STRATEGY RESEARCH PROJECT

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THE PERPLEXITY OF WHAT IS JUST IN WAR AFTER WE HAVE ACCEPTED WHAT IS JUST ABOUT WAR

REFLECTIONS ON JUS IN BELLO

BY

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REFLECTIONS ON JUS IN BELLO

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ABSTRACT

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The central thesis of this research paper is that war continues to be "an ugly business" despite the profusion of laws and conventions designed to muzzle its devastation and limit the harm to non-combatants. No ethical theory of warfare can justify the horrific effects of war, particularly as we view the lethality of modern weapons and the damage they can inflict upon their targets. Many Just War theorists have tried to argue that unintended collateral damage is not a crime against humanity if it is the result of military operations waged in a just cause. Thus, the justice of going to war (jus ad bellum) has carried more ethical weight than the resulting ways and means for waging war (jus in bello). While the Just War tradition has served us well in establishing the moral and ethical basis for waging war, it has been less persuasive and consistent with regards to the means. In the world of digitization and precision guided munitions, crimes against humanity have become a banal side effect. Perhaps the time has come to reassess what our Just War Tradition should be for the centuries ahead. Perhaps the time has come to ban war as an option for resolving conflict.

"There never was a golden age of warfare when just war categories were easy to apply and therefore regularly applied;.....the judgement of war and of wartime conduct is a serious enterprise..."[1]

I was viewing a taped interview of a soldier, a Vietnam veteran who had survived MyLai. Survived? I wondered!

It was March 16, 1968 and the war had been raging in South East Asia for a few years. The Soldier had been part of the US Army unit that descended on the MyLai hamlet and shot everyone to death. Some twelve years later, he was being asked about his role, his contributions, and the feelings he might have had at the time of the occurrence. This was a useless dialogue, I felt, as the setting for the interview offered more information than the words the Soldier could speak. The Soldier's torment was most visible. He was shaking. On a table by the side of his chair was a tray full of what appeared to be prescription drugs, for which he provided an explanation. Some were "uppers" he said, designed to stabilize his mood swings. Some were "downers" to calm his outbursts of anxiety.

As he was asked about his life after MyLai, the Soldier spoke of his several suicide attempts, that never freed him from his torture but only convinced him that either God was not ready for him, still angered by his conduct in war, or he was not ready to be redeemed, having not suffered enough for the sins at MyLai. Sometime after the war he had witnessed, powerlessly, the shooting of his young boy by a stray bullet, and had held his dead son in his arms, much as he had once held the corpse of a young Vietnamese boy of the same age as his son, shot at MyLai--the price he felt he paid for his redemption, albeit a partial payment, for he was condemned to suffer for the rest of his life.[2]

The taped interview was most troublesome. It led me to recall violent scenes of our intervention in the Vietnam war, the social and psychological climate within the country and

our armed forces, and in particular the stark reality of what war is about. Mostly, it captured my mind on the issue of justice in war, searching for any shred of it at MyLai. MyLai was widely called a "massacre" and indeed it was. Think about armed soldiers coming down on innocent villagers to perpetrate violent and savage acts without mercy! Yet, one could argue that MyLai was an act of war -albeit most savage, and certainly with no strategic value - perpetrated by soldiers who had grown frustrated by the invisibility of the enemy and the treachery of the peasant population. For many of the participants, it was not clear whether the victims were truly innocent bystanders who became entangled in a conflict they did not understand, or actual participants in the fight who provided shelter and assistance to the communist Vietcong. Some said there had been a breakdown in communication between the leadership and the unit. Some said the "men went crazy." Whether an abomination or a warranted reprisal some would deem inherent to war, MyLai was a tragedy in all respects, one of those dark pages in the history of American wars.

This essay proposes to focus on this very tragedy, searching for ways to understand the paradox of bringing together in a single concept the words "justice" and "war," viewing moral rightness, equity and honorable behavior against the hellish images of violence, aggressive and irrational behavior and death. How could we reconcile these two concepts to justify our conduct in war? When and how can we speak of justice when we wage war, knowing that our behavior will always be driven by our aim, the defeat of the opponent? How can we expect moral and ethical behavior in war when the expected ultimate goal is to win, and sometimes "at any price?"

