

# The philosophy of international law of Modern Scholasticism: the theory of just war

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## **Abstract**

*This article analyzes the philosophy of international law of the Second, or Modern Scholasticism. The author of the article concentrates on the just war theory mainly developed by Francisco de Vitoria and Francisco Suarez. The objectives of the article are to clarify and classify the main principles of the above-mentioned theory as well as to grasp its relevance nowadays. In order to achieve these objectives doxographical, analytical as well as hermeneutical methods are applied. Based on them, the principles and rules of just war are divided into two fundamental types. The article comes to conclusion that these types correspond to the parts of contemporary just war theory entitled as jus ad bellum and jus in bello. Another significant conclusion is that the vast majority of the principles of just war presented in Modern Scholasticism (e.g. just cause of the war, adversary's warning of intended offensive actions, the inviolability of ambassadors and peaceful population, prohibition on killing prisoners of war and hostages, the compliance of reparations with the damage caused before and during the war, the illegality of religious and confessional wars) are also relevant nowadays.*

**Keywords:** Modern Scholasticism, international law, just war, jus ad bellum, jus in bello, Francisco de Vitoria, Francisco Suarez.

**JEL Classification:** K33, K38

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## **1. Introduction**

The Declaration of Principles of International Law<sup>3</sup> (1970) and the Helsinki Final Act (1975)<sup>4</sup> enshrined the fundamental principles of international law, securing fundamental rights of states as well as patterns of relations among them. The so called Decalogue of the above mentioned principles include sovereign equality and respect for the rights inherent in sovereignty; refraining from the threat or use of

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<sup>3</sup> Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (adopted on 24 October 1970), 9 ILM 1292 (1970). United Nations General Assembly, 25<sup>th</sup> session.

<sup>4</sup> Final Act of the Conference on Security and Cooperation in Europe (adopted on 1 August 1975), 14 ILM 1292 (1975). Conference on Security and Co-operation in Europe.

force; inviolability of frontiers; territorial integrity of states; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; equal rights and self-determination of peoples; co-operation among states; fulfillment in good faith of obligations under international law.

For a civilized Westerner of the twenty-first century, brought up on the basis of the ideals of freedom, democracy, tolerance and the rule of law, these principles seem to be self-evident postulates that have been in force always and everywhere. Well, at least always in Europe, which is usually being considered as the cradle of civilization, tolerance, democracy, the rule of law. However, reality refutes this romantic vision – the above-mentioned principles of international law have for quite a long time paved their way to recognition<sup>5</sup>. One of the most significant factors that contributed to establishment of those principles was the philosophy of international law that raised them and based them. It is Hugo Grotius that is usually considered the pioneer of this theory. Yet, quite often the forerunners of this Renaissance thinker, namely, the grandees of the Second, or Modern, Scholasticism (16<sup>th</sup>-18<sup>th</sup> c.) are undeservedly forgotten. These are the monk of the Dominican Order Francisco de Vitoria (1480-1546) and Jesuit Francisco Suarez (1548-1617). Their works, published before the appearance of Grotius' treatise *On the Law of War and Peace*<sup>6</sup>, analyzed the origin and nature of international law, formulated the fundamental rights of each nation and state as well as the conditions, rules and principles of their

