



PHILOSOPHY OF JUST WAR IN ANCIENT GREECE AND CAUSES OF WAR IN THUCYDIDES

Dr Iacovos Kareklas

CCW Visiting Research Fellow

June 2022

Abstract

The aim of the present article is, firstly, to unearth the philosophical grounds of just war in classical Greece. Secondly, to indicate specifically that neither the causes nor the theoretical grounds of the Peloponnesian War in the History of Thucydides are in conformity with previously established grounds of warfare. Thirdly, it shall be proved that the philosophical underpinnings of war in Thucydides have formed the theoretical and legal basis of contemporary kinds of military intervention in International Law. In this context, the contribution of Thucydides in the Theory of the International Law of War will be duly emphasized.

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An in depth study of Greek Law and civilization in general makes manifest the existence of a concept of International Law in the ancient Greek world. It is necessary to clarify at the outset that Greek authors distinguished between unwritten (*ἀγγραφος*) and written law. Unwritten law is defined by Aristotle as the universal law, that is universally recognized principles of morality, whereas written law as the statutes of any given State.¹ Unwritten law is otherwise called natural law or divine law. This distinction is drawn in the *Nicomachean Ethics*, where Aristotle suggests that: civil justice is partly natural, and partly conventional; that is natural which possesses the same validity everywhere, and does not depend on being deliberately adopted or not; while that is conventional which in the first instance does not matter whether it assumes one form or another, it matters only when it has been laid down.² A certain application of these conceptions and distinctions is seen in the sphere of the Greek Law of Nations. Writers frequently refer to “the laws of the Hellenes”, “the common laws of Hellas”, “the laws of mankind”, “the laws common to men”. Therefore, expressions such as the following are constantly used: τὰ τῶν Ἑλλήνων νόμιμα,³ τὰ πάντων ἀνθρώπων νόμιμα, τὰ κοινὰ τῶν Ἑλλήνων νόμιμα.⁴ A large number of important rules and practices of International Law are implied in these expressions.

¹ Aristotle, *Rhetoric, Ars Rhetorica, Oxford Classical Texts* (Oxford: Oxford University Press, 1959), i. 10: νόμος δ'ἔστιν ὁ μὲν ἴδιος, ὁ δὲ κοινός. Λέγω δὲ ἴδιον μὲν καθ'ὄν γεγραμμένον πολιτεύονται. Κοινὸν δὲ ὅσα ἀγγραφα παρὰ πᾶσιν ὁμολογεῖσθαι δοκεῖ.

² Τοῦ δὲ πολιτικοῦ δικαίου τό μὲν φυσικόν ἐστι τό δὲ νομικόν, φυσικόν μὲν τό πανταχοῦ τήν αὐτήν ἔχον δύναμιν, καί οὐ τῷ δοκεῖν ἢ μή, νομικόν δὲ ὁ ἐξ ἀρχῆς μὲν οὐθεν διαφέρει οὕτως ἢ ἄλλως, ὅταν δὲ θῶνται. (*Nicomachean Ethics, Loeb Classical Library* 73, Cambridge, Massachusetts: Harvard University Press, 1926, v. 10).

³ Thucydides, *History of the Peloponnesian War, Loeb Classical Library*, (Cambridge, Massachusetts: Harvard University Press, 1920), iv. 97.

⁴ *Ibid.* i. 3, i. 118; Plutarch, *Pericles, Lives Volume III, Loeb Classical Library* 65, (Cambridge, Massachusetts: Harvard University Press, 1916), 17.

The underlying principles belong predominantly to the category of unwritten laws, deriving their juridical force from tradition and custom, and having for their sanction the will of the gods.

The most common grounds considered sufficient for the commencement of operations of war in classical Greece were: violation of a treaty, desertion from an alliance or confederation, offences committed against allies, refusal to receive ambassadors on invalid grounds, breach of neutrality, violation of territorial integrity, and, highly importantly, desecration of sacred places.⁵ History offers examples.

A serious injury intentionally committed against an ally was usually considered as an offence against that ally's confederates, and so a ground for just war on part of the latter. Penelope rebuking Antinous for compassing the death of Telemachus, says: "Do you not remember how your father fled to this house in fear of the people, who were incensed against him for having joined some Taphian pirates, and plundered the Thesprotians, who were at peace with us?"

*Ἡ οὐκ οἶσθ', ὅτε δεῦρο πατήρ τεός ἵκετο φεύγων
δῆμον ὑποδδείσας; δὴ γὰρ κεχολώατο λίην,
οὐνεκα ληϊστηρῶν ἐπισπόμενος Ταφίοισιν
ἤκαχε Θεσπρωτούς. Οἱ δ' ἤμιν ἄρθμοι ἦσαν.⁶*

When the province of Macedonia fell by lot to Publius Sulpicius (202 B.C.), he proposed to the people that on account of the injuries and hostilities committed against the Athenians, who were allies of Rome, they should proclaim war against Philip. In the following year the Athenians having put to death two Acarnanians for straying into their mysteries, the countrymen of the victims appealed for help to who, as they were his lawful allies, permitted them to levy troops in Macedonia. With these reinforcements they invaded Attica without a formal declaration of war. Accordingly, envoys were sent to Rome to report the attack made by an old ally of the Romans. Therefore, the Senate of Rome, in the following year, proposed to the comitia a declaration of war in consequence of this attack on a State in alliance with Rome.⁷

Supplying assistance to the enemy belligerent, or any other flagrant act of violation of neutrality was certainly a cause of war. So, Demetrius, during his war against the Athenians, captured a ship which was loaded with wheat

