

**TRANSFER OF VALUES THROUGH INTERNATIONAL LAW:  
THE HOBBSIAN LESSONS FROM EASTERN EUROPEAN LEGAL SCHOLARS**

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One common criticism of international law pertains to its use as an instrument to impose 'universal values' seen as those of a few hegemonic powers. Such a criticism has been rife in Asia or in the developing world.<sup>1</sup> The portrayal of international law as a tool meant to transfer values has not been played down by the universalization of international law that was partly achieved in the wake of decolonization.<sup>2</sup> Indeed, the fears of a hegemonic use of international law for the transfer of values have been rekindled by the mainstream Western legal scholarship. This can be particularly traced back to the *liberal* and *constitutionalist* theories which still dominate the legal scholarship in Europe and North America and which construe the legal order as resting on some sort of universal values. More precisely, it is the *Kantian* or *Grotian* conception of international law ingrained in the work of modern international constitutionalists<sup>3</sup> and (neo-) liberals<sup>4</sup> that has brought the spotlight back on

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<sup>1</sup> R. Klein, "Cultural Relativism, Economic Development and International Human Rights in the Asian Context", 9 *Toronto Int'l L. Rev.* 1; Sienho Yee, "The Role of Law in the Formation of Regional Perspectives in Human Rights and Regional Systems for the Protection of Human Rights: The European and Asian Models as Illustrations", 8 *Singapore Yearbook of International Law* 157-164 (2004). For a discussion on the discrepancies between Asian and European values see, Yash Ghai, "Asian Perspective on Human Rights", 23 *Hong Kong L.J.*, 342 (1993), esp. 351-352

<sup>2</sup> See however M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (CUP, 2004).

<sup>3</sup> C. Tomuschat, *International Law: Ensuring the Survival of Mankind on the Eve of a New Century*, General Course on Public International Law, 281 *Collected Courses*, 10 (1999), see esp. 237, 306; E. de Wet, "The International Constitutional Order", 55 *International and Comparative Law Quarterly* 51-76 (2006); E. de Wet, "The Emergence of International and Regional Value Systems as a Manifestation of the Emerging International Constitutional Order", 19 *Leiden Journal of International Law* 611-632 (2006); H. Mosler, *The International Society As a Legal Community* 17-18 (1980). See also Der "Gemeinschaftliche Ordre Public" in Europäischen Staatengruppen, *Revista de Derecho Internacional*, vol. 21 (1968), 523, 532; J. Delbrück (eds.) *New Trends in International Lawmaking – International*

the question of the transfer of *values* in the international legal discourse and has ignited a new surge of criticisms.

Against this backdrop, this paper analyzes the role that Eastern Europeans legal scholars ascribe to values and interests in their vision of the international legal order. It is argued here that the conception of these scholars may help reconcile the transformation of society brought about by a number of international rules with the criticisms inspired by cultural relativism. Indeed, it is submitted here that Eastern European legal scholarship provides an avenue to bypass the imperialistic objection inherent to any value-oriented understanding of the legal order.

It is necessary to preliminarily point out that Eastern European legal scholarship is obviously not a unitary set of legal thinking. There is an ample diversity among authors originating in this vast area whose limits are themselves uncertain. What was Eastern before the end of the Cold War is probably more central today, thereby rendering any classification of that sort slightly futile. In any case, it is acknowledged here that any portrayal of an ‘Eastern European legal scholarship’ is inescapably beset with some

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*‘Legislation’ in the Public Interest*, Duncker & Humblot, Berlin. See esp. 18-19; B. Simma, “From Bilateralism to Community interest”, *Collected Course*, 1994-VI, vol. 250, 217-384, esp. at 233; A. Peters, “Compensatory Constitutionalism: The Function of Potential of Fundamental International Norms and Structure”, 19 *Leiden Journal of International Law* 579-610 (2006); P.-M. Dupuy, “Some reflections on Contemporary International Law and the Appeal to Universal Values: A Response to Martti Koskenniemi”, 16 *European Journal of International Law* 131-137 (2005); J. H. H. Weiler, “The Geology of International Law- Governance, Democracy and Legitimacy”, *ZaöRV*, 64 (2004), 547-562, esp. 556-557. On Constitutionalism in general see A. von Bogdandy, “Constitutionalism in International Law: Comment on a Proposal from Germany”, 47 *Harv. Int’l L.J.* 223 (2006)

