

Book Review: Humanizing Our Global Order: Essays in Honour Ofivan Head, Obiora Chinedu Okafor and Obijiofor Aginam (eds)

Darryl Robinson

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>
Book Review

Citation Information

Robinson, Darryl. "Book Review: Humanizing Our Global Order: Essays in Honour Ofivan Head, Obiora Chinedu Okafor and Obijiofor Aginam (eds)." *Osgoode Hall Law Journal* 43.3 (2005) : 335-341.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol43/iss3/5>

This Book Review is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

HUMANIZING OUR GLOBAL ORDER: ESSAYS IN HONOUR OF IVAN HEAD EDITED BY OBIORA CHINEDU OKAFOR & OBIJIOFOR AGINAM (TORONTO: UNIVERSITY OF TORONTO PRESS, 2003) 214 pages.¹

BY DARRYL ROBINSON²

I. CONTEXT: THE LIFE AND WORK OF IVAN HEAD

On 11 November 2004, at the age of seventy-four, and subsequent to the publication of *Humanizing Our Global Order*, Ivan Head passed away. He was a man of vision and compassion who was respected, admired, and loved by his colleagues and community.

Head played a major role in Canadian and international public life. He served as senior policy adviser to Prime Minister Pierre Elliott Trudeau on foreign policy and international relations from 1970-78. He went on to serve as President of the International Development Research Centre from 1978-91. In 1991, he became a professor at the University of British Columbia and founded the Liu Centre for the Study of Global Issues.

His interests covered a range of topics, but some consistent themes characterize his work. The first is a clear-eyed assessment of the serious challenges facing the global community and the moral urgency of collective action to divert crisis. The second is a fascination with South-North relations and the need for a more sensitive dialogue in order to find lasting solutions. The third is the sense of optimism, humanism, and compassion that permeates his work.

His writings touched on issues of commerce, the environment,

¹ [*Humanizing Our Global Order*].

² Legal Officer, Office of the Prosecutor, International Criminal Court.

peace and security, conflict, terrorism, proliferation of weapons of mass destruction, drug trafficking, poverty, and disease.³ He wrote of these problems with clarity and urgency, yet without simplification. Head believed that we have the capacity to reduce human misery, and that if we fail to act humanely, there will be consequences not only for our conscience, but also in the form of world-wide outbreaks of resentment.⁴ He argued that an important first step is to take seriously the legitimate concerns of the South. He also argued for greater humility in how we perceive the South. Some of his key messages are well-encapsulated in the following:

The only question is whether this recognition and this realignment of priorities will be in time to avoid the environmental catastrophes, the economic turbulence, and the political upheavals now gaining momentum. Our hesitancy to recognize what is real ... our assumption that we in the North can somehow be shielded from events in the South—these are in large part manifestations of arrogance: that we are more capable, more knowledgeable, more experienced; that the nations of the North are suitable role models for those in the South. This kind of arrogance assumes that in this single biosphere, in this planetary economy, in this age of satellite communications and inter-continental ballistic missiles, a drawbridge policy and a withdrawal attitude can be effective. To think in those terms is nonsensical.⁵

His thinking touched on issues of economics, environment, and demographics, easily weaving in arguments and illustrations from philosophers, scientists, political thinkers, and from literature. His writing was inspiring and topical fifteen years ago and remains so today. Any volume in his honour revisiting these themes is timely and welcome.

II. SUMMARY OF *HUMANIZING OUR GLOBAL ORDER*

In their introduction to *Humanizing our Global Order*, editors Obiora Chinedu Okafor and Obijiofor Aginam argue that we live in a world order that is essentially unfair, and which is characterized by problems of insecurity, conflicts, poverty, disease, and risks of nuclear and biological weapons and ecological disasters. They identify the major question confronting us as how to foster and deploy the political will needed to humanize our global order.⁶ As a second theme, they emphasize that the countries of the South must play a critical role in the project.

³ See Ivan Head, *On a Hinge of History: The Mutual Vulnerability of South and North* (Toronto: University of Toronto Press, 1991) [Head, *On a Hinge of History*]; Ivan Head & Pierre Elliott Trudeau, *The Canadian Way: Shaping Canada's Foreign Policy 1968-1984* (Toronto: McLelland & Stewart, 1995).

⁴ See e.g. Head, *On a Hinge of History*, *ibid.* c. 1.

⁵ *Ibid.* at 7.

⁶ *Supra* note 1 at 4.

The collection treats a diversity of issues: the environment, conflict prevention, use of force, and competition and trade law. This befits the approach advocated by Head, who argued that “[t]he crafting of a mutually beneficial dynamic relationship cannot wait for the emergence of a brilliant universal accord: it must emerge from a series of ‘creative patchworks.’”⁷ The contributors, who come from a range of backgrounds, not only address different subjects but also take different approaches: some conceptual, some descriptive, and some normative.

