

Too soon to foresee the Reality of global law

International Criminal Law Constitutes the Sole Field
Where the Promise of Global Law Provides Solid Ground*

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Foreword

In 2008, I found a book that would mark my academic and professional work over the following years. It was *Defending Humanity* [Oxford University Press, 2008]. In the conclusion, authors George P. Fletcher and Jens David Ohlin write: “The value of a national culture is not just instrumental, but intrinsic. National cultures are more than a source of warmongering and national prejudice, they are a source of the inspiration and difference that make human flourishing possible.” I reflected on the relationships between globalization, nationality and international law. I would intuitively conclude later that globalization is a far more complex phenomenon than we tend to believe; also, that the concept of nationality is not ready to disappear but instead is in the process of affirming itself. Finally, I inferred that international criminal law realistically holds the promise of an expanding legal globalization. These reflections form the basis of this article.

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1. Contemporary narrative of globalization and international law

Not only has globalization taken in modern times a prescriptive undertone. The phenomenon has been placed by media and opinion [also by academia] within a *sacrosanct* belief that we are witnessing today the first globalizing trend and it is also the inexorable destiny of humanity. Globalization would thus be historically unprecedented and peculiar to living generations. A sort of *pensée unique* [single thought] has been born in media, intellectual and academic circles whereby those critical would invariably be wrong or tricked by mere ignorance.

Contemporary globalization as a social phenomenon must be carefully and judiciously re-evaluated. A multiplicity of elements and factors at play yearn for re-examination. The total re-casting of international law away from the society of states paradigm, bringing about the demise of national sovereignty, towards a global society of persons and a new global public law is –I contend- premature.

Niall Ferguson reminds us that as the European great powers were completely taken by surprise by the outbreak of World War I and, like the Lusitania in 1915, globalization could go under the water.¹

Indeed, an integration of the economies through markets across frontiers has accelerated; cohesion of communities across the globe, thanks to cybernetic social networks, is well under way; the community of nations has finally embraced the pre-eminence of certain individual rights, proclaiming a legal right to respond collectively to gross violations.

However, the integration of political systems and simultaneous birth of a corresponding new global notion of distributive justice and the death of the Westphalian system and the nation-state is not occurring. Nor is the consolidation of an all-encompassing “global public reason” as envisaged by Sebastiano Maffetone.²

The European Union gives a clue today. Under prescription from the rich countries (headed by Germany), new fiscal rules are sought. E.U. treaties *must* be reformed with two goals in mind: removing political discretion at the national level, imposing E.U. strict fiscal monitoring and sanctioning powers, and reforming national constitutions to include balanced-budget rules. Such a fundamental political change is pushed institutionally by traditional power structures from the top down. Absence of grassroots is a fact.

On the one hand, international law has taken a normative path, attempting to impose social and political paradigms. Through legal engineering, it is predicted that the classical domain of national justice will be transformed into a global one, and national sovereignty, citizenship, legitimacy will either disappear or take a transformed face.

On the other hand, international law has taken a route where non-governmental organizations [NGOs] and individuals, in conjunction with governments directly participate in the law-making process. This participation clearly shows the birth of an incipient international civil society. Examples are the Convention on Cluster Munition [2008], Treaty of Rome [Statute of the United Nations International Cri-

1 Ferguson, N., *Civilization: The West and the Rest*, Penguin Press, 2011, p.16

2 Maffetone, S., *Le ragioni degli altri*, Saggiatore, 1992, p. 22

minal Tribunal, 1998], and the Ottawa Convention Banning Landmines [Landmine Convention, 1997]

International law as a gradual process, as viewed by Rosalyn Higgins, I contend, is not mechanistic or prescriptive. Social and political context is essential and international law as a process “does *not* entail a rejection of that core predictability that is essential if law is to perform its functions in society”.³

I argue that the concept of national sovereignty will prevail in the short, medium and long terms. Subtle changes are at play yet they should be not magnified if careful examination of facts is carried out. This reality-check will be essential. Historically, the development of international law, writes Sienho Yee,⁴ has been progressive and the most notable feature has been inclusiveness and egalitarianism, always concerned with ethical and moral parameters.