⁵ A formal declaration of war was not a necessary prerequisite for commencing military operations, though in the Peloponnesian War the instance of envoy Melisippus sent to the camp of the Lacedaemonians by General Pericles on part of the Athenians, only before the commencement of armed conflict, goes to the contrary. On his way back he notoriously exclaimed *μεγάλα κακά ἄρξονται τοῖς Ἑλλησι*. Interestingly, in the Roman Law of Nations (*Ius Gentium*) a demand for satisfaction was laid down before declaring war. The Romans, before declaring war, dispatched ambassadors to foreign countries, against which they had a grievance, with a formal demand in the name of the Roman government and people to make reparations for any injury suffered. In case of refusal a declaration of war was pronounced. This criterion of legitimacy of war is echoed in the words of Cicero, who says that "the laws and customs of war are religiously recorded in the code of the Roman people, in pursuance of which no war is deemed to be just or legitimate, unless it is duly declared after a formal demand for satisfaction has been made (Cicero, *On Duties (De Officiis)*, *Loeb Classical Library* 30, Cambridge, Massachusetts: Harvard University Press, 1931, i. II. 36: *Ac belli quidem aequitas sanctissime fetiali populi Romani iure perscripta est. Ex quo intelligi potest nullum bellum esse iustum nisi quod aut rebus repetitis geratur aut denunciatum ante sit et indictum*).

⁶ *The Odyssey of Homer* (Harper Collins Publishers, 2007), xvi. 425-428.

⁷ Livy, *History of Rome* volume VIII, *Loeb Classical Library* (Cambridge, Massachusetts: Harvard University Press, 1936), XXX. 42.

bound for Athens, and hanged the captain and pilot, a measure, says Plutarch, which terrified other merchants so much that they avoided Athens, and a terrible famine pursued there.⁸

The desecration of sacred places was especially, amongst the Hellenes, considered a cause for embarking upon just war against the offenders. Thus the reason of the Greek offensive war against the Persians was to exact just retribution for their profanation of sacred places. The Athenians declined to come to terms with Xerxes, and expressed their determination to avenge the destruction by him of their temples and images of gods and heroes.

Πρωτὰ μὲν καὶ μέγιστα, τῶν θεῶν τὰ ἀγάλματα καὶ τὰ οἰκήματα ἐμπερησμένα τέ καὶ συγκεχωσμένα,
τοῖς ἡμέας ἀναγκαίως ἔχει τιμωρέειν ἕξ τὰ μέγιστα μᾶλλον, ἢ περὶ ὁμολογέειν τῶν ταῦτα ἐργασασμένων.⁹

The devastation of Persia by Alexander the Great provides a further proof of the vengeance exacted by the Greeks upon their enemies, primarily, if not solely, because the latter did not treat with respect the sacred locations of Hellas.¹⁰

Even more emphatic was the defensive war of the Greeks when they took up arms to defend their homeland in the course of the Persian wars. Particularly their valor as shown in the navy battle of Salamis in 480 B.C., marvelously reported by Aeschylus, need be cited:

O ye sons of Hellas, go forth, free your homeland, free your women and children, the temples of your ancestral gods, the tombs of your forefathers. Now, you are fighting for them all.

(Ὡ παῖδες Ἑλλήνων, ἦτε, Ἐλευθεροῦτε πατρίδα, ἐλευθεροῦτε δὲ παιδας, γυναῖκας, θεῶν τε πατρῶων ἔδη, θήκας τε
προγόνων, νῦν ὑπὲρ πάντων ἀγῶν)¹¹

In this context, it is of crucial significance to mention the role of Amphictionies in classical Greece. Amphictionies were alliances or confederations in ancient Greece. Amphictionies denoted the establishment of very strong political and religious ties among city-States, which shared religious ceremonies and temples.¹² Many amphictionies existed in ancient Greece, notably that of Thermopylae, Delos, and Delphi. Delos The Delphic amphictiony was by far the most eminent and powerful. It was an international association as it was composed of twelve tribes or nations, linked with close ties of kinship. It is often referred to as the Congregation of the Greeks or, in fact, the Council of the Hellenes – τὸ κοινὸν τῶν Ἑλλήνων Συνέδριον. There existed two categories of representatives, namely the *ἱερομνήμονες*, otherwise called *Ἀμφικτιόνων οἱ Σύνοδοι*, Councilors, and the *πυλαγόροι*. The former, who comprised the formal Congregation, had the privilege to demarcate the

⁸ Plutarch, *Demetrius, Lives Volume IX, Demetrius and Anthony, Loeb Classical Library* 101, (Cambridge, Massachusetts: Harvard University Press, 1920), 33.

⁹ Herodotus, *The Persian Wars, Loeb Classical Library* 118 (Cambridge, Massachusetts: Harvard University Press, 1921), viii, I44.

¹⁰ Arrian in his *Anabasis of Alexander*, ably presents the patriotic, warlike, and justly vengeful temper of Alexander the Great as expressed in his : ἅπιτε πάντες καὶ ἀπελθόντες οἴκοι ἀπαγγέiliate ὅτι τὸν βασιλέα ὑμῶν Ἀλέξανδρον, τὸν νικήσαντα Μήδους τέ καὶ Πέρσας...καὶ τὸν Ἰνδὸν ποταμὸν διαβάντα, καὶ τὸν Ὑφρασιν διαπεράσαντα ἂν εἰ μὴ ὑμεῖς ἀποκνήσατε, οἴχεσθε καταλοιπόμενοι, παραδιδόμενοι φιλᾶττειν τοῖς νενικημένοις βαρβάροις. Ταῦτα ἴσως εὐνλεά ἔστε ἀπαγγελθέντα. Ἄπιτε. (Arrian, *Anabasis of Alexander, Books I-IV, Loeb Classical Library* 236, Cambridge, Massachusetts: Harvard University Press, 1976, p. 234, VII, 6).

