XXXIX POLISH YEARBOOK OF INTERNATIONAL LAW
2019
DOI 10.24425/pyil.2020.134477
PL ISSN 0554-498X

*Kostiantyn Savchuk**

INTERNATIONAL LAW AT THE SAINT VOLODYMYR IMPERIAL UNIVERSITY OF KYIV IN THE 19TH AND EARLY 20TH CENTURIES

Abstract: *This article is devoted to the science of international law at the Saint Volodymyr Imperial University of Kyiv, a major centre for the teaching and study of international law in Tsarist Russia. It examines the international legal views propounded by Vasilii Andreevich Nezabitovskii (1824–1883), Roman Ivanovich Baziner (1841–?), Nikolai Karlovich Rennenkampf (1832–1899), Otton Ottonovich Eikhel'man (1854–1943), and Petr Mikhailovich Bogayevskii (1866–1929). Scientists working at the Saint Volodymyr Imperial University contributed considerably to the development of the science of international law, although their work is not widely known due to the fact they did not produce many works in "western" languages. The large majority of these scholars' writings represent a perfect development of international legal theory. These works advanced the concepts of the legal nature of international law (Nezabitovskii, Eikhel'man); proposed a new spatial concept of territory that was further developed in international legal science (Nezabitovskii); and explored the laws and customs of war and the role of the Red Cross in the development of humanitarian norms in international law (Baziner, Rennenkampf, Bogayevskii).*

Keywords: history of international legal science in Ukraine, Nikolai Karlovich Rennenkampf, Otton Ottonovich Eikhel'man, Petr Mikhailovich Bogayevskii, Roman Ivanovich Baziner, Saint Volodymyr Imperial University, Vasilii Andreevich Nezabitovskii

INTRODUCTION

Investigation of the history of international law and international legal teachings has always been one of the main tasks of the modern science of international law. But whereas numerous fundamental works have covered different aspects of the development of international legal doctrine in Western countries, Western specialists are seldom well versed in the history of international legal science in Russia, let alone Ukraine.

* Senior Researcher, Department of International Law and Comparative Law, V.M. Koretsky Institute of State and Law, National Academy of Sciences of Ukraine; e-mail: konstantinsavchuk@rambler.ru; ORCID: 0000-0001-6966-1139.

One of the few exceptions is the work of the prominent Polish international lawyer Manfred Lachs, "The Teacher in International Law",[1] who mentions the significant contribution of Russian and Ukrainian scholars to the development of the science of international law. In recent decades though, several essential works in this field have been published in English. Foremost among them are a translation of a foundational work by a celebrated historian of international legal science, the academician Vladimir Emmanuilovich Grabar,[2] and works by such authors as William Elliott Butler[3] and Lauri Mälksoo.[4] Among Soviet scholars, the contributions of pre-revolutionary Kyiv specialists to the development of the science of international law was, alongside the work of the above-mentioned V.E. Grabar, also investigated by D.B. Levin,[5] N.N. Ul'ianova, Iu'Ia. Baskin,[6] and L.G. Zablotskaia.[7] Contemporary Ukrainian international lawyers pay much more attention to the study of the history of the development of the science of international law in Ukraine in general and at Kyiv University in particular. Thus the science of international law at Kyiv University has become the subject of research by such contemporary Ukrainian lawyers as O.O. Merezhko[8] and O.V. Bytkevych.[9] The author of this article also dealt with these issues both in sole publications[10] and in

[1] M. Lachs, *The Teacher in International Law*, Martinus Nijhoff Publishers, Dordrecht, Boston, Lancaster: 1987.

[2] V.E. Grabar, *The History of International Law in Russia, 1647–1917*, translated and edited with an Introduction and Bibliographies by W.E. Butler, Clarendon Press, Oxford: 1990.

[3] W.E. Butler, *On the Origins of International Legal Science in Russia*, 4(1) Journal of the History of International Law 1 (2002).

[4] L. Mälksoo, *The Science of International Law and the Concept of Politics: The Arguments and Lives of the International Law Professors at the University of Dorpat/Iur'ev/Tartu 1855-1985*, 76(1) British Yearbook of International Law 383 (2005); L. Mälksoo, *The History of International Legal Theory in Russia: A Civilizational Dialogue with Europe*, 19(1) European Journal of International Law 211 (2008); L. Mälksoo, *Russian Approaches to International Law*, Oxford University Press, Oxford: 2015.

[5] Д.Б. Левин, *Наука международного права в России в конце XIX и начале XX в.: Общие вопросы теории международного права* [The science of international law in Russia in the late XIX and early XX centuries: General issues of the theory of international law], Наука, Москва: 1982.

[6] Н.Н. Ульянова, Ю.Я. Баскин, *Василий Андреевич Незабитовский как международник* [Vasilii Andreevich Nezabitovskii as an internationalist], Советский ежегодник международного права 335 (1965).

[7] Л.Г. Заблоцька, *Розвиток науки міжнародного права вченими Університету Святого Володимира* [The development of the science of international law by scholars of the University of St. Volodymyr], 1 Український часопис міжнародного права 117 (1993).

[8] O.O. Merezhko, *On the Origins on the Ukrainian Science of International Law*, 2(2) JUS GENTIUM: Journal of International Legal History 443 (2017).

[9] O.V. Bytkevych, *The Nezabytovskyi Concept of the Law of International Community*, 2(2) JUS GENTIUM: Journal of International Legal History 485 (2017).

[10] К.О. Савчук, *Життєвий шлях і наукова біографія професора Василя Андрійовича Незабитовського* [The life pass and scientific biography of professor Vasilii Andreevich Nezabitovskii], 21 Правова держава. Щорічник наукових праць 415 (2010); К.О. Савчук, *Отон Отонович Ейхельман – біографічний нарис та міжнародно-правові погляди* [Otton Ottonovich Eikhel'man – biographical sketch and international legal views], 2 Науково-практичний фаховий журнал "Міжнародне право" 237 (2012).

co-authorship with V.N. Denisov.[11] But in general, as rightly noted by O.O. Merezhko, "the Ukrainian school of international law is not well-known outside Ukraine and sometimes is perceived as existing in the shadow of post-Soviet Russian international legal thought."[12] In my opinion, this statement is also applicable to pre-revolutionary Ukrainian legal science. Thus this article constitutes an overview of the contribution of Kyiv internationalists of the 19th and early 20th centuries to the development of the science of international law, an overview that might be interesting for Polish and other Western experts in the history of international law.

1. INTERNATIONAL LAW IN KYIV: THE LONG 19TH CENTURY

In what is now Ukraine the modern science of international law began to develop in the second quarter of the 19th century. It would eventually achieve much success, becoming an integral part of the world's science of international law and flourishing throughout the later 19th and early 20th centuries. It was mainly concerned with ideas of international law elaborated under the influence of the revolutionary changes taking place in Europe and the United States of America at the time. After the Napoleonic era, the old conceptions of absolute monarchy were gradually being overcome and ideas of democracy spread alongside concepts of a Europe reorganized on a firmer basis as well as the prospect of the political organization of the entire world. At the same time, scientific and technical progress was bringing changes in the structure of industry, means of communication, and transportation.

The resulting internationalisation of the economic and social interests of states necessitated new forms of legal regulation of international relations. These materialized in international conferences on economic and social issues, which significantly broadened the sphere of states' joint interests in their mutual relations, which earlier had been restricted exclusively to political problems, as well as in special state-organized "unions" of a permanent nature that provided a continuous basis for managing their particular interests. Politicians and international law experts of various nations began to set out their visions of a world law organized according to a system of voluntary cooperation between sovereign independent states, which eventually would regulate the wide array of their joint interests.

