

# Foreword

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At the moment we are writing this foreword Russia has militarily invaded Ukraine and the spectre of a nuclear war hovers over all of us. If one thinks of the concept of ‘justice’ in the international legal order in this particular historical time, it might seem pointless even to deal with the matter from a theoretic point of view. But it is even more necessary at times like these to continue to support rational and critical thinking, because only as rational animals humans can be distinguished from other sentient beings, and the proper of humanity, as Arendt would say, is to innovate, to create something new.

In this sense, the concept of justice represents one of the strongest arguments based on which throughout the centuries, and at least starting from the just war theory, theologians, philosophers and jurists have tried to call for the regulation of the action of States in the international domain. Therefore, it is not surprising that the concept of ‘justice’ in the international legal order

take different forms depending on the philosophical thought one wishes to follow or the scientific approach one wishes to apply.

For international theorists, international justice refers to the power of an international court or tribunal, chosen by the parties, to evaluate the legal arguments put forward by both of them and decide on the submitted case.<sup>1</sup> Therefore, the idea of international justice is purely *adjudicative*; or there can be *retributive justice* when the responsibilities associated with the violation of an obligation arise and entail the consequent duty to repair the caused damage.<sup>2</sup>

The modern international legal methodologies, however, are undergoing significant transformations that are now orienting the idea of justice to a broader context. We are, therefore, faced with a *global* configuration of justice, where not only the classical theories of international jurisdiction are composing the idea of a *forum*, but different methodological, theoretical, disciplinary, and cultural issues are influencing this configuration and progressively leading to its evolution. The global perspective, therefore, allows the concept of ‘justice’ to leave the traditional legal positivist groove and to broaden its theoretical and methodological horizons. By this broad openness, the taken applications and theoretical shaping are also different. The form of global justice is not only that which is practised before international courts and tribunals but is resolved in the application of common principles that are fair, reasonable, and giving a “sense of justice” to the international order (Onuma, 2010, 252).

Global justice, therefore, also becomes *distributive*. In this sense, there are not only distributions of rights, but also of legal goods, especially those natural resources that are fundamental in a sustainable development approach and that are derived from the International Community (Sen, 1999;

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<sup>1</sup> This is generally derived from the general principle of peaceful settlement of international disputes, which has its explication in Article 33 of the UN Charter and in those provisions relating to the prohibition of the use of force, the possibility to legally settle international disputes between States and the combination of different means of dispute settlement.

<sup>2</sup> See Article 31 of the 2001 Draft Articles on International Wrongful Acts.

Nussbaum, 2011, 113). Indeed, the International Community has repeatedly expressed a general interest in their protection and common enjoyment (Risse, 2013). This generated a sort of liberalist movement on global justice, by recognizing the necessary sustainment of principles of tolerance, cohesion, and realism in the global justice idea which might be at the core of the international legal order, as John Rawls expressed in his *The Law of Peoples* (Rawls, 1999; Kuper, 2000). Furthermore, can a ‘pluralist’ approach be conceived in international law and global justice *per se*? If we look beyond the structure of the international legal system, the philosophy behind it begins to reveal relevant questions about the cultural and political hegemony here present. A global society must also be a *pluralist* society, thus leading to a *transcivilizational* concept of international law (Onuma, 2010). This perspective also considers civilizational, cultural, and religious differences as relevant. It is only in this sense that the adjective “*global*” takes on a complete and functional physiognomy that accounts for the different perspectives and exigencies which are present in a pluricultural society.

