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On certain aspects of the unity of the international legal order

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1. The unity of the international legal order, that is, that the order be conceived as a a single whole, depends on its most fundamental general norms being, and being perceived as, universal. The unity of such an order is, in reality, no more than the appropriate legal manifestation of the unity of a specific social group namely the international community understood as a single sociological global base. Today it is irrefutable that within the heart of this single international community we observe the presence of, and interactions between, all (non-global) social groups and all people.[1]

   This being said, the universality of the aforementioned norms is enshrined in the fact that these norms prevail over all other norms, whatever the applicable legal order is considered to be. The universality of these norms also implies, therefore, their peremptory nature as *jus cogens*. In short, the universality of these norms underlies, and is underlain by, the legal order of our single and unique international community.

   In accepting the validity of certain general norms as universal, we also accept that a legal order of the international community is valid, and that the rules of this order cannot have sovereign equality of states as a *single* fundamental rule. On the contrary, this level of universal legality requires certain *legal personifications*, both with respect to the single international community and all people,[2] and in terms of primary social communities or peoples (that is, communities who 'democratically' organise themselves as states)[3] and the international community as a whole, which

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1 On the concept of global society as a *transnational society*, see García Pelayo, M. (1977), *Las Transformaciones del Estado Contemporáneo*, Madrid, 16ff. On the existence of a global socioeconomic system, see Mesarovic, Pestel (1974), *Strategie pour Demain*, 2nd Report of the Club of Rome, Paris.

2 As will be developed in this article, the legal profession is not for believers in the radical monism defended by Scelle (1932), *Précis du Droit des Gens*, vol. 1, Paris, pp. 27-8.

3 Regarding the complicated notion of 'peoples' within international law, see my articles 'Políticas sobre el medio humano y contradicción entre pueblo y estado: aspectos jurídicos internacionales', *R.E.D.I.*, (1977), 2, and 'La Declaración Universal de los derechos de los pueblos', in *Revista Jurídica de Cataluña*, 1977, nº 2. As I made quite clear in the first of these articles, the implementation of a global system of 'democracy' within the international order is crucial for adapting the order to the requirements of the globalisation

encompasses the entirety of humanity. This level of legal order would not be universal if it were only concerned with relations between forms of government, independently of social groups and without taking into account criteria to judge the legitimacy of these governments in their actions towards their own social groups and citizens. This is, I believe, completely logical, as, if this legal system is to be considered as universal, it must protect the interests of all individuals, all peoples and humanity as a whole. From this perspective, universality is articulated through the existence of common legal subjects within all legal orders.[4]

Obviously, and as has been widely observed, the principle of sovereign equality between states, understood as the *single* underlying principle of international law, cannot be taken as a *universal* norm in the sense of those we have mentioned. This is due to the fact that within a legal order based on the principle of sovereign equality, the only subject is "sovereign" forms of government, meaning that there can be no unity. This principle in fact means that there will be legal orders in the world to the extent that different groupings of states have wished to establish them. If the only basic rule to organise relations within a group is that each member only has the obligations that they themselves have agreed to, then there is no form of universal validity. Rather we are left with the aggregation of particular situations, each with its own singular basis. So the order is not singular, but rather we are dealing with a plurality of particular orders without a universal basis. This is especially the case for the international legal order, within which the principle of sovereign equality was only accompanied by the prohibition of the use of threats and violence in the nineteenth and twentieth centuries. Indeed, it is only the prohibition of the use of force and the positivisation of rules relating to human rights and the right to self-determination that have led to a singular international legal orderbeing in force and

process that the international community is currently undergoing. Obviously, the debate on 'democracy on a global scale' remains relevant but, following Kant (*Metaphysical Principles of Law*), Truyol (1966) observes that 'peace is not possible outside the framework of an organisation', and that 'constitutional homogeneity' in the sense of genuine rule of law would be a *sine qua non* condition of a valid universal order of peace ('La organización mundial en perspectiva histórica: Idea y realidad', in *ONU año XX*, Madrid, 51ff. On 'law of peoples' see Cassese, A. and Jouve, E. (eds.), (1978), *Pour un droit des peuples*, Paris.

4 On the unity of the legal system within the context of relations between the international legal order and domestic orders, see Verdross (1975), *Il collegamento normative del diritto internazionale e la procedura per la soluzione dei conflitti tra questi ordinamenti*, Comm. E Studi, 14, Studi Morelli, 981ff.
Professor Cabrillo Salcedoobserved that internationalist doctrines of the 19th century, including those which developed classical idees, abandoned universalism due to three factors: the process of rationalisation of natural law, *the progressive establishment of the state as the only subject of international law* (my italics), and an erroneous vision of historical progress (Eurocentrism), in 'Aspectos doctrinales del problema de la universalidad del derecho de gentes. (Un ensayo de interpretación histórica)', *R.E.D.I.* (1964-1), 3ff (especially p. 15). The nascent 'univeralism', which is in part observed as real and in part as a possibility, is not in itself a political phenomenon that is *structurally opposed* to 'internationalism', as Quadri (1964) notes in 'Course general de Droit International Public', *R.C.A.D.I.*, III, p. 246. In my view, Jenks (1968) interprets this well in noting that 'International law should be seen as "law which is common to all humanity" during an early stage of its development,' *El Derecho Común de la Humanidad*, Madrid, pp. 15, 22 ff. This not withstanding, Virally (1964) also has a point when he notes that the global legal order 'is not a fanciful idea that is unattainable, but rather the channels for achieving this can be started now'and that 'although we are a long way from this, and that the obstacles to overcome may be too numerous, diverse and fearsome that we cannot be sure of reaching this objective,' in 'Sur un point aux ânes: les rapports entre Droit International et droits internes,'*Mel. Rolin*, Paris, 1964, pp. 488 ff., p. 498, fn 24.

