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Narratives in International Law*

Summary

This contribution sets out to trace an unacknowledged narrativity of international law. It argues that narratives are cognitive instruments that organize the experienced knowledge in the form of a story. Within these stories, narrators can invent characters and concepts. In international law, a plurality of narratives exists and they can have a strong influence on the understanding and the development of international law. Against the background of a constant struggle over the authority of interpretations, narratives are used as tools for argumentation and persuasion. In a final part, this paper locates the narrative of collective security in international law to illustrate how narratives can function in the international legal system.

Zusammenfassung

Dieser Beitrag ergründet die Narrativität im Internationalen Recht. Narrative wirken als kognitive Instrumente, die Erfahrungen in Form einer Erzählung organisieren und strukturieren. Narrationen erlauben ihren Erzählern und Erzählerinnen Konzepte und Figuren neu zu erfinden. Im Internationalen Recht existiert eine Pluralität von Narrativen, die wiederum einen starken Einfluss auf das Verständnis und die Entwicklung des Rechts selbst haben. Narrative unterstützen Argumentationen und Überzeugungen vor dem Hintergrund eines ständigen Ringens um die Autorität von Interpretationen. Sie werden existentiell. Der finale Part dieses Beitrags lokalisiert das Narrativ der kollektiven Sicherheit im Internationalen Recht und zeichnet dessen Funktion im internationalen Rechtssystem nach.

Résumé

Cette contribution vise à tracer une narrativité inavouée du droit international. Elle fait valoir que les récits sont des instruments cognitifs qui organisent la connaissance expérimentée sous la forme d'une histoire. Dans ces histoires, les narrateurs peuvent inventer des personnages et des concepts. En droit international, une pluralité de formes narratives existe et elles peuvent avoir une forte influence sur la compréhension et le développement du droit international. Dans le contexte d'une lutte constante autour de l'autorité des interprétations, les récits sont utilisés comme outils pour l'argumentation et la persuasion. Dans une dernière partie, cette contribution localise le récit de la sécurité

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collective en droit international pour illustrer comment les récits peuvent fonctionner dans le système juridique international.

I. The Space Between

In international law, the possibility that there could be a story behind an interpretation or behind law-making processes is oftentimes rejected. As it was famously argued by *Richard Weisberg*, "law, proud law, dressed in a little brief authority, stubbornly resists full recognition of its basically narrative nature."[1] The concept of narrative was only cautiously taken into consideration by scholars who analysed judgements, and until today the vast majority of the work on narratives in law is concerned with the analysis of legal decisions in domestic law. In international law, there are only very few instances in which scholars hint at the existence of stories or even set out to analyse them.[2] Commonly, narratives are seen as a part of literature, as an art and as such cannot possibly have anything to do with law. I was intrigued by narratives because I felt they could be crucial for the understanding of how international law works nowadays. As *Tracy Chapman* phrased it, "there is fiction in the space between – the lines on your page of memories – write it down but it doesn't mean – you're not just telling stories."[3]

In this contribution, I set out to trace the unacknowledged narrativity in the field of international law. The project is structured in two parts: The first part is characterized by a predominantly conceptual approach to narratives, to what they are and how they function. Since narrative analysis originates from literature studies, I first approach the liaison between the disciplines of international law and literature. I develop a broader framing to locate the discussion of narratives in the context of language and interpretation. Narratives form a meaningful totality and I therefore suggest that narratives effectively function as mental tools that shape, influence and manipulate the understanding of international law. Furthermore, I ask how narratives establish themselves as authoritative readings of international law.

In a second step, I localize an example of narratives in international law: the narrative of collective security. In this part, I trace the prevailing narrative, analyse how and why it was created and examine the authority it establishes over time. I base my project on

1 *Weisberg*, Three Lessons from Law and Literature, Loyola of Los Angeles Law Review Vol. 27, 1993, 285 (285).

2 For one of these hints, see, for example: *Clapham*, Extending International Criminal Law Beyond the Individual to Corporations and Armed Opposition Groups, Journal of International Criminal Justice, 6/2008, 900. For comprehensive work on narratives in international law, compare, for example: *Orford*, Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law, 2007; and: *Slaughter*, Human Rights, Inc.: The World Novel, Narrative Form, and International Law, 2007.

3 *Chapman*, Telling Stories, SongLyrics.com, 2000, available at: http://www.songlyrics.com/tracy-chapman/telling-stories-lyrics/.

the assumption that international law can be understood as a rhetorical system, in which there is a struggle over the authority of interpretations, and in which argumentation and rhetoric are used to establish, or to undermine this authority.

II. Approaching Law and Literature

The use of literary criticism,[4] applying an analysis from rhetoric, narratology, mythology[5] or other fields, was prominently introduced to the discipline of law (and later international law) by scholars of a movement often referred to as 'Law and Literature'. Both of these disciplines are concerned with texts at the basis of their fields of study. In 1925, *Benjamin Cardozo*, an American jurist and judge, published an essay called "*Law and Literature*". *Cardozo* begins by stating that oftentimes the significance of literary techniques is mistaken by lawyers and he describes the lawyer's attitude as one that is "not of active opposition, but of amused and cynical indifference".[6] What he finds problematic about this points to the core of the liaison between literature and law:

> *"We are merely wasting our time, so many will inform us, if we bother about form when only substance is important. I suppose this might be true if anyone could tell us where substance ends and form begins. […] Form is not something added to substance as a mere protuberant adornment. The two are fused into unity."*[7]

Cardozo suggests that it is the form itself that safeguards the legal substance. He, who himself served as a judge at the New York Court of Appeals, even went further and characterized the activity of judges as "practicing an art".[8]

This far reaching statement only attracted closer attention again in the 1970 s. The beginning of the 'Law and Literature' movement is often situated in the 1970 s and linked to the publication of *James Boyd White's Legal Imagination*.[9] It was, at the same, time a reaction against the rationality of the 'Law and Economics' movement.[10] At the heart of the law and literature project lies the assumption that law, its principles and institutions cannot be understood from within the discipline of law itself, but that cultural

4 For further details, see: *Binder/Weisberg*, Literary Criticisms of Law, 2000, 112-200.
5 For example, of how myths may influence international law, see: *Wyler*, La Paix Par Le Droit: Entre Réalité, Mythe Et Utopie, in: Boisson de Chazournes/Kohen (eds.), International Law and the Quest for its Implementation. Le droit international et la quête de sa mise en oeuvre: Liber Amicorum Vera Gowlland-Debbas, 2010, 467–488.
6 Compare: *Cardozo*, Law and Literature: And Other Essays and Addresses, first published in Yale Review, July, 1925, reprinted 1986, 3-4.
7 Ibid., 4-5.
8 Ibid., 40: "He [the judge] is expounding a science, or a body of truth which he seeks to assimilate to a science, but in the process of exposition he is practicing an art.".
9 *Fludernik/Olson*, Introduction: Law and Literature Versus Law as Literature: Dissenting Opinions, in: Fludernik/Olson (eds.), In The Grip Of The Law: Trials, Prisons, And The Space Between, 2004, xxx-xli.
10 *Binder/Weisberg* (note 4), 3. For an example of the 'law and economics' method, see: *Dunoff/Trachtman*, Economic Analysis of International Law, Yale Journal of International Law Vol. 24, 1/1999, 1-59, especially the appended bibliography.

processes – "*the cultural sphere without which no meaningful social change can occur*"[11] – have to be taken into consideration.

Instead of turning to literature for its humanizing effects, literary criticism can offer a device to challenge international law's theories of interpretation and its perceptions of authority. Literature can allow for a questioning of the objectivity of international law, its self-conception as a science, and in turn law can challenge the perception of literature as an art that is exempted from political or ideological criticism.

1. On Language

> *"The world is out there, but descriptions of the world are not. […] The world on its own – unaided by the describing activities of human beings – cannot."*[12]

Language is part of the parcel of international law. It is a lawyer's most sensible nerve (if not to say her *Achilles* tendon). It constitutes the default settings she almost inevitable has to go back to. At the same time, language provides the biggest playground in law. It is existential for law.

In order to provide for legal certainty and predictability, "legal language aims to conceal its artificial origins".[13] Language is therefore intrinsically linked to law's authority. Artists and writers, on the other hand, confess that their creation on the basis of words is arbitrary, incomplete, personal and provisional.

The participation of law in the making of cultural meaning, more broadly of cultural life is essential for the functioning of the legal system. The word does not exist on its own, it "carries with it a semantic field of potential meanings which is partly governed by a social code and partly individualized by the unique features of whoever utters or interprets the word".[14] Thus, there is a collective and an individual element in language – a collective and an individual context. The meaning of language can never be fixed; it is instead shared by a certain community. The meaning of *jus cogens* in international law, for example, is not fixed by Article 53 of the *Vienna Convention on the Law of Treaties*, but is constantly reinterpreted over the years. Norms with a character of *jus cogens* develop and change, and it is a community of international lawyers that shares a certain meaning of *jus cogens* at a certain moment in time.

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11 *Aristodemou*, Law and Literature: Journeys from Her to Eternity, 2000, 10.

12 *Rorty*, Contingency, Irony, and Solidarity, 1989, 5.

13 *Aristodemou* (note 11), 2.

14 *Scholes*, 'Language, Narrative, and Anti-Narrative', Critical Inquiry Vol. 7, 1/1980, 204 (206-7). Scholes also refers to Jacques Derrida: "In this view, the medium of language – the material out of which linguistic signs are constructed, whether conceived as 'writing' (Derrida's 'écriture') or as 'speaking' (Saussure's 'sound-image') is based on 'difference'. Whether one conceives of language grammatologically or phonologically, the linguistic medium is generated by a series of differentiations or displacements. For spoken language to exist, human sounds must be organized into a system of phonemic differences. If we assume that these differences have priority over perception, then we must accept that we are indeed in a prison house of language. This is why Derrida says, 'I don't know what perception is and I don't believe that anything like perception exists.'".

