

WAR AND PEACE IN INTERNATIONAL RELATIONS ACCORDING TO NORBERTO BOBBIO (AND CARL SCHMITT)¹

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This essay discusses three aspects of Bobbio's reflections on peace and war: i) the doctrine of just war; ii) the thesis of overcoming the sovereignty of national states through a federation that overcomes the state of anomie in which international relations find themselves; iii) the need for this federation to be made up of states that are minimally homogenous to each other, in other words, democratic states governed by the rule of law. For Bobbio, the democratization of international relations is one of the most important conditions for an effective guarantee of peace. In this way, Bobbio criticizes the realist tradition (represented here by Carl Schmitt) and affiliates himself with the Kantian cosmopolitan tradition. At the same time, Bobbio is aware of the difficulties of realistically realizing this project in a context of international relations in which sovereign states remain the main, if not the only, subjects of international law. In particular, he points to the issue of the "absent third party", i.e. the lack of a *super-party* political subject that can support a true cosmopolitan order. Based on these reflections, some considerations will be made about the relevance of Bobbio's theses in relation to war and peace in the context of international relations in the contemporary world.

Keywords: War and peace, cosmopolitanism, realism, international law, democracy and human rights.

*"Compared to the brutality of religious and party wars,
which by nature are wars of annihilation
and in which enemies discriminate against each other as criminals and pirates,
that [the end of the just war doctrine]
means rationalization and humanization,
with profound effects"*
(SCHMITT, 2015, p. 51).

*"Contrary to what my critics seem to believe,
the effect of abandoning the just war doctrine
it wasn't the 'all wars are unjust' principle,
but exactly the opposite principle:
'all wars are just'"*
(BOBBIO, 1991, pp. 55-56).

I intend to develop the theme of this communication based on a central issue in Bobbio's internationalist thought. With the constitution of modern states, the sovereign imposes the monopoly of legitimate force, destroying, assimilating and homogenizing the old feudal intermediary bodies, and thus creating the conditions for an internal order; but

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the same does not happen in international relations. After the end of the medieval *Christian republic* and its two highest authorities, the Pope and the Emperor who governed it, modern sovereign states relate to each other *almost* like individuals in the Hobbesian state of nature, i.e. in a state of latent or manifest war.

On this crucial point, the cosmopolitan theories that defend the political, legal and moral need to overcome this state of international anarchy clash with the realist theories that somehow justify and legitimize this condition as something insurmountable that can only be managed, but not eliminated. Bobbio, despite his characteristic oscillations and prudence, is affiliated with the first family of theories, as we will try to demonstrate.

Although he did not draw up a systematic doctrine of international relations, Bobbio repeatedly returned to the theme of the relationship between democracy, human rights, war and peace. His reflections are spread over several essays, from those collected in *The Problem of War and the Ways of Peace* (1979), through *The Absent Third* (1989), the final essay of *The Future of Democracy (Democracy and the International System, 1991)* to his autobiography *Diary of a Century* (1997)³. The essays, in keeping with Bobbio's style, are dense and it is not always easy to understand whether he is analytically describing the dilemmas of reality or prescribing a solution (See LAFER, 2013, pp. 59-13).

First, I would like to justify the lack of more detailed attention to the theme of the "balance of nuclear terror", which occupies a significant part of Bobbio's reflections. I did this not because I no longer consider the atomic threat to be topical; on the contrary, it is just as topical as it was in Bobbio's time. The nuclear arsenals of several nations are still full of weapons and, to the danger of a thermonuclear war breaking out between states, – which terrified citizens during the Cold War and is still current – , is added the very plausible threat of an "atomic terrorist attack", with catastrophic effects and unpredictable consequences (GLEISER, 2016). But this issue, due to its "excessive" nature, goes beyond any discussion and eliminates any justification for a just, preventive, defensive war, threatening human survival itself, as Bobbio has aptly described (BOBBIO, 2003, pp. 49-116).

I will therefore focus on war with conventional weapons, which have immensely increased their power of destruction, analyzing three aspects: the problem of war and peace, in particular the debate on just war; overcoming the sovereignty of states through an association or federation of states, as a necessary condition for peace; and the democratization of international relations as a necessary premise of the whole discourse.

But before that, I'll start by presenting the opposite position to Bobbio's on the subject, that of Carl Schmitt.

1. Political realism and just war: Carl Schmitt

Schmitt is not an author with whom Bobbio has dealt frequently⁴. He is certainly not one of Bobbio's masters; in fact, he is the main adversary of one of his masters, Hans Kelsen. Nor is he an interlocutor like, for example, Marx, to whom Bobbio devotes a great deal of attention and many essays. Nor is he an author like Nietzsche and Heidegger, whom he simply ignores. Bobbio is well acquainted with Schmitt's work, he had a personal meeting with him in 1937⁵, but he considers him to be a theoretician of Nazism and derides the Italian left who pay homage to his thought.

³ The dates refer to the first Italian edition.

⁴ In the anthology organized by Marco Revelli, in more than 1,700 pages of Bobbio's writings, Schmitt's name appears only a few times and almost always in a critical way (BOBBIO, 2009b).

⁵ The episode is quoted in REVELLI, 2009b, p. LXXXIV. After this episode, the two thinkers corresponded for a certain period. See BOBBIO-SCHMITT, 1997 and SØRENSEN, 2005.

Carl Schmitt, who for a certain period was not only a promoter but also a theoretician of the Nazi state, was eventually, at least in Italy, rediscovered and honored above all by left-wing scholars, despite having been an adversary, during the great constitutionalist debate of the Weimar era, of Hans Kelsen, the greatest theoretician of democracy in those years (BOBBIO, 2009b, p. 16).

Carl Schmitt - one of the great realist thinkers of the 20th century - in *O nomos da terra no direito das gentes do Jus publicum europæum* (2014) states that the Peace of Westphalia of 1648 - which put an end to the Thirty Years' War and, more generally, to the era of wars of religion - is a milestone in the creation of modern international law, from which the only subjects of law become the independent and autonomous states in their jurisdiction, which do not recognize any higher authority; in other words, which live in a literal state of anarchy. This is what Schmitt calls *jus publicum europæum* and which finds one of its fundamental milestones in the end of the just war doctrine (SCHMITT, 2014, p.117-160).

