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International colloquium on Emer de Vattel's *Droit des gens*

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The association of the former students of the Faculty of Law at the University of Neuchâtel (Switzerland) organised an international colloquium on 21 June 2008 in the Aula des Jeunes Rives: ›Réflexions sur l'impact, le rayonnement et l'actualité du *Droit des gens* d'Emer de Vattel à l'occasion du 250^e anniversaire de sa parution‹.¹

The scientific premises were inviting: Petter Korkman (Helsinki University) opened the colloquium by speaking about ›Vattel sur l'amour universel du genre humain comme fondement du droit international‹. The title he had in mind before, namely ›La face cachée du système de Vattel, une construction axée sur l'utilitarisme‹, would have been even more appealing. However, Korkman maintained an unconventional view of the Vattelian work, taking into consideration poems and novels as well, and putting forward a critical approach to the sources. It is not an accident that he had been working on Jean Barbeyrac, the author who freely translated Grotius and Pufendorf and decisively contributed to their broadly diffusion in the French-speaking world.

Korkman asserted that the ›humanitarian impetus‹ which is supposed to permeate the *Droit des gens* – both in general and particularly as regards the *ius in bello* and *post bellum* – is ultimately based on the utilitarian principle of egoism. Thus, Vattel turned away from the tradition of the ›natural sociability‹ of human kind; in his system, love itself is considered as a product of the instinct to survive and to pursue one's own happiness.

Philip Allott (Cambridge University) pointed out the connections between the *Droit des gens* and the corresponding cultural context of the

Enlightenment. Allott accounted for Vattel's specific concern about the legal order and associated him with ›archists‹ such as Thomas Hobbes and Edmund Burke, while other figures of the Enlightenment – for instance Voltaire, Hume, and Diderot – are representatives of the ›anarchist‹ tendency. In particular, Vattel was able to avoid the anarchical consequences of modern scepticism in so far as he based his ideal of global order on such fictions as ›states‹ or ›nations‹, so developing the Hobbesian theory of international relations. Nevertheless, although Hobbes' presence in the *Droit des gens* is unquestionable, one might ask if Vattel should actually be placed side by side to him and labelled as an ›archist‹: it should be considered that the *Droit des gens* was not thought of as a coherent doctrinal system as the *Leviathan* was, and indeed that it furnished quite a few arguments in favour of the ›anarchists‹: the sovereignty of the people and the right to resistance, the acknowledgement of rebels in civil wars, the intervention on behalf of peoples oppressed by tyranny, and the repression of the ›enemies of mankind‹. It is true that Vattel sought order (and even renounced the Wolffian logical coherence in order to achieve such a goal), but this was not the same order as that of Hobbes'.

Tetsuya Toyoda (Akita International University) opened the second session by speaking on ›The universalist foundation of the *Droit des gens* and Japan's entry into the international community‹. He said that the first western international law book to be introduced in Japan was Henry Wheaton's *Elements of International Law*, which was translated from Chinese into

¹ The *Droit des gens*, the masterpiece of the international lawyer Emer de Vattel (Couvvet, Neuchâtel 1714 – Neuchâtel 1767), was published in Neuchâtel in 1758. It rapidly became the most authoritative doctrinal source of international law and enjoyed great consideration among lawyers and diplomats until the mid-nineteenth century.

Japanese in 1865, while Vattel long remained unknown. Nevertheless, Toyoda argued that the universalist conception of the *Droit des gens*, being recovered by most international lawyers throughout the first half of the nineteenth century, indeed exercised an indirect influence and facilitated the acceptance of international law in Japan. Vattel's universalism also had a reverse effect, as it led Europe and the United States to regard Japan – and China – as ›civilised nations‹. However, profound respect for the great Asian cultures was widely spread in European intellectual circles long before the publication of the *Droit des gens*, so that Vattel is unlikely to have made substantial contributions to this trend.

An analogous report was that of He Weifang (Law School of the Haidian District, Beijing). He dealt, on the one hand, with the image of Chinese culture in the *Droit des gens*, and on the other with the reception of this work in China, which began in 1839 thanks to a partial translation by the American missionary Peter Parker. The history of this reception is particularly interesting, since Vattel was the first international lawyer to be translated and diffused in China. Moreover, it is not an accident that this introduction occurred just before the Opium Wars broke out, since Vattel, following Pufendorf, claimed that China and Japan, as well as all other sovereign states, had the right to refuse international trade.

There was also someone who did justice to the fascinating topic of Vattel's reception in the United States. William Ossipow (Geneva University) and a student of his, Dominik Gerber, claimed that such a reception began in 1762 (and not in 1775, as stated by most commentators), when the English 1760 edition of the *Law of Nations* arrived on the shelves of Manhattan's bookshops.

