ROMANIAN
JOURNAL OF INTERNATIONAL LAW

ISSN 2559 – 3846

Italian Classic School of International Law through the Lenses of the International Relations Theory

Lucian BOJIN

RJIL No. 30/2024

Pages 6 - 33

Articole
Articles

Italian Classic School of International Law through the Lenses of the International Relations Theory

Lucian BOJIN*

The West University of Timișoara, Faculty of Law

Abstract: *The study attempts to analyze the contributions of the Italian classic School of international law through the lenses of the international relations theory. To this effect, several important theoretical concepts in international law dealt with by some prominent members of the Italian classic School were selected. The approaches adopted by the Italian lawyers towards these concepts are then employed to qualify their (sometimes implied) view on the international affairs, using the categories of the international relations theory. The conclusion also stresses the difference between the conceptions of law as a system of rules and law as discourse, and why this distinction can be helpful in the field of International Relations theory.*

Keywords: *international law, international relations, liberalism, realism, Italian School of International Law*

* *Associate Professor, West University of Timisoara, Law Faculty, lucian.bojin@e-uvt.ro.*The opinions expressed in this paper are solely the author's and do not engage the institution he belongs to. This study was drafted during author's stage at the Accademia di Romania in Rome, with the support of the Romanian Government, through national scholarships program "Vasile Pârvan".

1. Introduction. Theoretical assumptions and framework

The purpose of this study is to assess the contribution of the Italian classic School of International Law (ICSIL) through the lenses of some relevant concepts borrowed from the theory of international relations. The same or a similar type of approach might be used, in general, to evaluate the contribution of International Law (IL), international legal doctrine and the legal discipline itself to the problems that are the concern of international relations (IR) theory.

International law is part of what Barry Buzan and Richard Little called the "political sector of analysis" in IR,[1] one of the five sectors of analysis (together with the military, economic, socio-cultural and environmental), the purpose of which is to theoretically (and provisionally) "disaggregate" the field of IR in order to deepen its analysis. This means that both international law (as instituted system of rules) and international legal doctrine (as intellectual product of the legal community) are rather marginal phenomena in the field of IR. IL does not enjoy primacy not even within the political sector, where diplomacy, for example, is a much more important phenomenon. However, its marginality does not imply neglection from IR theory, as the phenomenon is regarded as having a certain degree of relevance by most IR theorists. Some of them even privileged its study as a means of contributing to the maintenance of international order, while simultaneously acknowledging its limitations in performing this function.[2] This status of IL as enjoying a generally accepted but also limited relevance for IR was, probably, best described by Stanley Hoffmann, which qualified IL as "*a type of* international relations which appears in *nearly* all international systems" (emphasis added).[3]

IR theorists approach, therefore, the IL as part of international politics. They do so from the perspective of political theory (IR being a subfield of the latter). This is in stark contrast with the lawyers' approach on their own field, for which the separation between law and politics is a constitutive element of

---

[1] Barry Buzan, Richard Little, *Sistemele internaționale în istoria lumii* (2009), Polirom, Iași, 2009, [original: *International Systems in World History. Remaking the Study of International Relations* (2000)], p. 90.

[2] Hedley Bull, *Societatea anarhică (*1998), Știința, Chișinău, [original: *The Anarchical Society: A study of order in world politics*, (1977)], p. 132 and subsequent.

[3] Stanley Hoffmann, *Ianus și Minerva. Eseuri asupra teoriei și practicii internaționale (1999)*, Știința, Chișinău, [original: *Janus and Minerva. Essays in the Theory and Practice of Interanational Relations* (1997)], p. 134.

the legal field's identity. As previously mentioned, in this paper I adopt the approach of IR, and not the IL one. The IL theory will, therefore, be the object of the study and not its methodological support. The forays into IL theoretical questions will be meant to illustrate points that are relevant for IR theory.

To this effect, I will select a number of theoretical issues related to IL which have the potential to unveil a certain propensity of the international lawyers towards a certain view of the world politics, in function of the positions adopted by such lawyers on the said theoretical legal issues. I will take ICSIL as a "sample" of the international legal community in general and I will select, within ICSIL, a number of lawyers, something that would allow also to reflect the evolution of the approaches spanning over more than half-century.

Some disclaimers are necessary, at this point. First, the assessment of the theoretical legal issues from the standpoint of political theory will necessarily overlook important theoretical nuances for lawyers (or even important parts of legal theory, that are too technical to be politically relevant). The second disclaimer concerns the inherently anachronistic character of the approach adopted. While the discussed opinions on legal theory issues date back to late 19th century up to mid-20th century, the relevant categories through which these are looked at have crystallized in IR theory rather in the second half of the 20th Century. Therefore, tagging one legal opinion or another with a label inspired from IR theory does not mean in any way that the author of such opinion would have properly adopted such a political approach, either intentionally or implicitly.

The interdisciplinary approach between IR and IL received attention in a vast literature during the last three decades.[4] However, this is focused rather on contemporary issues of international politics and IL[5] or on theoretical challenges,[6] but does not generally focus on the history of international law. On the other hand, the works in the latter field, although managing to link developments in IL with the political context of the time, do not apply in a general and consistent manner the concepts or the approaches specific to IR

[4] E.g., the encompassing review made by Anne-Marie Slaughter, Andrew Tulumello, Stepan Wood, "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship", in American Journal of International Law, vol. 92 (1998), pp. 367-397.

[5] E.g. Christian Reus-Smit (ed.), *The Politics of International Law*, Cambridge University Press, 2004, Beth Simmons, Richard Steinberg (eds.), *International Law and International Relations* (2006), Cambridge University Press.

[6] Judith Goldstein, Miles Kahler, Robert Keohane, Anne-Marie Slaughter (eds.), *Legalization and World Politics* (2001), MIT Press.

theory.[7] One well known exception is provided by the works of Martti Koskeniemmi[8] which clearly prove his familiarity with IR theory. However, his focus on the structure of legal argument, rather than on the political relevance of the latter[9] contributes to qualify his work as pertaining to the field of IL, not to the field of IR.

The study will proceed as follows. In the first part (sections 2 to 5), I will make a brief summary of the main topics and points of debate in IR theory that, I believe, are relevant for the IL field. I will then continue with a brief presentation of the specificities of IL field (both in relation with IR and with the legal discipline in general). On that basis, I will select eight theoretical issues of IL that I retain relevant for a "qualification" of IL theoretical positions from the perspective of IR theory. The second part (sections 6 to 12) will open with a presentation of the ICSIL and its main representatives, out of which I selected Pasquale Fiore, Dionisio Anzilotti and Roberto Ago. I will then assess the positions expressed by the latter in relation with the theoretical issues selected from the perspective of IR theory. The study will end with some concluding remarks, stressing, among others, the importance of the constructivist distinction between law as a system of (enforceable) rules and law as discourse.

2. Main topics and points of debate in IR theory relevant to the IL field

Summarizing the IR theory in a couple of pages is, certainly, extremely difficult. Saying that such endeavour is audacious is a mere euphemism. However, it proves necessary, with all its downsides, since this study is addressed not only to IR researchers but also (and even mainly) to lawyers.

---

[7] Stefano Mannoni, *Potenza e ragione. La scienza del diritto internazionale nella crisi dell'equilibrio europeo (1870-1914)* (1999), Giuffre, Milano, Peter Hilpold (ed), *European International Law Traditions*, Springer, 2021.

[8] Martti Koskenniemi *From Apology to Utopia. The Structure of International Legal Argument. Reissue with a new Epilogue* (2006), Cambridge University Press; Martti Koskenniemi M., *The Gentle Civilizer of Nations: the Rise and Fall of International Law 1870 – 1960* (2004), Cambridge University Press.

