

Međunarodna ljudska prava u svetu zaleta: Kretanje kroz whataboutism, wokeness i „moderno ropstvo“

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Uspostavljanje bolje stvarnosti je ključni zadatak međunarodnog prava. Važan deo ovog zadatka je istinsko poimanje stvarnosti. Ljudska prava su adekvatno izražena u međunarodnim konvencijama, ali je oko nas prisutna i jedna trajna opasnost i jedan trend da se principi ljudskih prava poimaju kao fraze te da se odvoje od realnosti. Obrasci razmišljanja koji sledi parole se rađaju u ideologijama, ali mogu i da nadžive ideologije. Istovremeno, pozitivne inspiracije mogu da se pretvore u zalet koji se odvaja od stvarnosti. Svedoci smo snažnih trendova da se istinski važne teme (kao što su afirmativna akcija, pokret „woke“ ili moderno ropstvo) potiskuju na jednu ili drugu stranu ideološkog suprotstavljanja.

Pretnje ljudskim pravima se menjaju i rešenja se mogu naći samo ako se suočimo sa onim pretnjama koje sada stoje oko nas. O ključnog je značaja da se stvori realna percepcija ljudskih prava, uključujući prava manjina i prava socijalno nejednakih. Ne sme se izostaviti iz uma ni fenomen „modernog ropstva“ („modern slavery“) koji je takođe postao deo naše stvarnosti. Nastojanja da se štite ljudska prava mogu biti efikasna samo ako ih usmerimo na sadašnje stvarne pretnje.

International Human Rights in a World of Swings: Navigating Whataboutism, Wokeness, and “Modern Slavery”

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Establishing a better reality is a crucial goal of international law. An important part of the task is a true understanding of realities. Human rights are properly expressed in international treaties, yet we are also in cohabitation with a permanent danger and a lasting trend to perceive human rights principles as phrases, and to divorce them from realities. Patterns of slogan-oriented thinking, born in ideologies, may survive the ideology itself. Positive inspirations might also turn into a swing detached from realities. There are strong trends aiming to push truly important topics (like affirmative action, the woke movement, or modern slavery) to one or other side of ideological controversy.

Threats to human rights are changing, and solutions can only be crafted after rightful confrontation with present threats. It is critically important to create a true perception of human rights, including rights of minorities and rights of socially unequal people. The phenomenon of modern slavery that has gained some ground must not be disregarded. Attempts towards protection of human rights can only function if our efforts are focusing on present menaces.

1. SOME INTRODUCTORY OBSERVATIONS, CONCERNING SWINGS IN THE PLAYGROUND OF INTERNATIONAL CRIMINAL PROCEEDINGS

International law has had a long history of oscillation between dream and reality. In his study *Is International Law “Law”?* Anthony D’Amato starts his reflections by referring to a student observation: “[...] we know it isn’t really law, but we know that international lawyers and scholars have vested professional interest in calling it ‘law’”(D’Amato 1994, 37).

It is clear that it is most difficult to have enforceable rules on an international level. The additional impediment is the absence of a true and legitimate enforcing power above individual states. Different segments of international law have different chances. At some points, it is not only difficult but practically impossible to give true power to norms of international law. Serious difficulties have been arising during endeavors to protect international human rights, and with regard to the punishment of those who committed violations. Yet, one cannot contest that it does make sense to craft international law – and to vest professional interest in it. It has also been noted that ratification of international human rights instruments does not necessarily translate into a higher level of protection. The actual impact of ratification has been debated. In a recent empirical study Christopher Farris presents some positive results. In the conclusions of his paper, he stresses: “I have presented evidence that the ratification of human rights treaties is empirically associated with higher levels of respect for human rights over time and across countries” (Farris 2018, 266). One could add that treaties (and their ratification), even if they do not yield perfect implementation, will increase awareness about the importance of human rights.

World wars (particularly World War II) prompted a significant move towards founding international law. The Preamble of the 1945 UN Charter contains an explicit recognition of this inspiration. According to the starting lines of the Preamble:

“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom, [...]”

