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Bertha von Suttner and International Law: *Ius contra bellum*

When Bertha von Suttner published her novel *Die Waffen nieder* in 1889, international law was in many fields in early stages of development. For example, this is true of the international law on the use of force between states, which was fairly rudimentary in the late 19th century. But interestingly enough, the situation was soon about to change, and it is conceivable that von Suttner contributed to the progressive development of the law on the use of force that was to manifest itself ten years after the publication of her book. I am referring to the, albeit meagre, but nevertheless interesting, results of the 1899 Peace Conference here in the Hague. I will revert to the Conference later, but first let us look at the legal situation at the time of publication of *Die Waffen nieder*.

As to the legal regulation of war, international lawyers and diplomats have always made a distinction between *jus ad bellum* (admitting self-defence and prohibiting aggression) on the one hand, and *jus in bello* (on humanitarian standards in war) on the other. The first set of norms did in the late 1800's not amount to a clear rule on the non-use of force in international relations. In modern international law the *jus ad bellum* has matured into a *jus contra bellum* (prohibiting aggression and admitting self-defence, in that order), and this modern approach more or less corresponded to Bertha von Suttner's and the peace movement's ambition to abolish and prohibit war as such.

However, the modern view recognizes that war, even if prohibited, will still happen, and that specific legal rules are needed to deal with that fact. Hence the need for a *jus in bello*, what we today call international humanitarian law of armed conflict, equally applicable to all parties irrespective of who is aggressor and who is "self-defender". International humanitarian law requires a decent behaviour on the battlefield, in the prisoners of war camps, and towards the civilian population. The peace activists were mainly interested in a prohibition on war as such, but they had to relate to the *jus in bello* as well, and we shall see how Bertha von Suttner approached this matter.

But let us start with the dimension of *jus ad bellum*, or *contra bellum* as von Suttner surely would have preferred to address the issue.

In *Die Waffen nieder* the leading character is Marta whose first husband is killed in war. In the latter part of the novel her second husband Fredric discusses the outbreak of war with a clergyman in Berlin and sums up the discussion:

“So we arrive at the following conclusion, that only wars of self-defence are admitted, and there is no right to resort to arms unless the enemy has first attacked your country. But if the enemy accepts the same reasoning, how could wars ever come about? In the last war {Fredric here referred to the war between Prussia and Austria of 1866} it was your army that first crossed the border . . .”

The German clergyman referred to the Holy Bible and the duty of the national leader to use any convenient opportunity to defeat a national enemy. Fredric shook his head and noted that the principle of convenient opportunity could not possibly be equally applicable to both parties. Von Suttner is here speaking through Fredric’s mouth and she displays no confidence in a legal norm which admits a broad justification of self-defence. She seems to favour an absolute ban on all use of force.

Later in the novel the characters experience the Franco-Prussian War of 1870-1871. The author notes that both parties to the conflict argue self-defence. Her comment is that what all states should rather defend themselves against is the warmonger spirit in their own national societies. She is unhappy with a situation where a smart political leader (like Bismarck in this case) can provoke another leader (Napoleon III) to attack first, thereby inviting the opponent to use the justification of self-defence. To her the distinction between first and second use of force, between aggression and self-defence, seems counter-productive, at least in some cases.

The French Declaration of War in July 1870 generally produced the reaction that the German nation was the victim of aggression. This was the view, for example, of Karl Marx and other German socialists. But in September 1870 the situation had changed. The general view was now that the Prussian war of self-defence had transformed itself into a fighting for territorial expansion in Alsace-Lorraine. Karl Marx described the war after the battle of Sedan as “an act of aggression” against the territorial integrity of France and the people of Alsace-Lorraine. Marx was oscillating between the poles of justifiability (self-defence) and non-justifiability (aggression), between perceived legality and illegality in line with the customary law development of the time. Von Suttner did not “buy” this dualistic and legalistic approach. She realized that it could not stop the outbreak of war. She wanted a watertight prohibition against the use of force in international relations.

In order to achieve that, the international community needed alternatives to gunboat and war diplomacy, and von Suttner, together with many others, advocated **arbitration**.

In the novel, Fredric Tilling is involved in a discussion with a retired diplomat who argues that governments cannot possibly agree among themselves on how to solve all disputes. Fredric answers:

“But that is not necessary. If a dispute arises it should be settled by a court of arbitration and not through the use of force”.

The older man interjects:

“The sovereign states and nations will never accept such a court’s decision!”

Fredric responds:

“The nations? It will be the diplomats and Their Excellencies who won’t accept it. But ask the people and you will get another answer! Among the people the wish for peace is genuine and heartfelt”.

