

# Diplomacy, Security & Rights of States: A Reflection on Vattel's Law of Nations

Li Wang<sup>1</sup>, Dongchen Zhou<sup>2</sup>

<sup>1</sup>Shi Liang School of Law, Changzhou University, Changzhou, China

<sup>2</sup>School of History and Culture, Qufu Normal University, Qufu, China

Email: wanglichangzhou@cczu.edu.cn

**How to cite this paper:** Wang, L., & Zhou, D. C. (2024). Diplomacy, Security & Rights of States: A Reflection on Vattel's Law of Nations. *Beijing Law Review*, 15, 1065-1074. <https://doi.org/10.4236/blr.2024.153064>

**Received:** May 6, 2024

**Accepted:** August 2, 2024

**Published:** August 5, 2024

Copyright © 2024 by author(s) and Scientific Research Publishing Inc.

This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

## Abstract

Emerich de Vattel has been esteemed for his celebrated *Law of Nations* (1758) in the study of law. He asserted that a system of independent states could maintain the liberty of each without undermining the ideal of an international society. The chief institutions serving this purpose are diplomacy and law defining that security and rights of each state should be mutually respected and also reciprocally observed. This article aims to parse Vattel's account on security and right of sovereign states to justify their struggle for power. It further argues for the legitimate rights of states as they were obtained in light of the ancient legacy of "*ubi societas ibi jus*" which refers to where there is a society, there should exist law. Accordingly, it is urgent for nation-states of Europe and then the world to take the legitimate security concerns of all members involved. Methodologically, the study reexamines Vattel's *Law of Nations* to analyze the core concepts of security and rights of sovereign states in term of the anarchic international system.

## Keywords

Vattel, Law of Nations, Diplomacy, International Society, Security, Rights

## 1. Introduction

Emerich von Vattel (1714-67) has been esteemed as one of the pioneers in the study of international law<sup>1</sup>. His treatise on international law was the most widely read and disseminated during the 18<sup>th</sup> century since Vattel did make an attempt to combine naturalism and positivism to highlight the inherent rights which

<sup>1</sup>One indication of its popularity is that *Le Droit des Gens* had gone through 20 French-language editions by 1863, 10 translations in England by 1834, and another 12 editions in the United States by 1854. See Albert de Lapradelle, introd. to Vattel. *Law of Nations*. (Washington, DC: Carnegie Institution, 1916; Reprint, Buffalo: William S. Hein, 1995), vol. 1. Lii-lix.

states deprived from natural law. Accordingly, he was regarded as the first to adopt the term of “the society of nations” (Grewe, 2000). Vattel formulated the principles and practices in his classic which defined Europe as “a kind of republic” referring to “a certain political and juridical unity.”

Inspired by his mentor Christian Wolff (1678-1754), Vattel opined that men was so formed by nature, that he couldn't supply all his own wants, but necessarily stood in need of the intercourse and assistance of his fellow-creatures, whether for his immediate preservation, or for the sake of perfecting his nature, and enjoying such a life as was suitable to a rational being (de Vattel, 2008). It is clear that each individual is intimately conscious that he can neither live happily nor improve his nature without the intercourse and assistance of others. Therefore, it is a convincing proof that the human being should communicate with and mutually aid and assist each other (Vagts & Vagts, 1979).

There is no question that Vattel's discourse on international law exercised a strong and also controversial impact on many social and academic elites during the 18<sup>th</sup> century and his legacy is still felt today. For him, an intellectual climate that had encouraged states to assert their rights yet ignore the duties involved was a sure recipe for disorder (Lesaffer, 2009). It is worth noting that one word recurring frequently in the treatise of Vattel and also his disciples' is the concept of the balance of power which is supposed ever to cause so much intellectual discussions. Moreover, the theory of sovereignty revealed an effort to define the internal structure of a state which possessed the supreme internal legislative and political power (de Vattel, 2008).