Opening this Pandora box led to a multitude of questions that only reinforced the

perplexity of looking at war as a moral and justified activity, despite the less moral and justified misery associated to it. Would it be easier to accept that "war is hell," I wondered, and as such will always entail activities befitting its character? Is every war doomed to have a page of recorded atrocities perpetrated by enraged men in the heat of conflict? How can we explain the fact that despite the Rules of Engagement and the body of laws crafted with great care over the centuries, for the proper behavior of our fighting men and women, we are still struggling to define what is right and wrong in waging war? Are we engaged in a game of semantics when we speak of differences between such concepts as "total war" vs. "limited war," perhaps masking the absolute truth about war? How should we view the issue of morality in the conduct of war against our current capabilities for waging wars? In the post Cold War international fragmentation, how can we reconcile our staunch belief in rules of war, those "textbook rules" Ralph Peters speaks about in his treatise on the wars of tomorrow, with the fact that "the opponent either hasn't read the book or has thrown it away?"[3] Are we bound to fight by traditional moral norms in the face of the changing nature of war, the dismantling of traditional frameworks, and the coming of such Twenty First Century concepts as "niches" and "warrior classes?"

This essay explores such questions, through a survey of current and past thinking, offering some reflections on the perplexity of what is <u>just in war</u> after we have accepted what is <u>just about war.</u> Perhaps, might one argue, the waging of war can no longer be an alternative to conflict resolution, particularly as we consider the lethality of modern weapons and their devastating impact on the societies that engage in war.

THE JUST WAR TRADITION
Learning about the Past as a key to Understanding the Present

Concern with justifying war and the manner in which it is conducted has been with us for thousands of years, from early biblical times, when war was total and unmerciful, to our deployment of troops to Bosnia, when war was more "limited" but equally unmerciful. It was shaped by every human culture, religious tradition, history and beliefs that preceded our times. Our literature abounds with references to the Old Testament stories of the wars of Israel, i.e., in the books of Exodus, Numbers, the books of Joshua and Judges, and the recorded history of the reigns of Saul and David. These were the Holy Wars, commanded by God, and justified on that basis.[4]

We find the same concern for justifying man's resort to war in the subsequent world of classic antiquity. Indeed, it was Aristotle who first offered the concept of "just war," applying it to the wars waged by Hellenes against Non-Hellenes, those he considered barbarians. Aristotle proposed that "since some men by their virtue.. deserved to extend their rule over less worthy men, wars by which they enslaved others were naturally just."[5] Some two hundred years later, Cicero would also address the issue of "just war" in his De Re Publica, speaking of "those wars which are unjust.. undertaken without provocation...no war considered just unless proclaimed or declared.."[6]

The "Just War" tradition was born out of a desire to restrain the forces of destruction unleashed by war. It evolved through the centuries, shaped by the maturing of our religious institutions, emerging philosophies, and in particular, the unfolding of our western history. Christianity, in medieval times, with its associated forms of warfare (i.e., the Holy Wars and the Crusades, conducted to purge the "Holy Land" of its infidels and heretics) led to such

giants as St. Augustine, Saint Ambrose, St. Thomas Aquinas, Peter The Chanter, and countless others. At different times, these giants built upon the Greek tradition and evolving Christian life and thought, to give us the many ethical and moral values we hold central to our just war tradition.

Our "discovery" of the new world led to the work of Francisco de Vitoria. In his De Indis, Vitoria attempted to ascertain whether the massacres and plundering conducted by the early Spanish Conquistadores in the name of the Spanish King, were right or wrong,[7] unknowingly adding another dimension to the debate on justice in war. It is however in Hugo Grotius' On the Law of War and Peace (1625) that we find "the most systematic and comprehensive work on the international laws of war,"[8] governing what is permissible in war. Grotius looked at just war through the two perspectives we distinguish in war, the ***jus ad bellum,*** which specifies when it is justified to resort to armed force, and the ***jus in bello,*** which sets the boundaries or limits for the use of justified force.

