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Just War Theory and Explosive Remnants of War

For centuries, philosophers and political theorists have pondered the ethical considerations of waging war. Just War theory, expounded upon by contemporary thinkers, addresses three ethical components of war-making: the conditions for going to war, acceptable violence during combat, and the eventual resolution and remediation of conflict. These issues and their overlap with humanitarian demining and small arms/light weapons control are examined below.

by Eric Patterson, Ph.D. [Georgetown University]

For the better part of two millennia, churchmen, scholars, jurists, soldiers and statesmen have turned to Just War theory for guidance in making ethical decisions about war. Indeed, Just War concepts permeate international law and the laws of armed conflict; it is from the Just War tradition that we get the principles of proportionality, noncombatant immunity, and the idea that legitimate authorities (i.e., governments) should have a monopoly on the use of force.

As the readers of this journal tend to be concerned with moving beyond the destructiveness of the conflict cycle, it is appropriate to ask, “Does Just War theory have something to say about our efforts to mitigate the threat to human life and property from explosive remnants of war,¹ as well as illicit military-style small arms and light weapons?” The answer is yes: Just War theory informs our views of weapons in or out of the hands of legitimate authorities, about the ethics of how war is conducted and about the post-conflict context.

Essential Just War Theory

In its strict form, Just War theory provides policy and moral guidance on two issues: under what conditions it is moral to go to war (*jus ad bellum*) and how violence can be morally employed during war (*jus in bello*). Early Just War theorists, such as Thomas Aquinas, argued that the principled decision to use military force was based on three criteria: **sovereign authority** acting on a **just cause** with **right intent**. Over time, new factors—what James Turner Johnson has aptly called “additional prudential criteria”—were added to the trio: likelihood of success, proportionality of ends and last resort.²

In addition to the criteria governing the resort to force, *jus in bello* suggests that wars should be waged with restraint, using means and tactics proportionate

to battlefield objectives (proportionality) that limit harm to civilians (discrimination or noncombatant immunity). Finally, it should be noted that a handful of contemporary authors argue that we should consider the moral context of how wars end (*jus post bellum*), which is an appropriate focus for practitioners who concern themselves with the detritus of violence in the aftermath of war.

Just War's Questions and Action Against ERW

The issue of legitimate authority. One of the interstices between explosive remnants of war and illicit small arms/light weapons and the Just War tradition concerns legitimate authority. Just War theory begins with the question, “Under what conditions is it just to go to war?” One of the answers provided by Augustine of Hippo (St. Augustine) and Aquinas is that, in general, legitimate authorities—we call them governments today—are the only agents that can justifiably use force. Of course, Just War theory has traditionally accepted individual self-defense, as well as communal self-defense in unique cases such as genocide. Nevertheless, generally speaking, for Just War theory, government authorities are the only legitimate purveyors of force. This premise has obvious ramifications for the issues related to conventional weapons and explosives in the developing world, such as stockpiled mines, ordnance and SA/LW.

A concern that many of us share is the over-abundance of military-style SA/LW and other conventional weapons of war that are either poorly secured or beyond the control of government authorities in developing countries. Of course, we are not talking about such items as sporting or hunting rifles, which citizens legally own in accordance with national laws, but rather the remnants of war such as the millions of Warsaw Pact weapons that made their way to Af-



A U.N. peacekeeper from the U.N. Mission in the Democratic Republic of the Congo examines AK-47 magazines stored in a warehouse in Beni in North Kivu. PHOTO COURTESY OF UNITED NATION PHOTO/MARTINE PERRET

rica through the gray and black markets during the 1990s or the tons of explosives looted from Saddam Hussein's arsenal.

These weapons, moving clandestinely across porous borders in the hands of criminals and terrorists, exacerbate conditions of insecurity and hamper good governance by legitimate governments. Likewise, the availability of explosive material, from landmines or other sources, has provided the components for improvised explosive devices. Fragile, post-conflict governments can be hamstrung in their efforts to develop economically and agriculturally if their lands are contaminated by unexploded ordnance or mines. The point is that a rightly ordered, or just, society presupposes conditions of security guaranteed

by legitimate authorities, but that such a guarantee is often beyond the abilities of modern post-conflict institutions, which are limited further by poorly trained police, unpaid soldiers, newborn judiciaries and fledgling civilian-government agencies.

