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## The Tattered Tapestry of International Law

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# **Symposium Introduction:**

## **The Tattered Tapestry of International Law**

William J. Aceves\*

This Symposium was convened long before the tragic events of September 11, 2001. And yet, the events of that day still resonate throughout these pages. The tragedy revealed, once more, the tattered tapestry of international law.

International Law Weekend - West was convened on January 26, 2001 at Pepperdine Law School by the American Branch of the International Law Association ("ABILA") and the Pepperdine Law Review.<sup>1</sup> While the ABILA has presented annual conferences on the East Coast for many years, this was the first such conference held on the West Coast.<sup>2</sup> Indeed, the goal of the Symposium organizers was to promote a fruitful discussion of international law on this forgotten coast.<sup>3</sup> The Symposium joined scholars

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\* Associate Professor of Law, California Western School of Law. Professor Aceves was one of the co-chairs for International Law Weekend - West. He would like to thank co-chair Professor Lee Boyd of Pepperdine University School of Law and Charles Siegal of Munger, Tolles & Olson for their excellent work in organizing the conference.

1. The International Law Association was founded in 1873 as a private organization devoted to the study of international law. It has over forty national branches throughout the world. The American Branch of the International Law Association ("ABILA") was established in 1922. The ABILA consists of several committees that study and address such issues as arbitration, arms control, commercial law, environmental law, extradition, human rights, intellectual property, and trade.

Co-sponsors of International Law Weekend - West included the American Society of International Law, the American Bar Association Section of International Law and Practice, the International Law Section of the Los Angeles County Bar Association, the International Law Section of the State Bar of California, and the law firms of Munger, Tolles & Olson and Morrison & Foerster.

2. The American Society of International Law has exhibited a similar East Coast preference in the location of its Annual Meetings.

3. The International Law Weekend - West organizing committee, all West Coast residents, consisted of William Aceves, Jeffery Atik, Lee Boyd, William Dodge, Gregory Fox, Alan Kindred,

and practitioners in a dialogue designed to bridge geographic as well as disciplinary divides.<sup>4</sup>

This Symposium Issue addresses a variety of topics that were raised at International Law Weekend - West, including dispute settlement, ethnic cleansing, intellectual property, labor rights, trade, and sports law.<sup>5</sup> At first glance, there does not appear to be a common thread among these disparate topics. It is difficult to imagine any relationship, for example, between the mechanisms for sports law arbitration and the consequences of ethnic cleansing. The connection between ad hoc international criminal tribunals and dispute settlement panels is equally unclear. In this respect, the articles in this Symposium Issue mirror the diverse theory and practice of international law.

A careful reading, however, reveals that each article in this Symposium Issue represents a separate strand of international law. In turn, each strand expresses a distinct set of norms, rules, and institutions. When woven together, these strands form the tapestry of international law.<sup>6</sup> It is instructive, therefore, to highlight the common features of these disparate strands.

*Norms.* International law displays a diverse set of norms that regulate a myriad of activities. These norms express principles of conduct, and they operate at two levels.<sup>7</sup> The primary norms express basic values. Examples of primary norms include labor rights, the right to life, and the right to be free from torture.<sup>8</sup> The secondary norms function to promote

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Charles Siegal, and Beth van Schaack.

4. On the merger of scholarship and practice, see Jeffrey L. Dunoff, *What's Wrong With International Legal Scholarship: International Legal Scholarship at the Millennium*, 1 CHI. J. INT'L L. 85, 89 (2000).

5. Panels were held on twelve topics: NAFTA Chapter Eleven, Hague Judgments Convention, Post-Seattle Accountability, International Peacekeeping, International Intellectual Property, International Criminal Law, Alien Tort Claims Act, China Trade, International Arbitration, Ethnic Cleansing, International Sports and Entertainment Law, and International Disabilities Law.

6. The typology of norms, rules, and institutions can be used to examine any legal system. See e.g., W. MICHAEL REISMAN, *LAW IN BRIEF ENCOUNTERS* (1999); Walter Otto Weyrauch and Maureen Anne Bell, *Autonomous Lawmaking: The Case of the "Gypsies,"* 103 YALE L.J. 323 (1993); ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991); Stewart Macaulay, *Images of Law in Everyday Life: The Lessons of School, Environment, and Spectator Sports*, 21 LAW & SOC'Y REV. 185 (1987). Indeed, the use of this typology facilitates the identification of functional equivalence in diverse legal systems, an important goal of the comparative method. See John C. Reitz, *How to Do Comparative Law*, 46 AM. J. COMP. L. 617, 620, 625 (1998).

