PUTTING THE POLITICS BACK IN INTERNATIONAL POLITICS

by

David Kennedy*

Let me begin by thanking Martti Koskenniemi, the Erik Castrén Institute and the Finnish Ministry of Foreign Affairs for the invitation to join you for this discussion. Like many international lawyers, I have always been somewhat fascinated by the United Nations, perhaps less as an institutional structure than as an idea, or set of ideas and commitments about how the world might be governed and what international lawyers might themselves become. It is certainly the case that the United Nations, through its various programmatic and doctrinal initiatives has made a more than modest contribution to matters I care deeply about — cross cultural understanding, humanitarian assistance, economic justice, even world peace.

The more I have thought about it, however, the more convinced I have become that the United Nations *idea* has come to do more harm than good in shaping the work of professionals concerned about the development of international law and policy. International lawyers have long shared a commitment to a cosmopolitan project, to the rule of law, to public governance, to rational conflict management. Many international lawyers have sought not simply to facilitate foreign policy, but also to do humanitarian work, to bring a rationalist humanism to world affairs, to develop an expertise which could be progressive, committed to a liberalism which would allow an enlightened and technocratic management of world politics. For a long time the United Nations, like the League before it, was a central terrain for developing, demonstrating and defending this vision. It offered at least a small world in which the vision could sometimes seem already alive.

But I am afraid the United Nations idea is no longer a good influence on cosmopolitan international lawyers. By holding out the false promise of a cosmopolitan public space, the United Nations idea makes it all the harder to understand the possibilities for public contestation of the distributive consequences of global military and economic markets. The United Nations has become a lulling alternative to confronting global social problems which must be solved at the national and local level and in the theater of economics. It convinces us we have too much politics and need law — when our situation is actually just the reverse. The United Nations idea perpetuates a completely false notion of what government and regulation can and must be, narrowing our image of what a just

* Professor, Harvard Law School, USA.

The Finnish Yearbook of International Law, 17–27.
© 2000 Kluwer Law International. Printed in the Netherlands.

cosmopolitan world might look like and how it might be built.

There is no doubt that the United Nations does good things. It is a solid peripheral actor in world affairs, modest but significant, certainly as important as the French central bank, or even the BBC. It is home to many extremely dedicated staff. But we do not need to worry about it in this sense. The United Nations as an institution need not be a fighting faith. Instead of a plausible transformative vision, it offers a convenient set of excuses, false promises and wrong directions, promising a cosmopolitan governance detached from the dirty business of politics.

Since the Cold War, internationalists have come to share a diagnosis of the changed conditions for statecraft. International politics has fragmented, involving more diverse actors in myriad new sites. Military issues have been tempered, if not replaced, by economic considerations, transforming the meaning of international security. A new politics of ethnicity and nationalism is altering the conditions of both coexistence and cooperation. Interpreting these changes has become a matter of deep ideological and political contestation among intellectuals concerned with international law, organization, and security. Unfortunately, a widespread tendency to disregard what seem background conditions and norms has influenced mainstream interpretations for the worse. Common but mistaken ideas — like the idea that international governance is separate from both the global market and from local culture, or is more a matter of public than of private law—sharply narrow the sense among foreign policy professionals of what is possible and appropriate for foreign policy.

Although we know professional disciplines have blind spot—some emphasize public at the expense of private order, governance at the expense of culture, economy at the expense of society, law at the expense of politics—we hope these run-of-the-mill limitations could be corrected by aggressive interdisciplinarity. Unfortunately, blindness to the background can be maintained, even reinforced, in the face of interdisciplinary work. Specialists in all fields overestimate the impact of globalization on the capacity for governance because they share a sense that governance means the politics of public order, while a background private order builds itself naturally through the work of the economic market. As a result, these specialists underestimate the possibilities for political contestation within the domain of private and economic law. Foreign policy intellectuals overestimate the military's power to intervene successfully while remaining neutral or disengaged from background local political and culture struggles. Specialists tend to overestimate the technocratic or apolitical nature of economic concerns, including the independence of economic development from background cultural, political, and institutional contexts. A shared sense that cultural background can be disentangled from governance leads specialists to overemphasize the exoticism of ethnic conflict as well as the cosmopolitan character of global governance. The result is a professional tendency to overlook opportunities for an

inclusive global politics of identity—for working constructively on the distributional conflicts among groups and individuals that cross borders.

