ATHENA

CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

*Submitted: 3 Dec. 2025 / Reviewed: 20 Apr. 2026 / Published: 6 July 2026*

# What Remains of the West? Beyond Eurocentrism: A Perspective through the Analysis of the Multiplicity of International Law's Narratives

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**ABSTRACT**

The central theme of this essay is the analysis of the multiplicity of narratives that have emerged in the history of International Law. This perspective highlights the transformation from a Eurocentric conception to one that recognizes the plurality of interpretations of international law. The essay addresses the following topics: 1. the plurality of histories of International Law and the overcoming of the Eurocentric conception; 2. the comparison between the perspective of realism and that one of normativism; 3. the reformulation of the concept of the "West"; 4. a "transcivilization" perspective in international law.

**Keywords:** history of international law, globalization, the West, normativity, concreteness, transcivilizational approach

ATHENA
**Volume 6.1/2026, pp. 103-124**
*Thematica*
ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

## Introduction – Histories of International Law

The essay that Martti Koskenniemi has dedicated to the *Histories of International Law* lets us analyse the multiplicity of narratives that have followed one another in this field. This historical perspective allows Koskenniemi to highlight the gradual transformation from a Eurocentric conception to a vision recognizing the plurality of interpretations of International Law. I think that this progressive shift is of fundamental importance in highlighting the West's loss of centrality and its internal fractures.

The histories that were narrated during the "time of European International Law" (1648-1815) were "profoundly Eurocentric", M. Koskenniemi states (Koskenniemi, 2011, 154). Some scholars declare that after the Second World War and the end of the Cold War, International Law no longer had the aim of protecting the interests of States but rather established the centrality of common values such as the environment, the protection of human rights or sustainable development (Renaut, 2007, 173).[1]

However, with respect to these possible transformations, Antony Anghie, one of the major exponents of TWAIL (Third World Approaches to International Law), has stated that "the perspective of Western imperialism continues to be a constant in International Law" (Anghie, 2004, 315). An analysis of the approaches adopted in the history of International Law also confirms this constant orientation.

Koskenniemi rightly highlights two approaches in the field: i) the "realist" one, which points out the state power and geopolitical perspectives, and ii) the "idealist" one, which emphasizes the conceptions of philosophers and jurists and analyses the past through debates about principles or institutions,

[1] M.-H. Renaut adds the following considerations: "Ces finalités modifient le droit international dans la mesure où il n'apparaît plus seulement comme un instrument neutre de régulation entre États mais également comme un droit porteur de transformations au service de l'humanité tout entière" (Renaut, 2007, 173).



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

although neither of these two perspectives is sustainable without the complementary contribution of the other. However, in both perspectives "the non-European world has tended to appear as an *object* of European policy or thought about that policy" (Koskenniemi, 2011, 161; my italics).
In particular, Koskenniemi recalls the works of Grewe and Schmitt, for whom colonialism represented "one of the greatest problems of territorial order in the history of humanity" (Grewe, 2000, 229, quoted in Koskenniemi, 2011, 162),[2] within which the non-European world was considered the *object* of European territorial occupation. In the contemporary age, the most relevant conflicts are those between power blocs that claim the status of representatives of the "International Community", on which what is considered "law" depends.[3]

Koskenniemi's criticism of the "realist" approach, that fails to grasp the heterogeneous uses — that is, the multiple purposes — of International Law pursued by hegemonic and non-hegemonic actors, is certainly worth sharing. Indeed, he highlights that "historiographies of International Law have been as Eurocentric as the world they describe" (Koskenniemi, 2011, 168). Moreover, he observes that the postcolonial perspective has been more critically exercised on European practices than on the analysis of alternative institutions or vocabularies of non-European countries and peoples.

In this regard, I refer to the thought of Onuma Yasuaki, who was a professor of International Law at the University of Tokyo, and who reiterates

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[2] Carl Schmitt too enunciated, through the concept of "*Großraum*", the same predatory conception on the part of the Western powers. In this regard, consider C. Schmitt, 1995.
[3] With reference to the different interpretations of International Law by power blocs see Matthew Happold, who writes that despite the best efforts of international institutions and scholars to assert "the universal application of international law, *its relevance and applicability has been influenced [...] by political power*" (Happold, 2012, 1; my italics). Owing to the tendency of international system toward multipolarity, various sites of power are able to exert a significant influence on international relations and international law. So, the novelty of the current situation is "the fragmentation of International Law in an increasingly divided world" (*ibidem*, 2). The perspective is that of abandoning a global International Law towards discrete regional subsystems. From a historical point of view, the Monroe Doctrine of 1823 was, according to Carl Schmitt, the most revolutionary departure from international law, and was seen "as suitable for justifying the principle of German *Großraum* in international law […]. The will of the German Reich, based on the power of its people, would be the basis of this 'new' International Law" (Orakhelashvili, 2012, 124).


ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

that European categories have always been presented as "universal"[4] (Onuma, 2010, 182).

Koskenniemi's essay concludes by highlighting the concepts that constitute a critical perspective on Eurocentrism. In particular, in addition to the conception of International Law as a system that encompasses the ideology of colonialism (in particular according to the fundamental theses of Antony Anghie), it is important to consider the analysis of the effects produced by the colonial encounter on the empire itself to be very relevant: "To what extent – Koskenniemi asks – European laws, or perhaps the identity of 'Europe', are a result of colonialism?" (Koskenniemi 2011, 174).

These methodological considerations are extremely relevant and shareable, because they entail the consequence that post-Eurocentric research should *consciously* use the concepts it employs, bringing them back to the *contexts*[5] to which they refer. Thus, for example,

> the application of formal sovereignty and UN membership in the colonies since the 1960s has done little to abolish factual inequality in the world, but it may have made that inequality slightly more invisible […] But what it has done is a matter of research and not the application of dogma (Koskenniemi 2011, 176).

What is important here is to highlight the *unilateral* perspective of every past narrative of International Law. An essay by David Kennedy allows us to

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[4] Onuma wrote that although Third World intellectuals were critical of international law, believing it to be unfairly favorable to Western nations, they nevertheless tended to follow its "prevalent cognitive framework". Many of these internationalists claimed the contribution that African and Asian nations had made to the development of international law. These claims, based on the criticism of the West-centric orientation that aimed to present and monopolize all that is good as a creation of Europe or North America, "were understandable given the hidden West-centric tendency in any discourse dealing with historical products that are valuable for humanity". But such claims – Onuma observed – "tend to ignore the historicity of these ideas and institutions, and are highly questionable" (Onuma, 2010, 183).

[5] An example of the need to consider the specificity of context is the use of International Law by Latin American internationalists to legitimize the expropriation of indigenous peoples' lands in the 19th century. In particular, the use of the principle of *uti possidetis* — which established that the newly independent states would maintain previous colonial borders — allowed indigenous lands to be transformed into *state territories* and thus to expropriate indigenous peoples. On this subject, see Becker Lorca and Alvez Marin, 2024, 8 ff.



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

delve deeper into these considerations. He has observed that the *context* is the area within which problems can be identified. *Historical reconstruction* lets us understand the origin of concepts and the contaminations between cultures that are at the origin of the formation of International Law.

Kennedy refers to the thought of Hugo Grotius and his analysis of the capture by the Dutch on 25 February 1603 of the Portuguese vessel *S.ta Catarina*. The analysis of the episode, that is of this *context*, allowed Grotius to develop his conception of sovereignty and his doctrine of just war. Borschberg (1999) analyses Grotius' *Mare Liberum* published anonymously in 1609, which constitutes Chap. XII of *De Jure Praedae*, posthumously published in 1868, and the unpublished fragment *De Societate Publica cum Infidelibus, w*hich was written in the first decade of the seventeenth century (see also P. Borschberg, 1998).

Grotius analyzed in *De Jure Praedae* the signing of the treaty in 1606 between the Dutch East India Company and the King of Johor, that was the kingdom located at the southern end of the Malay peninsula. Grotius declared that to contain the commercial and political influence of the Portuguese and Spanish in Asia it was necessary to acknowledge the full sovereign capacity of the indigenous rulers (Borschberg, 1999, 231). Moreover, in *De Jure Praedae* he added that the King of Johor had the necessary authority to conduct a public war (*ibidem*, 232).

In *De Societate Publica cum Infidelibus*, Grotius discussed the question of the conclusion of treaties and alliances between the Christian Dutch and the non-Christian peoples in Asia. He stated that all things originally belonged to all humans in common. Therefore, there had been a common property of all humanity, from which derived the arguments in favour of free trade and free navigation of the high seas (*ibidem*, 238).