allowed the legal system to be considered as unique.[5] In this line, it can be argued that universal rules which protect certain human rights and certain rights included within the principle of self-determination are in force. In fact, if these rules are not accepted as universal, the unity of the international order breaks down.[6]

On the other hand, the rule which allows us to identify norms as universal, that is, the rule which regulates the process through which such norms are formulated, is that which is expressed as the consensus of the international community as a whole.[7] That is, the rule which establishes the universality of other norms, is itself implicit in the formation and validity of these other norms. And if, hypothetically, the validity of universal norms were to disappear, the validity of the norm of consensus would also disappear. We can thus say that this rule of consensus is self-establishing as an aspect of universal general rules, and this is expressed sociologically from the unity of the international community in its current form and, ultimately, through the *authority* of the international community as a whole.[8]

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5 On the role of the United Nations' Charter in the consolidation of contemporary international law as general law, within the Spanish docrtine see: Medina Ortega, M. (1971), 'La Carta de las Naciones Unidas como Derecho Internacional General', *R.E.D.I.* nº 1-2, p. 31 ff. See also (especially the earlier opinions) of Giuliano (1950), *La Comunitá Internazionale e il diritto*. Padua, p. 237, who refers to 'the deforming influence of certain concepts of the phenomenon of international law, such as the legal order of all humanity and of human beings.'

6 If these *logical* aspects of the unity of the international legal order are acceptedas evident, they are seen in the validity of universal rules which protect *certain* human rights and *certain* rights included within the principle of self-determination.
Without going into excessive detail, and without the need to provide support from the practice or doctrine (see my articles cited in footnote 3 above), we can assert that these are human rights and fundamental freedoms which are protected by general international law, that is, those within the main international legal instruments in these areas (European Convention on Human Rights of 1950; the United Nations Covenants on Human Rights of 1966; and the Inter-American Convention on Human Rights of 1969), which cannot be overturned even during times of war (see footnote 38). These rights would be, primarily, the right to life, the right to not suffer torture or slavery, and the non-retroactivity of penal laws, to these we could add the right to a legal personality, the right to non-interference in private and family life, freedom of conscience and religion, and the right to a name. I believe it is still debatable as to whether economic, social and cultural rights have been *fully* positivised as part of general international law.
On the other hand, there is no doubt that positive general international law ascribes to peoples subjected to colonial or racist domination, or whose human rights are systematically and seriously violated, the right to free themselves, including through the use of force. Similarly, all peoples have the right to sovereignty over their wealth and natural resources, even within imperative law.
What I wish to stress with all this is that whilst there are arguments that the *effectiveness* of these norms (and of other universal-general norms of international law) will, on occasion, fully depend on the effective establishment of internal law within a state, this does not in fact mean that domestic law prevails over international law. In other words, where a state impedes the effective application of international law (through non-acceptance of the international guarantees that these laws are applicable), there are no *legal* arguments arising from the principle of non-interference in domestic affairs which legitimate and justify the actions of domestic legal actions in not willing to be subjected to any external controls. This refers to situations in which the organised international community can reasonably claim that international law has been violated. This counters arguments from Tunkin (1970), *Theory of Public International Law*, (translated by Butler), p. 81 ff.
Within another branch of thinking, it is argued that *universal*, which takes things just as they were conceived, differs from *general*, which takes things as they were systemised within a framework. See Safouan, M. (1977), *Estudis sobre el Edipo*, Mexico, p. 79, who follows the line of Lacan.

7 See especially Mosler (1974), 'The International Society as a legal community' *R.C.A.D.I.*, vol. 140, nº IV, pp. 34 and 83 ff. This is, in my opinion, one of the authors that most follows this line.

8 Reuter (1975), who is highly sceptical of idealistic postulations, as a disciple of the idealist Scelle, posits that, 'All states together, not just in the juxtaposition of their sovereignties, but rather in their totality as a whole,

It can only be argued up to a certain point that this authority that we refer to implies that the international community has a legal personality, with the common consent of all, or the vast majority, of *states*. By way of example, in some contexts, such as cases in which one or more states have violated the aforementioned universal norms, it might be more appropriate to refer to the *universal community of peoples*. Thus, as far as the validity of these universal norms is concerned, there can be no exceptions in terms of the action of any particular state, nor explicitly reserved fields of sovereignty in this respect. All specific legal frameworks within the world must align with these universal norms. In effect, although it can be said that amongst the key references relating to each person and people we see an overlap between norms that pertain to various legal orders interpenetrating norms within the domain of predominating universal rules it is more astute to invert this perspective, as these references are nodes within a network constituted by the continuum of a single legal system.[9]

In this line, certain legal situations referring to any person or people can be legally formulated within and for any legal order or context. Especially with reference to specific contexts where we see the interpenetration of domestic orders and the international legal order. That is, all specific legal orders and contexts have aspects which are the same in that they offer the same protections, and these are based on universal norms. For this reason, the unique rules of specific legal orders areonly valid within the realm of that particular order and cannot be generalised beyond that.

