

CONSTABULARY USES OF THE U.S. MILITARY  
AND THE NOTION OF *JUS AD BELLUM*

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Some Introductory Thoughts

Questions of war and morality traditionally focus on one central concern: justifying the use of force in conflicts between political states. This concern developed into a doctrine labeled *bellum justum* (literally "just war"), which involves two key notions - *jus in bello* and *jus ad bellum*. These notions can best be understood as what constitutes just actions; both just actions in war and the justice of going to war.<sup>1</sup>

Just war doctrine is particularly useful in making such judgments in cases of conventional wars. For example, when one country (A) invades another country (B), we can determine whether such an action is justified or not, by applying the tenets of the doctrine.

Recently, however, the nature of warfare has changed. What we now see are actions short of traditional war: raids, peace-keeping missions, responses to terrorist acts, interventions, and drug wars. These types of actions might be called "constabulary"

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1 - Phillips, Robert L., *War And Justice*, ix

actions. By constabulary, I mean actions that are normally associated with domestic police forces: maintaining law and order, ensuring public safety and security, and providing emergency and rescue services. In fact, since the Vietnam War, all U.S. military actions fall into the category of constabulary actions - consider the cases of Grenada, Panama, and now the Persian Gulf intervention.<sup>2</sup>

These constabulary actions are more difficult to judge in terms of just war doctrine than those of traditional warfare. It's difficult to determine who is aggressing against whom, what constitutes self-defense, and the violation of political sovereignty and territorial integrity.

In this paper, I will argue that increased use of the U.S. military in constabulary roles, specifically in interventions, seriously challenges the notion of *jus ad bellum*, and ultimately must lead either to significant modifications in just war doctrine or the abandonment of it.

### The Notion of Jus Ad Bellum

As a starting point for my argument, let us consider this notion of *jus ad bellum*. In his seminal text, *Just and Unjust Wars*, Michael Walzer defines *jus ad bellum* as the judgment(s) we make about a specific war, with reference to the reasons that

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<sup>2</sup> - Bolger, Daniel P., *Americans At War*, 11-12. (Bolger refers to this type of action as expeditionary, rather than constabulary, although he refers to the same type actions).

states (or nations) have for fighting it.<sup>3</sup> Why has a particular state gone to war with another state? What are the specific reasons behind the initiation (or response to initiation) of war? What considerations underlie the fighting of the war itself? In other words, *jus ad bellum* provides a means for judging whether a particular war is justified.

The basis for this concern is simple - we believe that certain reasons provide adequate moral justification for fighting a war. There are good (or just) reasons and bad (or unjust) reasons for fighting a war.

And although there are different versions of *jus ad bellum*, the following elements are frequently found in discussions, and as such, constitute a sort of "generic" theory.<sup>4</sup> They include:

- 1) Just Cause
- 2) Right Reason
- 3) Legitimate Authority
- 4) Reasonable Cost
- 5) Last Resort

Let me discuss what is meant by each of these elements or criteria briefly.

The first, just cause, asserts that in order for a nation to commit itself to fighting a war, it must be able to show there is a "morally good" reason (or reasons) for doing so. As noted in

3 - Walzer, *Just and Unjust Wars*, 21.

4 - Anderson, Gus, unpublished paper entitled *Just War Theory*, USMA.

the 1983 pastoral letter of the U.S. Catholic Bishops, "War is permissible only to confront 'a real and certain danger,' i.e., to protect innocent life, to preserve conditions necessary for decent human existence, and to secure basic human rights."<sup>5</sup> Ordinarily, a nation translates these claims into one of three reasons, namely:

1) Self-Defense. When nation (A) attacks your nation (B), you are justified (or have the right) to fight back in defense of your nation. This justification is based on the notion that nations possess rights to political sovereignty and territorial integrity. Any direct violation of either of these components constitutes "aggression." *Jus ad bellum* holds that aggression justifies violent defensive actions by the aggressed upon state.

2) Defense of Another Country. When one nation (A) has been aggressed against by another nation (B), then a third nation (C) is justified in assisting in the defense of (A). This is particularly true when (A) is a weaker military power than (B).

3) Intervention. Sometimes it may be necessary for one country (B) to intervene in the affairs of another (A). Intervention, however, is problematic since it resembles aggression (by violating a country's sovereignty or integrity). Thus intervention is only allowed for selected reasons. Two commonly accepted reasons for intervention are to balance prior interventions by other states (counter-intervention) and to rescue a people threatened with massacre (humanitarian).

In all of these cases, the purpose of fighting is used to judge the military action. It must be one of the three above.