Furthermore, Kennedy states:



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

> Today, International Law is not 'universal' even within the North. It is different in Europe and the United States,[6] each home to a variety of traditions and approaches in struggle with one another (Kennedy, 2023, 90).

Reconstructing the work of jurists in their time and place would help the discipline to grasp the pluralism and fragmentation of International Law (*ibidem*, 90). Thus, A. Anghie was able to affirm that "sovereignty was constituted and shaped through colonialism" (Anghie, 1999, 6). And Arnulf Becker Lorca has highlighted how the construction of International Law has been a transnational project[7] (Becker Lorca, 2006, 883).

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[6] Consider for instance the "policy-oriented jurisprudence" of Lasswell and McDougal, that was formulated during the 1940s and was characterized by the use of law to pursue policy aims. In particular McDougal and students associated to the so called "New Haven School", made legal arguments in order to support Cold War foreign policy of the United States. This perspective became a mainstream position in international law practice in the later twentieth-century United States (Derrig, 2025, 1 ff.).

[7] Becker Lorca argues his thesis through the analysis of the work of the Chilean internationalist Alejandro Álvarez, placing it against the backdrop of Latin American socio-economic and cultural life and projecting it into the interaction with the world system, "to argue that Álvarez's thinking is as much part of European legal culture (sociological jurisprudence) as expression of a distinctively Latin American cultural and political trend (modernism)" (Becker Lorca, 2006, 882). Latin American "modernism" represented, according to Becker Lorca's reconstruction, a strategy to negotiate the participation of the region "in the constitution of the world system by clearing a space for a locus of speech capable of articulating a discourse at the same time regional and cosmopolitan, modern and Latin American" (*ibidem*, 884). Furthermore, in a later essay Becker Lorca deepened and developed these topics. He declares that nineteenth-century international law has not been *imposed* on non-Western peoples but has a been *appropriated* by non-European jurists (namely Carlos Calvo, Argentinean; Fedor Fodorovich Martens, Russian; Etienne Carathédory, Turk; and Tsurutaro Senga, Japanese), who have suited the fundamental concepts of international positive law to the specificities of their own legal regimes (Becker Lorca, 2010, 482). In particular, Senga observed that the distinction between regional groups of states (e.g. between European and Asian states) did not justify discrimination by European states against Asian states, as was the case with inequitable treaties establishing consular jurisdiction. In Japan, it contradicted the principle of sovereign autonomy ("Insofern sprechen wir von Verletzung der Hoheitsrechte Japans durch die Konsularjurisdiktion": Senga, 1897, 107). Senga also criticized the prevailing view that limited the full enjoyment of fundamental sovereign rights to states that met a certain standard of civilization. From an ethnographic point of view – according to Senga – the standard was unscientific and misleading ("wie unwissenschaftlich und wie trügerisch die hierbei vorausgesetzten Abstufungen der Civilisation sind": Senga, 1897, 135). It is to be regretted – writes Senga – that authors of modern International Law use in their works such an unscientific expression as "civilisation" (resp. "culture") "But which science defined this expression? None!" ("Aber welche Wissenschaft hat je diesen Ausdruck definiert? Keine!": Senga, 1897, 135). In response and in dialogue with this essay by Becker Lorca, 2010, I allow myself to refer to Gozzi, 2010, 73 ff.



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

Kennedy also focuses on the thought of B. S. Chimni, who highlights the critical perspective of the Third World Approaches to International Law (TWAIL). TWAIL's concept is certainly one of the most significant critical contributions to the analysis of the ideology embedded in International Law. In this regard, Chimni states that this critical approach places the meaning of International Law in the context of the life experiences of Third World peoples, with the aim of transforming it into an International Law of emancipation (Chimni, 2007, 500).

Reflecting on the possible future of International Law from the Third World perspective, that is, from the perspective of the global poor, he states that the future will be determined by the way in which its past is interpreted, which can be reconstructed as the progressive affirmation of a *democratic global history*, which has overcome colonialism and imperialism, or as a global history written by scholars who share the vision of empire (*ibidem*, 512). The other fundamental task that Chimni identifies for Third World internationalists is that of "learning the grammar of global justice", which consists in placing at the centre of a "Global Law of Peoples the welfare of 'we the people of planet Earth'" (*ibidem*). It would therefore be necessary – in this "voluntarist" perspective – to reject the abstractions of International Law, rooting them in the reality of empirical world. In this – concludes Chimni – lies "the essence of the critical third world approach to International Law" (*ibidem*, 515).

