

THE APPLICATION AND TRANSITION OF JUST WAR PRINCIPLES
IN CANADIAN DEFENCE POLICY 1947-2005

by

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ABSTRACT

Just War Theory is a set of principles that have long been used to guide and regulate warfare between nations. Just War Theory principles are divided between *jus ad bellum*, the principles that guide the decision to engage in war, and *jus in bello*, the principles that regulate right conduct in war. The principles which guide the decision to engage in war include just cause, legal authority, sufficient cause, reasonable chance of success, and last resort, whereas the principles of right conduct include discrimination and proportionality. As the product of western religious and scholastic thought these principles have guided nations' resort to and conduct of war, and shaped the international conventions concerning war that now exist as the law of armed conflict or international humanitarian law.

As a western democracy, Canada's defence policy and military operations have been influenced by Just War Theory principles. Analysing how these principles have been defined and applied in Canadian defence policy and operations illustrates to what extent they have been used as a foundation for Canadian defence policy in the twentieth century and how they were re-defined and applied as Canadian defence priorities changed in the aftermath of the Cold War.

This thesis examines Canadian defence policy statements from 1947 to 2005 before focusing on case studies of Canadian Armed Forces peace-building operations in Somalia and the former Yugoslavia. This paper traces the application and transition of Just War Theory principles from the post-war internationalism establishing the United Nations, through the alliance relationships of the Cold War, the new internationalism

and revitalized United Nations following the end of the Cold War, culminating in the emergence of a new understanding of Just War, the doctrine of Responsibility to Protect.

DEDICATION

This project is dedicated to the men and women of the Canadian Armed Forces. They more than any others, have convinced me that just war theory is far more than a theory; it is a code of moral discipline that distinguishes soldiers from those who merely fight.

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INTRODUCTION

Just War Theory: the phrase elicits numerous responses that suggest it is an oxymoronic concept, an antiquated idea no longer necessary in a world of well-established international law, or simply a theory with little practical or useful application. Some might consider just war theory nothing more than an archaic example of humanity's past endeavours to place limits on the destructive force of war. This thesis finds that just war theory remains an active and important set of principles that guide the decision to go to war as well as one's conduct in war. Over time it has been espoused as religious principles, the embodiment of chivalry, laws derived from custom and nature, and most recently as "as a moral compass – a guide that will be clear, practicable and credible to the armed forces and the people they represent and serve."¹

This project begins with a brief look at the theorists and traditions that have shaped just war theory, from Augustine, Grotius, the Lieber Code and the Geneva Conventions. The second chapter considers how military historians such as Michael Howard, Michael Walzer, Robert Holmes and Michael Glover have applied just war theory to the study of modern wars in recent history. This review of just war theory distills a set of commonly accepted principles under *jus ad bellum* (justice for war), and *jus in bello* (justice in war). This review of the origins of just war theory and its modern application as principles provides the basis for an analysis of Canadian defence policy from 1947 to 2005.

The aim is to assess whether Canadian defence policy reflects the moral compass that just war principles offer to policy planners and the soldiers who turn policy into

¹ Charles Guthrie and Michael Quinlan, *Just War : The Just War Tradition – Ethics in Modern Warfare*, (London, Bloomsbury, 2007. p.4

operations. This project examines formal defence policy documents, statements by political and military leaders and two recent examples of Canadian military operations; the United Nations missions to Somalia and the former Yugoslavia.

The examination highlights the effective application of just war principles as well as times when Canada has struggled to do so. It highlights the connection between these principles and the myriad other realities that shape Canadian defence policy. It also highlights United Nations challenges and successes in applying these principles on humanitarian operations. In the context of this examination, just war principles have remained relevant and credible, even as they were re-defined to fit the moral responsibilities of the international community and the needs of military leaders and soldiers in ever more complex environments of conflict in the aftermath of the Cold War. Indeed, the ultimate result of just war adaptation to the late 20th century international system is the Responsibility to Protect (R2P) doctrine.

CHAPTER ONE: AN INTRODUCTION TO THE JUST WAR TRADITION

Before beginning an historical review of western just war tradition, it is imperative to understand what it is and how it evolved over many centuries. The just war tradition can be summarised as the body of literature that defines the appropriate justification and conduct for nations and persons in time of war. Contained in the literature are guidelines governing the declaration and cessation of war, the calling of and appropriate conduct of truces or cease-fires, respect for neutrals, appropriate care for wounded, the captured, and non-combatants, respect and protection of private property, cultural and religious sites, the inappropriate employment of weapons, banned or illegal weapons, the designation of who may fight, how they must be identified, and an international system that attempts to hold nations and individuals accountable for the contravention of all these would be rules.²

The ideas developed in the just war tradition crystallized in the writings of five key scholars in the post-Roman world. This chapter reviews how these scholars distinguished between justice for war, *jus ad bellum*, and justice in war, *jus in bello* and defined the principles that are found in each. Their ideas laid the foundations for the conventions and laws that evolved into international humanitarian law.

It is important to note that western thinkers held no monopoly on this idea of bringing order and rules to the conduct of war. An Indian Epic entitled *The Mahabharata*, dated to the eighth century BCE chronicles the Kurukshetra War through an inquiry of just war. A parallel tradition can be found in ancient China as well.

² Robert Kolb, "The Protection of the Individual in Times of Peace and War", in *The Oxford Handbook of the History of International Law*, Bardo Fassbender and Anne Peters eds. (Oxford, University of Oxford Press, 2012), 321. The entire section explains the development and addition of the various tenants of the just war tradition.

However, this study focuses on western thought. The Christian apologist, Augustine of Hippo (354-430), is credited with first writing that war must not be undertaken by a state unless it had just cause and a right intention for going to war.³ Augustine ascribed the responsibility and the right to declare and conduct war to the sovereign, the recognized, legal authority of the ruler.⁴ Although Augustine described numerous causes which may justify the resort to war, the right intention for Augustine must always be the stability of the state and establishing a just and lasting peace.⁵ Augustine said little about *jus in bello* principles. He asserted that the individual soldier's moral culpability for actions in war was mitigated as long as the soldier was acting under the direction of the state, embodied in the political leadership and generals.⁶ Although he did not provide a list of rules governing appropriate actions in war or define those who should be considered non-combatants, Augustine advocated a spirit of mercy that should guide the actions of soldiers toward the enemy, the captive and those who surrender.⁷

In the early medieval period, Catholic scholars such as Thomas of Aquinas (1225-1274), further developed this tradition. Aquinas confronted the moral issues surrounding war. Aquinas built on Augustine, adding three necessary components for *jus ad bellum*; first that it be declared by the authority of a head of state, second that it have a proportionally good reason, and third that it be supported by a morally right aim.⁸ The third condition marked the beginning of a doctrine of proportional response; that the aims of going to war are proportional to the injustice received and the just cause given.

³ Julian Lindley-French and Yves Boyer, eds., *The Oxford Handbook of War*, (Oxford, Oxford University Press, 2012), 18.

⁴ John Mark Mattox, *St. Augustine and the Theory of Just War*, (London, Continuum Books, 2006). 56-57.

⁵ Mattox, 76.

⁶ Allen Christopher, *The Ethics of War and Peace; An Introduction to Legal and Moral Issues*, second edition, (Upper Saddle River, NJ: Prentice Hall, 1999), 41.

⁷ Mattox, 63.

⁸ Christopher, 51.

If the aims of the war were not in keeping with the first two conditions, a war, legally declared for a just cause, could become wrong or illegal. In the context of *jus in bello*, Aquinas developed what has become one of the most controversial components of the tradition: the doctrine of double effect. This doctrine grew out of Aquinas' challenge to answer Christian critics who argued that taking another's life in war was murder and contrary to the law of God. The argument that Aquinas put forth runs as follows: the intended act itself is good, or at least morally acceptable; those carrying it out intend the good effect and not the bad collateral consequences; good effects can be expected to outweigh the bad consequences; the context is sufficiently serious to justify inflicting such consequences; the agents conscientiously attempt to minimize collateral damage or harm from their act.⁹ This doctrine, although initially developed by Aquinas as a moral guide for the individual soldier, has become a key component in the debate over civilian casualties of war in the modern age.

Francisco de Vitoria (1483-1546), a Spanish jurist, provided two further additions to the just war tradition. The first, premised on Spain's conquest of the new world, was to identify and avoid bringing harm to non-combatants in a time of war. His list included women, children, farmers, foreign travelers, clerics and religious persons, and the rest of the peaceable population.¹⁰ Vitoria's second related contribution expanded Aquinas' doctrine of double effect as a defence of collateral damage to private citizens and private property. Vitoria argued that given the proximity in walled cities of innocents to the belligerents, it is sometimes unavoidable that they be harmed, but that should not render a war unjust or prevent attacks on urban areas.

⁹ Julian Lindley-French and Yves Boyer, 106.

¹⁰ Christopher, 56.

Undoubtedly the greatest contribution to the just war tradition came from the Dutch jurist, Hugo Grotius (1583-1645). His 1625 treatise on international law, *De jure Belli ac Pacis* (The Law of War and Peace), established the first systematic legal structure for the conduct of war. In the Prolegomena of his work, Grotius explained the need to write:

Throughout the Christian world I have observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I have observed that men rush to arms for slight causes or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if in accordance with a general decree, frenzy had openly let loose for the committing of all crimes.¹¹

Grotius observed this conduct amidst the Thirty Years War (1618-1648) between the Hapsburg Empire allied with Spain and Bohemia and the Protestant Union led by Sweden and France. That devastating war resulted in an estimated eight million casualties and destroyed large segments of Germany and the Netherlands.¹²

Grotius' most important contribution to the just war tradition was to re-define the conditions necessary for a state to justly and morally go to war. The just conduct of war was articulated by Grotius in six *jus ad bellum* principles: 1) just cause for war, 2) proportionate cause, 3) reasonable chance of success, 4) public declaration of war, 5) legitimate authority to declare, and 6) course of last resort.¹³ Grotius limited the just causes to self-defence and the redress of an injury that had been received, and stressed that the cause must be objectively just and stand the scrutiny of the broader international

¹¹ Hugo Grotius, *The Rights of War and Peace*, trans. Francis Kelsey, (Oxford, Clarendon Press, 1925), 20.

¹² Norman Davis, *Europe, a history*. (Oxford, Oxford University Press, 1996), 568.

¹³ Christopher, 82-87.

community than simply the subjective belief of the ruler deciding to go to war.¹⁴

Proportionate cause was an important addition to the *jus ad bellum* principles. The requirement stipulates that the benefit from going to war must be proportional to the costs entailed. Grotius argued that rulers must not only consider how war would impact their own citizens, but also those of any other nation impacted by the war.¹⁵ This notion is an important precursor to the modern international community's sense of responsibility to intervene to protect innocent human life, developed in the 1990s as the Responsibility to Protect (R2P) doctrine.

Grotius's concept of 'reasonable chance of success' was a response to the futility of the Thirty Years War. He insisted that the state has a responsibility to surrender to prevent unnecessary death and destruction when it was clear that defeat was imminent. His 'public declaration of war' idea sought a return to Roman custom that allowed for the offending party to offer terms before war was commenced and permitted the international community to seek resolution through diplomacy or other means short of war. 'Legitimate authority' for Grotius was the ruler who possessed sovereign power over the state. Grotius considered that citizens may rebel against a tyrant if the king or prince has renounced his responsibility of seeking the peace and the good of his people, another precursor to modern Responsibility to Protect doctrine.¹⁶ Grotius' last principle, the 'course of last resort', encouraged states to resolve differences by another means such as negotiation or arbitration. Grotius challenged Aquinas' condition of right aim

¹⁴ Mary Ellen O'Connell, "Peace and War" in *The Oxford Handbook of the History of International Law*, Bardo Fassbender and Anne Peters eds. (Oxford, Oxford University Press, 2012), 275-276.

¹⁵ Christopher, 83.

¹⁶ Mark Cogen, *The Shock of War and the Law as a Battlefield Account*, (Ashgate Publishing, 2012), 52. The idea that the ruler has a primary responsibility to protect the citizens of the state and that failure to do so precludes their sovereign power within their own state is one of the decisive changes to the understanding of sovereignty in the post-Cold War era.

arguing that his proposed legal conditions were objective and easily deduced, whereas the “rightness” of a ruler’s aim in war was entirely subjective and could not be deduced with certainty making it of little practical value in assessing the legality of a war. His principle of last resort offered a better prospect to avoid war than ensuring the appropriateness of the aim or intention of the leaders involved and became the final principle in determining whether a war was just.

