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**War as a Recurrent Feature of Mankind: Just War Theory from St. Augustine
to the Contemporary Era of “War Against Terrorism”**

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Introduction

War, in its various forms - domestic, international, mixed, with different aims such as self-defense, autonomy, religion, ethnic identity or political beliefs, despite the expectations and efforts of the previous generations, still represents a “common manner” for states and political, ethnic and religious groups to solve disputes. Within such a context, individuals, in their citizen-posture, have the continuous duty to reflect upon the morality of the current or future wars fought on their behalf. The XXIst

century places this discussion in a special geo-political context. 9/11, the al Qaeda attacks and the multiple global events generated by these, led to major changes of the character of armed violence and, at the same time, of their moral implications. All of these changes reopen the way of conventions and practices of the moral norms of war. The Just War Theory (JWT) is without question the central theory in the contemporary debate regarding war and the moral implications of the new forms of military violence.

Concerning the contemporary changes the just war theory has to address, these are represented by the accelerated pace of globalization and the economic and informational interconnectivity of states. Globalization influences the parties exercising armed violence, the organization and use of armed forces and also the available weapons. All of these changes are part of, or are consolidated by globalization, since globalization represents the scene, where they perform within different instances, these being, in fact, the new challenges of the just war theory. Such instances are represented by the decline of state-sovereignty, of the principle of exclusive state authority concerning the national interest and of non-interference of foreign states within the national territory; by the proliferation of the international human rights movements generating global practical standards for the relationship between states and their citizens; by the emergence of international non-state terrorism and by the diffusion of destructive military arms such as weapons of mass destruction (WMD). All of these led to transformations for the use of armed force and, thus, they represent challenges for the contemporary just war theory.

Just and Unjust Wars - The Modern Just War Theory

The contemporary just war theory is best illustrated by Michael Walzer in *Just and Unjust Wars* and comprises two elements: *the legalist paradigm* and the *war convention*, the modern versions of the classical *ius ad bellum* and *ius in bello*.

Walzer conceives the *ius ad bellum – legalist paradigm* in a limited manner within which the core position of the *crime of war* is occupied by *aggression*¹. The author defines aggression as an act of intrusion that endangers the rights and autonomy of political communities through the threat or use of force and thus, the states have the right to defend themselves against aggression using force under two limited conditions [62]: 1) a state can respond to aggression using force in order to defend the domestic subject of aggression such as the victim-state and its people; and 2), at a more general level, states have the right to withstand aggression viewed as an insult to the fundamental values of the international society. Under this condition, the resistance has two forms – a self-defensive war of the victim and a war of enforcement fought by the victim state or by any other member of the international community.

Thus, the legalist paradigm focuses exclusively on aggression and therefore, the right to war is articulated in terms of resistance against it: “nothing but aggression can justify war” [62]. This central focus of the legalist paradigm is also reflected by the international law that stipulates the unique right to war of the states as self-defense – as formulated in Article 2, line 4 and Article 51 of the UNO Charter, although there are some stipulations regarding the multilateral use of force when the Security Council recognizes a threat to the international peace and security – Chapter VII of the UNO Charter.

The two elements of Michael Walzer’s theory present the XXth century just war

doctrine as a projection of the two world wars and of the bipolar global order imposed by the Cold War. Self-defense against aggression, as the single just cause for war, can be, thus, interpreted as a responsible maneuver for the clausewitzian fear that modern war tends towards extreme positions, nuclear war in our case.

JWT and the End of the Cold War

The Just War Theory of the XXth century, as described by Walzer, undergoes a process of changes and challenges along with the events determined by the end of the Cold War. The most shaped form of this process is represented by the enlargement of the classical category of *ius ad bellum* in order to comprise the humanitarian war or intervention. This evolution of the theory, basically, overturns the main role of defense against aggression as the sole right cause for war. This period is defined by the *New American Interventionism* of the Clinton Administration and Boutros Boutros-Ghali's *An Agenda for Peace* and is marked by numerous cases of humanitarian interventions – North of Iraq, Somalia, Rwanda, Bosnia, East Timor and Kosovo². The release of Boutros-Ghali's Report is synonymous with the increased role of the UNO's military-humanitarian policies and shapes the new military doctrine of *peace keeping*. At the same time, the end of the Cold War unmasks the phenomenon of *failed states*, ethnic conflict and brutal civil wars that were held under control by the bipolar order of the Cold War, and, under this new reality, the need for humanitarian war is more stringent than ever. Nonetheless, the 9/11 events, the Afghanistan War and Iraq War marked a period of great “uncertainty and disequilibrium”³. This moment reveals a *resurrection* of existent beliefs, conventions and practices of the public discourse regarding the values and actions of political

communities. It is unarguable the moment when the just war theory will occupy the central position within this discourse offering the common moral language to all the participant parties. The right to war of the states, in certain circumstances, is, thus, reargued and, together with it, the *ius ad bellum* category is reexamined in view of identifying the best formula to preserve, split or modify it, in order to answer the new security environment. In *Just Wars Against Terror: The Burden of American Power*, Jean Bethke Elshtain compares the impact that 9/11 had on the international system with the shock of the medieval world determined by the fall of Rome in 410⁴. Both events, the author argues, shook the moral foundations of their time and led to “decades of anxiety and instability”. These moments are relevant for our discussion since they both marked the resurrection of the good and evil rhetoric – always an indicator of the moral disturbance.

