Universalism of International Law and Imperialism: The True-False Paradox of International Law?

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This article explores a tension inherent in and constitutive of international law as a discipline. This tension relates to the presence of imperialist elements in the universalism of international law. International law has from its origins been marked by this paradox, the author claims, and cannot escape it without itself ceasing to exist.

My intuition, which is by no means a new thought but which I would like to reiterate here, is that international law has contained a paradox from its very origin. This is a foundational paradox in international law that does much to explain its connection to imperialist and hegemonic practices. The paradox results from the fact that international law, past and present, reflects a particular – western – culture while simultaneously aspiring to render the values it carries almost completely international and universal. To such an extent that my question is as follows: is this foundational paradox itself a constituent of international law? That is to say, can international law overcome it without disappearing as such? Or is this a paradox of origin, a paradox that never really was a paradox, and that will disappear with the advent of a truly internationalist and globalised society? And if so, can that which may have been perceived – and which was indeed so perceived – as juridical imperialism, really become – or is it in the process of becoming – juridical universality? Is this paradox of international law true or false? Has a history of international law come to an end? Has another begun? Or does the history of international law merely repeat itself? I develop these few suggestions simply to try to understand the logic behind the evolution of international law in its universalist dimension.
The Universalism of Classic International Law: Between Rationalism and Regionalism

That classic international law is the product of European legal culture is an indisputable fact that no one challenges. International law emerged with the advent of the modern European period. The first rationalist, humanist and liberal version of international law actually emerged between the sixteenth and eighteenth centuries within the school of natural law in Europe and was subsequently imposed imperialistically upon the world throughout the nineteenth century and the first half of the twentieth. Yet there is a fundamental paradox in the first “law of nations” adopted by the European powers and in the way it was theorised upon by the jurists of the schools of natural law (Grotius, Pufendorf, Wolff, Vattel). While being the direct product of European thought, and thus of a narrowly regional vision of international law as well as of a specific culture and civilisation, the law of nations was conceived by its founders as consisting of abstract, neutral norms, universally applicable to every state, regardless of judicial culture or traditional concept of law. No doubt, the category of so-called barbarian nations has always been presented as an obstacle to the immediate application of international law, but it remains a fact that in principle, the highly formalistic and egalitarian nature of this type of law was designed for universal application. This universality of international law was simply postulated in respect of a more complex reality, and initially restricted to Christian Europe, but it was no less strongly asserted for all that. According to Vattel, for example, “people treat with each other in quality of men, and not under the character of Christians, or of Mohammedans.” Such universality can be explained by its link with rationalism. From its origins in the school of natural law, this universality was directly supported by a vigorous rationalism. It is reason, shared by all, that establishes the universality of the principle of the law of nations, for it is from reason that the rights and obligations of individuals and states can be deduced. The law of nations ordered states to settle their relationships so as to achieve the coexistence, peace and the well-being of their populations. The opposition between the universal and the regional thus relates on a more fundamental level to the rational/cultural opposition.

Classic international law has remained split throughout its history between regional/cultural tendencies on the one hand and universalist/formal tendencies on the other, these becoming more complex as the scope of international law extends further. From the late eighteenth century onwards, the universalist spirit of the school of natural law has been obscured by the perception of the “law of nations”

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1 For a very enlightening perspective of the domination of the European model of international law at the time, despite the existence of other models developed by other civilisations, see Onuma 2000, 1–66.

2 Vattel 1758, L. II, chap. XII, §162.
as the law of specifically European nations. With the development of positivism, the law of nations was no longer thought of as a law founded on nature and on universally shared rationality, but merely as the effective rules existing between nations – something that at the time meant European law. This phenomenon also owed much to increasing European consciousness of the continent’s identity and European power then being in the full thrust of expansion. The idea that there is a specifically European “law of nations” was very clearly exposed in Germany in 1789 in the *Summary of the Law of Nations, Founded on the Treaties and Customs of the Modern Nations of Europe* by G. F. de Martens, and in Austria in 1819 in *Modern Law of Nations in Europe* by J.L. Klüber. Previous works on the subject had titles that were much more general, such as *The Law of Nature and of Nations* (1672) by S. Pufendorf or *Law of Nations or the Principles of Natural Law Applied to the Conduct and Affairs of Nations and Sovereigns* (1758) by Emer de Vattel. But this European background is sometimes itself superseded in favour of new national or regional visions of international law, that claim be better suited to the type of culture claimed, and thus to international law as adapted locally or regionally. This is the case with various European, as well as American, visions of international law, some of which have even been combined in a single work such as the *Treatise on European and American Public International Law* (1885) written by the French jurist, Paul Louis Ernest Pradier-Fodéré.

At the same time, the universalist rationalism that underlay the earliest law of nations becomes somewhat attenuated, though without the idea of a universal rational law being totally abandoned. It was in fact demoted to the role of a theoretical system of law that authors distinguished from positive or practical law. This is particularly well illustrated by the work of the great Latin-American diplomat, Carlos Calvo, published in 1870 as *Theoretical and Practical International Law*. Dismissing the universalism of the Enlightenment, the Romantic movement and the nineteenth-century historical school of law both made a substantial contribution to awakening consciousness of individual particularity and to a rise of national visions of international law; they correspondingly re-introduced a nationalist and imperialist statehood and view of law. Yet these specific and cultural visions of international law were, in turn, challenged after the disaster of World War I, by certain abstract and formal doctrinal constructs written in the inter-war era, most of them European, such as those of H. Kelsen, G. Scelle and even H. Lauterpacht. In other words, conceptions of international law have constantly mixed together or oscillated between, on the one hand, a universalist and rationalist vision and, on the other, a regional, positive and romantic concept of law. Yet the universalist concept of international law is itself the product of a tradition in western thought, despite the fact that it claims to extend beyond cultural and sociological differences, or at least to hold them irrelevant to juridical analysis.
The Universalism of Classic International Law, Imperialism and Colonialism

The formal, abstract, conceptual and universalist nature of this type of law is one of its greatest strengths, and serves at the same time to effectively conceal the aims of imperialist domination by the European (then Western) states and the world’s submission to their economies as well as to their model of a system of law. By virtue of this paradox, classic international law combines a universalising facade with underlying discriminatory and imperialist practice. Its universal extension could not have occurred without a total and fundamental recasting of existing non-occidental political entities in the mould of the modern European state. This brought in its wake an irremediable destruction of existing traditional forms. Furthermore, and throughout the classical period, international law as declared universally applicable to all states, was in reality a concrete translation of territorial and colonial imperialism. Thus law itself came to consecrate the discrimination between states and a sort of non-universality of law. It legitimated the imperialist imposition upon all of this single juridical model, along with the appropriation of land and governance of territories that European rule brought with it. If imperialism is taken to mean the domination and the forceful application to others of one’s own legal and economic system, then it is undeniable that classic, Eurocentric international law accompanied and legitimised such imperialism through a system of direct appropriation, through the right of effective occupation, the definition of sovereignty as virtually absolute and the system of mandates, trusteeships, etc.