However, at the beginning of the 20th century the international community faced a paradox: its political structure remained unstable, even though states were clearly cooperating to advance their economic and social interests. At the Hague Conferences of 1899 and 1907, states attempted to agree on joint measures aimed at preventing war, but their efforts proved insufficient. In that historical moment, their failure to

[11] V.N. Denisov, K.O. Savchuk, *Development of International Law Science in XIX – first half of XX century in Ukraine*, Ukrainian Yearbook of International Law 293 (2008).

[12] Merezhko, *supra* note 8, pp. 448-449.

politically organize the international community for the purpose of maintaining law and order resulted in international law's recognition of war as a lawfully permitted act, a decision that subsequently led to worldwide disaster in the First World War (1914–1918).

This transitional epoch swelled the ranks of highly-qualified representatives of the science of international law in Ukraine. They elaborated ideas about the nature and substance of international law and made interesting suggestions for its development, including the prevention of war. The bulk of these scholars' writings represent the comprehensive development of an international legal theory whose level of practical significance places it among the best examples of the world's scientific thought, a theory which is often distinguished by its originality.

The science of international law arose on the territory of the Russian Empire later than in Western Europe. As V.E. Grabar rightly emphasized, "in Kievan Rus', despite lively relations with states of Western and Eastern Europe and the existence of progressive institutes of international law, and in the feudal principalities of the thirteenth to the fifteenth centuries it is difficult to find definitive indications that enable one to confirm that there existed a developed doctrine concerning the norms of international law."[13] The first original theoretical work on international law appeared in Russia only at the beginning of the 18th century.[14] The further development of the science of international law in the Russian Empire in general and in Ukraine in particular is primarily associated with universities. Thus in the 19th century the main centres of scientific studies in Ukraine were Kharkiv University, Saint Volodymyr University (Kyiv) and Novorossiysk University (Odessa). The law faculties at these universities established departments of international law (or the all-people's law, to use the Russian terminology of the time) that conducted studies on topical problems and tendencies in conformance with the highest standards of scientific research in Europe at that time and became an integral part of that scholarly sphere. Of course Ukraine was part of the Russian Empire during this period, so the science of international law in Russia was interconnected with that of Ukraine. Moreover, the international legal teachings of professors at Kharkiv, Saint Volodymyr and Novorossiysk Universities were certainly also integral to the united imperial science of international law. International law at Kharkiv University, established in 1804, was represented by such scholars as Tykhon Fedorovich Stepanov (1795-1847), Dmitrii Ivanovich Kachenovskii (1827-1872), Andrei Nikolaevich Stoianov (1831-1907) and Vsevolod Pievich Danevskii (1852-1898). Novorossiysk University, founded in 1865, was home to such scientists as Ignatii Aleksandrovich Ivanovskii (1858-after 1926) and Petr Evgen'evich Kazanskii (1868-1947).

The Kyiv University, bearing the name of Saint Volodymyr, was founded in accordance with an 8 November 1833 decree of Emperor Nicholas I. The name was not chosen by chance. Saint Volodymyr, or Volodymyr the Great (958–1015), Grand

[13] Grabar, *supra* note 2, p. 3.
[14] Butler, *supra* note 3, p. 1.

Prince of Kyiv, was the ruler known for Christianizing Kyivan Rus. Naming the newly created university after him was a way of emphasizing Kyiv's importance as the cradle of Orthodox Christianity in the Russian Empire. The University's opening ceremony was held on 15 July 1834. The special charter granted to the University upon its founding provided for the existence of two faculties – philosophical and legal – but did not extend to teaching at a faculty of international law, so the department of the law of nations was not established at the University until a new charter was granted in 1842. The inception and development of the Kyiv school of international law is generally attributed to Konstantin Aleekseevich Nevolin (1806–1855), a well-known lawyer, historian of Russian law, and lecturer who taught a review of jurisprudence that also covered some international legal issues. K.A. Nevolin was born in Orlov, in the Vyatka Governorate (now the Kirov region of the Russian Federation) in a priest's family. He first received religious education at Vyatka Theological Seminary and Moscow Academy. Even at that time, the future scholar showed great abilities to learn. Thus, while studying at the Academy, together with some other students from universities and theological academies he was chosen to continue his studies in jurisprudence. In 1828, together with other gifted young fellows, he began studying jurisprudence in the Second Section of His Imperial Majesty's Own Chancellery under the direct guidance of M.A. Baluhianskii, according to the curriculum of M.M. Speranskii. After passing the exam in 1829, Nevolin was sent to study at the University of Berlin, where during three years he studied Encyclopedia of law and the philosophy of the law, history and theory of public law, Roman Law, Law of Germany and General State Laws for the Prussian States, as well as European International Law under the guidance of Friedrich Carl von Savigny. After graduation in Germany, he continued working for a time in the Second Section of the Imperial Chancellery, developing a set of privileges and laws of the Baltic governorates, but in February 1835 he defended his thesis "On the Jurisprudence Philosophy in the Ancient Times" at the Saint Petersburg University and obtained the degree of doctor of law. Shortly after the defence of his thesis, Nevolin joined the newly-founded Saint Volodymyr University in Kyiv, occupying the position of full professor of Encyclopedia of Law and Institutions of the Russian Empire. In the period 1837-1843, Nevolin was the Rector of the Saint Volodymyr Royal University. He stayed at this University until 1843, and then he was transferred to the Department of Russian Civil Laws at the Saint Petersburg University. In 1847, Nevolin became the Vice-rector and Dean of the Law Faculty of this University. During the Saint Petersburg period of his academic and scientific activities, his fundamental three-volume work "The History of Russian Civil Laws" came out. In 1853, Nevolin was elected a corresponding member of Saint Petersburg Academy of Sciences for the Department of Russian Language and Literature. In 1854 he was elected an Honorary Member of the Saint Volodymyr Royal University, which he had done his utmost to help establish and develop. Unfortunately, the life of this outstanding scholar was cut short. On 6 October 1855, he died in Brixen im Thale, Austria, where he had undergone medical treatment.

In 1839–1840 Nevolin published his fundamental work "Encyclopedia of Jurisprudence,"[15] which featured several commentaries on issues of international law and its teachings. Nevolin distinguished five stages of social life: family, generation, civil society, state, and alliance of nations, noting that the state is also a member of the latter. He wrote that the state "has links with other states like with individual units similar to it," emphasizing that "in mutual relations, each state recognizes each other as autonomous and independent, which serves as the basis for their behaviour towards each other."[16] Since there is no supreme authority over the states, then in cases which cannot be resolved successfully by peaceful means, war remains the only sustainable way to resolve conflicts between states. In analysing the term "law", Nevolin defined state and internal laws, civil laws, and laws of the union of nations or law of nations (external state laws). Since, from the standpoint of Nevolin all laws were divided into those that define rights and responsibilities (i.e. defining laws), and those that protect them (i.e. protecting laws), so too laws of the union of nations were also divided into two categories. Thus according to Nevolin laws of the union of nations or law of nations are divided into two categories of regulations: defining laws (or law of nations in time of peace), and protecting laws (or law of nations in time of war). The first category "defines the essence of the union of nations and law that arises from it'; while the second category 'contains the regulations according to which the union of nations and law arising from it remain in action by taking enforcement measures, and especially by war."[17] In his work, Nevolin attached great importance to the history of international legal doctrines, although he addressed them in the context of the common history of political and legal thought (history of the philosophy of law in his terminology). Nevolin actively analysed the international legal concepts of Plato, Aristotle, and Cicero, pointing out that in the papers of the latter "for the first time, we find the true concept of truth (that is, law. – K.S.) between the nations."[18] In reviewing the history of the philosophy of law of the new era, Nevolin drew attention to the role played by philosophy in the evolution of international law and its science. He rightly pointed out that: "[e]verlasting wars and distractions between European nations caused by uncertain relations between them provided the impetus for determining these relations more precisely, assisted by scientific searches."[19] The second volume of the Encyclopedia of Law is devoted to the consideration of "the history of positive legislation" (i.e. history of the state and law in modern terminology). In terms of the subject being analysed here, one can find other more interesting papers in which Nevolin explores the legal regulation of international relations in the laws of different countries, since these contributions finalize the histori-

[15] К.А. Неволин, *Энциклопедия законоведения* [Encyclopedia of Jurisprudence], Унив. тип., Киев: 1839-40, 2 vols.