2. With respect to the *application* of the aforementioned universal norms, that is, the way in which they are enforced and complied with be that through spontaneous compliance or coercive imposition there are numerous complementary factors that need to be considered collectively and which emanate from the decentralised structure of the international community.[10]

We only see legal orders effectively brought under the control of universal rules in cases where rules come from positive law; in other cases we are dealing with norms from natural law (in various forms, which we will not go further into here), but not

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appear under various names and formulae as a reality which is *logical and sociological, and consequently, legal'* (my italics). In 'Conféderation et federation"vetera et nova"', *Melanges Rousseau*, Paris, 1975, p. 199 ff., and p. 212. Regarding the crucial concept of the international community's *authority*, which goes back to the thinking of Francisco de Vitoria, within the Spanish doctrine see: Miaja de la Muela (1965), 'El derecho "totius orbis" en el pensamiento de Francisco de Vitoria', *R.E.D.I.* 1965, 3, pp. 341 ff. This notion of authority is distinct from *will* in its purest sense, due to its relation to the thinking of Jenks (1960), 'The Will of the World Community as the basis of obligation in International Law', *Homm*. Basdevant, Paris, pp. 280 ff., as well as that of Quadri(*op. cit.*). See also Truyol y Serra, A. (1967), *Ensayo introductorio a la Relectio de Indis*, Madrid, CSIC.(ibid.), Ann. Asociación Fracisco de Vitoria, 7 (1946-47), p. 179.
What we refer to here is the authority of an *organised* international community, as will be developed in the article. However, as Guggenheim (1958) has pointed out, 'Vitoria's idea of the unity of all humans does not presuppose the existence of international organisation,' *Les origins de la notion autonome du droit des gens*. Symbolae Verzijl, The Hague, p. 178; see also, de Vitoria, *De potestate civili*, 13, 3:21, *Relectio Indiis*, sect. 2 *De jure belli*, 19; also Suarez, *De legibus*, II, XIX, 5.

9 The simulataneous subjecting of individuals to the rules of various legal orders, especially those of international law and domestic law, underlies the analysis of Tammes (1977), *The binding force of International obligations of States for persons under their jurisdiction*. Leiden, pp. 57 ff.

10 On the crucial factor of application of norms within international law scholarship, see P. de Visscher (1972), 'Cours general de Droit International Public', *R. C. A. D. I.*, II, vol. 136, pp. 135 ff.

within a legal order in the full sense of the term. Where we refer to a full legal order we mean one whose norms are valid (because they have been formulated in a valid way and compliance is effective, either due to spontaneous or coercive mechanisms), and these norms serve to control relations within the heart of a historically specific social group, which in our case refers to the international community. We must thus consider that the effective application of universal norms is, together with their validity, crucial to their effectiveness and, therefore key to the singular and unified nature of the international legal order. Neither of the two aforementioned factors (application and validity) can prevail over the other in the effectiveness of law. Other interpretations may argue that one mechanism prevails over the other and is therefore *more effective*.[11] We thus observe that the prevalence of universal norms over any norm from other legal orders, particularly at the state level, can be effectively articulated through a variety of channels and procedures:

i) The first of these processes is constituted by the series of procedures that each internal order establishes in order to align its own arrangements with universal norms, giving these effectiveness in domo sua.[12]

ii) The second of these comes from the set of mechanisms, established through international treaties, that guarantee compliance and sanction non-compliance of the aforementioned norms.[13]

iii) The third process — which is essential but which looks increasingly precarious today — is the enforcement and compliance mechanisms of the international order itself.

From my perspective, to overlook the importance of the first two mechanisms and underline the importance of the third is to distort our understanding of the effectiveness of the universal norms both in terms of validity and action.[14] This is because not only do we overlook the legitimate plurality of the ways in which these norms are brought into force, within their imperative limits, and, therefore, the legitimate freedoms of each people in how their states are organised, but we also fail to consider each state's legitimate possibilities to reconsider its own laws before they are considered as finalised in terms of how they may be interpreted

11 See Miaja de la Muela, A. (1976), *Nuevas realidades y teorías sobre la efectividad en Derecho Internacional*, III, Pamplona, pp. 3 ff.

12 Without going into excessive bibliographical detail, within the Spanish doctrine we see the general observations of G. Campos (1975), *Curso de Derecho Internacional Público*, 1, Oviedo, pp. 217 ff. See also, from the same author (1977), article 1.5 of Título Preliminar del Código civil espanyol, in *Comentarios a las reformes del Código civil*, vol. I, Madrid, pp. 78 ff.

13 See P. De Visscher, *op. cit*., pp. 139 ff.

14 Paradoxically, Schwarzenberger (1976), who is a noted sceptic of the concept of international 'society', preferring international 'community', argues that within this nascent community international customary law would act 'almost automatically', and that then 'procedures to enforce it coercively would be hardly necessary', *The Dynamics of International Law, ch. VII: Civitas Maxima?*, London, p. 111. More incisively, in my opinion, Mosler contends that 'today international society cannot find its identity, as a community, in an ideal concept of the world [...] There should be [...] a forum for discussion and procedures for negotiation that can constitute the process through which principles, rules and criteria for behaviour are produced', 'The International Society as a legal Community', *R. C. A. D. I.*, vol. 140, pp. 1 ff, and p. 43.

as violations of universal norms.[15] Furthermore, we overlook the interrelationships between procedures through which non-universal norms (general or particular) are created in the international order and the interchangeability between methods used to demonstrate these norms. We also miss out on understanding how these proceduresof norm demonstration may also form part of the process that identifies consensus within the international community, which is the basis for the effectiveness of universal norms.[16]

