A European Vision of International Law: For What Purpose?

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I HAVE SOME difficulty with this topic. It is not clear to me what is meant by a 'vision' of international law, still less a 'European' vision. Perhaps it would be better to speak in terms of an approach or tradition.[1] But even then, it is not necessarily helpful to consider an approach except in relation to a particular individual, government or entity. Are you a positivist, a natural lawyer, a theorist, a realist, an idealist? Are you a member of the New Haven School? Are you a practitioner, a teacher, a writer? Are you a member of the International Law Commission, a judge on the International Court of Justice, a member of an ad hoc arbitral tribunal, a legal adviser to a government, to an international organisation, to a non-governmental organisation? The approach of an international lawyer surely depends more on what he or she does than on which state, or continent, he or she comes from. So is it really possible, today, to identify a European vision, tradition or approach—even leaving aside the problem of defining 'European'?

Even if there is not at present anything that can be identified as a European tradition or approach, it might be thought desirable to work towards one. But there would have to be some good reason for doing so, which outweighed any disadvantages. It is difficult to see any such reason, and indeed there are risks attached to the endeavour.[2]

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[1] For use of the word 'tradition', see the keynote address by Martti Koskenneimi at the first conference of the European Society of International Law held in May 2004 in Florence, Italy, 'International Law in Europe: Between Tradition and Renewal' (2005) 16 *EJIL* 113; see also the Symposia on the 'European Tradition of International Law' in *EJIL*.

[2] I am not dealing with the question of the European Union's approach to international law. To the extent that the Union develops an approach to international law, including in the fields of foreign and defence policy and justice and home affairs, that will presumably encourage a common approach to some issues by the Member States of the Union. See V Lowe, 'Can the European Community Bind the Member States on Questions of Customary International Law?' in M Koskenniemi (ed), *International Law Aspects of the European*

I start with two propositions. First, there is, and can only be, one system of international law in today's world. International law is universal—or it is nothing. Secondly, while there may well be an infinite variety of approaches to (or visions of) international law, it is not helpful to seek to corral this rich variety into a European approach or vision, an American one (or perhaps an Anglo-American one), and other visions, somehow embracing the rest of the world.

I shall seek to illustrate these two propositions by reference to the rules of international law on the use of force, and in particular to the question of anticipatory (or pre-emptive) self-defence. But I shall begin with some general points.

The first proposition lies at the heart of our discipline. There is, and can only be, one system of international law.[3] The days are long passed in which, for example, there was serious debate as to the existence or not of a Latin American international law.[4] A serious challenge to the unity of

Union (Leiden, Martinus Nijhoff Publishers, 1998); A-M Slaughter and W Burke-White, 'The Future of International Law is Domestic (or, The European Way of Law)' (2006) 47 *Harvard JIL* 327.

[3] The first of the conclusions of the International Law Commission's Study Group on Fragmentation of International Law is: 'International law is a system' (see Report of the ILC on the work of its 58th session, Supplement No 10 (A/61/10), para 251 (hereafter ILC Report 2006). See generally Report of the Study Group of the International Law Commission, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law* (A/CN/.4/L.682 and Add.1) (hereinafter ILC Study 2006), and the references at note 5 in A/CN.4/L.702; RY Jennings, 'Universal International Law in a Multicultural World' in M Bos and I Brownlie, *Liber Amicorum for Lord Wilberforce* (Oxford, Clarendon Press, 1987), also in R Jennings, *Collected Writings of Sir Robert Jennings* (The Hague, Kluwer Law International, 1998); P-M Dupuy, 'L'unité de l'ordre juridique international' (2002) 9 *Recueil des Cours de l'Académie de Droit International*; M Craven, 'Unity, Diversity and the Fragmentation of International Law' (2003) 14 *Finnish YIL* 3; M Dupuy, 'Some Reflexions on Contemporary International Law and the Appeal to Universal Values: a Response to Martti Koskenneimi' (2005) 16 *EJIL* 131; A Orakhelashvili, 'The Idea of European International Law' (2005) 17 *EJIL* 315. I leave aside, as being of limited importance in the present context, the question of regional, local, bilateral or special custom: see MH Shaw, *International Law* (5th edn, Cambridge, Cambridge University Press, 2003) 87 and 88, and works cited therein; G Cohen-Jonathan, 'La coutume locale' (1961) *AFDI* 133. All that needs to be said here is that such rules derive their authority from general international law. See also ILC Study 2006, para. 195 at 219, where three meanings of 'regionalism' are distinguished: a set of approaches and methods for examining international law; a technique for international law-making; and the pursuit of geographical exceptions to universal international law rules.