Grotius also wrote on right conduct in war, *jus in bello*. Grotius believed that soldiers were expected to act as soldiers in times of war.¹⁷ Alleviated of responsibility for *jus ad bellum* conditions which belonged to the political leader, the soldier was responsible for their actions preparing for battle and on the battlefield, *jus in bello*. Like Vitoria, Grotius focused his rules for right conduct on two parts, first, the protection of innocents whom, provided they were not engaged in fighting, included women, children, the elderly, farmers, merchants, prisoners of war and holders of religious office.¹⁸ Secondly, he suggested limits be imposed on destruction of enemy territory and property. In this regard, Grotius recognized that destruction of economic infrastructure is one means to defeat an enemy’s capacity to wage war but he counseled moderation (*temperamenta-belli*) and introduced the concept of military necessity as the guiding principle.¹⁹

The final authority to note in this cursory review of western thought is Emerich de Vattel (1714-1767). Although Prussian by birth, Vattel lived most of his life in Neuchatel, Switzerland. Vattel’s seminal work, *The Law of Nations*, contributed to the development of international law by re-defining its basis. While Grotius’ focused on

¹⁷ Cogen, 55.

¹⁸ Christopher, 92.

¹⁹ Cogen, 60.

customary law as the basis for conduct between states, Vattel argued that natural law formed that basis and compelled states to abide by certain standards of behaviour and conduct in economics, politics, and war that were or should be commonly observed between all peoples and states. When it came to war, Vattel argued that although moral right could not belong to both sides in a conflict, legal right could and should, ensuring that both states would subsequently be encouraged to abide by the laws of nature and appropriate conduct.²⁰ Similarly, Vattel posited that in cases of civil war, both sides must be considered as divided, legal entities, each bound to conduct war according to the laws set forth. Failure to do so would reveal their true quality and the justice of their motives to the international community.²¹ In keeping with this recognition of both sides as legal political entities, Vattel discouraged foreign intervention in civil wars as there was no higher authority that both were bound to.²² In so doing Vattel defended the sovereignty of the state or the sovereignty of the belligerents from foreign intervention. The centrality of sovereignty in the just war tradition which from the beginning was the basis of authority to resort to arms has now also become the basis of a right that precluded intervention in a conflict regardless of how “cruel, horrible and destructive to the nation” it becomes.²³

This brief summary of the development of western thought surrounding the just war tradition is not exhaustive. The theorists referred to above established the commonly accepted foundations of just war theory and component parts. The first set of principles belongs to *jus ad bellum*, justice for war. They are: just cause, proportionate cause, right

²⁰ Holmes, 157-158.

²¹ Richard Whatmore and Bela Kapossy, eds., *The Law of Nations by Emerich Vattel* (Indianapolis: Liberty Fund, Inc. 2008), 645.

²² Whatmore and Kapossy, 645.

²³ Whatmore and Kapossy, 646.

intention, right authority, reasonable prospect of success, and last resort. The second set of principles fall under *jus in bello*, justice in war, of which there are two: discrimination and proportionality. Although *Jus ad bellum* and *jus in bello* remain to this day as a robust ethical framework for decision-making in conflict, this set of principles applies mostly to wars between states. They served western governments well in the 19th and 20th centuries when it came to European conventional warfare. However, General Charles Gutherie, Commander of NATO's Northern Army Group in 1992-93, points out that just war principles "are not simply a tick-box test but rather the hard work of disciplined pragmatism and judgement and the criteria used must be pertinent and useable in situations not neatly classifiable as wars in the standard historical sense."²⁴ This becomes ever more apparent as the international community deals more and more often with conflicts such as those described by Vattel; internal to one state, but no less deadly and destructive.

The just war theory established on paper in the early modern western world later became embodied in a very practical series of declarations, policies, and laws intended to govern the conduct of states when they went to war. Indeed in the modern era of western warfare, just war theory began to be codified in the practice of international political-military relations. Key 19th century examples of this process include The Lieber Code, General Order No.100 of the Union Army, written by a Prussian jurist named Franz Lieber (1798-1872). Lieber's set of orders written at the behest of Major General Henry Halleck was approved by President Lincoln in May 1863 to govern the conduct of the Union Army during the American Civil War. The Code authorized

²⁴ Charles Gutherie and Michael Quinlan, *Just War; The Just War Tradition: Ethics in Modern War* (London: Bloomsbury, 2007), 15.

“...a ferocious war in which the ability of the enemy to make war was destroyed. At the same time, his rules prohibited unnecessary destruction of property and required the army to attempt to preserve and never purposefully destroy works of art, libraries, churches, schools, and scientific instruments. The Code specifically prohibited soldiers from taking public or private property for their personal use as booty or trophies of war. Neither officers nor enlisted men were to profit from the property they might seize on behalf of the government. [It was intended] to limit collateral damage as much as possible, legitimize damage where it was necessary, allow for the nation-state to take enemy property for the use of the army, destroy enemy property used to make war, and prevent the soldiers of the army from becoming a mob of looters and pillagers.”²⁵

By 1861-1862 Franz Lieber had written articles and delivered lectures outlining his vision for a law of war. He focused his attention on the *jus in bello* principles such as the treatment of prisoners of war, the recognition of guerrillas and irregular troops, and the protection of property and means not considered to have military value.²⁶ The document approved by President Lincoln in 1863 was an expansion of these earlier ideas. Lieber codified Vitoria and Grotius, instructing that civilian deaths were to be avoided where possible, although military necessity permitted the assault on cities even though there may be large numbers of civilian deaths. Prisoners of war were to be treated humanely, fed and housed safely and not tortured, and civilians were not to be killed, tortured, or enslaved. Under Lieber’s rules, the US Army was not to use poison, assassination of rulers was prohibited, flags of truce were to be recognized, spies could be summarily executed, prisoners of war could be exchanged or paroled, and civilian property and the property of a conquered nation should be respected. Even the killing of enemy soldiers was subject to the limitation that violence only be employed to win a battle, and protect

²⁵ Paul Finkelman, “Francis Lieber and the Modern Law of War,” *The University of Chicago Law Review*, vol.80, no.4 (Fall 2013): 2101.

²⁶ Jordan Paust, “Dr. Francis Lieber and the Lieber Code,” *American Journal of International Law* (April, 2001): 113.

one's own soldiers and military equipment.²⁷ The Lieber Code was widely distributed and later used by armies across Europe as a guideline for the conduct of soldiers in the field. It was a source document used in the 1874 Paris Declaration and at the 1899 Hague Conference in the Commission discussing the Laws of War on Land.²⁸

Around the same time, in 1863, Henry Dunant, a Swiss businessman and philanthropist, convinced the authorities in Geneva, Switzerland of the need to take action for the protection of wounded and sick soldiers in the field of war. A committee was established to recommend ways to provide better care for wounded soldiers. It was comprised of Dunant, General Guillaume-Henri DuFour, Gustave Moynier, Dr. Louis Appia and Dr. Theodore Maunoir.²⁹ Initially referred to as the "Committee of Five", in 1875 it was renamed the International Committee of the Red Cross (ICRC).³⁰ In August 1864, the Swiss government hosted an international conference attended by sixteen nations and four humanitarian groups that resulted in the Geneva Convention for the Amelioration of the Condition of Wounded in Armies in the Field.³¹ From that small beginning, the Geneva Conventions have become the embodiment of the just war tradition in international humanitarian law (IHL) and will be discussed later in the chapter.

Other steps toward regulating warfare emerged in Russia where Prince Alexander Gorchakov led an initiative to eliminate a new bullet developed by the Russian army that

²⁷ Finkelman, 2094-2095. These various laws come from The Lieber Code, Articles 15, 23, 56, 70, 114, and 148.

²⁸ Paust, 114.

²⁹ Aside from Dunant, the other four men were members of the Geneva Society for Public Welfare, and had been moved by Dunant's writing of his experiences at the Battle of Solferino in 1859.

³⁰ "History of the International Committee of the Red Cross", www.icrc.org/en/whoweare/history

³¹ The text of this protocol can be viewed at the International Committee of the Red Cross website, www.icrc.org/en/whoweare/history/bydate/esp

exploded upon impact increasing the pain and suffering of those struck. The Russian government feared the bullet would be too abhorrent and invited European powers to a conference where they agreed to ban this new weapon. They signed the St. Petersburg Declaration which reads: "The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances."³² Of note in the preamble to this prohibition was the recognition that the legitimate aim of battle was to weaken the enemy force by disabling a sufficient number of men without unnecessarily causing suffering or rendering death inevitable and that the use of a weapon that caused such injury was contrary to the laws of humanity. The St. Petersburg Declaration of 1868 was ratified by nineteen European countries and represented one of the first international laws limiting the use of a specific weapon in war to prevent unnecessary death or injury.

Three decades later the Hague Conference of 1899 was convened at the invitation of Tsar Nicholas II of Russia, whose rescript to the nations of Europe and major powers beyond highlighted the Tsar's lofty aspirations.

The maintenance of general peace, and a possible reduction of the excessive armaments which weigh upon all nations, present themselves in the existing condition of the whole world, as the ideal towards which the endeavours of all governments should be directed. To put an end to these incessant armaments and to seek the means of warding off the calamities which are threatening the whole world, - such is the supreme duty which is today imposed upon all States.³³

³² The entire text of the St. Petersburg Declaration can be viewed at the International Committee of the Red Cross website, www.icrc.org/applic/ihl/ihl.nsf/

³³ The complete transcript of the Tsar's rescript can be found in Sandi E. Cooper, "Introduction," in *Arbitration or War? Contemporary Reactions to the Hague Peace Conference of 1899*, ed. Sandi Cooper, (London: Garland Publishing, 1972), 9-11.

Twenty-six states sent delegations: Russia, Germany, the Austro-Hungarian Empire, Switzerland, Bulgaria, Romania, Yugoslavia, Great Britain, France, Spain, Portugal, Belgium, the Netherlands, Luxembourg, Denmark, Sweden and Norway, Finland, Italy, Greece, Turkey, Japan, China, Siam (Thailand), Persia, Mexico and the United States.³⁴ Delegates were assigned to three Commissions to debate and draft conventions on various matters. Commission 1 dealt with the limitation of weapons and the humanizing of war and produced three declarations limiting or prohibiting the use of specific weapons and technologies for war. These included the use of expanding bullets, the use of artillery shells to deliver asphyxiating or deleterious gases, and a five-year moratorium on the use of balloons for aerial bombardment.³⁵ Commission 2 considered the laws and customs of war and drafted the *Projet de Déclaration Concernant le Lois et Coutumes de la Guerres sur Terres*. This convention of sixty articles drawn largely from The Brussels Declaration of 1874, contained sections on belligerents, prisoners of war, sick and wounded, hostilities, spies, surrender, armistice, military authority in occupied territory, and neutral states.³⁶ Commission 3 considered the subject of international commissions of inquiry and international arbitration and produced the *Convention for the Peaceful Settlement of International Conflicts*, which included sections on the peaceful settlement of disputes through arbitration, the International Commission of Inquiry, and the establishment of the Permanent Court of Arbitration.³⁷

³⁴ The list of attending nations and signatories to various conventions can be found at the International Red Cross website, https://www.icrc.org/applic/ihl.nsf/States.xsp?xp_viewStates.

³⁵ Bob Reinalda, *The Routledge History of International Organizations; From 1815 to the Present Day* (New York: Routledge, 2009), 68.

³⁶ G.H. Perris, "A History of the Peace Conference at The Hague," in Cooper, ed., *Arbitration or War?: Contemporary Reactions to The Hague Peace Conference of 1899* (London: Garland Publishing, 1972), 69.

³⁷ Perris, 87-92.

The Second Hague Conference of 1907, again hosted by the Russian Government, brought together two hundred and fifty-six delegates from forty-four nations. In addition to those from the first conference, Norway attended as a separate entity and seventeen South and Central American states attended, having ratified the 1899 Conventions between 1903 and 1907.³⁸ The subject of arms limitation was not included in the programme, though a resolution affirming the importance of arms limitation was adopted by acclamation near the end of the conference. The first 1907 sub-commission again dealt with matters of land warfare and renewed the ban on expanding bullets and shells delivering asphyxiating and deleterious gases. The expired five-year prohibition on aerial bombardment was opened for discussion and renewal. The commission added the phrase "by any means whatever" to the prohibition of bombardment of undefended places, presumably extending the ban to include aeroplanes.³⁹

The second 1907 commission adopted The Law of War on Land revised at the Geneva conference of 1906, along with several additions to the 1899 Hague Convention. Key advances included agreement on the inviolability of the territory of neutral states, the rights of neutral states and neutral persons, and the rights of citizens of occupied territories.⁴⁰ The 1907 Convention also amended the Pacific Settlement of International Disputes article, formalizing procedures for establishing tribunals, securing testimony, obtaining testimony, establishing the duty of litigants to cooperate and the examination of witnesses.⁴¹ One additional step was taken by the 1907 conference in regards to the Permanent Court of Arbitration. A *voeu* (pledge) was made to consider at the next

³⁸ Reinalda, 78.

³⁹ Calvin D. Davis, *The United States and the Second Hague Peace Conference; American Diplomacy and International Organization 1899-1914* (Durham, NC: Duke University Press, 1975), 206.