Following a very ancient tradition, the doctrine of *just war* (*justum bellum*) argues that war requires a legitimate authority to proclaim it, the good intention of those who promote it, righteousness in its development and the existence of just causes which are fundamentally three: reparation for an injustice suffered (*repellere iniuriam*), the recovery of material goods unjustly taken, the imposition of just punishment against those who committed the offence (*iniuria*). Without these premises, war would become a crime (*latrocinium*), as stated by St Augustine in the *City of God*, the first Church Father to elaborate a doctrine of just war that would have enormous repercussions throughout the Middle Ages⁶.

Wars acquire more or less legitimacy depending on the type of enemy they face: in the Middle Ages, the Muslim infidels, who did not recognize the Christian faith and had invaded Christian territories, were considered perpetual enemies (*perpetui hostes*) of Christendom and wars against them were *eo ipso* just.

Law is called upon here not only to formalize and ritualize war, but to make justice possible; war is seen as an instrument, albeit an extreme one (*extrema ratio*), at the service of justice and peace. This theory presupposes the existence of a higher authority that can act as arbiter and judge of the legitimacy of war, because it can be just only for one of the contenders and not for both. In this doctrine, war is considered a relative evil that should always serve to guarantee peace⁷.

Schmitt gives the overcoming of the just war doctrine great historical importance, because of all the causes of just war only one remains: legitimate authority, all others are eliminated. In this conception, the right to promote war on the part of the constituted authority (*jus ad bellum*) is out of the question. Any sovereign state, by definition, has this right; therefore, what can be regulated is behavior during war (*jus in bello*). War is legal when it respects certain parameters and conventions of international law and when it is carried out by sovereign states, which are the only ones with the legitimacy to do so and which do not need the recognition or authorization of any higher authority (*non expectata auctoritate principis superioris*).

⁶ For a historical reconstruction of the concept of just war see: WALZER, Michael. *Just and Unjust Wars*. São Paulo: Martins Editora, 2003. CASSI, Aldo Andrea. *Santa, giusta, umanitaria: la guerra nella civiltà occidentale*. Rome: Salerno Editore, 2015. VERHOEVEN, J. Les grandes étapes de l'évolution du droit de la guerre. In *500 anni di solitudine*. The conquest of America and international law. Verona: Bertani, 1994, pp. 143-177.

⁷ On the various historical interpretations of just war from antiquity to the present day, see: CALORE A. (ed.), *Guerra Giusta? La metamorfosi di un concetto antico*. Milano: Giuffrè, 2003.

According to Schmitt, this change has three important consequences.

There is a **secularization** of the doctrine of war, which is removed from the competence of theologians. In this regard, Schmitt cites Alberico Gentili's statement as a paradigmatic moment⁸ :

Silete theologi in munere alieno [Theologians, shut up on foreign matters!], exclaimed Alberico Gentili, to keep theologians away from the discussion of the concept of war and to save a non-discriminatory concept of war. As the new rational order, the state appears to be the historical bearer of de-phonologization and rationalization (SCHMITT, 2014, p. 170)⁹.

There is a **rationalization** or ritualization of war: humanity has always lived with war and will continue to do so, and what can be done, say the realists, is to organize, ritualize, formalize, delimit, through law, the scope of what is legitimate in the case of war, as Schmitt says:

In the new European law of nations, war between states emerged in opposition to religious war and civil war, neutralizing and overcoming the oppositions between parties. War now becomes a "war in form", "*une guerre en forme*", because it becomes a war between European states as such, clearly delimited in terms of their territory, a confrontation between spatial units represented as *personae publicae* [public persons] who form, on common European soil, the European "family" and who are thus able to see each other as *hostes iusti* [just enemies] (SCHMITT, 2014, p. 150).

There is also a **humanization** of war:

Compared to the brutality of religious and party wars, which by their nature are wars of annihilation and in which enemies discriminate against each other as criminals and pirates, and compared to colonial wars waged against "savage" peoples, this means a rationalization and humanization with profound effects (SCHMITT, 2014, p. 151).

This doctrine, according to Schmitt, dominated the centuries from the Peace of Westphalia in 1648 to the First World War with the creation of the League of Nations, which put an end to the era of *jus publicum europæum*¹⁰.

In a decisionist and realist conception of politics like Schmitt's, international law is the child of war, as an expression of the relations of force between states. In this case, the maxim is: law arises from fact (*ex facto oritur jus*), law legitimizes a situation of fact, *ex post factum*. The central issue for Schmitt in the case of just war is the change, according to him radical, in the condition of the enemy, who is no longer seen as unjust, but as *just* (*justus hostis*).

⁸ In 1598, in Elizabethan England, the Italian jurist Alberico Gentili (1552-1608), exiled because he had embraced Protestantism, became the first professor of civil law at Oxford and denounced the intrusion of theologians in matters that did not concern them, thus signaling, according to Carl Schmitt, the end of the medieval doctrine of just war and the beginning of *jus publicum eropæum*: "Alberico Gentili, an authentic jurist of that time of change, gave the battle cry and found the formulation that can be considered the motto of sociological knowledge of the time: *Silete theologi in munere alieno!*". SCHMITT, 2014, p. 127 and pp. 131-135. The quote is taken from: GENTILI, A. *De iure belli libri tres*, lib. I, ch. 12.

⁹ This statement can be seen as an almost literal response to the Dominican theologian Francisco de Vitoria (1483-1546) who had said: "Officium ac munus theologi tam late patet, ut nullum argumentum, nulla disputatio, nullus locus alienus videatur a theologica professione et instituto" ("The office and competence of the theologian are so vast that no argument, no dispute, no matter, seems alien to the theological profession and institution"). VITORIA, *De Potestate Civili*, 2016, p. 194.

¹⁰ Strangely, Schmitt doesn't include the Second World War as part of this same era; we'll see why later.

What is striking about Schmitt's reflections,— elaborated in a very elegant and cultured manner and repeated with insistence in *O Nomos da terra*—, is their paradoxical nature, which, incidentally, is one of the characteristics of the German philosopher of law's thinking, despite (or perhaps because of) the clarity and forcefulness of his arguments (ALMEIDA FILHO, 2014, p. 57-69).

In the first place, it is impossible to see how the thesis that formalization allowed, in addition to secularization and rationalization, a "humanization" of war could be sustained historically. According to Schmitt, the *jus publicum europæum* was in force from the Peace of Westphalia until the end of the First World War, with the Peace of Versailles and the creation of the League of Nations. However, this periodization is merely formal, because, as we know, the League of Nations failed to implement Wilson's cosmopolitan project and what remained in force was the system of absolute state sovereignty at least until the end of the Second World War, with the creation of the UN.

