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INTERNATIONAL COMMUNITY AND COMMUNITARIANISM IN INTERNATIONAL LAW

Abstract: This essay proposes that one of the most notable achievements of Professor Janusz Gilas’s work is the development of community-oriented thinking in Polish international legal scholarship. His use of the term “international community” is not merely figurative and does not boil down to distinguishing another doctrinal concept. The article further develops the legal debate around the concept of international community by proposing that it should be grounded in philosophical and political communitarianism. After briefly discussing Gilas’s contribution and its theoretical underpinnings in the form of the sociological theory by Ferdinand Tönnies and the achievements of the English School of international relations, this article undertakes to present communitarianism as a social and political philosophy and its relation to the concept of the international community, its theoretical alternatives, and their base values. Having clarified the possible communitarian interpretation of the international community, the author turns to the question of the possibility of communitarian international law. The article concludes by reinterpreting the thesis that international law is viable and conceivable only as community law, oriented toward the common good.

Keywords: community, society, international community, international society, communitarianism, communitarian international law.

1. Introduction

Professor Janusz Gilas's work and its lasting impact in the field of the theory of international law is characterised by the careful attention he pays to the notions of international society and the international community.¹ He views international law in a pluralistic normative context as one of the several normative and interacting systems that organize the life of an international community.² The idea that international law is the law of a community of states has a long tradition and was embraced in its many forms by the fathers of international law such as Francisco de Vitoria, Paulus Vladimiri,³ Hugo Grotius, Richard Zouche, Christian von Wolff, Emerich de Vattel, Friedrich von Gentz, Lassa Oppenheim and others.⁴ From the medieval notion of *respublica Christiana*⁵ and its most important doctrine of a just war (*bellum justum*)⁶ through Italy's system of city-states and its crucial concept of *ragione di Stato*⁷ to the public law of Europe in the 18th and 19th centuries, which used the discriminatory "standard of civilisation."⁸ The idea of the law of nations as an essentially community-based undertaking has shaped the thinking of 20th century's prominent international lawyers. However, a deeper insight into the nature of international society in the discipline of international law came up only in the second half of the last century because of the advances in political sciences, including international relations theory. Notably, the most crucial development in this area was the English school of international relations, an influential academic movement in its classical period from the 1960s to the 1980s and included such scholars as Herbert Butterfield, Martin Wight, Adam Watson and Hedley Bull.⁹ In their work,

1 See Gilas, *Prawo międzynarodowe*, 9; cf. Gilas, "Normy społeczności międzynarodowej".

2 See Gilas, "Normy społeczności międzynarodowej", *passim*.

3 See Wiślak, "From Vladimiri's Just War to Kelsen's Lawful War: the Universality of the *Bellum Justum* Doctrine", 77-96.

4 Wiślak, "Zarys historii myśli o społeczności międzynarodowej", 349-369.

5 On the usage of this term in the historical sources of international law, see Steiger, "From the International Law of Christianity to the International Law of the World Citizen. Reflections on the Formation of the Epochs of the History of International Law", 184.

6 See Walzer, *Just and Unjust Wars. A Moral Argument with Historical Illustrations*.

7 See Watson, *The Evolution of International Society. A Comparative Historical Analysis*, 153.

8 Gong, *The Standard of "Civilisation" in International Society*; Bowden, "The Colonial Origins of International Law. European Expansion and the Classical Standard of Civilization", 1-23.

9 See Dunne, *Inventing International Society. A History of the English School*, 3; Linklater, Saganami, *The English School of International Relations: A Contemporary Reassessment*, 108.

the English School effectively made the notion of “international society” a critical paradigm. Similarly, Professor Gilas’s scholarship in Poland was also influenced by the strong ties he sees existing between the domain of international law and other social sciences, including sociology and political science, which resulted in paying careful attention to the social dimensions of his discipline.¹⁰ This thread of thinking about the discipline of international law stresses its social and communitarian character and thereby opens up its theory to important intellectual developments in political philosophy. However, this move “from bilateralism to community interest”¹¹ is by no means an uncontroversial development. The favourable atmosphere for the debate over the reform of international law along these lines has abruptly come to an end in the recent years with the rise of the political power of authoritarian regimes, followed by more frequent incidents of outward denial and breaking of the most basic principles of international law. This leads some to question the communitarian character of international law and even challenge the continuous relevance of the very notion of the international community itself.

