ENGLISH SUMMARY

INTERNATIONAL LAW

What today seems more desirable than an interstate law, is a *universal* private law. The model does exist. It is the *jus gentium*, as defined in the Roman *Digest*.

Even if a widely held doctrine lends to international private law necessary roots in international public law, the former exists « on the side » of the latter, in an environment where state sovereignty rules. The federalist model which « internationalises » international private law does not fully take into account the real world where protecting the person is the main care.

Like other juridical systems, international law has three dimensions : one for recording – which accounts for power relations and makes them official –; one for organizing that contains institutions, mechanisms and procedures of the system; one of utopia which includes all the representations and goals of the system and informs it. But whereas these dimensions are coherent in internal systems, with international law they remain independant, not to say contradictory. Here the utopic dimension is especially noticeable and easy to identify. Its various functions – negation, assertion, anticipation, transfer, derivation – can then be analysed.

Rather than having made up international law from start to finish, Grotius wrote the ultimate synthesis of the currents of thought composing the doctrine of the just war which he turned into a general theory for settling with weapons the arguments staying away from judicial ways instituted between citizens by public powers.

In Hobbes political philosophy, which is political in the narrow sens of the word, the power of the Leviathan-State does not cross frontiers. Hobbes is reacting to the current civil war that brought England back into the anarchy of the state of nature and therefore thinks that peace merges with Commonwealth security and order.

Rousseau is more qualified and wonders about the existential meaning of a would be international law. He discovers an antinomy between the *citizen* linked to the State, and *man* open to the universe, he therefore concludes, with a certain sadness, that national law will always hinder international law.

Unlike a still widely held opinion, Vattel is not the one to be blamed for the decline of natural law as a foundation for *jus gentium*. He only made more specific a doctrine already in embryo in his predecessors of the School of nature and international law.

With Kant and Hegel, international law answers the question of war throught modalities of paradoxical consequences. A survey of the *Project for perpetual peace* and of the *Principles of law philosophy* shows that the relation between the thesis of criticism and that of system, keeps a number of surprises, however softened by the position explicitely assigned to international law by each philosopher.

The XXth century was marked at the same time by the desire to submit war to law and by the worsening of violence in military conflicts. Max Weber's, Carl Schmitt's and Raymond Aron's merit was to show the solidarity of these processes by refering both of them to the contradictory development of modern rationality. Their divergences bear on the meaning to be given nowadays to the *ideals* of modern rationalism.

An international treaty being at the same time formal and normative, contains provisions which are essentially constituting the deed and must be distinguished from normative provisions. Moreover to the system of treaties as a whole, belong some characteristics linked to its normative aspect but others, more numerous, can be explained by its formal aspect.

Has the international assertion of the fondamental rights of the human being, accomplished through treaties on the basis of the general provisions of the Charter of the United Nations, already altered, even very slightly, the foundations of law and the structures of legal international order ?

Unlike what is often maintained, when legal reasoning takes the form of the syllogism, a fact is not simply contained in the minor. It rules over every step of the reasoning with the evaluative interpretation given to it. Legal reasonning does not rest on a separation of fact and law, but on a dialectical movement between them.

After having clarified what can be called a fiction, as opposed to other categories, and after recalling the main doctrinal currents as far as fiction is concerned, this study takes for basis a conception of the norm as a power relation accepted between the parties. But law uses ideological means, presented as juridical techniques to force acceptance of these situations. Fiction appears to be one of them.

Space is at the center of interstate relations and international law. Its profound heterogeneity appears in its legal treatment : space is quantitatively and qualitatively diversified, it carries changing values and meanings. From the point of view of spatial politics or from the point of view of theoretical rule analysis, this study reveals a dissociation between real space and juridical space. The main fact to be kept in mind is not so much this very dissociation as the modalities according to which it proves revealing of the tensions to which contemporary law is subject as a whole.

The fact that arbitral ou judiciary judges use general principles sanctions the positive value of this process as a way of creating international private Law and might foreshadow the recognition of a judicial order with a universal value.