Taking the foregoing points into account, in the context of relations between the legal order of the international community and domestic orders at the state level, the rule which organises relations between these orders and which establishes the primacy of international law over domestic orders is implicit in the aforementioned universal consensus and is derived from the same nature as universal norms. This notwithstanding, each state is free to specify the form of this within the established imperative limits and in good faith. For this reason, outside the frameworks of particular international agreements it can be difficult to determine violations of these norms.[17] Nevertheless, it should be borne in mind that the application of norms in domestic contexts is not the only possible mechanism for either general or particular norms.[18]

In effect, we can state that the prevalence of universal norms over others not only *can* be established in a range of complementary legal orders and contexts, and through various complementary procedures, but that this prevalence *is being effectively established*. The fact that, in certain cases, it is almost impossible to impose collective sanctions on states which violate international norms (especially where we are dealing with great powers or superpowers), does not take away from the fact that, in other cases, the international community has placed and legitimated sanctions against states which violate norms, especially through the United Nations.[19]

Furthermore, any person whose rights are protected by universal norms has the right to defend themselves in the face of violations of these rights, even through the use of force where necessary (this is obviously utopian, as it involves acting against states in the defence of rights. *Monarcomachi res praeterita*).[20] And all peoples that find themselves in situations where universal norms are being violated can also

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15 On the theme of international protection of human rights, within the Spanish doctrine see Ruiloba, E. (1978), *El agotamiento de los recursos internos como requisitos de la protección internacional del individuo*, Valencia.

16 See, for example, Reuter (1973), *Droit International Public*, Paris, p. 52. See also Lashs (1972), 'Some reflections on substance and form in International Law', in *Transnational Law in a changing society*, Essays in honor of Jessup, New York and London, pp. 101 ff.

17 Such is the case that Weil (1977) argues that state laws with extraterritorial reach 'must be assumed, as long as they do not violate international law, to be internationally licit', in 'Le contróle par les tribuneaux de la liceité internationale des actes de états étrangers', *A. F. D. I.*, p. 9 ff., and p. 48.

18 P. de Visscher, *op. cit*.

19 Notably, in the cases of Rhodesia and South Africa, as examined by Cadoux (1977), 'L'Organisation des Nation Unies et le probléme de l'Afrique australe. L'evolution de la stratégie des pressions internationales', *A.F.D. I.*, pp. 127 ff. On the effectiveness of sanctions on Rhodesia, see Kuyper, P. J., 'The límits of supervision: the Security Council Watchdog Committee on Rhodesia Sanctions', *Netherlands International Law Review*, 1978-2, pp. 159 ff.

20 On Monarchomachs in general, see Fasso, G. (1968), *Storia della filosofia del diritto*, vol. II, Bologna, pp. 63 ff.

defend themselves (this is more achievable and less utopian, and is established within the relevant norms of positive international law).[21]

Consequently, the fact that organs of the international community with powers to decide on violations of universal norms and the laws to be applied in each specific case have yet to be established obviously works against the effective implementation of universal norms, but this does not mean these norms do not exist. It is rather the case that we should recognise that in terms of their *effectiveness* there is a certain *relativism*, which can only be overcome through *specific universal consensuses* regarding the compliance and sanctioning mechanisms of universal law via the channels of the international community. This, however, presupposes international cooperation.

3. Regarding the broad principle that states should cooperate in various spheres of international relations, this is nothing more than, in my opinion, a reformulation of the international community's stress on the convenience of establishing a functioning cooperative order. However, this does not mean that this general cooperative order will be effective in all areas of international life.[22]

In fact, as is well known cooperation is a term which does no more than denote a mode of collective action in order to achieve the collective interests of two or more subjects within a legal order (in our case, the international order).[23] From my perspective, if cooperation were included as a fundamental and positive element of the international legal order, we could then refer to a cooperative order.

However, international practices show that this is not the case. Whilst some of the universal norms that we have seen as being in force especially those which protect human rights and self-determination do indeed constitute a cooperative order, this is not generalised across the entire order. This is especially due to the fact that the procedures through which international law is developed are subject to a certain relativism owing to the ongoing existence of mechanisms for effectuating international law which belong within the order governing coexistence between states. In terms of human rights, no effective mechanism for governing this field has ever been accepted by all members of the international community.[24] In terms of

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[21] See Calogeropoulos Stratis (1973), *Le droit des peuples a disposar d'eux mèmes*, Paris. Also Rigo Sureda (1973), *The right of selfdetermination. A study of U.N. practice*, Leiden. Also Cristecu, *Informe sobre el principio de autodeterminación*. Comisión de derechos humanos. E/CN. 4/Sub. 2 L. 641 (8-7-76), supra note 6. Also Gros, H. (1976), 'En torno al derecho a la libre determinación de los pueblos', *Aunario de Derecho Internacional*, III, Pamplona, pp. 49 ff.

[22] International law is necessary, but it is not suficient for the organising of humanity, as put forward by Friedmann (1970), 'Droit de coexistence et droit de cooperation. Quelques observations sur la structure changeante du Droit International', *Revue Belge de Droit International*, nº 1, pp. 1 ff, and p. 6. See also Friedmann (1967), *La nueva estructura del Derecho International*, Mexico,pp. 113 ff.; Sahovic (1972), 'The duty of states to cooperate with one another in accordance with the charter', in Sahovic (ed.), *Prinicples of International Law concerning friendly relations and cooperation*, Belgrade, pp. 277 ff.; Garzon (1976), 'Sobre la noción de cooperación en Derecho Internacional', *R. E. D. I.,* XXIX, 1, pp. 51 ff.