In this essay, I will present and comment on the significance of the selected parts of Professor Gilas’s international legal scholarship that concern the notions of international society and community and the normative syncretism of international normative order. I will then discuss this approach to international law against the background of modern political philosophy, arguing that the paradigm is best characterised as a communitarian rather than a liberal one. Often pictured as characteristics of the Western project of a liberal global order run by *Pax Americana*, the notions of international society and community stand for the essence of international law, making it possible to deliver the promise of plurality and equality among nations. Philosophical communitarianism of international law seeks to challenge forms of normative solipsism, including imperial hegemony and non-law-based versions of an international system, on the one hand, and modify the often overly idealistic assumptions of international liberalism. Finally, it remains to be answered whether there is a place for communitarian international law.

10 See Gilas, *Systemy normatywne w stosunkach międzynarodowych*.

11 Simma, “From Bilateralism to Community Interest in International Law”.

2. From *Gemeinschaft* and *Gesellschaft* to International Society and the International Community

2.1. Sociological Inspirations

The qualitative distinction between “community” (*Gemeinschaft*) and “society” (*Gesellschaft*) adopted in the works of Gilas and used for distinguishing between international society and the international community comes from the work of the German sociologist Ferdinand Tönnies, who in 1887 published a book titled *Gemeinschaft und Gesellschaft (Community and Society)*.¹² Tönnies was discussing human societies where the individuals are members of a society or a community. Gilas observes that according to the German scholar, what allows for the abovementioned distinction, is, first, the nature of the ties between the members of the community and society, respectively, and second, the mental intensity of this bonding.¹³ Membership in a society is given and – in the case of a community – largely a matter of choice. The sense of belonging is felt with increased awareness and rests on the continued will of the members in case of a community. In contrast, societies are primarily bound together by specific inherited settings, often beyond their direct control. As a result, the bonds between community members are willingly stronger, which means that there is an essential mental factor present in contrast to many instances of society. This view is aptly summarised by Tönnies himself when he writes: “In *Gemeinschaft*, they [the members: author’s note] stay together despite everything that separates them; in *Gesellschaft*, they remain separate despite everything that unites them”.¹⁴ In contrast to society, members of a community (*Gemeinschaft*) interact with the group out of self-interest and, perhaps above all, in the interest of the whole. They do it for the strong sense of ties connecting them, which clearly distinguish the group from a mere society. Hence, in the case of a community, “the more this group is threatened from the outside, the more bonding together will be likely to occur”.¹⁵ Examples of community bonds would include relations between mother and child, between siblings or “between a man and a woman as a couple, as this term is understood in its natural or biological sense”.¹⁶

12 See Tönnies, *Community and Civil Society*.

13 Gilas, *Prawo międzynarodowe*, 11-12.

14 Tönnies, *Community and Civil Society*, 52.

15 Tönnies, *Community and Civil Society*, 24.

16 Tönnies, *Community and Civil Society*, 22.

Community is, therefore, axiologically or even a morally “thicker” notion because the values common to members are well ordered and deeply held. In contrast, society is essentially an arbitrary grouping, less structured in terms of shared values and the attitude of its members towards the idea of acting as a collective.¹⁷ The distinction is not sharp, and it is accurate to conclude that Tönnies aimed to propose a typology of models.¹⁸ Interestingly, the German sociologist foresees the possibility of extrapolating his findings, by way of analogy, to the more complicated levels of social aggregation, such as more extensive socio-political group relations. This potentially opens the way to adapt his terminology to international law and international relations.