This situation has been repeated over several centuries in our history, the universality of ideas each time concealing the brutality of conquest. During the first colonisation of the Americas, Christopher Columbus believed in the universal victory of Christianity, as he explained in his letter to the Pope in February, 1502: “I hope that Our Lord is able to spread His holy name and His Gospel throughout the universe”, despite the fact that greed, the lust for gold and power went with him wherever he went. Several centuries later, the emblematic writings of Joseph Conrad at the time of the great European colonisation, would echo those words:

The conquest of the earth, which consists essentially in taking it from those whose skin is a different colour to ours … can only be bought by an idea. A guiding idea; not a sentimental pretext, but an idea; and a disinterested belief in this idea – something before which one can prostrate oneself, to which one can offer sacrifices.

3 For the juridical concept of colonialism and neo-colonialism, see Dictionnaire de droit international 2001, 193–194. For a wider definition, see Roy 2003, 231. For definitions of imperialism and forms of domination, I would refer to the distinctions provided by Sur 2004, 140ss.
4 Quoted by Todorov 1984, 19.
The same applies to the considerations of the Permanent Court of International Justice, as in the 1923 *Nationality Decrees* case in respect of the system of protectorates: “… [and that] it may finally be established through the authorised opinion of the Court of Justice, if not a complete statute, at least a general rule of principle applicable to the various protectorates […] Provided that this general rule should first and foremost be inspired by the higher goal of the protectorate […] a work of civilisation […] an advantage in which all [the nations] are equally interested […]”.

Of course, professional international lawyers contribute to the ultimate development of this dichotomy in decisive ways through an international law which is made up of the internal projections they develop in regards to the external realities of law. They participate in the elaboration, teaching and diffusion, of international law as a legal “system” that is indeed conceived of as being international and rationally applicable to all states (called “civilised” in the beginning). This law is understood as the product of European genius. The international lawyers embrace what they perceive as a liberal, humanist, civilising and colonialist belief system, without perceiving any inherent contradiction in these terms. According to the jurist Joseph de Hornung, for example, “civilised people should set the example of a higher form of justice … the civilised nations should help the ‘inferior races’ to enter the political system of Nations”.

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The original paradox has left a mark on international law that persists today. It partially explains the straying of the European colonial rule and, at the same time, the success of a system of law that was sufficiently abstract and formal to be considered compatible with most non-European cultures. It would seem to me that the latter point should be stressed without there being any misunderstandings on the subject. While it is obvious that this juridical model was extended to the rest of the world specifically through European colonialism and imperialism, with disastrous consequences in human, cultural and political terms, European international law would nevertheless have been quite unable to sustain itself until today if it were not for its abstraction and formalism. At first, it was to constitute a factor of inclusion/exclusion as the public law of the European states only, then as that of all civilised states, through incorporating civilised states while excluding others that were subjected to colonisation, but eventually it was to embrace every state in the world. This in no way signifies that it became politically neutral since it is the product

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of European liberal thought. Nor should we remain satisfied with it, because it continues to be just as much a factor for exclusion as for integration today. This merely means that one must not underestimate the importance and interest that its formalism has had and still has when co-existence and co-operation need to be made possible between multiple, culturally different political entities whose understanding of shared political assets differ profoundly.

**Contemporary Development**

The situation may appear to be profoundly different today because international law has clearly evolved since 1945, the fundamental stages being the post-World War II, the 1960s (decolonisation) and the 1990s (ending of the Cold War and new globalisation). With decolonisation, the colonial project appears to have been permanently extinguished. Territorial imperialism and conquest are utterly condemned not least owing to the trauma of the two world wars. Globalisation and the end of the Cold War seem to have enabled the emergence of an inter-subjective consensus on international law and its values that never existed before on such a worldwide scale. The magnitude of these changes should not be underestimated. There is the fact of the weakening of the state (though this needs to be relativised), but above all the fact that regional, discriminatory and specialised law was replaced, during the second half of the twentieth century, with law that was extended to all, without discrimination *de jure*, and on the face of it, based on respect for the integrity of every *de facto* politically independent entity. If the term “universal” means “extending to all the planet” or “to all the individuals of a single class”\(^8\), it can apparently be concluded that international law has become universal, at least in its application to states, and that it is now accepted as such by all — and is no longer hegemonic.

Perhaps the concepts of “generality” and “universality” should be specified here. The international law which has thus been extended to all, by force if necessary, continues to consist of general rules and special rules, whereas general law, when customary, can be the subject of persistent objection, and thus not applicable to all. Thus generality does not mean universality. The generality of law, of rules, means that they are applicable to a category of beings, a *plurality* of subjects. As for universality, it applies to the *totality* of beings and of subjects. The universal extension, and thus the universalism of international law, that we are talking about, thus consist in the extension of this model of production and application of international rules to cover the whole planet universally, but with its batch of general and special rules and their respective fields of application, with its secondary and primary rules, and the principle of reciprocity as the internal engine for its implementation. Through such

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\(^8\) *Dictionnaire Petit Robert* 1 1980, 2050.
a process, and if we go back to our initial proposition, we will have finally reached a situation of real universalism in respect to the circle of subjects of international law, and to a new legal construct of the post-cold-war and post-colonial era. A law that would be founded on a true consensus, which would no longer define exclusion or discrimination, *de jure*, (except in the form of positive discrimination), and would no longer translate a hegemonic vision that is only that of a single continent. Globalisation of practices and law would to bear witness to that.

We are all nevertheless very well aware that despite these changes, the question of the imperialism of international law or of some of its values has arisen yet again and that it is almost as strongly and frequently denounced today as it was in former times. Why should this be? By what singular displacement has law that has apparently become non-colonialist and non-discriminatory, law accepted by all, be suspected of being the reflection of a certain hegemony? And what lessons can be drawn from this?

