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Excerpt

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PART I

Sovereignty

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1

The war against cliché: dispatches from the international legal front

KAREN KNOP AND SUSAN MARKS*

‘To idealize’, writes Martin Amis, ‘all writing is a campaign against cliché. Not just clichés of the pen, but clichés of the mind and clichés of the heart.’ He goes on: ‘When I dispraise, I am usually quoting clichés. When I praise, I am usually quoting the opposed qualities of freshness, energy, and reverberation of voice.’¹ Amis is a justly respected leader in the war against cliché. But if we, the authors of this chapter, hope to consider ourselves partisans of that campaign, in our case the spur to enlist came from another source.

It was at the time when we were both doctoral students working under the supervision of James Crawford. One of us was busy finding the devil in the detail. The other was wondering whether at the end of the day everything really was so cut and dried. Well, suffice it to say (for clichés are surely hard to avoid altogether), we changed our tune (ditto) when there began to appear in the margins of our drafts that shaming rebuke, that call to arms: ‘cliché’.

We wish to use the present occasion to explore a little further what happened then. What exactly was it that James was signalling to us as aspiring scholars of international law when he cautioned us against cliché? Are the clichés of international legal field clichés of the pen, or also clichés of the mind and even clichés of the heart? Why are they to be deprecated? And if, once deprecated, they still remain (as we have already suggested) hard to avoid, why is that so? Does cliché always stand opposed to freshness, energy and reverberation of voice, or might it be that, behind the over-familiarity, there is potential for vitality and insight yet?

* We thank Simon Stern for his valuable suggestions on the subject of cliché and the Global Law Students Association, Melbourne Law School for the opportunity to discuss a draft of this chapter.

¹ Martin Amis, *The War against Cliché* (London: Vintage, 2002), xv.

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It is a cliché of writing about cliché that, while we think we know a cliché when we're confronted with one, that is not always the case. Perhaps because of this, much work on the subject takes the form of inventories or 'dictionaries' of clichés.² We do not offer here a list of international legal clichés (assuming such could exist). The issue for us is, rather, cliché – the phenomenon of cliché – as a problem of international law. What does it mean, we ask, and what does it not mean, to wage the war against cliché on the international legal front?

I

We begin with the concept of cliché itself. In the introduction to a dictionary of clichés that is now in its fifth edition, Eric Partridge writes that a cliché is 'an outworn commonplace; a phrase or short sentence that has become so hackneyed that careful speakers and scrupulous writers shrink from it because they feel that its use is an insult to the intelligence of their audience or public.'³ This definition highlights a number of features. In the first place, there is the *hackneyed* character of the cliché. Clichés are banal, trite, ho-hum. Secondly, the concept of cliché brings with it the idea of loss or degeneration.⁴ A cliché is an *outworn* commonplace, in the sense that it originally had a point but repetition has now blunted that point and effaced the meaning and intensity which the cliché once had. And thirdly, cliché is a pejorative term. To apply the label is to condemn that to which it is applied as boring, predictable, inane, jejune and/or specious – an *insult* to the collective intelligence.

Partridge's concern is the verbal cliché – the phrase or short sentence – but, at any rate today, the concept of cliché plainly extends much further than that. Thus, for instance, we speak of musical clichés, architectural clichés, theatrical clichés and culinary clichés. We take cliché to apply not only to language, but also to the aural, visual and other sensory domains, as well as to the realm of gestures and actions. Underlying all this is an idea of cliché as a particular mode of thought – a markedly unreflective mode of thought, indeed a mode of non-thought, a kind of automatism. For Walter Redfern, the central characteristic of cliché is 'dependence'

² See e.g. Eric Partridge, *A Dictionary of Clichés*, 5th edn (London: Routledge, 1978); James Rogers, *The Dictionary of Clichés* (New York: Ballantine, 1991); and Lucy Fisher, *Clichés: A Dictionary of Received Ideas* (Kindle, 2012).

³ Partridge, *A Dictionary of Clichés*, 2.

⁴ On this, see Elizabeth Barry, *Beckett and Authority: The Uses of Cliché* (Basingstoke: Palgrave Macmillan, 2006), 3.