Historically, the theory of sovereignty dates back to the early 16<sup>th</sup> century and then scholars usually referred to the works of Machiavelli (1469-1527), Jean Bodin (1530-1596) and Thomas Hobbes (1588-1679). But its best-known exponent, as far as lawyers are concerned, was John Austin (1790-1859), who defined law as the general commands of a sovereign, supported by the threat of sanctions. By 1995, some scholars raised that sovereignty in foreign affairs referred to “independence” as it was not only a legal term with any fixed meaning, but also a wholly emotive one (Vagts & Vagts, 1979). As states are usually forceful, the emphasis on sovereignty would exaggerate their power and encourage them to abuse it. Therefore, it has led to the superstition that there is something in international cooperation as such which comes near to violating the intrinsic nature of a “sovereign” state (Grewe, 2000). At the turn of the 19<sup>th</sup> century, quite a few jurists, mainly in Germany, advanced the doctrine of sovereignty to the point where it threatened to destroy international law altogether.

Since 1914, there was a reaction to the tradition of law. With the United States arising to one of the world powers of the day, international jurists and practitioners in the World began to question the rigid doctrine of sovereignty and the inherent right of states. Indeed, scientific reexaminations of the practice of states that were carried out for the first time in the 20<sup>th</sup> century revealed that those dogmas were never taken half as seriously by states as they were by theorists. Then in 1923, the Permanent Court of International Justice put it that “The

Court declines to see, in the conclusion of any treaty by which a state undertakes to perform or refrain from performing a particular act, an abandonment of its sovereignty... [T]he right of entering into international engagements is an attribute of state sovereignty.” (Grewe, 2000). The article aims to explore the security and rights that are seen by sovereign states as fundamental and unalienable. For the security concerns, states assume to struggle for power in terms of the legitimate rights. Once the treaties containing such far-reaching security concerns and rights were invalid, it amounted to depriving a state of its independence, e.g., a treaty whereby one state becomes a protectorate of another state. Yet, “there is no fixed dividing line between independence and loss of independence since it is also a matter of degree and opinion.” (Malanczuk, 1997). In reality, even independence can share some of the emotive qualities of the word “sovereignty”, e.g. the seminal case is the idea of joining a supranational organization like the European Union, which would have been seen as an intolerable restriction on independence centuries ago, but now it is discussed in the more realistic terms of economic advantages and security necessity (Grewe, 2000).

For sure, in the West, the doctrine of sovereignty now has been losing much ground in view of increasing international interdependence, but majority of the Global South still highly value it as the cornerstone of international relations to protect the sacred sovereignty, that is, independence, equality and nonintervention (Bull, 1984). What are the main legal dimensions of the development of this classical European public law, which used to view states as living more in a situation of anarchy than of a legitimate order? Yet, a number of basic rules and principles of international law had emerged substantially from the 16<sup>th</sup> century towards nowadays, among them are the doctrine of sovereignty referring to political control over and jurisdiction of its own domain, the freedom of the high seas, the law on state immunity from the jurisdiction of foreign courts and the *pacta sunt servanda* (treaties must be kept); not to mention the rules on the diplomatic protection of foreigners and their property and the neutrality whose primary political expression was to secure the equilibrium (Watson, 1982).

What follows is a historical approach to the security and rights of sovereign state since they are not only the principles in public law, but also the rationales of states to interact one another in international affairs where each player struggles for power, profit and prestige. Thus, a positivism method will be used to treat the questions in this study through examining Vattel’s *Law of Nations*, particularly the key concepts and main discourses involved. Moreover, since statecraft and law are always intertwined in world politics, the interpretation of the security and rights of states necessarily leads to the synthesis of the study of international relations and law. Given the issues aforementioned, the article aims to contribute to the interdisciplinary studies.

