Draft revised, 27 December 2012

Law of Nations or Perpetual Peace?

Two Early International Theories on the Use of Force

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To be published in Marc Weller (ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford: Oxford University Press, 2013forthcoming.

1. Introduction

This chapter deals with what is considered to be the legitimate use of force in two intellectual traditions that are at the origins of the modern international thought: the law of nations (hereinafter LN) and the perpetual peace projects (hereinafter PPP). These two traditions emerged in the late 16th century and lasted up to the Congress of Vienna, when their late developments gave rise to modern international law on the one hand and to international organisations and peace movements on the other hand. Both the LN and the PPP influenced and were influenced by the emergence and growth of the modern states in Europe (and, progressively, outside the Old Continent) and tackled the question of how these new institutional entities should regulate their mutual relations. As a consequence, the main issue addressed by these two traditions is the question of war and, therefore, the achievement of peace. In considering the development of the LN and the PPP, we need to bear in mind that both these traditions arise and develop in a transitional historical contexts, and often advocated changes that would take place in the following centuries.

In order to account for the different assessment of the recourse to armed force advanced by the LN and PPP, it is important to place the discussion in its proper historical context. This is why in the second section we focus on the emergence of the state as the main player of internal and international politics, progressively becoming the only legitimate authority in declaring war. As war becomes the primary activity of the state, this is also the primary issue discussed in both the LN and the PPP. We argue in the third section that this also leads to a change in the meaning of the term "war", which is no longer used to describe whatever social conflict, but it is limited to the political domain. Conversely, peace is no longer regarded as an internal and spiritual value (a sort of overall harmony), but as a stable political condition. Although LN and PPP share the new way of conceiving war and peace, the two traditions pursue two different aims. While the LN tradition aims at regulating and restraining war (3.1), the PPP tradition aims at banning and abolishing any armed conflict (3.2). After a basic insight – in the fourth section – on the significant developments of the two traditions taking place at the end of 17th century, in the final section we focus on the use of armed force concerning four main occurrences, fiercely debated within both the traditions. The cases we examine are the following: war among states (5.1), the resistance against an oppressive regime (5.2), humanitarian intervention (5.3) and the use of force towards stateless indigenous populations (5.4).

2. The historical context: the rise of the state and of the states system

The constitution of the state as the main player of national and international politics implied a fundamental revision of the concepts and practices of both coercive power and war which dominated since the Middle Ages. The pre-modern era was fundamentally characterised by indirect rule,[1] in which the government of territories relied on a plethora of sub-state actors that were

[1] "Indirect rule" stands for a particular type of administration of territories adopted by state governments that relied on the traditional authorities and local powers of these very territories. On the one hand, this type of rule required fewer

entitled both to impose taxes, to wage war and thus to recruit private armies. The transition from indirect to direct rule occurred over centuries and through violent struggles. Rulers that controlled substantial coercive means tried to draw the boundaries of a secure area within their territories and, to achieve this end, they had to demote or wipe out many of the protagonists of indirect rule. The more successful ones evolved as states' rulers. In this framework, three activities were particularly interrelated:

1) state-making (the erasure of internal rivals),

2) war-making (the attack on external rivals);

3) protection (the defence of internal populations).

Indeed, between the 16th and the 18th century, the new central governments spent many efforts in trying to disarm or co-opt those who could claim to exercise a rival political and legal power. The best way to further this aim was to outlaw the use of private armies by all those who were not formally authorised by the state. Disarmament of non-state agents took place in many different ways, such as collection of weapons, prohibitions of duels, controls over the production of weapons. These strategies made more and more difficult for rivals and rebels to organise forms of counter-power and, in turn, the state progressively became the sole controller of legitimate force. All this led to a radical transformation of the war, which was doomed to become a conflict between sovereign states, that is, the only agents allowed to use force to achieve political goals. Therefore, the very making of war turned into a way to reinforce the sovereignty of the states. War was a means among other means to strengthen the link between the supremacy of the state and the monocratic administration of legitimate force.[2] War became the primary activity of the state.

In an epoch in which armies were mainly comprised of mercenaries and national mass conscription was still unthinkable, warfare prompted states to gather financial and material means by subjugating

investments in terms of material and financial resources by state governments, as traditional authorities were called upon to employ resources of their own; on the other hand, precisely because of this, it granted remarkable power and autonomy to the latter. This reconstruction, as well as the historical framework we propose in our contribution, was originally advanced in Charles Tilly, *Coercion, Capital, and European States, Ad 990-1992*, Oxford: Blackwell, 1992.

the population and force them to provide contributions (taxes) to pay private armed force. The disarmament of civilians brought about the need for state protection, and the former were asked to provide the financial support for the warfare of the latter. In this way, states became the only actors able to protect the population from the attack of external enemies or internal irregular forces. The possibility of waging war entailed at one and the same time the possibility of eliminating internal rivals, subjugating populations and getting financial support.

The role of war turned out to be pivotal well after the 18th century, when the connection between war-making and state-making was collapsing and new players (basically, the nations) were arising. In fact, the costs and risks of using mercenaries – and especially foreign mercenaries – induced states to substitute them with civilians. The emergence of popular armies was stimulated by the French Revolution, which (even more than enlightened absolutisms) favoured the accomplishment of the transition from indirect to direct rule. French revolutionaries provided a model of centralised government that was followed by many other states. As a matter of fact, the *levée en masse* of 1793 transformed war into a national enterprise, instrumental in the construction and reinforcement of the nation-state. This allowed both a greater orientation toward war outside the state territory and the increase of the already extensive apparatus of extraction and control. With the brand new connection between nation-making and war-making, territory, population and state government could be really said to be three faces of the same entity.[3]

In brief, the formation of powerful states increasingly narrowed the limits within which struggles for power occurred. The elimination of the players entitled to use force and wage war led to the formation of a restricted number of states, organised in a system founded not only on the effective control of force and territories, but also on reciprocal recognition. The need to gather recognition from other states also led each political unit to reflect a similar basic structure. Standard models for

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[2] We prefer to rephrase the standard Weberian definition about the "monopoly on the legitimate use of violence" because literary monopoly refers to the existence of a single vendor, while violence is not sold but administered.

[3] In addition to Tilly's *Coercion, Capital, and European States*, a very instructive book on the transition we have discussed so far is Wolfgang Reinhard, *Power Elites and State Building*, Oxford: Oxford University Press, 1996. Reinhard explains the roles of elites in the shaping of the state as a political form and the connection between central and peripheral authorities. A further groundbreaking work in the study of the way the state managed to become *the*

armies and organised bureaucracies favoured a twofold process of collective guarantee of internal peace and an international system of sovereigns states based on rules that over the 17th and the 18th century shaped up to the rhythm of major wars.

