The Influence of Hugo Grotius' Thoughts on the Contemporary Law of Armed Conflicts

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Abstract

There are numerous rules and principles in the law of armed conflicts today that are reflected in the Charter of the United Nations, the Geneva Conventions and other international instruments. The role of valuable notions of theorists cannot be denied. Hugo Grotius is one of the theoreticians in the sphere of "Jus ad bellum" and "Jus in bello" who has attempted to regulate wars. In this study, we will use a descriptive-analytical approach to answer the questions of what Grotius's view about state sovereignty and the Just causes to start war was, and also how much the principles and rules of contemporary law of armed conflicts has been affected by Grotius' thoughts. Grotius considers the law of nations to be based on the consent of states, and just causes of war, in his view, include defense, compensation, and punishment. The principles that exist today in the law of armed conflicts, such as the principles of proportionality and necessity, sovereign equality of states and non-interference, as well as humanitarian intervention in the event of a gross violation of human rights, have existed in Grotius's thought. Also, the human behaviors that require the humanitarian rights of states to adhere to the general principles of humanity in wars are to some extent influenced by his ideas.

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Introduction

The law of armed conflicts in the present era is originated from customary rules and thoughts of various thinkers attempted to justify the start of war, to humanize it, and to regulate it in general. The theory of Just war is a theory that has existed since ancient Rome and over the centuries philosophers such as Cicero, St. Augustine, St. Thomas Aquinas, Gentili, Suarez and Vitoria have each expressed their characteristics from their own point of view. These philosophers have distinguished between Just war and unjust war. In this view, a Just war is a war that has legitimate causes, its initiator has good faith, there are sufficient reasons for the necessity of starting it, and finally, appropriate tools and methods should be used in war. However, any of these theorists has attributed Just war to certain characteristics; For example, St. Augustine believes that, it is a Just war in which the initiator of war has divine legitimacy and whose goal is to administer justice and establish a monotheistic and peaceful society; Just war also has three characteristics: morality, laws (natural and temporal) and commonwealth.

In general, the theory of Just war has been an attempt to bring morality into wars in order to prevent the tragic events that occurred in wars. This theory has been concerned with Jus ad bellum and *jus in bello*, and has sought, in a way, to justify the beginning of war, and secondly, to reduce the atrocities, imposed on war victims, mostly women, children and civilians in general; The issue that is now referred to humanitarian law.

One of the most famous thinkers developed the theory of Just war is Grotius, who has described its characteristics in his famous book, On the Law of War and Peace.[1] He was one of the most famous jurists and politicians of his time whose ideas have been the dominant view of international relations in Europe for two centuries. His ideas had such impact on contemporary international law that, he's been dubbed the father of modern international law. The views inspired by the school of natural law, which Grotius sought to secularize by separating it from the religious view of natural law, are now found in many of the rules of international law, either in the Charter of the United Nations or instruments concerning armed conflicts.

Although nowadays, Kant's ideas on international law and human rights prevail over anything else, there are still many signs of the Grotian tradition. About the subject of this study, an article entitled "A review of the law of war and peace from the viewpoint of Hugo Grotius" has been written, which examines Grotius' viewpoint on the relation between natural law and positive law, war and morality, and also human will and natural justice and has described several of his views. This article gives a brief overview of Grotius's life, examines his basic views on the state sovereignty and the law of armed conflicts and then answers the question of what place Grotius's ideas have in the law of armed conflicts today.

[1] De jure belli ac pacis

A. A Brief Overview on Grotius' Life and Thoughts

Undoubtedly Hugo Grotius is one of the most famous scholars of international law who has presented prominent ideas in the regulation of relations between states. In this section, we will first give a brief overview of his life and then describe some of his thoughts on natural law, state sovereignty and Just war.

Grotius was born in 1583 in Delft, Netherlands.. His father was a knowledgeable man who had studied at the University of Leiden and later became the dean of the university. Grotius was educated by his father and family of an early age and showed a great genius; He entered the University of Leiden at the age of 12 and studied law and philosophy. After graduation, he went to Paris and completed his education within a year. It was during a diplomatic mission in France that the King of France, Henry IV, dubbed him the "Miracle of the Netherlands"[1]. At the age of 16 he began his career as a lawyer in Delft and then in The Hague, where in 1607 he held an important position in the Attorney General of the Netherlands. Due to his political leanings, he was sentenced to life imprisonment in 1619. After two years, he escaped from prison and went to Paris. He was very well-received and spent the rest of his life there. In 1623 he began to write the book "On the Law of War and Peace", published in 1625 and became very famous. Grotius was so famous that in 1635 he was elected as the Sweden ambassador by the Swedish government, a position he held for the rest of his life. In 1645, while returning from Sweden by the sea, his ship was caught in a storm in the Baltic Sea, which survived. However, he died shortly afterwards in Rostock, Germany, due to fatigue and illness, caused by the accident.

