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Justifying a conflict over the Guarani Aquifer: Perspectives from Just War Theory

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Abstract

This article deals with the justification of water-related conflicts by analyzing a hypothetical war for Guarani Aquifer resources. In disagreement, a theoretical framework would be needed to justify war. First, Walzer's version of Just War Theory (JWT) is presented as the most consolidated reference. Then, Waddington's criticism of JWT is discussed when it comes to hydric resources, delineating the particularities of a natural resource and establishing that the "moral weight of water scarcity" should be considered. Following this, the hypothetical conflict among countries is introduced. Finally, pragmatism is advocated for justification of conflicts involving water.

Keywords: Groundwater. International Law. South America. Ethic

Justificando um conflito pelo Aquífero Guarani: Perspectivas da Teoria da Guerra Justa

Resumo

Este artigo trata da justificativa de conflitos hídricos, analisando uma hipotética guerra pelos recursos do Aquífero Guarani. Em desacordo, um arcabouço teórico seria necessário para justificar a guerra. Em primeiro lugar, a versão de Walzer da Teoria da Guerra Justa (JWT) é apresentada como a referência mais consolidada. A seguir, é discutida a crítica de Waddington à JWT no que diz respeito aos recursos hídricos, delineando as particularidades de um recurso natural e estabelecendo que o "peso moral da escassez de água" deve ser considerado. Em seguida, é introduzido o conflito hipotético entre os países. Por fim, é defendido o pragmatismo na avaliação de conflitos envolvendo água.

Palavras-Chaves: Água subterrânea. Lei internacional. América do Sul. Ética

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1. Introduction

In April 2018, Paraguay finally ratified the signature of the Guarani Aquifer System Agreement (Brazil, 2017). By doing that, it became the last of four nations – along with its neighbors Argentina, Brazil and Uruguay – to grant domestic enforcement to the much-celebrated international treaty (Villar, 2016; Sindico et al. 2018). The Agreement was a landmark on international law involving the governance of natural resources, after around eight years of negotiation to be drafted and roughly another eight years to be duly ratified by all parties.

Because of the new treaty, the international scenario involving the aquifer seems to be more peaceful than ever, since those countries have now an instrument of international law ruling the aquifer's situation. However, despite their peaceful relations – or maybe because it is interesting to see this occasion as an opportunity to figure out which could happen in case of an unexpected breach of the treaty –, the authors would like to propose a reflection on how far Brazil and its three South-American neighbor countries could go in order to protect each one's own interest, considering not only legal aspects, but moral ones too – i.e., in a way that is both legally and morally permissible –, in case an armed conflict explodes. The aim of this paper is to discuss the potential justification of this imagined conflict, to illustrate how one could make a proper assessment of resource-related conflicts, and finally showing (and justifying) why one may decide for a solution involving pragmatic philosophy.

Since the opportunity has presented itself, one explanatory note is in order here. The authors chose not to use the term “sovereignty” when referring to a nation's power over bodies of water because it usually refers to their command of a specific territory, with a specific population. However, when it comes to water-related resources, unless they are permanently flowing through the territory of one country, it is hard to determine just how much water (in volume) belongs to each country (i.e. how much is the water they have rights over, due to their sovereignty) with a part of such body of

water in their territory. If the reader keeps that in mind, the reasoning in which the authors engage in Section Three below will be very easy to follow.

The present article is divided in five Sections. In this Introduction, the motivation behind this work (and its submission to a specific public) is discussed; in the Second Section, we lay out the premises of the modern just war theory (JWT, from this point on), which will be the main basis for reflection along the article, highlighting the just cause requirement for the justification of international conflicts; in the Third Section, we rely on Conway Waddington's criticism (Waddington, 2012) to modern JWT (specifically for the case of water) to provide readers a theoretical bridge towards pragmatism in the analysis of war, for a lack of normative guidance is clear in the way JWT is usually formulated; in the Fourth Section, the authors essentially argue for the pragmatic outlook; and as a Conclusion, a recommendation is made for the public to see the United Nations (UN) legislation not only as a source of law, but as an instrument for reflection on pragmatism in international relations.

It is important to stress again that the improbable character of this supposition – at least while the diplomatic relations of the South American countries remain peaceful – should not misguide readers. This article deals with a topic of the utmost importance since our resources are finite and many parts of the globe are already struggling with water-related armed conflicts. The literature on resource-related conflicts even points out to a recent tendency of growth in the number of reports of water scarcity and hydric stress over the globe (Waddington, 2012). Last but not least, the topic is important because each one of us has legal and moral responsibility to act humanely towards any other inhabitant of the globe regardless of nationality, and by understanding how far one's country could go to protect citizens' interest in a way that is both legally and morally permissible, people may become more prepared to analyze a practical situation from a humanitarian perspective – and thus prevent abuse from authorities all over the world. So why is the subject of water-related conflicts being addressed through the point of view of JWT here?

