

incorporating the minimum rules for the treatment of individuals laid down by humanitarian law into the law of diplomatic protection and international responsibility, with due consideration for the variable and indeterminate nature of objective risk.

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ACTUALITÉ DE LA PENSÉE JURIDIQUE  
DE FRANCISCO DE VITORIA

*Topicality of the legal thinking  
of Francisco de Vitoria*

This book<sup>1</sup> contains five papers presented at the University of Louvain, Belgium, on 5 December 1986, during a day of study devoted to Vitoria's work and organized by the Charles De Visscher Centre for International Law. The event was a most useful way of marking the 500th anniversary of Vitoria's birth (around 1496; exact date unknown).

The value of short collections of critical studies such as this (128 pp.) is that they arouse the reader's interest in the thought of eminent forerunners or founders of international law, whose original texts are hardly ever consulted except by a few specialists. Studying the work of pioneers such as Vitoria, Suarez, Grotius and Gentili gives us a greater insight into the essence of international law and how the relationship between that law and the dynamics of the international community has evolved over time.

Today, when the Red Cross has just celebrated the 125th anniversary of the Movement and of the original Geneva Convention (1864), when a major campaign is being launched for the protection of war victims and the United Nations has decreed that the last decade of the century shall be the Decade of International Law, simple humility sends us back to the sources, to gain a better understanding of the ground already gained, the pitfalls to be avoided and developments to be recommended.

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<sup>1</sup> *Actualité de la pensée juridique de Francisco de Vitoria* (Topicality of the legal thinking of Francisco de Vitoria), by Antonio Truyol Serra, Henry Mechoulan, Peter Haggemacher, Antonio Ortiz-Arce, Primitivo Marino and Joe Verhoeven (preface by François Rigaux), Bruylant, Brussels, 1988, 128 pp.

The five papers presented in Louvain and published in this work with a preface by François Rigaux are on the following subjects:

- “*The main stages in the life of Vitoria*”, by Antonio Truyol Serra;
- “*Vitoria, father of international law?*” by Henry Mechoulan;
- “*The place of Francisco de Vitoria among the founders of international law*”, by Peter Haggemacher;
- “*Resort to force in the work of Vitoria*”, by Antonio Ortiz-Arce and Primitivo Marino;
- “*Vitoria or the matrix of international law*”, by Joe Verhoeven.

From Antonio Truyol Serra we learn that Vitoria expressed his most outstanding ideas in a series of 15 “*relectiones*, that is, special lectures that all professors were expected to give once a year in solemn circumstances” (p. 6). The two most important lectures for international law were the one devoted to the colonization of the Americas (“*De Indis prior*”) and the one on the law of war (“*De Indis posterior*”, better known under the title “*De jure belli*”). Both date from 1539.

It was Vitoria’s desire to legitimize the conquest of America by Spain in the XVIth century that gave rise to his fundamental notion of *communitas orbis*, the universal community, the oneness of all human society. As Henry Mechoulan stresses, it is this “universalism” of Vitoria that led his disciples to see him as the father of international law. However, Jews and Saracens, among others, had no place in his *totus orbis*. According to Peter Haggemacher, on closer examination this *totus orbis* is in fact an *orbis christianus*. The new *jus gentium*, a compromise between natural and divine law, is therefore not without ambiguity.

Our interest naturally focused on the study by Antonio Ortiz-Arce and Primitivo Marino which analyses Vitoria’s view of the law of war, expounded most fully in “*De jure belli*”. This is primarily a treatise on *jus ad bellum*, that is, the law of resort to force and the just causes that warrant it. Among Vitoria’s key concepts, highlighted by the two authors, is that of the necessary *injuria*, the grave violation of a right which alone justifies resort to force as long as it is associated with one of the just causes proposed by Vitoria. The rights he propounds are seven in number and include the *jus communicationis* (the right to communicate, navigate and engage in trade) and the right of humanitarian intervention, that is, the right to help innocents subjected to the tyranny of barbaric chiefs. Together with Antonio Ortiz-Arce and Primitivo Marino, we should like to mention three of the final recommendations of “*De Jure belli*”: “war, even just war, must be considered only as an extreme remedy. The aim of war is to restore justice and not to impose the will of the strongest. Victorious peace must be marked by Christian moderation and local concern for all” (p. 93).

Notwithstanding some reservations, most of the authors found that Vitoria’s main strength was the prominence he gave to alterity, i.e., awareness of and respect for others. Joe Verhoeven adds that to his mind Vitoria’s

most striking innovation was the fact that he considered the sovereign State as the subject of international law.

Was Vitoria the founder of international law or only an illustrious precursor? The eminent jurists meeting in Louvain do not agree on this point. Indeed, the question is academic. It is more important and useful to bear in mind Vitoria's tenet that the lawyer must not be a learned man at the service of the powerful, or indeed, just before we celebrate the 500th anniversary of the "discovery" of America (1492), that "there is a close relationship between maintaining freedom within each State and maintaining peace between States" (p. 96).

*René Kosirnik*

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- ***Frédéric de Mulinen: Manuel sur le droit de la guerre pour les forces armées***

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