

THE APPLICABILITY OF JUST WAR CRITERIA TO THE GULF WAR: A CRITICAL ASSESSMENT

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Abstract

Just War Theory is the basis on which nations seek to morally and ethically justify waging a war. The United States of America does explicitly recognize just war theory as criteria for engaging in war. Thus, the criteria of just war theory are a primary basis for discussion and debate about US war actions. Even former US President Georg Bush applied the criteria in reassuring us that the US was fighting a just war, and yet many scholars in international relations approached the question of its applicability with considerable ambiguity. Therefore, this paper will apply the just war criteria to the US decision to go to war with Iraq in 1991 both to test whether the US decision met the just war criteria, and to see what they mean for our understanding of peaceful resolution of conflicts.

I Introduction

The principles of just war originated with classical Greek and Roman philosophers such as Plato and Cicero. But much of the sources of modern thinking on just war are brought to light from St. Augustine (C.E.354-430). Then thinkers such as Thomas Aquinas (C.E.1225-1274) were instrumental in transmitting to later generations. Just war tradition was further developed in the seventeenth century by Hugo Grotius, the father of modern international law (Jeong, 2000: 64; Glossop, 2001: 23-26). However, the aim of this paper is to critically evaluate the applicability of just war criteria to the Gulf Conflict² rather than dealing with history of just war tradition. Thus, paper refers more often to contemporary writings for the sake of some particular illuminations and arguments.

The core and controversial, proposition of just war criteria is that, sometimes, states can have moral justification for resorting to armed force. The idea here is not that the war in question is merely politically prudent or bold, and daring, but fully moral and just. The just war tradition lies somewhere between the militarist understanding of unlimited conduct of total war and pacifist rejection of war as an intrinsic moral evil which cannot possibly promote moral and pacific ends (Coates, 1997: 65, 87). Accordingly, just war doctrine offers some potential assistance in preventing war or at least, in making it less destructive, and possibly even less likely (O'Brien, 2000: 80).

The United States of America is the most powerful nation in the world and disposes of a greater capacity to exercise military might than any other nation. How US deploys and disposes of its military power is a vital question that concerns for the international society. Does US use its military might for just reasons based on the principles of *jus ad bellum*, just for its own narrow national interests? When US armed forces engage in military operations, do they act in accordance with the principles of *jus in bello*, or do they wield their instruments of destruction with the viciousness and disregard for proportionality and non-combatant immunity? The just war doctrine provides a set of ethical reflections on the justifiable use of force that provide a template for judging the theory and practice of US-led coalition forces' exercise of military power in the Gulf War.

This paper is divided into three main parts. The first section will briefly explain the background of the Gulf War. The second section will critically assess the applicability of just war principles to the Gulf Conflict. Finally, paper will survey these results and examine whether the Gulf War can be justified on the basis of just war theory or not.

II Gulf War and its Background

Iraq invaded Kuwait, which it had long claimed, on August 2, 1990 and annexed it. Saddam Hussein, the president of Iraq, declared that the invasion was a response to overproduction of oil in Kuwait, which had cost Iraq an estimated US \$ 14 billion a year, when oil prices fell. Hussein also accused Kuwait for the illegal pumping of oil from Iraq's Rumaila oil field (Sluglett and Farouk, 1991: 99-107).

On the other hand, US administration believed that Saddam Hussein intended to invade Saudi Arabia and take control of the region's oil supplies. Therefore, USA began to organize an *ad hoc* multinational coalition³ to retake Kuwait and defeat Iraq's attempt. At the UN Security Council, within hours after Iraqi forces marched to invade Kuwait, the US secured, by a vote of 14-0, the passage of Resolution 660, demanding the immediate withdrawal of Iraqi troops from Kuwait. More serious, was the resolution the UN Security Council authorized a few days later, 661, calling for economic sanctions against Iraq. In response, Saddam Hussein put forward his first proposal to end the crisis⁴. Neither in the UN Security Council nor elsewhere did Iraq get useful diplomatic support. Meanwhile in Kuwait, Iraq followed the brutal pattern it had adopted in suppressing its Shiah (Shiite) and Kurds — destruction of property, arrests, torture, widespread looting, and execution. Then, while U.S. military commanders and strategists formulated war plans, the UN passed a resolution 678 authorized member states to take all necessary means if Iraqi forces did not withdraw by January 15, 1991. Last minute diplomacy continued, but both Saddam Hussein and US-dominated UN Security Council would not budge (Polk, 2005: 148-49; Sluglett and Farouk, 1991: 99-107).

