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EDITORIAL

In Defence of 'Generalism' in International Legal Scholarship and Practice

YANNICK RADI*

Puisqu'on ne peut être universel et savoir tout ce qui se peut savoir sur tout, il faut savoir peu de tout. Car il est bien plus beau de savoir quelque chose de tout que de savoir tout d'une chose; cette universalité est la plus belle.

Blaise Pascal*

1. Introduction

The *Leiden Journal of International Law* ('LJIL') has always endeavoured to promote diversity and interdisciplinary enquiries in the international law epistemic community. Interdisciplinarity and diversity, albeit necessary in the long-term to refresh and update the discipline, raise numerous questions and epistemic challenges in the short-term. On the initiative of Jean d'Aspremont and Larissa van den Herik,[1] today continued under the present editorship,[2] these challenges have been at the heart of past LJIL editorials.[3]

In this editorial, I offer some thoughts on interdisciplinarity within the 'box' of international law, i.e. by focusing on the impact of the diversification of international law regimes on scholarship and practice. More specifically, I reflect on the scope and array of knowledge expected from and necessary for international law scholars and practitioners in their day-to-day activity. In this respect, I claim that the current trend towards specialization is harmful to the professions of international law. I do so mainly on the grounds that one cannot, in my view, properly reflect on and practise one area of international law, e.g. international investment law or international criminal law, without having a sufficient knowledge of the system it belongs to.[4]

* B. Pascal, *Les Pensées* (1996), at [37].

* Senior editor, international legal theory section; Assistant Professor in International Law, Grotius Centre for International Legal Studies, Leiden Law School [y.a.a.s.radi@law.leidenuniv.nl]. The views expressed in this editorial are formulated by the author in his personal capacity.

1 See L. van den Herik, 'LJIL in the Age of Cyberspace', (2012) 25 LJIL 1; J. d'Aspremont and L. van den Herik, 'The Public Good of Academic Publishing in International Law', (2013) 26 LJIL 1.

2 See C. Stahn and E. de Brabandere, 'The Future of International Legal Scholarship: Some Thoughts on "Practice", "Growth", and "Dissemination"', (2014) 27 LJIL 1.

3 See, e.g., T. Aalberts, 'The Politics of International Law and the Perils and Premises of Interdisciplinarity', (2013) 26 LJIL 503.

4 For the purpose of this editorial, I presuppose the existence of international law as a system, without entering into the theoretical debate about the unity/fragmentation of international law.

I argue that 'generalism', a traditional feature of public international lawyers, is to be promoted and restored in the education and daily activity of international law scholars and practitioners. Of course, times have changed since the creation of modern public international law and the era of the great public international law generalists. This evolution calls for an update of generalism, taking note of the current features of international law. I will address this 'post-modern generalism' after briefly depicting the harmful evolution of international legal scholarship and practice towards specialization.

2. The harmful trend towards specialization in international legal scholarship and practice

At its inception, and in the centuries since, international law has been the common good of generations of generalists, starting with its founding father and most famous scholar: Hugo Grotius.[5] This monopoly was the result of two phenomena: the first one linked to the intellectual climate of those times; the second one related specifically to the content of international law. Both of these phenomena have evolved, contributing thereby to the fall of the monopoly of generalists on international legal scholarship and practice, to the benefit of specialists.

Starting with the first phenomenon, I believe that the move from generalism to specialization in international legal scholarship and practice has deep societal roots. At the time of the creation of modern international law during the 17th century, societies and their intellectual spheres were dominated by the figure of the *Honnête Homme*,[6] offspring of the figure of the humanist that appeared during the Renaissance.[7] Those figures – of which Erasmus, Montaigne, or Pascal are esteemed representatives – were characterized by the comprehensiveness of their knowledge, which presupposed a unitary understanding of knowledge. In this respect, the *Honnête Homme* and the humanist were opposed to the specialist. Since then, probably related to the functional differentiation of social subsystems,[8] the specialist has taken over their position. In this context, it seems that the trend towards specialization in international legal scholarship and practice is partly the result of more fundamental evolutions in the understanding of knowledge and the composition of intellectual spheres.

This brings us to share some reflections on the specific roots of the trend towards specialization in international legal scholarship and practice. In relation to the aforementioned autonomization of social subsystems, it is often said that this societal phenomenon has resulted in the proliferation of legal regimes, notably in

5 See H. Grotius, *De Jure Belli ac Pacis* (2011).
6 See, e.g., 'Honnête Homme', in F. Bluche (ed), *Dictionnaire du Grand Siècle* (1990), 728; N. Faret, *L'Honnête Homme ou l'Art de Plaire à la Cour* (1970).
7 See, e.g., V. Giustiniani, 'Homo, Humanus, and the Meanings of Humanism', (1985) *Journal of the History of Ideas* 167; B. Quilliet, *La Tradition Humaniste, VIIIe siècle av. J.-C. – XXe siècle apr. J.-C.* (2002).
8 See, e.g., N. Luhmann, *Theory of Society* (1997).

