A SCHOOLMASTER ABOLISHING HOMEWORK?
VATTÉL ON PEACEMAKING AND PEACE TREATIES

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I. THE PRACTICE AND DOCTRINE OF PEACEMAKING IN EARLY MODERN EUROPE

Since ancient times,¹ the conclusion of a peace treaty has been the common way to end hostilities and to restore peaceful relations after war. Nevertheless, in Early Modern Europe, peace treaties became more crucial instruments of international relations than ever before. From the 14th century to the great peace conferences of the late 17th and early 18th centuries, peace treaties became more extensive, more elaborate and more detailed. They made a significant contribution to the formation of the ius publicum Europaeum, the classical law of nations, from which sprang modern international law.²

Generally speaking, early modern peace treaties include three major categories of stipulations. First, there were the political concessions made and won by the treaty partners. In these, the claims for which the war had been waged were settled, or reserved for future settlement by peaceful means. The settlement exhausted the former belligerents’ right to resort to warfare over these issues in the future. The second and third category regulated the return from the state of war to the state of peace. The second category dealt with wartime events and their legal consequences. The third organised the state of peace for the future. Under this category fall stipulations

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¹ The oldest written peace treaty often referred to is the Peace of Kadeshe between the Egyptians and the Hittites of 1270 BC. See Karl-Heinz Ziegler, Völkerrechtsgeschichte (C.H. Beck, Munich, 2007), p. 16.

about the mutual rights and obligations of the former belligerents and their subjects during peacetime as well as specific guarantees to ensure the upholding of the treaty and the stability of the peace. Some articles of the third group combine these two roles. It was the second and third categories that grew increasingly elaborate. It was the dramatic change the conception of war underwent at the start of the Early Modern Age – apart from the intensification of trade relations – that explained this evolution in peacemaking.

In its late medieval conception, war was conceived of as an instrument of law enforcement, a substitute for legal trial in the hands of a sovereign to enforce his just and rightful claims upon an enemy who had allegedly injured these rights. In this sense, and regardless of the different types and scales of it, war was conceived of as limited in its scope and operation by its cause – the vindication of a particular right against the perpetrators of the injury. It was legally perceived of as a set of separate acts of war, which did not, at least not necessarily, disrupt all normal relations between the belligerents and their vassals, subjects and adherents. The just war, particularly in the views of scholastic theologians and canonists, was discriminatory. On principle, only one side could have justice on its side and be fighting a just war. Consequently, the benefits of war – the *ius in bello*, as the right to conquer or plunder – only befell one side. Also, a just belligerent could only take from the enemy that to which he held a claim of restitution, compensation or retribution.3

The growing scale of armies and warfare and the gradual monopolisation of war and external relations by central governments during the 16th and 17th centuries changed the legal conception of war. Apart from the concept of just war, which proved resilient both in the doctrines and practices of Early Modern Europe, a second conception of war emerged: that of war in due form – solemn war as Hugo Grotius (1583–1645) would have it –, which I propose to call legal war.4 For a war to be legal, it sufficed that it was waged under a sovereign authority and that it had been formally declared. Behind this last condition lurked its *ratio existendi*. Whereas the justice of war was by and large a matter of religious morality as well as political propaganda, its legality had roots and ramifications in the practice of warfare. The declaration of war by a sovereign Prince, having the authority to do so, indicated that from then on,

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4 Hugo Grotius, *De jure belli ac pacis libri tres* (Classics of International Law, Carnegie Institution, Washington, transl. Francis W. Kelsey, 2 vols., 1913), Book I, Chap. III, para. 4.1; Book III, Chap. III, paras. 4–5 and Book III, Chap. III, paras. 12–13. It is a war which allows the benefits of the *ius in bello* to both sides and is in accordance with the voluntary law of nations, but not necessarily with the natural law of nations. Therefore the term, legal war as opposed to just war, is appropriate.