3. The origin of international thought

Arising in the historical context sketched above, both the LN and the PPP conceive of states as the main or even the only actors of international politics. In particular, the internationalist thought developed by these two theories aims at regulating or even abolish the use of armed force. Although both the traditions obviously deal also with other types of interstate relationships – such as international trade, diplomatic relations, cross-cultural contacts, dynastic controversies – the opposition between war and peace undoubtedly represents the central issue at stake.

The LN and the PPP break with the earlier traditions that conceived of peace also as a familiar, religious or social problem, and thus fail to distinguish adequately between peace as a private and spiritual value and peace as a public and political condition. These latter traditions are perfectly summarised by two of the most influential tracts of Renaissance political thought, i.e. the *Querela pacis* by Erasmus of Rotterdam (1519) and the *De pacificatione* by Juan Luis Vives (1529).

According to the Renaissance perspective developed by Erasmus and Vives, the conceptual opposite of peace is, in compliance with the ancient and medieval tradition, discord. Quite to the contrary, the LN and the PPP conceive of war and peace exclusively in a strictly political sense. War becomes the only opposite of peace, which in its turn no longer refers to a polyphonic harmony but to the mere absence of armed conflicts among organised and sovereign groups. Beside these similarities, the LN and the PPP also show marked differences, which are highlighted below and summarised in table 1.

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political form of modernity and to irreversibly shape both modern and today's politics is Peter B. Evans, Dietrich Rueschemeyer, Theda Skocpol (eds), *Bringing the State Back In*, Cambridge: Cambridge University Press, 1985.

3.1. The law of nations

The LN was one of the most important attempts at justifying and regulating the rise and consolidation of independent states at the international level.[4] We call this tradition "law of nations" since this is the term already used in English at the very beginning of the 17th century. But the original Latin term *ius gentium* had a different meaning. "Gentes" were not necessarily nations: already in the Roman law, the *ius gentium* was the body of norms used by the Roman Empire to deal with stateless communities or conquered dependences. When the term re-emerged in Europe through the Spanish theorists of the 16th century, such as Vitoria and Suarez, it was meant to deal with a problem already encountered by the Romans. The main concern was to deal with the stateless communities of the New World: the norms to deal with them had to be invented from scratch and could not be left in the cruel hands of Conquistadores only.

A few decades after, these insights started to be formulated in a more systematic manner. Both Alberico Gentili (1588-9) and Grotius (1625) provided comprehensive treaties devoted to the problem of war and peace and their main focus was the European system of states rather than stateless communities. This line of thought further developed with a plethora of treaties, including Pufendorf (1672), Wolff (1748) and Vattel (1758). The last of the *ius gentium* treaties, and the first of modern international law, Martens (1789), was published in the year of the French revolution.[5]

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[4] For a more comprehensive account of the crucial turn from the medieval just war tradition to the modern law of nations, see William Ballis *The Legal Position of War: Changes in Its Practice and Theory from Plato to Vattel*, London: Garland, 1973; John Gitting, *The Glorious Art of Peace: From the* Iliad *to Iraq*, Oxford: Oxford University Press, 2012; James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200-1740*, Princeton: Princeton University Press, 1975; Stephen C. Neff, *War and the Law of Nations: A General History*, Cambridge: Cambridge University Press, 2005; Frederick H. Russell, Russell, F.H. (1975), *The Just War in the Middle Ages*, Cambridge: Cambridge University Press, 1975; Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order From Grotius to Kant*, Oxford: Oxford University Press, 1999; Alfred Vanderpol, *La doctrine scolastique du droit de guerre*, Paris: Pedone, 1919.

[5] Needless to say, in other languages, including French and in German, the old term (respectively *droit des gens* and *Völkerrecht*) is still used as equivalent of international law. In this regard, Kant was the first to note the semantic difference between "ius gentium" and "law of nations": "What we are now about to consider under the name of international right or the right of nations is the right of *states* in relation to one another (although it is not strictly correct to speak, as we usually do, of the *right of nations* [*Völkerrecht*]; it should rather be called the *right of states*, *jus publicum civitatum*)" (Immanuel Kant, "The Metaphysics of Morals", in Hans S. Reiss (ed.), *Kant: Political Writings*, Cambridge: Cambridge University Press, 1991, 165). The texts of LN tradition we are discussing are: Alberico Gentili,

Francisco de Vitoria's writings were crucial to going beyond the prior theological presuppositions of the just war tradition as the only, necessary and ultimate foundations of the law of war. Vitoria makes the first serious attempt at developing a natural law theory able to be applied across religious and territorial boundaries. His conceptualisation of an international society of independent and sovereign communities (with a composite law of nations replacing the canonical concept of universal sovereignty) stands at the beginning of the fundamental shift from the study of interstate relations as a subtle case-based reasoning to the international law as a consistent scientific domain. The first epochal consequence of this new approach is the substantial rejection of both religious differences (and, more generally, of matters of faith) and claims of universal jurisdiction as just causes of war.

Some decades later, Gentili (1588-9) definitely distances his treatise on the laws of war from the classical doctrine of just war. His famous warning – "Let theologians keep silence about matters outside their province"[6] – has been rightly considered as the inaugural address of the modern international law theory. Finally, Grotius, as a theorist of interstate relations, paved the way – most likely beyond his genuine intention – to the complete secularisation of the LN. The revolutionary potentialities of his famous speculative hypothesis – "even if we concede that there is no God . . . or that human affairs are of no concern to him"[7] – would be gradually pushed to the extreme by his successors. Grotius bases his whole theory on two explicit distinctions. The first one is between natural law and volitional law. The second one, strictly (but not completely) connected to the former, is between just war and legal war. Drawing on this crucial distinction, Grotius states that while only one side in a war acts justly, it may be the case that both sides act legally. Despite some degrees of ambiguity and uncertainty, these two distinctions represent the great and definite divide between early modern theory of interstate relations and modern international law.

De Iure Belli Libri Tres, Oxford: Clarendon Press, 1933; Hugo Grotius, *On the Law of War and Peace*, Whitefish (MT): Kessinger Publishing, 2010; Samuel von Pufendorf, *De Jure Naturae et Gentium Libri Octo*, Buffalo (NY): Hein, 1995; Christian Wolff, *The Law of Nations Treated According to a Scientific Method*, Oxford: Clarendon Press, 1934; Emerich de Vattel, *The Law of Nations*, Indianapolis: Liberty Fund, 2008; Georg Friedrich von Martens, *The Law of Nations*, London: Cobbett, 1829.

[6] Gentili, *De Iure Belli*, 57 (translation partially revised).

