## Challenges to International Law and Order from Evolving Technologies such as Blockchain

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Continuing Challenges to International Law and Order from Evolving Technologies such as Blockchain

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【Abstract】
Within the global arena diplomacy and international law have gone through a variety of transformations and adaptations, following the changing worldview of sovereign states and authority. Often the driving forces are innovation, and as such, international relations are constantly in flux. As a major driver behind change, technology tends to facilitate different interactions including the epochal trends toward globalization. Following the implementation of a new technology, there are disruptions to traditional customs, causing an evolution of social, political, and economic activities. This is particularly true in the face of further decentralization, as states may need to reassess their recognition of treaties and international law. While there have always been small states—even individual actors—with enough impact to disrupt and change the international order, recent technologies are empowering these actors to have a more significant and wider impact. This is not new; the development of weapons of mass destruction have created similar situations, such as in North Korea, where a small state has bypassed global norms and regulations to become an independent nuclear power. New technologies are constantly introduced, and a recent innovation, blockchain technology, is examined herein, within the historical context of its geopolitical implications.

【Keywords】
blockchain technology, international relations, global politics, international law
1. Introduction

Over the past five centuries, technology has driven the perception and concept of states as well as their interactions, namely international relations. The development of new innovations, whether philosophical or scientific, have also had a profound effect on the ways that states have interacted. For example, one significant area of international relations, international law, is not new; in fact, it is almost as old as the law itself, as Patrick Moynihan pointed out (1986). While international laws are ancient, it was not until the 19th century that international law was seen as a being a practical vision and reasonable choice for governments, particularly when determining behaviors towards others in international relations (Moynihan, p. 364). The advent of the industrial revolution transformed the manner in which world powers interacted. Prior to that, there were a variety of forms of organization, and many different ways to view the international order. Certain factors needed to converge to create the modern state apparatus, leading to international relations as it is currently known, with the driving changes taking place from the 16th century onward.

Technology has always driven international relations and geopolitics, as the world tends to shrink as options for physical movement and communications expand. The current state of international law has largely been shaped through the formation of the modern state, and the norms that guide interaction with others internationally. As technology continues to evolve, those changes will continue to affect the ways international law is perceived and actualized. Often, there are time-lags between innovative usage and the macroscopic view of geopolitical ramifications. This is particularly true when change is rapid and frequent; the significance of delays in technological understanding cannot be overstated. With the exponential expansion of knowledge and swift dissemination of information, profound effects can be seen throughout the world. Advances continue unabated. One recent example is blockchain technology (most recognizable as the underlying technology behind the cryptocurrency Bitcoin) which has the potential to continue to dramatically alter international law among states and with non-state actors.

2. Historical Perspective

Approximately 200 countries in the world interact with each other and respond to each other guided by the idea of adherence to international law. Defining the raison d'être of states domestically, Ray (1990) explains that “The business of government is making, applying, and enforcing law”, but he further expounds: “since the international political system has no government, it is only natural to conclude that international law does not really exist, or at least is not really a ‘law’.” (p.502) However, there are mechanisms for international law, based on the current understanding of “states,” as defined by an earlier American president. "Modern definitions of a State," wrote Woodrow Wilson in the years before he became President of the United States, "always limit sovereignty to some definite land. A State—runs the modern definition—is a people organized for law within a definite territory" (State, n.d., as cited in Duhaime Legal Dictionary).

Wilson was drawing from the traditional perspective, harkening back to the expansion of the Eurocentric worldview. In 1576, Jean Bodin defined sovereignty as the law-enforcing authority within a given territory (as quoted in Ray, 1990, p. 503). This philosophy continued to develop through the 17th century, building upon what Huntington (1997) calls: “the Westphalian separation of religion and international
politics, an idiosyncratic product of Western civilization” (p. 54). Though, for the most part, any European expansion by monarchs and explorers would be limited by the Church, which bestowed blessings to claim new territory (disregarding the sovereignty of those who were already living there, such as in the Americas, Africa, Asia, and others). This empowered the Church to establish, dictate, and enforce international law. This domination of international law by the Church continued, despite the Treaty of Westphalia in 1648, into the middle of the 19th century.

