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Księga jubileuszowa
dedykowana
Profesorowi Andrzejowi Rzeplińskiemu

redakcja naukowa

Barbara Błońska
Łukasz Chojniak
Beata Gruszczyńska
Andriy Kosyło
Katarzyna Witkowska-Rozpara
Dagmara Woźniakowska-Fajst

FOR THE RULE OF LAW: ACTION-ORIENTED COMMENTS ON THE 'SHOCKING'¹ JUDGMENT IN THE CASE *N.D. AND N.T. V. SPAIN*

Sławomir Redo

INTRODUCTION

In the 2018 New York Declaration for Refugees and Migrants, which paved the way for the 2020 'Global Compact for Orderly, Safe and Regular Migration'², the United Nations General Assembly called for, among others, 'responsible' migration³. Subsequently, the 2018 Assembly pointed to the latter element invoking the 2030 Sustainable Development Goals (SDGs) Agenda on 'Transforming Our World'⁴. The Agenda, as stated by the framers of the New York Declaration, 'makes clear, *inter alia*, that [by 2030 – added by the author] we will facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. The needs of refugees, internally displaced persons and migrants are explicitly recognized' (SDG 10.7)⁵.

The term 'responsible migration' was left out from the title of the Global Compact, but for the first time ever in UN history it contains an inter-governmentally approved definition of the rule of law⁶. In the interests

¹ M. Pichl, D. Schmalz: 'Unlawful' May Not Mean Rightless: *The Shocking ECtHR Grand Chamber Judgment in Case N.D. and N.T.*, 'VerfBlog' 2020/14, doi: 10.17176/20200214-164325-0.

² United Nations UN, 2018. *Global Compact for Orderly, Safe and Regular Migration*, 19 Dec. 2018 (A/RES/73/195).

³ United Nations UN, 2016. *New York Declaration for Refugees and Migrants*, 16 Sept. 2016 (A/RES/71/1).

⁴ United Nations UN, 2015. *Transforming Our World. 2030 Agenda for Sustainable Development*, 15 Sept. 2015 (A/RES/70/1).

⁵ I. § 16 (A/RES/71/1).

⁶ 'The Global Compact recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance. This means that the State, public and private institutions and entities, as well as persons themselves, are accountable to laws that are publicly promulgated, equally

of a comprehensive perspective regarding the broader pro-migration UN rule-of-law policy, recognized by the New York Declaration, the Agenda, and – of course – by the Universal Declaration of Human Rights (UDHR), the purpose of this article is to invite readers' attention to responsible, UN criminologically-relevant, technical assistance policy.

This article discusses it in the context of five action-oriented SDGs:

- 'Immediate and effective measures to... secure the prohibition and elimination of the worst forms of child labour' (8.7);
- 'Inequalities within and among countries' (10);
- 'Awareness for sustainable development and lifestyles in harmony with nature' (12.8)
- 'Climate action' (13);
- 'Peace, Justice and Strong Institutions' (16).

Particularly, in the context of relevant SDGs, this article, first, relates them to the verdict of the European Court of Human Rights (ECtHR/the 'Court') in the case *N.D. and N.T. v. Spain*, accompanied by the separate Opinion of Judge Aleš Pejchal; second, takes on board the question of irregular migrants and refugees entering Poland through the EU's Eastern border with Belorussia and Ukraine. The conclusion involves the European Union's South-West and North-East rule-of-law immigration challenges and a common strategy to address and overcome them in the UN rule-of-law terms.

THE JUDGMENT AND SEPARATE OPINION

The Court legitimized the immediate return (the so called 'push back' or 'hot return') to Morocco of one national of Côte d'Ivoire and another one of Mali. In 2004, they both attempted to enter, in an unauthorised way, the Spanish exclave of Melilla on the North African coast by climbing, from Morocco, the fences surrounding the exclave⁷. The Court concluded that the practice of Spanish authorities indiscriminately applying expulsion to every individual, irrespective of whether they sought asylum or not, did not amount to a violation of the prohibition of collective expulsions under Article 4 Protocol 4 of the European Convention of Human Rights (ECHR). As noted, the Court's verdict was found 'shocking'.

enforced and independently adjudicated, and are consistent with international law' (A/RES/73/195, I. § 15 (d)).

⁷ European Court of Human Rights, Case of *N.D. and N.T. v. Spain*, Application Nos. 8675/15 and 8697/15, https://hudoc.echr.coe.int/eng#_Toc31809956.

Against this backlash, I will argue here that inroads into sustainable livelihood in Africa envisioned in the 2030 Agenda are possible through transformative United Nations rule-of-law technical assistance, but heretofore hardly pursued.

In a separate Opinion Judge Aleš Pejchal offered an insight into the ECtHR's verdict. Although he concurred with it, he showed 'totally different and new approach'⁸. He first pointed out that the applicants' home countries ratified the African Charter of Human and People's Rights. From there begins their quest for justice, in terms of the Charter's protection of their fundamental rights and duties toward their home countries which he enumerated. He next observed that while the applicants' claims to seek justice in another legal community stand as an idealistic academic argument of John Rawls' theory of justice, however, their own quest for justice must be supported by evidence of their unfair treatment. Judge Pejchal meant the 'exceptional nature' of circumstances and 'specific problem' involving that treatment, as a result of which the applicants could not pursue their particular rights and exercise particular duties *vis-à-vis* their home countries and the continent.⁹

For the purpose of the UN transformative rule-of-law technical assistance outcomes that may address and hopefully *in spe* alleviate such serious problems on the continent wherefrom the applications originated, I will venture into Rawls':

- 'difference principle' (DP), i.e. '[s]ocial and economic inequalities... are to be to the greatest benefit of the least-advantaged members of society'¹⁰, which is a part of his
- 'reflective equilibrium' (RE) alias 'wide reflective equilibrium'¹¹, i.e. a procedure of a broad, open-minded moral and ethical 'back and forth' reflection on general principles and particular judgements over a problem whose solution inductively brings a coherent normative outcome for a shared bottom-up progressive justice reform enabling the DP to address inequality in source and host countries flexibly and systematically.

⁸ Case of N.D..., p. 108.

⁹ Case of N.D..., pp. 103-4.

¹⁰ J. Rawls, *Justice as Fairness*, Harvard University Press. Kindle Edition, pp. 42-43; S. Redo, *Criminological Reflections on the European House Rules and Freedom From Fear in the Age of Migration*, [in:] eds. E.M. Guzik-Makaruk, K. Laskowska, W. Filipkowski, *Liber Amicorum in Honour of Professor Emil W. Pływaczewski*, Białystok 2022 [in print].

¹¹ A narrow RE is limited to retaining the original moral judgment (J. Rawls. *Justice...*, p. 31).

