

Hélène Ruiz Fabri, Emmanuelle Jouannet, and Vincent Tomkiewicz (eds). *Select Proceedings of the European Society of International Law. Volume 1, 2006*. Portland Oregon: Hart Publishing, 2008. Pp. 458. £45.00. ISBN: 9781841136882.

This volume, a compilation of papers given at the 2006 conference of the European Society of International Law, mainly focuses on general theoretical aspects of international law. It does not represent a particular theoretical approach (e.g. critical, feminist, policy-oriented, Marxist, or other), but instead identifies general theoretical questions of the international legal discourse – which can sometimes be neglected in a discussion guided by particular theoretical perspectives. These general theoretical questions relate to the utility of international law, the relationship between law and politics, law and imperialism, and the discussion of European and other approaches to international law.

Emmanuelle Jouannet's essay focuses on the general purpose of international law, particularly in terms of how international law serves or constrains the choices states make in their policy calculations. Jouannet suggests that 'international law is no longer simply a means of limiting State behaviour, but is becoming a tool in the hands of States. International law has become an instrument for the defence of any position' (at 55). Furthermore, international law can be used to transform international society in order to make up for social and economic imbalances; it tends to become a more interventionist, welfare-providing law. This causes the growth of international regulation and bureaucracy. But still, international law makes little difference in eliminating or reducing important global problems – the task to which the international society has committed itself by way of declarations and multilateral statements. Jouannet refers to the declarations on the elimination of violence against women, on the provision of health care for all by 2000, and the implementation of the Kyoto Protocol – the tasks

which have not been completed or are even far from completion (at 57, 59, 71, 73).

Evidence of a more positive and encouraging trend in this field is the establishment of the International Criminal Court (at 84). Jouannet concludes that law is not a panacea, and it depends on agreement between states, based on political reasons, and the extent to which it will be able to accommodate and resolve pressing global problems (at 87, 89). It is pretty easy to agree with most of these suggestions apart from the one that international law is becoming a tool in the hands of states. Ever since its inception about three millennia ago, international law has always been a tool for states to advance and protect their interests. There is no contradiction between international law serving the interests of states and at the same time limiting their permissible conduct. For only by imposing limits on what states can lawfully do can international law genuinely protect interests of other states. It is also imprecise to denote international law as an instrument for the defence of *any position*. International law, just like any legal system, provides subjects of law with the fora and means to advance and defend their position. But the ultimate merit of those positions is clarified by reference to neutral rules established and operating independently of particular positions expressed by states in the relevant cases. Almost every rule of international law embodies the balance of interests of states. The balanced consideration of the interests of states in relation to the particular subject-matter of the rule is the reason it is possible for states to agree on that rule. Once, however, the rule is agreed upon and established, it will operate and govern the conduct of states whether or not this suits the interests of states which are affected by that rule – unless and until states manage to agree, again, to abolish or replace that rule.

Several essays in the volume relate to the European vision of international law. Ineta Ziemele examines the grounds on which the European vision could be feasible, and suggests that it should have a high degree of acceptance by both states and non-state actors in Europe. Ziemele's European vision of international law aims at contributing to 'a new kind of human

world', using the expression of Philip Allott. It is not obvious how this European vision could be formulated and no straightforward criteria are suggested for that. Ziemele refers, however, to the possibility of developing international law through the institutions of the Council of Europe and the European Union, and through advancing the concept of European *ordre public*, again without explaining how such public order is produced and how far it extends (at 140, 146). Michael Wood's essay on the same subject effectively exposes the weakness of the thesis that there is a European approach to international law, pointing to certain similarities in approaches to international law within and outside Europe, and to the divergence within Europe in approaches to particular international legal problems. European states have different approaches to important international legal issues, such as the use of force or reservations to treaties (at 152, 156–157).

