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Contestation, Emulation, Reformation: Latin American Legal Thought at the Hague Academy of International Law

Rodolfo Ribeiro C. Marques*

1 Introduction

The Hague Academy of International Law occupies a special place in international law's imaginary. This is not only well illustrated by its privileged position next to the Peace Palace (to the delight of its students) but equally evident from the long list of scholars and practitioners who have stood behind its lectern. The Academy provides a unique stage for the 'invisible college of international lawyers' to teach the new generations in their ways.[1] If the special courses – usually half a dozen per session – focus on selected themes from the vast expanse of international law topics, the three-week-long general courses provide a holistic, all-encompassing approach to the discipline.[2] These *lectiones magistrales* are often used to articulate one's general perspective on international law, by outlining a general theory of the discipline,[3] focusing on some of its structural features or simply presenting a *vue d'ensemble*. They are generally reserved for an exclusive group of senior lawyers who have pursued an accomplished career in the international law profession. So much so that to be invited by the Academy's Curatorium to deliver a general course is, as a famous legal scholar puts it, 'a recognition of one's having entered the discipline's hall of fame'.[4] The Hague Academy's

* PhD Researcher in international law, Geneva Graduate Institute, Switzerland. Email: rodolfo.ribeiro@graduateinstitute.ch. I am grateful to Adriana de Medeiros Gabinio, Carlos Cruz Carrillo, Mario Oyarzabal and George Galindo. Usual caveats apply.

1 To use Oscar Schachter's famous expression. See generally Schachter, 'The Invisible College of International Lawyers', 72 *Northwestern University Law Review* (1977) 217.

2 Since 2019, the newly created winter session condenses both public and private international law streams into a single general course.

3 H. Kelsen, 'Théorie générale du droit international public', 42 *Recueil des Cours de l'Academie de Droit International* (*RdC*) (1953) 1.

4 Koskenniemi, 'Repetition as Reform: Georges Abi-Saab Cours Général de droit international public', 9 *European Journal of International Law* (*EJIL*) (1998) 405, at 405.

Recueil des cours thus offers a privileged account of the intellectual history of international law spanning over a century, especially by virtue of certain overwhelming presences and notable absences.[5]

With that in mind, this review essay reflects on how different – yet few[6] – Latin American jurists have approached the academic discipline of (public) international law in their courses at the Hague Academy. Rather than assessing their individual 'contributions' to the development of certain areas of the law, I consider how these scholars and practitioners formulated their lectures as principled statements about international law. For one, while some have depicted the discipline as a universal law of European nations to which the practice of peripheral or semi-peripheral states could somehow accrue, others have approached it as a tool for contestation or a language of redemption. The essay argues that these different views may well indicate that Latin American international legal thought is more nuanced than what some might have expected.

2 (Latin) American International Law?

In a seminal article published in the third edition of the *American Journal of International Law*, Alejandro Alvarez made the case for the existence of a distinct legal order proper to the American continent.[7] Alvarez pondered whether the newly independent states from the region had, by virtue of their idiosyncrasies and as a product of their interactions, developed institutions, principles and practices distinct from those created by European nations, thereby giving rise to an 'American international law'. In fact, the idea that the experiences of Latin American[8] countries formed an alternative international law for the region had already gained traction by the end of the 19th and the beginning of the 20th century,[9] although not without opposition.[10]

Independence from colonial domination opened the way for the enjoyment of formal statehood and its incidents. If, in the aftermath of decolonization, Latin American states

5 The absence of gender parity – and diversity more broadly – raises important questions about who gets invited to teach at the Academy.

6 What is interesting and, most certainly, disappointing is that in 100 years of the Academy's history, only two Latin Americans – Eduardo Jiménez de Aréchaga (1978) and Antônio Augusto Cançado Trindade (2005) – have delivered general courses on public international law. This count excludes Tulio Treves, who is a national of both Italy and Argentina. Mónica Pinto is set to deliver the general course of the 2025 Hague Academy's winter session, thus becoming the third Latin American and first woman from the region to do so. For a comprehensive analysis on the engagement of Latin American jurists with the Hague Academy, see Oyarzabal, 'The Hague Academy of International Law and Latin America', 35 *EJIL* (2024) 4.