[9] This despite Koskeniemmi using the famous benchmark couple "apology" (of political power) – "utopia" (opposition to power in name of justice) group contributions from international lawyers. The couple apology/utopia would roughly approximate the opposition between realists and liberals in IR theory. Moreover, it might be mentioned Koskeniemmi allocates to ICSIL a rather small part of its attention, and somehow not proportionate with the historic impact of the latter over the discipline of IL.

The starting point for IR theory is that it deals with an anarchical society,[10] i.e. a group of social units that have no authority above them (in contrast with the hierarchically organized political society specific to States and domestic politics). Although the consequences that IR theorists draw from this situation differ depending the schools they are attached to (realism, liberalism, constructivism, etc.), this starting point is not contested. Anarchical does not, however, mean chaotic. Most IR theorists would agree that there exists, in the terms of Hedley Bull, an "international order", although, again, characterizing it would differ from one school to another. One can stick to Bull's description of a minimal threshold order that, in general (social order), would relatively ensure the security against violence, honouring the agreements and security of possession.[11] In the case of the international order in an anarchic society, its three main specific purposes would be "the preservation of the system and the society of states itself",[12] "maintaining the independence and external sovereignty of individual states"[13] and the goal of peace (limiting the violence),[14] but this order also relatively ensures the previously mentioned general goals of the social order.[15]

Adopting this view on the international order triggers the question of the place of justice in such a system. Although order and justice are not inherently incompatible,[16] it is generally accepted that order constitutes a pre-requisite for realizing other values, including justice itself[17] (without entering, for now, into debates over what is intended for justice). Consequently, order enjoys some kind of primacy towards justice in the international society.[18] Translating the order versus justice dilemma from the perspective of the system to the perspective of the actors results in the security versus morality dilemma. Should States behave according to moral rules, or should they

[10] Kenneth Waltz, *Teoria politicii internaționale* (2006), Polirom, Iași (original: *Theory of International Politics*, McGraw Hill, New York, 1979), pp. 144 and *passim*, Hoffmann (1999) 134, Bull (1998).

[11] Bull, *op.cit.* fn 2, pp. 3-6.

[12] Ibidem, p. 15.

[13] Idem.

[14] Ibidem, p. 16.

[15] Ibidem, p. 17.

[16] Ibidem, p. 87.

[17] Ibidem, p. 81.

[18] Ibidem, p. 91.

simply follow their own interest (assumed to be the conservation of security) is another classic dilemma in both IR theory and practice. And in terms of means to ensure one's own security, the dilemma is can be worded as power versus morality.[19] All these dilemmas that permeate almost all fields of IR theory are, quite manifestly, relevant to the legal field. Order, security, justice, and power are all concepts intimately linked with the law (in general) in many ways (power as support of the law, power as an instrument of law, justice as a purpose of law, order as the product of law, etc.).

On the other hand, and in close relation to what was stated above, there are a number of issues that brought to the "grand debates" that structure the IR discipline: conflict versus cooperation, war versus peace, and centralization versus decentralization. These debates and these dilemmas or, better said, the positions adopted towards them, generate the great divisions in the field, the most important schools of IR.

To maintain things as simple as possible, I will briefly refer only to the schools of realism (including neo-realism), liberalism (including neo-liberalism) and constructivism.[20]

The realist school, still the most influential, building on the previous practice of States in the foreign policy field, underlines the necessary distinction between moral desirability and what is possible from a political point of view.[21] According to it, whereas in the realm of the domestic politics of liberal States, it was possible to develop a political practice that takes into account the moral objectives and values of the citizens, the same approach would not work in IR. That is because the international society has an anarchic structure, fundamentally different from the domestic one.[22] The consequence of the anarchical structure of the international society is that, in order to ensure their security, States need to resort to self-help. Hence, they cannot prioritize abstract moral values over their own interest of self-preservation. Conflict is unavoidable thus and if one prioritizes security, it also prioritizes power (and in particular, military power) as an instrument to ensure that security. The

---

[19] Edward H. Carr, *The Twenty Years Crisis 1919-1939. An Introduction to the Study of International Relations*, (1981), MacMillan, London (1st ed. 1939).

[20] A particular mention should be made, though, concerning the English School of IR which, forecasting constructivism, put an important accent on the study of IL by IR theorists, especially through the voice of Hedley Bull.

[21] Hans J. Morgenthau, *Politics among Nations. The Struggle for Power and Peace* (1948) Alfred Knopf, New York.

[22] Carr, *op.cit.* fn 19, pp. 177-180.

relations between the units of the system (the States) are fundamentally relations of power. And States' behavior should be guided by national interest, not by "moral values". Neo-realism maintains this basic view on the IR, adding instead a more solid theoretical basis for this pessimistic view. The explanation for this state of affairs does not lie, according to neo-realism, in an inclination of the human nature towards violence, but in the characteristics of the system as such. The anarchical structure of the international system constrains the actors to behave in a certain way (as described by realism), irrespective of their intentions or wishes.[23]

Liberalism, especially in the years prior to the 1st World War (WW1) and in the interwar period, favored a more "cooperative" and "centralized" perspective on the IR, believing that the successful model in the domestic politics of liberal States could be transplanted in the world politics. According to liberalism, rational actors will choose dialogue over conflict, and economic cooperation would prove that. International Law was meant to have a central role in a "liberal world order", and a similarly important role would pertain to international organizations, such as the League of Nations, established in the aftermath of the 1st World War. The failure of the liberal approaches to prevent the disaster of the 2nd World War (WW2) discredited this overly optimistic perspective of the first liberalism. Instead, neo-liberalism that developed after the 50's accepted much of the neo-realist theoretical assumptions, but launched correctives to the neo-realist model. Neo-liberals as Robert Keohane and Joseph Nye[24] maintained that, in certain circumstances, the development of cooperation is still possible, and international institutions and regimes can create the framework in which States can overcome the security dilemma by "repeating" the game of interaction.[25] Other neo-liberals underlined the importance of the non-state actors in IR, challenging as such the "fetishization" of the State as the single type of IR actor.

Constructivism was instrumental in questioning the theoretical assumptions of both realism and liberalism. By exploring the social construction of IR actors and social norms, constructivism diversified the instruments of analysis and broadened the field of research and reflection in IR. The constructivist

[23] Waltz, *op.cit.* fn 10.

[24]Robert Keohane, Joseph Nye, *Putere și interependență* (2009), Polirom, Iași (original: *Power and Interdependence*, Taylor & Francis, 1973).

[25]Joseph Nye, *Descifrarea conflictelor internaționale* (2005), Antet, Bucureşti, (original: *Understanding International Conflicts*, Longman, 2003), p. 25.

approach had an important impact on reassessing the significance of IL, not only as a system of rules, but also as language and discourse. The conclusion of this article will draw upon this distinction between the functions of law, as emphasized by constructivism.

Moving now towards the approaches in IR theory towards rules (moral rules but also, in a second place, the rules of IL), Hedley Bull[26] distinguished between three normative approaches. The first approach, the *skeptic or Hobbesian*, views States as free to follow their own interests, without regard to rules, which only limit their ability to survive and, thus, observance of rules creates a net disadvantage for States. The opposite approach is the one called *cosmopolitan or Kantian*, according to which not only rules are relevant in the international society, but such rules are meant to primarily protect the interests of the individuals. From this perspective, the difference between domestic society and international society is not a difference in essence. Finally, the mid-way position between the two is represented by *internationalists or Grotians*, according to which rules are indeed relevant, but as rules between States as international actors. In this approach, international law is developed as a law between States and protecting the system of States.