⁴⁰ William I. Hull, *The Two Hague Conferences and Their Contribution to International Law* (London: Garland Publishing, 1972), 257.

⁴¹ Reinalda, 79.

conference a Court of Arbitral Justice to sit permanently at The Hague as a continuous and cumulative body of international jurisprudence.⁴²

The apparent success of the Hague Conferences and earlier declarations or codes faded as The First World War quickly became a global conflict employing modern deadly weapons systems inflicting casualties on a scale never before imagined. The inability of the Hague Conventions to prevent war or manage its destructiveness did not preclude the 1864 Geneva Convention for the Amelioration of the Condition of Wounded in Armies in the Field or provisions of the Hague Conventions governing prisoners of war, and civilians in occupied territories from being applied during the war. Guided in large part by the ICRC, the *jus in bello* principle of discrimination was effective in protecting prisoners of war, the wounded and civilian populations.⁴³ Of particular note was the establishment of the International Prisoner of War Agency in 1912 and the December 1914 agreement secured by the ICRC from all belligerent states to visit and inspect the conditions of camps for prisoners of war.⁴⁴

Following the end of the “war to end all wars”, the international community moved into a new era of international law to prevent war and its destructive potential by forming the League of Nations. The League of Nations was an international organization established as part of the Paris Peace Accords. Member nations began work in 1920, and as per the League’s Covenant, they agreed to focus efforts on avoiding war and the establishment of international law, stating:

THE HIGHCONTRACTING PARTIES, In order to promote international co-operation and to achieve international peace and security by the acceptance of

⁴² Hull, 426.

⁴³ A brief history of the ICRC activities in World War One can be found at, www.icrc.org/eng/resources/documents/misc/57jqgq.htm

⁴⁴ Ibid.

obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another, Agree to this Covenant of the League of Nations.

In the ensuing articles, the member states pledged themselves to a reduction of armaments to the lowest practicable levels necessary for national security (Article 8). They committed to the regulation of armaments and registration and control of the manufacture and exportation of munitions and weapons (Article 8). They pledged to engage in the process of dispute resolution through arbitration or judicial review, and endorsed the establishment of the Permanent Court of International Justice (Articles 12-14). They adopted a policy of collective security, acknowledging that the resort to war against one member was *ipso facto* war against all members and the collective use of sanctions, seizure of assets, blockades, and if necessary, military force supplied from member states, to end the war (Article 16).

In the minds of most people, the League of Nations was a failure. The United States' refusal to ratify the Covenant and French and British reticence to show leadership made it difficult for the League to achieve its lofty mandate as a guarantor of the Versailles Treaty and executor of the postwar settlement.⁴⁵ However, there were some notable successes in the League's twenty-five year existence. In April 1920, immediately after its establishment, the League of Nations authorized the ICRC responsibility for the repatriation of prisoners of war from all belligerent countries. Based on its work in the International Prisoner of War Agency, which collected data

⁴⁵ Michael Smith, "The League of Nations and International Politics," *British Journal of International Studies*, vol. 2, no. 3 (October, 1976), 319.

from all countries, the ICRC coordinated the repatriation of 425,000 soldiers.⁴⁶ The Permanent Court of International Justice, established under Article 14, began work in 1922 and by 1939 had heard sixty-six cases, referred to it for opinion by the League Council or by member states for judicial decision.⁴⁷ In May 1920, as per Article 9, the League established the Permanent Armaments Commission (PAC), which undertook many of the arms reduction and management responsibilities. Although unable to bring about wholesale reductions, the PAC did establish the Armaments Yearbook, beginning in 1922. It was printed annually until 1938 and provided detailed reporting on the national armaments and military expenditures of over sixty countries.⁴⁸ The PAC also began collecting data on the arms trade and in 1926 began the Statistical Yearbook of Trade in Arms and Ammunition which was also in print until 1938.⁴⁹ The 1925 Geneva Protocol banning the use of poison and deleterious gases, analogous liquids and bacteriological agents was undoubtedly the League's greatest arms reduction success. By 1932, thirty-six states had ratified including the major European powers (Great Britain, France, The Soviet Union, Germany, and Italy). Neither the United States nor Japan ratified prior to the Second World War but there was no use of these weapons during the Second World War.⁵⁰ The other lasting legacy of the League of Nations is the United Nations (UN) which grew from its shadow in 1945.

Despite the limited successes of the League of Nations, the ICRC continued its work and expanded the protections of the Geneva Convention. The First Convention, the

⁴⁶ ICRC and League of Nations cooperation, www.icrc.org/eng/resources/documents/misc/57jqgq.htm

⁴⁷ Ruth Henig, "A League of Its Own," *History Today* (February, 2010), 4.

⁴⁸ Andrew Webster, "Making Disarmament Work: The Implementation of the International Disarmament Provisions in the League of Nations Covenant, 1919-1925," *Diplomacy and Statecraft*, vol. 16 (2005), 559.

⁴⁹ Webster, 563.

⁵⁰ Webster, 564.

Geneva Convention for the Amelioration of the Condition of Wounded in Armies in the Field, adopted in 1864, was amended in 1906, 1929, and 1949 and covers the protection and care of wounded and sick soldiers during war on land. The Second Convention, adopted in 1949, replaced the 1907 Hague Convention on Maritime Warfare and protects shipwrecked, sick and wounded sailors during time of war. The Third Convention, also adopted in 1949, replaced the 1929 convention for the protection of prisoners of war. It addresses such matters as treatment after capture, forced labour, judicial rights, and release after hostilities have ended. The Fourth Convention also adopted in 1949 following the devastation done during the Second World War, protects civilians including those living in occupied territories, refugees and stateless persons and was adopted largely in response to the policies of Nazi Germany during the occupation of Europe, particularly relating to the Holocaust.⁵¹ As the year of their adoption suggests, the Geneva Conventions of 1949 were in large part a response to the suffering, death and destruction caused by the Second World War. It is important to recognize that these conventions are focused almost exclusively on *jus in bello* principles. They do not address the legality of weapons, the legitimacy of military tactics, command responsibility, obedience to orders or military necessity. They were written specifically to protect the victims of armed conflict; wounded and sick soldiers, prisoners of war and civilian populations caught in the midst of war.⁵²

The Geneva Conventions' implication for *jus in bello* principles stems from three significant additions in the 1949 amendments. First, in all four of the conventions, ratifying countries were obligated to enact domestic legislation for the search,

⁵¹ Gary D. Solis, *The Law of Armed Conflict; International Humanitarian Law in War*, (Cambridge, Cambridge University Press, 2010), 83-84.

⁵² Solis, 82.

prosecution and punishment of persons who breached the terms of the four conventions.⁵³ This is an important addition to any of the conventions and rules that have been written to mitigate the loss of life in times of war. Since the inception of the Geneva Conventions, the challenge has not been the adequacy of the laws, but the unwillingness of states and persons to be bound by these laws and an insufficient means to enforce them.⁵⁴ By obligating the states who had ratified the Conventions to enforce them, the authority of the Conventions as a legal document now rested with the states instead of the ICRC. In effect, *jus in bello* principles now became part of each states jurisprudence.

The second addition stems from Common Article 3 of the 1949 Conventions. This article states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial

⁵³ Solis, 85-86.

⁵⁴ Jean M. Henkaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict" *International Review of the Red Cross*, Vol 87, (March 2005): 176.

guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.⁵⁵

The significance of this article is that it challenges the sovereignty of states to autonomy in their dealings within their own territory. The Article lays out minimum standards of conduct and protection for all persons regardless of ethnicity or religion in an internal (civil) war. The shortcoming of this article is that it did not contain any provision for supervision or enforcement. The Article does not define what constitutes a non-international conflict and it does not designate a supra-national body that will determine if a conflict is a civil war and enforce the standards of conduct upon both the state and those who oppose it.⁵⁶ What it did assert, was that states had a responsibility to ensure the law of armed conflict or international humanitarian law was respected and enforced within their territory during times of internal conflict.

The third significant addition was the development of the term “grave breaches”. Used in common articles of all four Conventions, the term includes such crimes as: wilful killing and torture, inhumane treatment and great suffering, extensive destruction of property not justified under military necessity, depriving a prisoner of war of their rights, hostage taking or the deportation, transfer or confinement of any person protected

⁵⁵ The full transcript of the 1949 Conventions including Common Article 3 can be found at, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD00519E66>

⁵⁶ Solis, 102.

under the four conventions.⁵⁷ The term is important because it established a category of crimes that were beyond war crimes, i.e. the failure to observe the laws of war perpetrated against military personnel and expanded it to include crimes committed during conflict against all persons. Grave breaches extended war crimes to include crimes against humanity, which in turn became the basis for the Responsibility to Protect.

With the cessation of hostilities in 1945, it became clear that the League had failed and a new organization dedicated to international peace and security was required. In October 1945, fifty-one countries ratified the Charter of the United Nations:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.⁵⁸

To better manage the delicate nature of international security, the United Nations established the Security Council under Chapter V of the Charter. This Council comprised initially of five permanent and six non-permanent members was increased to fifteen members with the addition of four non-permanent seats. The permanent members were (and continue to be): China, France, Great Britain, Russia (formerly the Union of Soviet Socialist Republics) and the United States. The General Assembly has bound

⁵⁷ The full definition for each convention can be found in Articles 50, 51, 130, and 146 at, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>.

⁵⁸ “The United Nations Charter”, www.un.org/en/sections/un-charter/.

itself to the leadership of the Security Council in all matters of international peace and security.⁵⁹

In December 1948, the General Assembly adopted The Universal Declaration of Human Rights. In the preamble, the member states declared that the responsibility of every state and the United Nations collectively was “to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”⁶⁰ A second document adopted by the General Assembly in December 1948 was the Convention on the Prevention and Punishment of the Crime of Genocide. Defined as the those acts committed with the intent to destroy, in whole or in part a national ethnic, racial or religious group through killing, serious bodily or mental injury, destruction of their communities and the forcible transfer/dispersion of persons from the group, it mirrored in many ways the ICRC use of grave breaches.⁶¹

In 1977, the Geneva Conventions were expanded with the addition of Protocols I and II. Protocol I established a number of important additions. Wars being fought against colonial domination, foreign occupation and racist regimes are considered international conflicts permitting the intervention of other countries and international organizations such as the United Nations. The Protocol further expanded the application of the Geneva Conventions to civilian medical and aid staff and their facilities. Perhaps most importantly, Protocol I deals with the conduct of hostilities; issues which had been regulated by the Hague Conventions of 1899 and 1907 and by customary international

⁵⁹ Michael Akehurst. *A Modern Introduction to International Law*, sixth edition (London: Unwin-Hyman, 1997), 211.

⁶⁰ “The Preamble to the Declaration”, <http://www.un.org/en/universal-declaration-human-rights/index.html>

⁶¹ “The Genocide Convention”, <http://www.un.org/en/genocideprevention/genocide.html>

law. These included updated definitions of armed forces and combatants, military objectives, prohibitions against attacks on civilian persons and property, the responsibility of commanders, and the responsibility of states for the protection of the civilian population against the effects of hostilities.⁶² Protocol II applies the law of armed conflict to the conduct of internal wars, an area that was formerly covered only by Common Article 3 of the Geneva Conventions. For fear of impinging on the sovereignty of states and the fear that it would encourage outside intervention in the affairs of a state it was substantially altered to ensure acceptance.⁶³ The end result is a Protocol that provides fundamental guarantees for the protection and humane treatment of all persons in an internal conflict, with specific attention given to civilian populations and protection for children. The limitation of Protocol II is that like Common Article 3 it fails to define specifically when internal strife becomes conflict, and who then is empowered to intervene to ensure such protections are given.⁶⁴

With the addition of Protocols I and II, the Geneva Conventions subsumed most of the Hague Conventions and became the principal source and guide for international humanitarian law, and along with other international agencies such as the United Nations, it provides essential oversight of military actions and the protection of persons in conflict.⁶⁵

This survey of declarations and agencies which have given practical form to just war principles since the mid-nineteenth century illustrates the breadth of the effort.

⁶² The content of Protocol I and all its articles are explained and can be found, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument>

⁶³ The explanation of Protocol II and all its articles can be found, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C12563CD0051E783>

⁶⁴ Solis, 130.

⁶⁵ Solis, 83.

International humanitarian law, articulated in the Geneva Conventions and Additional Protocols, supported by the United Nations with near universal membership and recognition created the reality that many of the ideals articulated by early modern just war theorists are now enforced as international law. Most importantly for this thesis, the international system rooted in just war theory and the tradition embodied in conventions described above, formed the international system framing Canadian foreign and defence policy when it emerged from the Second World War as a United Nations member state and alliance partner with Britain and their powerful American neighbours.

CHAPTER TWO: JUST WAR IN HISTORICAL WRITING

Understanding the range of scholarly consensus on the influence of just war theory and tradition in the modern world offers a comparative basis for how to appreciate its influence on Canadian defence policy and operations in the 1947-2005 period.

