Globalization
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A. Introduction

1. Globalization is a phenomenon whose amplitude, implications, and nature are contested. At the most general level, it can be described as the name that has been given to a multi-faceted process of expansion of human activities to the entire globe and assorted cognitive frames of reference. There is thus presumably both a ‘real’ and an ‘ideational’ dimension to the phenomenon, it being understood that the two influence each other mutually. The idea of globalization, moreover, is normatively charged, so that with the perception of a phenomenon come a variety of views about its desirability, sustainability, and the extent to which it should be regulated. It is commonly understood to be one of the defining phenomena of several historical eras, including most notably the post-Cold War world (→ Cold War [1947–91]).

2. Its implications for → international law are simultaneously potentially enormous and at times hard to discern. The significance of these implications lies in the fact that globalization, as the very archetype of an overarching, all-inclusive phenomenon cannot be expected to leave international law untouched. At the same time, it should be stressed that public international law was based historically, after the crumbling of the Holy Roman Empire, on a certain rejection of the possibility or desirability of a truly global regulation or even interaction (→ History of International Law, 1648 to 1815). International law became primarily concerned with the existence and status of a particular kind of actor, the → State, and its relations to other States. This makes international law uniquely vulnerable to a phenomenon that challenges the status and role of the State. However, the implications of globalization for international law are and will probably remain for many years to come, fundamentally ambiguous, because they are intrinsically related to how international law itself evolves.

B. Globalization and International Law: History

3. Too excessive a focus on the particular form that globalization took in the late 20th and early 21st century can lead to minimizing the complex dialectical relationship between international law and globalization historically. The histories of globalization and international law have been intertwined for much longer than the end of the 20th century and the most recent phase of globalization.

4. The emergence of classical international law can be traced in part to the discovery of a world exterior to Europe in the form of the Americas and the expansion of Europe into that world. Canonical international legal texts, such as the work of Vittoria—and the issue of whether ‘Indians’ have a soul—or Grotius—and the issue of freedom of the seas—are indistinguishable from the great geopolitical, ideological, and political changes brought about by that discovery. Globalization then became the vehicle by which European public law was projected onto the world. With the spread of the State model naturally came the imposition/reception of the system of public international law as a means to normatively articulate the relations between States.

5. A second major wave of globalization, colonial imperialism, coincided in the 19th century with the modernization of international law (→ History of International Law, 1815 to World War I). Imperialism as a mode of exercise of power partly legitimized by international law, was simultaneously a way of spreading that model (→ Legitimacy). Following → decolonization, newly independent States would embrace it as the system of international normativity par excellence, thus contributing to international law’s eventual spread to the entire globe.

6. Finally, globalization and war, particularly 20th century warfare (→ War, Methods and Means), maintain complex relations. Turn of the century globalization collapsed in World War I. Both World Wars themselves can be seen simultaneously as negations of globalization, and as some of the first truly ‘global’ events. In addition, some of the normative bases for the current era of globalization (→ Universal Declaration of Human Rights [1948] (UDHR); → General Agreement on Tariffs and Trade [1947 and 1994] (GATT); and → International Military Tribunal) were laid very much as a result of World War II (→ History of International Law, since World War II), whilst the end of the Cold War is almost invariably credited as having inaugurated the beginning of the current era of globalization.

7. The histories of globalization and international law have therefore been more than a zero-sum game. Various phases of globalization served as a catalyst for the emergence, spread, and reinforcement of international law, even as they challenged international law and ultimately forced it to reinvent itself after periods of crisis.
C. Contemporary Globalization as a Phenomenon

8 Globalization is at least in part a phenomenon that can and should be understood aside from the law. Globalization is, interestingly, a process rather than an end result. In the most abstract sense, globalization is the idea that the entire world is increasingly the frame of reference for human activity, and is often associated with notions of the reduction of time and space.

9 Arguably, forces propitious to globalization had started accumulating long before that time, but the end of the Cold War did allow these forces to be unleashed. First, it opened new geographical areas for the expansion, in particular, of the capitalist economy. But perhaps more importantly, the end of the Cold War ushered in an era of liberal optimism—or hubris—often associated with theses concerning “The End of History?” (Fukuyama), in which deep ideological divides were seen as a thing of the past.