DIFFERENCE PRINCIPLE AND THE NORMATIVE IMPACT OF AGENCY

Regarding the equivalence of benefits, Aristotle noted that there is no absolute number of shoes made by a shoemaker that equals the value of a house constructed by a builder. This is because 'reciprocity is very inexact when it comes to benefits and very exact when it comes to evils'¹². Until the second half of the 20th century the equivalence of benefits (later interpreted as 'win-win') in technical assistance had been a guessing game. In an effort to say what credible equivalence means in international developmental aid, Mitchell Sharp, Canadian Deputy Minister for Trade and Commerce (1951-1957), very brilliantly argued that '[i]f the primary purpose of our aid is to help ourselves, rather than to help others, we shall probably receive in return what we deserve, and a good deal less than we expect'¹³. Concerning the difference principle, a senior official of the United Nations Development Programme stressed that 'John Rawls was right in his famous and magnus opus theory of Justice (1971) when he argued that "The Primacy of Justice is the fundamental of a sturdy social contact, i.e. where inequalities are minimized"'¹⁴.

Regrettably, right as Rawls may be and progressive as his justice philosophy indeed is, academics documented intercultural disagreements over the sense of justice in his terms. Results of laboratory experiments from Canada, China, Poland, the Republic of Korea and the USA in this regard seem very compelling: cultural factors loom large in the process of determining the proper balance between the maximization of wealth and protecting the interests of the worse-off in a community. At the time of the experiments, in each society people generally rejected the principle, as if they would now question the current sense of SDG 10 insofar it targets the reduction of inequalities within countries¹⁵.

A minori ad maius, since people seem to say 'no' to relative mutual advantages among themselves, there should be no such advantages among countries. From the latter fragmentary perspective I will argue to the con-

¹² Aristotle, *Nichomachean Ethics*, Book. 5, sec. 5, 1133-1134, [in:] ed. R. McKeon, *The Basic Works*, New York 2001. For a contemporary analysis of functional equivalence, see A. Przeworski, H. Teune, *The Logic of Comparative Social Inquiry*, New York 1970.

¹³ M. Sharp, *Canada's Stake in International Programmes*, Dialogue 1961, p. 47.

¹⁴ A.M. Dieye, *Measuring Inequality in 21st Century*, 28 Mar. 2019, <https://bit.ly/3mQ3QgZ>.

¹⁵ H.M. Chan, *Rawls' Theory of Justice: A Naturalistic Evaluation*, 'Journal of Medicine and Philosophy' 2005/5, pp. 449-465.

trary, also *contra intentionem* of Rawls who reserved such benefits to well-ordered, i.e. relatively egalitarian societies.¹⁶ Namely, I will argue that the 2000 UN principle of transformative solidarity: ‘Those who suffer or who benefit least deserve help from those who benefit most’¹⁷ is the one which enables his same-kind principle and likewise UN-akin procedure to be employed worldwide as a ‘win-win’ rule-of-law technical cooperation strategy. In technical assistance terms, they may both serve responsible migration under the 2030 Agenda by scaling mutual advantages so as to arrive at a relatively satisfactory outcome to leave no one behind¹⁸.

Judge Pejchal invoked the African Charter not merely in its nominal wording. In essence, this is the normative question of individual and collective agency: who is responsible for what or what social expectations and experiences make the Charter work to pursue the pro-African motivation of its local stakeholders, including the two pushed-back African nationals?

The UN and even less so the African Union/AU, in whose prerogative rests the implementation of the Charter, have much power to steer the vehicle for orderly, safe, regular and responsible migration. Both entities are dependent on extra-budgetary funding from donor States or intergovernmental entities like the European Union (EU) or the Organization for Economic Development and Cooperation (OECD). Since funding is earmarked, the UN or AU hardly implement their own vision of the SDGs. Consequently, what follows below is a contribution to a ‘model UN’ vision of ‘win-win’, eventually ‘triple-win’ rule-of-law technical assistance, originally inspired by the solidarity principle. In this model, the implementation of rule of law is the major target, as per SDG 16.3 (‘the rule of law at the national and international levels, and...equal access to justice for all’) under the Agenda’s general umbrella of transformative sustainable development.

REFLECTIVE EQUILIBRIUM AS A GENERAL CONCEPT

What now needs to be also highlighted is the overall Rawls’ principle of Reflective Equilibrium (RE). Criminologically, this may be an application of the Rational Choice Theory¹⁹. Procedurally, this is a Socratic quest

¹⁶ He did not endorse the Difference Principle globally. (Samuel Freeman, *Distributive Justice and the Law of Peoples*, [in:] ed. R. Martin, *Rawls’ Law of Peoples: A Realistic Utopia?*, Kindle Edition, Ch. 14).

¹⁷ United Nations UN, 2015. *Millennium Development Goals Declaration*, 18 Sept. 2015, (§ 6, A/RES/55/2).

¹⁸ A/RES/70/1, §§ 4, 74.

¹⁹ H. Kliemt, *On the Nature and Significance of (Ideal) Rational Choice Theory*, ‘Analyse & Kritik’ 2018/1, pp. 131-159.

for justice, but only insofar it involves self-reflection as a method inspired by Socrates²⁰. Ideologically, this is a process premised on inclusive thinking and action aimed at workable social contract outcomes.

While Rawls' full approach to justice is theoretical in the sense of the 'original position' from which basic 'godlike beings'²¹ reason what's next in DP terms, the following sidesteps his approach. Judge Pejchal did so in his Opinion, and I will do so in this text.

He argued that 'in the quest for justice Rawls' theory holds much more true in the field of international law than in domestic law, which has substantially more possibilities than international law to enforce the observance of the law'²². The Judge struck a balance between a particular humanitarian problem and the ethical principle of solidarity by highlighting the latter's normativity in the AU Charter. In other words, through RE he inter-regionally approached justice in nominal social contract terms.

I follow him, but suggest to discuss here accessing justice *glocally*, across the West-East cultural fault lines. This text does so by intimately pursuing Rawls' justice philosophy for a field implementation of an international technical assistance rule-of-law strategy aimed at enhancing respective rights and shared responsibilities²³.

This is an UN-minded approach. It is motivated by the ecumenical Golden Rule-like message of the UDHR: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood,' which originated from Confucian thought²⁴. This provision embodies all like-minded expressions in custom, religions, legal philosophies and cultures. It indeed stands – as Rawls would have said – for 'reciprocity at its

²⁰ Cf. S. Redo, *Is Socrates Mortal? On the Impact of Socratic Logic on Teaching and Learning the United Nations Crime Prevention Law*, [in:] eds. H. Kury, S. Redo, *Crime Prevention and Justice in 2030. The UN and the Universal Declaration of Human Rights*. Cham 2021, pp. 623-635; J. Kessels, *The Case of the Shared Values: An Example of a Socratic Dialogue*, [in:] eds. W. van der Burg, van T. Willigenburg, *Reflective Equilibrium: Essays in Honour of Robert Heeger*, Dordrecht 1998, pp. 203-215.

