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## **On the Life and Works of D. I. Kachenovskii: Kharkiv International Lawyer**

The world of public and private international law in the Russian Empire was, in the mid-nineteenth century, still in its formative stages. When Moscow University was founded in 1755, lectures on the law of nature and nations<sup>1</sup> were an integral part of the curriculum but delivered by continental European professors (Austrian and Prussian) of a natural-law orien-

tation<sup>2</sup>. As faculties of laws were embedded in the expansion of Russian higher education during the nineteenth century (St. Petersburg, Kazan, Kharkov, Kyiv, and others) and the Baltic universities (Tartu), now within the Russian Empire, reinvigorated, young Russians succeeded to the Chairs previously held by foreign imports. In one of the wiser decisions adopted by Russian authorities at the time, it was considered to be essential in most disciplines for Russians aspiring to the professoriate to spend a year or two in western Europe, usually at State expense, in order to attend lectures and pursue dis-

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<sup>1</sup> A Memorandum issued in 1765 to the professors of Moscow University reminded them that “in the law class or faculty they study Russian laws, and in so doing also laws of other countries and universal public law...”. Quoted in T. N. Neshataeva and V. L. Tolstykh, «Зарождение науки международного права в России (вторая половина XIX – начало XX в.» [Origin of the Science of International Law in Russia (Second Half of XIX and Early XX Centuries)]. *Золотой фонд российской науки международного права* [Golden Fund of the Russian Science of International Law] (2007), I, p. 16.

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<sup>2</sup> See W. E. Butler, “F. G. Strube de Piermont and the Origins of Russian Legal History”, in id, *Russia and the Law of Nations in Historical Perspective: Collected Essays* (2009), pp. 129–144.

sertation research, sometimes even to acquire a foreign learned degree.

Kachenovskii was fortunate in being able to undertake his European visits at all. The tides of revolution in Europe during the late 1840s could not fail to produce a reaction in Russia, where national-ity relations were sensitive. A Manifesto of Emperor Nicholas I dated 27 February 1848 observed that “The West of Europe has suddenly been rocked by sedition and the threatened overthrow of lawful authorities and the social system”. This destructive trend, the Manifesto said, must be stemmed. The editors of journals in Russia were instructed to assist the “Government in protecting the public against the contagion of ideas harmful to morality and public order”. A number of measures limited the autonomy of universities and constrained the freedom of university instruction. Rectors and deans were no longer to be elected. The rector was appointed by the minister from among persons who had scholarly qualifications and was confirmed by higher authority. Deans were appointed by a minister from professors available to undertake this position. The academic curriculum and the content of what was taught were strictly regulated. Pursuant to a Circular of 1 January 1850, professors were obliged to submit to the dean details of their lectures, specifying the manuals and textbooks which they proposed to use. The deans had to “ensure that the syllabi did not conceal anything incompatible with the teachings of the Orthodox Church, with the form of government, and with the spirit of our institutions”. As part of this campaign, measures were introduced to limit the previously free contacts with the scientific

thought of Western Europe. Foreign visits were suspended; professors no longer had the right to receive uncensored foreign literature. It was prohibited to teach the State law of foreign powers. It was in this environment that Kachenovskii proceeded to complete his University education and magister dissertation<sup>1</sup>.

In the discipline of law, the most popular destinations for aspiring professors were the Prussian and Austro-Hungarian universities, followed by the French, with the Italians, Dutch, and others lagging well behind. England and Scotland, the original destinations of Russian law students under Empress Catherine the Great in the 1760s, were not frequented for these purposes again until the nineteenth century. One must speculate that Russian postgraduate students found the proximity, excellence, and intellectual congeniality of the adjacent Germanic school more to their liking and more relevant to their future professorial careers. In many instances these episodes of study abroad resembled an academic “Grand Tour”, during which the young Russians perfected their foreign language skills, visited numerous academic and private libraries, attended lectures and seminars, received personal tutelage and supervision from obliging German professors, and immersed themselves in the cultural experience of European travel.

Each postgraduate traveling for these purposes was required to submit a substantial Report upon returning to his University and to the relevant Russian ministries. Often these were published

<sup>1</sup> On these events, see V. E. Grabar, *The History of International Law in Russia 1647–1917*, transl. W. E. Butler (1990), pp. 281–282.

in journals of the Ministry of Justice or the Ministry of Enlightenment; some appeared as separate publications, either offprints from a journal or a slender monograph. This is a body of literature, in the instance of jurists, which has yet to be explored for the insights that may be obtained into the development of international and comparative law in Russia.

One early pioneer in the “Legal Grand Tour” was the Ukrainian jurist, Dmitrii Ivanovich Kachenovskii<sup>1</sup> (1827–1872) – remarkable for his early contributions to the development of international legal doctrine in the Russian Empire, but the more so because he visited England twice to this end and, moreover, published original works of scholarship in the English language. Kachenovskii possessed that commodity most rare amongst lawyers in the Russian Empire of his day – a command of the English language. In the present volume we collect his English publications, all of them uncommon and never before assembled in one place.

### *Biography*

Dmitrii Ivanovich Kachenovskii was born in Karachev<sup>2</sup>, Orlov Province, Russia, on 8(20) December 1827 into the family of a Chancellery clerk<sup>3</sup>. Primary

education was initially in a public school and then the Orlov School for children of chancellery personnel, eventually removing to the fourth grade of the I Kharkov Gymnasium. Something of a prodigy, he graduated in 1842 at the age of 15 and enrolled in the Law Faculty at Kharkov University. Completing his University degree in 1847, he was invited to remain in the Faculty as a professoriate stipendiary. In 1848 he passed his magister examination, whereupon the Law Faculty petitioned to have him appointed as a junior scientific assistant in the Chair of All-People’s [общенародное] Law (then a term widely used in the Russian Empire for international law). The petition was declined;

