

# Lesson Series 26: War and Human Rights

## Introduction

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This lesson is based on a discussion about the war against Iraq.

### Questions:

1. What is your government's view about this war?
2. What are the views of your friends and yourself?
3. How do your views compare with the principles of international law?

## **A summary of the positions in international law that emerged during the recent debate on war**

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### **Reading 1: Extracts from a speech by Justice C. G. Weeramantri (retired), International Court of Justice**

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#### **Legal Aspects of Proposed Military Intervention in Iraq**

[Note: following is the summary of a speech delivered by Justice Weeramantri at the University of London on the 27 February 2003. Source: *The Island*, 18 March 2003, <http://www.island.lk/2003/03/18/featur02.html>]

Article I(1) of the UN Charter requires that any measures taken should be “in conformity with principles of justice and international law”. The humanitarian aspects outlined below show the illegality of any military intervention against the background of the humanitarian catastrophe it will create.

International Physicians for the Prevention of Nuclear War (IPPNW) estimate that a war could kill 250,000 on a short-term basis and 250,000 others over the long-term.

The UN based Centre for Economic and Social Rights have found in a February study that military intervention will

- Trigger the collapse of Iraq’s health and food distribution system;
- Put 30% of children under five at risk of death from malnutrition;
- Far exceed the capacity of all the UN’s relief agencies;
- Lead to a humanitarian emergency of unmanageable scale and magnitude;
- Paralyse all civilian life support systems such as electricity, water and sanitation
- Suspend the eleven billion worth of supplies of the Oil for Food Programme;

- Isolate Baghdad's population of five million, around half of whom are children, without food or communication;
- Break down sanitary systems, resulting in plagues and epidemics;
- The proposed attack by 300 cruise missiles a day for two weeks will flatten large areas of Baghdad, killing vast numbers of people, 95% of them innocent civilians;
- Destroy large sections of the population of a dictatorship, who are not responsible for the actions of their Government;
- If the Security Council were to permit such a military attack to take place, this would be totally in violation of Article I(1) of the UN Charter. The words "in conformity with the principles of justice and international law" which were not in the original Dumbarton Oaks draft, were deliberately inserted into the Charter to restrain the powers of the Security Council;
- Neither the powers seeking to resort to military action nor the United Nations have contingency plans for medical relief on the enormous scale involved. This is an essential prerequisite to the legality of any action even the Security Council may sanction;
- Absence of contingency plans for the food interruptions involved. UK and USA have pledged 30 million dollars in emergency aid, but this will cover only one day's supplies under Oil for Food Programme.

#### **Other grounds of illegality**

- The principle of equality of nations - violated by attitude of America in dictating terms to Security Council;
- War is outlawed by UN Charter except in the strictly limited circumstances prescribed, and that too under complete UN control. UN cannot abdicate the conduct of any war to any power;
- Self-defence is limited only to the situation where an armed attack actually occurs and then only until Security Council takes necessary measures. There is no such attack upon US or UK nor even a threat of attack;
- An attack upon a country that is not using force is an act of aggression, which is outlawed by the Charter;
- All unilateral resort to force is outlawed by the Charter;
- Even a few states which are strung together in support of such action do not give it even the semblance of legality;

- All pre-emptive strikes are outlawed by the UN Charter and international law;
- Article 33 makes peaceful settlement mandatory. This includes negotiations, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies, resort to regional arrangements and other peaceful means. All of these are not exhausted. Some have not even been tried;
- An attack on Iraq by US or UK would be an unprovoked act of aggression based on alleged violations of international law, of which the aggressors themselves are guilty, i.e. production and stock-piling of weapons of mass destruction, which they have done on a greater scale than Iraq;
- It is illegal for any state to attempt to depose the ruler of another state;

Consistency of application is basic to international law. All states acting similarly should be similarly treated. If not, why not?

- International law does not permit one law for oneself and another law for others. If it is illegal for Iraq to have weapons of mass destruction, so is it for others;
- “Serious consequences” in terms of Resolution 1441 do not legitimise a blanket reign of death and destruction on a civilian population. Such serious consequences violate the Charter of the United Nations, especially Article I(1) and the Preamble which states the determination of the United Nations “to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind”. The proposed action can unleash a third such war;
- In its Advisory Opinion on the Legality of Nuclear Weapons, the International Court of Justice unanimously decided that “there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” The US and UK are both in breach of this binding obligation in relation to weapons of mass destruction and can scarcely take the law into their own hands to exact compliance with international law by another country in respect of an obligation they themselves have breached.