Historical analysis allows us to highlight the functionality of International Law for projects of domination or the need to build alternative perspectives.

> Colonialism provides the most obvious example. If for centuries international lawyers had stuffed and supported imperial projects, over the twentieth century they came to see empire as a historical vestige, incompatible with a modern international law of self-determination and sovereign equality (Kennedy, 2023, 74).



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

These words of Kennedy encapsulate the project of building an International Law that reaffirms the self-determination of peoples, their political sovereignty, and the right to ownership of their natural resources.

## 1. Which Method?

A reflection is needed on the method to adopt for an International Law that, in the context of globalization's transformations, transcends the perspective of Eurocentrism. Which method should we adopt?

We turn once again to Koskenniemi, who offers a clear interpretation of the methodology of International Law. He observes that this methodology – understood as "argumentative practice" – should adopt two criteria: "These criteria may be grouped into two: *normativity* and *concreteness*. A persuasive argument is one that appears both normative and concrete" (Koskenniemi, 2007, 2; my italics).

I will first consider the perspective of concreteness starting from Carl Schmitt's "realist" conception, and then that one of normativity.

Carl Schmitt's perspective belongs to an approach that aims to establish the correspondence of International Law with the facts of international life. Schmittian concreteness consists in the conception that International Law derives from the history of European societies and from European civilization. *It is the perspective that Koskenniemi poses in the 1920s and 1930s*, and which conceived International Law as "part of the transformations of international modernity itself" (Koskenniemi, 2007, 5). But the risk inherent in the attempt to align International Law with "social facts" immediately emerges, since this attempt may lose its normative and binding character and become only a mere sociological description of existing power.

Aware of these limits, let us examine some features of Schmitt's internationalist thought.



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

## 2. What Remains of the West?

In an essay published in 1943, during the Second World War, Carl Schmitt reflected on the transformations of the Western Hemisphere, highlighting the opposition between America and Europe, through the prediction of trends whose outcomes have continued to the present and thus grasping the transformations that were taking place within the West.

Schmitt traces the succession of global lines that have divided space since the fifteenth century. He recalls the line that was drawn from the North Pole to the South Pole across the Atlantic by Pope Alexander VI in 1493, in the aftermath of the discovery of America, to divide the new lands and oceans between Spain and Portugal (Schmitt, 1995, 441 ff.; Ilari, 2025, 107 ff.).

The subsequent global lines, the so-called "amity lines" in the sixteenth and seventeenth centuries had a very different nature, as they delineated a space of peace in Europe, beyond which the struggle for the appropriation and division of territories inhabited by non-European populations was legitimate. Finally, the global American line of the Western Hemisphere was established. It was formulated by the Monroe Doctrine of December 2, 1823, which designated American space as the political system of the Western Hemisphere, as opposed to the absolute European monarchies of the time. The spatial delimitation of the Western Hemisphere drawn by the Monroe Doctrine extended up to 20 degrees west longitude from the Greenwich Meridian, and included the Azores and the Cape Verde Islands, and also included Greenland although, Schmitt wrote ironically, "it was certainly not discovered by Christopher Columbus" (Schmitt, 1995, 442).[8]

The Monroe Doctrine, therefore, also included the extension and expansion on the sea and constituted a line of "self-isolation", whereby "the new world tended to the aspiration of being the authentic and pure Europe and opposed itself to the old Europe" (Schmitt, 1995, 444), which was thus

[8] As is known, Greenland is among the territorial claims of the current 47th president of the United States: an unsuspected continuity of history!



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

pushed "by the rise of America in universal history within the Eastern Hemisphere" (*ibid*., 444-45).

But the line of separation between the new (American) West and the new (European) East was also a line of separation between good and evil, whereby the United States identified itself with everything that was "morally, culturally or politically in the substance of the Western Hemisphere".

The line of self-isolation thus transformed into a line of disqualification and discrimination of the rest of the world, and changed into a logic of unlimited intervention, into a boundless pan-interventionism, since "the government of the United States sets itself up as the judge of the whole world and arrogated to itself the right to interfere in all the affairs of all peoples and all lands" (*ibid*., 445). But in this way, Schmitt comments, the interstate war of the old European International Law was transformed into a world war.