¹¹ Aeschylus, *Persians, Loeb Classical Library* (Cambridge, Massachusetts: Harvard University Press, 1926), 402.

¹² The term *αμφικτιονία* originates in the term *αμφικτιόνες*, practically a synonym of *περικτιόνες*, commonly called *περίοικοι*, which means neighbors.

territorial boundaries of the sacred places and sacred lands.¹³ As a rule the fundamental principles that the Congregation was called to implement were decided upon and ratified through formal oath. In the case of the Delphic Amphictiony the practice of the Councilors and in essence of allies who pursued identical policies has been preserved up to nowadays and is no doubt one of the most ancient texts of treaties, providing for the formation of an alliance, in the western world. The members or Councilors, took an oath that they would in no event destroy any member city-State of the Amphictiony, nor would they cut it off from the supply of drinking water in the course of either war or peace. That they would declare war against anyone who would violate this law and should destroy their cities. That they would punish in every manner anyone that would plunder the property of the god and his accomplices in such an act.¹⁴

Generally speaking, the real objective of war was to effect a reparation, previously denied, of some serious act that had without reason been inflicted, or, more importantly, to exact due revenge of a wrong in conformity and compliance with divine injunctions. Thus, Xenophon exhorted his men to have regard to moderation and honour, and not to plunder any city that was not in any way guilty of offences against them.¹⁵ The purpose, declares Polybius, for with which good men make war is not to destroy and annihilate the wrongdoers, but to alter the wrongful acts. Nor is it their object to involve the innocent in the destruction of the guilty –

*οὐ γὰρ ἐπ' ἀπολεία δεῖ καὶ ἀφανισμῷ τοῖς ἀγνοήσασι πολεμεῖν τοὺς ἀγαθοὺς ἄνδρας, ἀλλ' ἐπὶ μεταθέσει
τῶν ἡμαρτημένων, οὐδὲ συναρεῖν τὰ μηδὲν ἀδικοῦντα τοῖς ἡδικηκόσιν.*

This, however, has not always been the sole, let alone the most significant and justifiable, aim of war among the Greeks. The same aforementioned doctrine had long before been affirmed by Plato. In the Republic, where Socrates and Glaucon discuss what acts ought to be forbidden in warfare, but distinguish between war against Greeks and that against barbarians, Socrates suggests that the armed conflict, with the Greeks, must be conducted entirely with a view to conciliation. The rule ought to be not enslavement or destruction of the enemy. “And as they are Hellenes themselves they will not devastate Hellas, nor they burn houses, nor even suppose that the whole population of a city –men, women, and children- are equally their enemies, for they know that the guilt of war is always confined to a few persons and that the many are their friends. And for all these reasons they will be unwilling to devastate their lands and raze their houses; their enmity to them will only last until the many innocent sufferers have compelled the guilty few to give satisfaction”.¹⁶ Contrast, though, the firm view of Aristotle, as expressed in the *Rhetoric*, that punishment and just retribution ought to be in every case the predominant object - *διὰ θυμὸν καὶ ὀργὴν τὰ τιμωρητικά.*

¹³ *Ιερά χώρα* (A. Bockh, *Corpus Inscriptionum Graecarum*, Officina Academica, 1171).

¹⁴ See I. Kareklas, ΔΙΕΘΝΕΣ ΔΙΚΑΙΟΝ ΚΑΙ ΕΛΛΗΝΙΚΟΣ ΠΟΛΙΤΙΣΜΟΣ (Athens, 2010), 19 for the text: *Μηδεμίαν πόλιν τῶν Ἀμφικτυονίδων ἀνάστατον ποιήσιν μηδ' ὕδατων ναματιαίων εἶρξεν μητ' ἐν πολέμῳ μήτ' ἐν εἰρήνῃ, ἐάν δέ τις ταῦτα παραβῆ, στρατεύσιν ἐπὶ τοῦτον καὶ τὰς πόλεις ἀναστήσιν, καὶ ἐάν τις εἰ σὺλα τὰ τοῦ θεοῦ εἰ συνείδη τί ἢ βουλεύση τί κατὰ τῶν ἱερῶν τιμωρήσιν καὶ χειρὶ καὶ ποδὶ καὶ φωνῇ καὶ πάσει δυνάμει.* See also extensively on the issue of Amphictionies *Idem*. pp. 15-22.

¹⁵ Xenophon, *Anabasis*, *Loeb Classical Library* 90 (Cambridge, Massachusetts: Harvard University Press, 1998), vii. I. 29.

¹⁶ Plato, *Republic*, *Loeb Classical Library* 276 (Cambridge, Massachusetts: Harvard University Press, 2013), v. 471A: *Οὐδ' ἄρα τὴν Ἑλλάδα Ἕλληνες ὄντες κερουσιν, οὐδὲ οἰκήσεις ἐμπρήσουσιν, οὐδὲ ὁμολογήσουσιν ἐν ἐκάστη πόλει πάντας ἐχθροὺς αὐτοῖς εἶναι, καὶ ἄνδρας καὶ γυναῖκας καὶ παῖδας, ἀλλ' ὀλίγους ἀεὶ ἐχθροὺς τοὺς αἰτίους τῆς διαφορᾶς. Καὶ διὰ ταῦτα πάντα οὕτε τὴν γῆν ἐβελήσουσι κείρων αὐτῶν, ὡς φίλων των πολλῶν, οὕτε οἰκίας ἀνατρέπουν. Ἀλλὰ μέχρι τούτου ποιήσονται τὴν διαφορὰν, μέχρι οὐ ἂν οἱ αἴτιοι ἀναγκασθῶσιν ὑπὸ τῶν ἀνατιῶν ἀλγοῦντων δοῦναι δίκην.*

