

[#WritingContest2017](#)

The Trinity and the Law of War

[Julie Anna Glascott](#)

[November 12, 2017](#)

---

Earlier this year, The Strategy Bridge asked university and professional military education students to participate in our first annual writing contest by [sending us their thoughts on strategy](#).

Now, we are pleased to present one of the essays selected for honorable mention, from Julie Anna Glascott of the U.S. Army's Command and General Staff College.

---

In Prussian theorist Carl von Clausewitz's seminal military treatise, *On War*, he introduced the "paradoxical trinity." [1] The trinity is a useful tool to conceptualize the chaos of war and has been described as the tension between three fundamental elements of war: the government, the people, and the army. [2] The legal discipline, whether intentionally or not, reflects this trinity in the development of the modern day law of war. Contemporary law of war reveals a sort of legal trinity in which legal documents seek to regulate each point of Clausewitz's paradoxical trinity. In the legal trinity, the Charter of the United Nations holds the position of the government, the Geneva Conventions represents the people, and the Rules of Engagement cover the military.

*Australia's Mighty Warhorses (National Geographic)*

Although it is convenient to speak of the trinity in its most basic components—the government, the people, and the army—to do so is to oversimplify the trinity and strip it of its vigor. Clausewitz's description of the trinity demonstrates the vitality of the trinity and, after reading it in full, it becomes obvious why the law of war must constrain it. Clausewitz, in his own words, describes the trinity as consisting of "primordial violence, hatred, and enmity, which are to be regarded as a blind natural force; of the play of chance and probability within which the creative spirit is free to roam; and of its element of subordination, as an instrument of policy, which makes it subject to reason alone." [3] Stated this way, the trinity is passionate and can be envisioned as three war horses, which would run free if left unbridled. The legal discipline recognizes this potential energy, foresees the damage they can inflict if left untended, and seeks to tame these war horses through the application of the law of war. [4]

The first horse to be constrained is the government. In *On War*, Clausewitz emphasizes the central role politics plays in war. [5] In analyzing the politics of war, Clausewitz posits that war is not an ends unto itself, but instead a means to achieve political objectives. [6] In the context of his trinity, he concedes "the political aims are the business of the government alone." [7] Although Clausewitz recognizes the policy decision to go to war is made exclusively by the government, he suggests this governmental power should be constrained, at least in part, when

he states, “War is no pastime; it is no mere joy in daring and winning, no place for irresponsible enthusiasts.”[8] Clausewitz knows the brutality of war, and he cautions governments from entering into war recklessly.

The position that war should be entered into as a last resort to solve legitimate political disputes is the same position the United Nations took when it met at the end of World War II. In the shadow of a ravaged world defiled by war, thirty-eight nations sought to save “succeeding generations from the scourge of war.”[9] But even after witnessing some of the greatest atrocities, these countries still recognized war remained a viable political tool, which should be employed only to restore peace and only when no other option is available.[10] The United Nations felt the employment of war should be a reasoned, rational decision, and therefore it developed limitations on when states could employ the use of force and codified them in the Charter of the United Nations.[11]

The most powerful provision to restrain war within the Charter of the United Nations is found in Chapter VII, “Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression.”[12] Chapter VII allows for the employment of war, but implores the signatories of the Charter to first seek resolution of any conflict by means not involving the use of armed force.[13] The Charter of the United Nations requires that countries, in consultation with one another, take measured actions to respond to “a threat to the peace, breach of peace, or act of aggression.”[14] Although the Charter of the United Nations explicitly allows for self-defense, it requires the retaliating country to report the force to the Security Council, so further efforts to restore peace are coordinated among the members.[15] The development of the Charter of the United Nations—and its attempts to regulate the decision to go to war—are inherently political acts, which reflect Clausewitz’s idea that war is but a means to a political end.

The second war horse to subdue is the people. In discussing the trinity, Clausewitz argues the “passions that are to blaze up in war must already be inherent in the people.”[16] However, Clausewitz indicates this zeal may be tempered depending on the level of sophistication of the society. He states, “Savage peoples are ruled by passion, civilized peoples by the mind.”[17] It is these primal passions that must be tempered during wartime to protect other members of society who are not themselves engaged in hostilities.

*Some of the major European powers signing the First Geneva Convention in 1864, by Charles Édouard Armand-Dumaresq (Wikimedia)*

Clausewitz is aware that wars are not fought against faceless entities, but by people against people: “[W]ar...is not the action of a living force upon a lifeless mass but always the collision of two living forces.”[18] With this dynamic in mind, Clausewitz recognizes the only way nation-states can minimize the brutality of war and protect those non-combatants is through a cooperative effort by countries. He states, “If wars between civilized nations are far less cruel and destructive than wars between savages, the reason lies in the social conditions of the states themselves and their relationships with one another.”[19] In this passage, Clausewitz intimated that wars should not be conducted indiscriminately, but, rather, there should be instances when

humans, through their governments, should limit their use of force against and among other humans. This is the very subject the Geneva Conventions was created to deal with.

