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Friendship between Nations and the Theory of International Public Goods: A Balancing Act between Minilateralism and Multilateralism*

La amistad entre los Estados nación y la teoría del bien público internacional: un acto de equilibrio entre el minilateralismo y el multilateralismo

Andrés Tellez Núñez

B.A. (Legal Studies), Master of Philosophy and Doctor of Philosophy, Universidad Pontificia Javeriana. LL.M., Georgetown University. Associate Professor at the *Facultad de Ciencias Jurídicas* of Pontificia Universidad Javeriana. aatellez@javeriana.edu.co
https://orcid.org/0000-0002-6775-4101

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Abstract

This investigation has the purpose of showing that given the fragmentation of classic multilateralism in the context of international law of trade and politics, an emerging minilateralism that provides international relations with a new and fair context is juridically and morally acceptable as long as human dignity can be deemed both a value and a source of law. By means of a dogmatic and hermeneutic methodology, and once the features of the tension between multilateralism and minilateralism, the theory of public goods, and the use of some tools of law and economics have been presented, it is discovered that States and their representatives continuously engage in calculations in order to obtain and preserve what they consider good and beneficial, and it is concluded that a balance between minilateralism and multilateralism can be achieved.

KEYWORDS

Multilateralism, minilateralism, Resolution 2625, fragmentation, liberalization.

Resumen

Esta investigación tiene como objetivo mostrar que ante la fragmentación del multilateralismo clásico en el derecho internacional de la política y del comercio, un minilateralismo emergente, que dé un alcance renovador y justo a las relaciones entre Estados, es jurídica y moralmente aceptable en cuanto se considere que la dignidad humana sea tanto valor como fuente del derecho. Mediante una metodología de investigación dogmático-hermenéutica, y una vez expuestas las características de la tensión entre el multilateralismo y el minilateralismo, los argumentos que fundamentan un nacionalismo bueno, y la vinculación de estas nociones con un estudio de la teoría de los bienes públicos en el contexto de una amistad internacional que proclama que ellos son objetivamente buenos con base en algunas aproximaciones de una teoría clásica (platónica) de justicia y la utilización de algunas herramientas del derecho económico, se descubre que los Estados y sus representantes continuamente llevan a cabo una serie de cálculos en aras de obtener y conservar lo que ellos perciben como bueno y como beneficio, y se concluye que una posición intermedia entre un minilateralismo y un multilateralismo es aceptable siempre y cuando se considere que la dignidad humana es fuente y valor del derecho.

PALABRAS CLAVE

Multilateralismo, minilateralismo, Resolución 2625, fragmentación, liberalización.

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INTRODUCTION

The history of modern international law comprises two periods. One corresponds to the second half of the 20th century; the other corresponds to the third decade of the 21st century, which also coincided with the beginning of a pandemic. Both periods can be described broadly and respectively one as *multilateral-liberal* (Fandl, 2021, p. 582; Yusuf, 2020, p. 505) and the other as *minilateral-reactionary*, with marked overtones of political and economic nationalism (Puig, 2014, pp. 492 and 496; 2015, p. 14; Yusuf, 2020, pp. 505 and 508).

This piece of research—which was undertaken in the context of a philosophy of international law research project on the crisis of multilateralism—aims to study the last period through an examination of the theory of international public goods[1] by stating that multilateralism has gone through a process of erosion and fragmentation (Agon, 2020, p. 76; Lehmann, 2017, p. 407; Melo, 2017, p. 160; Puig, 2015, p. 16) and has become a *nationalistic minilateralism* (Téllez, 2022, p. 86)—preceded by regionalism (Agon, 2020, p.76)—something that may only be juridically acceptable if it ultimately contributes to the development of the international community through the protection and enjoyment of international public goods by safeguarding the national interests of the States. This would be equivalent to an actual and true international friendship, which can only be achievable when human dignity is considered a source and value of the law (Habermas, 2010, pp. 3-4), and the respect for human rights is a top-priority governmental issue. The working hypothesis of this research defends the existence and emergence of a nationalistic minilateralism as follows: the search for virtue and for the good of an agent—the State—results in the good of the group—the international community—in a context of alterity, something that is achieved when the subject of law, if virtuous, acts to achieve the good of others[2]. Therefore, in a normative scenario of international relations, the working hypothesis can be summarized by asserting that if in a post-war multilateralism the correct assumption entailed the promotion of cooperation and the avoidance of war and famine through the enactment of international norms, in the second period referred to above, there seems to be a change: the

[1] The search and possession of international public goods are elements that can explain the proper enforcement of public international law norms. In the *Laws*, Plato says the following about the greatest ignorance and its relationship with the appreciation of goods and the good: "When someone doesn't like, but rather hates, what in his opinion is noble or good, and likes and welcomes what in his opinion is wicked and unjust" (3.689a).

[2] The relationship between the pursuit of good and virtue by an individual as an element to achieve happiness in the State is found in Plato's *Laws* (1.630c3-6; 4.705d3-706a4; 4.707d1-5; 6.770c7-e1; 12.962b4-963A4) and *Republic* (4.419a-421c; 433b). However, whereas the *Republic* does not insist on the virtue of citizens since many are not philosophers, the *Laws* aims at citizens' being virtuous (Bobonich, 2002, pp. 119-120; Purshouse, 2006, pp. 49 and 53; Rosen, 2005, pp.53-54; Stalley, 1983, p. 59).

search for the international good no longer seems to occur in a hierarchical sense—from the multilateral level to the minilateral level or from the largest dimension to the smallest dimension or top down—but in the opposite direction: from the minilateral to the multilateral level, from the smallest to the largest dimension and from bottom up: the State acts first in a reduced context and that is reflected in the international organization (Puig, 2015, p. 58).

