

20 years later.

How has International Law evolved as a legal Order?

"Twenty years later..... » : General Course of International Law delivered at the Hague Academy in the year 2000 (Vol. 297, 2002).

The unity of international law (as a legal order) as opposed to the "fragmentation" thesis.

I. **The thesis of the two kinds of unity defended in 2000.**

-reminder: what is a legal order? (Santi Romano; Kelsen; G. Scelle; Hart) ?

A. Formal unity based on the identity of secondary rules

1. Production of rules. A constant quest for forms ; treaties; creation of international custom.
2. Rules of adjudication and sanctions for violations of the law. Liability; other forms of sanctions.

B. Material unity based on the content of some primary rules.

1. *Jus cogens*, a revolution? (an old idea. A voluntarist foundation).
2. Another hierarchy of norms (the inversion of Kelsen's thesis).
3. Relationship between primary and secondary rules as far as *jus cogens* is concerned : criticism of the ICJ's case law (*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening.* 2012)

II. **The thesis of the two kinds of unity facing the test of time.**

A. Limited but significant evolution of formal unity.

1. General consistency of the modes of production of the law.
2. Evolution of the rules of adjudication:

Evolution of the responsibility of States. Codification of the law and practice of States.

The multiplication of international jurisdictions has not led to any significant fragmentation of the law.

B. Questioning the material unity

1. Facts : Structural rise of populism: worsening nationalism and crisis of multilateralism;

Questioning the authority of international law; systematic criticism of international organisations ; negation of any normative hierarchy.

2. Law : Conditions for the obsolescence of a rule in international law and a *jus cogens* norm in particular.

These conditions are not met. (cf. ICJ case law; ILC; State practice).

4. *Jus cogens* as the hard core of international law?

Authority of the norm and theory of subjects in international law.

Back to George Scelle and Hersch Lauterpacht.

The rise of the individual and its function in the defense of the law.

A critical review of the « Constitutional » approach of International law.

Towards an international dimension of « constitutional patriotism » (Habermas) ?

Conclusion : *Jus gentium* revisited.

The subversive if not even libertarian dimension of *jus cogens*.

International law itself as the common heritage of mankind.

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