Already during the First World War, American policy oscillated for a long time between isolation and interventionism, until in 1917 the dilemma was resolved in favour of intervention. Also in the Second World War, American neutrality was converted into pan-interventionism.

In this transformation, Carl Schmitt already saw in the 1940s the advent of "an American century for our planet" and, acknowledging the fracture between the United States and Europe, he stated that the political myth of the Western hemisphere had reached its epilogue (*ibid*., 447). The abandonment of American self-isolation and its transformation into a global imperialism, which was opposed to the imperialism of Eastern Bolshevism, had meant, starting from the Second World War, the opening of a new historical phase, in which "the global unity of a planetary imperialism – even if now capitalist or Bolshevik" was opposed to the "essence of Europe" and a plurality of concrete "large spaces" (*Großräume*).

This fracture within the West also corresponded to a clash with imperialisms to establish whether a possible future International Law should be the legal form of a plurality of large spaces – each with its own essence and historical, economic and spiritual specificity – or whether there should be



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

"only decentralized branches of a regional or local type, concession of a single lord of the earth" (*ibid*., 447).

Certainly, in the heat of the Second World War, Carl Schmitt defended only in an instrumental way the essence of Europe and its "large space" against American global imperialism, but his analysis hit the mark, highlighting the fracture within the West and the loss of its values in the American Western hemisphere. Today – in the 21st century and following the election of the 47th American president – those lines of transformation show all their relevance.

How has it transformed and what remains of the West?

At the foundation of the orientations that guided the politics of Donald Trump, since his first term from 2017 to 2021, there was Jacksonian populist nationalism, which was inspired by the policies of the first populist president of the country, Andrew Jackson, who was the seventh American president from 1829 to 1837.This populism is centred on the nation-state of the American people, and aims at the physical security and economic well-being of American citizens, interfering as little as possible with their individual freedom. At the origin of this populism there are certainly the stagnation of wages, the loss of jobs by less qualified workers, but also the affirmation and claim of identity policies against the risks of immigration, which is considered as an attack on the American identity. To these orientations are added the scepticism and the rejection of an American commitment to the construction of a global liberal order (Mead, 2017, 6).

This political vision is also at the basis of the new Trump presidency which, on the international level, has launched a series of initiatives against international institutions and commitments (such as the United States' exit from the WHO, sanctions against the International Criminal Court, the withdrawal from the Paris climate agreements, etc.) and, on the domestic level, is giving rise to an authoritarian-technocratic power that takes measures against sexual minorities, the rights of migrants, the rights of workers in


ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

federal agencies, giving a glimpse of an unprecedented attack on the foundations of liberal democracy.

The new American presidency aims to create a new imperial order, built on the creation of spheres of influence, on the basis of agreements with other autocracies – the Russian Federation and perhaps in the future China. But this new order is being created through a break with Europe and a deep and irreparable laceration within the West (Ilari, 2025, 113).

After the U.S. turnaround, will Europe be able to defend the values of the West – the rule of law, democracy, human rights – while recognizing, at the same time, its responsibilities towards the non-European peoples over which it has exercised its dominion?

## 3. Beyond the West: A Transcivilizational Perspective

The perspective adopted by Carl Schmitt is that of a "realist" approach, which establishes a close relationship between International Law and concrete power relations between world powers.

The perspective of normativity in International Law refers instead to the use of arguments that are placed "outside or above sovereign power" (Koskenniemi, 2007, 3). Koskenniemi rightly writes:

> But the problem with this method lies in the difficulty of demonstrating the rightness of the chosen standpoint. Ideas such as justice, self-determination, human rights, or peace are prone to much controversy: whose justice, which rights, whose peace, and under what conditions? (*ibid.*).

The analysis of Onuma Yasuaki's thought, which is placed in a *transcivilizational* perspective, can allow us to understand the meaning of a "normativist" approach and, at the same time, of an attempt that aims to combine normativity and concreteness. At the same time, *this perspective*



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

*represents an attempt to establish an approach that goes beyond Eurocentrism and the centrality of the "West".*

Onuma writes that the material power relations are now multi-centric, but "the West-centric ideational power structure may still persist" (Onuma, 2017, 31). Onuma also states that "the prevalent concepts of International Law may does not correspond to *changing realities of power constellations* in the twenty-first century world" (Onuma, 2017, 53; my italics). Antony Anghie elaborates on this interpretation by adding that the post-war institutions – especially the World Bank and the IMF – reproduce inequalities between states[9] in a way that makes it more difficult to think about poverty globally (Anghie, 2001-2002, quoted by Kennedy, 2023, 89).