There is a current trend in which apparently States first seek their own good; a virtuous calculation assumes that (only) then can the good of the international community be materialized. In post-war multilateralism, the State's good was sought by universalizing (Lamp, 2016, p. 118) and prioritizing the good of other States. In the minilateralism of the 21st century, the good of other States is sought by prioritizing the State's own good[3]. Although both approaches should theoretically result in the good of the community of nations, the first one, that is, the liberal-multilateral approach seems to give way to the second one: a nationalistic (reactionary) minilateralism. This would be juridically acceptable only when *human dignity* is considered the source and value of the law and the enforcement of international human rights law within the State is deemed both a means and an end[4]. In this sense, this Article seeks to review this hypothesis from the philosophy of international law in the context of the challenges posed by the interpretation and application of international legal norms when trade unilateralism and isolationism policies (Téllez, 2022, p. 93), authoritarianism (Gingsburg, 2020, p. 257), and the violation of multilateral commitments have become more prevalent.

The method of this research is both dogmatic-normative and hermeneutical (Cho, 2001, p. 461; Lehmann, 2017, pp. 422 and 426; Pemmaraju, 2021, p. 195; Wheatley, 2020, p. 195[5]) as the study seeks to specify the new interpretative contours of the Declaration on the Principles of International Law Relating to Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, Annex to Resolution 2625 of the XXV General Assembly of the

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[3] Plato's *Laws* establishes a relationship of dependence between goods and virtue without ignoring that virtue is a good in itself. The corresponding passages of *Laws* are 660e2-661d3 (Bobonich, 2002, pp. 89 and 134).

[4] The specific mechanisms by means of which this can be materialized include, for example, the inclusion of provisions that protect the rights of minorities and labor conditions general monitoring, environmental due diligence, etc. in minilateral treaties (Téllez, 2022, p. 88 and Shaffer, 2019, p. 23). It is worth noting that the word *dignity* is understood according to its ordinary meaning; from the perspective of juridical science such expression means both a value and a source of law.

[5] I agree with Wheatley (2020, p. 195), who in my opinion outlines the main contours of the hermeneutic method: "Words for international lawyers mean what international lawyers decide they mean."

Organization of Nations United Nations (hereinafter "Resolution") and article II of the General Agreement on Tariffs and Trade (hereinafter "Agreement").

The empirical evidence considered for purposes of this Article comprises (i) the existence of tyrannical regimes[6] that tend to violate the territorial integrity of other States[7] and their capacity for self-management and political self-organization, which have proliferated in the last twenty years; (ii) the emergence of trade protectionism (García et al., 2019, p. 35; Meyer, 2015, p. 1979; Meyer, 2018, p. 531; Trebilcock and Trachtman, 2020, p. 22) along with the use or abuse of nationalistic or isolationist positions in the international political and legal sphere. The reader may notice references to some tactics of economic (Shaffer, 2019, p. 42) and political nationalism that according to the hypothesis I put forward sometimes apparently violate the substantive and adjective dictates of international law, but which, if adopted with respect for *human dignity* and human rights, would be juridically and politically acceptable.

This text is divided into two chapters. The first chapter presents an illustration exercise from the philosophy of international law on the notions of multilateralism and minilateralism, and lays out their main features. The second chapter presents a new theoretical proposal[8] of international friendship considering the hypothesis that this work tries to demonstrate by means of which an approach to the theory of international public goods and a categorization thereof is presented.

The approach contained in this Article represents a hermeneutical effort (Lehmann, 2017, p. 424) to characterize the legal, political and economic reality of modern international relations. It provides the heuristic elements to achieve a balance between a multilateral position and a minilateral position, thereby allowing nations to experience and enjoy international public goods and their happiness to be materialized in the form of physical and psychological well-being.[9] This of course does not necessarily entail that violations of human rights and international conflicts or infractions of the international legal regime would ever cease; however, the hypothesis defended in this Article gives some light with respect to the axiological environment that should

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[6] This means tyranny, which is the opposite of the rule of law.

[7] Territorial integrity is a quality that is central to the process of interpreting any norm of public international law (Damrosch and Murphy, 2014, p. 359).

[8] This Article is not focused on the theory of economic boycott since such topic exceeds the theoretical framework of the conduct of this research.

[9] In the *Republic* and in the Laws, Plato says that there is a connection between the achievement of justice and pleasure (Stalley, 1983, p. 59).

surround the application of international legal norms that seek to guarantee global peace and harmony or, broadly speaking, international friendship.

1. THE AXIOLOGICAL TENSION BETWEEN LIBERAL MULTILATERALISM AND REACTIONARY MINILATERALISM. A HERMENEUTICAL BALANCING ACT

This first chapter outlines two existing trends as to how public international law has been experienced: on the one hand, the premise of global trade liberalization that was set out after the Second World War—classical multilateralism—which is reflected, for example, in article II of the Agreement[10]; on the other hand, the new trends that advocate a nationalistic (reactionary) minilateralism. The attacks on the part of the administration of Donald Trump a few years ago against global initiatives on environmental protection, the World Trade Organization, and the North Atlantic Treaty Organization (NATO) are evidence of this. This latter trend that lacks certain central elements of justice will be discussed later on in this Article.

In the first section, I explain the characteristics and problems proper; in the second section I explain how the positive contours of nationalism could be deemed a juridically acceptable response in the context of international economic relations.