The authors examined in this section are writing about just war theory during the late 20th Century and the reality of the Cold War; bipolarity, regional alliances, and nuclear weapons. Each begins with an implicit belief about the value of the just war tradition that profoundly affects their perspective and hence their writing. Some disparage its inability to stop wars, end killing and destruction and write critically of the ways in which the tradition has failed the victims of war. This is particularly true of Richard Falk, whose criticism of the tradition is focused on the American experience in the Vietnam conflict. Falk espouses a very high standard for the just war tradition in international humanitarian law (IHL) and laments that states do not subscribe to this standard. Other writers argue that the tradition has failed because of the inherent contradiction between just war principles and the realities of war. Michael Glover, in his book, *The Velvet Glove; The Decline and Fall of Moderation in War* (1982), describes this contradiction as the “chasm that is the just war tradition”, and this contradiction is central to the writing of Richard Baxter, Robert Jordan and L.F.E. Goldie.⁶⁶ Each asserts that international humanitarian law and the just war tradition have failed to provide sufficient restrictions or effective guidelines applicable to modern wars.

A third group of writers assesses the just war tradition from a more philosophical perspective, distinguishing between the morality of war and the legality of war. Michael

⁶⁶ Michael Glover, *The Velvet Glove; The Decline and Fall of Moderation in War* (London: Hodder and Stoughton, 1982), 15.

Walzer's *Just and Unjust Wars* (1977), Robert Homes, *On War and Morality*, (1980) and Michael Howard, *War and the Liberal Conscience*, (1977), belong in this group.

In an article written in 1975, Richard Falk applied just war theory to the American war in Vietnam. Falk acknowledged that until the Vietnam conflict, the traditional laws of war had never conceived of a conflict that pitted a low-technology, large-scale, popular insurgency against a high-technology, foreign sponsored, counter-insurgency.⁶⁷ The problems that this created, as Falk sees it, is that the Vietnamese people became indistinguishable from the Vietcong(VC) or the National Liberation Front (NLF) insurgents and as a result were deliberately targeted by United States servicemen and considered the equivalent of the enemy. Indiscriminate weapon systems designed for the traditional battle space (long-range artillery, aerial bombardment, rocket systems, napalm, helicopter gunships) were incapable of distinguishing between civilians and enemy in the villages or fields. There was a systemic failure to abide by the law of armed conflict by virtue of foreign intervention in an internal war, the scale and type of weapons used and the indiscriminate targeting of the civilian population. The first failure is one of *jus ad bellum* and rests on the legitimacy of the war itself, both in terms of cause and authority to prosecute. If the VC and NLF were indeed leading a populist uprising against the government of South Vietnam, the United States was guilty of supporting an illegitimate South Vietnamese regime for its own foreign policy/political ends and lacked the just cause to enter the war on the side of South Vietnam. The second and third failures Falk raises, relate to just conduct in battle – *jus in bello* – and the principles of discrimination; the targeting of civilians (intentionally or otherwise)

⁶⁷ Richard A. Falk, "Counterinsurgency, Tactics and the Law," in Trooboff, Peter, D., ed., *Law and Responsibility in War; The Vietnam Experience* (Chapel Hill, NC: University of North Carolina Press, 1975), 37.

and proportionality; whether the level of destruction perpetrated against civilians and private property was reasonable for the military benefits achieved. It perhaps goes without saying that in both cases, Falk would argue vociferously that the United States failed to abide by these *jus in bello* principles. Falk offers compelling evidence and examples to support his case including US carpet bombing, jungle defoliation, well poisoning, and the destruction of villages to force civilians into the Strategic Hamlet Program in order to deny shelter to the insurgents; all of which caused great harm to non-combatants.⁶⁸

Falk concludes his article with a number of recommendations for the international community, two which pertain to this project. First, Falk encourages greater study and clarification of insurgency and counter insurgency operations and the role of external powers in such conflicts. He suggests that the international community must develop limits on the methods and tactics that can be legally used, especially by external actors, focused on the interplay of legal, political and moral factors. He also argues for greater education and respect for the laws of war among military leaders and soldiers and greater emphasis placed on reporting and prosecuting violations.⁶⁹ The wisdom of the recommendations is illustrated by the fact that in 1977, two years after Falk wrote his critique of the Vietnam Conflict, the Additional Protocols I and II were added to the Geneva Conventions expressly dealing with internal conflict and the protections of civilian populations in such conflicts.

⁶⁸ Falk cites specifically, the CBU cluster bombs and flechettes, contrary (he claims) to the St Petersburg Declaration of 1868, the use of Rome ploughs and Agent Orange in systematic defoliation, and the Phoenix Program for the “elimination” NLF and Vietcong political leadership. Falk, 42-45.

⁶⁹ Falk, 51-52. Falk uses the My Lai incident and the limited disciplinary steps following it to illustrate this point.

In response to Falk, Robert Jordan begins by acknowledging that war is “an unpleasant, dirty, cruel, business” and that as much as the laws of war are intended to diminish the evils of war, they only do so as far as military requirements permit.⁷⁰ He accedes that there were undoubtedly violations of the laws of war in the Vietnam conflict, even wilful violation, but these cannot be used by analysts to condemn the entire conflict as illegal or unjust. Jordan uses the doctrine of military necessity to counter Falk’s critique based on discrimination and proportionality. He acknowledges that proportionality remains a criterion to be respected but questions what the specific formula of acceptable risk and ratios are in any given situation. Specifically, Jordan raises the doctrine of military necessity because it often stands juxtaposed to the *jus in bello* principles of discrimination and proportionality. The challenge hinges on whether a commander in war has a primary responsibility for military concerns (the maximum application of force, appropriate tactical use of the ground and resources, and defeat of the enemy) or whether he must give equal attention to the protection of civilians, protection of private property, and the mitigation of destruction and death. The question Jordan raises is now a rhetorical one because the 1977 Geneva Convention Additional Protocol I has assigned belligerent governments and military commanders at all levels responsibility for the latter within the context of military operations.⁷¹ The two cannot be separated; the protection of civilians and private property and the mitigation of destruction and death are integral parts of the military operation.⁷²

⁷⁰ Robert E. Jordan III, “Comments,” in Trooboff, Peter, D., ed., *Law and Responsibility in War; The Vietnam Experience* (Chapel Hill, NC: University of North Carolina Press, 1975), 54.

⁷¹ Protocol I, Article 87, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/470-750113?OpenDocument>

⁷² Solis, *The Law of Armed Conflict*, 130.

Richard Baxter takes issue with Richard Falk specifically on the matter of civilian casualties in conflict. Specifically, he challenges the legal premise that Falk uses, arguing that the Vietnam Conflict was an internal conflict and that in the 1949 Geneva Convention only Article 3 applies, where it states:

In the case of armed conflict not of an international character occurring in the territory the belligerents agree that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely.⁷³

Baxter contends that in the Vietnam Conflict, the United States and South Vietnam applied these guidelines in their conduct towards the civilian population of Vietnam but that the protection of civilians in internal conflicts is becoming ever more difficult because the safeguards in this Article rest on the premise that the civilian population do not take any role in the armed conflict. Baxter goes on to point out that in,

the confusion and urgency of combat, where split second decisions must be made on the basis of inadequate information, the intermingling of combatants and non-combatants has made it difficult and sometimes impossible for a belligerent to direct its fire only against those who are clearly identifiable as combatants. The result is that civilians, not a few of who have taken no part in hostilities, inevitably get hurt.⁷⁴

The point that Baxter is making is that "war is hell" and even with the best of intentions, belligerents will cause collateral damage among the civilian populations while engaged in combat. This is the challenge and responsibility of military leadership; the burden of weighing tactical advantage or military necessity against the obligation to protect the civilian population.

⁷³ "1949 Geneva Convention", www.icrc.org/applic/ihl/ihl.nsf/

⁷⁴ Baxter, 64.

Baxter also challenges Falk on the manner in which Falk uses the various international treaties upon which his argument rests. Baxter asserts that Falk gives these treaties a “law giving force” that contributes to the customary international law binding upon all states. Baxter dismisses this, suggesting that customary law does not bind states or parties not signatory to these treaties, and that all such treaties limiting a state’s recourse to military action can only be applied in the strictest sense for which they were written.⁷⁵ In truth Baxter is wrong on this point. Already in the late 1970’s, the 1949 Geneva Conventions had attained general acceptance and had been recognized as customary law, binding on all parties in a conflict, state and non-state, independent of any formal ratification.⁷⁶ The point is that in the complex world of the law of armed conflict, humanitarian responsibility for the protection of people becomes the foundation principle in determining what military actions can and cannot be taken.

Michael Walzer, the author of *Just and Unjust Wars* (1977), did not engage his study of the just war tradition from the vantage of any specific conflict. His focus was a comparison of the legal paradigm that is often the focus of the just war tradition, and the moral dimension of the principles and laws that comprise this tradition. Walzer begins by describing the realist tradition based on the ideas of Thomas Hobbes (1588-1679) that posits the idea that war is a realm of its own with laws of its own, distinct and separate from the laws of moral life. Against this idea Walzer defines morality as belonging to and informing the real world, even the world of warfare, assessing military action

⁷⁵ Baxter, 65.

⁷⁶ Solis, 82.

against a moral standard of right and wrong. The morality of the actor and his actions are the foundation of a just war, not the legality of the outcome.⁷⁷

From this foundation, Walzer introduces the two component parts of just war: *jus ad bellum*, the justice of war, and *jus in bello*, justice in war. War itself is just or unjust and war is fought justly or unjustly, and moral responsibility exists at every level and it is applicable to the political leaders who lead a country to war, the generals who make strategic and tactical decisions to prosecute the war, and individual soldiers who fight on the battlefield.

The challenge of moral responsibility for soldiers (whether the commanders who lead or the soldiers in the field) rests on a moral sensibility of right and wrong that determines which groups of people are outside the legitimate target of warfare. Walzer maintains categorically that war is combat between combatants and that historically, protection has been offered to those groups in society not able or equipped to fight such as children, women, the elderly, clergy, neutral persons, injured, sick, or captured soldiers. Killing people that come from these groups in war becomes the basis of the moral question in all wars. This sentiment seems to lie at the heart of the Responsibility to Protect (R2P) doctrine – the moral obligation to intervene when the violence “shocks the conscience of mankind”.⁷⁸

In order for just war theory to have any utility Walzer maintains that there must be some structure that consistently applies this convention in the international sphere.

Drawn largely from the legal premises developed by Emerich Vattel, the eighteenth

⁷⁷ Michael Walzer, *Just and Unjust Wars; A Moral Argument with Historical Illustrations* (New York: Basic Books Inc. 1977), 8.

⁷⁸ ICISS Report, *The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty*, (Ottawa, International Development Research center, 2001), 31.

century jurist who developed just war theory from natural law, Walzer outlines this structure in six propositions he titles the Legalist Paradigm:

1. There exists an international society of independent states, focused on the protection of life and liberty for which they cannot be challenged by any other state (principle of non- intervention);
2. The international society has laws that establish the rights of its member states, above all territorial integrity and political sovereignty;
3. Any use of force by one state threatening the territorial integrity or political sovereignty of another is a crime of aggression and is a criminal act;
4. Aggression justifies two kinds of violent responses:
 - a. war of self-defence by victim against aggressor state,
 - b. war of enforcement by victim and any/all other members of the international community against aggressor state;
5. Nothing but aggression can justify war, the actual or imminent receipt of a wrong;
6. Once repulsed, aggressor state can be punished to exact retribution, to serve as deterrence for others, or as an act of reformation.⁷⁹

Walzer then applies this paradigm to several historical conflicts and highlights the inherent contradictions between it and the moral imperatives that Walzer believes must belong to the just war tradition if it to have value as a set of guiding principles.

Of the cases Walzer examines, the question of intervention is particularly enlightening of his position. Though the legalist paradigm advocates non-intervention, one of the exceptions that Walzer suggests must exist is when the actions committed in war become so terrible that moral responsibility demands other states intervene to stop it.⁸⁰ Although Walzer does not use these terms, what he is speaking of here are those crimes acknowledged under the International Commission on Intervention and State Sovereignty Report as genocide, ethnic cleansing or crimes against humanity.⁸¹

⁷⁹ Walzer, 61ff.

⁸⁰ Walzer, 87.

⁸¹ ICISS Report, 33.