<sup>4</sup> T. Franck, *Fairness in International Law and Institutions* (OUP, 1995); P. Allott, “Reconstituting Humanity – New International Law”, 3 *European Journal of International Law* (1992) 219-252; Fernando R. Tesón, “The Kantian Theory of International Law”, 92 *Colum. L. Rev.* 53 (1992); Anne-Marie Slaughter, “A Liberal Theory of International Law”, 94 *Am. Soc’y Int’l L. Proc.*, 240 (2000); “The Liberal Agenda for Peace: International Relations Theory and the Future of the United Nations”, 4 *Transnational Law and Contemporary Problems* 377 (1994); “International Law in a World of Liberal States”, 6 *European Journal of International Law* 503 (1995)

overgeneralization. This being said, it does not seem overly exaggerated to claim that some common ground can be found among Eastern European legal scholars in connection with their conception of the foundations of the international legal order. The existence of a common denominator in such a rich and diverse legal scholarship probably pertains to the fact that most of these authors have, within a lifetime, experienced a unprecedented political, intellectual, economic and social metamorphosis whose extent can supposedly not be fathomed by Western scholars. One must also be mindful that it is delicate to appraise the extent to which the end of the Cold War and the political revolution undergone by the country of origin of the authors mentioned here have made some of them alter their original conception of the international legal order.<sup>5</sup> Such a change of opinion cannot be entirely excluded.<sup>6</sup> Subject to these few caveats, this brief paper posits that one of the added values of the Eastern Europe legal scholarship lies in the cautious and circumspect resort to values to explain the foundations of the international legal order.

It is true that Eastern European legal scholars do not deny the existence of values. No prominent Eastern European author could be described as a resolute agnostic in this respect. Although not discarding them, they fall short of assigning values a central function in the international legal order. Indeed,

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<sup>5</sup> Comp. for instance V. Dimitrijevic, "The Place of Helsinki on the Long Road to Human Rights", 13 *Vand. J. Transnat'l L.* 253 (1980) with V. Dimitrijevic, "The Role of Reporting Procedures in Monitoring Violations of Human Rights", 6 *Sri Lanka J. Int'l L.* 4 (1994).

<sup>6</sup> See Iulia Voinea Motoc, "European Tradition and the European Society of International: Some Remarks about Totalitarian Legacy", 6 *Baltic Yearbook of International Law* 85-109, esp. at 89 (2006); see also Vojin Dimitrijevic, "Human Rights in the Constitutional Systems of Socialist States", 8 *Netherlands Quarterly of Human Rights* 5-20 (1990).

subject to a few noticeable exceptions<sup>7</sup>, they have a minimalistic understanding of the role of values, Values play, at best, a secondary function in the lawmaking. The most tangible role that values may play rather concerns, for these authors, the interpreter of the rules, rather than the ‘international legislator’. In this regard, many Eastern European scholars, like V.-D. Degan, R. Mullerson or Jerzy Makarczyk, have spotted the significant influence of values, as extra-legal factors, on international lawyers in charge with the interpretation and the application of the rules.<sup>8</sup> As they confer a modest place to values in the international legal order, these scholars correlatively bestow the central and determining role upon (individual and common) interests.<sup>9</sup>

Within the framework of this brief paper, two authors will be especially examined as they have not balked at expressing their views on the question at stake here. Milan Sahovic is certainly among those that have offered the most cogent explanation on the role of common interests in the international legal order: “common interests of the community of States as a whole, confirmed as the basis of the jus cogens rule, became in the framework of contemporary international law the most prominent incentive for the adoption of its

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<sup>7</sup> K. Skubiszewski, “Human Rights: a view from Central Europe”, in *Mélanges N. Valticos* (1999), 521-528, esp. 522 and 525; Gabor Kardos, “Facing new reality: the Humanitarian Dimension of the CSCE”, in A.J Williams (ed.) *Reorganizing Eastern Europe* (1994), 145-157, esp. 145.