The approach to how justice ought to be experienced lies in the fact that the intention of one entity to do something good to another entity is tantamount to doing something good to the first entity itself; such act is virtuous and, therefore, leads to happiness[11]. Should this criteriological premise be used in the conduct of international relations, one can also state that the government that seeks its own good, which is something virtuous, will also seek the good of the global community. In a certain sense, a minilateral-nationalistic approach is a stance that places national interests above global interests; it is neither legally nor politically unacceptable only if the aim or objective sought is the promotion of the protection of human dignity as a source and

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[10] Subparagraphs a) and b) of Article II of the Agreement read as follows: "The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date." The definition, scope and one of the dimensions of the expression *minilateralism* and a contrast with multilateralism have been studied by French academic Alice Pannier at some length.

[11] This is a platonic stance that is found in both the *Republic* and the *Laws* (Stalley, 1983, p. 59).

a value of law (Habermas, 2010, p.1). Although from a philosophical and grammatical perspective there may be a contradiction when stating that seeking one's interest and placing it above the interest of others could entail an act of injustice, this rebuttal can be discussed and challenged by stating that (i) under the elements of the theory of rational choice that is exactly what happens at the level of reality; (ii) seeking one's interest or good is not injustice if what is sought, at the same time, is the good of the other agent. The first position can be called (i) *rational-normative*, and the second position can be called (ii) *altruistic.*

A notion of international friendship would involve finding a balance between the search for one's well-being and the search for the good of entities. Is that possible or achievable? Under what scheme? Under alliances or minilateral or multilateral groups? The reader should note that this research involves providing theoretical elements that could mitigate or weaken positions that cause harm and discomfort to the international community in the context of the *ought*. I believe that the rule of law necessitates governmental leaders who are not only entrusted with reading and applying the principles of international law, but who also have an interpretative guide of what friendship between nations is or ought to be like. Hence, what is justice and injustice?[12] What is good and what is not? And how is the pursuit of isolationist policies outlined in the context of this reflection? I will try to address these issues in the following sections of this Article.

1.1 The Clash of Forces between Multilateralism and Minilateralism. A Vicious Circle

The expression ***minilateralism*** (Lehmann, 2017, p. 427; Stemler et al., 2017, p. 595) was coined by the former editor of *Foreign Magazine Policy*, Moisés Naim, in the context of a new theory, according to which the participation of the *smallest number* of States is sought to have the maximum possible effect to solve a problem (Brummer, 2014, p.18; Powell and Low, 2011, p. 265). *Minilateralism* can be opposed primarily to what has been called *multilateralism*, but it can also be against what Krisch (2014, pp. 1-2) labels as a decline in the era of consent and an emergence of informal mechanisms of creation of legal norms that have had to do with a liberal character under the premise of the defense of human rights and a crisis of legitimacy of international institutions (Roth, 2021, p. 60). As to the weakening of (mutual) consent as a form of creation of international law and when a lack of formalism is mentioned, unilateralism looms large (Lehmann, 2017, p. 425) at an undesirable extreme, which is also a reflection of power asymmetries

[12] The so-called *principles of justice* are mentioned in the Vienna Convention on the Law of Treaties. Human dignity as a value and source of central law in the process of interpreting treaties is referred to by Téllez (2020, p. 211) following Habermas (2010).

(Krisch, 2014, p. 10). How many decisions can be made without consulting other States and how many actions can be implemented unilaterally? I think that unilateralism does not fit into basic natural law premises; in contrast, it is a combination of consent with an observation of material evidence what explains the foundation of (international) law (O'Connell, 2021, p. 141). I also believe that an axiological challenge within a realistic vision of law seeks to achieve a balance of the two positions referred to above by discarding unilateralism. Nonetheless, in the context of the conduct of international relations, neither minilateralism nor multilateralism can be cast off, and not on all occasions there will be a formal consent; therefore, it is necessary to find tools that allow the interpreter to explain and support a redefinition or a resignification of the action, either consented or not, not so much in terms of the reason why it does result or not in intervening in the affairs of other States (for example, for humanitarian reasons[13]), but instead in terms of describing how they act: either States act through small clubs or groups (minilateralism) or they act through large formal structures formed after the Second World War (multilateralism).

Perhaps the theory of international public goods with the identification of certain criteria can give theorists some light in this characterization and resignification effort. I stated at the beginning of this Article that the search for one's good must entail and suppose the search for the good of other agents. In the context of mutual relations between States, there are two levels of consent that have been weakened and could regain some vigor through the mechanisms put forth here. The two levels of consent are the following ones: (i) the one corresponding to the stage of creation of the legal norm, which is the drafting of an international treaty; (ii) the one corresponding to the enforcement and compliance stages of an international agreement. The problem of consent and its relationship with multilateral, minilateral and unilateral positions in the following two precise ambits is worth examining: (i) the scope related to the search for international peace and security; (ii) the scope related to international trade.