This long period of more than 300 years was characterized by countless armed conflicts between sovereign states, such as the Napoleonic Wars, and was undoubtedly a period marked by continuous wars as bloody and annihilating as the medieval and Renaissance ones, due to the technological development of the destructive power of weapons, but also to the absolute power of sovereigns to proclaim war, which formalization and rationalization failed to limit and humanize in its destructive effects. This situation had become so serious that it aroused the concern of several Enlightenment thinkers: the "philosophical project" of Kant's *Perpetual Peace* (2008) is just one of the countless writings on the subject to try to overcome this ever more intolerable state of war and anomie¹¹.

There is a second paradoxical aspect, which Schmitt himself emphasizes. The wars mentioned above were fought between Europeans, within the border lines of war and/or friendship (*amity lines*), which characterized the division of geopolitical spaces (SCHMITT, 2014, pp. 85-146; 196-224). In these spaces there would have been the supposed delimitation of war (*Hegung des Krieges*); but beyond these lines the wars against peoples considered "inferior, savage and barbaric",— practiced during the centuries of European colonization of the world, which began with the event that Schmitt considers the greatest historical event of humanity: the discovery of America,— would not have this limitation. These wars are legitimized by Schmitt with the argument of the superiority of European "civilization" over the rest of the world. There are numerous statements to this effect in *The Nomos of the Earth*:

In reality, the justification for the great seizure of non-European land by European powers at that time lay solely in the *discovery*. Discovering - *reperire, invenire*, hence *découvrir* - hitherto unknown seas, islands and *terra firma*, that is, unknown to Christian sovereigns, constituted the only true legal title left to a Eurocentric law of the nations when the medieval spatial order of the *Respublica Christiana* was destroyed and theological argumentation was suppressed (SCHMITT, 2014, pp. 137-138).

From this stems Schmitt's criticism of Francisco de Vitoria and his bewilderment at the Spanish theologian's failure to recognize the right of discovery (*ius inventionis*) as a legitimate title to dominion in the New World.

In the *Relectio de Indis* (1539), the theologian from Salamanca had settled this thesis in a few lines by stating:

¹¹ Abbé de Saint-Pierre's *Project for Perpetual Peace in Europe*, 2002 (IPRI Classic), which provoked the reflections of J.J. Rousseau, became famous. *Extract and Judgement of Abbé de Saint-Pierre's Project for Perpetual Peace*. 2003, pp. 69-110.

But on this title, which is the third, there is no need to extend (*non oportet multa verba facere*), because, as has been shown above, the barbarians were true masters, both publicly and privately. [...] Thus, although this title may have some effect together with another (as will be said below), nevertheless, taken by itself and in isolation, it is of no use to justify the domination of those Indians no more than if they were the ones who had discovered us (*non plus quam si ipsi invenissent nos*) (VITORIA, 2016, II, 10, p. 130)¹².

Vitoria uses a disconcerting argument of reciprocity that demonstrates, according to Schmitt, an "apparently unlimited objectivity and neutrality" and provokes his ironic comment:

If Christians and non-Christians, Europeans and non-Europeans, civilized and barbarians are endowed with the same rights, all concepts must be reversible. This is why, with regard to the legal title of discovery and occupation, Vitoria states the following: a legal title like this (*sc. occupatio bonorum nullius*) does not serve the Spanish any more than if, on the contrary, "the Indians had discovered us" (*non plus quam si illi invenissent nos*). [...] But what will the representatives of modern civilization say about the fact that Vitoria makes absolutely no mention of the right of a superior civilization or culture, nor does he mention the right of the civilized to dominate over the semi-civilized or uncivilized? Or that he didn't even speak of "civilization", a concept which, from the 18th to the 20th century, dominated the entire era of European public law? (SCHMITT, 2014, pp. 110-111).

In fact, Vitoria (as well as Bartolomeu de Las Casas, and on the contrary Ginés de Sepúlveda¹³) lacks the idea of the right of a superior civilization to dominate over an inferior one, an argument typical of the ideological justifications of a large part of modern Eurocentric theories of international law; and which is so well represented, according to Schmitt, by Hegel: "In Hegel's *Vorlesungen unter die Philosophie der Geschichte*, one finds the phrase according to which the culture of the Mexicans and Peruvians 'had to perish as soon as the spirit approached it'. And he comments: "This sentence shows the superb self-consciousness of an idealist philosophy of history" (SCHMITT, 2014, p. 11)¹⁴.

For this reason, for Schmitt, Vitoria, unlike Ernest Nys and James Brown Scott, is not the father of modern international law, but remains within the scope of medieval *jus gentium* and not modern *jus inter gentes* (SCHMITT, 2014, pp. 121-124)¹⁵.

Finally, Schmitt gets to where he wanted to go with this long *excursus*, that is, to the polemical goal of all his research and the one that interested him the most: contemporaneity. The end of the Second World War ended the long (and for him glorious) era of *jus publicum europæum* and inaugurated the new international law, starting with the League of Nations and, after its bankruptcy, the UN and international organizations. The centerpiece of this new international law is the reappearance of the doctrine of just war, although no longer in a theological context. And Schmitt does this not to stigmatize totalitarian regimes such as Nazism, Fascism or Stalinism and their policies of extermination, which reintroduced the concept of the unjust enemy who must

¹² I compared the UnB-IPRI translation with the Latin text of the Italian bilingual edition, modifying it in some cases.

¹³ On this subject I would like to point out: TOSI, 2006, pp. 277-320.

¹⁴ For a critique of this Hegelian conception, see DUSSEL, 1993, p. 17-26; and TOSI, 2002.

¹⁵ Schmitt considers these two authors responsible for the "renaissance" of the thought of Vitoria and Suarez in the 20th century, considered by them to be the founders of modern international law of the people, and of the doctrine of the criminalization of war, theses with which the German philosopher does not agree. See: PIETROPAOLI, 2008.

be annihilated as in the holy wars against the infidels, but to criticize the allies, the victors of the war who, with the Nuremberg and Tokyo trials, had criminalized the enemy (including themselves), thus reintroducing the figure of the unjust enemy and war as a way of achieving justice and peace (SCHMITT, 2014, pp. 278-303)¹⁶.

It is surprising that Schmitt, in his long and erudite essay, says nothing about the political regime to which she had adhered, which created the figure of the absolute enemy who had to be annihilated in a brutal way, more than the enemy of medieval wars, through the total extermination of the Jews and other peoples considered inferior. We can't see how Schmitt can escape this dilemma: if the war that the Nazis waged against the internal and external enemy is still an expression of sovereign states, then it is still situated in the logic of the *ius publicum europæum*, and constitutes the ultimate example that the rationalization and formalization of war has not promoted any humanization, but on the contrary the most brutal dehumanization.