Just cause is closely related to the second element, that of right reason. Right reason or intention means that during the conflict the pursuit of peace and reconciliation is of tantamount importance. Specifically, it means that a nation must wage war to achieve peace (and only peace). No other intention is morally justifiable. It also requires that the original reason a nation pursues a war (specified in just cause) cannot be superseded by another (perhaps more expedient) goal.

So, if nation (A) goes to war to defend against aggression by nation (B), nation (A) cannot later decide to occupy the oil fields of country (B) (despite the political and economic advantages of such an action).

Further, right reason includes the idea of avoiding unnecessarily destructive acts or imposing unwarranted conditions. In the first case, I'm talking about wanton devastation of targets not important to military objectives, like schools, hospitals, and churches, while in the second case, I'm referring to instances like the insistence on "unconditional surrender" as the only type of settlement acceptable to a warring nation.

A third element is that of legitimate or competent authority. This prescription refers to the tradition that ties the right to use military force to public order and common good (in a state). Public order and common good, in turn, are the responsibility of certain political persons or bodies. Therefore, the use of

military force (or rather, war) must be directed by those political persons or bodies (instead of private groups or individuals).

The underlying moral precept is quite obvious here: only those public officials who are responsible for specific activities (like war) can exercise authority in those matters.

(In this country, the competent authority responsible for declaring wars is the U.S. Congress.<sup>6</sup> Few presidents, however, have felt constrained by this designated authority and simply used their own authority to commit U.S. military forces abroad. Consequentially, Congress passed the War Powers Act of 1973 in an effort to limit independent military actions by the president. Nonetheless, no sitting President has yet accepted the constitutionality of the War Powers Act and have continued to conduct U.S. military actions when [they deemed it] necessary.<sup>7</sup>)

The fourth element in *jus ad bellum* doctrine is the idea that it must be waged under the conception of reasonable cost. This is a utilitarian-type calculation which measures the cost of fighting the war against the cost of letting the aggression stand. If the cost of war far outweighs the cost of suffering the aggression, then a nation might tolerate (or accept) aggression.

A number of considerations go into this calculation of reasonable cost, including material costs (like the number of tanks, planes, and ships) and human costs (such as casualties

6 - U.S. Constitution, Act I, Section 8.

7 - *Facts on File Yearbook*, 1973, 928; A good summary of the War Powers Act is found in this volume.

among military forces and noncombatants) but also certain "immaterial" costs (like freedom, rights, and justice).

Another facet of reasonable cost is the probability of successful outcome. How likely is it, given our forces against the enemy's forces, that we will win this war? This is an important concern, for if one nation wages a war with another, it ought to do so with the expectation of achieving its goals rather than simply forfeiting its forces in an ill founded endeavor.

The final criterion is that a just war, when fought, ought to be a last resort. Prior to beginning the fighting of a war, all peaceful alternatives must have been attempted and exhausted. Due to the massive violence, devastation, and suffering that war causes, we need to pursue it only as a last option. Other options may include such actions as diplomatic negotiations and sanctions, political and economic sanctions, and public forum condemnation.

In summary, we conclude that if a war meets all of these (above) conditions, then it can be considered in accord with *jus ad bellum*, and thus, declared a just war.<sup>8</sup>

#### The Nature of U.S. Military Actions Since Vietnam

Now if we consider U.S. military actions (or operations) since the end of the Vietnam war (through today - December 5, 1990), we see that our forces have been used in ten different

<sup>8</sup> - Other elements sometimes considered in this notion include reasonable means, proportionality, and discrimination, although they more commonly occur in *jus in bello*.

operations.<sup>9</sup> These operations include the recovery of the *U.S.S. Mayaguez*, the Iranian hostage rescue, different air and naval actions in the Persian Gulf, the "peacekeeping" operation in Beirut, and the interventions in Grenada and Panama.<sup>10</sup>

Furthermore, it appears that all of these operations fit nicely into the previously-mentioned categories of constabulary actions: raids, peace-keeping missions, responses to terrorist acts, interventions, and drug wars. The U.S. air bombing of Libya in 1986, conducted for the purpose of destroying terrorist facilities, is clearly an example of a raid. Likewise, the use of U.S. Marines as an "interposition force" in Beirut from 1982 to 1984, indicates a peace-keeping mission. Or, the Iranian rescue mission of 1980, intended to free American hostages, is representative of a terrorist response.<sup>11</sup>

Examples of U.S. interventions can be found in both Grenada and Panama. In fact, it appears that interventions might be a little easier to examine in terms of constabulary missions (since they tend to resemble more traditional actions), so let's consider them in a little more depth.