In the context of the pursuit of international peace and security, for example, the Charter of the United Nations—which sets forth the rules on to the use of force and self-defense exceptions—is a multilateral treaty. Its entry into force required the consent of the negotiating States, but the

[13] The issue of intervention with humanitarian purposes and the theory of *responsibility to protect* (R2P) exceeds the scope of this investigation for it seeks to illustrate not so much why an intervention takes place or whether there is a violation of the principle of non-intervention or not. In contrast I examine how an intervention must proceed considering a resignification of the principle of non-intervention in a multilateral or minilateral context. Roth (2021, pp. 64-65) discusses the duties of entities that are not members of a community and Wheatley (2020, pp. 171-172) summarizes the stance of the International Court of Justice on the principle of non-intervention. From a philosophical and legal point of view, the scope of the word *coercion* continues to be an object of reflection and analysis. This study outlines the discussions of Michael Bayles, Joel Feinberg, Joel Rudinow, and Scott Anderson (pp. 177-182).

decisions of the Security Council also require their members consenting to the corresponding resolutions. Thus, there are two levels of consent required in a multilateral context, the second of which seems to have been weakened by minilateral or unilateral positions either because it is not obtained or because it is not even sought. Should this occur, (i) the first level of consent and even (ii) the principle of non-intervention end up being eroded and apparently breached, and will only be juridically materialized as long as the good of others is sought. This is equivalent to stating that international public goods are safeguarded on the basis of the promotion and respect of human dignity that must be considered a source and a value.

Should the substantial contour be human dignity, the minilateral approach (sometimes also unilateral) can eventually be considered both just and valid as long as dialogue is promoted, freedom of expression is protected, and human rights law monitoring structures in the context of environmental protection, public health, prisons administration public policy (corrections), labor standards, etc., are implemented (Téllez, 2022, p. 95).

Regarding international trade law, the academic research on the tension between multilateralism and minilateralism has taken place basically at two levels: firstly, as to the proliferation of trade agreements between a small number of States (Trebilcock and Trachtman, 2020, p. 48) that have eroded and fragmented universal legal institutions (e.g.: article II of the Agreement) and, secondly, as to the relationship between trade and investment. In this sense a series of effectiveness criteria of the international trade legal system and the interaction with the private sector have been identified. With respect to the first level, the minilateral schemes that tend to fragment the international trade system could be avoided or reduced by protecting international public goods through interpretative guides that local courts could have at hand (Puig, 2015, pp. 17-18 and 55). With respect to the second level, the tension between trade and investment could be tackled through the protection of the interests of private investors who inevitably act in light of hyper-globalist instruments (Brummer, 2014, p. 86). Opting for a multilateral route or a minilateral route additionally implies decision-making processes based on probabilities and not on certainties. Even when a public good can be identified and the goal is to maximize the profit and reduce the cost (Krisch, 2014, p. 38) or the eventual loss, the truth is that States, just as it occurs with individuals, act based on probabilities and uncertainties. Defining whether this is rational or irrational deserves another philosophical examination; however, in international trade law there is (i) incomplete information and (ii) uncertainty about the consequences and how they should be computed. There is also a typical *prisoner's dilemma context* (Jacobsen, 1999, p. 781; Lehmann, 2017, pp. 432 and 434; Williams, 2019, p. 706) that makes States follow or prefer to follow their own set of rules (Lehmann, 2017, p. 432) rather than cooperating.

These scenarios also explain why a minilateral configuration emerges when cooperation can be captured more clearly than in a multilateral or universalist context, but the temptation to proceed with a global harmonization effort—multilateralism—is evident. Hermeneutics (Cho, 2001, p. 461) demonstrates that a harmonization of rules (Lehmann, 2017, p. 421) will necessarily entail problems of interpretation of legal norms that will (again) lead either to unilateral actions or to actions not entirely consented to, which would violate the essence of democratic principles and sovereignty—despite the rejection of its traditional notion (Kaul, 2012, p. 747; Lehmann, 2017, p. 425; Roth, 2021, pp. 68-69 and 77; Pemmaraju, 2021, pp. 178 -179 and 182; Shao, 2021, p. 224)—something as to which there seems to be no other option than a fruitful dialogue to discover the position and interests of the other agent (Lehman, 2017, p. 409).

The main features of multilateralism and minilateralism in two areas— security and trade—have been previously explained, and a path to reach a balance between these two approaches—a balance that could be achieved on the basis of understanding how a minilateral structure that privileges national interests is or can be juridically acceptable—has been suggested. In the following sections, the process of exchange of information and of individualization of claims, which seems to be something more realistic and efficient, will be explained.

1.2 Towards a Good Nationalism

Nationalism as a political and anthropological expression has a positive and a negative contour. Usually from the point of view of constitutional law, its negative aspects are studied, aspects that the desire for domination and hegemony and the imposition of cultural and sociological values (Naranjo, 2014, p. 106) entail. However, in the context of the tension between two extremes that seem to be contradictory—multilateralism and minilateralism—and which I explained in the first section of this Article, the positive side of nationalism can be seen more clearly: if international normative instruments that were designed after the Second World War were inspired by the rational and altruistic idea of avoiding international conflicts and permanently motivating the achievement of consensus (Lienau, 2017, p. 544), the dynamics of recent decades show that the phenomena of inequality[14] and inequity (Lawrence, 2019, p. 521) either cannot be effectively treated by international standards—of a commercial or economic nature—or they are subject to exceptions and violation or non-compliance[15], in some cases with acceptable juridical and moral grounds.

[14] The World Bank (2019).

[15] See notes 17, 18 and 19.

A universal vision of justice—which is the most salient aspect of international law corresponding to the first period, which could now be called "transnational law" (Pemmaraju, 2021, p. 193)—is efficient and effective, but only up to a point. Generally, it is the rational expression of humanity to extrapolate a series of juridical and axiological postulates showing the essential equality of human beings. But the human nature and the human condition, notwithstanding their generic features, include specificities that justice and law are not capable of treating in a universal fashion;[16] rationality also has a limit that, once exceeded, ends up becoming irrationality. Thus, a call for individual justice concentrated on *doing* —more than on *being or finding*—prevails because States or individuals (Roth, 2021, p. 85) notice the lacks of universal premises (Habermas, 2010, pp. 7 and 16). This, at the level of the States, takes the form of nationalistic expressions that seek to protect interests given the characteristics of their economies, their political systems and their forms of government.