<sup>8</sup> V.-D. Degan, *L'équité et le droit international* (Martinus Nijhoff, La Haye, 1970) at 15; R. Mullerson, “Selfdetermination of Peoples and the Dissolution of the USSR”, in J. MacDonalt (ed.), *Essays in honour of Wang Tieya* (Martinus Nijhoff, 1994) at 568; In the same vein, see Jerzy Makarczyk, “Protocole No. 11 à la Convention Européenne des droits de l’homme – notes de lecture”, *Mélanges N. Valticos* (1999) 439-448, at 443.

<sup>9</sup> Jerzy Makarczyk and Andrezej Waiłkowski, “Le nouvel ordre économique international en tant qu’instrument de transformation du droit international”, 12 *Polish Yearbook of International Law* 41-55, esp. at 50 (1983). See also the Statement adopted by the Participants at the Poznan Conference on All-European Human Rights Protection, 8 October 1990, *All-European Human Rights Yearbook*, vol. 1, 1991; Budislav Vukas, *The Law of the Sea – Selected Writings*, Martinus Nijhoff, 2004, at 125-129; V.-D. Degan, “The Common Heritage of Mankind in the Present Law of the Sea”, *Liber Amicorum Judge Oda*, vol. II (Kluwer, 2002), at 1363.

fundamental norms”<sup>10</sup>. On several occasions, he has also stressed the ‘joint interests’ underlying the protection of human rights<sup>11</sup>, as illustrated by the Universal Declaration on Human Rights<sup>12</sup> or, more generally, by self-determination.<sup>13</sup> The work of Milan Sahovic, in that sense, constitutes an illuminating example of a moderate and subtle vision of the foundations of the international legal order.

It is probably R. Mullerson who has the most admirably depicted the role of values and interests in the international legal order. Mullerson does not deny the existence of values in domestic societies. He even argues that similarities exist among the basic values of each culture.<sup>14</sup> He nonetheless refrains from inferring from these similarities anything like global values at the heart of the international legal order. In his vision of the legal order, values play a minimal role.<sup>15</sup> The paramount driving forces of international law making are individual and common interests. Common interests (or “the interests of humanity as a whole”<sup>16</sup>) underlie those norms of international law that are deemed the most fundamental. And to the little extent to which he sees a role in values in the international legal order, it is of utmost importance to note that

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<sup>10</sup> Milan Sahovic, “The Concept of International Law at the End of the Twentieth Century”, *Essays in honor of M. Singh* (1992), at 90; Milan Sahovic, “Est-il possible de démocratiser le droit international?”, *Liber Amicorum Boutros Boutros Gali* (1999), vol. II, pp. 1331-1343, esp. at 1334.

<sup>11</sup> Milan Sahovic, “The Concept of International Law at the End of the Twentieth Century”, *op. cit.*, at 91-92.

<sup>12</sup> Milan Sahovic, “Est-il possible de démocratiser le droit international”, *op. cit.*, 1331-1343, esp. at 1341.

<sup>13</sup> Milan Sahovic, “Le droit des peuples à l’autodétermination et la dissolution de la fédération de Yougoslavie”, *Mélanges Valticos, op. cit.*, 189-196, esp. at 195-196.

<sup>14</sup> R. Mullerson, “On Cultural Differences, Levels of Societal Development and Universal Human Rights”, in J. Makarczyk, *Essays in honor of K. Skubiszewski, Theory of International Law at the Threshold of the 21<sup>st</sup> Century* (Kluwer 1996), at 931.

