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“THE ETHICS OF STABILISATION AND SECURITY PRINCIPLES FOR JUS POST BELLUM”



PROCEEDINGS, PROJECT OUTCOMES AND RECOMMENDATIONS

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Editor Patrick Mileham

ARMED FORCES CHAPLAINCY CENTRE, UNITED KINGDOM

DEFENCE ACADEMY

FOREWORD

This academic Seminar was convened on 25 September 2018 at the Armed Forces' Chaplaincy Centre, Amport House, part of the United Kingdom Defence Academy. Former Chief of Defence Staff, General Lord Richards and the current Chief of Defence People, Lieutenant General Richard Nugee, were patrons of the Seminar, Major General Tim Cross acted as Chairman, with the host Revd Andrew Totten, Principal AFCC and Dr Patrick Mileham as organizer.

Partners included the McDonald Centre for Theology, Ethics and Public Life, Oxford University and the Oxford Institute of Law, Ethics and Armed Conflict, together with the King's College, London Centre for Military Ethics and Conflict and Health Research Group, being represented by speakers, Professors Nigel Biggar, David Rodin, David Whetham and Richard Sullivan. Air Marshal Johnny Stringer (JFHQ), Brigadier Ben Barry (IISS) and Lieutenant Colonel Thammy Evans (77Bde and DECAF) completed the panel of speakers.

Addressed by the seven speakers noted above, the event drew more than forty participants, a balance of serving officers, academics and informed civilians, including members of the European International Society of Military Ethics (EuroISME). The Syndicate discussions and Forum were conducted under the Chatham House Rule.

'Outcomes' from the Seminar were required by the United Kingdom Ministry of Defence (MOD). This means solid recommendations and for this reason the Seminar naturally expanded into a Project. Four subsequent group meetings were held from November 2018 to February 2019 to assist in completing the record and recommendations. Certain legal points have been clarified by an international expert on the Law of Armed Conflict (LOAC), Professor Charles Garraway.

A final version will be published in conjunction with the Defence Academy and also forms a chapter in the forthcoming EuroISME book *Jus Post bellum: Restraint, Stabilisation and Peace*, publishers Brill Nijhoff, Leiden and Boston, edited by Patrick Mileham. Other chapters in the book are papers delivered at the EuroISME Conference held in Brussels in May - June 2017, 'Restraint in War: Essential for a Lasting Peace?' Chapters in that book are also mentioned in the text here

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**Seminar held at the Armed Forces Chaplaincy Centre
UK Defence Academy
on 25 September 2018**

Editor Patrick Mileham

SUMMARY

‘Better an unjust peace than a just war’? This difficult question opened the Seminar, which addressed the need for principles of *Just post Bellum*. The Just War Tradition contains the ‘successful outcome’ criterion justifying the political decision in considerations of *Jus ad bellum* before military action is taken.

The difficulties of using lethal force and occupation of territory *in bello*, albeit governed by the explicit Law of Armed Conflict (often referred to as International Humanitarian Law, IHL) and specific Rules of Engagement, are exposed by all speakers and participants in the following proceedings. The military’s responsibilities and political-will liability for war termination, based on the need for true reconciliation of all parties is discussed with observations from first hand experience and observation. Stabilisation is discussed as an interim stage between war-fighting military operations and peace, but there are weighty and prolonged problems in the process. Britain’s Armed Forces experience in Northern Ireland, the Balkans, Iraq and Afghanistan particularly show that sustained occupation and detainee handling is particularly testing. Reference is made to the 2016 Chilcot *Report on the Iraq Enquiry*. Human Rights Law in *post bellum* often conflicts with LOAC.

The complexity of strategic judgment and decision-making poses acute questions in the detail of defeating implacable forces in countries where conflict is daily causing misery and displacement to millions of the civil populations. Perceptions at home as to what is being achieved in supposedly ‘a good operation’ aimed at providing for a long lasting peace remains an urgent question.

The Seminar addressed three pre-arranged discussion questions about ethical principles, doctrine development and education / training. The following recommendations emerged during the event and in further project work, encouraged by the MOD.

1. Stabilisation and security stages after conflict should be given a newly-articulated ethical framework, with definitions and principles, in appropriate MOD document(s).

2. A comprehensive approach should be taken to develop and conceptualise the ethics of the conduct of all types of military operations and of military service in general, in an MOD document - or duly incorporated into a number of documents - in which the MOD and Armed Forces take full ownership of their own ethics. This could initially take the form of a Joint Doctrine Note.

3. The Single Services should develop their own doctrine and training, with deeper educational emphasis, and that such enterprises be cross-referential, through the continuous exchange of 'good practice'.

These recommendations are in full accord with the findings of *Global Strategic Trends. The Future Starts Today*, 6th ed, published for the Ministry of Defence by the Development, Concepts and Doctrine Centre 2018. The executive summary in that document ends with 'A final thought'

Few would dispute that the character of conflict is changing, for example, distance is becoming increasingly irrelevant as a security buffer and the West's technological advantage is reducing. The physical dimension could become less important than *the cognitive and moral dimensions*.

Developing the 'moral component' of military power and capability, in tandem with the law, as a cognitive activity in the education of ethics to all members of the Armed Forces and Ministry of Defence officials is highly recommended.

SEMINAR PROCEEDINGS

INTRODUCTION

‘Better an unjust peace than a just war’? Major General Tim Cross, as Seminar Chairman, put this double-negative question of Cicero to participants assembled for one day in a very traditional English country house in Hampshire, England¹ in September 2018. In bringing forward the discussion from the ‘disasters of Baghdad’ to today’s present global tensions, General Cross asked the assembly to tackle the awkward underlying phenomenon, that it is easier to come to engage in war-fighting than bring about a safe and lasting peace².

During the months following a number of the original participants met again to discuss and develop the questions and ideas exposed on the day. Explicitly and implicitly the fundamental question continues, how can we better identify the nature and conduct of operations in future? The ‘Good Operation’ advice from the Chilcot Team, remains tabled, with other official documents in support, including the MOD’s *Global Strategic Trends. The future Starts Today*³, a work of considerable scholarship.

The declared Seminar and Project aim is ‘to engage academic and military participants to debate the causal link between the purpose and physical conduct of military operations and the need to build desirable and effective *jus post bellum* settlements, including promoting a safe and lasting peace. A secondary project aim, carried forward from a previous UK Defence Academy Seminar, is ‘to achieve greater consistency and guidance for educational and training needs for

¹ At Amport House, formerly the residence of the 14th Marquess of Winchester, is currently the Armed Forces Chaplaincy Centre, UK Defence Academy. In a village setting and surrounded by formal gardens, the house dates from 1857. It was later adapted by Sir Edwin Lutyens, leading British architect, working in collaboration with the renowned garden designer Gertrude Jekyll.

² During 2018 the centenary of the First World War was recalled. ‘Our study has led us to one broad conclusion, which is that the British Army has always been inadequate to finish a serious war quickly’. The War Office, *Report of the Committee on the Lessons of the Great War*, 1931 (declassified 1981) 8.

³ United Kingdom Ministry of Defence (MOD), the Chilcot Team, *The Good Operation. A handbook for those involved in operational policy and its implementation* (MOD 2016) and the MOD Development, Concepts and Doctrine Centre (DCDC) *Global Strategic Trends. The Future Starts Today*, 6th ed, October 2018.

professional armed forces, so as to understand ethical constraints and achieve conformance with the highest professional standards'. As the debate is ongoing and provoking future developmental processes, this record of proceedings is expressed in the present tense. Looking to the future, and at the invitation of the Ministry of Defence's Doctrine, Concepts and Development Centre (DCDC), three recommendations were thought timely and appropriate, and form the conclusions of the proceedings.

RECONCILIATION, THE GOAL OF MILITARY ENDEAVOUR⁴

NIGEL BIGGAR

What peace is not common sense? As well as being the goal of all activities in Christian Just War Theory (JWT) it is central to what Confucius taught his followers. Grave wrongs must be put right convincingly, but not as Tacitus stated, to 'make a desert and call it peace'. Benevolence and forgiveness are active Christian virtues, centred on love, but de-sentimentalized. Love as a military endeavour is far from implausible, bringing together as it can fierce loyalties while protecting the innocent, and respecting enemies without hatred. 'Just war' is by nature punitive, but it is disciplined by love, forcing people to 'think again' to achieve a just peace, and without moral self-righteousness. The justice of *jus ad bellum* is a moral enterprise, not positive law; during *in bello* coercive action is taken, but with proportionality not annihilation. There are some positive and recent lessons learnt from Rwanda and Serbia, although much remains fragile.

For sure such coercion is judgmental, but beware of arm-chair bloodthirstiness, calls for 'crusades' and holy wars. All people have dignity, even if wickedness continues in deep culpability. How can post-fighting activities resolve *post bellum* societies? Rough punishment must give way to law courts, and for certain reconciliation must be the goal of all military endeavour in promoting security. The ambiguity of achieving security through beating an enemy into compliance with our will is certainly a political endeavour, while there is need to dominate the circumstances, events and relationships thereafter. A political peace may well have to be achieved in two stages, through accommodation in one generation and full reconciliation over two generations.

Military force may be thus necessary when faced with fully-exposed, uncompromising and deep wrong-doing by a state or community, so as to bring about true reconciliation as a good. Military occupation of territory and the endeavour to deliver security in what might be chaotic circumstances, then can

⁴ Professor Nigel Biggar's section here is a condensed version of Chapter 8 in the EuroISME book.

provide for law and order to prevail, with fair justice in local courts, followed through in the work of international courts. When necessary this must be achieved with proportional and sensitive discriminatory force. But cease-fire provisions and peace agreements must not encourage greater alienation as too often happens. Somehow hostilities must be abandoned, and agreements reached to change ways and means on all sides, thus calming, pacifying and securing a kind of repentance and forgiveness. All of these activities must be an inter-personal and intimate enterprise as well as objective and strategic.

How does one measure success? This can only come from eventual political settlements truly de-fusing tense situations, de-arming and dispersing internal belligerents and those interventionists from outside. Such was achieved in Northern Ireland albeit taking forty years. Peace was achieved more quickly in the Oman (1972-75) and Sierra Leone (1991-2002).

The goal of peace is an aspiration after any necessary show of physical military strength, while avoiding as far as possible destructive violence. While a formal political peace settlement may not achieve true reconciliation, somehow manifestations of unsentimental love does, even though the cost of continued fighting must be taken into account. The act of fostering and encouraging peace amongst the military and all types of participants during the violence, needs a new 'cause', that is to stop the fighting as a political objective based on the principle of humanity. The experience of Malaya 1948-60 proved that such far-sighted political initiatives, including resettlement to be followed by promised independence, can work well. Witness the success of the nation now, leading the prosperity of the region. A 'just' peace is vital both for the majority, but also to reinforce the end-state, as a 'moral' settlement must be for all in the population.