р. 808. Grabar, «Каченовский Дмитрий Иванович» [Kachenovskii Dmitrii Ivanovich], Новый Энциклопедический словарь [New Encyclopedic Dictionary], xxi, cols. 335–337; S. I. Posokhov and O. N. Iarmysh, «Каченовский Дмитро Иванович» [Kachenovskii Dmitro Ivanovich], in Iu. S. Shemshuchenko (ed.), Юридична енциклопедія [Legal Encyclopedia] (2001), III, pp. 68–69; V. N. Denysov and K. O. Savchuk, «Каченовский Дмитро Иванович» [Kachenovskii Dmitro Ivanovich], in Iu. S. Shemshuchenko (ed.), Антологія української юридичної думки [Anthology of Ukrainian Legal Thought] (2004), VIII, pp. 73–76; V. A. Izstrzhembskii, «Каченовский Дмитрий Иванович» [Kachenovskii Dmitrii Ivanovich], in M. P. Chubinskii and D. I. Vagalei (eds.), Юридический факультет Харьковского университета (1805–1905). История факультета. Биографический словарь профессоров и преподавателей [Law Faculty of Kharkov University in the First 100 Years of Its Existence (1805–1905): History of the Faculty. Biographical Dictionary of Professors and Lecturers] (Kharkov, 2007), pp. 242–247 (reprint of the 1908 edition with a new preface). See, in general, V. Denysov and K. Savchuk, «Розвиток науки міжнародного права в Україні у XIX – першій половині XX сторіччя» [The Development of the Science of International Law in Ukraine in the XIX-First Half of the XX Centuries], Український щорічник міжнародного права 2008 [Ukrainian Yearbook of International Law 2008] (Kyiv, 2010), pp. 264–317.

<sup>1</sup> Spellings of his surname in English are sundry: Katchenovsky, Katchenoffsky, Katchenowsky, among others. We follow the Library of Congress transliteration of his name, which in Cyrillic, of course, has Russian and Ukrainian variations.

<sup>2</sup> Some sources report his place of birth as Kharkov, which is incorrect. He was a distant relative of Mikhail Trofimovich Kachenovskii (1745–1822), a professor of Moscow University.

<sup>3</sup> For biographical data on Kachenovskii, see V. E. Grabar, note 3 above; Grabar, «Каченовский Д. И.» [Kachenovskii D. I.], Энциклопедический словарь [Encyclopedic Dictionary], xivA,

Kachenovskii was appointed to the position of junior scientific assistant only after defending his magister dissertation, at the age of 22, in 1849: a historical survey of the provisions of international law on dominion over the seas<sup>1</sup>.

At Kharkov the Chair of Natural and Political Law and the Law of Nations had not been filled after the death of Professor B. O. Reith (1770–1824). The Professor of Roman Law, Konstantin Pavlovich Paulovich (1782–18?), lectured temporarily in the Chair of Political Economy and Diplomacy from 1824 to 1832. In 1832 Tikhon Fedorovich Stepanov (1795–1847) was appointed to the Chair of Diplomacy and from 1835 until his retirement in 1845 Stepanov held the Chair of the Law of Nations. He was succeeded by Sergei Nikolaevich Ornatskii (1806–1884), who in 1848 removed to Moscow University to the Chair of the Encyclopedia of Laws. Lecturing on the law of nations during the academic year 1848/49 was entrusted to the Professor of Criminal Law, Gavriil Stepanovich Gordenko (1805–1849), who was succeeded by Kachenovskii<sup>2</sup>.

Commencing his lecturing duties, Kachenovskii offered, in addition to international law, a course on “State Institutions” to students of the Law Faculty. In the next academic year (1850–51) he was appointed Secretary of the Law Faculty. His course load was enlarged to include the standard introductory course on the “Encyclopedia of Jurisprudence and State Institutions”, as well as lectures on the

basic laws of the Russian Empire and the institutions and laws regulating State service. He quickly “became a star of the first magnitude”<sup>3</sup>. The international law topic set by Kachenovskii for students participating in medal competitions during the academic year 1851/52 was: “A Critical Evaluation of the Work by Hugo Grotius *De iure belli ac pacis* Showing the Influence of Works by this Publicist on the Development of the Science of the Law of Nations”<sup>4</sup>.

In 1855 Kachenovskii defended a dissertation for the degree of doctor of political sciences at Moscow University on the law of prize, which in expanded form was published at London in 1867 and is reproduced in the present volume. While in Moscow, Kachenovskii became involved in intellectual circles frequented by Timofei Nikolaevich Granovskii (1813–1855) and other “Westernizers” who engaged in passionate disputes with the “Slavophiles”. Whether he encountered the life and works of the American statesman, Daniel Webster (1782–1852), in Moscow or Kharkov remains obscure. Sometime in 1855 he acquired the fourth edition of Webster’s collected writings introduced by Edward Everett (1794–1865) and wrote a lengthy review for the new literary and political journal founded by Mikhail Nikiforovich Katkov (1818–1887)<sup>5</sup>. This he enlarged into

<sup>1</sup> The magister dissertation was not published and remains in manuscript, being at one time in the ownership of the former librarian of the University.

<sup>2</sup> Grabar, note 3 above, p. 286.

<sup>3</sup> М. Ф. Де-Пуле, «Харьковский университет и Д. И. Каченовский: Культурный очерк и воспоминания из 40-х годов» [Kharkov University and D. I. Kachenovskii: Cultural Survey and Recollections from the 1840s], *Вестник Европы* [Herald of Europe], XLV, no. 1–2 (1873), p. 86.

<sup>4</sup> Grabar, *ibid.*, p. 289.

<sup>5</sup> *Русский вестник* [Russian Herald], no. 3 (May–June 1856), pp. 385–416: “Of the public fig-

a more substantial piece, relying, he said, on some additional articles about Webster. Kachenovskii evidently completed his manuscript in London and sent it to the publisher from there. This book is probably the first biography of an American political figure by a Ukrainian author, and, moreover, in the French language<sup>1</sup>.

Kachenovskii was sent abroad in 1858 on his first academic visit, touring widely throughout Western Europe, including Prussia and England, for eighteen months. The “purpose of my journey”, he said, “from the very outset was determined firmly and clearly”: to “familiarize myself with the contemporary state of international law” and “to add to my knowledge of the State sciences in general”. To this was soon added a third objective: “in March 1858 the Council of the University informed me that the teaching of the State law of European powers would be assigned to me upon my return from abroad”. It was necessary for Kachenovskii to expand his horizons into the field of comparative public law and study “the political life abroad and make observations concerning the institutions of at least the leading peoples of the Western world”<sup>2</sup>. While in England

he made the acquaintance of John Westlake (1828–1913), Sir Robert Phillimore (1810–1885), and Sir Travers Twiss (1809–1897) and spoke at the Antislavery Society.