Onuma develops his perspective by reconstructing the history of International Law from the pre-modern to the modern age and observes that European International Law was not simply imposed on non-Europeans. In fact, "the globalisation of the modern European system had been a complex process of imposition and voluntary acceptance" (Onuma, 2017, 81). However, there was a lack of a shared normative awareness, which is why Euro-centric International Law can be characterized as "a system of power disguised in the form of law" (ibid., 83).

But after the Second World War and after the end of colonialism, the ideas of equality and cultural diversity were affirmed, and International Law became globally legitimate thanks to the principle of equality of nations,

[9] Anghie highlights the continuity of colonial relationships since the Mandate System of the League of Nations to Bretton Woods. He writes that: "In strictly legal terms, the Mandate System was succeeded by the Trusteeship System. But in terms of technologies of management, it is the Bretton Woods Institutions (BWI) – the World Bank and the International Monetary Fund (IMF) – that are the contemporary successors of the Mandate System" (Anghie, 2001-2002, 624). And he continues: "The BWI understand poverty and underdevelopment to arise from factors that are purely endogenous to developing societies. As a consequence, all the BWI's initiatives and programs – of good governance, transparency, and anticorruption – are directed toward reforming the backward, developing country. The BWI, however, make no effort to reform the fundamental structures of the international economy itself-structures that largely operate to the disadvantage of developing countries" (*ibidem*, 628). See also Anghie, 2004, 193-195.



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

which constitutes a normative principle.[10] However, the study of International Law has not been sufficiently attentive to the problem of *global legitimacy*, which requires that the voice of the majority of humanity, that is, of non-Western peoples, be heard.

Therefore, in the 21st century the excessively "state-centric" structure of International Law can hardly be maintained and rather the "appreciation of cultural diversity will be a guiding normative principle in the twenty-first century" (Onuma, 2017, 160). The universal validity of International Law can be accepted by members of the global community – which includes non-state subjects, multicultural actors and multi-civilizations – if it satisfies a "transnational and transcivilizational legitimacy in the eyes of diverse non-state subjects and participants of International Law" (Onuma, 2017, 161).[11]

[10] In the first edition of 1905 of his classic *International Law*, Oppenheim wrote: "The equality before International Law of all member-States of the Family of Nations is an invariable quality derived from their International Personality. Whatever inequality may exist between States as regards their size, population, power, degree of civilisation, wealth, and other qualities, they are nevertheless equals as International Persons" (Oppenheim, 1905, 162). But there were some exceptions to the rule of equality. Indeed, writing in the epoch of colonialism, Oppenheim declared: "[…] such *half-civilized* and similar States as can for some parts only be considered International Persons, are *not equals* of the full members of the Family of Nations" (*ibidem*; my italics). Oppenheim referred to non-Christian States: "Doubtful is the position of all non-Christian States except Turkey and Japan, such as China, Korea, Siam, Persia, and further Abyssinia, although the latter is a Christian State. Their civilisation is so different from that of the Christian States that international intercourse with them of the same kind as between Christian States has been hitherto impossible" (*ibidem*, 148). But he was aware that this condition of diversity and dependency would not last long: "It may be expected that with the *progress of civilisation* these States will become sooner or later International Persons in the full sense of the term" (*ibidem*, 149; my italics). However, the cause of the change was not the progress of civilisation, but the struggle of non-Western peoples against the domination of the Western world! In the Ninth Edition of Oppenheim's *International Law*, edited in 1996 by Sir Robert Jennings and Sir Arthur Watts, we can read that States are certainly not equal as regards power, territory and the like, but "[s]ince International Law is based on the common consent of states as sovereign communities, the member states of the international community are equal to each other as subjects of International Law", and that "the principle of juridical equality is formally established as one of the basic principles of international law" (Oppenheim, 1996, 339-340). But Onuma goes beyond the concept of State and rather emphasises the "principle of equality of nations": thanks to this *normative* principle "all nations formally enjoy the same entitlement in the creation of international law" (Onuma, 2017, 85).

[11] Onuma refers to "civil society" actors, NGOs, national liberation movements, indigenous peoples.