3. IL as a legal discipline and as part of IR phenomena

As it is generally understood, the legal disciplines overlap more or less with the branches of law, i.e. the fields of law that study the legal rules in specific socio-political fields (e.g. constitutional law, private law, administrative law, labour law, criminal law, etc.). In this logic, IL would simply be the set of rules applicable in IR and, as a legal discipline, the study of such rules. Although, in both meanings, IL dates back at least to the 16th century, until the mid-19th century, IL was seen rather as an appendix to diplomacy than a proper branch and field of law.[27] Consequently, when we deal with the field of IR from the perspective of IL, we need to bear in mind that international lawyers have to position themselves not only towards IR practitioners (i.e. diplomats) but also towards fellow lawyers, towards the legal community in general.[28]

---

[26] Bull, *op.cit.* fn 1, pp. 22-25, J. Nye, *op.cit.* fn 25, pp. 30-35.

[27] Koskeniemi, *op.cit.* 2004 fn 8, pp. 28-30.

[28] Bull (*op.cit.* fn 2, pp. 127-128) was among the first to acknowledge that, despite substantial differences between international and domestic law, due to the different political systems

The main problem with positioning the IL in the field of law rests on the fact that IL hardly matches the standard definition used for law in general, i.e. a system of rules which can be enforced by recourse to public coercion. This implies the existence of the public monopoly of legitimate coercion, i.e. of the State, with its three functions (powers): legislative function, executive function, and judiciary function. Centralization of powers (even followed by their separation, in the paradigm of constitutionalism) was possible in the hierarchical system of domestic political organization. However, as we saw, the international system is anarchical, therefore no organization, even loosely resembling the State, is possible. For that reason, following Hobbes and Hegel, some lawyers (chiefly John Austin,[29] but also internationalists such as Adolf Lasson and Karl Fricker)[30] denied IL the very character of being "legal", precisely because of the absence of coercion. International lawyers formulated various answers to this objection, which will be treated *infra* (section 8). However, even accepting that IL is "law", as specific as it is, the problem of the functions performed by IL in the international system, by comparison to the functions of domestic law in the domestic systems, remains.

It is generally believed that the main function of law in domestic legal systems is precisely coercion. Based on that, several other functions are performed: organization of the legal system and legal order, dispute resolution, prediction of future behavior of the members of the society. Even if one could say that, to a certain extent, IL may perform the same functions (or some of them) in the international system, it is manifest that it does not do so in a comparable way to domestic law in the domestic system. Historically, this was one of the issues that international lawyers had to tackle to defend their belonging to the legal community and to justify their job as jurists.

Another problem of international lawyers in defending their "legal" identity concerned, instead, the conceptual apparatus and the methodology of their "legal science", as the legal discipline was called in the 19th century. Legal theory was dominated by jusnaturalism until the 18th century, while towards the end of that century and up to the mid-19th century, the legal field was

within which they operate, the two share the same language and, moreover, the professional training of lawyers in the two fields is no different. Thus, Bull acknowledged the role of the epistemic legal community in maintaining the "unity" of law.

[29] Bull, *op.cit.* fn 2, p. 124, M. Koskenniemi, *op.cit.* 2004 fn 8, p. 34.

[30] Mannoni, *op.cit.* fn 7, pp. 29-32.

already nearly completely positivist.[31] Jusnaturalists saw the world order as of divine nature and law was just part of this order. Beyond strict legal rules, there were always some latent natural rights that could be activated in case the legal rules would bring "unnatural" consequences. After the rationalist Enlightenment in the 18th century, the human nature replaced the divine as the foundation of the natural order. However, the inner logic of jusnaturalism remained unchanged. All this was challenged by positivists who tried to establish the autonomy of law in relation to ethics and religion, therefore the law was reduced to law enacted (posited) by the sovereign, i.e. written law (mainly legislation and acknowledged customs). By mid-19th century that was the new consensus in the legal community (at least in civil law systems) and jusnaturalism was seen as "unscientific". However, IL remained jusnaturalist way into the second half of the 19th century[32] and this heavily affected the professional recognition from the other lawyers.

It was against this background that the IL discipline developed and asserted itself starting in the second half of the 19th century. This self-promotion included formulating views about world politics, i.e. about IR. They went as far as to indicate a design for the future organization of the world.

It should be mentioned from the outset that many international lawyers were part of a movement (professional but also somehow of the activist type) that was advocating a more significative role for international law in international affairs, as a part of an effort to create a better, more "civilized" international society (hence the epithet "gentle civilizer of nations" which Koskenniemi used to describe the IL of the second half of the 19th century).[33] They hoped to be able to realize the "peace through law",[34] an achievement that would have solved the problem of war, which in the 19th century was generally regarded as not being subject to law. These lawyers shared the dominant liberal ideas of the era in Western Europe, with their optimism and belief in progress. However, not all international lawyers were supportive of this kind of attitude.[35]

This sort of leanings informed lawyers' approaches towards power and its relationship with the law. For domestic lawyers, the relation power – law is

[31] Ibidem, pp. 13-14.

[32] Idem.

[33] Koskenniemi, *op.cit.* 2004 fn 8, pp. 12-19.

[34] Mannoni, *op.cit.* fn 7, pp. 75-76.

[35] Ibidem, p. 133.

ambivalent. On one hand, power supports law. Without the power, the coercion element of the law would not be possible. On the other hand, law organizes power, renders its exercise more predictable and, in the constitutional orders, it openly constrains power. It does so in the name of constitutional values, therefore, in a broad sense, it can be said that law constrains power in the name of justice. The same approach was not tenable as such with reference to IL and IR. As we have seen before, in the international order, the order itself prevails over justice. And in the absence of the institutionalized power (providing some guarantees of neutrality), the only power in the international system was the power of the stronger States. In the terms of Martti Koskenniemi,[36] the law (and legal argument) was left oscillating between "apology" (of the power of the individual States) and "utopia" (a wishful thinking construction where the law would be able to play a similar role to the one of domestic law). Hence, advocating a more significate role for law in IR implied advocating the development of international institutions that would "neutralize" power to make the law effective.

From a different perspective, international lawyers were fighting on the front of professional recognition from the legal community. They won that battle only by abandoning the jusnaturalist foundation of their field and adopting positivism, which rapidly spread among lawyers, to become the dominant view by the end of the 19th century.[37] But positivism for international lawyers meant something completely different in practice than for domestic lawyers. Adopting positivism in IL meant also adopting voluntarism, i.e. the view that law is created only by consent of the States. That made very distant any horizon in which the development of international institutions, and the ensuing centralization of the international order, would be possible. While voluntarism defended a certain equality between sovereign States, irrespective of their military, political or economic power, it also "frozen" and legitimized the anarchic society not only in practice, but also in principle.

[36] Koskenniemi, *op.cit.* 2006 fn 8.

[37] Mannoni, *op.cit.* fn 7, pp. 37-61, Jianming Shen, "The Basis of International Law: Why Nations Observe", in *Dickinson Journal of International Law* (1999), vol. 17(2), p. 311.

4. IR categories relevant for an assessment of the works of international lawyers

From what was discussed above, the dispute between realism and liberalism seems relevant to characterize the work of international lawyers. While it is quite obvious that most lawyers would qualify as "liberals" (and, indeed, some of them were truly and openly liberals), not all the theoretical positions they were supporting would favor the arguments of liberalism. For example, a crude (not very nuanced) voluntarism fits rather the realist position than the liberal one.

