

1. L'anarchie interétatique

*Max Weber, on le sait, définissait l'État par le « monopole de la violence légitime ».
Disons que la société internationale est caractérisée par « l'absence d'une instance
qui détienne le monopole de la violence légitime ».*

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Problématique de la séance

Les relations internationales, entendues ici comme les relations entre États, sont généralement caractérisées par leur anarchie. Elles devraient être comprises à partir d'un fait premier, la division de l'humanité en une pluralité d'unités politiques, qui décident chacune pour son propre compte. Mais de ce point de départ commun, les analyses des auteurs varient considérablement. L'anarchie est-elle nécessairement synonyme de violence ou de désordre ? Est-il légitime de rapprocher, par analogie, l'anarchie entre États de l'anarchie entre individus ? Le statut juridique de l'État, fondé sur l'égalité souveraine, ne confirme-t-il pas l'anarchie ? Et cela est-il incompatible avec l'idée que le droit puisse réguler la société que les États formeraient entre eux ?

Extraits proposés à la lecture

1. Stanley HOFFMANN, « Théorie et relations internationales », *Revue française de science politique*, 1961, n° 2, pp. 424-426.
2. Emmanuel KANT, *Essai philosophique sur la paix perpétuelle*, Paris, G. Fischbacher, 1880 (1795), pp. 19-20.
3. Kenneth WALTZ, *Theory of International Politics*, Boston, Addison-Wesley, 1979, pp. 102-109.
4. Hedley BULL, *The Anarchical Society. A Study of Order in World Politics*, Londres, Palgrave Macmillan, 2012 (1977), pp. 50-51, 64-66.
5. Alexander WENDT, « Anarchy is what states make of it: the social construction of power politics », *International Organization*, 1992, vol. 46, n° 2, pp. 404-405.
6. Sentence arbitrale, *Affaire de l'île de Palmas*, États-Unis d'Amérique c. Pays-Bas, 1928.
7. Cour permanente de Justice internationale, *Affaire du vapeur Wimbledon*, Angleterre, France, Italie, Japon et Pologne c. Reich Allemand, 1923.
8. Michel VIRALLY, *Panorama du droit international contemporain*, Recueil des cours de l'Académie de droit international de La Haye, vol. 183, 1983, pp. 76-77.
9. Georges SCELLE, *Règles générales du droit de la paix*, Recueil des cours de l'Académie de droit international de La Haye, vol. 46, 1933, pp. 342-343.

Extrait n° 1. Stanley HOFFMANN, « Théorie et relations internationales »,
Revue française de science politique, 1961, n° 2, pp. 424-426.

(...)

Le point de départ de toute théorie valable des relations internationales est la constatation d'une différence radicale entre le milieu interne et le milieu international. Il y a, certes, des circonstances dans lesquelles cette différence tend à s'estomper : il y a des pays dont la cohésion est si faible que les relations qui s'y établissent entre groupes sociaux ou politiques ressemblent aux rapports internationaux. De plus, à certaines époques de l'histoire, se produit une imbrication étroite entre les deux milieux : à l'heure actuelle, la politique internationale emprunte à la politique interne certaines institutions (parlementarisme, groupes de pression internationaux, formations supranationales de partis ou de syndicats), et la politique intérieure est subordonnée à — dans certains cas même déterminée par — les relations entre les États. Néanmoins, pour fonder une discipline, il faut partir d'une sorte de type idéal, d'une représentation de l'essence des phénomènes à étudier, et qui les distingue d'autres phénomènes, quitte à analyser par la suite les cas dans lesquels des rapprochements s'opèrent. Ce type idéal est le point de départ de toute théorie. Celui de la science politique « interne » contemporaine, c'est le modèle de la société intégrée, à la fois communauté (c'est-à-dire accord inconditionnel des membres pour coopérer, division du travail poussée, croyance en un bien commun plus ou moins largement, plus ou moins clairement défini) et Pouvoir (c'est-à-dire monopole de l'usage légitime de la violence par l'État, exercé directement sur les individus). Le modèle dont doit partir la théorie des relations internationales, c'est celui d'un milieu décentralisé, divisé en unités distinctes, c'est-à-dire un milieu qui n'est pas pour l'essentiel une communauté (au mieux, une société, c'est-à-dire que la coopération y est limitée et conditionnelle, et que l'allégeance des membres s'adresse aux groupes distincts plutôt qu'à l'ensemble qu'ils constituent ; au pire, un champ de bataille) et qui n'est pas doté d'un Pouvoir central (d'où le recours légitime à la violence par chaque unité, et l'absence d'autorité directe sur les individus dans les institutions établies entre les unités). C'est à partir de là, et de là seulement, que l'on peut chercher à comprendre, évidemment, les processus ou institutions caractéristiques des relations internationales (diplomatie, guerre), mais aussi des phénomènes tels que les internationales de partis ou de syndicats, les tentatives juridiques ou institutionnelles pour exorciser le recours individuel à la violence : car les contrastes entre celles-là et les partis ou syndicats internes, et les échecs répétés de celles-ci, ne s'expliquent qu'à partir de la différence des milieux.