The evolution of our just war tradition is a long and complex tale of the wars and conquests that have plagued man for the past three thousand years, in a way a sort of search for sanity and ethics in an activity which by nature would offer neither one. Associated to that tale, we have inherited a long list of theories and philosophical treatises to explain man's behavior and his reasons for resorting to war, the subject of much writing in our western literature. That tale continues, as does the evolution of our thinking on war, hence the perplexity and frustration when we attempt to reach an absolute truth in dealing with the justness of war.

ON THE ISSUE OF JUS AD BELLUM

Overall, analysis of our wars against the moral and ethical framework of the ***jus ad bellum*** axiom has most often led to the assurance that our resort to war was morally justified. We were either provoked into military action by a wrongful aggressor, or we made the choice of being the aggressor to achieve a noble and moral goal, consistent of course with what we deemed noble and moral in our western culture and beliefs.

The conditions for meeting the spirit of ***jus ad bellum*** are clear: the war must be fought for a just cause, with the right intention, the right agenda, and as a last resort, after all possible avenues for resolving a conflict have been exhausted. The decision to go to war must be made by a legitimate authority, i.e., the head of state, our President, and should be followed by a formal declaration of war, i.e., by our Congress. There must also be a reasonable hope of success, and the decision must satisfy the requirements of proportionality, implying that the good to be achieved by the war will outweigh the injury, the harm that war might bring.[9]

Against this conceptual framework, who could question our reasons for fighting England during the eighteenth century American Revolutionary War, when "taxation without representation ..was deemed tyranny?"[10] --or for decimating native American tribes to fulfill our "manifest destiny?" Consider the reasons for the 1898 Spanish American War: we could no longer tolerate Spanish atrocities against the Cuban people, and needed to avenge the sinking of the American battleship "Maine." Who could argue against the moral rightness of our intervention in World War I, after Germany's U-boats started torpedoing British ships and American citizens were killed in the attacks? After the sinking of the Lusitania, America's

path to war was morally justified on all grounds.

Too much has already been written about our entry in World War II, Pearl Harbor being only the sparkle that was needed to ignite the fire. However, who could stay indifferent to the poignant face presented to the American public by the New York Times, of the Frenchman who tear-eyed watched Hitler and his army parading down the Champs Elysees on that fateful day of June 1940 when France surrendered to Germany? As for Japan, nothing could have been more "just" than our attacks on that island nation after its daring assault on Pearl Harbor, even the dropping of the atomic bombs on Yiroshima and Nagasaki, weapons we knew so little about at the time! Containment of communism was our just cause for fighting in Korea in 1950, and in South East Asia some twelve years later. Finally, our intervention in the Persian Gulf could be submitted to the ***jus ad bellum*** test without hesitation, as has been done in a number of military analyses of the conflict in the months following our success, and unequivocally meet all of its conditions. One must however overlook former President Bush's recent remarks about our need for oil to accept that test!

Need I expand further to illustrate this point? Despite the challenges brought on by the clergy, the academic and intellectual communities, and even elected officials, against our decision to resort to war, we have always managed to discover and defend a just and moral cause for acts of war we conducted throughout our history. Thus, we have been able to satisfy our compelling need to remain faithful to our long held ethical and moral high ground. As will be shown below, our ability to deal with the ethical and moral dimensions of behavior <u>in</u> war has been far less persuasive, far less conclusive.

ON THE ISSUE OF JUS IN BELLO

Although the perception might be that concern for behavior in war started with the Nuremberg and Tokyo trials after the second world war, concern for that behavior was already present in the early history of man, i.e., in the fifth century BC, when Sun Tzu wrote "Treat the captives well and care for them." [11] We did have to wait until the Christian knights of the Middle Ages developed their code of chivalry for the concept of ***jus in bello*** to take hold. "The whole idea of a distinction between combatant and non-combatant correlated directly with the social and functional distinction between Knights and non-Knights,"[12] wrote James Turner Johnson, and the ***jus in bello*** tradition came out of "the customs and sensibilities of the knightly class, who provided the professional soldiers of their times." [13] The tradition further evolved through time, particularly influenced by the early modern manuals of military conduct, such as Gustavus Adolphus' Swedish Discipline in the Thirty Years War, and the military practices during the 18th century wars in Europe.