What if only a compromise can be attained, remaining fragile and certainly not ideal? The answer is much easier of course when national survival is not in question. How long must be the military dominated or supported stabilisation phase, is a question than can only be answered in context. A sense of time as healer, sometimes longer in duration, sometimes shorter, is necessary on all sides. Of course 'success' means 'hope' for the future, whatever those terms mean. Such can only be assessed over time and when the national interests are more or less settled enough to bring prosperity.

As the stabilisation process progresses, internal security provided predominantly by national civil-police forces, not military formations and units, is what a post-conflict nation really needs. External military assistance can sometimes bring security-continuity for the time being, both for enabling re-construction of national infrastructures and promoting and sustaining political / constitutional development. Iraqi instability continues years after that invasion and occupation.

Finally the Western intervention in Afghanistan from the time of 9/11 attacks in 2001 against the USA, was not seen primarily or even at all as a matter of seeking safe and lasting internal peace and reconciliation in that country, which is why it escalated into a major campaign from 2006. As a consequence reconciliation in that country could take many decades. That is why military endeavour needs to be all about reconciliation, from the very outset.

WAR TERMINATION AND MILITARY LIABILITY

DAVID RODIN

My belief is that the purpose, means and ends of war, together with stabilisation generated as the war-fighting diminishes and hopefully ends, all reside in the way that human rights are viewed and adopted as first principles. I believe one can take from the start a 'framework of rights' - human rights - as guidance for observing problems leading to and during conflict, their causes, immediate effects and later consequences.

Taking the word and substance of what we mean by 'rights' as coterminous with ethics, too often ethics as such are believed to be only peripheral in military affairs, seen only as stopping us from doing something. In the contrary a growing number of observers and participants can see that adherence to strong ethical principles is a positive and enabling factor. What ends are we seeking? Only ethics, can truly inform the means used *in bello* to achieve the best ends *post bello*. So ethics and adherence to rights should be a process from the beginning, which prompts our thinking about the same framework of the principles guiding human rights.

So starting with such principles, rights can be the very justification for the use of harmful and lethal action to counter wrongs if force has to be used. The agency of rights can lead to the precise methods of dealing with existing wrongful harm and killing, such as need to be stopped. A framework, or set of parameters of rights, can give licence to achieving fundamental effects in war-fighting and other military operations, the consequences being known to be necessarily restrained and near enough measurable in cost-benefit terms. Using military force always involves costs of every sort, the chief being physically harming and killing people on all sides. There are financial, legal and moral costs too.

Long gone are the days when professional armed forces of liberal democratic countries ignored the rights of adversaries. There is recognition that keeping minimal the enemy's casualties and damage is as nearly strong an incentive as

keeping our own to the minimum. Such considerations of the principles of proportionality and minimum force affords both protection in law and of conscience. This spirit is in accord to the European Convention on Human Rights (ECHR, 1953) reinforcing the Universal Declaration of Human Rights (UDHR, 1948) which demand universality of rights and their inalienability. Self-defence is a significant human right we know, but over-played, such self-protection and preventive action can bring unjustifiable disregard to the rights of others for their self-protection: the claimed inalienability principle of human rights is thereby compromised or lost.

What is permissible? What are the rights and liabilities of military agents lawfully involved in military action and those opposing them either lawfully or unlawfully? Much is covered in the Law of Armed Conflict (LOAC) / International Humanitarian Law (IHL)⁵. But both sides can be liable under Human Rights Law (HRL), and there are areas of activities when these branches of international law are in direct or indirect conflict. What acts and activities are correct, lawful and ethical? The details of actions on both sides can be justly exposed, or they can remain concealed.

The law too is based on principles of general moral philosophy. The consequences of voluntary actions by military professionals are particularly vulnerable to legal scrutiny. They have to be both necessary and proportional. Likewise property rights are well established in the body of international rights law, even if less so in some nations' domestic law. Compensation is a particularly important principle with liability to make good if the law is infringed. But goods restored or refused, this can mean life or death during and after conflict to very many people, maybe millions. The physical vulnerability of civil populations can be acute, both in surviving adverse circumstances of military insecurity, but also against ill-health and starvation.

Just War Theory brings significant rights to all parties in conflict. Although largely as yet un-codified, *jus post bellum* in my view is also protected by the principles of 'last resort', 'necessity', 'proportionality' and 'discrimination', these being habitual duties, therefore rights. The question remains an open one, whether the three categories *jus ad bellum*, *jus in bello* and *jus post bellum* are conceptual and legal categories entirely separable or dependent on each other. Is the *jus ad bellum* danger higher if the causes of conflict are or likely to be genocidal? As the war in progress becomes more intense and unjust, does that mean that *in bello* rights diminish on a scale according to ethical or legal principles? While not necessarily achieved fact, the inalienable nature of human rights, expressed in UNHR and ECHR documents, continues to be an aspiration.

⁵ IHL is a term widely used by the International Committee of the Red Cross (ICRC), civilians and academics. LOAC is a term chiefly used by armed forces for the same body of law.

The termination of war, ceasefire, surrender, armistice, peace agreements and legal treaties agreed in international law can present operational perplexity for military professionals. The means and ends of military operations come under close scrutiny. Often there is escalation of intensity of the fighting, just because it is too difficult to conceive of anything less than 'victory'. In stabilisation and security operations limits must be placed on further physical harm and death. Equally there should also be limits to ethical escalation; if not, finding the means of a just and lasting peace becomes more difficult. There is such a condition as 'moral harm' as well as physical harm.

One also can conceive of ethical principles as being human 'goods', both qualifiable and quantifiable, where opportunity costs and cost-benefit principles pertain. Maybe there is a sort of 'contingency budget' for harming people, our own and adversaries when operations are in progress. Then military capability and hoped-for human capacity for continuing rightful action are obviously the chief dynamics to be taken into account.

Finally, human rights must be accounted for objectively *post bellum*, because they have inevitably been withheld or flouted and already caused both directly and indirectly, intense conscious suffering to people. Above all the framework of rights is a vital means of deterring and preventing war in the first place, which is what we all want.

JUS POST BELLUM: A REJOINDER FROM OBSERVATION AND EXPERIENCE

DAVID WHETHAM

In bringing comments as a rejoinder to the previous speakers, we note that our Chairman began with a retrospective comment on Iraq. We are even more conscious in Britain now after being formally both politically and militarily held to account by the 2016 Chilcot Iraq Inquiry and Report. *Jus post bellum* is a concept as intrinsic to just war theory as is *jus ad bellum*, but much more difficult if the *ad bellum* is wrong and unjustified. Because it is often seen to be implicit in other principles - such as proportionality - how can this be judged in the macro sense unless one is to look to future harm? It is all too easily overlooked.

The Coalition's deficiencies during and after the 2003 invasion of Iraq, are now painfully evident. The lack of proportional response to whatever threat Saddam Hussein's regime posed is now also well known. The lack of preparation in phase

four the occupation of Basra, was also recognised in the event, all now fully exposed by Chilcot. At the time there were public warnings of not being well prepared for *jus post bellum* before the invasion as well as more generally about the legality of the war.⁶

The explicit principles of post bellum have been explored by a number of people, including Immanuel Kant, but Brian Orend is probably, and rightly, the best known contemporary exponent for setting out how we should think systematically about this area. Orend has put forward 'suggested principles of *jus post bellum* in general'⁷ and we can paraphrase them as

- Just causes which relate to the termination of fighting
- Unjust gains restored
- Reasonable punishment - universally and impartially applied
- Reasonable compensation, but only those responsible to pay
- Open peace deals, fully declared and 'authorised' formally and appropriately
- No punishment for being on the 'wrong side'
- Proportional treatment for all - never forgetting human rights.

These principles need to be 'operationalized', accessible equally to soldiers and commanders.

At the EuroISME conferences in Oslo (2016) and Brussels (2017) we heard about the empirical field research conducted by the International Committee of the Red Cross, *Roots of Restraint in War*.⁸ (See Chapter 9.) This research is different from that which preceded it because it focuses, not on violations of the laws of war, but the factors that contribute to its adherence. This recognises the importance of 'socialized norms', and organisational culture in shaping behaviour and ultimately, compliance with the 'expected legal norms'.

⁶ A million people demonstrated in London before the war, even though Parliament sanctioned military action. *Post bellum* difficulties were previously noted at a RUSI Conference in September 2002. See Roger Yates (Action Aid), Tim Aldred (CAFOD) and Jean-Michel Piednagel (Médecins sans Frontières), 'Means and ends - Stabilization *post bellum*', in *War and Morality*, ed Patrick Mileham (Royal United Services Institution 2004), being proceedings of a RUSI Conference 19-20 September 2002.

⁷ Brian Orend, 'Jus post bellum: A just war Theory Perspective' in Carsten Stahn and Jann Kleffner (eds) *Jus Post Bellum* (Asser Press 2008) 31-51.

⁸ ICRC, *Roots of Restraint in War* (Geneva 2018). The four categories of arms carriers the ICRC researchers identify are 'Integrated State armed forces', 'Centralized non-State armed groups', 'Decentralized non-state armed groups' and 'Community-embedded armed groups'. In many countries and regions hybridization of these neat categories occurs to confuse the situation.

While IHL and the Law of Armed Conflict must still be taught, this new research shows that the fostering the right context is essential if that teaching is to translate into actual behaviours. Initiatives such as 'Fighter not Killer' - an IT app developed by Geneva Call to promote norms in war among non-state actors - tap into the culture behind the rules and suggest different ways to support rule adherence among different types of actor.

Normalising the everyday discussion of ethical matters is an important part of creating and fostering an organisational culture which promotes the right kind of behaviour. This kind of consideration is best done, not in a classroom, but in the same environment where the decisions need to be made. To help promote this kind of activity, we need to think about how best to support ethical education and training.

For example, the King's College London Centre for Military Ethics have developed an innovative education tool to support the teaching of military ethics. Fifty-two questions from across the broad area of military ethics have been carefully developed, based on professional military ethics education curricula, in conjunction with research and testing on military focus groups, and in consultation with specialist lawyers. The questions are matched to playing cards which are available (at cost price) to military units, and can be used to prompt informal discussion about the ethical challenges faced in military environments. Question include:

- Should a soldier challenge an order if they consider it to be illegal? If so, how?
- Is necessity ever a reason to break the laws of war?
- Can soldiers refuse to serve if they disagree with their government's decisions?

To ensure an appropriate 'take away' from any discussion, each card has a QR web link to the King's Centre for Military Ethics web pages where there are additional prompts, questions and information for each question, along with reading and articles. Groups of questions can be thematically linked, so impromptu or pre-planned supported discussions can quickly be developed using the open-access material. The key thing is that such discussions can take place anywhere - not just in classrooms - and those leading the discussions can feel supported and empowered by the linked supporting materials wherever they are.

It is by engaging with such methods that values can become genuinely internalised and soldiers, sailors and airmen recognise that this is what 'we do', not simply this is 'what I am told to do'.

