Law&Ethics

Is There a Just Cause for War Against Iraq?

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Critics of just war theory often ask if the proponents of the theory have ever been able to discern in advance whether a proposed war is just or not. Conscientious officials and military personnel, anxious that their actions meet the test of justice, ask similar questions of those of us who discuss just war theory as part of our academic work. It is, of course, easier to demand answers than to arrive at them, because wars are necessarily controversial and are fought under conditions of ignorance and uncertainty. Hindsight is genuinely useful when it enables us to better understand the evolution of our understanding of a complex conflict and also the process by which we came to form a moral judgment on a shifting reality. It is not reasonable to expect theories, however rooted in military history they may be, to dissolve the fog of combat. It is reasonable, however, to ask those who expound them to alert us to some of the morally troubling aspects that are likely to arise as we move from public deliberation toward the actual use of force.

In contrast to the public discussion that preceded the Gulf War of 1991, there has not been much use of the language of "just war" in the public debate or in the administration's arguments that there must be an immediate regime change in Iraq. A recent exception is the letter sent by Bishop Wilton Gregory to President Bush on September 13, 2002. I will not comment

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on Bishop Gregory's letter, which he sent in his capacity as president of the U.S. Conference of Catholic Bishops and has an official authority and a political weight that a scholarly comment cannot have. My own interest is in exploring certain questions that arise as we apply just war criteria to the current situation. In doing this, I am, of course, looking into a future about which our knowledge is quite limited. Although the precise way in which the war would be conducted has been the topic of vigorous speculation and of surprising leaks, no one can speak with certainty as to how the course of a war will actually proceed. Many of the details of the present situation are unknown even to specialists on Iraqi affairs and U.S. military planning.

The first requirement that any proposed conflict must meet is that there be a just cause for which the war is to be fought. In the absence of a just cause, there can be no just war, so this will always be the most fundamental requirement. It is here that the administration's proposal to invade Iraq in order to bring about a regime change in Baghdad runs into its first serious difficulty. There can be no doubt that this proposal aims at morally worthy and politically important objectives. Both the removal of Saddam Hussein from power in Baghdad and the removal of weapons of mass destruction from the arsenal of Iraq are compelling and even urgent goals. They are, nevertheless, distinct goals and two of the questions that U.S. policymakers may have to resolve is whether one of them is more important and whether we would be content with the final situation in Iraq if only one of these objectives was actually attained.

In the current situation, of course, the two objectives are intertwined, but both

the ongoing debate and future policy decisions will be affected by the priority we give to one or the other. If, for instance, we place priority on the removal of weapons of mass destruction, as we have seemed to do in our efforts to get a positive resolution from the UN Security Council, we put ourselves under serious pressure to come up with consistent policies for handling other countries which have or are on the verge of acquiring weapons of mass destruction. The need for such policies has been underlined by the disclosure that North Korea already has a small nuclear arsenal. In particular, if Saddam Hussein makes seemingly serious offers to allow inspections, will we accept that he remains in power? These questions, however, should not lead us to deny the real benefits of removing Saddam Hussein and his weapons from Iraq.

For just war theory, the question about any proposed use of force is not whether it leaves the world better off in some respect, but whether there is indeed a specific just cause for a particular country or group of countries to use force against an aggressor or a potential aggressor. The potential harm can affect us, one of our allies, or a neighboring state. In all cases, whether they are in self-defense, the honoring of the terms of a just alliance, or in the cause of collective security, there is a just cause for a war that is recognized by international law and agreed upon across political and cultural boundaries. The nearly universal recognition of the need to expel Iraqi aggressors from Kuwait was rooted in the clear presence of a just cause for a defensive war. The harm that defensive military actions aim to prevent is normally inflicted by the armed forces of the aggressor country, but we can also envi-

sion scenarios in which the harm is inflicted by guerrilla or terrorist groups. The harm must also be current. Harms inflicted in the past would not justify violent action now to undo them, even though there may be a serious case for renegotiation of the issues and for reparations for harm previously done.

The harm done to citizens and residents of the United States by the terrorists of al Qaeda aided by the Taliban on September 11, 2001 provided just cause for the use of force by the United States and its allies in the war against Afghanistan. But, in the absence of convincing links between that attack and the activities of Saddam Hussein's regime in Iraq, it does not constitute a just cause for an attack on Baghdad. The attacks on New York and Washington clearly demonstrated America's vulnerability to weapons of mass destruction and probably created a broad willingness amongst the general public to use force against those who would harm us or threaten our allies. But this is a psychological connection and not a moral argument founded on rational analysis. Some of the public statements of the administration appeal to this connection, but many of them respect the difference between the harm actually done by the terrorists of September 11 and the harm that has been done and may be done by Saddam Hussein.

