

***Is International Law International?***  
**Exploring its normative underpinnings**

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1. *Introduction*

Is International Law International? The title of the celebrated book authored by Anthea Roberts<sup>1</sup> poses a *prima facie* straightforward, binary question. In line with Roberts's high quality scholarship, the book raises challenging questions that go deep to issues, such as the source of international law's authority and the structure of the international order. It comes as no surprise that this scholarly work has attracted the attention of prestigious international law blogs<sup>2</sup> and reviews<sup>3</sup>, and has been deservedly awarded the American Society of International Law's 2018 Certificate of Merit for 'Preeminent Contribution to Creative Scholarship'.

Roberts crafts a powerful account challenging the assumed universality of international law. As far-reaching as it may sound, Roberts's

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<sup>1</sup> A Roberts, *Is International Law International?* (OUP 2017).

<sup>2</sup> See the Symposium co-organized by EJIL:Talk! and Opinio Juris, D Akande, 'Joint Symposium with Opinio Juris on Anthea Roberts' *Is International Law International?*' (7 February 2018) available at <[www.ejiltalk.org](http://www.ejiltalk.org)>.

<sup>3</sup> O Chasapis-Tassinis, 'The Self-seeing Soul and Comparative International Law: Reading Anthea Roberts' *Is International Law International?*' (2018) 7 Cambridge Intl L J 185; R Mitchell, 'Anthea Roberts, *Is International Law International?*, Oxford: Oxford University Press, 2017, 420 pp' (2018) 81 Modern L Rev 547; K Linos, '*Is International Law International?* by Anthea Roberts. New York, New York: Oxford University Press, 2017, pp. xvi, 406.' (2018) 112 AJIL 795.



book has the potential of altering the teaching of international law as well as the perception of the field as a whole.<sup>4</sup>

The present contribution starts with a synopsis of the main concepts and ideas presented in Roberts's book. It then introduces the comparative (international law) approach advocated by the author and fleshes out the three driving concepts that constitute the backbone of the book under consideration, namely 'difference', 'dominance', and 'disruption'. This part also sheds light on the benefits of the proposed comparative (approach to) international law.

The next part traces lines of critique of Roberts's main arguments. Firstly, the existence of an underlying normative framework is investigated, as Roberts's endeavor could be construed as being too neutral. In this vein, the potential critique of suspicion, which is analyzed below, is countered by approaching the book as a conversation-starter. In general, the counterargument based on the goal of Roberts's book to shed light and begin a conversation is very effective in foregrounding the self-awareness exercise comparative international law calls for, notwithstanding the inherent limitations attached to this exercise. The connecting thread of these critical remarks lies in the author's approach towards international law's universality. In our view, the idea of law as a unity of perceptions constitutes a domestic presumption that is not directly transposable at the international level. Simply put, any attempt to project this specific understanding of law to the international is immanently fraught with difficulties. Having examined the implications of this point on Roberts's account, I submit some concluding thoughts.

## 2. *Driving concepts and the value of comparative international law*

The explanatory force of the book under discussion lies on three central concepts, which are masterfully unpacked by Roberts, and in combination with the provision of a wealth of empirical evidence and data, the book sets the scene for a new research agenda. The first driving concept of 'difference' concerns the differing backgrounds of international lawyers. According to the author, due to diverging influences and teachings, international lawyers perceive international law in dis-

<sup>4</sup> M Koskenniemi, 'Foreword' in Roberts, *Is International Law International?* (n 1).



tinct ways and adopt different approaches. As Mitchell has concisely summarized this point,

‘[t]he book effectively identifies and establishes the importance of key (and sometimes surprising) differences in educational background, professional activities, linguistic and networking characteristics, as well as the textbooks and scholarly authorities relied upon by these various communities.’<sup>5</sup>

It is precisely for these reasons that Roberts introduces the term ‘divisible college of international lawyers’ and thus the assumption or aspiration of a universal international law is effectively challenged in its core.