The contemporary globalization popular narrative exudes a sense of being a one-time, unsinkable, deterministic fate of humanity. No distinctions are made. Every single field of human activity would thus be involved in the newly minted globalization era.

I believe that a thorough and conscientious redefinition of globalization is in order.

Also, an identification of current and feasible globalizations (I prefer to use the plural) with more predictive power, being certain to ensure that the methodological assumptions of my dissertation do not insinuate themselves into normative positions. Anthony Giddens’ proposition by which “globalization is a social process where space is eliminated as factor in social relations”⁵ must be expanded into a more meaningful and workable synthesis.

Once we have established a working definition, I will examine law and globalization –specifically legal globalization- with one purpose in mind: descriptively and analytically observe what is occurring within the area of international law.

Claiming to examine globalization at the legal level, Anne Marie Slaughter recently wrote in her work *A New World Order*:

“To be effective, regulatory decisions *must* increasingly involve the meta-state level. Globalization requires a fundamental re-examination of social regulation and governance at the global level, leading to a system in which States may still have a preeminent role, but not the only one”.⁶

Slaughter’s premises –typically normative- deal with ideal standards and models and on how things should or ought to be. Once she does this, international law’s advances and/or shortcomings are derived from hypothetical situations.

I would like to be clear from the outset: A clear, concise and truthful picture as possible of globalizations and developments of international law is needed. Likewise, an examination of the premises and possibilities of global law as presented by cosmopolitanism must be developed.

3 Higgins, R., *Problems and Processes; International Law and How We Use It*, Oxford University Press, 1995, p. 17

4 Yee, S., *Towards an International Law of Co-progressiveness*, Martinus Nijhoff Publishers, 2004, p. 23

5 Giddens, A., *The Consequences of Modernity*, Stanford University Press, 1990, p. 64

6 Slaughter, A.M., *A New World Order*, Princeton University Press, 2004, p. 40

1. *Globalization is not new*

Humanity has gone through various ages of globalization. Economic historian Angus Maddison has shown how China's transformations through the centuries included international economic exchanges [in the XIV century] amounting to PIB percentages higher than the country has today.⁷

Identifying three waves of globalization, David Bederman⁸ finds from the first one [ancient Mesopotamia, Greece, Egypt and Rome] onwards, significant bodies of international law. I go further by advancing the approach by which world-reaching legal orders existed before.

Contemporary elaborations tend to assume we live in exceptional time: a globalizing era without historical precedent. Besides being inevitable and inexorable, globalization, it is pointed out, seems to have acquired the characteristic of being history's last uninterrupted leap.

My hypothesis is, however, that globalization has appeared in the form of a succession of episodes, not necessarily in a progressive fashion.

If globalization has had intermittent periods [I disagree with Bederman⁹ it has had cycles, as I expect to elaborate], we must figure out what has gone through one episode to the next, being aware that they are essentially fragile and avertable. In any case not historically necessary.

2. *Nation, society and community*

Globalization normative theory [for example Frank J Garcia¹⁰] views nation and nationality as obsolete concepts, not only theoretically but in practical terms. History would be relegating them to a second stage. I disagree as I intend to show.

The nation-state is both a social reality and a cultural phenomenon [I will not dwell here on this aspect but will devote analysis to the topic in my dissertation]. Also, as David Miller argues, the nation-state has a highly dense ethical significance.¹¹ Successive wars but definitely World War I and II diminished the national entity as an agent of confrontation and racial hatred [manifested through horrendous crimes]. However, the nation-state continues to be the territory where the application of justice makes sense, and it is still within the nation that justice finds its full meaning. National boundaries not only bear political but also ethical significance. They conform to both formal legality and to accepted standards of conduct.

