

## Just War Theory

by Rodrigue Tremblay

**D**oes the Bush administration have the right under international law to attack and invade a sovereign nation in order to change its government? On March 20, 2003, a U.S.-led war against Iraq began when cruise missiles and laser-guided bombs were fired at the city of Baghdad and its surroundings. Since this war hasn't been formally approved by an international court of justice or by the United Nations, isn't the U.S. government in a legal quandary by having U.S.-led forces invade and the U.S. military occupy another country? A basic tenant of the United Nations Charter is the protection it accords to the domestic sovereignty of its member states. Therefore, changing the governments of member countries isn't one of the prerogatives of the UN; changing the governments of sovereign countries is even less a prerogative of the United States. The UN Charter is very clear. It outlines the cardinal rule of international law that the territorial integrity of all states must be respected. No international order is possible without this principle. Article 2.3 and Article 2.4 of the charter stipulate that:

2.3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

2.4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the UN.

In arrogating the right to overthrow the Iraqi govern-

ment and depose of Saddam Hussein by force, the Bush administration is violating international law and the UN Charter.

Until the Kosovo precedent of "humanitarian international military intervention" within a sovereign state to protect the basic human rights of minorities (but not to overthrow its government), specialists in international law knew only two exceptions to this comprehensive prohibition of state-sponsored violence: The first exception is every state's natural right to self-defense (Article 51 of the charter). The second exception concerns the collective coercive measures of the UN according to articles 42 and 53 of the charter. Accordingly, the UN Security Council can allow certain member states or regional alliances to use force. This was the reason that the United States and British governments were anxious to obtain some majority support from the fifteen-member Security Council. Without such a seal of approval, a U.S. invasion of Iraq would appear to the rest of the world as being an illegal and illegitimate act of aggression. Under international law, no single individual country can legally use force against another, outside of these narrow situations, without provoking ipso facto a return to international anarchy.

Why does the U.S. government seem determined to undermine the international legal system, with its preemptive war against Iraq, even when the UN doesn't back the United States up? That is a question that will need to be answered in the years ahead. For the United States, the stakes are high. There is no other country in the world that benefits more from the system of international law. U.S. economic and financial interests are substantial and worldwide. The last thing the United States needs is

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a regression of international relations toward anarchy and the rule of brute force.

It is a terrible mistake for the Bush administration to be so shortsighted as to believe that the United States will be able to prosper in a world devoid of international legal order, relying solely on its military might to defend its legitimate interests. If the administration's planners follow the dangerous precedent that others before them have applied with disastrous results (for example, Adolf Hitler in Germany, Benito Mussolini in Italy, and Nikita Khrushchev in Russia), they will be launching the United States on a mine-filled journey it will sooner or later deeply regret. Other nations in the future, when they become powerful enough, will inevitably attempt to follow in the United States' footsteps and invoke their own precedent for unilateral military action against any sovereign nation they choose.

Where would the world be then? Back to the nineteenth century and possibly back to the middle of the seventeenth century, before the Treaty of Westphalia in 1648. The latter was signed after the end of the European Thirty Years (religious) War. It incorporated the basic principles of the sovereignty of nation states, internationally binding treaties between states, and nonintervention of one state into the internal affairs of other states. Indeed, the Treaty of Westphalia is crucial in the history of international political relations. This important treaty formed the basis for the modern international system of independent nation states. It marked the beginning of an international community of law between sovereign nations of equal legal standing, guaranteeing each other their independence. Two new regulations were proclaimed: the principle of sovereignty and the principle of equality among nations.

Thus, the treaty defined these new regulations of sovereignty and equality among states in order to establish a durable, eternal peace and friendship among them, within a mutually acceptable system of international law based on globally binding treaties. This was a revolutionary approach to

worldwide relations because, for the first time, it established a system that relied on international law rather than on brute force and the right of the strongest to regulate interactions between states.

Another principle was also present in the Treaty of Westphalia—the idea that magnanimity, concessions, and cooperation had to be relied upon by the victorious parties in order to achieve an enduring peace. It was really the beginning of a genuine international constitution for humanity and the advent of a new international order. After the Thirty Years War, religion became less a politically motivating force behind conflicts between European states, being replaced by considerations of national interest. In a way, international affairs became secularized and somewhat devoid of religious considerations after 1648. If the United States were to declare to be de facto above international law and claim the right to provoke regime changes in other sovereign countries, this would be an illegal and illegitimate objective. Regime change as a goal of military intervention violates the system of international relations, not only since the advent of the UN but also since the Westphalia Peace Treaty.

The principle of nation-state sovereignty has been the foremost stabilizing principle in the world for three and a half centuries, ever since 1648, and was solemnly reiterated by the Helsinki Conference of 1975. However, the current U.S. administration openly defies and challenges this fundamental principle under two pretexts. First, the United States has a special place among nations because it is the major defender of liberty and democracy around the world and, second, because it devotes the largest amounts of resources to military expenditures. These two considerations are deemed sufficient by its leaders to serve as a justification for U.S. unilateral behavior around the world.

A little more than a quarter of a century ago, on August 1, 1975, the international community adopted the ten Helsinki principles, which went further than the UN Charter of 1945 in guaranteeing the borders and territorial integrity of all existing states. However, the Helsinki principles contained a quid pro quo. For example, in order for their borders to be respected, sovereign states must respect the human rights of minorities within those borders. Nevertheless, the Helsinki principles—of which thirty-three European countries plus the United States and Canada are signatories—are of paramount importance because they played a fundamental role in opening up the communist bloc to liberty and freedom. This has been confirmed by former Soviet president Mikhail Gorbachev who believed that the Helsinki principles ushered in basic reforms within the Soviet bloc—reforms that

wouldn't have taken place otherwise.