[4] Acccording to Hersch Lauterpacht, 'the controversy, hitherto largely theoretical, as to the existence of a Latin-American international law acquired, through the Judgment and Dissenting Opinions in [the *Asylum* case], a complexion of reality': *The Development of International Law by the International Court* (London, Stevens & Sons, 1958) 30. For a recent article summarising that debate (which apparently lasted from the 1880s to the 1950s), largely by reference to textbooks of the period, see AB Lorca, 'International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination' (2006) 47 *Harvard Journal of International Law* 283. For a clear and authoritative rejection of such thinking, see Hersch Lauterpacht, 'The So-called Anglo-American and Continental Schools of Thought in International Law' (1931)

public international law came from the Soviet Union in the immediate post-revolutionary period. But Soviet lawyers swiftly retreated from a root-and-branch attack on the international legal system, though the approach of Soviet or 'socialist' international lawyers remained rather special almost to the end of the Cold War, and in some cases beyond.[5] Another such challenge came from what was once called the 'Third World'.[6] Some in the 'new states' (and their supporters in the developed world) sought to 'pick and chose the customary law they wished to apply'[7] within what they saw as a Eurocentric or colonialist system, a system developed without their participation and imposed upon them. This culminated, in the 1970s, in the North-South 'dialogue' and the struggle for a 'New International Economic Order'.

Turning to the present, another challenge to the coherence of public international law comes from the emergence of what are sometimes called 'self-contained regimes'. In fact, as Koskenneimi demonstrates in his study for the International Law Commission, 'no regime is self-contained'.[8] So far as concerns the World Trade Organization a recent article in the *European Journal* gives a convincing and balanced account in the same sense.[9] These special regimes may often be characterised by their own enforcement mechanisms, but, like regional custom, owe their existence to

12 *BYIL* 31, and *International Law, being the Collected Papers of Hersch Lauterpacht* (Cambridge, Cambridge University Press, 2004) vol II, 452. For a recent piece which seeks to highlight differences between the United States and Europe, see LA Casey and DB Rivkin, 'International Law and the Nation-State at the U.N.: a Guide for U.S. Policymakers' (Background paper No 1961, The Heritage Foundation, 18 August 2006) www.heritage.org/research/worldwidefreedom/bg1961.cfm. Among the literature on regionalism in international law, see Société française pour le droit international, *Régionalisme et Universalisme dans le droit international contemporain* (Colloque de Bordeaux, 1976) (Paris, Pedone, 1977).

[5] Shaw (n 3) 31–8 (dealing also with China), and works cited therein; K Gryzbowski, *Soviet Public International Law Doctrines and Diplomatic Practice* (Durham, Rule of Law Press, 1970); T Långström, *Transformation in Russia and International Law* (Leiden, Brill Academic Publishers, 2002).

[6] Shaw (n 3) 38–41, and works cited therein. See also A Anghie and BS Chimni, 'Third World Approaches to International Law and Individual Responsibility in International Conflicts' in S Ratner and A-M Slaughter, *The Methods of International Law* (Washinton DC, American Society of International Law, 2004).

[7] ILC Study 2006 (n 3) para 185. See also TO Elias, *Africa and the Development of International Law* (Leiden, AW Sijthoff, 1972); RP Anand, 'The Role of Asian States in the Development of International Law' in R-J Dupuy, *The Future of International Law in a Multicultural World* (Leiden, Martinus Nijhoff Publishers, 1983); AO Adede, 'African International Law: Key Issues of the Second Millenium and Likely Trends in the Third Millenium' (2000) 10 *Transnational Law and Contemporary Problems* 351.

[8] ILC Study 2006 (n 3) paras 123–94, at para 192; and conclusion (15) of the ILC Study Group: ILC Report 2006 (n 3) para 251. See also B Simma, 'Self-contained Regimes' (1985) 16 *Netherlands Yearbook of International Law* 112.