As for success, I mention Colombia, where amongst others over a number of years, Kings College London have been active in training military ethics. (See also Chapter 11.) There is a cease fire and treaty, with a political re-integration process of the narco-terrorist organizations well under way. Over 50 years a quarter of a million people have been killed, keeping occupied half a million members of the armed forces for an internal war. How far has the violence and use of force reached an end, and a strong, effective *jus post bellum* process been established and perpetuated? Time will tell, but there is substantial investment in engaging with, and attempting to transform the organisational culture of the Colombian Armed Forces, so that they are better equipped and prepared effectively to take orders from people they have been trying to kill for the last half century, and suggesting that some of the tenets of *post bellum* thinking have indeed been understood.

RICHARD SULLIVAN

Looking further afield, we see variable success. There is good progress in the Balkans despite initial setbacks⁹. The 1995 Dayton agreement on Bosnia and Herzegovina seems to be holding (see Chapter 10). In the Middle East and North Africa peace settlements are fragile and immature. It must be said that Libya is in chaos; there is no 'national purpose' there and cultural cohesion is polarized. Across the spectrum of conflict zones, counter insurgency operations are particularly difficult to curb. Who is in the right and who is in the wrong? 'Unjust warriors' are what one party always sees in their opponents and other parties, and vice versa.

The rapidly changing nature of conflict, from Mexican 'narco-wars' through to more kinetic urban war-scapes and the rise of coalition conflict, creates particular challenges for evidence to inform doctrine¹⁰. Generating robust evidence takes time and is often overcome by events. Doctrines diverge as do their intrinsic acceptance of external critique, and indeed their ability to change to such analysis. Whilst doctrine has clearly improved, for example, the move from 'rubblization' of targets to precision bombing, albeit many contemporary conflicts still trend towards the former, rather than latter. Yemen today (2019) is in a desperate state.

Reconstructing social fabric is very hard. Repairing torn social-fabric and networks cannot be achieved without the vital commodity of trust which, like currency, too often remains with a continuously debased value. It is difficult to find the causal links between human needs - social, spiritual as well as economic, together with

⁹ Iain King, *Peace at any price. How the world failed Kosovo* (Cornell University Press 2006).

¹⁰ Alice Hills, *Future War in Cities*. (Frank Cass 2004).

health and basic foodstuff and commodities - and the causes of conflict, Armed forces see this the whole time, as do the large number of NGO staff deployed in such unstable and chaotic countries.

What do people need in places of chronic conflict, with fear, grief, hatred and mistrust as endemic factors? Obviously security and safe neighbourhoods, but also spiritual needs of hope, healing and reconciliation are urgently required. These goods can't be provided directly, in lorries. Some problems are so complex and nuanced which means that solutions have to be perhaps even more nuanced and complex.

The best solutions can sometimes be counter-intuitively devised, demanding much imagination amongst humanitarian aid providers and statesmen. Women particularly are the key to all national and community reconstruction, spiritual as well as material and life comprehensively enhancing. Sadly women remain too disempowered in many regions.

Principles *post bellum* are fine in theory. How to realize them for truly suffering humanity is the reality of our efforts that we all, professional military and civilians, search for.

STABILISATION: MORAL, LEGAL AND ETHICAL ISSUES

BEN BARRY

Can ethics guide moral conduct and be reinforced by law? I have experience of being a first hand-witness as a military intelligence officer and commander, knowing that lessons have been learnt from the conflict in the Balkans, particularly the intense fighting in Bosnia and Herzegovina, and later in the aftermath of the Iraq invasion. (See chapters 10,14 and 17.) We can see that the cease fire and Dayton agreement has held and that uneasy nation-state has at least been stabilised. I have more to say on Iraq.

War crimes tribunals have been conducted to warn future leaders, particularly about ethnic cleansing and genocidal tendencies, over which international law sometimes can take action and punish. However matters are never simple. The question persists, which of our actions on operations are legal and moral, and which of the enemies actions are also legal under International Humanitarian Law and the Law of Human Rights?

The 'troubles' in Northern Ireland, from 1968 started with disagreement and violence over the denial of 'civil rights' by one community over another, deep in the population. With escalation into armed force, OP BANNER involved a whole infantry division continuously deployed in support of the civil authority and police on Britain's home territory. The question of legitimacy under LOAC accorded to the Irish Republican Army (from the Catholic community), and their armed opponents from the 'Loyalists' (Protestant community) - both with their own tight political control and symbolic 'military funerals' - was in the event never conceded by the British Government and Armed Forces to either side. For the British Army starting with quite simple Rules of Engagement, it became a history of minimum-force and 'restraint', to stabilise the situation over forty years of operations, surrounded with so many uncertainties, political and constitutional, painstakingly to be resolved. In all such campaigns, at some stage the lead has to switch from military to firm civil control and the judicial process, then to political and constitutional settlement. In this case the Good Friday Agreement of 1998 formalised a state of stability which had by then been more or less gradually achieved with the cooperation of all sides.

Stabilisation operations can be more complex than state-on-state combat operations. What problems face the soldier and his commanders? Was military action in support of the civil-police moral? Terrorists and insurgents try to prompt security forces to over-react so as to lose political legitimacy. Targeting for arrest or capture of known people is a well-tried tactic by security forces, identified through intense human intelligence (humint) activity; ceasefires have occurred; and accommodation of peoples' desires for themselves and their communities gradually have taken root, albeit often with weapons and money involved.

In all cases there is a sort of battle for the minds of local people and those who are openly belligerent. One is aware, often acutely, that there is no one narrative about what is happening, and the battle of narrative-control continues. Yet with so many uncertainties in interpreting the situation, any course of action is far from likely to be ethically ideal in leading to a final settlement. 'Sub-optimal' moral performance in the sort of force being used is too often the consequence. How do soldiers as 'good guys' react or over-react? One has to fall back on the very skills and qualities of leaders of every level, their understandings and actions with those they lead, in order to curb and bring restraint to all sides. In particular the questions of mission command and the autonomy and legitimacy of the actions of a 'strategic corporal' are ever present during stabilisation operations.

We have learnt the hard way that there was a particular unforeseen problem in the intensifying tactical developments of the last twenty-five years, namely the question of correct handling of detainees. What is the moral position and legalities about tactical questioning and holding of detainees - whether as ordinary, suspected criminals or from more-or-less organized militaries? Should

they be dealt with under local or international criminal law, or as legitimate soldiers now prisoners of war, with all the protections due to them? The death of the Iraqi Baha Musa in British custody (2003), with minimal convictions imposed on members of the Queen's Lancashire Regiment as being likely responsible for murder or manslaughter, remains a stain on the British Army. This was the British equivalent of the world-wide exposure of the humiliation and torture scandal of detainees in US custody in Abu Ghraib, Baghdad (2003-4), with eleven US soldiers later convicted.

I believe that these problems, bringing questions of both legitimacy and ethical judgment to the public's notice about standards not being achieved, plus the ongoing legal inquiry over many years, about possible or likely illegal acts by our Armed Forces, is a relic of the lack of imagination and preparation in the past. Inadequate OP TELIC (Iraq occupation 2003-8) preparations meant that such ethical education and moral judgmental training as there was, was given low priority. Chief of Defence Intelligence had no developed, modern-day policy or directives for detainees. The Law of Armed Conflict was not taught widely enough amongst the Armed Forces¹¹, even if the Government Communications Headquarters (GCHQ) and associated Secret Intelligence Service were by then well trained. Even so we have learnt that a much broader, deeper and nuanced understanding of the LOAC must be developed.

I believe that if military activities and operations are supposed to secure stability and eventual peace, in Britain currently we are lacking a way of doing a critical analysis on the risks involved, I mean legal risks, moral risks and ethical risks. What policies, capabilities and training exist to decrease the risks of soldiers doing wrong? Individual failures are corporate failures. Do no harm. Who should speak up as whistle-blowers? Confidences must be taken seriously and respected. Counselling and TRiM observation conducted¹². The restrictions of 'lawfare' too often persist, when people will do nothing, including obviously what is right and good, for fear of prosecution. So there needs to be proper protection from threats of war-crime arraignments in court when the moral-legal safeguards of soldiers' immunity sometimes seemingly and unaccountably evaporate, the law itself being confused occasionally contradictory. Rules of Engagement can be too wide or too restrictive. Corporate memory is of equal importance as the need to recognize that all wars are different and lessons learnt are not easily transferable into future training and education.

¹¹ One indication of this is that the authoritative JSP 383 *Joint Services' Manual of the Law of Armed Conflict* (having remained un-revised since 1958) was finally published by the MOD in 2004 after the invasion of Iraq. Before then the Army relied perhaps too heavily on short printed cards as an *aide-mémoire* in training.

¹² In-theatre training for NCOs and junior officers in Trauma Risk Management (TRiM) was introduced during Op HERRICK to give early warning of those soldiers likely to be affected by psychological or moral damage. Albeit a short two day course, it was deemed very effective.

The operations in Iraq (OP TELIC) and Afghanistan (OP HERRICK) definitely leave us with valuable lessons for the future. Two chief lessons must be learnt. Security Forces should not make the problems worse. There has frequently been a political dimension to military operations right down to the tactical level. Secondly that sooner or later moral and / or legal problems always arise from operations. All military professionals must learn to spot them in advance.

Training and education for each new generation of higher commanders, right down to soldiers is vital, as the character of war changes, both for state-on -state, and with non-state military actors. Accountability must be beyond what is narrowly lawful, and in all such operation there is the primacy of political considerations given to directing operations. However what future gaps there might be, which increase the risks of British service personnel committing crimes and moral/ethical lapses on operations, need imaginative consideration as well as better training and understanding. For sure the nature of future operations will be very different from recent ones, so imaginative thinking is very necessary.

Finally, a future unjust war, as well as failure of operations *in bello* to restore or provide what is good and right, will seriously erode the spirit and ethics of *jus ad bellum* and *jus post bellum*. We know that the recognized British Military 'principles of war'¹³ have existed for a hundred years and NATO's are of more recent date. Should they explicitly include 'legitimacy', which implies the spirit as well as the letter of the law?

CIVILIAN PERCEPTIONS AND ETHICAL OUTCOMES: 'THE GOOD OPERATION'

THAMMY EVANS

Jus post bellum is a developing dynamic which is part of the progress of international law and international development. In an increasingly interconnected world, civilian perceptions of military operations and their ethical outcomes produce support or reactions that can increasingly be mapped out. The evidence, practice, lessons, and processes exist to do so, and so our understanding of building *jus post bellum* can be foretold in the campaign planning and execution long before 'victory' can be hailed.

¹³ MOD, UK *Defence Doctrine* JDP- 01, 5th edn (Development, Concepts and Doctrine Centre 2014)31 cites the 'Principles of War', developed over the past hundred years in Britain, being 'selection and maintenance of the aim', 'maintenance of morale', 'offensive action', 'security', 'surprise', 'concentration of force', 'economy', 'flexibility', 'cooperation' and 'sustainability'.

A paired relationship telling of such dynamics is that of 'agency' and 'dependency'. Agency is increasingly understood not only as the ability to influence and affect through personal responsibility, but for defence and military representatives of the state, it comes in the form of command responsibility. 'Agency theory' applies also to the freedom of manoeuvre, ownership, accountability and responsibility of our interlocutors, i.e. those we are trying to 'assist' in a world *post bellum*. Conversely, dependency on our assistance in a *post bellum* world, is a dangerous situation which begs the question of the ethics and morality of our involvement in the first place.