The author, a constitutionalist and not an internationalist, goes deeper, on the occasion of this year topic, into a reflexion he began in *Archives* last issue. He runs the trial of the notion of State sovereignty which hides the necessary foundation in law of the State and the fact that the State is subject to a law that towers above it. With this - important - reservation, he admits the necessary character of a formal definition of the power of State. But according to him, if it is necessary, it is not enough. Even if the State may not be the « perfect » society dreamt by classical thinking, it remains the biggest society in which a person can bloom. Its power warrants both of them. In its unity, superstate law - a notion which covers notions seldom brought side by side due to the separation between disciplins (supra-constitutionality for internists and *jus cogens* for internationalists, for example) could only, while limitating it and founding its self-limitation, ensure the non-availability of the means for State conservation and power. Determining the content of this last notion is still difficult, despite an age-old reflexion on the subject. Unlike the dominating conception, such a way of thinking brings a material definition of international law.

The insolvency of numerous indebted countries is equivalent to a *de facto* redistribution of world revenu. Currently, general international law offers no legitimation for this. For, turning back to the principle of *liberal* state, it does not account for the redistributive principle of *social* state. If world order were to convert to the principles of social state, it would have two advantages : supporting world global demand by other means than accumulating the debt – economic advantage – and make acceptable, *i.e.* « legitimate » what can today only be seen as a « savage » redistribution of world revenu – political advantage. However such a conversion arises the problem of a conflict between *sovereignty of States* and *solidarity of Nations*. This conflict between principles sends back to the opposition between the concurring legitimations of a « natural order » (liberal state) and « managed order » (social state). Legitimizing a « concerted order », as device overriding this opposition, would on a conceptual plane, open the perspective of a conciliation of both principles.

If the respect of law ensures peace inside political communities, could an international law guarantee it between States ? This study intends to show that, far from being the secularization of obeing in the biblical order, the idea of peace through law, proceeds from a wrongful analogy between law and science, as developped from the XVIIth century.

SUMMARY

MISCELLANOUS STUDIES

The author discusses the recent « regulatory crisis » of law in terms of closure and openness of autopoietic social systems. He compares traditional concepts of social autonomy with the new concept of social autopoiesis in the background of a radical system closure, and develops a notion of system interference wihich allows for the design of regulatory strategies of « reflexive law ».

Taking his inspiration in Kant, von Wright corrects Anderson and contradicts Searle. In the process, he explains his theory of norms and his philosophy of law which, both of them, bear the strong mark of Kelsen while underlying the deontic logic of von Wright, close in certain respects to Mally's *Logik des Willens*. What to think about it ?

Can juridical argumentation be rational, and if so, what is the meaning of this rationality ? These are the main questions raised by Robert Alexy. On one side, they concern the legitimacy of juridical decision, on the other, the possibility for a science of Law.

The author points out the important progress Charles Eisenmann originated in french juridical dogmatic by his analysis, inspired by Kelsen , of the juridical deed - deed enacting a norm or normating deed. He then proceeds to further this effort of elucidation by underlining the riders that must be brought to these analysis and, in particular, by highlighting that juridical deeds not only correspond to the act of enacting a norm but also to the act of « declaring » which controls the interplay of norms enacted elsewhere.

The laws of ancien Near East, even if they were not designated as such by a specific word, had a normative value. Observing the great number of formal pecularities of cuneiform law does not prove they were ineffective, but only reveals a legal thought tinged with empirism and a very down-to-earth vision of law.

SUMMARY

From a reflexion on certain contemporary data, the authors intends to draw a basic critic of the « right to self-disposal ».

After defining a few basic categories (personality, life, right to the respect of life), the author intends to justify the principle of indemnifying death harm, in particular by disproving the idea that the *de cujus* could not acquire a right linked to the very desappearing of his legal personality.

TEXT

INTERNATIONAL CHRONICLES

Composé par BARBEROUSSE, 72 Quai de l'Hôtel de ville, 75004 PARIS
Imprimé PARAGRAPHIC/ 34 Rue du Taur 31000 TOULOUSE
Dépôt légal novembre1987