Evidently, there are several explanations for this situation. The links between international law and imperialism are multiple and far from having been completely unravelled. The mere fact that law is a social instrument obviously means that it can be manipulated by the dominant powers of the time. Furthermore, certain current practices of occupation, of indirect management of territories, ease of access for fossil fuel exploration, the free deployment of trans-national private practices and the interplay of the most powerful economic players, etc. are inevitable reminders of the territorial element in the traditional system of appropriation and of certain neo-colonial practices. But it is not this neo-colonial territorial and economic aspect of contemporary international law that I wish to deal with here. As I have mentioned, we also need to raise again the question concerning the universalism/imperialism of international law in respect of the values of modern juridical humanism. This humanism, to be very brief, is exemplified by human rights, especially those proclaimed in the "universal" Declaration of Human Rights of 1948\(^9\), and by the shared material principles specific to the contemporary international order (the right to peace, to a healthy environment, etc.). We shall focus only on the example of human rights, since they are evidently symbolic of a new juridical humanism and because they are certainly at the heart of this new universal materiality, of these shared values of contemporary international law that compete with traditional international law based on territorial sovereignty.\(^10\)

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The Formal/Universal Material of International Law

Admittedly, traditional international law also translated the values of its advocates. Formalism does not imply vacuity\(^1\), contrary to what one is sometimes led to believe, and formal law always formalises a content or material. Matter and form are interdependent and the opposition between the formal and the material that is used here is relative. All law transcribes the values of those who create it, it is not a mere form that remains devoid of substance, but rather the translation of the values of the society that it regulates. It would be completely wrong to think that the first classic international law, extended to cover the whole world, was purely formal. It was an instrument of the modern state, and, through colonial and territorial domination, it imposed the values of internal organisation that destroyed the cultures of the colonised peoples. It is nevertheless true that the values that are inherent in traditional international law were principally those of co-existence and co-operation; therefore they allowed, in principle, each state – and subsequently each newly decolonised state – to pursue its own goals, requiring only a minimum of integration of systems of law. This is one of the reasons, as we have said, why international law has succeeded through what we have called the formalism of classic international law, i.e. by essentially consisting in rules of operation and cohabitation between entities with profoundly differing subjective values and concepts of justice.\(^2\)

The formalism of international law currently persists, and with it a certain formal universalism, namely the equal application to the whole world, and without discrimination between states, of the international legal system of European origin. But the pursuit of goals that are really held in common on an international level, of a common justice, would appear to create an obligation to foster an even greater degree of integration of each state’s traditions and cultures so as to be able to define and adapt to these new objectives, and thus to pursue a new phase of acculturation. If there has really been a move away from liberal and mainly formal law, aimed solely at organising respect for the sovereignty (freedom) of each state, to a multiform and complex law, that would seek to express solidarity and to play down sovereignty and also supplant it for the benefit of the common good (which might, this time, really be the freedom and well-being of individuals), then we are witnessing a process of the *substantialisation* of international law, which necessarily implies a will to harmonise the values of each individual by overcoming some of the most dramatic cultural divides between them. The fact that one today speaks of universalism is due to the fact that these humanistic values, these new finalities, are most frequently understood as being based on human nature or the interests


\(^2\) This is what Mr. Koskenniemi analysed, identifying it as political liberalism transposed into international law and consisting in the principle of the formal primacy of law over the subjective concepts of states. Koskenniemi 1990, *Between Utopia and Apologia: the Politics of International Law*, 1–32.
of community in general, and as needing to be applied to every human being. One thus finds the insignia of an underlying western rationalism which ever since the time of natural law has underpinned the universality of the principles of the law of nations. This material universality is a mere postulate, since legal texts in which human rights are enshrined are of general rather than universal application, but their underlying rationalist foundation leads to their being conceived as being universally applicable in the long term. Certain categories of treaties, certain customs, certain general principles that concern them, “are intended to achieve universality”.  

Furthermore, when we speak of the common good or of common values in contemporary international law, we do not mean that current international law a priori imposes some form of religion, culture, morality, or a concept of happiness specific to particular states. If we stick to human rights and democracy, these are clearly taken to express a concept of legal and liberal “justice” that ought to be neutral with respect to the conceptions of the good of each person, and that aim in the long term towards respect for the plurality of values and the subjective good of individuals, that enhance internal plurality within each state of the cultures, opinions and religions of each individual. It is a set of values founded on pluralism and tolerance. Yet it is also true that these shared juridical values, instituting pluralism, liberty and tolerance, are based on a specific idea of “justice” that corresponds to a vision of the “common good” of international society itself as an end that it pursues. As Charles Taylor has demonstrated so well, a concept of what is good for human beings is a necessary prerequisite for a concept of rights. This common good, incarnated in the new values of contemporary international law, claims a dimension of universality that would transcend the historical context in which they emerged, a universality that would eventually permit confronting every state – and especially any non-liberal state – with its standards, whatever the juridical culture or natural vision of justice and the common good of that state.

The Question of the New Material Universalism of Contemporary International Law

Yet this precisely, as far as we are concerned, is the central point of the whole debate, of this development with all the approval or disapproval that it generates; to strongly simplify matters, one could say that the question about material universalism is now


14 Although this ideal of the neutrality of democratic liberalism can be discussed very seriously, see for internal societies and from a communitarian or moralist point of view, Sandel 1999 and Walzer 1997. And for international society, in a critical perspective, see Koskenniemi 1990, 1–32.

15 Taylor 1998, 125.
replacing the question concerning formal universalism. The question of imperialism also returns in this more insidious form, for at least two main reasons:

Firstly, the proclamation of a new material universalism (universalism of a conception of the common good) indicates an “ethical turn”\textsuperscript{16}, a possible moralisation of law, that is imperceptibly drawing its instigators down the slope of a \textit{deformalisation} of international law itself. Shared values, such as democracy or human rights, become fundamental, but they receive their importance not from their having been written into the texts of positive law, but rather because of their intrinsic value. Being fundamental to international law in much the same way as is sovereignty, they ought, according to some, to prevail over the merely formal rules of classical law. The intervention in Kosovo, the “crusade” by George Bush or the concept of just war which is re-emerging today are emblematic of this development\textsuperscript{17}. War has been rehabilitated in moral terms rather than through law because it has once again become the means by which to accomplish good. And, in fact, it is rather worrying to see several renowned philosophers, along with certain jurists, defend intervention solely on moral grounds, considering, of course, that western liberal countries alone can afford this luxury\textsuperscript{18}. This appears to express a forgetfulness of the fundamental ambiguities that has generated this type of interventionism in the past of international law, as well as a genuine unfamiliarity with the specificity of international law as law\textsuperscript{19}. Evidently, an eminent author such as Jürgen Habermas will insist on the juridical, as opposed to the moral, nature of human rights (and thus their formalisation through law), but the underlying fundamentally ethical nature of these values can lead some to go beyond the law\textsuperscript{20}. The defence of such a common good implies both a hierarchical restructuring of rules, a relativisation of sovereignty and the domain reserved for states, but also, and increasingly frequently, a relativisation of the legal form since there is sometimes an underlying imperative to act which supersedes respect for existing law. The consequence is the imposition of a model that can appear to be hegemonic.