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<sup>5</sup> For example, in 1990 the Soviet Union led by Nobel Peace Prize laureate Mikhail Gorbachev stubbornly contested the right of Lithuanian, Latvian and Estonian peoples to self-determination. In 1991, the same USSR used a brutal military force against Lithuania and Latvia, which have declared their independence a year ago, thus violating the sovereignty as well as inviolability of frontiers of those states. Moreover, right up to its collapse, Soviet Union tried to create a certain autonomous unit (the so-called Polish autonomy) within the restored Lithuanian state, menacing by this action to the territorial integrity of Lithuania, as well as instigated discontent of Lithuanian citizens with the legitimately and democratically elected government, thus intervening in Lithuania's internal affairs. It is as well nowadays that numerous violations of international law's principles are still taking place in Europe. Here, again, Russia, as the successor of the Soviet Union, takes the lead. People of Sakartvelo (Georgia) still remember Russia's invasion of this independent state in 2008 that aimed at cutting off regions of Abkhazia and South Ossetia. Again in 2014, Russia, thanks to its covert troops, occupied and later annexed the Crimean Peninsula of sovereign Ukraine, as well as initiated splitting of a certain part of Donetsk and Lugansk Regions from Ukraine's territory. Finally, it is ongoing Russian offensive war against Ukraine that crossed and still crosses all the imaginable boundaries of international law and elementary humanity, as it supplements the aforementioned international law's infringements with constant sadistic violations of human rights and fundamental freedoms.

<sup>6</sup> Hugo Grotius, *De jure belli ac pacis*. This Grotius' work was published for the first time in 1625. Meanwhile, de Vitoria's treatises *On Civil Power* (Francisco de Vitoria, *De potestate civili*) and *On the American Indians Lately Discovered and on the Law of War Made by the Spaniards on the Barbarians* (Francisco de Vitoria, *De Indis recenter inventis et de jure belli Hispanorum in Barbaros relectiones*) were issued in 1557. Suarez's treatise *On Laws and God the Lawgiver* (Francisco Suarez, *De legibus et legislatore Deo*) was published in 1612 followed by another treatise *On Three Theological Virtues* (Francisco Suarez, *De triplici virtute theologica*) issued in 1621.

defense in a just war (*bellum justum*)<sup>7</sup>. Based on Roman law, as well as on works of Thomas Aquinas, Saint Isidore of Seville (7<sup>th</sup> century), Saint Raimond of Penafort (13<sup>th</sup> century) and John of Legnano (14<sup>th</sup> century), de Vitoria and Suarez developed a theory of international law, a significant part of which retain its relevance in our days.

The legal theory of Modern Scholasticism was recently investigated by Alves and Moreira<sup>8</sup>, Buyuk<sup>9</sup>, Garcia Castillo<sup>10</sup>, Gomez Robledo<sup>11</sup>, Kincaid<sup>12</sup>, Macedo<sup>13</sup>, Spindler<sup>14</sup>, Todescan<sup>15</sup>, Valatka<sup>16</sup> etc. Various aspects of just war theory were, in turn, researched by Bazargan<sup>17</sup>, Braun<sup>18</sup>, Cahill<sup>19</sup>, Johnson<sup>20</sup>, Lo<sup>21</sup>,

<sup>7</sup> The influence of theorists of Modern Scholasticism on Grotius is known to a certain circle of this thinker's researchers. In 1926, the Dutch Association of Grotius awarded the gold medal to University of Salamanca, wherein de Vitoria taught for many years and headed the department of theology. The medal was awarded to honor de Vitoria as one of the "fathers" of international law. However, in the Anglo-Saxon world, international law theory of Modern scholasticism has so far been little known. For example, the above mentioned legal-political treatises of de Vitoria were translated from Latin into English only in 1991.

<sup>8</sup> Andre A. Alves and Jose M. Moreira, *The Salamanca School* (London: Continuum, 2009).

<sup>9</sup> Mehmet Emin, Buyuk, "The Development of the Theory of Sovereignty and the Modern Law of Nations from Machiavelli to Grotius", *Istanbul Hukuk Mecmuasi* 80, no. 1 (2022): 299-356.

<sup>10</sup> Pablo Garcia Castillo, "The Jus Gentium from Vitoria to Suarez", *Disputatio-Philosophical Research Bulletin* 6, no. 7 (December 2017): 489-510.

<sup>11</sup> Antonio G. Robledo, *Fundadores del derecho internacional: Vitoria, Gentili, Suárez, Grocio [Founders of the International Law: Vitoria, Gentili, Suarez, Grotius]* (Mexico City: Universidad Nacional Autónoma de México, 1989).