1. DISAGGREGATE PUBLIC POLICY

No one was "present at the creation" of the post-Cold War world —it happened in too many places at once. The fragmentation of international political life was long underway. Dozens of new states, many with economic and military power surpassing the old great powers, multitudes of splinter groups with access to weapons and the media, and myriad private actors had all begun to play a role in foreign policy making. Within states, the political class splintered as politics became a complex administrative and social process.

These changes have led analysts to reaffirm their most familiar and dogmatic propositions: that sovereignty has eroded, that international law should be understood politically, that the boundary between international and municipal law is porous, that "transnational" law may be the better term, that international law may not be as universal as it pretends, that the international regime is better understood as a process or multilevel game than as government by legal norms. International lawyers embrace politics and political scientists show interest in the legal process. All hope to renew and restate what has been disciplinary common sense for a century: pragmatism, anti-formalism, interdisciplinarity. This methodological self-confidence heralds a familiar political optimism: the end of the Cold War will complete the internationalist project, inaugurating a humanitarian "civil society": an "international community" which will dethrone the state, welcome wider participation and open international law to the political.

There is a dark side to this decentralization about which internationalists are more ambivalent. The erosion of the state also transforms the methods and objectives of public policy, eroding the ambitions of public law, expanding private law and private initiative, withering the welfare state under conditions of globalization, inaugurating a democracy deficit, governance by experts, technocracy. Law fragments political choices, spacing them out in bureaucratic phases structured by proliferating standards and rules. Political interests become factors to be balanced in an apparently endless process. Take trade, for instance: once broken down into hundreds of technical disputes and individual negotiations about specific tariffs and regulations, each on its own timetable in its own institution, commercial interests are hard to aggregate into a "trade war" between two "nations" except rhetorically.

As the spirit of free trade replaces the spirit of multilateralism, more changes than just the site of decision-making. In a technocratic private market, the locus for political choice is less opened up than it is rendered invisible. Take the European Union, whose political decision-making always seems to take place "elsewhere": last year at the summit, across the road in the Council, down below in the Member States, and so on. The idea of a

"government" promoting a "program" has been replaced by the enlightened managemen of prosperity. This dramatically narrows the participants whose interests are understoo to be in contestation internationally—exactly as it celebrates an opening of the polic process to civil society. EU policy managers treat the transitional economies of Central an Eastern Europe less as a set of political exclusions and choices than as the technica management of different natural stages of development. But the replacement of politica choices by technical options, like the emasculation of the public state, empowers som interests and disempowers others.

Mainstream internationalists greet this trend with a tone of tragic resignation Something called "globalization" has rendered public intervention in the emerging globa market more difficult than it was within the welfare state, whether for the environment labor standards, consumer protection, or redistributive taxation. Although analysts ofte bemoan the weakening of traditional public policy levers in the face of newly mobil capital, their relative resignation contrasts starkly with their enthusiasm for a newly ope international political process, as if enthusiasm about new participants were linked t confidence that they can now do little mischief. The link here is a familiar liberal on between democracy and a disempowered state, between strong markets and weak governments. The common theme is a disempowering of public law and the disappearanc of background private and commercial affairs from the jurisdictional domain of politics

2. RECLAIMING POLITICS

In my view we should reject both enthusiasm about the fragmentation of internationa political life and resignation before the shrinking ambitions of public policy in the face o a growing private sector. My argument is not that we should revivify the state o disestablish the international market. The welfare state often did entrench class, race o gender privilege within its borders while preventing movement of people, ideas an capital—all in ways which buttressed inequitable resource distributions across the glob and shrunk the global imagination. In some cases a more technocratic politics has been a counterweight to the corrupt tendencies of mass politics and the capture of the welfare stat by rent seekers of various sorts. And treating the state apparatus as the *sine qua non* o decolonization has often entrenched gruesome practices in the name of sovereignty.

My argument, rather, is that the resignation about the demobilization of a vigorou public policy indicates that even as welfare states erode, the notion of public policy the exemplified is alive and well: public policy as territorial intervention by "public" authorities against a background of apolitical private initiative. This resignation refuses t treat as political, as public, as open to contestation, the institutions and norms whic structure that background market. If we think of the private domain as political, it is no

at all obvious that the current situation is one of fragmentation rather than concentration. Global governance may have simply moved from Washington to New York, from the East Side to Wall Street, from Geneva or the Hague to Frankfurt, Hong Kong and London. Where factors of production are relatively immobile, a locality or private actor may have more capacity to conduct global public policy than either the welfare state or the institutions of international economic law.

