

Fly on the wall ...

Fly remembers his initial scepticism at treating international law, or the law of nations, as “law” proper, when first grappling with this issue as a youngster at university. Gradually, he came to be indoctrinated by Prof John Dugard’s insistence that there was enough of Sir Frederick Pollock’s community regarding itself as bound by recognised rules for this lot to be called law.

Some decades later, he consumed a wonderful book by Phillipe Sands, *East West Street*, detailing how for Hersch Lauterpacht the project of insisting on such “law” was vital to our basic ability to be civilised.

At heart, it’s an aspirational normative reality. For as long as enough of us pretend it exists, we do enormous good to the potential progress of humanity in a direction towards our higher natures as a species.

As the USA kidnapped the Venezuelan head of state, threatened to take Greenland, and then teamed up with Israel to drop bombs on Iran, Fly was wondering why those who keenly treasured the value of Lauterpacht’s project felt something had shifted fundamentally, somewhere, and maybe for ever.

Fly tried hard to interrogate his grief at the loss. What’s new? Didn’t the USA of the 1960s assassinate Patrice Lumumba? Of the 1970s oust Allende to instal Pinochet? Of the 1980s bomb Grenada (operation “urgent fury”, grandpappy of “epic fury”?) Of the 2000s lie to the world about what Iraq was capable of doing and planning to do imminently as a pretext to bomb it to oblivion? Didn’t Richard Nixon secretly bomb Cambodia without Congressional approval (in fact, without almost anybody knowing about it)?

So what *is* new? Why is everybody saying we are now back in a world where Might is Right, as if we ever left it? Why is it that the likes of Putin, Xi Jinping and Kim would feel the lifting of some or other burden these days that may make it easier to drop bombs on the Baltic states, Taiwan or Seoul? What burden?



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The burden of pretence. When Colin Powell addressed the United Nations in 2003, showing the world pictures of metal tubes on trucks that looked like something in the back alley of a Builder’s Warehouse, Fly thought he had seen more persuasive affidavits resisting summary judgment deposed to by serial debtors. But Powell was trying his best to pretend. Pretend that what was going to happen was in some sense legitimate, backed by some set of rules the audience shared with him. Pretend that there would be a seismic chasm, on a normative plane that actually mattered, between the imminent invasion of Iraq and Iraq’s own invasion of Kuwait some years earlier. Pretend that there was such a thing as a set of rules and that the USA tried to play by them. That pretence was what had made it necessary for Ronald Reagan to throw Oliver North under the bus.

That pretence is what is gone. Yes, nobody has ever launched a war without invoking some or other pretext to seek to render it just in some way or another. Even Hitler did this, and so, most recently, did Putin. The justifications naturally vary in their power to persuade anybody other than the immediate allies and the people who have to die and kill or have their loved ones get killed.

But there is a certain kind of justification that used to be important. Unless your state enjoyed pariah status, and since the second world war and the painstaking construction of Lauterpacht’s fiction, you either did things covertly, or you tried your best to muster the best arguments you could to appeal to Lauterpacht’s project, Pollock’s

set of shared rules. The pretence was immensely important, even if it was often tragically nothing more than a pretence.

And now, that pretence seems to be simply gone. It just does not matter any more. “War? What war? We don’t want these people to have weapons” is good enough. If they also have oil we would like, massive bonus.

Fly was recently the victim of an unsuccessful attempt by a law enforcement officer to extort a bribe from him by the roadside. The pretext was so thin, it was laughable. During this stressful and memorable encounter, it occurred to Fly, in a moment of horror, that they both knew, Fly and his extorter, that the latter did not even need a pretext. He could simply say “give me R5000 or I will make your day and maybe week miserable. Look, see my gun”. Why was it so much more shocking as a citizen to be confronted with the absence of a pretext, a pretence? Because the pretence matters, immensely, for the idea that we are governed by laws. And the idea that we are governed by laws matters immensely for our ability to achieve normative progress as a species. For those, like Fly, who have made this normative world such a big part of their own, it also matters immensely in making them feel as if their daily endeavours have a stab at what’s noble. These sorts of fictions are more important in how we live as communities, national or international, than so many other much more concrete things.

Fly wants a minute’s silence for the pretence. Let’s hope he or his children see it again one day. **A**