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CATEDRA DE ȘTIINȚE POLITICE

**Rezumat**  
**TEZĂ DE DOCTORAT**

*Teoria războiului drept în relațiile  
internaționale și provocările secolului XXI*

*Just War Theory in International Relations  
and the Challenges of the XXI<sup>st</sup> Century*

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Iași, 2012

International relations represent the necessary background for understanding the interactions between state and non-state actors relevant to the architecture of the international system. Although Jeremy Bentham first used the term “international” in the late 18<sup>th</sup> century (as a synonym for the Latin phrase *jus gentium*), international relations as an academic discipline is only established after the end of World War I as an attempt to identify, understand and then remove the causes of the war and, consequently, to provide a vision of peace conditions. Concerns for conflict and causes generating belligerent behaviour are becoming increasingly acute after the Treaty of Westphalia, when sovereignty begins to be the exclusive feature of the nation-states. Moreover, the topography of the international system can be interpreted as a result of the great conflagrations that culminated in the 20<sup>th</sup> century with two World Wars followed by an extremely long Cold War.

Whereas the 1990s represented – precisely as a result of ending the ideological confrontation – a period of optimism, this was immediately offset by the reheating of inter- and intra-national conflicts that have brought back the war issues on the agenda of international relations. Thus, far from eliminating the incidence of conflicts, international relations theorists seek to identify a prophylaxis that, as a last resort, could reduce or legitimize a series of such predominantly pathological behaviours.

In 1918, at the University of Aberystwyth the first department of international relations was founded. Nevertheless, the philosophical concerns and foundations of both the discipline and the way war has been theorized (as a specific concern of international relations) is based on a long tradition of thought on human nature, political communities and how they are formed and evolve, and on how power shapes and reshapes the relations between them. On such an intellectual archaeology is built the contemporary interpretation of the just war theory.

This dissertation – *Teoria războiului drept în relațiile internaționale și provocările secolului XXI [Just War Theory in International Relations and the Challenges of the 21<sup>st</sup> Century]* – starts from the premise that just war theory remains an indispensable framework for analyzing the global order, peace and security. In my opinion, the reasoning of the just war should be seen as a dynamic theory of reflection on the nature of the international society and not as a rigid set of provisions applicable to crisis situations. Another premise of the dissertation is that, unfortunately, conflict remains an inextricable component of both intra- and inter-state relations. Therefore, the attempt to understand this phenomenon becomes a moral obligation and just war remains the best method of assessment. I also believe that the ethical dimension is and

must remain a central component of politics and that a correct understanding of just war theory has a major role in highlighting the values and objectives of political communities. Seen in these terms, just war theory becomes, above all, an exercise in the practical philosophy of the nature of international relations and its fundamental issues such as military interventions.

For the 21<sup>st</sup> century, war remains what it has always been – “a defeat for humanity”<sup>1</sup>, as Pope John Paul II called it, and just war theory should not be seen as an attempt to “moralize” warfare in order to make it easier to wage war; instead it represents “the two-dimensional ethics that addresses equally both the consciousness of policy makers and that of citizens.”<sup>2</sup>

At the same time, it should be noted that the theory goes through a process of limitation during the Cold War, a limitation which has the effect of distorting its capacity of exercise. The shadow of the Soviet-American confrontations shapes the entire moral language, almost completely focusing it on issues of nuclear threat. However, with the end of the Cold War and the emergence of new types of international threats and challenges, such as the accelerating pace of globalization, the decline of state sovereignty, the proliferation of international human rights movements and, not least, the rise of non-state international terrorism and the circulation of destructive military technologies (weapons of mass destruction), the need to review just war theory becomes pressing. This dissertation aims to examine the extent to which the theory remains relevant or not for the changing nature of international relations and, should the answer of such an analysis appear to be affirmative, to identify a framework through which just war theory could become an effective practice for the international system of states.

Thus, research on the contribution of writers such as St. Augustine, Gratian, Thomas Aquinas, Francisco de Vitoria or Hugo Grotius will analyze the fundamental principles that define and shape the classical theory of just war. The fact that these principles were partially absorbed later by the rules of international law forces us to an interdisciplinary approach to complete the philosophical aspect of the theory with elements and developments from the field of international jurisprudence. Moreover, this methodological conjunction was designed within the theory of international

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<sup>1</sup> “Pope Condemns War in Iraq”, *BBC News World Edition*, 13.01.2003, <http://news.bbc.co.uk/2/hi/europe/2654109.stm>, website accessed on 13.04.2012.