[9] A Lindroos and M Mehling, 'Dispelling the Chimera of "Self-contained Regimes": International Law and the WTO' (2005) 16 *EJIL* 857; B Simma and D Pulkowski, 'Of Planets and the Universe: Self-contained Regimes in International Law' (2006) 17 *EJIL* 483.

the universal system of public international law. (As an aside, it may be noted that while concerns about the fragmentation of international law are exaggerated, they do derive from a laudable desire to maintain the unity of the system.)

Yet another current challenge, and one perhaps more directly relevant to the theme of this session, comes from those who suggest that there is emerging some kind of American exceptionalism; that somehow the international rules do not apply to the sole remaining superpower (or *hyperpuissance*).[10] Happily such views are not promoted by any serious body of international lawyers. They tend to be held largely by some in the international relations field, and the occasional neoconservative. But mention of this challenge leads on to the second proposition.

This is that it is not helpful to seek to develop a European vision of (or approach to) international law, which would inevitably be seen as being in opposition to an American one and presumably to some other or others. If successful (which is improbable) such an endeavour would undermine the unity of international law, thus destroying it. The notion of a European vision appears to exclude the multiplicity of approaches from lawyers in all parts of the world, and their contributions to the law and legal thinking. It may, in some cases, reflect a degree of latent anti-Americanism. Such an approach may even elevate some vision of American international legal thinking, as though that were necessarily the starting point against which all else had to be tested. It is not good legal policy, since it plays into the hands of those who would seek to establish American exceptionalism or to treat international law as an irrelevance. And in any event, no such divide exists in reality, certainly not among practitioners, or among writers generally.

There are probably as many different approaches to international law as there are international lawyers. Practising lawyers may to some degree be influenced by their clients' views or interests, whether those clients are governmental or not. Some academic lawyers are grouped into 'schools',[11] often under the influence of an inspirational teacher—most famously at New Haven. These 'schools', in turn, are usually centred on some theory, often with its own language, largely unintelligible to those who are not disciples.[12]

[10] J Bolton, 'Is There Really "Law" in International Affairs?' (2000) 10 *Transnational Law and Contemporary Problems* 1 ('International law is not law; it is a series of political and moral arrangements that stand or fall on their own merits, and anything else is simply theology and superstition masquerading as law', at 48); JL Goldsmith and EA Posner, *The Limits of International Law* (Oxford, Oxford University Press, 2005).

[11] See P Daillier and A Pellet, *Droit International Public* (7th edn, Paris, LGDJ, 2002) 82.

[12] See I Scobbie, 'Wicked Heresies or Legitimate Perspectives? Theory and International Law' in M Evans (ed), *International Law* (2nd edn, Oxford, Oxford University Press, 2006) 83. As may be gathered, I am somewhat critical of theory. At least, I do not find theory particularly helpful—beyond, that is, some understanding of the basis of obligation in international law, as well as the nature and sources of the law.

Sometimes, especially in the past, attention has focused on national approaches to international law. Italian international lawyers were considered strong on theory and saw an essential unity between public and private international law. Germans too majored on theory. The British, on the other hand, were pragmatic (or thought they were). In the United States, the centenary of the *American Journal* has produced some interesting studies of the special contribution of Americans (or the *American Journal*, which is not exactly the same thing) over the last hundred years.[13] American society, so it seems to me, is today striving for openness to non-Americans, for international outreach, and for a genuinely international approach.

It is, of course, true that international lawyers (who, after all, are also human beings) are the product of their environment: national, social, educational and also legal. This is presumably why the Statute of the International Court of Justice refers to 'the principal legal systems of the world'—not, be it noted, the principal visions, traditions, methods or approaches. Of course, lawyers from a particular state or region may have particular interests or concerns, reflecting their history or geography or current problems. They may be concerned with particular institutions, such as the European Union and the European Court of Human Rights. But that is not the same as having a special vision of the law.

The starting point for any lawyer trained in England and in the English legal system is different from that of one trained in France, or in Germany, the United States, India, South Africa, Brazil, China, Japan. But that is only a starting point. For those who work in the field of public international law, national influences are likely to diminish over time. For one thing, a large proportion study or teach at foreign universities. Practitioners are often based abroad, whether working in the public sector (for example, for an international organisation) or privately. Even those who are mainly based in their home countries, which includes most government lawyers, are in constant contact with each other, at international conferences, whether official or not, as colleagues in legal proceedings (whether or not on the same side), or through bilateral contacts. This interchange is far more developed than a century ago, when what might be called the national school debate was at its height.[14]

[13] LF Damrosch, 'The "American" and the "International" in the *American Journal of International Law*' (2006) 100 *AJIL* 2; DJ Bederman, 'Appraising a Century of Scholarship in the *American Journal of International Law*' (2006) 100 *AJIL* 20.