This new paradigm disposes of the theological universalism embedded in the just war tradition (based on the concept of an all-embracing *Respublica Christiana*) and replaces the canonical concept of universal sovereignty with a composite law of states as a self-sufficient legal regulation apt to be applied across religious and territorial boundaries. According to this new paradigm, sovereign states – conceived as self-constituent, independent and equal subjects – become the primary institutional agents in an interstate system of relations that aims at stabilising and preserving the balance of political power and territorial subdivision on the European continent. In this perspective, the normative rationale of the LN may be essentially reduced to a multilateral and shared insurance against any attempt, either internal or external to the state, to alter *substantially* – that is, beyond a partial and limited border change among two or more countries – the established power relations.

The basic aim of keeping competing nation-states in check and preventing one from overriding the others is pursued by means of a binding regulation of the use of force, with regard to both the legitimate justifications to wage war (*jus ad bellum*) and the limits of legitimate conduct in war (*jus in bello*). As long as it is confined to the field of inter-state relations, war is no longer conceived as an irrational exception that must be justified (let alone a barbarism that must be abolished), but as an expectable rational outcome. This does not necessarily mean that war has to be seen as the normal condition of the international relations and peace, consequently, as nothing but a truce between two wars. Rather, war has to be regarded as a possible and practicable political solution. Accordingly, peace appears no longer as a condition of harmony among human beings or as a moral ideal or as spiritual value, but simply as the valuable condition of a stable political assessment that proves to be able to minimise the risk of unrestrained armed conflicts.

The canon law developed by theologians, according to whom a just war primarily concerns the moral sphere and it is to be mainly viewed as a retributive punishment for an offense, gradually gives way to secularised conceptions of natural law. These latter conceptions were based on the

[7] Grotius, *On the Law of War and Peace*, "Prolegomena", § 11 (translation partially revised).

reason of state, according to which a justified war exclusively pertains to the political domain and needs to be essentially considered as the restoration of a violated right. In this institutional perspective, far from needing to be banned or taken to the extreme, war is to be effectively bracketed and restrained, in order to settle armed disputes among states without destroying the institutional system. The LN therefore aims to make of war a sort of duel among states, in which each of them should accept and respect shared rules. Provided the contenders share these rules, there is no moral judgement on their behaviour.

The basic conviction shared by the states may be also translated in a precept of strategic rationality. According to this interpretation, the maximum gain a state can make – by waging an unrestrained war, say, in order to take over the leadership of the whole European continent – is less relevant than the maximum loss a state can suffer if the structural framework of interdependent relationships and multilateral balance – that represents the institutional core of the LN as a whole – collapses. This "strategic" interpretation of the modern LN is clearly developed in Martens' systematisation in terms of general positive law, in whose opinion the legal foundation of the law of nations solely lies in "the mutual *will* of the nations concerned"[8] and the *jus ad bellum* can be reduced to the state's self-interest. War is consequently enshrined in an institutionalised legal framework that, by formalising the rules of warfare, seeks to limit and restrain the use of arms and the intensity of the perpetrated violence. In the last instance, the *theoretical* growing liberty of the states to wage war goes hand in hand with the *practical* self-limitation of their own freedom of action, in order to preserve the overall political balance among leading powers.

This new institutional model rests on three main pillars:

1) The formal equality of the states – in compliance with the principle of sovereignty – regardless of any material difference (military force, economic power, territorial extension) among them.

2) The respect of neutrality and non-interference in another state's affairs.

[8] Martens, *The Law of Nations*, 48. As Neff rightly points out, "the period might be known more aptly as the Age of Calculation than the Age of Reason" (Neff, *War and the Law of Nations*, 90).

3) The dynastic legitimacy as practical foundation of absolutism. Consequently, there is no third party who has the power and the right to settle a dispute between two (or more) states.

Within the perspective developed by the LN, any sort of conceivable supranational court of last resort would jeopardise the existing political balance as a whole and indirectly the very existence of the sovereign states that support it. Indeed, if a sovereign state came to set itself up as a judge of the political actions carried out by another sovereign state, the former would infringe the legal equality of the latter. Consequently, if the legal equality of the state was violated, and then the political balance was broken, any contractual resolution among states that aims at restraining violence would turn out to be impossible.

From these pillars we can deduce one of the considerations of the LN approach that has often baffled commentators: according to this paradigm, both the opponents could fight a "just war". Once it is granted that any war declared by a sovereign is a legitimate war and that there is no third party legitimate to determine who is right, it follows that both the opponents have true justice on their side (with the sole exception of Wolff[9]). This is the revolutionary conclusion reached by all the theorists of the modern LN: war is claimed to be just on both sides and without distinction. Inasmuch as the *jus ad bellum* prescriptions decline, the restrictions imposed by the *jus in bello* requirements raise in prominence. Indeed, if both sides have the same degree of justice on their side, the overall justice of each of them can be determined, if ever, only by the relative adherence to a proper conduct of the hostilities:

> Thus the rights founded on the state of war, the lawfulness of its effects, the validity of the acquisitions made by arms, do not, externally and between mankind, depend on the justice of the cause, but on the legality of the means in themselves, — that is, on everything requisite to constitute a *regular war* [*guerre en forme*].[10]

[9] Wolff, *The Law of Nations*, 513-5 (§§ 1010-16).
[10] Vattel, *The Law of Nations*, 591.

The discrimination between belligerents and civilians – according to which violence is to be limited to the regular soldiers and, more specifically, to those soldiers who actively take part in the hostilities – is formalised by means of the creation of a national army, that is, military units raised, selected, sustained and controlled directly by the state. The enemy, usually depicted as a criminal, turns to be a *justus hostis*, that is, a legitimate opponent who complies with a substantially shared set of rules of engagement and conduct. There is no room, then, at least theoretically, for an absolute conflict against an enemy regarded as an existential and anthropological other than oneself, who needs to be annihilated because of his distinctive way of life. As Spinoza points out, "it is not hatred but the state's right that makes a man an enemy".[11] Accordingly, the political opponent can be described as someone other than oneself only with regard to her/his political aims, which are by definition occasional and contingent (as proved by the quickly shifting alliances that characterise the Cabinet Wars). The conflict is limited to a single and determined *casus belli*: it is meant to counter and force back a state army, not to ravage and destroy a whole nation.