## 2. Diplomacy, Sovereignty & Security

States are committed to *diplomacy* by the nature of the world in which there are

several separate states, their actions usually affect one another. Given this, states are unlikely to function in a vacuum of isolation, with each entity considering only how to manage its internal affairs. As a result, sovereign states and later nation-states need to maintain their regular intercourse with a view to serving each core interests, to avoiding unnecessary injuring one another, and to adjusting and even terminating their disputes (de Vattel, 2008).

Around 1494, Europe states began to form a political system in which they all were bound together by various interests and secular concerns through frequent intercourses into a single body. Unlike the countries in the previous times when each of them rarely troubled itself over what did not immediately affect it, now European states attentively paid attention to all that happened, e.g. the continued negotiations among their resident diplomats. It indicates that “European states—each independent, but all bound together by a common interest—worked inclusively to maintain the legitimate order and preserve each liberty.” (de Vattel, 2008).

As an advocate of a reformed international order, Vattel essentially placed sovereign states under a high level of moral obligation in their relations with each other. He insisted that sovereign states were bound not just to avoid unnecessary harm in their intercourses, but also to provide extensive mutual welfare. Yet, the scenario required them properly able to lay down the general principle: “One state owes to another state whatever it owes to itself, so far as that other stands in real need of its assistance, and the former can grant it without neglecting the duties it owes to itself. Such is the *eternal and immutable law of nature*” (de Vattel, 2008).

Moreover, as a disciple of Christian Wolff (1679-1754), who was a leading jurist championing a natural law theory based on human equality and a contractual theory of the state, Vattel wrote that there was no other natural society between nations than that which nature has established between mankind in general. It was crucial to every civil society (*civitatī*) that each member state had been resigned a part of its right to the body of the society, and that there existed in it an authority capable of commanding all the members, of giving them laws, and of compelling those who should refuse to obey. To that end, however, each state of Europe should possess both the right to negotiate when in engaging with others, and the reciprocal obligation to lend itself to such relations as far as the circumstances permitted.

Here, Vattel viewed the law of nations designed to advance the “maxims of sound policy” to reconcile them with the principles of international law. First, he opposed war and called for states not to resort to it unless they had no option indeed (Vagts & Vagts, 1979). Since public law served to regulate how a system of independent states could maintain the liberty of each without undermining the normal function of the community, they all depended on law for the fulfillment of their duties to themselves, their citizens and each other. The issue also arises how the sovereign states could better insulate the development of international society from the predations of the state system?

In a more general perspective, Europe had acted as a political system in which equilibrium was crucial to the order and liberty of all states. For Vattel, to make all efforts to stabilize the equilibrium among nations was linked to a standard set of 18<sup>th</sup> century expectations that “No state shall be in a position to have absolute mastery and dominate over the others.” (de Vattel, 2008). Conceptually, the balance of power became most used during the 18<sup>th</sup> century and afterwards since it was called the golden age of “the classical diplomacy”. As a policy and a principle in foreign affairs, Vattel opined that the “European republic” was not merely a system of independent states bound by their participation in the *balance of power*. Rather, it gave the law of nations the task of disciplining European sovereigns how a system of independent states could be possibly prevented from destroying the natural society that united them.

Historically and politically, a few scholars argued that the balance of power is not a written law, yet, over the past three centuries it has been championed as closely as the laws of nature (van Loon, 1968). Thus, the natural obligations of states were first to preserve and then to discipline themselves; and second, to assist each other in fulfilling these primary duties that each state owed itself, e.g., commerce with each other and scientific and cultural exchange, too. Finally, states were obliged to help each other to advance more accommodating communities, so long as this did not conflict with their own primary duties to themselves.

In an anarchic world system then and nowadays, it is necessary to formalize an enlightened notion that an effective multilateral diplomacy within a state-system required more than the chance of coexistence with a plurality of independent states of varied interests. Over the past centuries, sustained dialogues developed and flourished between groups of states in a circumscribed geographical area and with a history of close contacts. Their identity was determined by membership of, or close contact with, a common civilization. Diplomacy among states was conducted, and the pursuit of their separate interests was mediated, in terms of legitimacy, honor, morality and prudence which prevailed in Europe. Even war between them was not indiscriminate violence: it was regulated by the rules of the system (Watson, 1982).