[14] The *European Journal* seems fascinated by national approaches. See eg B Aral, 'An Inquiry into the Turkish "School" of International Law' (2005) 16 *EJIL* 769. But that perhaps flows from its commendable interest in the history of international law. See also E

One particular reflection of the national school debate, a century ago, concerned the composition of international courts and tribunals, in particular the proposed World Court. A major obstacle was fear that it would be dominated by lawyers from a particular legal tradition—put bluntly, the common lawyers would be outvoted by the civil lawyers. The reality has been quite different. The composition of international courts has indeed given rise to concerns, but these have been largely unrelated to the national backgrounds of the judges. A debate about the respective influences of the common law and the civil law occurred more recently in connection with international criminal tribunals. Early on it was feared in some quarters that the common law would dominate in these tribunals, not least, that particular form of the common law to be found in American criminal courts. But as time passes we see that the ad hoc tribunals, and the International Criminal Court, are drawing on elements of various systems.

Arguably, one important fault-line (more important than national origin) is between those who practise international law and those who teach it. Practitioners, whatever their origins, often seem to have more in common with each other than with their co-nationals from the academic world. But this should not be exaggerated. Many academics are also practitioners. Sometimes it can seem as though the fault-line runs through a single individual.

I have tried to understand the reasons behind the suggestion that there is a European vision of international law, presumably opposed to an American (or an Anglo-American) vision. I would hope that such a division is not something that any of us would wish to promote. But does not the suggestion that there is or may be a specifically European vision, tradition or approach to international law logically imply an opposition to another or other approaches? If so, we should think long and hard about the merits of such an endeavour.

Of what would a 'European vision' consist? Two specific points were made in the brief description of this opening session prepared by the organisers of this Conference. The first is a supposed 'gap between Eastern and Western Europe'. I am not sure what is meant by 'gap' in this context. Certainly, working together over the last 15 or so years with colleagues from Eastern Europe I have not been conscious of any 'gap' in approaches to the law. Secondly, it is suggested that 'the European vision of international law' may 'be something more than a middle ground between the American vision and that of the developing countries'. The underlying assumptions of this suggestion are difficult to comprehend.

Cannizzaro, 'La doctrine italienne et le développement du droit international dans l'après-guerre: entre continuité et discontinuité' (2004) *AFDI* 1. The ILC Study 2006 (n 3) remarks that many articles in the *Journal of the History of International Law* 'have been geared to examining regional influences and developments in a historical way'.

Perhaps the subtext is 'the idea of a constitutionalisation of international law', which (it has been suggested) is the 'prevailing theme' of the European Society of International Law. It is not clear that there is any agreement on this 'theme', or even on the broad outlines of the ideas behind it.[15] The term 'constitution' has no particular meaning in international law. It becomes no clearer if embodied in a complex term like *Verfassungskonglomerat* or described as an 'international value system'. But perhaps the question has to be asked: is 'constitutionalism' the European vision? Or is it an incipient 'school', a circle grouped around an emerging theory, a theory that may one day be influential—or not.

There is a preliminary question. 'The definition of "Europeanness" is inevitably elusive'.[16] Who is 'European' for the purpose of this debate? Presumably all citizens and Member States of the European Union are European—or is the divide still seen as between continental Europe and Anglo-Saxons? Does 'Europe' encompass all 47 member states of the Council of Europe and their nationals? Does it encompass all or most members of the Organisation for Security and Cooperation in Europe and their nationals (except presumably the United States and Canada)? Perhaps the answer to this question is—it is all in the mind, or in your approach—but this is completely circular: presumably on this view there are Europeanised Americans and Americanised Europeans. Another difficulty with identifying a European vision or approach is that there are widely differing views on the substance of much of the law, not only among European writers but among European governments. Try, for example, to find two European Union states that have the same understanding of the rules governing reservations to treaties.