Grotius's life took place in the midst of the Thirty Years' War in Europe, and he fully understood the fire it'd ignited in Europe. He had also witnessed conflicts between Protestants and Catholics and in fact, these events had a profound effect on his thoughts. The catastrophes and savagery that he saw from these wars caused his disgust and by writing his book, he sought to establish moral restrictions which affect the behavior of states.[2] It was three years after his death that the "Peace of Westphalia" was concluded and Europe achieved peace. In fact, the preparations for the Peace of Westphalia began in 1641 and its negotiations began in late 1644; it is likely that Grotius played a main role in its negotiation; but he did not see the result. In the following, we will examine the general thoughts of Grotius.

I. Natural Law and State Sovereignty

Grotius is best known for his attempts to integrate ethics with positive law. In fact, he had mostly naturalistic views, but develops a middle position between pessimistic realism and excessive idealism in international affairs 'by combining natural law with the more flexible institution of positive law, rooted in human volition.[3] In the system that he founded, the moral

[1] Lee, Daniel (2011). "Popular Liberty, Princely Government, and the Roman Law in Hugo Grotius's De Jure Belli ac Pacis", Journal of the History of Ideas, 72(3), p. 371

[2] Moosavi Zonooz, Moosa (1394). A review of the law of war and peace from the viewpoint of Hugo Grotius. Public Law Quarterly. Vol 45. Issue 1, P. 86.

[3] Olsthoorn, Johan (2017), Cambridge Handbook on Just War, Cambridge University Press, p. 7

strictness of natural law had been combined with the flexibility of positivism.[1] Grotius, a Christian and theologian, took a firm step in secularizing natural law and separating it from theology. He tried to de-religionize the theory of Just war and give it a transnational dimension, to make it belong to the whole world and in the realm of international law, followed by civilized nations.[2] According to him , the law of nature is discerned by human reason and urges man to seek a peaceful and organized society.[3] In fact, according to Grotius, there is a body of principles that, even if there were no gods, would still exist and are taken for granted in the light of rational principles to regulate social relations.[4] With respect to governments, he disagrees with other prominent pre-Westphalian philosophers such as Suarez. According to Grotius, the body of binding norms for states, that is, what we call "international law", includes both *jus gentium* and the natural law.[5] On the other hand, he considered natural laws as two types, primary laws and secondary laws. The universal and binding natural law is the primary source of international law. Natural law is supplemented by the secondary corpus of international law associated with the consent of states.3.[6] According to Grotius, common rules can be applied through consent between states or a large number of them, and it is the existence of these rules that justifies the necessity of *jus gentium*[7]. In his book, he mentions:

"The law of nations is a more extensive right, deriving its authority from the consent of all, or at least of many nations. It was proper to add many, because scarce any right can be found common to all nations, except the law of nature, which itself too is generally called the law of nations".[8]

He, therefore, believes in common law between states to which they are subject, and even though international law is relatively independent of the will of states, Grotius nevertheless considers it as a requirement of sovereign states. In jus civil, in his view, the sovereign power is essential for society and he believes that the ruler is accountable only to God and not to the nation. However, he also believes in the social contract, which he considers a necessity arising from the rational nature of mankind. According to Grotius, as soon as the nation transferred the right of sovereignty to the state and the constitution of the country was agreed upon, power has been transferred from the nation to the state and cannot be taken back.[9] He criticizes those who say that, if the monarch abuses his power, the people have the right to stop and punish him,

[1] Moosavi Zonooz, 1394. op. cit, p. 85.
[2] Kadkhodai, Abbas Ali (2002). The September 11 Events And The New American Approach Towards the Just War Theory. Issue 3, p. 94.
[3] Ferreira-Snyman, Anel (2006), The Evolution of State Sovereignty: A Historical Overview, Fundamina, 12(2), p. 8.
[4] Ghorbannia, Nasser (2016). Ethics and International Law. 2nd edition. Tehran. Samt Publication, p. 80.
[5] Moosavi Zonooz, 1394. op. cit. p. 91
[6] (Ferreira-Snyman, 2006: 8)
[7] (Shahbazi, Aramesh (2016). International Law: Dialectic of Value and Fact. 2nd edition. Tehran. The S.D Institute of Law, p. 100).
[8] Grotius, Hugo (1625), On the Law of War and Peace, Edited by A.C. Campbell (2001), Batoche Books, Kitchner, p. 13.
[9] Grotius, Hugo (2016). On the Law of War and Peace. Translated by Hossein Piran. 1st edition. Tehran. The S.D Institute of Law. P. 16. Available at: https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/grotius/Law2.pdf/ (Last visited: 02 June 2021).

saying that the sane person easily realizes that this thinking will lead to countless catastrophes. Kant believes that, the law which Grotius attempts to seek does not impose any significant restrictions on the behavior of states and any occupier can resort to it to justify his actions[1]. However, it also makes exceptions to the absolute immunity of states. For example, when the ruler betrays or resigns.[2]

Lauterpacht identifies the "subjection of the totality of international relations to the rule of law" as the primary feature of the Grotian conception of international society.[3] Grotius argues that, the supreme goal of custom is to maintain social order, regardless of the interests of states, and concludes that customs do not ultimately pursue the interests of a particular state, but belong to all societies and are formed to protect the interests of "international community as a whole".[4] It should be mentioned that, this is the concept of sovereignty whichleads governments to equality at the international level and independence at the domestic level. True independence also means that, state's decisions and actions must be made without the intervention of a third state[5] and this can be seen in thoughts of Grotius. Although Grotius considers the highest value for state sovereignty, these ideas lead him to distinguish between Just wars and unjust wars, and consequently he denies the absolute right of states to start the war.