In the United States, that concern was the catalyst for the Lieber Law of 1863, drafted as "Instructions for the Government of Armies of the United States in the Field." As the first Army pronouncement on the subject of law of war, these addressed "the protection of persons (especially women), religion, the Arts and Sciences, and the punishment of crimes against the inhabitants of hostile countries." As General Orders No.100, the Lieber code was to provide the moral fundament for the Union Army, and much of the material for the Hague Conventions of 1899 and 1907.[14]

The conditions for meeting the spirit of ***jus in bello,*** and ensuring that combatants' conduct will be honorable and just, are based on two key issues. One is the distinction

between combatants and non-combatants, designed to protect civilian populations and limit "collateral damage" (a more modern term for the destruction of non-military targets). The other is the issue of proportionality, however applied here to the individual combatant's behavior as he becomes engaged in the conduct of war. In effect, ***Jus in bello*** places limitations on how wars should be waged, aiming to lessen the devastation of war and spare those considered innocent parties to the war. As eloquently articulated by Dr. Johnson, entailed are:

> ...restraints on the behavior of combatants in the treatment of noncombatants of various sorts, including prisoners of war, the wounded on the battlefield, and civilians; restraints on the means of war, including weapons bans and non-use treatises for particular weapons (i.e., poison gas); restrictions on certain kinds of usage of otherwise permissible weapons (i.e., air attacks against unprotected, noncombatant areas)...[15]

As we looked to justify our behavior in war, and find ethical grounds for the damages inflicted on enemy forces and populations, these ***Jus in bello*** limitations have given rise to a multitude of puzzling questions. For example, if civilians in enemy territory deserved "special moral protection," how could this protection be given without endangering the war mission? Are all civilian populations deserving of our concern? Worth mentioning here is the idea of "double effect," which has been at the center of much debate on the morality of air raids over Germany during World War II, and even over Baghdad in our more recent war in the Persian Gulf. Unfortunately, this would deserve a separate treatment, beyond the scope of this paper! The same argument could be made about guerilla warfare, as in South East Asia or more recently, in Somalia, when "the insurgents infiltrate everything.. and you cannot tell who is a member of the opposition and who is loyal to your side..and to leave anything to chance is to threaten the safety of the entire area."[16] Indeed, it has been argued that modern

war "renders noncombatant immunity anachronistic"[17], a point deserving some notice!

The issue of proportionality has equally come under fire. In essence, it calls for the individual combatant to judge--amidst the heat of the battle--whether the act he is about to engage in the conduct of war is commensurate with the intensity of the danger the enemy represents; i.e., would he fire his Javelin missile against an enemy armed with a spear! Consider Paskins' argument that,

> To demand that people engaged in activity with a military dimension secure and preserve a sense of proportion is to ask for something difficult and strenuous.. It is to require that people think what they are trying to do, remember what they are trying to do, avoid being side tracked into doing something instead.. Writers as diverse as Clausewitz and Tolstoy have constantly stressed the muddle and indirection of war: no one knows what is going on, so no one is capable of a sense of proportion..[18]

Indeed, one could read War and Peace or even for that matter, any book on the Gettysburg campaign, to get a sense of the turbulent and chaotic nature of the moment, when demands on the individual combatant are most vigorous. How we have dealt with ***jus in bello*** in the course of our military history points to the torment ***jus in bello*** represents in the continuing struggle towards what is just and moral in war. As Paul Christopher points out, although we have established sanctions and punishments within the body of international laws and rules of engagement, for activities we would deem criminal and beyond the scope of just conduct in war, our ability to enforce these has been rather limited. There have been many cases throughout the history of American wars when the sanction or punishment for a reprehensive act of violence was at best lenient and not proportional to the nature of the crime.[19]