Even more adequate is the typology between Hobbesian, Kantian and Grotian approaches. Although lawyers' positions fall mainly within the latter two categories (with Kantians seemingly being "utopists" and Grotians being "apologists"), there were also a few "Hobbesian" lawyers.[38]

Finally, another typology promises to be fruitful for our proposed assessment, one that comes neither from IR theory nor from the legal field either, but from sociology. In the late 19th Century, the German sociologist Ferdinand Tőnnies coined the distinction between community (*Gemeinschaft*), a group of people solidly integrated, whose members have a strong sentiment of belonging to the group, and society (*Gesellschaft*), a group of rather independent members who associate voluntarily only to pursue limited objectives.[39] The distinction was rapidly adopted by international lawyers, such as Max Huber[40] or Georg Schwarzenberger.[41] On its basis, the latter coined the tripartite distinction between the law of power (based on a relationship of domination, in a society where power is central for the social structure and the units in the system are unequal in terms of their power), the law of coordination (based on a *Gemeinschaft*-type of reality, where the need for coercion is really low, and the members share common interests) and the law of reciprocity (applicable to a society where the power of actors is equal or comparable and although their interests are opposed, they are able to compromise). The various evolutions in the field of IL were somehow analyzed as movements between

[38] Mannoni, *op.cit.* fn 7, pp. 31 and 133, Koskenniemi, *op.cit.* (2004) fn 8, pp. 37 ff., Giulio Bartolini (ed.), *A History of International Law in Italy* (2020), Oxford University Press, 2020, p. 174.

[39] Ferdinand Tönnies, *Community and Civil Society* (2001), Cambridge University Press.

[40] Mannoni, *op.cit.* fn 7, p. 138.

[41] Georg Schwarzenberger, "The Three Types of Law", in *Ethics*, vol. 53(2) (1949).

these three types of law, reflecting changes in the nature of the international society.[42]

5. Theoretical issues of IL allowing for relevant characterization from the IR perspective

As mentioned in the introduction, I selected several theoretical problems specific to IL that, by their implications, would constitute good indicators for a characterization of the lawyers' propensities from an IR theory perspective (i.e. more liberal or realist leaning, Kantian or Grotian leaning, etc.).

I identified six such themes (although some others could be added or maybe replace some of the selected ones).

The first topic is the so-called "foundation of IL", i.e. the explanation given for the existence and the nature of IL. The positions adopted in relation to this topic could indicate what is the view of the lawyer towards the nature of the international system: is it an anarchy, a society or a community?

The second theme is the nature and the binding force of IL, a question dealing directly with the "negationist", or Austinian approach, denying the very character of "law" to IL.

The third is the problem of the subjects of IL. Here, limiting the subjects to States would indicate a preference for Hobbesianism or Grotianism, while expanding the category to include private persons would unveil a penchant for Kantianism. Including international organizations in the category of the subjects of IL would indicate either Grotianism or Kantianism, but would exclude Hobbesianism.

The fourth topic is the classic problem of the sources of IL. Again, preference for treaties would indicate a propensity for Hobbesianism (or, at most, Grotianism), but would exclude Kantianism. While acceptance of custom (as independent from States' consent) or general principles might indicate a tendency towards centralization, of either Grotian or Kantian pedigree.

The fifth selected issue is the relation between international and domestic law, the famous problem of the legal orders, with its heated debates between dualism and the two kinds of monism. Here, the theoretical stakes seem quite evident. Dualism would correspond to Grotianism, Monism with domestic

[42] Hoffmann, *op.cit.* fn 3, p. 140.

law primacy to Hobbesianism and Monism with international law primacy to Kantianism.

The last topic would cover the problem of war and peace, a central concern in IR theory and one on which lawyers took interesting positions, in particular before the IL emerging in the inter-war period prohibited wars (which is now the consensus on the topic among international lawyers).

6. The Italian classic School of International Law

The Italian School of IL is one of the best-known national schools in Europe, having a history of notoriety and influence of more than one and half century. Leaving aside predecessors of Italian origins, such as Alberico Gentili, the Italian tradition in IL can be said to have started around the middle of the 19th Century, during the period of *Risorgimento*, with the charismatic figure of Pasquale Stanislao Mancini (1817-1888), whose ideas influenced the following generations of Italian international lawyers. From a theoretical perspective, more rigorous than Mancini was his disciple,[43] Pasquale Fiore (1837-1914), whose works enjoyed respect also outside Italy, setting the scene for the increase of notoriety of the Italian school in the first decades of the 20th Century.

The next generation of Italian international lawyers was the one that established the fame of the School, and its best-known member is Dionisio Anzilotti (1867-1950). Anzilotti gained international respect even before the 1st World War, with his seminal work on State responsibility.[44] After the establishment of the Permanent Court of International Justice, he was appointed as a judge and became the president of the Court in 1928. Other colleagues of generation with Anzilotti were Donato Donati (1880-1946), Giulio Diena (1865-1924) or Scipione Gemma (1867-1951).[45] This was the generation that aligned the Italian school with the most developed national traditions of IL in the Western world: the German school, the French school and the Anglo-American one. It was now that positivism was established as

[43] Bartolini, *op.cit.* fn 38, p. 99.

[44]Dionisio Anzilotti, *Teoria generale della responsabilità dello Stato nel diritto internazionale* (1902), Lumachi, Firenze, Georg Nolte, "From Dionisio Anzilotti to Roberto Ago: The Classical International Law of State Responsibility and the Traditional Primacy of a Bilateral Conception of Inter-state Relations", in *European Journal of International Law*, (2002), vol. 13 (5) , pp. 1083-1098.

[45] Bartolini, *op.cit.* fn 38, p. 132.

the dominant theoretical approach in Italy, together with voluntarism and dualism, which dominated the international literature on IL as well.

The following generation of Italian international lawyers benefited from the fame acquired previously by the Italian school. By now, Italian scholars were already influential. According to the counting by Giovanni di Stefano and Robert Kolb, more than twenty courses held in the Hague Academy of International Law (the most respected institution dealing with the doctrine of IL) in the inter-war period were held by Italian professors.[46] Among the important names that were active in the inter-war period and continued after 2nd World War are: Angelo Pietro Sereni (1908-1967), Gaetano Morelli (1900-1989, later judge at the International Court of Justice), Roberto Ago (1907-1995, later member of the International Law Commission and later judge at the International Court of Justice), Giorgio Balladore Pallieri (1905-1980), Riccardo Monaco (1909-2000), Rolando Quadri (1907-1976), Giorgio Sperduti (1912-1993). This very prolific generation was followed by another one equally well-known, among whose members one can count Piero Ziccardi (1914-2015), Gaetano Arangio-Ruiz (1919-2022), Francesco Capotorti (1925-2002), Luigi Ferrari Bravo (1933-2016, judge at the European Court of Human Rights), Giorgio Gaja (b. 1939, judge at the International Court of justice).

The Italian School of IL has brought many important contributions to the field.[47] In the present study, following Koskenniemi's periodization,[48] I decided to apply the name "classical" to the doctrine issued until 1960, although many of the important representatives at that moment continued to be active for at least other three decades, with important contributions. Italian jurists contribute today as well to the important debates in IL. However, the period to which I refer in this study covers roughly the years between 1880 and 1960, after which the epithet "contemporary" is probably better deserved. Among so many important names of the ICSIL, I decided to make a selection encompassing one representative from each generation: namely, Pasquale

[46] Bartolini, *op.cit.* fn 38, p. 434.