[23] See, especially, Virally (1974), 'La notion de la fonction dans la theorie de l'Organisation internationale', *Mel. Rousseau*, Paris, pp. 277 ff.

[24] Notwithstanding the United Nations Commission on Human Rightsand its subsidiary organs. See Schreiber (1975), 'La practiuque recente des Nations Unies dans le domaine de la protection des droits de

the right of peoples to self-determination, particularly in the field of economic and social development within the heart of a cooperative international economic order, we can say that although international law has set out criteria which legitimate certain claims, and that certain legal arrangements have been developed in the field of development, the mechanisms for guaranteeing compliance with the legal arrangements in place are generally non-existent or highly precarious, in line with the flexibility of the norms within what is known as *economic law*.[25]

Inter-state cooperation flows through standard diplomatic channels, but the results of this are developed within permanent institutions, that is, intergovernmental organisations, especially those which enjoy status as international subjects. We can thus state that there does not seem to be any *general* obligation in force which requires states to cooperate via these organisations, even in the fields of respect for human rights or the self-determination of peoples.

It is certainly the case that a global organisation that pursues general aims will tend to be united and will be singular in that it works for the whole of humanity, as in the case of the United Nations.[26] However, the United Nations is not universal in a *de facto* sense and it is premature to argue that it represents an 'organisation of the international community'. Membership of the United Nations or the organisations within its system, many of which are also universal, is not compulsory for all states; if this were the case, the legal right to withdraw from these organisations would also be brought into question.

The foregoing analysis does not, I believe, mean that the only general principle in force within international law regarding these organisations is the principle of effectiveness.[27]International practices already include other general rules, according to which the status of international organisations as international subjects is recognised, this being determined in line with the will of the founder states. From this we see the possibility of developing international legal acts in areas such as the legal possibility of forming permanent relations with other subjects of international law.[28]There are even some international organisations whose international legal

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l'home', *R. C. A. D. I.*, II, pp. 297 ff.

25 On 'economic law' in general, see Farjat (1971), *Droit economique*, Paris. On international economic law, within the Spanish doctrine see Miaja de Muela, A. (1970), *Ensayo de delimitación del Derecho internacional económico*, Valencia; Aguilar Navarro, M. (1972), *Ensayo de delimitación del Derecho internacional económico,* Madrid. See also Schwarzenberger, G. (1966), 'The province and standards of international economic law', *R. C. A. D. I.*, I, vol 117, pp. 5 ff.; *S. F. D. I.*, Colloque d'Orleans (1972), Aspects du droit international économique, Paris, (Especially the contribution by Weil, P., pp. 3 ff.); Carreau, D, Julliard, P and Flory, T. (1978), *Droit International économique*, Paris.

26 See Virally (1972), *L'Organisation mondiale*, Paris. See also Virally (1972), 'De la classification des organisations internationales', *Miscellanea W., J. Ganshof Van der Meersch*, I. Paris-Bruselas, pp. 365 ff. Within the Spanish doctrine, see Diez de Velasco (1978), *Instituticiones de Derecho internacional público*, II, 2nd Edition, Madrid, pp. 34 ff, and 69 ff.

27 On this point see Reuter (1975) in *Melanges Rousseau, op. cit*, pp. 214 ff. The limitations of studying the international order purely through international organisations are pointed out by Yalem, R. (1975), 'The concept of world order', *Yearbook of World Affairs*, pp. 320 ff.

28 See, especially, Rama Montaldo, M. (1970), 'International legal personality and implied powers of international organizations', *B. Y. I. L.*, pp. 111 ff. Rama Montaldo focuses on the the sentence of the ICJ regarding the 'reparation for injuries suffered in the service of the United Nations' *Rec.*, 1949, pp. 174 ff. See

subjectivity can be imposed on third parties, regardless of whether these actors recognise the legal subjectivity of the organisation in question, as in the case of the United Nations.[29] Along these lines, it has been accepted that in practice these organisations are endowed with the right to organise themselves.[30] For the United Nations, this right has special characteristics due to the organisation's nature, as it is the only subject of international law with the capacity to create new functional subjects of international law through a unilateral legal act. It is, therefore, in the field of global organisation and its system where the universal order of cooperation begins to cohere. It is also in this realm where procedures that create the general cooperative order begin to take shape.[31]In my view, this is even clearer if we consider that humanity, as the focus of interests protected by the international legal order, has been considered within legal instruments developed within the heart of the United Nations and its system.

4. In effect, the acceptance and development of a concept of humanity, with its own sense of self within the international legal order in terms of the granting of legal subjectivity to the international community, will affect this order as a whole and lead to a rearrangement of all its fundamental concepts.

   The historically formed nature of humanity as a single whole is based, firstly, on the concept of there being no inhabited geographical spaces outside of the global system of social relations and, secondly, that there is an observable and fundamental link between all the main economic, political, social and cultural processes in terms of the possibility of collective action within humanity.[32]The reality of the unity of humanity, which is insufficiently based on a spirit of global solidarity, has been partially specified within international law, even though we cannot yet claim that global peace and security are effectively and permanently guaranteed within the military and political spheres; neither can it be claimed that it is possible to achieve an appropriate organisation of global resources between all humans and their institutions of government.

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also Virally (1975), *Melanges Rousseau*, *op. cit*.; and Schwarzenberger, G. (1976), 'International Constitutional Law' (vol. III, International law as applied by International courts and tribunals), London, especially pp. 115 ff.; Dupuy, R. (1973) in *Ann. I. D. I.* , p. 314; and Reuter (1972), in *Ann. I. D. I.*, II pp. 178 ff., andReuter (1973), in *Ann. I. D. I*, II, pp. 81 ff.

