security and cooperation embodies a new stage of development of international relations in Europe, characterized by a transition from conflict to cooperation. This process encompasses several spheres: the military, political, economic, ecological, and humanitarian. A component of this process is the development of fundamental principles of international law, the creation of new treaty norms, and the development of new legal norms. This is a multilateral arrangement, but as such it entails the creation of new structures and institutions of cooperation. For many issues of international security there may be a resolution even in bilateral agreements.

The process of development of the principles and rules of international law in the domain of international security can by no means be considered completed. The content of the basic principles of international law which are developed in UN General Assembly resolutions and in the Final Act of the Helsinki Agreement should be given precisely defined legal force, Analogous problems arise with the formulation and adoption of a general principle of environmental protection as well as a number of other matters connected with the content and legal force of the basic principles of international law.

The status of treaty norms in the domain of international security is of an even more varied nature. International treaties exist on some problems, and in these cases only the question of their effectiveness may arise. On a number of problems treaties are just at the formulation stage, while on others there exist only UN General Assembly declarations or resolutions, which often precede the formulation and adoption of international treaties. And finally, even a consensus of opinion has not yet been reached on some problems.

In the military area of international security there exist legal problems pertaining to increasing the effectiveness of a number of

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[25] https://behorizon.org/the-role-of-non-state-actors-in-the-future-of-global-governance-and-international-security/

existing treaty norms, as well as the drafting and adoption of new international treaties. In particular, it is necessary to strengthen the effectiveness of such treaties currently in force as the Nuclear Nonproliferation Treaty, treaties on nuclear-free zones, etc. The process of drawing up new international treaties is today proceeding in such directions as the cessation of nuclear weapons testing, banning and elimination of chemical weapons, etc. Such problems as preventing an arms race in space, banning the development and production of new types and systems of weapons of mass destruction, etc., are presently at the stage when the existing problem and the need for agreement on the necessity of concluding an international treaty are under discussion. Finally, there are also problems, discussion of which boils down to preliminary submission of initiatives and exchange of views by the interested parties: These include the problem of total banning and elimination of nuclear weapons, lowering levels of military potential to limits of reasonable sufficiency, limiting naval activity, limiting arms transfers, transformation of military-political alliances, and reduction of military budgets.

Thus international law is of considerable importance for formally articulating attained understandings or agreements on all problems pertaining to international security. The science of international law is also called upon to play an important role in this. Inasmuch as the establishment of international law norms constitutes bringing the positions of interested states into agreement, study of these positions is of considerable importance for constructing possible variations of drawing them closer together, utilizing the means of international law.