In response, a US-led coalition forces began immediately to build in Saudi Arabia. The US congress granted authority to wage war on January 12, 1991. President Bush rejected a Soviet-Iraq peace plan for

a gradual withdrawal that did not comply with all the UN resolutions and gave Iraq an ultimatum to withdraw from Kuwait by noon February 22, 1991 (Polk, 2005: 152). Hostilities started, the US-led coalition forces smashed through Iraq's defenses and defeated Iraqi forces in four days of fighting, which came to be known as 'Desert Storm', mainly involved Air Forces units, with strong support from the Navy. At this point Saddam Hussein had announced he would comply with Resolution 660, including withdraw from Kuwait. But US-led coalition began the ground war. On February 26, 1991, coalition troops entered Kuwait city. Already on February 25, the Iraqi troops began to withdraw, but they were slaughtered on the 'Highway of Death'⁵. Hussein tried to negotiate terms but finally yielded on February 27. The Bush administration then ordered a unilateral ceasefire (Polk, 2005: 152). Then coalition forces and Iraqi military leaders met on battlefield to discuss terms for a formal ceasefire to end the Gulf War. On March 2, Iraq agreed to abide by all of the UN Security Council resolutions. However, the UN trade embargo remained in effect after the end of the war (Polk, 2005: 153).

Estimates of Iraqi military deaths range up to 120,000, Iraqi and Kuwait civilians' death range up to 20,000, coalition forces lost about 343 troops. The war also caused extensive damage to infrastructure of both Iraq and Kuwait and the region's environment (Arkin, Durrnt and Cherni, 1991:15). The war and killing, did not end on 28 February 1991. Within days after the ceasefire, two revolts (Shia and Kurd) had broken out against the regime in Iraq⁶, civilian casualties mounted, and millions of refugees began fleeing Iraq's internal military repression⁷. 'Hyper-war' had come and gone, but the deadly character of US policy continues to wreak havoc and suffering on the people of Iraq (Ibid, 1991: 17).

III Applicability of Just War Principles to the Gulf War

Just war doctrine includes two sets of criteria⁸. Namely: the *jus ad bellum* (justice on the way to war) and the *jus in bello* (justice in the midst of war). Just war tradition developed on the basis of these two principles which determine justified recourse to war and put restraints on the waging of war (Johnson, 1991: 5). Both principles are equally important and a balance has to be established between 'considerations of whether to use force and of how to use it' (Johnson, 1984: 31).

1. The principle of *jus ad bellum*, which concerns the justice of resorting to war in the first place. This principle in its moral terms incorporates concepts such as just cause, right intention, legitimate authority, the use of force as the last resort and proportionality related to the recourse to war. This has origin in the Thomas Aquinas who also added that war must not be made in the desire to hurt, or a thirst for power (McClelland, 1996). Although the concept of last resort has become reduced to issues of self-defence in international law (Johnson, 1984: 3) for any resort to war to be justified, a political community or state must fulfil each and every one of the five requirements (Glossop, 2001: 23-26).

(1) Just cause or right reason: The 'just cause' that makes going to war morally permissible is

defence against aggression; the defence of others from such; the protection of innocents from brutal, aggressive regimes; punishment for a grievous wrongdoing which remains uncorrected. According to Walzer, 'any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act' (Walzer, 2006: 62). The United Nations Charter Article 2 requires the peaceful resolution of disputes. Under the terms of Article 42 of the UN Charter, the UN Security Council is the sole legitimate authority for authorising the use of armed force to maintain or restore international peace and security. In spite of the clear rules, Iraqi invasion into Kuwait was an aggression against Kuwait. So, it is obvious that Iraq violated international law. This illustrates that Iraqi aggression can be identified objectively, as they fired the first shot (Holmes, 1992: 208). Thus, it can be argued that there was a right reason for US-led coalition to use force against Iraq on the basis of aggression against UN member nation.

(2) Right intention: Having the right cause for waging a war is not enough: the actual motivation behind the resort to war should be morally acceptable too (Atack, 2005: 65). In other words, war must be undertaken with the aim of getting peace not for some other gain or purpose. Self-interests such as power or land, property grab, revenge or ethnic hatred are excluded. The US intention to go to war against Iraq was ambiguous. A surprising number of people believe that the US is in the Gulf not to free Kuwait or punish Saddam Hussein but to bolster its own influence and power after the collapse of Soviet Union. A poll reported in the *Boston Globe*, 13 January 1991 revealed that a considerable number of Americans shared these delusions, believing that control over oil was the 'key reason' for the US troop presence fifty per cent (50%), not 'liberation of Kuwait from Iraqi occupation' twenty eight per cent (28%) and 'neutralization of Iraq's weapons capabilities' fourteen per cent (14%) (Chomsky, 1991: 15). What apparently Saddam Hussein did not properly judge was that he had put his hand on two things where the Great Powers would not tolerate interference: money and oil. They, not morality or legality, were what differentiated Kuwait from Tibet and East Timor⁹. As an American congressman then remarked, 'if Kuwait produced bananas instead of oil', Saddam Hussein's grab might have been tolerated (Polk, 2006: 147). Therefore, taking into account of this fact we can argue that US-led coalition had not right intention.