Walzer engages the debate over guerrilla fighters from the vantage point of the civilian population. The rights of civilians in the midst of war are in no way altered by implicit support of the guerrilla fighters or the fact that the guerrilla fighters live in and among the civilian population – this remains for Walzer the primary moral focus. If civilian protections were nullified by the presence of guerrilla fighters there would be no value in hiding among them. The challenge for the belligerent fighting against a guerrilla army is to separate the fighters from their protection, to expose the fighters from within the rest of the population without contravening the rights of the civilian population. If this is not possible suggests Walzer, it is an indication that the conflict is no longer against a guerrilla army, it is against the entire society at which point the government loses its just cause to fight. It no longer represents the people and its legitimacy to prosecute the war against the guerrilla army is gone.⁸² In the prosecution of the war, the guerrilla fighters are bound by the same moral imperative as any other military organization, namely protection of the rights and property of the civilian population.⁸³

Walzer's analysis of the just war tradition reflects a personal conviction that war must have rules and that these rules must be adhered to by all groups who engage in fighting. His moral imperatives focus on the protection and rights of those not engaged in the fighting, those who are *hors de combat*. His efforts to defend limits on war in the face of both utilitarian and military necessity arguments suggests someone who firmly believes that moral imperatives must exist in what is often considered an immoral human activity. Walzer rests consistently on the moral foundation he defined at the

⁸² Walzer, 187. Walzer looks at the Vietnam Conflict in this section and concludes that South Vietnam and its US ally failed against the Vietcong and NLF precisely because the South Vietnamese government lost its representative legitimacy with the Vietnamese people.

⁸³ Walzer, 200.

beginning and assesses all military actions and events through this moral lens. There are the rights and limits of the legalist paradigm and then there are the moral imperatives of humanity. This distinction lends itself well to the changing understanding of sovereignty that emerges in the Responsibility to Protect (R2P) doctrine where sovereignty is not just a right but also a moral responsibility.

In his seminal work, *War and the Liberal Conscience* (1977), Michael Howard engages the just war tradition from a philosophical position that examines the underlying values that shaped the tradition and influenced its application in the conduct of war. Initially delivered as part of the George Trevelyan Lecture Series at the University of Cambridge in 1977, Howard focuses his attention on the transformation of society's attitude towards war and concludes that rather than disparage war, or believe that war can become anathema to human existence, we must wrestle with the tragedy, horror and cost of war and weigh them in the liberal conscience of our global community.⁸⁴

Thus, Howard argues that war will remain a reality in our world as long as there are peoples or groups that have yet to realize their own sense of nationhood or achieve the right of self-determination. The challenge Howard presents to the international community is the collective responsibility to manage the force being used and the objectives of wars being fought.⁸⁵ Evidence in the post-Cold War era bears out Howard's concerns as warlords, ultranationalists and imperialists all resorted to gross excesses in war to attain their political and economic objectives at terrible human cost.⁸⁶ In the introduction to a second volume, *Restraints on War, Studies in the Limitation of*

⁸⁴ Michael Howard, *War and the Liberal Conscience* (New Jersey: Rutgers University Press, 1978), 134.

⁸⁵ Howard, 134. In this second conclusion Howard stresses the responsibility of the international community to promote and support the right of self-determination of all peoples.

⁸⁶ Later in this paper, a study of Somalia and the former Yugoslavia will bear out the truth of this point.

Armed Conflict (1979), Howard explains the just war tradition in an historical context and demonstrates that this tradition derives from the values and beliefs inherent in all of society, and that the just war principles have a normative quality in both the nation-state and in the broader international community. They do not rest on legal prescriptions, but on the value-based moral norms that guide human society, foster life and well-being and limit harm. This is for Howard, the essence of the liberal conscience that must guide the international community's response to war.

Michael Glover's book *The Velvet Glove; The Decline and Fall of Moderation in War*, (1982), begins by identifying two strands of the just war tradition. The first strand is that of the theorists, lawyers and clerics who attempted to arrange and codify a set of rules governing the conduct of war between states. The second is the practical strand, developed by generals and soldiers in the conduct of war and premised on two ideals: that a certain soldier ethic existed that declared certain behaviours on the battlefield to be unacceptable; and second, a recognition that rules governing conduct on the battlefield toward one's enemy was a reciprocal relationship that offered as many benefits to one's own soldiers as it afforded to those of the enemy.⁸⁷

For Glover, this distinction between the theorists who develop the rules of war at conferences and the soldiers who face the reality of war and all its horrors and potential on the battlefield, is the chasm that is the domain of the just war tradition.⁸⁸ Glover insists that the only hope for moderation in war is that the international community establishes an effective mechanism to enforce the laws of war, and for the laws of war to move away from legislating who can fight and what weapons may be used and become

⁸⁷ Glover, 12-13.

⁸⁸ Glover, 15.

what they are for all of humanity: moral questions of right and wrong and the value of life.⁸⁹

Building on this moral tradition, Robert Holmes in *On War and Morality* (1989), begins his discussion of just war with a philosophical analysis of what motivates and what might limit the behaviour of states in the international community. In this analysis he draws upon Reinhold Niebuhr (1892-1971), a theologian, ethicist and advocate of Christian realism. Drawing upon Niebuhr's analysis, Holmes suggests that if one is going to take morality seriously as a component of international relations between states, one has two options: first, one can reject the notion that morality has any place in shaping or limiting state behaviour in the international community, what Holmes refers to as the realist position, or second, one can recognize that morality has a place in shaping and limiting state behaviour, what he calls public or collective morality.⁹⁰ Holmes opts for the second, recognizing that this limited morality profoundly shapes his argument for morality in foreign policy and its most direct means, war. Holmes quickly comes to the conclusion that in the sphere of international relations, states do not use morality as a measure of good or bad consequences, rather, states assess such consequences against national or state self-interest. This is where Holmes recognizes the foundational flaw in international law and relations. States, he contends, must accept that the best option for achieving moral consequences in international policies is to act morally, not self-interestedly. The actions of all states can and should be assessed morally: the challenge that Holmes then addresses is whether it is possible to establish a common morality among the states that can serve as the basis for this assessment and

⁸⁹ Glover, 247.

⁹⁰ Holmes, 55.

guide states in their decisions and actions.⁹¹ This is reminiscent of Walzer's moral imperative as a guide for states actions in war that extends beyond a legal paradigm of what is permissible to a moral question of what is right.

This leads Holmes to a question about the entire nature of war: are there things that states unavoidably do in war, when all the *jus ad bellum* and *jus in bello* rules and restrictions have been met that still cannot be justified morally? Holmes believes there are, which renders the entire just war theory and tradition flawed in the initial premise upon which it rests. Before one can engage in a war, even one for which there is just cause, one must consider the fact that war necessarily means the conduct of organized violence against persons causing systematic death and destruction. Many contemporary theorists consider these aspects under *jus in bello* rules from a purely legal basis. *Jus in bello* does not wrestle with the question whether the violence should be taking place at all; this is the domain of *jus ad bellum*. Contemporary theorists too often limit *jus ad bellum* principles such as just cause, legal authority and the reasonable chance of success to legal context of state interests or rights. Holmes assertion is that at no point is there serious consideration given to the larger question of whether the resort to war, given the destruction and death that it will cause, is a morally justified course of action. Holmes concludes the section by stating, "Unless a state can justify the actions necessary to waging war, it cannot justify the conduct of war and the pursuit of its objectives; and if it cannot do this, the state cannot justify going to war."⁹² A moral justification of the violence inherent in war and the death and destruction that will result must be part of the moral reckoning that determines justification for war in both *jus in bello* and *jus ad*

⁹¹ Holmes, p.98

⁹² Holmes, 181.

bellum. For Holmes, to separate the two parts from each other and determine morality only through the *jus in bello* principles renders the entire exercise of determining justice in war useless. Thus, the just war tradition in its historical and contemporary application has failed to address the central moral problem of justifying war.⁹³ It is the inclusion of moral justification to *jus ad bellum* that is key to Holmes, and it is what prompted the United Nations to study and redefine the responsibility of the international community to intervene in cases of genocide, ethnic cleansing, and crimes against humanity.

This review of historians' use of the just war tradition in writing about war illustrates the divergence of opinion about the validity of the just war tradition and its efficacy in controlling and limiting war in the modern world. All of the authors grounded the rules of war which they used or critiqued in the historical context of the theorists and traditions discussed in the first section of this paper, effectively demonstrating the continuity that exists within this body of literature. Within the literature, however, there exists a correlation between one's support of the just war tradition and one's method of critique. Those who accepted the just war tradition as being a body of international jurisprudence, laws which have been formulated to control and limit violence in war, accepted its limitations and restrictions to control wars. These writers would subordinate the just war principles or laws of war to the sovereign rights of states and national interests. Those who assessed the just war tradition from a moral context, insisting that the just war tradition must appeal to something higher than a collection of laws, have expressed frustration with the tradition and its value in ensuring peace and security in the international community.

⁹³ Holmes, 182.

It is important to recognize that among all the authors considered, three points of debate about the just war tradition continually came to the fore: the protection and rights of non-combatants, the relationship between the two component parts of the tradition, *jus ad bellum* and *jus in bello*, and the role that morality should play in our application of the just war tradition principles.

The protection and rights of non-combatants, as the 1977 Additional Protocols attest, is a relatively recent expansion of international humanitarian law. It is closely tied to the experience in recent history of insurgency wars, the protection and legitimacy of guerrilla fighters, the tactics they employ, and the responsibility of belligerents to respect the laws that protect the non-combatant population caught up in the battle. Baxter, Goldie, Glover, and Walzer all assert that this part of international law is full of potential contradictions and complexities that make it easily ignored, and often mitigate its effectiveness. The relationship between fighting an insurgent enemy and the limits imposed on military action for the protection of the civilian population remains the most important issue for the just war tradition. Encouraging insurgents to abide by the Geneva Conventions in their military actions, and the states that are suffering from insurgency operations to consistently apply the laws of war they have ratified is no small challenge.

The second area most often cited as a critical component of the just war tradition is the relationship between the traditions' two component parts: *jus ad bellum* and *jus in bello*. Holmes argues that the two cannot be applied separately in any justification of war, and that *jus ad bellum* principles in particular must be defined morally for war to be justifiable. Walzer suggests that each must be applied conscientiously to the specific role it fills in determining legitimate behaviour in war, and the justification for each can be evidenced independently. For Walzer, as for Grotius, the relationship between the two is

clear; a just war fought unjustly in an unjust war, an unjust war fought however justly remains an unjust war. In the end, it is important to recognize the relationship between the two, but also the vital importance each set of principles brings to the justification of any state, non-state or supra-state actor that chooses to use force to attain their objectives.

All of the authors, but Walzer, Howard and Holmes particularly, developed their arguments for *jus ad bellum* and *jus in bello* principles from a moral vantage point. As Howard points out so eloquently, “one does not cease being a moral agent when they take up arms”.⁹⁴ The challenge of using a moral lens through which to apply just war theory is that the acceptable standard of application becomes significantly higher. As Walzer points out, the moral paradigm not only supersedes the legal paradigm in effectiveness, it makes the application of just war theory far more restrictive on any who would conscientiously apply it. The relationship between legal authority and international responsibility become more complex when the moral imperative is invoked. The international community needs to wrestle with the question of whether it is more important to respect the sovereign rights of states, or intervene to protect the basic human rights of people. This is an important issue for the just war tradition going forward as more often wars being fought in the modern era are wars of self-determination or political independence. As public opinion is galvanized around the protection of rights enshrined in the United Nations Charter and Declaration of Human Rights and as ever more graphic evidence of terrible atrocities being committed flashes across all forms of media, the issues of legal authority and moral responsibility become crucial in defining the appropriate response of the international community to any such

⁹⁴ Howard, 13.

conflicts. This is where much of the challenge for the continued application of the just war tradition rests: the tensions between an international community wrestling with the moral responsibility to intervene and an international community that is still premised on ideas of state sovereignty, autonomy and non-intervention.

CHAPTER THREE: CANADIAN DEFENCE POLICY AND JUST WAR THEORY

This chapter examines Canadian Defence policy from the end of the Second World War until 2005. During this period, Canadian defence policy underwent two profound transitions; the first the advent of the Cold War and the reality of collective security in a bipolar world; the second the end of the Cold War and the emergence of the United Nations as the resurgent leader of a new internationalism. Canadian defence policy during this period will be examined under the rubric of the Just War Tradition. Specifically, defence policy articulated in the formal government papers and official statements is analysed under the criterion of *jus ad bellum*. It is the *jus ad bellum* criteria that govern the political and strategic levels of war and going to war and thus the appropriate ones to analyse a nation's defence policy. The principles that apply most readily to this analysis are: just cause, proportionality, reasonable chance of success, legitimate authority and last resort. The use of these principles in an analysis of Canadian defence policy has not been done before and the hope is that the results will yield a new and better understanding of what principles have guided the development of Canadian defence policy during these profound times of transition.