The Helsinki accords proclaim fundamental individual rights and the concomitant principle that these rights can't be imposed by violating the principle of national sovereignty. In addition, they explicitly state that participating states will refrain "from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating state, regardless of their mutual relations. Countries will accordingly refrain from any form of armed intervention or threat of intervention against another participating state."

The Western powers, the United States in particular, were very anxious to have the noninterference clause introduced explicitly in international law. They hoped that such a clause might reduce the chance that the Soviet Union would again intervene in the affairs of Eastern European countries, as it had in Hungary in 1956 and in Czechoslovakia in 1968. Indeed, according to the infamous 1968 Brezhnev Doctrine, the Soviet government, not unlike the U.S. government today, had asserted its right to intervene where there could be internal or external forces hostile to communism. Replace the word *communism* with *the United States* and the 1968 Brezhnev Doctrine morphs into the 2002 Bush Doctrine. The Soviet government proclaimed its right to intervene unilaterally against any country that threatened its empire; the U.S. government proclaims its right to intervene unilaterally against any country that threatens its security. The principles of international relations have changed considerably: the Soviet empire no longer exists, and the United States is openly aspiring to become one. The U.S. government is now challenging the very concept of sovereignty that it supported not long ago because it wants more sovereignty and freedom of action for itself and less for other countries. The Bush administration acts as if it never understood the reasons why democracy won against communism. For example, there can't be basic human rights without peace and there can't be a durable peace without respecting the sovereignty of nations.

**T**here are many other important matters to be considered before rushing toward an illegal war against a sovereign nation.

People with a religious bent sometimes refer to the ancient and medieval concept of *just or righteous war* when they want to validate an offensive and aggressive action. The concept of just war was

crafted at a time when the technology of violence was much less advanced than today and pertains to defending battle along Christian moral principles. Religions purposefully forbid doing to others what one doesn't want to be done to oneself and, as in Paul's biblical writings, one must not render evil for evil but overcome it with good (Romans 12:17 and 21). However, war's central action is to inflict suffering and death on other people, so it isn't easy to justify war and military murder in the name of Christianity. Historically, some religious scholars—especially after the Roman Catholic Church became identified with the Roman Empire—attempted to devise arguments to justify wars under certain conditions. (See Mister Thorne's article "Atheists in Foxholes, Christians in Uniform," page nineteen, for the just war principles.)

Augustine (354–430 CE), the originator of just war theory, contended that even cases of individual self-defense of life or property are never a justification for killing one's neighbor. Moreover, Augustine stated that the only reason for waging a war would be to defend the nation's peace against serious injury. Therefore, there are very few instances when a country is justified in attacking another. During the Middle Ages, scholastic philosophers such as Thomas Aquinas, Francisco Suarez, and Francisco de Vitoria further developed just war theory. According to Aquinas' book *On War*, a war of self-defense needs "no special moral justification;" however, an offensive war should be viewed only as a defensive measure.

Nowadays, with the tremendous destructive power of modern weapons, such principles of just war are irrelevant and can't be invoked to launch aggressive wars. It is obvious that the use of nuclear weapons is morally prohibited under any circumstances because they are designed to kill innocent people indiscriminately. Even the "smart" bombs that certain U.S. military people boast about are morally indefensible and unjust. According to the Pentagon, such smart bombs miss their targets more often than they hit them. Such is also the case with cluster bombs; at least 5

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percent of them explode days or weeks after impact and are often picked up by civilians or unsuspecting children. The same can be said about landmines, which kill more noncombatants than combatants. The moral conclusion is clear: sophisticated modern weapons have rendered modern warfare obsolete because it is no longer waged between armies but against civilian populations. Political thinkers who say aggressive wars are justified in theory and in practice are misguided. There can't be a just war under modern conditions and circumstances.

In the aftermath of World War II, Pope Pius XII declared, "The enormous violence of modern warfare means that it can no longer be regarded as a reasonable, proportionate means for settling conflicts." And Pope John XXIII's encyclical *Pacem in Terris* also condemns wars of aggression: "Therefore in this age of ours, which prides itself on its atomic power, it is irrational to think that war is a proper way to obtain justice for violated rights." One can safely say, therefore, that just war theory has been completely eliminated from religious or, for that matter, secular morality. What is left is the moral concept of self-defense and defensive wars, but only when there is proportion-

ality between the needs to secure a country's peace and the means to do so.

In conclusion, when the Bush administration develops arguments to launch aggressive wars all over the world, it can't do so according to the basic principles of international law, nor can it do so according to fundamental principles of morality and justice. The United States now runs the risk of transforming itself into an international rogue state. The greatest success of the Islamic al-Qaeda terrorists on September 11, 2001, wasn't the killing of three thousand innocent people but rather the transformation of a great and free democratic nation into a neo-conservative and fascist society.

*Rodrigue Tremblay is emeritus professor of economics and of international finance at the Université de Montréal in Québec, Canada, and holds a Ph.D. in economics from Stanford University in California. This article is adapted from his forthcoming book Behind Bush's War, initially published in French in 2003. He is also the author of numerous professional articles and books, including a basic textbook in economics.*

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