7 Alvarez, 'Latin America and International Law', 3(2) *American Journal of International Law* (1909) 269.

8 The expression 'Latin America' here is used to refer to the former Spanish colonies in the Americas, Haiti and Brazil. The caveat is necessary since some authors may hesitate to consider Brazil as part of Latin America, given the great geographical, historical and political distances between these countries.

9 See Lorca, 'International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination', 47(1) *Harvard International Law Journal* (2006) 283, at 299.

10 For example, Manuel Álvaro de Sousa Sá Viana, who was a fervent supporter of a universalist conception of international law, disputed Alejandro Alvarez's theory of an international legal order proper to Latin America. See M.A.S. Sa Viana, *De la non existence d'un doit international american: dissertation présentée au Congres Scientifique Latino-Americain* (1912).

had to struggle with political instability, territorial fragmentation and *caudillismo*, the turn of the century saw the emergence of generally stable, liberal republics governed by conservative political elites committed to economic modernization. In their relations with the European powers, doctrines limiting the use of force[11] and proscribing foreign intervention in domestic and external affairs[12] started to be articulated as a reaction to interventionism and gunboat diplomacy. Sovereign equality was similarly emphasized and served as a powerful normative justification for these developments.[13] Some of these emergent practices and doctrines were the object of codification efforts in the region,[14] which reached their peak with the 1933 Montevideo Convention.[15] Within the broader context of the Pan-American movement, these experiences soon gave thrust to the proposal that the newly established Latin American nations could develop a legal order reflective of their special character and, therefore, dissimilar from the received principles of European public law.[16]

While Alvarez never lectured at the Hague Academy,[17] the idea of an international law particular to the Americas would find its way there through other Hispano-American publicists.[18] During the interwar era, many of the courses taught by Latin American lawyers were dedicated to examining the special character of the region[19] – in particular, the foundational nature of the Monroe doctrine as the basis of Pan-Americanism.[20] Similarly, the idea of an 'American international law' – a legal

[11] For instance, the Calvo and Drago doctrines and later the Estrada and Larreta doctrines.

[12] On a critical account of non-intervention, see Scarfi, 'The Latin American Politics of International Law: Latin American Countries' Engagements with International Law and Their Contradictory Impact on the Liberal International Order', 35 *Cambridge Review of International Affairs* (2022) 662, at 665–668.

[13] As famously defended by Rui Barbosa at the Second Hague Conference in 1907. See R. Barbosa, *Obras Completas: Discursos de Rui Barbosa em Haia*, vol. 2 (2007), at 262–270, 275.

[14] Including by the Pan-American conferences and through the establishment of the American Institute of International Law. On a critical account, see A.B. Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2015), at 305–352.

[15] Montevideo Convention on the Rights and Duties of States 1933, 165 LNTS 19.

[16] See d'Eça, 'The Codification of International Law in the Americas', 98(2) *World Affairs* (1935) 94, at 94–96.

[17] Even though he was a member of the Academy's Curatorium in the 1920s.

[18] The idea of an 'American international law' was primarily a Hispano-American creation. Although later captured by a Monroeist reading of pan-Americanism, its origins can be traced back to the Congress of Panama (1826) and Simon Bolivar's efforts to unite the former Spanish colonies in the Americas. Given considerable geographical, historical and political differences, Brazil was initially excluded from this project. This is well illustrated by the lack of Brazilian representation in the Congress of Washington in 1856, the Second Congress of Lima in 1864 and the Juridical Congress of Lima in 1877–1879. This would change with the establishment of the Republic of Brazil in 1889. The republican government would support continental initiatives and work towards strengthening ties with its Hispanic neighbours and the USA. So it is no surprise that the idea of a body of law proper to the Americas was not so popular among Brazilian international lawyers.