In Prussia he met frequently with Professor C. F. Wurm (1803–1859), and in London visited the Houses of Parliament and attended various public lectures and meetings. There is no doubt that his foreign travels had precisely the impact that was intended – they greatly influenced his approach to the discipline of international law and initiated his involvement in matters European.

Upon his return to Ukraine, Kachenovskii decided to offer a series of open public lectures. Given widespread interest at the time in the possible emancipation of Russian serfs, he decided to devote the lectures to the relations of Europeans with negroes, giving particular attention to the British and French colonies. This suggestion encountered resistance in the Council of Kharkov University as being “inappropriate” because “much would relate also to our fatherland”. Nonetheless, the Council approved the suggestion, observing that “censorship does not prohibit articles on the trade in negroes and abolition thereof at all”. In the end, the public lectures never happened because the Ministry considered them to be “untimely”. Nonetheless, Kachenovskii devoted twenty to thirty hours in his course on international law to a historical survey of the origins, development, and decline of slavery in the West. Without saying a single word about Russian legislation on

ures of North America, no one enjoyed recently such a wide reputation as Webster” (p. 385). The article is widely recorded as having been in a French journal, *Messagerrusse*, a reference taken from the Preface to the Brussels edition in book form of the Webster biography, because Kachenovskii in that publication had translated the Russian title of the journal into French.

<sup>1</sup> Kachenovskii, *Daniel Webster: etude biographique* (Brussels, 1858).

<sup>2</sup> A. N. Stoianov, *Воспоминание о Д. И. Каченовском: Биографический очерк* [Recollection of D. I. Kachenovskii: Biographical Essay], (Kharkov, 1874), p. 22. Stoianov had access to two vol-

umes of manuscript notes which Kachenovskii left of his visit to Europe.

serfdom, he convinced his students of the need to abolish that institution in Russia, which predisposed their later activities when they served on committees to improve the lot of peasants<sup>1</sup>.

Kachenovskii was appointed professor *ordinarius* in 1859 at the Chair of International Law and assigned to lecture on the State law of European powers. Being an unapologetic proponent of constitutionalism and human rights, Kachenovskii embodied these opinions in his course on comparative State law. Here he used his visits abroad to advantage, drawing upon his personal experiences in witnessing the operations of Parliament in England, the Sejm in Hungary, and French, Prussian, and Austrian parliamentary bodies. When Russia became interested in local self-government and justices of the peace, Kachenovskii enriched his lectures with examples of English and other European experience. A “Westernizer” often accused of Anglomania, Kachenovskii was described by his students as a “patriot in the best sense of the word” who sought to eliminate shortcomings inherent in Russian society by references to relevant foreign examples<sup>2</sup>.

<sup>1</sup> So the students recalled. See M. M. Kovalevskii, «Моя жизнь» [My Life], История и историки [History and Historians] (1975), p. 281; P. Leibin, «Памяти Д. И. Каченовского» [In Memoriam D. I. Kachenovskii], Санкт-Петербургские ведомости [St. Petersburg Gazette], no. 15 (15 January 1973), p. 2.

<sup>2</sup> Kovalevskii, «Характеристика Д. И. Каченовского в связи с личными о нем воспоминаниями» [Characterization of D. I. Kachenovskii in Connection with Personal Recollections About Him], in Д. И. Каченовского: Торжественное заседание Юридического Общества при Харьковском университете 22 ноября 1903 г. Характеристики и воспоминания В. А. Ястржембского,

By all accounts his lectures were popular and attended by students from throughout the University, not merely the Law Faculty<sup>3</sup>. His popularity extended beyond his formal lecturing, though. He encouraged students to meet informally with him, supplying students with recent publications, inviting them to his home, and involving them in conversations on contemporary issues, both academic and social. These conversations “were often no less important than the lectures, because Kachenovskii was a rarity of a talented and multi-dimensional individual. He was seriously interested in painting, not a bad pianist, knew ancient languages, and had an excellent command of French, German, and English. Preferring to read the best works in their originals, he began to study Italian and Spanish”<sup>4</sup>.

In Faculty affairs he was well regarded by all colleagues for his fairness in administering matters, but as a “Westernizer” he was in constant conflict with

Максима Ковалевского, А. Н. Фатеева, Н. Ф. Сумцова, Л. Л. Гиршмана, А. П. Шимкова [In Memoriam D. I. Kachenovskii: Solemn Session of the Law Society attached to Kharkov University on 22 November 1903. Characterization and Recollections of V. A. Iastrzhembskii, Maksim Kovalevskii, A. N. Fateev, N. F. Sumtsov, L. L. Girshman, and A. P. Shimkov] (Kharkov, 1905), p. 25.

<sup>3</sup> Among his students who later achieved renown as international lawyers were M. M. Kovalevskii and A. N. Stoianov. For recollections of student impressions, see the essays by L. L. Girshman and A. P. Shimkov, in note 11 above.

<sup>4</sup> V. Iu. Ivashchenko, «Профессор Д. И. Каченовский в воспоминаниях современников» [Professor D. I. Kachenovskii in the Memoirs of Contemporaries], Проблеми періодизації історії та історіографічного процесу: Харківський історіографічний збірник [Problems of the Periodization of History and the Historiographical Process: Kharkov Historiographical Collection] (Kharkov, 2002), V, pp. 91–92.

the “Slavophiles” in the Faculty, especially P. A. Lavrovskii (1827–1886) and N. A. Lavrovskii (1827–1899). Partly fueled by personality conflicts, partly by differences of view on individual issues, these disputes sometimes negatively affected the instructional process. Kachenovskii, for example, opposed the introduction of the History of the Slavonic Peoples in the syllabus for the magister examination on the grounds that this subject-matter was an “unnecessary embellishment”<sup>1</sup>.

A man of principle, Kachenovskii vigorously opposed a practice at Kharkov University under which university professors would accept students as boarders in their homes, charging high rents for accommodation, on the understanding that these boarders would most certainly be successful on the examinations. Ultimately, Kachenovskii’s view prevailed, such that by the end of the 1850s this academic abuse had all but disappeared – an outcome that Kachenovskii’s students attributed mostly to his efforts<sup>2</sup>.