These tenets are practically uncontested, but the duties stemming from these calls and principles are not perceived equally. Reading the whole Charter, the question also arises whether the drafters missed an opportunity to formulate more specific norms (and duties) pertaining to human rights. According to Thomas Buergenthal, a well-known scholar and judge of the ICJ, the Charter fell short of expectations. He adds: "That was to be expected, for each of the principal victorious powers had troublesome human rights problems of its own. The Soviet Union had its *Gulag*, the United States its *de jure* racial discrimination, France and Great Britain their colonial empires. Given their own vulnerability as far as human rights were concerned, it was not in the political interest of these countries to draft a Charter that established an effective international system of human rights, which is what some smaller democratic nations advocated" (Buergenthal, Shelton, Stewart 2002, 28).

International conventions inspired by the UN Charter offer more details and more instruction, but at certain points there still remains a distance from lived reality. Goethe wrote his autobiography under the title *Dichtung und Wahrheit* (*Poetry and Truth*). Such a cohabitation is often a characteristic feature of life. Including the life of international law. Rules may turn into symbols, which gain multiple functions. They may inspire the shaping of reality but can also replace reality. At the same time, the dividing line between principles and slogans may evaporate.

In this text, I shall try to put into focus some examples of the cohabitation of realities, symbols and phrases. In these situations, swings triggered largely by politics will play important roles. At some junctures they push the implementation of international human rights forward, at others they push it to one side.

One important test is to compare the concept of international criminal proceedings with real achievements. Politics and justice permanently exist in cohabitation (and often in competition) with each other. The question also arises of whether imperfect patterns established during the totalitarian regimes of individual states may regenerate in international proceedings.

During wars and dictatorships, the rule (and role) of law is curtailed. To cite one of many examples, during World War II and the German occupation in Serbia, the Military Command issued an order on listening to radio stations.¹ In this directive issued on May 31st, 1941, the political swing forged ahead with fatal results. It was stated that if someone is listening to a radio station that is not among those permitted, he/she will be imprisoned, or "in more severe cases" (of listening to the radio) will be sentenced to death. Which fate awaited the Jewry and Roma even without the charge of listening to unpermitted radio stations.

1 Naredba o zabrani slušanja emisionih stanica, *List Uredaba vojnog zapovedika u Srbiji*, br. 8, 31. maj 1941, 83.

After liberation, the Nazi terror was eliminated. A new legal practice was taking shape, yet the reverse swing prompted by the still topical wartime confrontation was often more dominant than the search for truth and justice. Various sources of inspiration suddenly emerged, one of which could be identified as revenge. In the words of Richard Posner: “The desire to take revenge for real or imagined injuries, without calculating the net benefits of revenge at the time when it is taken, may therefore have become a part of the human genetic makeup” (Posner 2009, 77).

The desire for revenge may throb even after the targets have vanished from our vicinity. This may stimulate an endeavor to fabricate targets and to exercise post-peril heroism. I shall refer to some cases I found in the attorney’s archive of my father and grandfather, and which I have addressed in books of documentary prose. In my book *People in Spite of History* I mention (among other cases) the proceeding against a Lutheran minister from my hometown, who was accused in 1945 for having committed an “anti-people smile”. The accusation was based on the testimony of a neighbor, who stated that when the Red Army and the partisans were marching in, Pastor Csepcsányi stood at the window of his clergy residence, and instead of happiness he showed a “derisive, cynical smile”. Pastor Csepcsányi was sentenced to one year’s imprisonment (Várady 2021, 321–335). Those who were following the new political swing felt that finding more “fascists” was worthier than finding more truth.