At the end of the book, in the Epilogue, von Suttner mentions the Alabama Claims arbitration of 1872, and the Caroline Islands arbitration of 1885, as successful examples of peaceful settlements of disputes. This was a time when the peace movement was very active and when idealistic international lawyers founded peace-oriented institutes and associations. *Die Waffen nieder* includes a couple of references to the Swiss professor Johann Caspar Bluntschli (d. 1881) who was famous for his efforts to develop international law in a progressive direction. Bluntschli was much inspired by the successful conclusion of the Alabama dispute (between the USA and the UK) through the arbitral award in Geneva in 1872. The following year he belonged to those who founded the *Institut de droit international* in Ghent. Belgium was chosen as the host country due to its status of neutrality. The new institute should, according to its statutes, promote the development of international law through its ambition to function as “the common legal conscience of the civilized world”. Bluntschli had suggested this concept, a “Rechtsbewusstsein der civilisierten Welt”, and von Suttner was influenced by it. She did not believe in the value of treaties negotiated among so called statesmen (that is clear from some passages in *Die Waffen nieder*), but she had great hopes for a development of international morality.

Let us compare with what a famous Finnish lawyer recently has written about Bluntschli:

“For Bluntschli, the essence of the legal craft was neither the reporting of treaties, negotiated by diplomats with an eye for immediate benefit, nor the elucidation of customs, always developed for local situations and for particular needs. Law was, in accordance with the catch-word of the times, dynamic, and it was the task of the legal science to capture and describe it in its dynamism.”

(Martti Koskenniemi, *The Gentle Civilizer of Nations*, 2001, p. 42 f.)

Von Suttner was not the only writer at the time that advocated international arbitration. The Swedish writer August Strindberg, who in 1884 lived in Switzerland and was influenced by the cosmopolitical atmosphere of Geneva with its refugees, peace activists and international associations, wrote on spot a short story where the Alabama arbitration played a major role. The story first pictures a tragic incident during the Franco-Prussian war and it concludes with a peace-time dinner party at Lac Léman where glasses of champagne are lifted to greet the news of the successful arbitration in Geneva. The story is still very readable. It was published in Swedish and Danish in 1884 and 1885, in French in 1885 and 1895, in German (in Vienna) in 1885, and it was presented in English in 1895 in *Belgravia London Magazine*. The title of the French version was *Remords*. The German translation was done by Mathilde Prager in Vienna and it was published in the *Neue Freie Presse* in July 1885, probably with the title *Gewissensqual*. Bertha von Suttner might have read this “Peace story”, as it was sometimes referred to in Sweden. There is one comment by

Marta Tilling in *Die Waffen nieder* which indicates that this could well be the case. After the conclusion of the German-Danish war of 1864, Marta puts forward a suggestion in order to rule out future wars in Europe. She says:

“{W}hy couldn't all civilized states in Europe enter into a pact, a community with one another? Wouldn't that be the easiest way?”

In the novel the idea is totally ignored by the male participants of the conversation, but it is the same idea that Strindberg at one point had presented in his story. At the dinner-party at Lac Léman one person had made the point that future wars of reconquest could be avoided:

“...when Europe becomes unified ... one federation of states, then Alsace-Lorraine will be neither French nor German, but simply - Alsace-Lorraine. Will that be the end of the problem?” (*Utopier i verkligheten*, 1885).

So far the issues touched upon have all demonstrated a potential for a *jus contra bellum*, either directly as a legal and moral imperative, or indirectly through mechanisms of arbitration or integration.

Now let us turn to the *jus in bello*, the “laws of war”. Modern international humanitarian law of armed conflict has its genesis in the battle of Solferino in 1859, or rather in the booklet *A Memory of Solferino* that Henry Dunant wrote between 1859 and 1862. In the book Dunant, who had been present at the bloody battle, made an appeal for international cooperation to alleviate the suffering of the victims of combat in the future. His appeal resulted in the birth of the Red Cross movement and the adoption of the first Geneva Convention of 1864 on the Protection of War Victims - it was later to be replaced by more modern and extended versions.

Bertha von Suttner tells the story about Dunant's book in *Die waffen nieder*, and her alter ego, Marta, deplores that Austria was not an original party to the Geneva Convention.

Marta's first husband is killed in the French-Austrian war of 1859. The reader first gets the impression that he was killed at Solferino, but later it becomes clear that he was killed before that - at the battle of Magenta. In my view, von Suttner makes a mistake here as an author of a *Tendenzroman*, a novel with a purpose. The place of death for the young officer is not completely irrelevant. She should have chosen Solferino which, through its link to the Red Cross movement, stands as a symbol for the need to *do* something in the face of war.

