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INTERNATIONAL LAW AND PRACTICE IN TIMES OF CHANGE

MARCELLA DAVID*

There is no international law; there is only local law.
—Frank L. Steeves¹

I sympathize with the view that international law doesn't exist; there are days when I wake up and think exactly that. Ultimately, despite the challenges of definition, implementation, and adherence—challenges which, it should be noted, exist in all legal systems—I believe that international law is alive and well. And then I go to my law school and teach my class.
—Marcella David²

INTRODUCTION

This Article, based on remarks given at a fall 2013 conference hosted by The Whitney R. Harris World Law Institute at Washington University in St. Louis School of Law, offers a perspective on the current state of private and public international law, and what that means for law students today, particularly students at Midwestern law schools. With that perspective in mind, the article concludes with some observations about what law schools are and should be doing to integrate international perspectives and experiences into law school curriculum.

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1. Executive Vice President, General Counsel and Secretary, Emerson Electric, Panel Remarks, “International Law and Practice in Times of Change,” International Law Weekend—Midwest, September 19–21, 2013, sponsored by the Whitney R. Harris World Law Institute of the Washington University in St. Louis School of Law [hereinafter “the conference”].

2. Paraphrase of partial response to Frank L. Steeves at the conference.

I. PRIVATE INTERNATIONAL LAW

In thinking about globalization and private international law—for this purpose defining international law broadly to include international law, transnational law and comparative law—one can assess both what is, and what should be. What is private international law today? The current influence of private international law in today's legal practice is significant and increasing. There is an undeniable linking of peoples and of individual, national, and international interests through a web of national and international legal standards that is unprecedented; while any categorization runs the risk of being overly simplistic, these affairs can loosely be categorized as matters of private international law. When students ask about why they should care about international law, the answer is that in this increasingly interconnected world, where people, money, and things move across national boundaries with relative ease, it is imperative that they think about international issues as they formulate legal advice for clients.

A favorite example highlights this phenomenon. Simply ask students how many people they know who are in the following situation: a person from Country A travels to Country B, where she meets and falls in love with someone from Country C. They marry (in Country B) and move to Country D where they have a child, Baby E. They then move to Country F, where things fall apart; each wants to dissolve the union, and each seeks to return to their respective home countries (Countries A and C)—with the baby. One parent successfully takes the child home, over the objection of the other parent, who seeks a return of the child to Country F for resolution of the dispute. Which state has the most interest in the marital and custodial affairs of this family? One of their states of nationality? The state where the marriage occurred? Where the marriage fell apart? Where the baby was born? Where the baby spent its first years? Consider this an introduction to the increasingly important topic of international family law.

There are other ways our affairs are increasingly intertwined on the private side. A friend who lives in Iowa regularly buys books from Amazon.com.uk. Another friend who lives in the United Kingdom regularly buys antique watches from Ebay.com sellers in the United States. I have been known to feed my knitting addiction with yarn purchased and shipped from New Zealand, and I once ordered wine from a broker in France and had it shipped to New York. Each of us is engaging in international commerce, and each of us appreciates—or should appreciate—that these transactions are subject to unique risks. Even if we

are unaware of or unconcerned by the risks, we implicitly rely on international structures to protect our varying interests in these international transactions: that items purchased will be delivered as promised. In the case of a default, any lawyers we hire would immediately appreciate the unique challenges of identifying and applying the applicable law to vindicate the rights of those engaging in cross-boundary transactions.

A particularly crisp example is provided by the raising of the *Costa Concordia* from where it sank off in Italian Coastal waters.³ Consider that the 3,700 passengers and 2,000 crew members came from countries all around the world, implicating contract law, maritime law, and, because of the arguably criminal behavior of the captain, tort law issues, arising in a host of interested jurisdictions.⁴ It is unlikely that passengers thought of these transnational issues as part of their vacation planning, and it will be up to the lawyers they consult to sort through competing legal regimes and issues.