[47] Just to name international responsibility which continues to be an "Italian affair", according to Georg Nolte (*op.cit.* fn 44). Although in terms of legal philosophy, ICSIL mainly followed German legal philosophy, in terms of technical legal issues, Italian contributions have been truly original and outstanding (to some of them mention will be made infra).

[48] Koskenniemi, *op.cit.* (2004) fn 8, p. 4. The same periodization id adopted by Paolo Palchetti in "Uno sguardo d'oltre oceano: la dottrina italiana di diritto internazionale nelle pagine dell'American Journal of International Law (1907-1960)" in *Rivista italiana per le scienze giuridiche*, no. 6/2015 (2015).

Fiore (for the early period of the school and representative for the liberal engaged jurists in the second half of the 19th century), Dionisio Anzilotti (for the "positivist" generation) and Roberto Ago (for the third generation, that started activity in the inter-war period but was largely consecrated after the 2nd World War). The selection does not entail any value judgment towards the content of the works of these law professors or those who were not selected.

7. The foundation of IL

The importance of the discussions on the foundation of IL rests on the fact that the positions adopted towards this problem might indicate a certain conception of the international system: Is it a simple international society (the members of this anarchical society merely recognize their reciprocal existence, but do not share any common interests or objectives – closer to the Hobbesian approach)? Is it an international community with permanent common purposes and its own assumed values – closer to the Grotian approach)? Or, is it conceived as a community of human beings, instead of being a community of States (closer to a cosmopolitan approach)?

As a jusnaturalist and an optimistic engaged liberal, Pasquale Fiore seems to see "beyond" the contemporary society of States a world community that waits to be "released". He quotes Bluntschli mentioning the existence of an "international interest reuniting more national interests".[49] This is still a contained style compared to when he writes emphatically about "humanity as a great natural society of nations [...] coexisting together under the binding empire of the Supreme Law".[50] It follows that for Fiore, as jusnaturalist, the foundation of IL is the human nature. But not all jusnaturalists were cosmopolitans, while Fiore seems to really incline towards that direction. Although he mentions the nations as members of the human community, it really seems that nations are simply better political environments to express human will in the international arena and not the ultimate beneficiaries and members of the world community.

Dionisio Anzilotti, on the other side, as the representative of the first generation of positivists, is firmly attached to the States' will as the foundation of IL. In his first period (before WW1), Anzilotti was a proponent of the "collective will" of the States as the foundation of IL, following Triepel's lead

[49] Pasquale Fiore, *Trattato di diritto internazionale pubblico* (1904), UTET, Torino, p. 88.

[50] Ibidem, p. 114.

in this direction.[51] Localizing in the States the foundation of IL would make Anzilotti's position a Grotian one with a Hobbesian tendency, but the nuance of "collective" will suggests however a more "communitarian" approach. This was confirmed in the later evolutions in Anzilotti's thought, after WW1, where, similarly to Kelsen, he embraced the idea that the principle *pacta sunt servanda* is the foundation of IL.[52] While preserving the essential role of the States, such conception also suggests acceptance of a more "centralizing" order, whose base lies beyond the States' will, in a legal principle recognized by the entire community.

Finally, Roberto Ago's position on this topic reflects the evolution of the IL doctrine up to his generation, a more intellectually mature one. According to Ago, the very topic of the foundation of IL is not relevant and necessary for the "legal science". A legal order is an objective reality and the existence of the international legal order is, similarly, objective.[53] The problem of foundation was a positivistic idiosyncrasy, due to the centrality of the sovereignty in the positivistic construction of IL,[54] and to the fact that multiple sovereignties could not fund by themselves a single basis of the system, therefore a unifying concept was needed, and that was found, according to him, in the idea of "foundation of IL". By this, Ago reveals himself as a true "communitarian".[55]

---

[51] Dionisio Anzilotti, *Corso di diritto internazionale pubblico (Appunti ad uso degli studenti). Volume terzo: I modi di risoluzione delle controversie internazionali* (1915), Athenaeum, Roma, p. 5, Laura Passero, *Dionisio Anzilotti e la dottrina internazionalistica tra Otto e Novecento* (2010), Giuffre, Milano, p. 8, Palchetti, *op.cit.* fn 48, p. 274.

[52] Dionisio Anzilotti, *Corso di diritto internazionale pubblico (Appunti ad uso degli studenti). Volume primo: Introduzione – Teorie generali* (1928), Athenaeum, Roma, p. 43, Rosario Fiore, "L'obbligatorietà del diritto internazionale: elaborazione di una teoria della volontà arbitraria", in *Rivista di diritto dell'economia, dei trasporti e dell'ambiente,* vol. XIII – 2015, p. 335.

[53] Roberto Ago, "Science juridique et droit international", in *Recueil des cours de l'Academie de droit international de La Haye* (1956), vol. 90, p. 953.

[54] For Ago's criticism of sovereignty, see Ago, *op.cit.* fn 53, p. 858.

[55] Ago regularly uses the term of "international community" to refer to the international society (Ago, *op cit.* fn 53, Roberto Ago, *Caratteri generali della comunità internazionale e del suo diritto*, without year (w.y.), Biblioteca interdipartamentale di scienze giuridiche, Sede diritto internazionale, Università Roma 1, La Sapienza).

8. Nature and binding force of the IL

Austin's argument about the absence of "legal character" of IL, because of the absence of coercive sanctions is not only a contestation of IL, but also expresses a view on the international society as qualitatively essentially different from a politically organized society, as the one within States. At least from this perspective, it is a radical Hobbesian view of the international world.

It was natural for international lawyers to defend the legal character of their field of activity, so there is no surprise that each of the jurists whose works are discussed here denies the validity of the Austinian critique. It is interesting, however, to see on what arguments they rely on.

Pasquale Fiore answers to Austinian critique by underlining the "effective authority" of IL.[56] "The *imperium* of the law has been accepted repeatedly by Governments", he mentions.[57] The absence of coercive sanctions does not represent a problem for Fiore. The part of IL which is natural law has its own specific sanctions, i.e. the natural sanctions. While for the "positive" IL, i.e. the law containing the rules posed by States (such as treaties), it has its own coercive sanctions, applied by the States themselves.[58]

Anzilotti defends the same idea of the "decentralized" sanctions, i.e. sanctions applied by the States themselves.[59] According to his theoretical rigour, Anzilotti deals with the issue from the perspective of validity, and less from that of effectiveness. After WW1, Anzilotti added the "collective coercive action" provided by Art. 16 of the Covenant of the League of Nations.[60]

Roberto Ago notes that the entire " negationist" argument is based on philosophical or aprioric assumptions, that are not "scientific".[61] The "negationists" start from a concept of law that rejects accepting all manifestations of law, qualifying as such only the "statist" law. As we will later see, for Ago, the main expression of IL is the spontaneous law, the

[56] Fiore, *op.cit.* fn 49, p. 124.

[57] Ibidem, p. 125.

[58] Ibidem, pp. 127-131.

[59] Anzilotti, *op.cit.* fn 52, p. 44.

[60] Idem.

[61] Roberto Ago, *Lezioni di diritto internazionale* (1943), Giuffré, Milano, p. 13

custom,[62] and its reality and existence are "objective" and cannot be denied by ideologically driven arguments. On the contrary, the fact that States indeed create law is based on a concept of law that encompasses State law as well. But, in any case, the law cannot be reduced to State law.

9. Subjects of IL

In the matter of the subjects, limiting them to States would indicate a preference for Hobbesianism or Grotianism. Expanding the category to include private persons would unveil a tendency towards cosmopolitism. Including international organizations would indicate either Grotianism or even Kantianism, but would exclude Hobbesianism. It should be reminded that building legal orders, such as the European Union or the European Convention on Human Rights system necessarily implies accepting private persons as bearing legal personality.