A carefully pre-determined, guaranteed cause-effect outcome of events and operations - explicitly stated up front as per the Chilcot Team's advice in their 'Good Operation Handbook'¹⁴ - may be the lesson identified, but may still not work next time. Good practice evidence in the meantime calls for empowerment (i.e. agency) of our interlocutors to manage their own security *pax post bellum*, to move from security importers to security providers. We have to move therefore from 'traditional security', as seen from the perspective of the Armed Forces and MOD's objectives, to 'human security', being the effects on a human-centric world where the protection of civilians and basic human rights is as important as protection of the state.

So what is 'human security' and who is it for? Who defines it? Clearly people themselves define their own security, which must include all people: women, men, boys and girls, of all creeds, genders, races, and persuasions. For the majority freedom from want and fear are most important in the Maslow hierarchy of needs. Agency resides, I must emphasize, with human beings' feelings as both the starting point and ending point of the real substance of what it is to be secure and insecure. Such is more significant than ever. Security is inclusive for all, by all, in a just and safe environment.

To paraphrase Clausewitz, all military activity 'is politics by another means'. There are political consequences of military professionals being seen to be aligned to the hosts' national cause, say in support of mentoring the Afghan Army or Syrian rebels on operations, while they are fighting against the enemies of their new national unity. Taking a stand rather than a side requires that objectivity and impartiality must be predominant. The activities of defence, diplomacy, international development, and domestic politics are closely intertwined. The effects of the perception of, *inter alia*, arms transfers, taking sides at the expense of a stand, and how we justify our P5 status¹⁵, or how we prop up assistance with NGO

¹⁴ Chilcot Team (n 3).

¹⁵ The UK is one of the five permanent members of the UN Security Council, but has the fewest personnel deployed on UN missions.

activities or empower local ownership, all play into the narrative, which is crucial to give hope of progress in *pax post bellum*.

In the strategy and tactics of stabilisation, the military has to understand 'consequences', blunt and cruel if not successfully healing, when providing for the wellbeing of individuals and communities. Particular military action can be taken, for seemingly obvious, short-term easy gains equally beneficial for the population and for the security forces. But longer term the very same military act might be consequentially self-harming, for both the local community and the military. Judgment is a command responsibility either way, at every level of command. Risks have to be judged in advance and such likely or possible damage measured so as to prevent adverse consequences and in the spirit of do-no-harm analysis. Armed forces' professionals are representatives¹⁶ of their own nation-state, and when acting as if direct representatives of the host nation's government, then they are perceived as party to the moral 'covenant' with the local people and rightful authorities.

As part of our professional body, the military also have to judge the professional distance between them and populations. There is an increasing imperative to judge military-professional consequences, with tax payers asking if we are 'doing the right things', as opposed to just simply 'doing things right'. Fighting power is made of physical, conceptual and moral components, all of which are essential for success. Yet our wars tend to focus overly on the physical at the expense of the conceptual, and perceived by many to be bereft of the moral consequences of our physical actions.

Are we as soldiers trained to understand all of these factors? Such as what the consequences of our actions can be? That might need a greater effort of the imagination and more original thinking than current military planning and processes are truly open to. But the tools to assist us with such understanding exist - do no harm analysis, campaign planning beyond a mandate incorporating a theory of desired change, gendered analysis, risk mitigation matrices prompting us to treat, tolerate, transfer, terminate risk or take opportunity as appropriate. What does all that mean for our ethical choices? Our education as soldiers teaches us that the moral component requires that we should be prepared fully to make lawful, appropriate and professional judgments rather than fanciful military conjecture even in stabilisation operations; we should be enthused to do what is

¹⁶ The Executive Committee of the Army Board cites the 'fiduciary responsibilities of trust', in other words 'trusteeship' applying to all members of the Army, in their ECAB Paper of May 2015, *The Ethical Foundation for the British Army Values and Standards* (MOD 2015) 2. That ECAB Paper also considered the work by Revd Philip McCormack Paper 'Grounding the British Army Values Upon an Ethical Good', accessible 8 April 2015 <http://www.cgscfoundation.org/wp-content/uploads/2015/04/McCormack-GroundingBritishArmyValues.pdf>

right; and inspired to do the best for those populations that must live with the consequences of our actions. Such is the responsibility of command.

An ounce of prevention is worth a pound of cure. Much can be done short of offensive action, and the ethics of stabilisation and security indicate that we are duty bound to exercise our professional judgment to leave force as a last resort. A graduated military response model is shown below to illustrate the range of responses that can be available short of war, seemingly lost to view, since the end of the Cold War. Only at the end of an expanding range of 'partnering', 'deterrence', 'coercion' and necessary armed 'force' continuum, is the extreme of 'attack', being the principle of 'offensive action'¹⁷ within the British principles of war.

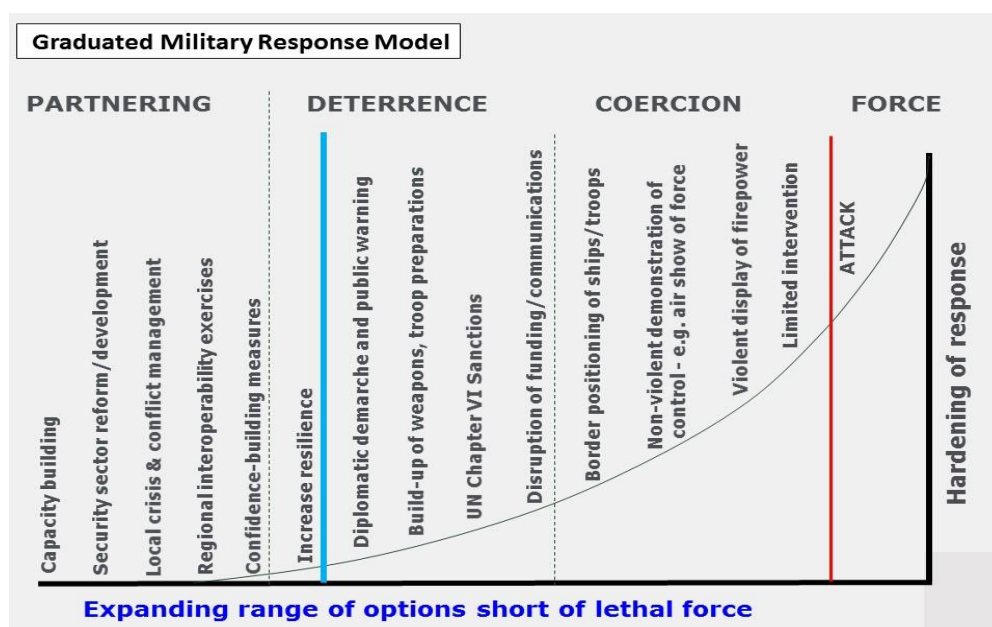


Plate 1

I end with a recommendation. We know that there are four accepted principles connected with International Humanitarian Law, namely

- Humanity
- Distinction of targeting
- Proportionality
- Military necessity

Can we add a fifth, which brings in the teleological ideal of 'Consequence'? With the sort of tools we have available today to map risk and so understand consequences better, with the sort of mediation available at the state, formal, informal, good offices, social, community, traditional and grass-roots level, we can understand consequences ever better by far. The question is more, do we want to? The consequences can be physical life and death, harm to persons and property,

¹⁷ MOD (n 13) 30-31.

legal, political, social, economic and moral - repercussions all falling short of the ethical ideals of a stable, secure, safe and lasting peace.

Understanding consequence is a tall order, it needs a new, future-looking, imaginative approach to armed forces themselves. As one General once said to me 'the lazy officer will stay in his comfort zone, but the conscientious will go beyond'. The *post bellum* of one conflict should definitely not be the cause of a new war, seeking yet again *jus ad bellum*, and so we must understand better the consequences of our potential actions. In the words of another General, Sir Nicholas Houghton, Chief of Defence Staff, 'But in truth Armed Forces should be much more about avoiding, preventing and deterring war'.¹⁸

OPERATIONAL AND STRATEGIC COMPLEXITY: THE CHALLENGES FOR JUS POST BELLUM

JOHNNY STRINGER

We live in extraordinary times and the context we find ourselves in Britain, as a small but leading nation, makes us acutely aware of our responsibilities as an international player. There are of course a multitude of players in a connected, globalised world and we are in an era of persistent competition across all environments and domains, and especially that of Information. The spectrum crosses every area of human activity and enterprise, from benign cooperation and international collaboration, to non-kinetic contest and ultimately armed conflict. Across this spectrum there are many challenges in defining moral clarity within context and actions; what is right in competition and good in collaboration, with soft power, activities and agreements reducing the likelihood of war and significant kinetic military operations. Understanding those problems sometime fails, and we well recognise the repercussions and consequences. Some regions of the world suffer the consequences from both action and inaction: endemic war-fighting, large-scale terrorism, mass forced migration and other humanitarian issues.

Our environments are the most congested and contested one can recall, and the geostrategic landscape is changing after the many decades of post-WW2 certainties and consensus. The exponential development in the cyber and electromagnetic environments has given us the means of instant information and new, powerful activities of every sort. Many have military uses. Increased real-time information and greater military intelligence-gathering capability can give us net assessments about both 'hard' and 'soft' dynamics across the spectrum - from competition to

¹⁸ Gen Sir Nicholas Houghton, Christmas lecture to the Royal United Services Institute, London, 2015.

conflict. Indeed, our cyber and Information Operations are ‘always on’ and need to be against a post-factual, febrile and fertile landscape, where the rules are often nascent at best and up for challenge. Our precision weapons, advanced sensors and remotely operated systems do not exist in a vacuum. Political sensitivities governing their use and employment are affected by existing and changing societal norms, and the different moralities (and permissions or constraints) which emerge.

My theme is about trying to make sense of the connection between ways in warfare, *jus in bello*, to meet the very significant challenge to get things right to enable *just post bellum* the best chance of succeeding. There are many narratives, some with extra-ordinary, sub-threshold coincidences and ramifications, such as the chemical attack in Salisbury on the Skripals in February 2018. With narratives up for grabs and traditional voices and norms treated with suspicion and even contempt, some of our certainties aren’t necessarily certainties without vigorous engagement and support.

The Western narrative from 1991 to the present needs to be understood. Intervention in the Balkans gave us much to study about modern ways and means. History may judge the ends and continuing fragility in a harsher light, but so far violence has been contained in political settlements which are holding and bringing justice in international affairs in the region. The Coalition invasion of Iraq in 2003, and surge of activity by NATO and the UK in Afghanistan (from 2006) have provided us with many lessons. Despite the UK’s successful military campaign in Libya alongside her allies (from 2011), the subsequent support to the Libyan national government and building the post-Gadhafi nation remains ongoing. We remain committed in the Middle East, especially to defeat Daesh finally, and to deepen the political and military capacity of Iraq.