Then, Roberts moves on to unravel the concept of ‘dominance’. But who dominates? Roberts, following a strand of sociological thinking and rethinking of globalization that has emerged and significantly influenced international legal thinking during the last decades, has the answer: ‘people, materials, and approaches from particular national and regional traditions within the field’.<sup>6</sup> Unsurprisingly, certain powerful Western states take centre stage within this pattern of dominance. These states not only hold the power and resources to successfully influence less powerful states, but also to export their domestic notions and conceptions of international law as universally applicable and valid. The dominance of the English language as the contemporary *lingua franca*, along with that of the French language, albeit to a lesser extent, serve to illustrate the Western bias of international institutions and the international order at a general level.<sup>7</sup> The identification of these patterns of dominance could equally function as a call for (self-)reflection on the part of international lawyers with the aim of bringing to light their own biases and predispositions. This delicate exercise of introspection has the potential to reveal to international lawyers other and others’ conceptions of the international (legal) order.

The third fundamental tenet of Roberts’s analysis is the concept of ‘disruption’. The latter encapsulates the dynamic nature of comparative international law as expounded by Roberts. What is disrupted is not on-

<sup>5</sup> Mitchell (n 3) 549.

<sup>6</sup> Roberts (n 1) 9.

<sup>7</sup> *ibid* 9-11.

ly the various perceptions of international law, but its very nature. Disruption derives from a multitude of factors, such as technological innovation and shifts in geopolitical power.<sup>8</sup> In tandem with this concept the author introduces and builds on the term ‘competitive world order’, which she defines as the gradual transfer of power from the North to the South and from the West to the East. This change, which could potentially generate diverging perceptions of international law, lends support and persuasive force to Roberts’s call to international lawyers for ‘delv[ing] more deeply into the understandings of, and approaches to, international law of lawyers from a variety of unlike-minded states’.<sup>9</sup> Weaving together the concepts of disruption and competitive world order as driving forces of change, Roberts examines illustratively the situation in Syria, the status of the responsibility to protect doctrine, proposals for a multilateral treaty on cybersecurity,<sup>10</sup> and the permissible scope of freedom of navigation.<sup>11</sup>

Roberts’s seminal work follows a ‘data-driven approach’,<sup>12</sup> providing an abundance of information – a result of arduous research – that substantiates her claims. Ranging from comparisons of international law academics and textbooks, to the situation in Crimea or the South China Sea arbitration, Roberts manages to judiciously navigate a vast array of complex debates. It is noteworthy that Roberts’s research focuses on the practice of the five permanent member states of the United Nations Security Council and on the elite international law academics and universities of those five states. Consequently, her work could readily qualify as a sociological study on the international law profession. Having that in mind, Rasulov’s recent ‘exploration of *the operative conditions of failure and success* applicable to the workings of disciplinary heterodoxies in contemporary international law’ gains even more significance.<sup>13</sup>

<sup>8</sup> *ibid* 11.

<sup>9</sup> *ibid* 17 (citation omitted).

<sup>10</sup> For a detailed account of the current standoff regarding the regulation of cybersecurity issues and a relevant proposal to resolve this impasse, see F Delerue, ‘The Codification of the International Law Applicable to Cyber Operations: A Matter for the ILC?’ (2018) *ESIL Reflections* 7(4).

<sup>11</sup> Roberts (n 1) ch 6.

<sup>12</sup> Mitchell (n 3) 549.

<sup>13</sup> A Rasulov, ‘What is Critique? Towards a Sociology of Disciplinary Heterodoxy in Contemporary International Law’ in J d’Aspremont and others (eds), *International Law as a Profession* (CUP 2017) 189, 191 (emphasis in the original).



Rasulov studies and taxonomizes the institutional trajectory of New Approaches to International Law movement drawing from sociology, critical legal studies and jurisprudence. In this sense, his analysis could serve as a complementary or even a counterbalancing exercise that fosters a more comprehensive understanding of the international law academic process. Taken together with Roberts's work, it could also be viewed as a confirmation of the turn to a more thorough approach towards international legal academic production.

