INTRODUCTION

Had I been younger and had it been my first book on international law and politics, I would have, probably, started with words like ‘we live in an unprecedented historical period in which the fate of future generations is being decided’. However, there are too many books published in almost every decade that make such claims. At the same time, I am perhaps not yet old enough to think that ‘plus ça change, plus c’est la même chose’. The end of the twentieth century was satiated with events such as the fall of the Berlin wall, developments like the collapse of the ‘evil empire’, rising expectations, fulfilment of some of those expectations but also tragic disappointments. Of course, events of the same significance had happened before. Even the crimes committed in Rwanda, Sierra Leon, Bosnia or Kosovo that shock the conscience of mankind are not something unheard of before. Even the twin processes of globalisation and fragmentation are not completely new. The world was globalising at the turn of the nineteenth and twentieth centuries, while the aftermath of the First World War and the process of decolonisation may be examples of significant fragmentation which, from time to time, takes place in international society. At the same time, the concentration and interconnectedness of various events at the turn of the Millennium that affect many or all societies—both domestic and inter-national—is quite unique.

The end of the Cold War and the collapse of the communist systems in the former USSR and other Eastern European countries have ended the rigidity of the bipolar international society, disclosed or released some hitherto suppressed tendencies and opened up many societies to radical change. The revolution in information technology is affecting most societies. Its impact on societal relations is not only comparable to, but seems to surpass, the effects of the industrial revolution. It took many decades or even centuries for industrialisation in some Western states (England, Holland) to spill over into other societies. The Internet has conquered the whole world within a decade. Some societies or governments may and do resist these changes since they undermine traditional ways of life and traditional centres of power. However, as history, especially that of the self-imposed isolations of China (end of the XV-beginning of XVI centuries), Japan (XVI century), or Albania (XX century), teaches us, often too strong a resistance to changes that have external causes may be disastrous for society.
It seems that though it would be wrong to say that the current changes in the world are unprecedented, they are certainly quite significant, allowing us to conclude that we live in one of those periods when international society seems to be in transition from one status to another. The very number of novelties, their interconnectedness and compression in time, together with the increasing closeness of the world, mean that international society in the twenty first century is qualitatively different from that of the twentieth century. Anthony Giddens singles out three overlapping trends: the worldwide communications revolution, the arrival of the 'weightless economy', and 'a post-1989 world', while Will Hutton believes that 'what is different is the sense that change is all-encompassing and carries a new inevitability, its, its momentum is a superior power to any other, even that of the state'.

Changes in domestic societies and in international society inevitably affect international law, many important parts of which are if not exactly in crisis then at least in a state of significant fluctuation. This forces international lawyers to review critically some central tenets of their discipline. As the changes that international law is either currently undergoing or needs to go through are not prompted by factors internal to law but by significant societal transformations such reviews necessarily have to be inter-disciplinary. This is what this book is attempting to do.

The book is divided into three closely interrelated parts. Part I analyses theoretical and philosophical problems of international law, Part II concentrates on its political context, while Part III is more about the practicalities of international law. The reader will see quite a few cross-references. They are necessary because if a problem is dealt with, say, at the theoretical level in Part I of the book, its more detailed practical implications may be developed either in Part II or especially in Part III. Such a division of the book into theoretical, political and practical legal parts is not absolute, of course. In a sense, the whole book is about theory of international law and theoretical issues are indeed discussed in every chapter. At the same time, I believe that theory (at least international law theory) cannot be developed on the basis of theoretical and philosophical knowledge only, but more as a by-product (important and necessary) of the search for solutions to significant practical issues of international law and politics. Of course, existing theories and world-views enlighten such a search. This means that the book is inevitably also about the practicalities of some of the most controversial and topical problems of international law.

The renewed interest in theory of international law and its increasing role in international law practice is dictated by rapid changes in international

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society and in the volatility of societal relations. The role of theoretical knowledge increases in the life of every society during transitional periods and international society is not an exception. This has dictated such an emphasis on theory in the book. It is thus possible to say that the needs of international practice have determined the theoretical nature of this book.

Part I studies theoretical problems of international law in the context of other social sciences (especially philosophy and international relations theory). Here, various theories and theoretical approaches are compared and analysed. The book tries to show that no approach can explain the reality of international law and politics both comprehensively and profoundly, can be at the same time inclusive enough and sufficiently rigorous. That is why international law needs different theoretical approaches, which not only compete with but also complement each other.