Since the European states saw diplomacy as an organizing process between them, it had assumed its distinctive styles and its own networks of procedures, rules, treaties and other commitments. In brief, the European system was so well-connected that it was able to exercise impacts and restraint over the assertiveness of its members because they were bound from the beginning by much more than a mere political arrangement. The member states had in common the strong traditions of Medieval Latin Christendom, and in the meantime, the inherited elements of unity were never entirely subordinated to the newer movements of diversity and fragmentation. Unlike other systems of states in history, such as the Hellenic, ancient Chinese and Indian, the European system developed highly sophisticated and culturally-based diplomacy for centuries

(Kissinger, 1994).

Among all the sophisticated and recognized techniques, European statesmen contributed not a little to the remarkable legacies—permanent embassy, the balance of power and public law, which aimed to assure that no single state proved so powerful that it could for any length of time absorb or even dominate all the others. Under such circumstances, diplomacy that refers to a dialogue between states has developed gradually and creatively to the point where it could expand to organize a global system of sovereign states (Grewe, 2000).

### 3. Rights and Obligations in Diplomacy

European states used to be all under the indispensable obligation of giving their consent and concurrence to whatever conduces to the general advantage and welfare, such as procuring the means of accommodating or if possible terminating their differences. Thus, states had right mutually to promote their perfection without injuring one another while fulfilling their duties by the necessary means in necessary since they were bound by reciprocal obligation to continuous negotiation between them. According to Cardinal Richelieu (1624-42) who was chief minister to King of France then, it was necessary to the interests of the state to negotiate either openly or secretly, and in all places, even in those from which no present fruits were reaped and still more in those for which no future prospects as yet seemed likely. It was plain that negotiations were innocuous remedies which never did harm since common senses taught us that it was imperative to watch our neighbors closely because proximity in geography often led to the intended or unintended bothersome (Berridge, 2008).

Then, Francois de Callieres (1698-1717) who served King Louis XV of France dedicated his entire life to the career of diplomacy which was supposed to play the sound role in the commonwealth of Europe. His essay on “The Art of Negotiating with Sovereign Princes” was esteemed as the first genuine work of diplomatic theory. In 1716, Callieres put it first that all states of Europe had necessary security allies and economic partners to each other, which made them to be looked upon as members of one and the same commonwealth. Thus, there could hardly happen any considerable change in some of its members, but which was capable of disturbing the quiet of all the others. Second, geopolitically, when a state became powerful enough to give the law to all its neighbors, diplomacy came to be useless if a sovereign was pretentious to declare his will as the fiat. In doing so, the ruler or sovereign of state might come to pursue the aggrandizement of his own interests and exerted his power restlessly towards his neighbors and obviously those interiors. The function of a public minister who was sent to a foreign court was usually expected for two principal heads: “the one was to negotiate there the affairs of mutual states; and the other was to discover those of other sovereigns in Europe.” (Berridge, 2008).

In 1758, Vattel made serious efforts to compile his treatise on international law, embracing the right of sending his public minister to abroad and receiving

public ministers from other states. First, it was necessary to maintain embassies in foreign courts with a view to continue uninterrupted negotiations with foreign sovereigns, if they were conducting with prudence. Second, considering the Europe affairs of the day, the rulers or sovereigns of states couldn't well come to a personal conference for conferring to their common affairs. Since such intercourses were impracticable and exclusive of delays, trouble, expense, and so many other inconveniences, it was rare that any good effect could be expected from them. The only expedient, therefore, for sovereigns was to communicate with each other by the agency of procurators or public ministers charged with the commands and vested with their powers. Literally speaking, public ministers is a recognized term that denotes any person in trusted with the conduct of public affairs as he acted in such capacity in a foreign court (Watson, 1982).