I now turn, by way of illustration, to perceived differences between European and American approaches to the rules of international law on the use of force. At first sight, this would seem to be one area of international law (and a central one at that) where American and European approaches differ most. Unlike in other areas,[17] in the case of the use

[15] There is an increasing literature; see B Fassbender, 'The United Nations Charter as Constitution of the International Community' (1998) 36 *Columbia Journal of Transnational Law* 573; S Szurek, 'La Charte des Nations Unies, Constitution mondiale' in J-P Cot, A Pellet and M Forteau (eds), *La Charte des Nations Unies, Commentaire article par article* (Paris, Economica, 2005) 29; S Tierney and C Warbrick (eds), *Towards an 'International Legal Community'? The Sovereignty of States and the Sovereignty of International Law* (London, British Institute of International and Comparative Law, 2006). It is noteworthy that the ILC Study 2006 (n 3) expressly took no position on 'whether and to what extent international law might be in a process of "constitutionalisation"' (para 326).

[16] *Report of the Inaugural Conference of the European Society of International Law* (held in Florence), available at www.esil-sedi.eu/english/ficr.html.

[17] Such as in the fields of international human rights law and international organisation, where the degree of commitment varies, which, properly analysed, comes down to policy difference. The United States may have chosen as a matter of policy to enter reservations, or not to join a particular treaty or organisation.

of force the legal obligations of the United States and European states are essentially the same (except that some, but by no means all, European states accept the jurisdiction of international courts and tribunals over use of force issues). It is also the field where the fact that the United States is, at present, the sole remaining superpower is most likely to lead to different approaches. The United States is more extended militarily, and has more occasion for military action, than most.

What does one look at to assess a state's (or a continent's) approach or vision in any particular area of international law? Do you look to the political utterances of its leaders, often rhetorical? Or to the more careful statements of those who routinely speak for it on foreign or legal matters? Or do you chiefly look at what states do? Do you also look at what the leading writers are saying? (Similar questions arise when it comes to assessing state practice.)

I will refer to three use of force issues. First, does international law in any way act as a constraint on the use of force by states? Secondly, is there a right of anticipatory self-defence? And thirdly, if there is such a right, are the *Caroline* principles still good law and, if so, how do they apply in the face of modern threats? Even on such matters, it is not, in my view, sensible to speak of a European vision as opposed to an American one.

On the first point, and despite occasional wild statements (reported statements, at least) I would suggest that no difference exists between governments on each side of the Atlantic. It is a few authors, not government representatives, who have questioned the very existence of rules of law in this field. They have for the most part come from the international relations end of the spectrum, so perhaps we should not pay them too much attention.

As to the second issue, there remain stark differences among states, and among writers, on whether the right of self-defence encompasses a right to use force to avert an imminent attack. The US Government's position (that there is indeed such a right of anticipatory or, as some now call it, pre-emptive self-defence) has been clear and consistent, and is shared by a fair number of European states, including the United Kingdom. Lest it be said that the United Kingdom is not a European state for these purposes, I would recall a recent study by Stefan Talmon of the evolution of the German Government's position[18] or the equally interesting positions taken in the last year or two by the Dutch and Russian Governments.[19] So the

[18] S Talmon, 'Changing Views on the Use of Force: the German Position' (2005) 5 *Baltic Yearbook of International Law* 41.

[19] See also MC Wood, 'Towards New Circumstances in which the Use of Force may be Authorized? The Cases of Humanitarian Intervention, Counter-terrorism and Weapons of Mass Destruction' in NM Blokker and NJ Schrijver (eds), *The Security Council and the Use of Force: Theory and Reality—Need for Change ?* (Leiden, Martinus Nijhoff, 2005) 81.

differences on this second issue, while deep, cannot be said to reflect a European vision on the one hand and an American one on the other.

Third, and most difficult, is the application in today's world of the *Caroline* principles: 'It will be for the [British] Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation ... It will be for it to show, also, that the local authorities of Canada ...did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept strictly within it'.[20] A central requirement, simply put, is that the attack must be 'imminent'. To the extent that the US National Security Strategy of 2002 may have suggested otherwise, it has no basis in law. It is probably not possible to be more specific than the British Attorney General, in a parliamentary statement in April 2004, when he said:

> The concept of what constitutes an 'imminent' armed attack will develop to meet new circumstances and new threats ... It must be right that States are able to act in self-defence in circumstances where there is evidence of further imminent attacks by terrorist groups, even if there is no specific evidence of where such an attack will take place or of the precise nature of the attack.[21]

The State Department Legal Adviser has made similar remarks on a number of occasions. For example, his speaking notes for a meeting in January 2003 included the following:

> While the definition of imminent must recognize the threat posed by weapons of mass destruction and the intentions of those who possess them, the decision to undertake any action must meet the test of necessity.[22]

Few other states have felt it necessary to say anything on this matter—yet. There are, no doubt, those who would not accept that the concept of imminence is relative in this way. But the fact that there are disagreements on the substance of particular rules of law does not mean there is a different vision. So even here, it is not in my view possible, on the evidence, to discern a distinct European vision as opposed to an American one.