<sup>12</sup> Elisabeth Rain Kincaid, "'Good, Rich, or Secure?'. Spanish Scholasticism and Law's Development of Virtue", *Bajo Palabra-Journal of Philosophy* 2, no. 26 (2021): 123-139.

<sup>13</sup> Paulo E.B. Macedo, *O Nascimento do direito internacional [The Birth of International Law]* (Sao Leopoldo, Brazil: Editora Unisinos, 2009).

<sup>14</sup> Anselm Spindler, "Law, Natural Law, and the Foundation of Morality in Francisco de Vitoria and Francisco Suarez", in *Concept of Law (Lex) in the Moral and Political Thought of the School of Salamanca*, ed. Kirstin Bunge et al. (Brill Academic Publishers, October 2016), 172-197.

<sup>15</sup> Franco Todescan, "From the 'Imago Dei' to the 'Bon Sauvage': Francisco de Vitoria and the Natural Law School", in *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law*, ed. Jose M. Beneyto, and Justo C. Varela (Springer, August 2017), 21-43.

<sup>16</sup> Vytis Valatka, "Legal philosophy of Modern Scholasticism: Rights of Nations as a Means of Intercultural Dialogue", *Tribuna Juridica-Juridical Tribune*, 8, no. 2 (June 2018): 553-563.

<sup>17</sup> Saba Bazargan, "Morally Heterogeneous Wars", *Philosophia* 41, no. 4 (December 2013): 959-975.

<sup>18</sup> Christian N. Braun, "Quo Vadis? On the role of just peace within just war", *International Theory* (2022): 1-23, <https://doi.org/10.1017/S1752971921000270>.

<sup>19</sup> Lisa S. Cahill, "Just War, Pacifism, Just Peace, and Peacebuilding", *Theological Studies* 80, no. 1 (March 2019): 169-185.

<sup>20</sup> James T. Johnson, "The Just War Idea: the State of the Question", *Social Philosophy & Policy* 23, no. 1 (Winter 2006): 167-195.

<sup>21</sup> Ping Cheung Lo, "Gratian and Mengzi: Pioneer Works in the Christian and Confucian Just War Traditions", *Journal of Religious Ethics* 48, no. 4 (December 2020): 689-729.

Morkevicius<sup>22</sup>, Kirkpatrick<sup>23</sup>, O'Driscol<sup>24</sup>, Vorster<sup>25</sup>, Saraiva<sup>26</sup> and the others. Still, the most of these researches are devoted to the contemporary just war theory while archetypal concept of just war presented by the law philosophers of Modern Scholasticism has so far been little investigated<sup>27</sup>. Therefore, this article aims at clarifying and classifying the main principles of the above-mentioned concept as well as at grasping its relevance nowadays. In order to achieve these objectives doxographical, analytical as well as hermeneutical methods are applied.

## 2. Rights of nations and theory of just war

One of the most significant parts of Modern Scholasticism's theory of international law was the list of fundamental rights of nations and states. This list involved the rights to existence, mutual equality and political independence, the right of international migration and trade as well as the right and duty of humanitarian or even military help. Subject to certain reservations, these rights may be considered certain equivalents of important principles of contemporary international law, namely, principles of sovereign equality, refraining from the threat or use of force, inviolability of frontiers, territorial integrity of states, non-intervention in internal affairs, equal rights and self-determination of peoples as well as principle of humanitarian intervention<sup>28</sup>.

According to the authors of Modern Scholasticism, the observance of the above-mentioned rights, as well as of the other principles of international law, is determined and induced by two essential factors. First of all, it is the human reason

<sup>22</sup> Valerie Morkevicius, "Power and Order: The Shared Logics of Realism and Just War Theory", *International Studies Quarterly* 59, no. 1 (March 2015): 11-22.