If we now turn to the causes of the Peloponnesian War, one cannot but see that these very causes have little resemblance with the grounds of war as above elaborated. As a preliminary it should be stressed that this was a civil war amongst the Greeks, not an international armed conflict as the notion is nowadays comprehended. However, the war erupted between city-States of the classical Greek world, so from this perspective it may be too to be termed as an inter-State war. What is more, Thucydides invented the distinction between the remote and deeper causes of the war and the immediate causes of it. The immediate causes of the Peloponnesian War are well-known and there is no need to refer to them extensively: the events at Epidamnus, the political situation in Corcyra, the Megarian decree and the incidents at Potidaea. In the History of the Peloponnesian War Thucydides considered the immediate causes, which in fact went back almost five years before the commencement of hostilities, to be less important than the remote causes, which arose from the growth of the Athenian Empire during the fifty years before the outbreak of the war. The standpoint of Thucydides that the war was the eventual and inevitable sequence of that empire's growth has been widely accepted among scholars and is hereby too endorsed. Thucydides' main statement of the causes of the war runs as follows:

Διότι δ' ἔλυσαν τὰς αἰτίας προύγραφα πρώτον καὶ τὰς διαφορὰς του μὴ τινὰ ζητησαὶ ποτέ ἐξ ὅτου τοσοῦτος πόλεμος τοῖς Ἕλλησι κατέστη. Τὴν μὲν γὰρ ἀληθεστάτην πρόφασιν, ἀφανεστάτην δὲ λόγῳ, τοὺς Ἀθηναίους ἠγοῦμαι μεγάλους γυνομένους, καὶ φόβον παρέχοντας τοῖς Λακεδαιμονίοις ἀναγκᾶσαι ἔς τὸ πολεμοῦν. Αἱ δ' ἔς τὸ φανερόν λεγόμεναι αἰτίαι αἰδ' ἦσαν ἑκατέρων, ἀφ' ὧν λύσαντες τὰς σπονδᾶς ἔς τὸν πόλεμον κατέστησαν.

The reasons why they broke it [the peace] and the grounds of their quarrel I have first set forth, that no one may ever have to inquire for what cause the Hellenes became involved in so a great war. The truest explanation, although it has been the least often advanced, I believe to have been the growth of Athens to greatness, which brought fear to the Lacedaemonians and forced them to war. But the reasons publicly alleged on either side which led them to break the truce and involved them in the war were as follows.¹⁷

The imperial policy of Athens and ambitions of its ruling elite, which became manifest particularly in the eve of the Sicilian expedition, readily justified or at least explained a policy of counter-imperialism on part of Sparta that eventually led to war. These causes are far more similar to causes of contemporary wars that are characterized by an imperial spirit, that is, wars that are usually the consequence of imperialistic ambitions.

I cannot be agreed with Kagan, who attempts to disprove the statement of Thucydides and allege that the immediate causes of the war were far more important than the remote ones.¹⁸ Also, economic causes of various forms have been suggested as the real cause of the armed conflict. The proposition of Cornford that there was a party of merchants from Peiraeus who hoped to make gains by seizing control of the routes to the west through Megara, Acarnania, and Corcyra and forced Pericles to lead Athens to war is mostly an imaginary proposition.¹⁹ Clearly, the interest of Athens in Corcyra was strategic and not economic. Although there were

¹⁷ Thucydides, *History of the Peloponnesian War*, translated by C.F. Smith, *Loeb Classical Library* (Cambridge, Massachusetts: Harvard University Press, 1921), I, 23.

¹⁸ See D. Kagan, *The Outbreak of the Peloponnesian War* (Cornell University Press, 1989), pp. 345-346 : "Our investigation has led to conclude that his judgment is mistaken. We have argued that Athenian power did not grow between 445 and 435, that the imperial appetite of Athens was not insatiable and gave good evidence of being satisfied, that the Spartans as a state seem not to have been unduly afraid of the Athenians, at least until the crisis had developed very far, that there was good reason to think that the two great powers and their allies could live side by side in peace indefinitely, and thus that it was not the underlying causes but the immediate crisis that produced the war".

¹⁹ C.F. Cornford, *Thucydides Mythistoricus* (London, Edward Arnold, 1907), 1-51.

aggressively imperialistic Athenians who hoped to gain economically from the extension of their empire, the mere fact is that they did not formulate Athenian policy.²⁰ That policy was made by Pericles, who had previously fought them successfully and was not influenced by them at the stage of the final crisis. The interests of the merchants may only have had some part in the decision made by the Athenian people to embark upon an expedition in Sicily.

Noteworthy is a version of the Thucydidean thesis that the war was the inevitable outcome of the division of the Greek world into two power blocs.²¹ This Thucydidean view is reinforced by the weapons of contemporary political science, notably international relation theory. The condition that troubled the Greek world and brought about the war is to be found in the expression “bipolarity”. Bipolarity is used to describe a condition in which exclusive control of international politics is concentrated in two great powers solely responsible for the preservation of peace or the making of war expeditions. Such a thesis seems to be convincing, but not distinct from the remote and real causes of the war, as the influence and policies exerted by the two great States of the Greek world was actually the product of their respective inclinations, ambitions, ideologies and immanent idiosyncracies.

The more important contribution of Thucydides, however, in my view, is to be traced in the grounds of war as described in his History. In this third part of the article, an analysis will ensue indicating that the grounds, more properly the justifications, of war as elaborated by this great author in have provided the legal basis of some fundamental forms of armed intervention in the modern world, in the sphere of International Law science in particular.

