

TEMIDA

Jun 2012, str. 49-60

ISSN: 1450-6637

DOI: 10.2298/TEM1202049R

Originalni naučni rad

From the Universal to the Particular through intercultural United Nations crime prevention law and practice

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The article focuses on some legal and criminological counter aspects of the functionalist approach to public international law, by taking as the example United Nations crime prevention law. On this basis, the article's author analyses the theoretical and practical meaning of cross-disciplinary concepts of the Universal and the Particular, known also in law and criminology as the General and the Specific. He emphasizes the coexistence of both concepts and their mutual reinforcement through the intercultural United Nations policy and action.

Keywords: corruption, crime prevention, peace, trafficking in human beings, United Nations.

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This article is the refocused and updated version of the author's text on "Sociology of knowledge on academic and bureaucratic knowledge" from his book titled *"Blue Criminology. The Power of United Nations Ideas to Counter Crime Globally"* (Redo, 2012). For some examples of philosophical consideration of the concepts of the Particular and the Universal, see: Sykes, 1975: 311-331 and Fletcher, 1987: 335-351. The term United Nations "law" is conceptually understood here as a loose collation of various provisions, but not their code as one consolidated legal text. However, in line with "promoting international co-operation in the political field and encouraging the progressive development of international law and its codification" (art. 13.1(a) of the United Nations Charter), this article seeks to interpret those provisions with a view to advancing the codification of international law. Last but not least, this article focuses only on some legal and criminological counter aspects of the functionalist approach to international law. Among those left out are the domestic translation aspects of the Particular into the Universal (see, e.g.: a traditionalist interpretation by Fletcher (op. cit.), and a modern one by Šarčević (1997); the inductive logic of international law and the inductive and other logic of the United Nations law (Redo, 2012).

Introduction

When working with the United Nations, the most universal and universalistic of all global organizations, I was keenly aware that each and every Member State has something particular in its domestic system that makes it different from others. Practically, any universal law is qualified by their particulars, expressed through legal language incompatible with the Universal.

Against this background academics in favour of a functionalist approach to international law argue that as long as developed legal systems, notwithstanding such particulars, reach the same substantive solution to a common problem, the interim ideas, concepts, or legal arguments through which these particulars are domestically expressed are eventually of little value. It is the final result that counts, and not the interim machinery producing it, for it only weakens the perception of the Universal (Kahn-Freund, 1966).¹

This article argues the contrary. It claims that ideas, concepts and legal arguments, as a part of a larger intercultural machinery, strengthen the Universal. Thanks to the Intercultural, the Universal and the Particular are not mutually exclusive. They coexist and mutually reinforce one another. I will demonstrate and discuss this using the example of United Nations crime prevention law.

The Universal in law

In the first preambular paragraph of the United Nations Economic and Social Council (ECOSOC) resolution on “Guidelines for the Prevention of Urban Crime” it states that urban crime has “universal character” (UN, 1995).

The Particular in law

At the very start of the statutory part of the resolution, in operative paragraph 1, it emphasizes “a local approach to problems” – a confirmation that urban crime is “glocal” (universal and particular at the same time). These

¹ Some commentators regard this interpretation as “a revised version of Montesquieu’s theory” (Ewald, 1995: 495) about which later.

problems can be solved through a multi-agency approach and a coordinated response at the local level, in accordance with an integrated crime prevention action plan, which should incorporate, inter alia, local diagnostic survey of crime phenomena, their characteristics, factors leading to them, the form they take and their extent.

The above approach is reemphasized by another ECOSOC crime prevention resolution (UN, 2002). It recognizes that "Each Member State is unique in its governmental structure, social characteristics and economic capacity and that those factors will influence the scope and implementation of its crime prevention programmes." Notwithstanding the above, the resolution next accepts the universalistic guidelines which it extensively lists in 33 operative paragraphs.