The question, in other words, is not *whether* politics or *where* politics, but *what* politics. Internationalists should care less about whether the state is empowered or eroded than about the distribution of political power and wealth in global society. Because mainstream international analysts accept that the political and economic results which flow from a particular system of private initiative are outside the legitimate bounds of political contestation, they can be enthusiastic about a disaggregation of the state and the empowerment of diverse actors in an international "civil society" without asking who will win and who will lose by such an arrangement. As a consequence, the turn to political science too often illuminates the structure of the regime without adding to our understanding of its substantive choices.

Technocratic governance, a displacement of public by private, of political alignments by economic rivalries, the unbundling of sovereignty into myriad rights and obligations scattered across a global civil society—all this has transformed international affairs. That it has often meant an opening of international affairs to new actors and concerns, a democratization and proceduralization of international relations, may well positive. But this transformation has also shriveled the range of the politically contestable, confirming as natural the geographic and economic distributions thought to be the inevitable consequences of "the market." Underestimating the political nature of private institutions and initiatives, many mainstream internationalists have accepted the demobilization of policy making as they have lauded increasing access to its machinery. The result is an intellectual class unable to develop viable political strategies for the world it has applauded into existence, ratifying the political choices that result from the arrangements of private power to which the state has handed its authority, while still celebrating the expansion of participation in an emasculated public policy process.

3. ECONOMIC SECURITY

Since the Cold War, national security has been increasingly understood in economic, rather than military terms. Of course, the question of who can project force abroad remains important, undergirding patterns of trade, prosperity, and emiseration. But we have a new security vocabulary of budget surpluses or deficits and hard or soft currencies rather than throw weights and silos. We reimagine missiles as missives, their deployment determined

less by Clausewitz than Keynes, their military function shaped more by CNN than th Pentagon. Like the disestablishment of the state, the economization of security has largel been welcomed by our foreign policy mavens. If the liberal peace hypothesis prove correct, the disaggregation of the state into a global market has left the world more secur and free to worry about prosperity. At the same time, economic security seems achievabl through technocratic means, sound management and trade deals, and a smorgasbord o alternative dispute resolution mechanisms. Trade wars promise to be friendlier than rea wars: they cost less and can be won by lawyers.

In the meantime, we can think of all sorts of new uses for military machinery. Durin the Cold War, military interventions and proxy wars were hard wired to the centra problem of global security. Now they float more freely, drifting into limited police actions humanitarian gestures, and stabilization at the periphery.

The military has emerged from the collapse of the welfare state as the only bureaucrac broadly thought capable of acting successfully, so long as the mission does not bleed back into economic or political matters. Seen this way, the military is available for a wide variety of technocratic tasks, but should be protected from the quagmire of political o social engagement. The military will stabilize borders and prop up states precisely as globalization renders state institutions marginal sites for public policy. Analysts assert tha our national interest now coincides with the stability of global governance for a global market. Consequently, the military should become a national contribution to that international order, for which we should be thanked and probably reimbursed. At the same time, nothing is very urgent—we could do it or not, it is a moral question, a technical question, maybe we should send the Red Cross instead, or hold a plebiscite, or enforce an embargo. We expect a police action, an air strike, force by permission, with limited objectives and clear avenues of retreat back to the cosmopolis.

The problem is this: we expect a technocratic cosmopolitan governance to have no stakes in local disputes beyond stability, and therefore to deploy force in an unrealistically sanitary way, without political entanglement. But cosmopolitan governance does have stakes in local disputes. Although we should focus on securing prosperity, these new security concerns cannot be engaged blind to the social and distributional context within which they occur, anymore than by military force detached from economic cost and political risk. Economic security need not mean deference to the largest market actors; there are, after all, a number of possible markets, structured by different background values and distributive choices. Defending the stability of a political order necessary for investor confidence requires a set of political choices both among states and among groups or classes within nations, as among the transnational interests of labor or capital or women or men. Moreover, it calls for choices among economic sectors with stakes in different patterns of modernization, among investors with stakes in different patterns of production,

trade and consumption. It is commonly said, for example, that a global market "requires" an emerging market to enforce the "rule of law" to permit "transparency" and "predictability" in market transactions. It sounds very clean, egalitarian, procedural, just like apolitical background rules. But the alternative is neither arbitrary nor chaotic allocations, but a different, and often equally predictable allocation of resources, perhaps to local rather than foreign investors, to domestic oligarchs rather than foreign shareholders or vice versa.