The Thucydidean historical work sets an authoritative example of the Use of Force in the sense of armed intervention in international relations. The affairs which follow should be seen in the light of the fact that the Greek cities in ancient times were States themselves.²² First, Book IV of the *History of the Peloponnesian War*, may at first sight be said to pose an example of self-defence in International Law, particularly of protection of nationals abroad, this being a facet or category of self-defence of States. On its way to Sicily the Athenian fleet was met with a sea storm, which forced the ships to seek refuge in the Peloponnese (Pylos). Since the war between Athens and Sparta was at its height the Athenian navy members were arrested by the Lacedaemonians. Cleon, the Athenian demagogue, forcefully urged the Athenian Assembly for a military campaign to prevent their fellow citizens from being massacred. The incident may be described as an operation to save nationals abroad (since the Athenian prisoners of war were not subjects of the Spartans).

In modern International Law serious efforts have been made to limit the use of force by States. One of the cornerstones of International Law is the general prohibition of the Use of Force as enshrined in the Charter of the United Nations.²³ UN Charter Article 2(4) provides: all members shall refrain in their international relations

²⁰ On this I agree with Kagan. See *The Outbreak of the Peloponnesian War*, *ibid.* pp. 345-356.

²¹ P. J. Fliess, *Thucydides and the Politics of Bipolarity* (Baton Rouge, 1966). See also the fundamental work of Polly Low, *Interstate Relations in Classical Greece. Morality and Power*, *Cambridge Classical Studies* (Cambridge: Cambridge University Press, 2007) for an international or interstate relations perspective in Thucydides.

²² It is precisely because of the fact that the Greek cities were themselves recognized as States –albeit with common origins of blood, language, and religion- that the Peloponnesian War, though often described as the greatest ‘Civil War’ in antiquity, was in fact an international conflict.

²³ Previous efforts had been made to the same effect including primarily the Covenant of the League of Nations 1919, of which Article 12(1) provided: the members of the League agree that, if there should arise between them any dispute likely

from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations. However, Self-Defence of States is a commonly accepted exception to the general prohibition of the Use of Force as embodied in the UN Charter. Article 51 of the Charter stipulates that: “nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain international peace and security”.²⁴ The protection of nationals abroad forms one of the four facets of the right to Self-Defence. An attack against nationals of a State who happen to be abroad or failure for them to be succored in accordance with International Law stipulations, gives the right to this State to use armed force in order to protect its nationals without securing the consent of the foreign government. The right of a State to take military action to protect its nationals in mortal danger is recognized by all legal authorities in International Law. In *Self Defence in International Law*, Professor Bowett states, on page 87, that the right of the State to intervene by the use or threat of force for the protection of its nationals suffering injuries within the territory of another State is generally admitted, both in the writings of jurists and in the practice of States.²⁵

On June 27, 1976, an Air France airliner bound for Paris from Tel Aviv was hijacked over Greece after leaving Athens airport. Two of the hijackers appear to have been West German nationals; the other two held Arab passports. The airliner was diverted to Entebbe airport in Uganda where the Jewish passengers (about 100) were separated from the others and the latter released. The hijackers demanded the release of about 50 Palestinian terrorists imprisoned in various countries. The evidence seems to suggest that Uganda did not take such steps as it might have done against the hijackers and, indeed, helped them, although Uganda denied this. On July 3, 1976, Israel flew transport aircraft and soldiers to Entebbe and rescued the hostages by force. The hijackers were killed during the operation, as were some Ugandan and Israeli soldiers. There was also extensive damage to the Ugandan aircraft and the airport.²⁶

to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council, and they agree in no case to resort to war until three months have passed after the award by the arbitrators or the judicial decision or the report by the Council. Secondly, and more persistently, the Kellogg-Briand Pact 1928 declared: The High Contracting Parties solemnly declare that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

²⁴ The International Law of War and its first and foremost category, jus ad bellum, which provides for the legal justifications of war, recognizes four instances of lawful war: (1) individual and collective self-defence, (2) humanitarian intervention, though there exist views as to the opposite, (3) collective military action under Chapter VII of the UN Charter after a decision of the Security Council has been made, when regional or international security is at stake, and (4) war in aid of self-determination.

²⁵ In the *Law of Nations* (6th edition, Oxford: Oxford University Press, 2012), p. 427, Brierly states as follows: every effort must be made to get the United Nations to act. But, if the United Nations is not in a position to move in time and the need for instant action is manifest, it would be difficult to deny the legitimacy of action in defence of nationals which every responsible Government would feel bound to take if it had the means to do so; this is, of course, on the basis that the action was strictly limited on securing the safe removal of the threatened nationals.

²⁶ 15 *International Legal Materials* 1224 (1976). A similar Case is the *US Diplomatic and Consular Staff in Tebran Case*. On November 4, 1979, several hundred Iranian students and other demonstrators took possession of the United States

The military operation at Pylos has in a magnificent manner also generated the criteria for a legitimate use of force applicable in all cases of military intervention, including self-defence. These were formulated in the speech of the Athenian General Demosthenes only a while before the commencement of the military rescue operation: ‘Men who have gathered in this venture, let no one of you wish to be esteemed a man of rationality; but, instead, with plain courage, which *leaves no moment for deliberation*, let him attack the opponents and even be optimistic that he will eventually be victorious. When matters reach a point of *overwhelming necessity*, as the present case is, crude reflection is least needed in view of the *instant danger*.²⁷). Note the striking similarity between the terminology used in this text, and the one employed in the *Caroline Case* 1840,²⁸ which traditionally and in a universally acceptable proposition sets limits to the use of armed force in contemporary International Law: ‘It will be for Her Majesty’s Government to show a necessity of self-defence, instant, overwhelming, leaving no moment for deliberation’. These were the words of Mr. Webster, U.S. Secretary of State, to British Minister