(3) Legitimate authority and public declaration: A legitimate authority may wage war only if the decision has been made according to the proper process, and made public, notably to its own citizens and to the enemy state or states¹⁰. As we discussed above, in the Kuwait case, both the UN Security Council and US congress passed resolution to participate in Gulf Conflict stating that the invasion of Kuwait by Iraq was the clearest case of aggression by one state against another. The war against Iraq that was fought by a US-led coalition and sanctioned by the UN Security Council, and thus met the principle of legitimate authority.

However, some critics argued that President Bush coerced the UN Security Council into series of resolutions. As Ramsey Clark notes:

To obtain Security Council votes, the US corruptly paid member nations billions of dollars, provided them

arms to conduct regional wars, forgave billions in debts, withdrew opposition to a World Bank loan, agreed to diplomatic relations despite human rights violations and threatened economic and political reprisals (Clark, 1992: 19).

(4) Last resort: A legitimate authority can resort to war, if all peaceful alternatives, diplomatic negotiations for example, have been exhausted (O'Brien, 2000: 81). US backing for Saddam Hussein, up to the day he invaded Kuwait, had four known manifestations: continued diplomatic and political support, continued economic and military aid, opposition to congressional pressure to impose US economic embargo and, last but not least, giving him the wrong signals on the consequences of invading Kuwait. Rejection of diplomacy was explicit from the beginning. As King Husain said, just before the ground war: *It is fairly obvious the infrastructure of the whole country (Iraq) has been destroyed... I've been convinced for a while that there was no effort to dialogue, there was no effort to reach for a diplomatic solution, and there was preparation from the word go for war (Cockburn and Cohen, 1991: 20).*

Around the turn of the year Iraq proposed a settlement linking its withdrawal from Kuwait to withdrawal of US force from other occupied Arab lands (Chomsky, 1991: 15). This proposal was relayed to the White House by Yugoslav emissaries in the Non-Aligned Movement, and duly rejected (Cockburn and Cohen, 1991: 21). Thereafter, US diplomacy was a matter of avoiding a peaceful settlement at all cost. President Bush rejected a Soviet-Iraq peace plan for a gradual withdrawal that does not comply with all the UN resolutions and gave Iraq an ultimatum to withdraw from Kuwait by noon of February 22, 1991. Therefore, it can be argued that all peaceful alternatives had not been exhausted.

(5) Proportionality: If it can foresee that waging war will have no measurable impact on the situation, a proper authority can resort to war. There must be a reasonable expectation that the act of war taken as a whole will produce more good than evil, which would include the idea that those trying to stop the evil really have a good chance of accomplishing that goal without inadvertently leading to even more evil happening in the long run (Gutman and Rieff, 1999: 224). Brown argues that proportionality calculations must continue throughout the course of conflict (Brown, 2003: 176-7). From the US-led coalition point of view Gulf War was a 'success' war. The 'success' was the result of a combination of factors, including favourable international and political conditions; air supremacy and technological and strategic advantages; the minimization of coalition casualties; and media management. Its specific, short-term 'success', however, has to be put in the context of the failed insurrections and the disastrous repression and suffering that they brought to the Iraqi people; the high death toll and suffering later in 1991 due to the destruction of water, sewage and electricity systems; the consequences of the failure to resolve the political and international impasse over the Saddam Hussein regime, which included deliberating sanctions and the impoverishment of many Iraqis over the following decade; and, ultimately, the 2003 Iraq War itself (Shaw, 2005: 17). Looked at in this light, how can we say Gulf War was a 'success' one? Therefore, the word 'success' needs inverted commas. 'This is a consequentialist criteria, requiring some calculation or prediction of the expected outcomes of the use of force, in terms of harm or destruction caused versus benefits obtained

or at least harm prevented'(Atack, 2005: 67). In case of Gulf Conflict, the evil outweigh the good. Moreover, supporting to my point of view Brown argued that US-led war against Iraq does not conform to this application of the proportionality criteria (Brown, 2003: 175).