There is a simple justification for this: philosophy has given birth to science (Mariconda, 2006) and theoretical speculation has since become an important tool for both of them. That must not be forgotten. For this reason, the authors hope that this paper will provide readers with material for reflection on humanitarian issues that science must soon help to tackle.

2. Modern JWT and justification for war

JWT is a philosophy that has traditionally informed international law, so it is important to take some time to clarify it first. JWT was developed by many different philosophers since Antiquity. The essential question behind it is: when is war justified? Even if western philosophy has mostly idealized and praised times of peace, the position that says war is never justifiable has been somewhat irrelevant in History. The fact is that nations do engage in different kinds of war; so JWT serves as a theoretical framework for judging the morality of a given conflict.

The subject deserves much more space in order to be thoroughly analyzed. But for brevity's sake – and because this is what is really important to the present discussion – its explanation in this Section will be limited to Michael Walzer's modern version of the theory – one that has been very influential among philosophers since *Just and Unjust Wars* was published in 1977 (Lazar, 2016) – to proceed to Waddington's criticism in the following Section.

The traditional version of JWT is based upon three main tenets (McMahan, 2006). First, *jus ad bellum* (i.e., those principles governing nations' resort to war) and *jus in bello* (i.e., the principles on the conduct of war) deserve separate consideration, always. Second – which is in fact an implication of the first tenet –, if a combatant who is participating in an unjust war behaves in accordance with the moral commands of *jus in bello*, this person will have no basis on which to be criticized whatsoever (and, as a consequence, both sides' combatants are given equal moral status in the situation of war). And third, combatants are (morally) liable to be killed while civilians never are.

In any case, the most important feature of JWT to the present discussion is that *jus ad bellum* requires all conflicts to be justified. To analyze whether a war is really justified, the following criteria have been observed by modern theorists: military action should have a just cause; it should maintain a relationship of proportionality with that just cause; it must be led according to the commands of a legitimate authority; it should have reasonable chances of success; and, finally, it needs to be conducted with the right intention (Waddington, 2012).

Of course, all the criteria just mentioned are rather vague and open to interpretation. Also, JWT was not specifically developed to deal with conflicts over vital natural resources— on the contrary. The traditional view on JWT sees as just cause only two things, namely, national defense and humanitarian intervention in the case of humanitarian crimes (Lazar, 2016). In other words, the formulation of the theory according to its modern conception is already archaic, from a time when conflicts over vital natural resources were fewer and not such pressing (global) issues. It surely works better for political contends, instead of conflicts with more humanitarian background such as fights to defend a people’s right to have access to clean water. But in the present time, nations seem to be constantly developing new engineering to exploit natural resources, and water has a central place in scientists’ contemporary research. Sometimes, governments even use the controversial tactics of stimulating competition where hydric resources are transnational. This is the core of Waddington’s criticism to JWT, as the next Section will explain in detail.

3. Waddington’s criticism and the war over water

In a perspicacious article called *Reconciling Just War Theory and Water-Related Conflict*, Conway Waddington (Waddington, 2012) claims that water security reveals a prescriptive void in JWT. The author essentially argues that traditional analyses of just cause are unable to account for water-related disputes; they do not fit these contexts. And if their justification is lacking according to JWT – which, as formerly mentioned, is nowadays the

most important theory in the subject of war –, humanity has a problem of not having a theoretical basis upon which explain the need nations have to go to war to protect their hydric resources. When writing about the perils of a prescriptive void in JWT, Waddington affirms: “(...) Central to this is the question of the moral weight and significance, if any, of vital resources, as defined by strategic and human necessity” (Waddington, 2012). In other words, the importance of natural resources such as water to citizens of the globe should weigh in a theory that explains why people go to war for them. If it is immoral to leave other peoples without water, the harmed party should be justified to declare a war and a theoretical framework that accounts for what we understand from a situation like that is needed.

The author heavily condemns a position that many governments adopt, namely, to claim that they defend “state security” when going to war over resources. Of course, that is a way to try fitting war over natural resources into the traditional JWT framework, but it turns out to be just an easy way out of the problem, without due justification.

The reasoning of those governments who appeal to state security goes as follows. The international law principle of domestic sovereignty provides justification for offenses aiming to secure one nation’s vital interests. Natural resources are part of these vital interests, especially since there has been a rapid reduction of water and other resources in most parts of the globe. For this reason, it seems morally defensible for a government to try to secure those resources for its citizens. Nevertheless, JWT as Walzer conceives of it must involve an offensive attack to a nation if it is to appeal to national defense as justification for going to war.

But let us take a step back and look at the specific case of water. Water is not only a natural resource with economic value; mostly, it is important because it is essential for everyone’s everyday life. Water-related conflicts thus have an aura of apparent justifiability that disputes for other less important resources seem to lack. That is the reason why Waddington’s work is so relevant: the author writes about a special case of conflicts over natural resources, which is the most sensible of them all. Waddington takes up an

analysis of the “moral weight of water scarcity”, claiming that the lack of water should – as it already does in the international scenario – weigh in favor of a nation’s decision to go to war.