Il découle de ce point de départ :

1° que la théorie des relations internationales, tout en posant certaines questions communes à toute la science politique, le fait dans un cadre distinct, et ne peut transposer purement et simplement dans ce cadre les hypothèses ou les lois dégagées

par la science politique « interne ». Il y a en effet une différence essentielle entre la science du Pouvoir (ou des structures d'autorité) et la science de l'absence de Pouvoir (ou de la multiplicité des Pouvoirs, ce qui revient au même); le déclin des théories dites « idéalistes » s'explique par leur méconnaissance de ce contraste ;

2° que la théorie des relations internationales, au sens d'un ensemble de principes organisateurs, permettant de faire un tri parmi les contributions des multiples disciplines qui traitent des rapports entre unités distinctes, et de mettre ces contributions à profit, est une théorie politique, plutôt qu'économique ou sociologique. En effet, la théorie économique ou sociologique ne pourrait servir cadre organisateur des relations internationales que s'il y avait une communauté internationale poussée ; dans l'état actuel du milieu, phénomènes économiques et rapports transnationaux entre groupes sociaux ou individus sont profondément marqués par la séparation et la rivalité des Pouvoirs. Dans certaines théories sociologiques de la société industrielle (surtout celle de Parsons), il n'y a guère de place pour le secteur politique ; en tout cas, ce n'est pas lui qui est au centre de la théorie. Il est impossible de concevoir une théorie des rapports internationaux qui ne mettrait pas à son centre les phénomènes politiques qui naissent de la fragmentation du monde en unités distinctes.

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Extrait n° 2. Emmanuel KANT, *Essai philosophique sur la paix perpétuelle*, Paris, G. Fischbacher, 1880 (1795), pp. 19-20.

(...)

Pour les hommes, l'état de nature n'est pas un état de paix, mais de guerre sinon ouverte du moins toujours prête à s'allumer. Il faut donc que l'état de paix soit *établi*, car, pour que l'on soit à l'abri de tout acte d'hostilité il ne suffit pas qu'il ne se commette point de tels actes, il faut de plus qu'un voisin garantisse à l'autre sa sécurité personnelle ; ce qui ne saurait avoir lieu que dans un état légal. Hors d'un tel état, chacun est en droit de traiter tout autre en ennemi, après lui avoir inutilement demandé garantie.

(...)