As far as I know, the Csepcsányi case was recorded in the legal community of my town as a bizarre or tragicomic one. In some less bizarre cases during the early post-war years, politics kept its commanding role, yet the decisions were (then) considered part of an emerging normalcy. In a criminal case that started in 1946 before the Circuit Court in Zrenjanin, two defendants (Marocsik and Popić) were accused for participation in a murder (in beating a person to death). At the time of the murder, the accused were celebrating with others inside a pub, and they were moving in and out of the establishment. Meanwhile outside the pub, some guests became involved in a fight, and one person was beaten to death. Much attention was devoted to the issue of whether Marocsik and Popić had actually participated in this beating. At this point, the arguments and the procedure followed a normal legal course. It was not easy to establish the truth. The court found that Marocsik and Popić did participate². Though this finding could have been questionable, the path to this finding was not political. The debate about the sentence, however, did have an unconcealed political background. Arguments pertaining to the length of the sentence focused on whether Novikov (the victim) was on Tito’s side or against

2 See decision Kž. 350/1946 of the Zrenjanin District Court- – I found further details of the case in file No., 12390 of our family attorney archive.

Tito during World War II, on whether his parents (who migrated from Russia) were in favor or against the 1917 Bolshevik Revolution, and on whether the two accused were pro- or anti-Tito.

The question arises, whether political swings may also gain ground in international criminal proceedings. After World War II, the Nuremberg Trial was directed against actors on Hitler's side. There was logic behind this, because no one can contest that Hitler's side was the wrong side. Fortunately, it also became the losing side. People on Hitler's side committed dreadful atrocities. Every logic supports criminal proceedings against these actors. Yet the question may also be raised, whether it was justified to avoid proceedings for crimes against humanity committed by actors on the winning side.³

Turning towards another example, the military conflicts that ended with the breakup of Yugoslavia prompted a significant endeavor in international law. The International Criminal Tribunal for the former Yugoslavia was constituted (Cryer 2005).⁴ Unlike the Nuremberg trials, this was not a construction of the winning side, but rather an edifice of the international community. The work of the ICTY attracted some criticism (which is, of course, not unprecedented). At some points it is difficult to say whether that criticism was based on real imperfections or on the ICTY's non-compliance with competing narratives (Koh 2023, 1117–1137, particularly 1127).⁵ Yet, in principle, proceedings were envisaged against actors on all sides, and in reality such proceedings were conducted. Nevertheless, conflicts between law and politics remained, and at some points the cohabitation between international and national law also generated intriguing, politically motivated questions.

The functioning of the ICTY was significantly influenced by political shifts. Serbia's president Milošević was a major target of international justice. While he was holding power it was unimaginable to conduct criminal proceedings against him. But Milošević's political privilege ended when he lost power in Serbia. Yet during the endeavors to harmonize international and Yugoslav law, complex legal problems emerged.⁶ The Constitution of the Federal Republic of Yugoslavia (enacted in 1992)

3 See on this issue Robert Cryer, *Prosecuting International Crimes: Selectivity and the International Criminal Regime* – Cambridge University Press (2005).

4 ICTY (International Criminal Tribunal for the former Yugoslavia) with a mandate from 1993 to 2017.

5 See on this issue e.g. Steve A. Koh „Prosecution and Polarization” 2023 *Fordham Urban Law Journal* 1117–1137 – in particular on p. 1127.

6 After the breakup of Yugoslavia, Serbia was part of the Federal Republic of Yugoslavia, and the applicable law was “Yugoslav law”. The country changed its name to „Serbia and Montenegro”. After Montenegro seceded in 2006, Serbia became a separate state.

prohibited extradition of Yugoslav citizens. Professor Grubač, the first federal Minister of Justice in the post-Milošević era, made an attempt to harmonize Yugoslav and international law, and submitted to the Yugoslav Parliament a draft act in which a distinction was drawn between extradition to a foreign country and transfer to an international tribunal. The aim was to craft a legal way to allow proceedings against Milošević before the ICTY. Yet the acceptance of this draft was blocked by Montenegrin representatives in the Federal Parliament. Thus, the new government did want to send Milošević to The Hague, which was clearly in line with international law – and with justice as well, I would say. Yet a knotty matter had emerged on the domestic legal scene. After several legal attempts, Milošević was finally transferred to The Hague, by relying more on Serbian than on (the still effective) Yugoslav law. The outcome was in line with a search for justice, yet it is still disputed whether it was observance of law or of changing politics that had shaped the grounds for transfer (Várady 2013, 459–464).⁷