On the other hand, if it belongs to the new law that emerged after the Second World War, which includes the return of the *just* war doctrine— insofar as it does not treat the enemy as the *justus hostis*, but as *perpetuum hostis*—, then this should be the ultimate example of the dangerousness of just war, much more so than the doctrine of "humanitarian interventions" by the allies that he denounces¹⁷.

What we must do now is confront and put into dialogue Schmittian realism on war and peace with Bobbian cosmopolitanism. As we shall see, the central object of disagreement is war: while the realists, despite their differences, agree that it cannot be eliminated, but only limited; the cosmopolitans defend the need for its elimination, which would be a Kantian sign of humanity's moral and political progress. To this end, the two doctrines develop different conceptions of international relations, the former considering sovereign states to be the main, if not the only, subjects of international law, the latter seeking to overcome the absolute sovereignty of states in favor of some *super-party* power.

2. Norberto Bobbio's Cosmopolitanism

Cosmopolitanism is an ancient doctrine that finds its roots in the Stoic philosophy that influenced the *jus gentium* of Roman law and the medieval *Christian republic*, taken up again in the Renaissance by Erasmus and the Spanish Second Scholasticism (Francisco de Vitoria and Bartolomeu de Las Casas), a tradition that, through the mediation of Christian Wolfe's doctrine of the *civitas maximus* and the Enlightenment's pacifism and universalism, reaches as far as Immanuel Kant (SCUCCIMARRA, 2006; FERRAJOLI, 2002).

Kantian cosmopolitanism, despite its prophetic force, did not find resonance in the 19th and 20th centuries, a period in which the sovereign power of states, including democratic ones, was dominated by a phenomenon that Kant had not foreseen: nationalisms. It was only after the terrible experience of the two world wars and the totalitarianisms of the left and right,— which can be considered the last and most radical

¹⁶ Danilo Zolo, despite supporting Schmitt's thesis on the just war, recognises that: "In *Der Nomos der Erde*, as is well known, Schmitt unexpectedly suspends his exposition, not going beyond the period after the First World War. Even with the tragedy of the Second World War as a backdrop, Schmitt never comments on the extremely serious crimes committed by the Nazi regime at home and abroad". ZOLO, 2011, p. 231 (*The prophecy of global war*).

¹⁷ Jürgen Habermas, reflecting on the 200th anniversary of Kant's *Perpetual Peace*, analyses Schmitt's theses on war very critically. See HABERMAS, 2002, p. 185-227.

examples of the destructive and uncontrollable power of the international system of absolute state sovereignty—, that the Kantian project reappeared with force on the international scene, inspiring and underpinning cosmopolitan institutions and finding a significant number of followers.

In political philosophy and law, "juridical globalism" (ZOLO, 1998, pp. 133-148) is today a current in the theory of international law and politics that is widespread among scholars of international law, philosophers and political scientists, jurists, moralists and theologians who adhere to a cosmopolitan vision of international relations. We think of one of the greatest legal philosophers of the 20th century, Hans Kelsen (1990), Eric Weil (1990), Jürgen Habermas (2002), John Rawls (2002/2003), Hans Küng (1992/1999), and among them our author Norberto Bobbio.

2.1 The just war doctrine

Bobbio explicitly affiliates himself with the cosmopolitan and pacifist tradition that considers war neither as an apparent evil, nor as a necessary evil for the moral, civil and technical progress of humanity (BOBBIO, 2003, pp. 84-88; 90-93). On the contrary, for Bobbio as for Kant, the abolition of wars would be a sign of humanity's moral progress (BOBBIO, 1992, pp. 1-14; 131-142).

Bobbio, however, does not agree with the theory of war as an absolute evil, defended by moral and religious pacifism, because there are some cases, such as war of defense, in which it is legitimate because it is "justified on the basis of a principle valid in every legal system and accepted by every moral doctrine (with the exception of doctrines of non-violence): *vim vi repellere licet*" (it is lawful to repel force with force) (BOBBIO, 2003, p. 79). Therefore, not all wars are unjust, and this is where the discussion of just war comes in.

Bobbio, without quoting him, agrees with Schmitt that the era of just war doctrines in the traditional theological mold is over and associates the crisis of the just war doctrine with the crisis of jusnaturalism:

Its [just war theory's] decline was one of the many aspects of the crisis of natural law or jusnaturalism and the advent of legal positivism at the beginning of the 19th century. For jusnaturalism there was no difference between law and justice: a law had to be just to be valid. [...] For legal positivism, for a law to be considered valid, it was not necessary for it to also be just: it was enough for it to be issued by the legitimate authority" (BOBBIO, 2003, p. 81).

Applying the positivist method to the concept of war, Bobbio notes that:

When it comes to war, states behave among themselves as if there were no accepted competing rules for distinguishing just wars from unjust wars. In other words, states consider war to always be a lawful process. This consideration led to the necessary conclusion that the criteria for distinguishing just and unjust wars proposed by theologians, philosophers and moralists [...] had not yet become positive international law. In short, the problem of legitimizing war was a moral issue; not yet, and perhaps never, a legal one (BOBBIO, 2003, p. 82).

Using the traditional categories of just war, what is no longer under discussion is the *ius ad bellum*, since each sovereign state is legitimately authorized to promote war, therefore "in relation to the causes of war, no state has legal limits (of positive law) but only moral ones (or of natural law)" (BOBBIO, 2003, p. 83). What remains is a discussion on the *ius in bello*, i.e. on the conduct to be followed during war: "With regard to the conduct of war, there are also legal limits, i.e. established by a law in force in the

international community to which it [the state] belongs and which it itself has contributed to producing".

And he concludes that:

If positive international law was not able to protect men from the unleashing of violence (international society does not have a monopoly on violence), it could at least protect them against the indiscriminate use of violence or, more specifically, against pointless cruelty (BOBBIO, 2003, p. 83).

Bobbio then comments that in the atomic age, the possibility of a war with thermonuclear weapons definitively abolishes both the *ius ad bellum* and the *ius in bello*, since "Atomic war, in the most exact sense of the expression, is *legibus soluta*" (BOBBIO, 2003, p. 84).

But it is precisely this destructive nature of both nuclear war and conventional wars, due to the ever-increasing power of weapons, that makes it necessary to eliminate them, as pacifist theories claim:

We are interested here in the problem of eliminating war, i.e. pacifism, the inspiring principle of which could be formulated in these words: men have so far tried in vain to contain war within certain limits; now that these limits have gradually been eliminated and it does not seem possible to introduce new ones, either we resign ourselves to indiscriminate destruction, or we ostracize war once and for all (BOBBIO, 2003, p. 130).