Embassy in Tehran by force. They did so in protest at the admission of the deposed Shah of Iran into the United States for medical treatment. The demonstrators were not opposed by the Iranian security forces who “simply disappeared from the scene”. United States consulates elsewhere in Iran were similarly occupied. The demonstrators were still in occupation when the International Court of Justice was called to give a judgment. They had seized archives and documents and continued to hold 52 United States nationals (women had been released). Fifty were diplomatic or consular staff; two were private citizens. In an earlier judgment, the Court had indicated interim measures at the request of the United States. In the present judgment, the Court ruled on the United States request for a declaration that Iran had infringed a number of treaties, including the 1961 and 1963 Vienna Conventions on Diplomatic and Consular Relations respectively. It also asked for a declaration calling for the release of the hostages, the evacuation of the Embassy and consulates, the punishment of the persons responsible and the payment of reparation. In April 1980, while the case was pending, United States military forces entered Iran by air and landed in a remote desert area in the course of an attempt to rescue the hostages. The United State justified its action, in a report to the Security Council pursuant to Article 51 of the UN Charter, as being in “exercise of its inherent right of self-defence with the aim of extricating American nationals who are and remain the victims of the Iranian armed attack on our Embassy”. The attempt was abandoned because of equipment failure. United States military personnel were killed in an air collision as the units withdrew. No injury was done to Iranian nationals or property (*International Court of Justice Reports* 1980, p.3). The Court by thirteen votes to two, decided that the Islamic Republic of Iran had violated obligations owed by it to the United States of America under international conventions in force between the two countries, as well as under long-established rules of general International Law. The Court also decided that Iran must immediately take all steps to redress the situation resulting from the events of November 4, 1979, including the release of the hostages and the return of the premises and documents to the United States, and that Iran was under an obligation to make reparation to the United States. Iran, which declined to participate in the proceedings, did not comply with the judgment of the Court in any respect. The hostages were ultimately released in January 1981 as a result of a negotiated settlement with the United States.

²⁷ Thucydides, *History of the Peloponnesian War*, Loeb Classical Library (Cambridge, Massachusetts: Harvard University Press, 1972), Book IV, para. XXXVIII. (emphasis added).

²⁸ The case arose out of the Canadian Rebellion of 1837. The rebel leaders, despite steps taken by United States authorities to prevent assistance being given to them, managed on December 13, 1837, to enlist Buffalo in the United States the support of a large number of American nationals. The resulting force established itself in Navy Island in Canadian waters from which it raided the Canadian shore and attacked passing British ships. The force was supplied from the United States shore by an American ship, the *Caroline*. On the night of December 29-30, the British seized the *Caroline*, which was then in the American port of Schlosser, fired her and sent her over Niagara Falls. Two United States nationals were killed. The legality of the British act was discussed in detail in correspondence in 1841-42 when Great Britain sought the release of a British subject, McLeod, who had been arrested in the United States on charges of murder and arson out of the incident. (Harris, *Cases and Materials on International Law*, London: Sweet and Maxwell, 1991), p. 848. See Jennings, *American Journal of International Law*, 32, 1938, 82.

Mr. Fox (April 24, 1841). It makes one wonder whether Mr Webster, was a fervent reader of Thucydides. In fact, researches I have done into his biography have revealed that, indeed, he studied Thucydides to a significant extent. This may only be coincidental. But, it remains a true fact that the terminology used in both the the at the Pylos incident and the Caroline affair is identical. And, it remains an undisputable fact that the International Law principles laid down in the Caroline Case, known at the Caroline test, were put forward some 2,400 years ago in Pylos, as reported by Thucydides in the History of the Peloponnesian War. State practice in the field of the Law of War in the twentieth century that has developed in the same pattern as the rescue operation of Pylos (and Sphacteria) affirms the principles born out of the Peloponnesian War. A criterion is that the use of force must correspond to the dictates of the proportionality principle. The *Caroline* case principle may be seen as one that sets limits to the use of force in general and calls for adherence to proportionality. The classic formulation of Mr Webster in this context may also be quoted: ‘...did nothing unreasonable or excessive; since the act is justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it’.

Turning back to Thucydides, and examining for a moment the war incident of Pylos from a purely philological (and political) perspective, one cannot fail to see stress the rather unfair treatment of Cleon on part of Thucydides. In paragraph 28.5 of Book IV, where Cleon is described as struggling to persuade the Athenian assembly to undertake a military operation in Pylos to rescue the Athenian hostages, Thucydides verbatim says:

ἐνέπεσε μὲν τί καί γέλωτος τῆ κουρολογία αὐτοῦ. Ἀσμένους δ’ ὄμως ἐγίγνετο τοῖς σώφροσι τῶν ἀνθρώπων, λογιζόμενοι δοῦν ἀγαθὸν τοῦ ἐτέρου τεύξεσθαι. Ἡ Κλέωνος ἀπαλλαγῆσεσθαι, ὃ μᾶλλον ἤλπίζον, ἢ σφαλεῖσι γνώμης Λακεδαιμονίου σφίσι χειρώσασθαι.²⁹

The prejudice against Cleon is evident, though Thucydides to his credit seems to take a measured stance when he subsequently (much at the end of the Athenian military campaign) does not hesitate to emphasize the success of Cleon. *Καί τοῦ Κλέωνος, καῖπερ μανιώδης οὖσα, ἡ ὑπόσχεσις ἀπέβη* (and the promise of Cleon, mad though it was, proved to be successful, paragraph 40). The proverbial objectivity of Thucydides is further confirmed at paragraph 21.3, where it is stated that Cleon was a prominent and most influential demagogue. That statement, of course, is carries some irony, but still accurately depicts Cleon himself, who, indeed, exerted influence among the populace.³⁰

Cornford’s view that Thucydides emphasized and exaggerated the element of chance in the Athenian victory, in order, according to him, to minimize Cleon’s success, in reality it would serve rather to minimize that of Demosthenes, with whom Thucydides is generally supposed to have been on friendly terms.³¹ The war incident