On this point, Fiore believes that international legal personality may accommodate various categories of entities, not only States. The individual is a legal subject "in a natural way".[63] Legal persons, aggregating individuals, enjoy legal personality if they express a certain "moral unity".[64] Therefore, according to Fiore, in IL, it is the States' legal personality that must be proven, and not that of individuals. On this point, Fiore departs from the previous Italian tradition of IL, which, under Mancini's lead, supported the view that nations, and not States, are the "real" IL subjects.[65] Fiore argues that the subjects of IL are the peoples that constituted an autonomous government on a given territory (i.e. the States, according to the definition still in use).[66] But Fiore goes much beyond that and argues in favour of the international legal personality of non-State actors, provided that their activity is cross-border,[67] and as well of what we would call today international organizations ("legal entities ... created by States for a common interest" – *Confederazioni* or *società di Stati*).[68] One must acknowledge that Fiore's view on the

[62] Ago, *op.cit.* fn 53, pp. 936 ff.

[63] Fiore, *op.cit.* fn 49, p. 167. See also Mannoni, *op.cit.* fn 7, p. 21.

[64] Fiore, *op.cit.* fn 49, p. 171.

[65] Ibidem, p. 173.

[66] Ibidem, p. 180.

[67] Ibidem, p. 231.

[68] Ibidem, p. 234.

international legal personality was a very generous one, making him a fully-fledged cosmopolitan.

Anzilotti, instead, faithful to his positivist, voluntarist and dualist stance sees only States as proper subjects of IL. Even in his more "liberal" period, after WW1, in the field of subjects, Anzilotti sticks to his strict approach to personality in IL. He rejects the theories arguing that individuals might be subjects of IL,[69] by saying that even when individuals are conferred rights by international treaties, such rights are to be exercised within the legal domestic order of each State and not within the realm of IL.[70] After an initial denial of the legal personality of international organizations,[71] Anzilotti seemed then ready to accept the legal personality of international organizations, in particular of the already existent League of Nations, which he compares to the status of confederations and real union of States.[72] However, he was still skeptical and not really convinced of the usefulness of the discussion (he labels it a merely semantic discussion), while he seems rather inclined to qualify the organs of the organizations as "collective organs" of the States (as opposed to "individual organs" of each State, such as heads of States, etc.).[73] Indeed, in his textbook from 1923, he discussed this topic within a chapter entitled "Organs", subdivided between "individual" and "collective" ones. Here he adopts an interesting view, somehow Kelsenian, where the legal order (in this case the international one) attributes (imputes) to subjects certain acts.[74] It seems, therefore, that, for Anzilotti, States retain the quality of subjects of IL and that international organizations are somehow "transparent" in that they facilitate the expression of the collective will of the States but do not constitute autonomous entities. This sort of approach matches very much what used to be the traditional realist approach to international organizations, as mere instruments of the States.[75] As a whole, Anzilotti's position towards

[69] Bartolini, *op.cit.* fn 38, p. 187, Passero, *op.cit.* fn 48, p. 7.

[70] Dionisio Anzilotti, *Corso di diritto internazionale. Lezioni tenute nell'Università di Roma nell'anno scolastico 1922-1923. Introduzione – I soggetti – Gli organi* (1923), Athenaeum, Roma, pp. 73-74.

[71] Ferrajolo, *Il contributo di Dionisio Anzilotti al progetto italiano del Patto della Società delle Nazioni* (2005) (available at http://www.prassi.cnr.it/prassi/docs/Anzilotti.pdf), p. 8.

[72] Anzilotti, *op.cit.* fn 70, p. 88.

[73] Ibidem, pp. 153-158.

[74] Ibidem, p. 137.

[75] Clive Archer, *International Organizations* (2001), 3rd ed, Routledge, London, pp. 68-69, Anna Caffarena *Le organizzazioni internazionali* (2009), Il Mulino, Bologna, p. 36.

legal personality in IL seems to confirm an approach that at most can be qualified as Grotian, but in no way closer to a cosmopolitan approach.

Ago, as well, at least in his first theoretical works, does not seem inclined to accept that private persons can be subjects of IL.[76] Before the developments occurred after WW2, he was still seeing international and domestic legal orders as distinct without the possibility of transferring legal personality from one another, not even for States.[77] Concerning the international organizations, he was much more "progressive". Already in 1943, writing in Fascist Italy, he was forecasting the creation of a political international organization to limit the power of the States, similar to what the UN had to become.[78] After WW2, Ago witness the ICJ's Opinion[79] confirming the legal personality of the UN and he had written early and extensively in the field of international organizations,[80] then a relatively new one, therefore he had no problem in acknowledging their legal personality. Consequently, Ago could be characterized as a Grotian with "centralization" tendencies, and his evolution as a lawyer in the second half of the 20th century confirms such characterization.

10. Sources of IL

If acknowledgement of sources of IL requires States' consent this indicates a strong preference for Hobbesianism or, at maximum Grotianism, with the rejection of Kantianism. Acceptance of sources unrelated or more detached from States' consent would indicate a tendency towards centralization, of either Grotian or Kantian pedigree.

Not surprisingly, Fiore is very generous in accepting many sources of IL, starting with "principles of international morality".[81] Treaties and customs, the standard sources in positivist accounts, are acknowledged but they are

[76] Ago, *op.cit.* fn 61, p. 50.

[77] Idem.

[78] Ibidem, p. 118. See also Bartolini, *op.cit.* fn 38, p. 162.

[79] International Court of Justice, Advisory Opinion of 11 April 1949, Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C. J. Reports 1949, 174.

[80] Roberto Ago, *Considerazioni su alcuni sviluppi dell'organizzazione internazionale* (1952), CEDAM, Padova.

[81] Fiore, *op.cit.* fn 49, p. 145.

only "particular law",[82] something that we might label in today's language as "sources of obligations".

For Anzilotti, only treaties are sources of IL. Custom is indeed a source of IL but in its quality as "tacit agreement".[83] Although, on many issues, Anzilotti changed after WW1 some of his theoretical views,[84] he remained inflexible on the core issues of positivism, voluntarism, and dualism.

Roberto Ago's most original contribution to the philosophy of IL is his theory of the spontaneous rules,[85] a category where he includes custom, as independent of governments' will.[86] "Spontaneous rules" appear naturally, while the other rules are "artificial". Without establishing a formal hierarchy between these kinds of rules, Ago assigns some sort of primacy to "spontaneous rules".[87] By taking this stance, Ago proves a strong propensity for centralization of international order, a view that he championed during many decades after WW2.

Comparing the above-mentioned views, we can notice a somehow "naive" cosmopolitanism in Fiore, a rigid Grotianism in Anzilotti and a more mature centralization-leaned Grotianism in Ago.

11. The relation between domestic law and IL

Fiore does not deal directly with this issue, which is specific to positivists. As a jusnaturalist, however, he is inherently monistic,[88] as the natural order is one single order, and law, including IL, is part of it.

---

[82] Ibidem, p. 147.

[83] Anzilotti, *op.cit.* fn 52, p. 68.

[84] Giorgio Bosco, *Dionisio Anzilotti. L'attività diplomatica e giurisdizionale* (2006), Nagard, Milano, p. 13, R. Fiore, *op.cit.* fn 52, p. 336, Giorgio Gaja, "Positivism and Dualism in Dionisio Anzilotti", in *European Journal of International Law* (1992), no. 3, p. 138.