A second visit abroad, undertaken principally for reasons of personal health, although academic interests were pursued, occurred from June to October

1861<sup>3</sup>. Kachenovskii spent time in Austria and Italy, followed by some days in France and Dublin, Ireland (the Irish visit was to attend the fourth Annual Meeting of the National Association for the Promotion of Social Science). During three weeks in Austria, principally in Vienna, he spent time at the Reichsrath – primarily a waste of time, he said, as there were no interesting parliamentary addresses to be heard. He criticized the Austrian system of elections to the Reichsrath – candidates were mostly appointed by provincial assemblies without the direct participation of the people. The candidates for deputy were mostly tools of the Austrian Government.

Of greater interest to him were the disputes between Hungary and Austria over the constitution. Kachenovskii arrived in Vienna shortly after a memorable parliamentary address by Deak and followed the polemic which the address generated. In his view, the resolution of what he called the “Danubian question” was closely connected with the future of the “Slavonic tribes” and deserved the special attention of Russian publicists. Although he professed himself to lack the “special preparation and especially a knowledge of Slavonic languages” necessary to become fully acquainted with the issues involved, he did make the acquaintance of representatives of various political parties and peoples who were

<sup>1</sup> See A. Voronov, «Воспоминания бывшего студента Харьковского университета 60-х годов» [Recollections of the Former Student of Kharkov University of the 1860s], Русская старина [Russian Antiquity], CLIV.no. 6 (1913), p. 575; D. I. Bagalei, N. F. Sumtsov, and V. P. Buzeskul, Краткий очерк истории Харьковского университета за первые сто лет его существования [Concise Survey of the History of Kharkov University During the First Hundred Years of Its Existence] (Kharkov, 1906), pp. 202–203.

<sup>2</sup> See A. Shimkov, «Воспоминания о Д. И. Каченовском» [Recollections of D. I. Kachenovskii], in note 13 above, pp. 84–87.

<sup>3</sup> See Kachenovskii, Краткий отчет о занятиях профессора Императорского Харьковского университета Д. И. Каченовского за границую с июня по октябрь 1861 г. [Concise Report on the Occupations of the Professor of the Imperial Kharkov University, D. I. Kachenovskii, Abroad from June to October 1861] (Kharkov, 1862), pp. 1–12.

destined, he believed, to play a role during what he called the Austrian “crisis”. In his view a “coup” was imminent in the Danubian area whose results be felt “in all of southeastern Europe”.

While in Vienna, Kachenovskii visited lectures offered by Robert von Zimmermann (1824–1898) on the philosophy of law, L. (or J. G. J.) Neumann (international law), and Lorenz von Stein (1815–1890) on the theory of finances and came away persuaded that the Austrian Government had granted greater scope for university instruction. In general he believed the situation at the University Law Faculty was quite satisfactory. Stein lectured to students on international law who were primarily being trained for positions in the Austrian diplomatic or consular service. Other Austrian institutions had introduced international law to the curriculum, notably the law of war in military schools.

Venturing into Italy, Kachenovskii visited Venice, Padua, Milan, Turin, Florence, Pisa, Bologna, Parma, but omitted Rome because of considerations of time. He took the occasion to visit parliamentary sessions in Milan and chat with local lawyers. In Florence he used the San Lorenzo Library and State Archives. Bologna was a disappointment. The University had moved to new quarters, leaving few traces of the Glossators (“even their works and manuscripts had been moved elsewhere”).

Kachenovskii had a special interest in penal institutions, which he visited as occasion permitted during both his first and second tours of Europe. During the second visit he went to Austrian prisons near Vienna and in France visited asylums,

crèches, and school for poor children, lamenting the absence in Russia of societies and institutions similar to those operated by the Catholic sisters in Europe.

Kachenovskii’s visit to Ireland was occasioned by an invitation from the National Association for the Promotion of Social Science, founded in England. The Society held annual congresses of a week or so in duration. Kachenovskii had been elected a Foreign Corresponding Member by the Council of the Association on 14 July 1859<sup>1</sup>. In 1860 Kachenovskii sent from Kharkov a communication to the Secretary of the Association urging that an “international department” be created. The Letter was read out at the Glasgow Congress and served as the initiative for the formation of a “Department of Trade and International Law” attached to the Association (reproduced in the present volume below).

The first sessions of the new Department were opened at Dublin on 14 August 1861. The initial discussions concentrated on the Treaty of Commerce between England and France, recently concluded. One of the architects of the treaty, Michel Chevalier, was elected President of the newly-formed Department. Discussions then turned to international law proper: the acquisition of immoveable property by foreigners; bankruptcy; belligerent rights;

<sup>1</sup> George W. Hastings (ed.), *Transactions of the National Association for the Promotion of Social Science 1859* (1860), p. xxxiii. The number of Foreign Corresponding Members was highly selective. In all during the early years of the National Association only twenty or so individuals were chosen. Kachenovskii was the sole individual from Russia. The sole American was William B. Lawrence, the international lawyer, who was elected after Kachenovskii.



literary property, and others. In the absence of the newly-elected President, who was needed elsewhere, Kachenovskii was invited to take the Chair. He also spoke during the plenary sessions, setting out in concise form the essence of the history of Russian legislation on foreigners.

Kachenovskii was recorded as being among those who spoke in support of a resolution proposed by Mr. W. S. Lindsay, M. P., which was unanimously adopted by the Department on Trade and International Law:

“That in the opinion of this Department, it is most desirable that the principles laid down by the Congress of Paris in 1856, with respect to maritime warfare, should be extended to the length of exempting the private property of citizens of belligerent nations, not being contraband of war, from capture at sea”<sup>1</sup>.

These were not his only visits to Europe. Italy especially attracted his presence, in 1864, 1866, 1868, 1870, and in May 1872 he traveled to Austria upon the advice of his doctor.

Kachenovskii served several terms as secretary on the Law Faculty (1850–1853, 1867–1870). He was elected Dean of the Law Faculty in 1870, but resigned in September 1872 because of poor health. He died of consumption three months later (21 December 1872/2 January 1873). A bachelor, he lived with his mother throughout his life. In the volume published in commemoration of the thirtieth year from his death both his own portrait and that of his mother appear, together with a facsimile of a manuscript in

his hand. Although his financial resources were modest, he bequeathed the sum of 973 rubles, the interest from which was to be used to establish the Kachenovskii Prize for an outstanding work in the field of international law. Laureates of the Kachenovskii Prize included V. A. Iastrzhembskii (1866–19?).

