Two Strands of Change, ASIL Newsletter

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Two Strands of Change

Notes from the President

The historian Paul Kennedy recently wrote that it is difficult to recognize when we are living through a watershed in history (which he thinks we likely are) in part because we always view events through the side of the watershed in which we grew up, not from the side to which we are transitioning. I happened on his thought as I reached the end of my participation in several conferences these past six months. Who can say if the strands of change I perceive reflect a watershed, but two strands in particular strike me as pervasive and significant. In one sense, neither is new. In another sense, there is a moment when watersheds may have been crossed and what was exceptional may become routine.

A Loosening

There is an image of a world that is politically loosening up, and, in terms of international law, a loosening up of its universality, of the consensus of the international community on questions we may have thought were quite settled. The bipolarity of the Cold War is gone. The unrivalled power of the United States is less. And as the world loosens up politically, I time and again was met with a rise of a regional or even local focus, even though the topics ostensibly were global. At two conferences in Asia, a meeting of the International Law Association ASIA Branch in Taipei in June, and the Joint Meeting of the Chinese, Japanese and Korean Societies of International Law in Seoul in August, a pervasive theme in the presentations was a search for difference. International law scholars strove to identify local and regional differences from the orthodox global consensus that were lost to sight prior to the loosening. Rarely did the search for difference focus on what conversely is shared even though it was clear that the majority of international law principles and rules remained agreed upon.

A Tightening

In contrast to the strand felt in these conferences, the joint meeting of the American and European Societies in Florence, Italy, in October as well as the meeting of the Global Agenda Councils (in particular, the Global Agenda Council on the Rule of Law) of the World Economic Forum in Abu Dhabi in October both focused upon global challenges that cannot be addressed merely through simple win-win coordination such as universal postal service; instead, discussion was dominated by difficult problems that require cooperation on a level never seen previously.

The Florence Conference used the perspective of global public goods and focused, among other things, on the mechanism of their production. In this light, the resistance of several types of challenges to international coordination was not only cast in a new light, but also raised an increasingly familiar frustration with the weaknesses of the consent-based cooperation mechanisms of international law. In more traditional cooperation situations, states that wish to cooperate may do and those that do not may be isolated without prejudice to the benefit of cooperation. But "aggregate effect" problems such as climate change require coordinated internal governance by at least the main players on internationally agreed objectives. The main contributors to climate change can’t simply be isolated. Even more, "weak link" problems, such as terrorism, involve situations where essentially the absence of any state from a collective effort threatens to undermine solutions.

In Abu Dhabi, a focus on governance focused on strategies for coordinating internal governance toward internationally agreed objectives. Putting to the side for the most part the formation of such agreed objectives, discussion focused on the reality that not all nations are capable of effective internal governance. The rule of law movement globally in this light becomes not only a means of ensuring human rights and encouraging a favorable economic climate, but also provides the necessary machinery for implementing agreed objectives concerning shared challenges. But as we know, the reality of "rule of law" is a work in progress for many nations. And when faced with international demands to coordinate internal governance, some nations are experiencing what Davis and Kingsbury have termed "obligation overload." Sometimes a state without sufficient governance capacity de facto is isolated from the benefit of cooperation. An example raised in Abu Dhabi was safety in international passenger air transport. On the surface, many states are bound by such safety standards. But in fact, many are not able to digest, never mind implement, such standards. In those instances, the airlines of such states are placed on lists where their use is not advised. Given that

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Nominating Committee Announces 2012 Leadership Nominees

The 2011-12 ASIL Nominating Committee has announced its slate of nominees for the Executive Council and officer positions. The candidates will be presented to the ASIL membership for election at the next Annual Meeting, March 28-31, 2012. The Nominating Committee was chaired by Charles N. Buxbaum, Anne Joyce, Daniel Price, and Vikram Raghavan.

ASIL OFFICERS AND EXECUTIVE COUNCIL NOMINEES

President

Donald Francis Donovan, the current president-elect of ASIL, is a partner in the New York office of ASIL Law Firm Sponsor Debevoise & Plimpton. He has argued international law in a broad range of international and domestic fora, including the International Court of Justice and the U.S. Supreme Court. He regularly appears as both counsel and arbitrator in proceedings initiated under the auspices of the world’s leading arbitral institutions and litigates international disputes in U.S. courts. For his achievements in both international arbitration and international human rights, he was awarded the Premio Nacional de Jurisprudencia by the Mexican Bar Association, the first non-Mexican so honored, and was inducted as a member of the Orden Mexicana del Águila Azteca, the highest award given by the Government of Mexico to non-Mexicans. Donovan currently serves on the Advisory Committee for the Restatement of the U.S. Law of International Commercial Arbitration of the American Law Institute, as a member of the International Council for Commercial Arbitration, having recently completed two terms as its vice-president, and as a member of the Board of Directors of Human Rights First and chair of its Litigation Committee. He formerly served as chair of the Institute for Transnational Arbitration. He teaches international commercial and treaty arbitration at ASIL Academic Partner New York University School of Law.

Donovan served as law clerk to Associate Justice Harry A. Blackmun of the U.S. Supreme Court and legal assistant to Judge Howard M. Holtzmann of the Iran-United States Claims Tribunal. He received his B.A. in 1977 from the University of Virginia and his J.D. in 1981 from Stanford Law School.

Notes from the President

 aggregate effects and weak link problems are ongoing, the question at Abu Dhabi became whether it is possible to identify successful interim strategies for coordinated governance.

Diversity and Convergence

Thus these conferences and meetings appeared to manifest and echo a simultaneous loosening and tightening of international law. A changing political constellation gives room for a loosening of those international rules supported by such circumstances. Yet, it may be that the loosening itself reflects several strands—in part a reexamination of variation of cultural difference and in part a mask for political realignment towards the regional level. At the same time, the urgency of certain shared problems creates a hegemony of its own, pushing for greater convergence globally in internationally agreed objectives that will require coordinated internal governance. It may be that this loosening and tightening are happening in different areas of international life and may proceed in parallel.

In asking whether we are at a watershed in history, Paul Kennedy asks that we “take our world a bit more seriously.” That is precisely what the members of our Society have done for over a century. Both the universality of our human nature and our cultural differences are valued. So too are solutions to the shared challenges of our day sought.