²¹ H.M. Chan, *Rawls'...*, p. 451.

²² Case of N.D..., p. 103.

²³ See also S. Redo, *For More United Nations Rule-of-Law 'Win-Win' Technical Assistance Outcomes amid Migration*, 'Studia Iuridica Toruniensia' 2021/XXIX, pp. 315-349, doi.org/10.12775/SIT.2021.035.

²⁴ Art.1, Universal Declaration of Human Rights, General Assembly resolution 217 (III A), 10 December 1948. For the etymology of this formulation, see, e.g., Y-J. Zhang, *The Universal Declaration of Human Rights: Public International Law and the Confucian Legal Culture for 2030 and Beyond*, [in:] H. Kury, S. Redo, *Crime Prevention...*, pp. 603-622.

deepest level²⁵. Paraphrasing him, ideally, the UN enjoys a unique original position from which it seeks justice as eventual fairness.

The UN may practically revive, assess, orchestrate scientifically and enhance the rule's fundamental value for such fairness through progressive technical assistance, initially conceptualized in the second part of the 1940s and incrementally modified ever since²⁶. The text below addresses locally conditioned rights and responsibilities as if the UN – quite naturally morally premised and authorized – had *de facto competencia ratione materiae et ratione loci* to venture into their implementation in Africa by practically broadening them through the SDGs' spectrum of normative rule-of-law outcomes for the sake of social justice. This UN-minded field approach is chiefly motivated by the SDGs' worldwide transformative objective. Inherent to the UN transformation is the progressive implementation of its global standards and norms by a constant reassessment (akin to RE) of their practical applicability.

RE AS A PRACTICAL EXAMPLE

The example involves the review of the local working environment whereby technically free, low paid, irregularly employed people should benefit from fairer labour standards, as per a global benchmark, e.g., treaty or soft law²⁷. On the one side, in line with that law's general ethical principle, i.e., the 1973 Minimum Age Convention of the International Labour Organization (ILO)²⁸, the general minimum age for admission to employment or work as per art. 7 § 1 is 15 years (13 for light work) and the minimum age for hazardous work is 18 years of age (16 under certain strict conditions). On the other side, as per art. 7 § 4, where the economy and educational facilities are insufficiently developed, the lower limits of age are 14 (12 for light work).

Regarding the latter age category, these may be exactly children from the impoverished families. They can survive in hard work environment only if they accept it for the sake of own livelihood opportunities. Such children are the most vulnerable, and their families are those the poorest and furthest behind²⁹. In 2020, the ILO estimated that about 150 mil-

²⁵ J. Rawls, *Justice...*, p. 49.

²⁶ S. Redo, *For More...*, p. 326.

²⁷ I.e., the soft law is more advanced.

²⁸ International Labour Organization, *Minimum Age Convention*, 1973 (No. 138) <https://bit.ly/3nZGVz8>.

²⁹ See A/RES/70/1, § 74.

lion children aged 5-17 years worldwide were engaged in years 2012-2016 in 'work that deprives children of their childhood, their potential and dignity, and that is harmful to their physical and mental development'³⁰.

African countries like Burkina Faso, Cote d'Ivoire, Ghana, Mali, Niger, Nigeria, and Togo are beset by trafficking in children and their slave labour. Some countries have ratified the ILO Minimum Age Convention and have enacted several domestic policies to protect children from hazardous work. Burkina Faso, for instance, participated in several international initiatives to combat child labour including the project funded by the US and similar projects conducted in collaboration with France and the European Union. Since the adoption in 2007 of the Education Orientation Law, schooling in Burkina Faso has been ostensibly free and compulsory up to the age of 16 years but, in reality, access to education is still dependent on the local availability of schools and the households' ability to purchase school materials and spare children from working on behalf of their families³¹.

This is a serious work environment problem. It will not be solved by nominally important laws. This requires a more forthcoming solution. In its interest, a technical assistance project may be guided by RE exclusively targeted at such children. To do so, a UN-principled donor should locally enhance with a recipient country fairer labour standards for the project's joint output, for example by providing or facilitating amenities or welfare assistance with a valuable developmental context (playground, fair play coaching, hospital, kindergarten, school, incentivized teaching, etc.) to reduce such child labour in the future, thus later more satisfactorily meeting the norms and standards set out by the ILO convention and the SDGs.

WHAT IS IN THE SCHOOL BACKPACKS?

This is not a challenge limited to purchasing school commodities, be they schoolbooks, backpacks or tablets, or even the perfunctory thought experiments. Symbolic here may be the Polish Government's token gesture of purchase of school backpacks for the Syrian children ('School backpacks

³⁰ International Labour Organization, *What is Child Labour*, <https://bit.ly/3D3x6pS>; ILO, *Global Estimates of Child Labour (2012-2016)*, <https://bit.ly/3EotZTs>.

³¹ O. Oppong-Nkrumah, J.S. Kaufman, J. Heymann, J. Frank, A. Nandi, *The Impact of Increasing the Minimum Legal Age for Work on School Attendance in Low- and Middle-Income Countries 2019/8*, pp. 1-8.

for Aleppo'), never delivered there³². Not only that Government, but other Governments attempts were ill-fated as well³³.

A genuinely helpful, humane and social justice conduct involves the aforementioned 'valuable developmental context'. Perhaps the most relevant to it is 'agency freedom' for children, so much emphasized by the United Nations Convention on the Rights of a Child:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child (art. 12 § 1)³⁴.

This particularly powerful idea highlighted by Amartya Sen, Rawls' Indian friend and critic, should sensitize educationists and educators to children's own visions of their valued future or what they need today³⁵. It should be one of the drivers for a progressive educational reform. It should incentivize inspiratory interactions between children, teachers and other caretakers to break away from the cycle of self-sustaining poverty – material and of thought. For any instructor this is a much more tedious but insightful field experiment that may provide quite hopeful and viable conclusions then just 'us-to-them' education³⁶.

To sum up, in keeping with the above principles of technical assistance aimed at reducing inequalities by carefully balancing mutual benefits while raising the labour standards, the project has *pro domo sua* (in the sense of *urbi* and *orbi*) transformative potential as per SDGs 8.7, 10 and 16.3 – all with the general objective to leave no one behind.

³² *Wystąpienie do Ministra Spraw Zagranicznych w sprawie syryjskich dzieci*, 19 Feb. 2018, <https://bit.ly/3oQ6bbd>.

³³ TheirWorld, *Still a broken promise: world leaders fail to deliver for out-of-school Syrian refugee children* <https://bit.ly/3i0wg4r>, 21 Mar. 2021.

³⁴ The United Nations Convention on the Rights of a Child, 1577 U.N.T.S. 3.

³⁵ See further K. Williams and H. Daniels, *Youth Justice as Justice for Children: Towards a Capabilities Approach*, [in:] eds. J. Blaustein, K. Fitz-Gibbon, N.W. Pino, R. White, *The Emerald Handbook of Crime, Justice and Sustainable Development*, Bingley UK 2020, pp. 273–294.

