

The Role of Emotions in the Processes of Interaction with International Law

Written by Nicolás Carrillo

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NICOLÁS CARRILLO, JAN 2 2018

While there has been increasing attention paid to the role of emotions in international relations, generally the same cannot be said of international law –with some exceptions. This may be explained by factors as the idea –perhaps related to positivism— that legal endeavors are largely rational and could be ‘contaminated’ if room is made for emotions, which could distort analysis or, worse, generate bias and affect due process.

This notwithstanding, if emotions can have an impact on international transactions, then they surely can influence international *legal* ones. Furthermore, constructivist studies suggest that doctrines and interpretations of international law are made over time and generate a legal “language”. Why can there be no possibility of emotions having an impact on such construction? For instance, Chinese reactions to the arbitration with the Philippines may be better understood bearing in mind discourses on the “century of humiliation” – expressions and narratives with clear cultural overtones, which Anthea Roberts discusses in her recent book. Furthermore, as Myres McDougal and Harold D. Lasswell argued, international law is used -formally or not- through processes as invocation, interpretation, creation, adjudication, and others by several actors to pursue agendas and policies, and emotions can play a role in the identification of objectives and strategies to achieve them, including the creation of norms. This can be seen, for example, in initiatives that have ended up in the creation of norms against serious human rights abuses. Their background often shows that “personal histories matter in the development of the law.”

After all, as was said by Emma Hutchinson, “emotions [...] [are] an intrinsic part of the cognitive processes [...] Emotions are in one way or another embedded within all political perceptions, standpoints, behaviors and even policies.” Furthermore, a perception of the legal reputation of certain actors can be relevant in international relations, as Robert Jervis argued; and emotions can impact on the perception of legal reputation.

Altogether, there is no contradiction between emotions and reason, and there can be a synergy between them in international legal endeavors, as those based on solidarity –and empathy. In this regard, as explained by Dan Degerman, “[t]he relationship between reason and emotion, in Arendt’s understanding, seems complementary. ‘In order to respond reasonably one must first of all be “moved”’. Certainly, *lex ferenda* campaigns can answer to this dynamic.

But in addition to responding to rationalistic objections in order to defend the importance of exploring the role of emotions in international legal processes, given the excessive State-centrism in international legal studies, it is also unavoidable to address the question of whether it is pertinent to study them insofar as States are collective constructs with no emotions of their own. In fact, their very consenting –or not objecting– to norms is based on legal fictions and attribution.

Two answers can be provided. First, social psychology has explored how emotions can play a role in groups and their members; and secondly, beyond fictions, interdisciplinary and critical approaches (such as social actor model, liberal or disaggregated studies) have grasped how non-state actors –individuals included– can influence State choices with international legal relevance. In this regard, some actors operate at the transnational level interacting with international law through formal and informal processes, and others operate as sub-state actors that may

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influence States: both can be propelled by emotions or use emotional strategies, and so can State authorities. Ultimately, individuals are the ones that determine what they do or fail to do. After all, as the International Military Tribunal well explained, in the end, conduct with international legal relevance “are committed by men, not by abstract entities”.

Therefore, as individuals are emotional beings, it is not surprising that emotions can play a role in conduct that shapes or is addressed by international law. But in addition to this, sociological and social psychology studies indicate that emotions can indeed be alive and present in group dynamics –including those tied to nationalism and States.

Bearing in mind the foregoing considerations, it is convenient to ponder what impact emotions can have –and have had– on international legal frameworks. For starters, certain processes of changing or creating law can be motivated, at least partly, by emotions, as can happen with empathetic campaigns and initiatives to better protect victims and vulnerable groups, or with processes that lead to the constitution of international criminal judicial bodies. On the other hand, concerning the implementation of international law, campaigns such as the Kony one, or appeals to protect refugees motivated by episodes as the death of Aylan Kurdi, may prompt civil society to put pressure on States –and thus to influence international law indirectly if successful. In fact, in this regard, emotions can democratize international legal activism –and be conducive to the recognition of its importance by citizens worldwide.

As to interpretation, can emotions not be considered to determine the satisfaction component of reparations in a given case, or psychological complicity, among others? In the different forms of interacting with international law, emotions have certainly often had some impact. Understanding this, and several related questions, is thus important. For instance, can they improve the perception of the legitimacy or fairness of international norms, and thus affect their effectiveness? On the other hand, it is worth also exploring whether international legal constructions may generate –conditioned or unconditioned— emotional reflexes in connection with the perceptions generated by the constructions of international legal language.

Altogether, as Dylan Evans has said, research on emotions is no longer “confined to a few psychologists and [...] anthropologists” and “emotions are [not] fundamentally at odds with reason”. Thus, it is important to recognize that emotions can be highly influential in campaigns and initiatives that are empathetic and seek to protect the vulnerable, either seeking to improve law *de lege ferenda* or to implement it in order to bring about reparations and justice, which is perceived emotionally by victims and others who are affected by wrongful acts. As Martha Nussbaum claimed, it is now up to us to “imagine ways in which emotions can support the basic principles of the political culture of an aspiring yet imperfect society”.

About the author:

Nicolás Carrillo-Santarelli holds a PhD in International Law and International Relations from the Autónoma de Madrid University (Spain); an LLM in the Protection of Human Rights from Alcalá University; Certificates on Human Rights and International Humanitarian Law from American University (Washington, DC); and a Law Degree from the Externado de Colombia University. He is currently Professor of International Law and Comparative Law in the Sabana University, Colombia; and has conducted research and published in areas related to general international law; human rights law; theory of international law; non-state actors; business and human rights; domestic use of international law; among others.