The Intercultural in law

In para. 27 (c) the resolution lists the stipulation for "Designing crime prevention strategies, where appropriate, to protect socially marginalized groups, especially women and children, who are vulnerable to the action of organized criminal groups, including trafficking in persons and smuggling of migrants."

The recognition that both trafficking in persons and smuggling of migrants are the forms of organized crime is the evidence for the influence of the Intercultural. Shortly after signing the United Nations Convention against Transnational Organized Crime (2000), very few Member States had in their criminal codes these (new) forms of crime. Mostly, its official recognition was limited only to some legal elements of it (e.g., prostitution). In 2001, the United Nations Office on Drugs and Crime (UNODC) through its pre-ratification technical assistance programme embarked on increasing the awareness of Member States on those two forms of organized crime. As a United Nations Senior Crime Prevention and Criminal Justice I was involved in Central Asia in this programme. In its course, one of the most important factors found involving the victims' trafficking was their cultural isolation from the outside world that rendered them an easy prey for the traffickers. Women's self-perceived role of house wives and child-bearers limited their understanding of their other development potential. When left on their own, in order to maintain their living such women can only transpose their domestic experience in the outside labour market. From its side, the traffickers can easily recruit them,

claiming a demand for cleaners, maids, sellers, babysitters; and for those who are in worse living condition – commercial sex (Redo, 2004: 68).

Against such a background, raising the legal awareness of signatories to the Convention on the need to criminalize trafficking in human beings and smuggling of migrants is only a minor part of the entire effort to redefine the scope of the Particular to the Universal through the Intercultural. In this process not only intergovernmental organizations and governments but also non-governmental organizations, private sector, faith groups and others should be a part of the machinery that transforms the Particular to the Universal.

Whether or not one wants to do it, that is another thing. "Obviously, the more one stresses the inner character of a culture, the more difficult it is to move on to comparison and generalization" (Kuper, 1983: 194).

For the universalists, this is quite a debilitating argument. It was originally articulated by Montesquieu (1689-1755)² and Friedrich Carl von Savigny (1779-1861), founder of the legal historical school. He wanted to purify Germanic law of any elements of Roman law for they did not reflect the German mindset. Everybody knows to what this kind of reasoning led in the 20th century, including war atrocities like genocide, ethnic cleansing and other barbarous acts.

Such a purification argument is often misread, at least as Montesquieu is concerned. In his "De l'Esprit des Lois" he wrote that the laws of different countries "should be so specific to the people for whom they are made, that it is a great coincidence if those of one nation can suit another."³ Still troubled by the master's credo⁴ underlying the relativity/specificity of laws, Montesquieu's followers seem to stretch his view emphasizing that laws should be adapted to the people for whom they are made. In other words, laws are made from the Universal to the Particular, rather than only from what one locally sees (Graziadei, 2003: 119). But probably the most conclusive and synthetic vision

² "The Montesquiean approach emerged as a perfect model also for the nationalists and ethnological comparative law... It had all the qualities of a persuasive socio-historical analysis. The claim regarding the autonomy of the nation suited many purposes perfectly" (Kiikeri, 2001: 16).

³ Translated by Robert Launay (2001: 23).

⁴ This critical passage then continues: "They should be relative to the physical qualities of the country: to is frozen, burning or temperate climate: to the quality, location, and size of the territory; to the mode of livelihood of the people. Farmers, hunters, or pastoralists; they should relate to the degree of liberty which the constitution can admit, to the religion of the inhabitants, their inclinations, to their wealth, to their numbers, to their commerce, to their mores, to their manners..." (Launay, 2001: 23).

of Montesquieu's work is advocated through this statement: "Montesquieu... attempted, through comparison, to penetrate the spirit of laws and thereby establish common principles of good government" (David, Brierley 1978: 2). In sum, Montesquieu's the Particular led his followers to the Universal.