<sup>2</sup> Bryan Hehir, “The Politics of Ethics of Nonproliferation”, *CISAC Annual Drell Lecture*, Stanford University, 06.12.2005, <http://iis-db.stanford.edu/evnts/4308/HehirTranscript.pdf>, website accessed on 13.04.2012.

relations, in order to provide an answer to the flexibility of just war theory, to the degree to which it maintains its relevance when confronted with contemporary challenges.

Therefore, the methodology was supplemented by completing a new stage, respectively, delineating the coordinates of a current reading of just war theory corroborated with the identification and analysis of concepts that are stronger related to the practice of just war. To achieve this, I analyzed the fundamental documents of the international organizations relevant to this approach (UN, NATO) and the documents of state actors that shape contemporary just war theory (USA). The actual manner in which these principles – originally developed at philosophical level and later adopted within the lexis of international or state organizations – become operational was highlighted by analyzing armed conflicts (Afghanistan and Iraq) and humanitarian military interventions (such as that in Kosovo). This case study, drafted in a triangular manner (*preventive war – pre-emptive war – humanitarian war*) allowed me to conclude that just war theory continues to offer, in the 21<sup>st</sup> century as well, a theoretical framework necessary to legitimize the recourse to armed force.

The dissertation is structured in seven chapters and analyzes the classical elements of just war theory *jus ad bellum* and *jus in bello* to identify, in the end, the need to adopt a third governing principle – *jus post bellum*. The intention of this approach is to go beyond recognizing the need for rethinking the theory and to provide features for a new theory of just war.

In conclusion, the doctoral dissertation entitled *Teoria războiului drept în relațiile internaționale și provocările secolului XXI [Just War Theory in International Relations and the Challenges of the 21<sup>st</sup> Century]* is mainly focused on exploring the validity of just war tradition and on examining ways in which this tradition can be updated in order to address the new international security environment. The thesis emphasizes the relationship between theory and practice, in order to provide a flexible way of reporting war in the contemporary world.

Since the end of the Cold War, international security has undergone a fundamental change. The emergence of new forms of threat to international security – the rise of non-state terrorism, “criminal” states and the proliferation of weapons of mass destruction – affects how states address the use of military force as an instrument of foreign policy. Debates on preventive war and changing government regimes brought an additional level of complexity to the international system. Use of force in the 21<sup>st</sup> century rather takes the form of police actions than of the traditional model of

war. At the same time, international law slowly adapts to the new security environment and thus state practice appears to be non-compliant with the rules of the UN Charter.

This discrepancy has profound implications because it erodes the international consensus on the right to use force. And if it is more than obvious that the old rules governing the behaviour of the states are no longer relevant, we can not say the same thing when trying to determine what the new rules are or who can design and apply them. From a *jus ad bellum* perspective, the emergence of new forms of threat to security is a challenge to the consensus reached in 1945, as it appears in the UN Charter – armed force may be used only for self-defence. This consensus was the shape taken by the international reaction to the horrors of the two world wars and was reflected in a significant limitation of *the just cause* of the just war.

As we indicated in Chapter 1, just war theory has a non-linear development, equivalent to the interaction between the ever-changing nature of war and men's efforts to limit, regulate and justify it. Thus, if during the period between the 18<sup>th</sup> century and World War I the *jus in bello* classical category is central in the concerns of theorists, in contrast, the period between World War I and the fall of the Berlin Wall reveals *jus ad bellum* as the main theme of debate.

The end of the Cold War, which exposes the phenomenon of *failed* states, ethnic conflict and brutal civil wars, on the one hand, and “the new American interventionism” of the Clinton Administration and Boutros Boutros-Ghali's *An Agenda for Peace*, on the other hand, capture the *jus ad bellum* category in the 20<sup>th</sup> century expression, in a limited form, in which the right to wage war is formulated solely in terms of resistance against aggressions, in which the resistance can only take two forms: “a war of self-defence of the victim and a war of *enforcement* waged by the victim and any other member of the international society”, which become challenges to just war theory. Besides these, 2001, through the black day of September 11, marks irreparably the international society and represents a milestone in developing the rules of just war.

In order to analyze the extend to which the theory responds or not to these new realities of the international environment, our theoretical approach identifies four key moments – al Qaeda attacks of September 11, 2001, the War in Afghanistan, the War in Iraq and, last but not least, the War in Kosovo (moments that can be translated, in terms of challenges, as: *preventive war* – *pre-emptive war* – *humanitarian war*). Stating these key moments raises, most probably, questions about the chronology of events. Why is the Kosovo case raised only after Iraq? My motivation for this reversed chronology lies in the mixed justifications that the Bush administration and the UK

offered for the invasion of Iraq, justifications that also include the humanitarian nature of the military operations. Thus, I considered it necessary to address the Kosovo case after Iraq, in order to highlight the major differences between the two crises and to analyze the appropriateness of adopting a third pillar of just war theory – *jus post bellum*.

