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Interactions between Culture and Law in India and Europe

Influence réciproque entre culture et droit en Inde et Europe
Wechselwirkungen zwischen Kultur und Recht in Indien und Europa

edited by

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Editorial

The book is the outcome of the Tri-national Winter University hosted from 20 to 26 February 2017 by the National Law University (NLU) in New Delhi. The conference was attended by academics, students and lawyers from India, Germany, France, Italy and other parts of the world. Co-chairs of this colloquium were Stephanie Rohlfing–Dijoux, Nanterre and Université Franco–Allemande, Tobias Lettl, Potsdam and Prof. Prasannanshu, New Delhi.

Law and culture are intimately linked. It can arguably be assumed that laws are the reflection of the culture of a country. “Law and culture” is a very fertile, albeit virgin field of enquiry. This upcoming field can be seen as a specialization of Jurisprudence, or as an independent area in its own right. With the trend towards unification, and integration of laws and legal systems of different countries, driven by the forces of globalization, national and cultural differences are becoming apparent, and it is increasingly significant to understand and address these issues to progress in the direction of such a unification.

The project of the Universities of Paris Nanterre, and Potsdam to organize a common winter–university with the National Law University Delhi, India, aimed at focusing upon the transmission of knowledge about culture and legal systems. As on one hand, there are the French and German Laws, both, systems of continental law, and on the other hand, there is the Indian law influenced by the English law. No doubt, these systems are very different. For this Winter–university in India we focused on the comparison of legal concepts, and on the cultural influence on the evolution of the law in the concerned countries. The details of the cultural peculiarities in Europe and India and its influence on certain fields of law are examined in the different articles.

Hence, the purpose of this international workshop was centred around an analysis of the cultural differences in Europe and India, and its influence on particular fields of law such as family law, child

custody and protection, the protection of intellectual property, competition law, labour law, contract law, death penalty, human rights, international law, surrogacy, Euthanasia, suicide, environmental laws, and the rights of the citizens, and linguistic rights and linguistic justice. This large field of research encompassing different branches of law, but also of Linguistics, Humanities and Philosophy needs an interdisciplinary approach. Academics from different disciplines enriched the discussions and contributed to the success of the conference.

The sessions and workshops focussed on “Legal Theory and Constitutional Law”, “Human Rights, Fundamental Freedoms and International Law”, “Religious Influence on Law”, “Criminal Law and Criminology”, “Economic Law”, “Labour Law”, “Process Culture” and “Law and Language”. Most contributions could be published, without any change, or at times with some modifications, in the present volume.

Other unpublished, but prominent contributions where from E. Millard, The cultural argument in the interpretation of legal statements; S. Sachidhanandam, Constitutional Protection of Language and Culture in India; Shugan Chand Jain, Legality and case law regarding the Sallekhana practice in India; L. Sinopoli, Process culture and class action; J. Thouvenin, The Hague Academy of International Laws’ contribution to a world culture of international law. Shekhar Hattangadi, a lawyer and filmmaker from Mumbai presented a documentary on “Santhara: A Challenge to Indian Secularism?” Thanks are also due to Pratyush Kumar’s assistance in bringing out this volume.

The conference was a unique experiment of learning comparative law by intergenerational and intercontinental dialogue.

Paris, November 2018

Co-editors: Jörg Luther, Prasannanshu, Stephanie Rohlfing-Dijoux

PART I

LEGAL AND POLITICAL CULTURES

Culture of Peace A Potent Tool Against Terrorism

UCHENNA H. OKORONKWO*

SUMMARY: 1. Introduction, 15 – 2. Terrorism: description, 17 – 3. Summary and Recommendations, 23.

1. Introduction

Despite the violence-laden-world of today, peace is still possible. Yes, it is. It is if and only if good [people] form strong alliance against evil [people — terrorists]. It is a matter of choice and conscious efforts. This choice goes with sacrifices too: compromise, commitment, political will etc.

Needless to overemphasise the threat posed by terrorism to the peace of the entire world. The Middle-East is generally held to be the epicentre of the menace. However, other parts of the world have their own ugly experiences to share. African nations and Central Asia are not spared. Each of the European countries have either experienced acts of terrorism or are spending huge sums of their annual (financial) budgets to prevent it. Even America, France and United Kingdom have been attacked one time or the other and are still vulnerable to future attacks.

The world body — the United Nations — saw the enormity of the challenge and formed the UN Counter-Terrorism Committee Executive Directorate (CTED) with the responsibility of coordinating the efforts at combating the threat around the world. This Committee has been churning out programmes, collaborating with nations and regional bodies to further its terms of reference.