This is just a sampling of the abundant reasons why lawyers today need to have a heightened awareness of how globalization affects the everyday affairs of their private clients. This is the reason why I differ with the notion that international law either doesn't exist or has been supplanted in importance by "local law." In my family law example, thanks to the framework established by the Hague Convention on the Civil Aspects of International Child Abduction,⁵ the local courts of the state to which the parent has taken the child are expected to apply international custody standards and not simply enforce parochial interests and concepts of family and custody that would prevent return of the child to the state of his or her habitual residence.⁶ Not only is this the expected outcome, as more states become party to the treaty and more courts aware of its provisions, this has become, in many jurisdictions, the *likely* outcome. Even in the context of commercial and financial transactions, where contracts often

3. Barbie Latza Nadeau & Matt Smith, *Costa Concordia Righted After Massive Salvage Effort*, CNN (Sept. 17, 2013), <http://www.cnn.com/2013/09/15/world/europe/italy-costa-concordia-salvage/index.html>.

4. See, e.g., B.L. Nadeau, *Costa Concordia Legal Battle Gets Ugly*, DAILYBEAST (Jan. 26, 2012), <http://www.thedailybeast.com/articles/2012/01/26/costa-concordia-legal-battle-gets-ugly.html> (describing class action suit initiated in Italian Courts on behalf of passengers); Marc J. Bern, *Costa Concordia Victims Have Jurisdiction Victory in Florida*, PRNEWswire (Feb. 26, 2013), <http://www.prnewswire.com/news-releases/costa-concordia-victims-have-jurisdiction-victory-in-florida-193338741.html> (describing tort proceedings in Florida federal courts).

5. Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, *reprinted in* 19 I.L.M. 1501 (1981).

6. *Id.* art. 3.

identify a specific governing regime and incorporate methods of dispute resolution, those choices of law and forum fit into an international legal context that allows, encourages, and enforces those choices.

Private international law is alive and well, and influencing every aspect of life in a modern, globalized world. This presents a wealth of opportunities for today's law students. In my state of Iowa, the "Creative Corridor"⁷ is home to aerospace giant Rockwell Collins and financial giant Aegon USA. Other Midwestern-based international heavyweights with significant presences in the Creative Corridor include Proctor and Gamble (headquartered in Ohio), Quaker Oats (headquartered in Illinois), and John Deere (headquartered in Illinois). The Iowa directory of exporters includes biosciences, manufactured goods, renewable energy, and agriculture.⁸ In short, from toothbrushes manufactured by Proctor and Gamble's Oral B, to GPS technology enhanced by Rockwell Collins advances, to Quaker Oats cereal grown by Iowa farming enterprises using John Deere equipment, our international connections touch us every day. And each one of those international business connections is influenced by international law, as are the immigration and family issues of the global workforce supporting these global enterprises.

II. PUBLIC INTERNATIONAL LAW

If private international law is alive and well, some would argue public international law is on life support. It is true that the challenges to international law presented on the public side are more significant, and it is the challenges—particularly as influenced by the policies and practices of the United States—which generate my own occasional doubts about the efficacy of public international law. This is a great concern for all citizens, including the sophisticated, politically aware and globally connected citizens of the heartland.

Public international law is inexactly understood as the international rights and duties of states (as compared to the international rights and duties of individuals and business entities). When assessing the vitality of public law, it is natural, if not completely fair, to look at the points of

7. The "Creative Corridor" is an economic zone encompassing six counties in eastern Iowa. *See About Iowa's Creative Corridor*, IOWA'S CREATIVE CORRIDOR <http://iowascreativecorridor.com/> (last visited Mar. 17, 2014).

8. *See Iowa Directory of Exporters*, IOWA ECONOMIC DEVELOPMENT http://www.iowaeconomicdevelopment.com/asp/resources/export_directory.aspx?navid=35&pnavid=19 (last visited Mar. 17, 2014).

stress in international relations,⁹ including peaceful relations between states, and its domestic analogue, states' national security policies. After all, war was the impetus that led to the adoption of new theories of international law in the era of Grotius, and World War II ushered in the new era of peace-building international institutions with the creation of the United Nations and the adoption of the Geneva Conventions of 1949. Issues of war and peace are the heart of public international law. Since the terrorist attacks of September 11, 2001, the United States has been the most aggressive proponent and practitioner of an expanded view of self-defense. More recently, the United States has also been a proponent of an expanding doctrine of the duties of states to protect civilians. Taken together, these new interpretations challenge accepted constraints on states' behavior, and accordingly the efficacy of international law.