It is within the above described interdisciplinary and pluralist framework that the Athena call for papers on ‘Global justice: the current situation and the new challenges’ was conceived, including researchers outside the pure international law field. For instance, the so-called processes of ‘constitutionalization’ of international law and ‘conventionalization’ of constitutional law (Reposo 2012, 28-30; Chang, Yeh 2019; Sagüés 2011) have contributed, since the second half of the past century, to a reciprocal enrichment of both disciplines, regarding in particular the guarantee of human rights. Besides, from a comparatist critical perspective, the adjective ‘global’ – ascribed both to ‘law’ or ‘justice’ – evokes suspicions of ethnocentrism and neo-colonialism, that can be overcome through the comparative methodology (Pegoraro 2014). Comparative law is based on a broader idea of what the ‘law’ is (Tamanaha 2016), on the analysis of legal formants instead of the sources of law (Sacco 1991), on the recognition of legal pluralism as a physiological manifestation of cultural diversity, and on the need to nurture

legal sciences with methods and contributions from other sciences. So, in this sense, it is not properly the law that is global, but instead the lawyer, who must approach the study and the practice of law with a global (comparative) perspective (Bagni 2017).

In a time of peace (unfortunately, a very unwanted consequence in wartime is that long-lasting crucial substantial issues are overshadowed by the immediate conflict drama), as the contributions to this issue very clearly highlight, there are in particular two justice issues that are intrinsically ‘global’, in the sense that they impact and affect the entire humanity, and would necessarily ask for common and coordinated policies from the international community to be effectively tackled and finally solved: the environmental crisis, on one hand, as recently re-stated by the IPCC, in the ‘Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change’, released on the 28<sup>th</sup> of February 2022; and the ‘social’ crisis, on the other, which corresponds to n. 1 Sustainable Development Goal ‘No poverty’, and urgently asks for the realization of an inclusive society and a Caring State, able to take care of all vulnerable living subjects (Bagni 2021).

In this context too, approaches to thinking about international law also make it possible to advance precise points of legal and political reform. Examples of this are *Third World Approaches to International Law* (TWAAIL; see Eslava and Pahuja, 2011). This conception considers relevant the third-world perspective as different from the mere post-colonialist and late-imperialist conception of international law. These are approaches that can go beyond a hegemonic political imposition, but without distorting the function of international law as a regulator of relations between the actors of the International Community (Anghie, 2005). Global justice, therefore, also follows this course and becomes *cognitive* of the differences between cultures, but especially between the North and South of the world (Santos da Sousa, 2007; Barreto, 2014). This also implies the creation of a universe that

is a *unicum*, but “pluralist”, complex and not singularly addressed, and by this is even closer to a transcendental ideal of the *universal* (Anghie, 2005). From the epistemology of the South perspective, a transcultural approach to this issue has generated the idea of ‘Pluriverse’, as opposed to ‘Universe’, that can be defined as ‘a world in which many worlds fit’ (Kothari et al. 2019).

In this context of the renewal of the conception of global justice, this issue offers some theoretical and doctrinal perspectives that can provide a comprehensive examination of the related problems and solutions in international law. The authors who have engaged in these discussions have provided their visions of global justice and the challenges that are characterizing it:

*Elisa Piras* attempts to critically evaluate the consequences of the recent pandemic situation on global justice for both human beings (as for the enjoyment of fundamental freedoms) and environmental capabilities, arguing the need for a conceptualization of rights and duties from a multidimensional perspective.

*Anthi Koskina and Konstantina Aggelopoulou* attempt to explain the increasing importance of space sustainability, proposing it as a paradigm for the contrast to climate change with a global effort to preserve this capability.

*Matheus Gobbato Leichtweis* seeks to frame the problems arising from the implementation of the 2030 Agenda within the framework of philosophical theories of international law, emphasizing the historical and materialist fundamentals of International Law and the role of international lawyers as promoters of addresses of the political and philosophical changes of the international legal order.

*Ozlem Ulgen* deals with the application of the utilitarianist theories of global justice to a particular aspect of the law of armed conflict, focusing on different cultural perceptions and perspectives on the “no-harm” duty in warfare.

*Juan Pablo Gómez-Moreno* goes at the very heart of international justice and tries to explain the interactions between investment arbitrations and political transition through a global justice perspective.

Finally, *Kurtul Aytakin Kaan* explains how recourse to unilateral measures has gone beyond their mere qualification as measures of *extrema ratio* and have been used to impose the hegemonic power of certain states, heavily shifting the balance.

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