³⁶ S. Redo, *On the Dialogues in Hell Between Machiavelli and Montesquieu from the Perspective of Climate Change, Migration and the Rule of Law*, [in:] ed. S. Redo, *The Retreat of the Rule of Law. Reflections on the Challenges to Justice in the United Nations World*, Lexington Books Lanham, MD 2022, pp. 281–322.

DISCUSSION

Given intercultural adverse DP findings documented through laboratory thought experiments this could look as if, indeed, there would be 'no evidence that the ethos of a people can be changed according to plan. It is one thing to engineer consent by the techniques of mass manipulation; to change a people's fundamental view of the world is quite a different thing, perhaps especially if the change is in the direction of a more complicated and demanding morality'³⁷.

This statement was true until the turn of the centuries. Then the economic inequalities were not so excessive like now, and there were no UN millennial transformative goals. Moreover, contrary to it, in real-life situations people react in surprising unison. Consider the following situations: during a plane's flight, it dives sharply; a chemical process in a plant prompts an abrupt change of temperature; a bestiality is committed. In each instance reacting or reciprocating with the same intensity bounces back but only with a greater amplitude. A few more of these ever-increasing reactions and the situation will get out of control: the plane will crash; the plant will explode; people will murder each other until the last one remains³⁸.

Are the above findings from the differential calculus of instantaneous rates of change then applicable to the rule-of-law technical assistance? In other words, does the growing despotism prompt people to express instantly their counter preference for larger freedom sought by the United Nations Charter, the UDHR and the 2030 Sustainable Development Agenda? If not, what must be balanced out to arrive at a more fetching outcome to control disorderly, unsafe and irregular migration? In short, to what extent and when does such a control yield fair *pro tanto* outcomes?

The two figures seek to answer this one question. Figure 1 does so from a technical assistance practitioner's perspective in a source country of migration³⁹. The graph envisions technical assistance as a field-based, three-step bottom-up pragmatic procedure countering persisting child labour. The figure envisions the alternative result delivered as a virtual

³⁷ E.C. Banfield, *The Moral Basis of a Backward Society*. Glencoe, IL: 1958, p. 165.

³⁸ See P. Szafranski, *Czy nie sądzicie że Alianci postąpili zbyt łagodnie w stosunku do Niemców zaraz po II Wojnie Światowej?*, <https://bit.ly/3CTblcF>.

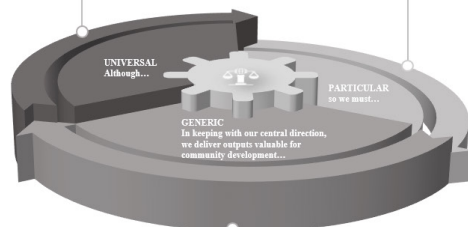
³⁹ J.J.M. van Delden, G.J.M.W. van Thiel, *Reflective Equilibrium as a Normative-Empirical Model in Bioethics*, [in:] eds. W. van der Burg W., T. van Willigenburg, *Reflective Equilibrium*. Library of Ethics and Applied Philosophy, vol 2, Dordrecht 1998, pp. 3,8, https://doi.org/10.1007/978-94-011-4972-3_20.

social justice contract for meeting locally SDG target 10.7 in the next round of technical cooperation⁴⁰.

UNIVERSAL

Children under 12 y.o. should not work anywhere. Apply rules and procedures universally to ensure consistency with UN sustainable development goal of decent work and growth

3



PARTICULAR

This African least developed country project is addressed to very poor rural communities where children below 12 y.o. work which should be eliminated

1

GENERIC

Since children below 12 y.o. work in this country, and we focus on a UN sustainable development goal of decent work and growth, we can deliver outputs that are valuable for community development and children's welfare

2

Figure 1 UN crime prevention (3) with local adaptations (1/2) and discretion (2/3)

Source: Adapted from F. Trompenaars, *Law Across Cultures: An Overview*, [in:]: ed. R. Blanpain, *Law in Motion. International Encyclopaedia of Laws*, Dordrecht 1997, pp. 27-46.

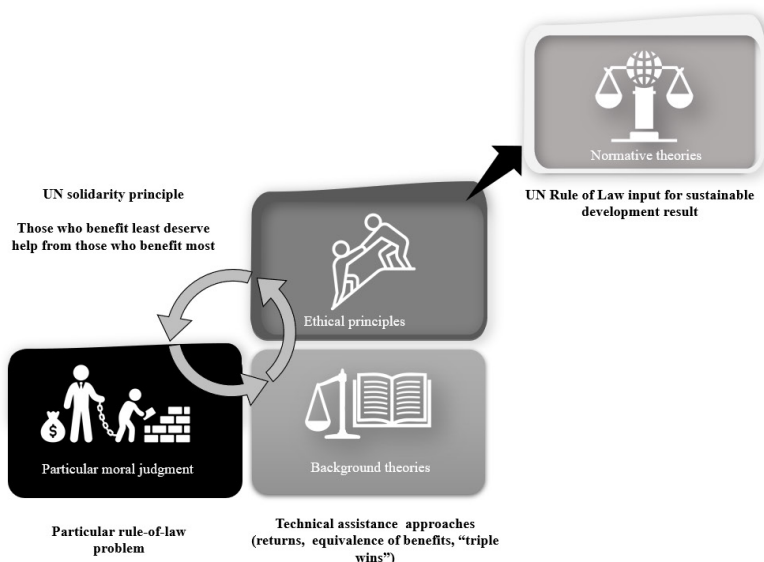


Figure 2 Reflective Equilibrium and the decision-making – UN rule of law for sustainable development

⁴⁰ Cf. S. Redo, *Is Socrates Mortal?*, pp. 623-635.

Figure 2 answers the same question from the Rawlsian RE structural perspective with the collateral UN principle of transformative solidarity. The figure consists of four elements. The first constitutes an individual 'considered judgment' of a particular moral issue, e.g., of the aforementioned child slave labour in a source country of migration. The second element comprises local and general ethical principles. As per Rawls' idea, these two elements, i.e., moral judgment and those external principles, are mutually reflective and adjustable. They are also modified by the third element. It comprises academic theories e.g., general social theory, theories about the nature of a person, including (non)moral considerations, ways of thinking, set of beliefs, social contract⁴¹. Drawing on these three elements, stakeholders' partnership interactions eventually produce the fourth element. It reflects a coherent progressive normative conclusion that makes sense for justice as fair *pro tanto*. The figure shows these four 'process-to-product' elements for such a UN rule-of-law upcycle interregional sustainable development outcome. It induces consensus for cooperation. It yields commensurate benefits for members of civil society seized by slave labour of children that may be eliminated in the next round through technical cooperation.