[19] See, for example: R-O. de Langgaard Meneses, 'Les sauvages américains devant le droit', 31 *RdC* (1930) 181; F.C. Pontes de Miranda, 'Là conception du droit international privé d'après la doctrine et là pratique au Brésil', 39 *RdC* (1933) 553. Francisco León de la Barra's course seems to be an exception, see: F.L. de la Barra, 'La médiation et la conciliation internationales', 1 (1923) 555.

[20] S. Planas-Suarez, 'L'extension de la doctrine de Monroe en Amérique du Sud', 5 *RdC* (1924), 264; J. Matos, 'L'Amérique et la Société des Nations', 28 *RdC* (1929) 3.

manifestation of the Pan-American movement – would figure prominently in the courses delivered by Alberto Guani,[21] Francisco José Urrutia[22] and, most notably, Jesus Maria Yepes.

Like Alvarez, Yepes was an enthusiast of a body of law arising from, and, thus, proper to, the American continent.[23] The Colombian lawyer and diplomat dedicated all his three courses at the Academy to examining the role of the region in the development of international law. In his 1930 Hague lectures, Yepes considers Latin America's 'contribution' – an expression that would later become current among international lawyers from the region – to the development of both public and private international law.[24] Taking as a starting point the place of Latin America within the wider international community, he assesses the different regional efforts to codify international law,[25] the existence of norms and concepts with a Latin American pedigree (for example, the Drago doctrine, the prohibition on the use of force,[26] non-intervention,[27] *uti possidetis*, among others[28]) and the regional practice regarding the peaceful settlement of disputes, before finally delving into the notion of an 'American international law'. After examining how the expression had evolved in diplomatic practice and academic debates (both within and beyond the region),[29] Yepes lays down his own definition: bonds of solidarity in the continent, he argues, were behind the existence of an American 'mentality, conscience, soul, and psychology' that gave the region its distinctive character.[30] This shared identity enabled Latin America to exert a growing influence on the international stage, either by creating doctrines and interpretations different from those of European international law or by contesting their application in the region.[31] While there existed principles and rules of a universal character applicable to all states, he ponders, there were also those peculiar to certain parts of the world. The amalgamation of these problems, practices and normative solutions that

21 A. Guani, 'La solidarité internationale dans l'Amérique Latine', 8 *RdC* (1925) 205.

22 See F-J. Urrutia, 'La codification du droit international en Amérique', 22 *RdC* (1928) 83.

23 Yepes and Alvarez would meet in the 1950s not far from the Hague Academy: one as the main legal adviser of Colombia in the *Asylum (Colombia/Peru)* case, while the other a sitting judge at the International Court of Justice. In the Colombian memorial, Yepes argued that diplomatic asylum was part of the *droit coutumier du continent, ainsi que le démontre le* consensus gentium *des états américains*. The Court eventually found that Peru was not bound by a customary rule on diplomatic asylum but not before setting an especially high bar for the identification of regional custom. Alvarez dissented from the majority. In his individual opinion, he considered, among other things, that (diplomatic) asylum was 'part of Latin-American international law because that institution is applied in the Latin countries of the New World in a special manner'.

24 See J.M. Yepes, 'La contribution de l'Amérique latine au développement du droit international public et privé', 32 *RdC* (1930) 693.

25 *Ibid.*, at 714–731.

26 *Ibid.*, at 743–745.

27 *Ibid.*, at 745–748.

28 *Ibid.*, at 748–752.

29 *Ibid.*, at 776–791.

30 *Ibid.*, at 790.

31 *Ibid.*

were particular to the Americas – but that only emerged after decolonization[32] – is what Yepes terms *droit international américain* or *panaméricanisme juridique*.[33]

The Colombian lawyer would further explore some of these themes in his 1934 Hague lectures, which focus on how certain problems proper to the region had been perceived through an 'American international law' perspective.[34] In 1947, Yepes would return to the Academy to deliver a course on regional agreements, once again supporting the existence of regional bodies of law. From acknowledging the existence of a universal law of nations, he goes on to consider legal regimes applicable to certain parts of the world.[35] The interaction between a universal law common to all nations and regional law is thus at the core of his course.