Some of the contributions propose an alternative conceptual framework for key concepts of international law. Obijiofor Aginam, one of the editors of the volume, discusses the hegemony of global environmentalism, and in particular, the marginalization of third-world approaches to the concept of sustainable development. He argues that the concept has become a collaborator in environmental injustice. He cites the activities of multinational enterprises operating in the Niger Delta and the Ecuador Amazon, contaminating air, soil, drinking water, and fishing areas, and creating environmental refugees. He also examines the International Court of Justice (ICJ) decision in *Hungary v. Slovakia*,⁸ which exposes the poverty of the concept of sustainable development in mainstream international law. At present, the perspectives of the South are relegated to the periphery, neglecting and eroding valid conservation practices of many indigenous peoples, which feature a more holistic approach. The legitimacy and effectiveness of the norm of sustainable development can be achieved through a more cosmopolitan understanding.

Jutta Brunnée analyzes law-making under multilateral environmental agreements (MEA) and proposes an alternative conceptual framework. She first examines the evolution of MEA law-making processes (for example, decision-taking by Conferences of the Parties) under a standard conception, which focuses on state consent and formal decision-making procedures. From this perspective, the developments are welcome because they help mitigate the constraints of formal consent to new treaties, but the streamlining also raises problematic legitimacy concerns. She proposes an alternative conception, which sees law-making as a continuous international process, in which states and other actors create and influence international norms and institutions, and in turn, these norms and institutions provide context for future interactions and shape the identities and interests of states and other actors. Legitimacy is measured not only by

⁷ Head, *On a Hinge of History*, *supra* note 3 at 22.

⁸ *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* (1998), 37 I.C.J.Rep.

formalities, but also by internal criteria, which suggests more challenging requirements, including an inclusive process, exposing all actors (including those from North and South) to the construction of norms.

Karin Mickelson explores the co-opting of the concept of “common heritage” of mankind. This concept, born in controversy, is central for any study of South-North dynamics of international law. She argues that the concept has been co-opted by environmentalists operating from a Northern perspective, so that it has been “wrenched ... out of context, pulled ... apart, and reassembled ... in new incarnations that are little more than hollow mockeries of the original.”⁹ This was a failure to think the issue through from a South-North perspective. South-North scholarship is imperative if the ideal of common heritage is to be realized.

Other contributions describe an approach taken to a difficult issue, inviting lessons to be drawn on a more global scale. Olivier A.J. Brenninkmeijer appraises the work of the Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities (HCNM). He highlights the role that an independent third party can play in resolving tensions before they give rise to violent conflict. This is why OSCE members have agreed that these issues are not internal affairs but rather are of legitimate international concern, and have accorded to the HCNM powers to collect information, conduct on-site fact-finding, and issue recommendations. Some key lessons learned include the importance of early warning and early action, the merits of a pragmatic diplomatic approach, and the advocacy of small, realistic steps to deal with issues of territory, language, education, citizenship, and self-administration.

Kirsty Middleton explains pending changes to modernize the enforcement of European Commission (EC) competition law.¹⁰ Under these reforms, enforcement is decentralized and brought closer to the individual. This is appropriate for two reasons: first, competition policy is now largely developed in a global rather than national or regional context; and second, the growth of the European Union (EU) has made centralized control unworkable. One aspect of reform is that the Commission gives up some of its exclusive functions, allowing a greater role for national courts and competition authorities. Pragmatic measures will allow the EC to continue to promote uniformity, for example, by requiring national courts to notify it of relevant cases so it may intervene as *amicus curiae*. The experience

⁹ Karin Mickelson, “Co-opting Common Heritage: Reflecting on the Need for North-South Scholarship” in *Humanizing our Global Order*, *supra* note 1, 112 at 119.

¹⁰ EC, Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, [2003] O.J. L. 46/1, entered into force on 1 May 2004, after the printing of the volume under review.

shows how one may balance global cooperation and the need to bring enforcement closer to the individual.

Other chapters examine normative developments that affect today's legal and political context. Thomas Franck studies how the UN Charter provisions on the use of force have been interpreted and applied over the decades. He argues that the UN Charter is a quasi-constitutional instrument which adapts through implementation. Some key developments that have affected international practice include the Cold War (and the paralysis of vetoes in the Security Council); surrogate warfare through covert interventions; development of weapons of mass destruction; and the human rights movement and ethos of humanitarian protection. The challenging issues surrounding humanitarian intervention provide a front line both for promoting a humane order and for South-North differences and concerns about possible abuse. He notes examples where the Charter has been interpreted flexibly, and argues that the Charter should be interpreted as a quasi-constitution able to adapt to circumstances and necessity.

Karen Guttieri addresses the phenomenon of military operations in civilian contexts, particularly post-conflict operations, and argues that the civil dimension of strategy is insufficiently understood. The decision to use military force involves a transition from a mode of policy to a mode of force. She observes that, once troops control foreign territory, there begins a transition from force back to policy, as occupiers assume a quasi-political role and begin working toward an exit strategy, including establishing a new functioning regime. Today's armies in post-conflict operations face challenges and obligations exceeding their ability, mandate, and will. She argues that, before entering into conflict, it is necessary to consider issues of constructing a post-conflict order. For greater humanization of the global order, more attention must be paid to the civil dimension of strategy.