Il en est des peuples, en tant qu'États, comme des individus ; s'ils vivent dans l'état de nature, c'est-à-dire sans lois extérieures, leur voisinage seul est déjà une lésion réciproque, et pour garantir sa sûreté, chacun d'eux peut exiger des autres qu'ils établissent d'accord avec lui une constitution garantissant les droits de tous. Ce serait là une *Fédération* de peuples, et non pas un seul et même État, l'idée d'État supposant le rapport d'un souverain au peuple, d'un supérieur à son inférieur. Or plusieurs peuples réunis en un même État ne formeraient plus qu'un seul peuple, ce qui contredit la supposition, vu qu'il s'agit ici des droits réciproques des peuples, en tant qu'ils composent une multitude d'États différents qui ne doivent pas se confondre en un seul. Quand nous voyons les sauvages préférer dans leur anarchie les combats perpétuels d'une liberté dérégulée à une liberté raisonnable fondée sur un ordre constitutionnel, nous ne pouvons nous empêcher d'envisager avec le plus profond mépris cette dégradation animale de l'humanité, et de rougir de l'avilissement où l'absence de civilisation réduit les hommes ? Combien donc on serait porté à croire que des peuples civilisés, dont chacun forme un État constitué, dussent se hâter de sortir d'un ordre de choses aussi honteux ? Mais au contraire, ne voyons-nous pas chaque État faire consister sa majesté, (n'est-il pas absurde de parler de la majesté d'un peuple ?) précisément à ne dépendre de la contrainte d'aucune législation extérieure ?

Le Souverain met sa gloire à pouvoir disposer à son gré, sans s'exposer beaucoup lui-même, de plusieurs milliers d'hommes, toujours prêts à se sacrifier pour un objet qui ne les concerne pas. La seule différence qui se trouve entre les sauvages d'Amérique et ceux d'Europe, c'est que les premiers ont déjà mangé plus d'une horde ennemie, au lieu que les autres savent tirer un meilleur parti de leurs ennemis ; ils s'en servent pour augmenter le nombre de leurs sujets, c'est-à-dire, pour multiplier les instruments qu'ils destinent à faire de plus vastes conquêtes. (...)

Extrait n° 3. Kenneth WALTZ, *Theory of International Politics*, Boston, Addison-Wesley, 1979, pp. 102-109.

The state among states, it is often said, conducts its affairs in the brooding shadow of violence. Because some states may at any time use force, all states must be prepared to do so-or live at the mercy of their militarily more vigorous neighbors. Among states, the state of nature is a state of war. This is meant not in the sense that war constantly occurs but in the sense that, with each state deciding for itself whether or not to use force, war may at any time break out. Whether in the family, the community, or the world at large, contact without at least occasional conflict is inconceivable; and the hope that in the absence of an agent to manage or to manipulate conflicting parties the use of force will always be avoided cannot be realistically entertained. Among men as among states, anarchy, or the absence of government, is associated with the occurrence of violence.

The threat of violence and the recurrent use of force are said to distinguish international from national affairs. But in the history of the world surely most rulers have had to bear in mind that their subjects might use force to resist or overthrow them. If the absence of government is associated with the threat of violence, so also is its presence. A haphazard list of national tragedies illustrates the point all too well. The most destructive wars of the hundred years following the defeat of Napoleon took place not among states but within them. Estimates of deaths in China's Taiping Rebellion, which began in 1851 and lasted 13 years, range as high as 20 million. In the American Civil War some 600 thousand people lost their lives. In more recent history, forced collectivization and Stalin's purges eliminated five million Russians, and Hitler exterminated six million Jews. In some Latin American countries, coups d'États and rebellions have been normal features of national life. Between 1948 and 1957, for example, 200 thousand Colombians were killed in civil strife. In the middle 1970s most inhabitants of Idi Amin's Uganda must have felt their lives becoming nasty, brutish, and short, quite as in Thomas Hobbes's state of nature. If such cases constitute aberrations, they are uncomfortably common ones. We easily lose sight of the fact that struggles to achieve and maintain power, to establish order, and to contrive a kind of justice within states, may be bloodier than wars among them.

If anarchy is identified with chaos, destruction, and death, then the distinction between anarchy and government does not tell us much. Which is more precarious: the life of a state among states, or of a government in relation to its subjects? The answer varies with time and place. Among some states at some times, the actual or expected occurrence of violence is low. Within some states at some times, the actual or expected occurrence of violence is high. The use of force, or the constant fear of its use, are not sufficient grounds for distinguishing international from domestic affairs. If the possible and the actual use of force mark both national and international orders, then no durable

distinction between the two realms can be drawn in terms of the use or the nonuse of force. No human order is proof against violence.

