UNIVERSITÉ DE NANTES

CRHIA centre de recherches en histoire internationale et atlantique

THEMIS IN DIPLOMACY :
LEGAL ARGUMENT IN THE INTERNATIONAL RELATIONS FROM THE LATE ANTIQUITY TO THE EARLY XIXTH CENTURY

History workshop, Nantes, France, 5 and 6 June 2014

In 1779, Count of Vergennes wrote to Louis XVI's ambassador in Madrid : « *L'intérêt est le grand mobile des nations comme des hommes* »[1]. If the satisfaction of the interests of the different powers lays in the heart of the relations between States, it is seldom however an argument in diplomatic exchanges. The Christian culture and the anti-machiavelism were at the basement of the discourse of negotiations which compelled to build an argumentation on the defence of the right cause and on the promotion of the right intention as well, and therefore invite to resort to a legal speech. The legal ideal in the field of diplomacy was connected to the vision of an international scene which should not be governed by the particular interests of each powers and by the law of the strongest, but by a cohabitation, if not harmonious, at least peaceful between States.

In the field of inter-States relations and diplomatic negotiations, the law is a common language which made possible the exchange of arguments between interlocutors who shared the same culture in order to settle their dispute. The legal speeches allow to justify or to reject the claims of the actors of a negotiation. The legal arguments must strengthen the requests of a negotiator by showing the legitimacy of his opinion. Consequently, the law can be used or perverted in order to take an advantage, which is an indicator of the balance power between the negotiating parties. The use and the manipulation of law in the diplomatic speeches invite to challenge the legal argument as a pretext to constraint and to strength.

However, we must investigate which face of law was called up, since this discipline is not monolithic. The history of international relations shows that several aspects of law can be used in the field of inter-States relations[2]. In the middle of the XVIIIth century, the Danish jurist Martin Hübner suggested a classification between several aspects of the law of nations which govern the relations between States: the customary laws based upon the tradition; the conventional law based upon

[1] A.A.E., C.P., Espagne, vol. 596, fol. 405, Vergennes à Montmorin, 17 décembre 1779.

[2] Since Late Antiquity, as suggested by a recent study: Antonio PADOA-SCHIOPPA, « Profili del diritto internazionale nell'alto medioevo », dans *Le relazioni internazionali nell'alto medioevo, Settimane di Studio della Fondazione Centro Italiano di Studi sull'Alto Medioevo*, 58, Spolète, 2011, p. 1-78. The *ius gentium* described by Isidorus of Sevilla covers different and numerous aspects which could be invoked as different juridic arguments, cf. Salvatore PULIATTI, « Incontri e scontri sulla disciplina giuridica dei rapporti internazionali in età tardo-antica », dans *Le relazioni internazionali nell'alto medioevo, op. cit.*, p. 109-157, with the final remarks made by Cl. Moatti.

treaties, and the universal law based upon the natural right[3]. Several others rights derive from these three main legal sources, for example the right of conquest or the right of seizure, which could, among others, justify the claims, the protests and the oppositions of the actors of the international scene. The confrontation of unusual situations, strong demands and sometimes violent actions led to a separation between, on one side, the reality of facts and, on the other side, the legal model which should govern the relations between States and between their representatives. Tensions, incidents and even conflicts came out of that separation. Some of them have been studied recently, but some aspects still to be investigated[4].The situations of the international life led the contemporaries to think about the international law, to clarify some issues as a way to adapt its provisions especially in the case of contacts with non-European civilisations or when emerged the colonial disputes in the Early Modern times.

The object of our workshop is to investigate the jurisprudence produced by the inter-States relations and to think about the way it was challenged. The development of the principles of the law of nations, and then of the international law, should be related to the emergence of new stakes, original situations, particularly outside Europe, and of several kinds of challenges which contributed to the reality of diplomatic life. We also have to investigate how diplomacy raised new legal questions and to study the answers they called. The legal background of the people involved in diplomacy is another interesting topic, what was their training in that field? What were their practical and intellectual means to fulfill their missions?

These foods for thought have to be considered in a long-term perspective, from the late Antiquity to the early XIXth century, in order to understand, beyond the features of a period or of a singular event, the development and the deep permanencies of the legal argumentation in international relations which concern the diplomatic practices and the culture of negotiation as well. The aim of the workshop is not to study theoretical or doctrinal history of international relations law, but to investigate how law was really used in the diplomatic matters and in framework of negotiation. The questioning on the legal *modus operandi* in the international relations lead to renounce to any approach from the top, but to favour the perspectives from below. The aim is to see how diplomats, by the nature of their activity, were not only practitioners of law but also its creators by the way they used this discipline to fulfill their mission and to reach their objectives.

Please submit proposals in French or in English, between a half page and a page, along with a brief CV before October 15 2013 to Nicolas Drocourt and Eric Schnakenbourg. The final delivery of papers is expected for September 1^{rst} 2014 for publication in 2015. The proposals will be examined by a scientific committee composed of Marc Belissa, Nicolas Drocourt, Stéphane Péquignot and Eric Schnakenbourg.

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[3] Martin HÜBNER, *De la saisie des bâtimens neutres, ou Du droit qu'ont les nations belligérantes d'arrêter les navires des peuples amis*, 2 tomes, La Haye, 1759, p. 40-42.
[4] Lucien BELY et Géraud POUMAREDE (dir.), *L'incident diplomatique XVI^{e}-XVIII^{e} siècle,* Paris, Pedone, 2010.