#### **Obvious practical consequences**

- Bulk of casualties will be civilians. This cannot be dismissed as “collateral damage” without total violence to the principles and purposes of the United Nations and its Charter;
- Even a quick victory of a few days will leave a legacy of generations of anger and bitterness

- Any war is easy to commence but difficult to disengage from. Commencement is a matter of day if not hours. Total disengagement can well take years;
- Every war has unpredictable ramifications, which not the most competent think-tank in the world can foretell;
- The Middle East is an extremely volatile region and military intervention could ignite a powder keg;
- Hostilities lead to a progressive escalation of weaponry and could lead all the way to the use of weapons of mass destruction. All of this is not speculation but is “on the cards” and is openly talked of;
- Irreparable environmental damage is a likely consequence;
- There will be health impairment for generations and defective children will be born for generations;
- Friends will be alienated, neutrals tilted away and enemies embittered;
- Far from ending terrorism the proposed military action will give a new lease of life to terrorism and create vast numbers of new terrorists. In the words of Senator Byrd of Virginia it would “fracture the once solid alliance against global terrorism which existed after September 11th”;
- Such unilateral action would entitle and provoke other nations to act unilaterally;
- It would splinter and cause dissension amidst old peace -keeping alliances such as NATO;
- It would upset stable regimes in the region and create whole new ranges of problems;
- It would weaken the UN and other peace-keeping entities;
- It would weaken the authority of international law;
- It would increase the global race to join the nuclear club;
- It would create instability in Iraq and give rise to fresh dangers attendant on a foreign sponsored government;
- It would increase Middle East tensions;
- It would lead to untold sufferings of soldiers, both of the UK, US and others, who have left their homes in

deep distress and sorrow at parting with their loved ones for a war the purpose of which they may not all understand or approve;

- There will be even in the attacking countries a large legacy of wounded soldiers who will continue to suffer in silence for the rest of their lives;
- The war will lead to an expenditure of billions if not trillions of dollars which can only come out of the welfare services of the state especially at the expense of the elderly, the sick and the disadvantaged;
- Funds for global causes such as AIDS and malnutrition will be diverted into military expenditure;
- Once military action starts and unsettles current world conditions, other countries wanting to use force to gain their objectives could see an opportunity to do so, as the military resources of their opponents would be stretched.

#### **Moral considerations**

- Major religious leaders are against it, such as the Pope, Archbishops and leaders of all religions;
- In Senator Byrd's words "A massive unprovoked military attack on a nation which is over fifty percent children cannot be 'in the highest moral traditions of our country'".
- Nelson Mandela has added the enormous weight of his moral authority to the campaign against war;
- All religions alike emphasise: The unity of the human family, Justice, Peace, the infinite value of human life, Equality, Non-aggression, Tolerance, Forgiveness, Non-violence, The peaceful resolution of disputes, Assistance to those in distress and every one of these values is endangered by the proposed course of action.

Judaism teaches that we should look forward to the day when swords will be converted into ploughshares and we will not learn war anymore; Hinduism - that all humans are sparks of the divine and are of infinite value; Islam - that all are equal and brothers and sisters to each other. Buddhism - that hatred ceases not by hatred and that violence leads to escalating spirals of violence. Christianity - Erasmus, the great humanistic scholar of the Renaissance said "What did Christ teach but peace"?

**Observations of respected leaders**

- President Kennedy - Mankind must put an end of war, or war will put an end to mankind;
- General Douglas Macarthur - Its very destructiveness to friend and foe makes war useless as a means of settling international disputes;
- President Eisenhower - (I speak) as one who has witnessed the horror and the lingering sadness of war - as one who knows that another war could utterly destroy this civilisation which are been slowly and painfully built over thousands of years;
- General Sherman - It is only those who have neither fired a shot nor heard the shrieks or groans of the wounded who cry aloud for blood, more vengeance, more desolation. War is hell;
- Dag Hammarskjold - War has always seemed to me the ultimate insanity. Violence and war are against my religious beliefs, my sense of morality and my commonsense;
- Henry Kissinger - describing the aftermath of a nuclear war - “(They) the survivors would not be worrying about rebuilding the automobile industry or the electronics industry. They would be worrying about how to find non-radio active berries in the woods or how to tell which trees have edible bark.”

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These few thoughts have been put together in the hope that even at this eleventh hour the voices of humanity, reason, law and morality will be heard by those in power and will save humanity from a cataclysm that can undo the work of centuries of civilisation.

[Sources: *The Island*, 18 March 2003, <http://www.island.lk/2003/03/18/featur02.html>]

**Reading 2: Cook gets Commons Ovation**

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[Source: [www.bbc.co.uk](http://www.bbc.co.uk), 18/03/2003]

Robin Cook has won an unprecedented standing ovation in the House of Commons after telling MPs why he resigned from the government over the looming war with Iraq.

Mr Cook said he could not back a march towards a war that did not have international and domestic support.

In a Commons statement that followed his resignation as leader of the House earlier on Monday, he went on to warn that international alliances of all kinds were under threat now that the diplomatic route had been abandoned.

Mr. Cook, who had been a Labour front-bencher for 17 years, added that despite his resignation he wanted Tony Blair to continue as leader of the Labour Party and as prime minister.

But he said that he would vote against the government's stance on Tuesday.

"Neither the international community nor the British public are persuaded that there is an urgent and compelling reason for this action in Iraq," he said.