<sup>23</sup> Jesse Kirkpatrick, "Moral Injury and Revisionist Just War Theory", *Ethics & International Affairs* 36, no. 1 (2022): 27-35.

<sup>24</sup> Cian O'Driscol, "Nobody wins the Victory Taboo in Just War Theory", *Journal of Strategic Studies* 42, no. 7 (November 2019): 901-919; Cian O'Driscol, "The Irony of Just War", *Ethics & International Affairs* 32, no. 2 (Summer 2018): 227-236; Cian O'Driscol, "Rewriting the Just War Tradition: Just War in Classical Greek Political Thought and Practice", *International Studies Quarterly* 59, no. 1 (March 2015): 1-10.

<sup>25</sup> Nico Vorster, "Just War and Virtue: Revisiting Augustine and Thomas Aquinas", *South African Journal of Philosophy* 34, no. 1 (January 2015): 55-68.

<sup>26</sup> Bruno Cozza Saraiva, "O Direito Natural, o Direito Positivo e o Positivismo Jurídico: de como se decide no Brasil", *Cadernos de Direito Actual* N° 15. Núm. Ordinário (2021): 72-94.

<sup>27</sup> Some aspects of this concept were analyzed by Melvin Endy, "Francisco de Vitoria And Francisco Suarez on Religious Authority and Cause for Justified War: the Centrality of Religious War in the Christian Just War", *Journal of Religious Ethics* 46, no.2 (June 2018): 289-331; Mauro Mantovanni, "Brief Notes on the "Right War"'s Theory according to Francisco Suarez", *Sophia-Coleccion de Filosofia de la Educacion*, no.23 (December 2017): 229-252; Mark Somos, "Vitoria, Suarez, and Grotius: James Brown Scott's Enduring Revival", *Grotiana* 41, no. 1 (June 2020): 137-162.

<sup>28</sup> The concept of "humanitarianism" or the definition of what is "humanitarian" derives from an intrinsic dedication to alleviating human suffering and protecting the well-being, dignity and lives of other human beings, particularly those who meet in a state of vulnerability – see in this regard Sidney Guerra, Ádria Fabricio, "Analysis of the incursion of international law of catastrophes to the normative territory of armed conflicts: when catastrophe and war collide", *Cadernos de Direito Actual* N° 16. Núm. Ordinário (2021):8-23, p. 9.

itself created by God that demands to stick to these rights. Such a factor of observance was suggested by the Modern Scholasticism's assertion that international law is a kind of derivative of natural law, while the latter derives precisely from the human natural reason. Thus, the natural reason itself dictates that states, nations and individuals should recognize and observe the law enshrined by it between those states and nations. Secondly, observance of states and nations' rights is determined by the universal customary nature of international law, since the latter was understood as a set of customary norms more or less characteristic of the entire world community.

However, international customs matching natural reason are not being everywhere and always observed. Rights of nations and states are not as well an exception to the rule. They are also being violated from time to time by various states, nations or even individuals. According to the authors of Modern Scholasticism, violations of that type should be considered extremely serious international crimes. They destroy international peace and security as well as bring great harm to nations and states such as the capture or robbery of territory, the loss of political independence, and so on. In such a situation, two essential measures can be taken to restore the *status quo* as well as to compensate for the inflicted damage. First of all, it is necessary to try negotiations. And only if all possible means of peaceful persuasion do not bring any positive results, a just war (*bellum justum*) is permitted against a nation or state that has violated international law. Such a principle in modern international law is called the last resort.

As for the theory of a just war itself, it is the fruit of Christian ethical, political and legal thought. It is St. Augustine that is considered to be the pioneer of that theory. His ideas of a just war were developed into a complete and comprehensive theory by one of the most famous authors of Classical Scholasticism – St. Thomas Aquinas. In Modern Scholasticism, the theory of just war was most developed by Francisco de Vitoria and Francisco Suarez. They supplemented the Aquinian version of the theory and adapted it to a new global geopolitical situation, when the so-called New World was discovered and colonized. The theory of just war of Modern Scholasticism presented and substantiated conditions, rules and principles according to which every nation – both “primitive” and “civilized” – could defend its fundamental rights by waging a just war against another nation or state.