10 Concretely, perhaps the most outstanding contribution to and most blatant symptom of globalization, has been the formidable expansion and integration of the world economy. As a result of the development of new technologies, production became globalized; multinational corporations achieved dominance of whole sectors of the economy (Corporations in International Law); foreign direct investment boomed; a global market emerged for certain goods leading to a vast expansion in international trade; and financial flows have created a huge delocalized currency market.

11 A parallel more super-structural aspect of globalization is the extent to which it has meant the spread of a global ‘culture’, often associated with American culture, in areas previously untouched by it. A number of technologies, most notably the development of the Internet but also the colossal development of transportation, were both instrumental in bringing about globalization and have become emblematic of it. The common thread that runs through all of these developments is a sense of de-territorialization in which production, culture, and ultimately politics are decoupled from the space occupied by States.

12 Globalization has provoked major changes in the international distribution of power between different actors. To speak of globalization is inevitably to raise interrogations about the fate of the State. The considerable movements of money, goods, and peoples flowing across borders have loosened the State’s control on its borders, and thus its ability to present itself as the artefact of a common and bounded political project. Moreover, the State itself has occasionally downsized itself to minimal status, outsourcing ever more functions to the private sector, including some of clear regalian dimension (eg publicly funded security companies in Iraq). Some States are resisting these trends and reinvigorating themselves in the process, but all are becoming more disaggregated (see the role in particular of networks of bureaucracies, as highlighted in the work of A-M Slaughter).

13 In turn, a number of so-called non-State actors have gained renewed prominence. Technological revolutions have made it much easier for individuals to manifest themselves on the international stage. Corporations and non-governmental organizations (NGOs) are illustrative of the newfound prominence of some non-State groupings. Alongside—crucially—much has been made of the emergence of an “uncivil society” which represents a darker side of globalization, particularly in the form of transnational criminality (eg Mafia, Al Qaeda). Increasingly powerful supranational actors, such as the European Union (European Union, Historical Evolution), are also a challenge to the State, although they may also simply be seen as manifestations of the resistance of the State form.

14 At a certain level, the diminishing power of the State and the free circulation of peoples is also creating a new sense of community and even ultimate. The idea of ‘nation’, despite its enduring appeal, is no longer seen as necessarily the locus of identity. Global events, particularly catastrophic ones, such as Chernobyl, the Rwandan genocide, 9/11, the Asian tsunami, and major financial crises, have at times created a strong sense of interconnectedness and ultimate commonality of fate. Globalization changes individuals’ sense of community by reconfiguring the world in both more local and cosmopolitan lines. At the same time, globalization can create substantial alienation, frustration, and anger among populations on the periphery of wealth production, especially in a context of exponentially rising inequalities.

15 The fundamental nature of globalization is much discussed. For some it heralds an era of ever-increasing integration, leading to both peace and prosperity; for others, globalization is but a thin disguise for empire, and a decisive step in the westernization or even Americanization of the world. Linked to this debate is the one about the more or less transient or definitive nature of globalization.

D. Law, International Law, and Globalization as Fields of Scientific Inquiry

16 The history of the phenomenon of globalization is also largely a history of the perception, analytical and scientific, of that phenomenon. To an extent, the term creates the debate, and is part of the process whereby its novelty is affirmed. The legal debate on globalization has been marked by both hubristic calls for the overturning of paradigms and assertions of the international legal model’s continuing validity.

17 International lawyers at least initially seemed oblivious to what was arguably the defining phenomenon of the times (Alston), except to acknowledge globalization’s existence, and to generally see it as a positive development for international law. Instead, it is often domestic lawyers who were the first to become sensitive to the impact of globalization on the law and the extent to which municipal law has—or needs to—become globalizationized (Delmas-Marty). This interest manifests itself in a field of inquiry, ‘law and globalization’ which, whilst raising some questions of direct relevance to international law, is quite distinct from that field in that its focus is on the transformation of domestic law, as well as transnational and global regulatory phenomena (Berman). ‘Law and globalization’, as a programme of scientific inquiry, has been concerned with the ways in which globalization, by eroding sovereignty, is loosening the State’s monopoly on legal production and enforcement. It has investigated issues of jurisdiction, various instances of transnational judicial dialogue, legal transplants, and legal hybrids, as well as more generically interaction between different legal traditions; for example, the common law and the civil law.