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

Onuma's book aims to develop the attempt to realize a theory that satisfies these needs.

## Conclusions: How to Establish a Relationship Between Normativity and Concreteness?

Koskenniemi states that: "a persuasive technique of legal argument must be open to both demands — *normative authority and contextual responsiveness* — without being completely reduced to either" (Koskenniemi, 2007, 7; my italics).

What relationship[12] should we establish between "normativity" and "concreteness" to analyse the West's loss of centrality in the complexity of globalization and its transformations? Onuma Yasuaki aims to achieve this result through a careful and rigorous analysis of the historical transformations of the system of States and of the International Law that formalized their relations.

Onuma observes that the conception of the State formulated by Jellinek in his *Allgemeine Staatslehre* of the late nineteenth century represented a State that entered into a system of relations with other States. But the form and functions of the State differ greatly according to different historical periods, according to people's perceptions of authority, norms, religion. The model of the States of the *Allgemeine Staastlehre* was that of Western States. Indeed, non-Western societies, representing the overwhelming majority of humanity, had been ignored.

In Onuma Yasuaki's research, *the historical perspective* is the essential condition of his interpretation of International Law. Historical reconstruction allows him to identify a precise relationship between the past and the future of International Law. As in his other previous writings, Onuma retraces the doctrinal debate, which took place, since the early modern age, among the theorists of the natural law conception of *jus gentium*, from Francisco de

[12] Regarding this relationship see R. Kolb, 2016, 279 ff.



ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/23440

Vitoria to the extraordinary elaboration of Grotius in the seventeenth century, who anticipated the construction of the system of States on the foundation of the Peace of Westphalia of 1648. That system continued until World War I and its dissolution began a process – of research and institutional achievements – that is far from having reached a valid and effective solution.

Onuma's historical research highlights the distance that separates the age of natural law and the subsequent season of legal positivism from the instability of the current international legal system and the present system of international relations. This instability is due to the crisis of the Western-centric character of today's international system and the need to rethink it from a "transcivilizational" perspective (Onuma, 2017, 15). But what meaning should be attributed to this connotation? And to which areas does it refer?

The transcivilizational approach represents, according to Onuma, a third perspective between the Western-centric and state-centric vision and the perspective focused on the role of civil society actors, who present themselves as representatives of the "global community" (*ibidem*, 19). The transcivilizational perspective[13] constitutes a cognitive and evaluative context based on the recognition of the plurality of civilizations and cultures that have long existed throughout the history of mankind (*ibidem*).

From the point of view of the method followed, Onuma specifies at the outset that, when referring to cultures and civilizations, it is necessary to adopt a relativistic and functionalistic approach (*ibidem*, 21). In short: there are always cultural and civilizational factors that influence and determine the realization of International Law (*ibidem*, 21-22).

[13] A significant example of the transcivilizational perspective is given, according to Onuma, by the Declaration on Human Rights promulgated by the World Conference in Vienna on 25 June 1993. The Vienna Declaration opened the way to adopt a transcivilizational approach to human rights, that is, to give life to a concept that recognizes the contribution of different civilizations and cultures to the interpretation of human rights. Through this way, the Vienna Declaration "succeeded in formulating the global common ground reached at the end of the twentieth century, opening the door to transcivilzational human rights in the twenty-first century" (Onuma, 2017, 370).



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Onuma addresses some themes, with respect to which he poses the fundamental questions, which must be answered in order to outline the constituent elements of the future global order. In particular, Onuma asks: "When the world is becoming more multi-centric and more multi-civilisational, what kind of perspective is needed to locate human rights[14] in such a changing world?" (*ibidem*, 407).

Regarding the relationship between global economy and International Law, Onuma notes that China can surpass the US and become the world's largest economy (*ibidem*, 475). Since international institutions generally reflect the interests of the most powerful States, the question arises: "Will this change bring about a 'China-centric' international economic order?" (*ibidem*, 476). And furthermore, we need to ask what role International Law can play in preventing the outbreak of a conflict between the previous powers and the emerging ones. Onuma recalls the conflict between the USA and the UK, then the USA and Japan and, previously, the Opium Wars (*ibidem*, 476).

