

The Vienna Congress and the Transformation of International Law

Veranstalter: Mathias Schmoeckel, University of Bonn; Miloš Vec, University of Vienna

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200 years after the European Great Powers convened in Vienna to discuss the post-Napoleonic era, Miloš Vec, professor of legal and constitutional history at the University of Vienna, and Mathias Schmoeckel, professor of legal history at the University of Bonn, called for an international and interdisciplinary conference to examine the implications of the Congress of 1815 in international law and conflict resolution. Indeed, whereas the political importance of the Congress of Vienna has very often been emphasised in the historical research, its legal aspects, on the contrary, have been left untold for too long. The conference took place on 3rd and 4th September 2015 at the Poppelsdorf Palace (*Poppelsdorfer Schloss*) in Bonn (Germany) and was financed by both the universities of Vienna and Bonn, and the LOEWE Research Focus 'Extrajudicial and Judicial Conflict Resolution' (*LOEWE-Schwerpunkt „Außergerichtliche und gerichtliche Konfliktlösung“*).

Following Vec's greetings and introductory words, the first panel started with a presentation by LUIGI NUZZO (Lecce) on the question of whether the Congress can be seen as a landmark in international law, and, if so, what kind of history of international law can be told. At first, Nuzzo focused his study on the twentieth-century German histories of international law, such as those taught by Wilhelm G. Grewe and Carl Schmitt, and the role which they attributed to the Congress of Vienna. Then, he compared these twentieth-century German assertions with those found in the first works on international law and the history of international law produced in the second half of the 19th century by Western jurists (Kaltenborn, Pierantoni, Fiore). Finally, Nuzzo looked into Friedrich Carl von

Savigny's methodological renewal and traced back his influence on nineteenth-century international legal history.

FREDERIK DHONDT's (Ghent / Brussels) presentation focused on the concept of 'Balance of Power' and its importance for the creation of the Belgian state in 1831 and 1839. At first, Dhondt compared the Congress of Vienna with the multipartite conferences of the early 18th century to end the War of Spanish Succession. This comparison allowed him to assert continuity in diplomatic practice. The Balance of Power, understood as a system of mutual limitation of power, served to secure the necessary basis for the elaboration of a normative order. Regarding Belgium, the Congress created the United Kingdom of the Netherlands as a bulwark against French expansion, although this idea originated from early modern European diplomacy. However, the Congress in its conservative views failed to assess the internal political liberalism. The Belgian revolution forced the Great Powers to make an amendment to the result of the Congress. The solution was to declare the new Belgian state perpetually neutral, here again as set out in the practice and doctrine before the French Revolution.

The second panel started with RAYMOND KUBBEN's (Tilburg) presentation on three cases of state formation: the Republic of the Valais, the Free city of Cracow and Neutral Moresnet. On the basis of these examples, Kubben examined the phenomenon of state-peacemaking in relation to the Congress of Vienna. Indeed, new states were created and former borders were redrawn throughout the French Revolutionary and Napoleonic wars as well as at Vienna. Settling disputes about strategic territories by means of a peace treaty was a common method. Furthermore, Kubben presented reflections on statehood and territorial rights in international law as well as on the intervention of other European states in national constitutional law. In this context, he pointed out that international legal doctrine experienced a shift regarding the way it discerned the state-making activities of the French Revolutionary and Napoleonic wars on one hand and the Congress of Vienna on the other.

MATTHIAS SCHULZ (Geneva) then dis-

cussed the role of the Congress of Vienna for the development of international governance, understood here as an intergovernmental regulation between several states. One major result of the Congress was to achieve peace through a single multilateral treaty unlike the previous peace treaties, which were bilateral. Besides the codification of the diplomatic protocol, which resolved conflicts over rank between diplomats, the Congress also developed new practices of diplomatic communication in peacetime. It contributed to making the European states aware of the international system and of its control. Furthermore, the 'Concert of Europe' was used as an opportunity to resolve conflicts following a political procedure, i.e. without a normative frame. Schulz highlighted the participation of non-state actors and their inclusion in decision-making. A modernisation of interstate communication and an improvement in cultural practices of decision-making was evidenced in Vienna.