18 Earlier paradigms of “transnational law” had arguably laid the bases for a diversification of the study of international law. But the realization that globalization might have a considerable impact on international law by international legal academia has been comparatively tardy. It has, moreover, arisen in often oblique ways, for example through the debate on the Fragmentation of international law, which can be seen as a way of interrogating the phenomenon of globalization, but from a distance. The inability of international lawyers to come up with ambitious ‘international law and globalization’ paradigms has arguably emboldened some scholars to make calls to move beyond the study of international law altogether, and reinvent instead a new and much broader interdisciplinary legal scholarship of ‘cross-border norm development’ (Berman, From International Law to Law and Globalization (2005) 489). Indeed pressures to reorganize the study of law in universities (Spick), have often emphasized comparative and “transnational” law at the expense of international law.

E. ‘Real’ Impacts of Globalization on International Law
19 When it comes to international law, globalization operates both as a challenge and a promise. A promise because the sheer volume and significance of human activity unleashed by globalization can be interpreted as requiring a significant normative effort, and international law seems well placed to provide this. A challenge, however, because globalization is not so much a phenomenon waiting to be regulated by international law as a phenomenon which activity affects the subjects, objects, and very nature of international law (→ Subjects of International Law).

1. The Changing Subjects of International Law

20 To the extent that globalization is challenging the State’s ability to assert power, it is also inevitably stretching the legal fiction that States are and should be the only subjects of international law. International law has on occasions ratified this trend, but it has also resisted it. In recognition of both the negative and positive contribution that they can make to international law, individuals have been partially recognized as subjects of international law (→ Individuals in International Law). In the worst of cases, individuals can be directly liable under international law when they commit certain crimes (→ International Criminal Law; → Individual Criminal Responsibility). As a mechanism of attribution, international criminal responsibility seems to displace the more traditional → State responsibility. On the positive side, individuals have been recognized as subjects of international law, for example by being allowed to present petitions before → international courts and tribunals (see also → Human Rights, Individual Communications/Complaints). Although a number of international judicial institutions remain resolutely impermeable to the idea of individuals’ standing (eg → International Court of Justice (ICJ)), others such as the → European Court of Human Rights (ECHR). The debate when it comes to non-State actors that are not individuals is more intractable. There seems at present little inclination to grant such actors the quality of subject directly under international law.

21 Aside from these non-State actors of a private sort, globalization has also had a significant impact on the importance, nature, and emergence of international organizations (→ International Organizations or Institutions, General Aspects). The existence of international organizations is an old phenomenon, dating back to at least the 19th century (→ International Organizations or Institutions, History of). The realization that some issues are inherently global, embracing inter-State but also internal and transnational matters has, however, had a considerable impact on those institutions that already existed and prompted the emergence of new ones. The profile of international organizations in general has been boosted as States became willing to delegate even more functions to the supranational level, although that movement was often resisted. Globalization has changed the nature of international organization. The → United Nations (UN) system, in particular, has tremendously diversified its activities, which increasingly include interacting directly with non-State actors. Some regional organizations have evolved from fairly narrow mandates (eg the European Communities) to very advanced forms of proto-federal integration (→ European Integration).

22 In addition, a number of international organizations, some among the most prominent since the 50s, have emerged specifically as a result and to regulate some of the by-products of globalization. The → World Trade Organization (WTO), for example, marks the passage from a relatively classical web of inter-State treaties concerning trade (→ General Agreement on Tariffs and Trade [1947 and 1984] [GATT]), to a complex, institutionalized global trade regime. The → International Criminal Court (ICC) can also be seen as an institution born of globalization and the increased prominence of individuals. More informal mechanisms such as the → Group of Eight (G8), a sort of governors of the wealthy and powerful, have acquired considerable ascendancy over more formal and representative institutions.

