

Universal jurisdiction and global governance

Jennie S. Bev, San Francisco | Opinion | Thu, November 26 2009, 1:28 PM

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International law has risen to a new level where it is no longer a series of norms that nations agree to adopt but rarely enforce. It has risen to a new plateau where it is more than a political instrument.

Landmark cases are being created, which is crucial to worldwide advancement in adherence to human rights and respect for humanity. Eventually, international law is no longer more philosophical than practical and it promises to evolve into something greater than mere utopia. It is the gateway to good global governance.

Recently, there have been several incidents in which individuals and entities belonging to other geographical jurisdictions are investigated and tried in other countries or by the International Criminal Court (ICC). A Norwegian court and the ICC are separately investigating Israel for alleged war crimes in Gaza regardless of Palestine's nonstate status.

An Ohio resident has been deported to Germany for his alleged involvement in World War II camp concentration. Former US attorney general Alberto Gonzales is being investigated by a Spanish judge for his alleged torture involvements in Guantanamo. Augusto Pinochet of Chile is also being investigated by a European judge. The ICC is investigating the government of Zimbabwe for their involvement in the collapse of the public health system.

The main principle of such proceedings is that states have the right to prosecute an alleged criminal regardless of nationality, country of residence and other jurisdiction requirements as long as the alleged crime is identified as a crime against humanity or has the potential to pre-empt. Erga omnes (the principle of in relations to everyone) and Jus cogens (the principle of pre-emptory norm that includes genocide, slavery, trafficking, torture, piracy, and military attack) serve as the foundation.

Several European nations have specifically adopted "universal jurisdiction" principle in their constitutions, which provides a legal basis for assuming jurisdiction.

Proceedings based on "universal jurisdiction" might be the answer to ICC's nonretroactive principle, in which cases occurred prior to July 1, 2002, cannot be applied against. It might also be an answer to the so-called "tribunal fatigue" as more than 30 of them have been created in the last 25 years for investigating and trying cases related to human rights, trade, and environment through ad hoc committees such as International Tribunal Court and International Court of Justice.

However, some obvious incidents, such as the recent alleged Somalian piracies on oil tankers in open seas, apparently have not resulted in international law interventions, despite its ongoing occurrences since the 1990s and UN Security Council resolution 1838 (10) calling for military forces' interference. A number of speculations, including from oil cartel lobbyists, have been circulating around the grapevine for the reasons of taking no legal action and no US military force involvements.

Overall, the rise of universal jurisdiction principle is seen as an upward trend in international rule of law and a positive inclination toward global governance. Despite the Indonesian government's denials

of multiple counts of grave human rights abuses, the invisible hands of international law are diligently working. For conscientious people, such a trend is a breath of fresh air indeed.

Political maneuvers, however, can still be observed in obvious violations of crimes against humanity that are left untouched. In the case of violations by the United States, for instance, Obama's smooth and empathic rhetoric can be translated as either favorable or unfavorable. It is favorable in a way that it would provide leadership in peace building, while at the same time it may as well be not more than sugar-coated statements that can be used in postponing or even muting international pressures.

An interesting development is when the Palestinian Authority forwarded the Gaza incident in 2008 to the ICC, as Palestine has not been officiated as a "state" per se. While the case is currently being investigated, the Palestine authority's request has been considered, which may eventually provide a legal basis for officiating it as a state or "equal to a state" status at a later date.

For international law to be fully enforced and international good governance to take place, people of the world should work together hand-in-hand in advocacies and public education, including in public schools. In the United States, forward-thinking public schools have been offering curricula that would prepare students for careers in international affairs early on. A holistic view of how things work globally needs to be introduced prior to university education.

Only by recognizing that Indonesia is not an island in the global constellation can we strive to be recognized as a respectful international player. After all, humanity is one and only.

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