

Global Norms- Emergence, Conflict and Domestication

May 2016

MCB: May I invite the other panelists to join before we open it up for discussion. I've been asked to offer some provocative thoughts and I will start with a question, how relevant is all of that? And it really stems from another question that comes to my mind and the other question is how thick or how thin is the veneer of civilization? How fast is that thin crust of civilizational veneer, which is obviously made of all of these norms and values, how fast does it come off? I happen to have chaired four international commissions that investigated war crimes from Yugoslavia to Libya and been the independent human rights expert of the UN on the rights of the victims, so I suppose this gives me five insights, but four of them in the context of ongoing conflicts. Well let me tell you, none of what we are speaking about here was relevant, spoken of, dreamt of and certainly not applied or visible. And so, we really have to measure what we think we have accomplished, whether its in the normative development area, at the international, regional or national, not against the standard of normalcy but against the standard of exceptionalism. Whether that exceptionalism arises because we have an actual ongoing conflict, take presently Syria, or because we have a transformative regime that is returning a country to a dictatorial regime, such as in Egypt, or other similar transformative stages such as the transformative stage in Turkey where the President is seeking to acquire more power. And if you look at what is the common factor among all of these, you'll really see that this common factor is two age old common factors, which have always existed as part of the human condition, its always a struggle about power and wealth. And so in a sense, when you are looking at the relevance, the significance of these, call them norms, however differently we can define them, general principles, general rules, norms, whatever it is, these norms, measure them against this range of exceptional circumstances that exist in this world. Allow me to give you an example which is relevant but not directly on point. I was the UN independent expert on human rights in Afghanistan and at the same time I was asked to oversee the training of Afghan judges. To my surprise, I think about 18% of all four hundred Afghan judges were illiterate, could not read or write. Less than 15% had a law degree, most of them have barely finished high school. Now, if that is the community, for lack of a better term, that you have to deal with, how much can you expect in terms of growth or progress or however you want to call it, to achieve? In contrast, I

did judicial training for the entire Iraqi judiciary and in Iraq I felt that I had maybe fifty years of time to catch up with. Afghanistan it was maybe 300 years. So how much can you gain in these two contexts? The variables are really very difficult. In Egypt, the nationalist movement that started in the 1920s and brought about Egypt's independence was due to a free press, it was due to a nationalistic press. But even at the risk of sounding benevolent towards the colonial power, it was really due to the fact that the colonial power was Great Britain and that it did recognize the existence of a free press to allow the Egyptian free press to advocate the nationalism which ultimately resulted in the removal of that. So you may have those paradoxes but what it does reflect is the importance of social values and the accretion of social values in the course of time, which either result in the development of norms or in the strengthening of norms or actually in not needing norms anymore. Whether it strengthens you in telling somebody to pick up the poop of a dog in the street or whether it strengthens you to stand at the corner of a street, whether its in Hyde Park or elsewhere and declaim whatever you want. The point is that without this particular background, you're not going to be able to have a comparative basis of analysis. So what I said is that within a period of between 1920 and 1950 you had an enormous sort of jump, the French word which I find difficult to translate is *** [cant make it out], this surge if you will of freedom of the press, freedom of speech, freedom of assembly, etc. that brought about the nationalist movement, which ended with a military dictatorship in 1952 and then sort of slumped down and after a while, with the beginning of the 25 January 2011, the great hopes and expectations that there would be another surge of nationalism, which was carried by freedom of expression, as was demonstrated in Tahrir street. Only ultimately to be crushed by a return to the most draconian military dictatorship that Egypt has seen since 1952. And so it is not always even, situations vary from societies to societies. And the ability to take certain norms and to apply them and to look at judicial decisions can only be relevant if you put it in a particular social context and look at all of the surrounding circumstances, particularly surrounding circumstances which include at the national levels, situations involving demographics, economic development. You take societies like Bangladesh or Egypt with the enormous demographic projection and the exponential rate of growth of the population and the very limited rate of growth of the economy and you're not going to see much. Compare that with what we all saw as the great hopeful beginning of the Tunisian experiment, which could very well fail for reasons totally unrelated to the expectation of the people and that is the economic reasons of the country and nobody in the world is saying,

how can we help Tunisia economically. It would be very simple, by helping Tunisia economically you help to save democracy in Tunisia and you help to pave the way and put an example to other countries about what could be done. But there again, you return to the original premise and the premise is the pursuit of power and wealth. And then if you look at the present geopolitical conditions that we have in the world, the geopolitical conditions emphasis, notwithstanding the enormous development in the human rights field, we have over 300 international human rights conventions, but that enormous productivity on the one hand does not in anyway match the exceptionalism that is used by the powerful states in terms of trumping those human rights and encouraging others to do the same as we have seen in a number of contexts. And so all of this has to be placed in a particular, if you will, a socioeconomic, political context and I'm not really sure that by looking at the overall geopolitical conditions in the world that we are going to see a continued resurgences in the enforceability, call it implementation, whatever you want, of human rights. Nor do I see a particular increase in the demand for international criminal justice, as we have seen through the building of all of these international institutions in eth last twenty years, and that's due to entirely different reasons. And so the question becomes, what alternative strategies do we develop? This morning we heard somebody say well you know we may want to look at commerce and navigation and investments as a way of doing arbitration and forcing states to comply. So, the key is, how do you develop compliance mechanisms to induce states to comply. And that is I think the big challenge, is how to identify within each society what are the mechanisms that can be employed that will produce inducement for greater compliance than we now have.

Thank you. The floor is now open for discussion.