Moreover, the events of 9/11 and especially the subsequent events they generated require this paper to present an analysis of the concept of anticipatory war and of the moral dimensions involved by the anticipatory use of military force, an analysis of the anticipation spectrum defined by two extremes – the reflex action (pre-emptive war) and preventive war defined as an attack against a remote threat, subject to precaution and rational decision. The findings of this analysis indicate that, although the War in Afghanistan was not a pre-emptive one,<sup>3</sup> nevertheless, during the events there can be identified a predisposition of the international community to extend the *jus ad bellum* classical category, in relation to the self-defence principle underlying the U.S. invasion of Afghanistan. However, at the same time, one can notice the negative international attitude towards the treatment applied by U.S. to the prisoners of war in Afghanistan. Both France and UK opposed the U.S. decision according to which detainees are not prisoners of war and thus cannot benefit from the protection of the Geneva Conventions and threatened that they will not surrender the prisoners to the United States. The international pressure eventually led to the change of the U.S. policy, which leads me to note that, unlike *jus ad bellum* principles, those of *jus in bello* category are not the subject of any compromise to change the classical structure of just war theory.

Furthermore, the Afghanistan moment determines at least two international debuts: the first is the UN Security Council Resolution 1360 of September 12, 2001 – an action unprecedented in history, in which terrorism is declared a threat to international peace and security, giving states the possibility to invoke the right to self-defence and legitimizing the unilateral use of force in response to terrorist acts; the second lies in attributing the responsibility for terrorist attacks to one state – Afghanistan – although the attacks were committed by non-state actors who were on the territory this state.

As in the case of the war in Afghanistan, the U.S. provided in the case of Iraq a new stage of development of the *jus ad bellum* category from the perspective of anticipatory self-defence illustrated by the *National Security Strategy 2002*, a

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<sup>3</sup> Within just war theory, pre-emptive wars represent an acceptable way of implementing the principle of *just cause*.

development beyond the category of sufficient threat. This attempt is, however, offset by a part of the international community, including key NATO allies, France and Germany who did not support the U.S. position. The obvious link between the Taliban regime and al Qaeda represented, in case of Afghanistan, a real threat not only to the U.S., but also for the security of the entire international community. In this context, the international approval for the extension of the *jus ad bellum* principles is demonstrated and Operation *Enduring Freedom* is not categorized as a violation of international law. In the case of Iraq, the evidence submitted by the U.S. and UK for claiming a link between Iraq, weapons of mass destruction and al Qaeda is ambiguous and, in some cases, false. Without adequate proof, ignoring the restrictions of the anticipatory self-defence principle remains abusive, even in the case of the world's sole superpower.

In an international environment characterized by the fact that the constraint means specific to the Cold War were no longer in place, the most important issue is to answer the question – is it possible to change just war theory and, thus, international law to include the principle of preventive self-defence? The answer is affirmative. International law is not a rigid set of rules and history proves its capacity to adapt to changes underwent by international society over time. Even the provisions of the UN Charter present this quality – the invasion of Afghanistan is proof to that effect. In terms of just war theory, the ultimate proof of its adaptability is embedded in its current existence – it would not have survived until the 21<sup>st</sup> century had it not been adapted to an international system constantly subject to changes; the fact that it is partially absorbed by international law guarantees its future existence. However, it should be noted that the fact that these two institutions are subject to changes does not mean that they have to change under any conditions.

The *National Security Strategy* and its explicit request to expand the *jus ad bellum* category illustrate the case in which international law and just war theory cannot be flexible. To trigger the attack, preventive war is justified by fear and vague assumptions. The criteria of the imminent threat and of sufficient threat play a vital role in justifying pre-emptive actions. They are vital because, in their absence, the legitimacy of military power is questioned, paving the way for abuses. At the same time, the two categories provide credibility to threats.

From the perspective of the international community, the change of international law to provide legitimacy to anticipatory self-defence is against its individual and collective interests. The current *jus ad bellum* rules render a predictable quality to the anarchic international system. Twisting the international rules by unilateral actions can only mean undermining centuries of toil in diplomacy.

International law must be applied equally to all states, even to the world's sole superpower.

