

UNITY OF APPLICATION OF INTERNATIONAL LAW AT GLOBAL LEVEL: THE ROLE OF JUDGES IN FIGHTING FRAGMENTATIONS

Lamessa Gudeta Guder ¹

¹ LL.B in Law,LL.M In International Human Rights & Criminal Law and Currently serving as District Public Prosecutor at Oromia National Regional State Attorney General ,Address- Addis Ababa, Ethiopia, Email: lamgudee@gmail.com , lamkiyaa@yahoo.com

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ABSTRACT

The judges have great role infighting fragmentations and bringing unity of application of international law. The rhetoric that, the proliferation of different international courts and Tribunals provoked the fragmentation of international law is not practically working on the ground. It is mere imaginary argument.

With respect to international tribunals and courts, their multiplication both at global and at regional levels are impressive for the aim of unifying the interpretation and application of international law at the universal level, from a purely logical point of view. The objective of this article is to show the proliferation of different international courts and Tribunals does not provoked the fragmentation of international law, rather it help us to unifying the application of International laws. It is a qualitative reserch.

INTRODUCTION

Since a decade, the role of international and national judges in the elaboration and application of international norms has grown enormously. Different scholars argued that, the proliferation of different international courts and Tribunals provoked the fragmentation of international law. However, I argued conversely that, With respect to international tribunals and courts, their multiplication both at global and at regional levels are impressive for the aim of unifying the interpretation and application of international law at the universal level, from a purely logical point of view.

International law, according to this understanding, is not merely a tool-box of rules and principles, but it is true common legal order though out the world which cherish especially for the human rights of all mankind. Undeniably, there is no one and single of mechanisms and procedural principles guaranteeing an always effective coordination of international jurisdictions over the world. In this case, the integration of international law will depend on what the judges decide to do with it. This manifests that, the judges have great role infighting fragmentations and bringing unity of application of international law (Benvenisti, 2007).

This Article analyses the role of judges; Courts and tribunals in the interpretation and unity application of international law through fighting fragmentations. The goal here is of crucial importance: that of guaranteeing the unity of international law and avoid fragmentation by the adjudication of courts and Tribunals (Andenas, 2014).

WHAT IS UNITARY APPLICATION OF INTERNATIONAL LAW?

Unity of application of international law is about approaches to play a unifying role in jurisprudence of international law, and provide coherence to application of international legal order. Especially such as human rights jurisprudence specifically. When the effectiveness of human rights regimes faces a severe challenge, lawyers are inclined to stress the unity of international law, arguing that human rights are part of the larger international legal order. Such unity is a precondition for enforcing human rights by countermeasures under general international law (Enabulele, 2010).

Universalists argued that the quest for a unified international law is a quest for the containment of power. Particularists, on the other hand, may object that the erection of meta structures (such as the concept of a unified legal order) risks to blur and conceal the true struggles of interests, power and identities in which international law is situated. And conclude, as the quest for unity translates into a quest for universality, denying the existence of the particular. But not as such; the unitary application of international law at the global level would imply, not so much the disappearance of the barrier between the national and international legal orders, completely denying the existence of some particular values and

culture which is unlikely, but at least its progressive diminution (Fischer-Lescano, 2004).

An analysis of the actual structure of the interaction between, on the one hand, international and national courts, and on the other hand, international Tribunals, tends to show that beyond the institutional question, it is first and foremost in the mind of judges that, the problem is solved. If they are convinced that a harmonised application of the rules of international law is necessary, its unity will be guaranteed. If they disregard this fundamental unity, from cultural reasons or through incompetence, then its survival can indeed be threatened (Garcia, 2009). This clearly manifests that, the Judges has great role in the unity application of international law through their interpretation and harmonization of international legal order as far as no single and compiled law of the world which bind all countries throughout the world.

THE RESPONSIBILITY OF JUDGES IN FIGHTING FRAGMENTATIONS

Different international courts and tribunals, as well as central international institutions such as the International Law Commission and other United Nations bodies, have made contributions to entrench the coherence of international law as a unitary legal system. However, some scholars argued that, the multiplicity and diversification of courts and tribunals at different level; domestic, regional and international level leads to fragmentations of application of international law. But this is not persuasive argument. Because, courts and tribunals at different level could not thought necessarily insists on their own norms or locality. They interpret in light of international norms. It is undeniably that currently, different international instruments are attained customary status in which it has been applied even by different domestic courts. The courts apply either international norms, or regional norms or domestic laws in their interpretation. In turn, Regional norms may be enacted precisely to support and strengthen global norms and domestic laws enacted in light of international norms. For instance this appears to be the rationale of the ECOWAS Convention on small arms and light Weapons which are directly complement with international instruments. Then even the regional court applies this in light that of International norms (Islam, 2021).