The staunch defence of an 'American international law' needs to be understood within its broader political and historical context. Like most Latin American international lawyers of their generation, Guani, Urrutia and Yepes had strong ties with the ruling elites of their countries. These men were also seasoned diplomats who had participated in various codification projects for some time. For them, international law could be used as a strategic tool to resist European structures while fostering continental cooperation. There was a shared optimism and enthusiasm about a new international law based on regional solidarity. Yet Western cultural and intellectual heritage continued to exert a tremendous influence on their perception of the discipline. Speaking the language of international law gave them some cosmopolitan flair as well – being a member of the Institut de Droit International or a lecturer at the Hague Academy, for instance, could be seen as a sign of one's admission into the profession's mainstream intellectual circles. Their idealism notwithstanding, these Latin American jurists would not shy away from adopting a colonial attitude when convenient. This is perhaps best illustrated by their views on the status of Indigenous peoples.[36]

3 Embracing Universalism

The debate as to whether one could speak of a particular law of the American continent would eventually die out in the 1960s and 1970s.[37] Gone were the academic divides between regionalism and universalism. This was also reflected in the courses taught at the Hague Academy during and after that period.[38] If, up to that moment, the preferred themes of Latin American lawyers seemed to be charged with certain

[32] *Ibid.*, at 790.

[33] *Ibid.*

[34] See J.M. Yepes, 'Les problèmes fondamentaux du droit des gens en Amérique', 47 *RdC* (1934) 3.

[35] See J.M. Yepes, 'Les accords régionaux et le droit international', 71 *RdC* (1947) 229.

[36] Yepes, *supra* note 34, at 790–791; Langgaard Meneses, *supra* note 18; A. Alvarez, *La codification du droit international: ses tendences, ses bases* (1912), at 84.

[37] Becker Lorca, *supra* note 8, at 299–304.

[38] As Julio Barberis concludes in his special course on the subject, '[l]a relation existant entre ce droit régional et l'ordre juridique international universel. Depuis que ce débat a commencé, on a fait de nombreuses études dans la théorie générale du droit et dans le droit des gens qui permettent de donner sans difficulté une réponse à cette question. … Les normes juridiques régionales font partie du droit des gens et ne constituent pas un ordre juridique autonome'. See J. Barberis, 'Les règles spécifiques du droit international en Amérique', 235 *RdC* (1992) 87, at 227.

particularistic sensibilities, the new generations would now lecture about topics not necessarily connected with the region.[39] Although still discussed in different courses, the practices and experiences of Latin American countries would be appraised against a universal conception of international law. A Latin American 'contribution' to the discipline's development would be favoured over the idea of a distinct body of law proper to the region.[40] Some courses also focused on the now institutionalized inter-American system and its place within a broader international legal order.[41] Common to these lectures, however, was the effort to depict Latin America as more than a mere spectator or receiver of a European law of nations. The region's experiences are thus portrayed by these different jurists as meaningful practices able to complement, influence and somehow shape a universal international law. Yet this comes at the expense

