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“Going To War”

By /par

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Abstract

The Just War Theory continues to have relevance in modern times. The theory is examined in conjunction with the United Nations Charter and other appropriate conventions and charters, and then applied to the 1991 Gulf War and the 1999 Kosovo War to demonstrate its contemporary value and applicability. Interesting discussion points include: the right of states to engage in war; alternatives to unachievable Security Council resolutions; and the differences between wars of aggression legitimized by international law, and humanitarian interventions based on ethical and moral imperatives.

Going To War

"I saw in the whole Christian world a license of fighting at which even barbarous nations might blush. Wars were begun on trifling pretexts or none at all, and carried on without any reference of law, Divine or human."

Hugo Grotius
1583-1645

Introduction

Canada's reputation for supporting American-led multi-national coalitions undoubtedly played a role in creating the expectation that Canada would be a willing, if not an anxious, coalition member in the war against Iraq in March 2003. However, in the final days leading up to the "shock and awe" campaign, some were disappointed when Canada withheld its support to the offensive action. Interestingly, there was no clear position offered by the government in the weeks and months before Canada's final decision. Perhaps a political tactic, the Liberal Cabinet exercised flexibility of maneuver through indecision, and contradicted itself with respect to the criteria needed to justify military action. The wavering requirement for a second UN Security Council Resolution to authorize the American-led action was particularly noteworthy.

The criteria used by government when deciding when to go to war are of interest to Canadians, and if Canada was to send its military into combat, there would need to be a clear and justifiable reason for such action. As witnessed recently in Iraq, justification is sometimes difficult to provide.¹ When the moment arrived for a Canadian decision, the Prime Minister had few options to consider. Unlike the British parliament that went against public opinion in the U.K. and voted in favour of supporting the American-led invasion, the Canadian Prime Minister did not formally consult Parliament. The Government's final decision appeared to be based more on national opinion polls than the outcome of any methodical examination of specific or relevant criteria.

¹ UN inspection teams produced little evidence to support U.S. and British assertions of Iraqi weapons of mass destruction (WMDs); American intelligence agencies struggled to provide credible information linking Saddam Hussein with Usama bin Laden; and because American abandonment was blamed for the deaths of thousands of Iraqi Shi'i following the 1991 Gulf War, even this option was risky to pursue.

Committing a country to war should be an informed decision based on the examination of well-defined criteria. What persists today is the age-old challenge of defining the criteria and conditions that should guide the debate. Today, "justice" has come to determine when war is to be waged. Central to this debate is the "Just War Theory", a doctrine of radical responsibility that holds political and military leaders responsible for the well being of their own people, but also of the innocents on the other side.² The tradition is an enduring and respected theory used by academics, historians, and philosophers to examine matters of war and armed intervention; however, recent political decision-making on war has seldom referred directly to the concept, a shortcoming, which if corrected could add rigour to future debates and yield decisions better able to withstand scrutiny at home and abroad. To better understand the Just War tradition and the role it can play in national decision-making, the theory is discussed in this article in conjunction with relevant portions of the United Nations Charter and other appropriate conventions and charters, and then applied to the 1991 Gulf War and the 1999 Kosovo War to demonstrate its contemporary value and applicability.

Just War and the United Nations

Throughout history, monarchs, statesmen and philosophers have struggled to define the moral and legal justification for waging war. Central to their debate has often been the "Just War" tradition, a diverse work of literature on the morality of war and warfare that offers criteria for judging whether a war is just and whether it is fought by just means. The earliest writings on this topic can be traced back to Saint Augustine of Hippo in the fifth century. The theme was continued in the twelfth century and was made systematic by Saint Thomas Aquinas in the thirteenth century. Considered Christian, largely Western and rooted in ancient Greek philosophy, there is also a parallel concept in the Koran and a similar debate in Islam. Although canon lawyers, legal scholars, secular philosophers, and military strategists have also added to the theory, European theologians were primarily responsible for formulating the specific Just War criteria used for judging the morality of war as we know it today.³

² Michael Walzer, "The Triumph of Just War Theory." *Social Research*, Vol. 69, No 4, 2002. 935.

