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TIME AND INTERNATIONAL LAW

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I. DECLARATION OF INTENT — II. THE UNCERTAIN FUTURE — III. PAST IMPERFECT — IV. INTERNATIONAL DOCTRINE AND TIME — V. THE DYNAMICS OF INTERNATIONAL LAW

ABSTRACT: This text, conceived and written as a tribute to Professor and mentor Diego Javier Liñán, is a reflection on university life and the passage of time in international law: revisiting its past, contemplating its uncertain and unsettling future, and grappling with its ever-changing, elusive present. New times bring new fears and hopes, new realities and falsehoods, new and fleeting theories. However, any hope for freedom, peace, and prosperity must inevitably involve the development and adherence to a more advanced international law.

KEY WORDS: Time, International Law, History, Future, Doctrine.

TIEMPO Y DERECHO INTERNACIONAL

RESUMEN: El texto, pensado y escrito en homenaje al profesor y maestro Diego Javier Liñán, es una evocación del tiempo universitario y del tiempo del Derecho internacional: de su pasado en revisión, de su futuro incierto e inquietante y de su presente cambiante, inaprehensible. Nuevos tiempos, nuevos temores y esperanzas, nuevas realidades y bulos, nuevas y efímeras teorías. Pero cualquier esperanza de libertad, paz y prosperidad pasa necesariamente por articular y observar un Derecho internacional más avanzado.

PALABRAS CLAVE: Tiempo, Derecho Internacional, Historia, Futuro, Doctrina.

LE TEMPS ET LE DROIT INTERNATIONAL

RÉSUMÉ: Le texte, qui a été pensé et écrit en hommage au professeur et maître Diego Javier Liñán, constitue une évocation du temps universitaire et du temps du Droit international: de son discutible passé, de son future incertain et inquiétant et de son présent changeant, inapréhensible. Des nouveaux temps, des nouveaux craintes et espoirs, des nouvelles réalités et mensonges, des nouvelles et éphémères théories. Mais n’importe quel espoir de liberté, paix et prospérité appelle

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forcément à un Droit international mieux articulé et observe.

MOT CLES: Temps, Droit International, Histoire, Future, Doctrine.

I. DECLARATION OF INTENT

Writing in homage to professor and mentor Diego Javier Liñán brings back countless personal and academic memories. In Spanish, *recordar* etymologically means “to go back through the heart”, rather than the head. As Norberto Bobbio wrote, affections are more important than conceptions² and feelings. I add to this that affection —and I include admiration and gratitude among them— cannot be reproduced by any generative artificial intelligence programme, at least for now, however well versed the device may be in the configuration of concepts. The past is a foreign country, where things are done differently, as it was said in a novel, and the mental journey to the past makes us revisit, at zero cost, distant places and times. Physicists and metaphysicists say that the combination of space-time can expand and contract, and deform. At this point, when almost everything happened 30 or 40 years ago, and when life is definitely serious, as Gil de Biedma once said, it is suggestive to remember and compare ourselves as we were, also as iusinternationalists.

This personal evocation leads me in the present contribution to meditate on time and international law in a naturally panoramic, selective, impressionistic rather than scientific, interdisciplinary way, with the aim of better understanding the *Zeitgeist* (the spirit of the time). In this way, of course, I disregard the canonical advice for tribute books to look for timeless themes for contributions. My contribution is made of time. And, as it is said, time is of the essence in politics and law. The instantaneity that our time demands is not always a good advisor.

II. THE UNCERTAIN FUTURE

It is astonishing that in our present time, we are witnessing marvellous

² BOBBIO, N., *De Senectute*, Taurus, Madrid, 1987.

technological advancements and, at the same time, a profound sense of decline, exacerbated by the covid-19 pandemic, various economic crises of different kinds, biblical population movements, and the looming risks of environmental or nuclear apocalypse... The James Webb telescope explores the origin of the universe that continues to expand. At the same time, collapsology is gaining recognition as a branch of knowledge and fear, sounding apocalyptic warnings for Earth, its inhabitants and —at least for now on— several States. Unlike the dichotomy established 60 years ago by Umberto Eco³, many modern apocalyptic thinkers are also integrated intellectuals. *Another End of the World is Possible*, is the title of a “preparatory” book, though with an optimistic tone⁴. Doomsday seems to be approaching; the final judgment will come before the countless human judgments that, so often delayed and postponed, seem to last an eternity. The intergenerational gap is inevitable due to factors like public debt, demographics, and pensions. Yet, we still do not know whether we are the result of an unrepeatable cosmic event. If we are indeed not alone in the universe, we would need to develop new frameworks for interplanetary law, a fresh world view, and numerous research initiatives. I remember my own disbelief, as well as that of others, when I first taught outer space law during my early years as a lecturer. This was in the late 1980s, a period Tony Judt called the “forgotten twentieth century”⁵, or, as Eric Hobsbawm referred to it, the “short century”, from 1914 to 1991⁶. Internationalist doctrine has always been prone to utopianism, as illustrated by the Kantian idea of perpetual peace in contrast to a gloomy reality. However, in recent times, dystopian, apocalyptic and even post-apocalyptic studies have become more and more common, exploring scenarios that previously seemed the domain of science fiction. Hobbesianism is regaining ground. Strategists prevail over harmonists. We live —and will continue to live— in parallel realities, yet realpolitik remains hegemonic: interests over values and ideals. Which values I wonder, when some 50 States have refused to condemn Russia’s barbaric aggression against Ukraine in the United Nations General Assembly?