This was later emphasized by the Sixth United Nations Congress on Crime Prevention and the Treatment of Offenders (1980), attended by Dušan Cotič, then the first-term member of the United Nations Committee on Crime, Prevention and Control – the preparatory Congress body which he served as Vice-Chairman-Cum-Rapporteur. The Congress in its Caracas Declaration affirmed the Particular by stating that "crime prevention and criminal justice should be considered in the context of economic development, political, social and cultural systems and social values and changes, as well as in the context of a new international economic order" (UN, 1980, op. para. 3). Recently, but certainly not lastly in the United Nations, the General Assembly that endorsed the Salvador Declaration of the Twelfth Congress on Crime Prevention and Criminal Justice, invited "Governments... to implement the principles contained therein, taking into account the economic, social, legal and cultural specificities of their respective States" (UN, 2010, op. para. 5).

In the above light, so much originally pondered by Montesquieu, Savigny and other lawyers, as paradoxical as the following question may now sound, one still wonders that while Member States are jointly affirming the particularity of crime prevention in each country, why do each of them declare the same thing? Is this not then the evidence of universality of particular problems? If so, is the Particular a legal disclaimer protecting State sovereignty rather than declaring real differences? Second, why did each country affirm that only a locally-driven modernization ("new international economic order") can be beneficial to the effective and humane crime prevention and criminal justice, while – at least some Member States – also advocated a contrary view that of centrally-led new international economic order for the whole world?

There are some plausible explanations. A first explanation suggests that both affirmations (the Universal and the Particular) are not mutually exclusive. They rather are a collective anti-theses of the individual positions. They are a demonstration of legal unity in diversity, for the United Nations law is a universalizing system of „*We the peoples*“. It ordains cultural, political, social and economic specificities. It expresses a collective „*Volksgeist*“ or „*Weltgeist*“ (Hegel) much in the same way as Montesquieu and Savigny independently of one another meant the former only for a single domestic

legal system. That „world spirit“ is essentially alive and active throughout mankind’s history. “Hegel identifies the spirit of a people with its historical and cultural accomplishments, namely its religions, its mores, its constitution, and its political laws. They are the work of a people, they are the people” (Rotenstreich, 2003: 491). And they are only in people for the Universal does not exist outside them. Nothing less, nothing more.

However, since the above explanation may still be somehow unsettling (the argument of the Particular still lingers behind religions, morality, constitution and laws), and for the lawyers too phantomatic, a second, less troubling, explanation was advanced by Leszek Kołakowski (1927-2009). This Polish philosopher of morality and historian of ideas argued in his Oxford lectures that it is not the Particular that really matters. What matters is a, still dominant in the world, tribal tradition of treating what is „ours“ as „good“ and what is „theirs“ as „bad“ (Kołakowski, 2003: 189). But, across and above this tribal morality of peoples, if not for real than at least nominally, there is an emerging common core of human values. Even if those values are violated by the „barbarians“ themselves, he concludes, they, at least half-wittingly, at the bottom of their hearts, know that such violations are indeed barbarous. And they indeed are, as elsewhere the same philosopher convincingly argues, by saying: “historical or anthropological material, these will always be the laws of particular groups, races, classes, nations that on the strength of those laws are free to eliminate or enslave other groups. Humankind is a moral concept, and if we do not accept it, we have neither a good basis to question slavery nor its ideology” (Kołakowski, 1990: 87). Hence, there is no question that “a border is [only] a veil not many people can wear” (Danticat, 1998: 394).

In some instances the argument of the Particular may well be yet another veil, protecting particular group interests rather than those of the State. The example of UN counteraction to corruption is a case in point. Often related to human trafficking, corruption is very difficult to fight internationally, let alone be assessed in terms of other State’s technical assistance needs. UNODC experience shows that such external assessments based on the United Nations Convention against Corruption (2003) are objected to when State Parties through their own internal self-assessment know beforehand how corrupt their apparatus indeed is. In such cases arguments are heard that the particular situation would not allow making an objective external assessment. In fact, this says that countries with integrity-deficit resist being scrutinized by others.

