



EMERGING TRENDS OF SUSTAINABLE SOCIETY

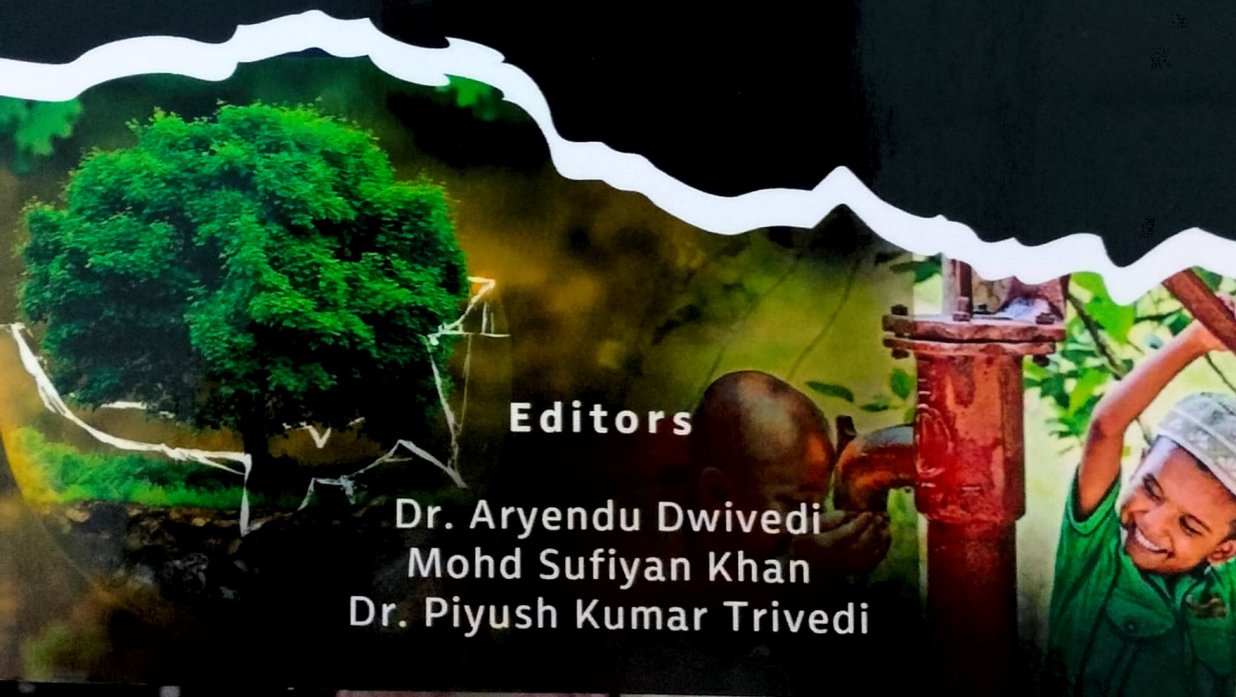
Present Perspective & Future Prospects

FOREWORD BY

MR. ABHAY RAJ AGARWAL

TRUSTEE

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Editors

Dr. Aryendu Dwivedi

Mohd Sufiyan Khan

Dr. Piyush Kumar Trivedi

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CHAPTER-2

Convergence of Jus Ad Bellum and Jus in Bello for Promoting Sustainable Society in a Globalised Scenario

-Dr. Seema Siddiqui¹

Introduction

“The term ‘just war’ is an internal contradiction. War is inherently unjust, and the great challenge of our time is how to deal with evil, tyranny and oppression without killing huge numbers of people.”

-Howard Zinn

After nearly two centuries of neglect, the old idea of just war has gained fresh traction in the 21st century, largely as a result of two circumstances in the modern world. First, a new international system has emerged to replace the recent European balance-of-power system. Second, modern technology has produced military weapons with unprecedented levels of destructive power, fundamentally altering the methods and even the purpose of warfare. As significant as the reasons for starting a war and the methods employed are, what occurs after one also has an impact on our moral assessments of it. However, the just war tradition has not given questions of jus post bellum enough attention.

The convergence of *Jus Ad Bellum* and *Jus in Bello* can play a crucial role in promoting sustainability in society in a globalized scenario. *Jus Ad Bellum* is a set of laws and principles regulating the recourse to armed force by States while *Jus in Bello* refers to the legal principles that govern the conduct of warfare. A fair peace arises when both sides of the conflict’s participants’ human rights are better protected than they were before to hostilities.²

This paper actually seeks to contribute to recent efforts to develop jus post bellum principles by first noting some of the ways that jus ad bellum and jus in bello considerations serve to constrain what can legitimately be done after war to uphold sustainable society.

¹ Assistant Professor (Head), Faculty of Law, Integral University, Lucknow.

² Orend Brian, *Kant’s Just War Theory* 12 (Routledge, 1stedn., 2006).