[39] See: E. Jiménez de Aréchaga, 'Le traitement des différends internationaux par le conseil de sécurité', 85 *RdC* (1954) 3; E. Jiménez de Aréchaga, 'La coordination des systèmes de l'ONU et de l'Organisation des États américains pour le règlement pacifique des différends et la sécurité collective', 111 *RdC* (1964) 421; F. V. García-Amador, 'State Responsibility Some New Problems' 94 *RdC* (1958) 367; H. Acciolly, 'Principes généraux de la responsabilité internationale d'après la doctrine et la jurisprudence', 96 *RdC* (1959) 351; R.J. Alfaro, 'The Rights and Duties of States' 97 (1959) 93; J. Castañeda,'Valeur juridique des résolutions des Nations Unies', 129 *RdC* (1970) 209; A.G. Robledo, 'Le ius cogens international: sa genèse, sa nature, ses fonctions', 172 *RdC* (1981) 15; J. Sette-Camara, 'Pollution of International Rivers' 186 *RdC* (1983) 122; J.F. Rezek, 'Le droit international de la nationalité', 198 *RdC* (1986) 338; J. Barboza, 'International Liability for the Injurious Consequences of Acts Not Prohibited by International Law and Protection of the Environment', 247 *RdC* (1994) 298; J. Barboza, 'International Criminal Law', 278 *RdC* (1999) 17; M. Pinto, 'L'emploi de la force dans la jurisprudence des tribunaux internationaux', 331 *RdC* (2008) 15; J.A.E. Faria, 'La Protection Des Biens Culturels D'Intérêt Religieux en Droit International Public et en Droit International Privé', 421 *RdC* (2022) 21; P.B. Casella, 'Droit international, histoire et culture', 430 *RdC* (2023) 15; M.J.A. Oyarzábal, 'The Influence of Public International Law upon Private International Law in History and Theory and in the Formation and Application of the Law', 428 *RdC* (2023) 136; G.R.B. Galindo, 'The Inviolabilities of the Diplomatic Mission', 439 *RdC* (2024) 121; J.M. Gómez-Robledo, 'Le droit international du désarmement: entre idéalisme et réalisme', 439 *RdC* (2024) 291. This was also true in relation to private international law. See, for example: H. Valladão, 'Conséquences de la différence de nationalité ou de domicile des époux sur les effets et la dissolution du mariage', 105 *RdC* (1952) 71; H. Valladão, 'Développement et intégration du droit international privé, notamment dans les rapports de famille (Cours général de droit international privé)', 133 *RdC* (1971) 416, G. Parra-Aranguren, 'General Course of Private International Law: Selected Problems', 210 *RdC* (1988) 19. For a more detailed assessment of the scope of the different courses delivered by Latin American jurists, see Oyarzábal, *supra* note 5.

[40] This was also true in relation to private international law. See, for example: M.A. Vieira, 'Le droit international privé dans le développement de l'intégration latino-américaine', 130 *RdC* (1970) 355; M.A. Vieira, 'L'évolution récente de l'extradition dans le continent américain', 185 *RdC* (1984) 161; G. Parra-Aranguren, 'Recent Developments of Conflict of Laws Conventions in Latin America', 164 *RdC* (1979) 62; L. Pereznieto Castro, 'La tradition territorialiste en droit international privé dans les pays d'Amérique latine', 190 *RdC* (1985) 277.

[41] See, for instance: A. García Robles, 'Mesures de désarmement dans des zones particulières: le traité visant l'interdiction des armes nucléaires en Amérique latine', 133 *RdC* (1971) 46; C. Sepúlveda, 'The Reform of the Charter of the Organization of American States', 137 *RdC* (1972) 86; H. Gros Espiell, 'Le système interaméricain comme régime régional de protection internationale des droits de l'homme', 145 *RdC* (1975) 4; H. Gros Espiell, 'La Convention américaine et la Convention européenne des droits de l'homme: analyse comparative', 218 *RdC* (1989) 172; A.A. Cançado Trindade, 'Co-existence and Co-Ordination of Mechanisms of International Protection of Human Rights (at Global and Regional Levels)', 202 *RdC* (1987) 9; H. Caminos, 'The Role of the Organization of American States in the Promotion and Protection of Democratic Governance', 273 *RdC* (1998) 109; J.-M. Arrighi, 'L'Organisation des États américains et le droit international', 355 *RdC* (2012) 241.

of abandoning any serious contestation of the mainstream understanding of the discipline. It is thus no coincidence that the only two Latin American jurists invited to deliver a general course on public international law were virtually unthreatening for the Western, international legal establishment.

A *Eduardo Jiménez de Aréchaga's General Course (1978)*

This turn to universalism is very much present in the general course delivered in 1978 by Eduardo Jiménez de Aréchaga, who was also the first Latin American to give a general course on public international law. Jiménez de Aréchaga, who had already taught two special courses at the Academy,[42] was an accomplished Uruguayan international lawyer and International Court of Justice (ICJ) judge (and, at the time, also its president). In over 10 chapters, he discusses the evolution international legal norms since 1945. These range from those touching on the usual, classic topics of international law, including sources, subjects, peaceful settlement of disputes and state responsibility, to an analysis of some of its specific branches, such as the law of the sea and the law of the air and outer space. The overall focus is on how the discipline has fundamentally changed in the lapse of just 33 years. The course concludes on an optimistic note about the future of international law as a means for reducing 'inequalities and inequities between States'.[43]