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in this sense.⁵ When you use a cliché, you short-circuit cognition. You renounce your independent-mindedness and obviate the inconvenience and effort of thinking for yourself. There is felt to be a laziness about the use of cliché. There is also felt to be an undertone of self-legitimation, inasmuch as clichés tie us to normality, to respectability, to authority. In her study of the trial of Adolf Eichmann, Hannah Arendt remarks on Eichmann's tendency to repeat 'word for word the same stock phrases and self-invented clichés', observing that 'when he did succeed in constructing a sentence of his own, he repeated it until it became a cliché'.⁶

At the same time, Gillian Beer poses a fair question when she asks: '[H]ow would we live or communicate without clichés?'⁷ Clichés frequently belong to the category of phatic communication, meeting the need for general sociability, rather than putting across any specific proposition. As Beer explains, 'cliché assures us that we all belong together . . . It wards off extreme intimacy of encounter', while signalling comfortable 'communality'.⁸ Redfern recalls that the French word 'répétition' has the double sense of reiteration and rehearsal.⁹ The repetition of familiar tropes facilitates the performance of social interaction. The darker side of that is, of course, that cliché is also exclusionary. Outworn, it is by no means washed-up; there is a potency in its very banality. Thus, clichés function as *shibboleths* that distinguish those in the know from those who fail to understand the clichéd expression or to appreciate its character as a cliché. At the same time, clichés serve as carriers of *ideology* that uphold the status quo by making the received version of right-thinking common sense too banal to question. Arendt's attention to Eichmann's patterns of speech has been read in this light: 'To identify the cliché is to try to open up the possibility of dissent in the domain of the obvious.'¹⁰ Finally, clichés give expression to *stereotypes* that reinforce prejudices and perpetuate the marginalisation of low-status groups.

The concept of the stereotype takes us directly to the origin of the word 'cliché'. Borrowed from French, the term comes from the world of printing. It refers to a moulded metal plate – a stereotype – cast for printing

⁵ Walter Redfern, *Clichés and Coinages* (Oxford: Basil Blackwell, 1989), 16.

⁶ Hannah Arendt, *Eichmann in Jerusalem* (London: Penguin, 1994 [1963]), 49. See further Jakob Norberg, 'The Political Theory of Cliché: Hannah Arendt Reading Adolf Eichmann', *Cultural Critique*, 76 (2010), 74.

⁷ Gillian Beer, 'The Making of a Cliché: "No Man is an Island"', *European Journal of English Studies*, 1 (1997), 33.

⁸ *Ibid.* ⁹ Redfern, *Clichés and Coinages*, 8.

¹⁰ Norberg, 'The Political Theory of Cliché', 81.

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blocks of text. Whereas at first individual letters had always to be set one by one, in the early nineteenth century a process developed whereby phrases that were likely to appear frequently could be prefabricated as single units – ‘clichés’. The word is believed to be onomatopoeic: *clicher* is a variant of the more common *cliquer* (to click), and is understood to evoke the ‘click-clack’ sound made by the moulding matrix when it struck the surface of the molten metal to produce the plate. By extension, cliché came also to refer to plates for the printing of images, and later to other printing technologies, including photographic negatives. The figurative usage of cliché as a ‘prefabricated’ or stereotyped mode of expression had apparently gained currency in France by the 1860s. That figurative usage (though not, it seems, the literal usage) was then imported into English.¹¹ The *Oxford English Dictionary* dates the first occurrence in English to 1892.

The cliché, then, is a phenomenon of the nineteenth century that is bound up with processes of mechanisation, industrialisation and rationalisation, and with the emergence of a print culture enabling the mass circulation of texts. In tracing its history, Elizabeth Barry highlights the shift from the positively or neutrally coded ‘commonplace’ to the negatively coded ‘cliché’.¹² In classical antiquity commonplaces formed part of the study of rhetoric, and referred to particular starting points or thematics to be used in formal argument (*topoi*). Early modern European thought likewise embraced the idea of the commonplace, though not so much as an aspect of rhetoric, which fell widely out of favour insofar as it came to be associated with manipulative and insincere speech. Instead, the activity of ‘commonplacing’ and the ‘commonplace book’ became private pursuits, the collection of material in personal scrapbooks. According to Barry, what set the scene for the concept of cliché was the emergence of a mass market for the consumption of texts. Anxiety about vulgarisation, banalisation and inauthenticity arose as a concomitant of the increasingly wide and fast dissemination of words and ideas that was made possible by the new technologies of mechanical reproduction. Barry reports that an analogy became prevalent in Romantic literary aesthetics between ‘a mechanical use of language and the technical equipment of printing’.¹³

The first work thematising the concept of the cliché is often said to be Gustave Flaubert’s satirical novel *Bouvard and Pécuchet*, written in 1880,

¹¹ The *Oxford English Dictionary* refers to cliché in its literal sense as the French name for what in English is simply called a cast or, in a more technical idiom, a ‘dab’.

¹² Barry, *Beckett and Authority*, 11 *et seq.* ¹³ *Ibid.*, 16.