The process of encoding a collective meaning in language is another way of describing how words gain their meaning and it is applicable to all forms of communication, such as writing, reading, speaking, listening, acting etc. On the individual level, *"[l]aw and legal language are always bound up in ethical choices*"[15] and these choices are limited by the collective social code. Since ethical choices vary depending on their collective coding around the world, the search for a common language in international law becomes a virtually impossible project.[16] In addition, limiting language to its verbal nature is restrictive as it "*engages parts of the self that do not function in explicitly verbal ways, and behind all of our attempts to describe or direct them remains an experience that is by its nature inexpressible*".[17] For the understanding of narratives, this non-verbal aspect of language, which relies on experience, is quintessential. A word derives meaning from the context in which it is used, yet context is made up of the elements to which it gives meaning. This has been described as the "hermeneutic circle". Hence, there is an unspoken foreknowledge – some shared knowledge that is already there, formed by experience and by the collective social coding described above.[18]

> *"Context [...] also includes what could be termed as the interpreter's internal context – namely, her past experience, the knowledge she has of the domain to which the text belongs, her presuppositions and so on and so forth."*[19]

Context is fundamentally connected to the experienced knowledge. Without going into much detail, it is to be stressed that knowledge is based on individual, social and cultural perception and it is never 'point-of-viewless'.

Consider, for example, the concept of an 'international community': The narrative of collective security creates and heavily relies on an 'international community', but the meaning of this concept cannot merely be explained verbally. Instead, the experiences of belonging to this community, and of being excluded from it, also generate meanings.

Language can accommodate fiction and imagination. Commonly, the legal discourse "*differentiates itself from literary discourse by virtue of its subject-matter ('real'*

15 *Weisberg* (note 1), 286.

16 For further reading, compare: *White*, 'Our Meanings Can Never Be the Same': Reflections on Language and Law, Rhetoric Society Quarterly Vol. 21, 3/1991, 68-77.

17 *White*, Law as Language: Reading Law and Reading Literature, Texas Law Review Vol. 60, 1981, 420.

18 *Esser*, Vorverständnis und Methodenwahl in der Rechtsfindung. Rationalitätsgrundlagen richterlicher Entscheidungspraxis, 1972.

19 *Bianchi*, Textual Interpretation and (international) Law Reading: The Myth of (in)determinacy and the Genealogy of Meaning, in: Bekker/Dolzer/Waibel (eds.), Making Transnational Law Work in the Global Economy: Essays in Honour of Detlev Vagts, 2010, 41.

rather than 'imaginary' events), rather than by its form".[20] The processes of creating fiction and imagination are non-issues in the legal world. This is all the more striking, since many fundamental tenets and concepts of the legal discourse are fictions: The State, nationality, responsibility and sovereignty, to name some examples. However, what is interesting in respect to narratives is the process of creation of these fictions, how they come into play.[21]

The original meaning of fiction, *fictio*, is "*something made*" and this implies "*not that they are false, un-factual, or merely 'as if' thought experiments"*,[22] but that they are formed. In this case the *German* word '*Gestaltung'* is very suitable to describe the process. Nationality,[23] to pick up the example, is constantly formed in the discourse, and as such it is not just an '*as-if thought experiment'*. This also means that fictions are in a constant process of revision. Considering another example of fiction in international law, the dualist approach defining customary law (*opinio juris* and practice) has become part of the vocabulary. Its use is deeply controversial at times, precisely when the process of forming this fiction becomes visible, when it is apparent that custom is a fiction.[24]

As this paper argues below, powerful narratives follow a strategy of concealing their fictitious and imagined components in order to convince the audience that they are telling the real story. Language is Janus-faced, as it is at the same time promising "*closure, fullness, and resolution [and] is the vehicle through which new stories, new interpretations, and new resolutions will be negotiated and contested"*.[25]

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20 See: *White*, The Question of Narrative in Contemporary Historical Theory, History and Theory Vol. 23, 1/1984, 21. For the relationship between discourse and narrative, compare: *White*, The Value of Narrativity in the Representation of Reality, Critical Inquiry Vol. 7, 1/1980, 7: "The idea that narrative should be considered less as a form of representation than as a manner of speaking about events, whether real or imaginary, has been recently elaborated within a discussion of the relationship between 'discourse' and 'narrative' that has arisen in the wake of structuralism and is associated with the work of Jakobson, Benveniste, Genette, Todorov, and Barthes." See also: *Foucault*, L'ordre Du Discours: Leçon Inaugurale Au Collège De France Prononcée Le 2 Décembre 1970, reprinted 2007.

21 As a note on the side, I would like to point to work on science fiction and law, see: *Travis*, Making Space: Law and Science Fiction, Law and Literature Vol. 23, 2/2011, 241–263. Orna Ben-Naftali and Francesco Francioni taught a seminar at the European University Institute on 'Science, Science Fiction and International Law', information available at: http://www.eui.eu/DepartmentsAndCentres/Law/ResearchAndTeaching/Seminars/2011-2012-I/Science,ScienceFictionandInternationalLaw.aspx.

22 *Geertz*, Thick Description: Towards an Interpretive Theory of Culture, in: Clifford Geertz (Ed.), The Interpretation of Cultures: Selected Essays, 1973, 15.

23 Compare: *Anderson,* Imagined Communities. Reflections on the origin and spread of nationalism, rev. ed., 1991.

24 See the discussion of practice of the International Criminal Tribunal for the Former Yugoslavia: ICTY, *Prosecutor v. Tadić*, Appeals Chamber, the Decision of 2 October 1995, para. 99; ICTY, *Prosecutor v. Furundžija*, Trial Chamber, Judgement of 10 December 1998, paras. 162 and 185; and: ICTY, *Prosecutor v. Kupreskič*, Trial Chamber II, Judgement of 14 January 2000, para. 527.

25 *Aristodemou* (note 11), 228.

2. On Interpretation

Interpretation is the warp and the woof in international law. Since there is no legislator (in the constitutionalist sense) in the international system, international law relies more than other branches of law on interpretation. In 1969, some basic rules on interpretation were codified in Article 31, Article 32 and Article 33 of the *Vienna Convention on the Law of Treaties*.[26] However, the rules on interpretation were largely contested and were subjects of a fierce debate before and during the conference.[27] A report of the *International Law Commission to the General Assembly* a couple of years before the *Vienna Conference* acknowledges this: *James Leslie Brierly* and *Sir Hersch Lauterpacht*, *"[t]he first two of the Commission's Special Rapporteurs on the law of treaties in their private writings also expressed doubts as to the existence in international law of any technical rules for the interpretation of treaties."*[28] The report goes on by stating that *"recourse to many of these principles [of interpretation] is discretionary rather than obligatory and the interpretation of documents is to some extent an art, not an exact science."*[29] In 1968, at the *Vienna Conference of the Law of Treaties*, it was the delegation of the *United States* who prominently raised these concerns.[30] Ultimately, however, the conference outcome followed a textual approach to interpretation and the adopted articles on interpretation are considered to be part of customary international law today.[31]

Since 1969, a textual approach to interpretation has become widely accepted in international law.[32] Underlying the assumption that there is an 'ordinary meaning' of

26 Vienna Convention on the Law of Treaties, adopted on 23 May 1969 (entered into force on 27 January 1980), 1155 U.N.T.S. 331. Article 31 is devoted to the general rule of interpretation, Article 32 to supplementary means of interpretation, and Article 33 to interpretation of treaties authenticated in two or more languages.

27 Compare also: *McTaggart Sinclair*, The Vienna Convention on the Law of Treaties, 1984, 114-119.

28 Report of the International Law Commission on the work of its Sixteenth Session, 11 July 1964, Official Records of the General Assembly, Nineteenth Session, Supplement (A/5809), A/CN.4/173 (Extract from the Yearbook of the International Law Commission: 1964, vol. II), 199.

29 Ibid., 200.

30 Compare: 'Official Documents -Vienna Conference on the Law of Treaties (Statement of Professor Myres S. McDougal, United States Delegation, to Committee of the Whole, April 19, 1968)', reprinted in: American Journal of International Law Vol. 62, 1968, 1021-1027. The US delegation was especially concerned with the hierarchy between general and supplementary rules of interpretation. Moreover, McDougal argued that "principles of interpretation, taken as a whole, have seldom in the past been considered as mandatory rules of law, precluding examination of relevant circumstances.", Ibid., 1022. Other States were also expressing their scepticism at the conference, compare: UN, Report of the 32nd meeting of the Committee of the Whole (United Nations Conference on the Law of Treaties, 26 March – 24 May 1968), A/CONF.39/C.1/SR.32 (Extract from the Official Records of the United Nations Conference on the Law of Treaties, First Session).

31 Compare: *Dörr* (Ed.), Vienna Convention on the Law of Treaties: a Commentary, 2012, 523, para. 6.

32 Compare: Ibid., 541. For the argument of interpretation as technique, see: *Bianchi* (note 19), 37. And in this context I would also like to refer to a related argument of international law as a technology, compare further: *Anghie*, Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law, Harvard International Law Journal 40, 1/1999, 64.

words and phrases is the understanding that the meaning of a text is determinate. Textual determinacy is still the "*prevailing paradigm*"[33] that is taught in law schools and practiced by international courts and tribunals. Consequentially, there is little room for the ambivalences of language discussed above. Textual determinacy has been critiqued by scholars of the critical legal studies movement, such as *Duncan Kennedy, David Kennedy,* or *Martti Koskenniemi*.[34] For CLS scholars, form and substance, and the objective and subjective dimension cannot be separated. They even suggest that "[t]he interminability of legal argument is the subtle secret of its success".[35]

Interpretation is thus not a matter of right or wrong; it is about persuading the others, consolidating opinions and about controlling these interpretations. In fact, interpretation can provide the tools to construct narratives. Inherently, law is a "*culture of argument and interpretation through the operations of which the rules acquire their life and ultimate meaning"*.[36] That is why international law can be understood as a rhetorical system. This rhetorical system is in turn restricted by certain rules:

> *"Il se peut toujours qu'on dise le vrai dans l'espace d'une extériorité sauvage; mais on n'est dans le vrai qu'en obéissant aux règles d'une « police » discursive qu'on doit réactiver en chacun de ses discours."*[37]

Interpretation takes place within a "*structure of constraints*".[38] *Michel Foucault* has linked this to the nature of disciplines itself: "*La discipline est un principe de contrôle de la production du discours."*[39] Along these lines, the discipline of international law has detected and begun to anxiously discuss the phenomenon of growing fragmentation. However, this fragmentation can also be seen as "*consubstantiel au système [juridique] lui-même",*[40] as part of the rhetorical system of international law.