In October of 1983, President Ronald Reagan, responding to a

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9 - It is quite apparent that *jus ad bellum* presents problems for U.S. justification of actions prior to 1975; just consider the cases of the Korean war, the Vietnam war, and interventions in Latin America. My use of 1975 is simply a discussion construct.  
10 - Bolger, vii. Bolger's book chronicles actions from 1975 to 1986, so it doesn't include the naval operations in the Persian Gulf (including the *U.S.S. Vincennes* incident), the Panama invasion, nor the U.S. reaction to Iraq's occupation of Kuwait.  
11 - Sometimes the definition of what "exactly" a military action is unclear. In this case, it could be considered a rescue mission, a rescue raid, or a response to terrorist action (or a perhaps some combination).



changing political situation in Grenada, unilaterally authorized U.S. military action: in fact, it was the largest joint land, air, and sea operation conducted by the U.S. since Vietnam.

President Reagan provided three reasons for the U.S. action including: 1) ensuring the safety of U.S. citizens on the island (mostly medical school students), 2) restoration of democratic government, and 3) elimination of Cuban influence on the island.<sup>12</sup>

The 82nd Airborne Division, as well as two Ranger and one reinforced Marine battalions, landed on Grenada backed by thousands of support troops (including air and naval forces). They faced a total enemy of approximately 10,700 (including Cuban and Eastern Block military personnel). The entire action lasted about a week (October 25 to November 2, 1983), with a total of 18 U.S. deaths and 45 Grenadian deaths. As we know, the U.S. action was extremely successful in attaining its stated objectives.<sup>13</sup>

Last year, barely seven years after the Grenada intervention, U.S. troops landed again in Latin America, this time in Panama. Close to 23,000 soldiers and marines, based both in Panama and the U.S., participated in this intervention at the (sole) direction of President George Bush.

Following two years of "crisis" in Panama, U.S. forces were ordered into action, based on four reasons including: 1) to restore democracy, 2) to protect the Panama Canal, 3) to safeguard the lives of U.S. citizens in Panama, and 4) to bring

12 - Bolger, 295.

13 - Bolger, 280 and 290. These figures do not include civilian (or noncombatant deaths).

General Noreiga (Panama's military chief) to justice (on U.S. drug charges). Additional justification was claimed under Article 51 of the United Nation's Charter and Article 21 of the charter of the Organization of American States.<sup>14</sup>

United States troops faced an enemy numbering several thousand, primarily composed of Panamanian Guard units and "Dignity" battalions. This action lasted from December 20 until December 27 and resulted in a total of 23 U.S. deaths and 320(?) Panamanian deaths.<sup>15</sup>

These interventions, along with the previously mentioned other U.S. actions (including increased military support of drug law enforcement efforts), clearly represent a trend to use the military in constabulary missions.<sup>16</sup>

### CONSIDERATIONS

These military actions appear difficult to categorize as "wars" for a number of reasons. First, warfare is traditionally characterized as "violent conflict between (political) states."<sup>17</sup> It is pursued by military forces, such as armies, air forces, and navies, in actions like maneuvers, attacks, defensive actions, and retreats. War, on an elementary level, implies fighting

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14 - *Keesing's Record of World Events 1989*, 37112.

15 - General Noreiga was arrested on January 3, 1990. Exact figures on total losses of Panamanian forces remains a source of dispute as does the number of noncombatant deaths.

16 - The U.S. intervention in the Persian Gulf, while clearly meeting the criterion of just cause, is still clearly a constabulary mission.

17 - Ropp, Theodore, *War in the Modern World*, 12.

between comparative equals, fighting between two armed and equipped combatant forces.

Second, war involves concepts like mobilization of national resources, popular or public support, and a restructuring of national priorities. And this is because wars, particularly American wars, tend to last for an extended period. For example, our involvement in the Second World War lasted from 1941 to 1945 (four years) and the Vietnam War lasted from 1964 to 1975 (twelve years). Such wars require a long-term commitment on the part of a state.<sup>18</sup>

Nonetheless, it is difficult not to consider constabulary actions as "war-like". This appears to be particularly true if we consider "war-like" to refer to actions involving the use of military forces as opposed to other type of forces (like police or emergency rescue teams). The use of military forces, by its very nature, brings with it special requirements and considerations. These include distinctions like those between combatants and noncombatants; the use of force in appropriate proportionality to one's opponent; and specific rules of engagement in operations (typically *jus in bello* type concerns).

Therefore, it appears that these U.S. military actions, which I label as "war-like", are ones we have to consider as analogous to wars. And if they are analogous to wars, we ought to be able to apply *jus ad bellum* criteria to them. Such an application, however, presents us with a major moral difficulty: that these

<sup>18</sup> - Since definitions of war are difficult to come by (beyond being a legal state of affairs), I just cite a few elements that appear common to wars.