Humanitarian intervention – as means of change for the JWT

From the perspective of the evolution of the just war theory the humanitarian intervention can be divided in three historical phases⁵: The first is temporally demarcated by the writings of St. Augustine and the Early Middle Ages; this period is dominated by the political and ethical thought of the Christian world in which the political leaders have the universal duty to watch justice. Within such a context, on the shoulders of the secular rulers lays the responsibility to enforce the law within the Christian space and the divine duty to protect the innocent⁶. Sovereignty does not limit the actions and does not restrict the physical boundaries for the duties of the leaders because their justice is not geographically limited since the divine natural law, on one hand, represents the common element of Christianity and, on the other hand,

the majority of the political entities are not entirely sovereign.

A second phase is demarcated by the end of the Middle Ages up to 1945 and has, as a core element, the idea that there exists a right, but not a duty, to war in order to protect the innocent. Thus, the main preoccupation of the theorists is represented by the idea of constraining the right to interfere, phenomenon determined on the background of two major conceptual changes: the separation of rights and duties and the transition from a Christian common space to the idea of distinct political communities⁷. Francisco de Vitoria is among the theorists who argue for the limitation of the right for intervention, suggesting the transition from *duty* to the *permission* to intervene and he establishes restrictions concerning the circumstances and the length of the actions admitted by this norm. Although the author shares the idea of a universal community, governed by natural law, still, within the discussion dedicated to the American Indies, he claims the limitation of the humanitarian war, placing the responsibility to protect the population against the crimes of tyranny and oppression within the jurisdiction of the princes⁸. The just causes for the humanitarian war that Vitoria prescribes are cannibalism and human sacrifice, but still these categories are dominated by restrictions in the sense that war has to end as soon as the crimes are eliminated, and natural law, as the spring for humanitarian war, cannot represent a pretext for empire aggrandizement or other hidden interests.

On the other hand, Grotius claims that the sovereigns hold a right to intervene, but not a duty to help other states' people. The right to intervene is placed by Grotius in a restrictive context determined by the problems of abuse and humanitarian war pretexts signaled by Vitoria. Moreover, Grotius insists on the responsibility to obey the law and outlaws any form of rebellion, even against a tyrannical system.

Pufendorf argues that the sovereigns don't have the right to intervene in view of eliminating the natural law abuses and they can only help third parties, but this following their express request for assistance⁹. Yet, for Wolff nothing can justify the right to intervention, thus entirely prohibiting the "punitive" war. The elimination of humanitarian interventions both as right and duty of the states, is later explained by John Stuart Mill through the so-called test of self-determination: the free form of governments cannot be legitimately set up without a domestic struggle for freedom¹⁰. Mill shares Kant's view that non-intervention represents an essential condition for a free government although he reserves this right to the civilized people and places the *barbarians* as legitimate subjects for foreign domination.

Emerich de Vattel sustains the general principle of non-intervention considering that each state has its right to govern according to its own norms, right from which the prerogative for punishing the crimes that threaten its security follows. Yet, de Vattel shares the exception articulated by Pufendorf in terms of the permission to intervene in isolated cases, represented by tyrannical regimes that can lead to legitimate rebellions and under the conditions of the express call of the rebels for assistance.

Thus, we can see that each of the authors mentioned above choose either the total ban of intervention, or a limited form of it. The reticence for humanitarian/punitive war can also be explained by the context of the conflicts of the XVIIIth century and by the will to avoid their reoccurrence. Still, in the XVIIIth and XIXth centuries the European states continued to often justify the use of force in humanitarian terms.

1945 marks the beginning of a new phase of the humanitarian intervention – the express ban of every use of armed force except self-defense. The new law order outlaws the use of military violence and establishes a mechanism for the authorization

of humanitarian intervention - the Security Council - with the role to authorize collective enforcement actions every time a threat to international peace and order is identified. Still, the Security Council didn't work according to these established norms and the cases of the violations of human rights in Biafra, Cambodia, Latin America, Zaire, Congo, Rwanda, Sudan, Afghanistan and East Timor etc. led to significant casualties.

