International law has important global challenges to address irrespective of some States' unilateral defiance

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On 14 July 2015 the Russian Constitutional Court adopted the judgment entitling it to declare judgments of the European Court of Human Rights incompatible with the Russian Constitution and thus non-enforceable in the Russian Federation. The first case to be dealt with by the Russian Constitutional Court under this new procedure is *Anchugov and Gladkov v. Russia* about prisoners' voting rights.

The 14 July 2015 judgment is a serious blow to the regional system of human rights protection established by the European Convention on Human Rights, a system based on the legal obligation on the part of the participating States to take good-faith measures to comply with the European Court's judgments (Article 46 of the Convention). However, there is nothing new in attempts to use domestic apex courts to circumvent legal obligations flowing from international human rights treaties. Ten years ago the Supreme Court of Sri Lanka in *Singarasa v. Attorney-General* failed to give effect to the views of the Human Rights Committee having found that the country's accession to the Optional Protocol to the International Covenant on Civil and Political Rights had been unconstitutional.

It is very likely that the Russian stance will be contagious. Indeed it may appear so easy for many naughty States to get rid of their international obligations portraying them as 'unconstitutional' whatever that means. Of course, this approach will not trump the fundamental *pacta sunt servanda* principle of international law that is clearly stated in Article 27 of the Vienna Convention on the Law of Treaties. It provides that a State "may not invoke the provisions of its internal law as justification for its failure to perform a treaty". For its part, the International Court of Justice observed in the 2009 judgment in *Avena* (Mexico v. the United States of America) that 'considerations of domestic law' hindering the implementation of international obligations could not 'relieve' the relevant State of its obligation.

Attempt to withdraw from international commitments relying on decisions of municipal courts is akin to the claim of a corporation that it may choose to rescind a commercial contract because its own board of directors found it to be in contradiction with the company's charter. Unilateralism destroys contractual obligations. It is no less destructive for international law. Tony Carty wrote about this destructive unilateralism in his book *The Decay of International Law*: 'Official argument is… confined to one-sided assertions of legal principle which it is thought are likely to appeal... either to a domestic audience or to particular allied powers'.

Seemingly lawful under domestic law but clearly unlawful under international law pronouncements of the Russian Constitutional Court and Sri Lankan Supreme Court prompt a reasonable observer to challenge the existence of international law itself in particular given that individuals are most likely to be arrested, taxed, married and divorced pursuant to domestic and not international law. In other words, it is high time to re-emphasize reasons why international law still has relevance, appeal and authority.

Unlike domestic legal systems, international law does not have strict hierarchy of sources. Unlike domestic societies, international community does not have elected legislature, and international courts have jurisdiction only if States consent to it. However, 'the decentralised nature of the international legal system' (according to Boyle and Chinkin) or 'plurality of international law' (according to Hart) does not deprive international law of its *legal* nature. There is wisdom in the words of Professor James Crawford in the eighth edition of *Brownlie's Principles of Public International Law* that classification of a system as legal depends on 'whether the rules, traditions and institutions of a given system *enjoy at least some salience* within the relevant society, meet its social needs, and are applied through techniques and methods recognizably legal – as distinct from mere manifestations of unregulated force' (italics added).

International law – as any other legal system – remains effective not when it is always complied with but when it is truly needed by its beneficiaries. By way of example, murders committed daily around the world do not by themselves undermine the legal nature of criminal codes because people everywhere still believe that life should be protected.

The ultimate beneficiary of international law is humankind as a whole. Contemporary international law has unparalleled role to play in addressing global challenges in the interests of humanity as a whole. International maritime law proclaims resources contained in the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction 'common heritage of mankind' (Article 136, UNCLOS) with all rights in these resources to be vested "in mankind as a whole" (Article 137 § 2, UNCLOS) and all activities there to 'be carried out for the benefit of mankind as a whole' (Article 140 § 1, UNCLOS). Likewise, '[t]he exploration and use of the Moon shall be the province of all mankind' with due regard 'to the interests of present and future generations' (Article 4 § 1 of the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies).

The International Criminal Court is established 'for the sake of present and future generations' and 'with jurisdiction over the most serious crimes of concern to the *international community as a whole*' (Rome Statute, preamble, emphasis added).

Prosecution and punishment of those responsible for international crimes, and exploration and conservation of the ocean floor and seabed in the high seas are indisputably global issues. Even further, modern challenge of climate change concerns everyone, with no exception whatsoever.

States Parties to the United Nations Framework Convention on Climate Change acknowledged in 2015 'that climate change [was] a common concern of humankind' (Paris Agreement). In the same year the United Nations General Assembly unanimously expressed its determination 'to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations' (Resolution 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development', preamble).

Climate change and degradation of the ecosystems of our planet are common threats. Only common responses will be effective. Sustainability of practical measures that are already contained in the Paris Agreement and that will be suggested in the future will depend on good-faith commitment of individual States to carry out their international obligations pursuant to international law. In the absence of such commitment, enormous resources will be wasted, and no tangible sustainable results will be achieved.

Unilateral measures especially if taken by influential States such as the Russian Federation will be counter-productive for everyone, including those taking such measures. They will defeat the common objectives defined by consensus in Paris and New York in 2015.

For the promotion and protection of human rights unilateralism is no less detrimental as it contributes to the erosion of collective regimes such as one established by the European Convention on Human Rights. However, regarding the global challenges, such as climate change, shortsightedness of this selfish and obstructive approach is much more evident.

The principle of *pacta sunt servanda* and avoidance of unilateralism will help all to counter global threats. It is for international lawyers to keep advancing this not so obvious utilitarian argument for international law including in domestic decision-making *fora*.