Stanley Fish once made a comment that is interesting to read against this background: "*It has been my strategy in these lectures to demonstrate how little we loose by acknowledging that it is persuasion and not demonstration that we practice*."[41] Ack-

33 *Bianchi* (note 19) 35.

34 See: *Kennedy*, Theses about International Law Discourse, German Yearbook of International Law Vol. 23, 1980, 353-391; compare also: *Kennedy*, International Legal Structures, 1987; *Kennedy*, Legal Reasoning: Collected Essays, Contemporary European Cultural Studies, 2008; and: *Koskenniemi*, From Apology to Utopia: The Structure of International Legal Argument, Reissue with a new epilogue, 2005. For a summary of the argument, see also *de Schutter*, Les Mots Du Droit: Une Grammatologie Critique Du Droit Interntional Public, Revue quebecoise de droit international Vol. 6, 1989, 120–132.

35 *Kennedy*, A New Stream of International Law Scholarship, Wisconsin International Law Journal Vol. 7, 1/1988, 1 (39).

36 *White* (note 17) 436.

37 *Foucault* (note 20), 37.

38 *Fish*, Is There A Text In This Class?: The Authority of Interpretive Communities, 1980, 356.

39 *Foucault* (note 20), 37.

40 *Zarbiev*, Les politiques des vérités juridiques en droit international: Propos autour d'une controverse interjuridictionelle, Finnish Yearbook of International Law Vol. 18, 2007, 343 (365), with reference to: UN, International Law Commission, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law', Report of the Study Group of the International Law Commission (Finalized by Martti Koskenniemi), A/CN.4/L.682, 13 April 2006.

41 *Fish* (note 38), 367.

nowledging persuasion, we arrive at the question of how narratives come into play in the process of interpretation. One way to describe narratives is that they provide a framing for and thus constrain interpretations.[42] The narrative of irregular migration in international law, for instance, upholds a distinction between so-called 'regular' migration and 'irregular' migration. This narrative can constrain the interpretation of human rights of migrants. Concerning access to health care, for example, 'irregular' migrants are facing lower standards of protection within many legal frameworks.[43]

The role of narratives in interpretation has also been captured by the "*parol evidence rule: in the first [stage] its presence on the 'interpretive scene' works to constrain the path interpreters must take on their way to telling a persuasive story […] then, the rule is invoked to protect the meanings that flow from the story."*[44] In this sense, narratives locate meanings in a particular setting.[45] The narrative of collective security in international law, for example, has located and appropriated many other stories within its script exercising its authority to define what constitutes a 'threat to international peace and security'.[46]

Interpretation becomes a "*creative process [that] is collective and social"*.[47] Understanding international law as a rhetorical system allows us to trace the crucial role narratives play in interpretation. Stories are essentially created to support, confirm, safeguard or to undermine the authority of an interpretation in international law.

III. Narrative Nature of International Law

In international law, treaties are written, customary international law is developed (and constantly developing), interpreted by courts, discussed in articles by scholars, summarized in textbooks, commented on in commentaries and essentially passed on in teaching to law students. International law functions as a rhetorical system. Argumentation and interpretation are essential for its development. Nonetheless, the meaning and the role of narratives has not yet been well explored in international law. Initially, narrative criticism arose in relation to domestic case law in the *Anglo-Saxon* countries belonging to common-law systems. Until today, the vast majority of the work on narratives in international law is concerned with the analysis of judgements, there being only few exceptions.[48] The fact that narratives were first analysed in case law can also

42 See also: *Jackson*, Law, Fact and Narrative Coherence, 1988, 171.

43 Compare: Council of Europe, European Social Charter, Collective Complaint No. 14/2003 from the International Federation of Human Rights Leagues (FIDH) v. France, available at: http://hudoc.esc.coe.int/eng/?i=cc-14-2003-dmerits-en.

44 *Fish*, The Law Wishes To Have a Formal Existence, in: Stanley Fish (Ed.), There's No Such Thing As Free Speech. And It's A Good Thing, Too, 1994, 153.

45 *Cover*, Foreword: Nomos and Narrative, Harvard Law Review Vol. 97, 4/1983, 4: "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture.".

46 Compare, for example, the reaction to terrorism in 2001: UN, Security Council, Resolution 1373, S/RES/1373, 28 September 2001.

47 *Cover* (note 45), 11.

48 See, for example: *Orford* (note 2); *Slaughter* (note 2); *Nesteruk*, Corporate Theory and the Role of Narrative, Michigan State Law Review Vol. 2009, 4/2009, 933-945.

highlight a different insight. Norms are generally created by States and other actors involved in law-making; judges can then be called upon to interpret these norms, and critics comment on the judgements. This leads to a constant telling and retelling in order to generate the meaning of rules and concepts. These stories seem to be necessary for the functioning of international law.

1. To Tell Is To Know – On Narration

The origins of the word 'narrative' go back to the Latin verb *narrare*, 'to tell', and this is derived from the adjective *gnarus,* which means to have knowledge of something – skilful or practiced.[49] The history of the genre 'narrative' in literature is very rich and cannot be fully explored within the constraints of this paper.[50] characterize

Moreover, various theories about the origins of narratives exist. There are endogenous theories that characterize storytelling as natural, inherent and universal. The activity itself is described as constructing a world through mental activity.[51] In addition, there are also theories in which "*narratives serve to model characteristic plights of culture-sharing human groups"*[52] in a rather exogenous conceptualization. With regard to international law, both of these approaches are relevant.

Almost all stories in international law develop a storyline. Narratives commonly do this by defining a steady state – the ordinary way of how things are set out to be. This ordinary state can be taken as the starting point of a story. Stories can also be created with the intention to explain or solve a certain trouble or conflict. This conflict can take the form of a breach, or any other form of disruption. Oftentimes, troubles and finding solutions are what drives a narrative and provides it's dynamic. In case the story encounters a conflict, the plot usually moves to a state of redress or transformation, which leads to a situation where either the steady state is restored or where is it transformed. Out of this evaluation of the conflict, either restoring the steady state or transforming it, a narrative can develop its moral.[53]

Furthermore, *Anthony G. Amsterdam* and *Jerome Seymour Bruner* argue that narratives "*get a good measure of the hidden cargo that is its underlying script"*.[54] This

49 *Mitchell*, Editor's Note: On Narrative, Critical Inquiry Vol. 7, 1/1980, 3.

50 For an introductory overview, see: *Vogt*, Aspekte Erzählender Prosa: Eine Einführung in Erzähltechnik und Romantheorie, 2008. And: *Binder/Weisberg* (note 4), 215. Compare also: Northrop Frye's models: He identifies four myths of narrative literature: romance – irony, and comedy – tragedy; and regroups jurisprudential traditions according to that scheme. For more details, see: *West,* Narrative, Authority, and Law, 2001, 347 and 358.

51 Compare: *Amsterdam/Bruner*, Minding the Law, 2000, 115. Bernard S. Jackson addressed a call for caution to this approach: "I do not believe […] that the content of such narrative frameworks derive from some universal, perhaps genetically-endowed competence, even if our narrative structures of understanding so derive. Nor do I consider it sufficient to ascribe such narrative frameworks simply to 'social construction'.", see: *Jackson* (note 42), 172.

52 *Amsterdam/Bruner* (note 51), 117.

53 These characteristics are inspired by the definition of narrative given by *Amsterdam/Bruner* (note 51), 113-114. The moral of a story is not a necessary characteristic for all narratives. Unfinished stories, for instance, do not have one.

54 Ibid., 121-122.

distinction between script and narrative can be helpful for the understanding of possible troubles that stories integrate in their storyline. Oftentimes, the conflict that narratives address is taking place between some form of hidden cargo, originating from the steady state, and a new reality. The hidden cargo adds a further level in explaining how meaning is constructed. *Bernard Jackson* referring to *Algirdas Julien Greimas'* influential work *Sémantique structurale*, distinguishes between a "'*deep level' of signification and the 'surface level' or 'level of manifestation'*".[55] The narrative links every meaning to "*what […] culture designates as mattering. And what does or doesn't matter to a culture can be traced back through the culture's stories, its genres, to its enduring myths."*[56] Narratives can be the carriers of these myths.[57] State sovereignty provides a powerful example of such a hidden cargo in a script. It can also be part of the underlying script of other narratives, such as collective security. As such, State sovereignty dates back to the original conceptualizations of international law.[58] Oftentimes the *Westphalian peace treaty* from 1648 is cited as the beginning of this narrative. The script of State sovereignty was further established during the colonial period and nowadays faces a different reality in which, non-state actors, such as corporations gain increasing influence on the processes of international law. Taking into consideration this hidden cargo script of State sovereignty in other stories is helpful for the understanding of conflicts those stories encounter: Consider, for example, the tension State sovereignty creates for the narrative of the *Responsibility to Protect*. The conflicts that narratives encounter can appear in the form of ambiguities or doubts over interpretations of different epistemic communities.[59] Instead of concealing the origins of those interpretations, *"[n]arratives serve to warn us of the ever-present dangers that beset our scripts, of the fragility of the ordinary. […] [They] also work to reinforce the scripts."*[60]

An additional aspect that is interesting to discuss in relation to narratives in international law is narrative time. The narrative carries with it a sense of a beginning, middle and an end.[61] The sense of time is often concealed or imagined: "*Where one chooses to begin one's story is a part of the hidden-cargo script that defines what's to be taken as ordinary or as mattering in the narrative."*[62] Considering the concept of collective se-

55 *Jackson* (note 42), 27.
56 *Amsterdam/Bruner* (note 51), 111.
57 Ibid., 112.
58 Arguably, this narrative of sovereignty begins with the Machiavellian *mantenere lo stato*. See, e.g. *Roth-Isigkeit*, Niccolò Machiavelli's International Legal Thought – Culture, Contingency and Construction, in: Kadelbach/Kleinlein/Roth-Isigkeit (eds.), System, Order and International Law – The Early History of International Legal Thought (forthcoming).
59 Reading narratives against the background of the debate on fragmentation becomes an interesting exercise in this sense.
60 *Amsterdam/Bruner* (note 51), 122.
61 This is an allusion to Frank Kermode famous lecture series held in 1965 at Bryn Mawr College and published as: *Kermode*, The Sense of an Ending: Studies in the Theory of Fiction, 2000.
62 *Amsterdam/Bruner* (note 51), 124.

curity, for instance, most analyses of this concept go back to 1945.[63] However, there are continuities with the mandate system of the League of Nations that could be traced moving beyond 1945.[64] The authority of the narrator, the one knowing something – as the origins of the word narrative suggest – can be so powerful that it "*leav[es] the hearer or reader uncertain about whether a story reaches, as it were, a timeless logical conclusion, or a time-bound narrative one."*[65] Particularly regarding the exercise of reading narratives in international law, the time frame is often unclear or a story is presented to be timeless. The question of revealing hidden timeframes is highly dependent on the reader's sensitivity, her education and cultural background.