If one accepts that there has been no significant cooperation between al Qaeda and Saddam Hussein's regime, then the issue of just cause revolves around the extent to which it is justifiable to anticipate or preempt an attack by Iraq against the United States and its allies, particularly Israel. A requirement that we must wait until an attack has actually begun seems unrealistic at a time when missiles can deliver destructive payloads within minutes and when terrorists can launch lethal surprise attacks. Some have claimed that the mere possession of weapons of mass destruction by a rogue state or by a terrorist group constitutes an intolerable threat to the security of the United States and its allies. It is clear that the acquisition and possession of such weapons indicates the presence of anxiety and hostility, and it is reasonable for a state that thinks itself to be the likely target of such weapons to take measures to defend itself. Indeed, if the danger is grave and imminent, then the state may well be justified in attacking first.

The question then is whether the Iraqi threat to the United States is grave and imminent at the present time. The consensus seems to be that the Iraqi regime possesses chemical and biological weapons, which could be used at any time, but that it does not now possess nuclear weapons and the delivery systems that would allow them to be used reliably against the United States. It must be clear to all that if Saddam employs weapons of mass destruction against his neighbors, Israel, or the United States, it would lead to massive retaliation and would initiate a series of events that would have to include his removal from power and the destruction of his regime.

At this point, the psychological and motivational differences between Saddam Hussein, a secularizing leader and opportunistic user of Islamicist slogans, and the radical militants of al Qaeda are very important. A reasonable interpretation of these differences is that Saddam Hussein is likely to be deterred by the prospect of the complete destruction of his regime and by the comprehensive damage that his country would suffer, whereas the prospect of death and destruction has a demonstrated positive

appeal to the most committed members of such organizations as al Qaeda, who are ready to seek martyrdom. Deterrence does not come with an absolute guarantee of its effectiveness in preventing hos-

be directly self-destructive or driven by fanatical beliefs, it makes sense to deter him by drawing clear lines beyond which he must not pass, and by making definite threats about what will happen if he does

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tile or irresponsible acts, but it is thus far the most reliable manner that we have of avoiding conflicts between hostile and heavily armed powers. If deterrence is a reasonably reliable means of preventing Saddam Hussein from engaging in hostile acts against his neighbors, then it is rash to conclude that his acquisition of weapons of mass destruction will lead to their use. One exception to this would be the case in which our hostility towards Saddam and his regime is so manifest and intense that he concludes that his destruction is imminent and that he may as well take as many Americans and Israelis as possible with him. In this case, our threats may, contrary to our stated intentions, make the use of weapons of mass destruction more attractive rather than less attractive.

Some observers point out that Saddam Hussein has not been deterred from rash and destructive actions in the past—his attacks on Iran and Kuwait being two examples. He is, as I argued at the time of the Gulf War, a "serial aggressor," a man who cannot be relied on not to attack or kill in the future. He is opportunistic; he will take unwise risks; and he will attempt to exploit divisions and uncertainties in the ranks of his potential adversaries. For all these reasons, it will be a positive moment when he is ultimately deprived of power. But, since he does not seem to

so. We should also remember that the United States held ambiguous positions with regard to Saddam Hussein in the past because of our opposition to the Islamic regime in Iran and because of our failure to intervene to save the Shah's regime. These ambiguities have been eliminated and will not have the effect of diminishing the credibility of our threats to use force in suitable circumstances.

This brings us to the point that our concern is not so much to prevent Saddam Hussein from using his weapons of mass destruction as to prevent him from restricting our own freedom of action in the Gulf area and the Middle East. No reasonable person would give Saddam a veto power over the actions of other powers in the Gulf region. However, the history of the Cold War shows that it is possible to live with heavily armed, hostile regimes and wait them out, since they have enormous negative factors in their internal composition. Weapons of mass destruction, however, could appeal to other regimes in the area, as an attractive means of preserving themselves. A negative situation of regional deterrence could emerge similar to that evolving between India and Pakistan on the South Asian subcontinent. Despite this, there is still a case for regarding it as less destructive than a full scale war to destroy Saddam's regime. It does not rely solely on a

potentially costly U.S. intervention in the area, for which the American public may not be ready. The conclusion I would draw is that weapons of mass destruction are for Saddam both attractive and virtually unusable.

It is also not likely that he will attempt to attack the United States with weapons of mass destruction through surrogates such as al Qaeda or other terrorist groups. He will not want to let those weapons of mass destruction pass out of his control. As long as he remains rational in the minimal sense, he will not want to run the risk of detection in a scheme that would require him to have a high degree of confidence in the discipline of his confederates. In the aftermath of its successful operation of September 11, al Qaeda might seem to qualify on these grounds; but given the conflicting viewpoints of the secular regime in Baghdad and the religious fanaticism of al Qaeda, it is difficult to imagine that Saddam Hussein would regard them as reliable allies to whom he could entrust the continued existence of his regime. Such a step, which would require trust in political groups not under his complete control, seems incompatible with the paranoia of his regime.