Undoubtedly, the book under consideration should be read together with the relevant symposium organized by the American Journal of International Law,<sup>14</sup> which could be construed as the predecessor of the recently published edited volume *Comparative International Law*.<sup>15</sup> The notion of comparative international law holds a pivotal place in Roberts's book, as evidenced by the definition of the former concept, namely that 'comparative international law entails identifying, analyzing, and explaining similarities and differences in how actors in different legal systems understand, interpret, apply, and approach international law'.<sup>16</sup>

The objectives of comparative international law project have been identified as follows:

'to establish comparative international law as a field of research in a way that has some coherence but remains sufficiently broad to embrace a variety of perspectives and approaches; to identify various theoretical perspectives and methodological approaches that scholars have brought, or might bring, to bear on this subject; and to conduct an initial array of comparisons across issue- areas and legal systems to illustrate some of the types of projects that can be conducted, and range of insights that might be derived, from this field.'<sup>17</sup>

It is no coincidence that the value of the comparative approach to international law has also been advanced by other prominent authors. A similar call was recently issued by Anne Peters tracing the value of comparative international legal scholarship in serving as a response to

<sup>14</sup> See A Roberts and others, 'Comparative International Law: Framing the Field' (2015) 109 AJIL 467 and the other contributions in that issue.

<sup>15</sup> A Roberts and others (eds), *Comparative International Law* (OUP 2018).

<sup>16</sup> A Roberts and others, 'Conceptualizing Comparative International Law' in A Roberts and others (eds), *Comparative International Law* (OUP 2018) 3, 6.

<sup>17</sup> *ibid.*



the peril of epistemic nationalism. In her words, '[t]he comparative approach, analyzing *national* practice, will allow better to identify a truly national international legal corpus of rules on a particular international problem at hand.'<sup>18</sup> What is required from international lawyers is to internalize the perspectives of other scholars, rather than to disassociate themselves from their own educational and cultural backgrounds.<sup>19</sup> In other words, the comparative approach to international law could act in the first place as an emancipatory force from one's own educational and cultural biases that would favor self-reflection and awareness of others' perspectives and approaches, so that, at a second step, proposed solutions and interpretations would be enriched and therefore better suited to fulfill their intended jurisprudential role.<sup>20</sup> To her credit, Roberts does not shy away from providing a detailed account of her background, proving her determination to fully abide by her proposed approach and dispel any potential accusation of inconsistency.<sup>21</sup> Given their role in providing insights into each author's background, the inclusion of such accounts in (international) legal writings would be more than welcome.

Moreover, a terminological issue with further ramifications arises here: Is it appropriate to speak of comparative international law or rather the more accurate term is that of a comparative approach to international law? In this respect, it is worth quoting H el ene Ruiz Fabri's concern regarding the term 'comparative international law', since 'it does not refer to law as a set of norms but to a methodology applied to law, and which can be applied to any kind of law, be it domestic or international, private or public, etc. Thus, comparing how various international courts and tribunals deal with a specific issue can qualify as

<sup>18</sup> See A Peters, 'International Legal Scholarship Under Challenge' in Jean d'Aspremont and others (eds), *International Law as a Profession* (CUP 2017) 117, 124 (emphasis in the original).

<sup>19</sup> *ibid* 126.

<sup>20</sup> In Roberts's words, the adoption of the proposed comparative approach brings many benefits with it, such as that it 'not only enhances knowledge of the other, but (that it) also enables international lawyers to look more critically at their state's own position and to become more aware of how some arguments and actions might be viewed differently by those with other perspectives.' Roberts (n 1) 320 (citation omitted).

<sup>21</sup> The relevant subsection is entitled 'Identifying and seeking to overcome one's own limitations'. *ibid* 48-49.



*comparative international law*, which can therefore be de-nationalized.<sup>22</sup> Interestingly, Peters also refrains from using the term comparative international law, rather opting for the term ‘comparative international legal scholarship’.<sup>23</sup> The point at stake here is not insignificant. It is worth asking whether Roberts’s call concerns a specific methodology, a new subfield of international law or a new way of framing international law as a whole. Be that as it may, Roberts is right to emphasize the great potential of her work in that this kind of scholarship ‘seeks to open our eyes to many issues, analyze their origins and effects, and provide a framework and vocabulary for talking about them.’<sup>24</sup>

### 3. *Lines of critique*

In the present part, I turn to arguments critiquing the author’s approach. I will first deal with the seeming lack of a normative vision underpinning the proposed comparative approach to international law, as Roberts’s monograph, however informative and enlightening, could be construed as being too neutral. This line of critique potentially opens the author up to the critique of suspicion, which entails questioning the author’s intentions. Nevertheless, Roberts convincingly dispels this type of critique by arguing that the field of comparative international law, and her work more specifically, should be approached through the lens of a conversation-starter. Having said that, certain inherent limitations stemming from one’s educational and cultural backgrounds are perforce attached to the self-knowledge endeavor in which comparative international law invites international lawyers to engage. From a broader perspective, these considerations derive from and are closely interwoven with the overarching idea of approaching law as a unity of perceptions and practices; an idea, however, which stems from the domestic level and cannot be transposed at the international one. Hence, the conclusions Roberts arrives at regarding the universality of international

<sup>22</sup> H Ruiz Fabri, ‘From Babel to Esperanto and Back Again: The Fate of International Law (or of International Lawyers?)’ (8 February 2018) available at <[www.ejiltalk.org](http://www.ejiltalk.org)> (emphasis added).