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in which two copy-clerks embark on a search for knowledge that brings only errors, failures and disasters.¹⁴ The clerks' putative commonplace book – published separately under the title of *Dictionary of Received Ideas* – catalogues clichés in such entries as 'Rhyme: Never in accord with reason'; 'Thicket: Always "dark and impenetrable"'; and 'Unleash: Applied to dogs and evil passions'.¹⁵ By the middle of the next century, the denunciation of cliché had become considerably less subtle – a trend perhaps nowhere better exemplified than in George Orwell's famously intemperate essay on politics and the English language.¹⁶

For Orwell, 'the English language is in a bad way', and a key aspect of the pathology is the prevalence of clichés.¹⁷ All too often, and especially in the discourse of politics and government, recourse is had to 'ready-made phrases' and 'worn-out metaphors which have lost all evocative power and are merely used because they save people the trouble of inventing phrases for themselves'.¹⁸ Echoing the association mentioned above of 'mechanical' language with printing technology, Orwell writes that a 'speaker who uses that kind of phraseology has gone some distance towards turning himself into a machine. The appropriate noises are coming out of his larynx, but his brain is not involved as it would be if he were choosing his words for himself'.¹⁹ The essay culminates in a series of rules for overcoming this state of affairs, of which rule 1 is 'Never use a metaphor, simile or other figure of speech which you are used to seeing in print.'²⁰

II

Let us now begin to connect this discussion to international law.²¹ In doing so, we should note one further feature of cliché on which we have not yet touched. This is that cliché is, as Ruth Amossy and Elisheva Rosen observe, an inescapably relative phenomenon.²² There is no such thing as a 'cliché in itself'.²³ Rather, clichés are specific to particular times.

¹⁴ Gustave Flaubert, *Bouvard and Pécuchet*, with *Dictionary of Received Ideas*, tr. A. Krailsheimer (London: Penguin, 1976).

¹⁵ *Ibid.*, 324, 328.

¹⁶ George Orwell, 'Politics and the English Language', reprinted in *Why I Write* (London: Penguin, 2004), 102.

¹⁷ *Ibid.* ¹⁸ *Ibid.*, 112, 106. ¹⁹ *Ibid.*, 114. ²⁰ *Ibid.*, 119.

²¹ We join here a wider literature on law as rhetoric and the roles of imagery in law, including international law. What distinguishes clichés is that they involve failed metaphors, whereas the legal literature tends to focus on successful imagery.

²² Ruth Amossy and Elisheva Rosen, *Le Discours du cliché* (Paris: Société d'édition d'enseignement supérieur, 1982), 9.

²³ *Ibid.*

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We mentioned earlier Partridge's dictionary of clichés. It runs to some 250 pages, and puts asterisks next to clichés that are 'particularly hackneyed or objectionable'.²⁴ Yet who today speaks of 'heaping coals of fire on a person's head', or of 'Lares and Penates', 'the clerk of the weather', 'in one's palmy days' or 'hewers of wood and drawers of water' – all of them asterisked as especially egregious clichés in Partridge's most recent edition of 1978?

Clichés are also specific to particular places. To stay with verbal clichés, 'Monday morning quarterback', 'fall off the turnip truck', 'blow this pop stand' and 'talk turkey' might be – or once have been – used and understood by some people in the United Kingdom, but if so, these phrases would not be likely to be – or have been – heard as particularly clichéd. That said, the global circulation of language, or at any rate English, and perhaps especially American English, is a widely remarked phenomenon of our time, and it may be accelerating. As Hephzibah Anderson remarks, 'Twitter, digital memes and the 24-hour news cycle can coin a cliché overnight, it seems.'²⁵

Finally, clichés are specific to particular contexts and communities. Hence Redfern's remark near the beginning of his book on cliché that there is 'no way of knowing whether my clichés are yours'.²⁶ Amossy and Rosen explain that clichés depend on conditions of reception that permit them to be recognised as such.²⁷ Along with the other aspects of relativity, this is, of course, a feature shared by the related phenomenon of idiom. But whereas idioms are unmarked lexical items, we have seen that it belongs with the distinctiveness of the cliché that it gives off an aura of loss or degeneration.²⁸ In order for that to occur, there must exist a situation in which, and an audience by whom, it is apprehended as exhausted, stale and devitalised, something that once fired the imagination, but does so no longer.

Learning to sort a field's clichés from its idioms is an important competence that may serve as a badge of proficiency for those who have it and a handicap and barrier to entry for those who don't. It is a competence that is often acquired through relationships of training or apprenticeship. We have already mentioned the training which we both received from James Crawford. Of course, that training was not limited to specialised international legal language. The clichés of international law are the clichés of

²⁴ Partridge, *A Dictionary of Clichés*, 9.

²⁵ Hephzibah Anderson, 'In Praise of the Cliché', *Prospect*, 14 November 2012.

²⁶ Redfern, *Clichés and Coinages*, 3. ²⁷ Amossy and Rosen, *Le Discours du cliché*, 9.