[16] К.А. Неволин, *Энциклопедия законоведения* [Encyclopedia of Jurisprudence], in: К.А. Неволин, *Полное собрание сочинений*, Т. 1, Тип. Эдуарда Праца, Санкт-Петербург: 1857, p. 65.

[17] *Ibidem*, pp. 71-72.

[18] *Ibidem*, p. 213.

[19] *Ibidem*, p. 228.

cal research of the positive legislative development of each nation. Nevolin was of the opinion that international law is a product of the New Time, since it "assumes that people realize the uniformity of their nature and, accordingly, the equality of their common humanity," while the nations of the Ancient World "did not recognize the mutual rights of each other" and "each of them ... placed themselves above other nations."[20] According to Nevolin, the main precondition on which international law was established directly in Western Europe was firstly the unity of faith and church power in the nations. He believed that other such preconditions were continuous wars and peaceful relations between them, as well as "the uniformity of the grounds of all social and private everyday life."[21] As rightly pointed out by Nevolin, this situation contributed to the fact that irrespective of whether the nations of Europe were in peaceful relations or in a state of war, they were guided by the same principles in their mutual relations. In terms of the scope of international law, Nevolin's considerations were in line with the dominant paradigms of his time, and he noted that international law emerged in the relations of Western European states, but in the 18th century Russia began to take an active part in the common causes of Europe, and subsequently the newly-emerged states of America joined them. The scholar did not express his opinion on the possibility of applying international law to relations with the nations of Africa and Asia. On the subject of sources of international law, Nevolin pointed out that it emerged as a custom, but "we sipped knowledge of it from treaties that were entered into between European states at different times."[22]

As mentioned above, the department of international law was founded in 1842. Prior to that, international law was taught by professors from other chairs, namely Aleksandr Aleekseevich Fedotov-Chekhovskii (1806–1892) and Nikolai Dmitrievich Ivanishev (1811–1874). The talented scholar Platon Lukich Tutkovskii (1820–1849) then held the chair, but only for a few years as he died very young.

2. VASILII ANDREEVICH NEZABITOVSKII: ORIGINATOR OF THE SPATIAL CONCEPT OF TERRITORY

From 1853 until his death in 1883, Vasilii Andreevich Nezabitovskii (b. 1824) held the chair of international law at Saint Volodymyr University. He is still regarded as one of the most distinguished figures in the Russian and Ukrainian science of international law. Nezabitovskii was born in Radomyshl', near Zhytomyr, to a family of petty clerks. After graduating from the Second Kyiv Gymnasium, he earned a law degree in 1846 from the Law Faculty of the University of Kyiv. From 1846 to 1848 he worked as an assistant department head in the civil chamber of the Kyiv District Court. For the next

[20] К.А. Неволин, *Энциклопедия законоведения* [Encyclopedia of Jurisprudence], in: К.А. Неволин, *Полное собрание сочинений*, Т. 2, Тип. Эдуарда Праца, Санкт-Петербург: 1857, p. 511.

[21] *Ibidem.*

[22] *Ibidem*, p. 512.

two years he taught jurisprudence at the Second Kyiv Gymnasium. Then, from 1850 to 1853, he held the chair of administrative law at Nizhyn Lyceum, where he taught the history of Russian law, and state and financial law. In 1853, he obtained a master's degree in state law with his thesis "On the Financial System of Moscow State from the Establishment of Monocracy until the Introduction of Poll Tax by Peter the Great."[23] From 1853 until his death, he was a professor of international law and also served three times as Dean of the Law Faculty (in 1863–1865, 1870–1873 and 1876-1879) and once as Vice-Rector (1865–1867). In 1858 he was made an associate professor, and in 1863 he became a full professor. In 1858 and 1859 he travelled to Germany, France, England, Belgium and Switzerland to engage in research and for other academic purposes.

In 1862, he defended his doctoral thesis, "Publicists' Teachings on International Possession",[24] concisely weighing in on the topic in his relatively short (only 40 pages) yet exceptionally in-depth study. According to Nezabitovskii, both international law as a system of legal rules governing international relations and international legal studies as a branch of the legal sciences had emerged relatively recently, i.e. in the mid-17th century. It was during that period, after the end of the Thirty Years' War and the 1648 Peace of Westphalia, that the idea of a universal Christian monarchy was abandoned and the "fragmentation of Europe into many independent states elevated itself to the new supreme foundation of political life in the European world."[25] Even though the various links between European states so substantially intensified thereafter that those states considered themselves parts of a common political system, the idea of state independence became the fundamental law of the European system of international relations.

These developments in international relations also defined the subject matter of the science of international law. Nezabitovskii opined that "[the science] should define what is right and what is wrong in external relations between states."[26] To that end, Nezabitovskii schematically encapsulated the development of international law scholarship from the 17th to the mid-19th century and differentiated between two of its directions: the theoretical and the positivist. The theoretical approach predominated in the 17th century, but since the end of the 18th century the positivist approach to the science of international law had come to prevail. Nezabitovskii explained this switch of perspectives by observing that in the 17th century "the life of European states in all its emanations was failing to catch up with the new foundation" and legal science faced the challenge of "providing advice and guidance for it."[27]

---

[23] В.А. Незабитовский, *О податной системе в Московском государстве, со времени установления единодержавия до введения подушного оклада Петром Великим* [On the financial system of Moscow State from the establishment of monocracy until the introduction of poll tax by Peter the Great], in: В.А. Незабитовский, *Собрание сочинений*, Тип. Е.Я. Федорова, Киев: 1884, p. 2.

[24] В.А. Незабитовский, *Учение публицистов о междугосударственном владении* [Publicists' teachings on international possession], in: В.А. Незабитовский, *Собрание сочинений*, Тип. Е.Я. Федорова, Киев: 1884, p. 105.

[25] *Ibidem.*

[26] *Ibidem*, p. 106.

[27] *Ibidem*.

It was the evolution of the legal system that regulated the relationships between states that determined the positivist direction in the development of international legal science. However, Nezabitovskii stressed that both directions started from the same foundation – state independence – and that as a result, the "idea of state independence diverted the attention of politicians and publicists from thoughts on inter-state union."[28] Therefore, Nezabitovskii concluded, the then-prevailing state of international legal theory failed to meet the realities of international life, and many of its core provisions required in-depth revisions focused on unity and union between states. He thus declared that revision of the teachings on international possession would be the main task of his research.