Bobbio analytically distinguishes between passive and active pacifism, and opts for active pacifism, which he divides into three types: instrumental, finalist and institutional or juridical, opting for the latter, whose central thesis he defines as follows: "War is a prerogative of sovereignty; to abolish wars it is necessary to abolish the current system of international relations based on the equality of states by creating a universal supra-state system" (BOBBIO, 2003, p. 133).

And he comments that, "institutional pacifism is both more feasible than finalist pacifism and more effective than instrumental pacifism. For this reason - but here I am expressing a strongly opinion - it is preferable to the other two" (BOBBIO, 2003, p. 134).

But while the situation of international relations remains as it is (*rebus sic stantibus*), Bobbio's pacifism does not completely abandon the idea of just war, at least in wars with conventional non-atomic weapons, and recognizes that it, abandoned in the 19th century, returned in the 20th century after the First World War, although without becoming an opinion shared by all (*communis opinio*) (BOBBIO, 2003, p. 120)¹⁸.

The greatest example of the return of the just war doctrine was the debate on the first Gulf War (1990-91), which he defined as a just and legal war, since it was a legitimate defense to an aggression (Iraq's invasion of Kuwait) and was promoted by a legitimate authority, the coalition led by the United States, and authorized by the UN Security Council (BOBBIO, 1991).

His position provoked a strong polemic that spilled over into public opinion in newspaper and magazine articles. Some authors, including Celso Lafer, (LAFER, 2013a, p. 77-85; 2013n, pp. 305-319) have tried to show that Bobbio's stance is consistent with his institutional pacifism:

Bobbio observes that, according to legal tradition, there are two types of just war: that of defense and that of reparation for damage, although it is difficult today, due to the destructive potential of weapons, to consider a war just. The qualification of the Iraq war as a sanction, and therefore as a means of affirming the law through the legal procedures

¹⁸ Probably an allusion to realist theories like Schmitt's.

of the United Nations Charter, gives it the presuppositions of a just and legal war. This is the opinion of Bobbio, who, in an interview with the *Corriere*, also says that one cannot remain passive in the face of aggression" (LAFER, 2013n, p. 80).

Other authors, including Danilo Zolo, were more critical and sharply polemicized with Bobbio through letters, newspaper and magazine articles and academic essays. Zolo criticized Bobbio for limiting himself to a "formal" assessment of the right of self-defense without going into the merits of an operation with enormous destructive potential and terrible "side effects" on the civilian and military population (ZOLO, 2008, pp. 85-98)¹⁹

Bobbio responded to the critics without changing his mind, but faced with the brutality of the war, he recognized that there had been excesses in its conduct and that he had not properly foreseen and calculated this aspect. In a letter to Danilo Zolo dated 25 February 1991, in relation to the just war controversy, Bobbio wrote:

I am the first to acknowledge that it was a mistake on my part to use the word "just", without realizing that it could be interpreted differently from how I had understood it, that is, quite simply as "justified war" in response to aggression. However, since the first interview I have said and repeated dozens of times that the relevant problem was not one of lawfulness, but of effectiveness and compliance with the scope (In ZOLO, 2018, p. 154. My translation).

In any case, despite this recognition, some interpreters have considered his stance to be a "notable attenuation of Bobbio's opposition to any ethical or legal justification of war" (ZOLO, 2008, p. 96) and have identified a discontinuity in Bobbio's pacifism, a "before" and an "after" the Gulf War (STAICO, 2006).

But the discussion of just war inevitably forces us to return to the question of international relations and overcoming the absolute sovereignty of nation states.

3.2 International relations between anarchy and empire

As a defender of Kantian and Kelsenian-inspired legal pacifism, Bobbio - unlike Schmitt and the political realists - does not consider the transition from the doctrine of just war to the doctrine of war *en forme* as something positive. With a pithy phrase, inspired by Hans Kelsen, Bobbio says: "Contrary to what my critics seem to believe, the effect of the abandonment of the just war doctrine was not the principle 'all wars are unjust', but exactly the opposite principle: 'all wars are just'" (BOBBIO, 1991, pp. 55-56).

The choice of institutional or legal pacifism implies overcoming war through an analogy between internal and international public law:

Legal pacifism is that form of pacifism that conceives of the process of forming an international society in which conflicts between states can be resolved without ultimately resorting to war, by analogy with the process by which, according to the contractualist hypothesis, the state would have been formed" (BOBBIO, 2009a, p. 168).

And here comes into play what is known in international relations as *domestic analogy* (GREWALD, 2016): just as individuals in the Hobbesian state of nature, which is a state of war, sign a contract to get out of the state of permanent war, states should

¹⁹ A wide-ranging discussion on this topic can be found in the electronic magazine founded by Danilo Zolo Jura Gentium: <http://www.juragentium.eu/jg/home.html>

sign a pact of union between them that allows them to get out of this state of war and guarantees a stable and lasting peace²⁰ .

For legal pacifism, the remedy par excellence [to war] is the institution of a supra-state or world state: since, in certain phases of an international conflict, what makes the use of force inevitable is the lack of a superior authority to the isolated states in a position to decide who is right and who is wrong and to impose its own decision with force. The only way to eliminate wars is to establish this higher authority, which can only be a single, universal state above all existing states (BOBBIO, 2003, pp. 102-103).

Despite this peremptory statement (which, however, it is not clear whether it is descriptive or prescriptive), Bobbio oscillates on what type of pact would be most appropriate: whether a "horizontal" pact of union or association (*pactum societatis*) would be sufficient, or whether a "vertical" *pact of submission* (*pactum subiectionis*) to a higher power would be necessary.

Bobbio states that:

In past centuries, and especially in recent centuries, characterised by the colonial expansion of the great European powers, whenever the anomic state ceased to exist, this did not happen through agreement or the formation of confederations or federal states, [...] but through the imposition of one state or a group of states on others, in other words, through the typical form of autocratic power. [Until today, the history of international relations has predominantly seen either anomic or autocratic relations, anarchy or empire (BOBBIO, 1991, pp. 197 and 198).

And he cites the League of Nations, and the UNO as attempts to overcome this dichotomy, moving away from anomie without falling into heteronomy:

These two tendentially universal international institutions were the product of a genuine *pactum unionis*, which, however, was not yet followed by a *pactum subiectionis*, that is, the submission of the various contracting parties to a common power to which the exclusivity of coercive power is attributed" (BOBBIO, 2000, p. 198).