2.2. International Legal Theory

The distinction between “society” and “community” as proposed in the sociological sciences is paralleled in the political sciences by the English School of international relations. Several authors intensively investigated the politico-legal typology of systems at the global level. The resulting basic trialectic of international system, international society, and world society, as presented most comprehensively by Hedley Bull,¹⁹ was clearly oriented to analytically focus on and distil the central notion of an “international society”. As much of their work was immersed in historical analysis, English School’s authors were realistic enough to base their idea of the international society on the ontology of state and proposed that:

A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.²⁰

This idea of an international society stood in important conceptual opposition to another state-based configuration, simply referred to as an international system:

17 Zajadło, *Spoleczność międzynarodowa*, 38.

18 See Zajadło, *Spoleczność międzynarodowa*, 38.

19 Bull, *The Anarchical Society. A Study of Order in World Politics*.

20 Bull, *The Anarchical Society. A Study of Order in World Politics*, 9.

A system of states (or international system) is formed when two or more states have sufficient contact between them, and have sufficient impact on one another's decisions, to cause them to behave – at least in some measure – as parts of a whole.²¹

Importantly to note, in terms proposed by the English School, the international system does not necessarily live up to the level of a “society” (*Gesellschaft* in Tönnies's terminology) because it does not require the existence of any social bonds beyond the awareness of the existence of the other parts of the system. The interactions between the elements (members) of the system may thus be of a mere kinetic nature and do not imply any accepted co-existence. Indeed, they may even aim at the annihilation of the other. Therefore, the international system is almost a naturalised notion, not essentially encompassing any social institutions. In political terms, the international system creates room for its different sub-forms, such as suzerain-state systems, hegemonies, or empires.²² Therefore, the notion is broad and constitutes a precondition for more nuanced and narrower forms of international relations, including international society. It follows that the states need to interact within the same international system to form a society. However, an international system does not necessarily amount to the existence of a social reality and relationships between states as its members.

As defined by Bull in the passage quoted above, international society may be interpreted as consisting of three essential conceptual spheres or layers: the structural, axiological and the normative-institutional.²³ The structural element points to the abovementioned state-centrism, which places international society on the same ontological plane as the international system and in opposition to the notion of a world society, which has no clear political manifestation in international relations and perhaps only a limited identification under international law. The specific part of the definition of international society focuses on the existence of “shared interests and values”. There may be a minimal or “thin” set of values and goals (such as co-existence or survival of the society), but they need to be well established and identifiable. The axiological dimension is effectuated by the normative and

21 Bull, *The Anarchical Society. A Study of Order in World Politics*, 9.

22 See Watson, *The Evolution of International Society. A Comparative Historical Analysis*, 14-16.

23 See analysis in Widłak, *From International Society to International Community. The Constitutional Evolution of International Law*.

institutional structures, which means that the states within the international society cooperate through standard rules and institutions, including international law.

It is the normative-institutional dimension of international society, which is the point of focus for the science of international law. International relations theory, which considers the forms and politics of a more extensive world system, meets international legal theory precisely in the notion of the “international community”. In other words, only the idea of the international community has the conceptual capacity and supports normative conditions for international law to exist and play a meaningful role. *Ubi societas, ibi jus* – this Latin phrase is equally applicable internationally as it is truly domestic.²⁴ International societies may thus stand for multiple and relatively equal sovereign memberships guided by some form of international law and other applicable rules. However, the idea of an international society and the kind of normative legal constellation it potentially creates for managing shared values and interests are broad enough conceptualisations to still leave room for more specified qualifications. In other words, it remains to be seen what kind of international law is there to be created and supported within the broad category of international society.