Our era is referred to as the Anthropocene, marked by human domina-

³ ECO, U., *Apocalípticos e integrados*, Tusquets, Madrid, 1995.

⁴ GAVIRIA, A., *Otro fin del mundo es posible*, Temas de Hoy, Barcelona, 2021.

⁵ JUDT, T., *Sobre el olvidado siglo XX*, Taurus, Madrid, 2008.

⁶ HOBBSAWM, E., *Historia del siglo XX, 1914-1991*, Serie Mayor, Madrid, 2011.

tion over nature —we are already in the sixth mass extinction of biodiversity. At the same time, there is growing discourse around transhumanism, an era where the very identity of the human person and their free will are being questioned, perhaps even facing obsolescence. We now wonder about their potential demise in the future, just as we once pondered the birth of the human being in prehistory. With the four horsemen of the Apocalypse seemingly galloping forward, it is difficult to agree, whether in hindsight or through a “presentist” lens, with the poet Jorge Guillén’s assertion that “the world is well made” or the philosopher Leibniz’s belief that “we live in the best of all possible worlds” —even though the making of the world largely depends on us. Panglossian optimism is quintessentially flawed. Violence seems inherent to human nature, as well as to its technological extensions, which remain stubbornly immune to Article 2(4) of the San Francisco Charter and its system of collective security —intermittent, but fundamentally biased and flawed in practice. In his 1941 memoir, *Yesterday’s World*, Stefan Zweig observes that his generation was blindsided by the Great War of 1914, believing that another large-scale European war would be impossible. Many of us shared that same belief as of 2024. As we know, wars have lasting, unpredictable consequences. It is often impossible to determine their true beginning or end, as neither a declaration of war nor a peace treaty is always sufficient. Sometimes, the *ius post bellum* is more violent and enduring than the armed conflict itself⁷.

Human rights, long envisioned as conceived for permanent progress, are experiencing a marked deterioration —not only in autocracies but also in democracies, which are becoming illiberal, evolving into electoral democracies or autocracies, thus blurring the line between the free world and the oppressed world. Contrary to what might have been inferred from a 1994 monograph, globalization appears to be more harmful than beneficial for internal democracy⁸. Yet, during this time, the concept of the “rule of law” —which can mean “several things at once”⁹— is gaining prominence in international legal discourse. Some fundamental freedoms, such as freedom of

⁷ STAHN, C., “Jus ad bellum, Jus in bello... Jus post bellum? Rethinking the Conception of the Law of Armed Conflicts”, *European Journal of International Law*, No. 17, 2006, pp. 921-943.

⁸ ROLDÁN BARBERO, J., *Democracia y Derecho internacional*, Civitas, Madrid, 1994.

⁹ LIÑÁN NOGUERAS, D.J., “La internacionalización del Estado de Derecho y la Unión Europea: una traslación categorial imperfecta” in LIÑÁN NOGUERAS, D.J., MARTÍN RODRÍGUEZ, P.J. (dirs.), *Estado de Derecho y Unión Europea*, Tecnos, Madrid, 2018, pp. 39-68.

expression and the right to privacy, are undergoing a virtual transformation. Other rights are struggling to emerge: the right to be forgotten, the right to disconnect, and even neurological rights. Artificial intelligence (AI) raises profound questions about these rights and their future. AI, still in its infancy, propels us into the unknown, prompting calls from authoritative voices to pause its unchecked progress in the name of human security. Nothing can be taken for granted or considered consolidated. Women's rights, for example, are being trampled, and in many places, they are being rolled back. Numerous democratic transitions and bursts of freedom, like those of the Arab Spring, have regressed into autocratic regimes, as seen in Egypt and Tunisia. Our era of rapid technological advancement coexists with the ruling of the Taliban regime. Indeed, we are witnessing scientific progress that far outpaces human progress. The right to happiness remains an illusion for much of humanity, while mental illness is becoming a new epidemic. A report by UNICEF and other International Organizations estimates that five million children died in 2021 before reaching the age of five from causes that are largely preventable or treatable. These children are "the future that dwells among us"¹⁰. Human rights, unfortunately, remain alienable and reversible, even as we must continue to resolutely uphold the principle of human dignity. It is not enough to rely on moral proclamations or invoke the supposedly natural, primordial character of certain rights, such as the prohibition of slavery, which was only abolished in the 19th century and continues to exist today in various forms. These are the contemporary manifestations of slavery¹¹. We must place our trust in positive law and its strict application for the good of humanity. We must also believe in the possibility of a reasonable and successful reconciliation between the rights of the individual and the rights of the state. Climate change is a recent scientific and legal concept, but it already dominates and permeates us, becoming a cross-cutting branch of international law and an existential aspect of our lives (and of many states). Not so long ago, the environment was neither a half-subject nor a half-class subject in explanations of international law. In 2021, the anthropologist and ecologist Bruno Latour wrote a book called *Where am I? A guide to inhabiting the planet* pointing to the

¹⁰ ALONSO, J.A., *El futuro que habita entre nosotros*, Galaxia Gutenberg, Madrid, 2023.