To discover qualitative differences between internal and external affairs one must look for a criterion other than the occurrence of violence. The distinction between international and national realms of politics is not found in the use or the nonuse of force but in their different structures. But if the dangers of being violently attacked are greater, say, in taking an evening stroll through downtown Detroit than they are in picnicking along the French and German border, what practical difference does the difference of structure make? Nationally as internationally, contact generates conflict and at times issues in violence. The difference between national and international politics lies not in the use of force but in the different modes of organization for doing something about it. A government, ruling by some standard of legitimacy, arrogates to itself the right to use force—that is, to apply a variety of sanctions to control the use of force by its subjects. If some use private force, others may appeal to the government. A government has no monopoly on the use of force, as is all too evident. An effective government, however, has a monopoly on the *legitimate* use of force, and legitimate here means that public agents are organized to prevent and to counter the private use of force. Citizens need not prepare to defend themselves. Public agencies do that. A national system is not one of self-help. The international system is.

(...)

Structural constraints cannot be wished away, although many fail to understand this. In every age and place, the units of self-help systems – nations, corporations, or whatever – are told that the greater good, along with their own, requires them to act for the sake of the system and not for their own narrowly defined advantage. (...) The international interest must be served; and if that means anything at all, it means that national interests are subordinate to it. The problems are found at the global level. Solutions to the problems continue to depend on national policies. What are the conditions that would make nations more or less willing to obey the injunctions that are so often laid on them? How can they resolve the tension between pursuing their own interests and acting for the sake of the system? No one has shown how that can be done, although many wring their hands and plead for rational behavior. The very problem, however, is that rational behavior, given structural constraints, does not lead to the wanted results. With each country constrained to take care of itself, no one can take care of the system.

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Extrait n° 4. Hedley BULL, *The Anarchical Society. A Study of Order in World Politics*, Londres, Palgrave Macmillan, 2012 (1977), pp. 50-51, 64-66.

(...)

Throughout the history of the modern states system there have been three competing traditions of thought: the Hobbesian or realist tradition, which views international politics as a state of war; the Kantian or universalist tradition, which sees at work in international politics a potential community of mankind; and the Grotian or internationalist tradition, which views international politics as taking place within an international society. Here I shall state what is essential to the Grotian or internationalist idea of international society, and what divides it from the Hobbesian or realist tradition on the one hand, and from the Kantian or universalist tradition on the other. Each of these traditional patterns of thought embodies a description of the nature of international politics and a set of prescriptions about international conduct.

The Hobbesian tradition describes international relations as a state of war of all against all, an arena of struggle in which each state is pitted against every other. International relations, on the Hobbesian view, represent pure conflict between states and resemble a game that is wholly distributive or zero-sum: the interests of each state exclude the interests of any other. The particular international activity that, on the Hobbesian view, is most typical of international activity as a whole, or best provides the clue to it, is war itself. Thus peace, on the Hobbesian view, is a period of recuperation from the last war and preparation for the next.

The Hobbesian prescription for international conduct is that the state is free to pursue its goals in relation to other states without moral or legal restrictions of any kind. Ideas of morality and law, on this view, are valid only in the context of a society, but international life is beyond the bounds of any society. If any moral or legal goals are to be pursued in international politics, these can only be the moral or legal goals of the state itself. Either it is held (as by Machiavelli) that the state conducts foreign policy in a kind of moral and legal vacuum, or it is held (as by Hegel and his successors) that moral behaviour for the state in foreign policy lies in its own self-assertion. The only rules or principles which, for those in the Hobbesian tradition, may be said to limit or circumscribe the behaviour of states in their relations with one another are rules of prudence or expediency. Thus agreements may be kept if it is expedient to keep them, but may be broken if it is not.