The working hypothesis studied in this Article states that as long as these nationalistic expressions do not seek to violate the values and principles of international law, that is, they do not cause damage or impair public goods—which catalogue will be referenced in the second part of the Article—there may be room for them in minilateral settings (Brummer, 2014, pp.1-21). Consequently, a small group of States through international agreements actually exempt themselves from general provisions, and seek that their disputes and the dispute resolution mechanisms operate in more precise and reduced instances (Trebilcock and Trachtman, 2020, p. 57). A nationalistic expression on the part of an agent or an entity seeking only to protect their own interests by violating or failing to comply with international norms by unilaterally increasing tariffs would correspond to negative or bad nationalism (Chow et al., 2019, p. 2137). On the contrary, an approach that seeks to protect human rights and has human dignity as a value within the context of the State and is embodied in small and reduced international instruments would correspond to positive or good nationalism (Téllez, 2022, p. 99). This occurs in the context of the so-called "contested multilateralism" ("refuted multilateralism"), a trend according to which entities gradually move away from international legal regimes and create "diffuse" regimes (Julia Morse and Robert Keohane cited by Melo, 2017, p. 160). The United States of America, for example, which seems to appear as a defender and perhaps the creator of modern multilateralism, has been predominantly a protectionist nation, and has increasingly moved from multilateralism to minilateralism in the form of bilateralism. (Melo, 2017, p. 164) and even some protectionism (Williams, 2019, pp. 683-86).

[16] The passage from Plato's *Laws* from which it can be inferred that law as universal is not omnipotent is 6.769b-771a.

Two phenomena seem to surround the origins of this trend: on the one hand, the perception or intuition that international global standards do not work. On the other hand, a series of opposing interests between the so-called developed countries and the so-called non-developed countries (Melo, 2017, pp. 192-195). These phenomena can also be labeled as "conflicting interests" (*competing interests*), which serve as a framework to phenomenologically understand the praxis of international relations. These conflicting interests can be summarized as follows: (i) the interests of the State opposed to the interests of the individual; (ii) the interests of international regimes as opposed to local or national regimes; (iii) the assignment of governmental powers to enforce international law; (iv) the aspiration of human rights universalism as opposed to particular sociological and cultural views (Damrosch and Murphy, 2014, pp. 920-921). These conflicting interests underlie the working hypothesis that is studied and examined here as the phenomenon of minilateralism-nationalism (Téllez, 2022, p. 99) seems to be the natural and obvious result of the intricacies of human reality in the context of international relations. Thus, on the one hand there is an institutional apparatus, the State, and on the other hand there are persons (humans) who tend to be overwhelmed by its power and dominance—this is why constitutional law exists—. Furthermore, the State inserts itself into the international community, but just as it occurs to the individual within their State, they remain subject to an authority that they recognize. Finally, that same international authority gives the State a series of tools (Pemmaraju, 2021, p. 175) that it can use at the domestic level to enforce international commitments, which are materialized by walking a tortuous path in which sociological and cultural differences end up either reducing its scope of application or simply resulting in the creation of exceptions or different avenues such as, for example, minilateralism. The reader will notice that, in the end, what exists is a permanent conflict between the vision of the State and the vision of the individual; the vision of the international community and the vision of the domestic or local community—the government, in a broad sense—; the rights and duties of the State as to the international community and their particular appreciation and the values and principles (Damrosch and Murphy, 2014, pp. 920-21). In the current context, I do not find a position that explains and provides a solution to the current problem in a better fashion than a *nationalistic* one based on human dignity as a value and source of law that is reflected in minilateral international commitments. Consequently, an outline of the working hypothesis studied here states that (international) law shares common features with morality, politics (Kaul, 2012, p. 738), and aesthetics (Rosen, 2005, p. 62). From the semantic or grammatical point of view, it can even be stated that law is politics, and that, in a certain philosophical context, nothing that is considered legal or fair can be immoral or unpleasing; everything that is just is good (Stalley, 1983, p. 24).

The phenomenon of minilateralism-nationalism when observing its good and aesthetical dimension would then find an explanation at the following levels: (i) the lack of specificity of in-

ternational rules of a global nature within the multilateral context; (ii) the possibility of determining more precisely the needs of the population of few States; (iii) the existence of internal and external calculations as to the alleged benefits that result from either following multilateral commitments or introducing exceptions that can be considered violations or non-compliance (Meyer, 2015, pp. 1975 and 1979).

The issue of State behavior rationality or irrationality—regardless of its having previously ratified international agreements—and the fact that Governments introduce exceptions or flagrantly violate legal provisions will be studied in greater detail in the second part of this Article. In any case, a calculation prevails both in the sphere of internal political dynamics (of both governmental officials and legislators), and in the international sphere. At the same time that States seek to obtain what is perceived to be a benefit—at the internal level, it could be a public policy-related electoral one (Lehmann, 2017, p. 415; Meyer, 2015, p. 1975).)—there is also a calculation about what the violation of a multilateral commitment would represent: the State's reputational cost (Gustafsson, 2017, pp. 1213-14 and 1220). Thus, there is a constant and paradoxical tension between the international and the domestic scope (for example, the anti-free trade stances and, generally, the authoritarian rhetoric typical of the second and third decade of the 21st century attacking multilateralism). The perception of the good and right, perhaps, although laudable, is not precise when expressed in a multilateral instrument. In this sense, the drafters of international commercial and economic standards seek cooperation that at the level that occurs outside the borders seems to sound good, although it does not respond to local demands as to which the only solution seems to be resorting discriminatory measures (Meyer, 2015, p. 1943) or preferring minilateral groups. Someone may refute this characterization and say that this analysis is not necessary since international agreements, for example, the Agreement, contain a series of provisions (articles XX and XXI[17]) in the form of exceptions. In fact, an international agreement