Since that attitude is more or less common, it should be added that the argument of the Particular as a smoke screen may be overcome. This may be done by showing that in other countries' legislation and practices difficult corruption cases have been addressed by a new method of their double investigation by two autonomously working teams, hence more resilient to the corrosive influences.

Particular-Intercultural-Universal in practice

Further, where cultural specificity really matters, the UNODC has started developing recommendations on adapting culture-specific good practices to other cultures, as the case is with its the prevention of drug abuse through parental skills training. For that purpose, the UNODC conducted a review of some 130 family skills training programmes and the evidence of their counterdrugs effectiveness worldwide. The review focused on the universalistic programmes that target all parents and families, and selective programmes that target parents and families that belong to groups or communities which, by the virtue of their socio-economic situation, are particularly at risk of substance abuse problems. The review concluded with a list of principles enabling culturally adapting family skills training programmes (UNODC, 2009). In fact, these recommendations are so generic that they may also be helpful in other areas of intercultural crime prevention, including the countering of youth urban crime.

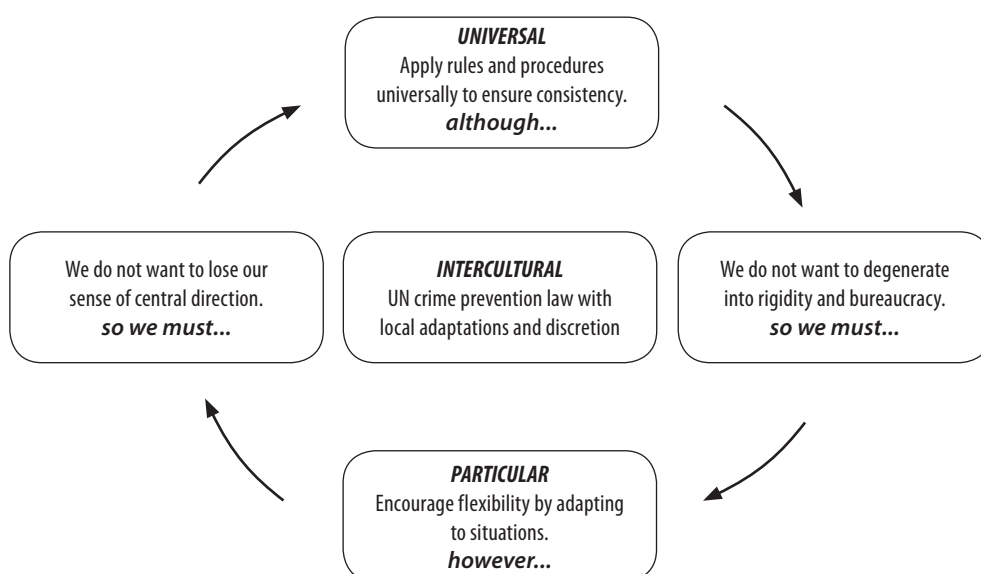
The above shows that the argument of the Particular may be reduced by such universalistic methods and arguments. This broadens a shared understanding ("common language of justice") of problems and has nothing to do with limiting the State sovereignty, otherwise often justified by the above defensive and deflecting argument.

Researchers say: "[I]t is not...to go from the Universal to Particular...[H]uman organizations with the most effective change programs have developed a culture of dialectics. This means that change is best initiated by putting one orientation in the context of the other rather than opposing values. The elegance of this approach is that the existing [legal-added] culture is not threatened but enriched" (Trompenaars, 1997, p. 32).

The following graph (Figure 1) shows this. It explains that when dealing with crime prevention, we may be caught in the dilemma of the universal

truth and the particular or local circumstance. On the one hand, we realize that there are some universal precepts. On the other, the particular needs of the local environment ask for responses that do fit such precepts, because there is no good crime prevention practice for all seasons. A good practitioner reconciles this dilemma by acknowledging that the particular instances need universal rules in order not to slip into local pathology. How can then UN crime prevention law be implemented with such a recommendation?