The theory of just war was further developed by philosophers and lawyers of the Renaissance and New Ages: Samuel von Pufendorf, Christian Wolff, Emmerich de Vattel etc. In the 20<sup>th</sup> c., after the so-called Kellogg-Briand pact, which condemned recourse to war for the solution of international controversies and renounced it as an instrument of national policy, the theory of just war had lost its significance for a while. It came back along with the creation of a nuclear weapon and the U.S. invasion of Vietnam. Nowadays, when several military conflicts between various states take place at the same time all over the world, this theory is more relevant than ever. Its relevance was further enhanced by the brutal offensive war of Russia against Ukraine, which basically violated all the principles and rules of modern international law enshrined in the Declaration of Principles of International Law and Helsinki Final Act.

### 3. *Jus ad bellum*: true cause, legitimate authority and probability of success

Within frames of Modern Scholasticism, the principles of just war were most developed by Suarez. According to him, “war is neither bad in itself nor forbidden to Christians”<sup>29</sup> – it can be both just and unjust. A just war is obliged to fulfill a number of necessary conditions. Their list begins with reasons and factors which justify war. In modern international law, the set of such causes and factors that explain when it is permissible to wage war is called *jus ad bellum* (right to warfare). As for Suarez, he did not use this term yet, still, most of the factors and conditions of a just war he indicated are fully consistent with the spirit of modern international law. According to him, “firstly, the war should be declared and waged by the legitimate authority”<sup>30</sup>. That is, only the legitimate ruler of a state or nation can declare war against another state or nation. True, this rule applies only to offensive war (*bellum offensivum*), as in case of external aggression both the entire civil society and its individual members are permitted to start a defensive war (*bellum defensivum*) without any sanction of the political sovereign.

Secondly, just war requires a just cause<sup>31</sup>. Such a cause was also interpreted in a very modern way. Namely, it was argued that “diversity of religion is not the cause of a just war”<sup>32</sup>. The reason is that every human being possesses free will delivered by God Himself, therefore every human being is absolutely free to choose the way to confess and praise the Almighty. Similarly, the ruler’s desire to expand territory of state or to earn the glory of a warlord cannot be considered the just cause of war<sup>33</sup>. It is only the significant damage done by a certain state or nation to another state or nation that is regarded as a just cause of the war: “there is one and only just reason for starting a war, that is the damage received”<sup>34</sup>. This damage includes the capture or robbery of state’s territory, the loss of political independence, the misappropriation of state and private property, the obstruction or restraint of trade with foreign countries, insulting the honor of the ruler or citizens, etc.<sup>35</sup> As well, an external aggression against which every nation and state has the right and duty to defend itself also counts as a cause for just warfare<sup>36</sup>. Finally, a just cause of a war is also an aggression against another nation or state, in which case the other nations

<sup>29</sup> “Bellum simpliciter nec est intrinsece malum, nec Christianis prohibitum” – Francisco Suarez, “De triplici virtute theologica” [“On Three Theological Virtues”], in *Opera omnia Francisci Suarez* [Complete Works of Francisco Suarez], vol. 12, ed. L. Vives (Parisiis: Apud Ludovicum Vives, Bibliopolam editorem, 1858), 737.

<sup>30</sup> “Primum [caput est], ut [bellum] sit a legitima potestate” – Suarez, “De triplici virtute theologica”, 739.

<sup>31</sup> Ibid.

<sup>32</sup> “Causa justii belli non est diversitas religionis” – Francisco de Vitoria, *De Indis recenter inventis et de jure belli Hispanorum in Barbaros relectiones* (Tubingen: Verlag J. C. B. Mohr (Paul Siebeck), 1952), 128.