During the Cold War states maintained their reluctance regarding humanitarian intervention and the international community refused constantly to legitimate this type of actions. In the most severe cases USA together with their allies opted for economic sanctions such as those applied to Vietnam for the invasion of Cambodia in 1978. Although the 1990' registered a progress concerning the receptivity towards this kind of intervention, yet the Security Council failed to promptly answer the humanitarian emergencies in Bosnia, Kosovo, Iraq and Darfur.

At the same time, the 9/11 attack, but especially the events determined by it, reopen the discussion concerning the anticipatory war and the moral dimension implied by the anticipatory use of force. The anticipatory spectrum is defined by two extremes: the reflex act – the preemptive war and the preventive war defined as an attack against a distant danger, subject of precaution and rational voice. Thus, under the just war theory the preemptive war – seen as a reflex action – is admitted unlike preventive war, which crosses the boundaries of legitimate use of force.

Under these restrictions, the USA invasion in Afghanistan (2001), although not a preemptive one benefits from the international community support and thus we can consider an extension of the *ius ad bellum* classical category in relation with the principle of self-defense that justified the invasion. At the same time, we have to

underline that under the *ius in bello* criteria, the invasion reveals the negative attitude towards the treatment applied by the USA to the war prisoners in Afghanistan. Both France and Great Britain opposed the US decision that the detainees were not war prisoners and thus could not benefit from the protection of the Geneva Conventions' stipulations and they threatened not to deliver the detainees to the USA. The international pressure led in the end to the policy change on behalf of the American party, fact that determines us to observe that, unlike the principles of *ius ad bellum*, those of the *ius in bello* are not subject of any compromise in view of modifying the classical structure of the just war theory.

Moreover, the Afghanistan War determines at least two international novelties: the first is the Resolution 1360 of the Security Council – an action without precedent in its history in which terrorism is declared a threat against the international peace and security, thus offering the states the possibility to invoke the right to self-defense and legitimizing the unilateral use of force as an answer to terrorist acts; and the second is the attribution of the responsibility for the terrorist attacks to a state – Afghanistan – although these were the acts of non-state actors placed within the territory of this state.

The Iraq War (2003) represents another case where the enlargement of the classical *ius ad bellum* is desired as seen from the perspective of the anticipatory self-defense invoked by the *National Security Strategy* of the USA. Yet, this attempt is counteracted by a part of the international community, including the main NATO allies, France and Germany, that do not support the USA position. The evident connection between the Taliban regime and al Qaeda represented, in the case of Afghanistan, a real threat not only for the USA but also for the security of the whole

international community. In this context, the international acceptance for enlarging the principles of *ius ad bellum* is manifested and the *Operation Enduring Freedom* is not labeled as a violation of international law. In the case of Iraq, the evidence brought by the USA and Great Britain for the claim of the connection between Iraq, weapons of mass destruction and al Qaeda are ambiguous and, in some cases, false. Without adequate proof, ignoring the anticipatory self-defense principle is thus abusive even in the case of the world's single superpower.

Conclusion

Within an international environment characterized by the fact that the means of containment specific to the Cold War don't function anymore, the most important issue is represented by the answer to the question – is the change of just war theory and, implicitly, of the international law in view of comprising the preventive self-defense principle possible? The answer is an affirmative one. International law is not a rigid set of norms and its history proves its adaptability to the changes the international society goes through in time. Even the stipulations of the UNO's Charter indicate this adaptability – the Afghanistan invasion being a proof in this sense. Concerning the just war theory, the supreme proof of its adaptability is embedded in its current existence – the theory could not have survived until the XXIst century if it did not adapt to an international system constantly subjected by changes, and the fact that the theory is partially absorbed by the international law warrants its future existence. Still, we need to underline the fact that although these two institutions can support changes, this is not synonymous with changes under just any condition.

¹ Michael Walzer, *Just and Unjust Wars. A Moral Argument with Historical Illustrations* (New York: Basic Books, 2006).

² United Nations Organization, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping*, <http://www.un.org/docs/SG/agpeace.html> (accessed 25.05.2012).

³ Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005), 224.

⁴ Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power* (New York: Basic Books, 2004), 151.

⁵ Alex J. Bellamy, *Just Wars From Cicero to Iraq*, (Cambridge: Polity, 2008), 203-7.

⁶ Jean Bethke Elshtain, "Just War and Humanitarian Intervention," *Ideas: From the National Humanities Centre* 8 (2001): 1-21, 7-8.

⁷ Bellamy, *Just Wars*, 203.

⁸ Anthony Pagden, Jeremy Lawrance, *Francisco de Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991), 231-92.

⁹ Samuel Pufendorf, *Of the Law of Nature and Nations*, 1729, <http://archive.org/details/oflawofnatureat00pufe> (accessed 17.03.2012).

¹⁰ John Stuart Mill, "A Few Words on Non-Intervention", *Foreign Policy Perspectives* 8, <http://www.libertarian.co.uk/lapubs/forep/forep008.pdf> (accessed 27.05.2012): 6.