II. Just War

Grotius acknowledges that, states may use military force to defend their rights and to correct violations of international law. Grotius himself was a supporter of peace and with his Just War theory tried to reduce the wars and also minimize the effects and casualties of war violences.[6] Although in some respects he legitimizes actions that may not be in complete harmony with today's prevailing views, in his treatise has considered his aim to challenge the usual behaviors of monarchs and draw them to higher standards of conduct. He considered war an evil necessity and discussed issues, related to war in order to curb the government behavior in war.[7] In fact, his disgust of the tragedies and crimes that took place in the wars , led him to write his book.[8]

According to Grotius, if war is waged by legal power and for legitimate reasons, the war itself imposes law and right. When war is waged according to moral teachings, it will lead to peace as its ultimate goal. He stated that, the war must have popular and legal support and if it is

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[1] Moosavi Zonooz, 1394. op. cit, p. 101.

[2] Grotius, 2001: op. cit, p. 49-50.

In the fourth chapter of the first book of his work, Grotius mentions seven things that are not affected by the absolute sovereignty of states.

[3] Nagan, Winston P and Hammer, Craig (2004), The Changing Character of Sovereignty in International Law and International Relations, Columbia Journal of Transnational Law, 43(1), p.145.

[4] Shahbazi , 1394, op. cit, p. 104.

[5] Ranjbarian, Amir Hossein and Farahzad, Mahsa (1394). The evolution of state formation criteria: from effectiveness to legitimacy?. Public Law Studies Quarterly. Vol 45. Issue 2, p. 261.

[6] Askary, Pouria (2016). Jus Post Bellum and the responsibility to protect victims of armed conflicts. Public Law Quarterly. Vol 46. Issue 4, p. 958.

[7] Moosavi Zonooz, 1394, op. cit, p. 103.

[8] "Throughout the Christian world, I have witnessed unbridled warfare; as even the savage tribes are ashamed of it ... It is as if murder and crime are allowed by a general decree.

without justified reasons, it is criminal and unjust. According to the Scythian ambassadors, he referred to Alexander's invasion of Iran and other nations, calling it Unjust and Alexander a thief and looter.[1] He condemns aggression and states that, most people who resort to war give convincing reasons, but not necessarily just. However, he believes that, whether the cause of the war is Just or not, both sides are obliged to abide by its rules.

As to when war can be started, he believes that, war is sometimes imposed by all three major types of law, namely natural law, *jus gentium* or international law, and divine law. In order to extend international order, he emphasized that, war is permissible when it is based on specific legal reasons.[2] According to him, there are three Just causes of war; Defense, Compensation and Punishment. Each of these causes gives individuals the right to use force.

1. Self-Defense

The idea of Self-Defense to engage in war has existed since pre-Grotius times. St. Augustine says the Commonwealth can be extinct in two ways; External aggression that takes place through military attack and internal aggression that disappears by refusing to live with justice.[3] Therefore, to prevent extinction through foreign aggression, one can go into war, which is the concept of self-defense. The right to use force in self-defense arises directly and immediately from the Care of our Preservation,[4] which is a principle of natural law and he states that this has also been acknowledged by Christian scholars.

He cites people such as St. Augustine and Diodorus,[5] and with examples of private warfare he values the defense of life and property, saying that whenever there is an immediate threat to our lives and property, confrontation is legitimate, and whenever there is no If there is no way to eliminate the danger of death, the murder of the rapist is also just. He extends this to the general war.

Regarding the use of possible means for self-defense, Grotius, contrary to Hobbes, who said that in a situation of war based on the natural right to self-defense, we can defend ourselves by all means,[6] insists that, the natural right of self-defense, though normatively fundamental, can be exercised only as a last resort.[7] Therefore, he has considered restrictions on self-defense.

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[1] Grotius, 2001. Op. cit, p. 61.

[2] Danish Institute of International Affairs (1999), Humanitarian Intervention Legal and Political Aspects, 1th ed, p. 11. Available at: https://www.diis.dk/files/media/publications/import/extra/humanitarian_intervention_1999.pdf

[3] Baqeri,, Saeed and Haghighat, Seyyed Sadeq (2013). Theory of Just War in Political Philosophy of St. Augustine. Occidental Studies. Vol 4. Issue 2, p. 45.

[4] Olsthoorn, 2017. op. cit, p. 17.