<sup>33</sup> Ibid. This position is perfectly in line with the essential principle of the Kellogg-Briand Pact!

<sup>34</sup> “Unica est et sola causa justa inferendi bellum, injuria accepta” – Ibid, 130.

<sup>35</sup> Suarez, “De triplici virtute theologica”, 744.

<sup>36</sup> Ibid, p. 738.

and states have the right and duty to give an aid to the victim of aggression in defending its territory and independence<sup>37</sup>.

External aggression is a sufficient cause to start a defensive war. Meanwhile, before declaring an offensive war, the sovereign, based on his reason and conscience, must thoroughly investigate if a just cause of that war really exists. If it turns out that the enemy is rather right than wrong (e.g., it must be admitted that the city that the sovereign wants to regain once belonged to the enemy's predecessor, from whom it was later deprived of by one of the sovereign's predecessors), the offensive war is not permitted<sup>38</sup>. And what about sovereign's soldiers? Should they care about such a question as war's justice? Namely, are they obliged to seek for the just cause of the war before attacking enemy? According to Suarez, there is usually no need for doing this. If soldiers do not have any serious and reasonable doubt about justice of war, they must unconditionally obey the ruler's order to fight. Still, if there are some doubts concerning that question, troops must examine it thoroughly and in detail. If, even after this consideration, the doubts remain, it is necessary to consult a wise and virtuous person (a priest, a higher officer or even the ruler himself) and only afterwards to take a final decision.

Thus, a just war is impossible without the just reason. Yet, even in case the latter exists, the sovereign must objectively evaluate his chances for victory before starting an offensive warfare. If it turns out that there is a greater probability of losing a war than winning it, the sovereign must refrain from warfare. Otherwise, his state is at risk of suffering even greater damage than the existing one<sup>39</sup>. Within the frames of contemporary international law, such an assessment of one's chances to win a war is called the principle of probability of success.

The authors of Modern Scholasticism faced one more important question, namely, whether offensive war requires not only a just cause but also the papal endorsement. According to Suarez, in most cases such a sanction is not necessary. The matter is that Pope cannot be considered a sovereign of political power (*imperium*). Still, he possesses incontestable spiritual authority (*sacerdotium*) the aim of which is to guide citizens of the Christian world on the path of salvation. Therefore, when a ruler of some Christian state clearly deviates from this path (e.g. becomes a heretic, plunders, imprisons or kills his own citizens, etc.), Pope may give a spiritually obliging order to sovereigns of the other Christian countries to dethrone such a vicious ruler. Thus, "the highest pontiff has the power to punish the unjust rulers"<sup>40</sup>.

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<sup>37</sup> Vitoria, *De Indis recenter inventis*, 112.

<sup>38</sup> Suarez, "De triplici virtute theologica", 749-750. In contemporary international law, such an examination of just cause of offensive war is called comparative justice. Still, it is important to note that contemporary international law somewhat narrows the number of just offensive war's causes. Namely, attacking the other state is permitted only when it massively violates its citizens' human and civil rights and liberties (right to life, right to personal freedom, right to property, freedom of thought and expression, religious freedom, freedom of press etc.), or when that state carries out aggression against another nation or state. In this case, the offensive war becomes a legitimate humanitarian intervention.

<sup>39</sup> *Ibid*, 746.