2. The Changing Objects of International Law

23 International law traditionally was seen as principally dealing with inter-State matters such as the classical issues of war and peace or diplomatic relations (→ Diplomatic Relations, Establishment and Severance). Although international law still deals with such issues, globalization has fundamentally changed the way in which it does so. An example of this trend is the age-old attempt by international law to regulate the use of force (→ Use of Force, Prohibition of), arguably its founding and defining struggle since Westphalia (→ Westphalia, Peace of [1648]). Although international law once seemed to have accomplished significant strides in regulating inter-State warfare (see, inter alia, Nuremberg or the First Gulf War, → Crimes Against Peace), globalization is threatening to strikingly reduce the scope of these accomplishments. First, the gradual downgrading of sovereign legitimacy and at least the perception of increasingly imminent massive security threats in a globalized world has provided renewed incentive to transgress international limitations. The rise of transnational terrorist groups (→ Terrorism) has created complex problems of legality of the use of force. As a result of the increased emphasis on norms protecting human beings, international law has also shown itself to be hesitant about whether all first uses of force are always illegal, particularly when they are for the purportedly benevolent goal of protecting a population (eg → Humanitarian Intervention). These developments linked to globalization lead to a development of the jus ad bellum which seems haphazard.

24 Perhaps more importantly, globalization has fundamentally altered the phenomena of violence which international law seeks to regulate. While inter-State wars remain a problem that is high on the international community’s agenda, large-scale phenomena of non-international violence, be they internal conflicts (→ Armed Conflict, Non-international) or the commission of mass crimes by the sovereign (→ Gross and Systematic Human Rights Violations), have shifted attention both within and beyond the State. In that context, some of the definitional problems that beset inter-State violence (eg What is aggression? What is → self-defence?) seem to have had an uncanny tendency to reappear in non-State form (eg What is a terrorist group? What is a movement of national liberation? [→ National Liberation Movements]).

25 These developments have also pushed the limits of the laws of war (→ Humanitarian Law, International), which have increasingly been asked to regulate atypical phenomena involving the use of force. The ius in bello too remains deeply wedded to a statist vision of violence, creating all kinds of inconsistencies from which States have benefited. For example, mercenary violence (→ Mercenaries) and, beyond it, the increasing implication of the corporate sector in the provision of security services is something that international law has had tremendous difficulty dealing with. Equally, international humanitarian law has been torn between the temptation of providing non-State affiliated fighters with combatant status (→ Combatants) and thus prisoner of war protections (→ Prisoners of War), and the fear that it might thus endow terrorist movements with some warlike legitimacy (→ Combatants, Unlawful).

26 In addition, international law is increasingly required to deal with a number of issues that are not distinctly international, but that can properly be described as global. Global issues are issues that arise at the level of the entire world, and for which the State as a normative unit is deemed ultimately insufficient. They typically deal with the regulation of global “public goods” or “global commons”. Some “global” issues are classical international law issues that have been reformulated in conditions of globalization, for example, the → law of the sea is gradually transformed from primarily an issue of jurisdiction and freedoms, to a regime of sharing of resources, management of stocks, and protection of the environment (→ Equitable Utilization of Shared Resources; → Environment, International Protection). However,

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globalization has also coincided with the striking development of three broad thematic areas which until then had been thought of as being at the core of international law.

27 First, the global management of the economy or of the ‘global market’. International trade treaties traditionally operated on a bilateral basis. Increasingly, however, regulation of the economy is taking a more global nature be it through the spread of the → lex mercatoria (→ Commercial Contracts, UNIDROIT Principles), the regulation of international trade (→ European (Economic) Community; GATT; WTO; → North American Free Trade Agreement [1989]) and of international financial flows (→ International Monetary Fund [IFM]; World Bank Group; Basel Committee, → Bank for International Settlements [BIS]).

28 Second, the global protection of earth regime. One older model of environmental protection, originating in such early rulings as the → Trail Smelter Arbitration, emphasized the transboundary aspects of pollution (Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; → Air Pollution, Transboundary (Asia)); however, rather than the transboundary element, it is the boundless and global nature of threats to the environment that is emphasized, as seen through conventions dealing with the protection of the environment in general, particularly climate change (→ Climate, International Protection), certain areas (→ Antarctica, → Desertiﬁcation); the protection of animal life (→ Endangered Species, International Protection), and genetic diversity (→ Plant Genetic Resources, International Protection).