Bobbio, albeit very cautiously, takes a stand for the second hypothesis, because he defends a positivist concept of law that is necessarily associated with force to be effective, without which it would not be a right, but a mere ideal aspiration. "According to the idea of law that I have supported here, in order to achieve a state of permanent peace, the first type of pact is not enough; the second is also necessary" (BOBBIO, 2009, p. 169). And he explains this concept:

The solution projected by legal pacifism is not aimed at eliminating the use of force in social relations, but only at regulating and limiting it more effectively; it tends to favor the transition from a legal regime in which the right to self-protection prevails to a legal regime based exclusively on heterotutelage (BOBBIO, 1991, p. 103).

This means that it is not enough to have a Confederation of free states, which would be a *provisional state governed by the rule of law*, but a Federal State, which would be a *peremptory state governed by the rule of law*, "that is to say, a state in which a normative order has been constituted in which there exists, according to the definition

²⁰ However, this is an analogy and not an identity; because, for example, while in the state of nature fear can lead individuals to accept a superior power in order to guarantee the peace and security of all, in relations between sovereign states this does not necessarily happen, especially for the most powerful states, which would have no reason to cede their sovereignty to a third party superior to them.

of legal positivism, a coercive power capable of making the norms of the order effective" (BOBBIO, 2009a, p. 170).

However, the philosopher doesn't delve into the discussion of what kind of legal and political architecture this federative pact would have, other than through sparse elements (BOBBIO, 2009a, pp. 119-138). What I find most interesting in Bobbio's reflection is the fundamental premise of the whole discourse on peace and war in international relations, namely the democratic character of states.

3.3 The democratization of international relations

The question is posed in these terms in the final essay of *The Future of Democracy*, which is one of the last essays on the subject published by Bobbio (in 1991) after the fall of the Berlin Wall:

1) whether democracies are more peaceful than autocracies; 2) whether, assuming they are more peaceful, external peace can depend on a progressive extension of democratic states and the democratization of the international community; 3) what consequences the presence of non-democratic states in the international system can have on the internal democracy of democratic states [...], in other words whether it is possible to be democratic in a non-democratic universe (BOBBIO, 2009a, p. 188).

About the first and fundamental aspect, Bobbio argues that the democratic form of government is one of the conditions for peace:

Human rights, democracy and peace are three necessary moments in the same historical movement: without recognized and protected human rights, there is no democracy; without democracy, there are no minimum conditions for the peaceful resolution of conflicts. In other words, democracy is the society of citizens, and subjects become citizens when they are recognized as having certain fundamental rights; there will be stable peace, a peace that does not have war as an alternative, only when there are citizens not just of this or that state, but of the world (BOBBIO, 1992, p. 1).

About the second question, the answer can be found in the contemporaneous essay collected in *The Absent Third*, published in 1989 shortly before the fall of the Berlin Wall and the beginning of the end of Cold War bipolarism:

The future of peace is strictly connected to the future of democracy. [...] Democracy is understood as the form of government founded on:

1. A preliminary and negative non-aggression pact between the parties who intend to form a permanent association with each other;
2. A second positive pact in which the parties decide to establish rules for resolving future disputes, without having to resort to the use of reciprocal force;
3. Subjection to a common power so strong as to be able to enforce the two previous pacts;
4. The recognition and effective protection of certain civil and political liberty rights that prevent the power thus constituted from becoming despotic (BOBBIO, 2009a, p. LIV).

Bobbio's reasoning develops in *almost* perfect analogy with the path proposed by the jusnaturalists in the passage from the state of nature to the civil state, taking up the first "definitive article" of Kant's *Perpetual Peace*, in which the Enlightenment philosopher defends the need for the form of government of states that associate in a peaceful league to be "republican", a form that we can translate in today's terms as democratic, despite the fact that Kant considered democracy to be a despotism (KANT, 2008, pp. 10-23).

The first pact would be negative, in the sense that it excludes the use of violence in reciprocal relations and creates the conditions for the second, positive pact, in which the contracting parties agree to establish rules to resolve conflicts. Bobbio, quoting Julien Freund's terminology, defines this pact as the passage from the polemical state to the agonistic state²¹ : "Which does not mean the passage from a non-conflictual state, but to a state in which what changes is the way in which conflicts are resolved" (BOBBIO, 2000, p. 192).

But there is a third step to be taken, namely the intervention of a third party, "that is to say a character (individual or collective) distinct from the contracting parties" (BOBBIO, 2000, p. 193). This is a third step, from a situation of an excluded third party to a situation of an included third party.

For Bobbio, the third party included can take on various guises. Excluding the figures of the Ally, who is an apparent third party because he is not above the parties; and the Neutral, who is a passive third party because he remains outside the conflict; what matters is an active third party, who intervenes directly in the solution of the conflict.

And here Bobbio presents several possible "third party" figures: the Mediator "who puts the two parties in a relationship, but does not replace them", the Arbitrator "to whom the parties delegate the decision, undertaking to submit to him"; and the Judge "authorized by a higher court to intervene to resolve the conflict", and who is therefore the only figure who is effectively *super-parties* (BOBBIO, 2000, p. 194).

The judge, in turn, is either a "body that does not have the coercive power to enforce the decision, an "impotent judge"; or a judge "whose superior body holds this power because, through a pact of submission, it has been given the use of legitimate force (BOBBIO, 2000, pp. 193-195).

If we apply these figures to current international law, we can say that international relations continue to be regulated by forms of apparent (allied) or passive (neutral) third parties, by forms of mediation and arbitration (diplomacy and the UN), or by impotent judges (the International Court of Justice) in many cases. And it was only after the creation of the International Criminal Court in The Hague in 2002, because of the signing of the Treaty of Rome in 1998, that we had the first example of a Third Party with coercive power, although its jurisdiction is not accepted by a limited number of countries in the world.

Finally, Bobbio reflects on the democratic nature of this third party and the pact of submission that underpins it, which cannot be imposed but must have the consent of the parties.

To speak of a democratic pact, it is necessary to include at least these two conditions: a) that sovereign power [...] does not extend over all freedoms...[...]; b) that rules are established for collective decisions in such a way as to allow them to be taken with the maximum participation and consensus of the contracting parties themselves" (BOBBIO, 2000, pp. 195-96).

The real premise and central stake of Bobbio's entire discourse is that all these proposals for the institutional architecture of world geopolitical relations would be a mere theoretical exercise if two fundamental premises were not realized: the democratization of internal and international political relations. And here we come back to the Kantian *domestic analogy*:

²¹ Controversial in the etymological sense, a state in which one aggressively fights for one's own interests; and agonistic in the sense of a state in which one competes on the basis of arbitrated rules.