The Kantian or universalist tradition, at the other extreme, takes the essential nature of international politics to lie not in conflict among states, as on the Hobbesian view, but in the trans-national social bonds that link the individual human beings who are the subjects or citizens of states. The dominant theme of international relations, on the

Kantian view, is only apparently the relationship among states, and is really the relationship among all men in the community of mankind – which exists potentially, even if it does not exist actually, and which when it comes into being will sweep the system of states into limbo.

Within the community of all mankind, on the universalist view, the interests of all men are one and the same; international politics, considered from this perspective, is not a purely distributive or zero-sum game, as the Hobbesians maintain, but a purely cooperative or non-zero-sum game. Conflicts of interest exist among the ruling cliques of states, but this is only at the superficial or transient level of the existing system of states; properly understood, the interests of all peoples are the same. The particular international activity which, on the Kantian view, most typifies international activity as a whole is the horizontal conflict of ideology that cuts across the boundaries of states and divides human society into two camps – the trustees of the immanent community of mankind and those who stand in its way, those who are of the true faith and the heretics, the liberators and the oppressed.

The Kantian or universalist view of international morality is that, in contrast to the Hobbesian conception, there are moral imperatives in the field of international relations limiting the action of states, but that these imperatives enjoin not coexistence and co-operation among states but rather the overthrow of the system of states and its replacement by a cosmopolitan society. The community of mankind, on the Kantian view, is not only the central reality in international politics, in the sense that the forces able to bring it into being are present; it is also the end or object of the highest moral endeavour. The rules that sustain coexistence and social intercourse among states should be ignored if the imperatives of this higher morality require it. Good faith with heretics has no meaning, except in terms of tactical convenience; between the elect and the damned, the liberators and the oppressed, the question of mutual acceptance of rights to sovereignty or independence does not arise.

What has been called the Grotian or internationalist tradition stands between the realist tradition and the universalist tradition. The Grotian tradition describes international politics in terms of a society of states or international society. As against the Hobbesian tradition, the Grotians contend that states are not engaged in simple struggle, like gladiators in an arena, but are limited in their conflicts with one another by common rules and institutions. But as against the Kantian or universalist perspective the Grotians accept the Hobbesian premise that sovereigns or states are the principal reality in international politics; the immediate members of international society are states rather than individual human beings. International politics, in the Grotian understanding, expresses neither complete conflict of interest between states nor complete identity of interest; it resembles a game that is partly distributive but also partly productive. The particular international activity which, on the Grotian view, best typifies international activity as a whole is neither war between states, nor

horizontal conflict cutting across the boundaries of states, but trade – or, more generally, economic and social intercourse between one country and another.

The Grotian prescription for international conduct is that all states, in their dealings with one another, are bound by the rules and institutions of the society they form. As against the view of the Hobbesians, states in the Grotian view are bound not only by rules of prudence or expediency but also by imperatives of morality and law. But, as against the view of the universalists, what these imperatives enjoin is not the overthrow of the system of states and its replacement by a universal community of mankind, but rather acceptance of the requirements of coexistence and co-operation in a society of states.

Each of these traditions embodies a great variety of doctrines about international politics, among which there exists only a loose connection. In different periods each pattern of thought appears in a different idiom and in relation to different issues and preoccupations. This is not the place to explore further the connections and distinctions within each tradition. Here we have only to take account of the fact that the Grotian idea of international society has always been present in thought about the states system, and to indicate in broad terms the metamorphoses which, in the last three to four centuries, it has undergone.

(...)

We have already noted that, unlike the individual in Hobbes's state of nature, the state does not find its energies so absorbed in the pursuit of security that the life of its members is that of mere brutes. Hobbes himself recognises this when, having observed that persons in sovereign authority are in 'a posture of war', he goes on to say that 'because they uphold thereby the industry of their subjects, there does not follow from it that misery which accompanies the liberty of particular men'. The same sovereigns that find themselves in a state of nature in relation to one another have provided, within their territories, the conditions in which refinements of life can flourish.