Morally, if *in bello* actions are to lead to *post bellum* justice and peace we, as a nation with much good global intent, continue to learn many lessons, beyond the direct protection of national interests. From the Royal Air Force’s viewpoint, sophistication and discrimination in our targeting and weapons employment has been paramount, and our means of delivery through manned aircraft and remotely piloted air systems (RPAS or ‘drones’) has been more precise than ever. And we are acutely aware of the effects and wider political and moral impact of our Means and Ways. Operating within both the Laws of Armed Conflict and a rightly intrusive political and societal context, our finely-tuned Rules of Engagement also reflect a national approach to war and warfare. An approach to risk in all its forms allows us to manage and to reduce (but not remove) the risks to all parties, while holding ourselves to the highest of standards against enemies and opponents who have no such concerns. This requires unrelenting focus on doing the right things, and doing things right: coalition warfare adds further opportunity and complexity, with senior military officers requiring political as well as professional skill.

The environments and domains I've outlined have to be viewed in the dynamics of how the character of war and warfare is changing. So is the capability and approach of our adversaries and competitors. New lessons (and some older ones) are constantly being learnt (and re-learned): the gamut of deterrence, sub-threshold activities and their counters, operating within the 'grey zone' of opacity and fluidity in words, deeds and intent. Developing and retaining an appropriate and robust moral and ethical framework is essential - we have plenty to draw on, but some of these strengths can and are employed against us. I am not sure at present that there is adequate sophistication in our thinking on *jus post bellum*, nor can complexity here be reduced to a simplistic reversion to moral relativism.

So as I see it there are significant *post bellum* challenges for us. The use of kinetic force has its obvious physical effects, and also attendant intended and unintended psychological effects. The wider unintended consequences of any military campaign and/or the politics that frame it can prejudice a fair, just and lasting settlement or set of outcomes. Coalition dynamics and realities induce friction but also offer the strength and opportunity of many nations uniting behind an agreed cause. When the fighting stops, we must ensure that these coalition strengths are brought to bear on addressing and resolving the underlying causes of conflict. No soldier, sailor or airman wants to go back to a campaign because we failed to close with the politics and other non-military dynamics and factors.

We must guard against physical, conceptual and moral naivety too - the good intentions that were not sufficiently hard-nosed or clear sighted. We face nihilistic and amoral opponent nations and groups, for whom generally destruction and misery is actively sought to advance their own interests. There are the 'rule breakers' and 'fakers', who seek to maintain or accrue power, influence and 'equivalence', and for whom mutually poisoned and contested narratives are actually a relative 'win'. In countering them, we face increasing financial, reputational and temporal costs.

Are there any 'principles' and elements which we can devise to help us in meeting the complexities of our current and future engagements? One might offer the following as some core attributes:

- Precision in employment, but discretion and judgment too
- Multi-agency analysis to provide the best understanding
- Always 'switched-on' - cognitively and physically
- Consistent, coherent and credible engagement in the Information environment
- The importance of coalitions, in all their forms
- Clarity on Permissions and Constraints
- Realism regarding 'Ends': what constitutes success, and might it be but part of trajectory of activities and outcomes?

- Appreciation that the military instrument sets the wider conditions for settlement, in tandem with but subservient to the political/diplomatic line of activity.

Finally, we must be honest about the realities of campaigning: that generating, sustaining and accelerating momentum in our campaigns is never consequence-free, and that we must steel ourselves for and accept that things might not always go right. War is a human activity, and we are not perfect. Honesty with all audiences will underpin, rather than undermine, our actions, as will the consistent application of just and ethical judgment by our servicemen and women. At all levels too - from the tactical to the strategic - and in the face of relentless pressure and the unblinking eye of commentariat and social media alike. In their absence, sound, credible and lasting *post bellum* end-states are uncertain and unlikely.

SEMINAR DISCUSSIONS AND FORUM

Desire for Reconciliation: Individual and Corporate

The first question to be addressed in syndicate discussion reads

From 'war' and 'conflict', to 'stabilisation' and 'security'; to what extent does long-lasting reconciliation meet the true ends of *jus post bellum* in politico-military thinking at all levels?¹⁹

The syndicate discussions and subsequent participants' meetings generally confirm that the incorporation of 'military ethics' into practice in the British military profession is less than complete, and there is imbalance within the currently expressed 'moral component of fighting power' in written Ministry of Defence documents. Participants recognize the opportunity to express how developments can be made and recommendations offered.

¹⁹ The intended outcomes of the Seminar and all three questions were carefully considered and agreed in advance by staff at the Joint Services Command and Staff College, MOD Doctrine, Concepts and Development Centre, with the Seminar chairman, Major General Tim Cross, and speakers, as well as General Sir Nicholas Parker and Lieutenant Generals Timothy Evans and Richard Nugee. The background, particularly to the third question, is that this seminar followed an MOD report and two previous Defence Academy based seminars (2010 and 2011, see footnotes 37 and 38 below) with then declared unfinished business about developing doctrine. Extensive footnotes below give much further, highly relevant background and associated work on the questions. Exposure to the findings of the *Chilcot Iraq Report* cannot be avoided. The work of the three syndicate scribes in writing up the discussions for editing is particularly appreciated.

There are many considerations much deeper and wider than the Law of Armed Conflict (LOAC) addresses. This is evident in that research and study of the Just War Tradition (or Theory, JWT), only tentatively takes account of *jus post bellum*, and mainly from the legal rather than the ethical standpoint. In our thinking the seminar participants recognize that we in the UK tradition share a broadly similar Western upbringing and professional background, with some quite fixed ideas shaping, or sometimes imprisoning, our understanding and developing ideas. This is true of the ethics of 'stabilisation' and 'security' operations.

The statement *jus post bellum* means different things to different people, whether as agents, opponents, victims and observers. It is a hugely complex, multifaceted term which exists at numerous levels, from official national governments right down to face-to-face individual encounters. In the reality of post-war planning and reconstruction we, living in the liberal West, are generally cushioned in our thinking from the multiple and costly consequences of post-war politico-military factors in chaotic and anarchic situations. In considering 'reconciliation' as a 'first principle' we have to acknowledge that we need to think about individuals with all their human consciousness and subjectivity, yet also about the assumed norms of corporate and cultural objectivity in bringing about peace amongst communities and national populations. In some regions, across a range of human desires and a sense of what makes for well-being, there exists too often widespread and deadly competition.

How to 'reconcile' violent opposites is thus the most important question of all in studying the problem *post bellum*. For a defeated host nation and within indigenous populations, the need for revenge may be a very vivid daily habit and the means for exacting vengeance is readily available, bringing yet more violence. Consider the ethno-political realities of oppressor and oppressed living on the same street and seeking common ground, or being responsive to incentives and compromises, with a spectrum ranging from amoral, even nihilistic radical fundamentalist antagonisms, to those people who want security at any cost. The very search by all parties, including intervening external armed forces, for security, transitional justice and the establishment of a just and sustainable peace continues to involve both real physical and moral danger. Perhaps these factors, the causes of violence, comprise the true starting-point for a better understanding of *jus post bellum*.

There is a general intuitive understanding, and perhaps agreement, that long-lasting 'reconciliation activities' do somehow provide for the true ends of *jus post bellum* both in fact and in politico-military thinking. But it may be difficult or impossible to reconcile quite different aims in the two conceptually distinct military operational categories of 'stabilisation' and 'security' - that is within the objective doctrines, policies and training of both our own political and military leaders, particularly in the context of our own national interests. How can these two sorts of operations be understood in theory, being so subjective in context and application, due to the backgrounds, cultures and thought-processes of the large number of individuals involved as direct agents, plus their political, military

and civil-population supporters? There is a firm requirement to have very clear understandings and statements, about who as individuals, in groups, communities and nations, should be reconciled, why and how.

The 'identity' of a nation during conflict and its 'culture' must be addressed in great detail, since such phenomena link future security and prosperity to individuals, local organisations institutions, and the very 'integrity' of the state itself. There are numerous questions to be answered, such as and 'how much' is there to reconcile, and 'whose' precise identities we are considering amongst all current and future competing communities. Then how long does the condition of 'long lasting reconciliation' take to 'achieve'- whatever that means - and after that, how long will it last? This question of time is very important; in some conflicts it has taken generations to achieve real reconciliation. In some regions, there are still states that have never been reconciled, and hostility remains endemic.

Irrespective of the protection of victimised or defeated populations there is understandably the underlying concern of governments and their armed forces about 'force protection' of their own people. As 'stability operations' are an integral part of the effort to prevent recurrence or reversal of the efforts expended, consolidating the gains of war-fighting must be the pre-determined aim of all operations to achieve general reconciliation. As the lead nation or junior partner in an intervention, Britain needs to invest intelligently in the training and mentoring of all security forces and civil servants of the host country, and to work with them for as long as it takes to help build a government which is accountable and reconciled to its own people.

Case studies with British involvement reveal mixed outcomes. These include Bosnia and Herzegovina where the Dayton Agreement eventually achieved a peacekeeping mission and a cessation of civil war, but the multi-ethnic state-security structure from 1995 has shaped only a fragile politico-economic reconstruction and virtually no deep socio-judicial reconciliation. Does separation into sub-national regions help - a deliberate Balkanization project, which might indeed be *de facto* ethnic cleansing of a region - that is population movement without the killing? Are the Balkan nations reconciled twenty plus years on, or will there be a gradual healing process over many generations within the permanence of borders? (See Chapter 10.) A generation on there are troubling signs that the hard-won peace in Bosnia and Herzegovina may be seriously faltering. In contrast Sierra Leone witnessed something of the reverse; it was a conclusive military intervention followed by a highly successful socio-politico reconciliation, excellent military and security accountability, assisted by the separation of the judiciary, and needing only limited economic reconstruction.

Closer to home there were mistakes in Northern Ireland, particularly the 1972 'pitchfork murders' (for which one officer and two NCOs were gaoled) and

secondly the conduct of troops on Bloody Sunday in Londonderry of the same year. There breakdown of control over the soldiers

..led to an intensification of the conflict. In the 12 months prior to Bloody Sunday, 45 soldiers were killed, in the 12 months after Bloody Sunday 127 soldiers were killed; in part because of the behaviour of those soldiers who...shot and killed innocent²⁰ civilians on the day. Secondly, it alienated the people we were there to help. Thirdly, that behaviour almost certainly made the campaign longer because information and intelligence flowed less freely - we lost vital cooperation²¹.

While these two cases clearly transgressed the law, if soldiers lose self-disciplined restraint at the tactical level, the moral high ground can be diminished or completely lost, with severe strategic consequences. Now twenty years after the Good Friday Agreement, while there are tangible peace benefits, low-level violence and criminality are still a reality which pervades everyday life for many Northern Irish people, particularly for the most vulnerable and disadvantaged. In sum these examples show that it can take decades for the results of civil justice and social development to take root.