[17] Article XXI of the Agreement states: "Nothing in this Agreement shall be construed (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials or the materials from which they are derived; (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; (iii) taken in time of war or other emergency in international relations; or (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security." Regarding this aspect, it is worth clarifying that the working hypothesis studied here does not state that minilateralism must prevail over multilateralism or that it has already done so. Instead, this Article describes a global phenomenon, not exclusively evident in the United States of America, by virtue of which both certain States and certain government officials in a tumultuous political and public health context appear to be contesting classic multilateral structures that in some ways have already undergone a

may contain exceptions, but in certain cases, the adjective and substantive premises of the rules have not been met and the State winds up breaching international norms[18]. Being closer or not to a multilateral system has an axiological contour finding its roots in human nature and the human condition. Just as it happens in the life of a person who finds fulfillment as soon as he or she feels and perceives that he or she belongs to something and that his or her actions are appreciated and sought after, States and their representatives perceive the intrinsic value of a system. In the postwar period, the system called multilateral was the most plausible option. But in the second and third decades of the 21st century, in a world that has changed (Roth, 2021, p. 89), the system is no longer multilateral, but regional or minilateral. Belonging to something is questioned regarding its purposes and means and universalization is experienced and perceived as insufficient and inefficient.

The perception of the benefit derived from belonging to a system ("system value") (Gustafsson, 2017, p. 1203) entails a consideration of the following aspects: *conditionality*, *risk weighting*, *reciprocity* and *penalty*. There is a certain rational approach (Meyer, 2015, p. 1975) that is not necessarily intelligent, useful, or altruistic, and that is aimed at obtaining benefits. Both an academic and a communitarian approach to the experience of the *ought* of international relations can be theoretically divided into "instrumentalist" theories, which group realistic and institutional positions and "normative" theories. Such analytical division results in noting that international law compliance and non-compliance feature a cost-benefit analysis (Gustafsson, 2017, p. 1205). Hence, the perception of the benefit, but also of the cost, involves a continuous calculation[19] made by the States and their representatives; it has also changed in the last seventy-seven years in the sense that even though suppositions and conjectures exist, the intuition about what benefits and costs are has shifted both in the stages of creation and application of international legal rules.

This perception of the benefit or good and its cost implies the following: (i) a compliance rationale analysis, which means that States fulfill obligations because they perceive their implicit good or because they seek to receive a reward or go unpunished depending on whether they observe rules or not; (ii) timeliness, which means observing how often non-compliance events are evidenced. Regarding (i), the hypothesis defended here affirms that international legal nor-

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process of erosion. I believe that the most illustrative example is the behavior of Donald Trump during his four years in office between 2017 and 2021, a behavior that has found an echo in other parts of the Global South.

[18] Palmer, D. (September 15, 2020).

[19] In the *Laws*, Plato says that drafting laws involves a calculation of what is good for the State. See passages 1.644d1-3 and 1.644d7-645b8 of the *Laws*. Jacobson (1999, p. 777) also has an interesting opinion on this.

ms, as long as they are just, are good, and that the benefit is materialized or obtained as a result of being in line with the rules. Regarding (ii), authors such as Abram Chayes and Antonia Chayes, cited by Gustafsson (2017, p. 1224), speak generally about substantial and temporary limits and forms of the mandates to explain why States either comply with or breach international law.

In this second section, I have tried to present the arguments to defend the good side of nationalism, which represents an alternative to classical multilateralism. Even though sometimes it is difficult to draw a dividing line between rationality (Meyer, 2015, p. 1975) and irrationality (Lehmann, 2017, p. 414) when the behavior of States is assessed—in other words, it is difficult to understand whether their behavior falls within rational parameters or not—a hermeneutical approach allows to deduce that there is a set of common features in their actions to find traces of legality in their actions. Such traces would correspond to their perception of (public) goods and how they can be obtained.

2. FRIENDSHIP BETWEEN STATES AS A SEARCH FOR (PUBLIC) GOOD

This second chapter discusses the issue of States friendship and zeroes in on the theory of the international public goods and the description of positions that regardless of being "rational" must always be guided by an altruistic spirit. The contours of international public goods and their location and foundations within public international law will also be examined to demonstrate the working hypothesis as follows: seeking the good of the State can result in the materialization of international public goods as long as rational approaches and altruistic approaches are balanced. Properly understanding the theory of the public goods must be accompanied by an adequate perception of the scope of liberal and democratic regimes based on the following corollary: to the extent that the democratic forms and structures of a State meet certain thresholds—which are described in the next paragraphs—the possibility of forging a friendship under the terms of the Resolution may be higher. The possibility of ruining the friendship between nations may be greater if these features are not met[20]. In this sense, it should also be considered that natural expressions of *cultural relativism* (Damrosch and Murphy, 2014, p. 953) may be overcome to the extent that goods are labeled as goods as there is a moral and juridical objectivism (Roth, 2021, p. 66) that allows the contours of the Charter of the United Nations, the Agreement and the Resolution to be interpreted for the protection and promotion of international friendship.

[20] This is the theory of *democratic peace* (Longley, R., January 2, 2022).

