

To what extent was
the war in
afghanistan a just war



The war had the backing of most Just war theorists those who believe that wars must meet certain criteria before they can be deemed Just. This essay will discuss various aspects of the causes and conduct of the U. S. wars in Iraq and Afghanistan and how they fit into established ethics of war in Western traditions.

First, this analysis will deal with the Justifications to go to war (Jus ad bellum). While second, it will focus on the conduct of war (Jus in bello). The analysis is divided further into the reasons behind the decision to wage war and the chief ideas of the conduct of warfare that will be examined both by the validations given and the individual ideologies of the ethics of war. A military response, to the attack on the United States on the 11th of September was justified in terms of self-defence.

In modern interpretations of Just war theory there are two legitimate reasons for aggressive war: 'self defence against an aggressor and humanitarian intervention against a sovereign state in response to acts that shock the moral conscience of mankind'. Evidently, if the US singled out Osama Bin Laden and Al-Qaeda as its targets, it would have run up against the widely held view that terrorist attacks, in and of themselves, do not justify military responses against sovereign states. Subsequently, in order to maintain the coalition against terrorism and establish a 'Just cause' for OEF, the US adopted a two-pronged legal strategy.

It began by expanding its focus to include the Taliban. By giving refuge to Bin Laden and Al-Qaeda and refusing to hand him over, the Taliban were alleged to have indirectly facilitated and endorsed his acts. The US in this way

broadened the claim of self-defence to include the state of Afghanistan.

Thus, the Taliban regime assumed responsibility for the armed attack against the United States and opened the way to the exercise of forcible US response in self-defence. It needs to be noted that the US can also be seen to have satisfied the Jus in bellum criteria for a 'legitimate authority.

Under article 42 of the UN Charter, the UN Security Council has become the sole legitimate authority for authorising the use of armed force to maintain or restore international peace and security and several legal commentators have argued that it authorized the United States to go to war against al Qaeda and the Taliban by pointing to two resolutions unanimously adopted by the Council in the aftermath of 9/11 : Resolution 1368 of September 12, 2001, and Resolution 1373 of September 28, 2001.

However, others have argued that a close reading of the resolutions, and a comparison of these resolutions with an earlier resolution, shows that they did not authorize war. Nevertheless, it has further been argued that there was an implicit authorization following from the references to the inherent right of self-defence and the lack of notable opposition from any government to United States actions in Afghanistan. Additionally, the secretary general of NATO, declared that the evidence the Washington Treaty.

Evidently whilst they may not have explicitly authorized it, it can be argued that Operation Enduring Freedom received some legitimate authority from both NATO and UN Security Council. Further, the criteria of 'last resort' cannot be ignored, particularly seeing as though OEF commenced merely four weeks after the attacks of September 11 . The criterion of last resort

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requires that reasonable measures be taken to seek the achievement of the just cause of the war through non-violent means as War can be morally legitimate only when a state has made every effort through measures short of war to seek to redress the evil'.

It has been argued that since the US made no attempts at bilateral diplomacy, economic and political sanctions, and judicial proceeding, it is reasonable to conclude that the war in Afghanistan is not a war of last resort. Conversely, some commentators have argued that the Taliban were not seriously interested in negotiating, and thus, only 'an all out military assault would expel the al-Qaeda network from Afghanistan'. Indeed, The Taliban and the Al Qaeda forces in Afghanistan were mutually interdependent forces.

The chief reason for supposing that the Taliban would not surrender Bin Laden is simply that they could not do so without bring about their own destruction. Finally, some have argued that in this case, it was a last resort as Al Qaeda had been implicated in numerous prior attacks of terrorism, most notably the planning for simultaneous attacks on airliners in the Philippines, the 1993 bombing of the World Trade Center and the attack on the U. S. S. Cole in Yemen in 2000 and was at the time of the 9/11 attacks already the target of a massive international law enforcement effort.

It follows that even if our cause is just we still have to consider most carefully and honestly whether the good we reasonably expect to achieve is large enough and probably enough to outweigh the inescapable harm in loss of lives, damage and disruption'. An unconditional, unlimited war of attrition

is morally unacceptable. Schmitt argues that the strikes against Al Qaeda were proportionate as Al Qaeda forces in Afghanistan numbered in the thousands and were widely dispersed. Further, it has been argued that Al Qaeda remain a very viable threat as they continue to operate from bases in any number of countries.

Nevertheless, others have argued that whilst it was permissible for OEF to eliminate the military capacity of the Taliban and al Qaeda in order to prevent a future attack by them, 'eliminating the whole government structure created by the Taliban, as a war aim, was beyond necessary self defence' and therefore a disproportionate use of force. However, it can be seen that the United States did not seek to eliminate the Taliban entirely, because it hoped to attract moderate Taliban to the US side.

Thus, it intended to replace the radical Taliban leaders and to ensure that the new government of Afghanistan would not follow the policies of those Taliban leaders and it is questionable, at best, whether this goal would be incompatible with the proportionality principle. Further, the criterion of right intention requires that the purpose of going to war must genuinely be to help create a better subsequent peace than there would have otherwise been, disqualifying revenge or the accumulation of resources as legitimate aims.

Some commentators have argued that the US acted in accordance with international laws and hence, any illegitimate motives would have surfaced. Regardless, it does need to be noted that the change to international law establish self-defence as an accepted basis for military action against some terrorist attacks, the US will now be able to invoke it again, even when the

circumstances are less grave. Finally, the *Jus in bellum* criteria for a 'high probability of success' holds that you cannot fight even in a just cause, if all you will do is cause lives to be lost with no hope of success.