<sup>15</sup> “A ‘universal human value’ must, at minimum, be a value held by a majority of mankind”, R. Mullerson and V.S. Vereschchetin, “International Law in an Interdependent World”, 28 *Columbia Journal of Transnational Law* (1990), at 292.

<sup>16</sup> R. Mullerson, “Human Rights and the Individual as Subject of International Law: A Soviet View”, 1 *Eur. J. Int’l L.* 33 (1990).

he construes values in an utter pragmatic and problem-solving way.<sup>17</sup> His definition of values could even be conflated with that of global interests, both being not immutable.<sup>18</sup> He sometimes even uses the terms as synonyms.<sup>19</sup> All in all, this author ultimately advocates a conception of international law free of any dogma.<sup>20</sup>

The works of these two authors, which reflect, according to this paper, a general feature of the Eastern legal scholarship<sup>21</sup>, bear a few resemblances with those of some prominent Asian authors like Yasuaki Onuma<sup>22</sup>, M. Sornarajah<sup>23</sup> or Yash Ghai<sup>24</sup>. It seems that, despite their differences, they all acknowledge

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<sup>17</sup> "The most importance universal human values are those connected with the resolution of global problems. Diminishing the threat of world war, nuclear catastrophe and the use of force in international relations generally accords with the interests of all peoples and individuals. Similarly, protection of the environment and maintaining ecological security are generally accepted human interests. Social injustice, economic underdevelopment, hunger and disease in the developing world are potentially explosive global problems, the resolution of which is also in the common interest of all nations", R. Mullerson and V.S. Vereschchetin, "International Law in an Interdependent World", *op. cit.*, at 292; see also R. Mullerson, "Right to Survival as Right to Life of Humanity", 19 *Denver Journal of International Law and Policy* 47 (1990-1991), at 50.

<sup>18</sup> R. Mullerson, "On Cultural Differences, Levels of Societal Development and Universal Human Rights", in J. Makarczyk, *Theory of International Law at the Threshold of the 21<sup>st</sup> Century, Essays in honour of K. Skubiszewski*, *op. cit.*, at 946-947.

<sup>19</sup> R. Mullerson, "Right to Survival as Right to Life of Humanity", 19 *Denver Journal of International Law and Policy* 47 (1990-1991), at 49-50; R. Mullerson, "Selfdetermination of Peoples and the Dissolution of the USSR", in J. MacDonal (ed.), *Essays in honour of Wang Tieya*, *op. cit.*, at 568. R. Mullerson and V.S. Vereschchetin, "International Law in an Interdependent World", *op. cit.*, at 294.

<sup>20</sup> R. Mullerson, "Human Rights and the Individual as Subject of International Law: A Soviet View", 1 *Eur. J. Int'l L.* 33 (1990); R. Mullerson and V.S. Vereschchetin, "International Law in an Interdependent World", *op. cit.*, at 292.

<sup>21</sup> See also V. Dimitrijevic, "The Role of Reporting Procedures in Monitoring Violations of Human Rights", 6 *Sri Lanka J. Int'l L.* 4 (1994).

<sup>22</sup> He has taken aim at the Westcentric modern civilization and criticized the "cultural imperialism" that plagues international human rights law and has artfully spoken of human rights law in terms of "usefulness" highlighting that human rights have proven to be the most effective way to protect human interests and fulfill the universal quest for human well-being; see in particular Onuma Yasuaki, "In quest of intercivilizational human rights: 'Universal' vs. 'Relative'", 1 *Asia-Pac. J. on Human Rights and Law*, 53 (2000), at 55, 72, 79.

<sup>23</sup> M. Sornarajah, "Power and Justice in International Law", 1 *Singapore Journal of International Law* 28 (1997), at 40; M. Sornarajah, "An Overview of the Asian Approaches to International Humanitarian Law", 9 *Australian Year Book of International Law* 238 (1985).

