GLOBALIZATION IN THE 21ST CENTURY: A JURIST'S PERSPECTIVE*

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GLOBALIZATION: QUO VADIS?

Globalization is the catch-word for the revolutionary tide that is sweeping the way the world conducts its affairs. The term emerged in the early 90's to encompass the processes that resulted from the integration and interconnection of the world's economies, politics and cultures. After the Cold War, most of us were left pondering on the nature of the coming world order. What emerged was a slew of transnational challenges, such as protection of the environment and prevention of transnational crime and security, as well as borderless transactions such as the integration of the world's financial and commodities markets and the rise of networks of cross-border contractors and suppliers.[1]

In the economic front, we see the integration of markets for goods and services, financial capital and intellectual property that has led to increased economic interdependence among business units.[2] The march of technology has made this integration doubly fast. On the other hand, equally profound are the changes in the political sphere. The rise of issues and transactions that transcend the confines of state authority has put mounting strains on the state system. Globalization has seriously put in question the usefulness of the state as a venue for addressing transnational concerns.

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[1] Cayetano Paderanga, DIMENSIONS OF GLOBALIZATION (2000).

[2] Alex Scita, *Globalization and the Convergence of Values,* 30 CORNELL INT'L L.J. 429 (1997).

The September 11, 2001 attack on New York's World Trade Center buildings had brought into sharp focus the inadequacy of domestic law in counterbalancing cross-border terrorist activities. The Love Bug virus that plagued the internet has led to serious re-assessments of our ability to regulate instant modes of communication and technology. The onslaught on the environment that led to Europe and Asia's inundation has brought to question the efficacy of tomes of international environmental treatises.

Clearly, the message of these developments is that we all live in a 'shrinking world' and that globalization is an idea whose time has come. What used to be distant international problems now impinge on domestic survival. The domestic and the international now form a seamless web where boundaries and frontiers have disappeared.

As with all challenges, however, these uncertainties present fresh opportunities. More than ever, there is great opportunity for cooperation among nations and peoples. It is now that we as members of the legal community should re-assert the predominance of the rule of law as the bastion of stability amidst this swiftly changing international landscape.

GLOBALIZATION AND THE RULE OF LAW

Globalization has created a perceived gap between the rapid proliferation of transnational issues and the capacity of states to address them.

One such gap is found in rule-making and rights enforcement. Globalization promotes the development of transnational society and consequently the elaboration of transnational rules. The most articulated of these rules systems have formal, written rules (law), along with specific organizations charged with maintaining the rule system itself. Ideally, if globalization continues, some international rules systems will be increasingly codified and will gradually develop organizations for managing the rules and resolving disputes. We have seen these developments in international economic law, such as trade law, with the creation of the World Trade

Organization; in "conflicts of law" rules in transnational business contracts; and in international commercial arbitration.[3]

The scenario is more problematic in other aspects. For one, there is resistance to the codification of rules and adjudication in many transnational issues. Despite the realization that many issues transcend national boundaries, normative rules are still territorial and location-specific. For one, states still operate under the Westphalian model, where each state is regarded as sovereign within the limits of its own territory. There is hesitation in surrendering part of that sovereignty to codified rules or supra-national institutions.[4] For another, international law is still grappling with advances in technology. For instance, despite the phenomenal impact of the digital revolution in our lives, the international legal regime for regulating cyberspace remains underdeveloped. Cyberspace prospers because of its decentralized architecture and the absence of a centralized rule-making authority.[5]

The panoply of transnational issues besieging the globe may be better addressed through mechanisms existing within the state system itself. While international law and institutions seek to come to terms with globalization, most international legal regimes rely on soft law which, though binding, has rather limited enforcement capabilities.[6] Since enforcement is the weakest aspect of international law, the firming up of international rules must develop along with domestic law and policy if transnational issues are to be effectively met.

Ultimately, it is still the state-system, with its existing apparatus for adjudication and enforcement, that could effectively address these issues. With international legal regimes as frameworks, national law and domestic courts must be sufficiently equipped and given the opportunity to attend to the legal ramifications of globalization. The way forward in achieving

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[3] Sandholtz, *Globalization and the Evolution of Rules*, in Aseem Prakash and Jefrey Hart (eds.) GLOBALIZATION AND GOVERNANCE, (1999).

[4] For instance, the Rome statute, which governs international crimes, has met opposition from major powers. Despite the global realization of the transnational character of environmental issues and the relative progress of international environmental law, the United States has still declined to sign the Kyoto Protocol.

[5] Part of difficulty in regulation lies in the fact that cyberspace is indifferent to physical location and parties are anonymous, which thereby raises issues of jurisdiction and enforcement.