[5] Diodorus Siculus, Greek historian of 1st century B.C

[6] Salahi, Malek Yahya and Amini, Vahed (1388). The Concept of Natural Law and International Law in Thomas Hobbes's Political Thought. Journal of Law and Politics. Vol 5. Issue 11, p. 169.

[7] Olsthoorn, 2017. Op. cit, p. 10.

2. Compensation

Grotius believes that, the right to use force to compensate primarily belongs to the victims. Individuals can retaliate for violations only when they have been suffered. Hence, if the damage is related to intangibles, the offender owes a debt of damages.[1]

To explain the compensation, Grotius quotes various people. He quotes on behalf of St. Augustine that a government that does not prevent its citizens from aggression of its neighbors and also is not willing to repair the damages, deserves hostility and aggression.[2] Based on his view, the right to start the war on the basis of damages applies not only to narrated property and land, but also to the rights of individuals (such as slaves), rights to acts (such as the fulfillment of contracts) and compensation for damages. All of these are required by natural law. The international law he considers is based on three moral principles: you should not bind another's property, you should fulfill your promises and you should compensate the damage you have wrongfully done to others.[3]

3. Punishment

The idea of punitive wars was not a new idea in the time of Grotius and Spanish scholars before him had being these wars morally permissible. Punitive wars are not only fought to compensate or reclaim what has been taken, but also to punish offenders. Gentili believed that, punishing a person for whom we have no right to punish is equal to punish an innocent person. Natural human equality means that based on naturally no one is subject to another's rights, so punishment requires political power. This means that, governments have no right to punish crimes, committed by their non-citizens elsewhere. Grotius rejects the presumption of political power to punish offenders, saying that by invoking nature, anyone can punish all those who have violated natural law through war. This implies that states can punish severe violations which don't specifically affect them and occur continuously outside the scope of their sovereignty.[4] This idea can be traced back to the concept of "universal jurisdiction" which is over serious international crimes nowadays.

B. Humanitarian Intervention

So far, Grotius' ideas on natural law, sovereignty, and the just causes of war have been discussed. In this section, we discuss the concept of humanitarian intervention in the world today and explore it in the mind of Grotius.

Humanitarian intervention is defined as an intervention that uses force to address or stop gross violations of human rights by appealing to humanitarian aims and motives and against the

[1] Ibid, p. 18.
[2] Grotius, 2016. Op. cit, p. 164.
[3] Ghorbannia, 1394. Op. cit, p. 80.
[4] Olsthoorn, 2017. Op. cit, p. 10. Not only violation of international law, but also natural law.

consent of the states.[1] In fact, Humanitarian interventions are not only responses to the suffering caused by repressive governments, but also they are directed to situations produced by internal conflicts, state disintegration and state collapses, as a result of which human rights are grossly violated.[2] What has been conducted over decades to protect human rights through the use of force and the violation of other states sovereignty has been done through relying on this concept?

To carry out humanitarian intervention, Realistic views that emphasize state sovereignty consider it illegal and contrary to the Charter of the United Nations. While some jurists, such as Lauterpacht, recognize the universal right of humanitarian intervention, some see it as based on the theory of self-help, which is distinct from self-defense. In their view, when a state, under special circumstances, disregards certain rights of its citizens over which it has absolute sovereignty, other states of the international community have the right to intervene for humanitarian causes.[3] For the Realists, the violation of sovereignty was not acceptable at all, but by looking at the principles emphasized in the years after World War II, one can see a change in the concept of state sovereignty. Unlike Realists, Liberals believed that the origination of sovereignty is the nation. In the post-charter period, with the internationalization of human rights, many authors have referred to Article 51 of the UN Charter to legitimize humanitarian intervention.[4] Humanitarian intervention in today's international system is both individual and collective. Throughout the history of the United Nations, humanitarian intervention in Somalia, Rwanda, Bosnia and Herzegovina, Albania and East Timor can be mentioned.[5] It is through this concept that responsibility to protect doctrine has been formed. In fact, changes in the concept of sovereignty have transformed this institution from an unconditional institution to a responsible one. It was with this in mind that the Independent International Commission on Intervention and State Sovereignty was established in September 2000 by Canada. It was given the mandate to investigate the relation between intervention for human protection purposes and state sovereignty. The Commission suggests that, sovereignty should be seen as the responsibility to protect. In view of its approach to sovereignty as the responsibility to protect, the Commission supports intervention for human protection purposes when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator.[6] In fact, the challenges, posed by the application of humanitarian intervention in practice, and there were no consensus on its legality or illegality, led to the creation of this mechanism. Therefore, in order for the interventionist state not to use its actions for personal interests, any intervention with altruistic aims must have a collective character; as