Generally, "*any narrative […] demands a progression from one point to the next, or at any rate, a change that may be in accordance with the time sequence or counter to it"*.[66] This does not imply that there always has to be progress. In contrast, the direction of this progression is not defined. As this paper argued above, plots are characterized by tensions and their resolutions. Therefore, "[*s]tories go somewhere*".[67] They commonly use an obstacle, a breach, or any disruption of the steady state, to develop upon. By addressing or resolving conflicts, narratives establish an order and localize and incorporate these conflicts in their storyline.

> *"The desire for narrative, for a beginning, a middle, and an end, is a desire for self-recognition and confirmation of our fragile sense of identity. […] The desire for narrative as a means of understanding ourselves and our world is central, however, not just to tragedy but to all narrative."*[68]

The narrative does not necessarily have to resolve the trouble or lead to a happy ending, but it has to find a solution that is "*made interpretable [and] becomes bearable"*.[69]

As a matter of fact, no narrative is complete, "*there are always gaps, silences, ignorances"*,[70] but it appears to resolve these contradictions, or to fill these gaps "*by appealing to our unconscious prejudices, superstitions, sentiment, and weakness"*.[71] Essentially, narration is not a chronological arrangement of events, but it is a process by which these events are given "*an order of meaning, which they do not possess as mere sequence"*.[72] The sense of an order that a narrative presents in terms of sequences

63 See for example: *Gowlland-Debbas*, Re-Interpreting the Charter's Collective Security System, in: Cardona Llorens (Ed.), La ONU y El Mantenimiento De La Paz En El Siglo XXI: Entre La Adaptación y La Reforma De La Carta, 2008, 273-287; *Franck*, Is Collective Security Through the U.N. Still Feasible?, Finnish Yearbook of International Law Vol. 9, 1998, 29-54; *Danchin/Fischer*, Introduction: The New Collective Security, in: Danchin/Fischer (eds.), United Nations Reform and the New Collective Security, 2010, 1-31.

64 Compare: *Kolb*, The Eternal Problem of Collective Security: From the League of Nations to the United Nations, Refugee Survey Quarterly Vol. 26, 4/2007, 220-225.

65 *Amsterdam/Bruner* (note 51), 127 (emphasis in the original).

66 *Riffaterre*, The Intertextual Unconscious, Critical Inquiry Vol. 13, 2/1987, 371 (381).

67 *Amsterdam/Bruner* (note 51), 127.

68 *Aristodemou* (note 11), 2.

69 *Bruner*, The Narrative Construction of Reality, Critical Inquiry Vol. 18, 1/1991, 1 (16).

70 *Aristodemou* (note 11), 2.

71 *West* (note 50), 423.

72 *White* (note 20), 9.

can create a false impression of coherence, an "*illusion of sequence*".[73] Narratives can "*give comfort, inspire, provide insight; they forewarn, betray, reveal, legitimize, [and] convince*".[74] Because of this manipulative power, narratives can never be exempted from critique. It is crucial to recall the critique of narrativity at the end of this section:

> *"And as for that family law professor, what was this business of stories as somehow truer than law, as if once you called something a story, it was exempt from ideology critique, as if narrative was ever free from the coercions of generic convention, the feints of rhetoric, its own multiplicity and contradictoriness?"*[75]

2. Forming A Meaningful Totality – Narratives As Mental Tools

In a more abstract way, narratives are used to form of a totality that is meaningful. By narratives we order and make sense of reality.[76] *Boaventura* de Sousa Santos has argued that "*laws are maps; written laws are cartographic maps; customary informal laws are mental maps"*.[77] In a similar way, narratives could be seen as the bigger mental maps on which laws are located. In narration, "*we organize our experience and our memory of human happenings"*.[78] Every narrator sorts the facts to be included in the story by relevance, makes choices and expands the fiction. The decision which facts are relevant is "*learned largely through experience"*.[79] *As a consequence, "the methodological component of legal theory, read as narrative, reveals a moral choice that a purely analytical reading will often obscure*".[80]

For instance, even empirical data cannot escape narratives: "*Numbers have become the bedrock of systematic knowledge because they seem free of interpretation, as neutral and descriptive. They are presented as objective, with an interpretive narrative attached to them by which they are given meaning."*[81] Without these narratives, empirical data would be meaningless and models would be impossible to interpret. For example, indicators have become a popular tool in the evaluation of the States' human rights policies, especially with regard to social, economic and cultural rights. States can use these various indicators (data on school enrolment, State expenditure on education, etc.) to tell the story of how committed they are to the realization of the right to education, for example. However, this data cannot provide the full picture of how a State makes choices

73 *Mitchell* (note 49), 2: "Robert Scholes observes, to say of narrative what Marx said of religion, that it is an 'opiate' which mystifies our understanding.".
74 *Amsterdam/Bruner* (note 51), 115. They add: "You can declare your love by telling just the right story.".
75 *Peters,* Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion, PMLA Vol. 120, 2/2005, 442 (443).
76 *Mitchell* (note 49), 2.
77 *de Sousa Santos,* Law: A Map of Misreading. Toward a Postmodern Conception of Law, Journal of Law and Society Vol. 14, 3/1987, 279 (282).
78 *Bruner* (note 68), 4.
79 *Binder/Weisberg* (note 4) 233.
80 *West* (note 50), 417.
81 *Merry*, Measuring the World: Indicators, Human Rights, and Global Governance, Current Anthropology Vol. 52, S3/2011, S89.

with regard to other areas of public expenditure (or even uses money for bribery) and moreover, there are strategies behind the collection of certain data.[82] Literary critics therefore argue that *"[n]arrative vision, more autonomous than philosophical and political vision, poses choices not open to the empiricist"*.[83]

Narratives do not just provide a structure for interpretation. They merge form and content and eventually become a mental tool for controlling knowledge. *Peter Brooks* has highlighted the *"cognitive dimension to our sense of narrative, to show how it is a 'specific mode of human understanding'."*[84] This can be linked to the origins of the word 'narrative' itself, as stated above (to tell means to know). While reading or tracing narratives in international law, the concern should not only be how the narrative was created, but also "*how it operates as an instrument of mind in the construction of reality"*.[85] In turn, the processes that relate to the construction of reality are highly internalized.

> *"What lawyers internalise is a set of narrative frameworks regarding the legal 'recognition' of typical behaviour patterns – the narrative form of legal rules […], [laden] with those forms of approval and disapproval which legal institutions use in order to confer 'recognition'."*[86]

Without drifting too far to psychological explanations, the understanding of narratives as a mental tool has an impact on how and where interpretation takes place in the legal discourse. Narratives – operating in everyone's mind – become necessary to make sense of a reality. It can be said that there is a necessity for narration – not to be understood as an equivalent to logical necessity.[87] Since stories are not easily (or even not at all) palpable in logical terms, they are often exempt from interpretation. The "route to making a story seem self-evident and not in need of interpretation is via 'narrative banalization'. That is, we can take a narrative as so socially conventional, so well known, so in keeping with the canon"[88] that it escapes the means of interpretation. It appears to be an inevitable, necessary and natural impulse to narrate, so that those narratives that correspond to the dominant cultural expectations are not problematized.[89]

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82 Compare: United Nations, Economic and Social Council, Report of the United Nations High Commissioner for Human Rights on the Use of Indicators in the Realization of Economic, Social and Cultural Rights, UN Doc: E/2011/90 (26 April 2011); and: *Davis/Kingsbury/Merry*, Indicators as a Techonology of Global Governance, NYU School of Law, Global Administrative Law Series, IILJ Working Paper 2010/2, Rev. August 2011. For case studies, see also: *Verstappen*, Report of the HURIDOS workshop: Bridging the gap between human rights advocates and scientists: improved measurement of the realisation of ESC rights, Geneva, August 2010, available at: http://www.huridocs.org/wp-content/uploads/2010/09/reportESCRworkshop-short.pdf.

83 *West* (note 50), 416.

84 *Clayton*, Narrative and Theories of Desire, Critical Inquiry Vol. 16, 1/1989, 33 (36). Compare also: *Brooks*, Narrativity of the Law, Law and Literature Vol. 14, 1/2002, 1 (2).

85 *Bruner* (note 68), 5-6.

86 *Jackson* (note 42), 116.