Consider for example the atrocities committed against the civilian population on the island of Samar, in the Phillipines, during the Spanish American War of 1898. It seems these

had been requested by the commanding officer, Brigadier General Jacob H. Smith. General Smith had ordered that,

> ..the interior of Samar be made a howling wilderness..wanting all persons killed who were capable of bearing arms and were actively engaged in hostilities against the United States.. designating the age limit of 10 years as boys of that age were actively engaged in hostilities against the United States authorities, and were equally dangerous as an enemy as those of more mature age. [20]

When the case was brought to light, criminal proceedings were initiated against BG Smith and the two officers who carried out his orders. The punishment imposed on these officers was retirement from military service! As expected, the public was outraged. A public committee was formed in New York in May 1902 to plead the case before President Theodore Roosevelt, however, to no avail! One could marvel at the eloquence shown by some members of that committee, as illustrated below,

> "..the punishments imposed on General Smith and the other officers were so slight as to be almost farcical, in view of the gravity of the atrocities which were compared to those by Tamerlane, Genghis Khan and the Spanish General Weyler in Cuba.. If we are, or appear to be satisfied with them (the sentences) it would indicate that as a nation we regard the killing of people and the devastation of a country, and the practice of torture as mere peccadillos.."[21]

Understand the word "peccadillos" as the diminutive form of "peccado," the Spanish word for "sin" - a clear inference on how light the issue may have seemed to the military courts!

Consider the case of Lieutenant William L. Calley, Jr. and Captain Ernest L. Medina, some seventy years later, in 1971. For his role in the 1968 MyLai massacre, Lt. Calley was sentenced to "serve a total of five years on house arrest where he was allowed various amenities.. Of the other two dozen individuals charged with the incident, five were tried and acquitted and charges were dropped on the remainder."[22] As in 1902, the public was outraged by the "aberration" MyLai represented, yet divided on the issue of moral

responsibility for the actual crimes. It seemed history repeated itself, when in 1972 the Association of the Bar of the City of New York attempted to do what the Public Committee of 1902 had done, on the same moral ground. Their letter to President Nixon was met with the same coldness -or ineptitude- as that expressed by President Roosevelt. President Nixon spoke of MyLai as an "unfortunate incident" not warranting public inquiry at the time, "in light of the divisiveness of the American public." The "rules of engagement governing operations in Indochina..as classified... could not be discussed nor divulged to the public for security reasons." [23]

The case of Chuyen [24], is another illustration. It is the story of the killing of a Vietnamese national who was suspected of being a double agent for the North Vietnamese military. Without confrontation nor trial, Chuyen was assassinated in a most vicious manner by members of our forces. As the author points out, we could have gone to our American Civil War to find the wisdom for dealing with this case. Paragraph 148, General Orders No. 100, addresses assassination as follows:

> The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen as a subject of the hostile government, an outlaw, who may be slain without trail by any captor, any more than the modern law of peace allows such international outlawry; on the contrary, it abhors such outrage...

Whether he was a spy, a civilian or a North Vietnamese soldier is not important for my argument. What is important is the fact that our institutions failed to administer the right type of justice for the crime committed, or perhaps accepted the killing as an acceptable outcome of war. When the case was brought to trial with mountains of damaging evidence against US Army personnel, all participants to the crime were acquitted, having received "executive immunity from releasing their testimony," thus closing the investigation!