We find ourselves –the whole world finds itself- embedded in national communities. Within a reality that has lasted well over 1000 years and previously inside a system which very closely resembled [albeit dispersed] to what today is a group of nations

7 Maddison, A., *The World Economy: A Millennial Perspective / Historical Statistics*, Development Center Studies, OECD, 2007, p. 19

8 Bederman, D. J., *Globalization and International Law*, Palgrave Macmillan, 2008, p. 32

9 Ibid. p. 48

10 Garcia, F., "Globalization, Global Community and the Possibility of Global Justice". Open access by Digital Commons @ Boston College Law School. (Discussion Draft), p. 7

11 Miller, D., *On Nationality*, Oxford Clarendon Press, 1995, p. 45

[ancient empires]. The nation constitutes a deep human social structure.

Global theory holds that the extreme heterogeneity of states dispersed around is not compatible with an international community deemed universal. The differences of race, culture and civilization are impediments that will slowly but surely disappear to open the way to a cosmic world.

Mexican historian Daniel Cossío Villegas coined back in 1925 the expression “cosmic race”, by which he meant a society which would eventually know no language and ethnic differences as a result of prolonged mixture.¹² I will agree with Cossío Villegas in that humanity [if still around] might finally be a social compact. However, this stage [if it arrives] is quite distant from us.

French historian Fernand Braudel emphasized the role of large scale socio-economic factors in the making of history.¹³ The analysis of ancient but particularly recent history focuses on short spans [*courte durée*] or history of events [*histoire événementielle*]. Political and economic history tends to be viewed and written as history of events. Globalization is treated as a history of events.

The long span [*long durée*] approach stresses the slow and very often imperceptible effect of factors on the actions of human beings and evolution of social phenomena. The long span approach shows to apply to human history. The

continuity of the deepest structures of society is central to history.

Nation, community and society are, I contend, among those most profound structures in history.

German sociological theory makes the distinction between “community” [*Gemeinschaft*] and “society” [*Gesellschaft*]. Community links are based on intimacy, sentiment, fraternity, friendship, neighborhood while societal links originate on the need of material exchange and interest. Life in community develops based on intimate and trustworthy relationships, while tension is fundamentally inherent to life in society.

At the global/universal level –I believe- the concept of international community has consolidated faster than the construct of international society. N. Q. Dihn, P. Daillier and A. Pellet in their text *Droit International Public* thought impossible 25 years ago the notion of international community.¹⁴ Mainstream international relations theory agreed.

It is from an analysis of the historic role and scope of these durable entities –nation, community and society- that I must view and evaluate globalization. Parameters and questions should be clear: Is, objectively speaking, the world rapidly and swiftly shifting towards a meta-state level? Can we signal out the emergence of an international community? Has the international society as a whole agreed on some form of common values and norms?

A detailed review of public, evident facts is needed:

Nationalism in the modern world is not in decline but on the rise. Re-

12 Cossío Villegas, D., *Extremos de América*, Colección Conmemorativa 70 Aniversario, Fondo de Cultura Económica, 2004, p. 76

13 Braudel, F., *Le Méditerranée et le monde méditerranéen à l'époque de Philippe II. Tome 2: Destins collectifs et mouvement*, Livre de Poch, 1993, pp. 80-87

14 Dihn, N. Q., Daillier P., and Pellet, A. *Droit International Public*, Librairie Générale de Droit et de Jurisprudence, 1987, pp. 30-31.

gionalism is blossoming in all parts of the world. Colombian philosopher Luis González-Barros has asked: Will the European Union be one of 20 or 100 flags?¹⁵ Spain, Portugal, France, Belgium, Great Britain, Italy, Russia show strong ferments of regional nationalisms. These are the countries where globalization and the arrival of a global law would seem most promising. Multiculturalism, as an expression of plural nationalism, gains ground, being enshrined in national constitutions.