Unfortunately, this valuable analytical criterion derived from Tönnies and later theorised for international politics by the English School has not always been adopted and used consistently in international legal scholarship, either in terms of theory or terminology. In the sources of positive international law, the term “international community” is used more often than the term “international society”, which is apparent in the notorious phrase “international community as a whole”.²⁵ On the pragmatic grounds, the international legal language usually uses interchangeably both terms: “community” and “society”. However, an analysis of some modern international legal instruments, such as the Rome Statute of the International Criminal Court,²⁶ shows that the term’s meaning is often that of a “community” (*Gemeinschaft*) in Tönnies’s understanding. The awareness of the difference

24 “Wherever there is society, there is law”, See Fellmeth, Horowitz, *Guide to Latin in International Law*, 281-282.

25 See, for instance, the Vienna Convention on the Law of Treaties, 1969 (with particular attention to Article 53 thereof) and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986. See also Crawford, “Responsibility to the International Community as a Whole”, 303–322.

26 See The Rome Statute of International Criminal Court, 1998.

between “international society” and “international community” may be growing, especially as far as the significant “constitutional” treaties are concerned. Unfortunately, problems with translation arise in the case of some languages. For example, there is a surprising inconsistency in Polish legal texts of many significant sources of international law. The term “international community” is often translated as ‘społeczność międzynarodowa’ – a Polish phrase which is the semantic equivalent of “international society” – instead of the more adequate “wspólnota międzynarodowa”.²⁷ Bearing in mind these discrepancies and the theoretical tradition behind both terms, the author will adopt the following terminological convention in the remaining part of this article. The author refers to “international society” as a concept in the political sciences, introduced by the English School of international relations or as a *Gesellschaft* type of community as described by Tönnies. When referring to the concept in the theoretical legal discourse, the author follows the tradition of English legal language and uses the term “international community” as a general concept. Alternatively, the author uses it to denote the “thicker” version of a community (*Gemeinschaft*), possibly even a denser community within the larger international community. The last meaning is justified by referring to the distinction made by Tönnies and extrapolated to international law, where axiologically and normatively closer bonds exist between some members of the general international society – such as is the case of some states of the cultural West forming communities, sometimes formalised.

3. Professor Gilas’s International Normative Syncretism

Another vital element of Gilas’s scholarship, which is part of his social concept of international law, is the postulate of normative syncretism in the international sphere. For him, international law is not the only normative regulator, even if it is the most critical system of standards (rules) for the international community. This follows from the assumption of logical and epistemological precedence of the international community before international law, even if the two concepts are necessarily linked. Apart from international law Professor Gilas distinguishes seven other systems: international praxeological rules; political norms; international morality;

27 See Zajadło, *Społeczność międzynarodowa*, 37.

international courtesy; an external normative system of states; international unification of law and regional normative systems.²⁸ Since the latter three are, in fact, subsystems of law, it can be concluded that the functioning of the international community outside international law is regulated by at least the former four of the systems mentioned above. The criterion for distinguishing normative systems in this typology is not only the nature of the binding force of their norms, as is the case with the distinction between legal and political norms, but also the kind of values behind them. One could argue that each of these systems finds justification in realising a different value of the international community. For the law, the values are primarily justice, security, and purposefulness, for morality – equity, for politics and praxeology – efficiency and usefulness, in case of international courtesy – respect.²⁹ To illustrate the relations between these normative systems, Gilas proposed the model of “whirling and intersecting circles of unequal size”,³⁰ each of which represents the regulative range of a given system. Therefore, distinguishing these separate normative systems has a functional purpose to it.³¹

Most importantly, the normative syncretism in Gilas’s teachings, as well as similar attempts by some other authors,³² point to the fact that his use of the term “international community” is not merely figurative or dogmatic but has a more profound meaning, reaching out to the foundations of international law. I postulate that this strand of thinking is interpreted as not merely a doctrinal approach to international law but instead as an argument grounded in philosophical and political communitarianism.