A. *Expanding Notions of Self-Defense*

Over the past dozen years, the of U.S. officials of what constitutes a threat, and accordingly the legal authority to take military action, has broadened substantially. Thus, U.S. officials appreciate the threat from those with terrorist inclinations planning operations in remote regions of Afghanistan as being as acute as the threat of a hostile nation actively training weapons on U.S. territories and interests. Some will say that this is appropriate given the ease of global travel and global communication, and the rise of non-state actors as a significant global threat. Under the prevailing view of recent U.S. Presidents, an appropriate and legal way for the United States to respond to threats of terrorism is to deploy global force, unconstrained by the territorial sovereignty of the state in which the target is found. In so doing the United States relies on a one-to-one theory of self-defense, where actions against a perceived threat bypasses the territorial authority of the state in which the suspected terrorist sits. An attack is therefore described as a strike against a terrorist target in Pakistan, obscuring the fact that under international law it should be understood as a military strike against the territorial sovereignty of the state of Pakistan. This practice facially violates the prohibitions on the use of force enshrined in the UN Charter. It creates a license for other states to

9. There are many public law successes, which are taken for granted because of their regular and systematic enforcement. Examples include treaties on commercial air safety, *see, e.g.*, Convention on International Civil Aviation, Apr. 4, 1947, 15 U.N.T.S. 295; trade, *see, e.g.*, General Agreement on Tariff and Trade, Apr. 4, 1994, 1867 U.N.T.S. 187; and post, *see, e.g.*, the Universal Postal Union, founded Oct. 9, 1874, Constitution Of the Universal Postal Union, July 10, 1964, 16 U.S.T. 1291, 611 U.N.T.S. 7.

militarily intervene in states where they identify terrorist threats, and has undermined the international effort to establish doctrines of state responsibility that would govern the exact circumstances of terrorist activity originating in the territory of one state and threatening another. Increasingly U.S. responses to threats are tied to technology, in order to both reduce the costs to the United States in terms of lives and equipment, and to counter the technology-fueled capacity of terrorist networks to extend their reach. Using drone technology, the United States launches trans-border military attacks that are so commonplace that the U.S. public does not even appreciate them as acts of war. Through telecommunications technology, as recent news has revealed, the United States is eavesdropping on the phone calls and emails of the entire world. It has also been credibly reported that the United States has participated in cyber-attacks intended to cripple nuclear technology aspirations of Iran.¹⁰ These divergent examples are linked by a commonality: the breadth of national security strategies and techniques being pursued by a state that understands the settled rules of *jus ad bellum* and *jus in bello* as “obsolete” and “quaint”¹¹ in a post-9/11 world. While those were the words of a Bush administration official, the change in administration has tempered but not repudiated this perspective.¹² Thus, the laws of war are described by Obama administration officials as ill-equipped or inapplicable to the war on terror, requiring the development of new understandings of territorial sovereignty permitting “preventive self-defense” military action over suspected terrorists found in other states.¹³ In sum, in the case of public

10. David E. Sanger, *Obama Order Sped Up Wave of Cyberattacks Against Iran*, N.Y. TIMES, (June 1, 2012), <http://www.nytimes.com/2012/06/01/world/middleeast/obama-ordered-wave-of-cyber-attacks-against-iran.html?pagewanted=all&r=0>.

11. Eric Lichtblau, *Bush Nominee Plans to Stand Firm on War-Captive Memo*, N.Y. TIMES (Jan. 6, 2005), <http://www.nytimes.com/2005/01/06/politics/06gonzales.html> (describing confirmation proceedings for U.S. Attorney General nominee Alberto Gonzales and quoting the nominee as saying “In my judgment, this new paradigm renders obsolete Geneva’s strict limitations on questioning of enemy prisoners and renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip (i.e., advances of monthly pay), athletic uniforms and scientific instruments.”); *but see* John H. Richardson, *Alberto Gonzales: What I’ve Learned*, ESQUIRE (Dec. 9, 2009), <http://www.esquire.com/features/what-ive-learned/alberto-gonzales-torture-quotes-0110> (quoting Gonzales: “I used the word quaint in referring to provisions in the Geneva Conventions that require the signatories to provide the prisoners of war privileges like commissary privileges, scientific instruments, athletic uniforms. I think those provisions are quaint. I did not say nor did I intend to say that the basic principles of the Geneva Conventions in providing for humane treatment were quaint. So if I had to do it again, what I would not do is use the word quaint and the Geneva Conventions in the same sentence.”).