The idea of an international community, discarded until recently as not possible, has shown to exist. Cybernetic social networks are forming solid intimacies across and inside countries, thereby shortening distances amongst individuals. The present Arab Revolution is an example. Technological networks have ignited the democratic flame, providing constant communication and support. What treaties of friendship signed from times immemorial never achieved or partially accomplished has been done by individuals themselves.

International society slowly agrees on some fundamental values, mostly as a result of domestic consensus. These agreements have found quick expression through United Nations resolutions. International humanitarian law and human rights have walked out of rigid, declarative treaties to become legal and social realities. And grass roots internationalism, essentially through cybernetic social networks, fosters the growth of values, particularly those related to the right to life.

15 González-Barros, L., "El Impacto de la Reunificación Alemana y las Alternativas de Colombia y América Latina ante el Mercado Común Europeo", in document published by the Centro de Estudios Colombianos, Mayo de 1991, p. 2

Globalization has emerged and flourishes at the core of nation, community and international society. Territorial boundaries seem not to be –I contend– a main obstacle to delivery of a global basic package. I attempt to demonstrate how grass-roots movements at present are the main engine of globalization –not institutional decisions from the top down.

3. International distributive justice

It is within the nation-state that the notion of justice takes place. Justice is pursued in the realm of a group committed to dividing, exchanging and sharing social goods first of all among members. It is within particular nations that one may determine what justice consists of and who owes something to whom. Shared values and beliefs in democratic systems or imposition by them in autocracies provide the basis for an institutional framework. Citizens are privileged over non-citizens.

I dispute current trends in academia where citizenship in western liberal democracies would be the modern equivalent of feudal privilege. It would be an inherited status enhancing one's life chances, as Joseph H. Carens contends.¹⁶

Again, we must look long span following Fernand Braudel. Justice is an ancient concept, going back to Greece and Rome. Ingrained in the deepest of society, autonomously built on national parameters, it should not have to be deliberately tackled as a harmful element

16 Carens, J.H., *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness*, Oxford University Press, 2000, p. 96

to modernity when developed within such parameters.

Frank J. Garcia writes "we need to develop a model for the international delivery of the basic package –a concept of effective global citizenship if you will- in which the accident of birthplace, or the vagaries of naturalization law, do not fundamentally affect each person's life prospects."¹⁷ Global law, according to this cosmopolitan view, demands a new view of distributional justice, where the state no longer holds the monopoly of delivery of basic public goods. Here, again, I will attempt to give evidence of the link nation-justice as a socio-historical reality, not ready for dismissal in the short span.

H.L.A. Hart and Michael Waltzer suggest the emergence of a secondary set of shared understandings, beliefs and practices in the global sphere.¹⁸ The example is provided by the European Union where national citizens give priority to a first national set and subsequently to the one incarnated by the E.U. A sort of alternate distribution scheme is slowly taking solid root.

John Rawls subscribes to the standard Westphalian model of nation-state where rights and obligations are available only to citizens.¹⁹ He proposes a clear separation between national and international society. On the other end

of the spectrum, Joel Trachtman proposes a purely cosmopolitan world without "particular cultures and without histories", which would stipulate some rules of permitted diversity [multiculturalism, we should read].²⁰ In this context, ideal for Trachtman, global law would reign as the supreme allocating power, directly connected to individuals.

Capturing reality as it is –I must reiterate-, and placing it within the appropriate historical context is needed. The major defect of current work on globalization is the systematic neglect of historical data. Simon Caney delineates international distributive justice emphasizing that social relationships must exist for this concept to operate.²¹ It cannot be imposed [as in Frank Garcia and Joel Trachtman] as a normative prescription when sociological conditions are absent.

Traveling an avenue of inquiry departing from information provided by my optics of the state, international society and community, expecting to find out which degree of international distributive justice has permeated actors of the global scene is the task to follow. My informed intuition is that a modest degree will be found, mostly in the international community –that elusive segment whose existence was denied until very recently- forged mainly by social networks born in new cyber technologies.