[1] Javanshiri, Ahmad (1393). Humanitarian intervention in the middle of intergovernmental order and cosmopolitan order. Journal of Politics. Vol 3, p. 36.
[2] Kardas, Saban (2001), Humanitarian Intervention: The Evolution of the Idea and Practice, Journal of International Affairs, Volume 6, Issue 2, p. 4.
[3] Ghorbannia, 1394, op. cit, p. 173.
[4] Moslemi Mehni , Yousef (2008). Evolution of the concept of humanitarian intervention in international relations. Journal of Assembly and Research. Vol 57, p. 64.
[5] Aghamohammadi, Ebrahim and others (2018). Humanitarian Intervention in International Law: The Military Intervention of NATO in Kosovo. Journal of Historical Study of War. Vol 2, Issue 3, p. 9.
[6] Ferreira-Snyman, 2006, p. 20.

several states participate in military intervention operations or one state acts on behalf of several countries.[1]

The history of nations knows few examples of such use of force which was established as practice of states. As most suitable examples could be listed: the intervention of France in Syria (1840) in order the repression against the population which was undertaken by the Ottomans to be stop.[2] However, the roots of this concept can be found in the thoughts of Grotius. Lauterpacht believed that Grotius' treatise on war and peace was the first work referring to the concept of humanitarian intervention.[3] It was mentioned earlier that Grotius considered a great position for state sovereignty, which can't be violated by the citizens of the state in any circumstances, and they can't take any action against the monarch. Nevertheless, he believed that, one of the causes of the war is a military attack on a land whose rulers have violated natural law and also its people have been oppressed. He begins his discussion with the question of whether war on behalf of nationals of other states is permissible in order to protect them from the oppression of their respective states or not. In response, he states:

> "It may be objected that in the discussion of tyrant, we have not considered it permissible for the people to confront him. But this does not mean that others are forbidden to confront. Because when the legal prohibition of an act is directed to the person and not to the act itself, in this case what's not legitimate for one person may be legitimate for another who is able to help".[4]

He was aware of the abuse of such a principle. Grotius says that historical experiences have shown defending the oppressed is an excuse for the ambitions of another countries' rulers, but the oppressors' abuse of a right does not preclude its legitimacy. According to Grotius, force can be used if an authoritarian ruler expressly treats his people in a way that obviously no one has the right to do. In his view, in some circumstances a nation may legitimately engage war to liberate another nation from oppression.[5] This humanitarian intervention was the first step to explain some restrictions on freedom of action for states towards their citizens.[6]

With these explanations, it's obvious that, what's being done today as humanitarian intervention or responsibility to protect is originated from Grotius's thoughts. Today, most humanitarian intervention must be collective, that is, use of force with the permission of the Security Council under Chapter VII of the Charter in order to maintain or restitute international peace and security, provided the Security Council recognizes the situation as a threat to

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[1] Joyner, Christopher.C (2005). International law in the 21st century. Translated by Abbas Kadkhodai and Amir Saed Vakil. 1st edition. Tehran. Mizan Publication, p. 90

[2] Petreski, Milorad (2015), The International Public Law and the Use of Force by the States, Journal of Liberty and International Affairs. Vol. 1. No. 2, p. 1.

[3] Moosavi Zonooz, 1394, p. 102.

[4] Grotius, 2016. Op. cit, p. 500.

[5] Cavallar, Georg (2008). "Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?", Journal of the History of International Law, 10, p. 193. Natural law would be the basis of the the foreigner's right of "humanitarian intervention," but the oppressed have contracted their own right away. See: Forde, Steven (1998). "Hugo Grotius on Ethics and War", American Political Science Review, 92(3):639-648.

[6] Mehrpour, Hossein (2018). International Human Rights Law. 8th edition. Tehran. Ettelaat Publication, p. 21.

international security.[1] At the time of Grotius, governments conducted individually and not collectively as we see today. However, as mentioned, humanitarian intervention has taken place today without the permission of the Security Council - for example in Kosovo - which has resulted much criticism. Therefore, the violation of state sovereignty individually isn't acceptable and can only be justified by UN mechanisms. On the other hand, as we have said, Grotius denied the violation of sovereignty and only has made some exceptions to it in certain circumstances.

C. Requirements of the Law of Armed Conflicts

There are principles in the law of armed conflicts today which are reflected in various international conventions and the structure of the United Nations. These principles govern both the use of force and the humanitarian law governing international and non-international armed conflicts. Principles such as sovereign equality of states, the prohibition of the threat or use of force, the peaceful settlement of international disputes and the principle of non-interference exist today with the primary aim of maintaining international peace and security. The principle of respect for human rights also exists in humanitarian law and has manifested itself in various international conferences and conventions related to armed conflicts. Each of these principles has philosophical and historical origination that has evolved over time as we see them today. From what we have dealt with so far, it is easy to see the influence of Grotius' ideas on the development of these principles. It is therefore necessary to examine UN Charter and other international instruments in order to find the place of Grotius' ideas in the contemporary law of armed conflicts.