12. While these quoted descriptions of international law cannot be attributed to members of the Obama administration, the call for new notions of sovereignty to meet new challenges is consistent with the Bush Administration view that established norms are outdated.

13. MICHAEL P. SCHARF, CUSTOMARY LAW IN TIMES OF FUNDAMENTAL CHANGE 183–210

concerns, as compared to private concerns, we see significant erosion in the appreciation that international law matters. In those rare circumstances in which international law is invoked, it seems to occur with no actual appreciation of applicable international norms, or with a careless disregard of how today's invocation of international law impacts its future development.

For example, the Bush-era torture of detainees at Abu Ghraib and the ongoing detentions (and widely-presumed torture) in Guantanamo Bay can only be seen as instances where the United States acted contrary to international norms enshrined in the Geneva Conventions of 1949¹⁴ and the Torture Convention.¹⁵ Review of the analysis of those U.S. officials crafting legal arguments that created the supportive framework for detention, rendition and "enhanced interrogation techniques"¹⁶ reveals several analytical flaws. The first is a willingness to disregard relevant international obligations *because* they are incompatible with perceived U.S. national security interests and strategies. Yet the Geneva Conventions of 1949 only apply in times of war, and are exactly designed to constrain states parties' unfettered pursuit of national security goals on the basis of exigency. Finding the protections inapplicable simply because they constrain U.S. national interests during a national security crisis is akin to saying the provisions about self-incrimination found in the 5th Amendment to the Constitution should not apply to accused criminals.

The second analytical flaw is a lack of awareness of how international obligations are *supposed* to inform domestic legal analysis. This is best exemplified by the surprise that is often expressed at the thought that a source of law external to the United States could *ever* constrain U.S. behavior during a crisis. Sadly, this view is held not only by members of government, but also legal actors in the academy and courts.

The final analytical flaw is perhaps most disturbing: the minimal extent to which many of those tasked with setting national security policy

(2013) (describing changes in post-9/11 U.S. national security doctrines under presidents George W. Bush and Barack Obama).

14. In particular, Geneva Convention relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

15. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, annex, U.N. Doc. A/39/51 (Dec. 10, 1984).

16. *See, e.g.*, JOHN YOO, WAR BY OTHER MEANS: AN INSIDER'S ACCOUNT OF THE WAR ON TERROR (2006). Even recognizing that publicized instances of torture that occurred at Abu Grahb were undertaken without orders, as demonstrated by the criminal charges brought against some of those involved, the culture created by those supporting enhanced interrogation techniques may be credited as influencing the environment that allowed excessive questioning techniques to be widely used.

evidence their appreciation of the important role the international legal plays in advancing U.S. interests, how international law works, how international law is created, and the rules for its interpretation and application. This circumstance has likely come about because many of the people working on the issues of U.S. national security, both in the government and in the academy, are not working on it because they are international lawyers. Instead, they are primarily grounded in U.S. constitutional law and national security law (e.g., the constitutional limitations on presidential powers) whose work on the related international issues is accepted because they are smart lawyers who are assumed to have the talent for all issues, including those international in scope. The lack of training in the theories on the formation and enforcement of international law guarantees flaws will be incorporated into resulting U.S. policy.

For example, a constitutional scholar of note once presented his theory on how to provide better protections for people held in Guantanamo Bay, a theory that was completely based on U.S. constitutional doctrine. When he was asked about the interplay between his theories and international law, in particular, about the existing norms that already offer protections, how his theories were potentially in conflict with those norms (by offering fewer protections) and how, if adopted, his theories might impact the development of future international norms, his response was to question the relevance of international norms, particularly when crafting a constitutional argument. While there are many talented government lawyers with the international expertise to thoughtfully consider these issues, they are not always—or indeed, it seems, often—the people driving policy creation.