Economic topics then constituted the subject of the third panel. KOEN STAPELBROEK (Rotterdam/Helsinki) examined the importance of the Congress of Vienna for trade and, inversely, the significance of trade for the Congress. In contrast to the situation during the 18th century, in which war between states was usually caused by commercial rivalries and peace treaties often included commercial provisions, at the Congress the commercial issues were seemingly barely discussed. However, Stapelbroek maintained that political economy had an influence on the Congress. To support his assumption, he found important similarities between certain eighteenth-century ideas and those prevailing in 1815. He therefore supported the view that the Congress of Vienna also aimed to build a commercial society, even though commercial treaties were not concluded and their conclusion not even aspired.

The next presentation was by ANNE-CHARLOTTE MARTINEAU (Luxembourg) about three problematic assessments concerning the slave trade and its affinity with the Congress of Vienna. The first assessment was that the Congress had a major importance for the abolition of the slave trade. However, although the Declaration of Vienna on the Abolition of the Slave Trade explicitly condemned

the trade, it did not contain any provisions regarding time limits or mechanisms to enforce the prohibition. Secondly, she evaluated the importance of the British abolitionist lobby and the adoption of its ideas in British foreign policy. Finally, she focused on the mixed commissions set up by bilateral treaties between Great Britain and other nations to enforce the prohibition of the slave trade. Martineau pointed out that there is academic disagreement regarding the significance of these mixed commissions for the abolition of the slave trade. According to Martineau, this has something to do with international law's self-perception in claiming that it would restrain power and empower people.

In the last panel of the day, ANDREAS THIER (Zurich) spoke about Swiss neutrality. The concept of neutrality, as we understand it today, emerged in the 17th century, although the Greeks and Romans also had notions of neutrality. Concepts of neutrality again appeared in the 14th century and were influenced by feudal law. Gradually, neutrality by agreement became a common phenomenon. It was in the 15th/16th century that the neutrality between the Swiss cantons formed a constitutive example for theories about neutrality. By the end of the 18th century, neutrality was part of international law but was only examined case by case. However, it was only in the Act on the Neutrality of Switzerland of 1815 that the term perpetual neutrality was introduced in international law for the first time. Thus, neutrality changed fundamentally in 1815, and this transformation was another indication of the rise of general rules in international law.

The last presentation on Thursday was given by MATHIAS SCHMOECKEL (Bonn) and dealt with the personal union of states and the special affinity of this term with the Schleswig-Holstein question of the 19th century. Schmoeckel acknowledged that the term 'personal union' acquired a legal meaning in the 19th century through the works of German legal scholars. According to them, personal union meant the accidental and temporary union of two territories under one common sovereign, the independence of the two states being left unchallenged. The problem

of personal unions arose in the aftermath of the Congress of Vienna with the creation of the German Confederation (*Deutscher Bund*). As a matter of fact, the distinction between a lasting union ('real union') and a temporary union based on the person of the monarch ('personal union') became relevant in regard to the delicate question of the membership of a German territory to the Confederation, when it was ruled by the sovereign of a non-German state. Schmoeckel stressed that the international legal doctrine of the second half of the 19th century accepted the legal term of personal union even when practical cases of such unions had almost come to an end.

On Friday 4th September, the first talk was given by THOMAS HIPPLER (Lyon) on legal iconography. Hippler proposed an interpretation of the empty chair at the front of Jean-Baptiste Isabey's pen-and-ink drawing of the Congress of Vienna. Among the several explanations listed, one possible meaning is that the chair stands for the principles of international law. In order to demonstrate that, Hippler undertook an iconographic analysis of representations of peace since the 17th century. Nevertheless, he pointed out that there were few images depicting peace as a normative principle itself. According to Hippler, an important shift in the imagery of peace occurred with the French Revolution. The conclusions drawn from those observations make him believe that the empty chair on Isabey's drawing symbolised the normative principles.