³ Mona Fixdal and Dan Smith, "Humanitarian Intervention and Just War." *Mershon International Studies Review*, 1998. <http://www.mtholyoke.edu/acad/intrel/fixdal.html>, accessed 20 May 2003. 283-312

Although theology is seen as the most formative influence on the Just War tradition, other disciplines have also influenced the theory. The medieval knight's duty to protect the innocent and the weak was one of the first attempts to codify immunity for noncombatants. The sixteenth-century Reformation led to a partial secularization, splitting apart the secular from the religious and the Protestant from the Catholic. Most religious philosophers maintained that war for religious purposes was the most just cause for the use of force; however, writers such as Augustine and Aquinas inspired secular philosophers to think about "justice in war" in terms of natural law.⁴

In addition to those mentioned above, Brian Orend identifies Hugo Grotius, a pioneering natural rights theorist of the late 16th and early 17th centuries, as the most comprehensive and formidable member of the tradition.⁵ Recognizing that national perspectives can never be truly objective, Grotius laid out a detailed set of criteria for nations to use in evaluating situations that might warrant the use of force. Grotius asserted that Just War criteria constitute the concept of *jus ad bellum*,⁶ all of which must be met in order for a war to be legally and formally just.⁷ Modern ideas about just and lawful war are not strictly those advanced by Grotius, but they stand in the Grotian tradition. His great moral principle that resort to war and the conduct of warfare should be subject to law, and that recourse to war should be based upon justice and not upon "reason of state", form part of a tradition that has now come to be a central part of our contemporary system of international law.⁸ Understanding the application of the just war tradition would be a laudable goal of political and military leaders responsible for committing military forces to war.

Just War theory can be divided into three parts: *jus ad bellum*, the right of state to engage in armed conflict; *jus in bello*, accepted means and methods of conducting warfare; and *jus post bellum*, the justice of peace agreements and the termination phase of war. The

⁴ Fixdal and Smith, 283-312.

⁵ Brian Orend, "Just War Theory". Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/war/>, accessed May 2003.

⁶ Jus ad Bellum - the right of state to engage in armed conflict.

⁷ Paul Christopher, "Hugo Grotius and the Just War." *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, Upper Saddle River, NJ: Prentice Hall, 1999, 87.

⁸ G. Draper. "Reflections on Law and Armed Conflict" Michael A. Meyr and Hilaire McCoubrey eds. *Kluwer Law International*, The Hague, 1998. 52-53.

discussion in this article will focus on *jus ad bellum*. Just war theory contends that for any resort to war to be justified, a political community or state must fulfill the following six criteria⁹:

Just Cause. A state must have a just cause for waging war. The most frequently mentioned include self-defence by a state from external attack, the protection of innocents within its borders, and vindication for any violation of its two core state rights; namely, political sovereignty and territorial integrity.¹⁰ The definition of Just Cause has become increasingly more complex with the advent of humanitarian intervention and international terrorism.

Right intention. A state must intend to fight a war for the sake of the just cause. Ulterior motives such as territorial gain, or irrational motives such as revenge or ethnic and cultural hatred are considered purely aggressive and wholly illegal.

Proper Authority and Public Declaration. A state may go to war if the decision has been made by the appropriate authority, according to the proper process and made public to its own citizens and to the enemy state(s).

Last Resort. A state may resort to war only if it has exhausted all plausible, peaceful alternatives to resolving the conflict in question, in particular diplomatic negotiation.

Probability of Success. A state may not resort to war if it can foresee that doing so will have no measurable impact on the situation.

Proportionality. A state must weigh the just cause for action against the expected casualties and losses accrued to achieve the objective. Only if the benefits are proportional to the costs should the war be pursued.

As mentioned above, many rules developed by the Just War tradition over the years have since been codified into contemporary international laws governing armed conflict, such as The Hague and Geneva Conventions.¹¹ Indeed, elements and concepts of the Just War

⁹ Orend, <http://plato.stanford.edu/entries/war/>.

¹⁰ Brian Orend, "War and International Justice". Wilfred Laurier University Press, Waterloo, Ontario, 2000. 49.