I. UN Charter's Principles on Armed Conflicts

As we know, in Jus ad bellum today, the use of force is prohibited, which is explicitly stated in the Charter of the United Nations. The right to enter war, which is derived from the theory of Just war and the practice of states, has a strong root in national sovereignty.[2] Article 2 (4) of the Charter states: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The prohibition of the right to use of force is based on the principles of sovereignty and respect for territorial integrity, because all states have sovereignty and are equal members of the international community. Every state has sovereignty, the right to independence and territorial integrity, and the use of force is against these rights.[3] This principle can be violated in two ways; under the authorization of the Security Council and also based on self-defense in accordance with Article 51, Chapter 7. Article 51 (1) refers to the sovereign equality of states. Sovereign equality requires the principle of non-interference in the internal affairs of other states. The principle of non-interference also belongs

[1] Aghamohammadi and others, 2018. Op.cit, p. 8.
[2] Joyner, 2008. Op.cit, p. 233.
[3] Ibid, p. 236.

to the old model of the world society. In fact, this principle is one of the most important foundations of the Grotius model. This principle, along with the principle of equality of sovereignty, was established to ensure that every state respects the fundamental rights of other members of society.[1] By prohibiting the use of force the Charter qualifies the classical understanding of sovereignty as absolute authority, which included as a key element the right to engage in war. According to Fassbender the ban on the use of force by the Charter is today understood not so much as a limitation of sovereignty, but as a necessary prerequisite for a de facto enjoyment of sovereign equality by states.[2]

Grotius' view of the state sovereignty, and to some extent the same view of Jean Boden that led to the formation of Westphalian sovereignty, although somewhat diminished today by the human rights views ruling the intergovernmental relations, but we see its enormous influence. As the principle of equality in the Charter is a form of the Westphalian model. The International Court of Justice in the Case Concerning Military and Paramilitary Activities in and against Nicaragua has strongly expressed that, the general prohibition on the use of force reflects the customary practices of states, and in particular the law of responsibility of states.[3] These cases may indicate Grotius' view of sovereignty. While accepting the assumptions that states or entities with sovereignty are the main actors in international politics, Grotian tradition believes that, states are constrained by rules, norms, legal requirements, and principles of conduct. These factors are an undeniable necessity for coexistence and cooperation among states and maintaining the sovereignty and system of the community of states.[4] It is also the case that in the event of gross violations of human rights where there is a threat to international peace and security, the Security Council will act in accordance with Chapter VII of the Charter. According to Article 39, the Security Council can intervene in situations such as threats to the peace, breach of the peace or aggression. The Security Council followed this procedure in relation to the Kurds of Iraq, the former Yugoslavia and Haiti.[5]

In respect to Self-Defense, it should be noted that each of the member states of the Charter has the inherent right to defend itself, both individually and collectively in the event of an armed attack (Article 51). Although today in the discussion of the Self-Defense of a state that is the victim of an armed attack and invokes self-defense, it must be clearly stated that, there is actual attack or the attack has already been committed,[6] but self-defense is a natural right. As mentioned before, Grotius considers Self-Defense as one of the means of legitimizing war, which also originates from natural law, and the authentic text of the Charter in French has also used the term natural law.[7]

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[1] Cassese, Antonio (2005). International Law. Translated by Hossein Sharifi Tarazkouhi. 2nd edition. Tehran. Mizan Publication, p. 188
[2] Ferreira-Snyman, 2006. Op. cit, p. 24.
[3] Joyner, 2008. op. cit, p. 237.
[4] Ghasemi, Farhad (2005). International Regimes. 1st edition. Tehran. Mizan, p. 47.
[5] Mehrpour, 2018. Op. cit, p. 22.
[6] Petreski, 2015, op. cit, p. 6.
[7] Joyner, 2008. Op. cit, p. 240.

Concerning the peaceful settlement of disputes under international law although restrictions have been adopted on the absolute sovereignty of States, the consent of States is still a strong foundation of modern international law and the jurisdiction of ICJ is based on the consent of State Parties.[1] It is noteworthy that, the concept of the consent of States whichGrotius means in the international community can be seen in the optional acceptance of jurisdiction by States. In addition, the International Court of Justice has recognized in many of its judgements the fundamental principle of state sovereignty. In the Case Concerning Military and Paramilitary Activities in and against Nicaragua, the United States stated that it was using military force against Nicaragua and interfering in its internal affairs, in response to violation of its sovereignty, territorial integrity and political independence as these are universally accepted fundamental principles in international law.[2]

II. jus in bello

Today, the law applicable to wars derives from various sources, such as Geneva Conventions and their Additional Protocols and other international instruments, international custom and public conscience. In international humanitarian law (IHL), Martens' Clause can be read in a modern context as providing for such a function of human rights, when it recalls that 'in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of public conscience.[3] The International Court of Justice recognizes it as customary in nature and has observed that, the Martens Clause "proved to be an effective means of addressing rapid evolution of military technology.[4] Grotius lived in an era the most heinous crimes took place in wars, and he tried to limit these actions. That is, he has imposed restrictive restrictions on what he has allowed and tried to humanize it. In the last chapter of his book, Grotius says:

> "Since war is the highest form of violence and unleashes a great force, it is necessary to restrain it with human requirements and considerations in order to prevent the horrible and terrible consequences of this force; otherwise we will forget that we are human by over-imitating animals' behavior."[5]

He was so passionate about peace that he believed honorable peace should be maintained at all costs, even by forgiving the enemy's brutal aggression or incurring financial losses. In this section, it is necessary to explain some of Grotius' ideas on acceptable behavior in war and to compare them with international humanitarian law.