[85] Koskenniemi, *op.cit.* 2004 fn 8, p. 51, Bartolini, *op.cit.* fn 38, pp. 178 ff., Palchetti, *op.cit.* fn 48, p. 271.

[86] Ago, *op.cit.* fn 53, p. 936.

[87] Ibidem, p. 946. Somehow ironically Ago says that the custom of *pacta sunt servanda* is the foundation of the law of treaties, but not of IL.

[88] Rolando Quadri, *Diritto internazionale pubblico* (1949), Priula, Palermo, p. 35.

Not much is to be said about Anzilotti's view on the topic. He is well known as one of the staunchest supporters of dualism.[89]

More nuanced is the position adopted by Ago. In his *Lezioni di diritto internazionale* of 1943, although he seems sympathetic to monism by not rejecting it *de plano*,[90] he nevertheless acknowledges the existence of a plurality of legal orders as an "objective reality", therefore accepting dualism as the reigning paradigm. After WW2, Roberto Ago was involved in the works of drafting the Italian Constitution and had an instrumental role in the provisions concerning international law.[91] Although Art. 10 of the Italian Constitution is said to be informed by dualism,[92] it is indeed a mild version of dualism that creates a constitutional duty for domestic bodies to align with IL, thus accepting a form of *de facto* primacy of IL. On the same occasion, an article authorizing limitations of sovereignty to adhere to international organizations was introduced in the Constitution.

By comparing the views of the three Italian jurists on the relation between legal orders, it can be noticed that Fiore's views is infused with an idealistic cosmopolitanism, Anzilotti's position corresponds to some sort of mainstream Grotianism (but that could easily slip into other instances towards Hobbesianism), while Ago's Grotianism could be characterized as moderate and pragmatic.

12. The problem of war and peace

Since the entry into force of the UN Charter, recourse to force in IR was outlawed, unless authorized by the Security Council of the UN, or in self-defense. Regulation of war started with the Covenant of the League of Nations and then continued with the Briand-Kellogg Pact. So for contemporary international lawyers (including Roberto Ago in this category) this is not *per se* an issue. However, until WW1, recourse to war was licit in principle or, in any case, not prohibited. It is then interesting to see what were the opinions of the lawyers mentioned here.

---

[89] Gaja, *op.cit.* fn 84, Palchetti, *op.cit.* fn 48, p. 274.

[90] Ago, *op.cit.* fn 61, p. 45.

[91] Bartolini, *op.cit.* fn 38, pp. 390 ff.

[92] "Italian legal system conforms with the generally recognized principles of international law".

Although Fiore was not precisely an activist against war, he gave important space in his 1904 treatise to efforts to "civilize the war" by limiting its legitimacy to self-defense.[93] He also applauded the self-limitation of war conduct by domestic laws adopted by United States.[94] Much of the liberal spirit that was influential on the intellectual stage in those years can be detected in Fiore's works.

Anzilotti, on the other hand, as a good positivist, was more neutral in this regard. He regarded war (or, better, the decision to start it) as a "fact outside the scope of law".[95] In his 1915 volume on international dispute resolution, recourse to force is considered, among other dispute resolution mechanisms, the most violent one. Certainly, with a moderate tone, he however opinated that "pretending that a State cannot ever impose his will on issues to other States [...] would lead to impossible and absurd practical consequences".[96] However, in practice, after WW1, Anzilotti proved to share the line of the liberal jurists of the late 19th century. He was one of the drafters of the Italian project for the Covenant of the League of Nations which provided for a general prohibition of the use of force, like what was realized, more than two decades later, with the Art. 2 (4) of the UN Charter.[97]

13. Conclusions

A few conclusions may be formulated based on this research which is far from being exhaustive, neither in terms of topics discussed (several other topics could have been of interest, such as the issue of legal dispute resolution for example), nor in terms of the variety of opinions expressed by such eminent lawyers as the ones gathered under the label of Italian Classic School of IL.

A first conclusion is that, undeniably, and despite their differences in theoretical approaches, the international lawyers aligned with the liberal aspirations expressed in the second half of the 19th century and the first half of the 20th century. This is very visible for the generation of Pasquale Fiore

[93] Fiore, *op.cit* fn 49, p. 79.

[94] Ibidem, p. 82.

[95] Anzilotti, *op.cit.* fn 51, pp. 139-146, Antonio Cassese, "Realism v. Artificial Theoretical Constructs. Remarks on Anzilotti's Theory of War", in *European Journal of International Law* (1992), no. 3, p. 152, Mannoni, *op.cit.* fn 7, p. 120.

[96] Anzilotti, *op.cit.* fn 51, p. 41.

[97] Ferrajolo, *op.cit.* fn 71, Bosco, *op.cit.* fn 84, p. 42.

(after all, the generation that started the movement around the *Revue de droit international et de législation comparée*).[98] Also, for authors like Roberto Ago, who were, in a different historical context (after the defeat of Nazism in the 2WW), engines of promoting an international order based on law and international organizations (to the extent it was possible). But even Dionisio Anzilotti, who tried to limit as much as possible the political influence on his theoretical works, in practice (with the Italian proposal for the Covenant of the League of Nations) proved to share the same liberal ideals and projects for the future of the world order.

A second conclusion is that the sequence of generations of lawyers tended to reflect a certain historical evolution of the views on the IR. The generation of Pasquale Fiore seems to be close to liberal idealism[99] that dominated the political and intellectual scene in the aftermath of the 1st World War. Although by then the generation of Fiore had already disappeared, its discourse and values did influence the liberal current of thought that created the League of Nations. The generation of Anzilotti and the other voluntarist positivists seems to be a reaction to the previous generation's idealism. In this way, although in a different historical time, the same sequence between liberalism and realism in IR is reproduced (indeed, the sequence of liberalism-realism in IR occurred a few decades after the period discussed). Finally, the generation of Roberto Ago seems to combine the theoretical rigor of positivists with a dose of the idealism of the earlier generation of liberal lawyers. Much in the same way in which neoliberals integrated the unchallengeable assumptions of neorealism, only to correct them based on their willingness to explore ways of encouraging cooperation despite unfavorable contexts or conditions.

A different conclusion refers to the functions of law. As mentioned previously, the basic function of law in domestic legal orders is organizing and, ultimately, applying coercion. In the course of doing that, the function of supporting dispute resolution proved to be essential for the social peace in these societies. Moreover, in liberal constitutional systems, law openly constrains the political power, by imposing limits to its exercise. These are functions of the law understood as a centralized system of rules with enforceable sanctions. The anarchic society does not allow law to perform these functions in IR, at least not to a relevant extent.

---

[98] Koskenniemi, *op.cit.* (2004) fn 8, pp. 12 ff, Mannoni, *op.cit.* fn 7, pp. 76 ff, Fiore, *op.cit.* fn 49, p. 85.

[99] Koskenniemi, *op.cit.* 2004 fn 8, p. 54.

Instead, if law is understood as language, as discourse, as "grammar", i.e. a system of communication following a certain inner logic (as constructivists did)[100] other functions become apparent. One is the function of "justification" or "legitimization".[101] When lawyers argue in courts or when judges give the reasons for their decisions, they "justify" a certain conduct by trying to persuade others and they use the language of the law to this effect. As it was noted,[102] the same function is performed by States when they are trying to present their conduct as "justified" or "legitimate". They do not always succeed but the mere practice of using this sort of language strengthens the role of law in IR. And lawyers are instrumental in this, as they are the ones that are drafting the legal arguments.