In his work, Nezabitovskii objected to the practice of automatically importing categories and notions of civil law into the sphere of international relations – an approach that was widespread in the legal science of the 17th, 18th, and even 19th century. From a civil law standpoint, Nezabitovskii noted, possession (i.e. power over things) may belong to a person individually, to several persons jointly (*dominium*), or to humankind (*communio*). He defined the essence of the civil law approach to possession as follows: "I. Human rule over the outward world takes two forms: private possession and communion. Private possession means unconditional and unlimited dominion over a thing. II. Physical possibility limits private possession. Only those things that are absolutely impossible to keep in exclusive dominion remain within the communion."[29]

In Nezabitovskii's opinion, however, the transplantation of such concepts into the sphere of international relations does not correspond to real international life. The subject matter of international possession is state territory or, as he termed it, "governmental area (territory)", by which he meant a "defined area of terrestrial surface."[30] It comprises two substantially different parts: land and maritime territory. In his doctoral thesis, Nezabitovskii thoroughly elucidated the main evolutionary stages of the freedom-of-the-sea principle in the doctrine and practice of international law, and ardently upheld the freedom of the sea for all states. Regarding the issue of access to and exit from state territory, Nezabitovskii pointed out a clear pattern in the history of international legal scholarship. Whereas 17th-century international lawyers – and Hugo Grotius in particular – argued for the right of a foreigner to enter the territory of a state, international law doctrine since Samuel von Pufendorf had shifted toward the position that the state should have an unlimited right, emanating from the principle of territoriality, to restrict foreigners' access to its territory. Nezabitovskii differentiated between international and intra-state relations, defending the unlimited right of a state to restrict foreign politicians' access to its territory, but upholding the right of private persons to enter the foreign territory. Based on the civil-law concepts of territorial possession prevailing at his time, he opined that it was impossible to settle the issue of lawful entry into foreign territory.

[28] *Ibidem*, p. 107.
[29] *Ibidem*, pp. 113-114.
[30] *Ibidem*, p. 114.

In his view, "international possession represents the exclusive power of a state over a certain part of territorial surface that comprises the governmental area."[31] This assessment reflects what is understood in civil law as *dominium*, but in international law *dominium* acquires rather the meaning of a State's ultimate title to the territory. At the same time, a state exercises power over the population, that is, *imperium*. Hence, in the sphere of international relations imperium and dominium merge into the general concept of international possession, despite being at the same time completely different and mutually independent conceptions by their legal nature. Nevertheless, international legal scholars mechanically transplanted the civil-law notion of possession into international law, producing a theoretically and practically untenable understanding of international possession as composed of two elements that are completely alien by their legal nature. Therefore, Nezabitovskii concluded, "territory cannot be a thing in state's possession, but only an area where governmental authority exists and functions. This is a governmental area, a circuit, the boundaries of governmental power. The state rules within the territory but not over the territory, and territory means not the subject but the limit of state power."[32] Hence Professor Nezabitovskii rejected the civil-law understanding of state territory and, after extensive study of myriad doctrinal sources ranging from Hugo Grotius and Alberico Gentili to the international law scholars of his own day, proposed a new spatial concept of territory that was further recognized and developed in the international legal science. This theory has been further developed in the works of such well-known scientists as Georg Jellinek, Leon Duguit, Nikolai Mikhailovich Korkunov, and Franz Eduard Ritter von Liszt. According to the modern international legal concepts state territory is defined as the sphere of a state's domination, territorial supremacy and sovereignty, part of the surface of the earth where the sovereign state exercises jurisdiction.

Western international lawyers usually regard Carl Victor Fricker – a renowned German jurist, statesman, and professor at the Universities of Tübingen and Leipzig (1830–1907) – as the founder of this theory. Without in any way downplaying Fricker's achievements in the elaboration of legal questions relating to state territory, I would note that the Ukrainian scientist's work "Publicists' Teachings on International Possession" was published in 1860, whereas Fricker's work "State Territory"[33] appeared only in 1867. Unfortunately, the works of Nezabitovskii have not been translated into Western European languages and today are a bibliographic rarity even in Russian, so his international legal views are little known in the modern Western science of international law.

Nezabitovskii's writings stand out not only in terms of the scale of the problems he researched, but also in their originality, clarity, and simplicity of explanation. The scholar also examined the problem of determining the place and the role of the rules and customs of war in international law, and the prospects for the creation of a universal international organization of states. As emphasized by O.V. Bytkevych, Nezabitovskii

[31] *Ibidem*, p. 136.

[32] *Ibidem*, p. 140.

[33] K.V. Fricker, *Vom Staatsgebiet*, Tübingen: 1867.

"considered an international system where war is a rare and exceptional fact to be an ideal for international law."[34] In his work "International Customs at the Time of War", Nezabitovskii came forward as a fervent opponent of war and the arms race: "What is war? It is the domination of force. What is education aimed at? Its aim is the rule of law. But it is generally known that force is not the law."[35] While acknowledging the significant developments in the international legal regulation of military operations, which in his opinion was certainly a positive tendency, the scientist also rightly pointed out that developments in technology had made war increasingly murderous. He singled out two methods with a potential to limit the scope of war: force reduction and the prohibition of maritime blockades. In recognizing that the ideas of gradual limitation of war and eventually its total prohibition as a means of settling international disputes would promote progress in education and the development of industry and trade, Nezabitovskii was confidently optimistic that "the time when the hope for a constant peace becomes a reality is close."[36]

It is worth noting here that the scholar was by no means detached from life or an idealist and dreamer. In a public lecture dedicated to the well-known project of the codification of international law led by the American lawyer D. Field, whom the scholar from Kyiv regarded highly, Nezabitovskii drew attention to the complexity and protracted nature of this process, in particular insofar as it concerned the need to establish an international court on a permanent basis. In his words: "Efforts to establish an international court are clear to me and the Court is possible without the registry and positive law: there is a law for the court which lies in a natural sense of justice. But today I personally find the composition of an international statute, of a complete statute, impossible."[37]

3. ROMAN IVANOVICH BAZINER AND NIKOLAI KARLOVICH RENNENKAMPF: STUDYING LAWS AND CUSTOMS OF LAND AND MARITIME WAR

When V.A. Nezabitovskii headed the Department of International Law, one of his students, Roman Ivanovich Baziner (1841-?), worked as a privatdozent during the period 1871-1880. R.I. Baziner was born on October 13, 1841 in Saint Petersburg in a teacher's family and studied at the Second Odessa Gymnasium. In 1866 he graduated from the Law Faculty of the Saint Volodymyr University and received a proposal to stay at the University to prepare to obtain his professorial title. At the same time, he was

[34] Butkevych, *supra* note 9, p. 499.

[35] В.А. Незабитовский, *Международные обычаи во время войны* [International customs at the time of war], in: В.А. Незабитовский, *Собрание сочинений*, Тип. Е.Я. Федорова, Киев: 1884, p. 147.

[36] *Ibidem*, p. 251.