2.1 International Public Goods

Now I want to address the following topics: (i) a general description of a theory of objects or goods that advocates their intrinsic goodness; (ii) an analysis of the main international public goods. In fact, recent literature on economic analysis of public international law examines the theory of public goods in order to explain the processes of creation and application of international legal rules and, in doing so, it seeks to explain why States behave as they behave, particularly in this third decade of the 21st century.

The theory of goods that underlies the working hypothesis featured in this Article entails two factors: (i) an intercommunication between the agent, in this case, the State, and the international public good(s); (ii) the intrinsic goodness of the object regardless of any assessment on the part of the State and of its representatives. Even though both the intercommunication process and the intrinsic goodness of the object have already been studied in moral philosophy[21], current academic legal literature does not seem to be largely focused on their use to describe and explain the dynamics of public international law as a juridical and legal framework of international relations. I intend to use this approach to study the phenomenon of fragmentation (Danielsen, 2011, p. 52; Hassanien, 2008, p. 54 and Trachtman, 2008, p. 207), and a legitimacy crisis of public international law (Roth, 2021, pp. 60-61 and 74), particularly as to economic relations (Puig, 2015, p. 18), and in order to contextualize the catalog of international public goods (Linderfalk, 2020, p. 895). In this sense I believe that given the conflicting or opposing interests that were mentioned in the previous section, three questions can guide this discussion: (i) can there be a universal consensus on what is objectively just, that is, good, regardless of sociological, cultural, and political differences? If so (ii) would both the creation of the international legal rule, and its application be protected against any position or ground that puts forward different legal, anthropological, and cultural conceptions?; (iii) can objective goods be identified? (Bobonich, 2002, pp. 89, 144 and 150).

These questions cannot be answered easily, not to mention the difficulties resulting from their being confronted with the tension between multilateralism and minilateralism that was explained in the first part of the Article, since minilateralism seems to be a response to the apparent inefficiency of multilateralism to deal with problems of global inequality and injustice. It can be said for now that all States, regardless of whether they follow or not the path of multilateralism—much less often—or minilateralism—more often—seek to maximize benefits and reduce

[21] Bobonich's study (2002, pp. 144 and 150) about Plato's moral objectivism in the *Laws* is one of the main inputs of this research and supports the working hypothesis that I intend to examine and show here.

costs—the theory of rational choice—even though philosophy of law must answer the question on whether what they perceive as benefits—regardless of the means to obtain them—are actually benefits or goods or not. The theory of goods would indicate that there is not only a process of intercommunication in which an agent—in this case, the State—takes part, but also that there are goods that are objectively so regardless of the assessment of the agent (the State or its representative). I believe that this argument can be useful in the context of an evaluation of fragmentation, and sheds some light on the process of explaining the principles contained in the Agreement and the Resolution with less hermeneutical difficulty and as international conflicts arise.

Regarding the intercommunication between public goods—which catalogue I present in the next section—and the agent (the State or its representative), a platonic approach adapted to the context of international relations can be implemented and posit that the correct perception of the public good will depend on the characteristics of the State and its agents: hence the State must be a democratic regime; it must respect and promote human rights; it must not use force or threaten the use of force against other States; it must respect the territorial integrity of other States, etc. (Almqvist, 2017, p.3). Only the State that displays these distinctive traits will be able to truly appreciate the international public good and adapt its contours to the creation of international legal rules. They are virtuous States. On the contrary, undemocratic regimes that violate human rights, that curtail freedoms and rights of their population, that do not respect the territorial integrity[22] of other States, etc., will not be able to perceive international public goods. They are non-virtuous States.

Both (i) the objectivity of goods (Bobonich, 2002, pp. 89, 144 and 150) and (ii) the weakness of a stance that defends a juridical and moral subjectivity that enables States and government officials to breach international law are based on a natural law position that deems reason and nature as equivalent notions[23]. Thus, a rational position can be considered as such as long as it coincides with natural law. Because reality exceeds rules (Cohen, 2007, p. 129), it can then be stated that nature is the supreme valid rule. This leads to a conclusion in the sense that human

[22] The political community has the territory as its nucleus or center. As Roth (2021, p. 63) states it, this cannot be said enough.

[23] The identification of reason and nature is defended by Plato in *Laws* (631c-d and 690c). Some careful reader of the *Republic* and the *Laws* will find it at least problematic that in this same text both a platonic vision of justice and a defense of the democratic regime are presented. I admit that this is not easy to understand and that it actually entails some degree of intellectual tension. Stalley (1983, p. 120) says that the *Laws* seems to show more sympathy towards democracy than the *Republic*.

dignity as a source and value of law would enlighten the process of perceiving and appreciating international public goods.

I put forth the following academic classification of international public goods which are mutually interdependent: (i) those goods that are necessarily included within the State; (ii) those necessarily included within the framework of the *ought*; (iii) those of a moral and material nature. The first criterion outlines a first set of international public goods, which are the following ones: (a) the rule of law and (b) a robust (not merely formal) democratic regime (Naranjo, 2014, p. 468). The second criterion outlines a second set of international public goods: (a) peace; (b) security; (c) the environment; (d) territorial integrity. The third criterion outlines a third set of international public goods: (a) reputation; (b) territorial integrity; (c) money; (d) health. With respect to this typology of goods, there are the following functional duties of States: as to the first criteria, (i) the ability to self-organize; as to the second criteria, (ii) the ability to act justly and legally and to demand just and legal behavior from other entities; as to the third criteria, (iii) the ability to interact with any other entity it wishes[24].

