Public International Law lecture on 2 May 2016: Prof. Dr. Vec talked about the emergence, interpretation and reform of the Prohibition of the Use of Poison in Art. 23 lit a of the 1907 Hague Regulations (HR)

The Department of Public Law and International Law had invited to a presentation of Prof. Dr. Miloš Vec on “Military Necessity before International Law? Emergence, interpretation and reform of the Prohibition of the Use of Poison provided in Art. 23 lit a HR” on the evening of 2 May 2016. Mr Vec is Professor at the Department of European Legal and Constitutional History at the University of Vienna and an eminent expert of the history of International Law. Hence the University of Giessen was very pleased to welcome him. Many academics from the universities of Gießen and Marburg attended his presentation; amongst them Prof. Dr. Marietta Auer, Prof. Dr. Anette Baumann, Prof. Dr. Horst Carl, Prof. Dr. Eckart Conze and Prof. Dr. em. Heinhard Steiger. The lecture took place in the Law Faculty’s deanery and was opened as well as chaired by research assistant Marie-Christin Stenzel. Miss Stenzel is currently a PhD student under Prof. Dr. Thilo Marauhn’s doctoral supervision at the Department of Public Law and International Law within the collaborative and interdisciplinary research network “Dynamics of Security - Processes of Securitization in historical perspective”. This project, funded by the German Research Foundation (DFG), kindly hosted Prof. Dr. Vec presentation and stay at the Justus-Liebig-University in collaboration with the Giessen Graduate Centre for Social Sciences, Business, Economics and Law (GGS) and the Franz-von-Liszt-Institute for International and Comparative Law.

After a brief introduction to the broader historical context Prof. Vec outlined the three major phases of the emergence of the prohibition of the use of poison as a norm, namely the years before, during and after the First World War. Prof. Vec focused on the scientific discourse circulating around the Prohibition of the Use of Poison instead of media exposure at the time. Subsequently, Prof. Vec described the prevailing optimism in reference to the formation of an international legal order which resulted in numerous publications especially in Germany. He then discussed the central question if and to what extent poisoned gas was and is covered by Art. 23 lit a HR. Before the First World War the idea of military attacks by means of gas had been unimaginably in view of the contemporary technical progress. Thus, gas as a weapon in modern warfare had not been discussed before 1915. That year convictions decisively changed due to the German offence involving poisoned gas at the Second Battle of Ypres. According to Prof. Vec, it is striking that the scientific discourse relating to the use of gas was
either rather dormant or strongly politicised and nationally biased. At the same time, poisonous gas was neither associated with Art. 23 lit.a HR nor were any efforts made to see it legally prohibited. Prof. Vec termed this agenda ‘avoidance of law-making’ (‘Rechtsvermeidung’) which is why he also titled his presentation “Military Necessity before International Law?”, alluding to the notion of “necessity knows no law”. Prof. Vec believes that in order to maintain freedom of action concerning warfare strategy, international law and the prohibition of the use of poison were deliberately ignored. Only after World War I did the prohibition of the use of poison expand to cover poisonous gas and developed into a positive norm of international law. Sadly this norm is nonetheless still violated up to this present day.

The subsequent discussion featured critical input on the concept of the avoidance of law-making as well as parallels to contemporary history (nuclear weapons), modern history (colonial legal systems) and maritime law (submarine warfare). In addition, the attendants reflected whether similar patterns of behaviour could be traced down into the early modern period and, more specifically, if wartime actions had been isolated from contemporary moral philosophy and “international legal order”. Lastly, the discussion focused on the discursive impact of legal scholars as opposed to the media. Overall, the debate as well as Prof. Vec presentation were very inspiring and instructive for all those involved.

The Department of Public Law and International Law thanks Prof. Vec most sincerely and hopes to welcome him back to Giessen in the future.

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