Now, most European sovereigns observed the practice of sending to and receiving public ministers from abroad; for they were the necessary instruments in the management of state affairs which sovereigns had to transact with each other, and the channels of that correspondence which they had a right to carry on. In 1757, Vattel further argued that like all the other rights of sovereignty, the right of embassy originally resides in the nation as its principal and primitive subject. They might send ministers in the same manner as the sovereign used to do this way; and these ministers had the same rights as were enjoyed by those of the sovereign.

But this is to be understood only of a time of peace. When war broke out, it allowed us to cut off from an enemy all his resources, and to hinder him from sending ministers to solicit assistance. There were even occasions when they might refuse a passage to the ministers of neutral nations, who were on the way to our enemy. Given this, sovereigns were obliged to correspond together, to attend to the proposals and demands made to them, to keep open a free and safe channel of communication for the purpose of understanding each other's views and legitimate concerns. After all, sovereigns who were really impressed with sentiments of humanity would necessarily cultivate peace. If they did not live together in peace, how could they perform those mutual and sacred duties which nature enjoins them?

This obligation of cultivating peace required that sovereign, being invested with the public authority, was at the same time charged with all the duties of the society, or society of the nations. Nations or sovereigns ought not only to refrain, on their own part, from disturbing that peace which was so salutary to mankind: they were moreover bound to promote it as far as lies in their power—to prevent others from breaking it without necessity, and to inspire them with the love of justice, equity, and public tranquility—in a word, with the respect for peace. Were a powerful prince thoroughly acquainted with the advantages attending it—were he to conceive what pure and effulgent glory he ought to derive from that endearing character, together with the gratitude, the love, the veneration, and the confidence of nations (de Vattel, 2008).

From Grotius's days to nowadays, one of the major tasks of diplomacy was to establish and revise the rules of international society. Usually the practice came first and the law was a formulation of it. But the rules of a developing society of states require constant change since it is rather an ongoing process. Grotius, Vattel and many other jurists consented that there are two principal aspects of international law: the regulatory, or the quest for order; and the ethical or normative, involving concepts of justice. The rules and codes of conduct that international societies observe are in this sense like traffic regulations, designed to maintain order. Because they are in the main observed, they give a pattern of conformity and thus a sense of predictability to the way in which states—and other organizations such as private corporations—behave on the international scene. Yet, the alternative to order by consent which these rules make possible would be international chaos. As realists have argued that since there are no supranational executive authorities, these rules are unenforced, except by the power of other states acting individually or collectively (Hoffmann, 1985). It is true that states depend for their executive effectiveness not on consent, but on their active observance by the member states, particularly the more influential ones.

It was Vattel who was one of the first jurists in Europe to define and argue for the rights, privileges and immunities of ambassadors and other public ministers in foreign affairs. He opined that first “the respect which is due to sovereigns should redound to their representatives, and especially their ambassadors, as representing their master's person in the first degree. Whoever offends and insults a public minister, commits a crime the more deserving of severe punishment, as he might thereby involve his country and his sovereign into very serious difficulties and trouble. It is just that he should be punished for his fault, and that the state should, at the expense of the delinquent, give full satisfaction to the sovereign who has been offended in the person of his minister.” Second, “once the necessary rights of embassies were defined, the perfect security and inviolability of ambassadors and other ministers were a certain consequence of it: for if their persons be not protected from violence of every kind, the right of embassy becomes precarious, and the success very uncertain. A right to the end inseparably involves a right to the necessary means. Embassies then being of such great importance in the universal society of nations, and so necessary to their common well-being, the persons of ministers charged with those embassies are to be held sacred and inviolable among all nations. Third, whoever offers violence to an ambassador, or to any other public minister, not only injures the sovereign whom that minister represents, but also attacks the common safety and well-being of nations: he becomes guilty of an atrocious crime against mankind in general”.