3.2. The perpetual peace projects

While the LN aims to restrain war, the goal pursued by the PPP is much more ambitious, i.e. the abolition of all wars. This is the reason why in these projects peace is qualified as "perpetual" (Kant's 1795, well known *Toward Perpetual Peace* borrows, as many others, the term introduced more than eighty years before by the Abbot Saint-Pierre). The first projects, those of Crucé (1623) and Saint-Pierre (1713-7), boldly promoted the idea of an International Union composed by all sovereigns. Others, such as Penn (1693) and Saint-Simon (1814) suggested the creation of a European Parliament. Others, such as Bentham (1786-9) and Kant (1795), were less keen to present

[11] Baruch Spinoza, *Theological-Political Treatise*, Indianapolis: Hacklett Publishing, 2001, 180.

clear institutional proposals, but indicated practical and ethical norms that, if implemented, would have led to the abolition of war.[12]

By advancing both moral and utilitarian arguments, the advocates of the PPP stress the point that, for achieving a lasting peace, a radical transformation of the rules of the inter-state system is needed. Accordingly, within the PPP's perspective, the chief cause of war is to be viewed in the anarchy typical of inter-state relations, which do not recognise any authority above the state. The PPP share with the LN the notion of equality of all states as members of the international community, but they go ahead and make an attempt to envisage the institutionalisation of a third party, endowed with an effective power, that is, able to persuade or compel states to accept its ultimate decision on a given issue. This third party can be an International Union composed by ambassadors of all states (as suggested by Crucé, 1623, and Saint-Pierre, 1713-7) or an elected Parliament (as in Penn, 1693, and Saint-Simon, 1814), or independent Courts. Once the establishment of a third party is agreed on, states should accept the *status quo*, and all territorial, political, and dynastic claims should be abandoned. Any change to the interstate system could be achieved through consensus and shared procedures.

The means for settling inter-state disputes is no longer war (however limited it may be), but an international arbitration, to which the parties refer and by whose decision they agree to be bound (by consent or even by force as a last resort, depending on the type of project considered). If not formally authorised by the supranational authority, any use of military force is absolutely forbidden, except in cases of self-defence. In the strong variant of the PPP, developed by Crucé and Saint-

[12] The texts of PPP tradition we are discussing are: Émeric Crucé, *The New Cineas*, New York: Garland, 1972; Abbé de Saint-Pierre, *An Abridged Version of the Project for Perpetual Peace*, Valletta: Midsea, 2009; William Penn, *An Essay Towards the Present and Future Peace of Europe, by the Establishment of an European Diet, Parliament, or Estates*, London: Peace Committee of the Society of Friends, 1936; Henri de Saint-Simon (with Augustin Thierry), "On the Reorganisation of European Society", in Keith Taylor (ed.), *Henri Saint Simon (1760-1825): Selected Writings on Science, Industry and Social Organisation*, New York: Holmes and Meier, 1975; Jeremy Bentham, "Of War, Considered in respect of its Causes and Consequences" and "A Plan for an Universal and Perpetual Peace", in John Bowring (ed.), *The Works of Jeremy* Bentham, vol. II, Edinburgh: Tait, 1838-43; Immanuel Kant, "To Perpetual Peace: A Philosophical Project", in Hans S. Reiss (ed.), *Kant: Political Writings*, Cambridge: Cambridge University Press, 1991. For a comprehensive account of the history of PPP, see Daniele Archibugi, "Models of International Organization in Perpetual Peace Projects", *Review of International Studies*, vol. 18 (1992), 295-317; Murray Forsyth, *Unions of States. The Theory and Practice of Confederation*, Leicester: Leicester University Press, 1981; Sylvester J. Hemleben, *Plans for World Peace through Six Centuries*, Chicago: Chicago University Press, 1943; Christian L. Lange, August

Pierre, the newly formed International Union should even have the power to administer sanctions against states that do not comply with its decisions.

The PPP model rests on the same three main pillars we mentioned above as regards the LN model. Yet they are differently conceived and deeply revised in order to account for a very different institutional setting:

1) The formal equality of the states is strongly radicalised. Indeed, the legal statute of the supranational assembly, by enforcing the rule "one state, one vote" (at least in the strong variant proposed by Crucé and Saint-Pierre), turns the formal equality of the states into a substantial parity, ensured by an institutional practice. Then, each state has to count for one and no state for more than one, regardless of any material difference (military force, economic power, territorial extension). The UN General Assembly and many other international organisations endorsed this principle. The early PPP (Crucé and Saint-Pierre, but also Penn) also dare to identify the core players of the international system: with the purpose of indicating the states that should become members of the International Union, for the first time in the international theory they do provide a list of the existing European states.[13]

2) The respect of neutrality and non-interference in another state's affairs.

3) The dynastic legitimacy as practical foundation of the absolutism inasmuch it is necessary to strengthen the pacification of the European region. But on this point the PPP model is even more radical than the LN one. While the latter sees the reconfiguration of state borders as an expected and natural outcome of international conflicts (and, more generally, of interstate relationships), the former intends to maintain the status quo at all costs. Any secession, annexation or fusion among states – as well as any change in borders – is explicitly forbidden, unless they are agreed upon by *every* member of international community.

Schou, *Histoire de l'internationalisme*, Oslo: Aschehoug, 1963; Jacob ter Meulen, *Der Gedanke der Internationalen Organisation in seiner Entwicklung*, The Hague: Nijhoff, 1968.

[13] It should be noted that no LN text provides a list of states. This is because within this tradition it is accepted that states could merge, could be conquered or to be created *ex novo*. In the LN it is force that provides the legitimacy to become members of the international community. On the contrary, in the PPP tradition, the system of states is somehow

However, apart from the different conception of the unavoidability of armed conflicts, the LN and the PPP agree on the fact that the right to wage war in no way pertains to non-state actors. In both the traditions, any non-state subject who is willing to resort to armed force faces condemnation as an outlaw actor and is declared as an enemy of the public peace and the social order. Non-state subjects may be internal or external to the state. Among the violent conflicts carried out by intrastate subjects, the most relevant for our purposes are private conflicts and civil rebellions fought by duellists, knights, nobles, or cities. Among the violent conflicts carried out by extra-state subjects, the most important are pirate wars and colonial wars. Any armed conflicts waged by the above non-state actors (just as the armed repression against them conducted by the state or by a supranational union) are no longer defined as war. War is only *interstate* war. In the first book of *The Social Contract* Rousseau perfectly sums up the state-centred nature of war we are discussing:

> War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation.[14]

Eventually, the PPP make a suggestion addressed to the rulers that it is rather simple: it is in their interest to establish an International Union since this will reinforce their internal sovereignty. Once the International Union will be established, the rulers of other states will refrain from instigate or support internal opponents, up to the point that, in the strong version of Crucé and Saint-Pierre, the joint forces of the members of the Union could potentially be used to repress rebels and rebellions. The price to be paid is, however, to give up the key aspect of external sovereignty, namely the legitimacy to wage war without any further authorisation. But this is precisely the legitimacy that

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"frozen" and changes could be achieved by consent only. For this reason, they can even dare to list the political players that would deserve to be part of the inter-state system and, therefore, of the international organisation.