As I said at the outset, I have some difficulty with this topic. Perhaps I have been tilting at windmills. Tilting at windmills is an ancient European

[20] MC Wood, 'Nécessité et légitime défense dans la lutte contre le terrorisme: Quelle est la pertinence de l'affaire de la *Caroline* aujourd'hui?' in Société française pour le droit international, *La Nécessité en droit international* (Colloque de Grenoble, 2006) (Paris, Pedone, 2007); C Greenwood, 'International Law and the Preemptive Use of Force: Afghanistan, Al-Qaida and Iraq' (2003) 4 *San Diego International Law Journal* 7.

[21] C Warbrick, 'United Kingdom Materials on International Law 2004' (2004) *British Yearbook of International Law* 822.

[22] Prepared speaking notes for William H Taft IV, for remarks at a meeting of the American Society of International Law and the Bar of the City of New York on 13 January 2003, (2002) *Digest of United States Practice in International Law* 952.

tradition that lies deep in our European culture. I should be relieved to learn that these are indeed windmills; that I have not understood this 'European vision' thing; and that it is not harmful at all.[23]

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[23] This thought is reinforced by reading the ILC Study 2006 (n 3), especially para 201, which puts the present enquiry in an historical context: 'It is no doubt possible to trace the sociological, cultural and political influence that particular regions have had on international law. However, these studies do not really address the issue of fragmentation. They do not claim that some rules should be read or used in a special way because of their having emerged as a result of "regional" inspiration. On the contrary, these regional influences appear significant precisely because they have lost their originally geographically limited character and have come to contribute to the development of universal international law. They remain historical or cultural sources or more or less continuing political influences behind international law'.

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Avant-propos

HÉLÈNE RUIZ FABRI ET EMMANUELLE JOUANNET*

Le droit international est désormais partout, il s'est considérablement étendu dans l'ordre international et dans les ordres internes. Et le droit international semble désormais servir à tout. Il est tout autant un moyen d'expression des droits individuels ou collectifs, un instrument de coexistence et de coopération des Etats que le paravent commode pour dissimuler des projets hégémoniques ou arbitraires des sujets internationaux, ou des acteurs transnationaux et opérateurs économiques privés. Son extension considérable fait que se répand cette sorte d'hommage du vice à la vertu que constitue la nécessité où se trouve tout un chacun aujourd'hui d'adopter un discours juridique.

Or c'est précisément dans ce contexte très général du développement considérable du droit international que l'équipe organisatrice de Paris I a inscrit la conférence de la Société européenne de droit international (SEDI), en radicalisant quelque peu l'interrogation afin de provoquer la réflexion. Nous avons posé une question très simple: à quoi sert le droit international? Autrement dit nous avons voulu répondre en partie aux interrogations posées par les évolutions en cours du droit international contemporain, en nous interrogeant directement sur son utilité et sa finalité; et donc en ne cherchant pas à revenir sur la définition, la validité, la systématicité ou l'existence du droit international. Il est vrai que l'idée même que le droit international puisse exercer des fonctions, ou avoir des buts qu'on lui assigne, présuppose qu'on lui confère une autonomie relative, et l'on va considérer bien souvent sa fonctionnalité et sa finalité suivant la façon dont on l'envisage: comme système de régulation sociale, comme organisation autopoiétique, comme jeu, langage, superstructure ou comme ensemble de réseaux. La simple évocation de ces multiples définitions rappelle la difficulté actuelle à conclure de façon définitive sur la nature du droit international. Et cette difficulté ne peut que rejaillir sur la façon d'envisager ses fonctions. Mais notre interrogation peut s'accompagner de ces multiples définitions car on peut y répondre par de multiples biais. La question, très générale, est de savoir si le droit international contemporain est adéquat pour accomplir les buts que se sont donnés les sujets de la société internationale et s'il peut parer les écueils de

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