Source: Own work inspired by figures from S. Thagard, *Computational Philosophy of Science*, Cambridge, MA-London 1993, p. 122; N. Doom, B. Thaebe, *Rawls' Wide Reflective Equilibrium as a Method for Engaged Interdisciplinary Collaboration: Potentials and Limitations for the Context of Technological Risks*, 'Science, Technology, & Human Values' 2018/3, pp. 492; 487-517.

FIVE ASPECTS OF SHARED RESPONSIBILITY

First, since originally people were apparently more charitable to strangers because they earlier encountered fewer of them (reciprocity was tribal)⁴², technical assistance should strengthen the responsibilities and commitments to fairness and reciprocity across the spectrum of beneficiaries. Accordingly, the figures show incremental rights and responsibilities for social justice. Technical assistance providers should emphasize in projects the value of hard unskilled work, independent small-scale entrepreneurship and studious behaviour in poor educational environments. 'Policies designed to raise the returns to these activities might garner widespread support. Strong reciprocity sentiments might also support policies

⁴¹ W. van der Burg, T. van Willigenburg, *Reflective...*, pp. 3, 8.

⁴² M.E. Price, *The Resurrection of Group Selection as a Theory of Human Cooperation*. 'Social Justice Research' 2008/21, p. 236.

that insure individuals against the vagaries of the weather or the market without compensating them for losses to laziness or poor judgement⁴³. However ambitious this sounds, '[p]eople give meaning to rights by exercising them'⁴⁴.

Second, Rawls, who studied the evolving behaviour of the sixteenth century Catholics and Protestants struggling against each another, pointed that both slowly realized that they could not defeat each other. Once they realized that, Rawls writes, both religious groups initially found an expedient *modus vivendi*. Eventually, they reciprocally endorsed themselves on moral grounds enabling co-existence, hence achieving 'overlapping consensus'⁴⁵. Academic Rawlsian idiosyncrasies aside⁴⁶, achieving the same between the Tutsis and Hutus in Rwanda is exactly what is needed to be done there by a technical assistance provider addressing access to justice (SDGs 10 and 16) in this post-genocide time⁴⁷. Sharp's persuasive argument corroborated by his own practical technical assistance experience should suffice here. However, achieving coherence in moral beliefs necessitates its ethnically non-discriminatory value (SDG 16 b). This is the real test for the UN solidarity principle, and – indirectly – of DP and RE.

Third, and consequently, the UN's *modus praevalentis* (rather than a mere *modus vivendi*) for the implementation of the solidarity principle must inculcate the sustainable development perspective with rule-of-law outcomes. There is no coincidence that, for the first time ever in the UN legislative history, the Global Compact provides for an intergovernmental definition of the rule of law. In other words, the UN as a 'benevolent conqueror'⁴⁸ applying its own DP version globally may help to incorporate such rule-of-law outcomes through technical assistance project's benefits for a donor and recipient, both seized by migration. Orderly, safe and regular migration according to the rule-of-law is a shared responsi-

⁴³ Cf. H. Gintis, J. Henrich, S. Bowles, R. Boyd, E. Fehr, *Strong Reciprocity and the Roots of Human Morality*, 'Social Justice Research' 2008/21, p. 245, doi: 10.1007/s11211-008-0067-y.

⁴⁴ R.C. Offenheiser, S.H. Holcombe, *Challenges and Opportunities in Implementing a Rights-Based Approach to Development: An Oxfam America Perspective*, 'Nonprofit and Voluntary Sector Quarterly' 2003/2, p. 286, doi: 10.1177/0899764003251739.

⁴⁵ J. Rawls, *Justice...*, pp. 192-193.

⁴⁶ Again, Rawls was against using the Difference Principle globally.

⁴⁷ S. Redo, H. Kury, *Epilogue*, [in:] H. Kury, S. Redo, *Crime Prevention...*, p. 719.

⁴⁸ Ch. Volk, *The Law of The Nations and The Civil Law of the World. On Montesquieu's Political Cosmopolitanism*, [in:] eds. S. Kadelbach, T. Kleinlein, D. Roth-Isigkeit, *Order, and International Law System. The Early History of International Legal Thought from Machiavelli to Hegel*, Oxford 2017, p. 242.

bility. Simply put, '[e]ach party benefits from the activity of the other'⁴⁹. Migration and climate change penetrate new moral grounds. These developments clearly go beyond a tribal sense of reciprocity. They prompt to demarcate co-existence according to the UN emblematic reciprocity: 'Do unto others what you would want others to do unto you', justified by the UDHR.

Fourth, in the excerpted Judge Pejchal's Opinion is the AU's Charter provision stating the duty to pay taxes imposed by law in the interest of the society. Poor tax governance in Africa involves tax avoidance by transnational corporations. A fair share of the taxed national income should go to low income families to fund welfare benefits. Nothing should stand in the way of future technical assistance to improve tax governance and anti-corruption, hence potentially, if not also eventually, social welfare.

Fifth, Rawls' philosophy is relevant to Judge Pejchal's opinion about the rights and exercising particular duties *vis-à-vis* the applicants' home countries and the continent. If to follow Rawls, Judge Pejchal alludes to a contract according to which every individual gives his or her adherence to civil society only on condition that they be guaranteed certain minima which one might call 'rights'⁵⁰. On paper, the AU contract serves to set the goals and limits of civil society, to prescribe duties to rulers and to motivate the citizens. The fact that both applicants fled their countries speaks for itself.

TWO DRAMATIC DEVELOPMENTS

While listing the above five observations, two dramatic developments have started threatening the EU's sustainable and peaceful future. First, in several locations bordering with the Schengen area and elsewhere on the European continent, EU law enforcement authorities have been compulsively reacting to transgressing migrants by pushing them back to those outside locations. While in the beginning of 2022, the Spanish law enforcement authorities in Melilla have been countering the incursions of hundreds of African illegal migrants from Morocco⁵¹, since the second half of

⁴⁹ A.C. Day, Ch.T. Hunt, *Stabilisation Operations and the Problem of Non-Linear Change: A Relational Approach to Intervening in Governance Ecosystems*, 'Stability: International Journal of Security & Development' 2020/1, p. 7, doi.org/10.5334/sta.727.

⁵⁰ Cf. A. Bloom Justice, *John Rawls vs. The Tradition of Political Philosophy*, 'The American Political Science Review' 1975/2, pp. 649-650.

⁵¹ Euronews, *Melilla: Hundreds. of Migrants Force Their Way Across Border to Spanish Enclave*, 3 March 2022, <https://bit.ly/3KCKfjZ>.

2021 Polish authorities on the border with Belorussia have been preventing the transgressions of hundreds, if not thousands of Western Asian and Middle Eastern people. In either case with a moderate effect, because the influx continues. Second, and conversely, since the 2022 Russia's invasion of Ukraine, Poland has experienced a massive influx of refugees from Ukraine, including fleeing non-European students from Ukrainian universities.