Recent events show recently that institutional international distributive

17 García, F., "Globalization and the Theory of International Law". Open access by Digital Commons @ Boston College Law School (Discussion Draft), 2005, p.10

18 Hart, H.L.A., *Law, Liberty and Morality*, Stanford University Press, 1963 and Waltzer, M., *Spheres of Justice*, Basic Books, 1983.

19 Rawls, J., *A Theory of Justice*, Original Edition, Balknap Press/ Harvard University Press, 2005

20 Trachtman, J., *The International Law of Economic Migration / Towards the Fourth Freedom*, W.E. Up John Institute for Employment Research, 2009, p. 87

21 Caney, S., "International Distributive Justice", *Political Studies* 49, 2001, p 101-129; "What is Cosmopolitanism"? *Journal of Political Philosophy*, 2000, p. 227 - 243

justice has not taken solid root. Rich countries from the north, such as Germany and France, appear reluctant to support [bailing out], in the current crisis, their southern counterparts as Greece and Portugal. Both institutions and electorates are not yet imbued with a sense of transnational justice. Humanitarian relief is not exercised, I argue, as a result of an institutional bond where obligations originate but as residual and dispersed endeavors and/or impulses generated in compassion.

4. Global law and norms of international law

Global law is not unfolding as cosmopolitan proponents contend: a single body of law which would govern the world. Both public and private international law will remain the legal systems providing the norms to global exchanges.

Cosmopolitanism today is a reflection of XVI and XVII rationalism [R. Descartes, B. Spinoza, G. Leibnitz]. Rationalism postulates the prevalence of unity over diversity.²² Any attempt to impose unity over diversity, I will elaborate, is prone to generate violence. Global law would hardly be the result of consensus. On the other end of the spectrum, post-modern theorists [M. Foucault, Derrida] see multiplicity and diversity as principles ingrained in the social fabric. Rules are therefore artificial. International law would thus be a mere tool of state self-interest and inter-state harmony a utopian ideal.²³

22 Kenney, A., *A New History of Western Philosophy*, Oxford University Press, 2012

23 Goldsmith, J.L. and Posner E.A., *The Limits of International Law*, Oxford University Press, 2005

Material reality affords some clear data: the number of participants in international organizations and international treaties continues to grow. The disintegration of states as a result of invoked nationalisms has multiplied. I argue that cultural relativism has not hindered an all-encompassing legal expansion of human rights values' and beliefs. The drive for legal uniformity is becoming stronger in this area. Cultural and religious diversities are showing a high degree of compatibility, I will contend, with cross-cultural values developed in international treaties and international law. A careful, structured analysis of the current democratic Arab revolution [started in 2011] is at this point imperative. Large segments of the population in geographic areas presumably adverse in an inherent fashion to ideals of freedom currently advocate essential principles of human rights and international humanitarian law.

A sign of growing uniformity is thus evident in some fields: international human rights law, international criminal law, international environmental law. The existence of basic values and common interests of all finds expression in limited instruments of public and private international law which differ from notions of global law.

The legal notion of obligations *erga omnes* shows two characteristic features. The first one is universality, in the sense that they are binding on all states and persons without exception; the second is solidarity, in the sense that every state is supposed to have a legal interest in their protection.²⁴ The International

24 Ragazzi, M., *The Concept of International Obligations Erga Omnes*, Clarendon Press, 1997

Court of Justice has provided a carefully selected group of obligations *erga omnes*. These are, as we have known, obligations owed by states towards the community as a whole. An *erga omnes* obligation exists because a universal interest operates in relation to critical rights. This notion was recognized by the International Court of Justice in the decision *Barcelona Traction Case*²⁵

Such obligations *erga omnes* are born in principles concerning the basic principles of the human person, including genocide, protection from slavery and racial discrimination.