¹¹ PÉREZ ALONSO, E. ET ALII (ed.), *El Derecho ante las nuevas formas de esclavitud*, Tirant lo Blanch, Valencia, 2017.

need for a new existential attitude born of citizen perplexity and responsibility in the face of the state of the world, so close to extinction or, at least, to decadence¹².

Of course, law has a common normative background, built on general and stable principles that stem from rationality. For instance, no one is obliged to do the impossible, although the definition of what is impossible continues to shift depending on perspective. “This is not the time of the prophets”, wrote Serge Sur in 1993¹³. We could echo this feeling today, considering the numerous expert analyses that dismissed the possibility of Russian aggression in Ukraine just days before 24 February 2022. Yet, the prophets of the day after are multiplying —and getting it right. It is true that neither black swans¹⁴ nor game changers are as rare as they once seemed, and history often appears to be accelerating. Countless well-reasoned reports with economic forecasts are quickly forgotten, disproved... Some of these initial shocks become part of our daily lives. At the end of World War I, Oswald Spengler published his famous essay *The Decline of the West*. In 1991, however, the West and its values seemed predominant, almost exclusive. Today, there are signs of that decline¹⁵, even if other predictions are unfounded or premature. Many predictions have become self-fulfilling prophecies. Concepts that seemed to be born of natural law and inherent to human nature, such as legitimate self-defence, are experiencing other manifestations, manipulations and unsuspected questions, such as in cyberspace, a new territory for security and defence.

As things stand, the future is not what it used to be. The only predictable aspect is the unpredictability, even the unthinkable, as a now-common saying goes. It is no surprise, then, that internationalist think tanks are multiplying their oracular efforts, and that national governments and International Organizations are constantly producing strategies and visions of the future — whether concerning greenhouse gas neutrality, development goals, or security challenges. These strategies are often revised shortly after their creation or pushed into a distant future, by a time when those in power, will no longer be

¹² LATOUR, B., *¿Dónde estoy? Una guía para habitar el planeta*, Taurus, Madrid, 2021.

¹³ SUR, S., “Sur quelques tribulations de l’État dans lea société internationale”, *Revue Générale de Droit International Public*, No. 4, 1993.

¹⁴ TALEB, N., *El cisne negro. El impacto de lo altamente improbable*, Paidós, Madrid, 2021.

¹⁵ LAMO DE ESPINOSA, E., *Entre águilas y dragones. El declive de Occidente*, Espasa, Madrid, 2021.

around to verify or be held accountable. Moreover, short-termism has become the dominant mindset today. In many specific conflicts, optimism seems out of place. First, because optimism is intellectually discredited, and we must adopt a patina of seriousness, raising our eyebrows to appear as though we possess profound judgment (pessimism is overrated, and humour is undervalued). Second, because the data and trends we are confronting —the age of “dataism”— often justify this pessimism. Take the Palestinian conflict, for instance, where an increasing majority of young Israelis favour drastic rather than conciliatory measures. What awaits us? For many, the sheer speed and volatility of events induce a sense of unease, with modernity perceived as a state of rootlessness. “Goodbye to all that”, they seem to say, with a hint of nostalgia. Even geography changes to some extent. Social demands now often focus on preserving what has been acquired, rather than on improving one’s status¹⁶; the past is imagined as a place of refuge, and history as a space to fantasize about heaven —a heaven some people can now only find in the fiscal realm, turning it into a kind of hell for the social and democratic rule of law. The welfare state, designed to protect individuals from cradle to grave, is being undermined, not least by fierce international economic competition.

III. PAST IMPERFECT

Although it is commonplace to mourn the deficient historical education of new generations, often accompanied by a misleading idealization of the past, history is gaining renewed importance in international relations and its legal frameworks (though I bemoan the overuse of the term “historical” to describe any event in everyday life). Indeed, a historicist approach should prevail, countering the supposed perpetuity of facts and thought. It is true that we see much déjà vu, with discussions of new Cold Wars, new Marshall Plans, postmodern coups, and perennial arguments like autocratic governments blaming calls for freedom on foreign conspiracies. Nevertheless, historical determinism is a fallacy. Many significant episodes of the past unfolded almost unwittingly, without deliberate intention on the part of their main characters, often driven by chance and inertia, as argued in *Sleepwalkers*,

¹⁶ GUILLUY, C., “Los desposeídos”, *El País*, 27 October 2022.

a book that explores the causes leading to the First World War —or, from a less Eurocentric perspective, the first European war¹⁷. The contingent nature of legal phenomena and the historicity of the rule of law must be embraced as an epistemological guide.