The resignation is seen as a blow to Mr Blair coming just hours before he is due to ask MPs to authorise the use of "all means necessary" to disarm Iraq.

'No weapons'

Mr Cook said that Iraq's military strength was less than half what it had been at the time of the last Gulf War.

It was illogical to argue, therefore, that Iraq presented a threat and moreover that that threat justified war.

Furthermore, he said, Iraq probably had no weapons of mass destruction in the "commonly understood" sense of being a credible threat that could be delivered on "a city target."

He drew a comparison over the impatience shown with Iraq over its failure to comply with the will of the UN and the situation in Palestine.

"It is over 30 years since resolution 242 called on Israel to withdraw from the occupied territories," he reflected.

The former foreign secretary went on to express alarm that the US administration seemed more interested in regime change than in Iraq's disarmament.

"What has come to trouble me most over past weeks is the suspicion that if the hanging chads in Florida had gone the other way and Al Gore had been elected we would not now be about to commit British troops," he said.

The BBC's political editor, Andrew Marr, called Mr Cook's performance "without doubt one of the most effective brilliant resignation speeches in modern British politics".

### **Reading 3: Just War - or a Just War? by Jimmy Carter**

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[Note: Jimmy Carter, the 39th president of the United States, is chairman of the Carter Center in Atlanta and winner of the 2002 Nobel Peace Prize. Source: *New York Times*, March 9, 2003, <http://www.nytimes.com/2003/03/09/opinion/09CART.html?ex=1048262100&ei=1&en=d3c3cc88bdf368b5>]

ATLANTA - Profound changes have been taking place in American foreign policy, reversing consistent bipartisan commitments that for more than two centuries have earned our nation greatness. These commitments have been predicated on basic religious principles, respect for international law, and alliances that resulted in wise decisions and mutual restraint. Our apparent determination to launch a war against Iraq, without international support, is a violation of these premises. As a Christian and as a president who was severely provoked by international crises, I became thoroughly familiar with the principles of a just war, and it is clear that a substantially unilateral attack on Iraq does not meet these standards. This is an almost universal conviction of religious leaders, with the most notable exception of a few spokesmen of the Southern Baptist Convention who are greatly influenced by their commitment to Israel based on eschatological, or final days, theology. For a war to be just, it must meet several clearly defined criteria.

The war can be waged only as a last resort, with all nonviolent options exhausted. In the case of Iraq, it is obvious that clear alternatives to war exist. These options - previously proposed by our own leaders and approved by the United Nations - were outlined again by the Security Council on Friday. But now, with our own national security not directly threatened and despite the overwhelming opposition of most people and governments in the world, the United States seems determined to carry out military and diplomatic action that is almost unprecedented in the history of civilized nations. The first stage of our widely publicized war plan is to launch 3,000 bombs and missiles on a relatively defenseless Iraqi population within the first few hours of an invasion, with the purpose of so damaging and demoralizing the people that they will change their obnoxious leader, who will most likely be hidden and safe during the bombardment.

The war's weapons must discriminate between combatants and noncombatants. Extensive aerial bombardment, even with precise accuracy, inevitably results in "collateral damage." Gen. Tommy R. Franks, commander of American forces in the Persian Gulf, has expressed concern about many of the military targets

being near hospitals, schools, mosques and private homes.

Its violence must be proportional to the injury we have suffered. Despite Saddam Hussein's other serious crimes, American efforts to tie Iraq to the 9/11 terrorist attacks have been unconvincing.

The attackers must have legitimate authority sanctioned by the society they profess to represent. The unanimous vote of approval in the Security Council to eliminate Iraq's weapons of mass destruction can still be honored, but our announced goals are now to achieve regime change and to establish a Pax Americana in the region, perhaps occupying the ethnically divided country for as long as a decade. For these objectives, we do not have international authority. Other members of the Security Council have so far resisted the enormous economic and political influence that is being exerted from Washington, and we are faced with the possibility of either a failure to get the necessary votes or else a veto from Russia, France and China. Although Turkey may still be enticed into helping us by enormous financial rewards and partial future control of the Kurds and oil in northern Iraq, its democratic Parliament has at least added its voice to the worldwide expressions of concern.

The peace it establishes must be a clear improvement over what exists. Although there are visions of peace and democracy in Iraq, it is quite possible that the aftermath of a military invasion will destabilize the region and prompt terrorists to further jeopardize our security at home. Also, by defying overwhelming world opposition, the United States will undermine the United Nations as a viable institution for world peace.

What about America's world standing if we don't go to war after such a great deployment of military forces in the region? The heartfelt sympathy and friendship offered to America after the 9/11 attacks, even from formerly antagonistic regimes, has been largely dissipated; increasingly unilateral and domineering policies have brought international trust in our country to its lowest level in memory. American stature will surely decline further if we launch a war in clear defiance of the United Nations. But to use the presence and threat of our military power to force Iraq's compliance with all United Nations resolutions - with war as a final option - will enhance our status as a champion of peace and justice.