7. Cf. H.L.A. HART, *THE CONCEPT OF LAW* 91-94 (1961). On the importance of norms, see generally Martha Finnemore, *Are Legal Norms Distinctive?*, 32 N.Y.U. J. INT'L L. & POL. 699 (2000); FRIEDRICH V. KRATOCHWIL, *RULES, NORMS, AND DECISIONS: ON THE CONDITIONS OF PRACTICAL AND LEGAL REASONING IN INTERNATIONAL RELATIONS AND DOMESTIC AFFAIRS* (1989).

8. See generally Stephen F. Diamond, *Bridging the Divide: An Alternative Approach to International Labor Rights After the Battle of Seattle*, 29 PEPP. L. REV. 115 (2001); John Quigley, *Repairing the Consequences of Ethnic Cleansing*, 29 PEPP. L. REV. 33 (2001).

implementation of the primary norms. Examples of secondary norms include such concepts as sovereignty and *pacta sunt servanda*.<sup>9</sup>

*Rules.* This cacophony of norms is reified through a diverse set of rules.<sup>10</sup> This process of reification can occur through treaty development or through the emergence of customary international law.<sup>11</sup> Rules are significant because they formalize the underlying norms. Rules, however, can develop as both hard law and soft law.<sup>12</sup> That is, they can establish binding or nonbinding obligations. Examples of rules include the United Nations Charter and the Uniform Domain Name Dispute Resolution Policy as well as nascent rules such as the Draft Hague Judgments Convention.<sup>13</sup>

*Institutions.* The institutions of international law are as diverse as its underlying norms and rules. There is, however, a corporeal presence – institutions maintain a physical existence. From national tribunals to international organizations, the institutions of international law facilitate the implementation of its reified rules. Institutions perform a variety of functions; they can clarify property rights, promote transparency and information exchange, monitor compliance, mediate disputes, and enforce the rules.<sup>14</sup> Examples of institutions include NAFTA Chapter 11 panels, ad hoc international criminal tribunals, and the Court of Arbitration for Sport.<sup>15</sup>

9. See generally Cedric C. Chao and Christine S. Neuhoff, *Enforcement and Recognition of Foreign Judgments in United States Courts: A Practical Perspective*, 29 PEPP. L. REV. 147 (2001).

10. Like norms, rules can operate at several levels. See FREDERICK SCHAUER, *PLAYING BY THE RULES: A PHILOSOPHICAL EXAMINATION OF RULE-BASED DECISION-MAKING IN LAW AND IN LIFE* (1991); HART, *supra* note 7, at 91-94.

11. See generally Philippe Sands, *Treaty, Custom and the Cross-Fertilization of International Law*, 1 YALE H.R. & DEV. L.J. 85 (1998); John Gamble, *The Treaty/Custom Dichotomy: An Overview*, 16 TEX. INT'L L.J. 305 (1982).

12. See, e.g., Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421 (2000); COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM (Dinah Shelton ed., 2000); Christine Chinkin, *The Challenge of Soft Law: Development and Change in International Law*, 38 INT'L & COMP. L.Q. 850 (1989).

13. See generally H.B. McCullough, *A Critique of the Report of the Panel on United Nations Peace Operations*, 29 PEPP. L. REV. 15 (2001); Laurence R. Helfer, *International Dispute Settlement at the Trademark-Domain Name Interface*, 29 PEPP. L. REV. 87 (2001); Friedrich K. Juenger, *Traveling to The Hague in a Worn-Out Shoe*, 29 PEPP. L. REV. 7 (2001).

14. International relations scholarship takes a broader approach to the concept of institutions. International institutions are defined as "explicit arrangements, negotiated among international actors, that prescribe, proscribe, and/or authorize behavior." See Barbara Koremenos, Charles Lipson, and Duncan Snidal, *The Rational Design of International Institutions*, 55 INT'L ORG. 761, 762 (2001); INTERNATIONAL INSTITUTIONS (Lisa Martin and Beth Simmons eds., 2001); William J. Aceves, *Institutionalist Theory and International Legal Scholarship*, 12 AM. U. J. INT'L L. & POL'Y. 227 (1997).