29 Third, the global regime of protection of human being, which encompasses international humanitarian law (→ International Committee of the Red Cross [ICRC]), international refugee law (→ Refugees, United Nations High Commissioner for [UNHCR]) as well as some aspects of migrations (→ Emigration), parts of international criminal law (universal jurisdiction; → International Criminal Tribunal for the Former Yugoslavia [ICTY], → International Criminal Tribunal for Rwanda [ICTR]), international labour law (→ International Labour Organization [ILO]) and, most notably perhaps, international human rights law (→ Universal Declaration of Human Rights [1948] → United Nations Commission on Human Rights/United Nations Human Rights Council, → Human Rights, United Nations High Commissioner for [UNHCHR]; regional human rights mechanisms). Globalization has had a paradoxical impact on human rights as an area of public international law, on the one hand considerably increasing their spread and prospects for enforcement; on the other hand opening spaces of contestation (for example, the ‘cultural relativist’ critique) which put to the test that particular model’s ability to usefully brand itself as a universal measure of the ‘good society’. It is, however, perhaps this regime that has the most potential to alter the fundamental substantive aspirations of international law in a cosmopolitan direction.

3. The Changing Nature of International Law in Conditions of Globalization

30 By redefining the sense of the key actors and issue areas of international law, globalization is having a rippling effect throughout all international legal categories, and some have spoken of a possible ‘globalization of international law’ (Pellet). In that sense, the form of international law is inevitably wedded to its substance.

31 International law’s structuring concepts have undergone very signiﬁcant changes. Although this has arguably always been the case, sovereignty is seen as ever more limited, conditional, and dependent on international law. Moreover, whilst still seen as largely the characteristic of the State, it is increasingly shared or distributed, whether it be exercised jointly at least in certain ﬁelds or on behalf of others (→ International Administration of Territories). The erosion of sovereignty, in turn, has eroded the public/private divide, one upon which much of the international legal edifice relied. It has accordingly become increasing difﬁcult to distinguish when international law is dealing with inherently public or inherently private matters, as illustrated by various immunity issues or the growing role of → private international law in dealing with matters of international → orde public (Public Policy).

32 Ideas such as that of an → international community, which have had a long history, have become omnipresent and are perhaps less challenged than they have ever been, despite strong doubts as to what exactly they signify in times of globalization. However, even the idea of an international community may appear too steeped in the State age, and references to a ‘global village’, a ‘global community of mankind’ or ‘global polity’—with their distinctly pre-grotian connotation—increasingly suggest an aspiration to stretch the frame of identiﬁcation reference.

33 Globalization has changed the conditions of production of international law. International legal developments were traditionally seen as very much the province of the States. Ever more pressing demands for participation by citizens’ groups, social movements, NGOs, and lobby have made these into permanent features at many international conferences (→ Conferences and Congresses, International), including a number of mega-conferences seeking to address issues characteristic of globalization (Beijing/women [1995], Rio/environment [1992], Durban/racism [2001], Vienna/human rights [→ Vienna World Conference on Human Rights [1990]], Istanbul/habitat [1996], Johannesburg/sustainable development [2002], Cairo/population [1994]). The growing proﬁle of non-State actors can also be seen through their increasing participation before international courts in a variety of guises, be it as petitioners (human rights courts; → International Centre for Settlement of Investment Disputes [ICSID], amicus curiae (→ International Courts and Tribunals, Amicus Curiae), or stake-holders in proceedings (ICC). Demand for increased participation is often based on the idea that global arrangements, unlike traditional international legal ones, really do directly affect the lives of individuals. It has been resisted by some inter-governmental fora (eg the role of the → United Nations, Economic and Social Council) in granting consultative status, but with limited success. Civil society and its transnational emanations have been instrumental in the adoption of a number of landmark treaties, particularly in the environmental and human rights fields (eg → land mines), and also increasingly have a role in pressuring for the enforcement of certain international norms via international private litigation, divestment campaigns, → boycott, etc. At a certain level, demands for participation are leading to calls for a more institutionalized and permanent form of representation; for example, before the UN the frequently mooted idea of a peoples’ assembly is part of this trend. Norm production is also, transnationally, increasingly a work of the professional networks of experts who control certain ﬁelds (Desalay and Garth).