During his years of declining health, Kachenovskii became increasingly critical of political life in Russia and the West. By the mid-1860s, his political and cultural values were no longer in tune with the intellectual trends of the time. His students were attracted by radical views popular at the time propagated by Alexander I. Herzen, N. A. Dobroliubov, and N. G. Chernyshevskii, or by the nationality issue, especially pertinent in Ukraine. Kachenovskii retreated towards idealism and poetry while remaining constant to his belief that social progress could be achieved in Russia solely through the dissemination of Western European culture. Attendance at his lectures fell off; critics in the learned journals of the day criticized his dogmatism and doctrinaire opinions. Kachenovskii sought consolation in art history, an interest which he pursued during his later European travels and as a collector of engravings and drawings. A fully-fledged study of Michelangelo was contemplated; although never finished, substantial portions were published during his lifetime<sup>2</sup>.

<sup>1</sup> George W. Hastings (ed.), *Transactions of the National Association for the Promotion of Social Science 1861* (1862), p. 794.

<sup>2</sup> Kachenovskii, «Флоренция и ее старые мастера (Из путешествия по Италии)» [Florence and Its Old Masters (From a Journey About Italy)]. *Вестник Европы* [Herald of Europe], IV, no. 8 (August 1869), pp. 634–683; V, no. 10 (October 1869), pp. 678–750. N. F. Sumtsov, *Художественные интересы Д. И. Каченовского* [Artistic Interests of D. I. Kachenovskii], note 13 above, pp. 57–62;

*The Works*

The materials published in England would appear to be among the first, if not the very first, substantial works by a Ukrainian/Russian international lawyer published in the English language outside the frontiers of the Russian Empire. As modern doctrinal writings express the position, "... D. I. Kachenovskii became the first Russian specialist in the field of international law to be well-known abroad"<sup>1</sup>.

These materials are fully reflective of, and fall within the period of, Kachenovskii's principal contributions to international legal doctrine. During his lifetime, he was the only international lawyer in the Russian Empire following closely and reporting on the major developments in legal works by continental European and English publicists. He intended, but never brought to fruition, to write a general work, a *cours*, on public international law. At one time collaboration with M. N. Kapustin (1828–1899) on this project was envisioned, allegedly, said Grabar, because of "their divergent outlooks and dissimilar scientific methods". Whereas Kachenovskii treated the postulates of reason as the basis of international law, Kapustin was an adherent of positive law<sup>2</sup>. Of Kapustin's inclination to positivism, there can be little doubt. Kapustin wrote: "At the present time, the science of international law finds firmer support in the mémoires and notes of State officials than in the speculations of the schools". As quoted by Kachenovskii,

"the 'realm of law' does not admit arbitrary fabrications; metaphysics and metaphysics should be alien to the jurist"<sup>3</sup>. Actually, upon closer examination, this explanation of their differences is unconvincing, for Kachenovskii was deeply influenced by the positivism and empiricism of the English approach to the law of nations and made extensive use of treaties and case reports in his works on the law of prize.

Although his efforts to write a *cours* were confined to an introduction (1863) and a historical survey (1866)<sup>4</sup> and, contrary to a widely-shared view, were not the first in Russian international legal doctrine (T. F. Stepanov (1795–1847) and M. N. Kapustin were before him), they were nonetheless a valuable step forward. Part One consisted of remarks introducing the volume and two prefatory lectures, followed by a section on the significance of the science of international law in the system of jurisprudence which included persuasive passages refuting those who denied the existence of international law. Part Two addressed the history of international law from Antiquity to the Middle Ages. The promised Part Three never appeared. V. P. Danevskii, reviewing the *cours*, described Kachenovskii as

<sup>3</sup> See Kachenovskii, «Успехи науки международного права в Германии и Англии» [Successes of the Science of International Law in Germany and England], Русский Вестник [Russian Herald], II (March 1856), Contemporary Chronicle, p. 32.

<sup>4</sup> Kachenovskii, Курс международного права [Cours of International Law] (Kharkov, 1863–66). 2 vols; Part One is reprinted in note 1 above, pp. 43–166. Fragments of Part One are published in Iu. S. Shemshuchenko (ed.), Антологія української юридичної думки [Anthology of Ukrainian Legal Thought] (2004), VIII, pp. 77–108.

N. F. Sumtsov, «Труды Д. И. Каченовского по истории искусства» Южный край [Southern Territory], Nos. 6905–6906 (1901).

<sup>1</sup> Note 1 above, p. 23.

<sup>2</sup> Grabar, note 3 above, pp. 371–372.

an “admirer of the French school... His style is picturesque, lively, and light... He is devoid of German pedantry... the tone of the work, although not pedantic, is persuasive in the manner of a popular textbook”, although inevitably guilty of “French prolixity and repetitiousness”<sup>1</sup>.

Read carefully, Kachenovskii was coy about whether international law actually existed during the period of Antiquity. Rather he referred to the “development of international links” among ancient communities and about the “foreign relations” of those communities. He did not actually use the term “law of nations” or other equivalents. Being greatly influenced by the writings of Laurent, Kachenovskii evidently shared Laurent’s skepticism about the existence of international law in Antiquity. Adapting a translation of an article on the international law of the ancient Greeks, he expressly declared in speaking of the foreign relations of Rome that “one seeks in vain for principles of international law in Roman policies”<sup>2</sup>.

<sup>1</sup> Danevskii, note 20 below, p. 204.