[14] Jean-Jacques Rousseau, *The Social Contract*, New York: Cosimo, 2007, 19-20.

the LN wishes to guarantee to states' rulers and which ultimately marks the core difference between the two traditions.

4. Evolutionary lines of law of nations and perpetual peace projects

What are the evolutionary lines of these two traditions? They emerge at the end of the 16th century and evolve in relation to the expansion of the states in the 17th and the 18th centuries. Though parallel, they cannot be said to be perfectly coeval: if the LN reaches its acme in the 17th century, the most significant advocates of the PPP belong to the 18th century. In reality, this temporal gap tells us a lot about the way the European system of states evolved: while still being in its infancy in the 17th century, in the 18th century it has completely developed. In the 17th century, on the wake of the development of the modern LN, the first requirement is that of granting states as much autonomy as possible and then the possibility of deciding when to resort to violence. In the 18th century, many European states have already developed and the principle of legitimate violence has eventually triumphed, to such an extent that it becomes conceivable to envisage at least a limitation of external sovereignty through the prohibition of a unilateral use of force, as suggested by the PPP. The influence of the LN that characterises the *Jus Publicum Europaeum* declined at the end of the 18th century. After the French Revolution – which in 1793 introduced the mass conscription (*levée en masse*, literally "mass uprising") – and the Napoleonic wars, the revolutionary ideals and the subsequent nationalistic ideology hallmarked the end of the *guerre en forme* as the exclusive paradigm of modern warfare. Collective goals other than the state security (mainly the demand for liberty as non domination and the quest for political equality) are gradually considered not only as legitimate reasons for waging war, but often as the only justifiable ground for resorting to violence. Such a shift celebrates the end of both the absolutist right to state's self-determination and the corresponding duty of non-interference in another state's affairs. As Clausewitz (1832) points out,

by reviewing his own previous idea on the nature of modern armed conflict, the absolute war – that is, a war with no restraints – is not merely a "a pure concept" (book I) but also a "real possibility" (book VIII):

> Since Bonaparte, then, war, first among the French and subsequently among their enemies, again became the concern of the people as a whole, took on an entirely different character, or rather closely approached its true character, its absolute perfection. There seemed no end to the resources mobilised; all limits disappeared in the vigor and enthusiasm shown by governments and their subjects. Various factors powerfully increased that vigor: the vastness of available resources, the ample field of opportunity, and the depth of feeling generally aroused. The sole aim of war was to overthrow the opponent. Not until he was prostrate was it considered possible to pause and try to reconcile the opposing interests.[15]

It is precisely at the end of the 18th century and during the Napoleonic wars, instead, the PPP flourish and often transforms itself from the rigid and somehow conservative approach that it got from the early authors such as Crucé and Saint-Pierre to an attempt to generate a new legal framework for Europe based on peace and human rights. In France and Germany – the countries more involved in conflicts – many thinkers debate on the possibility of a peace which may be different from a mere truce. In the eyes of diverse revolutionaries such as James Madison (1792) and Johann Fichte (1796), the PPP appear as a mutual warranty for sovereigns to keep their arbitrary power[16]. In the new historical context, these authors grasp the critical analysis of the early PPP already developed by Leibniz (1715), Voltaire (1761) and, above all, Rousseau (1758-9)[17]. Based on the old tradition, in that period the union between the adjective "perpetual" and the noun

[15] Carl von Clausewitz, *On War*, Cambridge: Cambridge University Press 2007, 239.
[16] See James Madison, "Universal Peace", in Marvin Meyers (ed.), *The Mind of the Founder: Sources of the Political Thought of James Madison*, Hanover: Brandeis University Press, 1981; Johann Gottlieb Fichte, "Zum ewigen Frieden. Ein philosophischer Entwurf von Immanuel Kant", in Id., *Gesamtausgabe*, vol. III, Stuttgart: Bayerischen Akademie der Wissenschaften, 1962. Of the same opinion is also Hegel, who asserts that "Kant proposed a league of sovereigns to settle disputes between states, and the Holy Alliance was meant to be an institution more or less of this kind" (Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right*, Cambridge: Cambridge University Press, 1991, 362).
[17] See Gottfried Wilhelm von Leibniz, "Observations on the Abbé de St. Pierre's *Project for Perpetual Peace*", in Patrick Riley (ed.), *The Political Writings of Leibniz*, Cambridge: Cambridge University Press, 1972. On the controversy between Voltaire and Saint-Pierre, see Merle L. Perkins, "Voltaire and the Abbé de Saint-Pierre on World Peace", *Studies on Voltaire and the Eighteenth Century*, vol. 17 (1961), 9-34. Finally, see Jean-Jacques Rousseau, "Abstract on Monsieur l'Abbé de Saint-Pierre's Plan for Perpetual Peace" and "Judgement on Perpetual Peace", in Stanley Hoffman, David P. Fidler (eds), *Rousseau on International Relations*, Oxford: Oxford University Press, 1991.

"peace" is deemed to be the way to ward off war, but also to devise an organisation of the European society based on the respect of individual rights and the autonomy of peoples – in a word, on those values of justice and freedom which had been announced by the French and American revolutions. This requires a rethinking of some of the basic presuppositions of the PPP of the pre-revolutionary era.[18]

But at the end of the Napoleonic wars, the situation drastically reverses. The idea of a perpetual peace, brokered by permanent institutions, is definitely put aside. The Congress of Wien, however, recovers the conservative aspects of the projects elaborated by Crucé and Saint-Pierre: no formal International Union was needed to allow the powers of old Europe to mutually help each other against any further revolutionary movement. The plea of Bentham and Kant for transparency in international affairs is put aside, as well as the idea that elected governments are preconditions for inter-state peace. But even such a loose agreement required recognition to foster diplomatic relations; the law of nations gradually developed into international law providing to inter-state relations the much needed juridical framework. But this would be another story to tell, the story of the 19th and 20th centuries.

5. The use of violence

As for the use of violence there are salient inner differences within each tradition. In particular, the following sticking points deserve to be mentioned:

- What are the reasons that authorise a state to declare war to another state? (5.1)
- Do state sub-groups have the right to resist to the state authority? (5.2)
- Can a third state have the faculty to encourage and support the resistance of sub-groups of another state? (5.3)

[18] Some of the key texts of this period are collected in Anita Dietze, Walter Dietze (eds), *Ewiger Friede? Dokumente einer deutschen Diskussion um 1800*, Leipzig: Kiepenheuer, 1989.

- When and how can a state make use of violence towards indigenous populations who are deemed to be stateless? (5.4).