¹¹ Orend, <http://plato.stanford.edu/entries/war/>.

tradition can also be found in key areas of the United Nations Charter, particularly those pertaining to relations between states. Similar to the ardent desires of the historical philosophers and theorists to avoid war at all costs, the United Nations Charter states¹² that all members shall settle their disputes by peaceful means in such a manner that international peace, security and justice are not endangered; and that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.¹³ Charter articles also deal with the means for settling disputes short of the resort to arms.¹⁴ Taken together, these articles reflect the Just War imperatives of Just Cause and Last Resort, the UN formula for exhausting all possible options before selecting armed force as the last resort.¹⁵

The overarching objective of the UN Charter is to promote international peace and security; however, the Charter does outline two exceptions to the general prohibition on the use of force between states, namely, the inherent right of states to engage in individual or collective self-defence against an armed attack; and enforcement actions to remove a threat to international peace and security.¹⁶ Related to the first exception, Article 51 states that nothing shall impair the inherent right of self-defence if an armed attack occurs against a member of the United Nations.¹⁷ Similarly, the Just War tradition endorses the right of states to political sovereignty, territorial integrity, and the right to make their own political decisions for their own people within their own borders.¹⁸ If these rights are violated through an armed invasion, a country is justified in resorting to a war of self-defence. Other countries may join the war on the victim's side, since the aggressor forfeits its state rights when it violates the victim's. Of significance, the decision to wage war based on self-defence is a legal issue supported and justified by the UN Charter and by international laws and conventions.

¹² UN Charter, Article 2.

¹³ Christopher, 99.

¹⁴ UN Charter, Articles 33 through 40.

¹⁵ Christopher, 100.

¹⁶ Report of the Standing Senate Committee on Foreign Affairs, "The New NATO and the Evolution of Peacekeeping: Implications for Canada." Seventh Report, April 2000. 10.

¹⁷ Orend, <http://plato.stanford.edu/entries/war/>.

¹⁸ Orend, <http://plato.stanford.edu/entries/war/>.

The second exception to the general prohibition on the use of force is related to initiating armed conflict against another nation state based on ethical or moral imperatives. As with humanitarian intervention operations, the precondition to violate state sovereignty is the determination of a threat to international peace and security in the form of internal acts of repression that could result in external consequences, such as refugee flows and the provocation of armed intervention by other states.¹⁹ The UN Charter charges the United Nations Security Council with the primary responsibility for the maintenance of international peace and security,²⁰ and further obliges all members of the UN to accept and carry out the decisions of the Council.²¹ When peace and security are threatened, the Charter gives the Council powers to deal with the situation, including the use of military force.²² Article 39 of the Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and, where the Security Council makes such a determination, it shall either recommend or decide the remedial measures to be taken under Articles 41 and 42. Article 41 provides for the application of enforcement measures not involving the use of force, such as economic sanctions or embargoes.²³

Ethical and moral imperatives have often caused the Council to act, and over the years it has adopted several resolutions under Chapter VII of the Charter²⁴ to protect human rights within states: South Africa in 1976, 1977, and 1980; Iraq in 1991; Somalia in 1992; Bosnia-Herzegovina in 1992-93; the Former Yugoslavia in 1993; Haiti in 1993-94; Rwanda in 1994; Zaire in 1996; and Yugoslavia (Kosovo) in 1999. Where the Security Council considers non-military measures inadequate, Article 42 permits the Council to take all necessary military action to maintain or restore international peace and security.²⁵ The just war imperative of “last resort” is represented in Article 42, wherein the UN Security Council resorts to military force to

¹⁹ Report of the Standing Senate Committee on Foreign Affairs. Seventh Report April 2000. 11.

²⁰ UN Charter, Article 24(1).

²¹ UN Charter, Article 25.

²² UN Charter, Chapter VII, articles 39-51.

²³ Article 41: “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”.

²⁴ Action with respect to threats to the peace, breaches of the peace, and acts of aggression.