RAPHAËL CAHEN (Orléans) reviewed then contemporary French publications in order to understand how the Congress was perceived in France. The contemporary French caricatures and booklets about the Congress often neither depicted nor talked about a new emerging international order, regardless of the political view of their respective author. Nevertheless, the 'official' historiography praised the Congress for establishing a new European order. This view was, however, contested by Edouard Bignon and 'l'Abbé' De Pradt. While Bignon presented the Congress as the dictatorship of the Great Powers, De Pradt conceded that it established a new order unprecedented in history whose arranged peace would not last long though.

Cahen concluded that the reception of the Congress in the contemporary French 'media' was quite diverse, although it was generally deemed to have established a new international order. However, it is Bignon's '*légende noire*' of the Congress which has survived in France until today.

In the last panel of the conference, LILIANA OBREGÓN (Bogotá) focused on the place of the Congress of Vienna in the international legal histories of the 19th century. Historians and jurists often tell different stories, she observed, and disciplinary perspectives can sometimes clash. For European writers, the Congress of Vienna was an origin story: it putted an end to wars, the Napoleonic Empire, the slave trade, and marked the beginning of a new era characterised amongst other things by peace and European unity. Henry Wheaton, a United States lawyer, published in French, in 1841, a history of the law of nations since the peace of Westphalia, in which he emphasised the importance of the Congress of Vienna as opening up a new period in history. However, in the version published in 1845, which was for an American readership, the Congress did not receive the significance it had in the French version because its concept of intervention was criticised in the Americas; hence those different accounts.

The last participant to present was MILOŠ VEC (Vienna). Although the Congress of Vienna can be considered a regulatory institution due to its quasi-legislative role, the balance of power intended by the Great Powers, seen as necessary for the maintenance of peace, was still denied any legal meaning; it was understood as a political principle. Vec sees in the predominance of this principle a sort of legal avoidance. For Vec, although legal history speaks about the extension of the law in new fields, we know almost nothing empirically about the process of juridification in international law and even less about legal avoidance, due to the methodical difficulty to assess this development. The balance of power policy was directly linked to the criticisms of the intervention doctrine as a conflict resolution tool with little juridical restrictions and requirements lacking precision. Vec concluded that the Congress admittedly achieved some results in the process of juridification,

but its poor reputation ensued from the avoidance of the law in some delicate political matters such as the doctrine of intervention.

With Vec's thanks to all the participants and the team in Bonn, the conference closed. Quite clearly it showed that the Congress of Vienna did not only have a political importance, but a legal one as well. Indeed, the Great Powers in 1815 contributed to some extent to the development of international law more than what has been assumed by historians and jurists so far. On the other hand, several presentations stressed the fact that the significance of the Congress on some aspects has been wrongly exaggerated. As Ph.D. candidate interested in history of international law, the conference has not only provided me a better understanding of this major historical event. It also helped me to take a critical look at some later accounts of international law, especially from the 19th century.

Conference overview:

Miloš Vec (Vienna): Welcome and introduction

Panel 1:

Luigi Nuzzo (Lecce): Vienna 1814: A Turning Point of International Law?

Frederik Dhondt (Ghent): The Balance of Power

Panel 2:

Raymond Kubben (Tilburg): The Vienna Congress and State-Making Peace

Matthias Schulz (Geneva): Forms of International Governance in the 19th Century

Panel 3:

Koen Stapelbroek (Helsinki): The Ordering of Trade at the Congress of Vienna

Anne-Charlotte Martineau (Luxembourg): The Vienna Congress and the (Non-)Abolition of Slavery

Panel 4:

Andreas Thier (Zürich): Swiss Neutrality

Mathias Schmoeckel (Bonn): Personal Unions

Panel 5:

Thomas Hippler (Lyon): The Empty Chair of Vienna

Raphaël Cahen (Orléans): The Congress of Vienna and the Vienna System in the French „Medias“ and „Publizistik“

Panel 6:

Lilian Obregón (Bogotá): The Congress of Vienna in International Legal History Narratives

Miloš Vec (Vienna): Juridification and Legal Avoidance: The Congress of Vienna and 19th Century European Law of Nations

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