Endeavors to shape a world-wide responsibility for crimes resulted in the Rome Statute of the International Criminal Court (accepted in 1998, in force since 2002). This is a critically important step towards raising international law above politics. But the dreams behind it are yet to become reality. Fluctuations continue. The competition between law and politics has left marks in the arena of international criminal law. This pertains, for example, to Afghanistan as well. In 2003 Afghanistan granted jurisdiction to the ICC. Investigations started concerning the Taliban and the Islamic State, but also the U.S. As pointed out in a study by Alice Speri, in 2020 the U.S. government decided to impose retaliatory measures against ICC Prosecutor Fatou Bensouda. These sanctions were lifted in 2021 by President Biden, but “this decision was taken with the tacit understanding that the Court’s investigation into crimes associated with US personnel would not resume” (Speri 2021).

Let me also mention that several states opted not to ratify the Rome Statute. The list of non-member states includes Egypt, Israel, Iran, Russia, Sudan, Syria, the United States and Yemen. It is very difficult to answer (or merely ask) the question of what connects these states. They are obviously not political allies. Are there any other coherent qualities between them?

The practice of the ICC has not yet proved a full transition from vision to reality. What is critically deficient is the actual opportunity for general practice. For example, factual proceedings against Putin and Netanyahu remain unlikely. Steps were taken in that direction, but the distance from reality got sustained.

7 See more in T. Várady, *Ambiguous Choices in the Trials of Milošević’s Serbia* – in „The Milošević Trial – An Autopsy”, edited by T. M. Waters, Oxford University Press 2013, pp. 459–464.

2. PRINCIPLES SHAPED IN THE MINDSETS OF WHATABOUTISM AND WOKENESS

I would like to examine some driving forces behind the blending of lived realities with idealized phrases. In recent times, two examples of this phenomenon have garnered particular attention: the mindsets of whataboutism and wokeness.

Whataboutism

The concept of international law includes the assumption of equality. A true equality beyond idealized phrases. This also implies renunciation of superiority and privileges based on race, just as of privileges based on power or on history. As time has passed, perceptions of supremacy have become more disguised, but have not gone. To give one example of an earlier manner of speaking that lacked any attempt to disguise its own perception of superiority, I shall mention here a legendary case from exactly 100 years ago. Today, the sentence I will cite would fit more into literature than into court proceedings. In the world-famous “Monkey Trial”⁸ conducted in 1925, the main issue was whether a teacher (John Scopes) should be punished for teaching Darwin’s theory of evolution. Famous scientists took part in the proceedings which also became the scene of a political clash. William Jennings Bryan, a three-time U.S. presidential candidate, stepped in as prosecutor. He vehemently opposed the theory according to which monkeys might be the predecessors of humans. During the fifth day of the proceedings (on Thursday, July 16, 1925) Bryan linked his anti-Darwinian approach with American patriotism (and perception of supremacy). He stressed that it is humiliating to say that humans descended from monkeys, adding in outrage: “Not even from American monkeys, but from Old World monkeys.”

Perceptions of supremacy have often been present in the playground of politics. They can bridge the distance between deserved and coveted achievements. In this setting, some trailblazing conclusions (for example that Greenland belongs to America) can almost pass as logical. Let me add that perceptions of supremacy are being used as a point of reliance in counterarguments as well. If equality is generally accepted as the correct principle (or correct phrase), then the following argument (based on the rhetorical denial of supremacy) may be formed against any condemnation: How can you judge me for this, aren’t you doing the same thing? This impetuous line of reasoning has recently acquired a name: *whataboutism*. Studies have also been devoted to this pattern of argumentation. In his article “*Whataboutism in*