Two questions are then prompted by these practically untamed flows of newcomers into the EU. First, its paradigmatic impact on equality, including pluralism, multiculturalism and integration for sustainable development. Second, its fundamental impact on larger freedom, in terms of the EU countries' justice challenges.

MIGRATION ACROSS THE CULTURAL FAULT LINES

Addressing the **first development**, I worked as a Senior UN Crime Prevention and Criminal Justice Expert in Central Asia tasked to counter transnational organized crime⁵². My office technically assisted, *inter alia*, in strengthening border controls against illicit drug trafficking, by providing numerous equipment for law enforcement officials, including manuals on the training of drug-sniffing dogs. The major indicator of returns in our work had been the reported drug seizures. Every now and then I wondered how successful our effort was in curtailing the influx of drugs into Eurasia. Drug demand reduction was in an incipient stage. Countering undocumented migration is now exactly the same kind of ambiguous question at an early stage of developing preventive measures.

Technical assistance shows that any country's legal culture alone is not adapted and effective enough to counter uncivil behaviour which transcends national borders (e.g., trafficking in drugs, people, firearms; corruption). Building 'fences', either physical or mental, in the era of globalization should be reconsidered. Rather than building trust in walls we should put more trust into global civic virtues. Intercultural civic education and training should contribute to technical assistance safeguards enabling reciprocal relations for real mutual benefits⁵³.

⁵² As per the adopted then United Nations Convention against Transnational Organized Crime. in 1996 originated from the initiative of Poland at the United Nations General Assembly.

⁵³ H. Kury, S. Redo, eds., *Refugees and Migrants in Law and Policy. Challenges and Opportunities for Global Civic Education*, Cham 2018.

This idealism flies in the face of reality: there is only one 1951 UN convention on the status of refugees and a few recent declarations regarding them and migrants. Without addressing the root causes of migration, strengthening border controls technically provides little help. Therefore, a few detailed criminological observations may offer an alternative perspective.

First, in journalistic accounts of migrants' hopes and tragedies, two seem to be the most relevant to the tenor of this brief text. In one account from Ibril (Iraq), a local migrants' smuggler who coordinated this organized crime service, reported his clients to be 'hungry for life'⁵⁴. How surprisingly easy that 'hunger' was successfully quelled by organized criminals, including some State actors, as if their adult victim was an immature child incapable of forming his or her own views about the self and smugglers' motivation! Would the solidarity principle pursued in 'triple win' terms be the more effective way for the source countries to overcome the self-sustained underdevelopment jeopardized by climate change and prompting migration? In another account, an Iraqi immigrant interviewed at the Belorussian-Polish border felt that her 200 US dollar wage per month earned in Kurdistan had not been enough to support her family there. She hoped for more in the EU, to save and support her family in its native home⁵⁵. Three decades ago, in 1991, after the fall of 'peoples' democracy' and socialist economy in Poland, the minimum wage there was 70 US dollars per month (ca. 650 US dollars in 2020), and the average salary ranged between 180 to 200 US dollars per month (ca. 1 300 US dollars in 2020). Regardless of any country, aspirations of people grow, which is absolutely natural and legitimate. Hence, more people living worldwide below the international absolute poverty line of 1.90 US dollar a day (SDG 1) will not stop disorderly migration by a mere militarization of borders. Judge Pejchal's sublime message to the AU countries thus matters also for EU countries and their residents. All over the world people want higher living standards. This is what the UN Charter and the Universal Declaration of Human Rights stand for. The EU and other technical assistance donors must critically look not only what to put in the school backpacks but also how from their own pockets they can appeal successfully to the minds and hearts of adult potential migrants to take their own destiny

⁵⁴ M. Czarnecki, *Zbadaliśmy w Iraku, jak Mińsk sprowadził tysiące ludzi na polską granicę. Dziesiątki powodów do ucieczki i wielki biznes*, 'Gazeta Wyborcza', 21 Oct. 2021, <https://bit.ly/3qyac6S>.

⁵⁵ W. Bielaszyn, *Relacja z obozu w Kuźnicy: Młodzi i bez dzieci chcą forsować granicę. Wielu chce wrócić do Iraku, ale nie mają za co ani jak*, 'Gazeta Wyborcza', 14 Oct. 2021, <https://bit.ly/3orycWB>.

more into their own hands, wherever they live. Why aren't there genuinely motivating transformative life chance-giving conditions in the source countries of migrants that would enable them to stay put? What kind of a toxin could be in ideologies that make people poor? Who is responsible for material poverty and dispenses poverty of thought? How to alleviate both? What kind of protective factors can stay their decision to leave? Who really scales fences and who scales them down to make people living in an uncorrupted and fair system?

Second, curtailing migration from countries wherefrom injustice stands out requires very considerable modification of technical assistance. Judge Pejchal wrote: 'In my view, practically speaking and allowing for a touch of overstatement, the Spanish security forces committed one small mistake. When returning all the persons involved in the climbing of the fence back to Moroccan territory, they could have informed them that if they were not satisfied with the situation of human rights protection in their home countries, they could bring an action before the African Court on Human and Peoples' Rights, which was competent in the matter'⁵⁶.

Global North developmental aid has not been incisive and large enough to prevent disorderly, unsafe and irregular migration. That aid for the least advantaged should be more progressive and paradigmatic. It grows even more urgent because of the imminent environmental migration. Countries of the Global North and South are mutually indebted to Mother Earth, hence the need to pursue the 'triple win' to scale down fences on the road to a global rule of law for sustainable development. Again, while writing these observations I came across the following view: 'The feeling of superiority of one nation over another should be replaced by a more universalistic thinking. On the one side – the care of immediate environment, on the other side – the care of greater piece of Earth than that closed within the borders of any country. So I understand modern patriotism'⁵⁷. This inspired me: so I understand the rule of law and the EU's 'Global Gateway' project as loyalty to Mother Earth (SDG 12.8). Consequently, with no touch of overstatement, any providers of technical assistance to the Governments of migrant-source countries should be encouraged to pursue more vigorously the commensurate rule-of-law safeguards.

Last but not least, from the Opinion of Judge Pejchal we learn that one of the applicants returned to his home country, the other applicant has been somewhere in Spain. If to recall now the Opinion's-listed Charter's responsibilities, then the whereabouts of the two applicants may symbol-

⁵⁶ Case of N.D..., p. 106.

⁵⁷ K. Sienkiewicz [in:] J. Szubrych, *Kuba Sienkiewicz: Polskiego społeczeństwa nie ma. Narodu też*, 'Gazeta Wyborcza', 24 Nov. 2021, <https://bit.ly/3HVSdO6>.

ize the divisive motivations with which the EU and the AU are confronted. Both must responsibly address the growing problem of disorderly, unsafe and irregular migration within their own jurisdictions. How many millions of new immigrants will drive them to act more responsibly and effectively? Have the three decades of Polish transformation efforts taught us how to build sustainable livelihoods around the world with the rule of law as their ultimate guarantee that stays put and is not sought elsewhere?

