

THE PROBLEM OF EFFECTIVENESS OF PUBLIC INTERNATIONAL LAW*

REVIEW

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* Andrés Téllez-Núñez, *El problema de la efectividad del derecho internacional público. The Problem of Effectiveness of Public International Law* (Colección Estudios de Derecho Internacional, 11, Facultad de Ciencias Jurídicas, Pontificia Universidad Javeriana, Bogotá, 2008). ISBN: 978-958-716-096-3.

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Andrés Téllez-Núñez is a Colombian attorney from Pontificia Universidad Javeriana who received his LLM degree at Georgetown University in Washington D.C. He has ten years of professional and academic experience, focused mainly on the fields of domestic and international contracts, International Project Finance, Foreign Direct Investment, International Trade and Intellectual Property. He has been a Professor of International Law at Universidad Javeriana School of Law in Bogotá, Colombia. He is currently a visiting professor of International Law at Georgetown School of Law, in Washington D.C.

Among his publications there is a chapter on international business law published in Germany (2009) and through the past six years he has published several book chapters and papers in well known Colombian law journals. Given that he is a certified translator (English-Spanish-English) licensed by the Government of the Republic of Colombia the book that is at hand, *The problem of effectiveness of Public International Law* is authored in both English and Spanish. This unique characteristic of the book being a bilingual edition gives way to the possibility of it reaching a wide audience.

This first book by the author is an academic effort to discuss, from different angles, one of the issues for which Public International Law is commonly criticized: its effectiveness. Given the lack of judicial authority to enforce the rules of Public International Law, its detractors believe it to be an “ineffective” set of rules. This criticism goes hand in hand with what is referred to as the ambiguity of international norms. Regardless of the source, it being treaties or custom, there is an inherent difficulty for the norms to be uniform and widespread, or to be considered as hard legal binding rules. Thus, the content of international norms tends to be inspirational in its nature rather than directly applicable rules.

The Problem of Effectiveness of Public International Law looks at the role International Law plays in different contexts, as a factor that impacts the conduct of international relations. The book also approaches the issue from different perspectives,

including: philosophical, psychological, juridical and geographical. The purpose the author hopes the book accomplishes is to ultimately both explain and justify how international juridical norms are eminently effective.

The book is structured in four chapters. The first chapter, entitled *Intersection of International Relations and Public International Law to Explain its Effectiveness* takes a look into the relationship between international relations and Public International Law from diverse approaches, beginning with a purely legalistic approach, to then move forward into a natural law approach, extra legal or democratic approach, theocratic, effectiveness approach and finally reaching a principle based or aspirational approach. The author concludes that all these different approaches are complementary and interact with each other, proving the intersection that exists between Public International Law and international relations.

The second chapter is named *Multidisciplinary Approach to the Problem of Effectiveness of Public International Law*. Here, the author goes beyond the realm of legal approaches and broadens the scope of analysis to other disciplines. These disciplines include: juridical science, political economy, international policy, psychology and finally, social philosophy. After giving us a walk through the issue of effectiveness of Public International Law from different fields of knowledge, the author arrives to two main conclusions. First, that Public International Law can and will only be useful if it is derived from custom. Illustrating this point by bringing forward the case of the North Atlantic Treaty Organization (NATO) attacks to Kosovo. The attacks were made in the absence of explicit authorization by the United Nations Security Council, as they should have been carried out according to rules of Public International Law. Secondly, the author concludes that consuetudinary norms are not fact creators but rather the norm is a fact in itself. Facts, hence, are norms.

The third chapter takes a closer look at the issue of effectiveness of Public International law, from two particular points of view: one being economy, and more specifically international

economic law, and the other being the philosophy of language. On the first point of view, the analysis is threefold, it looks at: principles, restrictions and anti-discrimination mechanisms. On the second point of view, that of the philosophy of language, the author looks at the role labeling and categorization of contexts and realities, and the role this plays in the effectiveness of Public International Law.

The last chapter of the book, named *International Public Order or Extra-Legal Juridical Effectiveness. The Democratic Empire. The Value of Customary Law* traces back to the conclusion made in the second chapter, in which customary international law plays a transcendental role in the effectiveness of Public International Law. The author uses the term “democratic empire” to refer to the United States of America, to which he will apply the specific analysis of the chapter. Furthermore, the author takes a closer look to two particular cases, that of Kosovo and Rwanda. To then finalize with a more detailed and extensive case analysis in the Inter-American context.

The main thesis the book *The Problem of the Effectiveness of Public International Law* wishes to put in the forefront is that the effectiveness of this particular field of Law will be determined by the nature of the issues to which the norms are aimed that. Accordingly, the author explains how in his opinion norms that deal with technical and economic juridical issues are rules of International Law that have absolute effectiveness. On the other hand, such rules of Public International Law that focus on global security issues and public order are norms which have relative effectiveness.

The author centers his analysis in the study of Public International Law in the context of the United States of America. He considers the United States of America to be the democratic entity that is primordial in making the rules of International Law effective. This given the ability the United States has to enforce them. The author explains how the “being” of the effectiveness of Public International Law lies within the ability of a democratic empire of exerting such effectiveness. Accordingly, norms of

Public International Law must be consuetudinary. Which at the same time will also mean that such norms of custom coincide with the foreign policy of a democracy.