8 The State of Tennessee v. John Thomas Scopes, Criminal Court of Tennessee 1925.

International Law” Eliav Lieblich explains that “in fact whataboutism is often the first line of defense that states invoke when condemned by other international actors (Lieblich 2024, 343–386). For example, in recent years, whataboutism has been the key argumentative tactic deployed by Russia to defend its invasion of Ukraine. It is reflected, in particular, in Russia’s allegations that the West has engaged in similar conduct in the past” (Lieblich 2024, 344) Lieblich is also mentioning another Russian (actually USSR) example from a time when the term “whataboutism” did not yet exist, but argumentative tactics that fit under this term were being used. After the invasion of Hungary in 1956, the USSR stated that the arguments raised against itself in the U.N. Security Council were a mere “smokescreen” for the contemporary intervention by the U.K. and France in Egypt during the Suez Crisis.⁹

Thus, “whataboutism” may be a new word, but it is not a new phenomenon. The approach opens many questions. One of the questions is whether uncovering inconsistency may (and should) generate decriminalization? The essence of the whataboutist argument is the following: how can I be punished if he was not punished for the same thing? In the context of a quarrel, this line of argument may hold up. But what about in the context of international law? Should an injustice in one case denote impunity in other similar cases?

One may also ask, of course, whether the alleged inconsistency is factual, which may then be debated. Many authors (including Western authors) have come to conclusions that the U.S. and other Western countries have, indeed, committed violations of international law. The 1989 U.S. military intervention in Panama was the subject of one such contention (Nanda 1990, 494). Other examples have also been noted in various studies. In his book which focuses on double standards, Wolfgang Kaleck reaches the following conclusion: “Although Western states like to portray themselves as global champions of human rights and universal justice, to date, hardly any of those most responsible for torture at Guantánamo, the ill-treatment of detainees in Iraq or war crimes in Afghanistan, Colombia or Gaza have faced trial” (Kaleck 2015, 7).

Thus, Russia’s whataboutism (or some other whataboutism) may have a foothold, but the question is how to proceed from this foothold. An imperfection in the enforcement of international law should not lead to the denial of international law. In the opinion of Lieblich: “Yet, even if we would presume that the wrongfulness of Russia’s actions and those of the West are similar, it is clear that the wrongfulness of the Western inconsistency itself is not weighty enough to justify refraining from action—right here, right now—against the mass atrocity of unprovoked aggression” (Lieblich 2024, 385).

9 See Lieblich, *op. cit.*, 363 – See also U.N. Doc. S/PV.754 (Nov. 4, 1956).

This is persuasive reasoning – Russia’s whataboutist argument, referring to Iraq, cannot justify the invasion of Ukraine. But at the same time, the rejection of such an argument should not necessarily lead to the dismissal of the allegations on which the debater tried to lean. Disqualification of the Russian argument should not indicate that the U.S. invasion of Iraq was correct.

Whataboutism should not and cannot serve as a satisfactory defense, but it may prompt rational inquiries moving beyond unilateralism and polarization.

Wokeness – and comparable trends

Actions inspired by the woke creed and woke movement have gained much attention during the past years, in the U.S. in particular. Woke is generally perceived as a liberal trend and a movement against discrimination, but it also prompted criticism (not only from the right wing). In his book devoted to wokeness entitled *We Have Never Been Woke – The Cultural Contradictions of a New Elite*, Musa al-Gharbi associates contemporary wokeness with symbolic capitalism, and makes the following observation: “[...] symbolic capitalists’ approach to social justice focuses so intensely on symbols, rhetoric, and culture war issues instead of the ‘bread and butter’ struggles that other Americans are most concerned about” (al-Gharbi 2024, 9). Al-Gharbi cites many examples of symbolic and rhetorical gestures made as a result of the woke movement that are replacing truly effective action. Among these examples, he refers to initiatives to change the names of schools if these names are linked to persons with a history of racism (such as Jefferson Davis, the president of the Confederate States between 1861 and 1865, who supported slavery). Al-Gharbi notes that: “if nonwhites who live in the affected communities had been consulted about *their* top concerns, it would have been clear that the name of the local school would not rank anywhere near their top priorities” (al Gharbi 2024, 102). It would be interesting to know how many contemporary pupils and parents are actually informed about the character of Jefferson Davis, and whether this name on the wall of a school still invokes racism. Whatever the answer to these questions is, the woke-inspired initiative to discontinue names with racist histories is entitled to support – but the achievement of such a change need not be the main goal in the fight for equality. At this point one may also note that it is often difficult to distinguish between the pursuit of striking phrases and true actions.