Part II studies current changes going on in international society and in the main characteristics of the state. The changing role and functions of the state in the world, the co-existence of different categories of states (sometimes called pre-modern, modern and post-modern, or pre-Westphalian, Westphalian and post-Westphalian), and the changing notion of state sovereignty are all analysed in this Part. As nothing but chaos happens automatically in international, or for that matter in any society, it is necessary to study who is ‘paying the piper’, who is pulling the strings in international society. In this context, the role of international organisations and great powers as well as the issues of anarchy and hegemony and their relationship with international law are also analysed.

At least some of the fundamental principles of international law closely reflect the structure of international society as well as the main characteristics of the state. For example, traditional elements of statehood (population, territory and authority) are reflected in and protected by different principles of international law. One of the indicators that international society is in the process of transition seems to be the fact that there is a clash between various principles of international law that reflect the characteristics not only of different states or different aspects of statehood but even of different international societies. There seems to be considerable strain between Westphalian and post-Westphalian principles of international law. These strains are analysed not only in Part II, Part III continues such an analysis on a more practical legal level.

Part II also discusses changes in two important areas of international law where theoretical and practical issues considerably overlap i.e. the interaction between international and domestic law and sources of international law. As states become more closely integrated in international society, the relationship between international and domestic law inevitably changes. Domestic developments have a greater impact on international
relations, while domestic structures and procedures are increasingly affected by international or foreign factors, including international law. The relationship between international and domestic law is studied in the context, and as a particular case, of the interaction between international society and societies organised as states. The Chapter on sources of international law concentrates on customary international law as a process reflecting specific features of international society and revealing one’s approach to and understanding of international law. As law functions in the context of other forms of international governance, the relationship between international law and legally non-binding norms is also analysed in this part of the book.

Part III discusses current changes in three interrelated areas of international law and politics: human rights, use of force and international humanitarian law. Human rights issues have not only become one of the central concerns for international scholarship and practice. They are also significantly affecting some other areas of international law such as legal regulation of use of force and non-interference in internal affairs. The emphasis in the Chapter on human rights is on the current trends and future perspectives of human rights in different parts of the world. Human rights problems are analysed in the context of factors such as culture, religion and levels of societal development. The book argues that though there are universal human rights, not all human rights are universal and while some human rights have become accepted as natural in the world as a whole, human rights are not natural at all but are rather social constructs that come to be considered natural when people want and believe them to be natural.

Massive human rights violations and humanitarian crises have become one of the major threats to international peace and security. Weak, failed or quasi states are often dangerous both for their own population as well as for their neighbours. More than ever before the last decade has seen an interrelationship between human rights (or rather their violation) and the use of force. Why this is happening, and whether there are any historical parallels that would help us to better understand current trends in the legal regulation of the use of force are the main issues analysed in the Chapter on the use of force. Special emphasis is placed on the recent crises in Kosovo, East Timor and other regions. The Chapter concentrates on the analysis of violence at the interface between domestic and international spheres. Because of the gradual erosion of distinctions between these spheres internal (civil) wars have become one of the most significant international concerns.

Finally, the last Chapter discusses international humanitarian law or *jus in bello* with special attention to the principles and norms applicable in internal conflicts. Although international wars are not a thing of the past, they have been outnumbered by far by internal or civil conflicts. Here, we study links between *jus in bello* and international human rights law, on the
one hand, and between *jus in bello* and *jus ad bellum* (legal regulation of the use of force), on the other. The Chapter also studies issues of individual criminal responsibility under international law of those who violate international humanitarian law, commit acts of genocide or crimes against humanity.

These three issue-areas are chosen not only because they are at the moment amongst the most topical and controversial in international law and politics. They indeed are. But they also help to illustrate or confirm theoretical conclusions made in Part I of this book. Or to put it differently, these conclusions have been made, to a great extent, on the basis of the analysis of the material in Part III. And I hope that such a structure of the book helps to bring together for discussion three important facets of international legal studies: its theory as a specific social theory, international (and even domestic) politics as the content of international law as well as the context in which it functions, and the practicalities of some of the most topical problems of international law and politics.