4. Communitarianism in Political and Social Philosophy

Communitarianism is an approach in political and social philosophy which rests on the foundational idea that communities or social relations

28 Gilas, *Systemy normatywne w stosunkach międzynarodowych*.

29 Gilas, *Prawo międzynarodowe*, 34.

30 Gilas, *Systemy normatywne w stosunkach międzynarodowych*, 10.

31 On a side note, there is also an important methodological aspect of this typology. As each of the normative systems refers to a different domain of the social sciences (philosophy, ethics, politics, psychology), not necessarily identical to legal sciences, this approach allows us to sustain the postulate of the methodological distinctiveness of the science of international law as formulated by Hans Kelsen.

32 See Arend, *Legal Rules and International Society*, 16-25.

largely shape human identities. According to communitarians, this concept of human nature should inform our moral and political judgements.³³ Thinking about the relevance of a community or multiple communities for the aim of human existence is an ancient tradition that pervaded many theories and political conceptions throughout the ages. As a modern school of thinking in political philosophy, contemporary communitarianism dates to the 1970s and 1980s and relates to the work of thinkers such as Alasdair MacIntyre,³⁴ Michael Walzer,³⁵ Michael Sandel³⁶ or Charles Taylor³⁷ and their reactions to John Rawl's³⁸ landmark contribution to the theory of justice.³⁹ It is not a coherent school, and perhaps some of these scholars would resist labelling themselves as "communitarians". Nonetheless, communitarian themes are essential cultural and theoretical and emerge in many contemporary debates, including those significant to legal philosophy, for instance, over the problem of universalism and particularism of human rights and their justifications. Some basic tenets of communitarian thinking involve prioritising the common over the individual good and highlighting the role of a political community in securing it, highlighting positive rights and respective duties of the members of a community against negative freedoms and authorising communities in supporting their identities and setting preferences for traditions and particular worldviews.⁴⁰ Among the most important contributions of the communitarian project is the "thick" concept of a community and the claim that the identities of individuals are constituted by and within the communities they participate in. Communities are multiple, place themselves at different levels of social ordering (families, workplace communities, nations) and may rest on several defining factors such as the physical (geographical), historical or psychological bonds.⁴¹

On the face of it, applying communitarianism as a set of ideas in political philosophy to international law and international relations may seem problematic. After all, the communitarian discussion has focused on

33 See Bell, "Communitarianism", <https://plato.stanford.edu/archives/fall2020/entries/communitarianism/>, accessed 28.03.2022.

34 See MacIntyre, *After Virtue*.

35 See Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*.

36 See Sandel, *Liberalism and the Limits of Justice*.

37 See Taylor, *Human Agency and Language: Philosophical Papers 1*.

38 Rawls, *A Theory of Justice*.

39 See Bell, "Communitarianism".

40 Morawski, *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian*, 127-129.

41 Bell, "Communitarianism".

natural communities and the rights and obligations of their human members. For this reason, some scholars are indeed sceptical of transplanting the debate to international law, and they keep interpreting international legal communitarianism as a perspective that merely advocates for the significance of the concept of the international community in international law.⁴² Contrary to this view and taking a more philosophical rather than strictly doctrinal approach, I argue for a salient point that there is always a political philosophy behind any community capable of generating its own rules of conduct, not to mention a full-fledged legal system.⁴³ A communitarian outlook is one of the possible ways of describing and justifying social institutions that can be employed to analyse the aims and structure of the international system and the functions of international law. There is no reason for leaving it aside while liberal or cosmopolitan arguments are brought forward from social and political philosophy to discussions over international legal theory.

5. Communitarian vs Liberal International Community?

Communitarian positions are often used to scrutinise or criticise liberal narratives, especially in Western scholarship. When discussing a liberal conception of international law, scholars often mean not one concise theory but rather a way of approaching the normative regulation of the international sphere along the lines of the general tenets of political liberalism, such as the priority of individual freedom and state autonomy, equality among the subjects of the law, protection and extension of rights, ideological, political, and religious neutrality. Liberal theory commits itself to what is often called a “normative individualism”,⁴⁴ which holds that the aim of the international community institutions and the *ultima ratio* of the international law itself is to serve, benefit and protect the individuals. This attempt to connect international legitimacy to the considerations of justice are most clearly visible in such legal and political doctrines as the institution of the Responsibility

42 See Rauber, “On Communitarian and Constitutional Approaches to International Law”, 202. See in particular note 6.

43 I agree with Hans Kelsen’s view that international law is a legal system in the complete sense of this word. See Widłak, “Kelsen’s Monism and the Structure of Global Law: on the Relevance of a Kelsenian Account for the Polycentric International Law”.