In spite of gross violations, human and life-centered values, I argue, are gaining solid ground and international law norms backing them are gradually expanding their scope. International criminal law, specifically, shows the crystallized effort of the global community to prosecute and punish those guilty of crimes offending our deepest values.

A localized yet expanding global public reason, I contend, is emerging in a subtle but firm manner. The international civil society has become the principal agent of a multicultural, multi religious and multinational trend upholding the value of human life. And institutional responses to violence exercised against the right to life, originated in and fostered by communities, take root.

It is ironic that those, the cosmopolitans, who announce the advent of a unified global law, are also the ones who fervently advocate and defend multiculturalism. Multiculturalism as policy promotes the institutionalization and peaceful co-habitation of multiple cul-

tures, nationalities, religions and ethnic groups. The concept of nation is thus inherent to the multicultural phenomenon. Post-modernity, it is my view, instead of weakening the national belief, has reinforced it.

I intend to show that recent Security Council resolutions developing Chapter VII of the UN Charter [Action with Respect to Threats to the Peace, Breaches to the Peace, and Acts of Aggression] have also provided institutional strength to the national entity.

Both the defense of life and nation are progressively articulating a robust body of international criminal law and international human rights law.

Economic integration is advancing mainly through regional economic and/or trade arrangements complemented by global liberalization as a subsidiary element. An immense structure of international economic and trade law continues to flourish starting out from the basis of national arrangements.

The reconfiguration of the international legal system towards global law is not occurring. Territorial boundaries not only affirm themselves but multiply as a result of renewed nationalism. We live within a complex, decentralized web of bilateral and multilateral agreements between states alongside a body of customary norms. And the binding force of international norms proceeds more dynamically, as pointed out above, where global values are at stake: nation and life.

Globalization viewed as intensified and stable relationships among different ingredients of society finds expression in the present articulation of international criminal law.

25 *Barcelona Traction, Light and Power Company Limited*, I.C.J. Reports 1970

5. *International criminal law*

International criminal law has progressed over more than 100 years to become a structured and unified body which prohibits certain categories of conduct deemed by humanity as serious crimes, making judicially accountable responsible individuals.

The Rome Statute of the International Criminal Court [1998] prosecutes and punishes genocide, war crimes, crimes against humanity and the crime of aggression. These crimes exalt and defend both the rights of the individual and the national entity.

It is my contention that international criminal law is becoming a self-contained body of substantive and procedural norms. As a senior legal advisor at the International Criminal Tribunal for the Former Yugoslavia, I argued that that international tribunal should exercise in an active manner its role with regard to pardon, commutation of sentences, early and conditional release for parole; the Statute, the Rules of Procedure and Evidence and the Model of Sentences Agreement gave full authority to the President and Judges to make all final decisions regarding these matters. I wrote in a policy paper that “the automatic transfer [of principles] or passive acceptance of notions from national law into international criminal proceedings and sentences could inadvertently distort the specificity of proceedings and sentences”²⁶, adding that “international law itself provides the

26 Jaramillo-Ortiz, J.D., Policy Paper on Issues Pertaining to Enforcement of Sentences, United Nations Criminal Tribunal for the Former Yugoslavia, November 1998, p.11

spirit that should embrace the mechanics of enforcement of sentences.”²⁷

International criminal law as a deterring and punishing tool which supports the values of life and nation is, I contend, the most important agent of coincidence of actors operating today in international civil society.

It should not be regarded as a static instrument. In fact, it is creating, I believe, political and legal synergies conducive to an ever-expanding reach of international law.

Other crimes deeply affecting the values of freedom and individual well-being, on the one hand, and the stability of numerous national entities, on the other, seem to be calling for an enlarged list of serious international offenses. A case in point is the production and distribution of narcotics which impacts the deepest well-being of millions of individuals and the stability of numerous national entities.