Figure 1. *The United Nations crime prevention law as intercultural and glocal: how to reconcile the Universal with the Particular? Adapted from: Trompenaars, 1993, p. 32.*



Strategic crime prevention management is not about replacing one orientation with another – to go from the Universal to the Particular. Intuitively, the most effective manager goes through a cycle in which the middle is held by his/her talents. A manager acknowledges that the particular instances need universal rules in order not to slip into a local pathology. Being universal means to be enriched by the other particular human values and letting them flourish for a common good. And just as English has become a global language, no part of the developed and developing world can remain unaffected by the global standards and norms, including among many of them the UN crime prevention law.

These universalistic arguments cut across various „laws of lands“. Hence, Figure 1 is merely the visualization of a generic cross cultural mechanism applicable to other global (UN or not) standards and norms in the local context.

In comparison with the arguments of early legal philosophers denouncing the influence of foreign law on domestic law, and, in fact, purifying the latter from the former, these contemporary universalistic arguments are both global and local (or *“glocal”*) for those technical assistance practitioners who see universalism and specificity as one concept (as Montesquieu did). In fact, they go into the heart of the United Nations Convention against Transnational Organized Crime with its two protocols against trafficking in humans and smuggling of migrants with no derogation of slavery, and straight into what a successful United Nations crime prevention should be. They also cut across various cultures because of the target populations: exploited, disadvantaged or vulnerable peoples who because of this problematic status are the same everywhere. These arguments lead to an additional common denominator for all of these peoples – that of different levels of statehood of countries in which they live. Depending on it, bringing into its light a United Nations crime prevention and criminal justice message will look differently and will have a different impact.

Conclusion

It is this humanistic and capacity-building context in which one should read what the Particular means when it is invoked by the United Nations. The Organization reminds us that it involves every civilization, every country and every level of statehood. It says that in each civilization tolerance is one of the fundamental values essential to international relations in the twenty-first century. Tolerance should include the active promotion of a culture of peace and dialogue among civilizations, with human beings respecting one another in all their diversity of belief, culture and language. There should be neither fear nor repression of differences within and between societies but cherishing the Particular – a precious intercultural asset of humanity.

Krzysztof Kieślowski (1941-1996), internationally renowned Polish movie maker, has aptly captured this message from the perspective of his home country:

[As Poles], “we have a deeply rooted conviction – which we thoroughly enjoy – that we are the most important in the world and that everybody knows it. I have understood quite a while ago that this is absolutely not true, that people in the world care about Poles...They are not at all interested in the Polish history, Polish suffering and our wrestling in the Polishness, in our heroism and so on. They do not care about this because everybody in the world has own problems... So the only chance for understanding each other is not finding [in my films] what is Polish, but finding in the Poles what concerns everybody in the world, and finding in the people of the world what concerns the Poles” (Zawiślański, 2007: 44).

No wonder that for this vision from his movies he was awarded across Europe and in Latin America – what is here the concluding argument for the coexistence and mutual reinforcement between the Particular and the Universal.

Ever since I have gotten to know Dušan Cotič personally I have realized that his own work that concerns everybody in the world is the most valuable intercultural asset that we should cherish and share with the succeeding generations of the Friends of the United Nations – the most universal and universalistic peace-promoting Organization in the world.

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ŚLAWOMIR REDO

Od univerzalnog do partikularnog u praksi i zakonskoj regulativi Ujedinjenih nacija za prevenciju kriminala

Članak se bavi nekim pravnim i kriminološkim aspektima međunarodnog javnog prava i za primer uzima zakonsku regulativu Ujedinjenih nacija za prevenciju kriminala. Autor analizira teorijska i praktična značenja multidisciplinarnih koncepata univerzalno i partikularno za koje se u sferi prava i kriminologije koriste i izrazi opšte i posebno. On naglašava da ova dva pojma koegzistiraju i međusobno se podržavaju u okviru regulative Ujedinjenih nacija.

Ključne reči: Korupcija, prevencija kriminala, mir, trgovina ljudima, Ujedinjene nacije.