Secondly, the material, juridical values that aspire to being universal are yet again western values. As Paul Ricoeur has indicated, even though, for example, texts concerning human rights have been ratified almost unanimously by states, “the suspicion remains that they are merely the product of a cultural history that is specific to the West, with its wars of religion, its laborious and unending apprenticeship to

\textsuperscript{16} Koskenniemi ’The Lady Doth Protest too Much’. Kosovo, and the Turn to Ethics in International Law (2002), 159–175.

\textsuperscript{17} For a very interesting discussion see, for example, Walzer 2006.

\textsuperscript{18} Walzer 2006; Canto-Sperber 2005, 226ff and Falk 2003.

\textsuperscript{19} For a typical misinterpretation see, Todorov 2003, 85.

\textsuperscript{20} Habermas 1996, 89.
achieve tolerance”\textsuperscript{21}. The claim to their universality is itself based, it has been said, on western rationalism, as was the first law of nations, and this to a point where they probably similarly conceal what “the West does not want to see in the West”\textsuperscript{22}. Certain people do not even attempt to hide this and even propose a new “civilisation campaign” in this direction. This is witnessed, to give an example, in the formulations of U.S neo-conservative Gary Schmitt, who considers the United States the sole “civilised” power with the ability and the will to impose its values on “uncivilised nations” and thus prevent the latter from threatening peace and security.\textsuperscript{23}

The debate about values for which international law ought to serve as a vehicle – a debate that is characteristic of this beginning of the century – thus relaunches in a new and acute form both the dilemma posed by the foundational paradox of international law and the question of imperialism. Any positive law is necessarily rooted in a culture. The new juridical values of contemporary international law are thus inspired by a specific – Western – culture but cannot be applied unless they are really recognised as being legitimate by those to whom they are applied. They can be recognised as such only if they are based on a shared ethic or a global culture, neither of which exist at the moment. That is why it is hardly surprising to see the emergence of strong cultural resistance against a development that is seen to universalize a set of values perceived as Western. The stronger the integrationist and universalist hold of international law aspires to be, the more each country will try to ensure that its own value systems and its own vision of international law predominate. This is what is called, in the field of human rights, the dispute between universalism and contextualism. Of course, it is perfectly true that victims of breaches of human rights, wherever they may be, are not worried about their cultural and national identity\textsuperscript{24}. It is no doubt in through suffering that human beings resemble each other most and are most solidary. But one cannot ignore the very strong reactions against what is perceived as a new juridical imperialism. Above all, one should not misinterpret the perception of these juridical values of certain peoples, individuals, and states who, regardless of their outward commitment to them, which is very often forced upon them or merely adopted as a strategy, consider them, from their point of view, a case of juridical imperialism.

The question then arises as to what this “liberal imperialism” consists of, that is so often discussed today. This expression, that may appear to be contradictory, is at the heart of the question of the current universalism of the values of international law. The humanistic values projected as applicable universally by contemporary

\textsuperscript{21} Ricoeur 1990, 335.
\textsuperscript{22} To repeat the famous title of the lectures given by P. Legendre in Japan, see Legendre 2004.
\textsuperscript{23} Schmitt 2003.
\textsuperscript{24} As Dupuy 2005, 131–138.
international law are indeed those of liberal democracies, whether European or American. They can consequently be perceived as the result of a policy of western imperialism or domination of the liberal type, in fact little else but a repetition of “the old civilising mission”. Let us keep in mind what J. Hornung wrote on this subject, and let us not forget that the internationalists of the nineteenth and early twentieth centuries, who accompanied and legitimised colonisation, were for the most part genuine humanists and true liberals, men of a real internationalist faith who were deeply convinced of the righteousness of their cause. The very severe charges levelled against contemporary “liberal imperialism” can thus be understood very well in view of the past history of international law. They provide food for thought even if one does not necessarily share all conclusions drawn from them. The question is thus to what extent the current “democratisation of the world” through contemporary international law reproduces the errors of the past or whether, on the contrary, they make it possible to avoid their repetition. At the very least, it seems essential to realise that one cannot act as if the transcription of human rights into positive international law, their general acceptance through the ratification of international instruments, and thus their quasi-universalisation on the level of texts, would have settled the question of the imperialism of these values and laws. We should also be well aware that raising such points is not a matter of comforting tyrants, but rather of taking account of reactions not only of governments, but also of non-governmental organisations and individuals. One example is that of Iranian women, veiled from head to foot, who demonstrate against human rights and equality of statutes. C. Delsol’s offers an anecdote to illustrate the topic. At the time of the most recent U.S. intervention in Iraq, fifty-eight U.S. intellectuals wrote an open letter to German and Saudi-Arabian intellectuals to explain why they supported George Bush’s war, which they claimed to be conducted to promote freedom and human rights. One hundred and fifty-four Saudi intellectuals replied very courteously, as follows:

The U.S. signatories have concentrated their attention on the need to separate Church and State, and they see in this a universal value that all the nations on earth ought to adopt. We Moslems, however, see the relationship between religion and the State differently. We consider that secularisation is inapplicable to Moslem society, because it denies the members of that society the right to apply the general laws on which their lives are modelled and violates their will on the pretext of protecting minorities.

There is thus a phenomenon of resistance that we, as internationalists who teach or apply international law, must of necessity consider. In fact, as Hannah Arendt has emphasised, however well-founded a set of values may be, the fact

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26 Delsol 2004, 150.
that they are perceived as having been imposed – even indirectly – the fact that they are perceived as being hegemonic, inevitably arouses “an awaking of the consciousness of national identity”\(^{27}\) that will lead to their inevitable defeat in the long term. The reaction to such imposed universalism expresses legitimate aspirations to recognition for the individuality of each person, culture or nation. Provoking such reactions can entail regression into oppressive traditions\(^ {28}\). In case law, this could lead to the type of reaction which Mireille Delmas-Marty rightly termed “dogmatic relativism”\(^ {29}\) – a particularly intransigent attitude which reminds of its counterpart, the universalist dogmatism of the Enlightenment era, and indeed of certain contemporary supporters of the universalism of international law.

**The Two Universalisms – European and American**

Having reached this stage, one is now faced, of course, with the question of the two universalisms, European and American, both of which possess by a strong desire to universalise democracy and human rights through international law, though by different means.