²⁹ This prompted the Athenians to burst out laughing at his empty talk, while the wise heads among them reflected with satisfaction that they would get one or other of two benefits: either they would be rid of Cleon – the result they expected; or if they were wrong about this, they would have the Spartans as their prisoners (Thucydides, *The War of the Peloponnesians and the Athenians, Cambridge Texts in the History of Political Thought*, edited by Jeremy Mynott, Cambridge: Cambridge University Press, 2013)

³⁰ Gomme, in my view, rightly observes that this is ‘certainly an unexpected description of Kleon after the very similar one in iii. 36. 6, and the prominent and characteristic part there played by him, and not to be justified by Stahl’s argument that Kleon’s influence was not constant and probably weakened after the second debate over Mytilene’ (*A Historical Commentary on Thucydides*, volume III, Oxford: Oxford University Press, 1956).

³¹ I agree with Gomme: Certainly the word *τυγχάνειν* occurs frequently: 5.1 (the Spartan festival), 9.1 (the arrival of the Messenian vessels), 13.4 (the omission to block the entrances), and 18.3 (*τύχη*); also 30.2 (the fire on Sphacteria). But as pointed out in the nn. on i. 57. 6, and iv. 9. 1, *τυγχάνειν* does not necessarily mean that an event was accidental, but that it

at Pylos and Sphacteria was certainly affected by the fortune of war, not chance in the strict sense of the word. The navy battle which took place in the harbor of Pylos remains one of the most impressive ones in the history of naval warfare, and it is worth quoting the historian at this point.³²

The military operation at Pylos can also be viewed as a paradigm example of unilateral humanitarian intervention, if by extension of the doctrine of self-defence one accepts the existence of a similar right of intervention for humanitarian purposes. The speech of General Demosthenes again lays down the premises of humanitarian intervention. A State can lawfully use armed force to prevent humanitarian catastrophe of its nationals, especially if such a danger is imminent. Such was the action of the Athenian State in Pylos. And, certainly, in modern International Law this form of the use of force should conform to the requirements of the principle of proportionality as this was developed in the *Caroline Case*, cited above. A UK Foreign Office Policy Document gives an accurate definition of humanitarian intervention: ‘a substantial body of opinion and of practice has supported the view that when a State commits cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interests of humanity is legally permissible’.³³

To put this issue into a contemporary context and to address the fundamental issue of the moral justification of humanitarian intervention would require a whole inquiry into the ethical foundations of the international legal system. The tension focusses between sovereignty and human rights.

At first sight there is a legal duty to refrain from interfering in the internal affairs of other States. Each State is bound to respect the sovereignty of its neighbour States. This view has its roots in legal positivism. The German philosopher Wolff was the first to separate the international law principles from the ethics of the individual. Great academic debate has erupted over the general prohibition of the use of force as stipulated in Article 2(4) of the UN Charter,³⁴ especially the wording ‘against the territorial integrity or political independence of any State’.³⁵

was contemporaneous. ‘The Spartans were at that time holding a festival’: the most that is meant is that Demosthenes had not timed the arrival at Pylos in order to coincide with it. ‘The Messenian vessels had just arrived’: that the Messenians had arrived by arrangement with Demosthenes is obvious and is implied by 3.3; but to arrive at exactly the expected time was to some extent fortuitous and fortunate. It was similarly fortunate for the Athenians, and again not planned by them, that the Spartans had not blocked the entrances; but it was not chance. The only events that were really accidental were the storm (3.1, *κατά τύχην*) and the fire on the island; and in the latter case Thucydides makes this clear by *ἄκοντος* and *ἔλαθε*— he does not use. means ‘the fortune of war’, which may be no more due to accident than *τό εὐτυχῆσαι*, 17.4 or *τη παρούση τύχη*, 14.3 (*A Historical Commentary on Thucydides, ibid*, pp. 488-489).

³² Ἔς τούτο τέ περιέσθη ἢ τύχη, ὥστε Ἀθηναίους μὲν ἐκ γῆς τέ καί ταύτης Λακωνικῆς ἀμύνεσθαι ἐπιπλέοντας, Λακεδαιμονίους δέ ἔς τήν ἑαυτῶν τέ καί πολεμίαν οὐσαν ἐπ’ Ἀθηναίους ἀποβαίνειν. Ἐπεὶ πολὺ γάρ ἐποίει τῆς δόξης ἐν τῷ τότε τοῖς μὲν ἠπειρώταις μάλιστα εἶναι καί τὰ πεζὰ κρατίστοις, τοῖς δέ θαλασσίσις τέ καί ταῖς ναυσὶν πλεῖστον προέχειν. (Thucydides, *History of the Peloponnesian War*, Loeb Classical Library, Boston, Harvard University Press, 1923, 4.1.2.).

³³ UK Foreign Office Policy Document NO. 148 reprinted in United Kingdom Materials in International Law 1986, 57 *British Yearbook of International Law* 614 (1986).

³⁴ See generally, I. Brownlie, *International Law and the Use of Force by States* (Oxford University Press, 1963).

³⁵ Walzer proposed that ‘any use of force by one state against the political independence of another constitutes aggression and is a criminal act’ (*Just and Unjust Wars*, Basic Books, 2006), p.61.