<sup>23</sup> Peters (n 18) 122-126.

<sup>24</sup> A Roberts, ‘Is International Law International? Continuing the Conversation’ (9 February 2018) available at <[www.ejiltalk.org](http://www.ejiltalk.org)>.

law could be equally, and perhaps more forcefully, drawn from another argumentative path/line of reasoning. In any event, this remark should not detract from the value Roberts's account carries with it, especially as far as her call for self-awareness is concerned.

To begin with, the author's call 'for each side to put itself in the shoes of the other so that it can appreciate its particular perspective and interests'<sup>25</sup> is moderate and convincing. In this respect, Julian Ku raised concerns regarding the overall stance of the author, arguing that not all approaches are or should be considered equally valid. The relevant excerpt merits to be fully quoted:

[A]pplication of her comparative approach to international law necessitates taking a neutral stance on what might be a better or worse interpretation of international law. While I agree with one of her main claims – that there are many divergent versions of international law arising out [of] distinct national and regional clusters – I am not sure all such divergences should be treated as good faith differences.<sup>26</sup>

In the same vein, Chasapis-Tassinis correctly highlights 'the need to have a clear normative vision of international law *as law* that is supposed to transcend, and not yield to, the differences that we look at as a matter of legal discourse.'<sup>27</sup>

Viewed from another angle, the abovementioned differences could be construed as not only justifying the need of the proposed comparative approach to international law, but also as further confirming the validity of the relevant international legal rules and more generally of the international legal order as a whole. As long as the users of international law stay within the permissible boundaries of argumentation that the current international legal system provides them with, no systemic challenge or threat should be identified. On the other hand, the above proposition naturally raises the question of who decides these permissible boundaries. Put otherwise, the differences under discussion could

<sup>25</sup> Roberts, *Is International Law International?* (n 1) 320.

<sup>26</sup> Ku continues his account of critique by focusing on the South China Sea arbitration, claiming that governments can use international law as an instrument of advancing their diplomatic and public relations campaigns. J Ku, 'Is International Law ... Law?' (9 February 2018) available at <[www.opiniojuris.org](http://www.opiniojuris.org)>.

<sup>27</sup> Chasapis-Tassinis (n 3) 194 (emphasis in the original).



be so diametrically opposed as to challenge the basic precepts of the international legal system. One relevant example is provided by Roberts regarding the debate about Crimea's annexation by, or reunification with, Russia.<sup>28</sup> As the author documents, a symposium was organized in the *Heidelberg Journal of International Law* that gathered Russian and Western scholars to discuss the issue of Crimea. Unsurprisingly, the Heidelberg Symposium proved that the divisions between Russian and Western scholars remained too wide to be bridged, notwithstanding the fact that these scholars shared a common forum.<sup>29</sup>

Another site of contestation, where the gap between differing opinions is too broad, can be traced within the law on the use of force, and more specifically in the debate between the so-called restrictivists and the expansionists. Quite importantly for our purposes, this debate concerns a foundational tenet of the current international order, namely the scope of the prohibition of the use of force. Restrictivists hold the view that: '(i) the prohibition of the use of force in international law encompasses even minor acts of force; (ii) the number of legal justifications for the use of force is strictly limited; and (iii) the ambit or scope of these exceptions to the prohibition (particularly the right of self-defence) are narrow'.<sup>30</sup> On other side of the spectrum lies the expansionist or extensive approach, according to which 'moral and other non-legal considerations will be taken into account' and the practice of major states should be highlighted,<sup>31</sup> when assessing the contours of the prohibition on the use of force.