If Saddam Hussein and his regime can be deterred, then from a just war perspective this would be the preferred policy. This does not mean that deterrence is a satisfactory situation, only that it is better than a preventive war. Affirming a policy of containment does not preclude fighting a war against Saddam Hussein if he disrupts an internationally authorized system of inspections or if he assaults his neighbors. Such a justifiable war against Iraqi aggression (if and when it occurs) should not be fought as an unlimited war without regard for civilian casualties. Our exercise of force should not be measured by our capabilities, but by the military needs of the situation and by the moral requirement that we not directly target civilians and attempt to minimize civilian casualties.

A preference for containment over preventive war does not mean that we should give up our efforts to impose a system of inspections on Saddam Hussein and a future without weapons of mass destruction on Iraq. The inspections must be intrusive and coercive if they are to be effective. Both effective containment and war require the deployment of military forces and a credible threat to use them. But a policy of deterrence and containment moving toward regional disarmament should be workable and is morally superior to an invasion of Iraq with the ensuing occupation of the country. Such a policy will have its own moments of danger, since al Qaeda will not appreciate the fact that we spared an Iraqi regime which they have their own reasons for despising. There is also the danger that the tedious task of maintaining inspections against a wily and determined foe may become laborious to the world at large and seem unduly harsh to those who lose sight of the character of Saddam's regime.

Adopting a policy of containment and deterrence means that we have to make a choice with regard to our objectives in dealing with Iraq. We give priority to the elimination of weapons of mass destruction and we postpone the objective of effecting regime change. It is clear from the recent unanimous vote in the UN Security Council that there is broad international consensus to disarm Iraq, while there is no such consensus to remove Saddam Hussein. The two objectives, however, are not neatly separable.

As long as Saddam Hussein is in control of Iraq, there remains a possibility that he will continue to attempt to build an arsenal including weapons of mass destruction. Some members of the Bush administration have made it clear that they think there are strong reasons to insist on inspections, no matter how numerous and eloquent, would in themselves have moved the situation forward to even a partial resolution. This is one of the widely recognized problems of deterrent systems in general, namely, that they rely on morally questionable

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both objectives. If we were to imagine a scenario in which Saddam Hussein is overthrown from within, we would still have the task of persuading the successor regime to accept serious limitations on its sovereignty with regard to the possession of weapons of mass destruction. Whether it happens in one or in two stages, it seems that the Iraq of the future will be without weapons of mass destruction and without Saddam Hussein.

If something like this argument is correct, then it seems that we lack a just cause for attacking Saddam Hussein and that the use of force is not a last resort in dealing with Iraq. But we encounter a certain paradox, which should make us both aware of the limitations of just war thinking and reluctant to fall into the common trap of imposing a dichotomy on what is really a very fluid situation. For it seems that it is precisely by threatening the use of force, something which is not fully justified on moral grounds, that we have been able to focus both Iraqi and international attention on the imperative need to terminate Iraq's programs for acquiring weapons of mass destruction. It is unlikely that denunciations of Saddam Hussein and recriminations about his efforts to avoid and terminate

threats. In the case of Iraq, there was reason to fear that the United States government believed that it would be advantageous to carry out the threats it was making and that it could implement these threats without exposing itself and its interests to serious damage. UN Security Council Resolution 1441 expresses a consensus that the disarmament of Iraq is preferable to war and that this is an urgent task which justifies the threat of force as an appropriate and necessary means. The first of these conclusions is now acknowledged as common ground between the administration and its critics; it restrains the more militant elements within the administration. Recognition of the second conclusion is an important point gained by the administration.

On the other hand, the threat of force will do little to prevent attacks from terrorist groups such as al Qaeda since they have a decentralized and unstable center of command, and since key members of these groups are willing to sacrifice their lives. Instead, foiling their plans requires that we have networks of communication and cooperation throughout the Middle East, as well as reliable sources of human intelli-

gence. Such patterns of cooperative relationships necessitate that, in the long run, we are seen as reliable and fair partners, ready to use force when needed but not overly eager to destabilize the region by the intermittent application of overwhelming military might.

The achievement of stability in the Middle East is a task that will require that we restore a perception of ourselves as being even-handed in relation to the dispute between the Israelis and the Palestinians. This is not a matter of abandoning the Israelis as our allies, which would be shameful and foolish, but of preparing the Palestinians to work with both the Israelis and ourselves on mutually beneficial terms. Such a prospect may seem implausible given the present tragic circumstances of the conflict in Israel and the West Bank, but it is nec-

essary if Israel is to achieve genuine and reliable security, and if we are to have stable democratic allies in the Islamic world. In the long run, the war on terrorism, the effort to prevent the proliferation and use of nuclear weapons, and the resolution of the most acute political conflicts (among which the Israeli–Palestinian conflict is the most directly relevant) are all directly related. Solving these problems will surely be more feasible when the United States shows itself to be capable of both firm leadership and genuinely collaborative action. The United States needs to recognize that the resolution of these grave problems requires that we avoid taking actions that seem attractive in a contrived emergency but that will undermine our ability to achieve peace, disarmament, and justice in the long run.