[37] В.А. Незабитовский, *Новейшие проекты международного устава* [Latest projects of international charter], in: В.А. Незабитовский, *Собрание сочинений*, Тип. Е.Я. Федорова, Киев: 1884, p. 151.

working as a court investigator in Kyiv. After the thesis defence pro venia legendi "On the Inviolability of the Private Property in International Wars,"[38] he was approved as a privatdozent of the Department of International Law. He was teaching a number of international legal disciplines, in particular The History of Treaties of Vienna of 1815 and Law of Neutrality. However, in 1880 he left his scientific and academic activities to focus on advocacy work as an attorney-at-law in the district of Kyiv Trial Chamber. Baziner's scientific papers are devoted primarily to the law of war, and like the papers of his teacher and mentor Nezabitovskii, are based on the positivist approach to understanding the essence of international law. His thesis contains a detailed historical and legal analysis of the main stages of the formation and development of the principle of the inviolability of private property in maritime wars. Describing rather accurately the essence of maritime war as "robbery of the enemy's property,"[39] Baziner highlighted the following trend: the development of progressive rules of international law aimed at protecting the private property of the citizens of the public enemy in the law of land war was growing much faster than that in the law of maritime war. In his opinion, this could mainly be attributed to the fact that the key objective in maritime war is to destroy the maritime trade of the enemy, which is impossible without interrupting the trade of this public enemy with neutral states. Thus, the logic of maritime war leads to a situation in which "in order to get neutral states to cease violations of their duties not to interfere with the military activities of the belligerent powers, and in order to make them respect the imagined rights of the latter, any neutral vessel which was deemed to be at fault was declared a legal prize."[40] In his thesis, Baziner provided a brief, but at the same time reasonably comprehensive historical background of the development of the provisions of positive international maritime law, with due regard to the legal status of enemy property on a neutral vessel and the neutral property of the enemy vessel, as well as the opinions of prominent representatives of the international law doctrine of the 18th and 19th centuries in this respect, and open-mindedly analysed the arguments of both supporters and detractors of the reservation of the right to seize the private property of enemy citizens in the open sea. In considering the possibility of realizing in full the principle of the inviolability of private property in maritime war, Baziner drew attention to the utopianism and even unfairness of the opinion according to which "future wars will be the combats between enemy armies and navies, while maintaining full observance of the commercial interests and ownership rights of individuals." He rebelled and asked: "Is it fair that one part of the citizens would enjoy all the benefits of a comfortable life, while the other should have to be miserable, exposing both their life and ownership to the contingencies of war?"[41] Thus, according to Baziner, a definitive

[38] Р.И. Базинер, *Неприкосновенность частной собственности в международных войнах* [On the inviolability of the private property in the international wars], in: *Наука міжнародного права в університеті Святого Володимира*, Том 1, Видавничий дім "Промені", Київ:, 2004, p. 166.

[39] *Ibidem*, p. 168.

[40] *Ibidem*, p 169.

[41] *Ibidem*, p. 220.

solution to the problem of respecting the private property of the citizens of belligerent powers during maritime war would be possible only if the most important problem of international law is solved: the prohibition of war itself, which in his opinion would inevitably occur sooner or later.

Baziner's writings also include one small, but quite comprehensive article devoted to the study of the legal content and significance for the development of international law of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field of 22 August 1864,[42] which was the first multilateral international legal instrument aimed at protecting war victims and one of those that subsequently laid the foundations for modern international humanitarian law. It is worth noting that according to Baziner, the significance of this international legal instrument was not only the establishment of humane rules for the treatment of the wounded and sick in armies in the field, but in "the incomparably greater humanity of the fundamental idea of the inviolability of a person, which, however unspoken, provides the basis for the agreement itself, and which is to be further developed not only in the interstate, but also in state law."[43] Such arguments by the scholar demonstrate his scientifically-based understanding of the basic trends of the international law development in general, as well as the legal regulation of the laws and customs of war in particular, since the principle of respect for human rights is one of the key principles in contemporary international law and is integrated in particular into the principle of humanity, which is a specific principle of international humanitarian law.

In describing the development of the science of international law at the Law Faculty of the Saint Volodymyr University, it should be noted that not only did regular lecturers of the International Law Department carry out international legal research, but so too did specialists in other legal disciplines. In reviewing the early decades of the University's existence it is especially worthwhile to highlight the scientific contributions of the Rector of the University, Nikolai Karlovich Rennenkampf (1832-1899), an outstanding specialist in the field of general theory of law and state, philosophy and encyclopedia of law, as well as the theory and methodology of comparative law. N.K. Rennenkampf was born on 10 September 1832 in Oleksandrivka, in the Chernihiv Governorate, in a noble family. He finished the Chernihiv Gymnasium in 1849 and graduated from the Faculty of Law at the Saint Volodymyr University with a gold medal for his composition "Rights and Duties of Settled Foreigners, and, in Particular, the Jewish People in Russia" in 1855. In November 1856 he was appointed a privatdozent at the Second Kyiv Gymnasium and, at the same time, delegated to the Saint Volodymyr University for preparation for teaching at the Department of Civil and Boundary Laws. After 1858, Rennenkampf began to teach the jurisprudence encyclopedia and in 1859, and following defence of his master's thesis – "The History of the Publicists' Doctrines

[42] Р.И. Базинер, *Женевская конвенция 1864 года (война и гуманность)* [Geneva Convention of 1864 (war and humanity)], in: *Наука міжнародного права в університеті Святого Володимира*, Том 1, Видавничий дім "Промені", Київ: 2004, p. 245.

[43] *Ibidem*, p. 259.

about the Right to Visit and Search Vessels during War"[44] – he was appointed as an adjunct in the Jurisprudence Encyclopedia Department. In the years that followed all his long-standing academic and scientific activities were associated with the Saint Volodymyr University, where in 1862 he became an extraordinary professor; and in 1868, following defence of his doctoral thesis "The Essays Of The Legal Encyclopedia", he became a full Professor in the Jurisprudence Encyclopedia Department. In 1880 he was transferred to the Department of Encyclopedia of Legal and Political Sciences. In addition to lecturing at the University, Rennenkampf also taught history at the Kyiv Institute for Noble Maidens. In the years 1863-1866, 1870-1871 and 1881-1888 he was a Member of the University court; and in 1872 he became an Honourable magistrate judge of the Kyiv District; in 1875-1879 he became a mayor of Kyiv; and he ended his career as Rector of the Saint Volodymyr University (1883-1887). He died in 1899 and was buried in the Baikove Cemetery in Kyiv.

As can be seen, this outstanding scholar and politician did not deal mainly with international law, although he obtained his master's degree in the specialty of all-people's law and his master's thesis was devoted to the history of international legal doctrines regarding the right to visit and search vessels during war. In considering the emergence of the science of international law during his times, Rennenkampf associated it with the works by Alberico Gentili and Hugo Grotius, noting at the same time that certain institutes of international law dealt with scientific developments in the past. While these developments did not in the main apply to the doctrine of the right to visit and search vessels during war, nevertheless the topic attracted the attention of some international lawyers in the times just little later than that those of Hugo Grotius. Thus according to Rennenkampf there were two stages which could be clearly observed in the development of international legal doctrines on the visits and searches of vessels during war: 1) from the emergence of international law science in the early 17th century to the advent of the work on the capture of neutral ships by Martin Hübner (1723-1795), a famous Danish international lawyer; and 2) from the advent of the above-mentioned work by Hübner to the middle of the 19th century. Rennenkampf noted that the first period was "remarkable with the predominance of the rights of the belligerent powers over the neutral ones, and the necessary consequence of this benefit [was] the uncertainty of the right to visit and search, which provided for arbitrary requirements", while the second period "represents an implicit willingness to restrict the arbitrary power of the belligerent powers in the best interests of neutral powers, and at the same time to exercise the right visit and search in the most precise framework possible in order to eliminate the restrictions."[45] In general, in his paper Rennenkampf supported restrictions on the rights of the belligerent powers in the best interests of the neutral states and the identification, as clearly as possible, of

[44] Н.К. Ренненкампф, *История учения публицистов о праве осмотра кораблей во время войны* [The history of the publicists' doctrines about the right to visit and search vessels during war], in: *Наука міжнародного права в університеті Святого Володимира*, Том 1, Видавничий дім "Промені", Київ: 2004, p. 114.