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Gruesome images of senseless attacks, mayhem and extreme violence are all over the place for all to see. Security outfits, schools, markets, hospitals are randomly attacked. As peace-seeking people, the rest of the world need to rally around, work together and harness the potentials inherent in the culture of peace to defeat the common enemy — terrorism. Target should be the youths around the world. The feelings of discontents, injustice and oppression; the racial, ethnic and hateful prejudices embedded in them need to be deconstructed. They should be made to understand the world as big family, with equal opportunity for all to achieve their respective goals and aspirations.

Since religion is a strong indoctrination tool and radicalisation, legitimate regimes owe it as duty to this and future generations to ensure that religious teachings and practices are fairly or reasonably regulated. Light of peace should be lit to dispel the darkness of ignorance bedevilling the present world.

This writer concurs with the former British Prime Minister — Mr. Tony Blair who is emphatic that through education (culture), terrorism can be defeated¹. Addressing the UN CTED in New York, the ex-British P.M. stressed that, in the present 21st Century, education need to be viewed as a security concern. That only education opens young minds to other peoples' diverse religious and cultural identities, and shows them how the future works, should be imparted. According to him, young people should be taught how to see others as equal and respect their respective cultures, faiths and belief systems². Indeed, to see each other in oneself, peaceful co-existence must be the collective objective of all.

To achieve the above aspirations, there is the urgent need to go beyond rhetorics. So far, the needed action of urgency is lacking mainly due to little or no funding of the culture of peace programme. Massive mobilisation and organisation should be embarked upon. Conversely, the extremists are able to wreck havoc on the world today because they are organised, equipped and funded³. The various

1. Editorial, *Terrorism can only be defeated by education, former British leader — Tony Blair, tells UN*, UN News Centre, November 21, 2013. cf. <http://www.un.org/apps/news/story.asp?NewsID=46554#.WKWODG997IU> (last accessed December 2, 2017).

2. *Ibidem*.

3. VIVEK CHANDHA, *Lifeblood of Terrorism: Countering Terrorism Finance*, p. 43, (Bloomsbury Publishing India, 2015).

programmes, strategies or initiatives of the UN and other regional bodies are neglected and reduced to mere paper tigers. This trend and attitude must be reversed.

2. Terrorism: description

A universally acceptable definition of terrorism is yet to be evolved. Stakeholders are constantly in disagreement on the precise description of terrorism. The difficulty in so doing is not unconnected with the fluidity of the subject itself and diversity of the actors on both sides.

Nevertheless, for the sake of this paper, some working definitions shall be adopted. One such is the one preferred by the defunct League of Nations. The then international body defined Acts of terrorism as «criminal acts directed against a state or intended to create a state of terror in the minds of particular persons or a group of persons or the general public»⁴. It could also mean: «The threat or use of force to achieve political objectives without the full-scale commitment of resources»⁵. The concept of terrorism has equally been described as «the unlawful use or threatened use of force or violence by a person or organized group against a person or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons»⁶.

None of the foregoing definitions/descriptions is without criticisms. Some of the definitions hinged the objective of “acts of terror” on politics alone. But that is not always the case and need not be to qualify an act as terror. According to Wardlaw⁷, because terrorism engenders such extreme emotions, partly as a reaction to the horrors associated with it and partly because of the ideological context, the search for a definition which is both precise enough to provide a

4. League of Nations Convention for the Prevention and Punishment of Terrorism, 1937. Unfortunately, the smooth entry into force of the Convention was hampered by the outbreak of the World War II.

5. KUPPERMAN, K. *Low Intensity Conflict* cited in KLARE, M. And KORNBLUH, P. (edited) “Low Intensity Warfare”, pp. 67 & 147, Pantheon, 1988.

6. The American Heritage Dictionary of the English Language, Cited in p. 4, «Awake» Journal of June 2006.

7. WARDLAW, G., *Political Terrorism*, pp. 8–9, England, «Cambridge University Press», 1982.

meaningful analytical device yet general enough to obtain agreement from all participants is fraught with difficulty⁸.

This researcher knows of no such thing as “perfect” definition of terrorism. As the concept of terror campaign constantly twists so is the search for its generally acceptable description. In fact, it is such inherent imperfection that makes the subject-matter an interesting area of research. The reason is that that creates room for more rediscovery (research) among authors, research scholars and other stakeholders. There is also emphasis on fear in the definitions but this is not always the case with every terrorist operation. It is true that acts of terror are often targeted at non-combatants (civilians) with the aim of instilling fear in them. However, the campaigners often go beyond merely instilling fear on their victims for political purposes and focus on religious promotion or preservation.

Narrowing the definitions down, they presuppose that

- a) terrorism is both of national as well as international concern;
- b) it involves the application or use of force either by individuals or groups against symbolic personalities, places or governments;
- c) its aim could be political or for similar objectives.