Most of the time the global judicial system rely on a simplified and harmonizing relationship between international law and national laws, as well as coordinate the competence of international jurisdictions within the international legal system which used as a tool to fight fragmentations and bring unity of application of international law. In other way, the International Court of Justice, as a kind of universal Supreme Court, would stand at the top of this institutional pyramid. At the other end, the first instance national judge, whether civil or administrative, having become the common judge of international law' in a similar fashion to what happened from the beginning with European law, would be the first to guarantee that states respect human rights and that, more specifically, an

individual be punished if he commits crimes of concern to the international community as a whole (Islam, 2022).

Minimizing the divergence interpretation of international norms among states

Many scholars argued that, if the multiplication of the tribunals might give rise to divergent interpretations of identical norms, threatening the unity of the international juridical order or having a deleterious effect on the principle of legal certainty. But the point worth mentioning here is that, Multiplication of Tribunals or courts does not necessarily give rise to divergent interpretation of identical norms. Rather they interpret in light of international accepted legal norms and customs which lead to minimization of the divergent legal norms at different regional and domestic norms (Islam, 2020).

Even if, there is no an ordered hierarchy of international courts which many authors underline the need for coordination amongst there, there is de facto recognition among different Tribunals and courts that the ICJ should play a role of preeminence. Such an opinion has been upheld, for instance, by the authors who would assign to the ICJ a kind of competence to give preliminary rulings, as it is the case of the European Court of Justice according to Article 234 of the European Community Treaty. For instance in 2000 Foreign minister of Congo was confronted by Belgium court up on its universal jurisdiction for the suspicion of crimes against Humanity. But, ICJ ruled that Belgium was found to have violated the DRC's sovereign immunity and proceeding was stopped. This shows that there is some preeminence role of ICJ especially over regional and national courts and Tribunals. This in turn narrows the divergence of interpretation of international norms.

Contributes to the application of customary laws/norms uniformly

There is no doubt that the contribution is of extraordinary importance, a contribution which becomes more extensive with the proliferation of judges, as examine with respect to the role of international tribunals is their contribution to the elaboration and development of general international law in to the commonly accepted norms. As a consequence, and as always in the reconstruction of the content of general rules of international law, it is useful and salutary to take as a reference point, the activity of international judiciary, particularly with the ICJ in mind.

It is contended that another case of this nature is that of the obligation, enjoined by general international law, to avoid damaging the environment. As is acknowledged, Different International obligation, such as avoidance of environmental damage recognized by the majority of commentators, was affirmed by the judges especially, in the Advisory Opinion on Legality of the threat or use of nuclear weapons in 1996, and in the judgment of the *Gabčicovo-Nagymaros Case* in 1997. The same was already proclaimed in the Stockholm Convention (1972) and the Rio Declaration (1992), neither of which is binding. But it is affirmed by the court as the

significant state practice and elaborates the international legal order which help us in unity of application of international law.

Judges' culture and actions by itself is guarantor of the unitary interpretation

Most courts recognize inherent powers, even if not explicitly. (Islam, 2022). Thus, in the course of resolving procedural orders, granting provisional measures, and assuming Jurisdiction or opining to facilitate an enforceable decision, Judges and arbitrators alike are often exercising inherent powers. Inherent powers serve to deny abuses of process in both substantive and procedural terms (Teubner, 2004). They are often invoked in terms of functional necessity. Judges on sitting international courts might feel a greater sense of compulsion or even loyalty to ensure that their decisions are consistent with broader principles upheld by their particular institutions and the international community (Islam, 2020). Accordingly, inherent powers are directly relevant to addressing the risks of the fragmentation of international law, such as uncertainty, inconsistency, and decisions undermining the authoritativeness of the courts and the international legal system (Korhonen, 2021).

DOMESTIC JUDGES AND INTERNATIONAL JURISDICTION FOR UNITY OF APPLICATION OF INTERNATIONAL LAW

ICJ for unity of application of international law

ICJ is Recognized as it have the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States. Due to the political compulsion felt by the member states, states frequently comply with ICJ decisions the International Court of Justice occupied the top of the pyramid. The Court would impose its authority on the other international jurisdictions of the international legal order, at least in respect of the interpretation of the general rules of international law that might be applied by all and consider means of strengthening the Court's work in the unity of application of international laws. I argue that there is an existing consensus regarding the ICJ as the supreme international court. It has clarified the criteria for the formation of customary law, and the canons of treaty interpretation. It cites case law from other international courts and from domestic courts as persuasive authorities. The I.C.J. contributes to customary international law, resolving pressing problems of human rights and environmental law, and moving away from the strictly inter-state, non-hierarchical perspective of international law where state consent has put extreme restrictions on jurisdiction, obligations of states and the development of the law (Koskeniemi, 2002).