B. Emerging Doctrine of R2P

Another helpful example of an issue that implicates core values of public international law is the debate about the ongoing civil war in Syria. The Syrian crisis presents questions about the “responsibility to protect,” or R2P. R2P, together with various U.S. national security interests in the region, are identified as grounds supporting U.S. military action in aid of the rebel forces opposing the Assad government. R2P has been described as “the generally recognized principle that the world has a responsibility to protect civilians from genocide, war crimes, crimes against humanity and ethnic cleansing.”¹⁷ What has not been generally recognized, however, is

17. MADELEINE K. ALBRIGHT & RICHARD S. WILLIAMSON, *THE UNITED STATES AND R2P: FROM WORDS TO ACTION* (2013), available at <http://www.brookings.edu/~media/research/files/>

what constitutes acts of “genocide, war crimes, crimes against humanity and ethnic cleansing” triggering action under the R2P doctrine, what form action can take, whether action is in whole or in part constrained by the generally recognized prohibition on intervention, and if it must be authorized by the Security Council or may be undertaken unilaterally.¹⁸

The call to protect civilian lives and ameliorate the refugee crisis in Syria is morally compelling, even when presented as only one motive justifying military action. But by broadly invoking R2P to justify arming rebel fighters, launching airstrikes, and creating “no-fly zones,” those advocating intervention are pushing for action which exceeds the current state of international law, with the risk that the action by the United States today will set broad precedent for intervention in future cases. One important path for the creation of new international norms is international custom, or “general practice accepted as law.”¹⁹ What would other states learn from unilateral intervention by the United States to protect Syrian civilians? The logic for intervening in Syria would equally support another state’s invocation of R2P to unilaterally intervene in Egypt in response to the brutal killings of civilians protesting the 2013 military coup. The distinctions between Syria and Egypt are thin, especially when measured by the brutality of repression exercised by the recognized governments and their stated goals to crush the opposition; indeed, the body count in Egypt is already similar to that in Syria at the time the first calls were made for U.S. intervention.

Yet if such a step were undertaken by a nation ‘willing’ to take action to protect civilian members of the Muslim Brotherhood as they protest the military coup and subsequent crack-down, it would undoubtedly be subject to U.S. objections. Objections made would likely include the ground that one cannot (yet) view the situation in Egypt as so dire as to trigger R2P, even though the actions to suppress what were peaceful protests by a political party would arguably also meet the definition of a “crime against humanity.”²⁰ An objection on these grounds reveals the

papers/2013/07/23%20united%20states%20responsibility%20protect%20albright%20williamson/23%20united%20states%20responsibility%20protect%20albright%20williamson.pdf.

18. See SCHARF, *supra* note 13, at 157–82 (discussing the challenges in discerning a principle of R2P in customary law and concluding that a customary norm has not yet crystallized).

19. Statute of the International Court of Justice art. 38 (1945).

20. Under the Statute for the International Criminal Court, “Crimes against humanity” include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or

failure by many in the United States to appreciate how action by one state today, pursued under the cloak of legality, creates a precedent for similar action by other states. Accordingly, if the United States justifies unilateral military action as even partially legally justified by R2P, it sets a precedent allowing every state to take such action in circumstances it deems appropriate. This risk might not ultimately be judged so significant as to lead the United States and other states to stand by while the crisis continues to unfold in Syria, but it is a risk that should be taken into account. While a U.S. national security official has been quoted as saying that due to the uniqueness of every crisis, "we don't make decisions about questions like intervention based on consistency or precedent . . . [but on] . . . how we can best advance our interests in the region,"²¹ that is only part of the calculation. The more significant question is not whether the United States "should . . . [or could] . . . intervene every time there is a crisis in the world,"²² but rather, how we can preserve the principles of law that would enable us to object when other states assert their right under the same doctrine of international law to intervene in future circumstances.

Although some would argue that R2P should only be triggered by U.N. Security Council action, unilateral action could of course be permitted pursuant to an agreed-to definition of the principle and its triggers. Yet a workable definition is not within easy grasp. Former Secretary of State Madeline Albright, a proponent of R2P, has concluded that "the application of R2P principles cannot be captured by a simple formula that is equally apt in all circumstances."²³ In the absence of neutral principals, the U.S. position seems to invoke the famous pornography standard: "we know it when we see it,"²⁴ with the implicit suggestion that the United

gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90.

21. David Jackson, *Obama and Aides: The U.S. Can't Intervene Everywhere*, USA TODAY, (Mar. 28, 2011 5:54 PM), <http://content.usatoday.com/communities/theoval/post/2011/03/obama-and-aides-the-us-cant-intervene-everywhere/1#.UmQwylNUZVg>.

22. *Id.* (quoting U.S. President Barack Obama).