How we will deal with the crimes committed unknowingly and unwillingly during the conduct of the Gulf War has yet to be fully explored and faced. This was one war where all the lessons of the past were to converge, and where technology would afford us the possibility for precision strike, minimizing unwanted casualties and protecting civilian populations to the maximum extent. However, while we wanted to avoid having to wrestle with other Dresden's, we still believed in the power of aerial bombardment, and as the record indicates, we pursued a most aggressive air campaign against the enemy. Efforts to "keep collateral damage" to a minimum have been well publicized. Yet, some analysts have indicated that we may have imposed more pain and suffering on the civilian population of the enemy through the destruction of the infrastructure, water-treatment facilities, sewage systems, electricity lines, etc. which by definition were not military targets. Although Jeffrey Record, who offered a "Contrary View of the Gulf War" in Hollow Victory, is not a "household" name in the catalogue of works we like to consult in our analysis of the Gulf War, some of the criticisms found in his work warrant consideration or challenge. Record cites Easterbrook's assessment on some of the damage,

> ..the very conscientiousness of American pilots in avoiding indiscriminate bombing backfired in one respect on the citizens of Iraq. Because bombing accuracy has always been poor, in previous wars attempts to destroy economic targets such as bridges, power plants, and refineries have never met expectations. In Desert Storm, the bombs finally hit home. Accurate weapons have moral advantages over the older kind; far fewer civilian deaths are caused. Yet, all Iraqi citizens will suffer for years to come from the precision with which coalition pilots smashed their infrastructure.[25]

The jury is still out on the devastation of our conduct of the war, and the debate on the ethical and moral implications associated to that intervention is forecefully on!

"IS WAR HELL?"

The historical events presented above, though drawn from different times and environments, present a perplexing similarity in the way we have dealt with the moral and ethical problems encountered in each case. There seems to have been a reluctance to confront and deal with punishment that would be justified on moral grounds, implicitly allowing forgiveness because of the circumstance of war. Ralph Potter wrote about "moral indifference,"[26] a concept I must reject. Is it rather a tacit recognition that war is hell and as such, will always entail criminal activity that is hard to restrain? I believe "WAR IS HELL," whether we view it inherent to man because of his natural aggressiveness, or as a social invention designed to resolve conflict, "something that people do, not something that happens, an activity with a military dimension.. not a mere blind process and event."[27]

"War is hell" writes Michael Walzer, "because people get killed, and often in large numbers... they are killed with every conceivable brutality, and all sorts of people, without distinction of age or sex or moral condition, are killed.."[28] We find the same compelling argument in so many other works! Some view war as "the oppression of mankind" or "a necessary evil in the pursuit of peace and progress,.." an activity in which "nations make war, their actions rhetorically shrouded in a noble mission on behalf of themselves or others," an activity in which "people die violently, with bitter consequences to their families, their societies and their civilization."[29]

Although Karl Von Clausewitz might not have intended to come out with the stark truth about "war as hell," there is much in his writings that unmistakably points to that truth. In his Principles for the Conduct of War, Clausewitz defines war as

> ...an act of violence intended to compel our opponent to fulfil our will." He points that "we speak of disarming the enemy...without wanting to see the reality of the act of violence itself that will be needed to disarm the enemy... when even the most civilized nations may burn with passionate hatred for each other."
>
> ...If we find that civilized nations do not put their prisoners to death, do not devastate towns and countries, this is because their intelligence exercises greater influence on their mode of carrying on war, and has taught them more effectual means of applying force than rude acts of mere instincts..
>
> ...War as an act of violence pushed to its utmost bounds..[30]

Can we deny the vividity of this language and its power to evoke images of hell, where unleashed forces engage in violent confrontation, far away from the civility implied in ***jus in bello?*** What can we say about the much respected concept that "War is an extension of politics?"

Consider what Paskins says about war, "likely to be fighting to the death...of individual human beings..between groups organized for such fighting..for the purpose of conquering, vanquishing..the other army... employing weapons designed for the purpose of killing."[31] To dismiss the idea that war indeed is hell would be like looking at the world and our long history of conflict through a tainted and filtering glass! The second World War is replete with illustrations of hellish activities on the part of both camps, each believing that God was on their side, each believing that they were fighting for a just cause, each believing in "military necessity" to overlook the fine line that separated the "White" and "Black" sides to the conflict. Consider the air campaigns, Hitler's and ours.. Korea, Vietnam.. Accounts of atrocities or unlawful acts abound, whether necessary at the time for self defense or other reason. With the passing of history and the opening of individual combatants seeking catharsis by making their experiences known, MyLai might end up being one of the many anecdotes in the history of our involvement in South East Asia--one that touched the moral

and ethical fiber of this nation at the time it was made public, one of the many that will fade away in history.