Latin America does make an appearance in Jiménez de Aréchaga's general course. The experiences of countries from the region are used by him to illustrate how practices defying established international law may in fact help modify it. He gives the example of the recognition of the rights of coastal states regarding fisheries in their exclusive economic zone, a thesis originally advanced by Latin American states that was for a long time considered inadmissible under international law.[44] Similarly, Jiménez de Aréchaga mentions some norms that originated in the region, including the principle of non-intervention.[45]

The juxtaposition between the regional and the universal is also analysed by him in the context of collective security measures. Far from being a completely theoretical topic, the relation between the UN Charter and regional security arrangements carried a high political charge during the Cold War. In the Americas, for instance, there were growing concerns that the Organization of American States (OAS) had become an instrument at the service of Washington's interests.[46] During the 1960s, the organization had adopted a series of controversial decisions, including diplomatic and economic sanctions against Cuba and the Dominican Republic. It had also approved the deployment of an inter-American peacekeeping force in the latter's territory following a US military intervention. But could a regional organization decide on such measures without a prior authorization of the UN Security Council (UNSC)?

[42] Jiménez de Aréchaga, *supra* note 38.
[43] Jiménez de Aréchaga, 'International Law in the Past Third of a Century', 159 *RdC* (1978), 6, at 313.
[44] *Ibid.*, at 206–214.
[45] *Ibid.*, at 111–116.
[46] See Quintana, 'Small Powers, International Organizations and the Role of Law: Jorge Castañeda's Views from Mexico', 34 *EJIL* (2023) 319, at 337–338.

For Jiménez de Aréchaga, who had already discussed some of these issues in his 1964 Hague lectures,[47] the question was a purely legal one. In theory, he argues, a regional organization could indeed deploy a peacekeeping operation so far as it did not amount to an enforcement action. Such operations would thus require the consent of the territorial state and should be assigned strictly non-fighting functions. Any regional military action that did not comply with these requirements would need to be authorized by the UNSC under Article 53 of the UN Charter. Otherwise, they would amount to an illegal intervention.[48] The OAS operation in the Dominican territory was a case in point.[49] Sanctions, however, were a different matter. Nothing in international law, Jiménez de Aréchaga observes, prevents a state or a group of states from breaking off diplomatic relations or instituting an interruption of economic relations with any other states. Hence, there was no reason why regional organizations would need the authorization of the UNSC to do things that any state, individually or collectively, could lawfully do on their own. This was also true in relation to regional economic and diplomatic boycotts, irrespective of their practical consequences.[50]

If excellent – both in substance and in style – from what is by and large expected of a general course,[51] Jiménez de Aréchaga's 1978 Hague lectures offer yet another formalist, mainstream account of international law. Notwithstanding some purported 'third world' sensibilities – in particular, when discussing compensation for expropriation[52] and arguing for the need to apply the Calvo clause in good faith[53] – his overall approach to the discipline is very much in line with those of European lawyers of his time. For one, his treatment of customary international law, state responsibility or the prohibition on the use of force was not remarkably different from those of authors like Humphrey Waldock,[54] Robert Y. Jennings[55] or Paul de Visscher.[56] In short, Jiménez de Aréchaga presents himself as an international lawyer who so happens to be Latin American[57] – and perhaps that is why the profession's mainstream milieu has accepted him as one of their own.