²⁵ Article 42: “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the

coerce compliance with Council resolutions. In the cases of Somalia, Bosnia-Herzegovina, Haiti, Rwanda, Zaire, and eventually Kosovo, the Security Council authorized the use of "all necessary means," including the use of military force to enforce its resolutions after belligerent parties were undeterred by non-military measures and sanctions.²⁶

As impressive as the record appears, not all threats to international peace and security have been met with a successful response from the United Nations Security Council. Stanley Hoffman argues that the current UN architecture for authorizing military interventions for humanitarian purposes is flawed because the Security Council is the only legitimate authority for armed conflict in the current legal framework of world governance. Hoffman highlights that the legality of humanitarian intervention is a contentious issue for Russia and China, and both countries, which are fierce defenders of state sovereignty, oppose intervention actions in support of oppressed minorities claiming the right to self-determination. Because the five permanent members each have the power of veto, respect for Security Council decisions and rulings, once handed down, make humanitarian intervention resolutions difficult to submit.²⁷ The counter to this position defends the intervention decision-making process, as it currently exists, thus making certain that intervention missions that intend to exert aggressive armed force are only possible with the full support of the five permanent members of the Security Council.

In an attempt to work around a politically paralyzed and polarized Security Council, Washington and London have turned to "coalitions of the willing" and the NATO Alliance as instruments of legitimate action.²⁸ However, it must be recognized that even ad hoc coalitions and NATO responses to threats to peace and security require a UN Security Council mandate to conduct armed offensive operations. Although the Charter expressly acknowledges the legitimacy of regional security organizations such as NATO,²⁹ all NATO members are also members of the UN and are therefore explicitly subject to the provisions of the Charter. The Charter affirms the inherent right of states to engage in individual or collective self-defence as

United Nations".

²⁶ Report of the Standing Senate Committee on Foreign Affairs. Seventh Report April 2000. 12.

²⁷ Pierre Martin and Mark R. Brawley eds., "Alliance Politics, Kosovo, and NATO's War – Allied Force or Forced Allies". Palgrave, New York, 2000. IX-XII.

²⁸ Martin and Brawley eds, IX-XII.

²⁹ UN Charter, article 52.

per NATO's Article V,³⁰ however, it does not give regional organizations any special authority. The Charter expressly forbids enforcement action by regional organizations without Security Council authorization.³¹ In a complementary manner, article 7 of NATO's Washington Treaty affirms that NATO Alliance obligations of member states are subject to those set forth in the UN Charter and to the primary authority of the UN Security Council in matters of international peace and security. NATO has been involved in several "Non-article 5" operations with respect to international peace efforts in the former Yugoslavia, and with the notable exception of Allied Force, the UN Security Council has authorized all. Difficulties arise when NATO proposes military operations of a non-defensive nature. As discussed above, the vetoes held by non-NATO permanent members make the requirement for such approval an almost insurmountable obstacle.³² Again, perhaps the intension of the Charter is to make aggressive war possible only with the full unanimous support of the Security Council.

The international community's legal alternative to an unachievable Security Council mandate caused by a permanent-five veto has been to seek a resolution from the UN General Assembly. This approach was formalized in the "Uniting for Peace" Resolution, which was adopted in 1950 with Canada as one of the seven co-sponsors. The Resolution provides for the convening of the General Assembly within 24 hours, at the request of seven members of the Security Council or a majority of the members of the United Nations. A two-thirds majority is required for any recommendation by the General Assembly on matters involving international peace and security.³³ The "Unity for Peace" resolution has been used on several occasions.³⁴ While there have been challenges to its legality, it has not been found inconsistent with the Charter by the International Court of Justice, nor has it been repudiated by the Security Council. Moreover, in terms of reflecting global perspectives and values, the Resolution provides the

³⁰ The North Atlantic Treaty, Washington D.C. 4 April 1949. Article V: The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

³¹ UN Charter, Article 53(1).

³² Report of the Standing Senate Committee on Foreign Affairs. Seventh Report April 2000. 11.

³³ UN Charter, Article 18(2).

