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RODRIGO, Ángel J., *La autonomía del Derecho Internacional Público*, (Aranzadi, Pamplona, 2024)

The existence of an ordered and coherent system of norms and principles of an international scope is a matter of course today. Public international law, unique, universal and complex, exists and governs the international community. Nonetheless, the legal nature and the basis for the bindingness of the norms that make up this order, as well as the autonomy, relevance and legitimacy of the international legal order itself, remain issues of systemic uncertainty.

In a context of significant essential and structural changes within the international community, of galloping material hyperspecialisation and, to some extent, a concerning fragmentation of public international law into relatively autonomous regimes or subsystems, Professor Rodrigo Hernández undertakes an admirable exercise of generalist research (currently in danger of extinction) to return the interpretative international law community to the foundations of the international legal order. This research is carried out, moreover, in the conviction that he is fulfilling the institutional duty which, in his view, all international law officials have to defend the (relative) autonomy and unity of public international law against the attacks of sceptics and corrupt states who seek to benefit from its fragility.

The central idea that the author of this book seeks to convey to the reader is clear from the first page to the last: in a scenario of important changes in the international community, which constitutes the social substrate upon which the international legal order is built, it is necessary to adopt a new conception of public international law that extols its autonomy, relevance and legitimacy. This conception is that of international inclusive legal positivism, which establishes that in international law there is a complex rule of recognition that is integrated by formal criteria of identification of a procedural nature, based mainly on the sources, and inclusive identification criteria, which take into account the substantive content of international norms and their necessary connection (but not dependence) with morality and politics. Such a complex rule of recognition, together with inclusive identification criteria, facilitates the defence of the legal character of international norms and, ultimately, the relative autonomy of international law as a necessary myth to reinforce its relevance and legitimacy.

In the first chapter of the book, Professor Rodrigo Hernández analyses, on the one hand, the origin and functions of the science of international law, starting from the premise that its mere conceptualisation as a 'science' is not exempt from criticism and challenges. As early as the times of Francisco de Vitoria and Hugo Grotius, the legal nature of *ius gentium* was debated and argued philosophically from an eminently positivist perspective, since only if international law is positive does the science of international law constitute an autonomous science. On the other hand, the confirmation of the existence of a science of public international law, the author asserts, has a dual function: descriptive, insofar as it serves to demonstrate the existence of legal norms; and constitutive, as it supports the constitution of an international legal system.

The second chapter, in my view, masterfully addresses one of the problems that generates most ontological scepticism and systemic uncertainty in the science of public international law, namely, the basis of the binding nature of international norms, an issue whose debate, for some authors, is absurd and outdated given the maturity of this legal system. However, the relatively recent irruption of the *soft-law* phenomenon as a set of norms with an attenuated degree of normativity, either by their form or their content, which influence and have effects among the subjects of the international community, has reopened the debate and it is necessary to offer new answers to the following questions: what is it that makes a norm become part of the international legal order? And why does this international legal order bind? Professor Rodrigo Hernández seeks to address these questions by drawing on the studies of several prominent authors in the field. Based on the analysis of these theories, the author highlights those that ground their contributions in classical voluntarist positivism, according to which a norm becomes legal and binding by the will of states when they express their consent and self-limit their power (G. Jellinek), by the unity of state wills (H. Triepel) or by the principle of *pacta sunt servanda* (D. Anzilotti). Other authors, defending Hans Kelsen's thesis, base their contribution on the supreme fundamental norm as the source of the validity of international legal norms. More recently, some authors have shifted the centre of gravity of the basis for the binding nature of international norms from states to the international community and its shared values and interests. However, despite the sophistication of the arguments offered by this series of authors, Professor Rodrigo Hernández highlights the limited explanatory performance of the positions that base the foundation of the binding nature of international norms on the will of states, disconnecting and isolating international law from the changes that have occurred in the international community since the end of World War II, in which states are no longer the only subjects with international legal personality.