#### **4. Conclusion**

It is clear that modern international law had in any case always been dual in nature: it was based on state sovereignty but was at the same time an effort to con-

trol if not limit it. Only during the second half of the 20<sup>th</sup> century, were efforts made to curb sovereignty and strengthen the international community stepped up but, until today, remain partially successful. There is no question that the main ideas and key features of international law have remained those of European origins although it expanded beyond the domain.

It is worth noting that Vattel aimed to defend the notion of an enlightened reason of sovereign state, one which recognized that justice is always the best policy. It is the reason why Vattel persisted in asking what a state ought to do when confronted with an unbalanced yet perfectly peaceful power. Then, he concluded that the sound policy was to seek to maintain an equal balance of power militarily and territorially, while containing aggrandizement mainly through the balance of power. In a similar vein, Vattel held out the hope that a great power could be brought down to size justly and peacefully through a more transparent diplomacy.

Given this, the article has re-examined the necessary security and obligation championed by Vattel in his epic work on international law. He reiterated that “since a state was not subject to any higher judge, it could not be punished by another state for failing to contribute to its perfection: failing to contribute to another’s perfection was not the same as impairing it”. In Vattel’s view, “European republic” was based on the voluntary law of nations and supposed to prevent interstate competition and conflict from destroying international businesses. Thus, the fundamental premise of Vattel’s approach to international law was that states are different from individuals by nature. It is necessary that sovereign states which are empowered to secure their unalienable rights properly are also obliged to maintaining common interests written into the treaties. As Vattel and his followers arguably opined over centuries that successful fulfillment of a state’s obligation to perfect itself yet did not inevitably justify an attack by neighbors whose security was threatened by its increasing prosperity (*de Vattel, 2008*). Given this, the argument goes that the key elements affecting the changes in rights and obligations in diplomacy have remained the nature of the existing world order, wherein some states have unlimited tastes to pursue the unilateral hegemony other than a multiple world order.

The central problem generated by Vattel’s approach to international law was how to provide for the continuation of mutual assistance among nation-states, despite the inevitable limitations of a state system whose members retained their full natural liberty. Conceptually, contemporaries have recognized Vattel’s stance on the central issue of European politics at the time, and what this article aims to justify is that it is worth making efforts to reexamine the key principles and doctrines advanced by Vattel nearly 400 years ago to tackle the tough issues and challenges of today’s global international society.

## Funding

National Social Science Fund of China (23BSS018).

## Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

## References

- Berridge, G. R. (2008). *Diplomatic Classic: Selected Texts from Comynnes to Vattel*. PKU Press.
- Bull, H. (1984). *The Anarchic Society: A Study of Order in World Politics* (3rd ed.) PKU.
- de Vattel, E. (2008). *The Law of Nations-Principles of Law of Nations, Applied to the Conduct and Affairs of Nations and Sovereigns*. Liberty Fund.
- Grewe, W. (2000). *Epochs of International Law*. De Gruyter.  
<https://doi.org/10.1515/9783110902907>
- Hoffmann, S. (1985). International System and International Law. *World Politics*, 14, 205-235. <https://doi.org/10.2307/2009562>
- Kissinger, H. (1994). *Diplomacy*. Simon Schuster.
- Lesaffer, R. (2009). *European Legal History*. Cambridge University Press.  
<https://doi.org/10.1017/9781107300866>
- Malanczuk, P. (1997). *Modern Introduction to International Law*. Routledge.
- Vagts, A., & Vagts, D. F. (1979). The Balance of Power in International Law: A History of an Idea. *American Journal of International Law*, 73, 555-580.  
<https://doi.org/10.2307/2200732>
- van Loon, H. (1968). *The Story of Mankind*. Liveright.
- Watson, A. (1982). *Diplomacy: The Dialogue between States*. Routledge.