Unit Three: Part 8
Hugo Grotius and International Law

Introduction

**Personal Biography:** Hugo Grotius (1583-1645) was born in the city of Delft in the Netherlands. As a young intellectual prodigy, he acquired a Doctor of Laws degree at the age of 16 and became an advocate-general in the Dutch foreign office where he also became a career diplomat. Grotius is considered to be the first modern theorist of international law. In this, Grotius drew heavily on the classical notion of *natural law* (*jus naturale*) first advanced in Stoic philosophy and underpinned by scholastic philosophy of the high middle ages.

The natural law tradition of Grotius tended to give way to the positive law tradition of Machiavelli from the 18th century to the 20th century stressing naked political power as the governing principle of international relations constrained only by the balance-of-power principle. However, a renewed emphasis on the natural law tradition in international relations has taken place since World War II. The most important subjects of international law that Grotius treated were: the *right of international access to the seas*; the *right to conduct a just war*; and the *right of colonization of the territory of indigenous peoples*. Grotius’ most important writings include: *The Free Sea* (*Mare Liberum*, 1609) and *The Rights of War and Peace* (*De Jure Belli ac Pacis*, 1625).

**Natural Law (Jus naturale)**

*Natural Law:* Grotius’ notion of natural law was grounded in Aristotelian-Aquinian tradition in a *rationalist understanding* of human nature, holding that the teleological development of human nature is aimed at the development of mature reason to gain knowledge of practical wisdom underpinning moral virtue. And to achieve this goal human beings possess the *naturalist rights* of *self-preservation* and *self-defense* to safeguard the livelihood and life of the human person. At the domestic level, Grotius treats the natural rights as protected under *civil law* (*jus civile*), and at the international level as protected the heading of the *law of nations* (*jus gentium*).

Grotius addressed the law of nations as having particular importance during his own lifetime in that western European nation-states were engaged in a maritime struggle for the *colonial conquest* for third world possessions. Netherlands as one of the aspiring colonial powers found itself blocked by England’s claim to exclusive naval rights in the *North Sea* and Portugal’s claim to exclusive naval rights in the *Malay Archipelago*. Hence, in reference to the natural rights of his Dutch countrymen demanding foreign colonization, Grotius argued in his first work, *The Free Sea*, that all sea lanes should be open to all nations to secure the natural rights to property and life in colonial expansion. Grotius’ position on colonization and the open seas has had the following impact on international law.

**Current International Law**

**Territorial Waters:** In the early 18th century the argument over *mare clausum* and *mare liberum* was settled in allowing all nations exclusive jurisdiction over a *three-mile limit* of offshore territories (as far as one could fire a cannon). This was later modified after World War II under United Nations regulations of 1958 to acknowledge exclusive offshore water rights of up to 200 miles, depending upon the geographical circumstances of various nation-states.

**Colonization of Indigenous Peoples:** The imperial ambitions of the western European powers, including the Dutch, in the 16th century raised the question of whether the western European powers had the right to take possession of the lands of *indigenous peoples* in the Americas and the East Indies without consent or remuneration. Grotius defended the right of the Netherlands to act as a colonizing nation along with the other western European powers on the grounds that anticipated the Lockean notion of the right to private property.
Grotius distinguished between “occupation” and “dominion” of the land with regard to the indigenous peoples of North America. Occupation was only living-on-the-land, as opposed to dominion was living-by-means-of-the-land. In anticipating Locke’s later justification of property, Grotius argued that living-by-means-of-the-land entailed the application of individual human physical labor to work up the land or extract its physical resources; whereas living-on-the-land simply meant appropriating what was naturally given by the land, such as hunting deer or collecting acorns. Entitlement to the land was therefore the just prerogative of European settlers who worked up the land regardless of initial occupation of the land by indigenous peoples. The legitimacy of such a proposition as being derived from Grotius’ doctrine of natural law is indeed questionable, but it conveniently supported the Netherland’s role as a colonial power.

Regime Change: Also with the context of the natural rights of self-preservation and self-defense, Grotius argued that a nation had the right of foreign intervention to take “punitive action” against another nation not only for direct offense against itself, but also under natural law to redress egregious acts of injustice by a foreign nation against its own subjects. In this, Grotius followed the thought of the Dominican Monk Francisco de Vitoria, who taught at the University of Paris in the first half of the 16th century and defended the duty of nations under international law to act to protect oppressed victims of injustice in other nations. Vitoria’s own thought about intervention for regime change found its inspiration in the earlier justification of such action by the Stoic political philosopher Seneca (4 B.C.- 65 A.D.).

The idea of regime change is one of the most hotly contested issues of present international relations theory. On the one hand, regime change pits the United Nations Universal Declaration of Human Rights (1948) against the absolute principle of national sovereignty. On the other hand, regime change under the heading of natural rights, especially like that imposed unilaterally against Saddam Hussein’s Iraq, can be used for narrow partisan political purposes of other nations. Even in Grotius’ time the Swiss theorist Emerick Vattel in his work Droit des nations (1758) made note of such potential anomalies (See, Alan Ryan, On Politics, New York: W.W. Norton, 2012, pp. 856-857).

Questions for Reflection

(1) In what sense did Grotius address natural law in the rationalist tradition of Aristotle and Plato. And in what sense did Grotius address natural rights as the naturalist basis of human life?
(2) What foreign policy consideration prompted Grotius to call for freedom of the seas?
(3) What in the early 18th century was first established as the off-shore territorial waters of nation-states? What was established as the territorial off-shore waters by the United Nations regulations of 1958?
(4) On what basis did Grotius argue that West European colonization of the foreign lands of indigenous peoples was justified in his distinction between “occupation” and “dominion”? What was Grotius’ position on what today we identify as forced “regime change” of foreign governments?