[6] As is the case in international environmental law. *See,* P. Birnie and A. Boyle, INTERNATIONAL LAW AND THE ENVIRONMENT (1992).

stability in a globalized era is to create effective enforcement systems that are fully integrated into the legal structures of individual states.

It is here where the judiciary plays a crucial role. Institutions such as domestic courts have more developed structures that are adequate for addressing international issues whereas statutes and international conventions do not provide sufficient legal certainty for the contingencies of global exchanges.[7] At no other time is legal certainty more needed.

In these cases, domestic courts have a primordial role in enforcing international agreements. Generally, courts interpret international law by requiring compliance with domestic legislation that implements international agreements, when allowed by domestic legal systems. Fortunately, in the Philippines, the Constitution declares that generally accepted principles of international law are considered as part of the law of the land.[8] The doctrine of incorporation has allowed the Supreme Court sufficient latitude to apply international law in a number of cases notwithstanding that such rules had not been transformed to statutory enactment.

Since the judiciary only responds to violations of the law and adjudicates on actionable wrongs, our judgments are mainly reactionary and go through long and arduous processes. We only act upon justiciable controversies that are ripe for adjudication. We are prepossessed with a becoming detachment and circumspection on legal issues that are propounded before us.

Yet, lest our actions be stultified, our institution fossilized and our judgments mooted, we must learn to innovate within the allowable limits of our discretion. We must learn to interpret stodgy black-letter law within the context of pervasive political, social and economic developments.

Globalization is of such magnitude that it represents an upheaval in the way we live our lives not only as citizens of a particular state, but as members of the human race. Our traditional resort to settling disputes such as litigation, adjudication and enforcement must conform to the needs of a globalized era.

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[7] Glassner.

[8] CONST. art. II, § 2.

For one, jurisdictional problems beset many transnational legal actions. In a shrinking world, multiple jurisdictions apply to most actionable wrongs of a transnational character. This empowers domestic courts to hear and decide cases committed in foreign countries.[9] On the other hand, certain breaches of the law[10] which are normally exclusively heard within the jurisdiction of a sovereign state, may now be adjudicated under the auspices of a supra-national body.

For another, the issue of standing may impede the pursuit of violations of the law. The conferment of standing only to "injured parties" may unduly limit access to courts, particularly in public interest cases, where there is no private injured party.

These initial challenges also provide avenues for creative interpretations that capture the spirit of the law and are in tune with society's march to modernization. The Philippine Supreme Court, for one, has injected and engineered innovative concepts in its decisions in public interest cases. On the doctrine of *locus standi*, the Philippine Supreme Court has consistently ruled in favor of upholding the standing of petitioners who, though not traditionally regarded as injured parties, possess interests as citizens and taxpayers. The environmental law concept of intergenerational responsibility has also found its way to Philippine jurisprudence, when the Court upheld the right of children to assert their environmental rights in behalf of generations yet unborn. The Philippine Supreme Court has also encouraged alternative dispute resolution as an innovative concept in arriving at a consensual arrangement among disputing parties.

The transcendental concerns spawned by globalization further call for the creation of a sophisticated judiciary that is able to act on threshold legal issues competently and judiciously. Modern–day jurists must not only be learned in the law, but must also understand rigors of international economics, politics, technology and a host of other fields. Creative venues and fresh opportunities for jurists to enhance their knowledge and share their experience are welcome developments in this regard.

Finally, the creation of a credible regulatory structure is premised on effective and independent judiciaries. Globalization invariably poses

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[9] *E.g.*, cyber-crimes.

[10] Such as criminal acts punished under the Rome Statute.

tough choices between scarce resources. The legitimacy of disputes based on a rules-based system can only thrive if judiciaries function to level the playing field among disputants.

"GLOBALIZING" THE VALUES OF JUSTICE AND THE RULE OF LAW

In asserting the rule of law to ultimately govern the rapid and increased interaction among nations, economies and peoples, jurists provide the necessary anchorage for a more stable regime for globalization. The most significant fruit of globalization may yet be the establishment of the rule of law, the idea that disputes will be settled and agreements reached through settled principles rather than the use of force, intimidation or power.

For all its complexities, globalization has demonstrated its power to bring nations, economies and peoples together. Today, as we search for a fitting role for the law in this rapidly transforming era, we as jurists are given unique opportunities to uphold the law and the ideal of justice as universal values. While increased interdependence has spawned difficulties, it has also spurred the harmonization of common values.

It may be as Judge Learned Hand[11] once said – that rights know no boundaries and justice no frontiers; the brotherhood of man is not a domestic institution.

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[11] Learned Hand, THE SPIRIT OF LIBERTY (1952).