It is a fact that followers of wokeness hold progressive principles, including principles of international human rights. At the same time, a closer look reveals other characteristics as well. For example that certain symbols are gaining more attention than their role in real life deserves, or that a woke-inspired swing, even if it starts out on the right track, may go beyond the limits of rationality. It may also

lead to a phenomenon called (or labelled) as “cancel culture”, which has different motivations. This leads to banning books as well. According to a report of PEN America, between July 2021 and June 2022 cancel culture had affected 2532 books (Friedman 2022). It yielded exclusion from libraries and from teaching programs. A bizarre consequence of the woke swing against racism was the barring of Mark Twain’s *Huckleberry Finn* (Titus 2022).

Cancel culture with a liberal inspiration also provided some foothold for cancel culture with an anti-liberal motivation. An interesting clash of persuasions took place with regard to Yale Law School students. The interaction of swings shaped an alternative reality. The occurrence was reported in many media, including an article of Helen Raleigh in the *Federalist* of October 5, 2022 (Raleigh 2022). Reportedly, Yale students tried to prevent a lecture of Kristen Waggoner, a well-known attorney, because she defended a florist who refused to sell flowers for the wedding of a homosexual couple. This step against Kristen Waggoner was qualified as a gesture of cancel culture. In another case, Yale Law School administrators pressured a student to issue a public apology over an emailed party invitation that contained (in a humorous context) the word “trap house” – which some black students found offensive. The response came from Federal Judge James Chun-Yee Ho, who announced that he would not hire Yale Law School graduates as clerks, because they were woke students that supported cancel culture. According to Helen Raleigh, “Shortly after Ho’s announcement about 12 federal judges have reportedly said they wouldn’t hire future Yale Law School students as clerks either. (Raleigh 2022)” Thus, an emerging response to exclusion (or perceived exclusion) is counter-exclusion – expressing stout disregard, but without any conceded withdrawal of respect towards principles of international human rights.

Patterns of polarized and design-oriented (rather than fact-oriented) thinking that characterize the woke movement have gained much ground. This extends to many fields of international law as well. For example, many analysts came to the conclusion that responses to the September 11 terrorist attacks were driven by motivations other than the one identified in the first sentence of the Preamble of the 1945 UN Charter, which bids: “to save succeeding generations from the scourge of war”. In his book *The Matador’s Cape*, devoted to responses to 9/11, Stephen Holmes explains that progressive thinkers in 2001, much like humanitarian interventionists, were carried away by the emotional and political momentum of the moment. He writes: “Many humanitarian interventionists, with the best of intentions, helped the Bush administration launch a disastrous and bloody military adventure with almost no public discussion” (Holmes 2007, 157).

One could argue that response to 9/11 may have been regarded as a step in the right direction. Yet, one cannot justify actions simply because they follow from a

seemingly positive starting point. It is not without precedent that a given use (or abuse) of a “right track” may convert this track into a slogan.

3. THE SHAPING OF THE NOTION OF “MODERN SLAVERY”

An important battlefield of international human rights was shaped in the domain of labor. Article 1 of the UN Charter states that one of the purposes of the UN is “international cooperation in solving problems of an economic, social, cultural or humanitarian character...”. I shall try to add here some short observations linking problems of “economic” and of “humanitarian” character.