23. Albright & Williamson, *supra* note 17, at 19.

[There are] ongoing difficulties of implementing the third pillar of R2P: the requirement for "timely and decisive collective action" when a state is failing to protect its citizens from genocide, war crimes, ethnic cleansing, or crimes against humanity. Sometimes this reflects the absence of political will among leaders to take decisive steps to protect civilians; other times, it reflects that military or other forms of intervention could make a bad situation worse. The application of R2P principles cannot be captured by a simple formula that is equally apt in all circumstances.

Id.

24. *See* *Jacobellis v. Ohio*, 378 U.S. 184 (1964) (Potter, J., concurring) ("I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand

States must be part of the “we” agreeing in that assessment. This position, however, implicates a somewhat different concern. Rather than setting a new precedent, the United States may seek to set a new *exception*, namely that U.S. intervention in Syria is supported by a new appreciation of international law and pursuant to that doctrine intervention by *the United States* might be legally supportable under circumstances where intervention by other states is not.

This privileging of the interests of the United States (and those of its close allies) is deliberate. The National Security Policy of George W. Bush, announced after the attacks of 2001 and still followed by the Obama administration, is based on exceptionalism. American exceptionalism can be defined for the purposes of this discussion as the conviction that the United States is unique and good, and deserving of heightened influence and power in world affairs. The corollary to exceptionalism is of course an erosion of the principle of sovereign equality. In this case, by suggesting that the United States has the greater authority to determine, against the wishes of the international community, whether a violation of R2P has occurred and what action is appropriate, the United States not only weakens the territorial sovereignty of all states, it also necessarily subordinates the authority of other states, in violation of the principle of sovereign equality. This is not an unintended consequence current of U.S. foreign policy; U.S. State Department officials have called for a more “flexible” consideration of sovereignty and sovereign equality,²⁵ and have announced the intent to pursue that flexible interpretation unilaterally, over the objections of other states, if necessary. The two questions raised are: What makes the United States believe that other states will cede their sovereignty to others to judge whether actions taken against civilians (undoubtedly identified as “criminals,” “insurgents,” “terrorists,” or “rebels”) are appropriate? And what is to restrain other states (not necessarily the same states), as they jockey for greater relative power within their spheres of influence, from acting in ways that diminish the sovereignty of their competitors?

Russian President Vladimir Putin implicitly raised these questions in his controversial op-ed published in the *New York Times*.²⁶ The response

description [of pornography]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.”)

25. See, e.g., Anne-Marie Slaughter, *Intervention, Libya, and the Future of Sovereignty*, ATLANTIC (Sept. 4, 2011), <http://www.theatlantic.com/international/archive/2011/09/intervention-libya-and-the-future-of-sovereignty/244537/>.

26. Vladimir V. Putin, Op-Ed., *A Plea for Caution from Russia*, N.Y. TIMES (Sept. 11, 2013), <http://www.nytimes.com/2013/09/12/opinion/putin-plea-for-caution-from-russia-on-syria.html>.

to Putin has largely been *ad hominem* in nature, calling him disingenuous, prevaricating, and obstructionist. This is unfortunate. Even if Putin is all of those things, which one can posit for the sake of discussion, the points he raises about the U.S.-led effort to erode accepted principles of sovereignty, and the questions he raises about how U.S. action will influence others to act should not be ignored. It would be nice to believe that the members of Congress and the President's cabinet who are shaping policy are thinking about these issues, but there are few external indications that that is the case. These questions are equally important as the question of how to stop the suffering of the Syrian people because they require the acknowledgement that even well-meaning actions today will generate a legal customary basis for actions tomorrow, potentially to the detriment of a different civilian population.

While a professor of law and before returning to government, Harold Koh, former Legal Advisor to U.S. Secretary of State Hillary Clinton, wrote about American exceptionalism. Koh identified the hazards of the double standard, including creating an appearance of hypocrisy, and "undermining the legitimacy of the rules themselves,"²⁷ among others, as the chief problems raised by America's conviction of uniqueness. More recently, Koh expressed his impatience for those arguing that the risks of acting outside the law, or creating new law that privileges U.S. power, should prevent the United States from acting unilaterally in Syria.²⁸ His impatience is warranted, as civilians are dying while legalities are debated.²⁹

Yet Koh's message from 2003 is equally compelling. Whether called a "new concept of sovereignty" or "international law through smart power," U.S. foreign policy needs to appreciate the fact that other states still value principles of sovereignty and equality and are apt to assert them following patterns forged by the United States. Each state that considers itself exceptional and not bound by these rules, challenges the continuing vitality of public international law.

