

### Aspects of Transition

The world is in transition. The fall of the Berlin Wall symbolized the start of a new era in international cooperation. The predictability of relative stability of the world order during the Cold War disappeared and new orientations in interrelations became necessary. Although the disruption of international order caused, and still causes, many uncertainties, it also offers an opportunity for new developments.<sup>1</sup>

Both within and outside the context of international law, much is said, written, and speculated about the turn and turmoil of today's world. In 1989, Fukuyama wrote of the *end* of history.<sup>2</sup> Many recent events and crises, however, also bring up the question whether history is not simply starting all over again.

The war in Bosnia-Herzegovina continues. Since its beginning, most diplomatic efforts to end it have sunk rapidly into a quagmire of the hatred and mutual suspicion of the warring parties, and marked differences of opinion between the states who have offered themselves as conciliators. The position of the peace-keeping forces is becoming increasingly difficult. More and more, they have become a weapon and a bargaining chip for the warring parties. In recent months, peace-keepers have been killed by snipers and mortar fire in Bosnia-Herzegovina. Each time, the reactions to the deaths were confused and reserved. From the perspective of both the overall credibility of the UN and the safety of UN peace-keepers and personnel as such, the question arises whether the forces should remain or be pulled out as soon as possible. No state has dared to fully and honestly confront this question. Thus the forces remain. The war rages on. In a different case, the UN pulled its peace-keepers out of Somalia after an experiment of 2 years, thus, in a way, admitting defeat and leaving the country to the warring factions once more. In Rwanda, genocide was committed on a large scale, and, except for a solitary French attempt, there seemed little

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1. M.M.T.A. Brus, *Third Party Dispute Settlement in an Interdependent World, Developing a Theoretical Framework* 220 (1995).
  2. F. Fukuyama, *The End of History*, 1989 *The National Interest* 3-18.

the world community could - or wished to - do about it. It has not proved possible to bring stability to the region. In neighbouring Burundi, tensions are rising, and the increasing level of distrust and abhorrence between the Huti and Tutsi communities make it difficult to envisage stability in the near future. A totally different approach was adopted in Chechnya. Here, the Russian army acted as a brutal 'peace' enforcer, with tacit recognition by the world community. Excessive violence directed at the civilian population was tolerated. There was some involvement of the Organization for Security and Co-operation in Europe (OSCE), but the UN stayed out of this crisis, and no substantial diplomatic efforts to solve it have been undertaken as yet.

Are these all signs of a confused world in transition? An aspect of transition is often chaos, and, as one can see from the random examples given above, there is plenty of that around. The world seems to be confronted with problems for which solutions - or even possible ideas for solutions - are not always available. Was it wise to intervene in Somalia and was it wise to pull out? Would an international show of force, even if consensus could have been reached on such an operation, have helped in Rwanda? What could have been done to prevent the bombardment of Grozny and its surrounding villages? Is it at all possible to end the war in Bosnia-Herzegovina?

The Cold War world was a world in balance. The main tool to keep things under control was power politics, founded on two horrendous stocks of weaponry, enough to destroy the world several times over. The post-Cold War world has a smaller, but still considerable amount of that weaponry. Instability is enhanced because the hands that hold the weapons feel they have more freedom in using them, on both the international and the national level. Conflicts which had been suppressed or controlled by the Pax Sovietica and Pax Americana, have decentralized. No longer do the two major powers divide the world between themselves. In the present time-frame, the dominant bipolar division of world affairs has been replaced by a more diffuse multipolar division. States and peoples which were previously contained in their place by either of the two world powers, now have more room to define their place on the globe, as well as pursue their aspirations for dominance or more autonomy. One of the world powers - the Soviet Union - has collapsed entirely, thus unleashing aspirations within its

territory which had been covered up for decades. The other - the United States - is becoming more reluctant and restricted in its means to 'police the world'. On the inter-state level, the difficult discussions presently taking place in New York on the extension of the Non-Proliferation Treaty of 1972, highlight the aspirations for dominance of various states, such as Pakistan, India, Iran, and North Korea. In a bold show of traditional gun-boat diplomacy, China has recently asserted its claims for the Spratly islands in the South China Sea, rich in oil and gas. On the level below the traditional states as we know and define them, multipolarity is personified by the war in Bosnia-Herzegovina.