At the time when the UN Charter was enacted, slavery was still on the scene, and economic segregation was typically in cohabitation with racial segregation. As time passed, slavery ceased to be permissible, but discrimination of laborers continued. This was one of the reasons behind the rise of communism. It is also a fact that in countries that became communist states, public order was shaped more according to the aspirations of the new rulers than according to the objectives of Marx. Nevertheless, in communist states, legislation devoted special attention to the working class. Concerning the impact of political swings and phrases in the realm of international human rights, the question arises, whether communist approaches to worker’s rights had some bearing on the shaping of legislation in the West. The UN Charter mentions “international cooperation” as a tool for problem-solving. History has shown that other patterns of international relationship might also yield results. Some researchers noted that Soviet communism did influence Western law (and international law as well). Louis Henkin noted that the shaping of some pro-laborer rules and organizations “was capitalism’s defense against the specter of spreading socialism which had just established itself in the largest country in Europe...” (Henkin 1989, 212)

In his book entitled “Soviet Legal Innovation and the Law of the Western World”, John Quigley states that while Soviet dictatorship was, of course, not an attractive model, Soviet steps in the field of labor law did gain sympathies, and this was also perceived as a possible threat (Quigley 2007). Quigley states: “To dampen the attraction of Bolshevism in Western Europe, the Allies took a major step. They formed a structure to deal with worker rights – the International Labor Organization” (Quigley 2007, 77) In the closing sentences of his book Quigley states: “When one has declared victory over an enemy, it is not popular to acknowledge that we may have been influenced by them. Despite the rejection of Soviet concepts, the West absorbed many of them” (Quigley 2007, 193). One may add at this point that international confrontation and rivalry might sometimes help in promoting human

rights. (This is, of course, not a typical product of confrontation and rivalry, but it is a possible one.)

Today, one may also raise questions regarding the downfall of communism, and its impact in the sphere of employee's rights. The principles of human rights did not decline, but with the workers' realities we have a more complex and more worrisome situation. The trend to be divorced of rules molded under communism grew even stronger in post-socialist countries. This also led to dissociating from rules pertaining to the working class that did deserve some approval, and still deserve attention.

Among present clashes between principles, slogans and realities, one important emerging topic is the status of human rights in corporations¹⁰. That is, whether human rights principles have actual reach within corporations, especially those which expand beyond individual states, and strives to rise above states.

Human rights (including the rights of laborers) have always had advocates. Principles set in the UN Charter, in international conventions and in other legal rules, sometimes remain at distance from realities, but they are serving advocates as a valid basis for arguments. Sometimes the protagonists' arguments will also follow political swings, and at times it is not easy to distinguish woke-style convictions from true assessments. As noted by Henkin, Quigley and others, workers' rights that gained emphasis under communism shaped a certain threat and motivated some pro-laborer norms in Western countries and in international agreements. Today (in the absence of such a threat) it is easier to reject pro-worker doctrines. In post-socialist countries there is even more desire to depart from aims that were prioritized (with or without true intentions) under communism. At this point the question arises as to what rhetorical tools have remained (or have become suitable) that can support demands pertaining to worker's rights (including human rights in corporations).

A classic type of rhetorical tool is the equation of the object of criticism with some phenomenon that holds a decidedly negative connotation. This may be a practice followed by the critics of the present exploitation of laborers. Supporters of workers' rights have started to use the term "modern slavery". This term does not have roots in the communist rhetoric of the past, but represents a contemporary coinage, and it has some traction. In the introductory remarks of this text, I referred to Goethe's *Dichtung un Wahrheit* (*Poetry and Truth*). One may fear that the expression "modern slavery" is more *Wahrheit* than *Dichtung*. At any rate, the term "modern slavery" was acknowledged, and even found place in the titles of some

10 See on this issue e.g. studies in Part IV of the volume of studies „Human Rights in the 21st Century” (edited by Tibor Várady and Miodrag Jovanović), The Hague: Eleven International Publishing, 2020.

legislative acts. Acts with the title “modern slavery act” (meaning obviously acts against modern slavery) came into force in the United Kingdom in 2015, in Australia in 2018 (amended in 2024), and in Canada in 2024. These acts emphasized a reliance on international conventions (e.g. section 7 of the Australian act refers to 9 international conventions). Recent legal practice has also identified cases in which the illegal behavior has indeed been qualified as “modern slavery”.¹¹

The key targets in the modern slavery acts are forced labor, child labor and human trafficking. Such practices are indeed associated with the institution of slavery. It is also important to note that legislative acts on modern slavery have shaped the duties of an “Anti-Slavery Commissioner”. One cannot doubt that modern slavery acts are a step in the right direction, yet the question remains of how far these legislative acts penetrate the everyday practices of corporations and other environments where such exploitation may occur.