So stabilisation cannot be taken for granted. Is reconciliation guaranteed, or at least more certain to be achievable, based not only on legal settlements but other, more subjective 'ways and means'? Currently there are no agreed international 'ethical rules' or 'principles' for *jus post bellum*, in formal 'counter-insurgency', 'stabilisation operations' or later substantial 'security' advice and training. Much depends on the categorical terms used. Can 'true ends' be achieved based on the development of an 'ethical framework'. How is this assessed and against whose standards, and how can this be articulated, trained for, evaluated and implemented, then validated after the event? Question three below continues the discussion.

Before substantial progress can be made in a truly understanding enterprise of 'reconciliation', both objectively and subjectively, there also needs to be a much better understanding by all parties of the long-term military-security and political ends *post bellum*. Success is difficult to measure and it varies amongst all agents who try to articulate and codify what success looks like. Success must also be articulated and codified by all nations, not just by organisations/states being the

²⁰ The lack of evidence of 'guilt' in domestic law deems persons innocent until proven guilty. The 'troubles' in Northern Ireland were always considered by the government to be contained under domestic law, not the Law of Armed Conflict.

²¹ Written statement supplied for the Seminar, quoting a letter published in the *Daily Telegraph* August 2018, by Colonel (Retired) John Wilson, Platoon commander Northern Ireland 1972, Defence Attaché Dublin 1998-2001, Editor *British Army Review* 2002-2011.

acknowledged responsible actors within the particular nations they are supporting after the war-fighting has subsided.

Since 'reconciliation' is currently encumbered by so many questions, the answers may be found in deeper understandings of why we intervene in some unstable or violent regions and not in others, and

- The difference between 'wars of choice' of external powers involved, and the 'national survival' of the country in question
- The obligations of individual intervening nations, beyond national self-interest, to the nation in conflict, the international community and the UN
- How the international community bears true and substantial responsibilities to a nation-state in the process of reconciliation.

Finally if alternatives to physical-lethal force and war-fighting fail and yet there must be true reconciliation and reconstruction in post-conflict arenas, the *jus post bellum* debate is as important as *jus ad bellum*, being in the same broad field as Just War Theory.

Restraint on Force: from *In Bello* to *Post Bellum*

The second syndicate question reads

Beyond humanitarian, social, economic, health, political, constitutional, legal (LOAC and Rules of Engagement, ROE) and the complex practical dynamics of rebuilding a nation, how far do constraints during the lethal phase, *jus in bello*, assist *jus post bellum* military-security activities?

The activities for the 'stabilisation' and 'security' stages after intense war-fighting outlined in the above question, vary considerably dependent on what type of operation has been conducted, its location and the number and variety of coalition partners involved. Then, in-country, how many of the necessary security and civil organisations are likely to remain intact to support the enterprise of nation rebuilding *post bellum*? Such factors will also drive what are the necessary constraints imposed during the 'kinetic' phase - as both metaphor and physical fact - *in bello* during the winding-down of the lethal phase of the operation. There needs also to be a pre-considered understanding of what the opponent is likely, and is still trying, to gain from any impending peace settlement while still physically fighting.

How competent are we to answer all these questions? The vital contributors absent from a *Jus post Bellum* discussion - in the peaceful atmosphere of Amport house, its tranquil gardens and long-established estate - are firstly the mediators, who broker post-conflict peace building, and secondly representatives of the host nations from those countries where we have been actively involved in war-fighting or stabilisation operations. If present in our discussions, they would likely as not have entirely different thought processes, suggestions and conclusions, but also probably be loaded with anti-Western feelings and, for certain, based on wholly different philosophical and religious traditions.

At the macro level such shortcomings in our discussions are uncomfortably significant in the understanding and improving the decision-making of Western nations engaged in regime change and intervention operations where the short term kinetic effect and 'war fighting excellence'- the claim of UK Defence Doctrine²² - is pre-dominant in our understanding. The relationship of our 'combat thinking', the consequential long term non-kinetic effect, and the implications for post-conflict security, may not help bring about the conditions which include permitting repatriation and reintegration of enforced emigrants - particularly asylum seekers encamped in adjacent countries - the rehabilitation of distressed societies and likely much needful infra-structure reconstruction. The very many deep misunderstandings about the use of force are seldom fully recognized, or they are ignored and dismissed as esoteric questions which can be solved by close adherence to international law expressed in the LAOC. Such a mind-set is likely to limit our understanding of the nature of 'restraint' leading to 'reconciliation'.

As nations frequently work in coalitions, permanent or campaign-specific, there has to be much discussion on how the coalition perceives itself and its combined objectives, which can be recognized as reasonable and accepted by the public consensus, both in home nations and the nations being helped. What does 'good practice' mean, especially when discussing stabilisation, and are there special 'codes of conduct' for stabilisation? This should again be defined in a collaborative approach, a joint-venture with the country being supported. Military might should certainly not be imposed on a country by intervening forces in such a way as to perpetuate its victim-state mentality. Albeit simply put, the recognition of how military restraint can be transmuted into peaceable 'hearts and minds' compliance by all armed parties²³ in the said state, requires substantial activities and tangible understanding to provide opportunities over a period of time to encourage reconciliation.

So precisely which type of *in bello* constraints affect *post bellum* operations will vary from case to case. There are numerous features of particular conflicts which should be taken into account when conceiving of the *in bello* to *post bellum*

²² MOD (n 13) 25.

²³ See ICRC (n 8) for categories of 'arms carriers'.

relationship. On the one hand, the particular features of one's armed opponents will make a difference. Is one facing a conventional force, an unconventional force, a terrorist group, a group that seeks to secede, to overthrow a state, to protect its economic power, and so on? The nature and goals of the opponent must be taken into account. On the other hand, the goals of one's own operation will also make a difference. Is one seeking to overthrow a state, to thwart a terrorist threat, to protect threatened minority groups, or whatever? The particular causes of war are likely to influence, maybe determine the particular *in bello* to *post bellum* dynamics.

We have to recognize that the continuum-connection between *jus ad bellum*, *jus in bello* and *just post bellum* cannot be ignored, as it has been, in even quite recent history. That being obvious, a number of instances of meaningful *in bello* to *post bellum* case studies should continue to be discussed. The 2003 invasion and occupation of Iraq is seen now as a highly significant case study. In this campaign a general failure on the part of US-allied forces to consider the *in bello* to *post bellum* relationship of activities and norms of conduct is now recorded in the Chilcot Iraq Inquiry (See footnote 25). In particular, there was insufficient comprehension of the relation of the different phases of the campaign, i.e. how one phase was supposed to lay the groundwork for subsequent phases. Additionally, the disbanding of the Iraqi military and police early in the occupation was seen as a failure to appreciate such implications for *post bellum* operations. It was also suggested, that in this case it would have been advisable, counter-intuitively, to limit further attacks on conventional Iraqi forces in the initial invasion in order to improve *post bellum* security conditions.

In Iraq 2003 phases one and two, invading and winning the war against a well-defined albeit a weak enemy, was where the British forces excelled. Phase four²⁴, the sketchily planned post-conflict dynamic of the operation, was not the war the British forces wanted to fight. There was a fundamental problem - what was the legal, moral and practical requirement to rebuild the defeated nation? There was wishful thinking beforehand and a deep-seated reluctance to acknowledge the specific legal obligations placed upon an occupying power to ensure law and order and to maintain services. So in the immediate aftermath there was haphazard, reactionary and often short-term reconstruction planning and project execution, repeated reference to a so called 'liberating' force and a dominant motivation to prevent recurrence of a further (Baathist regime) threat to the international community.

There was also clear evidence of a cavalier attitude to International Humanitarian Law which brought some severe consequences as British and other nations' soldiers

²⁴ Roughly the four phases were, 'invasion', 'occupation', 'disarmament' of Iraqi armed forces and 'stabilisation'.

found themselves falling into acts of criminality particularly when treating detainees²⁵. The Baha Musa case has been mentioned and there were others in the years 2003 and 2004. Thus in extremely difficult circumstances the spirit of *jus post bellum* was not being intelligently applied with necessary determination. Also short unit 'deployments' - typically six months - in both Iraq and Afghanistan did not give a sense of continuity and narrative to sustain the most effective reconciliation and physical rebuilding process.

Eventually, the 2016 Chilcot Inquiry concluded that many of the difficulties which the Coalition encountered could have been, foreseen²⁶. While it is true as a junior

²⁵ Explicit guidance for all British military personnel are contained in the MOD JSP 381 'Aide Memoire on the Law of Armed Conflict'. It includes the requirement that LOAC 'provides for the protection and humane treatment of combatants and non-combatants'. MOD *The Aitken Report*, An Investigation into Cases of Deliberate Abuse and Unlawful Killing in Iraq in 2003 and 2004. 25 January 2008 [www. http... data.parliament.uk/DepositedPapers/Files/DEP2008-0229/DEP2008-0229.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2008-0229/DEP2008-0229.pdf)

²⁶ Her Majesty's Privy Council, *Report of the Iraq Inquiry. The Chilcot Report* (2016). In outline the Chilcot Inquiry concluded that military action may have been necessary but was not the last resort at the time and that the consequences of invasion were underestimated. From the accessible *Executive Summary* under Open Government licence (Canbury Press 2016) some relevant passages are as follows.

The highly significant 'Personal....long Note' of 28 July 2002 from the UK Prime Minister to the US President, 'I will be with you whatever' was not seen by the 'UK Foreign and Defence Secretaries... who should have been given the opportunity to comment on the draft in advance' with (*inter alia*) 'a discussion in mid-September 2002 on the need for robust post-conflict planning' (Summary paragraph 409). Sir Jeremy Greenstock, Tony Blair's special representative to Iraq, early concluded: that 'The preparations for the post-conflict stage were abject; wrong analysis, wrong people'. 'In December 2002 the MOD described the post-conflict phase of operations as "strategically decisive". But when the invasion began, the UK Government was not in a position to conclude that satisfactory plans had been drawn up and preparations made to meet known post-conflict challenges and risks in Iraq and to mitigate the risk of strategic failure' (paragraph 592).

Then in May 2006 the Chief of the General Staff 'General Jackson felt compelled to report that "The perception, right or wrong, in some – if not all – US military circles is that the UK is motivated more by the short-term political gain of an early withdrawal than by the long-term importance of mission accomplishment"' (747).

Under the Section 'Planning for a post Saddam Hussein Iraq', 'The information [intelligence] available to the Government before the invasion provided a clear indication of the potential scale of the post-conflict task and the significant risks associated with the UK's proposed approach' to that post-conflict phase. 'Foreseeable risks included post-conflict political disintegration and extremist violence in Iraq, the inadequacy of US plans, the UK's inability to exert significance influence on US planning and, in the absence of UN authorisation for the administration and reconstruction of post-conflict Iraq, the reluctance of potential international partners to contribute to the post-conflict effort'.

partner in the Coalition the UK had very little influence over post war planning, it is luminously clear British coalition forces and the hurriedly-constituted civilian mission partners were not trained or equipped for an occupation under such hostile circumstances. For professional Armed Forces which had repeatedly upheld the value of winning 'hearts and minds', and for government ministries which upheld the Comprehensive Approach²⁷, these were sobering realities. Indeed no clear dividing line marked the beginning of a peace process. Was the Coalition based on intelligent cooperation, collaboration and use of properly integrated force?