In fact, one can apparently distinguish between an “experimental” universalism “of persuasion”, the European version, and a universalism “of coercion”, relying on force, which would be the American version. One can easily see the repercussions that this today quite current dichotomy might have on the question of imperialism. On this picture, the American project, based on unilateral coercion, would be imperialist whereas the European project, involving only persuasion and acceptance, would not. At the level of geo-strategic relations, one could understand the situation as a result of the respective power of the two continents (American super-power versus European power). At the level of the legal culture, the opposition could be framed as one between the instrumental pragmatism of the Americans (who use international law as an instrument to implement their own values) and the legal formalism of the Europeans (who consider law to be a behavioural model, their own example to be used as a model). One might also think, to paraphrase Marcel Gauchet\(^ {30}\), that, ultimately, the two no longer define their identity in the same way, and that Europeans have experienced “a profound change of the way in which this identity is defined”, a change that has implications for their approach to international law. Europeans in fact no longer seem to define themselves only through their aims for the future but also by what they have been. This does not mean that they escape their internationalist past: instead, they define their identity in relation to this past

\(^{27}\) Arendt 1982, 28.

\(^{28}\) Béji 2004, 55.

\(^{29}\) Arendt 1982, 46ff.

\(^{30}\) But here he is only talking about Europeans. Gauchet 2004, 13–14.
(colonialist and imperialist in this case). On the other hand, the United States gives the impression of still defining itself in terms of a forwards-leading movement. In short, one can thus identify interesting and necessary distinctions, but one could also just as easily deconstruct them. One will in fact from the very start focus on all that is relative in such distinctions. Historical identities are defined by interaction, and surely pragmatism and legalistic formalism can be found on both sides of the Atlantic. We are well aware that the European technique of “persuasion” is also sometimes very close to that of coercion. Think, for example, of the Europeans technique of making aid agreements conditional. This is quite difficult for the receiving party to contest due to the economic interests at stake. Instead of simple persuasion, this European technique uses pressures that the concrete inequality of the situation between the partners makes it impossible for them to resist. These two forms of universalism – or of hegemony? – are members of the same family and their complicity is just as important as the contrast between them.

Globalisation

At this stage, one meets the question of globalisation. That the universalisation of the juridical values of human rights and democracy is part of the contemporary process of globalisation cannot be ignored. The two must not be confused, even if the links between them are ambivalent, and although both are denounced by some as imperialist processes. Universalisation here refers to shared juridical values, while globalisation refers to phenomena that seem to become global by themselves in some way, to a dynamic that characterises the cultural, economic, technological and legal development, now that these are free from the constraints of the Cold War. The universalisation of legal values thus seems to refer to will and choice, while globalisation appears to indicate a mere necessity surging from the interaction of forces currently at play; accompanied in particular by the values of economic and political liberalism and the free market. Mireille Delmas-Marty addressed the question in these terms “Can globalisation succeed where westernisation has failed? Can it permit to demand the pluralism of systems and cultures, instead of imposing a model of hegemonic unification as did the Eurocentric model of the past? Recent globalisation seems to have extended to every country in the world, and to result in a dialogue between cultures and countries in conditions of increased institutional integration, as shown by China’s membership of the WTO. It favours the hybridising and cross-pollination of models while European colonisation and the importation of its legal system led to the destruction of all models except the European one. While the movement towards a legal pluralist globalisation

31 See in this respect Postel-Vinay 2005, 45.
is undeniable, it seems to engender some of the same difficulties as European
exportation did, arousing protests against domination and hegemony. Some see
globalisation not as an area for the hybridisation of cultures, but as that of the victory
of the most powerful, and thus the most hegemonic, transnational forces. Even
more pessimistically, an author such as Jean Baudrillard sees globalisation as the
end of everything universal as well as of all cultural particularities for, according to
him, it is “the triumph of blinkered thinking [pensée unique] over universal thought”.
While the universality of human rights is respectful of cultures, globalisation, he
argues, destroys everything in its path. Globalisation itself thus appears to be split
between harmonisation and hegemony.

Is There an Alternative?

The tension between the universal and the specific has been at the heart of the world
of thought since the advent of modernity especially. This tension, this paradox cuts
through international law on either side of its history, past and present. As a result,
it feeds on universalising visions while at the same time promoting imperialist or at
least hegemonic practices — to reiterate S. Sur’s distinction — this may well be applied
beyond a strictly Western context. That is not all there is to it, but it is part of it. As
Pierre Hassner indicates, there is a “hidden universality” behind the multiple cultural,
regional and specific visions of international law. In the same way, as emphasised
by Martti Koskenniemi, there is no doubt that a concealed imperialism, be it only
a benevolent domination, lies behind these universalising positions. Hence the
question arises: can we escape the deep paradox of thought and law within which
we are trapped, the ambivalence of conducts and principles as exposed, in such
singular and troubling manner, by Nathaniel Berman? Are we prisoners between
complete relativism and hegemony? Either international law gives up its substance
in favour of a more essentially formalist law, one that respects all human cultures,
or it sticks to the current values of law and the idea of the (hegemonic) primacy of
western legal culture in human rights. Is there some other alternative?

34 Finally, it should be noted that from this point of view, the fragmentation of contemporary
international law into regional sub-systems might appear to respond better to the particularisation
and adaptation of a general model for continents and regions that take their own culture and
traditions into account in order to generate their own principles in the more or less faithful shadow
of the general system. This must certainly be seen to be a positive effect of the fragmentation that
produces a partial reduction in the tensions between the universal and particular.

35 Baudrillard 2004, 46.

36 Other civilisations have made claims to universality as A. Toynbee shows very clearly in

37 Hassner 2000, 278.


39 A dilemma already formulated by Smet 2001, 140.
The Developments of the Argumentation-negotiation Interplay at the International Level

The question remains unanswered but, for my part, I would like to recall the last words of P. Ricoeur and draw a conclusion from them:

One must, in my opinion, ... assume the following paradox: on the one hand, one must maintain the universal claim attached to a few values where the universal and the historical intersect, and on the other hand, one must submit this claim to discussion, not on a formal level, but on the level of convictions incorporated in concrete forms of life. Nothing can result from this discussion unless every party recognizes that other potential universals are contained in so-called exotic cultures. The path of eventual consensus can emerge only from mutual recognition.40

These thoughts, which some would only find appropriate if applied to literature or history, should be applied also to internationalist legal discourse, to the actual practice of international law. To state that international law is paradoxically torn between the two extremes of universalism and imperialism, which are apparently inseparable, does not exclude the emergence of more subtle practices that take into account the contemporary situation of an effectively globalised society. This emergent configuration of international law may be much more complex than one might think, since it is not merely a system of formal rules or a toolbox but also a cultural product extended to cover the whole planet. It continues to express the powerful (hegemonic) values, but now does so at the summit of globalization and past colonisation. One cannot ignore the changes that are currently occurring beyond Europe and the West. Instead of complete acculturation and of a repetition of the horrors and degrading manifestations of classic colonialist imperialism, something more subtle appears to be at work, something that goes beyond the primary hegemony of positions, something akin to the radical deconstruction of the ideal of universalism. A process that proceeds, to take an example demonstrated by the work of Arjun Appadurai41, through the re-appropriation of the dominant (western) culture by minority (non-western) cultures.