34 Globalization has arguably accelerated a number of processes that have been visible in the → sources of international law for decades. The acceleration of the pace of normative production and the diversity of its sources has led to a relativization and transformation of → customary international law. The emergence of new objects of norm production has also had a deep effect on international law’s theory of sources. International human rights law and international humanitarian law have at times pushed teleological, ‘living instrument’, quasi-naturalist (→ Natural Law and Justice) interpretations of international treaties (see also → Interpretation in International Law). International criminal law, because it applies primarily to individuals, has required international law to pay considerably more attention to → general principles of law derived from the world’s principal legal systems, and has highlighted the contribution that comparative law (→ Comparative Law, Functions and Methods) can make under conditions of globalization to the emergence of a common legal heritage. To the extent that globalization is increasingly creating a sense of global polity, it has also revived constitutional thinking about international law.
Globalization has created pressures on the relative status of international law norms. One of the most contentious debates of international law in the last decades—the issue of whether certain norms are of higher ranking than others—has arguably been energized by transformations brought about by globalization. Globalization stands for its own idea of either the equivalence of all international norms—or allowing each sub-regime to operate without threat from the others—or the primacy of, for instance, market norms over state controls. The idea that certain norms are higher up in the international legal hierarchy than others—for example because they have → ius cogens, erga omnes (→ Obligations erga omnes), or constitutional status—has also become associated with converging efforts to, inter alia, start projecting a sense of the finality and purpose on globalization (Allen); hence, for example, efforts to assert the superior value of human, particularly economic and social, rights over a reified vision of the untempered operation of the market, or of civil and political rights (→ International Covenant on Civil and Political Rights [1966]) over the demands of development (→ Development, International Law of).

Globalization has changed the modalities of international law by often emphasizing regulation above law. This is manifest in the growth of → soft law, directives, and standards. Rather than constraint and bindingness, these new modes of regulation emphasize self-regulation, incentives, and have as their goal the channeling rather than the shaping of interests. This has led to a distinct fuzziness in the language of international law (eg global governance), as that language increasingly risks being colonized by other professional jargons, such as international relations, public policy, economics, or management. One can contrast, in this respect, efforts undertaken in the 1970s—largely unsuccessfully, but in a more familiar genre for international law—to bind multinational corporations via the code of conduct for transnational corporations (→ Codes of Conduct) and, for example, the UN’s current effort to get multinational corporations to sign onto the → Global Compact, a largely voluntary and non-committing instrument.

Globalization has challenged the ability of international law to act as a coherent system, at a time when inter-branch tensions are seen as alarming (→ Environment and Indigenous Peoples; → Human Rights and Humanitarian Law; → Trade and Environment; → Trade and Human Rights). This challenge, perhaps more than any other theoretical issue, has mobilized the attention of academic international lawyers. The fear is that the loss of the system’s unity—posed as having existed at least theoretically in the past—as a result of fragmentation weakens the ability of international law to act as an integral system of priority allocation. It is open to question, however, whether these fears about the unity of the system are not risibilitative manifestations of professional anxiety by generalist international lawyers, in light of evidence about the continuing dependence of international law, including its supposedly increasingly disconnected branches, on systemic thought (Koskenniemi).

Globalization has affected the modes of enforcement of international law. By creating strong pressures for enforcement in some fields, it has encouraged the emergence of branch-specific mechanisms, arguably at the expense of an evenly-spread elevation of the standards of enforcement. Although general enforcement mechanisms such as the ICI remain theoretically at the apex of international compliance, the emergence of international criminal tribunals, international human rights courts and bodies, the UN Convention on the Law of the Sea, (‘UNCLOS’) Tribunal (→ Law of the Sea, Settlement of Disputes) or GATT panels (→ World Trade Organization, Dispute Settlement), as well as various modes of → arbitration have effectively displaced general public international law’s monopoly on enforcement. Moreover, the primacy of the inter-State, as illustrated by the traditional dispute settlement mechanisms, is increasingly being replaced by a host of alternative mechanisms and strategies for enforcement.

Globalization has modified the fundamental nature of international law. The erosion of the private/public distinction, the possible transformation of international law from an inter-State law to a global law, are, most strikingly, making international law as a system lose some of its specificity. Whereas a relatively neat distinction used to exist between domestic law (centralized, based on sovereign command) and international law (weakened, centralized, of controversial basis), global modes of regulation differ less obviously from domestic law.