And finally, preventive wars are unjust from a practical point of view: it is not realistic to think that one can judge the actions that a state *might* initiate in a very distant future. As Bismarck said – “we do not know the games of Providence in such a way as to anticipate things.” Acknowledging anticipatory self-defence as a legitimate military option can transform the international system of states into a system similar to that in the 18<sup>th</sup> and 19<sup>th</sup> centuries.

Another challenge for just war theory in the 21<sup>st</sup> century is the humanitarian war. Since the humanitarian dimension encompassed in the military actions in Iraq, 2003 follows a “slippery logic”, considered by most theorists as an incredible justification for U.S. military actions, the analysis of the humanitarian war in Kosovo 1999 was considered relevant for this approach. This case is important from several points of view, as it presents a challenge for the *jus ad bellum* category in terms of *right authority* and *just cause* in which the moral nature of the case goes beyond the legal norms, but also under *jus in bello* category in terms of what Alex J. Bellamy calls *the calibration of means and ends*. Moreover, the crisis in Kosovo entails a series of major changes to the concept of sovereignty – in a context defined by massive violations of human rights, justifiable questions arise, such as: Does the sovereignty of individuals have the same inviolable quality as that of states? Can the use of military force be justified in international conflicts outside the UN and without prior authorization of the Security Council? Who signals the perpetration of mass atrocities and according to which criteria? And, last but not least, who decides on the appropriate response to fight them?

The answer to these questions cannot be identified without reference to the new geometry of the principles that shape contemporary security. Thus, the 1990s were marked by a series of re-formulations of the theory and, in terms of the entities that should be provided security, the concept is extended from the security of nations to that of groups of individuals. As a result, the concept is extended vertically – from nation to international system – and horizontally – completing the military perspective with the political, economic or environmental one and, thus, practically, affording security a human extent.

The Kosovo crisis, complete with the negative impact of that in Rwanda, points to the need to identify a response of the international society for what Kofi Annan called “the issue of the two sovereignties” and, therefore, for humanitarian interventions. Thus arises the concept of the *Responsibility to Protect* – R2P – in order

to solve the issue of military interventions for humanitarian purposes. R2P shifts the focus from the right to intervene, incompatible with state sovereignty, to *the responsibility to protect* or, in other words, it shifts the focus from potential interventionist states to vulnerable civilian populations. This transformation is a direct consequence of re-theorizing national security in the modern version of human security. R2P actually addresses the divide between the codified practices of international behaviour embedded in the UN Charter, in which state sovereignty occupies the central role, on the one hand, and the current state practice that emphasizes the limits of sovereignty and the need to protect the human rights, on the other hand.

R2P is a key turning point in the contemporary evolution of just war theory as its main components – *the responsibility to prevent, the responsibility to react and the responsibility to rebuild* are actually built on the classical architecture of the theory, in direct resonance with the ideas of Thomas Aquinas or the contemporary voices of Michael Walzer and Bryan Hehir. Moreover, based on the fact that it reiterates the *jus ad bellum* and *jus in bello* principles to contemporary conditions of war, R2P can be said to establish, next to the four paradigms of the theory identified by Murnion, a fifth paradigm of just war theory where the novelty is the extension of the two classical categories to embed a third one – *jus post bellum* in the sense of *the responsibility to rebuild*.

Thus, as stated in the opening lines of this dissertation, the ethical dimension is and must remain a central component of politics and the transformation of R2P into a fundamental principle of collective security marks “the commitment to ethical progress in international relations.”<sup>4</sup> At the same time, R2P as an aspect of the fifth paradigm of just war theory emphasizes the flexible and relevant nature of the theory in relation to the new contemporary realities, brought about by the rise of the movements that promote human rights, the new non-state actors in the international sphere and implicitly the war on terror.

The shift from the *jus in bello* state-centric approach to the human-centred one (based on human rights) also marks the establishment of the third pillar of just war theory – *jus post bellum* in the expression of its fundamental principle identified – the war can be ended in a fair manner and just peace can be achieved only when the human rights of all parties to the conflict are reaffirmed and become much safer than in the phase preceding the war. *Jus post bellum* thus reaffirms the existence of a fundamental

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<sup>4</sup> Matthew S. Weinert, “From State Security to Human Security”, Patrick Hayden (ed.), *The Ashgate Research Companion to Ethics and International Relations*, (Farnham: Ashgate, 2009), 159.

right to peace that, in turn, is part of the concept of human security, which, along with the other rights to liberty, life and security, are priorities of *just war theory*.