Terrorism as a crime not yet specifically defined in international treaties, is an additional example of a criminal activity, dealt with by UN and domestic laws, which would expand the current frame of international criminal law, fostered by a global constituency.

6. *Final comments and challenges ahead*

Viewed either as a Western universalist approach assuming a common value system based on Western beliefs through legalistic means or as an inter-civilizational approach²⁸ assuming the existence of plural value systems seeking some form of integration, there is

27 Ibid. p. 12

28 Yasuaki, O.A., A Transcivilizational perspective on International Law, *Recueil des Cours de l'Académie de Droit International*, No. 342, 2009

at this point in history –I will insist- a group of conducts abhorred by international civil society.

However, there will be some degree of relativism of varying degrees in the interpretation and policy of human rights. Culture and national laws in many nations discriminate against women and homosexuals. Ethnic considerations recognize higher status to some groups and directly discriminates others. Economic differences frustrate the ideal of equality and well-being for all, without distinction. At the same time it is recognized that relativism, as an inevitable element of multiculturalism, can be a natural expression of diversity within an enormously pluralistic world.²⁹ I hold a progressive evolutionary view of the UN Human Rights Declaration of 1948. Here, again, a patient long term approach is analytically prudent and productive.

Six decades show a transition from repeated brutality which permeated history until World War II to isolated episodes of violence, such as the ones occurred in the former Yugoslavia and New York's World Trade Center, responded energetically both by the global political establishment and international civil society. There is change that I intend to explore. This historic shift has to do with the values of life and nation.

The 1990 Cairo Declaration on Human Rights in Islam states that “all rights therein are subject to the Islamic Shari’ah [law].” The 1980 African Charter is concerned with human rights and peoples’ rights. However, “regional

conventions, by the rights they enumerate and protect, reflect on the whole a universal consensus on human rights rather than individual versions of rights or exclusions of the basic civil, political, and legal rights.”³⁰

Life and nation have started to develop an array of basic protections, progressively accepted and recognized. Genocide describes an ancient crime. The typology, however, is new. Extermination of national, ethnic, religious or racial groups was for centuries an evil dynamic present in human history and very often conceptually justified. This is no longer the case. International society is in the process of shaping strong built-in prevention mechanisms, institutional defenses and instruments of prosecution and punishment.

Social networks –that international community deemed impossible 25 years ago- seem to have been developing and refining values, thanks to modern technologies, which I center on life and nation. A close, methodic examination to what occurs now in the Arab world reveals a collective conscience surrounding not only human but political and economic rights.

I have explained that I view globalization as an episodic, fragmented and non-deterministic occurrence, concentrated on issues of particular importance or need for international community and society. Criminal matters, I argue, are the embodiment of the most prevalent globalization occurrence in modern time.

George P. Fletcher held back in 1998 that “there is much greater unity

29 Gibson, J.S., Dictionary of International Human Rights Law, Scarecrow, 1996, p.5

30 Ibid. p. 6

among diverse systems of criminal justice than we commonly realize”³¹ There is in fact a deep universal structure at work, in spite of positivist claims to the contrary. Every country has a criminal code, providing diverse answers to similar challenges, and will continue to have one for many years to come. However, it is strong today the belief that an expanding group of very serious crimes needs organized and articulated responses by the international society.

I see a dual process at work where two forces complement and enrich each other: an international community as an active advocate for the transnational values of nation and life, and an international criminal system evolving in multiple ramifications around them.

Why is international criminal law the compact where globalization seems to be operating at its fullest strength? I seek to provide answers to this central question. In an illuminating book written 75 years ago³², Trigant Burrows, founder of group analysis and neuro-dynamics, wrote that behavioral disorders whether individual or social, such as crime and war, were secondary expressions of disturbances deeply rooted in the human psyche. He added that a mechanism, which now functions individually or socially, tends to replace, modify or suppress these human pathologies. The capacity to differentiate between conflicting tensional impulses is, I believe, a salient feature of our time. Collective approaches to respond seem

to be nurtured by the new international community. The study of the dynamics of this process should be a major investigative challenge.