FAULT LINES AND PUSH BACKS IN THE ERA OF MIGRATION AND CLIMATE CHANGE

Addressing **the second development**, in about an hour into a United Nations Security Council meeting, Vladimir V. Putin, the President of Russian Federation, announced in Moscow that a ‘special military operation’ in Ukraine’s eastern Donbas region had commenced, and that he had asked Ukrainian troops to put down their arms⁵⁸. This announcement cannot be more symbolic and telling (if not also ostensible but ominous) to draw de facto a fault line on global peace and war than the Council’s venue in the UN HQ in New York.

Samuel Huntington would not have been surprised with such a demarcation line akin to his – dividing the Western Christianity from the Eastern world of Orthodoxy and Islam. He even maintained that the Eastern boundary of Western Christianity starts at the Norwegian-Russian coastal Barents Sea border and ends up at the Adriatic coast on the border of Bosnia & Herzegovina with Albania⁵⁹. But he would also may have recognized that, in fact, a civilizational fault line is not the same as a physical Cold War border line. Moreover, a true fault line runs through people’s minds, eventually demarcated by the soft power of ideology. With such mind’s content people migrate elsewhere.

The Ukrainians forced to emigrate to the neighbouring countries, including those entering Poland, are by and large a culturally fitting flock of people. It then goes without saying that such a cultural proximity between Ukrainian and Polish citizens, motivated by both groups’ similar idea of larger freedom, makes the right to refuge a much more ‘universal,

⁵⁸ United Nations, *As Security Council Meets on Ukraine Crisis, Russia Announces Start of ‘Special Military Operation’*, <https://bit.ly/3tY13Vo>.

⁵⁹ In-between it runs along Baltic States’ borders with western Belarus; through western Ukraine, around the western border of Hungary into Transylvania (Romania), then of the northern part of Serbia (S.P. Huntington, *The Clash of Civilizations?*, ‘Foreign Affairs’ 1993/3, p. 30).

indivisible and inalienable' (to use this sacred human rights concept) than in the case of irregular entrants into the EU who force its Belorussian border, also in the context of the first 'safe country' from which they came. Depending in which place along the border line one addresses the migration question, we may argue against illegitimate 'racialization' ('selective humanitarianism') or for a legitimate 'cultural defence'⁶⁰ across the entire EU/Belorussian-Ukrainian border.

Consequently, conflicting answers will be heard to the following questions: Is this differential treatment justifiable and defensible? Is it reformable? How do law enforcement authorities on the Ukrainian-Polish border treat non-European students fleeing Ukraine, reportedly, pushing them back behind native Ukrainians⁶¹? Why did so called 'citizen vigilance patrols' on the Polish side of the border with Ukraine persecute those students⁶²?

KUDOS AND CONCLUDING REMARKS

Some such questions may be answered by Professor Andrzej Rzepliński in whose recognition as eminent judge with rule-of-law accomplishments this text has been written, especially those ensuing from the EU's respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. 'These values – we read in the Treaty of the EU – 'are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail' (art. 2)⁶³.

Particularly the 'old' EU members are weary of the happenstance political commitments to undermine these values. Since 2016 Poland has been experiencing ever increasing erosion of the rule of law. Time may show, if it was for good halted by the 2021/2022 refugee crisis which added to its neglect the push-backs at the border with Belarus, but – likewise – may show that the erosion continues unabated, if and when the

⁶⁰ L. Orgad, *The Cultural Defense of Nations. A Liberal Theory of Majority Rights*, Oxford 2015.

⁶¹ France 24, 'Pushed Back Because We're Black': Africans Stranded at Ukraine-Poland Border, <https://bit.ly/3JcITqf>.

⁶² Wyborcza.pl, S. Żytnicki, *Rasistowski atak w Przemyślu. Kibole polują na czarnoskórych uciekinierów z Ukrainy*, <https://bit.ly/3KEh8Ga>.

⁶³ The Treaty on European Union, *Official Journal* 115, 09/05/2008 P. 0017-0017, <https://bit.ly/3JdsvoV>.

above EU values will further be perverted. Power corrupts. Absolute power corrupts absolutely. As of this writing, Polish legal reforms of 2016-2022 aimed at the elimination of independent judiciary are a part of a systemic corruption of the rule of law. Ukraine's rule of law is corrupted endemically.

Therefore, responding to other questions in a constructive way requires much more than just commenting on a happenstance humanitarian reflex involving very spontaneous and generous provision of food and shelter to refugees from Ukraine. Beyond it and for many years beyond 2030, the UN and EU human rights of refugees and migrants can either be addressed by assimilation or integration policy of a host country. How successful it might be depends which policy prevails *à la lettre*. Both groups will have different levels of access to justice (SDG 16.3) in every EU host country, and more or less open ways to advance and appreciate it. In fact (and again), people give meaning to rights by exercising them. But the same should be said for responsibilities. People give meaning to responsibilities by exercising them. Hence, so important is the evolving experience of host countries, where refugees and migrants are becoming now potential reciprocal actors for a new home rule-of-law equation, projected by the New York Declaration⁶⁴ and emphasized by practitioners⁶⁵.

If this equation succeeds, then host countries may prove *vis à vis* others in Europe that they share and promote it; that they genuinely and democratically exercise it and cooperate in its implementation worldwide. It should never be too late to pursue a far-reaching multicultural integration of migrants, and the assimilation of refugees. 'Racialization' is a fact of life. We have been living with it for decades⁶⁶.

A more inherent and comprehensive implementation of the Golden Rule is required, as stated upfront by the UDHR in its very first article. The rule's overarching sense is communicated by declaring it to be driven by 'reason and conscience...in a spirit of brotherhood' (in fact humankind). According to the *travaux préparatoires*, that ideological premise suggests the rule's essentially social sense 'as a function on the level of knowing'⁶⁷,

⁶⁴ 'We...note the obligation for refugees and migrants to observe the laws and regulations of their host countries' (II. § 39).

⁶⁵ International Organization for Migration, *The Responsibilities and Obligations of Migrants towards Host Countries*, <https://bit.ly/3MKsHha>.

⁶⁶ S. Castles, H. de Haas, M.J. Miller, *The Age of Migration. International Population Movements in the Modern World*, London 2014, pp. 59-60; I. Goldin, G. Cameron, M. Balarajan, *Exceptional People. How Migration Shaped Our World and Will Define Our Future*, Princeton and Oxford, 2011, pp. 70-90.

⁶⁷ S. Danchin, *The Universal Declaration of Human Rights*, <https://bit.ly/3tOcaQE>.

hence occasionally dormant (no reciprocity) unless awoken by ‘a spirit of brotherhood’ that prompts international reciprocity and cooperation.