44 Tesón, “The Kantian Theory of International Law”, 54.

to Protect (R2P).⁴⁵ However, normative individualism may lead to one of the two radically different conceptual frameworks for the international system: one seeking to realise the humanitarian and democratic aim through the interests of states operating in the fundamentally divided international system and the other advocating for the priority of a global moral order over political divisions. Hedley Bull referred to them as “Grotian internationalism” and “Kantian universalism”.⁴⁶ Both traditions oppose the ontological and moral priority of the state, which in turn is the foundational assumption for a realist approach to international relations. This claim unites both threads of liberal thinking in the attempt and effort to prioritise the rights of individuals. What differentiates them is realising this aim: either indirectly through the institutional mechanisms of state (internationalism) or directly through global mechanisms (universalism), perhaps even by a form of a universal global political community.

Consequently, a liberal view leads to different forms of an international society, resting on idealist assumptions. Liberal internationalism envisions international cooperation among states as a way forward to achieve progressive humanitarian aims based on the legal and institutional framework. The view is that the fabric of the international community of states and international organisations is effectively constructed on the rule of international law and strengthened by economic cooperation organised around free trade.⁴⁷ This postulate points to international society, which rests primarily on the normative-institutional element distinguished in the English School’s analysis. The structural element is also significant but less decisive: international society is mainly funded on the membership of states. The liberal view also opens the door for several types of international organisations. Clearly, it supports the role of individuals, although it does not necessarily grant them political participation separate from state institutions. The axiological element of the liberal concept of international society is concentrated almost exclusively on human rights, primarily civil and political ones. Sovereign values and the equality of states are more of a procedural character and seem to be instrumental in advancing individual rights. The institutional vision leads the proponents of international liberalism to believe that the recourse to the international rule of law will finally remove

45 See Peters, “Humanity as the Alfa and Omega of Sovereignty”.

46 Bull, *The Anarchical Society*, 23.

47 See Abrahamsen, Andersen, Sending, “Introduction: Making Liberal Internationalism Great Again?”.

the threat of the neo-Hobbesian realist politics, including war, from thus created international society.⁴⁸

Liberal universalism, being the second strand of liberal thinking about the project of international society, seems even more idealistic than the internationalist project. It presupposes a concept of a society (or, in fact, a single world society) signified by a radical change of the structural element compared to liberal international society. It is supplanted or supplemented by a universal cosmopolitan community that transcends the state-centric model. The humanity concerns may be acted upon directly, if not by international law, then by a new order of global law. However, the normative element is secondary and instrumental to both the structural and axiological. As the practical realisation of this type of global community has always remained far away, universalism serves as a certain ideal point or aim. Consequently, a more concrete universalist political project and its theorisation remain underdeveloped. Doubts arise about whether universalist arguments still fit within the realm of a society, or perhaps they render ideas of a world state as potentially relevant in this case.

Against the abovementioned images of a liberal world order, international communitarianism could be pictured as an approach that takes the idea of the international society seriously and not merely pays it lip service. Most communitarians focus on the normative (including moral) and axiological precedence of communities. Suppose it is assumed that communities are necessarily plural and occupy different levels of social aggregation. In that case, the resulting view of international society becomes much more nuanced than under the liberal interpretation. First, under the communitarian interpretation, the term “community” becomes more semantically consistent with the concept of *Gemeinschaft* as far as the intensity and diversity of social ties are concerned. However, this does not mean that communitarians would support a conservative interpretation of *Gemeinschaft* as a type of a pre-modern, closed, traditionalist and parochial community.⁴⁹ Instead, they usually envision democratic and generally open communities that differ in being more “thick” or “thin”.⁵⁰ The degree of “thickness” means the size of the shared space of shared values, norms and institutions, the intensity and multidimensionality of relationships

48 See Koskenniemi, “The Politics of International Law”.

49 See Łucka, “Marzenie o wspólnotcie: retrospektywna fikcja czy wizja przyszłości? Komunitariańska koncepcja wspólnoty”.