A second function, related to the previously mentioned one, is that of "moderation" of power.[103] When States, including powerful States, enter into a dialogue based on legal arguments they, somehow, *they accept to limit their own access to the language of force*. In this way, "moderation" of the process is encouraged in IR. Lawyers are instrumental in forging this language. And this function of "moderation" can be discovered retrospectively also in the history of IL doctrine. It is generally held that (liberal) lawyers have failed in their efforts during the second half of the 19th century to convince States to give up the use of force in IR and replace it with the use of law. And that is certainly true if one imagined success as equivalent to establishing an international rule of law on world politics. But the legal discourse of the late 19th century was a success in its persuasive effect. In fact, the liberal trend in world politics in the inter-war period (let aside its practical failures) was based on assimilating the language of the liberal lawyers of the 19th century. From this perspective, it could be said that *law as a system of enforceable rules always follows the exercise of power*. But *law as discourse can be said to precede the exercise of power*, in that it might determine certain self-limitations of the power holder, that law as a system of rules cannot do in IR.\

[100] Reus-Smit, *op.cit.* fn 5, p. 2 ("The discourse of politics is now replete with the language of law and legitimacy as much as realpolitik"), 5 ("when international law is indeterminate, or when situations arise that were not anticipated when the rules were formulated, international law serves as a discursive medium in which states are able to make, address, and assess claims") and *passim*.

[101] Nye, *op.cit.* fn 25, p. 156.

[102] Reus-Smit, *op.cit.* fn 5, p. 6.

[103] Ibidem, p. 1.

Bibliography

Roberto Ago, *Caratteri generali della comunità internazionale e del suo diritto*, without year (w.y.), Biblioteca interdipartamentale di scienze giuridiche, Sede diritto internazionale, Università Roma 1, La Sapienza.

Roberto Ago, *Considerazioni su alcuni sviluppi dell'organizzazione internazionale*, CEDAM, Padova, 1952.

Roberto Ago, *Lezioni di diritto internazionale*, Giuffre, Milano, 1943.

Roberto Ago, "Science juridique et droit international", in *Recueil des cours de l'Academie de droit international de La Haye*, vol. 90, 1956.

Dionisio Anzilotti, *Corso di diritto internazionale pubblico (Appunti ad uso degli studenti). Volume primo: Introduzione – Teorie generali*, Athenaeum, Roma, 1928.

Dionisio Anzilotti, *Corso di diritto internazionale pubblico (Appunti ad uso degli studenti). Volume terzo: I modi di risoluzione delle controversie internazionali*, Athenaeum, Roma, 1915.

Dionisio Anzilotti, *Corso di diritto internazionale. Lezioni tenute nell'Università di Roma nell'anno scolastico 1922-1923. Introduzione – I soggetti – Gli organi*, Athenaeum, Roma, 1923.

Dionisio Anzilotti, *Teoria generale della responsabilità dello Stato nel diritto internazionale*, Lumachi, Firenze, 1902.

Clive Archer, *International Organizations*, 3rd ed, Routledge, London, 2001.

Giulio Bartolini (ed.), *A History of International Law in Italy*, Oxford University Press, 2020.

Giorgio Bosco, *Dionisio Anzilotti. L'attività diplomatica e giurisdizionale*, Nagard, Milano, 2006.

Hedley Bull, *Societatea anarhică*, Ştiinţa, Chişinău, 1998 (original: *The Anarchical Society*, 1977).

Barry Buzan, Richard Little, *Sistemele internaționale în istoria lumii*, Polirom, 2009, București (original: *International Systems in World History. Remaking the Study of International Relations*, 2000).

Anna Caffarena, *Le organizzazioni internazionali*, Il Mulino, Bologna, 2009.

E. H. Carr, *The Twenty Years Crisis 1919-1939. An Introduction to the Study of International Relations*, MacMillan, London, 1981 (1st ed. 1939).

Antonio Cassese, "Realism v. Artificial Theoretical Constructs. Remarks on Anzilotti's Theory of War", in *European Journal of International Law*, no. 3, 1992, pp. 149-155.

O. Ferrajolo, *Il contributo di Dionisio Anzilotti al progetto italiano del Patto della Società delle Nazioni*, 2005 (available at http://www.prassi.cnr.it/prassi/docs/Anzilotti.pdf).

Pasquale Fiore, *Trattato di diritto internazionale pubblico*, UTET, Torino, 1904.

Rosario Fiore, "L'obbligatorietà del diritto internazionale: elaborazione di una teoria della "volontà arbitraria", in *Rivista di diritto dell'economia, dei trasporti e dell'ambiente,* vol. XIII – 2015.

Giorgio Gaja, "Positivism and Dualism in Dionisio Anzilotti", in *European Journal of International Law,* no. 3, 1992, pp. 123-138.

Judith Goldstein J. *et al* (eds.), *Legalization and World Politics*, MIT Press, 2001.

Peter Hilpold (ed), *European International Law Traditions*, Springer, 2021.

Stanley Hoffmann, *Ianus și Minerva. Eseuri asupra teoriei și practicii internaționale*, Știința, Chișinău, 1999 (original: *Janus and Minerva. Essays in the Theory and Practice of Interanational Relations*, 1997).

Robert O. Keohane, Joseph S. Nye, *Putere și interependență*, Polirom, Iași, 2009 (original: *Power and Interdependence*, Taylor & Francis, 1973)

Martti Koskenniemi, *From Apology to Utopia. The Structure of International Legal Argument. Reissue with a new Epilogue*, Cambridge University Press, 2006.

Martti Koskenniemi, *The Gentle Civilizer of Nations: the Rise and Fall of International Law 1870 – 1960*, Cambridge University Press, 2004.

Stefano Mannoni, *Potenza e ragione. La scienza del diritto internazionale nella crisi dell'equilibrio europeo (1870-1914)*, Giuffre, Milano, 1999.

Hans J. Morgenthau, *Politics among Nations. The Struggle for Power and Peace*, Alfred Knopf, New York, 1948.

Joseph S. Nye, *Descifrarea conflictelor internaționale*, Antet, București, 2005 (original: *Understanding International Conflicts*, Longman, 2003).

Georg Nolte, "From Dionisio Anzilotti to Roberto Ago: The Classical International Law of State Responsibility and the Traditional Primacy of a Bilateral Conception of Inter-state Relations", in *European Journal of International Law*, vol. 13 (5), 1083-1098.

Paolo Palchetti, "Uno sguardo d'oltre oceano: la dottrina italiana di diritto internazionale nelle pagine dell'American Journal of International Law (1907-1960)" in *Rivista italiana per le scienze giuridiche*, no. 6/2015.

Laura Passero, *Dionisio Anzilotti e la dottrina internazionalistica tra Otto e Novecento*, Giuffre, Milano, 2010.

Rolando Quadri, *Diritto internazionale pubblico*, Priula, Palermo, 1949.

Christian Reus-Smit (ed.), *The Politics of International Law*, Cambridge University Press, 2004.

Georg Schwarzenberger, "The Three Types of Law", in *Ethics*, vol. 53(2), 1949.

Jianming Shen, "The Basis of International Law: Why Nations Observe", in *Dickinson Journal of International Law*, vol. 17(2), 1999.

Beth A. Simmons B. A., Richard H. Steinberg (eds.), *International Law and International Relations*, Cambridge University Press, 2006.

Anne-Marie Slaughter, Andrew Tulumello, Stepan Wood, "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship", in *American Journal of International Law*, vol. 92, 1998.

Ferdinand Tönnies, *Community and Civil Society*, Cambridge University Press, 2001.

Kenneth Waltz, *Teoria politicii internaționale*, Polirom, Iași, 2006 (original: *Theory of International Politics*, McGraw Hill, New York, 1979).