From the late-18th through the 19th centuries, the organized European states continued to pursue diplomacy in the traditional sense, by continuing negotiations with their small continental neighbors, mostly comprised of monarchies. This behavior contrasted with larger geopolitical considerations, as represented by expanding sea power (Admiral Alfred Mahan), or land power (Sir Halford Mackinder), that were fueled by Church-sanctioned exploration and colonization of the Americas, Africa and Asia (Papp, 1988, pp. 7-8).

Therefore, by the latter part of the 1800s, there were far fewer actors on the international stage, and diplomacy was seen was through the lens of larger, post-Napoleonic, European empires, in the shadow of the Congress of Vienna. At this time, much of the world was unknown and, therefore, global geography was not well mapped. As the world was claimed and discovered, it led to a process of worldwide integration, dubbed “Globalization 1.0” by Niall Ferguson (2012).

From that time, those who traditionally created, and later implemented, international laws were almost exclusively European, primarily the Christian Church, which approved various treaties that determined political borders. So, the center of global power remained in Europe, where it has continued until today (Allison, 2017).

Therefore, historically, the perspective on laws and states, even as territories were moving from monarchies towards republican commonwealths, was still in its infancy. Although states were, for the most part, held together by adherence to the status quo of feudalism and monarchy before the 17th century, their styles of governance changed moving toward and through the Enlightenment of the 18th century. A large number of the remaining monarchies held fast to the common notion that a nation’s subjects were born into a particular geographic area and political situation, dictating to whom they were subject. This, combined with the influence of the Church, made for laws that benefitted ruling elites, ensuring little room for dissent and social movement. Order was critical, and concepts of centralized authority were developed. For instance, Hobbes (1651) proposed the concept of a “Leviathan,” a political entity of omnipotent power, responsible for keeping the population in compliance with laws. The enforcement of such laws was essential, he said, because without laws, society would quickly revert to nature—the Hobbesian state of anarchy.

Philosophically, there were backlashes against the growing strength and centralization of government. The mid-19th century economist Bastiat theorized that government should stay out of citizens’ lives, as human beings maintained the natural right to “Life, Liberty, Prosperity, and Health” (as Locke's law states), and the right to defend themselves. This promoted the idea that if something was wrong for an individual, it was wrong for a government. In other words, theft by individuals or theft by the state were both plunder, with only two possible motives: greed or false charity). Additionally, citizens were warned to avoid involvement in wars, because wars beget tyranny as nationalistic armies grew.
While resistance to centralized and strengthened government was strong, the 1814/5 Congress of Vienna ensured the rise of European republics, with each nation-state maintaining sovereignty over its territories, to the exclusion of all external powers. The Congress of Vienna was, according to Henry Kissinger (1994), “stillborn,” because the stronger states found the results unjust in different ways (p. 244). However, it did keep peace for a century.

The end results of the Congress of Vienna led to treaties that comprised the prelude to WW1, and while they brought peace to Europe for decades, they also brought forth the carnage of war. These accords have even been referred to as the WW1 doomsday device, ensuring all members of various alliances would be drawn into war (Ferguson, 2009).

A similar historical example was the 1885 Berlin Conference, the primary pact dividing up the African continent. Just a few participants divided an entire continent: The British, German, and French negotiated and upheld the Belgian King Leopold’s interests granting him an area of Africa many times the size of his own country, Belgium. (Van Reybrouck, 2010; Stearns, 2011) This was, perhaps, the most egregious example of a few European powers that decided the geographic boundaries of much of the world, including Asia, the Middle East, and other areas of “discovery.”

3. International Law

Modern concepts of international law are built around two main frameworks: treaties and customary law. Treaties are contractual, signed obligations, and disputes between parties often end at the International Court of Justice. Customary Law—customs and traditions—has been around for centuries, but has undergone many changes in the modern global context. “Customs” are made up of two, generally unwritten, parts, state practice—states’ behaviors and actions—and opinion juris—policies and actions accepted in the international community.