The United Nations General Assembly defined the Culture of Peace as the

values, attitudes and behaviours that reflect and inspire social interaction and sharing based on the principles of freedom, justice and democracy, all human rights, tolerance and solidarity, that reject violence and endeavour to prevent conflicts by tackling their root causes to solve problems through dialogue and negotiation and that guarantee the full exercise of all rights and the means to participate fully in the development process of their society.⁹

As can be deduced from the foregoing, the culture of peace or peace culture, as a concept, was a programme of the United Nations General Assembly (UNGA). It evolved following the UNGA's declaration of the International Year for the Culture of Peace¹⁰. The

8. *Ibidem*.

9. See *Towards a Global Movement of the United Nations Declaration and Programme of Action for a Culture of Peace* (A/RES/53/13). Also available at http://www3.unesco.org/iycp/uk/uk_mov.htm (last accessed: March 9, 2017)

10. *Ibidem*., under Resolution A/RES/53/243.

concept was aimed at inspiring the works of individuals, groups, organisations and institutions around the world¹¹ as the international community march towards global peace. Ultimately, it was meant to counter the culture of war, which has been ravaging the human family in different scales. The year 2000 was formally proclaimed as the International Year for the Culture of Peace by the UNGA. Later, 2001–2010 was declared as the International Decade for a Culture of Peace and Non-violence for Children of the World¹².

The above proclamations obviously triggered off the global movements for the Culture of Peace. It is to analyse and further these lofty ideals that this paper is partly aimed at. The question of whether the movement is progressing is a matter of fact. Since the facts speak for themselves, the answer to the question is already in the public domain and all can see for themselves. It is no news that member nations of the UN are yet to fully and practically key into this noble concept because they have withheld their financial commitments towards its implementations¹³. Hence, the movement, though still in existence, is yet to make its mark on the global map. The impact is yet to be felt. It is this foot-dragging posture and ineptitude of the member states that has negatively affected the impacts expected of the concept, for almost two decades since its proclamation¹⁴.

It is not just enough to play the blame-game. It should not be seen as the duty of only the United Nations Educational, Scientific and Cultural Organisation (UNESCO), as the UN lead agency, to execute. All efforts must be put together and pulled together if its lofty ideals are to be achieved. The mass media is indispensable in this regard. However, the contribution (if any) is also yet to be felt across board. Lovers of peace, other stakeholders in the global peace

11. Provided their actions correspond to those of the UN Declaration and Programme of Action for a Culture of Peace (A/RES/53/243): to foster culture of peace through education; to promote sustainable economic and social development; to promote respect for all human rights; to ensure equality between women and men; to foster democratic participation; to advance understanding, tolerance and solidarity; to support participatory communication and free flow of information and knowledge and to promote international peace and security.

12. A/RES/53/25.

13. Especially the United States, the European Union members and their allies who removed the provision of funding for a culture of peace resolution passed by the UNGA. See article by D. ADAMS, *The Culture of Peace as the Best Alternative to Terrorism*, p. 13. cf. <http://www.culture-of-peace.info/terrorism/AlternativetoTerrorism.pdf> (last accessed: March 10, 2017).

14. It was proclaimed in the year 2000.

project cannot afford to wait any longer. The time to act is now. Why? Because terrorism is not “their problem”, it is our collective concern. Everyone is susceptible to the menace. In the September 2001, when the World Trade Centre was hit in the United States, it was not only the US citizens who were affected. Almost every nation in the world lost one, two or more of her citizens in that infamous terrorist attack.

The argument here is that, since terrorism starts from the mind, the culture of peace must be infused and integrated into the national and international education systems of the world. Terrorism mentality impartation can be prevented if culture of peace is proactively instilled into the young minds before extremists get them derailed with culture of war. Unfortunately, the potency of culture, in the fight against terrorism, is yet to be embraced and accorded its rightful place.

Drawing from the definition again, one way of maintaining peace in today's world is by tackling the root causes of violence, intolerance, extremism and hostilities. Relating this to terrorism menace, terrorism is a clear manifestation of culture of war. One root cause of terrorism is brainwashing, teaching or indoctrination which gradually becomes a way of life (culture) of the indoctrinated. When this root is successfully countered through deconstruction, re-orientation and value impartation, then culture of peace would take the place of culture of war.

Terrorism represents the culture of war. However, the culture of war should not be restricted to the ongoing terror campaigns around the globe. Culture of war extends to bad governance, authoritarianism, dictatorial regimes, intolerance and monster/enemy images carefully orchestrated to perpetrate hatred in the human society around the world today.

Nature abhors vacuum. For the world to do away with the culture of war, the vanguards of the culture of peace must be up and running. The campaign must be vigorous and an active one. The world must match or replace terrorism with anti-terrorism, war with peace, violence with non-violence. On this note, the philosophy of the likes of Mahatma Gandhi, Nelson Mandela, Martin Luther King Jr., Cesar Chavez, Betty Williams, Dalai Lama, John Lennon, Bob Marley etc. may be adopted. If non-violence movement worked in achieving political emancipation, it can work in dethroning the culture of war and enthroning the culture of peace. Peace is possible.