<sup>24</sup> He has asserted that human rights boil down to a mechanism for "balancing different interests that surround the right"<sup>24</sup> and has focused on the "function" of human rights.<sup>24</sup> Yash Ghai, "Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims", 21 *Cardozo L. Rev.* 1095 (1999-2000); Yash Ghai, "Asian Perspective on Human Rights", *op. cit.*, p. 355. See also "Human Rights and Governance: The Asia Debate", 15 *Aust. Year Book of International Law* 1 (1994), at 21.

that States are not inherently self-interested<sup>25</sup> and are capable of pursuing the general well-being of human beings, wherever the beneficiaries may be located.<sup>26</sup> According to all of them, this universal quest does however not rest on any universal values but, more simply and pragmatically, on general consensus that it is in the interest of all that well-being and welfare be improved. In this sense, norms like human rights are only one of the many instruments to reach that goal.<sup>27</sup> This is why it can be argued that the aforementioned pragmatic vision of international law yielded by Eastern European legal scholars comes close to the approach based on the “usefulness” of the norms (for e.g. human rights) like that of Yasuaki Onuma.<sup>28</sup>

Some observers may be tempted to argue that such an interest-oriented conception of the international legal order that confines values to a secondary role cuts across some of the most famous pronouncements of the International Court of Justice. For instance, in the *Corfu Channel* case, the Court famously recognized the existence in international law of “certain general and well-recognized principles, namely: elementary considerations of humanity”.<sup>29</sup> Likewise, in its advisory opinion the *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, the Court recognized that the Convention endorsed in legal form “elementary principle of morality”.<sup>30</sup> A

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<sup>25</sup> A. Wendt, *Social Theory in International Politics*, CUP, 2004, 234.

<sup>26</sup> R. Mullerson, “On Cultural Differences, Levels of Societal Development and Universal Human Rights”, *op. cit.*, at 948

<sup>27</sup> Onuma Yasuaki, “In quest for intercivilizational Human Rights”, *op. cit.*, at 76-77. This idea can also be found in J. Donnelly, *Universal Human Rights in Theory and Practice*, 2003, (Cornell University, 2003), at 63-64.

<sup>28</sup> See *supra* note 22. See R. Mullerson based on the “needs” of human societies (“On Cultural Differences, Levels of Societal Development and Universal Human Rights”, *op. cit.*, at 948 & 952); Jerzy Makarczyk, *Principle of a new international economic order* (Martinus Nijhoff, 1988), at 26.

<sup>29</sup> ICJ Rep, 1949, a, at. 22.

<sup>30</sup> ICJ Rep, 1951, at 23: The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object, on the one hand, is to safeguard the very existence of certain human groups

similar statement was made in the *Nicaragua* case as regards the fundamental general principles of humanitarian law.<sup>31</sup> The advocates of the idea that international lawmaking is driven by values, especially when human rights are at stake, may be inclined to find further support in the declaration of the Court in the *South West Africa* cases according to which “humanitarian considerations may constitute the inspirational basis for rules of law”.<sup>32</sup>

It is argued here that it would be misleading to infer from the aforementioned *dictums* that the Court considered that rules pertaining to the protection of human beings are based on universal values. It is submitted here that the Court only meant that these instruments were not serving individual States interests but a common interest. As stressed by the Court itself in its opinion on the *Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide*, the “States do not have any interests of their own; they merely have, one and all, a common interest”.<sup>33</sup> Moreover, even if the Court also asserted that the aforementioned rules mirror some kind of existing international moral principles, it did not claim that values had been the driving force for adopting the rules concerned. Indeed, that the moral principles “constitute the inspirational basis for rules of law” does not mean that States adopted these rules to promote any corresponding values. Various

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and, on the other, to confirm and endorse the most elementary principle of morality. In such a convention, the contracting States do not have any interests of their own; they merely have, one and all, a common interest, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type, one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties.”

<sup>31</sup> ICJ Rep, 1986, at 112-114.

<sup>32</sup> (Second Phase), Judgement, ICJ Rep. 1966, at 34.

