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From: Mark Janis/UCONNLAW
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Subject: the French critiques

Dear Jose

. . . I am very fond of France (and am indeed a French householder!) but I'm sure that as far as international law approaches go it is, as always, a chacun son gout.

What is right for France is right for France, but what is right for America is right for America! Here are two (of many!) differences:

(1) Regarding approaches. The French approach to international law puts the discipline in the context of public law as part of an intellectual and judicial context with a sharpish divide between private law and public law. So, professors teach either public or private law, but not both. There is a Cour de cassation for private law and a Conseil d'Etat for public law. The American approach has a more unified intellectual and judicial context and professors and judges work with the law, rather than with either private law or public law. One consequence of this is that Americans speak of "international law" while the French talk about "droit international public" - and they're not really the same. Probably the similarities are closer than, say, those between an American baseball game and a French cycle race, but there are differences, and we both should be confident enough of ourselves (and knowing the Americans and the French, I think we are) not to feel we have to judge our approach against their approach in any sort of recriminatory fashion.

(2) Regarding fault. As a sometimes scholar of European human rights law, I know how badly the French incorporate Strasbourg judgments in their legal system, but I'm careful not to be too critical because, as a sometimes historian of American international law, I know how badly we Americans incorporate Hague judgments in our legal system. As a sometimes teacher of international law in France, I know that the French are keen on the United Nations, feeling, correctly, that the French permanent seat on the Security Council lets the French punch above their weight in that organization. As a sometimes teacher of international law in the United States, I know that Americans are often distrustful of the U.N., as we were of its predecessor the League of Nations, feeling, correctly, that the structure of the Security Council and the Assembly give the U.S. less power within that organization than we have outside it. These contrasting attitudes are not unreasonable; they are based on real national interests. France is not the United States and vice versa.

What we, as international lawyers from many countries, ought to do, I think, is find ways in which we can employ international law and international organizations to solve mutual problems and advance common interests. There is nothing holy about either international law or international organization - they are tools from the tool box of international relations. It is unrealistic to expect too much or too little from one's tools. Better to know them well and employ them as best one can. Here is our common enterprise.

Amicalement

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