The ways that countries relate to each other in international law has seen recent shifts. According to Raustiala (2012), the number of treaties has grown, a major trend in the last century, essentially codifying customs. One example of this was the Law of the Sea Treaty in 1982, which was instrumental in reshaping the sea maps. (Seitz, 2002)

Many tools of modern treaty enforcement are directly descended from the League of Nations court system, first introduced in 1922 and later reinvented as the United Nations. The International Court of Justice (ICG) is the main arbitrator, with other, smaller dispute arbitration panels attempting to reflect the reality of global diversity.

The ICG has 15 members, all from different countries and representative of various regions, who are elected for nine-year terms and reside in the Hague (the only UN body outside of New York City). This court serves two purposes. The first is to render opinions on international law from UN members who bring them forward. The second is to settle disputes in a manner that is binding and without appeal. Individual states may choose to disregard these verdicts, but traditionally, this has been rare.

As with many areas of international law, willingness to abide by ICJ rulings seems to be changing. American Wilsonian-style diplomacy, based on the ideals of liberal democracy, has remained the overarching system for most of the world (Kissinger, 1994). The major flaw in this approach has been that when clashing nations go to the UN for dispute resolution, and a permanent UN council member refuses to abide by the ruling, the aggrieved party can expect no resolution. For instance, China ignored the recent arbitration of the disputed South China Sea Islands. There are continued arguments that
they will eventually capitulate due to international pressures, but the bigger question is whether China will prioritize international law over their own strategic requirements (Heydarian, 2016).

Realpolitik increases the complexity, as globalization forces decisions that are not always congruent with public opinion. This leaves strategically unpopular decisions, such as the Obama policies regarding troops in the Middle East (Drezner, 2015). This helps lay the groundwork for a disruptive domestic player, like President Donald Trump.

For the United States, recent movements away from various treaties and accords suggest a pullback by the dominant superpower, exemplified by disregard for the impact of international law and custom. This began with U.S. withdrawal from the Paris Climate Accord, followed by the Trans-Pacific Partnership and the Iran Nuclear deal.

So, clearly, an enormous danger is the perception that international law can be ignored, as it is largely based on nations’ willingness to comply. For weaker states, the risk is that stronger states can implement and enforce laws that work in their own favor (often unilaterally), such as China losing in the world court against its South China Sea neighbor, the Philippines, and the high likelihood that they will not comply with the verdict.

One function the United States has played globally since WWII has been as an enforcer of what Charles Kindleberger called the “Public Good,” administration of the rule of law, critical to an orderly, globalized world. With the abdication of this function by the U.S., and the rise of China as a world power, international law has become much more complicated. As strength and power move to China, will they be less or more likely to enforce international law in the future (Nye, 2017; Alison, 2017)?

Bilaterally or multilaterally, when participation by key UN members is abdicated, the results are negated. An example is the July 7, 2017 Treaty on the Prohibition of Nuclear Weapons, endorsed by 122 countries. While a worthwhile and important endeavor, the absence of nuclear powers as signatories created an impotent treaty. There is no way to ensure worldwide implementation unless key countries join the accord.

None of these problems are new. A century ago, the League of Nations was doomed from the start, because it lacked U.S. involvement. This created a legacy that allowed others, such as Japan (who wanted more military freedom), to leave the organization when it was convenient to do so. However, the UN now includes virtually all countries (even recognizing diverse members such as Palestine and Taiwan, which are not universally recognized as nation-states). This has strengthened the mechanisms of international law and their enforcement.

The biggest challenge to international law now is the decentralized technological advances that are occurring at a rapid and relentless pace. There are different possible outcomes for international norms, which include less enforcement, as well as greater risk of individual actors acting as disrupters to traditional norms and values.

Globalization, as defined by the Merriam-Webster dictionary, is the “the integration of national economies through trade, investment, capital flow, labor migration, and technology” (Globalization, n.d.). Much of this integration has been facilitated by the discovery, extraction, and use of cheap energy, which allows a quick, efficient, and unhindered flow of goods and people across national borders. By keeping costs low and delivery cost-effective, globalization creates competitive advantage for those who can access the world markets.

In addition, the movement of people has become much more fluid and quicker, as
has the dissemination of information. Faster propagation of local, regional, and global information, more quantity of fact and opinion, and more routes to access knowledge with or without the approval of one’s government, creates a more level playing field, available to more individuals, companies, and other non-state actors.