In general, a certain degree of stability is a prerequisite for development and prosperity. The constellation that held much of the world in check up to a decade ago is no longer cogent. A new paradigm is needed. It is submitted that the vacuum which has come into being after the Cold War can, at least in part, be filled by international law. In a speech to the UN General Assembly in 1988, former Soviet President Gorbachev already pointed out this possibility.<sup>3</sup> Rules give a degree of predictability in life. They provide a background against which the actions of others can be held, interpreted, and, if needed, discussed and judged upon. Such rules can restrict the actions of states, international organizations, and, probably, even peoples. If international law is to perform this role, a realization and an acceptance that indeed it *can* perform that role is needed first. Secondly, the working of that law must be improved and adapted to some of the novelties of the post-Cold War era. In terms of international law, some of the crises that confront us today can be translated into the following questions: Is the prohibition of war valid only between states? When is a conflict no longer an *internal* conflict? What legal actions does the world community have at its disposal to intervene in inter-state disputes? Is there an *erga omnes* obligation in this regard? What limits are there to the exercise of the right to self-determination outside the colonial context? Can the existing mechanisms for dispute prevention and settlement of international disputes be improved, and, if so, how?

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3. See UN Doc. A/43/PV.72, at 22; see also Th. Schweisfurth, *The New Approach to the Law of Peaceful Coexistence*, in R. Lefeber, M. Fitzmaurice & E.W. Vierdag (Eds.), *The Changing Political Structure of Europe, Aspects of International Law* 29-49, at 38-40 (1991).

Apart from chaos, *challenge* is also an aspect of transition; the challenge of an opportunity to develop ideas and concepts. The multi-polar world will, in all likelihood, have more disputes and controversies than we were used to in previous decades. However, the intensity of these disputes will probably not be as high as the apocalyptic spectre of total destruction that permanently lured over the Cold War world. The world order has decentralized. Where disputes were once either bluntly suppressed or imprinted with a solution from above, there is now room for genuine bottom-up solutions, stemming from a realization that preventing and, if it nevertheless reaches this stage, solving a dispute is in the interest of the parties. The recent peace efforts in the Middle East are a case in point. Although they have been sponsored by the United States, their basis is an awareness of the parties involved that the differences *need* to be solved. International law is an important element of the peace efforts, both in terms of the material rules and of the institutional mechanisms for effectuating them. In recent years, the Middle East has shown us negotiation, fact finding, conciliation, mediation, arbitration, and, ultimately, peace treaties containing substantial rules and monitoring systems to act as guardian.

Transition is chaos. Transition is challenge. Transition also implies movement, and movement can be directed forwards and backwards. In a rather pessimistic outlook on history, Yeats once wrote the following words:

Hurrah for revolution and cannon-shot!  
a beggar on horseback lashes a beggar on foot.  
Hurrah for revolution and cannon come again!  
the beggars have changed places but the lash goes on.<sup>4</sup>

The challenge that the world in transition presents must be recognized. In this issue, the challenge is picked up by the *Leiden Journal of International Law* from various angles: the protection of the environment, the dispute settlement role of the International Court of Justice, minority protection, dispute settlement under the World Trade Organization, and recent developments within the International Criminal Tribunal for the former Yugoslavia and the Permanent Court of Arbitration. Similarly,

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4. The Great Day, in A. Norman Jeffares (Ed.), W.B. Yeats, Selected Poetry 190 (1974).

we must be aware of the danger of regression and firmly dedicate ourselves to the task of moving forwards. We must actively strive for the acceptance of the stabilizing role of international law and its further development and improvement. In other words, a movement forwards, aimed at silencing the cannons and restricting the use of the lash.

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