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[1] Zamani, Seyyed Ghasem and Kusha, Soheila (1391). Forum Prorogatum before the International Court of Justice: The Djibouti v. France Case (2008). Public Law Research. Vol 14. Issue 38, p. 189.

[2] ICJ Rep. Case Concerning Military and Paramilitary Activities in and against Nicaragua. 1984, para. 85.

[3] Kolb, Robert (2012), Human Rights and Humanitarian Law, The Max Planck Encyclopaedia of Public International Law. Vol. IV. Oxford: Oxford University Press, p. 7.

[4] Schmitt, Michael N (2013), Autonomous weapon systems and international humanitarian law: a reply to the critics. Harvard National Security Journal, 4, p. 31-32. Available at http://centaur.reading.ac.uk/89864/ (Last visited: 18 October 2021).

[5] Grotius, 2016. Op.cit, p. 729.

1. Treatment of Prisoners of War

According to Grotius, no human being should be another's slave according to natural law. Hence, he considers slavery against the natural law. But he says that because of the crime or according to the will, man can be taken away and this is not against natural justice. Grotius says people may become slaves either by virtue of some agreement, or in consequence of some crime. Like Locke, the Dutch jurist holds that, those who have forfeited their right to live (because of unjust aggression) may be lawfully enslaved as a lesser punishment. He maintained that, it is lawful for any Man to engage himself as a Slave to whom he pleases.[1] Regarding slavery and captivity in the war, Grotius believes , any person who is taken prisoner in a formal war is considered a slave as soon as transferred to the prison, that is, where the domination of the enemy forces is complete.[2] He says that the *jus gentium* prefers the least evil because the dominant can easily kill the defeated, but with slavery he may be content to refrain from killing prisoners. According to him, a slave will remain a slave until the debt of the nation is fulfilled, and the principles of justice and humanity require us to be tolerant, to differ between prisoners and to consider their dignity.[3] In order to deal with slaves, Grotius made arrangements for human treatment of prisoners. In his view, the employment of a slave should be balanced and his physical strength and endurance should be considered in the referential work. Regarding the treatment of prisoners of war, the Third Geneva Convention deals with it. According to the convention, they must be treated humanely in all cases. Any act or omission by the detaining force that causes death or serious endangerment of the health of the prisoner is prohibited. Thus, contrary to Grotius, who said that captives were taken instead of killed, the convention provided otherwise. Also, no prisoner should be subjected to physical or mental torture, etc., and Article 14 of the Convention stipulates the need to preserve the dignity of prisoners of war and to fully protect their legal capacity.[4] In fact, imprisonment is not a punishment for prisoners, but the purpose of keeping enemy is to keep them out of the battlefield. The Convention doesn't prohibit the use of prisoners; but they must be used in special circumstances and according to certain rules. With these explanations, we see that today's rules of treatment of prisoners don't in some respects in conformity with Grotius' ideas, and in others we can see similarities.

2. Treatment of Civilians

As we know, today, civilian targets must be completely safe from any aggression. The Fourth Geneva Convention deals with the protection of civilians. Additional Protocol no. 1 deals with the civilian population, and as a basic rule, Article 48 states that, in order to respect and protect civilians and civilian objects, States Parties undertake to always distinguish between military and non-military objectives and to conduct their own operations. Directly focus only on military objectives. This is the principle of distinction. Grotius says that at the moment the war was

[1] Olsthoorn, 2017. op. cit, p. 20.
[2] Grotius, 2016, op. cit, p. 586.
[3] Ibid, p. 638.
[4] Mehrpour, 2018. op. cit, p. 255.

declared, all the permanent residents of the country is considered as enemies[1] and gave historical examples of the treatment of women and children and said in despair "The horrific acts that took place during the wars against women and children are a kind of indication of its custom. However, he says that none of those who defend the right to murder and harm under the law of war does not recommend it and do not consider the killing of the enemy presumed or correct, they only mean that, these actions are not reprehensible under the human law of war.[2] In response to those who justify atrocities toward civilians, captives and refugees with the motive of resistance or retaliation, he uses these excuses as an excuse and says that punishment in the form of retaliation and revenge is applied only to the offender; while in wars, revenge targets innocent people precisely.