5.1. The legitimacy of waging war among states

According to the PPP, once the International Union has been established, the legitimacy of a state's waging war against another state vanishes. Every dispute must be brought before the International Union. In the strong variant, that of Crucé and Saint-Pierre, the Union also has a coercive power granted by the armies of member states. If a state continues to ignore its precepts, the International Union, when any attempt at mediation has been ruled out, must take it upon itself to restore legality by way of a joint military intervention. In the end, this variant is not so far from what is prescribed by the Charter of the United Nations, in that the Military Staff Committee should have had precisely this function. As a matter of fact, quite few are the circumstances in which the Security Council resolutions have led to joint military interventions against a state which continue not to comply with them: the most important case is the intervention in Iraq in 1991-2 to restore Kuwait's sovereignty. In the weak variant, advocated by authors such as Penn (1693), Kant (1795) and Saint-Simon (1814), the International Union lacks coercive powers and is conceived as an arbitration institution to which the parties can bring disputes. In both cases, the PPP require states to relinquish an important component of their own sovereignty, the external one.

In the LN approach, any war waged by a state is, by that very fact and at least prima facie, legitimate. Since the armed conflict is considered the ultimate but still necessary means for organising interstate relations, war can no longer be regarded as an outlaw solution. From the 16th century onwards, the paradigm of just war is thus eventually replaced by the theory of legitimate war. Because of this shift, the criterion of just cause is removed, or better, is included within (and effectively reduced to) the key criterion of legitimate authority: there are no longer just and unjust wars but only legitimate and illegitimate wars, that is, wars waged (or not) by the only proper

authority, i.e. the state. Accordingly, even though the three classical just causes of war – self-defence, claim of goods or rights taken or infringed in an illegal way, and (less generally accepted) the punishment of the aggressor – are reaffirmed, the substantive principles of the *jus ad bellum* (just cause, comparative justice and right intention) become secondary, while its procedural criteria (last resort, legitimate authority and proper declaration) are given more prominence. In order to be considered as lawful, at least from a legal point of view (lawful conflict), a war has only to fulfil a set of procedural steps, regardless of any substantive criterion concerning its justice – in some treatises considered indeterminable, in others irrelevant – other than the preservation of the overall balance of power among (leading) states. To put it otherwise, the only – but absolutely pivotal – actual limit set to the resort to war is a functional (or structural) constraint and not a normative requirement.

5.2. The right to resist

According to the PPP, above all in the strong variant of Crucé and Saint-Pierre, subjects have no right to resist. Indeed, were they intent on combating the sovereign, the International Union would even have the task of intervening militarily in order to restore the *status quo ante*. This is, on the other hand, the argument that Crucé and Saint-Pierre mostly advance so as to persuade sovereigns into creating the new institution: this would even corroborate their internal power, since it would prevent not only possible wars of aggression, but also inner rebellions. The armies of the Union would be called upon not only to intervene against states that violate international norms, but also to punish the rebellions of subjects.

Obviously, this position was doomed to be blamed by those who, even though in favour of peace, believed to be necessary to confer legitimacy on the reasons of subjects. As we have seen above, Voltaire, Rousseau and Madison fiercely criticised Saint-Pierre's argument, while Leibniz and

Saint-Simon (1814) remained sceptic. Rather emblematic is Kant (1795) position: although in his Project there is no reference to a coercive force of the Union and although he aims at a reduction of force (as it can be evinced, for instance, by the request for a progressive abolishment of permanent armies), it is precisely in this writing that he, departing from his disciples, takes stand against the right of a people to fight a revolution.

Nonetheless, it is worth considering that, unlike for example what happens in the LN, in the PPP there is no clear-cut distinction between the violence exercised among states and civil wars. In principle, the rejection of violence entails both domestic and international politics.

The question of the right to revolution throughout the history of the LN can be roughly summarised by the following trend: the more the states extend their control over society and strengthen their mutual relations within the interstate system, the more the legal theorists of the LN are prepared to endorse the right to revolution. At the very beginning of the LN tradition, there is fierce opposition to the right to revolution: Balthasar de Ayala (1582), for example, reaffirms the medieval relationship between the crime of rebellion and the crime of heresy. Yet, the classical condemnation of both the groups by the medieval and early modern canonists is in some way reversed: the infidels acquire the legal status of opponents, whilst the rebels and any other non-state subject are not only declared outlaw but also considered as immoral people (echoed few years later by Gentili, who affirms that the main incentive to cruelty in war is rebellion[19]). By discussing the status of rebels, Ayala affirms:

> Now rebels ought not to be classed as enemies, the two being quite distinct, and so it is more correct to term the armed contention with rebel subjects execution or legal process, or prosecution, and not war. […] For the same reason, the laws of war and of captivity and of postliminy, which apply to enemies, do not apply to rebels, any more than they apply to pirates and robbers (these not being included in the term of "enemy"). […] it follows that a war waged by a prince with rebels is a most just and that all measures allowed in war are available against them […].[20]

[19] See Gentili, *De Iure Belli*, III, 7.

[20] Balthasar de Ayala *Three Books On the Law of War And on the Duties Connected with War And on Military Discipline*, Washington, DC: Carnegie Institution of Washington, 1912, 11-2. For the comparison between rebels and infidels, see § 23, significantly titled "Rebellion a most heinous offense".

Also Grotius continues to deny any right to take arms against a sovereign, even if the latter is patently unjust. According to the Dutch jurist, even if a sovereign, by provoking her/his people to despair, "loses the rights of independent sovereigns and can no longer claim the privilege of the law of nations", the people have no right to take up arms against her or him:

> Admitting that it would be fraught with the greatest dangers if subjects were allowed to redress grievances by force of arms, it does not necessarily follow that other powers are prohibited from giving them assistance when labouring under grievous oppressions. . . . The impediment, which prohibits a *subject* from making resistance, does not depend upon the nature of the *occasion*, which would operate equally upon the feelings of men, whether they were subjects or not, but upon the character of the persons, who cannot transfer their natural allegiance from their own sovereign to another.[21]

Yet, as we said above, Grotius's misgivings as to the right of resistance counts as an exception which would not be sustained for long. Indeed, in 1690 John Locke, who is still the theorist of the "federative power" as a separate political power, advocates the right of resistance against any oppressive and illiberal government. Finally, on the other extreme of the continuum we are sketching, few decades before the French revolution, Vattel (1758) speaks of the right to resist as an "indisputable right":

> But this high attribute of sovereignty [right belonging to the prince] is no reason why the nation should not curb an insupportable tyrant, pronounce sentence on him (still respecting in his person the majesty of his rank), and withdraw itself from his obedience.[22]

What is the reason of this unexpected shift from a total denial of a right to revolution, when the states are still in the making, to its explicit recognition, when the states are almost at the peak of

[21] Grotius, *On the Law of War and Peace*, 227.
[22] Vattel, *The Law of Nations*, 104.

their development? In our opinion, the reason is to be found in the degree of systemic development reached by the interstate system in the 18th century. On the one hand, the internal stability of every member of the interstate system turns out to be more important, for the overall balance of the international domain, than the specific form of government and the dynastic continuity of a given state. On the other hand, the foreign policy of a state appears to be more and more independent of its form of government (which, therefore, whatever this may be, does not represent a systemic threat).