<sup>40</sup> "In summo pontifice est vere potestas iniquos reges coercendi" – Francisco Suarez, "Defensio fidei catholicae et apostolicae adversus anglicanae sectae errores" ["Defense of the Catholic and Apostolic

#### 4. *Jus in bello*: principle of moderation, or proportionality, and its derivatives

So, the just war requires just cause and legitimate authority as its source. But what about just warfare itself? According to the authors of Modern Scholasticism, the certain principles should be followed while waging war. In contemporary international law, a set of rules that must be obeyed in a just war is called *jus in bello* (the law of warfare, or the international humanitarian law). As for Suarez and Vitoria, they did not use this term yet. Still, the best part of the rules of waging just war, formulated by them, would easily get into the documents of contemporary international humanitarian law. After the representatives of Modern Scholasticism, the main principle of just warfare is moderation, or proportionality, the violation of which instantly deprives war of the quality of the justice<sup>41</sup>. More to say, all the rules of just warfare derives from the above-mentioned principle. The main message of proportionality is that armed force used in war must be precisely consistent with the objective of a just war, namely, repairing the damage done. Therefore, measures that go beyond this goal (capture or robbery of adversary's territory, mass killing of the inhabitants of this territory, etc.) are strictly prohibited, as they aim not at fair and proportionate compensation for damages, but at vengeance, elementary material gain, strengthening the power of the state etc.

By the way, moderation is as well necessary before starting hostilities. Namely, just before launching an offensive war, the sovereign must warn the adversary country of possible hostilities giving at the same time the last offer to compensate for the damage caused: "before the start of warfare, the ruler must inform the adverse state that there is a just cause of the war as well as demand adequate restoration of damages, and if the adverse country offers such compensation, the ruler must accept it and refrain from hostilities, because if he does not do so, the war will be unjust"<sup>42</sup>. On the other hand, while waging war, it is allowed to inflict on the adversary all the losses and damages necessary for a victory<sup>43</sup>. For example, it is permitted to assault cities, to blow up bridges, to demolish fortresses, to take captives, to expropriate enemy's weapons, ships, and war machines<sup>44</sup>. Yet, moderation must be maintained in every step you take. It is not

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Faith against the Errors of Anglicanism"], in *Opera omnia Francisci Suarez [Complete Works of Francisco Suarez]*, vol. 24, ed. L. Vives (Parisiis: Apud Ludovicum Vives, Bibliopolam editorem, 1859), 314. It is interesting to note that contemporary international law delivers similar power to the United Nations Security Council. True, this power of Security Council is much larger and broader than that of Pope, as Security Council's sanction is always required for any humanitarian intervention.

<sup>41</sup> Suarez, "De triplici virtute theologica", 739.

<sup>42</sup> "Ante bellum inchoatum tenetur princeps proponere justam causam belli reipublicae contrariae ac petere restitutionem condignam, quam si altera offerat, tenetur acceptare et a bello desistere: quod si non faciat, bellum erit injustum" – Ibid, 752.

<sup>43</sup> Ibid, 753.

<sup>44</sup> The same position was presented by de Vitoria: "the belligerent of just war is permitted to perform all the actions necessary to achieve peace and security" ("gerenti bellum justum licent omnia, quae necessaria sunt ad consequendam pacem et securitatem" – Vitoria, *De Indis recenter inventis*, 132).



allowed to devastate opponent's agriculture, to rape women, to kill captives and hostages etc. And most importantly, it should be done everything possible to minimize the harm being inflicted on peaceful population – the innocents, as Suarez entitles them, or, using modern terminology, non-combatants. As Suarez asserts, “According to the natural law, innocent people are children, women and anyone who cannot take up a weapon; according to the international law – ambassadors; according to the positive law of Christian states – clergymen. All other persons are considered guilty because human reason interprets all persons who can take up a weapon as those who actually do that”<sup>45</sup>. In warfare, deliberate and predetermined killing of innocent people is strictly prohibited. Still, if victory cannot be achieved without accidental deaths of a smaller or greater number of innocents, their killing is allowed<sup>46</sup>. For example, while assaulting a town or exploding a bridge, it is impossible to protect all peaceful people. Yet, intentional killing and mutilation of innocents during such campaigns is a hard crime and mortal sin instantly turning a just war into unjust one.