There is only one problem that still remains. Even if a move in self-defense clearly justifies the use of military force to protect a country’s hydric resources, it remains to be verified whether a non-military threat to that same nation would justify attack, that is, if the *jus ad bellum* conditions listed in the previous Section could be met in any such case.

Now that the problem in need of theoretical investigation was formulated, the authors would like to propose a hypothetical situation for analysis in the next Section. The reader should consider a scenario where Argentina, Brazil, Paraguay and Uruguay eventually have difficulty in defining the limits for each one’s allowed extraction. Suppose that Brazil claims that it should have access to a much larger volume of water per year than its neighbor countries (completely disregarding what could be considered the nation’s “fair share”, and also disregarding the existence of other important hydric sources in its territory to serve its population), presenting as justification the fact that it has a total population amounting to almost four times the number of inhabitants of all other three South American countries together. Obviously, none of the latter agrees on those terms. Should diplomatic relations fail to settle the dispute, would either Brazil or a coalition of Argentina, Paraguay and Uruguay be justified in attacking the other party?

4. Evaluation of morality in groundwater conflicts

The present authors believe that pragmatism towards moral issues is the philosophical approach THAT IS recommended to a situation of war for the aquifer’s resources, and Waddington eventually comes to the same conclusion in an abstract analysis. Now, it must be explained why JWT cannot be reformed to provide the justification in need, and why pragmatism should be preferred.

The modern formulation of JWT relies heavily on the just cause criterium for granting conflicts moral permissibility in terms of *jus ad bellum*.

The problem is that while the traditional view sees attack from another nation as the only true just cause, JWT has seen its rules become more flexible over the years, so today even pre-emptive measures could be justified – because what is usually called imminence of war is now understood as a situation of such uncertainty that it would seem comprehensible that one would want to attack to avoid being hit first.

Looking at the hypothetical conflict pictured in the previous Section, it is possible to see that an “absolutist”, as Waddington (2012) calls it, approach to JWT does not justify any resource-related war. In that situation, the South-American nations would have to continue the pursuit of negotiations to come to an agreement. However, to take the opposing view and say that such war is justified according to new and more flexible just cause criteria also goes a long way from arguing that Brazil is defending its own sovereign right over its territory and resources. JWT cannot simply have more flexible criteria to determine whether there is just cause for a conflict because it is intrinsically attached to the idea of state sovereignty ruling over global resources – and global needs. Since water is vital and fluid (being easily moved from one place to another), everyone in the globe is responsible for it at the same time that they have a right to it. States can try, but they can never guarantee possession of all their water, especially when one considers a subterranean body of water that is used by four countries at the same time.

Pragmatism, on the other hand, could serve as an alternative so one can still think of a world divided in nations while the justifiability of conflicts over water is discussed. This philosophical stream has been much employed in international law to promote a more collaborative environment for international relations. It is possible to say that the moral framework used for drafting the UN Charter (United Nations, 1945) and many other conventions – including the Guarani Aquifer System Agreement itself – can also be used as a theoretical framework to analyze the justifiability of conflicts over water. Leaving aside the never-ending discussion of the relationship between law and morality – which is a theme of passionate debate for many, but that is not indispensable to make the point of this article clear –, as one looks at the UN

Charter and sees that it does have a heavy principle content, as well as very few explicit passages containing prohibitions of conduct and also great empowerment of the Security Council to decide on the legality or illegality of conflicts, one notices that the international community embraces a pragmatic view on their relations to analyze each individual case in accordance to the UN principles. This pragmatic outlook is what these authors propose regarding conflicts over water: the “moral weight of water scarcity”, as Waddington calls it, should be taken into consideration in the analysis of any conflict for hydric resources. Weighing the information that was presented on the dispute pictured in the last Section altogether, one may come to the conclusion that Brazil seemed a little greedy and – especially because the country has other important sources of water – it may after all be wrong in claiming that it needs much more water from the aquifer than the other countries. Argentina, Paraguay and Uruguay may then be justified in going to war against Brazil should it act according to its ambition.

5. Conclusion

The authors have sought to discourage a one-size-fits-all solution to a potential future conflict among the four nations in whose territory the Guarani Aquifer is located, and they believe that the same pragmatic outlook should be adopted for any transnational groundwater conflict. In fact, this has already been put in practice: nowadays, international law adopts pragmatism to leave room to all kinds of agreements between sovereign nations for the usage of their joint water resources (as long as sovereignty and human rights are respected), so much so that the Agreement on the Guarani Aquifer System that Paraguay just ratified incorporates a reference to the UN International Law Commission Draft Articles on the Law of Transboundary Aquifers in its preamble.

Although the opinion expressed here is that JWT cannot just yet be reconciled with water-related conflicts – in disagreement with the title of Conway Waddington’s article many times cited here –, requiring from its defenders a greater theoretical effort than what has been made so far, the

authors do not believe that the prescriptive gap it contains is a reason for panic. Governments and concerned citizens may look to international law to find principles there which are motivated by humanitarian concern and pragmatism, and which they may evoke should conflict become imminent.

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