This classification is just an effort to characterize what States look forward to achieving and protecting in (an apparent) rational manner, although sometimes their actions seem to be more irrational than rational. As long as a State cannot be objectively deemed a real democracy, it will not be able to perceive the international public good that is realized (Krisch, 2014, pp. 6-7) as a result of being a true democratic regime. In any case, this classification of international public goods is not exhaustive; likewise, the human rights provisions set forth in the *Bill of Rights*[25] must be read by deeming human dignity a source and a value of international law. Hence, the normative system of international law and the principles and values incorporated in the corresponding legal rules entail the effective protection of international public goods under a set of objectifying criteria resulting in their being not dependent on any particular view or on any specific administration or government official.

In the context of a conception that does not separate what is just from what is good (Stalley, 1983, p. 24) such approach allows the interpreter and creator of the international legal rule to distinguish events of illegality and to mitigate the hermeneutical problem (Pemmaraju, 2021, p. 198) associated with interpreting treaties and inquiring the true intentions and motivations of

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[24] Russia demanded Ukraine to not be a party to the North Atlantic Treaty Organization (Martínez, A, December 17, 2021).

[25] That is, the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (Damrosch and Murphy, 2014, p. 934).

government leaders. It is worth clarifying that this catalogue of international public goods has an economic content in the sense that States representatives, just as it occurs with any human person, make economic calculations about how much it costs to comply or not with a rule of international law. If money measures all things[26], international law is not the exception.

Catalogue of international public goods

Classification of international public goods	1. Those necessarily included within the State	1.1 Rule of law 1.2 Real (not merely formal) democracy
	2. Those necessarily included within the ought	2.1 Peace 2.2 Security 2.3 Environment 2.4 Territorial integrity
	3. Those of a moral and material nature	3.1 Reputation 3.2 Territorial integrity 3.3 Money 3.4 Health

I have already presented above the main features of a theory of international public goods according to which goods are objectively and intrinsically good as long as there is an intercommunication with the agent, which, in the context of international law, is the State. As long as the State is a democratic regime and human dignity is a paramount value and source of the law, searching, obtaining, and enjoying international public goods, even in a minilateral context, and even by prioritizing national interests, will result in the well-being of the global community.

In the second section, I will outline some aspects about international friendship, which in this Article is deemed equivalent to the existence of harmony between peoples.

2.2 Alterity in a Context of Mutual Interference

There are two ways by means of which the particular rules of public international law that are of special interest in the conduct of this research can be interpreted: the first way could be deemed "authoritarian"; the second way could be deemed "altruistic." The first one is closer to an understanding that is merely rational whereas the second one resorts to human dignity to provide it with an altruistic scope at the same time that the role of reason is not underestimated. It can be discussed whether or not international law legal norms are (i) applied rationally

[26] Aristotle says this in passage 5.5.1133ª1.20 of the *Nicomachean Ethics* (Barnes, 1995, p. 1788).

in a context in which it is assumed that they are constructed and drafted by rational agents; (ii) ultimately enforced by rational agents. Some may state that the entities that apply international legal rules are not rational but irrational. One could also think that an altruistic rather than an authoritarian approach to international law is in itself irrational (Lehmann, 2017, p. 414). This statement could find some degree of support when events involving States and also their own actions where rules of international law that were rationally extrapolated and that are rational and reasonable end up being violated or breached by those States that participated in its creation and drafting. Regardless of whether the substantive or adjective legal rules may have been formally breached or broken, what takes place here is that the intention of the State and of its representatives is altruistic in the sense of seeking to do good to themselves and to other actors.

In this case, one cannot characterize this phenomenon as a violation of international law but rather as a violation of *legal* provisions (Roth, 2021, pp. 72 and 87) resulting from seeking the protection and enjoyment of international public goods. One way to relieve some tension between the realm of what is rational and altruistic—should there be a clash between these two positions—is by building a bridge between (i) the axiological foundations of the law—set of legal values and the principles of international law extrapolated by the Resolution—and (ii) international public goods that are goods because they are objectively recognized as such (Bobonich, 2002, pp. 89, 144 and 150). In doing so, a position that relativizes law is weakened if *law* is understood as a notion that is equivalent to morality, since nothing that is fair or just is or can be deemed bad, and nothing that is unfair or unjust is or can be deemed good (Stalley, 1983, p. 24). Hence, international friendship entails the existence of harmony (Jacobson, 1999, p. 771) between the consideration of national interests and international interests so that by seeking to protect and promote first the priorities of a State in particular, the consequence is the protection and enjoyment of international public goods.

I have outlined the main notes of an international friendship, which means harmony between the national interest that is rationally discovered, and the appreciation and enjoyment of goods that are objectively deemed so.

CONCLUSIONS

This Article aimed to study a working hypothesis that states that classical multilateralism has undergone a process of erosion, and fragmentation, and has become a nationalistic minilateralism that can (only) be juridically and morally acceptable when international law is materialized as a result of search for the good of agents who not only make their national interests prevail through reduced and small groups and alliances but also perceive and live human dignity as both a source and value of law. In order to study this working hypothesis, the research covered two

main theoretical fields: on the one hand, the characterization of the opposition between multilateralism and minilateralism with a particular approach to what can be deemed or labeled as *good nationalism*; on the other hand, the description and analysis of the theory of public goods pointing out that these are objectively good as long as they are perceived by a strong and substantial—not merely formal—democracy in the context of the rule of law. Defending the stance of moral objectivism and defending the equivalence of law and morality corresponds to the philosophical and juridical contours featured by the platonic theory of justice. A topic that will be the subject of future research is the rationality or irrationality of agents (States), an issue as to which this manuscript has already outlined some moot points.

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