29 ICJ, Rep. 1949, *op. cit*., p. 179. See also Schwarzenberger (1976), *op. cit*., p. 223

30 See, for exemple, I. Detter (1965), *Law-making by International Organization*, Stockholm, pp. 47 ff. Also Schermes (1972), *International Institutional Law*, volume 2, Leiden, pp. 482 ff.; Diez de Velasco (1978), *op. cit.*

31 Virally (1972), 'L'O.N.U. devant le droit', *Journal de Droit International*, pp. 501 ff. (especially p. 506). On the substitution of coercive controls for preventative ones in this field, see, for example, Zellentin, G (1976), *Les missions permanentes auprés des Organisations Internationales*, vol. IV, Brussels, pp. 100 ff.

32 Regarding this last point, Cassirer (1945) contends that, 'It is undeniable that culture finds itself divided across activities that follow different courses and pursue different aims… But […] we do not seek unity of effects, but rather unity of action […], unity of the creative process. If the term humanity has a meaning, it is that despite all the differences and contrasts which exist between its various manifestations, these manifestations cooperate to achieve common goals', *Antropología filosófica*, Mexico, p. 111. This fits perfectly with the astute observations of Heisenberg (1964), who argues that there seems to be a consensus within the social sciences that the internal balance of a society, at least to a certain degree, is based on the general relation to 'the singular whole'. Therefore, it is necessary to find this 'singular whole'. *Más allá de la física*, Madrid, p. 184. For perspectives on how law can be included within a unitary theory of social science from a Marxist perspective, see Cerroni, U (1977), *Introducción a la ciencia de la sociedad*, Barcelona.

One place where we can observe a certain 'legal personification' of the international community in its entirety is within certain articles of the Vienna Convention on the Law of Treaties, such as those regarding the effects of norms of imperative law. This term, interpreted in accordance with the text of the Convention, and taking into account the intention of parties and contextual factors, expresses the *concurrence* of the main groups of states, which produce the fundamental elements of law; these groups of states are also the creators of the international legal order through their practice. The expression 'in its entirety' can be interpreted as 'taken together' or 'as a whole', rather than referring to each and every state. Therefore, the concept of humanity can be seen as the whole prevailing over its component parts.[33]

It is, without any shadow of a doubt, a burden for positivism to have to reduce the relevance of the Convention's recognition, in an abstract sense, of the importance of international imperative laws. This can be seen, for example, in the impossibility of being able to determine specific *jus cogens* laws. This is because in order to admit this category in an abstract sense would mean also having to admit that there is at least *one* imperative rule; this would be determinable in a specific case, but determinable all the same and in good faith.[34] Whatever this rule were, it could be objectively tested in a given case. What is noteworthy here is that in denying the role of imperative norms, such as those outlined, the unity of the international order is also fractured, thereby meaning the international legal system is also broken. This must be borne in mind in order to avoid confusions, especially regarding unilateral state laws which configure or violate international law and which are constituted by legal acts which come from the organs of domestic legal orders, such as domestic laws and sentences. In addition, within the context of international development law, the right to development is a human right.[35]

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33 In Spanish see the observations on the creation of articles 53 and 64 of the Vienna Convention in the volume produced by De la Guardia and Delpech (1970), *El derecho de los tratados y la Convención de Viena de 1969*, Buenos Aires, pp. 364 ff. See also the observations of Tunkin (1975) on this theme, 'International Law in the International System', *R. C. A. D. I.*, vol. 147, IV, pp. 85 ff. Also Ago (1976), in *Anuario de la C. D. I.* I, p. 263. For a natural law perspective on the concept of humanity, see Legaz (1970), 'La Humanidad, sujeto de Derecho', *Homenaje a SELA*, vol. II, Oviedo, pp. 549 ff.

34 Wengler (1975), who acknowledges the unity of the international legal order (based, above all, on an order 'des injonctions et de contraintes'), and who posits that the aim of all the rules of international law should be the *bonum commune* of all humanity, argues that the 'the only effect of the concept of international *jus cogens* is to extend legal insecurity to conventional law, as is seen in various rules of universal customary law,' in 'La crise de l'unité de l'ordre jurídiques international', *Melanges Rousseau, op. cit*., pp. 329 ff (especially pp. 335 and 339). From my perspective, this is not due to legal logic, *a fortiori*, neither is it due to legal ethics, as in the aforementioned *bonum commune*.
Adorno (1977), highlights the connections between the paradigmatically positivist thought of Hobbes and the rejection of the concept of humanity in terms of *what isessentially human*. 'The founding relationship between men and society due to a collective impulse, to a collective need which is inherent to men, is rejected by Hobbes'. Therefore, there is no 'concept of humanity which expresses that which is essentially human. What we understand as essentially human is no more, in this theory, than an abbreviation of singular men'. *Terminología Filosófica*, vol. II, Madrid, p. 186.