5.3. Humanitarian intervention

Directly tied to the right to resistance is the humanitarian intervention. In the strong variant of the PPP the very same possibility of a humanitarian intervention is by no means taken into account: the fact that a sovereign may be cruel to her/his subjects and that subjects may have good reasons to resist goes well beyond the perspective of Crucé and Saint Pierre. Seldom is this issue tackled in the other perpetual peace projects: Rousseau, Bentham and Kant are aware that sovereigns can be brutal to their own subjects, but no one of them thinks that the solution relies on an external intervention. In brief, the PPP, in their strong version, are against humanitarian intervention and, indeed, support an intervention aimed at suppressing revolts; in the weak version, they simply disregard the problem.

There is no generally shared opinion about humanitarian intervention among the theorists of the LN. Grotius is undoubtedly the staunchest advocate of the legal right – not the moral duty – of an intervention on behalf of the oppressed. In his argument, the question of justice shifts from the discussion about *what is right* to the problem of *having a right*. As it has been noticed, Grotius's firm endorsement of this right seems to be at odds with his conviction that subjects cannot take up arms against an unjust sovereign even in the toughest situations: basically, he grants external

players, i.e. third states, endowed with sovereign power, the right that he denies to the internal players, i.e. the subjects, that do not have a sovereign power. It seems however contradictory that the external players should risk their lives when the internal players, those that suffer most from the actions of an unjust sovereign, should not do the same.

On this matter, Vattel's position is highly significant because he successfully manages to provide a justification for humanitarian intervention that is compatible with the respect of state's sovereignty: only when the oppressed subjects have started an open rebellion that effectively bring into question the authority and the power of the incumbent sovereign, can a third state consider interfering. And it is up to the third state to decide whether to intervene in favour of the incumbent authority or the challenging authority. In the chapter titled "Of the right to security, and the effects of the sovereignty and independence of nations", Vattel writes:

> It is an evident consequence of the liberty and independence of nations, that all have a right to be governed as they think proper, and that no state has the smallest right to interfere in the government of another. […] It does not then belong to any foreign power to take cognisance of the administration of that sovereign, to set himself up for a judge of his conduct, and to oblige him to alter it. […] But if the prince, by violating the fundamental laws, gives his subjects a legal right to resist him – if tyranny becoming insupportable obliges the nation to rise in their own defence – every foreign power has a right to succour an oppressed people who implore their assistance. […] when a people from good reasons take up arms against an oppressor, it is but an act of justice and generosity to assist brave men in the defence of their liberties. Whenever therefore matters are carried so far as to produce a civil war, foreign powers may assist that party which appears to them to have justice on its side.[23]

For our purposes, perhaps the most interesting arguments are those advanced by Martens (1789). In the section titled "Of the Rights of each State relative to its own Constitution", he writes:

> The internal constitution of a state rests, in general, on these two points: viz. on the principles adopted with respect to him or them in whose hands the sovereign power is lodged, not only at present, but for the future also; and on those

[23] Vattel, *The Law of Nations*, 289-91.

adopted with respect to the manner in which this sovereign power is to be exercised. Both these depend on the will of the state, foreign nations having not the least right to interfere in arrangements which are purely domestic. However, there are some exceptions to this rule. In case a dispute should arise concerning either of the points above-mentioned, a foreign power may: 1. offer its good offices, and interpose them, if accepted; 2. if called in to the aid of that of the two parties which has justice on its side, it may act coercively; 3. it may have a right, from positive title, to intermeddle; and 4. if its own preservation requires it to take a part in the quarrel, that consideration overbalances its obligations to either of the parties.[24]

Indeed, Martens seems to run into great difficulties in finding a viable solution to the question of humanitarian intervention. On the one hand, he is suspicious of a right that allows one state to enforce the rights of subjects in another state, because of the risks a horizontally organised state system may meet in recognising it. On the other hand, Martens does not seem completely indifferent to the questions of when, if ever, a foreign state can legitimately intervene on behalf of the faction that it considers as the morally legitimate opponent.

5.4. The use of force towards stateless indigenous populations

It is at the very beginning of the LN that the question of non-state communities (generally identified with the American aborigines) is more comprehensively discussed. Already in 1539, Vitoria set the agenda of an emerging problem that, unsurprisingly, had not been addressed since the end of the Roman Empire in his two essays *Relectio de indis* (On the American Indians) and *Relectio de iure belli* (On the Law of War).[25] Even though Vitoria judges the Spanish dominion in America as ultimately legitimate, he states that the legitimation at issue cannot be claimed by referring to just causes of war other than those concerning any war among Christian states. Vitoria affirms that aborigines should be considered as much human as any other people and therefore should keep a

[24] Martens, *The Law of Nations*, 69-70.
[25] Anthony Pagden, Jeremy Lawrance (eds), *Vitoria: Political Writings*, Cambridge: Cambridge University Press, 1991.

basic right to their land, sovereignty and resources. Yet, this "humanisation" of the American natives goes hand in hand with a new actual discrimination. Indeed, the reasons that, according to Vitoria, represent a legitimate title for the occupation of the American land by the Spain are in no way the same that might justify, in his view, a war waged by a European state against another European state (above all, the freedoms of trade and religion across boundaries).

The flawed and hypocritical sophistry systematised by Vitoria will be followed, with very few differences, by Gentili, Suarez and even Grotius and Pufendorf, when they refer to (what they consider to be) the *contra naturam* (such as human sacrifices, zoophilia and sodomy) customs and practices adopted by the aborigines (often compared again to the beasts) as just cause for war. Needless to say, none of these European thinkers ever dared, for example, to discuss the burning of witches in European cities and the other practices of Christian Inquisition as just case for war.

Far from being merely the first (and more cautious) author of an enlightened series of "legal critics", Vitoria is actually the sole theorist who recognises some of the state characteristics to the American land and its native people. The further we proceed into the history and consolidation of a more stable system of interstate relations in Europe (at least until the second half of the 20th century), the more fiercely the would-be statehood of any native or intrastate community is denied (and consequently the would-be injustice of any past and possible war against them). It is certainly highly significant that the LN, the main and well recognised approach of international norms, at the peak of colonial expansion substantially ignores the relationship of European states with the stateless non-European communities.