"War" writes Paskins, "is a foul and dehumanizing business. If it brings out the best in some people (as it does)..equally, it is the corrupter and destroyer of many people.."[32] This dehumanizing, and indeed psychological havoc, is the subject of an excellent analysis by Dr. Jonathan Shay, a psychiatrist working with a group of American combat veterans of the Vietnam War who are still suffering from "severe, chronic post-traumatic stress disorder (PTSD)."[33] Linking the Vietnam Veterans' plight to that of the soldiers of Homer's Iliad, clearly a superb comparison of Greek classics and our modern wars, further underscored in my mind the sense of powerlessness in man's long struggle with the evil of war.

"INTER ARMA SILENT LEGES"--RULES OF ENGAGEMENT

Yet, if war is hell, should we accept that "Inter arma silent leges"--that in time of war the law is silent [34] as was offered by our early Greeks and by our "realist" school in later years? I submit not. In fact, the conventional thinking in our culture has been that laws of war must govern the conduct of war if we expect that, even in the hell of war, man must keep some level of morality and ethical courage. This thinking has been codified in the body of laws, Army field manuals (i.e., FM 27-10, The Law of Land Warfare), Rules of Engagement (ROEs), Standards of Conduct, oaths..etc.. all attesting to our staunch commitment and genuine desire to maintain moral and ethical values very much part of the military ethos. In the words of Gidget Fuentes,

> The law of war provides rules and guidance on how troops are to act on the battlefield, including everything from when they may seize private property, what targets may or may not be engaged, what weapons are acceptable and unacceptable, and how to treat noncombatants, be they civilians, members of human rights

organizations or journalists.[35]

As a player in international politics, the United States has ascribed to every convention and international treaty on the disposition of war crimes, the respect of human rights and the protection of civilian populations during wartime, further attesting to its dedication to the spirit of ***jus in bello,*** and its commitment to justice.

With respect to our military, the focus placed on ROEs commanders must enforce and abide by, is a clear evidence of the military's genuine desire to respect international laws on the conduct of war. These however represent a monumental challenge to our armed forces, as

> ...United States soldiers and marines face hard choices about what, when, and here they can shoot.. and often get little help from the rules of engagement (ROE)..Over the past three decades, ground force commanders and judge advocates have searched for an effective method of imparting ROE.. The stakes are high in this search... Without an effective method, at least two dangers become imminent.. one that troops will respond tentatively to an attack, thereby permitting harm to themselves, fellow soldiers, or some mission essential facility. The second danger is that troops will strike out too aggressively, thereby harming innocents..[36]

We have had unfortunate illustrations of both dangers in the event of Lebanon in 1983 and in Somalia in 1993, both with serious and damaging consequences. As widely recognized, the task of having effective ROEs is made even harder by the "unpredictability of armed engagements and the inherent cognitive limitations of humans under stress."[37]

It has been argued that the possibility always exists "that a military action rightly begun with respect to the ***jus ad bellum*** cannot be pursued to victory without violation of the ***jus in bello***." And when that possibility is perceived,

> ...there is an obvious temptation to bend the criteria or to abandon them and adopt the stance of the crusader confronting barbarians and savages to whom civilized warriors owe no regard...and unless one believes in the sudden metamorphosis of man, the control of violence must be reckoned to be a continuing problem....[38]

Along the same thinking, President Eisenhower, in remarks delivered at a press conference on January 12, 1955, is quoted as having said,

> ...When you resorted to force as the arbiter of human difficulty, you didn't know where you were going.. if you got deeper and deeper, there was just no limit except what was imposed by the limitations of the force itself...[39]