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international law.[9] This proliferation of international law regimes[10] and the related decline of the presupposed unitary understanding of international law among scholars and practitioners[11] are certainly explanations for the specialization of international law scholars and practitioners. Another reason for this evolution most probably lies in the evolution of the objectives of international law themselves, from co-existence to co-operation.[12] This balancing of the *droit de coexistence* and the *droit de coopération*[13] has indeed led to the proliferation of international law rules and regimes, and to the specialization of international lawyers. In this respect, international law has greatly expanded beyond the scope of knowledge traditionally known and mastered by generalists, i.e. *jus ad bellum*, *jus in bello*, sources, subjects, responsibility, jurisdiction, and immunities.

This trend towards specialization leads to challenging situations with which practitioners and scholars, as well as their audiences and clients, are familiar. For instance, in some conferences and workshops, various 'subject-matter communities' meet and experience difficulties in communicating and understanding each other because of their specialized expertise.[14] From a different perspective, it also happens that experts of one field do not have knowledge of other fields which are in fact related to it, while 'outsiders' coming from other fields sometimes claim to have an influence on that field with little knowledge of it. This is well illustrated by investment arbitration, where investment lawyers tend to have an insufficient knowledge, of e.g. human rights, while human rights or environmental lawyers do not have a sufficient command of international investment law. Furthermore, experience proves that specialists do not always master the fundamentals of international law.

These situations are typical of the harm that specialization does to the professions of international law, in particular with regard to their societal role. Indeed, what is at stake is not only the theoretical issues of the conception of international law as a unitary system of knowledge, or the debatable relevance of disciplinary boundaries, but, more fundamentally, the practical *enjeux* routinely discussed in courtrooms and which have deep societal impacts – notably financial – on local populations and on the international community as a whole. It is enough to mention, for instance, the large number of investment arbitration proceedings faced by South American countries where human rights considerations abound. In those situations, specialization is on the verge of turning into incompetence, and our professions are at risk of losing their credibility among tax-payers and official authorities, and thereby their *raison-d'être* for society. For these reasons, I believe that generalism should be

9 See, e.g., G. Teubner, 'Global Bukowina: Legal Pluralism in the World Society', in G. Teubner (ed.), *Global Law Without a State* (1997) 3.

10 See A. Leander and T. Aalberts, 'Introduction: The Co-Constitution of Legal Expertise and International Security', (2013) 26 LJIL 783, 787.

11 On the unity/fragmentation debate in international law, see, e.g., ILC, 'Fragmentation of International Law: Difficulties Arising from the Diversification of International Law', Doc A/CN.4/L.682; P. M. Dupuy, 'L'Unité de l'Ordre Juridique International', General Course of Public International Law, 297 RCADI (2002) 9–489; M. Koskenniemi and P. Leino, 'Fragmentation of International Law? Post-Modern Anxieties', (2002) 15 LJIL 553.

12 On these objectives, see the *SS Lotus* case (*France v. Turkey*), 7 November 1927, PCIJ Rep Series A No. 10, 18.

13 On these notions, see, e.g., W. Friedmann, 'General Course of Public International Law', (1969) 127 RCADI 47–224. On this balancing, see, e.g., P.-M. Dupuy, *Droit International Public* (2008), 386.

14 For a similar reflection, see J. d'Aspremont, 'Wording in International Law', (2012) 25 LJIL 575.

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rehabilitated and restored both in the mindset and in the day-to day activity of international law scholars and practitioners; which leads us to the discussion of generalism in today's context.

3. The necessary restoration of generalism in international legal scholarship and practice

Against the backdrop of this damaging effect of specialization, it is first necessary to discuss the meaning of generalism and the knowledge to be expected from international law scholars and practitioners. As pinpointed earlier, at the time of the creation of modern international law generalism was characterized by the knowledge and command of a body of rules regarding notably *jus ad bellum* and *jus in bello*, the sources and subjects of international law, jurisdiction and immunities, as well as state responsibility. These rules (still) constitute the fundamentals of international law and the basic categories to be known today by international lawyers. In my view, the proliferation of regimes in the international legal order pushes us to conceive of generalism also as the acquaintance of international law scholars and practitioners with the main international law regimes.[15] In other words, in the context of the post-modern international law, generalism has two meanings: it is characterized by the knowledge and command of first, the fundaments of international law – its 'alphabet' – and, second, its main regimes – its 'dialects'. This brings us to the question of the extent to which generalism in its two meanings can be promoted in light of the current features of the professions of international law and academia.

The students of today are the scholars and practitioners of tomorrow. In that sense, a reflection on the promotion of generalism in international law scholarship and practice should start with universities. In this respect, two contemporary features of academia run counter to the promotion of generalism in the current curricula of most universities.