Indigenous peoples are not particularly addressed in the PPP tradition: this was mostly a European project designed for Europeans. There are, however, significant exceptions and one of them is the very first PPP by Crucé. In this work, he envisages a genuinely world Assembly of states in which no nation should be excluded. But he does not enter into the details of who should represent the peoples that still lack a state.

When subsequent projects, and most notably those of Penn and Saint-Pierre, started to identify the members of the international community by naming each of them, they ignored those outside Europe. The most significant case is Penn himself: the founder of Pennsylvania, the man who undertook a brave and avant-garde attempt to establish peaceful relations with the American aborigines, did not suggest involving neither non-European peoples nor even the inhabitants of the American colonies into his own European Parliament.

A significant exception is represented by Kant: following Vitoria, he forcefully condemns the fact that European states and their companies subjugate and conquer other continents, and the fact that these territories are considered devoid of any right. Kant, on the contrary, assumes that the Europeans should grant to these populations the same rights that they grant to each other.

6. Conclusion

In this chapter, we have sketched the main similarities and differences between two important traditions that have contributed to the foundation of modern international theory, the LN and the PPP. Both traditions reflected the rise of the new states but they also anticipated in their theorising an international system that becomes dominant only after several decades. In fact, they substantially contributed to provide legitimacy to the modern system of states.

In spite of the important variations encountered within LN and PPP, we have also emphasised the core distinctive factor among the two traditions as they are summarised in Table 1. But one core distinctive element would be enough to distinguish among them: the legitimacy of war in interstate relations. While the LN never attempt to get rid of war, but just to regulate it, the PPP has a much more utopian approach and aims to abolish interstate war all together.

We have also noted that, although the two traditions develop almost in parallel from the 17th to the 18th century, there is a significant difference: the LN splendour occurs in the 17th century, reflecting the need of the fresh new states to be guaranteed total autonomy. As soon as this aim was somehow

historically achieved, another issue rose in the international relations agenda, namely the possibility to have an institutionalised system of states based on shared procedures and cooperation.

There is, however, a baffling factor: the PPP and the LN basically ignored each other. In front of the same historical events and the same subject, PPP and LN were unable to confront each other, neither to stress the points of agreement nor to emphasise the disagreements. Very seldom do the authors of one tradition cite the authors of the other tradition, confirming that it is often easier to ignore opposite views rather than to deal with them. Can we assume that the authors of the PPP did not know those of the LN and vice versa? Not quite: Kant, for example, knew very well most texts of the LN, but he calls three of their main representatives – Grotius, Pufendord and Vattel – "sorry comforters", one of the most derogative term he ever used. Not even Rousseau (1756-8), who was a most careful reader of Grotius, found it necessary to discuss his views on peace and war when summarising and criticising Saint-Pierre's Project. On the opposite, within each tradition there is a careful attention to the legacy left by the ancestors.

Both the LN and the PPP have been very influential in the subsequent development of international theory and practice. The LN is generally considered the precursor of international law and almost all treaties of the discipline are introduced by a chapter devoted to these forerunners. We argue that the PPP have also been equally influential in inspiring the creation of international organisations, although they are often neglected. They have also inspired a distinctive stream of peace movements, namely institutional pacifism.

Lastly, we have tried to identify what each of this tradition authorises in the use of force. We have identified four different categories: 1) interstate wars, 2) the right to resist to state authority, 3) what in modern terminology has been called humanitarian intervention, and 4) the use of force towards stateless populations. A clear distinction between LN and PPP does emerge concerning the first category: the main aim of the LN is to regulate inter-state wars, while the main aim of PPP is to abolish them. This distinction suffices to classify the international theorists of the 16th, 17th and 18th century into one of the two traditions.

There is a much less clear-cut distinction across LN and PPP in the other three categories here considered: authors belonging to the same tradition may hold very different positions. In particular, LN theorists have different views on the right to resist, with Grotius leading those that believe that subjects should never resist their sovereign and Vattel leading those that extent to international theory Locke's lesson in defence of the right to resist.

In most cases PPP deny the right and even more the duty of a state to practice humanitarian interventions; when this is not explicitly said, there is a lack of consideration of the problem. Each LN author, on the other hand, provides a somehow different list of the legitimate reasons to recur to humanitarian intervention.

Concerning the use of force toward stateless communities, this is a problem ignored by LN and PPP. Only the early theorists of both traditions, such as Vitoria for the former and Crucé for the latter, acknowledge the existence of non-European peoples. Kant provides forceful criticism of colonial practices of European states and companies, but he is an exception among international theorists. The others tend to ignore the problem: at the peak of colonial expansion in the 17th and 18 centuries, international theorists were mostly concerned with the European system of states rather than on how the very same European states were dealing outside Europe.

Table 1. A comparative overview between Law of Nations and Perpetual Peace Projects

	Law of Nations	**Perpetual Peace Projects**
Method of enquire	Rational and realistic	Pleading and utopian
Attitude to War	Regulated/restrained (just/legitimate on both sides, on the basis of multilaterally recognised procedural criteria)	Banned/abolished (unjust/illegitimate on both sides, on the basis of generally shared substantial criteria)
Concept of peace	Contextual, transitory and negative (peace as mere truce between two wars)	Universal, perpetual and positive (peace as enforcement of a lasting well-ordered society)
Sovereign institution (legitimate authority for the jus belli)	State sovereignty (lack of a third party) Strong distinction between domestic and foreign politics	Supra-state sovereignty (effectiveness of a third party) Weak distinction between domestic and foreign politics
Members of international community	States represented by their sovereigns or diplomatic representative	Usually, states represented by their sovereigns. In some projects, delegates exercising an independent mandate
Interstate relationships	Bilateral	Multilateral
Forms of regulations of interstate relationships	Treatises, voluntary respected by member states, with no coercive powers	Permanent and indissoluble international organisations, sometimes with coercive powers
Method to address controversies	Diplomatic negotiations or armed conflict	Refereeing to international organisations (either Courts or inter-governmental institutions)
Changes to the inter-state system	Allowed as a consequence of war, but limited and regulated by the LN	Strictly forbidden unless it is achieved through consensus.
Relationship with political reality	Rational, aiming at the regulation of existing relationships	Utopian, aiming at the creation of new relationships
Authors	Mostly legal theorists, often working with Courts as legal adviser and lawyers, authors of systematic and comprehensive treaties (predominantly written in Latin), with strong Academic content	Mostly philosophers, authors of advocacy papers (written in modern languages), designed to support a cause rather than to define content and boundaries of a discipline