50 See Walzer, *Thick and Thin. Moral Argument at Home and Abroad*.

between the members, and the degree of emotional affection among them. The more the pursuit of the common good “weighs” in proportion to the individual interests within the community, the thicker and closer it is to a *Gemeinschaft* ideal type instead of a “thin” or instrumental type of association. This factor may also be described as the level of solidarism of communities. This characteristic is linked to the axiological and normative elements of the concept of an international society. A solidaristic community, building itself on a thicker and denser layer of shared values, interests and norms, is not oriented so much toward co-existence but rather toward reaching common goals in the interest of the whole.

Second, according to the communitarian argument, communities may be multiple and situated at different levels of the organisation of society. Such an arrangement is possible because of the structural relations among communities; according to communitarians, they may be nested in each other, which makes their co-existence and the multiplicity of the belonging of their members natural (for instance, one may simultaneously belong to a family, workplace, neighbourhood, local community, national community, global community).⁵¹ It follows that the multiplicity of belonging to overlapping communities is not only possible but inborn and unconstrained.⁵² The effect may be a layered loyalty towards different communities, which makes them potentially complementary.⁵³ Accordingly, different identities are shaped by different communities, but there is also room for a so-called community of communities. These claims amount to a sophisticated picture of the international community as the broadest possible society with several nested communities operating within different levels: international, regional, national, and local. The conflict over the shape of the liberal international community between the thin, rudimentary society of necessary shared common values and norms and the more universalist, value-imposing community is minimised according to the communitarian view. Under this interpretation, the broadest, thin international community develops a superstructure of thicker solidaristic communities, whose members (states, international organisations, and other communities like NGOs) share more values, interests, or rules (for instance, regional international law or EU law) in common, and even develop clear cultural links with each other. The treatment by Professor Gilas of the issue of the international community

51 Ezioni, *The Essential Communitarian Reader*, xiv.

52 Bellah, “Community Properly Understood: A Defense of “Democratic Communitarianism”, 18.

53 Ezioni, *The New Golden Rule. Community and Morality in a Democratic Society*, 202-203.

seems to support the communitarian interpretation of it as a normative space for multiple nested communities when he proposes distinguishing, next to the universal international community at the global level, the communities of Latin American, Western European, Arab, Muslim and Central American states.⁵⁴

Importantly to note, a communitarian interpretation of the international community leaves space for different kinds of normative and non-normative ties that create a net-like as opposed to a chain-like (bilateral) structure of relationships among their different members. Even though the broad international community (usually of a thin society type) allows for the more solidaristic and coherent communities to be built into its overall structure, the whole arrangement creates room for substantial pluralism. In other words, the one-dimensional conflict between a more pluralist or solidaristic vision of the one international community as pictured by some liberal accounts is not necessarily accurate. Instead, there are some more deeply integrated and solidaristic communities with visibly thicker value sets and even substantially denser legal ties between their members (e.g. European Union), but also more one-dimensional purposive associations (for instance, International Atomic Energy Agency). However, the lighter and thinner global communities (like those of the UN system) allow for more value pluralism and develop less and more general rules. This arrangement, in turn, gives more freedom of membership and belonging (formal and informal) to the different communities and supports normative pluralism. In opposition to the liberal view, which aims at the exclusivity of law as the necessary and sufficient normative structure of larger communities,⁵⁵ the thick notion of community is more likely to consider the role of other normative systems and regulators. The communitarian model becomes more responsive to realist calculations than the traditional liberal normative idealism. This view better explains the observations made by Gilas concerning the structure of multiple normative systems in international relations.⁵⁶