After this, the volume presents a number of essays on particular theoretical issues of international law. The essay written by Lauri Mälksoo, regarding liberal imperialism of the leading international lawyer in nineteenth-century Russia Fyodor Martens, is useful in highlighting the contribution by this figure. The essay succeeds both in demonstrating that the liberal imperialism of Martens was derived from his adherence to certain dogmas of classical liberal political thought and also in demonstrating the way Martens used liberal ideology to adapt it to the foreign policy aims of the Russian empire. This example of using ideology in foreign policy needs is instructive and should be borne in mind when some current instances of the use of liberal argument in the field of international law are confronted. It is the core of legal analysis and arguments to distinguish, in relation to every single theory related to international law, the analysis of applicable law and the ideological argument as to what the law should be or is desired to be.

Barbara Delcourt focuses on the possibility of an imperial version of international law in the context of the common foreign and security policy of the European Union. Delcourt analyses how far the liberal imperial project can fit within the framework and

activities of the European Union and how the concept of hegemony can be accommodated in this process. While this analysis is interesting, there is no sufficient coverage of the relevance of the European Common Foreign and Security Policy (CFSP) as a possible element of the projected liberal imperial project of the EU. In terms of relationship between international law and politics, Ralph Zacklin warns both against neglecting policy argument and against letting the policy argument overtake the legal argument in the process of interpretation and application of the law (at 234). Andriy Melnik's essay, called 'Master or Servant? International Law in the Foreign Policy Context', examines the merits of the approaches identifying the value of international law with those of particular policy preferences. While disapproving that vision, Melnik still emphasizes the symbolic intertwining between international law and politics. He provides an insightful analysis of the relationship between international law and vital national interests of states and how a legal adviser of the government should see his role in preserving international law where vital interests of states are involved (at 237, 240). In this sense, Melnik's essay is impressive and should be recommended to academics and practitioners alike.

To conclude, this volume contains a very useful, down-to-earth analysis of general conceptual aspects of international law. It is certainly good for international legal theory to be approached in such a transparent manner, cleansed of clichés and focusing on what international law actually is. This volume is certainly to be recommended to anyone who wishes to follow up on the pertinent issues of the relationship between international law, national interest, and ideological traditions.

## *Individual Contributions*

*Helène Ruiz Fabri and Emmanuelle Jouannet*,  
Foreword;

*Emmanuelle Jouannet*, A quoi sert le  
droit international?/What is the Use of  
International Law?;

*Hubert Védrine*, A quoi sert le droit international?;

*Pascal Lamy*, La place et le rôle (du droit) de l'OMC dans l'ordre juridique international;

*Jean-Paul Jacqué*, Une vision européenne du droit international?;

*Ineta Ziemele*, Legitimacy of the Vision: Central and Eastern Europe;

*Michael Wood*, A European Vision of International Law: For What Purpose?;

*Yury Kolosov*, A European Vision of International Law: For What Purpose?;

*Lauri Mälksoo*, The Liberal Imperialism of Friedrich (Fyodor) Martens (1845–1909);

*Barbara Delcourt*, International Law and the European Union;

*Slim Laghmani*, L'ambivalence du renouveau du *jus gentium*;

*Ebrahim Beigzadeh and Ali-Hossein Nadjafi*, Malentendu Nord–Sud autour du droit international: réalité ou mythe;

*Ralph Zacklin*, Evaluating the Role of International Law and the International Lawyer in the Decision-making Processes of the United Nations;

*Andriy Melnyk*, Master or Servant? International Law in the Foreign Policy Context;

*Pål Wrangé*, Is there a General Interest *hors la loi*?;

*Susan Marks*, The Ideology of Poverty; *M. Mahmoud Mohamed Salah*, Droit international et pauvreté;

*Peter Kovacs*, Les acteurs non-étatiques en droit international;

*Jan Klabbers*, The Commodification of International Law;

*Anne Peters*, Reconstruction constitutionnaliste du droit international: arguments pour et contre;

*Bardo Fassbender*, The UN Charter as Framework Constitution of the International Community;

*Mireille Delmas-Marty*, Droit international et humanisme juridique: Quelles perspectives?;

*Georges Abi-Saab*, Droit international et humanisme juridique: Quelles perspectives?;

*Iulia Voinea-Motoc*, Conceptions of Pluralism and International Law;

*David Kennedy*, Perspectives on International Law and Legal Humanism;

*Mireille Delmas-Marty*, Remarques conclusives

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