



SPECIAL OPERATIONS/
LOW-INTENSITY CONFLICT

~~SECRET~~

DRT
Feb 05

File HC

(54)

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-2500

INFO MEMO

EF-0409 Subst 12/17/01

DEC 17 2001 1300

I# 01/015397-SOLIC

FOR: UNDER SECRETARY OF DEFENSE (POLICY)

FROM: Robert Andrews, Principal Deputy Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)

SUBJECT: Pre-emptive Operations (J)

(5) I recommend that you read the attached op-ed.

- A prominent Catholic theologian outlines the moral justification for a pre-emptive strike against Iraq.
- The op-ed will appear in several dozen newspapers after Christmas.

(8) The author, George Weigel, author of the authoritative biography of Pope John Paul II, is the former president of the Ethics and Public Policy Center. Mr. Weigel:

- introduces the concept of "regime factor,"
- illustrates the concept using the Iraq situation, and
- demonstrates how pre-emptive action against Iraq fits into the just-war tradition.

→ RA 12/15/01
George is a brilliant
guy and a gentleman.
Thanks for sending this
along.
DJF

~~SECRET~~

DECLASSIFIED BY OSD POLICY DRT
JUNE 29, 2007
07-F-1332

Derived from Multiple Sources
Declassify 17 October 2011

Prepared by Robert Andrews

The Just War Case for the War

By George Weigel

Posted: Monday, March 31, 2003

ARTICLE

America (New York, NY)

Publication Date: March 31, 2003

It didn't happen in France, when the question recently was what to do about chaos in Cote d'Ivoire. It didn't happen in the European Union in the 1990s, when the questions were genocide in Rwanda and ethnic cleansing in Bosnia. But it did happen in the United States: for well over a year now, both in government and in the public arena, the question of what to do about Saddam Hussein and his Iraqi regime's weapons of mass destruction (WMD) has been debated in terms explicitly drawn from the just war tradition.

Many American religious leaders and religious intellectuals have found the Bush Administration's just war case for the war wanting. I have a different view; I believe that a compelling case can be made for using proportionate and discriminate armed force to disarm Iraq. Because the recent debate has focused on four key "war-decision" (*ad bellum*) issues, let me address these here, recognizing that the debate over the war's actual conduct *in bello* will continue during and after the campaign - and that the prior *ad bellum* issues will be revisited if the critics' case against the administration proves to have been based on false readings of the tradition and the contingencies.

A last preliminary note. The just war tradition does not "begin," theologically, with a "presumption against war." Rather, classic just war thinking begins with moral *obligations*: the obligation of rightly-constituted public authorities to defend the security of those for whom they have assumed responsibility, and the obligation to defend the peace of order in world affairs. That is one reason why Aquinas put his discussion of just war within the *Summa's* treatise on charity: public authorities are morally obliged to defend the good of *concordia* - the peace of order - against the threat of chaos. That is why Paul Ramsey described just war thinking as a specification of the second great commandment of love of neighbor - even as he insisted that the same commandment put limits on what can be done in defense of security, order, and peace. In the classic just war tradition, armed force is not intrinsically suspect from a moral point of view. It depends on who is using it, why, for what ends, and how. All of this bears directly on the case at hand.

Just Cause. In classic just war thinking, "just cause" meant response to an aggression underway, recovery of something wrongfully taken, or punishment for evil. Contemporary just war thinking tends to limit the meaning of "just cause" to "response to an aggression underway" (although calls for "humanitarian intervention" to prevent or halt genocides may resurrect the classic idea of "punishment for evil"). So the question is, when do we know that "aggression" is "underway"?

This is neither 1776 nor 1812; an "aggression underway" is not a matter of waiting for the redcoats to crest the hill at dawn. Modern weapons technologies, the character of a regime, and the hard lessons of 9/11 must be factored into today's moral analysis of "just cause" and into our ideas of "imminent danger." Which brings us to Iraq.

When a regime driven by an aggressive fascist ideology has flouted international law for decades, invaded two of its neighbors, and used weapons of mass destruction against its foreign and domestic enemies; when that regime routinely uses grotesque forms of torture to maintain its power, diverts money from

feeding children to enlarging its military, and rigorously controls all political activity so that effective internal resistance to the dictator is impossible; when *that* kind of a regime expands its stores of chemical and biological weapons and works feverishly to obtain nuclear weapons (defying international legal requirements for its disarmament), tries to gain advanced ballistic missile capability (again in defiance of U.N. demands), and has longstanding links to terrorist organizations (to whom it could transfer weapons of mass destruction) - when all of *that* has gone on, is going on, and shows no signs of abating, then it seems plausible to me to assert that aggression is underway, from a just war point of view.