Historiography has become a new battleground for diplomacy, punctuated by the spread of hoaxes that either follow or clash with one another. As Snyder has argued, the battle over history is also a battle for democracy itself¹⁸. Uchronia, or counterfactual history, is increasingly common, and Retrotopia, a term coined by Zygmunt Bauman to describe the mythologization of the past¹⁹, has become more prevalent than utopia. Despite the new optimists claiming, with some justification, that our time is the best in human history²⁰, it still harbours new barbarians and savages, as highlighted by the war in Ukraine and the challenges of international criminal justice. While some hope for punishment for crimes, the reality often shows a lack of accountability. The notion that we are living in both the best and worst of times, à la Dickens, applies to nearly every era. Joy and sorrow coexist in the same neighbourhoods and moods. The world has never been the harmonious, natural order that the Stoics and natural law theorists envisioned. Historical revisionism —whether in good or bad faith— is pervasive. Events once heralded as heroic from an imperialist point of view, such as the conquest or genocide of the Americas, are now condemned. We must, however, be cautious in hastily applying modern concepts and judgments to past events, guarding against anachronisms and oversimplifications. Yet the right to truth must guide transitional justice processes, even though these processes often prioritize social peace over justice, promoting a kind of tabula rasa for criminals in pursuit of internal peace.

Particularly relevant today is the revision of colonialism, which has become an ideological battleground between the Global North and the Global South —formerly called the Third World. This movement challenges traditional Eurocentrism and has fostered a new transcivilizational perspective of international law, one that advocates for true universalism, multiculturalism

¹⁷ CLARK, C., *Sonámbulos. Cómo fue Europa a la guerra de 1914*, Galaxia Gutenberg, Madrid, 2015.

¹⁸ SNYDER, T., “The War on History is a Battle on Democracy”, *New York Times*, 29 June 2021.

¹⁹ BAUMAN, Z., *Retrotopía*, Paidós, Madrid, 2017.

²⁰ PINKER, S., *Los ángeles que llevamos dentro*, Paidós, Madrid, 2018.

in addressing legal problems, and acknowledges the manifold debts —ecological, economic— incurred by the conquering and exploiting world against the conquered and exploited²¹. Nostalgia for a purely European or Christian international society (which, ironically, often welcomed wars like the so-called Hundred Years' War) is nothing more than a mirage, foolishness, or worse, a perversion. This issue extends beyond dialectical debates into tangible realms of accountability and restitution, as seen in cultural heritage claims. After all, the Congress of Berlin, where Europe divided Africa, took place as recently as 1885, in historical terms. To fully grasp the current political landscape, how can we not also consider the unequal treaties signed by European powers with China in the 19th century, or more recent colonial legacies that continue to evoke vivid and painful memories? Nevertheless, rejecting the West's discourse on human rights solely because of its colonial past is an immoral and opportunistic exercise, often employed by contemporary indigenous tyrants, who are more dangerous than the prehistoric tyrannosaurs and often wield a providential or transcendentalist vision that allows them to dismiss the demands of justice and accountability in favour of what they see as their historical legacy. Worse still, these autocrats flaunt their political longevity as a guarantee of stability, in contrast to the precariousness of democratic mandates. Orwell's *1984* seems more relevant than ever. To make matters worse, autocracies are no longer satisfied with merely oppressing internally; they are becoming increasingly assertive, disruptive, and interventionist on the global stage. This is certainly not the "end of history" in favour of democracy. Moreover, the self-serving portrayal of China and Russia as the new decolonizers is not only deplorable but also wholly at odds with the reality of contemporary events.

Moreover, attempting to reverse history (as Russia has been doing) can lead to hecatombs. International law is unfailingly based on historical facts and categories, as attested by *uti possidetis iuris*, which the International Court of Justice, while sometimes displacing this principle, has characterised as an instrument of security and stability, given the costly and bloody nature of border alterations²². However, we must be cautious of the so-called historical

²¹ ONUMA, Y., *A Transcivilizational Perspective on International Law*, Académie de La Haye de Droit International, 2010.

²² Judgment of 22 December 1986, *Burkina Faso v. Mali*.

rights invoked in our times, as they often conceal devious and pernicious intentions.

Our world is so different from that of yesteryear... It is ingenious to find ways to replace or update the concept of Westphalia with the trendy concept of Worldfalia²³ or the more recent and booming concept of Eastfalia²⁴. On the other hand, we are witnessing a phenomenon of deglobalisation or segmentation, which gives rise to new neologisms, often anglicisms (e.g., reglobalisation, regional globalisation, commercial diversification, slowbalisation, or friendshoring). Of course, there will always be alterglobalisation, the belief that another world is possible.