B *Antônio Augusto Cançado Trindade's General Course (2005)*

Universalism was central to Antônio Augusto Cançado Trindade's *Weltanschauung*. The Brazilian jurist and ICJ judge – a self-proclaimed *jusnaturaliste* – was one of the most prominent international lawyers of his generation. Having passed through the usual steps of what is typically considered a fulfilled career in the profession, Cançado

47 Jiménez de Aréchaga, *supra* note 38.
48 Jiménez de Aréchaga, *supra* note 42, at 138–139.
49 *Ibid.*
50 *Ibid.*, at 139–141.
51 See R. Kolb, *Les Cours généraux de droit international public de l'Académie de la Haye* (2003), at 610.
52 Jiménez de Aréchaga, *supra* note 42, at 299–300.
53 *Ibid.*, at 309–310.
54 See H. Waldock, 'General Course on Public International Law', 106 *RdC* (1962) 3, at 39–54.
55 See R.Y. Jennings, 'General Course on Principles of International Law', 121 *RdC* (1967) 326, at 473–514.
56 See P. de Visscher, 'Cours général de droit international public', 136 *RdC* (1972) 4.
57 And he was explicit about that. See A. Cassese, *Five Masters of International Law: Conversations with R-J Dupuy, E Jiménez de Aréchaga, R Jennings, L Henkin and O Schachter* (2011), at 76–79.

Trindade became the second, and, thus far, the last, Latin American to deliver a general course of public international law at the Hague Academy.

Divided into two volumes and 23 chapters, his 2005 Hague lectures offer a compendious assessment of what he terms 'a new *jus gentium*', an international law sensitive and attentive to both the individual and collective needs of human beings.[58] The time has come, he argues, to displace the state as international law's main point of reference. The discipline should recover the initial, humanist impetus behind the teachings of its 'founding fathers,' such as Francisco de Vitoria, Francisco Suarez, Alberico Gentili, Hugo Grotius and Christian Wolff.[59] This also means rejecting legal positivism, critical legal studies, political realism and any other attempts to deprive legal norms of their intrinsic values. These prolegomena will set the scene and inform his analysis of international law's move towards humanization and universality.

General principles of (international) law are thus elevated to the status of foundational norms of the international legal system. These include both principles with a universal reach (for example, the principle of humanity, the primacy of law over force, sovereign equality) and those proper to specific fields.[60] Their heightened normativity, Cançado Trindade contends, stems from the ultimate material source of all law: a 'universal juridical conscience'. It is precisely this metaphysical abstraction borrowed from the modern lawyer's vocabulary that allows him to argue for a broader understanding of both the sources and subjects of international law. For one, the notion of *opinio juris communis* is employed by Cançado Trindade not as an element of custom but, rather, as a normative yardstick against which the legitimacy of all formal sources needs to be assessed.[61] International legal personality has similarly expanded beyond states and international organizations to encompass individuals,[62] peoples and even humankind as such.[63] Moreover, he argues, certain conceptual constructions seem to further confirm international law's (re)turn to a values-based legal order. These include *jus cogens* and *erga omnes* obligations,[64] common heritage and common concern of humankind,[65] the rights to peace and development[66] and universal jurisdiction.[67]

Cançado Trindade then considers how the humanization of international law has already taken place in various of its subfields: from the law of treaties, state succession and international responsibility to diplomatic and consular law and beyond. Having the international rule of law as a main normative justification, the discussion of the peaceful settlement of disputes stresses the need for compulsory jurisdiction on the international plane. At last, he explores how the cycle of United Nations conferences in the (then recent) 1990s and the efforts to codify and progressively develop

[58] See A.A. Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium* (2nd edn, 2012).
[59] *Ibid.*, at 24–29.
[60] *Ibid.*, at 55–106.
[61] *Ibid.*, at 132–138.
[62] *Ibid.*, at 213–275.
[63] *Ibid.*, at 275–289.
[64] *Ibid.*, at 291–326.
[65] *Ibid.*, at 327–353.
[66] *Ibid.*, at 353–366.
[67] *Ibid.*, at 367–389.

international law are reflective of the aspirations, needs and interests of the international community as a whole.