If international law is no longer simply or even principally the legal system applicable to the relations between States, then questions inevitably arise as to its true nature, and the more or less misleading character of the ‘international’ epithet. The challenge is more than simply a definitional one, and involves questions of identity and purpose. On the one hand, international law may be tempted to retreat to a domain reserved for inter-State interaction where it is relatively unchallenged; on the other hand, it may make a hegemonic claim to being ‘a law of everything’, or at least a ‘law of laws’. In the former case, international law, by giving up any pretence of serving as the ultimate arbiter of inter-branch conflicts, may condemn itself to irrelevance; in the latter case international law may find it difficult to cling to a sense of the specificity of its project, and transform itself beyond recognition. An intermediary fate for international law might be to become a ‘global public law’ (Garraza J), one perhaps more closely connected to its origin in the ius publicum Europaeum.

Globalization, finally, has an impact on the very possibility of international law—understood as the ability of a world-wide system of law to meaningfully shape the totality of human interaction—and its implicit ambition, a universal rule of law. At the heart of such tensions is the question of whether international law wants to be a value-neutral means, or whether it wants to constitute itself as a purposive and programmatic end.

For some globalization would seem to be one of the factors that might herald a move ‘from Bilateralism to Community Interest in International Law’ (Simma) and maybe forms of cosmopolitan association. For others, globalization presents a risk that international lawyers will be asked to become complicit in developing imperial legal; or the commodification of the world. As a result of these conflicting opportunities and risks, one can witness a resurrection of thinking about international justice (Brooks), at a time when relevance on rules and process cannot be a substitute for thinking critically about the ultimate goals of the international legal order (Jouannet).

Conclusion: International Law’s Impact on Globalization

Rather than a resolution of international law’s perennial problems (→ compliance; indeterminacy), globalization has a tendency to displace them by proposing to transcend some of the very premises of the system. But even as international law is being radically shaped by globalization, it is also in a sense constitutive of globalization. International law, for example, helps entrain certain economic models which are inherent to globalization: the WTO legal order protects a certain vision of free trade that is far cry from earlier legal attempts to promote fair trade, a → New International Economic Order (NEO), or import substitution. International law is also a vehicle for certain domestic models that underpin globalization, the ‘Washington consensus’, → good governance, the → rule of law (see also → Corruption, Fight against).

This means that at the same time as it is partly the expression of globalization, international law could also be a force that regulates it. Indeed, globalization is a phenomenon that has been resisted or which has prompted calls, either by States (eg economic or cultural protectionism) or civil society (the so-called ‘anti’ or ‘alter’ globalization movement), for ‘more law’—especially to the extent that globalization has commonly been associated with deregulation. International law has therefore been afforded an historical opportunity to
shape rather than halt globalization even as it enshrines it.

45 One of the lessons to be learnt from globalization historically is the remarkably plastic and adaptable nature of international law, as a law less wedded to certain objectives than it is a supple system of regulation designed to make the most of any epoch’s preoccupations. A natural and often mooted vocation for international law in a globalized age might be to seek and tame some of the excesses of globalization, by standing for a certain form of global distributive justice, → sustainable development, and the protection of all those who have most to lose from globalization. The Doha Declaration on the → Agreement on Trade-Related Aspects of Intellectual Property Rights (1994); the → United Nations Educational, Scientific and Cultural Organization (UNESCO) sponsored effort on cultural diversity (→ Trade and Culture, the UN’s Global Compact, the UN General Assembly Declaration on the Rights of Indigenous Peoples of 2007 (→ Indigenous Peoples)) can all be seen as attempts to counteract some of the more nefarious effects of an excessively economically driven globalization.

46 Linked to these developments, international law can also be thought to have a role in ensuring better representation of voices other than States’ in international fora (→ International Organizations or Institutions, Democratic Legitimacy; see also → Democracy, Right to, International Protection), by helping to create an international public space. Where globalization can have a tendency to obscure the sources and very prevalence of power, moreover, one of the founding strengthes of international law is its ability to locate power and ascribe authority and its corollary, accountability.

47 International law’s great legacy to a hypothetical global legal order might be a series of answers, however imperfect, to how law might emerge in the absence of a central authority, a hypothesis that seems likely to remain in the world to come. Vis-a-vis globalization, authority and its corollary, accountability.

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International law’s great legacy to a hypothetical global legal order might be a series of answers, however imperfect, to how law might emerge in the absence of a central authority, a hypothesis that seems likely to remain in the world to come. Vis-a-vis globalization, authority and its corollary, accountability.

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