Within frames of contemporary international law, the requirement to distinguish combatants from non-combatants as well as prohibiting intentional killing or mutilation of the latter is called a principle of discrimination (lat. *Discrimination* – separation). As for Suarez, he did not use this term, yet his firm position that deliberate and predetermined killing of innocent people is prohibited in warfare is the obvious equivalent of the aforementioned principle. True, the prohibition of intentional killing of peaceful inhabitants has not become an independent principle in Modern Scholasticism’s just war theory, as such prohibition was understood here as a certain derivative of principle of proportionality.

So, while waging a just war, it is necessary not to deviate from proportionality. And what about a post-war situation? Namely, what should be done, when the war is already won and the winner strives to restore justice? Again, Suarez’s answer sounds very modern. According to him, also in this case proportionality remains the main principle. Namely, the winner should inflict punishments and reparations on the adversary that are consistent with, but in no case exceeding, the damage made by adversary<sup>47</sup>. This damage includes all the losses that the winner’s country suffered from the adversary both before and during the war: citizens killed, cities burned and destroyed, and so on<sup>48</sup>.

This is the just war theory included in the philosophy of Modern Scholasticism. It is important to note that Grotius interpreted the principles of just

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<sup>45</sup> “Innocentes sunt naturali jure pueri, mulieres et quicumque non valent arma sumere; jure gentium legati; jure positivo inter Christianos religiosi, sacerdotes etc. Nocentes reputantur reliqui omnes: nam qui possunt arma sumere, praesumuntur in humano judicio ac si vere sumant” – Suarez, “De triplici virtute theologica”, 754.

<sup>46</sup> Ibid, 755.

<sup>47</sup> Ibid, 754.

<sup>48</sup> On the other hand, according to requirements of justice and proportionality, even the death penalty may be imposed on those belonging to adversary’s camp who have inflicted exceptional harm – Ibid, 753.

war in a very similar way. He also argued that just war requires just cause: adversary's external aggression, seizure of state's territory or property, Christian duty to help another state to defend its independence, etc. Grotius as well asserted that war is an extreme and last mean of redress, as it can be started if and only if negotiations and other methods of peaceful persuasion do not yield any positive results. Finally, it was also affirmed that, both in warfare and at a time when the war has already been won and punishments as well as repairs are being imposed on the adversary, the principles of moderation, justice and Christian love must be observed. On the other hand, differently from de Vitoria and Suarez, Grotius proposed international conferences as well as arbitrations involving a third party as means of preventing wars.

## 5. Conclusions

The theory of a just war is the fruit of Christian ethical, political and legal thought. It is St. Augustine that is considered to be the pioneer of that theory. His ideas of a just war were developed into a complete and comprehensive theory by one of the most famous authors of Classical Scholasticism – St. Thomas Aquinas. In Modern Scholasticism, the theory of just war was most developed by Francisco de Vitoria and Francisco Suarez. They supplemented the Aquinian version of the theory and adapted it to a new global geopolitical situation, when the so-called New World was discovered and colonized. The theory of just war of Modern Scholasticism presented and substantiated conditions, rules and principles according to which every nation – both "primitive" and civilized" – could defend its fundamental rights by waging a just war against another nation or state.

The principles of just war presented by the authors of Modern Scholasticism can be divided into two fundamental types. The first type embraces reasons and factors that allow to start a licit war, while the second one involves the rules and norms of waging war. These types correspond to the parts of contemporary just war theory entitled as *jus ad bellum* and *jus in bello*. Although presented and developed in 16-18<sup>th</sup> c., the vast majority of the principles of Scholastic just war theory are also relevant in contemporary global world, where war is an inseparable element of everyday reality. Those relevant principles embrace just cause of the war, legitimate authority as the source of just offensive war, comparative justice, probability of success, illegality of religious wars, observing moderation and proportionality while waging war, adversary's preliminary warning of intended offensive actions, the inviolability of ambassadors and peaceful population, prohibition on killing prisoners of war and hostages, the compliance of reparations with the damage caused before and during the war etc.

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