2. The principle of *jus in bello*, which concerns the justice of conduct within war, after it has begun. A justified war is not necessarily a just war and *jus ad bellum* has to be coupled with *jus in bello* for a war to be just (Holmes, 1992: 223). The principle of *jus in bello* concerns the proportionality in the conduct of war and non-combatant immunity (Coates, 1997: 208). In this sense proportionality of means is crucial. Military actions must not inflict more harm than good as this is inconsistent and thus contradictory to the justifications set out in the proportionality of *jus ad bellum*.

(1) Discrimination and Non-combatant Immunity: 'There are specific restrictions on the use of force with discrimination between combatants and non-combatants. It is immoral to kill innocent civilians, and deliberately targeting of children, the elderly or women is not permissible' (Jeong, 2000: 63). The US-led Air War which delivered more than 50,000 attacks and more than 88,000 tons of bombs, nearly seven times the equivalent of the atomic bomb that destroyed Hiroshima against a clearly inferior enemy¹¹. '93 per cent of the bombs were free falling bombs, most dropped from higher than 30,000 feet... more than 25 per cent missed their targets, nearly all caused damage primarily beyond any identifiable target. Most of the targets were civilian facilities' (Clark, 1992: 14). President Bush was very concerned, personally and politically, with minimizing US casualties in the ground war. Any action which contributed to that goal was fully justified in American eyes, no matter how much damage or destruction it caused in Iraq (Carroll and La Rocque, 1991: 50-51). When one side could minimize the risk to its own soldiers to very low levels, was it moral to practice industrial killing on a hapless enemy? There have been a number of reports of facilities such as water distribution and treatment plants, sewage-related facilities, and hospitals being hit in the war (Clark, 1992). It is assumed that these strikes were the result of 'collateral damage'. For example, the bombing of the 'Baby Milk Formula' factory on 22 January 1991, the Amiriya civil defense shelter on 13 February 1991 is highly controversial. Moreover, it also seems that by the time the ground fighting was initiated on 24 February 1991, Iraqi forces had little time, no exit, nor adequate communication to allow for proper surrender in the field. US-led coalition forces moved forward and killed enormous numbers of soldiers who had emerged from the safety of their fortifications and bunkers. The massacres at the 'highway death' resulted in the death of as many as 25,000 troops. It is clear that the US used napalm, phosphorous, or other incendiary bombs. These are anti-personnel weapons prohibited under the 1977 Geneva Protocols. This massive attack occurred after Saddam Hussein announced a complete troop withdrawal from Kuwait in compliance with UN Resolution 660. The day after the ceasefire, another Iraqi column attempting to cross the Euphrates River, was also wiped out (Shaw, 2005: 15). It seems that the entire ground offensive, and the brutality of the closing battles, where tens of thousands of retreating Iraqi soldiers were killed without a fight, loss of military discipline, as well

as an abandonment of the principle of military necessity¹²(Arkin, Durrnt and Cherni, 1991: 21).

(2) Proportionality of means: When the principle of proportion is again raised in the *jus in bello*, the question immediately arises as to the referent of proportionality in judging the means of war (O'Brien, 2000: 83). This would thus concern political and military strategic concerns for the choice of weaponry and establishing legitimate and non-legitimate targets. For example, forces must not use weapons of mass destruction to achieve their aim or target. Chemical and biological weapons are intrinsically evil and these were banned by the Geneva Protocol in 1925. Certain military methods are also regarded as inherently evil such as genocide, mass rape and torture.

The US-led coalition forces were equipped with some of the most powerful weapons available in the world; some of them are illegal under exiting international law. US military forces used fuel air explosives, which can incinerate thousands of people at once. They used super-bombs, trying to assassinate leaders in Iraq in violation of international law. Francis Kelly notes that:

The obligations include respect for the rule of proportionality which the US ignored in its treatment of the Iraqi forces both on the Basra highway and after the cease fire. The rule of proportionality granted the Coalition the right only to use as much force as is necessary to achieve its legitimate military aim. However, the violent destruction of the Iraqi army clearly exceeded the UN mandate under which the Coalition operated (Kelly, 1992: 53).

The use of weapons containing depleted uranium was also widely condemned by the international community. Many experts insists that the larger missiles used in the Gulf War were depleted uranium coated. Although US argues that there is no treaty banning depleted uranium, UN and other experts show that depleted uranium weapons can be considered illegal because of the prohibition in the Hague Convention of 1907 on poisons, the 1925 Protocol on Gases, Protocol 1 of the 1983 Convention on 'Conventional' weapons that prohibits non-detectible particles and because they are indiscriminate. Widespread use of depleted uranium coated weapons in Iraq has resulted in an escalating incidence of cancers, birth defects and other health problems. For example, in Basra, where depleted uranium was used by US military forces, cancer rates increased nine-fold in the eight years after their use (Plett, 2001).