4. Individual Actors

Fiction writers have utilized and immortalized individual non-state actors who have an oversized potential to make an impact on the world. For example, Ian Fleming’s James Bond series immortalized numerous individual international actors in the world geopolitical landscape. The unforgettable villain, Goldfinger, who can be thought of as a threat to international order, to say nothing of the government-sanctioned hero who vanquishes him (Bond becoming an allegory for international law and non-state actors). However, real-life examples have been limited by concerted intervention by governments, and by enforcement of international law.

However, as globalization expands, new potential situations and actors have the capacity to disrupt international systems, including the rule of law. While terrorists like Osama Bin Laden have created havoc, generally, they are driven ideologically, not technologically, and are backed by a large following (San-Acka, 2016). Eventually, a non-state actor like Bin Laden can access support through national governments, either directly or indirectly, but the ideology tends to remain the primary disrupter (San-Acka, 2016).

A slightly different example, driven by personal gain, not political ideology, was the international arms dealer, Victor Bout, who flouted international conventions, operating worldwide with impunity for years. He exploited the lack of relevant international laws, and the difficulty of enforcing any laws that did exist, by operating in regions where governments and the balance of power were rapidly changing (Braun & Farah, 2009).

5. Continuing Changes

With new threats to world currency and economies, as well as the diffusion of absolute power, one of the biggest current dangers is the emergence of an international superpower unwilling to protect the public good. As China is set to overtake the United States in the coming decades as an economic and, by default, political superpower, the world may be heading for an enforcement vacuum, with no single world power strong enough, or willing, to enforce international laws (Nye, 2017; Allison, 2017).

In the twentieth century, just after WWI, the League of Nations was unable to effectively thwart different rising powers after the disruption of globalization. This might also prove the fate of the UN, given decentralization of power and the potential disruption of rapidly advancing technologies. This can only be exacerbated by the US further withdrawing from the world stage with increasingly isolationist policies, creating challenges for international relations. Robert Keohane rightly pointed out that the struggle with Nazism pushed the world towards power politics in world affairs (p. 9), which may yet be repeated.

This brings the focus to the latest technology, blockchain technology, an economic and political disrupter with the power to change everything from how individuals use national currencies to how governments and non-state actors fund their operations. Blockchain technology now has the potential to decentralize power to numerous smaller
actors—empowering those who can harness the technology to anyone including non-government and non-state sanctioned groups. This means the ability to circumvent the will of powerful groups (including nations) through decentralized mechanisms. The potential outcome is that countries such as the United States may not be as able to implement economic sanctions with the dollar. Blockchain technology with leveling of mechanisms of transparency and international currencies will also be a disruption for international relations with more equality as well - with the abilities of changing the global state dynamics. It may reshape the domestic agenda of the democratic processes through less hidden agendas and fraud.

Some argue that blockchain technology will allow for expanded transparency, so countries with a manageable population size can securely register 90% of the population with government entities, and provide each individual with a blockchain ID and personal access password-ensuring validity of the voters, and eliminating fraudulent elections. Proponents point out that governments will no longer be able to rewrite history, nor lie to the populace, as transparency will make it impossible (Tapscott & Tapscott, 2018, p. 199).

The antithesis of these arguments for freedom and openness can be seen in China, where support for government intrusion into private lives is balanced against a complacent citizenry. This dichotomy works in China for a variety of reasons, but the most generally agreed explanation is that the economy is still growing, leading to a pacified population conforming to Deng’s ideal: "To Get Rich is Glorious.” The question is at what point will citizens give up individual rights to allow complete control over their identities?

Technology of this sort allowed Bout to run an arms-dealing enterprise that changed much of the geopolitics of the area in which he worked. The use of computers and satellite phones ensured that the vast array of products, and the governments he was influencing, created enough complexity to grow unimpeded by international law. His enterprise ended after a sting by the U.S. government, but could easily have continued indefinitely.

Within the U.S. government’s arsenal of weapons to ensure compliance with international law are financial tools. Bout’s assets were frozen, so he was essentially broke. Had he been able to access his funds through blockchain technology, this risk would have been eliminated, and it would have been considerably more difficult for his actions to be traced.