87 Compare: *Bruner* (note 68), 9.

88 Ibid., 9.

89 Compare: *White* (note 20), 5.

> *"It seems almost as if humankind is unable to get on without stories. Knowing how to tell them and to comprehend them may be part of the human survival kit. And there appears to be something surreptitiously value-laden or value-promising about storytelling."*[90]

This leads to a situation where narratives become "*an aspect of everyday speech and ordinary discourse"*.[91] In many ways, this is not surprising; however, in relation to interpretation and especially thinking about interpretation in international law, "*automatized interpretations of narratives are comparable to the default settings of a computer: an economical, time- and effort-saving way of dealing with knowledge – or, as it has been called, a form of 'mindlessness'"*.[92] This automatized interpretation or even more so the fact that narratives escape interpretation bears obvious risks. However, it is part of the way in which narratives function as mental tools. When narratives operate as mental tools, this means that stories become real and receive unquestioned acceptance from their audiences – independent of "*whether they are offered as fact or fantasy, myth or matter of fact."*[93] This is essentially why narratives have such manipulative power.

3. Codes

Literary approaches to narratives demonstrate that a story carries much more information than international law is able to conceptualize in strict terms of interpretation.[94] Interpretation is not about emotions, identification and imagination; narrative is.

> *"In the kind of symbolization embodied in […] narrative, human beings have a discursive instrument by which to assert (meaningfully) that the world of human actions is both real and mysterious, that is to say, is mysteriously real (which is not the same thing as saying that it is a real mystery); that what cannot be explained is in principle capable of being understood;"*[95]

Narratives make sense of a problem or a reality; they locate troubles by incorporating them into their storyline and, most importantly, they engage with their readers and convince them of the story they present. In this sense, they can become "*a collective sign […] (the icon of a series of events)."*[96] The extra information that a narrative carries with it, and that not every text is capable of carrying, is not just a chronological or causal series of connections, but it is the "*mediat[ion] between different universes of meaning 'configuring' the dialectic of their relationship in an image"*.[97]

90 *Amsterdam/Bruner* (note 51), 114-115.
91 *White* (note 20), 1.
92 *Bruner* (note 68), 10.
93 *Hayman/Levit*, The Tales of White Folk: Doctrine, Narrative, and the Reconstruction of Racial Reality, California Law Review Vol. 84, 2/1996, 377 (399).
94 This section draws on: *Lotman*, Die Struktur Literarischer Texte, 4th edition 1993, 43.
95 *White* (note 20), 30.
96 Ibid.
97 Ibid., 28.

According to *Yuri Lotman*, a *Russian* semiotician, a text can have a memory function.[98] The memory function implies that a text, or broadly speaking a story, cannot only generate new meanings and develop moral codes, but it can also store memories of earlier contexts. The *peace treaty of Westphalia* concluded in 1648, for example, is a memory that many different narratives in international law have stored. Together with the event, stories store the perception that this was a decisive moment in the history of international law. The narrative of State sovereignty has integrated the *peace treaty of Westphalia* as a founding event, for example. Stories can thus encode memories and these memories of earlier contexts become part of the storyline.

Narratives act as symbols making sense of a particular reality and they can become a code for understanding this reality. The concept of humanitarian interventions, for example, carries a strong, controversial and appealing moral code: States, and even a wider community of States, have a responsibility to protect populations when their own State is not willing or able to do so anymore.[99]

Narrative authority is not only based on subconscious mechanisms of identification. They convey the moral of a story, such as the following (famous) example does:

"Two households, both alike in dignity,
In fair Verona, where we lay our scene,
From ancient grudge break to new mutiny,
Where civil blood makes civil hands unclean.
From forth the fatal loins of these two foes
A pair of star-crossed lovers take their life;
Whose misadventured piteous overthrows
Do with their death bury their parents' strife.
The fearful passage of their death-marked love,
And the continuance of their parents' rage,
Which, but their children's end, nought could remove,
Is now the two hours' traffic of our stage;
The which if you with patient ears attend,
What here shall miss, our toil shall strive to mend. (Exit.)"

William Shakespeare announced the moral of his famous play *Romeo and Juliet* in the prologue, presented by the chorus – a more abstract murmur of narrator voices. He passes on a lesson to be learned, a message to be taken into consideration. A moral usually relates to an approval or disapproval of a certain behaviour. Generally speaking, all texts are part of society's ideological practices, whether it is poems, songs, novels, plays or laws. Narratives capture the practices of a society. They mirror or comment on the way a society lives its reality.

98 For Lotman the memory function is the third function of a text – in addition to a creative function, which generates new meaning, and an encoding function that merges meaning and language. For a detailed discussion, see: *Lotman*, Die Innenwelt Des Denkens: Eine Semiotische Theorie Der Kultur, 2010, 28: „Die dritte Funktion des Textes ist die Gedächtnisfunktion. Der Text generiert nicht nur neue Bedeutungen, er kondensiert auch das kulturelle Gedächtnis. Texte sind in der Lage, die Erinnerungen an ihre früheren Kontexte zu bewahren.".

99 For a detailed discussion of this narrative see: *Orford* (note 2).

Codes, as they are commonly understood, convert information into some other form. In the case of narrative, they are the "*place where sequence and language, among other things, intersect to form a discursive code"*.[100] The coding is done by the narrators and within a cultural context, or discipline, out of which narratives arise. Therefore, codes are to a large extent cultural, they are shared amongst narrator and audience.[101]

Depending on which story, or more specifically whose story, is adapted, a different vision of reality and of the future becomes evident. A new inside (the story) and outside (in the world) is created and fixed. As a consequence, the narrative nature of international law creates inclusions and exclusions of certain points of view, of certain meanings. This is part of the authority of narratives and of the power they exercise. Hence, "*the experiences of law had by this society's traditional outsiders are in fact not well represented in either the literary or the legal canon"*. Migrants, for example, are classified as regular or irregular migrants in international law and the narrative of the so-called 'irregular' migration is exercising its authority over the interpretation of treaties. It is contributing to the establishment of those subjects in law and their exclusion from the enjoyment of certain rights.

Narratives are essentially cognitive instruments that organize the experienced knowledge in the form of a story. They are an attempt to make sense of a reality and they function as mental tools organizing and controlling knowledge. Stories rely on cognitive processes and are driven by a desire of the narrators and the audience to understand the reality. Because of this, narratives can have a strong manipulative power. They become so natural, convincing and self-evident, that they are internalized by their readers and the control they exercise is not noticed anymore.

IV. Authority In Narration

Having discussed how narratives are created and formed, one question remains: How do they generally operate and enter the discourse of international law? This paper suggests that narratives are inherent in international law and as such they also engage in the struggle over authority in legal interpretations.

Narratives in international law often try to hide their authors or pretend to have none. Discourse analysis has addressed this question particularly in post-structuralist scholarship. *Michel Foucault's* lecture on the question "*Qu'est-ce qu'un auteur?"* bears a number of insights. *Foucault* sets the discussion of the author into the context of the author's function in a discipline: The author "*assure une fonction classificatoire"*.[102] He reminds us that there has been a time in which texts circulated and were cited and retold without asking the question of an author, without knowing the author, but that this has changed: *"[A] tout texte de poésie ou de fiction on demandera d'où il vient, qui l'a écrit, à quelle date, en quelles circonstances ou à partir de quel projet."*[103] Most importantly, for *Foucault*, it is not the voice of an individual author that is fulfilling the

100 *Scholes* (note 14), 204.
101 Ibid., 211.
102 *Foucault*, Qu'est-ce qu'un auteur?, in: Foucault (Ed.), Dits Et Écrits: 1954-1988, 2001, 826.
103 Ibid., 828.

function of the author, but instead what he calls the "*murmur*" of a discourse: "*Tous les discours, quel que soit leur statut, leur forme, leur valeur, et quel que soit le traitement qu'on leur fait subir, se dérouleraient dans l'anonymat du murmure.*"[104]

This consideration provides valuable insights for narratives in international law. The voice of the author is not always singular; voices amount to a "*murmur*" – a collective process takes place. It also leads to another theory that has addressed this question: the concept of interpretive communities.

The concept of interpretive communities is similar to what political scientists would call epistemic communities. 'Epistemic' originates from the Greek word *episteme* meaning (scientific or technical as opposed to experienced) knowledge.[105] These communities are engaged in the processes of shaping knowledge. The concept of interpretive communities was developed by *Stanley Fish* in relation to the question of authority in interpretation.[106] *Fish* assigns several characteristics to these communities:

> *"Interpretive communities are made up of those who share interpretive strategies not for reading (in the conventional sense) but for writing texts, for constituting their properties and assigning their intentions. In other words, these strategies exist prior to the act of reading and therefore determine the shape of what is read."*[107]

With respect to narratives, this suggests that their creation requires some shared experience or common interpretive strategy. Once stories are 'written', they predetermine what the readers read. The creation of narratives can take place in interpretive communities. Meaning is therefore always shared by a community. The plain meaning of the sources of international law stated in Article 38 of the *Statute of the International Court of Justice*, for example, is a shared meaning of an interpretive community. Taking *Fish's* argument away from the emphasis on the concrete text, these considerations can apply to the formation of narratives. The "*consciousness of community members"* – as he calls it – is shaped by emotional and subjective experiences that are later reproduced in narratives. Narratives reproduce the common beliefs of a community "*about the meaning or ultimate nature of reality, shared by the average members of any given culture – what we call common sense".*[108] These collective forces can explain why interpretive communities are important for the creation and transmission of narratives: In essence, *"[i]t is a sense of belonging to this canonical past that permits us to form our own narratives of deviation while maintaining complicity with the canon".*[109] This anchoring in the complicity with the canon hints at the authority of interpretive communities in processes of interpretation, of telling and retelling stories. It is no longer the text (in *Fish's* analysis) that is at the source of authority, but the complicity with the canon of an interpretive community.[110] This complicity is also based on "*a pre-existing*

104 Ibid., 840.
105 *Kay* (et al., eds.), Historical Thesaurus of the Oxford English Dictionary, 2009, 949.
106 Compare: *Fish*, Interpreting the Variorum, in: Fish (Ed.), Is There A Text In This Class?: The Authority of Interpretive Communities, 1980, 147-173.
107 Ibid., 171.
108 *White*, The Narrativization of Real Events, Critical Inquiry Vol. 7, 4/1981, 793 (797).
109 *Bruner* (note 68), 20.
110 Compare also: *Bianchi* (note 19), 52.

body of knowledge (a 'legal education', in the wider sense here used)".[111] Legal education (the determination of which texts are read and which courses are taught) is influenced and shaped by interpretive communities. Legal education is thus an important place of narrative transmission and transaction.