35 Carrillo Salcedo, J. A., (1972), 'El derecho al desarrollo como derecho de la persona humana', *R. E. D. I.*, vol. XXI, p. 119. See also, Gros, H. (1975), *Derecho Internacional del desarrollo*, Valladolid; Abellan (1973), 'Codificación y desarrollo progresivo del Derecho Internacional del desarrollo', *R. E. D. I.*, 2-3; Miaja de la Muela (1977), 'Principios y reglas fundamentales del nuevo orden económico internacional', *I. H. L. A. D. I.*, Madrid (for an interesting focus on the fundamental role of *equity* in the construction of this new

It is important to stress that imperative norms are those whose violation constitutes an international crime in accordance with article 19 of the project to codify general norms on the international responsibility of the state regarding illicit acts.[36] All the norms within this article, which are indicated as those whose violation represents an international crime, function to protect the interests of the international community in its entirety; these are interests which are protectable *ergo omnes* within the lines set out by cited jurisprudence from the International Court of Justice.[37]

It is therefore not enough to highlight the unity of humanity as legally protectable in an abstract sense; we must also underline this unity in both *ad extra* terms, with reference to hypothetical bodies which are external to it, as well as in *ad intra* terms, with reference to all the social groups and actors within it, and to all humans which make up humanity.

This unity of humanity, as the focus of interest for international law, has been confirmed in international practice, above all by resolutions of the United Nations General Assembly and the international conventions which it has developed and/or approved. This has been seen in fields such as the prohibition on the use of force within international relations, especially in cases where this use of force is considered an international crime. We also observe this in the international protections of rights belonging to all persons, including the humanitarian law of armed conflicts, as well as the protection of the human environment on a planetary scale and the right to self-determination, achieving freedom from colonial and racist domination and human rights violations, allowing these states to choose their own developmental path within the New International Economic Order.[38]Furthermore, and also as a focus of international law, humanity can be

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order); Bedjaoul (1978), *Pour un Nouvel ordre economique internacional*, UNESCO, Paris (for an analysis of the concept of humanity).

36 See *C. D. I. Anuario* 1976, 1, pp. 249 ff., and *C. D. I. Anuario* 1976 2, part 1, report 5 by R. Ago on the international responsibility of the state regarding illicit acts.

37 I. C. J. Rec. (1949), (*Strait of Corfu*), p. 23; Rec. 1951 (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*), p. 23; Rec. 1970 (*Barcelona Traction, Light and Power Company*), p. 32.

38 Amongst the main instruments which include the protection of the interests of humanity, we observe:
i) The United Nations Charter (preamble). General Assembly Resolution 1653 (XVI), 24/11/1961. Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons, General Assembly Resolution2373 (XXII), 12/06/1968. Treaty on the Non-Proliferation of Nuclear Weapons General Assembly Resolution 2826 (XXVI), 25/02/1972. Biological Weapons Convention, General Assembly Resolution 3314 (XXIX), 14/12/1974. Convention for The Definition of Aggression of Helsinki (1975) in the Conference onCooperation and Security in Europe, General Assembly Resolution 31/ 72, 10/12/1976. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, General Assembly Resolution/ S-10/23, 30/06/1978. Final documents of the Extraordinary General Assembly on Disarmament.
ii) General Assembly Resolution 217 (III), 09/12/1948. Universal Declaration of Human RIghts. General Assembly Resolution 2319 (XXIII), 26/11/1968, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. General Assembly Resolution 3074 (XXVIII), 03/12/1973, Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity. General Assembly Resolution 32/44, 08/01/1977, regarding human rights in armed conflicts.
iii) General Assembly Resolution 260 (III), 09/12/1948, Convention on the Prevention and Punishment of the Crime of Genocide. General Assembly Resolution 1904 (XVIII), 20/11/1963 UN Declaration on the Elimination of All Forms of Racial Discrimination. General Assembly Resolution 2106 (XX), 21/12/1965,

seen as united in terms of certain spaces,such as the Antarctic, ocean and sea beds and what lays beneath them beyond national jurisdictions, as well as outer space and celestial bodies. All these spaces would, in principle, be controlled under state sovereignty, but as things stand they cannot be militarised and their exploitation must be carried out, at least partially, in the interest of humanity.[39]If the 'interest' in terms of international law needs to be specified, this would undoubtedly be through universal active legitimation by states to claim damages related to this 'protected interest', which is the equivalent of a law.[40]

International practice does show a slight indication that this legitimation is beginning to appear, at least in terms of cases which exhibit the most serious damages.[41] The aforementioned *specific consensus* regarding the general obligation to resort exclusively to law-based solutions in order to resolve all disputes of this nature still seems to be a long way off. Also, this universal, active legitimation by states might need to be carried out by a global organisation, which at the moment is even more difficult.

The above analysis does not, however, take away from the fact that there is, in my opinion, a discernible evolution in the emergence of this *actio popularis* within international law. This in itself is significant for the arguments put forward in this article. And even without this universal specific consensus in the field of procedure, a universal consensus in substantive terms is perfectly acceptable: the norms regarding certain human rights and rights of peoples are still universal in the aforementioned sense.

UN Convention on the Elimination of All Forms of Racial Discrimination. General Assembly Resolution 2626 (XXV), 24/10/1970, International Development Strategy for the Second United Nations Development Decade. General Assembly Resolution 3068 (XXVIII), 03/12/1973, International Convention on the Suppression and Punishment of the Crime of Apartheid. General Assembly Resolution 3201 S-VI, 01/05/1974, Declaration on the Establishment of a New International Economic Order. General Assembly Resolution 3281(XXIX), 12/12/1974, Charter of Economic Rights and Duties of States.

iv) Declaration and final documents of the United Nations Conference on the Human Environment, Stockholm, 16/06/1972.