The first criterion, just cause to go to war, was limited by Hugo Grotius to those necessary for defence of or to redress an injury against the state. At the 1899 Hague Peace Conference, just cause was closely bound up with national sovereignty and protection of territory; the inviolable rights of states to ensure their preservation. Following World War II, these notions of state sovereignty and protection remained. In 1947 when the Minister of Defence, Brooke Claxton presented his plan for the three services, it began by stating the responsibility of the government for the defence of

Canada against aggression and to maintain law and order in Canadian society.⁹⁵

Practically, the program was largely focused on administrative and organizational changes which in effect defined the perceived role of the military. Claxton and the service chiefs determined that post-war manning should rest at 38,400 for all three services and that these personnel would be "largely concerned with training, planning, staff work, care of materials, and training the reserve, rather than in providing immediate operational forces."⁹⁶ There was no interest in perpetuating the large combat capable forces of the war years, and there was no envisaged role for a military in the stable, peaceable international community that was expected following the end of the war. In this environment, Canadian policy rested on the principle that a resort to arms would indeed be a last and unlikely step. Whatever cause might justify the resort to arms would be adjudicated in the new international forum of the United Nations.

On February 12, 1947, Prime Minister Mackenzie King reiterated before parliament that the cornerstone of Canadian foreign policy was the United Nations Charter and that the Canadian government considered its obligations to the UN to be of "over-riding importance". Beyond joint or regional security he expressed a hope for international security.⁹⁷ The absence of any operational forces and the commitment to the United Nations Charter reflected a defence policy that believed the best chance for success in obtaining peace and stability in both Canada's national interests and its aspirations for the rest of the world was to be found in full participation in the United Nations and the willing support of any United Nation mandated mission for peace.

⁹⁵ Brooke Claxton, "Defence 1947", in *Canada's National Defence Volume 1; Defence Policy*, ed .Douglas L. Bland, (Kingston, Queens University Press, 1997), 3.

⁹⁶ Brooke Claxton, "Defence 1947", 41.

⁹⁷ The text of King's address to parliament can be found in *Canada's National Defence Volume 1; Defence Policy*, 53-55.

General Charles Foulkes, the Canadian Chief of General Staff from 1945-1951, stated that "...it should be constant Canadian policy to make our armed forces available for United Nations service, and even to declare that they will be used only for purposes that are consistent with the UN Charter."⁹⁸ It is also apparent given the "over-riding importance" of the United Nations and the very small size of the post-war Canadian military that armed conflict was indeed a last resort in the minds of Canada's political and military leaders. Given the experience of World War II, and the dramatic increase in the destructive potential of atomic weapons, Brooke Claxton, in the 1947 Defence White paper concluded; "our first line of defence and the object of all our policy must be to work with other nations to prevent war."⁹⁹ It is clear that Canadian defence policy immediately following the war was defensive in nature, a theme that has continued in Canadian defence policy ever since, despite the dramatic changes in international community.

The advent of the Cold War marked a new era for Canadian defence policy beginning with the creation of NATO in 1949. The Korean War which began in June 1950, further reshaped the reality of what Canadian defence policy would be, as Canada committed troops to the Korean action under the United Nations, and began to significantly increase its forces for NATO. In 1958, Canada entered into a bilateral defence agreement with the United States with the creation of NORAD, the North American Air-Defence Agreement. By the mid 1950's Canada had a regular force of 120,000 personnel, a brigade group and an air division deployed to Europe to counter

⁹⁸ General Charles Foulkes, "A Soldier's View of Defence". In J.L. Granatstein ed., *Canadian Foreign Policy Since 1945: Middle Power or Satellite?*, (Toronto, Copp Clark Publishing, 1969), 107.

⁹⁹ Brooke Claxton, "Defence 1947", 21.

Soviet forces, and defence spending that was 7 percent of GDP.¹⁰⁰ Jack Granatstein declared the mid-to-late 1950's the high point of Canada's professional military, pointing out that since that time, there has been a steady reduction in the Canadian Armed Forces capability and confidence in Canada's defence policy from our allies.¹⁰¹

Despite the Korean conflict and the commitment of troops to NATO in Europe, the focus of Canadian defence policy remained defensive. The North Atlantic Treaty affirmed the purposes and principles of the United Nations Charter; it affirmed the signatories' commitment to collective defence and the preservation of peace and security, and their individual and collective efforts to resist armed attack.¹⁰² Lester Pearson, when serving as Minister of Foreign Affairs, explained that:

The North Atlantic Treaty was more than a treaty for defence. We must, of course, defend ourselves, and that is the first purpose of our pact; but in doing so, we must never forget that we are now organizing a force for peace so that peace can one day be preserved without force.¹⁰³

The NORAD agreement first signed in 1958, specifically addressed control and defence of North American airspace. George Pearkes, the Minister of Defence in 1957, issued a statement affirming that NORAD was consistent with the mutual security objectives of NATO; *i.e.* it was intended solely for defensive purposes.¹⁰⁴ For the Canadian government, NORAD posed some concerns. Unlike NATO which was a regional

¹⁰⁰ J.L. Granatstein, "Canada As An Ally: Always Difficult, Always Divided" in *Entangling Alliances: Coalition Warfare in the 20th Century* eds. Peter Dennis and Jeffery Grey, (Australia History Military Publications, 2005), 267.

¹⁰¹ J.L. Granatstein, *Canada's Army: Waging War and Keeping the Peace*, (Toronto, University of Toronto Press, 2002), 341.

¹⁰² "The North Atlantic Treaty", www.nato.int/cps/en/natohq/official_texts

¹⁰³ Lester Pearson quoted in J.L. Granatstein and David Bercuson, *War and Peacekeeping, From South Africa to the Gulf – Canada's Limited Wars*, (Toronto, Key Porter Books, 1991), 95.

¹⁰⁴ The statements issued jointly by Pearkes and Charles Wilson the U.S. Secretary of Defence can be found in Joseph T. Jockel, "The Military Establishments and the Creation of NORAD", in B.D. Hunt and R.G. Haycock eds. *Canada's Defence; Perspectives on Policy in the Twentieth Century*, (Toronto, Copp Clark Pitman Ltd. 1993), 173.

alliance of eight countries with specific rules for sharing authority and decision-making, NORAD was bi-lateral arrangement with the United States. The issue of Canadian sovereignty over its northern territory and command and control of American aircrews and radar operators generated significant concern.¹⁰⁵ During the Cold War, participation in collective security did not mean a limitation of Canadian sovereignty.

The relationship between Canada's defence needs and national sovereignty was duly articulated in the 1964 White Paper. Minister of Defence, Paul Hellyer defined Canadian defence priorities under four essential responsibilities:

- (a) Collective measures for peace and security as embodied in the Charter of the United Nations, including the search for balanced and controlled disarmament;
- (b) Collective defence as embodied in the North Atlantic Treaty;
- (c) Partnership with the United States in defence of North America, and
- (d) National measures to discharge responsibility for the security and protection of Canada.¹⁰⁶

Although security and protection of Canada was one of four essential responsibilities, the truth in 1964 was that Canadian defence policy was a by-product of Canada's alliance relationships and role in the United Nations. What the 1964 White Paper did do was assert just cause into the articulation of defence policy. Canadian military action would only be initiated in response to aggression by another state against Canadian territory and interests.

The 1971 White Paper on Defence, put forward by the Liberal Government of Prime Minister Trudeau, articulated a defence policy premised on three distinctly national aims, the first "that Canada will continue secure as an independent political

¹⁰⁵ Jockel, 166.

¹⁰⁶ Government of Canada, *1964 White Paper on Defence*, 6.

entity".¹⁰⁷ It goes on to state that defence policy reflects this national aim through its focus on two primary responsibilities: the safeguarding of Canadian sovereignty and independence, and working for peace and security in the international community. The distinction between these two responsibilities reflects the traditional understanding of sovereignty as the authority by which a state could resort to military force, i.e. protection of its territory and political independence, and the beginning of a supra-national responsibility for global peace and security. The first of these responsibilities was largely, though not exclusively, addressed through Canada's participation in NATO and NORAD. An emphasis on Canada's sovereignty notwithstanding, it was recognized that Canada could not prevent a foreign armed attack of its territory and defence against such attack rested on the alliance relationship with the United States and other NATO allies. However, in light of the October Crisis in Quebec and the use of the War Measures Act calling upon Canadian Forces members to assist with this crisis, it was also recognized that Canada needed to have a military capacity to deal with such situations within its own boundaries that could not be left to a foreign military power to address.

The 1971 White Paper defined the second responsibility largely in the context of United Nations multilateral forces deployed for peacekeeping. The rationale given was that instability in the form of armed conflict anywhere around the globe threatened to draw one of the superpowers into a conflict, further destabilizing the entire international community. Efforts by countries such as Canada to intervene and bring an end to these conflicts (through interposition between warring factions and a negotiated settlement) would ensure the continued balance in a bipolar world. Even though there was an initial

¹⁰⁷ Government of Canada, *1971 White Paper on Defence*, 3.

recognition of an international responsibility to work for peace, in height of the Cold War, this internationalism was couched in the realities of a bipolar world and the maintenance of the balance of power. The 1971 White Paper was the first glimpse of a transition in just cause from sovereignty and territorial protection to international responsibility.

The closing paragraph in the White Paper provided an important caveat for the use of Canadian Forces members abroad:

It should be stressed that a constant criterion for evaluating all aspects of policy is the determination to avoid any suggestion of the offensive use of Canadian Forces to commit aggression, or to contribute to such action by another state. Such a possibility would be unthinkable and unacceptable. With a view to ensuring the protection of Canada and contributing to the maintenance of stable deterrence, Canada's resources, its territory, and its Armed Forces will be used solely for purposes which are defensive in the judgement of the Government of Canada.¹⁰⁸

The rejection of offensive operations and the insistence that Canadian military force would only be used for defensive purposes was a challenging position during the Cold War. The extensive alliance relationships which Canada maintained and the fact that a brigade group of Canadians were deployed to Europe to fight on behalf of other countries sovereignty and territorial rights should they be attacked seemed to contradict the rejection of offensive operations. The question of just cause becomes more difficult for alliance partners not directly offended by an attack. If not directly threatened, did Canada possess just cause to commit its military to war in northern or central Europe or anywhere else the alliance deemed necessary? If lacking just cause, was not intervention in another country an offensive military operation? In a section dealing with neutrality, Michael Walzer suggests that there is a moral component to alliance

¹⁰⁸ 1971 *White Paper on Defence*, 7.

relationships which recognizes that the threat or injury to one nation or alliance of nations against another nation or alliance endangers in real terms the peace and security of all, making Canadian involvement in Europe under the auspices of NATO not only appropriate, but a morally just cause for which to go to war.¹⁰⁹ This moral defence of the deployment of Canadian soldiers to foreign soil coupled with the earlier reference to international responsibility marks a second point of transition in just war principles. Sovereignty was not the only authority recognized; the moral responsibility to intervene on behalf of another country that was threatened or attacked was implicitly recognized in Canadian defence policy.

The 1971 White Paper remained the foundation of Canadian defence policy until 1987, when the Conservative Government of Prime Minister Mulroney presented "Challenge and Commitment: A Defence Policy for Canada". The new policy direction of "Challenge and Commitment" reinforced most of the statements of the 1971 policy justifying potential military action:

- (a) Canada cannot ensure its own security and must look to collective security relationships with the United States and its NATO allies;
- (b) Canada only considers the use of force for its own defence (through NATO/NORAD);
- (c) Canada has no aggressive intentions toward any country, our only objective is to deter the use of force or coercion against our territory and interests, and
- (d) Canadian sovereignty, the protection and control of our territory, sea and air approaches are important aspects of defence policy.¹¹⁰

The significant addition to the 1987 White Paper was the regular use of the word deterrence - a reference that incorporated both strategic (nuclear) deterrence and conventional forces. Although the defensive nature of Canadian defence policy was not

¹⁰⁹ Walzer, *Just and Unjust Wars*, 358.

¹¹⁰ Government of Canada, *1987 White Paper, Challenge and Commitment*, (Ottawa, Supply and Services Canada, 1987). This list of "facts" comes from pp.3, 17 and 23.

altered, the specific reference to the use of the strategic (nuclear) deterrent in response to a Soviet conventional attack significantly altered the criterion of just cause, particularly when considered under *jus in bello* principles. Michael Walzer suggests that the justness of one's cause can be voided if the manner in which war is fought is inherently unjust.¹¹¹ However, Walzer also suggests that although the reality of massive destruction and millions of innocents killed would definitely be an immoral act and void the just cause of NATO, the threat of such an act (upon which the effectiveness of deterrence rests) is not immoral at all.¹¹² Grotius likewise connects the justness of cause to the moral question of how war was to be fought. If the *jus in bello* principles were not maintained, the principle of just cause was lost, even in a defensive war.¹¹³ In the 1987 White Paper, although the objectives of Canadian defence policy had not changed, the manner in which war might have been fought to secure our cause may have rendered the just cause criterion no longer a principle of Canadian defence policy.

The 1987 White Paper also gave specific attention to Canada's involvement in UN peacekeeping operations. Aside from affirming Canadian support and participation in the United Nations, and a respected legacy of peacekeeping operations, it laid out a series of criterion that were to guide the government and military leaders in deciding on future Canadian participation. The criterion included 1) a clear and enforceable mandate, 2) agreement by the protagonists to Canadian involvement, 3) likely-hood of long-term political settlement, 4) the size and composition of the UN force must be adequate for the mandate, and 5) competent (national) authority to support the operation and

¹¹¹ Walzer, *Just and UnJust Wars*, 267-268.