Perceived objectivity is a key factor in the "knowledge-driven, technological society"[112] that can be encountered in many different areas nowadays, including the field of international law.

International law also conceals "narrative mental 'powers' and the symbolic systems of narrative discourse that make the expression of these powers possible".[113] The reasons for this are linked to the self-perception of the discipline:

> *"The narrative of law cannot afford to admit to its own constructedness or arbitrariness: it cannot afford to confess that it is only one amongst many narratives created to impose order on chaos. For the legal narrative to attract both moral and political power, no allowance can be made for its human origins, or for the possibility of mistakes."*[114]

As a result, this creates a tension between what *Foucault* would call "*une 'police' discursive"*[115] of the discipline and the dynamics of legal storytelling that are part of the nature of international law. Thus, international law suppresses and ignores its narrative nature – presumably to appear more objective and scientific when exercising its moral and political power.

Critics were amongst the first to recognize the value of analysing narratives in law (initially in domestic law). *Julie Stone Peters*, for instance, refers to the story behind the first conference on narratives in law held at *University of Michigan Law School* in 1989:

> *"In a 1988 letter that became the inspiration for one of the first major conferences on legal storytelling, Richard Delgado, one of its leading proponents, proclaimed: 'The main cause of Black and brown subordination is not so much poorly crafted or enforced laws or judicial decisions. Rather, it is the prevailing mindset through which members of the majority race justify the world as it is […]. The cure is storytelling, [...] counter hegemonic [storytelling to] quicken and engage conscience.'"*

Delgado describes narratives as the 'cure' to racial discrimination in law. He believes in the power of narratives to change mind-sets. The 'cure' that is hoped for in this particular context implies a radical change of destroying the mind-sets, but 'cure' can also be understood in a lighter version implying enhanced understanding and openness towards other perspectives.

Feminist, post-colonial or critical race scholars drew attention to oppositional narratives as they emerged or existed in international law and engaged in 'counterhegemonic storytelling'. Especially from the perspective of groups that have been ignored or oppressed by international law, narratives became a possibility to relate to a wider audience

111 *Jackson* (note 42), 129.
112 Ibid., 139.
113 *Bruner* (note 68), 21.
114 *Aristodemou* (note 11), 140.
115 *Foucault* (note 20), 37.

– beyond the group affected. Post-colonial critics have analysed narratives in international law and made use of 'counterhegemonic storytelling'. Narratives can draw attention to the perspective of the subaltern, of the colonized State, or to colonialized relationships. Post-colonial scholarship has contributed a particular work on stories that deal with victimization.[116] They have analysed, for example, how certain discourses, such as the one of the international women's human rights movement, have created and reinforced women as victim subjects. Narratives engage in the struggle over authority in the rhetorical system of international law. They are one playground on which the authority of international law is constantly challenged, because stories can be like chameleons[117] – conserving, consensus restoring, but also disrupting and overthrowing.

V. Localizing The Narrative Of Collective Security In International Law

This last part sets out to localize an example of narratives in international law, to trace its creation and to offer one reading of the story. Reading the narrative "reveals a moral choice that a purely analytical reading will often obscure".[118] In tracing the narrative, I deliberately rely on standard materials, including textbooks, commentaries, cases and UN documents. The following will be my reading of the narrative, as I detect it in mainstream legal discourse. This reading of the story is the most easily accessible one and generally accepted by a larger audience. Needless to say that alternative versions exist which are not as widely accepted in the discipline as the version I focus on. The narrative of collective security is a very complex story, as there are two main storylines this narrative is built upon: an idea of collectivism and one of security. It is a very well-known story and some authors have already hinted at the possibility of there being a narrative behind what international lawyers understand as the legal concept of collective security.[119]

116 See, for example: *Kapur*, The Tragedy of Victimization Rhetoric: Ressurecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics, Harvard Human Rights Law Journal Vol. 15, 1/2002, 1-38.

117 Compare: *Brooks* (note 83), 2.

118 *West* (note 50), 416-7.

119 See: Vera Gowland-Debbas calls for a "re-reading of the Charter goal of collective security", see: *Gowlland-Debbas* (note 62), 275; compare also: 'A Symposium on Reenvisioning The Security Council' Special Issue, Michigan Journal of International Law Vol. 17, 2/1996, 221-566; and: *Kolb* (note 63), 221. Kolb compares the collective security systems of the League and the UN Charter to the myth of Castor and Pollux.

1. The Creation Of The Narrative

The term 'collective security' is not used in the UN *Charter*. The *Charter* only speaks of "*collective measures*",[120] which are specified in Chapter VII as measures *"not involving the use of armed force*"[121] and measures involving the use of force,[122] and of *"collective self-defense"*.[123] The idea of 'collective security' is created in the narrative. Only with the narrative does 'collective security' obtain its meaning.

The story goes that collective security was created to "*underpin [...] the UN Charter's regime for dispute resolution"*.[124] The main objective of this system is said to be *"the keeping of the peace and the avoidance of war*".[125] Chapter VII of the UN *Charter* is drafted to provide some guidance on how the plot of the narrative is restrained. Generally speaking, collective security is said to mean that an attack on one State is an attack on the collective, and, hence, justifies collective action.[126] The story of collective security begins in 1945. This year has frequently been referred to as the decisive moment.[127] Even narratives that build on the story of collective security (for example, the narrative of humanitarian intervention) reinforce this point of beginning of the story.[128] The power structures of that time have influenced the creation of the story of collective securi-

120 See: Article 1 (1) of the Charter of the United Nations, adopted 26 June 1945 (entered into force on 24 October 1945), 1 U.N.T.S. XVI: "To maintain international peace and security, and to that end: to take effective **collective measures** for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;" (emphasis added).

121 Article 41, UN Charter.

122 Article 42, UN Charter.

123 Article 51, UN Charter.

124 *Charlesworth/ Chinkin,* The Boundaries of International Law: A Feminist Analysis, Melland Schill Studies in International Law, 2000, 280.

125 *Kolb* (note 63), 220.

126 Compare also: UN, High-level Panel on Threats, Challenges and Change, Report: A more secure world: our shared responsibility, in: General Assembly Resolution A/59/565, 2 December 2004, 11: Collective security initially derived from the "traditional military sense: a system in which States join together and pledge that aggression against one is aggression against all, and commit themselves in that event to react collectively". The report *A more secure world* very nicely tells the story of collective security as it happened until 2004.

127 UN Secretary-General, The Secretary-General Address to the General Assembly, New York, 23 September 2003, available at: http://www.un.org/webcast/ga/58/statements/sg2eng030923.htm.

128 Compare: *Orford*, Muscular Humanitarianism: Reading the Narratives of the New Interventionism, European Journal of International Law Vol. 10, 4/1999, 679 (694): "Intervention by the international community is justified by reference to a history beginning with the framers of the UN Charter of 1945, who 'understood the linkage between the protection of basic human dignity and the preservation of peace and security'".

ty: *"As Time noted, the UN Charter was basically designed to ratify a division of the world into 'power spheres'"*.[129]

The narrators have included a reflection of this initial power structure in their story: It is expressed, first of all, in Article 27 (III) of the UN *Charter* – the possibility of a veto of the permanent members of the *Council*.[130] Some commentators have observed that the *"veto went well beyond what was expected by most. It indeed resulted in freezing the system of collective security"*[131] – a freezing of the ordinary state of the story. The veto is subject to continuous debates, in the context of reforming the character of the *Security Council*, and in broader considerations of how collective decision-making takes place with respect to questions of peace and war. To illustrate how the initial idea of veto powers is still very present in the narrative until today, it suffices to point to the example of the debates at the beginning of 2012 when *Russia* used its veto on resolutions concerning *Syria*.

The ordinary meaning of collective security is further challenged during the development of the story. Questions that arise in relation to the ordinary state of the story are phrased like this: *"[W]as the structure of the Charter itself, and the body of international law on which it depends, still the correct framework by which to view and assess new and emerging threats in a post-September 11 world?* [Or:] *[…] how could the 1945 UN peace and security architecture be made to work more effectively to respond to new threats and lessen the impetus for powerful states to 'go it alone'?"*[132]

Sometimes the narrative of collective security allows its audience to see some continuances between its earlier times during the League of Nations and the present.[133] These flashbacks raise the question of how some of the actors, such as the international community, were imagined at that time: Who was the collectivity envisioned in the first half of the 20th century? In an attempt to answer these questions, some observers have argued that *"collective security is nothing but a particular peace alliance"*.[134] In order to allow for some flexibility in the story, the narrators have created a character called the 'international community' and they have been able to adapt the story to changing circumstances over time.

129 *Mazower*, No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations, 2009, 62. He adds that "the UN, even more than the League, was to be run by the great powers and far less confidence was reposed in international law as a set of norms independent from, and standing above, power politics.".

130 Article 27 (3) of the UN Charter reads as follows: "Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.".

131 *Kolb* (note 63), 224.

132 *Danchin/Fischer* (note 62), 5.

133 See, for example: *Anghie*, Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations, N.Y.U. Journal of International Law and Politics 34, 3/2002, 513-633; see also: *Kolb* (note 63), 221.

134 *Kolb* (note 63), 220.