In reality, international law itself is part of the problem, as it has been shown, but it is also part of the solution. Although it does conceal the aspirations to domination of the most powerful, it can also be considered as the place par excellence for inter-subjective practice of negotiation and discussion of values, principles and rules to devise and apply at the level of specialised or general institutions, as instances of

judgement or in diplomatic discussions. The de facto inequality between partners in this international discussion-negotiation is rightly condemned. But this inequality can sometimes also act to the advantage of the less powerful, or quite simply to the advantage of all, opening the door to a set of more pluralistic but also shared juridical values. The classic objection, which consists in stating that no consensus can exist between profoundly different socio-cultural systems, does not always win the day. It does not always imply the hegemonic victory of the juridical values of one of the protagonists. Martti Koskenniemi gave the example, a few years ago, of the talks held in order to agree on the famous definition of “aggression” at the UN. From a classic realist perspective, and as an expert on UN practice, he noted that during the debate, each representative contributed to the discussion “with two aims in mind: 1) firstly, to ensure that the result would not prevent his own country from taking action to defend its basic interests. 2) secondly, to prevent any action that might be prejudicial to the interests of his own country”. This is without doubt a true representation of the situation: vital interests of states were at stake, and the eventuality of an external attack against it. The argumentative force of this explanation in view of the interests of each state is undeniable. Nevertheless, it seems that this model of debate is only decisive in matters involving these so-called vital interests and that many current areas of international law combine the defence of such interests with the possibility of sharing or accepting the position of the other side. In her inimitable style, Hélène Ruiz-Fabri tells the story of the very amusing “scenario” of negotiations recently held regarding the UNESCO Convention on cultural diversity. It clearly illustrates these more complex processes of contemporary decision-making and debate. The same applies to the famous relationship between the sub-systems and (fragmented) specialist branches of contemporary international law. When one considers the WTO negotiations rounds, the decisions of the Appellate Body, the UN resolutions, the international conventions on the environment, anti-personnel mines or the International Criminal Court, or even rulings of regional courts of human rights, they all seem to reflect an effort towards the creation and/or application of an international norm which, without excluding the hegemonic factor, is particularly nuanced. The multiplicity of participants now attending great international conferences, such as NGOs,

42 See also on this point the work of Mireille Delmas-Marty and M. L Izorche on the logic of the flow and the national margin of appreciation in “Marge nationale d’appréciation et internationalisation du droit. Réflexions sur la validité formelle d’un droit commun en gestation”, Variations autour d’un droit commun, Premières rencontres de l’UMR de droit comparé de Paris, Société de droit et de législation comparée, 2002, 88.


45 Ruiz-Fabri 2006.
associations, multinational companies and others, reinforces the idea of a more subtle interplay in the debate and in the decision-making process.\footnote{Although this argument can be made to work both ways because if they can assist in promoting their shared values, as in the case of the adoption of the Statutes of the International Criminal Court, they can also prevent the adoption of an agreement concerning universal values, as happened at the World Summit on Sustainable Development in 2002. See \textit{Report on the World Summit on Sustainable Development}, UN Doc. A/CONF.199/20.}

It is not a matter of wanting to naively preach the idea of an ideal and utopian consensus which, if it were really fulfilled, would no doubt carry the flavour of an oppressive, despotic and streamlined universe. Nor is it a question of preaching the necessity of “the harmony of interests”, an illusion that has been very well denounced by realist critics.\footnote{Especially of course Morganthau 1940, 261ff.} The hegemonic struggle for definition and advancement of juridical values of the type stressed by Koskenniemi\footnote{Koskenniemi 2006, 295ff.} remain a decisive fact of international law. These values are inevitably the expression of political choices and cultural identities. But it should also be noted, in view of the reports of negotiations and the decision-making process at the UN and elsewhere, that decision making really has become more complex today. Sometimes the most powerful parties try to economise on conflict, to avoid future frustrations and shun injustices. They are becoming aware that results can be obtained through much more concerted and consensual discussions than in the past. The evolution of international society, in other words globalisation, constitutes a new parameter that must be taken into account, but so does the mediatisation of legal procedures with the public reactions they evoke, the proximity of the adversaries, and the necessity of having recourse to juridical discussions. Quite a large number of conflicts and strategic and tactical errors have been and continue to be the result of unilateral policies and “of dogmatic decisions in mishandled cases”\footnote{Ferry and Lacroix 2000, 385.}. There are plenty of examples, the most recent obviously being that of the war in Iraq. Such conducts inevitably persist. However, effectiveness is also now perceived as depending on a certain “decentralisation” of one’s position, not by virtue of generosity – it does not exist at state level – but by virtue of a well understood interest. Accepting unfavourable conditions in the present, with regard to the strict equality of concessions, might be reversed in one’s favour in another context.\footnote{All this is from a theoretical point of view but it has real power of explanation of current internationalist practice. Ferry and Lacroix 2000, 384ss.} This expresses the interplay of a “principle of sociality”, where the advantage that can be gained from a balance between positions and concessions is inferior to the cost that this would represent for the opponent. So much so that the former could eventually give in so as to avoid the subsequent repercussions of frustration, changes of heart etc. in the opposing
party. Evidently such procedures are more cumbersome and the risk of paralysis subsists, but all in all, they can lead to fairer, less arbitrary and consequently more effective decisions. They may also contribute to the emergence of the famous “universal pragmatisms” mentioned by J. M. Ferry and J. Lacroix, in relation to standards to be devised or applied, and especially the commonly held values that define the new material universality of international law.