Accordingly, it has been claimed that the method of rapprochement between these two diverging schools of thought lies with the methodology employed to interpret the relevant international legal provisions.<sup>32</sup> Simply put, as long as the method is not sufficiently agreed upon by the

<sup>28</sup> Roberts, *Is International Law International?* (n 1) 231-240.

<sup>29</sup> *ibid* 239.

<sup>30</sup> J Kammerhofer, 'Introduction: The Future of Restrictivist Scholarship on the Use of Force' (2016) 29 *Leiden J Intl L* 13.

<sup>31</sup> O Corten, 'The Controversies Over the Customary Prohibition on the Use of Force: A Methodological Debate' (2005) 16 *Eur J Intl L* 803, 821.

<sup>32</sup> *ibid*. See also A Bianchi, 'The International Regulation of the Use of Force: The Politics of Interpretive Method' (2009) 22 *Leiden J Intl L* 651 ('Any serious attempt to rebuild social consensus on the interpretation of the rules governing the use of force must be geared towards seeking a common methodology within the interpretive community that generates the official discourse', at 675).

respective interpretive community, no acceptable outcome should be expected.<sup>33</sup> Nevertheless, the above proposal could be considered as merely shifting the place of contestation from the substantive scope of the rules at stake, to the method deployed to identify their ambit. This debate, however, stems from broader disagreements concerning the security of the state or even one's vision of international law. True, agreeing on a shared methodology, however difficult that is, could comprise a welcome first step. But the political disagreements that generate the above divergences persist and will, therefore, most likely defeat the purpose of the authoritative call for a common understanding on the methodology to identify the relevant norms. As the legal and political aspects of the use of force are closely interwoven,<sup>34</sup> the debate between the restrictivists and the expansionists could equally be intractable, if not infinite. And the international community is eventually left with a fundamental discord on the scope of a foundational and ordering principle, such as the prohibition on the use force. In a nutshell, certain differences are not only too wide to bridge, but also so diverging that they could be seen as posing a fundamental challenge to the fabric of international law's authority.

In addition to the previous claim, it should be borne in mind that sometimes it is too difficult to strike the right balance or to remain equally distant from positions that seemingly stand in the two extremes. When the stakes are high, the international law professional -either a scholar or a decision-maker or an implementer of the law- shall not remain neutral, but she should instead take an energetic stance. In other words, the Aristotelian golden mean oftentimes is too difficult to reach and in many occasions, is not, or should not be desirable. True, Roberts rightfully qualifies the comparative approach to international law 'as a springboard to larger normative questions.'<sup>35</sup> Granted, the field of comparative international law, despite being 'primarily descriptive and explanatory, it also brings to the fore normative and theoretical questions, such as whether divergence or convergence should be celebrated or feared, encouraged or discouraged, and what findings of similarities and

<sup>33</sup> Bianchi (n 32) 676.

<sup>34</sup> *ibid* 675.

<sup>35</sup> Roberts, 'Is International Law International? Continuing the Conversation' (n 24).



differences might mean for how one conceptualizes international law.<sup>36</sup> If, nevertheless the above remarks hold true, then the call for a normative framework guiding one's engagement with international law and substantializing the proposed comparative approach to international law is more than warranted.

The identified lack of a normative vision leaves the work under consideration exposed to the critique of suspicion and consequently to potentially second-guessing the author's objectives. The hermeneutic of suspicion has recently become a common trope in legal scholarship and has been defined as

‘the idea that contemporary elite jurists pursue, vis-à-vis one another, a “hermeneutic of suspicion”, meaning that they work to uncover hidden ideological motives behind the “wrong” legal arguments of their opponents, while affirming their own right answers allegedly innocent of ideology.’<sup>37</sup>

Far-fetched as it may sound for our purposes, the critique of ‘[s]uspicion is valuable because it helps us see our field differently; what was once thought benign is shown to be troubling, what was once taken-for-granted is shown to be contingent, what was once familiar is shown to be strange.’<sup>38</sup>

Scoville's review of *Is International Law International?* provides an adequate reply to this critique. He suggests that, despite (or perhaps precisely owing to) its being effective in exposing the differences among international lawyers and textbooks, Roberts's book should rather be perceived as ‘merely a *conversation-starter*’, that is, ‘a set of hypotheses – on the questions of whether, to what extent, and how those differences matter.’<sup>39</sup> Quite tellingly, Roberts picked this idea up and responded to

<sup>36</sup> Roberts and others, ‘Conceptualizing Comparative International Law’ (n 16) 6.