2. The Hidden Cargo Of The Script

The storyline does not merely deal with the content of the story, but rather looks at what drives the story of collective security. The narrative of collective security is driven by two main troubles: first, the conflicts over who represents the collective, and second, the struggle in relation to security in the inter-state system versus security of the people. As this paper argued above conflicts often relate to the hidden cargo in the scripts stories are built upon. The narrative of collective security relies on these hidden scripts, in particular on the concept of State sovereignty, or sovereign equality of States. The concept of State sovereignty functions like a fall-back clause.[135] This can be observed in many cases, for example, in a *Security Council Resolution on Syria*, in which the *Council* "*[r]eaffirm[ed] its strong commitment to the sovereignty, independence, unity and territorial integrity of Syria, and to the purposes and principles of the Charter"*.[136] State sovereignty can have a preserving effect, in the sense that *"'[s]tability' is typically associated with the restoration of the status quo, without reference to the hierarchies of power sustained in the old order"*.[137] In a similar way, "*Third-World countries attempting to assert their newly won sovereignty by seeking to change international law were seen to be threatening the universality of international law"*.[138] State sovereignty is part of the hidden cargo of the script of the collective security narrative and it cannot be easily redefined, which is why it leads to many of the troubles that the narrative encounters.

Another example where the hidden cargo provokes trouble for the collective security narrative becomes visible in Article 43 (1) of the UN *Charter*. Article 43 deals with the armed forces that *Member States* of the *United Nation* make available to the *Security Council.*[139] Again, considerations of national sovereignty come into play and lead to disagreement about who can and who actually does make available its armed forces for these purposes. It therefore might not come as a *"surprise that the members States did not honor such an undertaking"*.[140] The lack of willingness of States to support UN missions by providing armed forces has led to frustrations over the way collective se-

135 In this context it is interesting to refer to the critique of post-colonial approaches to international law. Anthony Anghie, for example, argued: "It was principally through colonial expansion in the nineteenth century that international law became universal in this sense." See: *Anghie* (note 133), 516. How was the fiction of state sovereignty created? This could itself be analysed in terms of narrative and would go beyond the scope of the current example. Certainly, it does have strong implications for collective security.

136 UN, Security Council, Resolution 2043, S/RES/2043, 21 April 2012, introductory paragraph three.

137 *Charlesworth*, The Inadequacy of "Collective Security", Finnish Yearbook of International Law Vol. 9, 1998, 43. For a detailed discussion of the preservation of authority, see: *Orford*, International Authority and the Responsibility to Protect, 2011.

138 *Anghie* (note 133), 518.

139 Article 43 (1) of the UN Charter states: "All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.".

140 *Kolb* (note 63), 224.

curity was envisioned. In addition, unilateral actions, such as the action of the *United States* taken against *Iraq* in March 2003, circumventing the *Charter* system, have caused disturbances and frustrations.

Moreover, the hidden script has an influence on the concept of security. The intention of the narrators is to preserve the security of the inter-state system and to guarantee security of the people, or human security.[141] The security of the inter-state system relies on the 'cargo script' of sovereign equality, on the integrity of the States. In this regard, boundaries, a military force and right to self-defence are essential for the story of State security.[142] The trouble that arises from these premises has been highlighted by alternative narratives: *"They do not investigate the way that power relations work within states and how these power relations affect a state's 'external' activities".*[143] Others in the audience following the story of collective security have argued:

> *"The fact that older geopolitics of security, for instance, focused on territory and sovereign power, while now the biopolitics of security have received new and more complex formations and practices neither means that territorial conflicts have entirely eclipsed (though no longer fought necessarily in the name of the State) and that the 'new' space of 'one species' or 'global population' or 'humanity' are unrelated to disciplinary technologies of domination, nor that there has been progress from the old to the new."*[144]

Zartaloudis points to the continuities in the story, albeit the differences that are noticeable at first sight between the way insecurity was generated in earlier times and the way it is generated nowadays. The narrators of collective security have adapted and slowly incorporated a broader understanding of security – moving beyond State security.[145] This adapted conceptualization acknowledges that peace relates to social and economic justice, and to human rights. Consequently, social and economic injustices are seen as capable of generating insecurity. This also opens the space for new discussions on security and development assistance, for example.[146] Lastly, a broadening of the notion of security raises another trouble for the story to resolve: Should the decisions on these broad issues rest on the shoulders of the *Security Council*? The narrators seem undecided whether this character can and should evolve in that respect.[147]

All these troubles and conflicts resulting from the hidden cargo in the script essentially amount to what drives the narrative of collective security. They create moments of tension, suspension and relief. Each particular event in a narrative is sequenced and creates

141 See also: *Gowlland-Debbas* (note 62), 277.
142 Compare, for example: *Charlesworth/Chinkin* (note 123), 282.
143 Compare: Ibid., 283.
144 See: *Zartaloudis*, Giorgio Agamben: Power, Law and the Uses of Criticism, 2010, 168.
145 This broader understanding is formulated in the Agenda 21 and in the report "In Larger Freedom", compare: Agenda 21, 1992; and: UN, General Assembly, In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, A/59/2005, 21 March 2005.
146 The discussions on the 0.7 percent goal (percentage of gross national income that should go into official development assistance) are nonetheless wearisome. Compare: *Danchin/Fischer* (note 62), 10.
147 For a more detailed discussion of this point, see: *Wolf*, Responses to non-military threats: environment, disease, and technology, in: Danchin/Fischer (note 62), 173-192.

phases of regress or of transformation. The sequencing in the story of collective security is brought about through a constant redefining of what constitutes a 'threat to peace'. Whether something amounts to such a threat is said to be the threshold for events to enter the story of collective security.[148] Threats to peace can range from internal conflicts, interstate conflicts, economic and social threats, gross human rights violation, to terrorism, and weapons of mass destruction. The narrative intertwines all these different crises not only chronologically, but also by classifying them as successes or failures. This has led to the perception that *"the history of the UN has been one of constant crisis ever since 1946"*.[149] However, these crises keep the story of collective security moving. From the perspective of the narrators they provide an important impetus for the story. Amongst the failures, the narrators of collective security include the conflicts in *Somalia* in 1992, *Rwanda* in 1994,[150] *Iraq* in 1990-91 in relation to the effects of economic sanctions, the *Balkans* (especially with reference to *Srebrenica* in 1995), *Kosovo* in 1999, *Iraq* in 2003 because the *Security Council* did not authorize the use of force in these conflicts. This list is illustrative[151] and moreover, the emotions the narrative tried to evoke in relation to each situation vary to large extent. For instance, the emotions attached to the failure to act in *Rwanda* are very strong and the story goes that *"the death of hundreds of thousands of Rwandans in a slaughter that could have been avoided had there been a timely deployment of a preventive force"*.[152] It is not easy for the narrators to tell collective security's successes, because after all they remain bloody, forced, and destabilizing – at least those that involve the use of force. Similarly, the crisis interventions in *Libya* in 2011 were said to have been rather successful, at least from the first perspectives of the prevailing story.[153] For many crises it is difficult to tell whether they were perceived as failures or as successes in the storyline. The narrators then broadly referred to *"witness[ing] major shifts"*[154] in maintaining peace and security. Terrorism, particularly after September 11th, 2001, has been told to have been one of these major

148 Compare: *Charlesworth/Chinkin* (note 123), 281. See also: *Danchin/Fischer* (note 62), 2.
149 *Gowlland-Debbas* (note 62), 273.
150 See also the comparison between the SC reaction to the attacks of September 11th, 2001, and its reaction to the genocide in Rwanda: UN Panel Report (note 125), para. 41.
151 It also does not include many peace-keeping or peace-building missions. The same holds true for the successes mentioned.
152 *Franck* (note 62), 30.
153 Compare: *Powell*, Libya: A Multilateral Constitutional Moment?, The American Journal of International Law Vol. 106, 2/2012, 298–316; *Schmitt*, Wings Over Libya: The No-Fly Zone in Legal Perspective', The Yale Journal of International Law Online Vol. 36, 2011, 45-58; and: *Peters*, The Security Council's Responsibility to Protect, International Organizations Law Review Vol. 8, 1/2011, 1-40. For an alternative story of the Libyan intervention see: *Orford*, From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept, Global Responsibility to Protect 3, 2011, 400-424.
154 *Danchin/Fischer* (note 62), 2.

shifts that put pressure on the system.[155] The language used in *Security Council* resolution 1373 is illustrative in this respect.[156]

These sequences and earlier contexts can be stored by stories because, as argued above, narratives have a memory function. This memory of a continuing evaluation of the events is especially important for the development of the moral of the story. The assumption set out at the beginning of the story of collective security "*that there will be an active, finite, episode of 'collective' intervention (by sanctions or by military force)"*[157] clearly cannot be upheld after the various crises and conflicts it has gone through.

3. Narrative Imagination And Strategies Of Transmission

In the development of the storyline of collective security, fiction and reality are merged. As this paper argued above, the processes of creating fiction and imagination are non-issues in the legal world. However, certain elements in the narrative of collective security are clearly fictions created by narrators. First, there is the 'international community': The 'international community' stimulates a common identification, so that *"[t]hose […] who wage war in the name of the common good, those who kill in the name of democracy or security […] – all consider themselves to be 'acting globally' and even to be executing a certain 'global responsibility'"*.[158] Identification is a cognitive process that is encouraged, in this case, by the existence of the fictitious character of the 'international community'.

Stories, moreover, develop visions with regard to the future. It has been argued that *"a system of perfect collective security has never been realized in history, and may never be realized"*.[159] The creativity that lies in imagination and the possibility to envision a future is central for the story of collective security. In 1950, *Judge Alvarez* argued in a dissenting opinion that *"[i]t is therefore necessary, when interpreting treaties – in particular, the Charter of the United Nations – to look ahead, that is to have regard to the new conditions, and not to look back, or have recourse to travaux préparatoires"*.[160] This looking ahead inevitably requires the development of a vision by the narrators. In order to develop narrative solutions with future perspectives, collective security relies on imaginary characters, such as the international community, and visions.

155 *Gowlland-Debbas* (note 62), 283.

156 UN, Security Council, Resolution 1373, S/RES/1373, 28 September 2001. The resolution affirms the "unequivocal condemnation of the terrorist attacks" and expresses that the Council is *"[d]eeply concerned* by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism". Especially the measures adopted in paragraph 1 and 2 of resolution 1373 reflect the desire of the narrators to react strongly – those paragraphs are said to have law-making character.

157 *Charlesworth/Chinkin* (note 123), 284.

158 *Judith Butler*, Frames of War: When Is Life Grievable?, 2010, 36.