<sup>33</sup> ICJ Rep, 1951, at 23.



normative orders can coexist without interfering with each other.<sup>34</sup> Should there be global moral values as regards human dignity and the protection of human beings – what is far from certain –, corresponding international legal norms are not necessarily an offshoot of them. In other words, global moral principles do not automatically constitute what prods the international lawmakers to act when they adopt corresponding legal principles. In adopting rules that enshrine ‘elementary considerations of humanity’, States simply believe that promoting humanity is in all States’ interests as well as in the interest of all individuals. There is therefore no conflict between the conception of the international legal order offered by Eastern European scholars and the aforementioned *dicta* of the International Court of Justice.

It is probably not up to an international legal scholar – and especially not one who is not of a Eastern European origin – to venture into an examination of the reasons underlying this current (neo-)hobbesian inclination of Eastern European peers. The reasons may be manifold and difficult to fathom. Instead of attempting to explain this tendency, it seems more insightful to correctly appraise the consequences of the vision of international law that permeates Eastern European legal scholarship.

The depiction of the Eastern European legal scholarship that has been made in this paper may leave the impression that the Eastern European view of the role of values mirrors an *realist* understanding of the international legal order.<sup>35</sup> It

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<sup>34</sup> On the coexistence of normative orders, see J. Klabbbers, *The Concept of Treaty in International Law* (Kluwer International, 1996), 121-156. See contra, V. Gowlland-Debbas, “Judicial Insights into Fundamental Values and Interests of the International Community”, *op. cit.*, 344-347.

<sup>35</sup> A. Hurrell, “Society and Anarchy in the 1990s” in B. A. Roberson, *International Society and the Development of International relations Theory*, (London, Pinter, 1998) at 19; Barry Buzan, “From International System to International Society: Structural Realism and Regime Theory Meet the English School”, *47 International Organization* (1993), at 334-355.

is argued here that an identification of this legal thinking with radical realism would be ill-founded and far-fetched. Indeed, it must be highlighted that any theory that focuses on interests rather than values is not necessarily realist in the commonly negative and radical sense of the word. It is true that the Eastern European vision of the international legal order contains some (neo-) *Hobbesian* overtones.<sup>36</sup> But it is important to stress that the Hobbesian understanding of the legal order underlying the Eastern European legal scholarship cannot be conflated with the widespread (neo-) realist theories.<sup>37</sup> The (*neo-*) *realist school* has always centered on the Hobbesian ‘state of nature’ as a breeding ground for the vying for power.<sup>38</sup> Even though it does not deny the overarching importance of self-interests in contemporary law-making, the Eastern European tradition of international law cannot be seen through such an extreme interpretation of Hobbes as it builds its arguments on a conceptualization of the international legal order that focuses on the role played by common interests - which is a feature that realists like Hans Morgenthau<sup>39</sup> or even neo-realist like to Kenneth Waltz<sup>40</sup> adamantly disputed. It is argued here that Hobbes, although he might have been “guilty of gross and dangerous crudities”<sup>41</sup> did not rule out that common interests were

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<sup>36</sup> See for instance R. Mullerson, “On Cultural Differences, Levels of Societal Development and Universal Human Rights”, *op. cit.*, at 948.

<sup>37</sup> For a criticism of the neo-realist understanding of Hobbes, see D. W. Hanson, “Thomas Hobbes’s ‘Highway to Peace’”, 38 *International Organization*, 329-354 (1984).

<sup>38</sup> H. Morgenthau, *Politics Among Nations*, 4th ed. (New York: Alfred A. Knopf, 1967), at 113.

<sup>39</sup> See the depiction of Realists by M. Koskenniemi, “Image of Law and International Relations”, in M. Byers (ed.), *The role of Law in International Politics, Essays in international relations and International Law*, at 28 (OUP, 2000).

<sup>40</sup> Kenneth Waltz is said to be a neo-realist in the sense that he is not endorsing the conservative and pessimistic analysis of men and favors a more top-down analysis of international relations based on the deficiencies of the international system (whereas Morgenthau Kennan and Niebuhr construe the behavior of States as a magnification the flawed human nature). This said, Neo-Realists yet treat States as self-interested. For an overview of the different strands of realism, see K. L. Shimko, “Realism, Neorealism and American Liberalism”, 54 *The Review of Politics* 281-301 (1992).