When the UDHR was drafted, there were neither scientific findings to corroborate this premise nor any field experience how to make the rule work in practice through technical cooperation. Sadly, practical and experimental findings since then been accumulated suggest now that: ‘[a]ll that increased cooperation has done **is change the scale on which conflict takes place** [emphasis added]... [We]...would like to think there’s a happy story of peace and understanding. But you can’t be a 21st century human and not see that the trend is in the other direction’⁶⁸.

To reverse that direction, developmental aid may require new insights, policy recommendations and field-orientation accounting for the impact of global warming and people’s decisions to emigrate. The promotion of universal understanding of sustainable lifestyles (‘triple win’) is a priority (SDG 12.8), notwithstanding people’s other motivation for leaving their habitat.

Counter-migration technical assistance strategy should incorporate cutting edge education and training how back to square one reciprocity works: one-to-one, one-by-one, and item-by-item. This article merely demonstrated how to deal with one such item: elimination of child labour. By analogy, many other forms of uncivil or/and criminal behaviour like xenophobia, domestic violence, corruption, organized crime or – as far as immigrant groups in host countries are concerned – terrorism or just female genital mutilation be dealt with in just the same way.

In any such case, the rule-of-law outcomes should be functionally equivalent and measurable⁶⁹. They should aim at and prove the increased tolerance and sustainable livelihood opportunities, hence be eventually fair. This smarter and more individually appreciated rule-of-law technical assistance delivery (in a way a human rights’ antonym of targeted ‘smart sanctions’) may as well be appreciated in the context of pragmatic contributions of Sharp and Rawls. Their liberal arguments are particularly clear and helpful for the UN vision of countering exclusion, material poverty, the poverty of thought, and the side effects of climate change. Both intellectual contributions indeed substantiate the UN solidarity principle and operationalize it. Both may facilitate the implementation of the SDGs-driven projects in terms of their rule-of-law incrementally reciprocal value and outcomes for donor and recipient countries, ranging from high-ranking central government officials in capitals to local communities in the bush.

⁶⁸ R. Boyd, [in:] G. Vogel, *The Evolution of the Golden Rule*, ‘Science’ 2004/303, p. 1130, doi: 10.1126/science.303.5661.1128.

⁶⁹ A. Przeworski, H. Teune, *The Logic...*

But from the bush to the capital, from cradle to grave, we need to revive and inculcate in *pro tanto* terms that the Golden Rule is the most existential and fair way for sustainable livelihood in the age of migration and climate change.

Finally, at the risk of sounding outlandish, the following exchange at the 2022 session of the UN-mandated Intergovernmental Panel on Climate Change in my view offers indeed a paradigmatic lead in the above rule-of-law context:

‘The Russian head of delegation... apologised for his country’s invasion of Ukraine..., which he said lacked justification.’

Ukraine’s representative replied: ‘We will not surrender in Ukraine, and we hope the world will not surrender in building a climate resilient future... Human-induced climate change and the war on Ukraine have the same roots – fossil fuels – and our dependence on them’⁷⁰.

We are bracing for a big storm. The rule of law should be a weather-proof beacon. It should alert to the imminent risks to democracy in which the right of nations to self-determination; the threat of fascism; the rights of minorities (whether ethnic or migrants in general) are in focus.

But this can also sensitize to the failures in social justice and integration. These failures should not be regarded as a proof of immigrants’ cultural inferiority. Indeed, these will be rather failures of our own intercultural poverty of thought how to promote the rule of law for social progress and better standards of life in larger freedom through ‘triple win’, so peace and understanding will regain their canonical status.

If the UN through whose operational theatre run the various fault lines fails to react effectively in this vital regard, then this will be distressing. We may then see a deep fault line between war and peace. With Ukraine’s surrender, the rule of law in Poland may further erode. The verdicts of its Constitutional Tribunal undermining the independence of judiciary stipulated by the European Convention of Human Rights may be an existential threat to the rest of the EU’s legal order. The rule of law may be pushed back across the world, and larger freedom surrendered.

However appealing the call ‘*Slava Ukraini!*’ [Glory to Ukraine!] may now sound, after the war a global civic educator in any classroom worldwide should measure it up to the UN rule-of-law benchmarks (SDG 16). Depending on the outcome of the aggression, a new *limes orientalis* will emerge in people’s minds, and among the peoples: either running through the EU or further East. In any case and place, though, by enhancing learners’ functional skills to access justice, educators may contribute to ‘Peace,

⁷⁰ France 24, *Russian Official Apologies for War in Ukraine at UN Climate Meet*, 27 Feb. 2022, <https://bit.ly/35SHvcH>.

Justice and Strong Institutions’ (SDG 16), and to larger freedom from coast to coast and cradle to grave.

Ambitious (and somehow ambiguous) then as this proclamation may sound, I have tried to advance international developmental rule-of-law assistance by resuscitating the Golden Rule through ‘win-win’ strategy, substantiated by field and academic insights on child labour; migration and climate change. In my opinion, such a rule-of-law assistance is the way to reach out to vulnerable groups in migrant countries (e.g., those ‘left behind’ in Africa, those behind the EU border) i.e., in any place under the sun wherefrom the deficit of the rule of law prompts people to look for sustainable livelihood opportunities abroad. Anywhere indeed (that is also in the EU) we need to return to the basics of human cooperation and understanding, and do the elementary homework before ‘triple win’ advances in everyday relations through the loyalty to Mother Earth and to the rule of law.

Judge Aleš Pejchal, whose separate Opinion on the judgment in case *N.D. and N.T. v. Spain* prompted this whole text, had this to say about the two applicants: ‘Their attitude to the process of being granted protection of [...] rights and freedoms must show cognisance of the exceptional nature of the situation. Otherwise, the applicants’ conduct would be entirely lacking in the fundamental elements of fairness; in such a case it is inconceivable, in my view, that they should seek justice in the field of international law’⁷¹.

Reconceptualizing his statement, I conclude my action-oriented comments on that judgement with the following:

In the interest of justice as fairness, it is fundamentally important to push for the rule of law on a reciprocal basis – with rights, freedoms, but also responsibilities, all in the name of peace, multicultural integration, sustainable development, and notwithstanding the security concerns.

Regarding them, amid the tragedy in Ukraine – maybe a precursor of the Third World War – we indeed find ourselves with a ‘gun put to our head’, but not with a ‘gun to our head’⁷² put by the EU’s demand to defend the rule of law. The imminence of the Third World War comes to mind from one unlearned lesson: the genuine observance of the UDHR. Its preamble reads: ‘[I]t is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law’.

⁷¹ Case of *N.D.*..., p. 105.

⁷² Financial Times, *Poland’s Prime Minister Accuses EU of Making Demands with ‘Gun to Our Head’*, <https://on.ft.com/3KQpmem>, 24 Oct. 2021.

Without the rule of law our future will be inconceivable. If we do not take cognisance of this situation, then we are headed for a shocking outcome.

Sławomir Redo – Visiting Professor of United Nations Law, United Nations Studies Association (Vienna, Austria), ORCID: 0000-0003-2018-4217