Values and Conflicts of Cultural Identity

The question of cultures nevertheless returns here to explain certain fundamental conflicts which cannot be resolved merely by negotiation and arguments, however important these may be in an increasingly interdependent and globalised world. We are confronted here with a plurality of cultures, and thus divergent views concerning the standards to be applied translate into conflicts of identity that cannot be reduced to economic and political disputes between states. Cultural conflicts are existential and based on values, unlike conflicts of interest. There is nothing more dangerous than reducing such conflicts to matters of foreign policy or to economic interests: the more cultural or identity conflicts are in this way ignored, the more likely they are to reappear and attempt to impose themselves. This shows that “considered appropriation” is also necessary in solving cultural conflicts in addition to negotiation, debate or mere imitation. This view by Habermas seems to me to be fundamental. It is of a philosophical nature and is based on a thorough critical approach to the value of traditions and cultures. It shows that we cannot settle problems of international legal culture in the same way as other types of conflict, and that it is essential for (internationalist) lawyers to consider solutions that focus on training, education and teaching. The question of genetically modified crops, for example, cannot possibly be reduced to a commercial issue between Europe and the United States. Behind the very strong economic considerations there are mutual assumptions and cultural modes of approaching risks that differ profoundly on the different sides of the Atlantic. This is why the question cannot be resolved merely through negotiation. The same applies, to an even greater extent, to the legal values attached to human rights, and to the concepts of freedom, democracy and international justice. It is also hard to remain optimistic about the potential of rational negotiation when we are aware of the emergence of phenomena such as contemporary terrorism, feeding on hatred of the West. These obviously call

54 Habermas 2005, 218, 225.
56 In this respect, see Lamy 2004, 62.
into question any idea of rational negotiation or discussion. Witness a message from Al Qaeda, after the atrocity committed in Madrid on 11 March 2004, made all the more significant as it attacks international law itself: “The international system constructed by the West after the Treaty of Westphalia will collapse, an international system will be imposed under the command of a powerful Islamic state”.\textsuperscript{57}

The solution apparently cannot build on a new form of rational discussion alone, but requires, except if a political solution is reached, the use “considered appropriation”. We must thus also learn to identify juridical cultures, both in order to be able to better able to appropriate them but also, sometimes, to help us detach from them, or from elements in our own juridical culture, as the case may be. This does not entail a blurring of identities and conflicts in order to replace them by an improbable and despicable universal uniformity, far from it. It would simply make it possible to understand the modicum of truth there is in each, the element of convergence and that of irreducibility. In truth, the Al Qaeda example is too radical since it is particularly hard to find a way to cope with such intransigent fundamentalism, whether by negotiation or “considered appropriation”. This brings back into play an element of extreme irrationality and resentment, which leads us to complete this consideration from an anthropological and psychoanalytical viewpoint. In elaborating and assessing the universalism of international law, whether from a realist or a formalist point of view, one always assumes, as we have just done, the same postulate of rational human behaviour in society. So much so that one fails to recognise the profound ambivalence of human behaviour and its repercussions on social institutions and the rule of law. It is this last point that I would like to tackle here in order to throw light on the ultimate basis for the paradox of international law.

\textbf{Ambivalence of Internationalist Behaviour and Ideals}

In the third place, taking into account identities leads us to an even deeper dimension which is anthropology. Is it enough, for a correct assessment of the scope of these values that once again plunge our discussion of international law into a position between universalism and imperialism, to focus on culture and tradition as their source and origin? Apparently it is not, and in fact understanding values only in terms of culture and tradition is one of the most frequent errors made by jurists when taking a stance on the issue of diversity of cultures. Monique Canto-Sperber has remarked quite rightly that values are not merely defined by their relationship to a given culture, as the most dogmatic relativism teaches. Some values can, in fact, “correspond to the general characteristics of human beings”\textsuperscript{58}, thus expressing an

\textsuperscript{57} Quoted by Canto-Sperber 2005, 63, note 2.

\textsuperscript{58} Op.cit., 239.
anthropological rather than the mere cultural identity. Human dignity, the experience of freedom, and the ideal of concord are shared by all cultures, as all the great historians of cultures and civilisations have shown. They can be found just as much in medieval Islam as they can in Confucius’ China. Cultures simply produce different intellectual or institutional ways of expressing them or accessing them. For example, there are different ways of manifesting human dignity or living the experience of freedom or equality. But these shared anthropological values, as defined by Canto-Sperber, refer yet again to a common human identity based on reason rather than passion. The bottom line here is again the logic of an underlying rationalism. While I would not wish to deny the power of such rationalism, I would like to supplement it by taking into account ambivalence as a fundamental component of human identity.

In fact, I should like to discuss the very brilliant analyses of the American jurist Nathaniel Berman. For many years, Berman has been studying the way in which the rules and juridical institutions of international law reflect the profound ambivalence of human behaviour. The classically realist description of state leaders, presenting states as being solely concerned with their own national interests, or the idealist analysis which assumes that human conduct naturally bows to norms and ideals, are both superseded by a more fundamental and psycho-analytical consideration of human ambivalence. Without reverting to wild psychology, and using very serious and profound psychoanalytical arguments, Berman asks us to reflect upon the basic categories of human anthropology, by considering them slightly differently from the methods adopted by Pierre Legendre in France, for example. By using one of the fundamental precepts of modern psychoanalysis, developed in particular by Melanie Klein, Berman shows that human beings are naturally ambivalent in their relationships to each other and in relation to themselves. This essential dimension of human identity has repercussions on the levels of civilisation and history through the great constructs of international law: either when these constructs try to conceal hegemonic objectives under a universalist or civilising façade, or when they try to channel passions without occluding them, as in the great and daring ventures between the two world wars affecting Upper Silesia and the Sarre and those that can be found in some particularly interesting UN plans such as those for Palestine, Bosnia or Kosovo; or again when the rules of law and juridical discourse aim, on the contrary, at repressing such feelings — though they never succeed in doing so — by opting directly for an authoritarian approach claimed to be objective and rational in tackling a problem, as for example, in the most recent intervention in Iraq; or again when they are used to justify something and


60 Concerning these questions see Béchillon 2002, 47ff.

its opposite in different contexts (self-determination, for example). Whatever their utilitarian logic, states, these cold monsters, reproduce this ambivalence through their external legal policies which remain ambivalently divided over their perception of the meaning and utility of international law. They constantly operate a separation between “good” and “bad” uses of international law, reflecting their own traditions and national identities. This means that their external juridical policies cannot be reduced to mere utilitarian calculations, the satisfaction of interests or a quest for domination, since moral and cultural considerations inevitably become involved. This is something undisputed today but was for a long time underestimated by the post-war realists and idealists alike. It is the force of emotion, tribalism and the violence of cultural conflicts, closely interwoven in a desire for recognition, for stability and of course, the defence of national interests.