U.S. actions, when judged in terms of jus ad bellum, must be considered unjust.

Yet, we have a problem accepting such moral judgments. Almost intuitively, we know that states ought to be able to defend themselves, not only against direct threats but also against indirect threats. For example, in the Iranian hostage incident, it appears that the United States had a right (if not a duty or obligation) to protect the lives of its citizens, particularly when the political protections extended to them by the Iranian state were abrogated. If this right is granted, then a valid argument can be made for the use of military action (in cases where diplomacy fails or has failed).

Perhaps the central feature that separates "war" from "war-like" actions is the difference between direct and indirect threats. By this, I mean that war involves the application of a direct threat to the political sovereignty and territorial integrity of a state. State (A) attacks state (B) with military forces. The threat is obvious and apparent; if state (B) fails to respond, they may soon be defeated and conquered by state (A).

"War-like" actions are usually characterized by indirect threats from one state to another.<sup>19</sup> State (A) is threatened by state (B) by actions other than traditional military actions. For example, state (B) threatens the safety of citizens (who are residents or visitors) from another state (A). Or possibly,

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19 - "War-like" actions might also feature an indirect threat linked to a direct threat; in Grenada, the indirect threat was towards U.S. political interests and the direct threat to the medical students (U.S. citizens).

state (B) uses terrorist teams to attack the military installations of state (A). Or state (B) provides support to gun-running operations that violate the borders of state (A). With "war-like" actions, failure to respond will not result in national or military conquest (but simply some form of lesser defeat).

Another way to explain "war-like" actions is within the terms of the domestic analogy. The domestic analogy suggests that the international order is comparable to civil order; the system of states is comparable to a neighborhood. When one state (A) starts a war with another state (B), state (A) is guilty of aggression, (a crime) not unlike a murderer or robber who attacks someone in a neighborhood.

What I want to claim in terms of a modification to the domestic analogy is that wars and "war-like" actions are both crimes, but wars are felonies and "war-like" actions are misdemeanors. Although there are differences between the two types of crimes, in degree and severity, there are also important similarities. In both cases, offenses have occurred, we can identify the perpetrators (or criminals), and as such, they are subject to some type of response and punishment (to include the use of deadly force). Furthermore, because these threats extend beyond our national borders (the normal range of our domestic police forces), the proper instrument for dealing with them is our military forces.

This argument appears to justify U.S. military actions in punitive strikes, peacekeeping missions, responses to terrorists,

interventions (to protect our citizens and their concerns), and fighting drug traffickers. In all cases, military action is used as a response to a (relatively) lesser form of aggression.<sup>20</sup>

### CONCLUDING THOUGHTS

Let me now offer a few thoughts as a way of concluding my argument (and this paper).

First, I think we can establish that the future of U.S. military actions will likely be found in constabulary missions. As suggested before, the past decade reflects a trend towards using U.S. forces in such roles. Additional evidence for this claim can be found in the pending withdrawal of U.S. troops from Europe (based on a reduced Soviet threat), the Congressionally mandated "downsizing" of the military force, and a corresponding expansion of special operations forces that are better suited to "war-like" actions.

Second, the use of U.S. military forces in constabulary roles is meant as a means of combatting indirect threats (or "war-like" actions) to the nation. Our use of the Delta force in both the Iranian hostage effort and in Grenada, the use of Ranger battalions in the interventions in Grenada and Panama, and the Marines in Beirut and Grenada are all examples of our effort in this direction.

Third, these "war-like" actions are still ones we want to address in terms of war and morality. We want restraints on how

to pursue or respond to these actions. We don't want to say "anything goes" or "no rules apply here." Such a desire is grounded in the notion that morality, even in "war-like" actions, matters. Possibly it matters even more in constabulary actions that presumably are meant to promote law and order.

Fourth, and finally, the appropriate moral framework for linking constabulary actions to "war-like" actions is a modified *jus ad bellum* doctrine. Current *jus ad bellum* doctrine recognizes only direct threats to states. In the past, such recognition was appropriate and proper. However, a changing world environment and its corresponding modes of military actions require a modified *jus ad bellum* doctrine; a doctrine that recognizes indirect threats as legitimate threats to states and therefore, accounts for responses to these threats in terms of morality and justice.<sup>20</sup>

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20 - It appears the appropriate modification would be under the criterion of just cause. Specifically, a condition of indirect threat, whereas a state (A) is threatened by another state (B) using a "war-like" action, then state (A) would be justified in responding with military force in a constabulary role. This modification would be subject to the other criteria of *jus ad bellum* and the notion of proportionality, so to lessen the possibility of abuse.