54 Gilas, *Prawo międzynarodowe*, 12.

55 See e.g. Simma, Paulus, "The 'International Community': Facing the Challenge of Globalization", 267.

56 Gilas, *Systemy normatywne w stosunkach międzynarodowych*.

6. Conclusion: Communitarian International Law?

International law is an institution of the international community. It is a normative system that can exist (or take effect) only in a social context and among equal community members. For this reason, there is no international law in a 'bare' international system, for instance, where a hegemon or suzerain subdues other political communities. In such cases, a unilateral, hegemonic, or otherwise imperial legal system prevails. Even if it is misleadingly termed "international" and used towards other entities in a hierarchical international setting, such a law becomes a solipsistic undertaking on the part of the dominant power that defines what is left of the relations between political communities acting from the hegemon's standpoint.

Similarly, the idea of global law is often linked to a legal system, which should be a cosmopolitan project based on inclusive and universalistic morality. Under a hypothetical pure cosmopolitan view, states or other basic political communities would dissolve in the global community of individuals or humanity itself. Consequently, international law would cease to be "international" in the term's conventional meaning and become a form of standardised universal law for all. In contrast, international law as a historical and contemporary construct may be conceived only as a normative system within an international community.

International law is always a communitarian project. This assumption lies in the background of the mainstream doctrinal concept of international law when legal scholars define it as the law of the international community or society (of states or other entities). However, what remains to be decided is how communitarian (in the philosophical sense) international law actually is and should be. There may be several aspects to the discussion potentially generated by this question. However, the crucial part of this question is the dispute over what kind of values underlie the creation and application of international law. This question is directly connected to the issue of the concept of the common good and the aims of the international community as a political community. Only lawyers who presuppose such a substantive concept of the community's common good (including the broadest international one) may be called communitarians instead of those who rather point to the international community's instrumental or institutional function. The communitarian concept of international law envisages a normative order that is receptive to the international community's formulation of the common good or reflects the model of international justice

shared within that community. The more ambitiously the concept of shared good is formulated (for instance, the flourishing of humanity), the denser the rules, principles, and aims and the more value-laden international law becomes. When the concept of the common good is conceptualised in more minimal and sustainable terms (for example, the survival of the community or simply world peace), international law potentially becomes a thinner normative structure, leaving more room for legal particularism of smaller communities.

Considering the complex and nested structure of the international community, international law needs to be interpreted in a way that mediates between potentially colliding normative elements (norms, rules, values) of different and diverse communities on various levels of the organisation of society. The primary role is to mitigate divergencies between the largest consolidated communities – sovereign states or even the whole cultures – often transcending national borders. On the one hand, a degree of respect towards their particularism points to an element of realism in international law that allows for sustaining the indispensable pluralism of the international community. On the other hand, this idea cannot lead to moral relativism, for which communitarianism has been accused before. It is hardly imaginable that the international community accepts some culturally motivated flagrant violations of human rights (e.g., female genital mutilation) or dispenses itself with humanitarian law by failing to enforce it for sovereign interests. A specific layer of universal rules that can be readily enforced independently of cultural issues is a part of the commitment of international law to realise the common good of the “society of societies”.

The communitarian approach is a viable conceptualisation of the political and legal philosophy behind the notion of an international community and international law. The above analysis argued for a type of communitarian thinking that is not necessarily opposed to liberalism in international law and relations but instead aims to enrich the current paradigm to better accommodate the inherently social nature of the international legal order. The real threats to international law are forms of authoritarianism that aim at dismantling the network of shared values, rules and interests that are characteristic of the international community and supplant them with mere system-based relations or hierarchical hegemonies. There is no international law without an international community, and in the author’s reading of Professor Gilas’s scholarship, his arguments precisely underscore this point.

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