More recently the question came up during OP HERRICK in Afghanistan. How determined should military professionals be, and seen to be, in using 'kinetic' force with intent to kill? The ROEs should be a robust yet sensitive interpretation of LOAC, as should targeting. In Afghanistan the top-down US command policy directive of 2009 of 'courageous restraint'²⁸ was not seen as being particularly helpful, as it interfered with the fine-tuning and interpretation of the ROEs by commanders on the spot, in real time. British commanders preferred the term 'tactical patience' in interpretation of the need for 'restraint', or the use of more robust and determined methods necessary for troops under 'mission-command', that is necessary pre-briefed knowledge based on downwards communication of 'the commanders' intent'. Mission-command is a process and procedure to help on the spot decision-makers pre-judge likely or possible consequences and yet keep within the LOAC and ROE. The Afghans opposing us knew of our methods, intentions and self-imposed restraint as much as we did. They tried continuously to outwit us.

Beyond Iraq and Afghanistan, a few other instances of *in bello* to *post bellum* connections are pertinent. For example, the experience of employing remotely piloted aircraft reveals an interesting *in bello* to *post bellum* conundrum. While those who have employed such platforms do so because of their precision, it is arguable that those who live under the threat of these aircraft, and other robotic platforms, do not necessarily agree that they are always precise and those who operate them as caring for their interests. How we see our tactics might not be the same as those they target interpret those tactics - and our intentions. Hence, while we might be inclined to view these weapons as improving actual *jus post*

In sum, the UK 'Government, which lacked both clear Ministerial oversight and post-conflict strategy, planning and preparation, and effective co-ordination between government departments, failed to analyse or manage those risks adequately' (all bullet points in paragraph 814).

²⁷ A NATO term. UK Defence doctrine uses the term 'Integrated Approach', which 'implies a greater level of collaboration'. MOD (n 13) 44-45 and footnote 36. Doctrine demands clear terminology. 'Comprehensive' is a mental concept, an adjective from an abstract noun; 'integrated' derives from the active verb 'to integrate' and, another pragmatic verb, 'to collaborate'.

²⁸ See J P van Bruggen's chapter 13 for details of General McChrystal's directive, and difficulties for soldiers from the Netherlands deployed in Afghanistan.

bellum chances, the reality might be that they make *post bellum* circumstances less promising or entirely negative. This might be a case where we ought to pay special attention, indeed applying deep empirical research, as to how our *in bello* tactics generally are perceived by other communities before conclusions are drawn about *in bello* to *post bellum* relationship and successful transition. Without such knowledge there can be little generation of lasting trust in reconciliation.

Another way the current international environment might effect *in bello* to *post bellum* connection has to do with the rise of new existential threats in recent decades. The proliferation of nuclear and biological weapons as well as the impending threat of climate change, are realities which could change the *in bello* to *post bellum* dynamic in any given case. Concerns about severe existential threats might lead us to opt for many more *in bello* constraints.

A couple of cautionary notes also apply. First, we should not confine ourselves to look only for *in bello* constraints when considering *post bellum* settlements. There might be cases when *post bellum* considerations argue in favour of added *in bello* permissions as well. Indeed there may be cases where *post bellum* security requires specific or prolonged *in bello* operations to succeed. Second, we must be careful not to mislead political and military planners about the difficulty of long-term politically-transformative military campaigns. Even if we identify *in bello* constraints, which improve future *post bellum* possibilities, that should not be construed as an understanding of how conducting such 'transformative' campaigns successfully remain within the defined constraints and spirit of international law. Regime change as the sole cause of war is illegal under the UN Charter.

Finally there must be an agreement on conversations with all parties over what happens during operations, linked to what can, should and must be done. Involving ethical considerations, the military institutions and individuals should be held to account for their ethical conduct, not only their legal responsibilities. A culture should be developed even within the military so that individuals can 'speak truth to 'power'²⁹ about the 'just cause' before, and the likely 'just outcomes' after, conflict.

²⁹ This advice is included in MOD (Army) *The General Staff Handbook* (General Staff Centre 2015) 6. See also National Defence, Canada, *Duty with Discernment*, Commander Land Staff's Guidance on Ethics in Operations, (Strategic edition 2009). This slogan was developed by the Quakers in the 1950s, to describe institutional and individual whistle-blowing about things going wrong. It has rather lost its force in commonplace.

Principles, Documents, Decision-making and Training

The third question is

Beyond the current declared institutional 'ethos' and 'professional values and standards', how can a newly articulated approach to 'military ethics' be developed for British Defence and the Armed Forces from 'first principles' to

- Better support military commanders' decision-making
- Influence the ethical conduct of strategic, operational and tactical activity, and particularly to
- Achieve stabilisation and lasting security?

In short, firstly the strategic decision to deploy troops physically with 'boots on the ground' (*jus ad bellum*), then the practicalities of using force, with the legal constraints and moral sense of conduct during war (*jus in bello*), followed by the imperative to implement measured exit strategies (*post bellum*), should be very well understood, even if not articulated as moral philosophy, *qua* ethics in accessible doctrine. However the considerations of how to withdraw leaving a safe and lasting peace is very poorly defined conceptually, let alone in universal ethical terms. Well-known Just war theorists and many others have pointed out that the tail-end chaos of *jus post bellum*³⁰ is too often of the nature of an afterthought, exposed in all its complexity after the event. Sound theory and philosophy are required, plus a vast range of practical actions in support of a truly satisfactory ending for all parties.

There are indeed *post bellum* constraints which hold true for both military and political leaders, and they must be clearly and officially articulated in the public domain. Then the context of any operation - the character of the operation³¹ - has to be situated and contextualised, and this requires training and education to be delivered to all interested parties and partners. Not just legal constraints either, but the ethics of one category of operation may well be different for another category. There should be a wide-ranging programme of strong 'ethical principles' education for commanders and leaders at different levels within the military and government. This education must form part of their normal developmental /procedural education and training. In-conflict and post-conflict training is too late.

³⁰ See Stahn (n7).

³¹ See Hew Strachan and Sibylle Scheipers, *The Changing Character of War* (OUP 2011) being the product of the Leverhulme study of the same name at the University of Oxford. View Strachan's youtube lecture of 29 March 2011 'The nature of war, How does war end?' accessed 25 November 2018.

Culture is key in articulating principles of *post bellum* operations, but whose culture - the indigenous people's, militaries, OGDs, and NGOs? How do people learn about different organisational cultures, normative conduct and explicit codes of virtues, values and standards³²? There should be some caution about re-conceiving the professional 'values' which are already embedded in our codes, albeit part of the doctrine of 'the moral component', which is chiefly about our own forces' motivation and 'fighting spirit'³³ - not universal ethics as understood and taught by experts in moral philosophy. There has to be a meeting of motivation and ethics, not separately conceptualized.

For the Armed Forces, if there is to be a culture of reconciliation, it is about working together routinely, understanding one's own culture and operating models, and also about gaining a much wider understanding of other peoples' cultures. All things must lead to the capacity to generate widespread trust. The pre-deployment, annually enforced training undertaken by every soldier may well be first class under the 'moral component of military effectiveness', with willingness and will-power - to take 'offensive action' and encouraging 'fighting spirit' in the corporate 'ethos' as well as the domestic ethics of professional military service. Such matters are about laudable institutional introspection, but not the wider 'military ethics' or 'combat service ethics' as they should be, when enemies, adversaries, civilians and neutrals are concerned - with much the same 'codes' and will-power yet in deadly opposition to our own. Then 'fighting spirit' and 'restraint' become both actuality and necessity.

It is obvious that the LOAC, and the way it is taught, explained and understood is growing in importance, albeit and it must not be unwittingly diminished by any new ethical principles cobbled together. Of course the law and justice are informed and developed by the philosophy of law, jurisprudence, which contains many fixed principles, but also some principles which can change as human life changes. So conversely the law must not diminish ethical conduct for junior

³² See Single Services statements in MOD (n 13) 28. Each lists their 'values and standards', the term 'virtues', *qua* 'virtue ethics', has not being adopted. The Royal Navy and Army have chosen 'courage', 'respect for others', 'integrity', 'discipline', 'selfless-commitment' and 'loyalty' as their six principles of conduct or 'core values', while the Royal Air Force have chosen 'respect', 'integrity', 'selfless service' and 'excellence'. 'Self-discipline' and 'trust' are other prominent virtues. For the Army there are Military Annual Training Tests for developing the understanding of 'Values and Standards' (MATT 6) and for 'Operational' Law' (MATT 7). For the Royal Navy there exists an individual self-assessment question, before a decision is made, called the 'Honesty Test'. The Army has the equivalent, a 'Service Test', which is open to officials of all ranks to pose, but retrospectively, after the action or event - 'Have the actions or behaviour of an individual adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the Army [unit]?' Emphatically such a question is too late in the cause-effect sequence, tactically or strategically for example, in the Baha Musa case or Iraq stabilisation. Change in the 'Service Test' is recommended.

³³ MOD (n 13) 33.

combat ranks. On all military exercises LOAC scenarios must take into direct consideration ethical questions. Such procedures as 'judgmental training' are well understood and conducted. The ethical constraints, particularly linked to 'risk management', also must be taught to soldiers and young officers who act as the platoon's 'safety catch'³⁴. As the British Army returns to a likelihood of using its 'offensive'³⁵ war-fighting capability, this all must be taught consistently and continuously so as to become very well understood by military professionals, civil servants and political leaders alike.

So there is considerable merit in investing in well-developed, high quality programmes for middle and senior ranking officers as well, working at the operational level with extended education in 'military ethics' *qua* 'moral philosophy' proper. The aim must be to help create a more robust sense of obligation and inform their cognitive decision-making and finer judgment ability, particularly in morally ambiguous *jus post bellum* situations³⁶. There could also be a requirement for a range of strategic level of exercises which pulls together all agencies, including the military and Non Governmental Organizations (NGOs) and Other Government Departments (OGDs), in regard to the work of humanitarian, social, economic, health, political, constitutional, and legal expert rebuilding agencies, to give a joint understanding of how they could deal with such contingencies and problems. Standing coalitions can easily do this. The Cold War NATO exercises, WINTEX AND SILEX, can be viewed as models. Such build trust and collaborative experience between the different nations and organisations likely to be involved in post-conflict activities, resolution and reconciliation.

So there are a number of general guidelines which could achieve the development of concepts and doctrine, both for *just post bellum* and more generally doctrine on the Just War Theory. For the study and application of wider 'military ethics', current 'first principles' can be built on in new ethical doctrine, in order to develop a more sophisticated understanding of how policy choices affect decision-making and forming of judgment in confused and contradictory physical operational environments. Three are mentioned

³⁴ Captain Patrick Bury 'Pointing North' in *Developing Leaders. A British Army Guide* (Director General Leadership, Royal Military Academy Sandhurst 2014) 109-110. See also Patrick Bury, *Callsign Hades* (Simon and Schuster 2010).

³⁵ A principle of war, see n 13.