¹¹² Walzer, 270-271.

¹¹³ Cogen, 60.

influence the disputants.¹¹⁴ After the tacit recognition of authority based on moral responsibility, the second criteria reinforced the traditional understanding of sovereignty. Canada would only intervene if such intervention was agreeable to the belligerents. This position changed significantly following the 1989 collapse of the Soviet Union and the end of the Cold War. The United Nations quickly became the focal point of what Norm Hillmer called “the essential framework of a global cooperative security dialogue, a place where Canada, Canadian troops, money and knowledge could count.”¹¹⁵

As post-Cold War crises became more destructive and international intervention remained mired in traditional ideas of peacekeeping and national sovereignty, Canadian leaders began challenging the notion of national sovereignty in the context of foreign intervention. In 1991, Prime Minister Brian Mulroney declared that “invocations of the principle of national sovereignty are as out of date and as offensive to me as police declining to stop family violence simply because a man’s home is his castle.”¹¹⁶ Barbara McDougall, the Minister of Foreign Affairs at the time, likewise vigorously advocated for interventionism in pursuit of humanitarian good works: “is it not time to respect human dignity as much as, if not more than, national sovereignty?”¹¹⁷ The result was increased Canadian support for UN missions to the former Yugoslavia, Somalia and Rwanda. The *jus ad bellum* principle of just cause was transitioning rapidly from protection of sovereign rights to an international moral responsibility to act.

Canadian defence policy necessarily underwent a formal review. The primary threat to Canada for the past 40 years and the *raison d’etre* for NATO and NORAD was

¹¹⁴ *Challenge and Commitment* 1987, 24.

¹¹⁵ Norm Hillmer, “Peacekeeping; Canada’s Inevitable Role” in *War in the Twentieth Century – Reflections at Century’s End*, Michael A. Hennessy and B.J.C. McKercher eds., (Westport, Praeger, 2003), 156.

¹¹⁶ Prime Minister Mulroney quoted in Hillmer, 156.

¹¹⁷ Minister McDougall quoted in Hillmer, 156.

gone. A new internationalism under the leadership of the United Nations was quickly taking root. A Special Joint Committee of the Senate and the House of Commons was convened in 1993 to review defence policy and recommend a new way forward. In the end, though it was acknowledged that there was no direct threat to Canada, and that current conflicts in the international community were far from our territory, there was a continued need for military forces. The focus of this new Canadian defence policy was premised on its consistency with our national values and interests outlined in three points:

- (a) Canadians believe the rule of law must govern relations between states;
- (b) Canadians have deemed their own security indivisible from that of their allies, and
- (c) Canadians have a strong sense of responsibility to alleviate suffering and respond where their efforts can make a difference.¹¹⁸

In the end, the defence policy that emerged remained defensive in nature. Continued participation in NATO and NORAD highlighted collective security and the shared responsibility of Canada and her allies for defence of their respective territories and sovereignty. In addition, the 1994 White Paper gave considerable attention to multilateral operations and the Canadian obligation under the auspices of the United Nations, NATO or other multilateral organizations to participate. The range of such operations included preventive deployments, peacekeeping and observer missions, enforcement missions (for humanitarian aid and protection of civilians), post conflict peace-building and reconstruction, and operations to enhance security and build confidence.¹¹⁹

¹¹⁸ Government of Canada, *1994 Defence White Paper*, (Ottawa, Supply and Services, 1994), 12.

¹¹⁹ Each of these roles was outlined in a separate section of the *1994 Defence White Paper*.

This expanded list of multilateral operations highlighted the question about just cause and the Canadian sense of responsibility to intervene. If the conflict or crisis in question does not specifically threaten Canadian security, and recognizing that the Cold War mantra of reducing international tensions through peacekeeping to limit superpower involvement no longer applied, can intervention in a foreign country, even under a sense of responsibility to alleviate suffering qualify as a just cause? Emerich Vattel argued that such intervention was outside of just cause, and that in such instances as internal strife or civil wars, each party must be accorded a certain legal status and intervention by foreign states avoided.¹²⁰ As the 1993 defence review was being conducted, the world began hearing about the Serbian atrocities of ethnic cleansing, rape and killing against the Bosniak peoples. In 1994, as the White Paper was being prepared and presented to parliament, Canadian soldiers were serving in Rwanda under the auspices of the United Nations Mission in Rwanda (UNAMIR) and witnessed atrocities of rape and genocide committed against the Tutsi peoples. Against the background of these horrific events the pre-eminence of national sovereignty waned, and the just cause of a moral responsibility to act even in foreign interventions became an easy criterion for the Canadian government and its defence policy to justify. This expanded understanding of just cause under the moral responsibility for humanitarian assistance and protection outlined in 1994 White Paper was a precursor to Canada's involvement in and endorsement of the Responsibility to Protect (R2P) doctrine that was subsequently introduced by the International Committee on Intervention and State Sovereignty (ICISS) in 2001.¹²¹

¹²⁰ Richard Whatmore and Bella Kapossy, 645, 649.

¹²¹ The ICISS was a Canadian initiative, introduced by Prime Minister Jean Chretien at the UN GA in 2000 and funded by the Canadian Government and several non-government endowments. The ICISS documentation can be found at: International Development Research Centre (Canada), The Responsibility

The 1994 White Paper did endeavour to further define Canadian involvement in multilateral operations by updating the criteria for participation and expanding the types of operations that could be considered. Beyond peacekeeping in the traditional sense, Canada would contribute soldiers for preventive deployments, enforcing the will of the international community (peace enforcement operations), post-conflict peacebuilding, and humanitarian assistance.¹²² The updated criteria included: 1) an identifiable and commonly accepted reporting authority, 2) a recognized focus of authority, a clear and efficient division of responsibilities, and agreed operating procedures, 3) appropriate tasks for the force deployed and consistent over the life of the mission, and 4) a defined concept of operations, effective command and control, and clear rules of engagement.¹²³ These criteria were to ensure that the Canadian Government retained effective control over their forces, that the tasks in theater would remain consistent with mission mandate, and that consistent rules of engagement would be issued to guide Canadian soldiers conduct when deployed. Thus, Canadian defence policy in 1994 was intent on ensuring the justness of both the *jus ad bellum* cause, and the *jus in bello* conduct of Canadian participation in international operations.

In 1996, the Minister of National Defence, David Collenette, issued a Departmental Outlook on the continued rise of regional crises due to the collapse of government authority, severe economic and/or demographic stressors, and religious or ethnic rivalries. These crises would challenge the international community to find appropriate responses and implement effective solutions. The Canadian Armed Forces

to Protect : Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty.

¹²² 1994 Defence White Paper, 29-30.

¹²³ The full list of criteria can be found in the 1994 Defence White Paper, 29.

would be asked more often to undertake non-traditional roles in humanitarian, peace support or peace enforcement operations.¹²⁴ These roles, Collette argued, required the CAF to be professional and uphold high ethical and moral standards such as honour, integrity, loyalty to legitimate authority, service for public interest, and respect for the dignity of all persons.¹²⁵ These attributes reflected not only a response to the failure of the Canadian Airborne Regiment in Somalia; they also reflected the new moral imperative that was the basis for Canada's international interventions.

In his 1999 Annual report, The Chief of Defence Staff, General Maurice Baril, explained that the role of the Canadian Armed Forces had changed. North American security was directed toward surveillance and patrolling of approaches to the continent (NORAD), intelligence gathering, drug interdiction and civil emergency preparedness whereas multilateral operations now encompassed the full spectrum of conflict (non-combat and combat operations) including disaster relief, international humanitarian assistance, evacuations of Canadians overseas, peace support operations under the United Nations or NATO, and collective defence.¹²⁶ Although there was no reference to what just causes might justify Canadian military action, it seemed apparent from the primacy given to multilateral operations for humanitarian assistance and protection that the 1994 White Paper's moral responsibility to act remained the standard. The fact that Canada has engaged in thirteen new United Nations missions and five new missions

¹²⁴ Government of Canada, *Department of National Defence Outlook 1996*, (Ottawa, Supply and Services, 1996), Annex A-1, 2.

¹²⁵ *Department of National Defence Outlook 1996*, Annex A-8.

¹²⁶ Department of National Defence, *Annual Report of the Chief of Defence Staff, 1999-2000*, (Ottawa, Supply and Services, 2000), 3-4.

under NATO, the European Union or other regional coalitions since the 1994 White Paper substantiates this.¹²⁷

It is important to recognize that independent of Canadian defence policy, and apparently unconnected to it, has been the development of the Responsibility to Protect (R2P) initiative begun by Secretary General Kofi Annan in 1999 with a poignant question to the UN General Assembly:

...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?¹²⁸

It is noteworthy that the two specific situations that Annan referenced, the Rwandan genocide in 1994-95, and Serbian atrocities in and around the Bosniak Muslim towns of Potocari and Srebrenica from 1992-1995, happened while Canadian soldiers were part of United Nations operations in these regions. The dramatic failure of the United Nations and the broader international community to stop these (and other) atrocities is what prompted Annan's challenge. Canada's engagement in the R2P process began with a pledge by Prime Minister Chretien to the Secretary General, and was followed with the establishment of the International Commission on Intervention and State Sovereignty (ICISS) launched in Ottawa in 2000.¹²⁹ In brief, the R2P doctrine lays out a simple premise in two principles:

a). State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.

¹²⁷ The list of multilateral operations in support of the UN or other regional organizations shows that aside from the eighteen new missions begun during this time, Canada had troops serving in thirteen ongoing missions as well. The list can be found at:

www.canadahistory.com/sections/war/peace%20keepers/peacekeeping.html

¹²⁸ Kofi Annan speech to the UN General Assembly, 1999.

¹²⁹ *The Responsibility to Protect; Report of the International Commission on Intervention and State Sovereignty, Supplementary Volume*, (International Development Research Council, 2001), 341.

b). Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.¹³⁰

The ICISS developed these principles to advocate for military intervention under the auspices of the United Nations Security Council whenever there was evidence of or the real threat of large scale loss of life through acts of genocide, ethnic cleansing, expulsion and acts of terror or rape. Such actions, declared the ICISS constituted just cause for international intervention regardless of any norm of state sovereignty.¹³¹ Despite Canada's role in the development of these principles and their eventual adoption by the United General Assembly in 2005, R2P has never been overtly represented in Canadian defence policy formulation as either a guiding principle for the roles the CAF can be called upon to fulfill or as the just cause criterion to commit Canadian soldiers to multilateral operations. The closest such reference to R2P in Canadian defence policy remains the 1994 White Paper.

Given the lengthy presentation on Canadian defence policy under the principle of just cause, the remaining *jus ad bellum* principles of proportional cause, the reasonable chance of success, legitimate authority and last resort will be considered more briefly. The second criterion espoused by Grotius and used for this analysis is proportional cause. Specifically the question is one of threat assessment and a determination whether military action will protect, enhance or improve the security and well-being of the Canadian people given the risks and costs associated with using military force. This is a difficult criterion to apply in the Cold War environment and alliance structure that

¹³⁰ *The Responsibility to Protect*, xi.

¹³¹ *The Responsibility to Protect*, xii. The Commission developed its principles for military intervention under the rubric of *jus ad bellum* criteria or just cause, right intention, last resort, proportional, and reasonable chance of success.

Canada was part of from 1948 until 1989. At one level there is recognition that Canada did not constitute a major partner in the collective defence under either NATO or NORAD and that Canadian defence policy was tied inextricably to our alliance partners. But Canadian participation has not been without its value. Jack Granatstein suggests that in the early 1950's the Canadian Brigade in the British Army of the Rhine (BAOR) was the most professional and capable fighting force in NATO.¹³² It was also acknowledgement by the United States Chiefs of Staff in 1956 that Canadian participation in NORAD was important to North American security and defence.¹³³ John Holmes argues that far from resignation, Canadian participation in the western alliance was consistent with national interests determined by "the rigid bipolarity of the international system, geographic fact, historical linkages, domestic political and economic structures and public attitudes".¹³⁴

However, the nature of the threat to Canada has been consistently recognized as a threat to Europe, North America and western society. The 1964 White Paper stated explicitly that it was "impossible to conceive of any significant external threat to Canada that is not also a threat to North America as a whole".¹³⁵ The immediate threat that Canada faced during the Cold War was largely a threat of geographical proximity to the United States and the fact that Soviet routes for bombers or missiles crossed Canadian airspace.

The question that must be asked under the principle of proportional cause is whether Canada achieved greater security from collective defence in NATO and

¹³² J.L.Granatstein, *Canada's Army*, 340-341.

¹³³ Joseph Jockel, "The Military Establishment and the Creation of NORAD", 170.