[45] *Ibidem*, p. 118.

the legal framework in which a vessel under a neutral flag could be visited and searched by the vessels of belligerent powers.

4. OTTON OTTONOVICH EIKHEL'MAN: THEORIST OF DOMESTIC INTERNATIONAL LAW

Professor Otton Ottonovich Eikhel'man (1854–1943) of the University of Kyiv also made great contributions to the development of the science of international law. As a positivist and follower of August Michael von Bulmerincq, he saw a need to study international law as applicable to separate states. He was born on 27 April 1854 in the village of Heorhievskii near Saint Petersburg into a family of Baltic Germans. He finished high school in Revel (now Tallinn, the capital of Estonia). In January 1873 he entered the Law Faculty at the University of Dorpat (now Tartu), from which he graduated in 1875 having defended his candidate thesis "On the International Legal Relationships under Peter the Great." In 1876, he passed his master's exam at the University of Dorpat in the Department of International Law, and in 1878 he defended his master's thesis "On War Captivity."[46] This thesis, drawn up shortly after the approval of the draft Brussels Declaration concerning the Laws and Customs of War (1874), provided details of both the rules of international law and the domestic law of Russia in force at that time that regulated the prisoner-of-war status. In that same year he took the position proposed to him as associate professor of State and Administrative Law at the Demidov Legal Lyceum in Yaroslavl. While continuing to study the laws and customs of war, on April 13, 1880 Eikhel'man defended his doctoral thesis "On the Military Occupation of an Enemy Country" at the Saint Volodymyr University. Later, he became an extraordinary professor of the Department of State and Administrative Law Demidov Legal Lyceum. His doctoral thesis was based on an extensive research into the international law of that time of the military occupation institute, which examined the concept of military occupation of enemy territory, focused on the issue of the occupier state's powers towards state life in the enemy territory it occupied, including their attitude towards the legislative, governmental, and judicial authorities; the occupier's law with regard to property of the enemy state; as well as the duties of the occupier state. In sum the scholar worked for a relatively short time in Yaroslavl, and after 1882 his life and scientific activities became linked to Kyiv for a long time. In 1882 he was elected an extraordinary professor at the Saint Volodymyr University in the Department of Major Foreign Legislation, and in 1883 he became a full professor in the same department. After January 1884 he began working in the Department of International Law, where he worked for more than thirty years. In 1905-1909, Eikhel'man was the Dean of the Law Faculty at the University. In 1907, he was awarded the title of Distinguished

[46] O.O. Eichelmann, *Über die Kriegsgefangenschaft. Eine völkerrechtliche Studie*, Druck von C. Mattiesen, Dorpat: 1878.

Professor of the University. Eikhel'man combined his teaching activities at the Saint Volodymyr University with lecturing at other higher education institutes in Kyiv. For example, during 1908-1913 he was the Director of Kyiv Commercial Institute while still working full time at Saint Volodymyr University. He also took an active part in the public and political life of Kyiv, serving as a councillor of Kyiv City Duma in 1898-1906. In 1902 he was even elected mayor of Kyiv, but his candidacy was not approved by the Russian government.

Following the independence of Ukraine in 1918, he became actively engaged in the state-building process by committing his long-term scientific and practical experience to his new homeland. Ya. B. Turchyn, a modern Ukrainian researcher into Eikhel'man's political and legal heritage, has emphasized that "being a German by descent, he became a Ukrainian by vocation,"[47] while H.O. Korol'ov noted that "the combination of German ethnic identity and Ukrainian political awareness"[48] prevailed in the scholar's activities within the period described. According to O.O. Merezko, Eikhel'man "is an interesting case of a person who, being of German ethnicity, took an active part in in building the new Ukrainian nation and State after the demise of the Russian Empire and became a convinced Ukrainian patriot."[49] In 1918-1919, Eikhel'man was a member of the Council of the Ministry of Commerce and Industry and the Ministry of Foreign Affairs; in 1920-1922, he was a Deputy Minister of Foreign Affairs and was involved in many international negotiations on the part of Ukraine, and was also a member of the government committee of the Ukrainian People's Republic for the development of the draft Constitution. The Ukrainian politicians of that time repeatedly mentioned that Eikhel'man actively dealt with the public authorities during the regime of the Central Rada of Ukraine, the Ukrainian State of Hetman P. Skoropadskii, and the Directorate of Ukraine. Thus, in May-November 1918 Dmytro Doroshenko, the Minister of Foreign Affairs of the Ukrainian State, noted in his "My Memoirs about the Recent Past" that Eikhel'man was the only adviser to the Ministry of Foreign Affairs during the regime of the Central Rada of Ukraine who continued to work after the Hetman's coup,[50] adding that during his involvement in the intricate and controversial negotiations conducted by the Ukrainian State with Bolshevik Russia in May-October 1918,[51] – the only tangible result of which was the signing of a preliminary peace treaty on 12 June

[47] Я.Б. Турчин, Обґрунтування політико-правових передумов української державності та основних етапів її становлення в науково-теоретичних працях Отто Ейхельмана [Analysis of political and legal grounds of Ukrainian stateness and its evolution in scientific and theoretical works of Otto Eikhel'man], 15 (861) Вісник ХНУ імені В.Н. Каразіна «Питання політології» 81 (2009), p. 82.

[48] Г.О. Корольов, *Українська біографія Отто Ейхельмана*: *імперська лояльність та служіння "іншій" або "своїй" нації* [The Ukrainian biography of Otto Eikhel'man: The imperial loyalty and the service for the "another" or "own" nation], 1(289) Архіви України 156 (2014), p. 157.

[49] Merezhko, *supra* note 8, p. 449.

[50] Д.І. Дорошенко, *Мої спомини про недавнє минуле (1914-1920)* [My memoirs about the recent past (1914-1920)], Мюнхен: 1969, p. 263.

[51] *Ibidem*, p. 288.

1918 – negotiations were also ongoing with the Romanian government on entering into commercial treaty, in which the young Ukrainian diplomacy achieved significant progress by agreeing on petrol supplies with the Romanian government.[52] On the other hand Vasilii Zen'kovskii, a well-known religious philosopher and professor of the Philosophy Department of the Saint Volodymyr University, who was a Minister of Religious Confession in 1918 and left interesting recollections of that period in a work entitled "Five Months in Power", was highly critical of Eikhel'man's diplomatic activity. He noted that "O.O. Eikhel'man was a perfect professor of international law, but he had never been a diplomatic official, and if he could do anything to help Doroshenko, he would provide various statements for certain "precedents."[53] Zen'kovskii even accused Eikhel'man of excessive loyalty to Ukrainian stateness, pointing out that he tried to be *plus royaliste que le roi* in this regard.[54] These assessments could however be attributed to the political position of Zen'kovskii himself who, although was a member of the Government of the Ukrainian State of Hetman P. Skoropadskii, remained a devotee of the federation of Ukraine and the future non-Bolshevik Russia, while Eikhel'man consistently supported the principle of a fully independent Ukraine.