Arguably, there was never any serious concern that the supremacy of the US military would be challenged in Afghanistan. However, the capacities of an extensive and shadowy terrorist network are difficult to gauge. And if these networks are viewed as being fed by disparate strains of fanaticism and political alienation', then arguably a successful antiterrorist campaign must also deal with the intangible global battle for hearts and minds. As well as the aforementioned *Jus ad bellum* criteria, there are two *Jus in bello* principles which need to be addressed.

An analysis of the first *Jus in bello* principle, discrimination, raises serious concerns as to whether attacking forces acted in accordance with their obligation to exercise 'constant care to spare the civilian population' and take 'all feasible precautions' to minimize loss of civilian life. There are certain individual bombing missions that raise special concerns. Perhaps the most noteworthy were the two bombings on an International Committee of the Red Cross (ICRC) warehouse compound in Kabul. On 16 October US planes, in a daylight raid, bombed the compound. One local Red Cross guard was injured in the attack.

Since the first attack had been publicly reported, and the ICRC had reminded the US of the positions of their compound it might have been thought that special care would be taken to ensure that there be no repetition of such attacks. However, ten days later US warplanes again struck at the same

compound. It is extremely difficult to reconcile this second attack with the Jus in bello principle of discrimination, in particular the positive duty to take precautions in attack and abort an attack if it becomes clear that the focus on the attack is actually a civilian object'.

Nevertheless, it also needs to be noted that whilst the discrimination condition is one of the in bello conditions, it does not forbid all killing of civilians; it concerns only targeting and therefore allows the killing of non-combatants as a side effect of force directed at proper military targets, or as "collateral damage". In many versions of just war theory, the distinction here turns on the doctrine of double effect, which holds that 'non-combatant injuries are Justifiable even if they are foreseen, so long as non-combatants are not the object of attack.

Bearing this in mind, some have argued that there is 'no credible evidence in the conduct of the air campaign to suggest that there has been the deliberate targeting of civilians qua civilians'. That is not to suggest that civilians have not been killed, but rather it has been the result of 'mistakes made about the location of military targets, weapon malfunctions, or where civilians have died as an unintentional side-effect of attacks on military targets'.

Arguably, just war theory would be unacceptable if it said there is no objection at all to killing civilians collaterally, and two further conditions prevent this. The necessity condition, which parallels the ad bellum last-resort condition, says that killing soldiers and especially civilians is forbidden if it serves no military purpose; collateral killing of civilians is forbidden if the

resulting civilian deaths are out of proportion to the relevant good one's act will do; excessive force is wrong.

Difficult proportionality questions are raised by the use of depleted uranium weapons, cluster weapons as well as the targeting of television and radio stations. The US and its allies have still not confirmed whether or not depleted uranium weapons were used in Afghanistan. The effects of the weapon extends beyond the initial blast to lasting environmental damage caused by contamination. There is also evidence that suggests that the contamination of water supplies may have a profound effect on the health of the local population as a whole.

Depleted uranium weapons may be both indiscriminate (in that the nature of the weapon itself makes it impossible for it to be targeted against combatants alone) and disproportionate (in that the weapon's long term cost exceeds its short term military utility). Additionally, cluster weapons have been widely used in this conflict. Criticism has surrounded the use of these weapons because, aside from their destructive effect, these weapons have a 'dud' rate for submission of between 5 and 10 per cent. As a result of these weapons leaving unexploded ordinances, they frequently lead to civilian casualties, both during and after the conflict.

Further, Afghanistan is largely an agricultural nation and as many of the bomblets are spread over fields, vineyards, and walled gardens they interfere with agriculture crucial to Afghanistan's recovery. The civilian casualties and socioeconomic harm caused by unexploded cluster omblets in Afghanistan demonstrate the need to reduce the dud rate dramatically.

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Arguably, their large footprint, and their long-term effect because of 'duds' should be considered under the proportionality test used during targeting and evaluated to see if they are indiscriminate.

In some circumstances, the long-term harm to the civilian population of cluster bomb use may outweigh the short-term military benefit'. Further, it has been suggested that radio and television stations have been attacked by US warplanes, as they may have been used as propaganda organs for the Taliban. There have been no suggestions that the stations hit were part of an integrated military communications network and subsequently, it can legitimately be doubted whether this was an appropriate military target.

Further, even if one were to conclude that certain television or radio stations were, through their propaganda making an effective contribution to military action, it would not necessarily follow that their destruction offers a definite 'military advantage' and thus, the attack cannot be seen as proportionate. In circumstances such as Afghanistan, the application of Just ar theory and the ethics of war are by no means simple or clear, as it is hoped the above discussion has shown. Still certain things are clear.

The use of force in Afghanistan was Justified in terms of self defence which has serious applications, as it has opened up the door for wars to be waged on less grave offences than the September 11 attacks. Unlike an assessment of Just cause and legitimate authority, assessments of reasonable likelihood of success, proportionality, and last resort require extensive empirical speculation concerning what might have happened if a different policy had been pursued and what still might happen as a result of the chosen policy.

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Nevertheless, when it comes to the Jus in bello principles of argue that both the first and the second element of the Jus in bello were fulfilled, the use of cluster bombs and potentially uranium weapons raises serious concerns. Arguably, if anything, OEF demonstrates the need to carry out a thorough investigation of the collateral damage and battle damage assessment processes to determine how changes can be implemented to reduce civilian deaths.