<sup>41</sup> G. E. G. Catlin, “Thomas Hobbes and Contemporary Political Theory”, 82 *Political Science Quarterly*, 1-13 (1967).

playing a role in international relations.<sup>42</sup> In that sense, the Eastern European legal conception of international law comes close to the interpretation of Hobbes offered by the English School of International Relations. And it is particularly noticeable that, like the latter – it is well-known, for instance, that H. Bull has been decisively influenced by Grotius<sup>43</sup>, the Eastern European legal tradition of international law does not entirely brush values aside, recognizing the role that they may play at the periphery.<sup>44</sup>

Whatever the accuracy of these comparisons may be, there is no doubt that the greatest added value of playing down the significance of values in the international legal order relates to the possibility of circumventing the hegemonic and imperialistic objections to international law. Indeed, the major flaw of the mundane assumption that the international legal order rests on common values – what is particularly rife in the area of human rights law – pertains to the fact that international law may be perceived as an imperialist enterprise. The more subtle approach provided by the Eastern European tradition of international law helps tone down the imperialistic impression which dogs the constitutionalist and liberal schools of international law. It is true, however, that the conception of the international legal order that can be found in the Eastern European legal literature and which is shared by the author of these lines inextricably leads to *relativism* because of the contingent character of interests. This, again, echoes the self-referentiality of reason (*i.e.*

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<sup>42</sup> In the same vein, see L. May, *Crimes against Humanity – A Normative Account*, 14-16(CUP, 2005). See also M.C. Williams, "Hobbes and International Relations: a Reconsideration", 50 *International Organization* 213-236 (1996).

<sup>43</sup> H. Bull, *The Anarchical Society* (London, Macmillan, 1977), at 4-5. On the appeal held by Grotius for Hedley Bull and the discrepancies between the former and the latter, see Benedict Kingsbury, "A Grotian Tradition of Theory and Practice?: Grotius, Law and Moral Skepticism in the Thought of Hedley Bull", 17 *QLR* 3 (1997-1998).

<sup>44</sup> For a criticism of a moral reading of Hobbes, see T. Nagel, "Hobbes's Concept of Obligation", 68 *The Philosophical Review*, 68-83 (1959).

no reason can be established without another reason) depicted by Hobbes<sup>45</sup> and his idea expressed in *De Cive* whereby “the knowledge of good and evil belongs to each single man”.<sup>46</sup>

The *relativism* brought about by the vision of the international public order supported in this paper bears some resemblance with that of the *critical legal school* although it derives from a radically different premise.<sup>47</sup> The deconstructivist approach of the critical legal scholars leads them to challenge the legal objectiveness and lay bare the conflict of values which lies at the heart of the legal discourse. But, contrary to constitutionalist or liberals, they do not uphold the supremacy of any sort of values. In a way, the only “value” which they could be supporting is procedural: the openness of the legal discourse. In that sense the legitimacy of a legal argument stems from a deliberation (or “conversation” as they like to call it) which is not without reminding us of the habermasian understanding of legitimacy.<sup>48</sup> Even though the author of this paper does not espouse the critical legal scholars’ rejection of any objective legal rationality<sup>49</sup>, the relativism that flows from the interest-based conceptualization of the international legal order that has been defended here points to a similar ‘discussion’. Indeed, if interests cannot be subject to any objectivisation, their determination is bound to be the fluctuating upshot of a continuous and abiding conversation. This is what corresponds to Hobbes’

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<sup>45</sup> See the interpretation of Hobbes offered by M.C. Williams, “Hobbes and International Relations: a Reconsideration”, 50 *International Organization* (1996) at 229.

<sup>46</sup> Hobbes, *De cive* (1651), Reprint, Indianapolis: Hackett, at 178.

<sup>47</sup> See generally, M. Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument*, CUP, 2006.