Let me mention some contemporary examples in which the motto “free market” and the warning signal “modern slavery” have an interesting cohabitation. In the *Barbulescu v. Romania* case¹², the European Court of Human Rights reached two different decisions regarding the question of whether a private company may monitor the private communication of its employee. (The communication at issue was Barbulescu’s exchange of messages with his brother and with his fiancée.) In its first-degree decision (given on January 12, 2016), the ECHR held that there was no violation of Article 8 of the European Convention on Human Rights. Upon appeal, on September 5, 2017, the Grand Chamber rendered a decision in favor of Barbulescu¹³, finding that there had been a violation of Article 8. One has to add that the final decision did not yield a clear repudiation of the right to monitor private communications. One of the main bases in the Grand Chamber’s reasoning was that the Romanian national courts had not determined whether Barbulescu had been notified in advance that his employer might introduce monitoring measures.

Turning to another example that might fall under the concept of “modern slavery”, I shall mention a report communicated by Oxfam on May 10, 2016, which states that in a number of U.S. poultry farms, bathroom breaks are denied to poultry workers. Instead, they have to wear diapers. I have read about a similar problem in Serbian papers (*Danas* April 27, 2016, *Politika* May 15, 2016), according to which reports, the Yura Corporation in Leskovac (owned by a South-Korean manufacturing company) took similar steps. Toilet access was not denied,

11 Such cases have been presented, for example in a study of three Australian authors: Simmons, Frances, Jennifer Burn, Fiona McLeod. 2022. Modern Slavery and Material Justice: The Case for Remedy and Reparation *UNSW Law Journal* 6: 45.

12 *Barbulescu v Romania* (61496/08) [2016] I.R.L.R. 235 (12 January 2016).

13 *Ibid.*

but it was strongly regulated and restricted. Furthermore, the amount of time a worker spent in the restroom was recorded, and disciplinary proceedings were conducted against those who spent more time than was considered to be affordable. Diapers became an option.

The term “modern slavery” was coined with positive intentions. It may fall somewhat short of being a truly-balanced definition of the actual status of worker’s rights on a national or international scene, but it may serve as an adequate warning signal.

4. SOME CONCLUDING REMARKS

One could say that international human rights have become a globally accepted goal – at least in principle. Slogans have confirmed these principles. One might say that slogans tend to push towards reality, but they also tend to replace reality. The coexistence of phrases and realities in law – particularly in international law – is not a novel phenomenon, and its detection is no discovery. About one hundred years ago (in 1928), Leon Green, a well-known American legal scholar made the following remark: “The succeeding stages of rules and principles and doctrines, with their formulas and standards reduced to well-polished phrases, are still dominating our law” (Green 1928, 1017) Since these observations were made, many changes and reforms followed, but the coexistence of well-polished phrases and disparate realities continued. Logic is often warped to mirror a political swing. The motivation of that swing does matter, but it cannot guarantee rationality. An anti-Nazi swing may lead to a pastor’s condemnation for the “crime” of having committed an anti-people smile. Anti-racist swings may lead to banning *Huckleberry Finn*.

Whataboutism and wokeness are current examples of trends and perceptions that have some influence both on shaping and on substituting reality. Advocates against “modern slavery” are deploying the term in a way that straddles fact-finding and moral cautioning. International human rights occupy a liminal space between lived realities and idealized phrases, experiencing changing patterns of cohabitation between the two. Progress depends on recognizing the difference between rhetorical phrases and actual realities.

It is also important to maintain a holistic picture. While targeted researches and actions are, of course, logical, they must not come at the expense of a broader understanding of human rights – one that includes freedom of the press as well as the right of poultry workers to visit the restroom.

Progress requires an awareness that the realization of international human rights is still more an ongoing project and aspiration than a completed achievement.

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