27. Harold Koh, *Foreword: On American Exceptionalism*, 55 STAN. L. REV. 1479, 1487 (2003).

28. Harold Koh, Remarks at the University of Iowa College of Law, *International Law as Smart Power* (Oct. 17, 2013).

29. A point to note is that under the principles of R2P as announced, the doctrine would almost necessarily be invoked in any context of civil war, where the likelihood of urban armed resistance will lead to targeting civilians in a way that implicates the rules of discrimination and proportionality.

III. THE LEGAL ACADEMY AND INTERNATIONAL LAW

Hopefully the case is made that private and public practice of law is increasingly impacted by international law, and that greater appreciation of how international law interplays with a whole host of issues is vital to the continuing development of international law. What is the academy doing to promote that awareness and help students develop the requisite skills?

A. Courses

Over the time since I began teaching in 1995, I have participated in a number of conferences and workshops devoted to the globalization of law school curriculum. There has been progress: there are more texts available on a host of international topics, reflecting the fact that more international law courses are being taught. Beyond the traditional basic courses of international law and human rights, more law schools offer courses in subjects like international family law, international environmental law, international intellectual property, and international arbitration. This is a great development, but it must be noted that it does not reflect a wholesale integration of international law into the standing curriculum.

There are few textbooks and few courses that fully integrate international perspectives into domestic law courses. Yet I confess that when I teach civil procedure, I barely mention the Hague Convention, even though understanding its provisions are a vital first step for any lawyer involved in a civil litigation involving international parties or witnesses. I do mention comparative perspectives on discovery, but not in a way that truly heightens the issues for my students. Rather these are topics they may explore in classes on international litigation. I am not unique in this tendency—what this means is that at most law schools, the students who are interested in international law have many options, but it also all too easy for a student without that directed focus to graduate law school with little or no exposure to international law.

A few law schools have begun to require students take introductory international or transnational law courses. Others, like Iowa, encourage students to take those courses by listing them as one of a select 1L electives. Neither of these strategies will serve the need to infuse international law expertise into the new generation of lawyers.

B. Students

In terms of student enrollment, law schools have a very global perspective, in part triggered by the declining interest in law school on the part of domestic students. Law schools are vigorously recruiting international students into J.D. programs, and creating or expanding LL.M., S.J.D., and other programs to encourage foreign student enrollment.

While the global diversity of law school student bodies has increased dramatically, my sense is that there is limited action being taken to leverage diverse perspectives. The focus is on incorporating foreign students into the standing curriculum with its focus on learning U.S. law, as opposed to using the presence of foreign students, many of whom have a first degree in foreign law, to encourage a broad discussion of global perspectives of law enriched by those perspectives.

C. Study Abroad

Are our students getting out there? To the extent that immersion in a foreign legal environment provides an international experience beneficial to our students, to what extent is that a likely path? Once again the message is mixed. Study abroad programs had, prior to the economic decline and decline in law school enrollment, expanded greatly, including the development of programs located in underserved countries and regions, and a greater reach in Asia. This expansion has been profoundly impacted by the drop in enrollments and the understandable hesitation on the part of students to invest in expensive study abroad opportunities in light of prevailing economic and employment conditions. While ABA-sanctioned programs are floundering, I have been pleased to see entrepreneurial students avail themselves of other opportunities, including exchanges, international field placements and externships, and simply visiting at foreign institutions in desired locations. I am encouraged by the experience of one of my students, who last year organized a field placement in the West Bank and now is dedicated to a career in human rights. I am encouraged too that another student, who externed in a multi-national telecommunications company, is now dedicated to a career in international business. For my students and those students here today who are already committed to learning about international law, the opportunities continue to grow. The remaining gap is for law schools to fill, by integrating international and transnational legal perspectives and doctrines into everyday curriculum.

CONCLUSIONS

From the heartland, the view of the opportunities for lawyers presented by globalization is positive and exciting, as greater connections between people and businesses integrate issues of international law into practice. The stability of the framework provided by the guarantees of international peace and security is less certain, as post-9/11 strategies strain public law frameworks. The legal academy needs to continue and expand efforts to integrate global perspectives into traditional law school curriculum, and students should take advantage of opportunities to prepare themselves for the continuing inter-twining of international questions into local practice.