The scope and significance of past events remain legally relevant, as well as morally and politically controversial. For example, the genocide of Armenians in 1915, the recognition of which is a crime in Turkey but a political obligation in other countries like France. From the Spanish perspective, many bring up, through a “presentist” lens, Al-Andalus, the Res publica Christiana, the Treaty of Utrecht of 1713, or the emancipation of the Latin American republics. The fifth centenary of the first circumnavigation of the Earth has continued to be ignored by Flat Earthers, who are still prevalent in this day and age. The lights of the Enlightenment and the advances of science have by no means banished superstition, post-truth, and fanaticism. In this context, what is now called “the story” or “the narrative” of facts, which often aspires to colonize reality and minds, tends to predominate over the strict veracity of events. In other words, history must prevail over stories and legends; truth is truth, whether it comes from Agamemnon or his swineherd, even if its scope differs depending on the person asserting it (Putin’s acknowledgement of his aggression against Ukraine, for example, is not the same as the acknowledgement by so many other citizens of the world). The facts of events cannot be replaced by “alternative” facts, although their interpretation is, of course, subject to change over time.

On the other hand, the history and present of humanity and internatio-

²³ RODRIGO HERNÁNDEZ, Á., “Entre Westfalia y Worldfalia. La Comunidad internacional como comunidad social, política y jurídica” in GARCÍA SEGURA, C., *La tensión cosmopolita. Avances y límites en la institucionalización del cosmopolitismo*, Tecnos, Madrid, 2016, pp. 23-63.

²⁴ GARCÍA SEGURA, C., “Westfalia, Worldfalia, Eastfalia. Las transformaciones de la estructura de poder interestatal en el orden actual”, *Revista Española de Derecho Internacional*, No. 69, 2017, pp. 45-70.

nal relations are intertwined with the religious phenomenon —what used to be called sacred history— still a politically vibrant force shaping the earthly world. Religions remain instruments of life and hope (also for attaining another life) but also serve as pretexts for death, killing, and fostering hatred between peoples and individuals. These holy books, such as the Bible or the Qur’an, are still regarded by many, though often subject to personal and self-serving interpretations, as primary sources of legality and moral behaviour. Of course, history also determines the weight of these religions and their influence on international relations —just consider the Christian victory at Lepanto in 1571. The idea of convening an international inquiry to determine which religion, if any, is the “true” one is, of course, laughable. Meanwhile, God’s designs continue to evolve, influenced by demographic shifts. It is strange to witness the marriage between religion and nationalism when religion intrinsically carries a cosmopolitan origin and purpose. But -isms can do anything, and countries search through history for reasons and pretexts —often from beyond the grave— to store up common memories and aspirations to build or reinforce the nation-state or to exalt the leader of the day. Leaders, or ex-leaders, can suddenly and easily turn heroes and gods into villains and demons, or vice versa.

IV. INTERNATIONAL DOCTRINE AND TIME

Doctrine undeniably marked both the birth and the trajectory of international law, shaping its course even before its formal establishment. The founding fathers of international law, whether rooted in religious natural law, as with the Spanish School of Vitoria or Suárez, or in rationalist thought, with Hugo Grotius at the forefront, based its emergence on natural law. This divine or rational order, seen as eternal rather than fleeting, became the cornerstone of early legal relations between States. However, as natural law receded, the dominance of positive law brought forward the dilemma of establishing a purely voluntarist international law. This new legal framework was created by sovereign states, each recognizing no higher authority but themselves yet agreeing to self-impose limitations in the international realm.

Without delving into unrelated specifics, it is crucial to acknowledge the idealistic and visionary nature of early international legal literature. In the face

of a fragile international system and the insular development of Spain, the Spanish doctrine long prioritized history and legal theory over the practical applications of international law, which, unfortunately, yielded meagre results. This stands in stark contrast to the current reality, where international law has grown into a complex web of rules and branches, sometimes overwhelming for scholars yet increasingly significant for citizens. Today, international law shapes not only macrohistory but also the microhistory of individuals, with global crises such as the covid-19 pandemic expanding certain legal fields, like global health law. The modern international lawyer, like any engaged citizen, faces the challenge of improving a world that remains imperfect. In this context, *lex ferenda* and a teleological approach become indispensable, though they must carefully distinguish between positive law and aspirational law, between reality and wishful thinking. Wishful thinking, which has often complicated and diminished our understanding of international law, has frequently led authors to envision alternate realities that clash with practical application.

We now live in a post-ontological era of international law, where its existence is seldom disputed in the face of overwhelming empirical evidence. While some still deny its legitimacy, this denial pales in comparison to more prominent forms of conspiracy and scepticism that plague modern discourse. Nonetheless, the effectiveness of international law, along with its numerous fractures, remains a subject of deep contemplation and concern. International norms, as Alain Pellet noted, are “convenient forms of predetermining the future”²⁵. The entire international order must be teleologically inspired, if not theologically. Indeed, international law has always been in crisis — a crisis that signifies life or death, freedom or oppression, fortune or misery. This is no mere intellectual exercise but a matter of critical importance.