[39] i)Antarctic Treaty 01/12/1959

ii) General Assembly Resolution 1962 (XVIII), 13/12/1963, Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. General Assembly Resolution 2222 (XXI), 19/12/1966, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. General Assembly Resolution 2777 (XXVI), 29/11/1971, Convention on International Liability for Damage Caused by Space Objects. General Assembly Resolution 3235 (XXIX), 12/11/1974, Convention on Registration of Objects Launched into Outer Space.

iii) General Assembly Resolution 2660 (XXV), 07/12/1970, Treaty on the Prohibition of the. Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean. General Assembly Resolution 2749 (XXV), 17/12/1970, Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction. 3rd United Nations Conference on the Sea. Doc. A/Conf. 62/WP. 10 of 15 from 7-77 (article 136).

[40] Wengler (1975), *op. cit*., p. 332. On this theme within the Spanish doctrine, see Miaja de la Muela, A. (1970), *Aportación de la sentencia del Tribunal de la Haya en el caso de Barcelona Traction (5 February 1970) a la jurisprudència internacional*, Valladolid, pp. 66 ff. Also, (1975) *El interès de las partes en el proceso ante el Tribunal Internacional de la Justicia*, Comm. E Studi, XVI, Milan (Studi Morelli), pp. 525 ff.

[41] Miaja de la Muela: *Studi Morelli*, citing ICJ Barcelona Traction (second phase) Sentence of 05/02/1970, pp. 32 ff. See also ICJ sentence of 21/06/1971, onLegal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Rec. 1971.

5. If all the aforementioned analysis leads us to an understanding whereby the unity of the legal system is only possible when there is a single international legal order, which is based on universal norms, this also means that every powerful group, or power in itself, which acts within the decentralised international community, would be directly subjected to international law, especially the legal norms which protect human rights and the rights of peoples. It is for this reason that the obligations of international public order have begun to cover transnational companies and groups of companies, whose actions are not adequately controlled either in their home country or the countries in which they carry out their business, leading to situations in which international law may be persistently violated. In the same vein, it should be highlighted that the legitimacy of the wielding of transnational power, judged from the global perspective of the international community as a whole, is relevant for international public law, regardless of whether the power emanates from a person or group considered to be 'private' within domestic legal orders. Here we find ourselves in the field of emerging law, as seen in the recent session of the Institute of International Law where a resolution was adopted regarding multinational companies.[42]

   I thus contend that developments in the aforementioned direction have a logical role within the creation of the criteria of international public law with respect to this distinction, as well as establishing criteria in domestic law and for interactions between international and domestic law.[43]

   To round off, another advance, which is implicit in the acceptance of the unity of the international order, is found in the acceptance (in line with international legal criteria) of the freedom of states to use their powers in terms of international cooperation.[44]However, this requires not only progress in the collective security of humanity but also full positivisation of international protection of human rights in

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42 Resolution of 7 September 1977 adopted in the Oslo session on multinational companies. *Ann. I. D. I.*, vol. 57, tome II, pp. 338 ff. See the debates prior to the adoption of the resolution, (*ibid*., p. 192), where the observations of Professor Rigaux are particularly relevant. The ideas of Rigaux are, in my opinion, key to the analysis of overcoming the dichotomies between public and private power within the international order and the expression of this within the legal context. See also other works by Rigaux: *Droit public et droit privé dans les relations internationales*. Paris, 1977; 'Reflexions sur les rapports entre le Droit International privé et le droit des Gens', in *Homenaje a DE Luna*, Madrid, 1968, pp. 569 ff.; 'Le droit International Privé face au Droit International', *Revue Critique de Droit International Privé*.

43 In particular the distinction between relations and contexts of imperative and universal international public law, and other legal frameworks. In short, we can state that the 'globality' of the global order would impede a return to 'inferior' levels of protecion of human rights and the rights of peoples within *the field of law*. An obvious exception to this would be situations in which there were an 'absence' of law. On a more idealistic (yet not utopian) plane, is the perspective that from the single and unique international legal order, which is based on universal norms, within each domestic order we could differentiate between relations and situations of international public law and international private law. Other distincions between private and public law would be the domain of domestic legal orders or specific international legal contexts.

44 In this line see, Weil, P. (1970), 'Droit international Public et Droit Administratif', *Mélanges Trotabas*, Paris, pp. 511 ff. Weil states (p. 514) that 'we are seeing today that the development of the idea of the functions of international laware not only to guarantee the coexistence of equal and sovereign entities, but also to bring together states and other subjects of international law in common tasks for the progress (*mieux-être*) of the whole of humanity'. See also Medina Ortega (1971), *op. cit*., p. 59.

the economic, social and cultural fields; similarly, it requires the total eradication of subdevelopment at a global level. The extent to which this depends on moral values is beyond the remit of this article. Nevertheless, it should be stressed that the legal personality of the individual, as posited by the universal norms of the single and unique legal system, needs to be accompanied by a stronger legal responsibility of the individual within the international community. Currently this is seen within international law in the obligation of states to punish individuals guilty of crimes against peace, war crimes and crimes against humanity.[45]

6. Conclusions

It can thus be argued that the operating logic of the legal system through the universal imperative norms of international law shows the possibility of progressively establishing a cooperative global order of persons and peoples, as is befitting of a unified international community. It is one of many possibilities, but it is no less real for that.[46] In any case, *all legal reason is now developed within the single and unique system of law and the single and whole humanity*.

[45] See *A.C.D.I.*, 1976, I, pp. 50 ff.

[46] In any case, the process through which this possibility can be developed would seem to be absent, or at least very much relegated to the background as an informal concept. As Huizinga observes, this informal, or less serious, dimension has been present in the nature of law since the Ancient Greeks. Huizinga (1972), *Homo ludens*, Madrid, p. 99. This informality here could be seen in the possible forms of cooperation.