³⁴ Report of the Standing Senate Committee on Foreign Affairs. Seventh Report April 2000. The "Uniting for Peace" resolution has been used by the General Assembly to deal with the following international situations: Suez, 1956; Hungary, 1956; Lebanon, 1958; Congo, 1960; Bangladesh, 1971; Afghanistan, 1980; the Middle East, 1980; and Namibia, 1981. In the cases of the Suez, Lebanon and the Congo, the General Assembly authorized the establishment of peacekeeping operations under Chapter VI of the Charter.

greatest legitimacy for authorizing the use of force.³⁵

1991 Gulf War

The international community's response to the Gulf Crisis of 1991, as seen through the lens of international law, can be used to demonstrate a classic application of the Just War tradition and the UN Charter. Iraq's invasion of Kuwait on 2 August 1990 brought an immediate response from the international community. On the day of the invasion, the Security Council passed a resolution demanding an "immediate and unconditional" withdrawal. Within days of Iraq's invasion, Prime Minister Mulroney offered Canada's support to the UN-supported action. Invoking Articles 39 and 40 of the UN Charter, the Security Council passed Resolution 660, condemning Iraq's invasion.³⁶ The Security Council met again on 6 August to impose economic sanctions on Iraq under Chapter VII of the Charter. Again, an unprecedented near-unanimity was achieved, and Resolution 661 was adopted without a single dissenting voice. China and Yemen abstained. Many attempts were made to persuade Iraq to withdraw from Kuwait; however, Iraqi noncompliance led to the "declaration of war" as defined under International Law.³⁷

The decision to resort to armed force to liberate Kuwait was supported by both the Just War tradition and the United Nations Charter. Although the conditions of "Just Cause and Right Intention" are difficult to refute, some students of the debate question the true motives of the Americans in promoting the war. The Carter Doctrine declared that access to the oilfields of the Persian Gulf remained absolutely vital to the interests of the U.S. and would be preserved by any means possible, including military force.³⁸ The ultimate irony of the Gulf War may be that control of the oilfields was not only Saddam Hussein's motive for invading Kuwait, but also the United States' purpose for destroying much of Iraq's critical infrastructure in 1991 and invading

³⁵ Report of the Standing Senate Committee on Foreign Affairs. Seventh Report April 2000. 13.

³⁶ UN Charter, Articles 39 and 40 - the means for settling disputes short of the resort to arms.

³⁷ Jean H. Morin and Richard H. Gimblett, "Operation Friction – The Canadian Forces in the Persian Gulf". Dundurn Press, Toronto, 1997. 13-32.

³⁸ Morin and Gimblett, 13.

in 2003.³⁹

With respect to the conditions of proper authority and public declaration, successive Security Council Resolutions provided full authority for action contemplated by its members. Canada's motivation for supporting military action against Iraq was more altruistic and related to international law. Anxious to announce its continued support, the Canadian Government was unable to send forces into a theatre of war without an order-in-council approved by the Cabinet, and then debated in the House of Commons within ten days of its publication.⁴⁰ Six weeks after Iraq's invasion, when the Parliament reconvened from summer leave on 24 September 1990, the government's majority passed the enabling motion for Canada's support and military contribution to the UN's enforcement of the Naval embargo.⁴¹ However, as the first attacks were being carried out on 17 January 1991, Prime Minister Brian Mulroney was still trying to obtain a clear mandate from Parliament for Canada's military to participate in offensive coalition operations. The House debated the issue for several days and finally voted on 22 January 1991, 217 to 47 in favour of joining the coalition offensive.

Respect for the supreme authority of the UNSC Resolution was demonstrated when General Norman Schwarzkopf was refused permission to pursue the Iraqi army into Baghdad in order to destroy the Iraqi army and to topple Saddam Hussein's government. Such action would have exceeded the UN resolution authorizing force, and may have violated the condition of proportionality by generating a new effort aimed at a new political end rather than the one established from the outset. In a similar situation, General MacArthur was relieved of command by President Truman when the General insisted that the U.S. expand their operation into Manchuria in pursuit of the North Korean Army.⁴²

The three remaining criteria of the Just War tradition, "Last Resort, Probability of Success, and Proportionality", have been actively debated over the years. Although the probability of success has been seldom questioned, Last Resort and Proportionality have drawn some criticism. Fundamental to the discussion on last resort must be acknowledgment that Iraq violated international law and initiated hostilities in the first place. Furthermore, because the

³⁹ Laurie Calhoun, "Legitimate Authority and Just War in the Modern World". *Peace and Change*, Vol 27, No1, January 2002. 49.