A historical analogy may help. Given the character of the Nazi regime and its extra-legal rearmament, would it not have been plausible to assert that aggression was underway when Germany militarily re-occupied the Rhineland in 1936, in defiance of the Versailles Treaty and the League of Nations? The withdrawal of UNSCOM weapon inspectors from Iraq in 1998 was this generation's 1936. Another 1938, a new Munich, is morally intolerable: the world cannot be faced with a nuclear-armed Saddam Hussein and an Iraqi regime that had successfully defied all international legal and political attempts to disarm it.

Just cause is satisfied by recognizing that the present Iraqi regime, armed as it is and as it seeks to be, is an "*aggression underway*." The U.N. recognized that in 1991 when it demanded Iraq's disarmament. To disarm Iraq now, by using proportionate and discriminate armed force if necessary, is to support the minimum conditions of world order and to defend the ideal of a law-governed international community. Thus military intervention to disarm Iraq is not "pre-emptive war," nor is it "preventive war," nor is it aggression. The war has been underway for twelve years.

Competent authority. This classic "war-decision" criterion reflects the tradition's basic distinction between *bellum* and *duellum*. *Duellum*, dueling, is armed force used for private ends by private individuals. *Bellum*, war, is armed force used for public ends by public authorities who have a moral obligation to defend security and order. "Competent authority" once helped moral analysts distinguish between legitimate princes and marauding brigands. For the past several hundred years, "competent authority" has resided in the nation-state. Over the past year, a new claim has entered the debate: that only the United Nations (which in effect means the Security Council, which in effect means the five veto-holding members of the Security Council) possesses "competent authority" to authorize the use of armed force.

This claim actually outstrips anything the U.N. claims for itself. The Charter explicitly recognizes an inalienable right of national self-defense; if you are attacked, you do not need the permission of veto-wielding permanent members of the Security Council like France, China, or Russia before you can defend yourself. A further, interesting question is raised by the claim that only the Security Council possesses the moral authority to authorize the use of force: how is *moral* authority (as distinguished from political throw-weight) derived from the acquiescence of states like China, Russia, and France, whose foreign policies are conducted on entirely amoral (i.e., Realpolitik) grounds? Here is something for the masters of casuistry to think about.

In the case of Iraq, the debate these past two months came down to one question: how many more "final" Security Council resolutions were required to satisfy the war-decision criterion of competent authority? When Resolution 1441 was meticulously negotiated last November, everyone understood that the "serious consequences" to follow Iraq's material breach of the demand for its disarmament *and its active cooperation in that disarmament* meant intervention through armed force to enforce disarmament. Is it obtuse to suggest that the unanimous acceptance of 1441, by a Security Council which obviously understood what "serious consequences" meant, satisfies the criterion of "competent authority" - and precisely on the grounds advocated by those who argue for the superior competence of the U.N.? No. Absent another "final" Security Council resolution, would the use of armed force to compel Iraqi disarmament mean that brute force had displaced the rule of law in world affairs? No. It would mean that a coalition of states had decided, on just war grounds, that they had a moral obligation to take measures that the U.N., as presently configured, found it impossible to take - even though those measures advance the U.N.'s goals.

Willing ends without concurrently willing the means necessary to achieve them is not morally serious. Functional pacifism cannot help us traverse the hard, stony path from today's world - in which homicidal

ideologies are married to unimaginably lethal weapons - to the world envisioned by John XXIII's *Pacem in Terris*: a law-governed international political community.

Finally, the criterion of "competent authority" involves the "location" of moral judgment in matters of war and peace. The *Catechism* is quite explicit: "the evaluation of these [just war] conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good" [2309]. Responsible public authorities make the call. Religious leaders and religious intellectuals must teach the relevant moral principles, insist that they inform public and governmental debate, and bring their best prudential judgments to bear in those debates. But the call is made by others.

