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SERGE SUR, *INTERNATIONAL LAW, POWER, SECURITY AND JUSTICE*
ESSAYS ON INTERNATIONAL LAW AND RELATIONS,
OXFORD AND PORTLAND, HART PUBLISHING, 2010.

Thibaut Fleury[*]

How to qualify the United States' attitude towards International Law? How is Humanitarian Law evolving? Does the concept of "failed states" make sense? Here are some of the numerous issues that Prof. Serge Sur raises in this book, which assembles articles published by the author during the past 25 years. An eminent professor of International Law and Relations at Panthéon-Assas University in Paris, France, Prof. Sur directs the *Centre Thucydides*, and is currently ad hoc judge at the International Court of Justice. Prof. Sur is also the author, with Prof. Combacau, of one of the most famous handbooks of International Law published in France[1]. The translation of thirty-two articles he authored in this new volume of the *French Studies in International Law* thus offers, for the first time in English, an overview of the thought of one of the most respected French internationalists.

Prof. Sur's articles focus on four of the main issues of International Law and Relations, which are the four main parts of the book : States (Part I), International Legal System (Part II), International Security (Part III), and International Humanitarian Law and International Criminal Justice (Part IV). On those wide subjects, Prof. Sur's point of view proves to be both classical and challenging.

The first two chapters of the book provide the reader with an in-depth definition of the notions of power and hegemony, which are carefully distinguished from other notions such as, respectively, violence or leadership. This gives Prof. Sur the opportunity to recall, first, that States, despite the development of so-called new kinds of power (international organizations, NGOs, etc.), still are the most important entities to channel the expression of power in the international society and, second, that the 9/11 attacks did not end American hegemony, but rather underline the incapacity of the United States to define appropriate and pacific means of change. American hegemony is actually one of the recurring topics of the book : after a third chapter devoted to the decline of the United Kingdom in international relations, the author goes back in the fourth chapter to the two prevailing models of organizing interstates relations, i.e. the American and the European ones. The model promoted by the United States – qualified as "hegemony" rather than "imperialism" since it does not include territorial annexation – is described as grounded upon unilateralism, coercion, and deregulation, while the European model promotes compliance with International Law, democracy, peace and judicial means to settle disputes.

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[1] Jean Combacau, Serge Sur, *Droit International Public* (Paris, Montchrestien, 2010).

Unfortunately, the former model prevails over the latter: this is the purpose of the fifth chapter of the book to demonstrate that what we call "globalization" is nothing else than the expression of the American hegemony. The last chapter of the book's first part is devoted to what constitutes the reverse of hegemony. « Failed » States indeed refers to a situation in which the state cannot fulfill its essential functions, most critically that of ensuring the physical security of its people. Whatever the characteristics of failure – such as economic or ethnic difficulties – they all have international repercussions which call for policy responses. Prof. Sur proposes three classical kinds of answers: prevention, pre-emption, and reconstruction – showing among other examples how the European Union serves as a powerful mean to avoid failures of States by imposing criteria of membership without destroying the State once it is a member.

Devoted to the international legal system, the second part of the book is also the most theoretical one. In what is perhaps the most unexpected but interesting argument, Prof. Sur underlines the role that utopia plays in positive international law. An ideal object towards which conscious actions must converge, utopia is central, for example, in the process of setting up international norms governing peacekeeping and security, or an agenda for international disarmament. Those processes are regulated by international norms: their distinguishing features are described in the two following chapters. International law norms are said to be "relative" and "mobile" : relative because they do not apply uniformly with respect to their various subjects, and mobile because norms will develop and survive only if they are adapted to their environment and are capable of evolving with it – e.g. evolving from a conventional nature to a customary one. This allows Prof. Sur to underline the central role played by States in the definition of international law, the origin and development of customary rules and the interpretation of international norms. Devoted to this issue, the 11th chapter highlights the central role that is still played by States in international law, since there is no mean to limit a State's sovereign capacity to interpret international norms. Nevertheless, freedom of interpretation does not mean the absence of "fashion" in interpreting international law. The author concludes the second part of his book by showing how a "North wind" and a "South wind" have blown over International Law during the 20th century. But if the former promotes economic equality between the North and the South and peoples' self-determination, while the latter promotes European values such as human rights, criminal justice, and the protection of individuals, none of the two winds led to the creation of a "new international law" favorable to the "North wind" only, as some authors have argued.