The implications of such analyses need to be well understood, particularly at a time like the present, when the question of the formation of identities has become a key theme in the current legal reflection on the relationship between universalism and imperialism. While Berman was right in showing that our individual and collective behaviour is ambivalent, our ideals and our rules of law are just as much so. Thus, we must accept that we have a passion for combat and for imposing that which we consider to be best rather than claiming our internationalist juridical solutions to be solely the product of rational and legal reasoning (whether realist or formalist).

It is now several years since Francis Fukuyama relaunched the very interesting idea that today’s world has seen the victory of a human desire for universal recognition through liberal democracy \textit{(isothumia)}), a victory won against the ancient desire of gaining recognition by beating your opponent \textit{(megalothumia)}. For Fukuyama, this triumph of western values of rights and democracy, of law itself, was inevitable. As is well known, these ideas were attacked head on by Samuel P. Huntington in his work on the clash of civilisations, where a contrasting picture, of a world fragmented into almost petrified identities, was drawn. Between these two theses which are fundamental for contemporary debate, but equally excessive in their radicality, Berman shows, much more correctly, we believe, that humans and nations remain split between their desires in an intrinsically ambivalent way. It is thus on a recognition and an acceptance of this ambivalence that international law should be constructed. What this means for our thesis is that, in the context of discussions about universal values, what Ricoeur rightly calls “conviction” should be incorporated, along with argumentation, and it should also be understood that

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63 Canto-Sperberg 2005, 140.
64 Fukuyama 1992.
65 Huntington 2002.
universal pragmatism, which could be built through discussion and debate, will also itself remain inherently ambivalent. In other words, the position we are adopting here is rationalist in principle, but also aims to take into account the irrationality of the players, the contingent nature of the world, and the force of collective passions along with the idea of an eventual, but always provisional, universality, which is not abstractly defined but “which consists of that which is common to the values that are incarnate in each culture”.66

**Conclusion**

The paradox of international law reproduces “the dilemmas of modern reason”67. Max Weber remarkably predicted the world’s disenchantment through the rationalisation of modern law and the ever greater formalisation of law under the rule of experts and bureaucracy. The phenomenon of rationalisation accompanies such disenchantment since the formalism and neutrality of the rational legal world combines “the ascent towards reason with the inevitable effects of a loss of meaning”68. The same effects have been seen on an international level, as David Kennedy and Martti Koskenniemi have amply demonstrated in a number of important studies. And one can also see without a doubt the emergence of the same type of reactions against the formalism of law and its dehumanisation. Firstly there was thus a rise of formal rationalism through positivism and the triumph of a formal universal model. But this development has led to its own implosion, as predicted by Weber. In other words, the formalism and neutrality of law carried an excessive and rigid bureaucratisation, a depersonalization of justice, and a loss of the sense of an international norm against which the contemporary world reacted. The re-introduction of material value considerations make it possible perhaps to satisfy the expectations of groups or subjects (individuals, nations, NGOs, etc.) who were the least favoured hitherto. The passage from a universal formalism to a universal materialism (even a relative one), after World War II, remains part of the rationalization of the internationalist world, but does it not also translate into a quest for a new enchantment of the world, to the very opposite of what Weber contended? Weber never really solved the problem of an alternative since he remained the prisoner of his strictly instrumental vision of reason which, he claimed, after the end of any transcendence, could no longer serve to build the foundations of any value. He thus denied himself the opportunity for contemporary consideration of intersubjectivity, i.e. the idea of a political practice of discussion and argumentation, as well as of any reasonable decision and the idea of a possible re-founding of


meaning. Perceiving this other possible development seems to me to correspond just as well, if not better, to the empirical conditions of modern international society as I have indicated earlier. It ought not to conceal the pitfalls, however, nor the need to deconstruct illusions and expose any imperialist ambivalence. While it is in pragmatic reasoning that one may eventually find a way of overcoming the difficulties of the universal – contrary to what Weber believed – it is also in western reasoning itself that the problem lies. The way is thus narrow and uncertain.

The paradox of international law will thus never be definitively removed since international law is intrinsically paradoxical. Paradox: it is both one and the other, it is the instrument of universalism and yet reflects ambivalent singularities, a means of domination and the scene of cooperation and emancipation. This paradox thus calls for two concluding remarks:

Firstly, the fact that the ambivalences of international law, as exposed by Berman, must be coped with, as well as the ethnocentrism of its ideals and values. As the philosopher Mikhail Xifaras puts it, “the justification of international law must take on board the historical meaning of international law for non-western peoples and cannot be content with the affirmation of its legitimacy in terms of compliance with principles that originate in western thought”69. One must take into account the forced westernisation of the non-western world and to assume that “international law is always both the legal form that contains the promises of a political unification of humanity, and the form of the most infinite and violent of conquests, since its aim is to define the very terms of the identity of the conquered”70. That is why the role of internationalist doctrine is not confined to the systematisation of existing law. It also needs to criticise, even subversively, all the principles and values inherent in international law since this ever renewed critical contribution may make it possible to show how any value, any principle, any universally held legal principle may conceal shameful ventures, schemes to exploit, dominate and manipulate operated by the very people who promote or reject them, including internationalist doctrine itself.

Secondly, the observation that this paradox may no doubt be removed, but only temporarily, through “pragmatic universalisms.” These are deployed by and by as a type of international society unfolds that is neither the cosmopolitan society dreamed of by Kantian idealists, or even merely the realist’s balance of power. All this seems too schematic in the face of the reality of a society which is no longer characterised by states solely and only, but by a very dense network of legal rules and a constantly growing number of legal actors within a society that is increasingly open. Another type of society is emerging, one that combines the “grandeur and

69 Xifaras 2006.
70 Xifaras 2006.
poverty” of international law, since it always enshrines the imbalance between power and wealth for the benefit of an inevitably small hegemonic club, while at the same time seeming to constitute the locus for the possibility of an advancement. International law certainly reflects the emergence of new neo-imperialist and neo-colonialist practices. Yet, it also enables, through the very practice of law and its argumentation, the emergence of new forms of universal pragmatisms and shared values, just as it recognises irreconcilable differences and the clear statement of where they diverge. The paradox of international law does not necessarily mean an aporia or impasse. It rather reflects the enigma of the human condition71 and the limited nature of all institutions, law as much as any other.

71 Delsol 2004, 96.
References


Calvo, Carlos 1870. *Theoretical and Practical International Law*.


Pradier-Fodéré, Paul Louis Ernest 1885. Treatise on European and American Public International Law.