IV Concluding Remarks

Just War doctrine insists all above principles must each be fulfilled for a particular declaration of war to be justified. Two sets of criteria, the *jus ad bellum* and the *jus in bello*, provide strict requirements that any war must fulfil if it is to be morally justified or permissible. None of them is optional, and non takes priority or makes any of the others redundant (Atack, 2005: 63). As we assessed above, US-led coalition claimed 'just cause' and 'legitimate authority' in support of its action against Iraq, without fulfilling the criteria of 'right intention', 'last resort', 'proportionality', 'discrimination and non-combatant immunity'. Looked at in this light, there is no doubt that the word 'just' needs its inverted commas and accordingly

Gulf War was an unjust war.

However, Dower does raise the issue as to whether all just war principles must be met, or only a sufficient number of them (Dower, 1998: 123-4). In other words, according to Dower all the principles are not really necessary for applicability of Just War. Then, we could argue which of the principles could be overruled for a war to maintain its 'applicability'. If we insist the principles of 'just cause' and 'legitimate authority' are the most important and sufficient to justify Gulf War then it was a Just War, otherwise not. This is still being debated. Therefore, it would be better to leave readers to judge whether Gulf War was a just war or unjust war by taking into account our discussion on the applicability of just war principles to the Gulf War.

Notes

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- 2 The Iraqi occupation in Kuwait and the war to dislodge Iraq in 1990-91 is called Gulf Conflict. Also known as, Gulf War, First Persian Gulf War, and Operation Desert Storm.
- 3 Despite the participation of over 30 nations in the allied forces, no one would ever make the mistake of calling this war the 'Third World War'. It was very much a US affair; the US commanded the forces, designed and controlled the war plan, and did most of the fighting (Arkin, Durrnt and Cherni, 1991: 7).
- 4 Dr. Evgeni Primakov, during October made two visits to Baghdad, and he got Hussein to agree to withdraw from Kuwait on two conditions: first that American Forces also withdraw, and second, that an international conference be assembled to resolve all the outstanding problems of the Middle East, including nuclear arms and the Israeli-Palestinian conflict (Polk, 2005: 148).
- 5 A name the press has given to the road from Mutlaa to Basra in Iraq. US planes immobilized the convoy by disabling vehicles at its front and rear, then bombing and strafing the resulting the traffic jam for hours. More than 2,000 vehicles and tens of thousands of charred dismembered bodies littered the sixty miles of highway (Clark, 1992).
- 6 Bush administration encouraged and aided Shiite and Kurd rebellions to rebel against the Iraqi government 'causing fratricidal violence, emigration, exposure, hunger and sickness and thousands of deaths. After the rebellion failed, the US invaded and occupied parts of Iraq without authority in order to increase division and hostility within Iraq' (Clark, 1992: 20).
- 7 Eighty to ninety per cent of civilian death occurred after the war ended, in the aftermath, in the civil war which was encouraged by American government, and during the refugee exodus (Arkin, Durrnt and Cherni, 1991: 17).
- 8 The Just War doctrine provides the most flexible and relevant normative framework. It has roots in the ethics of all the great world religions, it is a vital source of modern international law governing the use of force and it focuses attention on the causes, means and ends of war (Falk, 2001).
- 9 Historically, many countries have used 'humanitarian' reasons for military action. But rarely has a state intervened militarily for a group of people because of internal human rights violations. The US and other countries have stood by and watched in case after case of atrocities...in Cambodia, Uganda, Tibet, and North Korea.

Then why did this war provoke a different response.

- 10 As Dower notes, 'ever since the development of the modern nation-state system, it has been a key feature of its rationale that nation-states are the unites, and no others are, who can legitimately use organized violence in pursuit of their ends'(Dower, 1998: 115).
- 11 Aerial and artillery bombardments were undertaken in the firm knowledge that they would increase the risk to civilians compared to other possible means, military as well as non-military. High-altitude and long-range destruction was inherently indiscriminate (Shaw, 2005: 135). Even UN peacekeepers were withdrawn when they were at risk: to save their lives, they abandoned civilians to genocidal terror.
- 12 Such a massacre of withdrawing Iraqi soldiers violates the Geneva Convention of 1949, common article 3, which prohibits the killing of soldiers who 'are out of combat' (Clark, 1992).

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