Just War Theory and Explosive Remnants of War

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For centuries, philosophers and political theorists have pondered the ethical considerations of waging war. Just War theory, expounded upon by contemporary thinkers, addresses three ethical components of war-making: the conditions for going to war, acceptable violence during combat, and the eventual resolution and remediation of conflict. These issues and their overlap with humanitarian demining and small arms/light weapons control are examined below.

by Eric Patterson, Ph.D. | Georgetown University |

For the better part of two millennia, churchmen, scholars, jurists, soldiers and statesmen have turned to Just War theory for guidance in making ethical decisions about war. Indeed, Just War concepts permeate international law and the laws of armed conflict; it is from the Just War tradition that we get the principles of proportionality, noncombatant immunity, and the idea that legitimate authorities (i.e., governments) should have a monopoly on the use of force.

As the readers of this journal tend to be concerned with moving beyond the destructiveness of the conflict cycle, it is appropriate to ask, “Does Just War theory have something to say about our efforts to mitigate the threat to human life and property from explosive remnants of war?” As illit at military-style small arms and light weapons?
The answer is yes. Just War theory informs our view of weapons in or out of the hands of legitimate authorities, about the ethics of how war is conducted and about the post-conflict context.

Essential Just War Theory
In its strict form, Just War theory provides policy and moral guidance on two issues: under what conditions it is moral to go to war (jus ad bellum) and how violence can be morally employed during war (jus in bello). Early Just War theorists, such as Thomas Aquinas, argued that the principal decision to use military force was based on three criteria: (1) whether there is a just cause, (2) whether there is a rightful authority acting on a just cause with right intent. Over time, new factors—what James Turner Johnson has aptly called “additional prudential criteria”—were added to the trio: likelihood of success, proportionality of ends and last resort.

In addition to the criteria governing the resort to force, jau in hel suggests that wars should be waged with restraint, using means and tactics proportionate to battlefield objectives (proportionality) that limit harm to civilians (discrimination or noncombatant immunity). Finally, it should be noted that a handful of contemporary authors argue that we should consider the moral context of how wars end (jus post bellum), which is an appropriate focus for practitioners who concern themselves with the detritus of violence in the aftermath of war.

Just War’s Questions and Action Against ERW
The issue of legitimate authority. One of the interstices between explosive remnants of war and illicit small arms/light weapons and the Just War tradition concerns legitimate authority. Just War theory begins with the question, “Under what conditions is it just to go to war?” One of the answers provided by Augustine of Hippo (St. Augustine) and Aquinas is that, in general, legitimate authorities—we call them governments today—are the only agents that can justifiably use force. Of course, Just War theory has traditionally accepted individual self-defense, as well as communal self-defense in unique cases such as genocide. Nevertheless, generally speaking, for Just War theory, government authorities are the only legitimate purveyors of force. This premise has obvious ramifications for the issues related to conventional weapons and explosives in the developing world, such as stockpiled mines, ordnance and SA/LW.

A concern that many of us share is the over-abundance of military-style SA/LW and other conventional weapons of war that are either poorly secured or beyond the control of government authorities in developing countries. Of course, we are not talking about such items as sporting or hunting rifles, which citi- zens legally own in accordance with national laws, but rather the remnants of war such as the millions of Warsaw Pact weapons that made their way to Af- rica through the gray and black markets during the 1990s or the tons of explosives looted from Saddam Hussein’s arsenal.

These weapons, moving clandestinely across porous borders in the hands of criminals and terrorists, exacerbate conditions of insecurity and hamper good governance by legitimate governments. Likewise, the availability of explosive material, from landmines or other sources, has provided the components for improvised explosive devices. Fragile post-conflict governments can be hamstringing in their efforts to develop economically and agriculturally if their lands are contaminated by unexploded ordnance or mines. The point is that a rightly ordered, or just, society presupposes conditions of security guaranteed by legitimate authorities, but that such a guarantee is often beyond the abilities of modern post-conflict institutions, which are limited further by poorly trained police, unpaid soldiers, newborn judicial systems and fledgling civil administration agencies.

The issue of noncombatant immunity. Just War theory asks a second question: “Assuming that the decision to fight a war has been made, how can battle be conducted in a way that is moral?” One element of Just War theory that answers this question is the principle of discrimination—distinguishing authorized military agents of states (e.g., soldiers and sailors) from civilians. This principle is often called noncombatant immunity, which has historically included women, children, the wounded, the elderly and the like.

The problems we have seen in the past decade that are directly related to illicit SA/ LW include rebel forces purchasing arms on the black market, illicit weapons ending up in the hands of child soldiers, and poorly secured national stockpiles being pillaged by criminals. Insidiously, terrorists often target civilians as “soft targets” for
With financial assistance from the U.S. State Department, Senegal has successfully collected and destroyed more than 4,300 landmines, including 580 anti-personnel mines and 3,720 anti-vehicle mines.

PHOTO COURTESY OF MAJOR ROB ATIENZA, U.S. EMBASSY IN DAKAR, SENEGAL

Clearing the Falkland-Malvinas Islands

Under pressure from nations around the world and in compliance with Article 5, the U.K. has committed to demining the Falkland-Malvinas Islands, despite the potential cost of demining in a relatively mine-safe area.

The news of the United Kingdom’s decision, under global pressure, to begin demining the Falkland-Malvinas Islands does show a commitment to holding countries to the agreements set up by Article 5 of the Ottawa Convention.4 The location and situation of the landmines in the Falklands raises the question: Is demanding that the Falkland-Malvinas Islands be cleared a triumph of global pressure, to begin demining the Falkland-Malvinas Islands, despite the potential cost of demining in a relatively mine-safe area.

Eric Patterson serves as Assistant Director of the Berkley Center for Religion, Peace & World Affairs, where he studied and worked on the issues of international and nuclear security, religious and human rights, and the role of religion in international diplomacy at Georgetown University. He is the author or editor of numerous books, including Do Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats (Lexington Books, 2007), Global War on Terror and Religion: What Are the Core Norms of Religion and the War (Berkley Center, Georgetown University, 2008), and Religion, War, and Peace: A Handbook of Religious and Peaceful Conflict Resolution Strategies (Lexington Books, 2007).

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Clearing the Falkland-Malvinas Islands

No Casualties in Over 20 Years

These mines pose a minimal threat to the Falkland-Malvinas Islands. There have been no civilian casualties since 1982, and there is little demand for the contaminated land. The Islanders themselves have been very vocal in asking the British government to spend money elsewhere. Mike Summers, a member of the legislative council of the Falkland-Malvinas Islands government, echoed this sentiment, saying, “There are a lot of mines in the Falklands, but they are not that intrusive. Clearly there is an issue about clearance, but unless they are cleared, we are not going to take the fences down anyway.” If that can be done, then fine. If the British government was to invest money in clearing mines, then we would be more happy for them to invest it in other countries. Our needs are not as pressing as other people’s.6 He goes on to say, “That doesn’t mean that in the fullness of time we don’t want it done. But we would feel somewhat embarrassed if the British government spent money clearing mines in the Falklands if there was an opportunity to spend it in some other territory where there are children and adults at risk.”7