<sup>2</sup> The article is Kachenovskii, «Международное право древних греков» [International Law of the Ancient Greeks], in Пропилей: сборник статей по классической древности [Propilei: Collection of Articles on Classical Antiquity] (1856), kn. 5, otd. 1, pp. 225–256. The article was in fact a combination of summary and translation from F. Laurent, *Histoire du droit des relations internationales* (Ghent, 1850), vol. II. However, volume 2 of Kachenovskii’s *cours*, although greatly indebted to Laurent, does “not slavishly follow Laurent, although it would be difficult not to subject oneself to the colossal material, attractive exposition, and profundity of views of the Belgian scholar, but Kachenovskii, using his material, succeeded in preserving his scholarly independence and, thanks to recent investigations of scholars, could even correct certain ambiguities and fill gaps in Laurent’s *Histoire de droit des gens*”. See Iastrzhemskii, «Д. И. Каче-

The primary source of law Kachenovskii considered to be the “legal consciousness of peoples”. Many jurists, wrote Kachenovskii, “describe all the monuments and forms in which law is expressed as its sources. This is untrue and ambiguous. Legal consciousness and the beliefs of mankind... are the principal, highest, single source of written and unwritten law”<sup>3</sup>. The subjects of international law, in Kachenovskii’s view, included, in addition to States, their organs and their citizens.

### Law of the Sea

In the preface to his treatise on the law of prize, Kachenovskii indicated the importance of the subject-matter of his book, its scope, the method of research, and a periodization of the history of privateering and relevant sources:

At sea, civilization has still not succeeded in overcoming the harsh customs of the Middle Ages... the efforts of belligerent States at sea are directed towards the destruction of mutual trade. Finding regular fleets inadequate for their purpose, they invite private individuals into the struggle... These voluntary entrepreneurs, known since ancient times as sea pirates, are also termed privateers... Privateers do not limit themselves to the pursuit of the enemy: they are charged in addition with supervision over neutral subjects... Deciding cases concerning the legality of booty also appertains to belligerent States... Deciding cases concerning the legality of booty also appertains to

новский как ученый и преподаватель» [D. I. Kachenovskii as Scholar and Teacher], note 13 above, p. 14.

<sup>3</sup> Quoted in Grabar, note 3 above, p. 480.

belligerent States; they institute prize or admiralty courts for this purpose...

It is evident from what has been said that the science of all-nations law may consider privateering as a custom of warfare at sea from two aspects: (1) in its immediate consequences for the belligerent powers; [and] (2) with respect to neutral trade. ... [The first issue is simple and clear; the second, complex and confusing]: in treaties and decrees there are sharp contradictions and inconsistencies; and in science, disagreements. Few publicists arrive at calm conclusions... almost everyone has his favourite theory or system accepted in a certain State. (pp. iii-xvi).

Kachenovskii investigated privateering in its second aspect, but given the close link between privateering and procedures in prize courts, he could not avoid giving some attention to prize court proceedings. His intention was to demonstrate:

...the boundaries within which the activity of privateers and admiralty courts had been confined by international law with respect to neutral trade, to find generally recognized principles which should govern such activity, and finally to trace the gradual application thereof in the practice of States...

The author chooses the historical-critical method... the so-called philosophical school of all-nations law now has no outstanding representative. Almost all publicists refrain from construction derivative theories... and begin to search for the legal foundations of the international community within the essence of the State itself, in the consciousness and age-old convictions of civilized man. The new orientation has appreciably enlivened the

scholarly of the last ten years. Heffter, Oppenheim, Pütter, Wheaton, Müller-Jochmus, Laurent, C. F. Wurm, Hauteville, Reddie, and others have long overtaken the pupils of Martens...

In a necessarily condensed account, but clear and precise, with detailed footnote references to treaties, prize court decisions, and doctrinal writings, Kachenovskii developed the following periodization of the history of privateering and admiralty courts (the pagination references are to the Russian edition of 1855):

1. In the Middle Ages warfare at sea was virtually indistinguishable from piracy and, because of the inadequacy of the regular fleet, it was carried on by private individuals (corsairs). The institution of responsible privateers was the first step toward curbing anarchy... Neutral trade was not on a large scale and the activity of privateers before the end of the sixteenth century was directed primarily against the enemy... (pp. 1–20);

2. From the end of the sixteenth century a mercantile orientation was predominant in warfare at sea: belligerents promulgated decrees limiting neutral trade; privateering took on broad dimensions and obstructed the intercourse of nations; abuses took root in prize courts. Such a state of affairs gave rise to struggle: the neutral endeavoured to mitigate the medieval system of prize legislation... Freedom of the flag was asserted and certain abuses of the admiralty courts were eliminated... (pp. 21–46);

3. After the Treaty of Utrecht, England, then paramount, endeavoured to restrain the development of international law at sea and to make her own prize laws

binding upon all Europe. The continental States consequently formed the opposition and... struck determined blows against privateering. Thanks to Russia's energetic intercession new principles of neutral trade gained the upper hand... (1780–1793)... (pp. 47–72);

4. But with the disturbance of the political system (1793–1815)... arbitrary decrees and regulations dominated over the norms of the law of nations; the autonomy of prize courts grew, and privateering intensified... (pp. 73–129);

5. Since the Congress of Vienna, the development of the international law of the sea has been uninterrupted; the principles of armed neutrality have acquired the force of a universal law; the autonomy of prize courts has weakened and privateering has declined... the long desired reforms of warfare at sea have approached realization... (pp. 130–174).

The original dissertation was a candidate for the Demidov Prize and earned a favorable review from Professor Ignatii Ioakimovich Ivanovskii (1807–1886), who held the Chair of International Law at St. Petersburg University<sup>1</sup>. In Ivanovskii's view the issue of maritime neutrality "has been virtually exhausted from the dogmatic point of view, but its history affords much scope for study" He welcomed Kachenovskii's account in the book of "how pirates who acknowledge no one's authority are transformed into national privateers" as a question that "up to now has been virtually ignored". The

<sup>1</sup> For Ivanovskii's extensive review, see Двадцать пятое присуждение учрежденных П. Н. Демидовым наград 26 мая 1856 года [Twenty Fifth Awarding of the Prize Founded by P. N. Demidov on 26 May 1856] (1856), pp. 321–331.

most important part of the book in his view was the survey of the period from 1793 to 1815, where the author directed special attention to the relevant domestic legislation of England and France.

Ivanovskii, just as Kachenovskii himself, emphasized the "advantage of freedom of neutral trade and to its being exempted from all constraints which do not flow from a reasonable view of war". But he contested Kachenovskii's view that "prize courts are international institutions":

International practice is more logical than Mr. Kachenovskii in this respect. Its rules are more in conformity with the idea of neutrality. Never, in no instance, does a belligerent have jurisdiction over neutrals. In the eyes of a neutral prize court the belligerent is merely a State institution of that power to which the privateer belongs.