Domestic judges for unity of application of international law

It is clear, first of all, that their decisions contribute to, and are, interpretations and elaborations of international norms both customary and conventional. In a sense, their influence on the evolution of international law is more 'direct' as they function as state organs and, as a result, their practice in this capacity has to be considered as state practice (Mia, 2022). For instance, An application to both the European Court of Human Rights and its American counterpart is conditioned on the same procedural rule, that of the exhaustion of local remedies. when a national judge hears a case on issues such as the right to life, to liberty or to a fair trial, there is a role splitting by which he controls at the same time the respect of international law as laid down in the treaty and the conformity of national law to the treaty, particularly if it is not directly integrated in the national legislation (Prost, 2012). It is common among international lawyers to refer to national courts as a reliable if diffuse system for ensuring compliance with international norms, and therefore urge judges to apply these norms rigorously. Most national judges eventually accept to enforce the primacy of international law (Simma, 2009). Even the natural tendency of the judge is to apply international law when there exist an equivalent or incompatible rule in his own national legislation.

CONCLUSION

The proliferation of international tribunals, courts, regional and domestic court has great role in fighting fragmentation and maintaining unity through their interpretation of international and regional norms. Because, neither the national judge nor the international have different goals. Rather the same goals of maintaining international peace and order as well as peaceful commercial transactions in due respecting and protecting human rights and environment in the organized norms and unitary systems. In this context, unquestionably the judges has great roles for unity approach to application of international law in this sense expresses the conviction that it is possible, desirable, indeed urgently necessary (and for many, a process already under way), to establish a public order on a global scale, a common legal order for mankind as a whole. So, instead of blindly understanding the proliferation of international tribunals and courts, as opening to fragmentations of international laws, it is better to understand as contributor for unitary application of international law at global level by fighting fragmentation through it interpretation and application of standard norms of international community.

REFERENCES

- Andenas, M. (2014). Reassertion and transformation: from fragmentation to convergence in international law. *Geo. J. Int'l L.*, 46, 685.
- Benvenisti, E., & Downs, G. W. (2007). The empire's new clothes: political economy and the fragmentation of international law. *Stan. L. Rev.*, 60, 595.

- Enabulele, A. O. (2010). Judicial Misgivings regarding the Application of International Law: An Analysis of the Attitudes of National Courts-A Reply to Eyal Benvenisti. *Tilburg L. Rev.*, 15, 39.
- Fischer-Lescano, A., & Teubner, G. (2004). The vain search for legal unity in the fragmentation of global law. *Michigan journal of international law*, 25(4), 999-1046.
- Garcia, D. (2009). Arms restraint and regional international law making: The case of the Economic Community of West African States. *African Security Studies*, 18(2), 78-92.
- Islam, M. A., Paripurna, A., & Islam, M. Z. (2021). Dispute Settlement under the UNCLOS with Special Reference to Compulsory Procedures: An Appraisal. *Journal of Asian and African Social Science and Humanities*, 7(2), 50-59.
- Islam, M. Z., & Islam, M. A. (2022). AN APPRAISAL ON MARITIME BOUNDARY DELIMITATION BY BANGLADESH AND NORWAY. *Journal of Asian and African Social Science and Humanities*, 8(1), 59-73.
- Islam, M. Z., & Norullah, M. (2020). Hate Speech Under International and National Laws: A Comparative Analysis from Islamic Law Perspective. *International Journal of Psychosocial Rehabilitation*, 24(6).
- Islam, M. Z., Mokhtar, K. A., Afand, N. H. M. B., & Islam, M. A. (2020). Online Broadcasting in Malaysia: An Analysis of Legal and Regulatory Framework and Future Reforms. *PalArch's Journal of Archaeology of Egypt/Egyptology*, 17(4), 2370-2386.
- Islam, M., Islam, M. T., Mia, M. T., & Islam, M. Z. (2022). The Application of International Laws in Bangladesh: A Critical Evaluation. *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*, 8(1).
- Korhonene, O. (2021). *International law situated: An analysis of the lawyer's stance towards culture, history and community*. Brill.
- Koskenniemi, M., & Leino, P. (2002). Fragmentation of international law? Postmodern anxieties. *Leiden Journal of International Law*, 15(3), 553-579.
- Leathley, C. An Institutional Hierarchy to Combat the Fragmentation of International Law' (2007). *New York University Journal of International Law & Politics*, 40, 259.
- Mia, M. T., Islam, M. Z., Billah, M., Islam, M. A., & Norullah, M. (2022). AN ANALYSIS OF REGULATORY FRAMEWORK OF CHILD PROTECTION IN BANGLADESH. *Journal of Asian and African Social Science and Humanities*, 8(1), 44-58.
- Prost, M. (2012). *The concept of unity in public international law*. Bloomsbury Publishing.
- Simma, B. (2009). Universality of International Law from the Perspective of a Practitioner. *European Journal of International Law*, 20(2), 265-297.
- Teubner, G., & Fischer-Lescano, A. (2004). Regime-collisions: the vain search for legal unity in the fragmentation of global law. *Michigan Journal of International Law*, 25(4), 999-1046.