Moreover, states are not vulnerable to violent attack to the same degree that individuals are. Spinoza, echoing Hobbes in his assertion that 'two states are in the same relation to one another as two men in the condition of nature', goes on to add, 'with this exception, that a commonwealth can guard itself against being subjugated by another, as a man in the state of nature cannot do. For, of course, a man is overcome by sleep every day, is often afflicted by disease of body or mind, and is finally prostrated by old age; in addition, he is subject to troubles against which a commonwealth can make itself secure.' One human being in the state of nature cannot make himself secure against violent attack; and this attack carries with it the prospect of sudden death. Groups of human beings organised as states, however, may provide themselves with a means of defence that exists independently of the frailties of any one of them. And armed attack by one state upon another has not brought with it a prospect comparable

to the killing of one individual by another. For one man's death may be brought about suddenly in a single act; and once it has occurred it cannot be undone. But war has only occasionally resulted in the physical extinction of the vanquished people.

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This difference, that states have been less vulnerable to violent attack by one another than individual men, is reinforced by a further one: that in so far as states have been vulnerable to physical attack, they have not been equally so. Hobbes builds his account of the state of nature on the proposition that 'Nature hath made men so equal, in the faculties of body and mind, [that] the weakest has strength enough to kill the strongest.' It is this equal vulnerability of every man to every other that, in Hobbes's view, renders the condition of anarchy intolerable. But in modern international society there has been a persistent distinction between great powers and small. Great powers have not been vulnerable to violent attack by small powers to the same extent that small powers have been vulnerable to attack by great ones. Once again it is only the spread of nuclear weapons to small states, and the possibility of a world of many nuclear powers, that raises the question whether in international relations, also, a situation may come about in which 'the weakest has strength enough to kill the strongest'.

The argument, then, that because men cannot form a society without government, sovereign princes or states cannot, breaks down not only because some degree of order can in fact be achieved among individuals in the absence of government, but also because states are unlike individuals, and are more capable of forming an anarchical society. The domestic analogy is no more than an analogy; the fact that states form a society without government reflects features of their situation that are unique.

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Extrait n° 5. Alexander WENDT, « Anarchy is what states make of it: the social construction of power politics », *International Organization*, 1992, vol. 46, n° 2, pp. 404-405.

(...)

Consider two actors—ego and alter—encountering each other for the first time. Each wants to survive and has certain material capabilities, but neither actor has biological or domestic imperatives for power, glory, or conquest (still bracketed), and there is no history of security or insecurity between the two. What should they do? Realists would probably argue that each should act on the basis of worst-case assumptions about the other's intentions, justifying such an attitude as prudent in view of the possibility of death from making a mistake. Such a possibility always exists, even in civil society; however, society would be impossible if people made decisions purely on the basis of worst-case possibilities. Instead, most decisions are and should be made on the basis of probabilities, and these are produced by interaction, by what actors do.

In the beginning is ego's gesture, which may consist, for example, of an advance, a retreat, a brandishing of arms, a laying down of arms, or an attack. For ego, this gesture represents the basis on which it is prepared to respond to alter. This basis is unknown to alter, however, and so it must make an inference or "attribution" about ego's intentions and, in particular, given that this is anarchy, about whether ego is a threat. The content of this inference will largely depend on two considerations. The first is the gesture's and ego's physical qualities, which are in part contrived by ego and which include the direction of movement, noise, numbers, and immediate consequences of the gesture. The second consideration concerns what alter would intend by such qualities were it to make such a gesture itself. Alter may make an attributional "error" in its inference about ego's intent, but there is also no reason for it to assume a priori—before the gesture—that ego is threatening, since it is only through a process of signaling and interpreting that the costs and probabilities of being wrong can be determined. Social threats are constructed, not natural.