Kachenovskii believed the privateer "to be the plaintiff in a prize court, and the neutral to be the defendant". Ivanovskii did not concur:

In general, the author is too indulgent towards English prize practice and sees the decisions of William Scott [Lord Stowell – WEB] as the application of principles of international law ... [whereas that] noted judge never seriously adhered to either the *consolato del mare*, or other sources of positive international law, or the requirement of justice, and his entire theory of prize jurisdiction is based on a pathetic sophistry and is directed towards the complete destruction of neutral trade<sup>2</sup>.

A second substantial review of Kachenovskii's treatise was published by

<sup>2</sup> Quoted in Grabar, note 3 above, p. 336.

M. N. Kapustin (1828–1899), who had acted as the official opponent at the dissertation defense. Kapustin wrote:

We have before us virtually the entire literature of international law; to subject it to criticism, to find the correct independent view of certain phenomena of European public life, having traced their historical development – these are the tasks which Mr. Kachenovskii has resolved so successfully. It is pleasant to record that his services to the science of international law have already been noted by European scholars: the German writer, C. F. Wurm, well-known as an authority in the field, has published a review of Kachenovskii's work in the *Allgemeine Zeitung* which is very flattering to our author<sup>1</sup>.

Kapustin considered Kachenovskii's treatise to be "...one of the best additions to our legal literature"<sup>2</sup>. That view of the dissertation was shared by Kachenovskii's successor in the Chair of International Law at Kharkov, V. P. Danevskii (1852–1898);

[Kachenovskii's dissertation] is rightly considered to be the finest work on privateering not only in our literature, but also in the foreign literature... His study is rich not only in treaties; many internal regulations and ordinances of various

States are cited which relate to privateering and prize proceedings. The procedure for prize proceedings was developed by Kachenovskii in great detail, although somewhat confusedly... the author very conscientiously expounds the doctrines of the celebrated English judge, William Scott, on judicial evidence, military contraband, and the delivery of dispatches by neutral ships to the enemy, and also his doctrine on blockade and sabotage and colonial trade<sup>3</sup>.

The doctrines of William Scott, Lord Stowell (1745–1836), Danevskii observed, were juxtaposed by Kachenovskii with those of the French prize judge, J. E. M. Portalis (1746–1807), and both subjected "to a critical analysis which has no parallel in the Russian literature on the subject". Kachenovskii in his account, Danevskii said, does not separate history from theory nor treaties from doctrine. Danevskii concluded:

The thread that runs throughout Kachenovskii's study is that the history of privateering in connection with the question of private property gradually and decisively declined in the natural course of its development to the benefit of the destruction of the former and recognition of the complete inviolability of the latter... [This work is characterized by] the unusual erudition of the author and the liveliness of his exposition of the subject-matter: ... in some ten or eleven of his printed signatures one can find more material and ideas than are to be found sometimes even in a multi-volume English or German work.

<sup>1</sup> Русский вестник [Russian Herald], I (February 1856), Contemporary Chronicle, p. 144. Kachenovskii's treatise is discussed as part of Kapustin's general survey of Russian legal literature published during the calendar year 1855. For the review by Wurm, see *Allgemeine Zeitung*, no. 349 (15 December 1855), pp. 5578–5579.

<sup>2</sup> Brief passages from the dissertation were published as «Морская война и каперство в средние века» [Naval Warfare and Privateering in the Middle Ages], Московские ведомости [Moscow Gazette], no. 24 (24 February 1855), lit. otd., pp. 85–86; no. 25 (26 February 1855), lit. otd., pp. 89–90.

<sup>3</sup> See V. P. Danevskii, Очерк новейшей литературы по международному праву [Survey of Recent Literature on International Law] (St. Petersburg, 1876), pp. 253–256.

Kachenovskii's treatise in the law of prize<sup>1</sup> never appeared in the Russian language in the version that was published in London, that is, with the benefit of taking into account the fruits of the 1856 Declaration of Paris. Russian legal doctrine takes the view that the dissertation recommended certain reforms, set out in the dissertation as postulates that flowed from the basic principles of international law and its historical development, partially realized in the 1856 Paris Declaration<sup>2</sup>.

### International Legal Jurisprudence

Kachenovskii's lecture in London on the contemporary state of international jurisprudence attracted considerable attention. His idea concerning the need to unite those working in the field of international law found resonance in a number of other countries and was eventually achieved through the creation in 1873 of the Institute of International Law. Grabar referred to Kachenovskii as "one of the initiators" of the Institute<sup>3</sup>.

### Personalia

Kachenovskii had the highest possible regard for his mentor in Germany, Professor C. V. Wurm, whom he mentioned on numerous occasions in his Reports on the visits made abroad and in his scholarly publications. His obituary assessment of Wurm's contributions to the science of

international law appeared in Russian<sup>4</sup> and English.

### Perpetual Peace

Kachenovskii gave an account of Malinovskii in 1859 to the Peace Society in London. He referred to this in his Report on his foreign tour in 1859 and 1859: "...to the Peace Society I communicated excerpts from the interesting proposal for perpetual peace written at the end of the last century by the Russian publicist Vasilii Malinovskii. They printed it in the *Herald of Peace* in July 1859. The book itself is not well known even in Russia, but deserves attention for the thoughts and sentiments that run through it"<sup>5</sup>.

### Associations of International Lawyers

As noted above, Kachenovskii was accorded the honor of being the sole Russian to be elected a Foreign Corresponding Member of the National Association for the Promotion of Social Science in 1859. Unable to be present at the Fourth Annual Meeting held at Glasgow in September 1860, he wrote a long letter to the General Secretary of the Association, G. W. Hastings, which was read aloud to those present. Whether Kachenovskii's letter had been orchestrated with other foreign colleagues has not been determined, but apparently foreign participants in the Annual Meeting had been outspoken in recommending to their British colleagues the formation of a sixth Department within the National Associa-

<sup>1</sup> For many decades the English translation of Kachenovskii by Pratt was considered to be the "... first instance of the translation of a Russian book on international law into the English language". Grabar, note 3 above, p. 353. That distinction is now known to belong 155 years earlier to the *Discourse* by P. P. Shafirov (1673–1739), published at London in 1722 and identified by the present writer. See W. E. Butler, "P. P. Shafirov and the Law of Nations", in Butler, note 2 above, pp. 207–250.