⁴⁰ Morin and Gimblett, 27.

⁴¹ Morin and Gimblett, 13-32.

⁴² Christopher, 86-110.

employment of precision-guided weapons was seen as greatly mitigating collateral damage, the argument of heavy-handedness and not allowing diplomatic efforts and the embargo to have their full effect becomes difficult to sustain. Counter to this position, Michael Walzer points out that the shielding of civilians against attack should have also excluded the bombing of electricity networks, water purification plants, and other urban infrastructure, even if such targets were necessary to modern war-making. Walzer believes that in this regard, the just war criterion of proportionality was violated. However, taken overall, targeting was far more limited and selective than it had been, for example, in Korea or Vietnam, or what was planned for a major confrontation between NATO and the Former Soviet Union in the Central European Region during the Cold War.

The 1991 Gulf War is an example where the decision to use armed force and to wage war against another nation state was justified from a legal perspective, but also with regard to the six Just War imperatives. In the next section, the examination of the Kosovo conflict of 1999 reveals that the decision to resort to armed force in support of a humanitarian intervention evolved not so much from the application of International Law and the legal criteria delineated in the UN Charter, but from a debate based on moral and ethical imperatives.

1999 Kosovo War – Allied Force

If the 1991 Gulf War can be regarded as a classic example of proper process and decision-making, perhaps the 1999 Kosovo War should be viewed as an example that sits at the other end of the spectrum. As with most humanitarian crises, the case for action can usually be made without too much difficulty. With or without a UN resolution, members of the international community are morally obliged to act quickly in the case of genocide. As witnessed during the war against Serbia in 1999, the debate was not focused on whether action should be taken, but instead on the method to achieve the desired result. Such was the challenge for NATO and the international community as they watched the situation in the Former Republic of Yugoslavia (FRY) unfold in the months and weeks leading up to Operation Allied Force.

Throughout the 1990s, longstanding ethnic tensions between Serbs and Kosovars worsened in the FRY Province of Kosovo, and by 1998 Serb security forces in Kosovo were responding to clandestine Kosovar terrorist attacks by burning houses and driving Kosovars

from their villages. Responding quickly, Security Council Resolution 1160, adopted in March 1998, condemned both the Serbs and the Kosovars and demanded an end to violence. Furthermore, the Security Council acted under Chapter VII of the Charter and declared that the internal conflict constituted a threat to international peace and security. Although no member of the Council voted against the resolution, Russia and especially China expressed their reservations over Security Council intervention in what they viewed as a matter of internal domestic jurisdiction of the FRY.⁴³

Despite international pressures, the Serbs initiated a new offensive in May 1998, and the scene of over 100,000 refugees caused the British government to argue the need for Britain and the NATO Alliance to use force to stop the ethnic cleansing. At a NATO defence minister's meeting in September 1998, the U.S. stated that they would act if the Serbs did not cease their attacks. Instigated by reports of mass killings, Great Britain took the lead in October 1998 and proposed a resolution authorizing "all necessary means" to end the conflict. Russia threatened to veto the resolution and warned that the use of force would be a violation of the UN Charter and would undermine the existing system of international relations. Without the possibility of a clear UN Security Council mandate, the Alliance was forced to justify its threat to use force in terms of existing resolutions. For political and historic reasons, Germany was initially against NATO's involvement; however, after a great national debate, the Bundestag offered reluctant approval based on ethical and humanitarian grounds.⁴⁴

With a growing sense of resolve emerging from within the international community, NATO's position proved too compelling for the Serbs, and in October 1998 special envoy Holbrooke secured a cessation of hostilities. Russia and China continued to express their disapproval of NATO's manipulation of Security Council resolutions to justify the use of force, and just when it seemed that a fragile ceasefire would turn to something more enduring, Serb forces massacred 45 civilians on 15 January 1999 in retaliation for the murder of two Serb policemen. In an attempt to stabilize the volatile situation, peace talks were convened between Serbs and Kosovo Albanians at Rambouillet, France. After a bumpy beginning, the Kosovar Albanians accepted a very attractive offer; however, the terms presented to the Serbs, which included among other things a NATO-led international force, were too much for the Serb

⁴³ N.J. Wheeler, "The Limits of Humanitarian Intervention From the Air: The Case of Bosnia and Kosovo." Chapter 8 of *Saving Strangers: Humanitarian Intervention In International Society*. Oxford University Press, New York, NY, 2000. 269.