³⁶ 'Metaphorically, a war, justly prosecuted, is something like radical surgery: an extreme yet necessary measure to be taken in defense of fundamental values, such as human rights, against severe threats to them, such as violent aggression. And if just war, justly prosecuted, is like radical surgery, then the justified conclusion to such a war can only be akin to the rehabilitation and therapy required after the surgery be akin to the rehabilitation and therapy required after the surgery'. Brian Orend, 'Jus Post Bellum: The Perspective of a Just War Theorist, Leiden, *Journal of International Law* (2007), 571, 58.

- *Clearly distinguish between destroying and defeating an enemy's will.* Too often these two concepts / activities are conflated. Consideration of *post bellum* security problems particularly highlights the importance of distinguishing the two. Military victory nowadays seldom entails destroying one's enemy and the interest in achieving *post bellum* security provides reason to limit to the minimum the destruction brought to one's enemy as the 'end-state'.
- *Understand the context of each campaign, the region, its history and culture(s).* Experience has shown how easy it is to make false assumptions or naïve simplifications about the people one encounters in a military campaign³⁷. Every community is immensely complicated and it should be assumed that they will have a unique experience of and reaction to encounters with foreign militaries. It is imperative that everyone seeks to understand the unique perspectives of those involved during military operations.
- *Do not assume that what worked in one case will work in another.* Each campaign will be determined by myriad factors and these factors will be a unique mix in each situation. Therefore, what may have brought success in one case will not necessarily bring success in another.

Where does this lead the British Armed Forces? It is widely acknowledged that governments rarely think beyond the next election. Domestic politics will always explain much of the inconsistent response to post- conflict situations, yet military commanders are increasingly under the scrutiny when applying their legal and ethical judgment. Given ministerial oversight, in essence the research and study of the best of ethical principles for military operations and moral conduct during military service, leading their proper articulation, is a matter chiefly for professional military persons. More work and continuous review is required.

³⁷ Two Haldane-Spearman Consortium studies were commissioned by the Ministry of Defence in 2006, namely '*Understanding adversary culture*' and '*Understanding ethical principles in the Armed Forces*'. The editor was involved in both. Never published in the public domain, the first- mentioned may have been taken into use by the MOD Armed Forces; the latter was not and forgotten.

PROJECT EXTENSION

DEVELOPING MILITARY ETHICS IN BRITAIN: CONCLUSIONS AND RECOMMENDATIONS

Further Background

To develop the study of military ethics, there are two background factors. The first is that 'moral philosophy, being the substance of 'ethics', is about the guidance of human affairs and the meaning of life (ontology). Secondly, arguably law is one thing, justice is another, as John Rawls wrote in *A Theory of Justice*. How they come together, through the study of deeper motivations and how problems small or large can be solved, then follows. Military ethics, the philosophy of military affairs, and jurisprudence, being the ethics guiding formulation and application of law and justice (with its own principles), are sub-texts and subservient to moral philosophy *qua* ethics in general. Whose law, whose justice is the moot question in international affairs, particularly in conflict.

At the earlier RCDS Seminar in 2011 (chaired by the Director General, Defence Academy), 'To consider the Ethical Component of military Capability'³⁸, it was recorded that 'Values and Standards training cannot on its own give enough guidance... to cover "operational ethics"' (David Whetham). 'Law without deep ethical understanding is only half the story. Law can obscure ... this often leads to trouble' (Charles Garraway). Discussing the need for articulation of 'military ethics' in doctrine, the 2001 Seminar concluded that 'a generic development' may be useful, and the 'development of *ethical principles*...beyond Values and Standards is achievable and favoured by some parts of the Defence community'. This 2018 Seminar and further study gives such an opportunity.

Incomplete Post-conflict Theory

Modern-day *Jus ad bellum* theories informed the original establishment of the UN and continue to emanate from its Charter, while the *jus in bello* regulatory framework resides in the LOAC, explained in the already mentioned 2004 *Manual*

³⁸ MOD Royal College of Defence Studies Seminar 'To consider the Ethical Component of military Capability', Summary of Proceedings, 2011.

of the Law of Armed Conflict JSP 383³⁹, then interpreted for specific operations within ROE. Unlike *ad bellum* and *in bello*, no formal, internationally agreed specific ethical 'principles' for *jus post bellum* for the understanding and compliance of armed forces exist, albeit Brian Orend drafted some general principles in 2007 (see n 7). Thus in the drawing-down of the use of lethal force in operations to bring about 'stabilisation' and 'security', there is much uncertainty about what professional military persons can and should do in actuality, working with numerous other agencies and NGOs - they having their own responsibilities for resolving socio-economic, legal-constitutional and politico-security and human rights problems.

The chief problem is the overlap between human rights law and LOAC, which may or may not occur in *post bellum* situations. Where LOAC *does not apply*, human rights law still applies - thus there remains an international law element. However where LOAC *does apply*, there can be serious disagreements as to how LOAC relates to human rights law. This is particularly so in the *post bellum* context. In the practicalities of 'stabilisation' and 'security', ROE can be even more difficult to set and interpret by commanders at all levels.

Therefore how military action can bring about the stability and security for a safe, just and lasting peace is an open question, requiring a much deeper level of understanding than ever before. High expectations are the spirit of the age. Developing thinking, down to the lowest levels of command and leadership, with clear ethical principles about just peace as an end-state, is surely a distinct governmental and military professional imperative for force-generating, to meet future operations and significantly post-war planning. The very 'character of war' (Sir Hew Strachan) is changing⁴⁰, with increasing international competitiveness and the further 'hybridization of war'⁴¹ (Christopher Donnelly), as well as in acknowledgement that we have to face that a 'necessarily imperfect peace.... [is a] far more complex affair than war'⁴² (Sir Michael Howard). Such cross-governmental thinking is imperative for successful outcomes of all future military action, and needed to vindicate the justice of any such action in the first place.

³⁹ MOD (n 11).

⁴⁰ Strachan and Shiepers (n 31).

⁴¹ Christopher Donnelly 'War in Peacetime', *Occasional Paper* no 9 (Council of Military Education Committees 2017).

⁴² Sir Michael Howard, *The Invention of Peace and the Re-Invention of war* (Profile 2001) 126, 2.

Developing and Conceptualising Military Ethics.

More generally, In agreeing that 'military ethics' are wider than the currently conceived 'moral component' - although the dynamics interact on operations and in base - there is intellectual uncertainty beyond heuristic thinking and obvious pragmatic action. Many mistakes have been made. There is currently no published over-arching, moral philosophical (ethical) MOD doctrine, although modest education interventions are conducted, for instance at the JSCSC Advanced Course and at the officer academies, down to unit 'judgmental training' - with some JSCSC / KCL guidance (Whetham). This is achieved using carefully designed pack of playing cards, with hard questions and choices for doing not only 'the right thing', but 'the good thing' (see above). Hitherto based only on the published motivational 'Values and Standards' - about values, not virtues -and 'fighting power' motivation as the declaimed institutional 'ethos', the Seminar and subsequent meetings of participants consider such education is less than adequate for the contexts and types of operations faced from now into the future. Over-arching ethical theory is missing to substantiate and reinforce the Law of Armed Conflict and the justification for a just war.

Emphatically international compliance is recommended in the ICRC 2018 *Roots of Restraint in War* ⁴³ (part funded by DfID) report, which specifically urges all nations' armed forces to incorporate in doctrine, taught codes and imbedded norms, as well as IHL and HR Law guidance (see Chapter 9). A deeper understanding of justice after war, incorporated generally in any new, internationally-understood conception of the Just War Theory, is thus becoming an urgent requirement.

Official Documents

A wholly new MOD doctrine document will almost certainly be needed in the near future to explain the 'moral dynamics' of war, beyond the existing inadequate description of the 'moral component' in force generation. But there are a number of existing official documents which could appropriately be revised and connected with each other through deeper thinking and articulation of moral philosophy - as applied to conflict and the military profession. Sections can be added to reinforce such as (with notes added for context)

⁴³ See n 8.

- *UK Defence Doctrine*, 5th ed JDP 01 2014 (n 13).
- *The Good Operation. A handbook for those involved in operational policy and its implementation*, 2017 (n 3). This was the follow-up work of the same group, under the leadership of Sir John Chilcot which presented *The Report of the Iraq Inquiry* (see n 26). It is the latest politico-military policy guidance document for use across all government departments, and follows deep thinking about the past fifteen years of British operations. The 'Good' in the title carries a much deeper implication than the sort of judgment and wisdom encouraged in the next listed document, useful as it is.
- *Understanding and Decision-making*, 2nd ed 2016 JDP 04, which is about developing cognitive faculties expected of those making fine judgments and decisions about operations in advance and during operations. The level is the Advanced Course at the Joint Services Command and Staff College, and it is also used at the Royal Military Academy Sandhurst. In the next revision it could be enhanced with a new section or chapter, to fill the vacuum about ethical judgment on operations and on base..
- Next, the *RCDS Getting Strategy Right (Enough)* 2017 booklet. It already has a brief resumé, as advised by Professor David Whetham, of the Just War Tradition, including outline *jus post bellum* guidance, following David Orend's work⁴⁴. This could be expanded

Finally, and most significant of all, the already mentioned October 2018 MOD DCDC *Global Strategic Trends. The Future Starts Today*, 6th ed, is an existing doctrinal vehicle for the future development of the ethics of military service and, more significantly the ethics of war-fighting to the conclusion of operations. The 6th edition is a work of considerable national and international interdisciplinary scholarship about the future. The Executive Summary ends with, 'A final thought', of great significance stating

Few would dispute that the character of conflict is changing, for example, distance is becoming increasingly irrelevant as a security buffer and the West's technological advantage is reducing. The physical dimension could become less important than *the cognitive and moral dimensions*⁴⁵.

These documents, together with new sections, need to be connected with each other in every new edition, through deeper thinking and articulation of moral philosophy as applied to conflict and the military profession.

⁴⁴ All official documents are on the MOD website, <https://www.gov.uk> › Defence and armed forces accessed 16 November 2018. For Brian Orend's work, see n 7.

⁴⁵ MOD DCDC (n 3)19, emphasis added.

Seminar Outcome Recommendations

In conclusion it is recommended that

1. Stabilisation and security stages after conflict be given a newly-articulated ethical framework, with definitions and principles, in appropriate MOD document(s).
2. A comprehensive approach is taken to developing and conceptualising the ethics of the conduct of all types of military operations and of military service in general, in an MOD document - or duly incorporated into a number of documents - in which the MOD and Armed Forces take full ownership of their own ethics. This could initially take the form of a Joint Doctrine Note, to argue in favour of expanding the next edition of *Global Strategic Trends*, with due significance as recognized above .
3. That the Single Services develop their own doctrine and training, with deeper educational emphasis, and that such enterprises be cross-referential, through the continuous exchange of 'good practice'.

This chapter is a record of a formal event and opinions expressed in 2018. It will continue to be relevant for many years ahead. The developments and outcomes can be followed and verified by future historians nationally and internationally, revealing whether positive progress has been achieved in furthering knowledge, understanding and professional military practice in Britain's Armed Forces and Government.