This conjecture is inspired by the Kantian idea that perpetual peace is only possible between states that have the same form of government and when this form of government is the republican form [...] integrated by the idea that the union of all states must also have a republican form (BOBBIO, 2000, p. 207).

In short, Bobbio says that the history of international relations has seen either the anomic relationship (anarchy)²² or the autocratic relationship (empire), and that the League of Nations before and the United Nations Organization after tried a third way, which, however, has not yet been fully explored.

International relations would thus be caught between the new ("based on the tacit consensus expressed by the majority of the members of the international community who gave life and continue to keep the UNO alive") and the old (which, "despite having lost legitimacy with respect to the letter and spirit of the UNO statute", continues to be effective").

And he concludes: "it is difficult to predict which of these two systems is destined to prevail today" (BOBBIO, 2000, p. 200). This is the question we will analyze in the last part of this essay.

4. The "unforeseen obstacles" or "unfulfilled promises" of cosmopolitanism regarding peace

Bobbio's analyses, in all their complexity and ambiguities, need to be reinterpreted in the light of the rapid and worrying changes in the international scene over the last few decades.

I will limit my remarks to discussing one of the main premises of Bobbio's discourse on war, namely that "democracies are more peaceful than autocracies". One of Bobbio's main arguments is the fact that, in contemporary times, no democratic state has waged war against another democratic state:

However, while admitting that I may be taking a certain risk, I believe it is possible to make one final observation: no war has yet broken out between states run by democratic regimes. This is not to say that democratic states have not waged war, but only that they have never waged war against *each other* (BOBBIO, 2000, p. 50).

I agree with this statement, which has its clearest example in the experience of the European Union, whose formation seems to have been molded literally from the three definitive articles of *Perpetual Peace*: 1) every constitution must be republican. In this sense, democratic clauses are a *conditio sine qua non* for states to be admitted to the European Union. 2) Republican (today we would say democratic) states must unite in a federation of free states. The European Union is a free union of states from which member states can freely join or disassociate themselves (see the example of Britain's recent departure); 3) This union of states must be subject to cosmopolitan law. For Kant, this right corresponded to that of universal hospitality, and for the European Union it is

²² Danilo Zolo is also critical of this perspective, which envisages the concentration of military power in the hands of a supreme international authority, stating that "in the international sphere, the lack of a centralized jurisdiction does not seem to amount to a situation of anomie and anarchy in the radical Hobbesian sense of *bellum omnium contra omnes*. Despite the lack of any "harmony of interests", state actors show a tendency, even in the context of imposing asymmetries of power and resources, to interact, to "adapt" and to co-operate with other actors in search of reciprocal advantages". He thus defends a concept of "anarchic international society" or "regulated anarchy" which, according to him, is preferable to a concentration of power, as defined by authors such as Kenneth Waltz or Hedley Bull (ZOLO, 2013, p. 330). On the debate between the two thinkers, see Bobbio's letters to Zolo, in: ZOLO, 2008, pp. 85-126.

treaties such as Nice (2001), which guarantee the fundamental human rights of the regional bloc (See, SORTO, 2013, pp. 335-362).

In the light of Bobbio's considerations, the EU's ambiguity lies precisely in the fact that there has been a *pactum unionis*, but no real *pactum subiectionis*, which makes it difficult to *govern* this *sui generis* institution that is neither a Confederation nor a Federal State, but a "Union", which does not have a unified internal and external policy, and to which the States delegate few of their sovereign attributions.

However, despite all its ambiguities and tensions and despite the current crisis, there is one undeniable fact: it is the EU that has allowed, for the first time since the days of the *pax Augusta*, (which was an autocratic/imperial peace), a long period of peace, prosperity and democratization of societies never seen before in the long history of the region, which has always been a hotbed of internal and external wars that have dragged the whole world down.

The history of Europe shows, however, an aspect that Bobbio has perhaps underestimated: states can be democratic within themselves, but imperialist or undemocratic in their external relations. This is a historical fact, from Pericles' Athens to the first modern democracy, the United States and the European colonial powers. The affirmation of rights and freedoms in Europe during modernity took place at the same time as the process of conquest, occupation and colonization of the world (LOSURDO, 2006).

Even today, democratic powers continue to maintain a completely different policy when it comes to their own citizens or the citizens of other states, and the use of war (whether authorized by the UN or not) is quite common and commonplace, as we can see in the recent "humanitarian interventions" in the conflicts in the Middle East. In the end, although they no longer formally exist, the global demarcation lines Schmitt talks about continue to separate "barbaric" peoples from "civilized" ones, "torturable" people from "non-torturable" ones.

The right to universal hospitality, the main characteristic of the *jus cosmopoliticum* advocated by Kant, is today one of the most violated rights in the face of the drama and tragedy of the millions of immigrants (the largest migratory wave since the Second World War) expelled from their countries and living in the condition of stateless people described by Hannah Arendt in *Origins of Totalitarianism* (1989).

There is also another consideration: after the fall of the Berlin Wall, which meant the end of the bipolarism of the Cold War, many analysts, including Bobbio (albeit with the prudence that characterizes him) were seduced by the prospect of a process of democratization of international society. However, despite considerable progress in the democratization process in Eastern Europe, Latin America, post-apartheid Africa and other parts of the world, today the democratic rule of law faces enormous challenges from an ideological and practical point of view.

In Asia, the defenders of the ideology of Asian *values* legitimize political systems such as those in China, Vietnam and Singapore, which accept economic freedom but deny political freedoms. And the Western illusion that economic freedoms would gradually lead to a democratization of the state, government, institutions and society does not seem to be borne out. Autocratic regimes remain firm and stable in their aims and theoretical justification, posing as alternatives to the Western democratic rule of law²³.

Another challenge comes from Russia, which after the dissolution of the Soviet Union, entered the capitalist economic orbit, but with a strong state presence over the

²³ On the question of "Asian values", see the essays on "The Rule of Law and Eastern Culture", in COSTA, Pietro - ZOLO, Danilo. *The Rule of Law. History, theory and criticism*. São Paulo: Martins Fontes, 2006, p. 827-992.

economy and society, and an authoritarian and police-like political regime (always in balance between its Eastern and Western soul), which is difficult to define, but certainly does not correspond to the canons of the Western democratic rule of law.