Like the Charter of the United Nations, the Geneva Conventions were reexamined and significantly updated at the conclusion of World War II. However, in the case of the Geneva Conventions, the intent was to provide standard protections for non-combatants (i.e., civilians, medics, chaplains, aid workers, etc.) and those troops who can no longer fight (i.e., wounded, sick and shipwrecked troops, and prisoners of war).[20] There are four Geneva Conventions, one to cover each type of non-combatant; together, they serve to shield those not involved in war.[21] Common to each convention is the following provision:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat [outside the fight] by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth or any other similar criteria.[22]

Like Clausewitz, the parties to the Geneva Conventions recognize that, in war, human emotions run deep, and a person's or group's capacity for rational thought can be clouded by the throes of battle, which may result in reckless harm to non-combatants. To reduce this possibility, the signatories sought clear parameters for the treatment of non-combatants during times of war. The protection of non-combatants during hostilities was deemed so important the signatories agreed the Geneva Conventions would apply in hostilities among the signatories to the Geneva Conventions and also to a signatory of the Geneva Convention when engaged in hostilities *against a non-signatory* of the Geneva Conventions.[23] In so doing, and to the greatest extent possible, the Geneva Conventions seeks to channel the raw energy of combatants towards legitimate targets of war, and away from its victims.

*A U.S. Army medic treats an Afghan child for a sunburn in the village of Meryanay Kherwar District, Logar province, Afghanistan, April 9. (ISAF Public Affairs Photo/Wikimeida)*

The third and final horse to be contained is the army. Clausewitz highlights that, at all times, the army is subordinate to the civilian government when he states, "The political object is the goal, war is the means of reaching it, and means can never be considered in isolation of their purpose." [24] Despite this subordination, soldiers in armies train to fight wars. As such, inherent within the army is a powerful desire to perform its warrior tasks in battle and to achieve victory. Although these are obviously reasonable desires for an army, they must always be in furtherance of, and subservient to, the political goal of the state.[25] As a result, it is this impulse that must be restrained.

In his discussion of the army with respect to the trinity Clausewitz states, "The scope that the play of courage and talent will enjoy in the realm of probability and chance depends on the particular character of the commander and the army." [26] Boiled down, this statement recognizes a military can be ferocious, even ruthless, in battle, but its overall character in war

will be defined by the professionalism and the ethical conduct of its force. Clausewitz nods to this interpretation when he states, “In the soldier the natural tendency for unbridled action and outbursts of violence must be subordinated to demands of a higher kind: obedience, order, rule, and method.”[27] Regulating this courage and defining this character is the reason rules governing a military’s conduct in war were created. It is the reason why the modern military employs Rules of Engagement.

Rules of Engagement reflect “legal, policy, and operational considerations, and are consistent with the international law obligations of the United States, including the law of war.”[28] Used within battle, Rules of Engagement are critical to the warfighter, because they delineate the circumstances and limitations under which forces will initiate and/or continue combat engagement with other forces encountered.[29] Since Rules of Engagement are drafted to comply with the law of war—law created by civilian governments—its overall effect is to keep the military subservient to the civilian government while simultaneously advising soldiers of the parameters within which they may operate. Beyond the Rules of Engagement, this subservience is reflected in the concepts of military values and the profession of arms, both of which are attempts to regulate the passions of the professional soldier.

*The aftermath of the My Lai massacre on March 16, 1968, showing mostly women and children dead on a road. (Ronald L. Haerberle/U.S. Army Photo/Wiimedia)*

It is clear that the trinity provides a useful structure for the law of war to build upon. Indeed, its elegant, yet simple, structure seems to have provided legal scholars with a road map to regulate the instruments of war. But despite Clausewitz’s gift to the legal community, it appears the gift may have been unintended. The great irony of the legal trinity is that Clausewitz, himself, paid little heed to the rules governing war stating, “Attached to force are certain self-imposed, imperceptible limitations hardly worth mentioning, known as international law and custom, but they scarcely weaken it.”[30] Nevertheless, it is clear that, with the use of his paradoxical trinity, modern day nation-states have imposed limits on the passions of the government through the construct of the Charter of the United Nations; the passions of the people through the Geneva Conventions; and the passions of the army through the use of the Rules of Engagement. None of these can be said to be imperceptible in modern times. It is clear that to inject any degree of sanity into the barbarity, the law must be at the forefront of all aspects of war, because, despite the great desire for peace, war will inevitably come. As Clausewitz said, “The defeated state often considers the outcome merely as a transitory evil, for which a remedy may still be found in political conditions at some later date.”[31]

---

*Julie Anna Glascott is Judge Advocate in the United States Army, and her service includes two deployments to Afghanistan. She has a bachelor of science degree in geological sciences (emphasis in paleobiology) from the University of California, Santa Barbara; a juris doctor from the University of California, Los Angeles; and a Masters of Laws from the U.S. Army Judge*