<sup>2</sup> See note 1 above, p. 22.

<sup>3</sup> Grabar, note 3 above, p. 469.

<sup>4</sup> Kachenovskii, «Христиан Фридрих Вурм: некролог» [Christian Friedrich Wurm: Obituary], *Русский вестник* [Russian Herald], xx, кн. 2 (March 1859), pp. 136–144.

<sup>5</sup> *Русский инвалид* [Russian Invalid], No. 131 (17 June 1861), p. 538.

tion dedicated to “Trade and International Law”. That suggestion was accepted in the Glasgow proceedings, partly in response to Kachenovskii’s eloquent plea for a forum in which international lawyers could assemble to pursue objectives of mutual interest. The letter was printed as a lengthy footnote in the annual proceedings of the Association.

Either Kachenovskii’s proposal had enduring resonance, perhaps reinforced by the publication of his letter, or he regarded the creation of the new Department within the Association as merely a first stage in a more ambitious undertaking. Kachenovskii is widely regarded as one of those who inspired the eventual formation of the Institut de droit international. Although he did not live long enough to see the Institut come into being, the founders of that organization recalled his contributions to the initiative many years later.

#### *The Translator*

The translator of Kachenovskii’s treatise on the law of prize was Frederic[k] Thomas Pratt (1799–1868), the third son of John Pratt, of Lambeth, Surrey. He became a scholar of Trinity College Cambridge in 1820, B. A. 1821, M. A., 1825. On 8 December 1836 Pratt was incorporated at St. John’s College, Oxford, where he received the degrees of B. C. L. in 1836 and D. C. L. in 1837. He was called as an advocate at Doctor’s Commons on 2 November 1837, where he achieved the offices of Steward (1840–42), Librarian (1842–44); and Treasurer (1847–50)<sup>1</sup>.

<sup>1</sup> See Frederic Boase, *Modern English Biography containing many thousand concise memoirs of persons who have died between the years 1851–1900 with an index of the most interesting matter*

Pratt’s arms, painted on a panel in an oval frame, hung in Doctors’ Commons and later in the chambers of Sir Anthony Wagner, Garter King of Arms, in the College of Arms<sup>2</sup>.

Unduly to date obscure in English legal history, he was a distinguished practitioner of the law of Admiralty and the author of several treatises on the subject:

He followed United States admiralty practice closely, being responsible for bringing Joseph Story’s writings on the subject to the attention of a British audience at the outset of the Crimean War<sup>3</sup>. This was followed by a collection of cases and materials on war contraband<sup>4</sup>, a subject close to Kachenovskii’s heart. These case reports drew upon the papers of Sir George Lee (1700–1758), also a member of Doctors’ Commons. The cases and materials were revised and en-

(privately printed, 1897; reprint ed., 1965), II, col.1620. The privately printed edition was limited to 250 copies. Pratt’s Christian name appears in various sources as Frederic and as Frederick.

<sup>2</sup> See G. D. Squibb, *Doctors’ Commons: A History of the College of Advocates and Doctors of Law* (1977), p. 74, 201.

<sup>3</sup> See Joseph Story (1779–1845), *Notes on the Principles and Practice of Prize Courts; with a Selection of Documents and Forms as Used in the High Court of Admiralty in England*, ed. F. T. Pratt (1854). This book was reviewed by M. N. Kapustin in the third article of a series of four published as «Английские призовые решения 1854 и 1855 годов» [English Prize Decisions of 1854 and 1855], in *Московские ведомости* [Moscow Gazettes], no. 67 (4 June 1855), lit. otd., pp. 267–268.

<sup>4</sup> F. T. Pratt, *Law of Contraband of War: With a Selection of Cases from the Papers of the Right Hon. Sir Geo. Lee and an Appendix, Containing Extracts from Treaties, Miscellaneous Papers, and Forms of Proceedings. With the Cases to the Present Time* (1856). The book is dedicated to John Lee, LL.D., a descendant of Sir George Lee, who made his ancestor’s papers available to Pratt.



larged to take into account the American Civil War<sup>1</sup>.

Pratt's other books dealt with the law of navigation and sea lights, of which there were three different titles<sup>2</sup>.

When and how Pratt came to become acquainted with Kachenovskii is unknown, but they most certainly met during Kachenovskii's visits to London after 1857. Kachenovskii's interests in the law of the sea and admiralty law would have encouraged an acquaintanceship. That they remained in correspondence is evident from the revisions introduced into the English edition of Kachenovskii's treatise on prize, for Pratt clearly supervised their incorporation into the volume

after receiving them from Kharkov via post or by safe hand.

Pratt, however, figures on the title page of the volume as the translator. How he came to have a command of the Russian language remains to be determined, if that was actually the case. It seems likely that Kachenovskii, who had a sound if not superior command of English, may have produced drafts that Pratt edited, at a minimum, and perhaps did indeed translate from the Russian text. Kachenovskii will assuredly have given Pratt a copy of his original dissertation published at Kharkov in 1855.

Pratt died at Upper Norwood, Surrey, on 13 April 1868.

<sup>1</sup> Pratt, *Law of Contraband of War: With the Reported Cases to the Present Time, and a Selection of Unreported Cases from the Papers of the Right Hon. Sir Geo. Lee LL.D, Formerly Dean of the Arches, etc., etc. Together with the Foreign Enlistment Act and the British and French Proclamations Respecting the Observance of Neutrality in the Present War in North America* (1861). This book is substantially the 1856 edition with the addition of new materials, including reliance upon additional doctrinal writings. Kachenovskii, if available to Pratt by then, is not cited.

<sup>2</sup> See Pratt, *An Essay on the Use of Lights by Sea-Going Vessels: and the Rule of the Road at Sea: With Numerous Cases and an Appendix, Including Foreign Ordinances, with Translations* (London, 1857); Pratt, *The New Admiralty Regulations Respecting Lights and Fog Signals: With Notes and References* (1858); Pratt, *A Treatise on the Law Relating to Sea Lights, and the Rule of the Road at Sea: With Numerous Cases to the Present Time: Foreign Ordinances and Translations: With an Appendix Containing the New Admiralty Regulations Respecting Ship Lights and Fog Signals* (1858).