The third part of the book is the central one: focusing on international security, Prof. Sur explores the system and doctrines of security, the role of the UN Security Council and the issues of disarmament and unilateral use of force. Systems of international security – such as the balance of powers, Federation, Empire, etc. – are carefully listed and defined, and the flaws of the UN system exposed. The UN system is an hybrid system, trapped between "superstatism" and "interstatism". Moreover, being both legal and political – even though one could wonder what kind of system is purely legal or purely political – and without proper military means, the

UN security system seems condemned, even though no alternative universal project has emerged. Some solutions are nevertheless listed in chapter 16 : to enforce existing articles of the Charter – such as article 4 which could be construed as authorizing the UN to suspend a Member not respecting is obligations – and, second, to improve the regionalization of the UN Security Council, the accountability of NGOs, or to establish Special Criminal Tribunals as soon as needed.

Despite those flaws and possible improvements, the author is without question a supporter of the Security Council as it actually exists: rejecting the criticism regarding the composition of the Council and its failure to adapt to new threats to peace, Prof. Sur explains that numerous post-9/11 events show that the Security Council's decisions are the most legitimate international decisions. The Council is then described as the best « architect » of the international society – an assertion which is proved by the analysis of the three following Resolutions 1368, 373, 1441 and 1540 adopted to deal with terrorism and weapons of mass-destruction in Iraq. The numerous flaws that Sur highlights in those resolutions – such as problems of definition of "non-state actors", "terrorist acts", or problems of implementation of those resolutions by States – does not preclude him from concluding that the UN Security Council's action dealing with this new international context has been satisfactory.

The author is far more critical about the way States and International Organizations deal with the problem of arms limitation. The formulation of instruments, their application and enforcement raise several legal problems which are more or less – and often less than more – addressed in positive international law. States' own interests, and notably American hegemony, preclude the development of an efficient international law of disarmament, as demonstrated by the rejection of the Comprehensive Nuclear-Test Ban Treaty by the United States.

Turning to the issue of unilateral use of force, the author develops arguments about the legality of the intervention in Kosovo and the sustainability of the preventive war doctrine. Indeed, after an overview of the legality of armed conflict in international law, where he explains that recent interventions in Iraq, Kosovo and Afghanistan do not verify the decline of the regulation of force but rather the over activity of the Security Council, Prof. Sur explains that the intervention in Kosovo could have been justified on the basis of humanitarian considerations. According to him, neither Article 2.4 of the UN Charter nor the notion of sovereignty preclude a State from intervening on the territory of another for humanitarian reasons. Since the intervening States did not ground their intervention of such a basis, their operations are qualified as illegal, just as the U.S. operation in Iraq.

Quite short if compared to the three other parts, the fourth and last one is devoted to humanitarian law and criminal international justice. It is mainly a strong criticism of the very necessity of the International Criminal Court (ICC). Indeed, according to Sur, there is no need for such a Court, since States still are the best entity to punish international crimes – as it has been proved by the *Pinochet* case – and because of the role that NGOs have played and are to play in the creation and

functioning of the ICC. Prof. Sur pleads for an international criminal justice grounded upon States' sovereignty in criminal matters and, if necessary, upon ad-hoc courts, which, contrary to the ICC, are special, universal and mandatory jurisdictions. Moreover – this is the concluding argument of the book – the recognition of humanitarian intervention would allow States to act directly against failed State, a mechanism best fitted to the very structure of the international society.

Prof. Sur's book offers a very wide range of thoughts on international law and relations. The most recurrent topics of this field of study – States, sovereignty, international organizations, etc. – are linked with contemporary issues – Afghanistan, Kosovo, Iraq, role and composition of the Security Council, etc. – in a way which illustrates both the complexity and originality of International Law. This book does not give in to "doctrinal fashions": Prof. Sur rejects or criticizes a lot of contemporary doctrines or evolutions of international law – such as the doctrine of failed states, of preventive war, the establishment of permanent criminal courts or the role played by NGOs. Rather, the author tries to give a classical but nevertheless modern overview of international law and relations.

The attempt is most of the time very convincing – but, strangely enough, this leads to a frustration : one would have liked to read more on topics which are, at least hypothetically, more challenging to classical views on international law. Prof. Sur says a lot about American hegemony, but, for example, the "European model" of organizing interstate relations is, in that book, scarcely analyzed. Also, Prof. Sur criticizes on several occasions the role played in international relations by NGOs, and emphasizes the importance of States for the regulation of international relations, but he remains quite silent about the evolving roles of individuals as subjects of international law – a topic which is so important that it is central to Prof. Leben's recent book, published in the same collection, *The Advancement of International Law*[2]. Does this mean that those issues, if addressed, would endanger the doctrinal assumptions upon which Prof. Sur's book is grounded?

[2] Charles Leben, *The Advancement of International Law* (Oxford, Hart Publishing, 2010). For an overview of his book see our review in this issue.