3.Use of Proportionate Weapons

Regarding the use of weapons which are cowardly, Grotius has emphasized the prohibition of the use of poison in wars.[3] Article 35 of the First Additional Protocol sets out three basic rules of war concerning the methods of warfare and the use of military weapons. According to this article, the use of weapons, missiles, tools and methods of warfare in a way that causes excessive injuries and pain is prohibited[4] (prohibition of unnecessary suffering). The Martens Clause provides a link between ethical considerations and IHL, which makes it particularly relevant to the assessment of autonomous weapon systems.[5] There are also two important points about the use of weapons; predictability is knowledge of how it will function in any given circumstances of use, and the effects that will result, and reliability is knowledge of how consistently the machine will function as intended.[6] Forbidden weapons include particularly weapons of mass destruction, like chemical weapons.[7]

Today, according to the principle of necessity, the parties to the conflict must refrain from the use of force in any armed conflict beyond what is necessary to achieve their goals. IHL rules on the conduct of hostilities—notably the rules of distinction, proportionality and precautions in attack—are addressed to those who plan, decide upon and carry out an attack in armed conflicts. These rules create obligations for human combatants in the use of all weapons to ensure compliance with IHL.[8]

Grotius allows the destruction or seizure of the property of others in three cases; Self-Defense, debt and fines or retaliation. He explicitly refers to the principle of proportionality,

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[1] Grotius, 2001. Op. cit, p. 286.
[2] Ibid, p. 285.
[3] Olsthoorn, 2017. Op. cit, p. 4.
[4] Allama, Gholam Haidar (2011). Crimes against Humanity in International Law. 2nd edition. Mizan Publication, p. 74.
[5] Davison, Neil (2018), A legal perspective: Autonomous weapon systems under international humanitarian law, UNODA Occasional Papers No. 30, p. 8.
[6] Ibid, p. 10.
[7] Vöneky, Silja (2020), Handbook of International Humanitarian Law, Edited by Dieter Fleck, 4th ed. Oxford Scholarly Authorities on International Law
[8] Davison, 2018. Op. cit, p. 17-18.

which, as we know, is one of the indisputable principles of the law of armed conflicts today. He quotes Vitoria saying that the principle of proportionality must be observed. Then, based on Proclus, he says that the duty of the commander of the army is to prevent the enemy from the necessary resources to continue the war as much as possible, and adds that this is the only reason to permit the destruction of enemy property in war.[1]

In conclusion, throughout his book, Grotius has no purpose but peace:

> "In discussing war, I have made every effort to speak out in condemnation of war and to reiterate the human duty to avoid war. It is appropriate for me to offer a few sentences as a notice and a warning about peace and its preservation, and to strive for good faith and *pacta sunt servanda*. For, as Cicero has said, good faith and *pacta sunt servanda* is a binding not only preventing a nation from disintegrating and dispersing, but also protect the great human community".[2]

Therefore, according to Grotius, the principle of *pacta sunt servanda* is one of the principles that play the most important role in maintaining international peace and security. At the end of his book, he says that whenever an agreement is reached between the parties and peace is achieved, it is necessary to maintain it, regardless of the circumstances leading to peace and regardless of its conditions. Thus, maintaining international peace and security, which is the main aim of the United Nations today, has been in Grotius' thoughts.

Conclusion

The rules of contemporary law of armed conflicts have been mainly influenced by Grotius' ideas. Although Grotius lived in a period when human rights views had not yet developed as they do today, seeing the catastrophes of the wars in Europe at that time, such as the Thirty Years' War, Grotius sought to restrict the behavior of the European states of that time. Influenced by thinkers such as St. Augustine, Suarez, and Vitoria, he proposed the theory of Just war, and in view of the component of consent of states at the international community level, he spoke of some common rules in wars that states are required to abide by.

In the years leading up to the Peace of Westphalia, based on the idea of natural law, he considered the state sovereignty within the country as absolute and the ruling power as the highest power, which in turn led to the principle of non-interference of states. The principle which is also in the Charter of the United Nations today. On the other hand, the Just causes to start war prevent states to engage in futile wars and countless crimes. The Self-Defense which, in the words of Grotius under natural law, as well as theology, obviously gives rise to the right to start war, can now be seen in Article 51 of the Charter. Also, the concept of humanitarian intervention, which today somehow punishes states that endanger international peace and security by their human rights abuses, is one of the rights that Grotius recognizes for other nations rather than the state whose people are subject to it, oppression has taken place. In the field of humanitarian law today, there are many rules such as the use of appropriate methods and

[1] Grotius, 2016. Op. cit, p. 626.
[2] Ibid, p. 728.

weapons in war, the principle of necessity and the principle of proportionality in Grotius's ideas, and he has tried to humanize it. However, there is no complete harmony in some of the modern rules and his ideas, such as the distinction of the combatants from civilians and the capture of hostile forces; But Grotius' human gaze can also be seen in these cases.

In his view, the principle of *pacta sunt servanda* is the most important principle that exists in the international community, and its absence leads to wars. Grotius considers *pacta sunt servanda* as a sacred thing for which it's necessary to avoid betrayal and breach of covenant at any cost. He desires peacekeeping at all costs, even financial losses, which is the main aim of the United Nations today. Grotius is undoubtedly one of the thinkers who, in an age states didn't yet exist as today and considered themselves allowed to do anything, claimed peace and we can see his thought's great influence on the law of the armed conflicts both in jus ad bellum and *jus in bello*.

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