Historical Perspective of Just War Theory to Sustain Society

At a time when the church was trying to establish itself as the world's religion, the doctrine of '*bellum iustum*' concept initially emerged in Christian moral theology. As a result, it was compelled to express an opinion on war as a tool of policy. *Saint Augustine's* fundamental distinction between a right and an unjust war served as a beneficial guide for Christian laypeople and priests alike, and it served as the foundation for addressing a pressing political necessity of the day, namely, defence against the barbarian invasion. He believed that if a war is fought for a righteous cause, it may be done so knowing that God has given the go-ahead, but if that is not the case, mankind would fight in violation of God's will in order to further their own interests. The goal of war is not victory but rather the establishment of a sustainable³ society.

If *Augustine's* distinction served as a tool for developing legal regulations to govern war, he had not attempted to do so, and neither did his theory purport to provide principles for the law of nations. However, it served its original purpose of serving as a practical ethical guidance for the practising Christian who also had to serve Caesar in the military.

Aquinas laid down three conditions for a just war:⁴

- a. the declaration of war must be made by the legitimate authority-an important limitation in an age when privately waged vendettas were the rule rather than the exception,
- b. there must be a just cause, which, as in Augustine's concept, could be found only in the fact that "*those against whom war is being waged deserve this on account of some fault*", and
- c. the belligerent must possess a just intention-"*to do the good and avoid the evil.*"

Even though the church had a loud voice throughout this time, its political decisions were never self-executing. Therefore, secular kings were not required to use the church's standards even if it may

³ Von Elbe, "The Evolution of the Concept of the Just War in International Law" XXXIII *American Journal of International Law* (1939).

⁴ Lothar Kotsch, *The Concept of War in Contemporary History and International Law* (Geneva, 1956).

have been widely believed that the church should be the final judge of issues establishing the legitimacy of war.

Vittoria recognised this fact, but tried rather feebly to avoid its ramifications by urging the sovereign to seek wise counsel before going to war. By the sixteenth century, the idea of state sovereignty had clearly eliminated the possibility that the justice-seeking, higher authority could, even in theory, rule upon the justice of particular wars.

The attempt to incorporate the doctrine into the secularised positive law of emerging nation-states had only a fleeting success by the time Grotius sought to rescue the *bellum iustum* doctrine from a then outmoded theological framework that had little connection with the legal requirements. Grotius regarded just war as a legal procedure for the assertion of positive right.

The formula offered by **Grotius**:

*“tended to spread war to the states that took sides regarding the justice of the controversy rather than to deter violence.”*⁵

Due to their nefarious repercussions in practise, the positive rights and responsibilities of the *jus ad bellum* that Grotius articulated so plainly were thus destroyed. Our discussion of the evolution of just war theory up to this point has focused on the so-called *jus ad bellum* component, or the circumstances that thinkers have thought justified a state's use of force. But even after the endeavour to define the conditions under which war may be justified was given up, a set of guidelines for the control of war after it had been used persisted. As long as the concept of the *bellum iustum* was believed to have any chance of success, the rules the *jus in bello*, or the laws of war had not been viewed as independent of its tenets.

Throughout the Middle Ages:

*“the jus ad bellum was on the one hand, formed and developed by the doctrine of bellum iustum which, on the other hand, gave rise to the application of the jus in bello.”*⁶

⁵ Morton A. Kaplan and Nicholas de B. Katzenbach, *The Political Foundations of International Law* 201-17 (John Publisher, New York, 1961).

⁶ Kotsch, 86.

Fundamental Principles of International Humanitarian Law
Jus ad bellum and jus in bello are two Fundamental Principles of International Law that govern the initiation and conduct of armed conflicts are:⁷

1. **Jus ad bellum:** Jus ad bellum primarily deals with the right to go to war or use force. It covers the circumstances under which it is lawful for a state to use military force. The following are the essential principles of jus ad bellum:⁸
 - a) **Self-defense:** The UN Charter permits the use of force only in self-defense against armed attack or imminent threats of armed attack.
 - b) **Just cause:** A state can use force if it has a just cause and a proportional response, such as protecting its citizens and ensuring its territorial integrity.
 - c) **Authorisation by the UN Security Council:** The use of force can be legitimate if authorized by the UN Security Council, especially for maintaining international peace and security.
 - d) **Legitimate authority:** The use of force must be authorized by the legitimate authority, such as government, not individuals or non-state actors.
2. **Jus in bello:** Jus in bello deals with the conduct of armed conflicts. It is also known as the law of war or international humanitarian law. The following are the essential principles of jus in bello:⁹
 - a. **Proportionality and discrimination:** The means and methods of warfare should not cause unnecessary harm to civilians and civilian objects, and there should be a distinction between combatants and non-combatants.

⁷ Christopher Greenwood, "The relationship between ius ad bellum and ius in bello" 9:4 *Review of International Studies* 221–234 (1983).

⁸ Carsten Stahn, "'Jus ad bellum', 'jus in bello' 'jus post bellum'? –Rethinking the Conception of the Law of Armed Force" 17:5 *European Journal of International Law* 921–943 (2006).