Although doctrine may no longer hold the decisive influence it once had, it remains essential in scrutinizing and guiding the evolution of international law. Modern international legal scholarship resides predominantly in the Anglosphere, where the abundance of accessible research online, the need for specialization, and the demand for productivity shape its landscape. Today’s scholars must account for their work in ways Socrates and Francisco de Victoria, both known for their lack of written works, never had to consider. The field is subject to ever-evolving classifications, often succumbing to youthful

²⁵ PELLET, A., *Contre la tyrannie de la ligne droite. Aspects de la formation des normes en droit international de l'économie et du développement*, Thesaurus Acroasium (XIX), Thessaloniki, 1992.

trends that neglect or dismiss the great masters of the past—a trend I increasingly oppose as I grow more skeptical of ageism and more inclined toward the wisdom of elder scholars. Artificial intelligence will inevitably transform scientific inquiry too, further shaping the future of international law. If war is indeed the art of deception, as Sun Tzu argued in the fifth century B.C., then even his ancient insights bear relevance in a world driven by new forms of power and technology. In this context, comparing the perspectives of internationalists from different generations, as done in the collaborative work by authors born between 1955 and 1965²⁶, proves invaluable.

Content, manners, and language evolve over time. There was once a time when we could write without the word “resilience”, a concept now omnipresent. We must however avoid diminishing the weight of terms like fascism, terrorism, and genocide, as well as virtues like solidarity, sustainability, and democracy. Another critical issue in the field of international law is the independence and integrity of judgment, especially in the face of external pressures from groups, commercial interests, or misguided patriotism. Power dynamics are as present in doctrine as they are in politics. In the 17th century, Hugo Grotius theorized the freedom of the seas in support of Dutch interests, but who can deviate from official foreign policy without risking their freedom or even their lives in modern-day China or Russia? The freedom of doctrinal thought is inextricably linked to civic freedoms. In my early career, we compared the organic Marxism of Tunkin, loyal to the Soviet Union, with the Western Marxism of prominent authors like Chaumont or Salmon. Today, capitalism has outlasted its primary critics, evolving into new forms like “surveillance capitalism”²⁷ or the expansive “state capitalism” of China. Despite new contestations, such as “accelerationism” born of left-wing thought²⁸, capitalism seems indestructible. It has been said somewhat ironically that the end of the world seems more plausible than the end of capitalism—an idea attributed to both Fredric Jameson and Slavoj Žižek. The lasting impact of financial crises born from capitalist excesses, as Galbraith noted, rarely lingers

²⁶ JOUANNET, E. ET ALII (coord.), *Regards d'une génération sur le Droit international*, Pedone, Paris, 2008.

²⁷ ZUBOFF, S., *La era del capitalismo de la vigilancia*, Paidós, Madrid, 2020.

²⁸ BERARDI, F. ET ALII, *Aceleracionismo. Estrategias hacia una aceleración hacia el postcapitalismo*, Caja Negra, Madrid, 2017.

in public memory for more than two decades²⁹.

International law, as we know it, is merely one possible configuration of our world. While it remains an ideal to call it “the common law of mankind”, as Jenks proposed in 1958, new theories of global constitutionalism or global administrative law continue to emerge. Utopian thinking —grounded in reason, not fantasy— endures, as it must. Luigi Ferrajoli’s recent work proposing a “Constitution of the Earth”³⁰ exemplifies this ongoing aspiration. Conversely, the pessimists and cynics who claim that great powers act solely in their own interest oversimplify a far more complex reality. In the current climate, particularly in the wake of the war in Ukraine, the world seems more prone to fragmentation than unity. International law textbooks may illuminate our understanding of this legal world, but they can never serve as self-help manuals for the dilemmas we face today.

V. THE DYNAMICS OF INTERNATIONAL LAW

The formation and the evolution of international law have been deeply intertwined with the development of the modern state. Despite a few early signs, the state has endured as the fundamental model of political and legal organization for centuries. However, in areas like economics and ecology, the state has demonstrated its vulnerabilities and limited autonomy. Alternative ideologies, such as Leninism, have challenged the State, but it has not only survived: in some cases, it has been strengthened —such as in the Soviet context, where it became a leviathan. The State was the primary aspiration of decolonization and continues to be the goal of contemporary independence movements. The creation of new, often unstable, states has introduced insecurity into international governance, sometimes resulting in failed States or, worse, chaotic entities, as illustrated by the first 13 years of South Sudan’s existence. While the classical notion of *summa potestas* has diminished, resurgent nationalism and identity politics have revitalized the nation-state. Yet, this same nationalism, when rooted within a State, can threaten territorial integrity and give rise to new States —unless tribal chaos takes over, destabilizing

²⁹ GALBRAITH, J. K., *Breve historia de la enforia financiera*, Ariel, Barcelona, 2011.

³⁰ FERRAJOLI, L., *Por una Constitución de la Tierra. La Humanidad en la encrucijada*, Trotta, Madrid, 2021.

not only the state but spreading disorder across entire regions. A particularly grim example is aggressive imperialist nationalism, such as Russia's attempt to erase Ukraine's statehood. In light of this, internationalism has emerged as a progressive ideology, while nationalism is increasingly viewed as reactionary. The state remains dominant but is undergoing transformation. The once sacrosanct equality of States, the foundation of the international order, is fracturing into a web of differing legal statuses, powers, and influences. An informal law of hegemony seems to be emerging. The growing social and legal interdependence across nations means that States, even without their full consent, are gradually losing their capacity for independent action. The recognition of global public goods and the emergence of individuals—both natural and legal—as key players in international relations are blurring the lines between public and private international law. While States retain their identity, many are changing so drastically they appear to be self-destructing. Some States have become mere spectres, failing despite their formal claims to sovereignty and inflated nationalistic rhetoric. All states have their hidden “sewers” too—what we might now call the deep State, akin to the darknet. The essentialism that national populists champion is not only misleading but also perilous. States, like all entities, are born, evolve, and can ultimately cease to exist.