[14] In the large literature on human rights in a globalized world, see the contribution of Tony Evans who states: "the dominant conception of human rights, which gives greater emphasis to civil and political rights rather than economic and social rights, prioritizes the interests of those closest to the processes of economic globalization rather than those on the periphery" (Evans, 2005, 3). In the perspective of the politics of human rights, as distinguished from the philosophy of rights or human rights law, Evans declares that the practices of globalization may not lead to greater human emancipation, but rather to new forms of repression. In this regard he quotes Scholte, who affirms: "in practice, globalization has often perpetuated (and in some instances increased) poverty, violence, ecological degradation, estrangement and anomie" (Scholte, 1996, 51). Regarding the *status* of human rights in the frame of globalization, Christine Chinkin declares that the states ought to perceive the furtherance of human rights as advantageous to their objectives, but that "this becomes ever more problematic as globalization decreases states' control over domestic policies and their ability to support effective human rights regimes" (Chinkin, 1998, 121). Moreover, we must be aware of the fragmentation of International Law and the possible conflicts among its different branches, for instance between "human rights law and international economic law, …between international humanitarian law and military necessity" (*ibidem*, 121). Also very important is the perspective adopted by Katerina Tomaševski, who highlights the contradictions embedded in the relationship between development aid and human rights. In particular, she declares that human rights should be integrated into international development aid in order to serve as its corrective. Donors have adopted strongly worded statements about linking development aid to human rights: "These, however, do not relate to the donors' own work *but impose human rights on developing countries as a condition for aid*" (Tomaševski, 1993, xiii; my italics). Through this way, donors revolve around political rights, which are remote from their political mandate. So, they do not focus on economic and social rights, while development aid ought to "be directly conducive to their realization" (*ibidem*).



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The 21st century – Onuma recalls – will no longer be centred on the West but will be multi-centric and multi-civilizational (*ibidem*, 478). It may take decades before new constellations of power are established in the global economy, not only in terms of economic development, but also in terms of values other than democracy, human rights, fairness, etc. (*ibidem*).

In this new scenario, the task of International Law cannot be limited – realistically – to an exposition and analysis of visible and explicit international legal phenomena. On the contrary – Onuma observes – the task of internationalists should consist, among other things, in: "*Critically examining the basic philosophy (or spirit) of the time* – which […] promotes deregulation of the global capitalist economy". Moreover:

> Seeking to identify the most appropriate role of international law from a perspective of global or transcivilizational public values and to evaluate current international economic law, especially its *'passive' normative stance toward international finance and currency* may be yet another mission (*ibidem*, 479).

Only in this way could International Law, as "a legal order and social science", respond to the needs of the time (*ibidem*).

Finally, Onuma addresses the question of war, in this era in which the use of force constantly violates law. Many internationalists have argued that the way in which the problem of war is addressed constitutes the criterion through which the structure of International Law is defined (*ibidem*, 588). The attempts of the League of Nations and the subsequent Briand-Kellogg Pact of 1928 have not proven sufficiently effective in preventing states from resorting to war (*ibidem*, 591).

In the 21st century, wars have manifested themselves as civil wars and acts of genocide – Onuma wrote already in 2017 – rather than as interstate wars (*ibidem*, 630). More precisely, he observes that in the period following the Second World War, International Law studies have analysed the question of the norm that prohibits the use of force, assuming it as the primary norm of



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https://doi.org/10.60923/issn.2724-6299/23440

International Law. During the Cold War period, both capitalist and socialist alliance systems sought to ensure their security outside the UN system. And, since the end of the Cold War, the UN has been unable to respond adequately to civil wars and terrorism (*ibidem*, 661).

Despite these failures of the UN, Onuma continues to place its trust in this Organization by stating that the UN is

> the most authoritative organ in international society to judge the legitimacy of the use of force by states through the mechanism representing international society and legitimate criteria of international law and other global norms (*ibidem*, 662).

On the contrary, although Onuma underlines the importance of the affirmation of the norm that prohibits the use of force (*ibidem*, 664), I think that we can state that we are witnessing a return to the non-discriminatory concept of war – that is to the refusal to distinguish between enemy and criminal, and to criminalize the war of aggression – that had been proclaimed by the *jus publicum europaeum* since the 17th century until the First World War. *And this return means that we are facing a growing clash between power and law.*

From here, as well as from a multi-centric system of power relations and from a multicivilizational system (*ibid.*, 407), and from the awareness of the need for a transcivilizational approach, we must start again to reflect on the future configuration of the new world order (or disorder!).

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