⁴⁴ Wheeler, 262.

president and resulted in the collapse of talks on 15 March 1999. A new Serb campaign of ethnic cleansing was initiated immediately. NATO air strikes commenced on the night of 23 March 1999 without a UN mandate.

The decision to resort to armed force was argued by NATO members from the perspective of humanitarian intervention as defined in the UN Charter, specifically, enforcement actions to remove a threat to international peace and security. However, without a Security Council mandate, western governments invoked four of their own key NATO rationales to justify their intervention in Kosovo: averting an impending humanitarian catastrophe; NATO's credibility; ethnic cleansing in a civilized Europe; and NATO's use of force as supported by existing Security Council resolutions.⁴⁵ In Canada, the Prime Minister outlined the basis for Canadian support to armed force as being "our values as Canadians, our national interests in a stable and secure Europe; and our obligations as a founding member of NATO. Although never put to parliamentary vote, the issue was vigorously debated in the House. When air operations were formally announced on 24 March 1999, all opposition parties gave their approval for the NATO initiative even though there was no formal UN support."⁴⁶

With proportionality as a critical condition to the legitimacy of humanitarian intervention, the level of force and destruction cannot exceed the harm that it was designed to prevent or redress.⁴⁷ NATO targeted Serb military forces in Kosovo throughout the campaign, but with only limited success. As the pressure increased for results, NATO focused on infrastructure targets in the FRY, such as bridges, industries, oil refineries, fuel depots, and political buildings considered vital to the prosecution of the military effort in Kosovo. This refocus led to an increasing number of Serb civilians being killed. Stray bombs dropped on civilian areas, and the bombing of the Chinese Embassy further diminished the moral character of the bombing campaign.⁴⁸ Presented with opportunities throughout the conflict to reassess the manner in which the humanitarian intervention mission was being prosecuted, NATO's senior leadership did not refocus on rescuing refugees and ending ethnic cleansing. Instead, NATO intensified its "effects-based" bombing campaign with the goal of breaking the will of civilian Serbs and

⁴⁵ Wheeler, 265.

⁴⁶ Pierre Martin and Mark R. Brawley. "Alliance Politics, Kosovo and NATO's War: Allied Force or Forced Allies?" Palgrave, New York, NY, 2000. 191.

⁴⁷ Wheeler, 272.

⁴⁸ Wheeler, 272.

undermining their support for the Milosevic regime. The will of the civilian population became NATO's new target, while the plight of Kosovar refugees worsened and the Serbian Army remained virtually untouched.

The probability of success was not initially an issue of great concern to the NATO coalition. A NATO force, prepared to fight and win a war in the European Central Region only 10 years earlier could have easily overpowered a much smaller and weaker Serbian force. However, in the case of taking action against the Serbian military, the Alliance did not commit the entire spectrum of its war fighting capabilities, or anticipate the difficulty it would have in finding and destroying well-bunkered Serbian ground forces. Moreover, the Alliance did not anticipate the intensified Serbian campaign to depopulate Kosovo immediately following the commencement of hostilities, under the cover of war. Michael Walzer reminds us that massacre and ethnic cleansing commonly take place on the ground, and a risk-free intervention undertaken from far away is likely to cause an immediate speed-up on the ground. This trend can only be stopped if the intervention shifts to the ground, especially if the aim of intervention is to rescue people in trouble.⁴⁹ The U.S. formally conceded in October 1999 that the bombing campaign actually accelerated the ethnic cleansing,⁵⁰ an admission that has underscored one of the most valuable lessons from the 1999-conflict, namely, the manner in which humanitarian intervention operations will be conducted in the future.