<sup>37</sup> Duncan Kennedy, ‘The Hermeneutic of Suspicion in Contemporary American Legal Thought’ (2014) 25 L and Critique 91 (citations omitted).

<sup>38</sup> I Roele, ‘Policing Critique’ (2018) 81 Modern L Rev 701, 704. Roele goes on to use the metaphor of guerilla struggle to illustrate that the hermeneutic of suspicion is political by nature (‘[p]olitics is always contextual – something is at stake here and now, there and then. The hermeneutics of suspicion are political in the mode of guerilla struggle.’ *ibid.*)

<sup>39</sup> R Scoville, ‘The Divisible College of International Lawyers’ (30 October 2017) available at <[www.lawfareblog.com](http://www.lawfareblog.com)> (emphasis added).

many of the comments raised in the Symposium dedicated to her book by arguing that her work does not purport to provide final, or even, answers at all to many interesting questions, but should rather be approached as ‘the start of a conversation ... and a platform for future research.’<sup>40</sup>

My last remark relates to the self-awareness exercise through the means of comparative international law. Noble and useful as this exercise is, certain inherent limitations are attached to it, of which international lawyers should be aware. As Wählisch succinctly observes, ‘[i]n any event, involuntary cognitive frames that narrow or widen legal interpretation are unavoidable.’<sup>41</sup> From a broader perspective, Odenstedt summarizes Gadamer’s related work on the (absence of) full awareness of context-dependence in a passage that deserves to be quoted in full:

‘According to Gadamer, however, the absence of full awareness of context-dependence is not due to a deficiency of reflection [Mangel an Reflexion] but to the essence of the historical being [im Wesen des geschichtlichen Seins] that we are. To be historically [Geschichtlichsein] means that knowledge of oneself can never be complete.’<sup>42</sup>

<sup>40</sup> Roberts, ‘Is International Law International? Continuing the Conversation’ (n 24).

<sup>41</sup> M Wählisch, ‘Cognitive Frames of Interpretation in International Law’ in A Bianchi, D Peat, M Windsor (eds), *Interpretation in International Law* (OUP 2015) 331, 351.

<sup>42</sup> A Odenstedt, *Gadamer on Tradition: Historical Context and the Limits of Reflection* (Springer 2017) 121, fn 86. The relevant excerpt reads as follows: ‘Auch die Erhellung dieser Situation, d.h. die wirkungsgeschichtliche Reflexion, ist nicht vollendbar, aber diese Unvollendbarkeit ist nicht ein Mangel an Reflexion, sondern liegt im Wesen des geschichtlichen Seins, das wir sind. *Geschichtlichsein heißt, nie im Sichwissen Aufgeben*. Alles Sichwissen erhebt sich aus geschichtlicher Vorgegebenheit, die wir mit Hegel >Substanz< nennen, weil sie alles subjektive Meinen und Verhalten trägt und damit auch alle Möglichkeit, eine Überlieferung in ihrer geschichtlichen Andersheit zu verstehen, vorzeichnet und begrenzt. Die Aufgabe der philosophischen Hermeneutik läßt sich von hier aus geradezu so charakterisieren: sie habe den Weg der Hegelschen Phänomenologie des Geistes insoweit zurückzugehen, als man in aller Subjektivität die sie bestimmende Substantialität aufweist.’ Hans-Georg Gadamer, *Gesammelte Werke: Hermeneutik: Wahrheit und Methode.1. Grundzüge einer philosophischen Hermeneutik. Bd. 1*, vol 1 (Mohr Siebeck 1990) 307 (emphasis in the original).



Put otherwise, comparative international law, as either a separate field or an approach, carries the potential to facilitate the knowledge of one's self. Nonetheless, its dynamic character should not be overstated. The background, the biases, and the assumptions of the international lawyer will always influence her scholarship, to a lesser or greater extent. As it has been eloquently argued, 'non-partisanship and 'objectivity' is hard to achieve, especially for those interpreters who serve strategic policy interests while applying international law.'<sup>43</sup>