⁹ *Ibid.*

- b. **Human dignity:** The treatment of prisoners of war, wounded, and sick must be in compliance with the principles of human dignity, such as not subjecting them to torture or inhumane treatment.
- c. **Principle of neutrality:** Medical personnel, the wounded, and those who surrender voluntarily must be respected and protected from harm.
- d. **Accountability and punishment:** Violations of jus in bello, such as war crimes, should be prosecuted, and the perpetrators should be held accountable.

The principles of *jus ad bellum* and *jus in bello* aim to regulate the conduct of states to prevent unnecessary loss of life and destruction of property during armed conflicts. International laws serve as guidelines that states have committed to following to maintain global peace and stability.

Therefore, the convergence of *Jus ad Bellum* and *Jus in Bello* can play a crucial role in promoting sustainability in society in a globalized scenario. By following the principles of international law that govern the use of force and conduct during armed conflicts, States can minimize the negative impact of conflicts on the environment, society, and the economy. This approach can foster a more peaceful, equitable and sustainable society for all.

Rules of Jus Ad Bellum and Jus in Bello for Promoting sustainable Society

The following are ways in which these two areas of law can contribute to sustainable development in society:¹⁰

1. ***Jus Ad Bellum and Sustainability:*** Jus Ad Bellum requires States to exhaust all non-violent means before resorting to the use of force. This means that in a globalized scenario, States must work towards the development of peaceful mechanisms to resolve disputes, such as diplomacy, mediation, and negotiation. This approach can promote sustainability by reducing the negative impact of armed conflicts on the environment, society, and the economy.

¹⁰ Stanar Dragan, "Moral equality of soldiers in war: Necessity of separating jus ad bellum from jus in bello" 68:8 *Union - Nikola Tesla* 33-41 (2016).

2. *Jus in Bello and Sustainability*: Jus in Bello requires that the use of force during armed conflicts is proportional and directed towards military targets. It prohibits the use of excessive force, indiscriminate attacks and the use of weapons that cause unnecessary harm to civilians and non-combatants. By complying with these principles, States can minimize the environmental and social impact of armed conflicts and create a more sustainable society.
3. *Collaboration between Jus Ad Bellum and Jus In Bello*: The convergence of Jus Ad Bellum and Jus in Bello can promote sustainability by ensuring that armed conflicts are only resorted to as a last resort and that they are conducted with utmost consideration for humanitarian and environmental concerns. This approach can prevent the wastage of precious resources like human lives, biodiversity, and natural resources, which are essential for building a sustainable society.
4. *Responsibility to Protect*: The concept of Responsibility to Protect (R2P) requires that States take responsibility for protecting their populations from mass atrocities such as genocide, war crimes, ethnic cleansing, and crimes against humanity. By ensuring the protection of human rights and dignity, the application of R2P can promote sustainable development by fostering peaceful societies that respect the earth and its resources.

Challenges for Implementing Just War Concept in Upholding Sustainable Society

Here are some hurdles that can arise in promoting a sustainable society through just war:¹¹

1. *Environmental impact*: War and military operations can cause enormous environmental damage, such as deforestation, soil erosion, and air and water pollution, which can hinder sustainable development efforts.

¹¹ Christian Barry, "A challenge to the reigning theory of the just war" 87:2 *Royal Institute of International Affairs* 457-466 (2011).

2. *Scarce resources:* Wars consume a vast amount of resources, including energy, water, and land that could have been utilized for development purposes to benefit society. This can result in shortages of resources and impede the transition to sustainable living.
3. *Displacement and displacement:* War can cause the forced displacement of civilians, leading to social, economic, and environmental consequences that undermine sustainability efforts and harm vulnerable populations.
4. *Financial burden:* Wars come with a hefty price tag that can drain resources that could have been used to meet sustainable development goals. Military-related expenses can adversely affect access to education, healthcare, and other social services, leading to economic and social inequalities.
5. *Political instability:* Wars can destabilize political and social systems, hampering efforts to establish a sustainable society and eroding respect for human rights and democratic principles.

However, it is essential to recognize and address the various obstacles that arise in promoting a just war that supports sustainability. By addressing these hurdles, we can move towards a more stable and equitable society that provides an equal playing field for all individuals.

Conclusion

Interesting possibilities about the establishment of humanitarian norms for dealing with violence in armed conflicts are raised by the international community's response to such violence. Although international war and the use of force between states have traditionally dominated discussions of the role of international humanitarian law in relation to violence, civil strife is currently proving to be the most difficult and complicated kind of violence the international community must deal with justness for the maintenance of sustainable society. The justness of the cause in a globalized world to sustain society requires strictness rather than leniency in the conduct and

termination of war for a state to remain legitimate in the eyes of the world. The traditional dichotomy in International Law between jus ad bellum and jus in bello has been more and more abandoned in favour of a system comprising norms designed to create fair and sustainable peace. It has been recognized that post-war societies need help in order to avoid a relapse into conflict and chaos.