After the final defeat of the Ukrainian People's Republic and the extension of the Soviet regime to Ukraine, Eikhel'man was forced to emigrate to Prague, where he continued researching, teaching, and his public and political activities. In 1921, the draft Constitution, the main state laws of the Ukrainian People's Republic based on the people's sovereignty and the principle of federalism, was published in Tarnów (Poland). As has been rightly pointed out in the national political literature, he "proposed to take federalist ideas based on M. Drahomanov's opinions, state and legal practice of the United States and Switzerland as a principle of democratic constitutional Ukrainian state building."[55] Together with other Ukrainian jurisprudents who were in exile in Czechoslovakia, Eikhel'man was actively engaged in the activities of the Ukrainian legal society in Czechoslovakia and became a lecturer at the Ukrainian Free University in Prague and the Ukrainian Economic Academy in Poděbrady. In 1924 he was elected a Full Member of the Shevchenko Scientific Society. Eikhel'man died on February 21, 1943 in Prague.

While holding to positivistic views, Eikhel'man also believed that international law should be studied from the point of view of its application to separate states. In 1887–1889, he published his "Chrestomathy of Russian International Law,"[56] as he

[52] *Ibidem*, p. 299.

[53] В.В. Зеньковский, *Пять месяцев у власти (Воспоминания)* [Five months in power (Memoirs)], Regnum, Москва: 2011, p. 211.

[54] *Ibidem*.

[55] Я.Б. Турчин, *Розвиток української політико-правової думки у Чехословаччині: період між війнами 1918-1945* [The development of Ukrainian political and legal thought in Checho-Slovakia: Period between the wars 1918-1945], 14 (839) Вісник ХНУ імені В.Н. Каразіна «Питання політології» 220 (2009), p. 224.

[56] О.О. Эйхельман, *Хрестоматия русского международного права* [Chrestomathy of Russian international law], Унив. тип., Киев: 1887-89, 2 vols.

called the law regulating relations between Russia and other states, which in addition to the international treaties to which Russia was a party included Russian legislation concerning issues of international law. Eikhel'man set out his views on the general problems of international law in his work "Extracts from Lectures on International Law."[57] He considered international law a legal order defining the international relations of states that are independent from one another. In his opinion, international law consists of two main categories of legal norms: those that apply to all states (absolute, necessary and natural international law); and these that apply only to particular states. The former group of norms includes the fundamental rules of international law that establish the prerequisites for the peaceful coexistence of states. Eikhel'man included in this first category the right of states to independence; states' equality; person-state mutual respect; the right of states to defend themselves by means of sanctions and war against the breach of their rights; the international responsibility of states; the freedom of the high seas; the inviolability of frontiers; and the laws and customs of war.

Eikhel'man's second category of norms comprises the absolute majority of international law substance as contained in the treaties and legislations of particular states. Each state at its own discretion independently decides whether to adhere to these types of norms. Thus, each state's own domestic international law also has a legal effect: for Russia it was Russian international law; for Germany, German; for France, French, etc. Moreover, Eikhel'man maintained that there also existed general principles of international law that studies of comparative jurisprudence have produced through generalization of the practice of international treaties and national legislation. Legally speaking, these principles have no binding effect; rather they represent the positivist concept of customary practice in international legal relations of states. He noted that: "Comparative legal studies provide the opportunity of observing general concepts in this quantitative practice of international treaties (and the laws of different countries), which represents a broad framework. It is extremely interesting theoretically, but also practically, in terms of the practical style of international legal life of this era, is quite important."[58] Thus, the concept of Eikhel'man's "nationalized" international law differs substantially from the concept of "external state law", which was quite popular in Germany in the second half of the 19th century (its representatives were, in particular, Ph. Zorn and A. Zorn). In a sense, Eikhel'man can be considered as a predecessor of the comparative approach to the study of international law which has developed in today's modern science of international law. Although Eikhel'man classified the majority of international law norms as "domestic international law", he acknowledged the crucial importance of principles of international legal communication between states. He also upheld the notion that general and particular norms exist in international law, as he explained in his work "Common Foundations, Legal Form and the Modern Cultural

[57] О.О. Эйхельман, *Очерки из лекций по международному праву* [Extracts from lectures on international law], Тип. И.И. Чоколов, Киев: 1909.

[58] *Ibidem*, p. 7.

Progress of International Law",[59] which he wrote in Ukrainian and published in 1931 while in exile in Czechoslovakia.

5. PETR MIKHAILOVICH BOGAYEVSKII: THE RED CROSS IN INTERNATIONAL LAW

Eikhel'man's successor to the chair of international law was Petr Mikhailovich Bogayevskii. Born into a noble family on 23 August 1866 in Moscow, Bogayevskii graduated from the Law Faculty of Moscow University in 1891. Upon graduation, he was invited to join the University's International Law Department by Leonid Alekseevich Kamarovskii, one of the most influential pre-revolutionary Russian international lawyers. Following his master's examination Bogayevskii was sent abroad to continue his scientific research, as was the established practice at that time. He spent the better part of his academic mission in Geneva, pursuing research in the Red Cross archives under the direction of the eminent Swiss lawyer Gustave Moynier, one of the founders of the Red Cross. The young scholar published his first scientific papers devoted to legal issues of the Red Cross during this academic mission. From 1904 to 1906 he held the position of privatdozent at the University of Tomsk.

In 1905 Bogayevskii defended his master's thesis, "The Red Cross in Developing International Law, Part I: National Societies of the Red Cross and the Geneva Convention of 22 August 1864"[60] at Moscow University. In its preparation he rigorously-researched the details of the premises, preparation, and legal content of the 1864 Geneva Convention. The thesis opens with a concise review of the existing ideas for helping wounded combatants prior the 1864 Geneva Convention. After further exploring the principles of governmental and international aid to wounded combatants, it concludes that by the sixtieth year of the 19th century the need for profound reform of the legal regime in this area had become apparent. The work provides additional details and results of the Geneva Conference, which was convened on 26–29 October 1863 by the Geneva Society for Public Welfare. The participants at the Conference – initiated by Jean Henri Dunant and Gustave Moynier, among others – solemnly agreed to undertake to establish national relief societies for wounded soldiers in various states, and presented to the Swiss Government their recommendations on convening an international congress to guarantee neutrality and protection for societies providing medical aid to soldiers wounded in armed conflicts. Bogayevskii included a detailed account of the process of

[59] О. Ейхельман, *Побутові підстави, правничий уклад і сучасний культурний поступ міжнародного права* [Common foundations, legal form and the modern cultural progress of international law], 3(1) Записки Української господарської академії в ЧСР 108 (1931).

[60] П.М. Богаевский, *Красный крест в развитии международного права; Ч. 1: Национальные общества Красного креста и Женевская конвенция 22 авг. 1864 года* [The Red Cross in developing international law, Part I: National societies of the Red Cross and the Geneva Convention of 22 August 1864], 28 Известия Томского университета 1 (1907).

establishing national Red Cross societies in various European and non-European states after the 1863 Geneva Conference. He also devoted a special place in his magisterial thesis to a legal analysis of the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864 – the first multilateral legal instrument on the protection of victims of armed conflict.

From 1906 to 1908, Bogayevskii held the position of director at the Petrovsko-Alexandrovsky Asylum in Moscow, coupling this work with a position as privatdozent at Moscow University, where he taught a special course on international law. In 1908 he was appointed a privatdozent on the international law faculty at the University of Tomsk, where he worked until 1912. On 13 October 1912 he was made an associate professor of international law at Saint Volodymyr University of Kyiv. In 1913, he defended his doctoral thesis at Kharkiv University. It represented the second part of his foundational research on the history of the Red Cross: "The Red Cross in Development of International Law, Part II: International Union of the Red Cross."[61] Thereafter he became a full professor.