²⁸ On the distinction between cliché and idiom, see further Barry, *Beckett and Authority*, 4.

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everyday communication – and they are the clichés of policy debate, legal practice, institutional organisation and academic life as well. On the other hand, those wider terrains are not all-encompassing. As with Orwell's domain of politics, there also exist clichés that are rooted in the distinctive history, literature, institutions and traditions of international law itself.

Thinking about cliché as a problem of international law, we might start by recalling the usage in international legal communication of banal and specious phrases in general currency. 'The reality on the ground', 'all the stakeholders', 'going forward' and 'drill down' are a few contemporary examples. We can then notice the emergence of clichés peculiar to international law. These mostly arise from the overuse of language borrowed from academic literature or from the pronouncements of courts and tribunals. 'The invisible college',²⁹ 'compliance pull',³⁰ 'a legal black hole'³¹ and 'the dark sides'³² are some phrases that may be thought to exemplify this turn of events whereby resonant expressions become, in some sense, victims of their own success. To these figurative noun-phrases, one might add sentence-length propositions. It is now trite to say – as the cliché of legal discourse would have it – that 'almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time'.³³ So too, repetition has dimmed the rhetorical power of Judge Dillard's chiasmus: 'It is for the people to determine the destiny of the territory and not the territory the destiny of the people.'³⁴

But the clichés of international law are not, of course, only verbal. Perhaps the most notorious international legal clichés lie, in fact, in the visual domain – the domain of book covers, website homepages, institute logos and the like. Robert Musil once wrote that '[t]here is nothing in this world as invisible as a monument',³⁵ and certainly the iconography of international law is replete with 'monuments' that have become more

²⁹ Oscar Schachter, 'The Invisible College of International Lawyers', *Northwestern University Law Review*, 72 (1977–8), 217.

³⁰ Thomas Franck, *The Power of Legitimacy among Nations* (New York: Oxford University Press, 1990), 16.

³¹ *R (Abassi) v. Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598, para. 64; Johan Steyn, 'Guantanamo Bay: The Legal Black Hole', *International and Comparative Law Quarterly*, 53 (2004), 1.

³² David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press, 2004).

³³ Louis Henkin, *How Nations Behave: Law and Foreign Policy*, 2nd edn (New York: Council on Foreign Relations, 1979), 47 (emphasis omitted).

³⁴ *Western Sahara*, Advisory Opinion, 16 October 1975, ICJ Reports (1975), 12, 116.

³⁵ Robert Musil, 'Monuments' in *Posthumous Papers of a Living Author*, tr. Peter Wortsman (London: Penguin, 1993), 61.

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or less invisible. Maps are one example. Their overuse on the dust jackets of international legal books has largely drained them of the capacity to engage us imaginatively. We register them, of course, as images of the global scale of international law or of its preoccupation with boundaries, spaces and territories, but they do not detain us for long. They do not hold our attention or invite our scrutiny. Their evocative spark has gone faint. Yellowing antique maps, favoured in recent times to emphasise international law's Eurocentric viewpoint (whether to place it comfortably in the past or disturbingly in the present), scarcely escape this fate.

Images of justice – the blindfolded goddess *Justitia* or the set of scales she holds – together with the Earth as a globe are another example. A staple of logos of programmes, journals and professional associations in the international legal field, these once-inspiring representations now project reassuring normality, safe respectability and a rather bland, humdrum authority. As a final example, we might take the scenes of important people doing momentous things in settings of international law-making and adjudication that adorn international legal publications and promotional materials for international legal activities – statesmen shaking hands, diplomats negotiating around a table, Heads of State signing documents, representatives voting at the United Nations, international judges on the bench and other similar images. Are we to focus on who is present at these occasions or on who is absent from them? The images are so familiar that it becomes hard to remember even to ask such questions.

Alongside verbal and visual clichés, any discussion of cliché as a problem of international law must reckon with a further category of clichés that come rather less neatly packaged for inspection. We shall call this the category of 'conceptual clichés'. Inasmuch as they are expressed through language, conceptual clichés might, of course, be assimilated to verbal clichés. But the focus here is less on the manner of speaking than on the manner of conceptualising things. Conceptual clichés are outworn ways of framing, analysing, thematising or otherwise thinking about the issues under investigation. In expressing conceptual clichés, we can usefully take our cue from Flaubert's copy-clerks. Thus, some international legal examples might be 'State sovereignty: Either eroding or persisting'; 'The individual: Always emerging as a subject of international law'; 'International legal system: Young, embryonic, primitive'; and 'Balancing: Applied to freedom and security, state sovereignty and human rights, military necessity and humanitarian protection, etc.' Stamped machine-like on the texts of international law, these *topoi* operate as stereotypes, shibboleths and performances of comfortable 'communality'.