The issue of noncombatant immunity. Just War theory asks a second question: “Assuming that the decision to fight a war has been made, how can battle be conducted in a way that is moral?” One element of Just War theory that answers this question is the principle of discrimination—distinguishing authorized military agents of states (e.g., soldiers and sailors) from civilians. This principle is often called noncombatant immunity, which has historically included women, children, the wounded, the elderly and the like.

The problems we have seen in the past decade that are directly related to illicit SA/LW include rebel armies purchasing arms on the black market, illicit weapons ending up in the hands of child soldiers, and poorly secured national stockpiles being pilfered by criminals. Insidiously, terrorists often target civilians as “soft targets” for



With financial assistance from the U.S. State Department, Senegal has successfully collected and destroyed more than 4,000 small arms, including MAS-36 submachine guns and MAT-49 rifles. PHOTO COURTESY OF MAJOR ROB ATIENZA, U.S. EMBASSY IN DAKAR, SENEGAL

suicide bombings to cause both mass casualties and widespread panic. Again, the point is that criminals and insurgents are turning a tool necessary for national defense on those who are unsuspecting and unarmed. Sadly, legacy landmines—some of which have been in the ground for decades—do not discriminate between warriors and innocents, making them an additional passive, yet deadly disruptor of prosperity.

The issue of ending war well. Finally, I believe that recent on Just War Theory completed by Brian Orend, Michael Water, and myself, poses a third question: “What does an ethical end to war look like?” Certainly in the past decade, we have seen strides toward more just and durable peace agreements than ever before, such as demobilization, disarmament and reintegration³ efforts, South Africa’s Truth and Reconciliation Commission, prosecutorial attempts against warmongers like Slobodan Milosevic, reconciliation processes and the like. An important component of DDR is those processes by which the national government asserts control over the military hardware it dispensed during the conflict. Government authorities should collect these items, professionalize the forces handling the weapons, safely and securely stockpile them, and destroy the excess and obsolete items from their stocks, lest they become tools for renewed conflict.

When it comes to landmines and associated ERW, establishing long-term conditions of peace means stewardship of land resources, including reclamation of transport links, water points and farmland from contamina-

tion. This process is “ending well”: moving beyond the conditions from which conflict commenced. Furthermore, it is more often the case that such issues are seen as regional and international inhibitors to peace, so international partnerships with foreign governments or nongovernmental organizations provide necessary assistance to ameliorate the legacies of conflict. This is *jus post bellum*.

Pragmatic International Security

This article has demonstrated that some of the ways we think about the destructive legacies of war, such as ERW and the proliferation of illicit SA/LW, have roots in venerable Just War theory; however, the Just War tradition should not be thought of as merely an academic exercise. It marries real-world pragmatism with our hopes for security and justice.

Elsewhere I have argued that *jus post bellum*—post-conflict law, or ending war well—begins with political order and sometimes moves beyond mere order to justice. In a handful of instances, reconciliation can be the result.³ That is the goal many of us hope for when the hot war ends; however, without a durable sociopolitical order—from basic safety to confidence that the land can be tilled and water can be drawn safely to assure that the weapons of war have been safely stored—such security is but a fantasy. Consequently, the efforts of major governments and nongovernmental actors in this regard are critical. For example, the U.S. State Department funds efforts to secure and/or destroy

excess and obsolete SA/LW, and has provided over US\$1.3 billion to humanitarian mine action in the past two decades. Governments such as Japan, Canada and members of the European Union likewise contribute in order to promote the conditions for such security to take root.

The reason Just War theory has endured through the vicissitudes of Western history is because it bridges our moral ideals with the realities of a world characterized by self-interested—and often violent—power politics. What many do not realize is that Just War theory underlies many of our assumptions in the West, such as those governing proportionality and noncombatant immunity. Perhaps of equal importance is that it provides a rationale for what we can do to promote security around the world. ♦

See Endnotes Page 111

For additional references for this article, please visit <http://tinyurl.com/krcvum>.



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