The first – and obvious – feature that goes against generalism in international law relates to the fact that many universities offer specialized masters where the teaching of public international law is marginalized. For instance, some specialized masters, e.g. in human rights, offer a curriculum where public international law – without even mentioning specific fields – is optional. Such a curriculum means that after the completion of their masters programme, students who have studied domestic law for three years and human rights over the course of one year, can practise this discipline, notably in international courts and tribunals, although they have hardly heard about the fundamentals of international law. Even though this example is a caricature of the system, it is representative of the partial and specialized way in which international law is taught in numerous universities. Against this trend, I believe that, in addition to a specialization, universities should offer a generalist

15 These two spheres of knowledge are inter-connected inasmuch as the acquaintance with specific regimes feeds the knowledge of the basic categories of international law and the reflection on their evolutions.

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education in international law to students. This leads to the second feature that runs counter to generalism in contemporary academia.

Indeed, it is worth noticing that – except through an (optional) introduction to international law – the discipline is taught at the masters level, during two years or, more often, one year, depending on the country. Compare this with the compulsory three-year period mainly devoted to the study of domestic law that precedes the one or two years of domestic law specialization at the masters level in the great majority of European universities. This means that universities provide and offer a strong generalist education in domestic law to students, which is not provided in international law. In this context and given the aforementioned expansion of international law, the promotion of generalism in international law starts with a reflection on the allocation of time and funds within universities, and on the venues to promote generalism. At a time of economic crisis and budgetary cuts, this is a difficult and sensitive issue, requiring choices to be made, and policy priorities to be established. In this respect, I believe that the increasing internationalization of the regulation of societal issues so far captured by domestic law, and the related globalization of the education market should lead universities to offer a stronger generalist education in international law. The multiplication of LL B programmes in international (and European) law would be an interesting way to go.

Such reforms of academia would equip future international law scholars and practitioners with a generalist command of international law, and contribute to the restoration of a generalist mindset in the profession. Beyond the channel of education and the profile of future generations of international lawyers, this generalist mindset and knowledge is to be rehabilated in our generation and cultivated in our daily activities. The objective is not to go *à la recherche du temps perdu*, but to conduct our professions in a manner that meets the legitimate expectations of our audiences and clients. Obviously, this is a challenge for all of us that needs to be overcome for the sake of international legal scholarship and practice. More specifically, two challenges need to be faced.

The first challenge relates to our biased and partial approach, a product of our daily activity. The fact is that most of us practise and do research in specific regimes of international law. As a result, regardless of the conscious views on international law and the promotion of policy agendas characteristic of the dynamics of our professions, we are unconsciously biased by our day-to-day activity. To fight and escape this state of unconsciousness and to seek to remedy our biases, we should, individually and collectively, promote generalism as a mindset whose main virtue is to predispose ourselves to be competent in the exercise of our professions. This predisposition leads to the second challenge of generalism.

Indeed, if predisposition is a *conditio sine qua non* of generalism, it remains to be put into practice, which begs the question of the enormous scope of knowledge produced by the various international courts and tribunals and scholarship. To be clear, the idea of generalism is not to transform scholars and practitioners into experts in each field, but, notably, to make these professionals acquainted with them. Even in this sense, generalism remains a challenge for practitioners who work on different cases at the same time, and for scholars who are increasingly required to be

multi-tasking: teaching, researching, administration, management, and fund-raising. In this context, where time is of the essence, I believe that, beyond individual efforts to keep up to date and well learned, generalism is a common good produced by collective endeavours. Indeed, collaborative platforms, like research groups within universities which gather the members of international law departments,[16] international law societies organizing cross-cutting *fora* and conferences, blogs where colleagues share and discuss their knowledge,[17] or international law reviews, are great vectors and promotors of generalism in international legal scholarship and practice. Such collaborative efforts and platforms need to be encouraged and further developed to reinforce generalism and give our profession the opportunity to address the challenge of proliferation without falling into the throes of specialization.

Such an approach and endeavour has always characterized the editorial policy of LJIL. At a time where international law reviews tend to specialize and to promote specific approaches to international law, this is, I believe, the honour and virtue of LJIL, to pursue the promotion of generalism in international law scholarship and practice, and to thereby contribute to placing the figure of the generalist back at the centre of our intellectual sphere.

16 See, e.g., the Grotius Dialogues initiative at the Grotius Centre for International Legal Studies, available at http://grotiuscentre.org/page11174634.aspx.

17 On legal blogging, see, e.g., J. d'Aspremont, 'In Defense of the Hazardous Tool of Legal Blogging', *EJIL:Talk!* (2011), available at www.ejiltalk.org/in-defense-of-the-hazardous-tool-of-legal-blogging; D. Jacobs, 'Some Thoughts on Social Media and Academics: Will All Academics Need to Do It in the Future', available at http://dovjacobs.com.