During the Prussian-Austrian war of 1866 Austria joins the Geneva Convention and the Red Cross system. In the novel Marta's father asks her:

“Well, are you satisfied now? Do you realize that war, which you always labelled as barbarism, will grow more humane as civilization advances?”

Marta responds that the efforts of the Red cross will always be insufficient. The organization will never be able to eliminate the misery that comes with a battle. Her father agrees:

“Not eliminate, but alleviate. What you cannot prevent, must be alleviated”

Marta does not accept this argument. Her response is

“...it is not possible to alleviate such misery. I would like to turn your sentence round and say: What you cannot alleviate, must be prevented.”

In other words: War as such must be prevented.

Bertha von Suttner does not articulate the standard legal objection to the humanitarian laws of war, that since war itself is or should be outlawed, it is absurd to regulate something which is or should be prohibited. But she comes pretty close to this line of argumentation.

To sum up her views on international law and war, as far as they can be deduced from her novel, she is all for a strong prohibition against the first use of force in international relations, but she does not exclude that this prohibition also covers some second use of force. On the other hand, it has been pointed out that she does not condemn war in self-defence as such, and consequently, the legal prohibition she aspired could not be totally without exceptions. Anyway, what she wanted was a comprehensive *jus contra bellum*, something which did not exist at the time.

With regard to *jus in bello*, especially the humanitarian law on conduct in hostilities, she simply did not believe in it. In the beginning of *Die Waffen nieder* a Dr. Bresser argues that as long as “enmity” is a living phenomenon among humans, the dictates of humanity will not have universal application.

Bertha von Suttner and other activists of the peace movement attended with great hopes the **Hague Peace Conference in 1899**. They must have felt a certain disappointment that the Conference’s main achievements was in the field of *jus in bello* (e.g. the land warfare regulations and the prohibition of the dum-dum bullet), rather than in the field of *jus contra bellum*. Nevertheless, the first convention adopted dealt with Pacific Settlement of Disputes and Arbitration. The popular demand for arbitration had yielded results. One small step in the direction of phasing out war had been taken. But it was a very small step. The idea of compulsory arbitration had been abandoned. There was no binding renunciation of the use of force, merely a declared intention to avoid armed force “as far as possible”. There was an agreement to use good offices and mediation instead of resorting to force, but only as far as “circumstances” permitted. After these vague commitments the Convention elaborated a voluntary system for arbitration with the still existing Permanent Court of Arbitration.

The Preamble of the Convention on Pacific Settlement of Disputes, although not of a binding nature, is interesting. Its formulations indicate an emerging customary law

principle of non-use of force in international relations. The first two preambular paragraphs refer to the Contracting States as:

“Animated by a strong desire to work for the maintenance of general peace;
Resolved to promote by their best efforts the friendly settlement of international disputes;”

Perhaps, one of the more interesting aspects of the 1899 Conference was its follow-up in 1907 (the Second Hague Peace Conference), and its planned but abortive follow-up with a similar conference in 1915. Conference diplomacy was being arranged in a regular pattern that paved the way for more institutional cooperation after World War I. With the founding of the League of Nations in 1920 and the United Nations 25 years later, the system of **collective security** had established itself as a goal for the international community. The concept of collective security included the norm of *jus contra bellum* that the peace movement had so ardously fought for.

It is not surprising that Bertha von Suttner was interested in collective security, even if she did not use that term. But of the four elements of collective security that may be listed she stood behind at least the first three. She supported peaceful settlement of disputes, non-use of force, and collective decision-making to maintain the peace. She may also have supported the fourth concept of collective sanctions (including military measures) against peace-breakers. We don't know for sure.

What we know is that she took an interest in the history of ideas as to different schemes for European confederations with a permanent council of decision-making states. In *Die Waffen nieder* there are a number of references to Immanuel Kant's *Zum ewigen Frieden* and Kant's ideas on inter-state cooperation. But there are also references to Kant's predecessors, King Podiebrad of Bohemia, Henry IV of France, the Duke of Sully, the quaker William Penn, the Abbé de St. Pierre and Gottfried Wilhelm Leibniz, who all supported some kind of European union as a means of maintaining peace and building common security.

Bertha von Suttner did not elaborate on this aspect, but she lived in an era when the first steps towards collective security were taken, and when the ongoing process of conference diplomacy needed the peace movement to keep its momentum. She played her constructive part in that.

As we know, World War I had to come and go before the first experiment in collective security could be launched. Bertha von Suttner had died in 1914, just before the shots of Sarajevo, but her spirit was certainly present in Versailles in 1919, when the Covenant of the League of Nations was adopted and a further step in the direction of a *jus contra bellum* was taken by the international community.