The structural principles of international law—alongside the development of a material constitution and a shifting, often ambiguous and even contradictory mandatory law—are evolving, particularly with the rise of human dignity and the growing emphasis on international cooperation as alternatives to a purely statist vision of the law of nations. In stark contrast, the traditional values brandished by Putin's Russia are not only threatening but actively destabilizing the entire international system, potentially sparking a *Zeitenwende* (change of era). Ukraine's current existential crisis highlights this tension, as it shakes the very foundations of the international legal framework, which constantly navigates the delicate balance between state independence and interdependence. The paradox remains: while international law advances under the guidance of sovereign states, that very progress simultaneously limits their true sovereignty.

Consequently, the very literal interpretation of the United Nations Charter is revealing the obsolescence of many of its provisions, which must adapt

to an era vastly different from that of June 1945. A so-called “Charter bis” is desperately awaited—a profound reform of its articles, yet this reform remains blocked by the vicious circle created by the very right of veto that benefits the allies of the Second World War. As history has always shown, both the past and the present are written by the victors. However, today’s global power structure is markedly different from the one established by the San Francisco Charter, and it will continue to evolve, especially with the rise of new technologies and the growing influence of start-up nations.

This situation is shared by many other post-war International Organizations whose founding treaties have remained unchanged or largely similar, rendering these organizations living, sometimes even Kafkaesque entities—hibernating and then reviving—unbound by their original legal frameworks. The case of the Western European Union illustrates the various cycles an intergovernmental organization can undergo, even up to the point of extinction. The examination of the state, as well as other subjects of international law must be viewed as temporary and biological rather than purely formal or abstract, and certainly not as rigidly certain or apodictic.

It is a common refrain in our field—one that is admittedly not always well-disciplined—to speak of living in a changing world. Many occasionally declare, sometimes hastily and prematurely, the arrival of a new world order. The term “order” itself, as applied to our discipline, is polysemous. One of its meanings in English suggests “putting things in their proper place”, a definition that hardly fits the contemporary international community, or indeed, any era. The complexity begins, from a factual standpoint, with the reality that many international events are never, or only belatedly, fully clarified. It is essential—yet often impossible or ill-timed—to understand what truly occurred before determining their legal consequences. Moreover, the interpretation and renewal of international law present intricate temporal challenges. Hermeneutically, the well-known dictum from inter-temporal law famously articulated in the 1928 Island of Palms arbitration award, holds that every legal act must be assessed in the light of the law of the time when the event took place. However, the evolutionary interpretation of international norms, beyond the temporal guidance provided in the 1969 Vienna Convention on the Law of Treaties, is deeply intertwined with the unfolding of events as

emphasized in the case law of the European Court of Human Rights³¹.

However, the renewal of norms and the replacement of one with another is far more challenging within the international order given its lack of a centralized mechanism for derogation —something that is much more pronounced than in domestic legal systems, where the law also tends to lag behind social realities. Considering, for instance, the 1951 Geneva Convention on the Status of Refugees; here, Gramsci’s maxim that “the old world is dying, and the new is slow to appear” seems fitting. While disuse (desuetude) is not, in itself, grounds for terminating a treaty, subsequent custom (*lex posterior derogat priori*) can indeed replace earlier treaties, serving as the latest expression of state consensus. Law, by nature, is conservative, aiming for stability —just as many countries today claim a return to stability as the new normal in politics. Custom, on the other hand, is inherently elusive. Appeals to instantaneous custom, or even a wild, immediate revisionist custom, must acknowledge the ineffable and malleable nature of customary law. International law has only sporadically kept pace with social developments, as exemplified by the United Nations General Assembly Resolution and the corresponding 1967 Outer Space Treaty.

The mechanism used by the International Labour Organisation to repeal conventions that have clearly become obsolete due to changing times and evolving legal sentiments is particularly interesting. For academics who advocate the theory that international law is a dynamic process —a continuum— rather than a fixed set of norms, this uncertain renewal is intrinsic to the legal order, not pathological. It’s often surprising when a treaty thought to be long dead is suddenly revived, as in the case of the 1927 arbitration treaty invoked by Chile against Spain in relation to the Pinochet case at the end of the 20th century, or the intermittent agreement on the readmission of persons in irregular situations signed by Spain and Morocco in 1992. Additionally, the habitual delays of the Official State Gazette in publishing international agreements in Spain have occasionally led to instances of “time travel”, such as when it mentioned the Soviet Union as a party to a treaty long after its dissolution³².

³¹ MCWHINNEY, E., *The Time Dimension in International Law. Historical Relativism and Intertemporal Law*, Martinus Nijhoff, Leyden, 1984.