In 1916 the *Juridical Reports* of the Moscow Law Society published his short but instructive article "The Red Cross at Key Points of Its Life and Organization",[62] a scientific paper devoted to the 50th anniversary of the 1863 Geneva Conference that had initiated the Red Cross social movement. According to Bogayevskii, "until the mid-19th century the civilian population was not engaged in relief for the victims of armed conflict and the latter were the responsibility of the military medical administration"; noting however that a "prudent observer of 19th century life could not help but note that only under the condition of organized aid of civil society could the fruitful nursing of wounded soldiers be thinkable."[63]

The Geneva movement benefited from a general trend acknowledging the need to alleviate human suffering in armed conflicts, a trend that prevailed in the public opinion in many European states and the United States. Bogayevskii underlined that the primary task of the Geneva movement was to ensure that a Red Cross society was established in every state. Nevertheless, some among the military command distrusted civilian interference into allegedly purely military matters, a distrust substantial enough to impede the functioning of these societies. Bogayevs'kyj noted, though, that "till the time of Franco-Prussian campaign [i.e. the Franco-Prussian War of 1870–1871 – K.S.] due to persistent propagation and work with the public opinion in Europe, except for Greece, Hungary and the Balkan states, far and wide the civil society rallied around the white banner with the Red Cross."[64] Little by little, the activities of Red Cross societies expanded to the Bal-

[61] П.М. Богаевский, *Красный крест в развитии международного права;* Ч. 2: *Международный союз Красного креста* [The Red Cross in development of international law, Part II: International Union of the Red Cross], 34 Известия Томского университета 1 (1913).

[62] П.М. Богаевский, *Красный крест в главных моментах его жизни и организации* [The Red Cross at key points of its life and organization], 13(1) Юридический вестник 57 (1916).

[63] П.М. Богаевский, *Красный крест в главных моментах его жизни и организации* [The Red Cross at key points of its life and organization], in: *Наука міжнародного права в університеті Святого Володимира*, Том 2, Видавничий дім "Промені", Київ: 2004, p. 347, 349.

[64] *Ibidem*, p. 351.

kan states, South American nations, and other non-European countries, affirming the idea that "modern culture demands that there be a Red Cross society in each state."[65]

Bogayevskii's article analysed the activities of the Russian Red Cross Society founded in 1867, explicating not only its virtues but also its drawbacks, such as excessive bureaucracy. In summing up the 50 years of the Red Cross's work, he noted that its founding fathers had "launched such a wonderful and powerful cause that nowadays, when their demands resurface anew above the bottomless sea of cruelty and legal defiance, the moral solidarity of Red Cross representatives, even those from belligerent powers, shines with the bright light of humanity and mercy."[66] While working in Kyiv, Bogayevskii also composed other works that merit mention, such as the pamphlet "Bosporus and Dardanelles", a special course on international law focusing on trade treaties; and a pamphlet on U.S. federalism.

Like many others in the juridical elite of the Russian Empire, Bogayevskii did not accept the 1917 October Revolution. He continued working at the university in Kyiv until 1919. That autumn he moved to Odessa, but in 1920 he had to leave for Bulgaria, where he headed the international law faculty of Sofia University. He was also active in the Russian People's University, a cultural and educational establishment of Russian émigrés in Bulgaria.

The spectrum of Bogayevskii's scientific interests expanded considerably during his time in Bulgaria. The eminent historian of international law V.E. Grabar noted that Bogayevskii, during the periods he spent in Tomsk and Kyiv, "acquired a reputation at home and abroad as the leading expert on the history of Red Cross", while noting that at that time "other questions were of little interest of Bogaevskii."[67] By contrast, in his Sofia period he engaged in numerous research projects and publications on the theory and history of international law, including works on the Küçük Kaynarca Peace Treaty and the legal implications of the Pereyaslav Agreement. The lectures he delivered at Sofia University were also published. In addition, he was active in public life via the émigré press and was one of the founders of the *Russian Gazette* in Varna. Bogayevskii taught at Sofia University until he passed away in Sofia on 29 January 1929.

Thus, certain conclusions and generalizations can be drawn. In the pre-revolutionary history of the Saint Volodymyr Royal University of Kyiv, international law had been taught as an independent discipline for 75 years, of which the first 10 years of lecturing in this discipline were carried out by professors from other departments, and beginning in 1853 the department employed professional international law scholars. The foregoing has shown that international lawyers from the Saint Volodymyr University have contributed significantly to the development of the science of international law, producing works that advanced original concepts of the legal nature of international law; offered a new spatial concept of territory that was further recognized and developed in international legal science; and explored the rules and customs of land and maritime war, the

[65] *Ibidem*, p. 352.

[66] *Ibidem*, p. 369.

[67] Grabar, *supra* note 2, p. 421.

codification of international law, and the role of the Red Cross in the development of humanitarian norms in international law. The international law scholars who worked at the University had a positivistic understanding of the legal nature of international law, in contrast to the scholars of Kharkiv University (represented by D.I. Kachenovskii and V.P. Danevskii), in which the concept of natural law retained a great influence. In our view, this can be explained by the fact that the teaching and study of international legal disciplines in Kharkiv had begun several decades earlier than in Kyiv, and among the first lecturers in international law at Kharkiv University was Johann Baptist Schad, an outstanding German classical philosopher (1758-1834). He was the author of a fundamental course of natural law,[68] which, *inter alia*, contained a quite detailed doctrine of the legal nature and major institutes of international law at that time. J.B. Schad's doctrine had a great influence on the formation of the methodological foundations of Kharkiv School of International Law, in which for most of the 19th century the natural law approach to the understanding of the essence and the legally binding force of international law clearly dominated. Tykhon Fedorovich Stepanov (1795-1847) was a student of J.B. Schad. He was an eminent economist and lawyer and professor of the University of Kharkiv, who was the author of the first course in international law in the Russian Empire based on the combination of natural law and positivistic approaches. At the same time, K.A. Nevolin, the founder of Kyiv School of International Law, acted as a fervent advocate of the positivistic trend in jurisprudence. All the lecturers in international law at the University (probably with the exception of N.K. Rennenkampf, who belonged to the upper classes) belonged to the social stratum which is today called the middle class. The Kyiv international law scholars who worked at the University at the beginning of the 20th century did not accept the 1917 October Revolution. However, while O.O. Eikhel'man, an ethnic German, unconditionally took the position to support the Ukrainian statehood (although he altered it in exile and dealt mostly with purely Ukrainian educational and scientific institutions), P.M. Bogayevskii, a Russian, was a clear supporter of a united Russia, both during his stay in Kyiv and in exile. The one thing that united the scholars of the 19th and early 20th centuries was that the vast majority of their works were published in Russian, and thus they remained (and remain today) almost inconspicuous in the Western science of international law. This statement is true almost for all international law scholars who worked in the Russian Empire. The few exceptions (D.I. Kachenovskii, F.F. Martens, V.E. Grabar) only confirm this, inasmuch as the only works of theirs which became popular in the West were those which had either been written in, or subsequently translated into, French, German or English. This problem still remains highly topical for the modern Ukrainian science of international law, since contemporary Ukrainian law scholars publish their works mainly in Ukrainian, which causes their scientific knowledge to be almost unknown outside Ukraine.

[68] J.B. Schad, *Institutiones juris naturae. Conscripsit in usum Auditorum suorum*, Typis Universitatis, Charcoviae: 1814.