In the 1999-conflict against Serbia, NATO acted preventatively, and it was right to do so. However, it employed the wrong means to achieve its humanitarian goals. The aversion to risk and body bags dictated the selection of the bombing as a means of humanitarian intervention, which in turn produced results that contradicted the humanitarian justifications of the operation. The Alliance should have demonstrated its commitment to defending human rights by building up an invasion force so that, if diplomacy failed, it could have conducted a successful rescue mission.⁵¹ The end result was the violation of five out of six just war conditions: Proportionality – the bombing of civilian targets to achieve results; Proper Authority – no Security Council mandate or General Assembly resolution even though there was time to request the latter; Last Resort and Probability of Success – poor diplomacy followed by improper application of military

⁴⁹ Michael Walzer, "The Triumph of Just War Theory". *Social Research*, Vol. 69, No 4, 2002. 937.

⁵⁰ Wheeler, 284.

⁵¹ Wheeler, 284.

capabilities to achieve desired aim.

Different from wars of aggression legitimized by international law and conventions, humanitarian intervention operations are more often the result of a decision-making process guided by ethical and moral imperatives. Of significance is the challenge of dealing with the differences in ethics and morality among international partners. The character of a humanitarian debate can be quite different from those that are focused on international law. As discussed above, “just cause” and “right intent” for truly legitimate humanitarian interventions will be clear and easily defended. The “last resort” portion of the debate will pass quickly, especially in the case of ethnic cleansing, genocide and humanitarian rescue missions, and will seldom allow for the full diplomatic process to unfold. Not surprising, UN Security Council “authority” may not be achievable, which might see like-minded nations responding quickly, and often in the midst of criticism from those opposed. With the appeal of no-risk and no-casualty humanitarian operations, the desire for success while respecting “proportionality” will remain the greatest challenge. As highlighted in NATO’s 1999 Kosovo War, as urgent as an emerging humanitarian crisis may seem, the application of armed force should be the result of a decision-making process based on the criteria and conditions espoused in the Just War theory.

“Vietnam ... a war that we lost, and the brutality with which we fought the war almost certainly contributed to our defeat. In a war for hearts and minds, rather than for land and resources, justice turns out to be a key to victory.”

Michael Walzer
2002

Conclusion

The Just War tradition has a long and rich history spanning over 1500 years. Initially advanced by St Augustine and St Aquinas, it was Hugo Grotius who championed a detailed framework of criteria and conditions in the 17th century that have since become part of our modern day system of international law. Just War theory contends that for any resort to war to be justified, a political community or state must fulfill the following six criteria: Just Cause, Right intention, Proper Authority and Public Declaration, Last Resort, Probability of Success, and Proportionality. Elements and concepts of the Just War tradition can be found in key areas of

the United Nations Charter, particularly those pertaining to relations between states.

Both the UN Charter and the Just War Tradition recognize the inherent right of states to engage in individual or collective self-defence against an armed attack, and enforcement actions to remove a threat to international peace and security. The right of the permanent-five members of the Security Council to exercise their veto power over Security Council resolutions creates the situation, where by humanitarian operations may be difficult to initiate with explicit UN authorization. A viable and legal alternative to a “vetoed” Security Council resolution has been to seek a resolution from the UN General Assembly. In terms of reflecting global perspectives and values, the General Assembly resolution provides the greatest legitimacy for authorizing the use of force.

The 1991 Gulf War and the NATO air war over Kosovo and Serbia in 1999 offer diverse yet interesting opportunities to demonstrate the application of the Just War tradition and the decision-making process of the United Nations. Noteworthy, all six conditions of the Just War tradition can be used to support coalition actions in 1991 against Iraq. Conversely, justification for the 1999 Kosovo War, based on the Just War criteria, is difficult to find. Although there was just cause for a humanitarian intervention, violations were noted in all of the other just war imperatives. Worthy of special note is the difference between wars of aggression legitimized by international law, and those related to humanitarian intervention operations, which are often based on ethical and moral imperatives. International law tends to be objective and more widely accepted, whereas ethics and morality vary widely among international stakeholders, thus making consensus on humanitarian interventions difficult to achieve.

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