Ossipow and Gerber affirmed that Vattel immediately gained great authority and was used to argue against the tax burden which the British Crown levied on the American colonies during and after the Seven Years War. From 1776 onwards, the *Law of Nations* was quoted not so much because of its philosophical contents, but rather because it delivered arguments for the new United States' foreign policy, which was to be based on the recently achieved sovereignty, armed neutrality, and stipulation of trade agreements with European powers. Alexander Hamilton and Thomas Jefferson were among the most influential politicians who thought a great deal of Vattel's opinion in matters of *Realpolitik*.

As to the ›legal reception‹ of the *Law of Nations* in the United States, it is witnessed by the numerous quotations by the Supreme Court. Furthermore, Ossipow and Gerber reminded us that Vattel's *ius in bello* constituted an important source of inspiration for American writers and jurisprudence for the whole of the period studied in their research, i.e. 1760–1820. Afterwards, the *Law of Nations* continued to be regarded as an authoritative text and employed in *case law*, but its political significance gradually faded away.

Pablo Gutiérrez Vega (Seville University) spoke about Vattel's reception in Spain. Indeed, the *Droit des gens* remained a neglected text there for decades – except for some plagiarisms and partial translations – until the time of the integral Spanish edition in 1820. Vega proposed several explanations for this phenomenon: first, the Salamanca School, despite its irreversible decline, remained the dominant doctrine of international law in Spain throughout the second half of the eighteenth century; second, the *Droit des gens* was put on the Index in 1779 because of its anti-Catholic contents; third, the fact that

Vattel often criticised Spanish policy while approving the wars waged by European powers on ›imperialist‹ and ›despotic‹ Spain surely did not facilitate the acceptance of his work in this country. Thus, the *Droit des gens* was translated into Spanish in 1820, only after the Napoleonic Wars and the Wars of Independence in South America had rendered the Salamanca Scholars' works obsolete and a more modern approach to international law was required.

Robert Kolb (Geneva and Neuchâtel University) analysed the validity of the Vattelian legal principles in the context of current international law, providing one of the most interesting contributions to the conference. He subdivided this issue into three domains, namely Vattel's ›structural‹, ›accidental‹, and ›punctual‹ modernity. In doing so, Kolb highlighted both the actuality of the Vattelian ›internationalist‹ conception of the law of nations and the specific contributions of the *Droit des gens* to the development of some pivotal norms which are still today at the basis of the law of treaties and *ius in bello*. He also mentioned the problem of the coalition war against ›enemies of mankind‹, which can still be seen as an interesting point for the current reflection on international crimes, *ius cogens*, and *collective security*. Still, Kolb remarked that the aspect of multilateralist cooperation remained almost wholly absent in Vattel's work and exclusively turned up in crisis situations.

Robert L. Howse (University of Michigan) gave a lecture on the debate (so Howse) between Vattel and Jean-Jacques Rousseau. Indeed, Rousseau's theses – in particular those on the origin of inequality and on the notion of sovereignty – played an important role in the evolution of Vattel's concepts of natural and international law. Nonetheless, the author of the *Droit*

des gens often dissociated himself from Rousseau, whom he regarded above all as a sharp provocateur.

The concluding speech of the conference was that of Anthony Carty (University of Aberdeen). He posed the question, whether the Vattelian doctrine was thought of as an attempt to answer the challenges of the seventeenth century Wars of Religion and whether such an attempt can also be valid nowadays.

Carty took into account the characteristics of current religious fundamentalism as well as the messianism of United States' foreign policy. He came to the conclusion that Vattel's state theory and his liberal conception of the relation between state and church can still provide essential principles in order to contain the conflicts which arise from fanaticism. Moreover, the *Droit des gens* furnishes the picture of a ›divided humanity‹, among which all sovereign states enjoy the same rights, and where nobody is allowed to make war and interfere in the internal affairs of third countries for the purpose of exporting ›democracy‹, ›freedom‹, or ›true religion‹.

Carty is undoubtedly right when affirming that the *Droit des gens* can still be employed in order to solve contemporary problems. Yet it can be added that such relevance is restricted to some of the principles underpinning this book, while others have become completely untenable. Vattel certainly regarded European sovereign states as ›free‹ and ›equal‹, but what about the others? And what about the peoples which were not organised as ›states‹? Vattel may have been the advocate of religious tolerance (except for some particular ›appreciations‹ for the Jews, as Robert Kolb reminded us), ›humanitarian international law‹, and separation of Church and State, but he was also a proponent of colonialism and

the distinction between ›Civilised Nations‹ and ›Barbarians‹. He was the one who claimed that, since there are peoples who go to war without any legitimate reason or even pretext, »all nations have the right to join in a confederacy for the purpose of punishing and even exterminating those savage nations«. ² He meant here the Ta-

tars and the pirate states of the Barbary Coast. European monarchies used to be a little more moderate than Vattel, since they preferred to make treaties with these ›enemies of mankind‹, rather than go to war. This strategy is likely to become popular again.

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² EMER DE VATTEL, *Droit des gens*, III, III, § 34.