159 *Kolb* (note 63), 220.

160 ICJ, Competence of the General Assembly for the Admission of a State to the United Nations, ICJ Reports 1950, Advisory Opinion of 3 March 1950, Dissenting Opinion of Judge Alvarez, 18.

The narrative of collective security is never fully completed, but it is constantly adapted and passed on to new audiences. This transmission is taking place via various routes: in judgements and legal opinions, in UN *resolutions*, in textbooks and classrooms, and in articles and commentaries. Essentially, the narrative transmits its messages in codes and in evaluations of the crises it has encountered. For instance, the conflict it had to face in Rwanda in 1994 is evaluated as a failure, because the behaviour of the States, of the 'international community' and of the *Security Council* is disapproved of. By means of evaluating the situation as a failure, the story transmits a message saying that 'this was not normal', 'collective security normally functions differently' and so on and so forth.

The story of collective security heavily relies on the construction of an inside and an outside of the system. It attempts to keep everything inside its story, as part of the storyline, in order to *avoid "assertions of unilateralism exercised outside the United Nations"*.[161] The language that is used to support this is very strong and emotional: *"Self-help will rule, mistrust will predominate and cooperation for long-term mutual gain will elude us"*.[162] It is a language of responsibility and commitment. Problems and conflicts are internalized, so that they become manageable and controllable. The inside is held up by such persuasive arguments that the audience almost never asks the question why certain problems are framed in terms of collective security. The example of counterterrorism is illustrative in this respect. Alternative stories have drawn attention to "*how a phenomenon like 'terrorism' is defined in ways that are vague and overly inclusive"*.[163] As a consequence, it can be addressed and incorporated in the story of collective security. The technique behind this is very simple: *"We define the phenomenon so that we know what we are talking about, and then we submit the phenomenon to judgement. Conventionally, the first task is descriptive, and the second is normative."*[164] Counterterrorism could also be addressed in terms of economic and social policy and in fact, it sometimes is. However, the story of collective security has established itself as a dominant discourse in which counterterrorism is addressed and it claims the power of defining the phenomenon and react by means of security policy. Moreover, *"this technical security discourse has become increasingly naturalized"*.[165] Narratives result from the desire to make sense of a complex and at times confusing reality and a rather technical language may help achieving this, also reinforcing the perceived objectivity of its narrators.

The transmission of knowledge is further facilitated by certain codes and symbols that are used in the language in which the narrators tell the story. These discursive codes are shared, in a culture, or a discipline, and they carry a certain meaning within an interpretive community. Alternative stories (particularly from a feminist perspective) have criticized how the prevailing narrative of collective security is using and reinforcing

161 *Gowlland-Debbas* (note 62), 287.
162 See: UN Panel Report (note 125), 12.
163 *Butler* (note 158), 156.
164 Ibid., 155.
165 *Orford* (note 123), 709.

different dichotomies, such as public/private, for example.[166] These dichotomies characterize the language in which the story is told and this language of the narrators is not neutral, but value-laden. There are other dichotomies, such as the distinction between *"'hard' threats" to security (for example, armed conflict and terrorism) and "'soft' threats",*[167] such as poverty or environmental degradation. These dichotomies can then be attached to other categories, for instance, 'hard' threats are a concern of Northern countries and 'soft' threats are a concern of Southern countries. The story of collective security produces some of these generalizations, also because they are easier to be transmitted than complex argumentations. One aspect that seems to be rather easy for the narrative of collective security to transmit relates to its underlying script: State sovereignty. State sovereignty is part of the agreements that exist prior to the story between the narrators and its rather specialized audience in international law.

As argued above, narratives transmit their messages and morals in codes. They achieve this by defining what is (new) common sense. In the case of the collective security narrative, one example of a common sense that is firmly established goes as follows: Because of the *"interconnectedness of today's threats",*[168] it makes no sense for each State to face security problems on its own. Collective solutions become indispensable – even more so, because some States might not be willing or able to protect their own people. Consequently, the discourse puts "*pressure on states to cooperate in security",*[169] especially on States from the so-called 'Global South'. Overall, the story of collective security has transmitted a common sense that is effectively working as a mental tool controlling the language in which the story is passed on and including whatever new events, actions or phenomena take place as part of the story of collective security.

However, what is transmitted as the narrative of collective security also silences other aspects and perspectives on the story. Generally speaking, in the narrative described above, solving problems of collective security, *the "action remains state-centered".*[170] Instead, other community-based approaches could be envisioned and developed, and consequentially, the prevailing narrative *"does not describe the experience of many groups".*[171] This is also due to the fact that the characters in the story of collective security reflect a "*dependence on a particular gendered world view"*[172] and almost never

166 Compare: *Charlesworth/Chinkin* (note 123), 286: The author criticize the reliance of the discourse on several examples: "logic/emotion, order/anarchy, mind/body, culture/nature, aggression/passivity, external/internal, public/private, protector/protected, independence/dependence".

167 See: *Danchin/Fischer* (note 62), 17.

168 Compare: UN Panel Report (note 125), 11: "The case for collective security today rests on three basic pillars. Today's threats recognize no national boundaries, are connected, and must be addressed at the global and regional as well as the national levels. No State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats. And it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbours.".

169 *Braveboy-Wagner*, Institutions of the Global South, 2009, 216.

170 *Charlesworth* (note 137), 43.

171 *Orford*, The Politics of Collective Security, Michigan Journal of International Law Vol. 17, 1995, 373 (400). Compare also: *Charlesworth/Chinkin* (note 123), 286.

172 See: *Charlesworth* (note 137), 43.

acknowledge *"the emotional, the concrete, the particular, the human bodies and their vulnerability, human lives and their subjectivity"*.[173] The technical language of collective security has been powerfully adopted by the narrators and transmitted to the audience of the story, but the narrators also use very emotional language to persuade their audience. The audience is thus *"invited to participate in imagining the world in those terms"*.[174]

In conclusion, the narrative of collective security in international law can be characterized as a meta-narrative, because its storyline provides the anchor and starting point for other related stories, such as the narrative of humanitarian intervention,[175] the story of peacekeeping, or the narrative of counterterrorism. It has also been described as a *"deeper narrative"*[176] that embeds and functions as a carrier for those other stories. For example, the broadening of the understanding of security in the 1990 s (towards including gross human rights violations) provides the link for the narrative of 'responsibility to protect', a story that is embedded in the narrative of collective security, to argue that gross human rights violations can constitute a threat to the peace and allow for measure under Chapter VII of the UN *Charter*.

VI. Conclusion

This contribution has argued that the international legal system can be understood as a rhetorical system. International law is essentially built on the exchange of arguments, on writing judgements, legal opinions, articles, commentaries, on passing on its interpretations in courtrooms, classrooms, at conferences, on websites or in other networks. The discussion of narratives in international law reaffirms this argument.

The paper has investigated and traced the meaning of narrative in the rhetorical system of international law. In essence, narratives operate as mental tools that order, shape, control and manipulate their audience's understanding of international law. Narratives are deliberately created to persuade audiences with a particular reading of international law. At the same time, they can have such an effect because they meet the need of their audiences to make sense of the reality of international law.

This has consequences for the international lawyer's understanding of interpretation: Narratives are used to establish the authority of a certain reading, or interpretation. Therefore, persuasion and rhetoric, in general, are existential for international law.

Narrators can use several tools to persuade their audiences. First, within narratives they can merge fiction, which is generally considered a non-issue in international law, and reality in a way that becomes unnoticeable to the reader. The fictitious aspects of a story, whether those are characters or events (for example, the international community or State sovereignty) are intertwined with the storyline and become a real and, most important, a necessary part of the development of the story. Narratives can transmit a common sense, or a moral of the story by means of encoding messages. These messages

173 *Cohn*, War, Wimps and Women: Talking Gender and Thinking War, in: Cooke/Woollacott (eds.), Gendering War Talk, 1993, 232.
174 *Orford* (note 123) 710.
175 For a detailed discussion of this narrative see: *Orford* (note 2).
176 See: *Orford* (note 123) 682.

often emanate from the evaluation of conflicts and solutions the narrative has encountered. Stories also impose their evaluations on the future perspectives they envision and they can rearrange the past. Consequently, they can establish a different sense of time. It is evident that when narratives transmit a common sense and maybe even a sense of time, they leave no room for alternative stories. They begin operating like mental tools of knowledge: In this sense 'to tell' is 'to know'. Later, once a story has been accepted by the audience, the mind sorts new experiences and events according to the storyline.

Since there is a plurality of narratives, rhetorical techniques of persuasion are needed in the struggle over authority of interpretations and readings of international law. Rhetoric should not be dismissed as a negative instrument; instead it is existential for international law.[177] Narratives are a powerful tool to establish, overthrow or reinforce this authority in international law. They are inherently part of legal argumentation and they become necessary for the functioning of international law. Narratives are part of international law's nature.

International law cannot afford to ignore the plurality of narratives that exists in various areas. This contribution has illustrated the example of the narrative of collective security. An understanding of narratives in the international legal system can, moreover, shed light on how certain interpretations establish their authority, how they maintain it, what they silence, and generally, that they are not objective, but represent the interests of a certain community.

Besides, this can offer new inspirations in legal theory: *"In order to energize legal theory, we need to subvert it with narratives and stories, accounts of the particular, the different, and the hitherto silenced."*[178] It is a challenge for legal scholarship not just to wait for new developments in international law and to use the familiar lenses of analysis, but to re-narrate and trace different stories of a known legal problem or concept. In the end, I am convinced that such narrative analysis will enrich the understanding of international law, its methods, translations and practical implications. Tracing the narratives in international law is essentially a task of asking and analysing how the ordinary might be strange.

177 For a defence of the positive characteristics of rhetoric, or rather a challenge of the "anti-rhetorical stance", compare: *Fish*, Rhetoric, in: Fish (Ed.), Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies, 1989, 478-485.

178 *Harris*, Race and Essentialism in Feminist Legal Theory, Stanford Law Review 42, 3/1990, 615.