Most of the above critical remarks would *prima facie* appear to be connected to each other. This is because, as hinted above, they could all be approached as originating from a common challenge: the assumption of international law's universality. The *chapeau*-idea that permeates and eventually binds these points together lies in fashioning the conceptualization of law as a unity of perceptions and practices. However, the construction of a unity based on the homogenization of social facts or their evaluation is first and foremost a domestic law objective and achievement. The institutional spaces of the State create the possibility for the unity of law within and among them. The State and its machinery also mediate between different spaces so as to maintain and promote the – otherwise fragile – self-image of unity. This image of law's unity cannot be easily portrayed at or projected to the international sphere. It is precisely in cases when the latter is attempted that the elusive promise of a universal international law is generated. Be that as it may, the above observation should not be seen as attempting to dismiss comparative international law's value altogether, as the self-knowledge potential that comparative international law brings with it remains intact.

#### 4. *Concluding thoughts*

'*Is International Law International?*' serves as the starting point of further research, provided, as argued above, that the latter is guided by or integrated in a coherent normative framework. Not all differences are based on good faith nor should neutrality always be envisioned as the desirable outcome of this exercise. Such a normative account can furnish the required criteria that enable a critical assessment of the dif-

<sup>43</sup> Wählisch (n 41) 331, 351.

ferences between diverging perceptions and interpretations. Drawing from Wählisch's work, it could be convincingly argued that 'the interpretation of international law is a conversation, carried out with others and with oneself',<sup>44</sup> and this is the type of conversation Roberts invites international lawyers to engage in. Ideally, this conversation should be both outward-looking, namely among users of international law, as well as inward-looking, that is, self-reflective, so as to unmask our own biases and assumptions. At the same time, international lawyers should be mindful of the fact that self-knowledge will, by necessity, never be fully achieved.

As divergent interpretations are proposed by different powerful users of international law based on their strategic interests, the relationship between international law and international politics undoubtedly gains immense importance. Consequently, Ku asks whether international law is law,<sup>45</sup> and Chasapis-Tassinis succinctly claims that Roberts's message is obscured, since she appears to be simultaneously advancing two seemingly contradictory ideas; on the one hand, that international law could be separated from international politics, and, on the other hand, that 'international law reflects international power'<sup>46</sup>.

The question that naturally flows from the preceding observations concerns the possibilities and the promises that international law offers. Roberts does not provide 'good answers to these questions'.<sup>47</sup> After all, her objectives were different. Taking into consideration that the book could be read as a sociological account of the international legal profession, Hernández's following claim seems quite pertinent:

'if we are to have any faith in international law's emancipatory potential, however thin, then we must assume our own agency and responsibility for the vocabularies that we deploy and use in the name of internationalism, of universalism, and of all humanity. Our indirect, yet

<sup>44</sup> *ibid.*

<sup>45</sup> Ku (n 26).

<sup>46</sup> Roberts, *Is International Law International?* (n 1) 289, also cited and discussed in Chasapis-Tassinis (n 3) 189.

<sup>47</sup> Roberts, *Is International Law International?* (n 1) 321.



powerful, influence on the continued development of the international legal order depends on it.<sup>48</sup>

This influential proposition reminds international lawyers of their responsibility, which, if taken seriously, could go a long way toward safeguarding the autonomy, but not insularity, of international law. In any event, we should not lose sight of the bigger picture. As Rasulov instructively prompts when commenting on the lessons learnt from Chimni's *International Law and World Order*,<sup>49</sup> 'theoretical strategy and the necessity of continuing the struggle for a better international law'<sup>50</sup> (should) constitute the backbone of international legal scholarship.

There is so much richness in examining and comparing our perceptions, internal and external to international law, that reach to its ontological core. Roberts's book urged us to discuss and question the commonality of our assumptions, thus uncovering many of the suppositions prevailing within our discipline. To sum up, Roberts sets the scene of an ongoing, or rather never-ending, conversation. She forces us to see and examine differences and ask questions about our goals and the substantive underpinnings of international law as a whole. Even if all the above critical remarks contain a grain of truth, her achievement is no small feat.

<sup>48</sup> G Hernández, 'The Responsibility of the International Legal Academic: Situating the Grammarian Within the 'Invisible' College' in Jean d'Aspremont and others (eds), *International Law as a Profession* (CUP 2017) 160, 188.

<sup>49</sup> BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, CUP 2017).

<sup>50</sup> A Rasulov, 'A Marxism for International Law: A New Agenda' (2018) 29 Eur J Intl L 631, 643.