Other contributors explore how the efforts of different institutions can and should be harmonized. Robert Shum examines the legitimacy of the international trade system. Many groups, especially those who feel they do not have a voice in the World Trade Organization (WTO), argue that the system suffers from many defects, including a failure to recognize other societal interests such as labour and the environment. However, examining the ruling in the controversial Tuna/Dolphin case,¹¹ he finds that while the panel rejected unilateral measures in that case, it expressed openness to *multilateral* environmental agreements. This is not unsound when one considers the South-North dimensions of the issue: concerns about eco-imperialism, unilateral imposition of extraterritorial conditions on others,

¹¹ GATT, *United States Restrictions on Imports of Tuna*, GATT Doc. DS21/R, 39th Supp. B.I.S.D. (1993) 155.

and disguised protectionism. Similarly, with respect to labour, there are concerns in the South about the unilateral imposition of requirements; multilateral efforts (such as the International Labour Organization (ILO)) may be more appropriate. On the other hand, the readiness of the WTO system to entrench intellectual property rights strengthens the argument of those who say that the agenda favours powerful private interests in the developed world. Shum argues that variety and institutional pluralism may encourage institutions to compete for legitimacy by seeking broader representation and serving broader constituencies and interests. Institutions will have to resolve conflicts and increase cooperation. Shum's contribution highlights many of the themes of the volume.

In the final chapter, Ronald St. J. McDonald discusses the challenges and opportunities for the International Seabed Authority in responding to scientific and political developments and harmonizing its activities with those of others. He argues that the Authority should cooperate with the *Convention on Biological Diversity* secretariat with respect to newly discovered genetic resources found in the seabed. The Authority should work with the secretariat of the *Framework Convention on Climate Change* to study and manage reservoirs of methane hydrates, which present a great source of energy but also a great risk for global warming. He discusses submarine cables and notes that even a 0.001 per cent tax on business transmitted through cables on the seabed would produce major revenues for ocean development and conservation. In these and other areas, collaboration with other relevant actors is the key to efficient management in the interests of all.

III. OBSERVATIONS

The book is informative and thought-provoking. The breadth of the issues discussed provides a textured understanding of the challenges and some possible solutions. One observation, however, is that with an ambitious volume dealing with such diverse topics, the challenge is even greater for the editors to exercise tight editorial control and to bring out unifying themes more vibrantly. The chapters address the themes of humanizing our global order and of South-North dynamics to varying degrees. In some cases the linkages are not explicit, and greater highlighting of the unifying themes would have tied the collection together in a more complete and satisfying way.

A second observation is that this book does not address the areas of human rights or international criminal justice. This is understandable insofar as the book is following the approach in some of Head's writings which tended to focus on economic and environmental issues. More

regrettable, however, is that the book could not include the issue of responses to terrorism. The contributions to the volume appear to have been prepared before the events of September 11 and their aftermath, so it is understandable that the issue is not addressed. However, the question of how to respond to the threat of terrorism (for example, whether from a strictly military/national-security perspective or whether root causes should also be addressed; and whether there are appropriate constraints even in the war on terror) is central today to the question of humanizing our global order. The response to terrorism also raises major South-North issues, as many in the South perceive and experience the war on terror in a manner different from major governments in the North.

It is a challenging moment in history for a book on humanizing our global order. In 1989, Ivan Head warned against militarist solutions and the temptation to solve problems by deepening the moat, drawing up the bridges, and doubling the guard on the battlements.¹² However, the Bush administration, leading the most influential country in the world, seems committed to a military/national security approach to a range of threats, and has exhibited reluctance to join in collective efforts to promote human security and other global problems. The current administration has shown hesitation to listen even to its most important allies, let alone to embrace the perspectives of the global South.

On the other hand, despite a difficult international context, efforts to promote a more humane global order continue nonetheless. The ratification by Russia brought the Kyoto Protocol into force in February 2005. The International Criminal Court has been established and has commenced its first investigations. The UN Secretary General has appointed a Special Adviser on genocide as part of an early-warning mechanism. A report of the Secretary General's high-level panel on threats, challenges, and changes, released in December 2004, proposes concrete steps toward a more secure and fair world.¹³ In diverse fields, including minority protection, peace-building, and poverty reduction, countless individuals continue to work toward a more equitable and humane global order. These efforts may now face a steeper and rockier path, but they are more vitally needed than ever.

¹² Head, *On a Hinge of History*, *supra* note 3 at 214-15.

¹³ High Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, UN GAOR, 59th Sess., UN Doc. A/59/565 (2004). See also, *Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN SCOR, 2004, UN Doc. S/2004/616.