*Advocate General's School. The views expressed are the author's alone and do not represent the official position of the U.S. Army, the Department of Defense, or the U.S. Government.*

---

*Have a response or an idea for your own article? Follow the logo below, and you too can contribute to The Bridge:*

*Enjoy what you just read? Please help spread the word to new readers by sharing it on social media.*

---

*Header Image: Still image from a commentary on the first Geneva Convention. ([International Committee of the Red Cross](#))*

---

## **Notes:**

[1] Carl von Clausewitz, [On War](#), trans. Michael Howard and Peter Paret (Princeton University Press, 1976) 89. The trinity has also been described as the “remarkable trinity,” Peter Paret, [Makers of Modern Strategy from Machiavelli to the Nuclear Age](#) (Princeton University Press, 1986) 201, and the “fascinating trinity,” Christopher Bassford, [Teaching the Clausewitzian Trinity](#), accessed on 16 Mar. 2017. This paper will use the term “paradoxical trinity” from the Howard and Paret’s translation of *On War*.

[2] Alan Beyerchen, [“Clausewitz, Nonlinearity, and the Unpredictability of War,”](#) *International Security* 17 (Winter, 1992-1993) 69.

[3] Clausewitz, *On War*, 89.

[4] In *On War*, Clausewitz likens his trinity as three magnets. Ibid. He states, “[o]ur task therefore is to develop a theory that maintains a balance between these three tendencies, like an object suspended between three magnets.” Ibid. This simile seems incongruent with his description of the points of the trinity. While magnets can generate a powerful magnetic field, they do so within the predictable laws of physics. And while a pendulum suspended between the magnets may swing wildly, it too, eventually, comes to rest. Beyerchen, “Clausewitz, Nonlinearity, and the Unpredictability of War,” 69-70. The point of Clausewitz’s trinity is that it is nonlinear and chaotic. Therefore even the points of the trinity cannot be said to be static and must be analogized to a force that does not answer to unyielding laws of physics.

[5] “[W]ar is not merely an act of policy but a true political instrument, a continuation of political intercourse, carried on with other means.” Clausewitz, *On War*, 87.

[6] “[I]t is clear that war should never be thought of as *something autonomous* but always as an *instrument of policy*.” Ibid., 88.

[7] Ibid., 89.

[8] Ibid., 86.

[9] UN Charter, Preamble <http://www.un.org/en/sections/history-united-nations-charter/1945-san-francisco-conference/index.html>. There are currently 193 state parties to the United Nations Charter.

[10] Article 42 of the Charter of the United Nations authorizes the use of force. It states, “Should the Security Council consider that measures provided for in Article 41 [a provision the imposition of sanctions] would be inadequate or have provided to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.” United Nations, [\*Charter of the United Nations\*](#).

[11] The Charter of the United Nations requires that the Security Council take several steps before war can be declared. These include making a determination that there has been a breach of the peace or act of aggression; require the parties concerned to comply with provisional measures; and imposition of sanctions. Ibid.

[12] Ibid.

[13] Ibid., Chapter VII, Article 41.

[14] Ibid., Chapter VII, Article 39.

[15] Ibid., Chapter VII, Article 51. “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right to self-defense shall be immediately reported to the Security Council.”

[16] Clausewitz, *On War*, 89.

[17] Ibid., 76.

[18] Ibid., 77.

[19] Ibid., 76. Clausewitz also recognizes the need to provide protections for non-combatants when he states “if civilized nations do not put their prisoners to death or devastate cities and

countries, it is because intelligence plays a larger part in their methods of warfare and has taught them more effective ways of using force than the crude expression instinct.”

[20] International Committee of the Red Cross, [Geneva Conventions and Commentaries](#).

[21] Geneva Convention I, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention II, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention III, Geneva Convention Relative to the Treatment of Prisoners of War; and Geneva Convention IV, Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

[22] Ibid., Article 3. The Geneva Conventions share three common articles, which are found in the first three articles of each of the Geneva Conventions. Ibid., Articles 1, 2, and 3.

[23] Ibid., Article 2.

[24] Clausewitz, *On War*, 89.

[25] War “must adapt itself to its chosen means, a process which can radically change it; yet the political aim remains the first consideration.” Ibid., 87.

[26] Ibid., 89.

[27] Ibid., 187.

[28] Department of Defense, *Law of War Manual*, (2015) 26.

[29] Department of Defense Joint Publication 1-02, [Department of Defense Dictionary of Military and Associated Terms](#) (2010, with change 2016) 207.

[30] Clausewitz, *On War*, 75.

[31] Ibid., 80

Tagged: [Law of War](#), [Rules of Engagement](#), [Geneva Convention](#), [United Nations](#), [Just War Theory](#)