Consider an example. Would we assume, a priori, that we were about to be attacked if we are ever contacted by members of an alien civilization? I think not. We would be highly alert, of course, but whether we placed our military forces on alert or launched an attack would depend on how we interpreted the import of their first gesture for our security—if only to avoid making an immediate enemy out of what may be a dangerous adversary. The possibility of error, in other words, does not force us to act on the assumption that the aliens are threatening: action depends on the probabilities we assign, and these are in key part a function of what the aliens do; prior to their gesture, we have no systemic basis for assigning probabilities. If their first gesture is to appear with a thousand spaceships and destroy New York, we will define the situation as threatening and respond accordingly. But if they appear with one spaceship, saying

what seems to be "we come in peace," we will feel "reassured" and will probably respond with a gesture intended to reassure them, even if this gesture is not necessarily interpreted by them as such.

This process of signaling, interpreting, and responding completes a "social act" and begins the process of creating intersubjective meanings. It advances the same way. The first social act creates expectations on both sides about each other's future behavior: potentially mistaken and certainly tentative, but expectations nonetheless. Based on this tentative knowledge, ego makes a new gesture, again signifying the basis on which it will respond to alter, and again alter responds, adding to the pool of knowledge each has about the other, and so on over time. The mechanism here is reinforcement; interaction rewards actors for holding certain ideas about each other and discourages them from holding others. If repeated long enough, these "reciprocal typifications" will create relatively stable concepts of self and other regarding the issue at stake in the interaction.

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Extrait n° 6. Sentence arbitrale, *Affaire de l'île de Palmas*, États-Unis
d'Amérique c. Pays-Bas, 1928.

(...)

Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations. The special casts of the composite State, of collective sovereignty, etc., do not fall to be considered here and do not, for that matter, throw any doubt upon the principle which has just been enunciated. Under this reservation it may be stated that territorial sovereignty belongs always to one, or in exceptional circumstances to several States, to the exclusion of all others. The fact that the functions of a State can be performed by any State within a given zone is, on the other hand, precisely the characteristic feature of the legal situation pertaining in those parts of the globe which, like the high seas or lands without a master, cannot or do not yet form the territory of a State.

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Extrait n° 7. Cour permanente de Justice internationale, *Affaire du
vapeur Wimbledon*, Angleterre, France, Italie, Japon et Pologne c. Reich
Allemand, 1923.

(...)

La Cour se refuse à voir dans la conclusion d'un traité quelconque, par lequel un État s'engage à faire ou à ne pas faire quelque chose, un abandon de sa souveraineté. Sans doute, toute convention engendrant une obligation de ce genre, apporte une restriction à l'exercice des droits souverains de l'État, en ce sens qu'elle imprime à cet exercice une direction déterminée. Mais la faculté de contracter des engagements internationaux est précisément un attribut de la souveraineté de l'État.

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Extrait n° 8. Michel VIRALLY, *Panorama du droit international contemporain*, Recueil des cours de l'Académie de droit international de La Haye, vol. 183, 1983, pp. 76-77.

(...)

La souveraineté est une notion à la fois maudite et exaltée : maudite par ceux qui voient en elle la cause de toutes les faiblesses du droit international et le rempart de l'égoïsme des États ; exaltée par ceux pour qui elle est le plus solide rempart de l'indépendance des peuples. Ces sentiments sont excessifs. Ils sont provoqués l'un et l'autre par une même conception hyperbolique et absolutiste de la souveraineté, qui paraît mythique et presque mystique, et doit certainement être réformée.

Telle qu'on vient de l'invoquer, l'idée de souveraineté est une construction philosophique plus que juridique, élaborée à partir des analyses de cette notion en droit interne et surtout d'un autre mythe : celui de la volonté illimitée de l'État. Les développements de cette idée au XIXe siècle ne sont pas exempts de toute influence hégélienne. Ils conduisent, dans l'ordre international, à une impasse juridique totale, qui n'a pu être camouflée que par une explication [p77] purement verbale: celle de l'autolimitation, exposée notamment dans les travaux de Jellinek. Si la volonté de l'État est illimitée, elle ne peut être arrêtée de l'extérieur. Le droit international reposerait donc seulement sur la volonté de l'État de se limiter lui-même. Mais si sa volonté est illimitée, comment empêcher qu'il ne revienne sur les limitations qu'il a acceptées et les transgresse? L'autorité du droit n'est plus assurée.

