Abstract: diplomatic practice and 18th century international law, a research gap?

The history of international law, a “booming” branch of legal history, considers international law in the 18th Century foremost on two levels: doctrine and published treaties (Lesaffer 2004-2005). Diplomacy is confined to the realm of political history (e.g. Black 1987), as the expression of antagonist dynastic interests. Law is about ideas, rather than acts. Authors as Samuel Pufendorf (1632-1694), Christian Thomasius (1655-1728) and Christian Wolff (1679-1754) are considered as forerunners of present-day international theory (Koskenniemi 1989).

However, our image of the law in action can only be partial if we follow this approach. For example, one of the major successes of the nascent international law was the period of stability between 1713 and 1739, when peace was safeguarded through negotiation on the basis of the Treaty of Utrecht (Bély 2001). An achievement recognized by Emer de Vattel (1714-1767) when he integrated norms created by states into the writings of the School of Natural Law (Jouannet, 1998).

The visions of French and British diplomats on this period constitute the first cluster of our doctoral research. Within the discursive community of diplomats, James Stanhope (1673-1721), Guillaume Dubois (1656-1723), Louis de St-Saphorin (1669-1737) and Horace Walpole (1678-1757) had the task to translate dynastic interest into abstract argument, acceptable to the other players. In other words, to insert it into the conceptual framework of the European balance (Duchhardt 1976).

Examining diplomatic correspondence allows the legal historian to apply a different reading to these texts. They do not only reveal short-term political conjuncture. Middle- and long-term planning and conceptualisation come forward in the long dispatches. Their authors almost invariably had a training as lawyers at university. They were occupied with practical politics, but could express their legal opinions freely behind the veil of secrecy, as opposed to scholars, who had to count with censorship and patronage (e.g. Réal de Curban 1764).

I would like to illustrate the pertinence of these diplomatic sources following the treatment of a major international crisis: the so called “Ripperda” Treaty, concluded on 30 April 1725 between Emperor Charles VI (1685-1740) and King Philip V of Spain (1683-1746), against the Franco-British mediators at the congress of Cambrai (1723-1725).

ABBÉ DE BURLÉ RÉAL DE CURBAN, La science du gouvernement, t. 5: contenant le droit des gens, Qui traite les Ambassade; de la Guerre; des Traités; des Prerogatives; des Pretentions, & des Droits respectifs des Souverains, Paris, Les libraires associés, 1764, 870 p.