It is necessary to show that a right of unilateral humanitarian intervention is compatible with Article 2(4) of the UN Charter.³⁶ The only exceptions to the general prohibition of the threat or use of force are the 'inherent right of individual or collective self-defence in the face of an armed attack against a State in Article 51 of the UN Charter, and enforcement actions by the Security Council or by a regional organization or group of States authorized to use force by the Security Council under Chapter VII of the Charter. Neither of these provisions is applicable to unilateral humanitarian intervention. Two arguments may be employed: that a genuine humanitarian intervention would not be a use of force against the 'territorial integrity or political independence' of another State, or that it would not be 'inconsistent with the Purposes of the United Nations'. It is noteworthy that in their commentary on the Charter, Goodrich and Hambro observed that it is possible to construe the language as allowing certain limited uses of force, such as a temporary intervention for protective purposes.³⁷ Teson, noting that the promotion of human rights is as important a purpose in the Charter as the control of international conflict, concludes that to argue that humanitarian intervention is prohibited by Article 2(4) is a distortion.³⁸

Article 2(4) must be read and interpreted in conjunction with the purposes of the United Nations one of which is the promotion of human rights. The Preamble to the Charter reads as follows: 'We the peoples of the United Nations determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights...of nations large and small...'. Article 1(3) states: 'To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all.'³⁹ Further, Article 55(c) of the Charter declares that the United Nations shall promote 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. More importantly, by Article 56 'all members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55'.⁴⁰ The deduction from the above should be that the right of unilateral humanitarian intervention is clearly not incompatible with Article 2(4) of the UN Charter.

Apart from the legal debate, however, I would suggest, from the moral standpoint, that the rights of States under international law derive from individual rights. The proper role of the State is to ensure protection of the rights of the individuals. As Hersch Lauterpacht very well put it, 'states are like individuals; it is due to the fact that states are composed of individual human beings...The dignity of the individual human being is a matter of direct concern to international law'. Lauterpacht's rationale for humanitarian intervention is that 'ultimately, peace is much more endangered by tyrannical contempt for human rights than by attempts to assert, through intervention, the sanctity of human personality'.⁴¹ Therefore, in my opinion, State sovereignty must give way

³⁶ UN Charter Article 2(4): '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'.

³⁷ Goodrich and Hambro, *Charter of the United Nations: Commentary and Documents* (Boston: World Peace Foundation, 1946) p.68-69.

³⁸ Teson, *Humanitarian Intervention* (Transnational Publishers, 1988) p.151.

³⁹ UN Charter, Article 1(3) (emphasis added).

⁴⁰ UN Charter, Article 56 (emphasis added).

⁴¹ H. Lauterpacht, *International Law and Human Rights* (London, 1950), p.32 (emphasis original). H. Lauterpacht is late Whewell Professor of International Law in the University of Cambridge.

to the protection of human rights whenever these are flagrantly violated.⁴² In view of the preceding theoretical discussion in this section, I strongly submit that States have a moral right, to say the least, to unilaterally intervene in cases of overwhelming humanitarian necessity. The writings of learned jurists should, in my submission, be taken much more seriously into account, and perhaps cease to be seen merely as subsidiary sources of public international law (despite Article 38(1)(d) of the ICJ Statute).

A further instance, which could have crystallized into a clear example, of humanitarian intervention in the History of Thucydides, and eventually did not materialize as such, is provided In Book III. The Island of Lesbos (member of the Athenian Empire-Commonwealth or Confederation of city-states) revolted from Athens. The Athenians set sail against the Mytilenians (inhabitants of Lesbos), and warned them that if they were to refuse an order to surrender, they would demolish their fortifications. An embassy of Mytilenians sought the help of Sparta thus: 'Come to the help of Mytilene. It is our lives that we are risking; an even more general calamity will follow if you will not listen to us'.⁴³ The very basic criteria for humanitarian intervention were in this case fulfilled: (i) the Mytilenians were subjects of a State (Athens), (ii) they consented to the military intervention undertaken for their own sake, and (iii) they faced imminent danger of humanitarian catastrophe.⁴⁴ The Spartans, indeed, dispatched a fleet which reached the coast of Lesbos but never engaged in fighting. The conservative foreign policy of Sparta dictated that the military forces of the State were to keep an eye on a possible Revolt of the Helot population in the Peloponnese.⁴⁵ This affair serves, if not else, as an instance clearly showing that humanitarian disaster may, indeed, be the outcome of non-intervention, as it eventually was with the Mytilenians. Therefore, it may be inferred that humanitarian intervention in cases of instant necessity is a must.

The History of Thucydides has undoubtedly laid down the foundations of modern International Law of War. State practice of ancient times, indeed the custom of the States of ancient Greece, cannot be neglected.⁴⁶ The adoption of the UN Charter is not meant to suggest that pre-charter international customary law has automatically been abrogated. Instead, customary law can, indeed, be considered as part and parcel of a unified International Law tradition; as living international custom, living law, which may still find appeal in the modern world.

⁴² Most legal scholars who are opposed to humanitarian intervention emphasizing the danger of abuse, are putting forward a policy objection rather than a principled argument. However, all rights are capable of being abused. The right of self-defence has undoubtedly been the subject of abuse, but it is never seriously suggested that International Law should not include the right of a State to defend itself.

⁴³ Thucydides, *History of the Peloponnesian War, ante*, Book II, 14.

⁴⁴ The basic criteria for humanitarian intervention were fulfilled, but the Mytilenians's constitution was an oligarchy; the majority of the citizens of Mytilene may well have seen things very differently (on this point see G. de Ste. Croix, *The Origins of the Peloponnesian War* (Cornell University Press, 1972)

⁴⁵ See, however, Hornblower, *A Commentary on Thucydides Volume I* (Oxford University Press, 1997), where he argues that the standards of the ancient Greeks were not ours, and by our standards the Spartans were probably among the least 'humane' of all ancient Greeks.

⁴⁶ Thucydides, having detected the unchangeable character of human nature, ably predicted: 'My work is not a piece of writing designed to meet the taste of an immediate public, but was done to last for ever' (*History of the Peloponnesian War, ante*, Book I, 22).

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