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Interview with Professor Luis Tome

Future of NATO: Significant Insights from 2021Meeting of NATO Ministries of Foreign Affairs

by Dr Rahman Dag

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Shifting the Clausewitzian Paradigm from Battlefield to Political Arena

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Introduction

War and politics are closely interrelated. If it is assumed, as in the case of Clausewitz's famous principle, that "war is a mere continuation of policy by other means... is not merely a political act, but also a true political instrument, a continuation of political commerce, a carrying out of the same by other means" (Von Clausewitz, 1976), then it should be acknowledged that war is a political act. But Foucault inverts Clausewitz's traditional conception of war and says that politics is the continuation of war by other means (Foucault, 2006: 165). Here the emphasis of the discussion on war moves on politics. So, how to limit conflict within the political arena? The question shifts from the concept of armed conflict (i.e., war) to that of political conflict, in which nations confront each other with alternate means such as sanctions, coercive diplomatic efforts, economic warfare, or as a prelude to war (Carisch et al., 2017).

International Dialogue in a Nutshell

Heuser considers Napoleon as the game-changer; until then, the paradigm of war was justified only if it led to peace (Hauser, 2010). The first effort to promote collective security through international cooperation1 is the Concert of Europe (1815), which established a set of principles, rules and practices to maintain a balance between the major powers after the Napoleonic Wars in the 19th century and so avoid war (Rapoport, 1995: 498–500), which is called as a multi-polar international system. This system collapsed after a century, with the beginning of the Great War, but, in the meanwhile, gave birth to several significant international instruments: First Geneva Convention of 1864, which set forth the rules for the protection of the victims of armed conflicts, and the Hague Conventions of 1899 and 1907, which provided the rules of war and the peaceful settlement of international disputes (Northedge, 1986: 10).

When Clausewitz, who had fought in the Napoleonic Wars, writes his famous book On War, Europe already experimented with economic sanctions with Napoleon's Continental System of 1806–1814, directed against British trade (Hauser, 2010: 229). The international community, as it is known today, was not yet born, nor had rules, but that would soon come. Attempts to avoid armed conflicts through diplomatic efforts, including sanctions, were sought by the international society within the

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[1] For the purposes of this essay, the definitions "political dialogue", "international dialogue" and "international cooperation" are equivalent.

League of Nations (LN) during its short life (1920-1946). The inability of the LN to impose and/or enforce sanctions on aggressive countries was the cause of his failure and one of the main reasons for the outbreak of the Second World War in 1939 (Baer, 1976: 3). The League failed to resolve the major political disputes and, finally, failed in its primary purpose, the prevention of another world war (Northedge, 1986: 276–278).

The idea of an international governmental organisation (IGO) to prevent future wars or to limit hostilities through diplomacy, sanctions, and other political means will be resumed after World War II, with the foundation of the United Nations (UN) in 1945 (Marsili, 2020: 15). Chapter VII of the UN Charter describes the means that can be adopted by the Security Council to resolve disputes, including economic, diplomatic, and military sanctions, leaving the use of the military as a means of last resort.

From the Vienna Congress onwards, the international community opened a political channel to avoids armed conflicts. The European Concert, established in 1815, can be considered a proto-IGO, a concept that will be later developed into permanent bodies to facilitate the dialogue between the powers.

A Set of Rules for the International Community: The Law of Nations

To be effective, the international community needs common rules accepted by all its members. The relationships among the international community are regulated by public international law. Natural law provides the basis of the law of nations (*ius gentium* or *jus gentium*), a set of rules that has its source in the *naturalis ratio* and is observed equally among all *gentes* ("peoples" or "nations") as customary law, in "reasoned compliance with standards of international conduct" (Bederman, 2004: 85). Customary law emerges from traditional practice, establishing an instant *opinio iuris* (Simma and Alston, 1988). International law is made up of two components: general practice and "accepted as law" (*opinio juris*). Part of these norms is recognised as fundamental principles of international law from which no derogation is permitted (*jus cogens* or *ius cogens*). The prohibition of genocide, maritime piracy, slaving, torture, refoulement and wars of aggression and territorial aggrandisement are generally considered *jus cogens* (Bassiouni, 1996: 68).

Bouvier explains that, according to Vattel, international law is generally divided into two branches: the natural law of nations, consisting of the rules of justice applicable to the conduct of states, and the positive law of nations (Bouvier, 1948). The latter consists of the voluntary law of nations, derived from the presumed consent of nations, arising out of their general usage; the conventional law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts; the customary law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts between themselves (Bouvier, 1948).

Natural law is embodied in positive international law, especially in the law of war, through the 1907 Hague Conventions. The Martens Clause, introduced into the preamble to the 1899 Hague Convention II, later modified in the 1907 Conventions (Hague IV), refers to the "principles of the law of nations, as they result from the usages established among civilised people, from the laws of humanity, and the dictates of the public conscience" (Ticehurst, 1997).

The Legality of War in Natural Law

Clausewitz understands war almost as a 'natural occurrence', not as something that can be avoided. The problem of the justification of war arises, from a philosophical and political point of view, in the modern era. In the contemporary era, it evolves in the drafting of positive international law, and in the establishment of IGOs, in response to the conflictuality between the nations. Therefore, we pass from a Hobbesian state of homo homini lupus,[2] in which the law of the jungle prevails, to the search for legal means aimed to resolve and prevent disputes between nations, and by doing so, politics would have the floor.