Latin America remains very much present in this general course. The region's experiences – in particular, developments in the inter-American human rights system – are conjured by Cançado Trindade to demonstrate the growing humanization of the discipline. For instance, decisions of the Inter-American Court of Human Rights (IACtHR) recognizing the peremptory nature of the prohibition of torture and other ill treatments, non-discrimination and the right of access to justice are used to attest the 'gradual expansion of the material content of *jus cogens*'. These are thus evidence of the awakening of a 'universal juridical conscience' that seems to be revealing itself first in the region to later spread into other parts of the world: in a sort of 'reverse universalism'. This argument would be later refined in his 2015 Hague lectures, where he discusses the region's usual, doctrinal 'contributions' to the development of international law.[68]

Most of the themes that Cançado Trindade has chosen to discuss seem to reflect his professional background as a Brazilian delegate in diplomatic conferences and, later, as a human rights judge. This is perhaps best exemplified by the ubiquity of self-citation, including the unapologetic use of his own individual opinions from his time at the IACtHR throughout the course. In fact, these experiences seem to have had a profound impact on his understanding of the discipline as there is a palpable change in style if compared to his 1987 Hague lectures.[69] Even if the over-reliance on certain anachronistic, natural law principles and concepts would make it sit more comfortably next to late 19th- and early 20th-century European international law textbooks, this is still a general course in which the reader hears the distinctive voice of an idealist Latin American speaker with a message. The Brazilian jurist professes a deep faith in the redeeming force of international law. For him, a revitalized, universal and humanized international law is humankind's best hope for a future of peace and justice. Criticism is therefore directed against 'permissive', 'voluntarist' doctrines, which are treated as deviations from the discipline's true humanist vocation. Consequently, there is no problematization of the Eurocentric origins of international law nor of the power dynamics that helped create, shape and sustain it. This lack of critical bite is one of the persisting pitfalls of universalism.

4 Conclusion

In discussing the courses delivered by Latin American international lawyers at the Hague Academy, this review essay has tried to explore some of the different ways of

[68] As he concludes in that special course, 'the contributions of Latin American legal doctrine can be appreciated within the framework of the universality of the law of nations. … I perceive the overall contribution of Latin American legal doctrine to the progressive development of a truly universal international law, the new *jus gentium* of our times'. See A.A. Cançado Trindade, 'The Contribution of Latin American Legal Doctrine to the Progressive Development of International Law', 376 *RdC* (2015) 9, at 92.

[69] See Cançado Trindade, *supra* note 40.

thinking about the discipline's significance in and for the region. More than a simple transition from 'particularism' to 'universalism', the ways in which these (mostly) men approached the academic discipline of international law reflect their own experiences, worldviews, political commitments, biases and professional backgrounds. They also tell a story about the legal profession in Latin America. If the interwar generation was especially interested in articulating international law as a foreign policy tool, the 1950s saw the emergence of international law academics and bureaucrats who were less enthusiastic about the political usages of the discipline. No doubt, the political reality in Latin America during the Cold War was largely behind this shift. The wave of dictatorships in the region up until the early 1990s would also influence the next generations of Latin American international lawyers to be more sensitive to human rights law and transitional justice.

But this does not mean that Latin American international legal thought is just a bundle of personal preferences tied together by the fateful coincidence that these men happened to be born in the region. What seems to characterize a continental tradition of international law – and this is reflected in the Hague Academy courses – is their sustained, yet diverse, efforts to engage with the discipline beyond passively accepting the European canon. If regionalists would emphasize the special character of Latin America and the need to develop a body of law reflective of that reality, universalists would try to demonstrate agency by arguing that the region's experiences were able to influence the development of a universal international law. Of course, there are things that the 20th-century international lawyer's net simply could not catch. The analytical limitations of a 'contributionist' approach, for one, would be hardly sensed by someone like Jiménez de Aréchaga or Cançado Trindade, who saw the discipline's expansion across the world as the product of a number of disinterested contributions.

One needs also to consider the very nature of the setting in which these lectures were presented. Here is the difficulty of the Hague Academy. General courses offer an appealing space for the presentation of one's holistic perspective of the discipline or the articulation of a grand theory, often followed by some optimistic message about the future and potentialities of international law. Special courses, on their part, provide a unique opportunity to carve out one's area of expertise and often pave the way for an invitation to deliver a general course. Hence, there is a natural temptation for the non-Western international lawyer to speak the language of international law with the accent of a native speaker. Resisting and problematizing this temptation may be an initial step towards a deeper reflection of international law's meaning beyond the West.