Some commentators contend that digital currencies can protect individuals against geopolitical risks, like Bout’s sting operation, as they are “immune to capital controls and currency manipulation” (Smith, 2016). For international relations and international law, the implications are more complex. Blockchain technologies can circumvent traditional approaches to enforcement of international norms and the rule of law. As a result, nation-states will need to create new approaches to existing problems, including the problem of disruption by these new advances in technology.

6. Technology

The century from 1870 to 1970 has been identified as the most influential in terms of technological change and transformation. As discussed in the Feb 5th, 2019 Daily Reckoning, the differences between 69AD and 1869 AD were minimal. But, from 1870 to 1970, vast and dramatic changes abounded, with consequences that are still reverberating. Adding to this time of turmoil, the half century since 1970 has seen more
refinements and larger, faster changes in information creation and data distribution than could rationally be expected, leading to “the knowledge economy,” (Wiggin, 2019) This is also the timeframe that has seen a massive growth in the sheer number of organized states as they develop in accordance with the historical narrative, and the development of international organization bodies.

At the core of all of these changes is advances in computing, with Moore’s Law lasting far longer than was ever anticipated. The 1970 theory explains that the processing speed of computing technology will double every two years, and the cost will halve. This exponential growth has remained viable for the last half-century, and is expected to continue (moorelaw.org). The ramifications are dramatic; with the application of technology, we have seen sharp increases in users and user knowledge, with individuals now accessing and utilizing tools previously only available to those with huge resources, like governments.

The face of blockchain technologies now is Bitcoin, currently the largest and most visible, example of a crypto-currency. The underlying technology of Bitcoin is the distributed ledger of blockchain technology, a way to record transactions without a central authority. In 1991, this technology was originally described as “a chain of blocks containing information acting as a timestamp for digital documents, in order to prevent backdating or altering the information”.

In 2009, the idea was further developed by a person or persons who went by the name “Satoshi Nakamoto” creating the blockchain digital currency, Bitcoin. Each block contains data (in Bitcoin’s case, the sender/receiver and amount), the hash (a series of identifying digits similar to a fingerprint) and a link to the previous block and its hash that cannot be changed. The “proof of work” takes about 10 minutes to create, and the ledger is distributed, thereby making tampering extremely difficult. (Tapscott & Tapscott, 2018)

To exemplify the advantages of blockchain, we can use the example of a traditional money transfer. A few decades ago, the transfer of funds took considerable time domestically, as the sender sent a check, and the receiver then deposited the funds into a bank in person. If both parties were customers of the same bank, it was slightly faster, as the funds were manually input and verified. With international banking, the process took much longer (often weeks), as different banks needed to have funds first changed into US dollars and then, possibly, going through a variety of different institutions before arriving at the destination.

The key for customers was always trust in the intermediaries—the assurance that banks would verify the legitimacy of the transaction. All of this was time consuming and costly for customers and prone to errors.

However, the decentralized ledger system of blockchain technology eliminates the traditional delays, as the asset transfer is completed using a fraction of the resources. There are also transparency advantages that minimize the risk of human error or theft. Additionally, blockchain can eliminate the use of certain currencies, such as the US dollar, in transactions. This is potentially very important, but will require the continued growth of Bitcoin to establish it as a true disrupter of international economies.

Smart contracts are another form of distributed ledger technology that offers immediate relevant changes to ensure compliance (or register noncompliance) with agreements. Smart contracts are digitally stored in the blockchain, and do not require third-party verification. The possibilities are endless within the international arena. These
contracts are immutable and distributed—with transparent validation of everyone involved. Additionally, all contracts could, potentially, be executed immediately. The technology allows for peer-to-peer trust, with anonymity.

While enforcement remains dependent on the contract, issues still remain regarding the will of those involved. An example with potentially concrete results was the 2015 Iran Nuclear Deal (also known as the Joint Comprehensive Plan of Action). Signed by the UN Security Council and the European Union, it allowed Iran to join the international community, lifting sanctions in exchange for Iran giving up their nuclear weapons program.

A number of trust factors were brought up by both sides, but particularly by Israeli Prime Minister Netanheau, and U.S. President Trump. Theoretically, smart contracts would help mitigate the trust factors both sides claimed, through real-time confirmation of adherence to the terms of the deal. While this would not stop further political attacks, such as a new U.S. administration deciding not to live up to the agreements, the court of world opinion could continue to pressure one side to live up to the agreement.