Such choices can only be engaged, can only be *seen* beneath the blanket insistence on technical "transparency" once the mainstream tendency to efface background cultural, institutional, or political structures has been overcome. In the Banana War between the United States and the European Union, there is a well established institutional machinery to weigh the technical impact of one or another result on the balance between free trade and protectionism, to assess costs between American producers and European consumers, but there is no mechanism to examine distributional costs between African, Carribean, and Central American labor.

We should worry, moreover, about optimism that military deployment can be disentangled from ongoing local political judgment and risk. Humanitarian intervention and international community policing also require engagement with the distribution of power among groups, along with a political vocabulary for addressing social and economic justice. It is as if the old coexistence mentality which left Cold War internationalists agnostic between liberal and totalitarian regimes had paradoxically reasserted itself as agnosticism between wealth and poverty, between this and that warlord, this dictator and those victims. But longterm economic security cannot be "managed" without attention to distribution, any more than longterm humanitarianism can be enforced without political choices. Humanitarian *aid* is one thing—humanitarian intervention is another. We can see the difficulty in Kosovo—in our odd oscillation between hands off negotiation and pious criminalization. Both aspire to clean hands—but governance is a messy business, globally as locally.

4. CULTURAL POLITICS

Culture takes center stage in foreign policy debates today, and rightly so. Cold War ideological conflict obscured other differences and accentuated traditional modes of interstate politics. The medium for international affairs has become increasingly cultural: Coca-Cola has become more important than the Voice of America or the military establishment; CNN has replaced the embassy cable. Governance is less about norms or sanctions than communication and persuasion. Like the economization of security and the disaggregation of the state, this cultural turn suggests a model of international affairs more

optimistic conclusion about global democratization and a pessimistic conclusion about th
horizons for public policy. As military issues have been tempered by econom
considerations, analysts have become unduly sanguine about projecting military forc
abroad without local political engagement, while simultaneously overestimating th
amenability of economic security issues to technocratic measures. Our foreign polic
establishment increasingly sees military force both as an expression of a national intere
unwilling to place a single soldier in harms way and as a technical tool for cosmopolita
governance, able to be extended abroad on the unrealistic condition that the cosmopoli
lives up to its promise to govern without political, economic, or cultural entanglemen
Whether specialists are thinking about economic stability among the wealthier powers o
development at the periphery, they think of the global economy in strangely depoliticize
and technical terms. These misinterpretations often reinforce one another. Only afte
accepting the attenuation of public policy capacity in the face of globalization does it mak
sense to reinterpret security in economic terms turned over to technocrats indifferent t
distributive concerns. The result is a decontextualized, deracinated, and depoliticize
foreign policy.

By reinforcing the invisibility of background norms and private arrangements
mainstream commentators have taken important areas of political contestation out of the
internationalist's vision precisely as the disaggregation of the state makes these norms and
institutions the most significant sites for international policy making. They stress the
naturalness of current distributions of global wealth and poverty, focusing our attention on
participation in public structures precisely when questions of economic justice decided
elsewhere become most salient. And they reinforce the stability of cultural identity at
precisely the moment diasporic and hybrid experiences make contestation among and
within cultural groups the central context for both politics and economics.

We could rethink the locus of international political contestation and public policy by invigorating debate about what have seemed to be the background rules and structuring institutions of private law, economic life, and local culture. The fragmentation of the state and the geographical expansion of the economy place local and global groups in complex and intersecting new relations. They invite a new global politics of identity. We should judge the global market, like the global political order, by the distribution it effects among today's overlapping cultural, political, and economic groups. The issue is not how to repress or manage national, ethnic, economic, race, gender or religious claims, containing them within the private or the national domain, but how we can engage them internationally. We are challenged to embrace the post-Cold War transition without transforming political, economic, or military questions into technical matters which narrow our political options and naturalize inequalities.

We might yet embrace the disaggregation of international affairs and the economization

of security without resignation about global poverty, embrace the displacement of ideology by culture without sharpening the distinctions between cultures or the cosmopolitan conceit of living beyond the cultural. We might yet develop a vibrant global politics on the shifting sand of diverse economic and cultural claims about the distribution of resources and the conditions of social life.