

SIMPOZIJUM O KNJIZI / BOOK SYMPOSIUM

PREDGOVOR / PREFACE

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PREFACE TO BOOK SYMPOSIUM:  
MIODRAG JOVANOVIĆ,  
*THE NATURE OF INTERNATIONAL LAW*  
(Cambridge University Press, 2019)

*The Nature of International Law* (hereinafter: *NoIL*) by Miodrag Jovanović, published by Cambridge University Press, comes at a time marked by a sharp increase of philosophical interest in questions of international law. Even within this line of recent, at times substantial contributions to the literature, Jovanović's book is in many ways an outlier. Firstly, while legal philosophers have overwhelmingly focused on narrow topics of international criminal law, humanitarian intervention, migrations, human rights law,<sup>1</sup> *NoIL* tackles the persisting issue of legality of international law heads on. Secondly, and in sharp contrast with some more recent books on the topic,<sup>2</sup> *NoIL* engages in a discussion about the nature of international law with contemporary and past legal philosophy, without confining itself to one (by and large Anglo-American) tradition of legal thinking.

Even though it garnered significant attention after its publication, unfortunate and alarming events, starting in late 2019 and lasting until now, have significantly hindered organised attempts to discuss both the arguments and the ideas of the book. From a philosophical perspective, Jovanović approaches the subject-matter by tackling the perennial problem of conceptualising law, and he does so in a very specific way. His challenge to the methodological orthodoxy, convincingly based on both elaborate philosophical argument and on theoretical authorities in the

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1 See, for example, Tasioulas, J., Besson, S. (eds.), 2010, *The Philosophy of International Law*, Oxford University Press.

2 See, Lefkowitz, D., 2020, *Philosophy and International Law*, Cambridge University Press; Haque, A. A., 2021, International Law: System or Set?, *EJIL:Talk!*, (<https://www.ejiltalk.org/international-law-system-or-set/>).

field, leads him to abandon conceptual essentialism in favour of the prototype theory of concepts, allowing for an insightful analysis of typical features of law, namely — normativity, institutionality, coerciveness and justice-aptness. This is the angle from which Jovanović casts the question about the nature of international law, and it is from this perspective that he argues for the conclusion that international law shares all the features typical of national law.

Philosophical arguments of the book have been subject to philosophical scrutiny in previous book forums.<sup>3</sup> Backed by *Union University Law School Review (Pravni zapisi)*, *Serbian Association for Legal and Social Philosophy (IVR Serbia)* and *Belgrade Legal Theory Group (BLTG)*, this symposium, organised on 18th of June 2021 at the Faculty of Law University of Belgrade, took a deferent route. Its purpose, on the one hand, was to stress-test the common belief that scholars writing in the field of international law, being inclined to legal argument based on sources, institutions, and practices, are reluctant to tackle more abstract philosophical issues. On the other hand, the aim of the symposium was to try to challenge the stubborn notion that philosophy of law is extraneous to the quotidian concerns of legal practice, interpretative concerns of legal dogmatics, and descriptive concerns of legal science. With this in mind, the invitations to participate were extended to established and rising international law scholars from the region and (just) one philosopher of law.

I am proud to present the result of their engagement with *NoIL* in this volume of *Pravni zapisi*. Jernej Letnar Černič and Ana Zdravković tackled the arguments of the book by scrutinising Jovanović's analysis of the law-making nature of activities of non-state bodies in international law (Černič) and by elaborating on *erga omnes* obligations in international law as precursors to *jus cogens* norms (Zdravković). Tatjana Papić and Miloš Hrnjaz took note of the substantive philosophical concepts and methodological tools developed in *NoIL*. Building on from there, their contributions inquire into the relation between indeterminacy and uncertainty in international law (Papić) and even develop a novel theory of the formation of international customary law as an alternative to the dominant additive theory (Hrnjaz). Goran Dajović, being the only philosopher of law discussing the book, addresses *NoIL* on its philosophical merits, by challenging Jovanović's exposition of normativity – one the most contested issues in contemporary philosophical debates about international law. Aimed at bringing the philosophical debate closer to the domestic public, it is also the only contribution published in Serbian.

3 See *Revus, Journal for Constitutional Theory and Philosophy of Law*, 2021, Vol. 43, (<https://journals.openedition.org/revus/5741>).

As a whole, the papers resulting from the symposium expose the aforementioned commonly held beliefs regarding international law scholarship and philosophy of law as simplistic prejudices. At their best, efforts in the domain of philosophy of law infuse the landscape of a legal discipline with novel approaches and novel ideas, change the focus of debate, provide legal science with refined tools for approaching its subject. The reply written by Jovanović shows that this is not a one-way street and that the input of legal science, in this case of international law scholarship, is invaluable to philosophy of law both as a testing ground for those novel approaches and ideas and as a source of factual knowledge about law.

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