A country’s currency can be the path to prosperity or to ruin, so within the international arena, countries with the strongest currencies have the best advantage. If grown large enough, crypto-currencies, could potentially have an enormous impact on geopolitics, strengthening or weakening currencies. This would be through creating a viable option to the major international trading currencies: the US dollar, the Euro, the Japanese Yen or Chinese Yuan—which are all methods by which countries are able to effectively implement controls and sanctions (freezing of assets, preventing trade in a particular currency etc.).

The implementation is not evenly distributed, as there are discrepancies in execution. Niki (2018) reported that, “[W]hile some countries are restricting blockchain projects, others are actively recruiting them,” with areas like Hong Kong leading and others falling behind. Another commentator predicted the growth of influence into future generations: “It is impossible to stop Bitcoin,” and it will “grow to have significant geopolitical influence” (Serrano, 2018).

Bitcoin has been described as a currency (Serrano, 2018; Nayak, 2018), but also as a commodity, by George Friedman (2017), only a variant of a currency, because of its relative volatility. Other changes to international relations are as yet untested—applications have yet to be tried and proven in a variety of ways, as Niki (2018) pointed out when he quoted a financier who stated, “[blockchain] became a solution in search of a problem.”

The Petro: A Cautionary Example

At this early stage of blockchain implementation, there have been attempts at changing the international power structure, but without much success. The South American country of Venezuela is sitting on one of the largest oil reserves in the world. In recent years, the leftist government has been subject to American sanctions, causing hyperinflation and a socio-economic crisis (Nayak, 2018). Within the area of the town of Atapirire (in northeastern Venezuela), there are reserves of five billion barrels of oil, which was pledged to back a new crypto-currency called the “petro.” (Ellsworth, 2018). The government formed SUPCAVEN, the acronym for the official governmental agency, and certified that the petro would be valid for all intranational transactions, with 100 million issued and more than 80 percent for sale to the market (Norton Rose Fulbright,
2018). If successful, the government claimed, “the petro can be an effective weapon for the troubled Venezuela to restructure its economy without compromising its monetary-sovereignty” (Nayak, 2018).

Even with all of the assurances, the petro did not work as crypto-currency; a year after the announcement, the socio-economic crisis worsened. A Reuters report six months after the launch showed little to no oil extraction activity in the area, and local residents had no idea what the petro was (Ellsworth, 2018).

Further, initial issues of trust grew. One commentator in the Caracas Chronicles blog describes the process of using the petro to sign a lengthy contract between SUPCAVEN and the purchaser, instead of the country’s central bank. (Wolf of Kryptos, 2018) The contract included various caveats, such as clauses that released SUPCAVEN from the contract, and allowed for considerable variability of value — up to $100, according to the investor, instead of the benchmark price of a barrel of crude oil (Wolf of Kryptos, 2018). Business Insider called the petro an “imaginary currency” (Cunningham, 2018).

After the first half-year, President Maduro announced that the petro would be backed by more than just oil. According to Bitcoin.com, the currency would be backed by 50% oil, 20% gold, 20% iron, and 10% diamonds. In addition, a new white paper described the blockchain in detail, explaining how the underlying technology will work. Just four months later, the country was in crisis and the inflation rate topped 2.68 million percent, according to NHK (nhk.com). Monetary chaos was rampant; the petro was not successful and was not being traded. There were still signs of potential success, as Bitcoin was heavily traded, but the petro had only been ‘pre-sold’ and “critics dismissed the move as a scam” (Duggan, 2019).

7. Conclusion

As humanity changes and evolves, states and international interaction will also evolve. Technology is making the use of international law, with traditional states increasingly challenged by more non-state actors. The example of blockchain technology leaves open the possibility that further non-state individual actors, like Victor Bout, could play a bigger role in international relations. A new international authority may be needed, that can enforce laws and norms, combining habeas corpus with enforcement mechanisms for all parties. But, more importantly there will be continuing changes to the international order — including the traditional concepts of states and international relations as a result of human evolution.

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