And finally, the third and most serious challenge is that posed by Islamism as a whole and by radical sectors such as the "Islamic caliphate". There is an intrinsic difficulty for the Islamic religion and ideology in accepting the values of Western democracy, due to the lack of a clear distinction or separation between state and religion, and the lack of guarantee for individual rights. Overcoming these deadlocks can only happen if Islamic societies themselves democratize internally; but what we have seen since the so-called "Arab Spring" of 2013 is the replacement of autocratic regimes not by democratic ones, but by forms of dictatorship, as in Egypt, or authoritarian regimes like Turkey, or civil war as in Afghanistan, Iraq, Syria and Libya. Situations that are promoting a confrontation and an ideological and military offensive against Western democracy that are fueling the ideologies of the various Islamic fundamentalisms (See: COSTA-ZOLO, 2006, pp. 747-826).

What these situations have in common, despite their differences, is the lack of a democratic tradition, which may explain the difficulty of the transition from autocratic to democratic regimes, a transition that requires a series of conditions and historical maturations, which cannot be imposed from outside by force.

On the other hand, what is worrying is that, in Western societies too, representative democracy is in crisis, and ever stronger populist and demagogic movements are emerging, on both the right and the left, which are undermining the foundations of democracies, even those that are apparently more consolidated. The question posed by Bobbio is once again topical: "whether it is possible to be democratic in a non-democratic universe". Frustration with the hope of a democratization of international relations has repercussions for democratic societies subjected to ever greater external and internal pressures with serious institutional setbacks.

Instead of an expansion of democracy, as had been hoped after the end of the Cold War, we have witnessed with concern an opposite movement in the advance of non-democratic regimes, which corresponds, not by chance, to an upsurge in conflicts and wars. In a way, this is a demonstration to the contrary of the Bobbian axiom that only regimes with a minimum of homogeneity (democratic) can guarantee a more lasting peace between them, so that we can think of an institutional architecture that overcomes the anarchy of sovereign states and guarantees, if not the perpetual peace prophesied by Kant, at least a more stable peace than a simple truce between wars. Without this assumption, the present and future of international relations is absolutely open and uncertain.

I believe that Bobbio would view these phenomena with great concern, because if there is one firm point in his thinking, it is the universal value of the democratic rule of law and the need for its internationalization.

Final considerations

In addition to the aporias internal to Bobbio's own thinking, his reflections on war and peace leave many questions open and lend themselves to criticism from various points of view: I would highlight at least three major groups of questions.

According to political realism, cosmopolitanism, even if it were ideally desirable, would not be practically possible for two reasons: because it would be difficult for states, especially the most powerful ones, to be willing to cede a significant part of their sovereignty to a superior power. Even if this were to happen, what guarantees would we

have that the entity thus created,— be it a world state or a federation or confederation of states—, would not become a despotic and tyrannical government due to the enormous concentration of power it would have? What guarantees would we have that it would be democratic in the way Bobbio describes or prescribes?

Pacifists say that Bobbio's juridical pacifism may be the "most feasible and most effective", but that for it to have a minimum chance of being realized, it would need to be accompanied by the other forms of pacifism, the instrumental, i.e. the disarmament of states and citizens, and the finalist, whose goal is the moral reform of humans. In other words, pacifism needs to be based not only on the institutions of states, but also on civil society, through popular mobilization that actively challenges the military instrument as a means of resolving conflicts and develops alternative pacifist strategies.

Another objection comes from the defenders of legal pluralism, the critics of globalization as the westernization of the world, the defenders of multiculturalism who question the universality of the western model of democracy and human rights, not only because it involves imposing an external model on different cultures that has little to do with their history, but also because it is the western democratic rule of law, with its internal democratic and external imperialist face, that has provoked and continues to provoke so many conflicts and wars in order to impose its domination on the world.

Bobbio could reply that if it is illusory to think that sovereign states voluntarily cede their sovereignty, it is equally illusory to expect that the "secularization and rationalization" of war will lead to its "limitation or humanization" as Carl Schmitt intended. War is, says Bobbio, always more *legibus soluta* in a strict sense, the antithesis of law; and law can intervene before war, but not during war: *inter armas enim silent leges*. With the development of nuclear weapons and conventional weapons with ever greater destructive power, war no longer finds any theoretical justification in the name of any technical, scientific, moral, political or religious progress, and no practical justification in the face of the enormous "side effects" of the destruction of human lives and property that it brings with it.

The only remaining alternative is its elimination, which necessarily involves overcoming the absolute sovereignty of states, the main source of conflicts, and handing over part of this power of coercion to a third *super-party*, which is still absent but whose existence is ever more necessary; a process which, in turn, presupposes a certain political homogeneity among states, in other words, a growing internationalization of democracy, or democratization of international relations, to prevent it from becoming a tyrannical power.

As for pacifism, Bobbio had already foreseen the objection:

Unfortunately, the law alone is not enough. [...] But precisely because legal pacifism isn't enough, we shouldn't stop trying other avenues. Peace today is too important a task to stop travelling down all the paths that may lead, sooner or later, to the goal. Moreover, the three paths are not incompatible: they can be followed in parallel without crossing paths, as is in fact happening today in the disarmament conferences, in the strengthening of the organization of the international community, in the expansion of movements for non-violence (BOBBIO 2003, P. 134).

The task of pacifism is so gigantic that all possible strategies and forces must be used.

Bobbio is a Eurocentric thinker, his theoretical and historical references are all Western; from this perspective, one of his central theses is the belief in the universality of democracy and human rights. For him, the UDHR and the treaties that make up the UN system demonstrate the existence of an *omnium gentium consensus* that tends to be

universal and constitute a promising sign (*signum prognosticum et rememorativum*) that makes us hope that, after the *era of totalitarianism*, we are entering the era of *rights* (BOBBIO, 1992, p. 26; 131-141).

We should therefore understand Bobbio's considerations as Kantian ideas or regulatory ideals: we don't know if they will be achieved, but their primary function is to point the way forward, without which we wouldn't even know where to go. As history is not in the hands of divine Providence or the Kantian "ruse of nature" or the Hegelian "cunning of reason", but in the hands of men themselves, the only philosophy of history we can believe in is the one in which the prophecies that (self-)fulfil are those that the greatest number of people commit themselves to believing in and working towards.

I conclude this brief reconstruction of Bobbio's thinking on the subject by echoing the words of Danilo Zolo on the questions left by Bobbio on war and peace:

These are all crucial problems that Bobbio's reflection leaves open to doubt and further investigation. What is undeniable, however, in my opinion, is the intellectual rigour and moral intensity with which an existential pessimist like Bobbio confronted the problem of war and strove to find a way to peace (ZOLO, 2008, p. 98).

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