The next question that the book attempts to resolve, which is closely linked to the previous one, is that of the legal nature of international law. In this debate, as Professor Rodrigo Hernández points out, there is growing support for the realisation that international law is a social fact in which it is necessary to claim a minimum threshold of normativity in order to consider a norm as a legal norm, and thus be able to differentiate it from other norms with a lesser degree of normativity or legal authority. In short, it is a matter of proposing criteria that help to distinguish law from non-law. Thus, the answers systematised in this third chapter, among which H. Hart's rule of recognition stands out (although for H. Hart international law is a primitive law), have, according to the author, a greater explanatory performance than those based on classical voluntarist positivism, as they not only explain the basis of the binding nature of international norms, but also help to identify formally legal norms and to distinguish law from non-law.

Having analysed the different ways of explaining the basis of the binding and legal nature of international norms, the fourth chapter of the book goes into the defence of the autonomy of international law, describing first of all what is to be understood by this autonomy. If anything is clear throughout this research work by Professor Rodrigo Hernández, it is that international law exists and is an autonomous and independent legal system that does not require morality or politics to exist, which does not mean that it is neutral, as it is closely connected to them. Such a connection is necessary, though not sufficient, to give international law legitimacy and relevance. In this chapter,

the author explains the autonomy of international law by means of the social thesis of sources. The acceptance of the social thesis of sources to explain the autonomy of international law derives from the complex rule of recognition together with inclusive identification criteria, which in the fifth chapter will be referred to as international inclusive legal positivism.

Thus, in the penultimate chapter of the book, Professor Rodrigo Hernández defends international inclusive legal positivism as the most suitable conception at present to explain the basis of the binding nature of international norms, the legal nature of these norms, international law as a set of relevant social facts, the validity and relevance of this law in the international community, and its relative autonomy from morality and politics. Inclusive international legal positivism consists of affirming that there is a complex rule of recognition, successor to H. Hart's rule of recognition, which constitutes a convention with a constitutive dimension from which the validity of international law as a whole derives, and a series of inclusive identification criteria, which make it possible to explain the incorporation into the international legal order of criteria of political morality on which the primary rules depend, while maintaining the formal requirements based on the sources (*pedigree*) to acquire the status of a norm in the international legal system. Within this chapter, the author's analysis of the conclusions of the International Law Commission on the identification of *jus cogens* norms is significantly illustrative.

The last chapter of the book takes up the question of the autonomy of international law, already formulated within the framework of inclusive international legal positivism, in order to analyse its characteristics and to underline the need to defend it. As this sixth chapter shows, the autonomy of public international law should not be understood as a condition that isolates the international legal order and disconnects it from questions of morality and politics. Such a conception is a myth, but a necessary myth. Public international law is not neutral, the autonomy of this law is relative, as it has a contingent connection with moral argumentation and international politics. The permeability of this type of arguments is necessary, in the author´s view, because it gives legitimacy to international law. However, this characteristic of the relativity of the autonomy of international law makes it at the same time relational, dynamic and fragile. More and more states are making instrumental use of the moral values that international law protects and turning it into a weapon to be used for their own interests (*lawfare*).

In this scenario, Professor Rodrigo Hernández assigns us a task. The international legal interpretative community has the institutional duty and ethical responsibility to defend the relative autonomy of public international law from the perspective of legal formalism, but also by resorting to arguments of political morality identified and shared in the international community. Only by positioning ourselves in the new conception of international inclusive legal positivism and defending the relative autonomy of public international law in our research and studies will we be able to build a valid, relevant and legitimate legal order for the international community, resistant to the attacks of sceptics and corrupts.

In short, Professor J. A. Rodrigo Hernández's book, highly recommended for all those wishing to return to the foundations of international law, rescues complex legal-philosophical debates that hyperspecialised international law scholars tend to shy away from, contributes with new perspectives, and brings them to the forefront at a time when

the risk of fragmentation in public international law is pressing. As the author asserts, the fragmentation of public international law into relatively autonomous regimes or subsystems is not a problem itself. However, this risk becomes a reality, and fragmentation turns into a challenge when those charged with identifying, studying, interpreting, and applying international law disconnect from the foundational principles and general issues that underpin it. Just as Professors Dupuy and Casanovas once defended and as Professor Rodrigo Hernández today defends, with extraordinary mastery and command of language and sources, international law scholars must be the guardians of the unity and relative autonomy of public international law, rather than exclusively specialists in specific international regimes.

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