Alas, this has been well illustrated throughout our western military history, starting with the American Civil War on the United States soil, to world wars on the European continent and Japan, to South East Asia and even to our participation in the Persian Gulf. These were wars started under banners of justice and morality. These were also experiences that led to such blasphemies as "Andersonville Prison," "trench wars," "obliteration bombing," "MyLai" and countless others. Might we then interpret the ***jus in bello*** rules as "ideals to be followed only when expediency permits, rather than legal prescriptions grounded in moral principles?"[40]

OUTLOOK FOR THE FUTURE

In his last State of the Union address, in 1952, President Truman, with the Korean experience still fresh in his mind, remarked:

> "The war of the future would be one in which man could extinguish millions of lives at one blow, demolish the great cities of the world, wipe out the cultural achievements of the past, and destroy the very structure of a civilization that has been slowly and painfully built through hundreds of generations. Such a war is not a possible policy for rational men."[41]

This statement is as relevant today as it was then. In fact, we have today even more capabilities to demolish and destroy than we did then, making the call for sanity in the game of war even more critical. We have travelled far from the gentile world of old Europe, "the good old time when the French and English Guards could courteously invite each other to fire

first, as at Fontenoy...[42] Ours is a different and so much better armed world!

Much has been written about our uncertain, volatile and changing world, the proliferation of rogue states, increasing terrorism, etc., an endless list of lugubrious predictions for the future. The truth of the matter is that the world has always been uncertain, volatile and changing. Only our awareness of that fact has changed. To compound that "bright" presage, technology has achieved, and well demonstrated in the Gulf War, what the Tofflers have dubbed "the deadly convergence" of range, lethality and speed, that gives modern weapon systems an unsurpassed power to kill. Thus to speak of waging war in the just war tradition we have known until now seems almost irrelevant, and "Just as a missile guided down to target on a laser beam cannot miss, the new warfare can involve no sport or honor."[43] In the world of digitization and precision guided munitions, crimes against humanity become a banal side effect!

More relevant at this time would be to contemplate the prevention of war altogether, building on the lessons we could have learned from this century's experiences, a century that could be dubbed one of the bloodiest in the long history of man. Realistically, war continues to be "an ugly business" despite the sanitized version we were all able to view through the CNN-ization of the Gulf War. This is a fact we continue uncovering as more historians and ethical theorists set out to redefine our history in that latest war, and as the "dust settles in," its consequences on the world community. Our political belief and adherence to the Clausewitzian axiom that "war is an extension of politics" allows us to contemplate war as a way to resolve political conflict, albeit as a last resort, consistent with our deeply held just war tradition. Yet, maintaining war as an option in the spectrum of conflict, as we seek to

eliminate or minimize conflict in our dialogue within the world community, implies a willingness to resort to war, and therefore a responsibility to prepare for it. Perhaps the time has come to abandon that axiom, though recognizing its value in the shaping and direction of our strategic thought. Perhaps, it is time to redefine conflict resolution against the background of our evolving world, a world marked by changing political structures, increased economic competition and tensions, and uncontrolled proliferation of weapons of mass destruction.

The United Nations was created in 1945 as a forum for bringing nations together to resolve crises and conflicts through peaceful means, uniting nations' strength to "maintain international peace and security." Dr. Dag Hammarskjold, who served as Secretary General of the UN from 1953 to 1961, was a man of great intellect and vision, who accepted the fact that international conflict was inevitable because of different national interests and perceptions. However, he also believed that violence in the world could be averted through the use of peace keeping forces. Resources could be applied to analyze the conflict, improve the basic cause of the conflict, and in the long run, prevent war from erupting, or at least from expanding beyond the first two belligerent nations. He met his death in 1961 pursuing his beliefs, while on a fact finding mission in Congo. Boutros-Boutros Gali, the current Secretary General, shares that belief. Indeed, Mr. Gali has called on the international community and the United States to support a much expanded and solid UN role in resolving world crises, with the creation of a military arm to the UN. It is perhaps in that path that the future for conflict resolution in the world lies, a path in which our military profession can play a vital role. Our recent experience in resolving conflict in Haiti, with the restoration of

peace and a democratic form of government attests to the success this course of action could achieve. Our participation in enforcing peace in the Balkans may be our test for the direction we must take.

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