Proportionality. The most intellectually respectable arguments against military intervention in Iraq have involved weighing desirable outcomes (Saddam's disarmament) against undesirable possibilities: the "Arab street" in chaos, further deterioration in the prospects for peace in the Holy Land, terrorists emboldened, a new and dangerous rift in Christian-Muslim relations. These are very serious concerns. Yet scholars and analysts with entirely respectable track-records have argued that these things will *not* happen. The "Arab street" did not rise up as predicted in 1991; the first Gulf War actually advanced the cause of Middle East peace by leading to the Madrid peace conference; terrorists struck the United States most viciously when Osama bin Laden had convinced himself that Americans were feckless. As for the future of relations between the West and the Arab Islamic world, the brilliant Fouad Ajami, a Lebanese Shi'ite, has argued that, for all its dangers, the disarming of Iraq, ridding the Iraqi people of a vicious dictatorship, and helping to build a new, democratic Iraq could have a galvanizing effect throughout the Middle East by breaking the patterns of corruption and repression we now mistakenly call "stability," and by challenging what Ajami calls the culture of "bellicose self-pity" in the Arab Islamic world.

This is, as always in the just war tradition, a judgment call. Reasonable people could differ on it. What should not have been in dispute is that the gravest damage would be done to the cause of world order and international law if Saddam Hussein were permitted to defy demands for his regime's disarmament. That fact must weigh heavily in any calculus of proportionality.

Last resort. "Last resort" is also a matter of prudential judgment, not algebraic certitude. I judge that "last resort" was reached in the first months of 2003 for at least three reasons:

First, the experience of the late 1990s demonstrated that containment cannot work in Iraq, given the weaknesses of the U.N. system and the cravenness of those Security Council members who dismantled UNSCOM for commercial advantage. A prudent statesman could not assume that effective containment could be re-built. Moreover, a robust containment regime would have to include economic sanctions; the primary victims of those sanctions, thanks to Saddam's manipulations and internal control, would be Iraq's ill, elderly, and children. This would have been a morally superior policy option?

Second, the post-Resolution 1441 inspections process seemed almost certainly incapable of succeeding in its task: to compel the disarmament of Iraq. It could not succeed because the regime cooperation necessary to rid Iraq completely of WMD was manifestly not forthcoming - and never would be.

Third, "last resort" was reached because deterrence was not an option after containment's failure. When Saddam Hussein got control of nuclear weapons - and prudent statescraft understood that, absent disarmament and regime change, the question was *when*, not *if* - the only forces that would be deterred would be the U.N. and the U.S. The Iraqi people would then be condemned to more torture, repression, starvation, and disease. Our capacity to protect the Kurds and Shi'ites would be lost. Moreover, no prudent statesman could bet on the long-term likelihood of deterring a man who, at many crucial junctures in the past, had made the wrong decision, with vast suffering as a result.

I took no pleasure in reaching this conclusion. People of decency and good will kept saying, "But surely there must be another way?" The hard fact of the matter, though, is that the other ways had all been tried and had all failed. It was true that we had been brought to this point both by Saddam's relentless pursuit of power and by failed western policies in the past. But the failures of the past could not be excuses for further failures of wit and nerve now. Last resort was upon us in early 2003. A binary choice had been posed:

appeasement, or military intervention to enforce disarmament. And the appeasement of Saddam Hussein's murderous regime was, in my judgment, both morally loathsome and a profound threat to peace.

From War to Peace. The just war case for the war against the Iraqi regime must conclude with a viable concept of the peace that can be achieved after Saddam Hussein, his government, and the Ba'athist regime are deposed and Iraq's disarmament of WMD is achieved. As President Bush and his senior counselors made clear, armed intervention in Iraq would not be a matter of "butcher and bolt" (as Britain used to describe some of its 19th century Third World adventures). Disarmament and regime change must, and will, be followed by a concerted effort to rebuild Iraq - to empower its educated and hard-working people to regain control of their own lives, and to facilitate the emergence of a modern, post-Ba'athist Iraq that is good for Iraqis, good for the region, and good for the world. In that way, the use of proportionate and discriminate armed force against the Saddam Hussein regime - not against the Iraqi people but against the regime that has brutalized and enslaved them for decades - can contribute to building the peace of order, justice, and freedom in a long-suffering country. And in doing so, it can set an example for the entire Middle East.

As the Holy Father has said, war is always a "defeat for humanity," a defeat for the forces of reason. Permitting Saddam Hussein to realize his ambitions to hegemony in the most volatile region of the world would also be a defeat for humanity and its quest for the peace of order that is composed of freedom and justice. The "defeat for humanity" that the last resort of armed intervention to enforce Iraq disarmament will represent can be redeemed by the emergence of a new, free, and stable Iraq - a living refutation of the debilitating notion that Arabs and Muslims are incapable of self-government and unsafe for the world. Thus "last resort" can, and I pray will, create an opening to new and welcome possibilities for the pursuit of peace, security, and freedom.