D'un point de vue factuel, la volonté de l'État est celle de ses dirigeants. Il est faux de dire qu'elle est illimitée. Tout au contraire, elle est soumise à un nombre considérable de contraintes et de limites. Celles-ci, pour simplifier, sont de deux ordres. D'ordre interne d'abord : celles de ses moyens et de ses ressources (jamais illimités, même s'ils sont considérables) ; celles de l'appui que l'État (ou son gouvernement) trouve en lui-même, et qui tiennent au degré de solidité de son régime politique et aux divisions de son appareil étatique et de son opinion publique ; celles aussi des risques qu'il est prêt à accepter, c'est-à-dire de la qualité de sa résolution face aux dangers auxquels l'exposent les décisions qu'il envisage. Quant aux contraintes internationales, elles viennent de l'environnement international dans lequel l'État se trouve plongé : des autres États et de leurs réactions actuelles ou prévisibles et, plus généralement, du système international dans son ensemble. Ce sont les contraintes de l'interdépendance.

Ces données sont évidemment à prendre en compte dans l'analyse juridique de la souveraineté dans l'ordre international.

(...)

Extrait n° 9. Georges SCELLE, *Règles générales du droit de la paix*,
Recueil des cours de l'Académie de droit international de La Haye,
vol. 46, 1933, pp. 342-343.

(...)

Mais ce qu'il ne faut jamais oublier, c'est que, dans le mouvement incessant des rapports internationaux, c'est l'homme, l'individu, qui constitue l'élément premier et l'agent des formations sociales. Il n'y a de sociétés que d'individus ; seulement les mêmes individus contribuent à former une infinité de groupes sociaux divers. Tout dépend des affinités qui les réunissent. A l'intérieur d'un État, le même individu apparaît à la fois dans les rôles et sous les revêtements juridiques les plus divers. Membre d'une famille, d'une paroisse, d'une commune, d'un département, d'une province, il peut encore participer à telle société privée, telle association, tel syndicat. Débordant les limites de l'État, il peut entrer dans telle internationale, tel cartel, telle Eglise. Le citoyen d'un dominion est partout citoyen anglais. Le ressortissant d'un État fédéral est lui-même un confédéré. Il est enfin membre de cette vaste société œcuménique qui s'appelle l'humanité, puisqu'il n'est pas un individu membre d'un groupe humain qui ne puisse aujourd'hui entrer en rapports avec n'importe quel individu de n'importe quel autre groupe.

Il n'y a qu'une chose qui nous paraisse impossible, c'est de concevoir une « société d'États » ou une « société de groupements », si ce n'est pour des commodités terminologiques. Chaque groupe, chaque division territoriale, chaque circonscription administrative, chaque État, chaque fédération, étant formé d'individus, n'est en réalité rien autre chose qu'un procédé de répartition, d'administration et de rattachement de ces individus. Les États sont les circonscriptions nationales de la société internationale globale, comme les circonscriptions administratives ou les États Membres des fédérations sont les divisions territoriales des sociétés étatiques. Mais on ne peut concevoir une société d'États, pas plus qu'une société de circonscriptions communales ou départementales. Une société internationale, comme une société étatique, est une société d'individus, et rien que d'individus.

Bien entendu, ces individus, en vertu de la loi de division du travail, se répartiront les tâches sociales. Il y a des gouvernants et des gouvernés, des administrateurs et des administrés, des particuliers et des officiels. Mais quelles que soient les compétences et les fonctions, leurs titulaires ne sont jamais et ne peuvent être que des individus. Abandonnons donc définitivement l'idée que la société internationale est une société d'États. C'est une vue fautive, une abstraction anthropomorphe, historiquement responsable du caractère fictif et de la paralysie de la science traditionnelle du droit des gens.

(...)