Life and nation, I repeat, are the foundational elements. They are values to be preserved and defended. A multidisciplinary approach will be necessary to explore how international criminal law permeates society today: tools from the fields of history, comparative law, social psychology, sociology and philosophy will be used.

We are at a turning point in history, when societies previously judged inherently adverse to the principles of democracy and human rights are embracing them. The challenge could not be more captivating.

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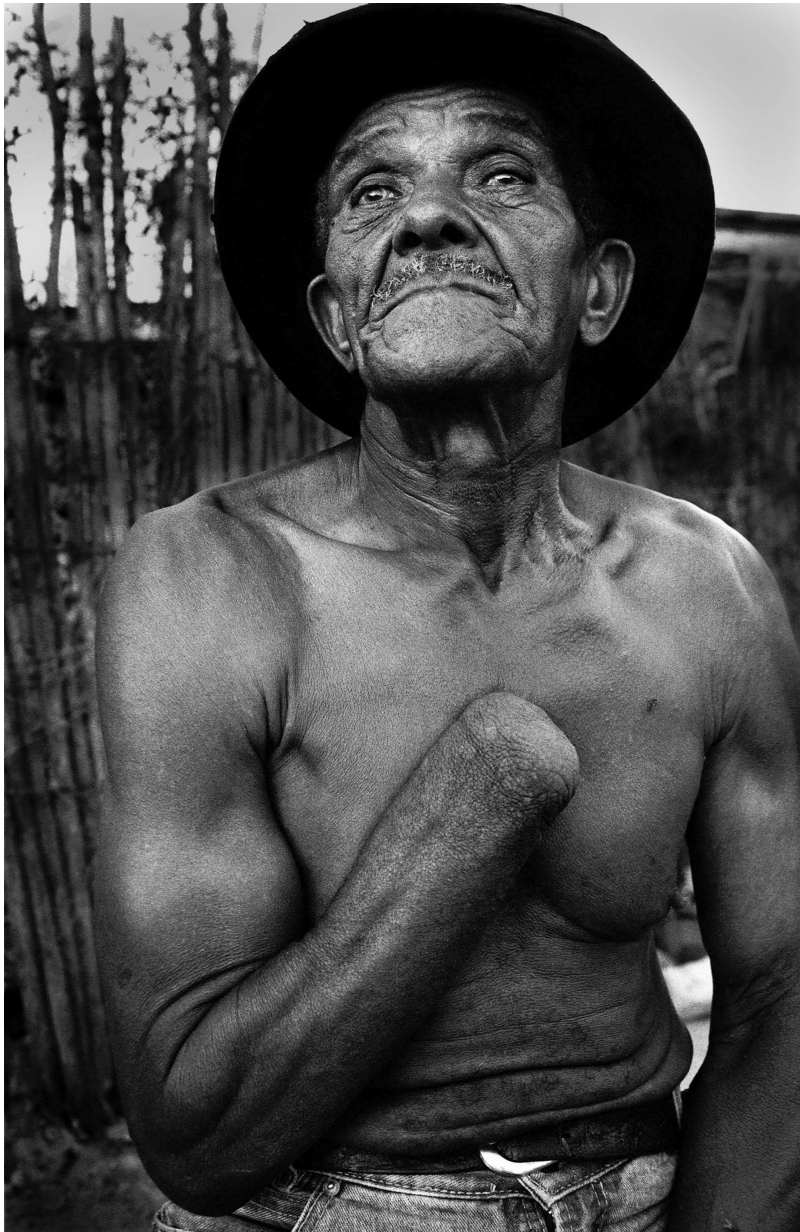
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31 Fletcher G.P., *Basic Concepts of Criminal Law*, Oxford University Press, 1998, p.4

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