15. See, e.g., Charles H. Brower, II, *Investor-State Disputes Under NAFTA: A Tale of Fear and Equilibrium*, 29 PEPP. L. REV. 43 (2001); Diane Marie Amann, *Calling Children to Account: The*

The tapestry of international law, therefore, is crafted from diverse strands of norms, rules, and institutions.<sup>16</sup> Each new strand that develops further strengthens the tapestry. As strands fade or disappear, however, the tapestry begins to unravel. In this respect, international law is not unique; it shares these attributes with its domestic analogs.<sup>17</sup> Indeed, recent interdisciplinary scholarship on the legalization of world politics has acknowledged the similarities between the domestic and international legal systems.<sup>18</sup>

The events of September 11, 2001 reveal the fragile nature of the tapestry of international law. They also raise serious questions about its continued viability. Can the tapestry survive the destruction of that day?<sup>19</sup> Will the norms of democracy and human rights be severed from the tapestry as countries respond in more draconian ways to the threat of terrorism?<sup>20</sup> Are new rules necessary to address such horrific acts of violence?<sup>21</sup> Can its institutions develop effective mechanisms to prevent further acts of

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*Proposal for a Juvenile Chamber in the Special Court for Sierra Leone*, 29 PEPP. L. REV. 167 (2001); Richard H. McLaren, *Sports Law Arbitration By CAS: Is it the Same as International Arbitration?* 29 PEPP. L. REV. 101 (2001).

16. Contemporary international relations scholarship would define the strands of international law as institutions. See Lisa L. Martin and Beth A. Simmons, *Theories and Empirical Studies of International Institutions*, 52 INT'L ORG. 729 (1998). In contrast, early international relations scholarship would refer to the strands as regimes. A regime is often defined as a set of principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area. See INTERNATIONAL REGIMES 1 (Stephen D. Krasner ed., 1983).

17. See HIDEO SUGANAMI, *THE DOMESTIC ANALOGY AND WORLD ORDER PROPOSALS* (1989); William Coplin, *International Law and Assumptions About the State System*, 17 WORLD POL. 615 (1965); Roger Fisher, *Bringing Law to Bear on National Governments*, 74 HARV. L. REV. 1130 (1961). But see RICHARD FALK, *THE STATUS OF LAW IN INTERNATIONAL SOCIETY* (1970).

18. See Judith Goldstein et al., *Introduction: Legalization and World Politics*, 54 INT'L ORG. 385, 386 (2000); Kenneth W. Abbott et al., *The Concept of Legalization*, 54 INT'L ORG. 401 (2000).

19. The attacks of September 11, 2001 have already led to a growing debate on terrorism and war. See, e.g., Note, *Responding to Terrorism: Crime, Punishment, and War*, 115 HARV. L. REV. 1217 (2002); Robert K. Goldman, *Certain Legal Questions and Issues Raised by the September 11th Attacks*, 9 HUM. RTS. BR. 2 (2001); John W. Head, *The United States and International Law After September 11*, 11 KAN. J.L. & PUB. POL'Y 1 (2001). For a similar debate on war and terrorism in Canada, see *THE SECURITY OF FREEDOM: ESSAYS ON CANADA'S ANTI-TERRORISM BILL* (Ronald J. Daniels et al. eds., 2001).

20. See Michael Ignatieff, *Is the Human Rights Era Ending?* NEW YORK TIMES, Feb. 5, 2002, at A25; John Mintz, *Treatment of Detainees in Cuba Questioned*, WASH. POST, Jan. 16, 2002, at A13; Oren Gross, *Cutting Down Trees: Law-Making Under the Shadow of Great Calamities*, in Daniels, *supra* note 19, at 39.

21. See Michael J. Jordan, *Terrorism's Slippery Definition Eludes UN Diplomats*, CHRISTIAN SCI. MONITOR, Feb. 4, 2002, at 7; Antonio Cassese, *Terrorism is Also Disrupting Some Crucial Legal Categories of International Law*, 12 EUR. J. INT'L L. 993 (2002); Jutta Brunnée, *Terrorism and Legal Challenge: An International Law Lesson*, in Daniels, *supra* note 19, at 341.

terrorism?<sup>22</sup> Has the purported clash of civilizations torn the tapestry into competing displays?<sup>23</sup>

Through its diversity, this Symposium Issue highlights the many strands that form the tapestry of international law. As scholars and practitioners, we must recognize the fragile nature of its interwoven strands. It is our responsibility to ensure that they do not unravel.

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22. See Sonia Verma, *Terrorism Agency Proposed*, TORONTO STAR, Oct. 29, 2001, at A15; S.C. Res. 1373, U.N. SCOR, 4385th mtg., U.N. Doc. S/RES/1373 (2001) (establishing a special committee on counter-terrorism).

23. See *Fight Terror By Enforcing Universal Values, Analysts Urge*, AGENCE FRANCE PRESSE, Jan. 27, 2002; Thalif Deen, *U.N. Seeks Dialogue to Avert "Clash of Civilizations,"* INTER PRESS SERVICE, Nov. 11, 2001; Edward Rothstein, *Attacks on U.S. Challenge the Perspectives of Postmodern True Believers*, NEW YORK TIMES, Sept. 22, 2001, at A17.

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