<sup>48</sup> On the concept of Legitimacy, see J. d’Aspremont, “Legitimacy” in Wolfrum (ed.), *Heidelberg Encyclopedia of International Law 2007* (forthcoming).

<sup>49</sup> See J. d’Aspremont, “International Law as a grammar”, *op. cit.*, available at <http://www.globallawbooks.org>.

*appeal to politics*.<sup>50</sup> Politics being the organization of the debate about what a good society is, the determination of common interest is left to the world debate and the evolving and fickle consensus among States.

It goes without saying that the immediate fallout of such a relativism and an abiding 'discussion' is a continuous exposure to challenges of those principles that have been deemed serving the public good. Preventing such discussion or debate and cementing the conception of the public good at a given time is precisely the goal of all those who adopt, like constitutionalist and liberals, a *Grotian* understanding of international law based on values. Indeed, under the guise of values, they seek to crystallize the consensus about what promotes the public good and prevent any attempt to question what has been at a given moment considered in the interest of all. In that sense, the value-oriented approach of the liberals and the constitutionalist betrays a *fear*.

The inextricable debate about the public good spawned by the interests-based vision of the international legal order inspired by the Eastern European legal scholarship should however not be taken with a dim view. One must not be apprehensive of the theoretical possibility of a relentless challenge of the conception of the public good. The continuous discussion about what serve the common interest that follows the absence of global values does not necessarily bring about sweeping and incessant upheavals of those principles that have been construed as directed at a common interest. No such a radical amendment of the principles directed at the public good must be anticipated as long as the background of the aforementioned inextricable debate hereto meets certain conditions. In particular, the relativism and the infinitude of the

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<sup>50</sup> Hobbes, *Leviathan* (1651), Reprint, Indianapolis: Hackett, 1993, at 80.

quest for consensus which is encompassed in the conception defended here does not carry any hazard as long as the conditions for an *open debate* are guaranteed. This, among other, requires the representativeness of the lawmakers and the determination of those actors who should have their say in this conversation. These questions inevitably pertain to the question of the democratization of the international system. It is not certain that such a question is to be taken up by legal scholars. Be that as it may, it has already been studied elsewhere and it does not behoove this paper to engage in this problematic. For the sake of this paper, it suffices to indicate to those international lawyers that understand their role as ‘improving the fate of the world’<sup>51</sup> that, instead of trying to artificially export values that they deem objective, they should rather devote their efforts in streamlining these instruments that help make this inextricable world conversation more transparent. Ensuring the transparency of the world debate about how to serve the public good is probably the best way to bolster the universality of those principles serving the common interest. Even if this author believes that the fears of a hegemonic use of international law are very often far-fetched<sup>52</sup>, the perception of an hegemonic project that many see as lurking behind a value-oriented international legal order may severely undermine the universality of the latter. Stripping international law of its imperialistic and hegemonic overtones constitutes the precondition of its true universality and, hence, its effectivity.

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<sup>51</sup> For a more modest understanding of the role of international scholars, see J. d’Aspremont, “International Law as a grammar”, *op. cit.*

<sup>52</sup> Contra, see M. Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960*, CUP 2005, at 98-166. See also “International Law in Europe: Between Tradition and Renewal”, 16 *European Journal of International Law* (2005), 113-124.

CONCLUDING REMARKS:

Torn between their European origins and the appeal to values on the one hand and their reluctance – inspired by their own experience – to any forcible transfer of values on the other hand, Eastern European legal scholars have offered a very astute and refined (neo-) hobbesian account of the role of values and interests in international law. Their conception provides an avenue to bypass the imperialistic criticism inherent to any value-oriented understanding of the international legal order. In doing so, they have cast a conception of the international legal order which keeps the radical liberal and constitutionalist views at bay and offers room to reconcile the undoubted capacity of international law to transform societies with those legal traditions of the world averse to anything that looks like a transfer of ‘Western values’. In that sense, the Eastern European tradition of international law proves more ‘universalist’ than its Western European and American counterparts.