The justification for resorting to war finds its foundation in natural philosophy. Natural right (ius naturale) intersects the natural law theory (lex naturalis), which justifies the supremacy of the strongest – to some philosophers, jurists and scholars, the term natural law is equivalent to natural rights, or natural justice (Shellens, 1959), while others differentiate between natural law and natural right (Strauss, 1968). According to the natural law theory, certain rights are inherent by virtue of human nature endowed by nature, God, or a transcendent source and are universal (Strauss, 1968). These binding rules of moral behaviours originate from nature's or God's creation of reality and mankind.

In *Leviathan* (1651), Hobbes defines natural law as "a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or takes away the means of preserving the same; and to omit that by which one thinks it may best be preserved" (Hobbes, 1651: 100). The author believes that in the state of nature, nothing can be considered just or unjust, and every man must be considered to have a right to all things (Hobbes, 1651: XIII.13). According to the British philosopher, there are nineteen Laws of nature; the first two are expounded in chapter XIV of *Leviathan* ("of the first and second natural laws; and of contracts"), the others in chapter XV ("of other laws of nature"). The first law of nature provides states that every man may seek and use all helps and advantages of war (Hobbes, 1651: 86 et seq.). The second law gives a man the right to self-defence (Hobbes, 1651: 86 et seq.). The third law of nature provides the motivation to rebel against the authority: "whatsoever is not unjust is just" (Hobbes, 1651: 97).

[2] Latin proverb meaning "Man is wolf to man", quoted by Hobbes in the "Epistola Dedicatoria" to *William Cavendish* – 3rd Earl of Devonshire, in the premise to the *De Cive* [1642], p. 73.

The Significance of Political Dialogue and International Cooperation

The concern of how to maintain the international political order as a tool to avoid wars comes from afar. In the Anarchical Society, Hedley Bull traces the story of international relations and explores the issue of the order in world politics. He recalls the deep concerns expressed by Samuel von Pufendorf in De statu imperii germanici, published in 1667 under the pseudonym Severino di Monzambano, about the lack of a strong central power as had been in times of the Holy Roman Empire. However, the French political philosopher Voltaire (1759) describes his times by saying that there was no holy, nor Roman, nor an empire – which would prevent armed conflicts between nations (Marsili, 2020: 17).

In the Law of Nature and of Nations [De jure naturae et gentium, libri octo, 1672] Pufendorf resumes the theories of Grotius and the doctrines of Hobbes and develops the just war theory and ideas on the law of nations (jus gentium). He argues that the state of nature is of peace, not of war as assumed by Hobbes. But, as peace is weak and uncertain, it should be preserved as good of all mankind (Marsili, 2020: 17).

Pufendorf owes much to the thought of Grotius, which can be considered the 'founding father' of the idea of an international society of states, governed not by force or warfare but by law (Marsili, 2020: 17). In De jure belli ac pacis Grotius proposes the adoption of international law, based on natural law, which should be binding on all nations. In Book 1 he deepens the conception of war and of natural justice; he argues that there are three "just causes" for war – self-defence, reparation of injury, and punishment – and tries to fix some rules that should govern the conduct of hostilities.

When the Dutch jurist develops his idea, the ancient system that, until then, had governed international relations within Europe has ceased to be effective (Marsili, 2020: 17). Europe was suffering long wars of religion, including the Eighty Years' War (1568–1648) and the Thirty Years' War (1618–1648), that ended with the Peace of Westphalia in 1648. The Peace of Westphalia strips some powers from the Emperor – doing miss, in fact, a central authority able to mediate and prevent armed conflicts – and establishes a new political order that will lead to the modern international system (Croxton and Tischer, 2002).[3]

Grotius also heavily influenced the work of Vattel on states' rights and obligations and on the development of the 'just war theory', that the Swiss philosopher and jurist illustrates in his masterpiece *The Law of Nations* (1758).

In *Perpetual Peace* (1795, § 354, ff.), Kant accepts a Hobbesian account of the reality of relations among sovereign states ("Hugo Grotius, Pufendorf, Vattel, and others [...], are always piously cited in justification of a war of aggression [...]"). Here, in order to ensure lasting peace, it is necessary that

[3] For a snapshot, see the e-poster History of International Relations at a Glance (Marsili, 2020).

nations establish a system of rules that avoid the outbreak of armed conflict. To achieve this goal, Kant (1795: p. 12, § 354, ff) suggests founding the law of nations on a federation of states, or on what we can currently define an International Governmental Organizations (IGOs) like the UN (Marsili, 2020: 15). The aim is to protect international law and to defend it against threats to international peace and security (Marsili, 2010: 18).

In the space of two centuries, war, as a lawful and natural means to settle the disputes between nations, has given way to political dialogue; in the 16th century, when Machiavelli writes his political treatise The Prince, military and political action were both considered legitimate means to achieve political goals.

Conclusions

If it is true, according to a naturalistic or Darwinian approach, that war is nothing more than the continuation of politics by other means; it is also true that the Clausewitzian paradigm has changed much during the 19th and 20th centuries. Clausewitz was probably anchored to pre-Napoleonic concepts, and this prevented him from seeing the changes taking place. The debate has gradually shifted to politics as a means to prevent or limit wars. Although the political dialogue is not a guarantee to avoid wars, at least it serves as a facilitator of peace; arms became the means of last resort to achieve peace, which should be a common desire for all nations.

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