³² GONZÁLEZ VEGA, J., “Acerca de algunos viajes en el tiempo en la práctica reciente española”, *Revista Española de Derecho Internacional*, No. 49, 1997, pp. 328-333.

The truth is that multilateral treaties, even at the time of their formation, are poorly suited to the volatility and urgency of modern times. How can we expect a treaty to save the oceans in the high seas or regulate autonomous lethal weapons to arrive in time? Some even suggest, in more abstract terms, that what is urgently needed is a mutual and global survival pact. The creation of a treaty is cumbersome, and so too is its amendment. Various techniques—such as subsequent protocols, interpretative agreements, exegesis, implementation bodies, or follow-up conferences—attempt to bridge the gap between the treaty and the real-world events it is meant to govern. Yet events like the Chernobyl nuclear disaster or the current efforts to prevent truly global pandemics require a speed and certainty that conventional legal norms simply cannot provide. Often, these situations are literally matters of life or death, oppression or freedom, misery or prosperity. In response, shortcuts are sought, such as recourse to soft law or the empowerment of the United Nations Security Council as an emergency legislator as occurred in the 1990s. However, these are not the solutions demanded by sound legal principles, which require regulatory certainty and transparency. It is no surprise that even the International Law Commission struggles to differentiate between codification and progressive development and has recently favoured instruments that are more guiding than mandatory. As a result, it has stepped away from attempting to draft codifying treaties, which—when they did emerge—were often adopted by only a few states and left vulnerable to the slow-moving processes of customary law that run parallel to codification. Meanwhile, countless other treaties, more conventional and limited in scope, such as the 2020 EU-China Global Investment Agreement, face such prolonged delays in gaining the necessary consent for entry into force that the circumstances in which they were drafted have fundamentally changed (as evidenced by the onset of a new cold war), rendering them politically and legally impractical or obsolete before they even take effect.

On the international stage, solutions described as provisional or temporary are sometimes articulated but then extended and consolidated over time. A clear example is the General Agreement on Tariffs and Trade (GATT) of 1947, or the United Nations Interim Force in Lebanon, created in 1978 and still in operation. One can only hope that the temporary protection the European Union provides to Ukrainians fleeing the war will not soon prove to

be futile. At other times, international agreements take for granted a future that cannot be guaranteed. A notable example is the Treaty of Peace and Friendship concluded between Spain and Morocco on 26 April 1860, where Article 1 optimistically proclaims: “There shall be perpetual peace and good friendship between H.M. the Queen of Spain and H.M. the King of Morocco and between their subjects”.

And what about the temporal criterion and the process of European integration? Well, it always seems to lack a new treaty, as Araceli Mangas pointed out³³; that, despite its greater legal sophistication, it also resorts to shortcuts and soft law; that its end point is indeterminate; and that it cannot even guarantee, as primary law promises, an ever closer union among the European peoples. A regression, let alone a dismantling, of the construction of the old, aging continent would be a disgrace for the entire international system.

I am approaching the final point: having so far sketched some reflections on the time factor in our world and in our legal system, it is appropriate to dedicate the last lines to the environment, so damaged and threatened, so accelerated in its deterioration, so decisive for the increasingly immediate future of all of us. However, it is important to leave the window of hope and action open, so as not to fall into defeatism and fatalism. In passivity. The state of the ecosystem is, of course, the result of the accumulated work of generations of men (to a lesser extent, also of women), and very particularly in certain areas; hence the postulate of being conservationist in relation to the natural environment and that in this branch of international law the principles of prevention and precaution have a special significance. Too little, too late, seems to be the sign and fate of our times, and there is still, in addition to denialists, procrastinators who postpone to the future, really *ad calendas grecas*, the finding of solutions that avoid armageddon, the return, in a way, to the night of the ages. Procrastinate is a verb of reckless conjugation in this matter. God will provide can lead to extinction. In the meantime, let us be cautious, responsible and enjoy life, including university life, and let us not waste time. We are not only “the time we have left”, as Caballero Bonald entitled his complete poem, but also the time we have lived and shared, and can remember and long for. Although international relations, and its legal system, are not a collection of exemplary lessons, we can always look to the

³³ MANGAS MARTÍN, A., “A Europa siempre le falta un tratado”, *El Mundo*, 16 December 2011.

good men and women who have also made history and law and thus improve the opinion we have of the human species. For example, Henry Dunant, who laid the foundations for the creation of the International Red Cross in 1864. However, we must wait for the passing of time before sanctifying a human being, even a secular one, for there are many illustrious people whose serious failings and vileness end up being revealed, thus destroying their hagiography.

Orson Welles used to say that a film would have a happy or sad ending depending on when the plot and the action stopped. So let us end this work with a message, albeit a cautious, optimistic one. With a happy ending: the ozone layer that protects the Earth from ultraviolet rays is expected to be restored in the coming years, largely as a result of the implementation of the 1987 Montreal Protocol that banned chemicals that depleted and punctured it. Long and fruitful life for international law, that is, for our world!

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