¹³⁴ John Holmes, quoted in J.J. Sokolsky and D.W. Middlemiss, *Canadian Defence; Decisions and Determinants*, (Toronto, Harcourt Brace Janovich, 1989), 17.

¹³⁵ *1964 White Paper on Defence*, 13.

NORAD than it would have achieved from a defence policy premised on a neutral or non-aligned position in the international community. The answer to this question seems obvious in light of the nuclear threat that existed during the Cold War. Even a non-aligned Canada would have suffered the same vulnerability and threat of collateral damage given its geographical proximity to the United States. Furthermore, Canadian defence policy has never rested on a mere geographical basis, it rests on an ideological basis and the protection of Canadian values, freedoms and institutions. The 1971 Defence White Paper recognized that defence policy rested on national values, the hopes for peace and security in the international community and the protection of Canadian territory and sovereignty. It concluded that all of these were at risk if war broke out between NATO and the Warsaw Pact and thus, Canada needed to participate in NATO and NORAD to ensure collective defence and deterrence achieved Canadian priorities for its own protection.¹³⁶

The 1987 White Paper was explicit in its rejection of neutrality or unilateral disarmament as being inconsistent with Canadian values and goals. The values of individual freedom, the rule of law, political and economic interests and the democratic relationship of the individual to society align us with other western nations and make Canadian participation in NATO and NORAD the right course of action.¹³⁷ Geographical considerations aside, it seems hard to deny the value added to Canadian defence policy of Canada's participation in NATO and NORAD.

With the end of the Cold War in 1989, the question of proportional cause needs to be reassessed. The threat, indirectly to western values and institutions through the

¹³⁶ *1971 Defence White Paper*, 1-3.

¹³⁷ *1987 Challenge and Commitment*, .3-5.

alternative Soviet communist ideology, and directly to security through the Soviet nuclear arsenal seemed to end with the collapse of the Soviet Union. Communism still existed in the international community, and nuclear weapons still existed in several countries arsenals, but the principal antagonist was gone. The principle of proportional cause now moved to Canada's role as a peacekeeping nation, engaged in foreign interventions for international peace and stability. The answer in this context is far less clear. There is less direct threat to Canadian territory, institutions or values as most of the crises are limited, regional and far from North America. It is hard to conceive that civil war in Rwanda, or even the Balkans would jeopardize Canadian security in any way. The 1994 White Paper skirted the issue of proportional cause when speaking of multilateral operations by expanding this scope of this principle to include not only genuine threats to international peace and security, but also humanitarian tragedies that clashed with the moral sensibilities of Canadian society.¹³⁸ The question remains whether the risk to Canadian soldiers lives and the tangible benefits to Canadian security and prosperity warranted Canadian participation in these multilateral operations. Moving beyond the 1994 White Paper, the sheer number of multilateral operations undertaken by the CAF for humanitarian aid and the protection of civilians suggests that large scale human suffering in any area of the world represents, if not a threat to Canadian security, an offense to Canadian values. The moral responsibility Canada feels to intervene becomes the basis of proportional cause.

The third *jus ad bellum* principle is the reasonable chance of success. In the Cold War era it is clear that success, identified as the effective deterrence of war between NATO and the Warsaw Pact, was demonstrably greater in the context of the western

¹³⁸ 1994 Defence White Paper, 28.

alliance and the development of a credible conventional and nuclear deterrence. As the reality of the Cold War dawned upon the world and began to limit the ability of the United Nations and the Security Council to bring stability and peace to the international community, Canadian leaders acknowledged their country's need for a different structure in which to pursue collective security. In 1947, Louis St Laurent, then Minister for External Affairs, announced at the United Nations "that Canada would seek greater safety in an association of democratic peace-loving states willing to accept more specific international obligations in return for a greater measure of national security."¹³⁹ This new association was NATO, and the North Atlantic Treaty was signed on April 1, 1949. Canada entered into a second security alliance in March 1958 with the creation of the North American Air Defence Command. A bilateral relationship with the United States for continental air defence provided the best option to achieve the level of security desired and Canadian participation demonstrated Canada's commitment to both North American defence and defence of the U.S. nuclear deterrent. In short, these alliance relationships provided the best chance of success for ensuring Canadian security in the Cold War.

There are two areas in which the reasonable chance of success principle may not fit well with Canadian defence policy. The first is the contribution to United Nations peacekeeping operations. The crux of this argument rests on the definition of success for these operations and this in turn rests on the mandate the UN gives to the participating countries. One of the first major peacekeeping operations for the Canadian military was the United Nations Emergency Force (UNEF) in the Sinai, begun in 1956. After ten

¹³⁹ Louis St. Laurent quoted in Joel Sokolsky, "A Seat at the Table: Canada and its Alliances", in *Canada's Defence: Perspectives on Policy in the Twentieth Century*, (Toronto, Copp Clark Pitman Ltd, 1993), 149.

years of monitoring the uneasy peace between Israel and Egypt, the Canadian contingent was ordered out of Egypt in 1966 by Egyptian Prime Minister Nasser. Shortly afterward began the Six-Day War between Israel and Egypt, Syria and Jordan. Following the failure of UNEF, the Department of External Affairs issued a statement on UNEF and peacekeeping in general:

The lesson which we must draw from this is that a peace-keeping operation such as UNEF is not an end in itself but a practical adjunct to peace-making. Hand in hand with peace-keeping there must be continuous efforts to work assiduously for a settlement and not to regard a truce as a satisfactory long-term settlement.¹⁴⁰

Other Canadian peacekeeping missions followed a similar pattern. The United Nations Mission in the Congo (ONUC) was abandoned after four years and numerous episodes of Canadian soldiers being captured, detained, beaten, shot and killed. The United Nations Force in Cyprus (UNFICYP) begun in 1964 to ease tensions between Greek and Turkish Cypriots, continued until 1993 when Canada removed its contingent. Thirty years of patrolling the buffer zone between Greeks and Turks had achieved nothing more than a perpetual stand-off.¹⁴¹ These are typical of the challenges that faced Canadians while serving under the auspices of the United Nations.

It is hard to argue that any of these operations had much real chance of success, especially if success was a long-term political solution. However, Canadian participation in UN operations continued. Some were heralded a successes such as the 1989 ONUCA mission in Nicaragua, and the UNIKOM mission in Kuwait where Canadian combat engineers cleared thousands of mines, and educated the local population on the

¹⁴⁰ Quoted from J.L. Granatstein and D. Bercuson, *War and Peacekeeping; from South Africa to the Gulf - Canada's Limited Wars*, (Toronto, Key Porter Books, 1991), 200.

¹⁴¹ Granatstein and Bercuson, 222-226. The author of this paper served a tour in Cyprus in 1990-91 as part of the Canadian contingent responsible for patrolling the BZ in the city of Nicosia.

danger.¹⁴² According to Jack Granatstein, 1988 was the high point of Canadian peacekeeping. Missions afterward in Bosnia, Somalia and Rwanda were failures for the United Nations and in the case of Somalia and Rwanda for Canada as well. Granatstein quotes a senior Canadian peacekeeper who maintained the failure was due to incompetent civilian UN commanders, inadequate mandates and insufficient resources.¹⁴³ In the 1994 Defence White Paper, the government updated its criteria for participation in UN missions with the expressed intent of making the reasonable chance of success principle an active piece when assessing support for any UN mission.¹⁴⁴

A final point on the reasonable chance of success principle also pertains to defence policy. Rather than the planning or conduct of operations per se, this concern stems from the importance of properly equipping soldiers for the missions they will be sent on. When one examines the defence budgets from 1960-1984, it is apparent that defence spending has consistently become a smaller and smaller part of overall government spending and over this twenty-five year period had no real growth in funding and often experienced significant reduction in real spending.¹⁴⁵ The 1964 White Paper understated the challenge when it admitted that Canada must ensure it does not let its commitments over-run its capabilities.¹⁴⁶ The 1971 White Paper announced a reduction of 7000 personnel to offset the additional costs of the defence budget, as well as the cancellation or long-term delay of capital equipment research and purchases.¹⁴⁷

¹⁴² Granatstein, *Canada's Army*, 395-396.

¹⁴³ Granatstein, *Canada's Army*, 398.

¹⁴⁴ *1994 Defence White Paper*, 29.

¹⁴⁵ For a table of the defence budgets in question and further analysis, see Rod Byers, "The Economics of Defence" in *Canada's Defence: Perspectives on Policy in the Twentieth Century*, 258-260.

¹⁴⁶ Granatstein, *Canada's Army*, 354.

¹⁴⁷ *1971 White Paper*, 15-16.

The 1987 White Paper drew attention to the commitment-capability gap that existed in the Canadian Armed Forces and the advanced state of obsolescence of CAF equipment. The White Paper promised huge increases over a rolling five year acquisition plan to purchase new equipment.¹⁴⁸ Due primarily to financial restraint most were scaled back or cancelled altogether before the end of the governments four year mandate, although in the same period as many as four thousand Canadian soldiers were deployed on UN missions at any given time using that same obsolete equipment¹⁴⁹ Jack Granatstein has written that the equipment required to outfit the Canadian contingent for the UN mission to Somalia (UNITAF) was borrowed from several different units including reserve units and was in such bad repair that parts and pieces were cobbled together to make them work.¹⁵⁰ A similar challenge came in the former Yugoslavia where the Canadians serving in UNPROFOR were forced to share a limited number of kevlar helmets and ballistic vests since there weren't enough to equip every Canadian soldier in theater.¹⁵¹ The Canadians of UNPROFOR quickly realized that their Cougar tank trainers and M-113 armoured personnel carriers were no match for the Serbian Army's main battle tanks and 20mm canons, and that diplomacy was far more effective and safer than the threat to use force because the Canadian equipment was hopelessly inferior in most instances.¹⁵² These examples illustrate the important connection between the *jus ad bellum* principle of a reasonable chance of success and the financial considerations, equipment procurement and manning levels dictated by Canadian defence policy. Particularly in the early 1990's, the documented evidence of equipment

¹⁴⁸ *Challenge and Commitment*, 43-63.

¹⁴⁹ Sokolsky, "A Seat at the Table; Canada and its Alliances", 160. See also Granatstein, *Canada's Army*, 396.

¹⁵⁰ Granatstein, *Canada's Army*, pp.404-405

¹⁵¹ Desmond Morton, *A Military History of Canada*, (Toronto, McClelland and Stuart, 2007), 278.

¹⁵² Morton, 279, 294.

and manpower shortfalls in the context of very dangerous missions constitutes a failure of Canadian defence policy to consistently apply this principle.

The fourth criterion is legitimate authority. Grotius held that only the legal authority of a state could determine to go to war. The implications of this were twofold: only states could legally go to war, and war could only be declared by the government. In the Canadian context this is an easy criterion to consider. The very fact that this paper is examining Canadian defence policy through the formal statements and documents of the elected government of Canada suggests that it is indeed the government of Canada that determines all operations and deployments of Canadian military forces. However, there is one caveat to this otherwise true statement. As a result of our alliance relationships through NATO and NORAD, Canadian Armed Forces have been placed under command to Supreme Allied Commander Europe (SACEUR) and U.S. Commander of Continental Air Defence at NORAD. The allocation of forces to these external commands has been approved by the Canadian government through the 1949 North Atlantic Treaty and the 1958 government notes establishing NORAD.

In a similar way, the allocation of Canadian Armed Forces personnel to support United Nations operations is done by the government in response to a formal request from the Secretary General of the United Nations. In such operations the one challenge that is sometimes acknowledged is the lack of clarity in the mandate of the UN force and the specific tasks that Canadian military personnel will be asked to perform. In these multilateral operations under the auspices of the United Nations or NATO one of the specific legal developments to ensure that Canadian military personnel act within the constraints desired by the Canadian government is the promulgation of operation specific Rules of Engagement (ROE). These documents are carefully crafted instructions

to the commanders and personnel of a particular operation detailing the use of force. According to the International Institute of Humanitarian Law, *Rules of Engagement Handbook*, these rules will often include specific instructions regarding self-defence, the tactical considerations, mission objectives, the Law of Armed Conflict, and governmental direction to its forces limiting particular types of actions. Governments will also often provide narrative instructions of their aims and objectives so their commanders and forces in theater can respond appropriately as situations develop.¹⁵³ In the following chapter, attention will focus on the *jus in bello* criterion including the drafting and use of Rules of Engagement for Canadian Armed Forces in multilateral operations.

In the 1994 White Paper, moral responsibility was first introduced as a just cause for Canadian military action including foreign deployments. In 1999, the inherent contradiction between the sovereignty of a state on which much of the just war tradition was founded and the moral responsibility on the part of the international community to stop large scale loss of life through genocide, ethnic cleansing and crimes against humanity became the focus of a Canadian led initiative called Responsibility to Protect (R2P). This new doctrine challenged the traditional understanding and inviolability of state sovereignty by insisting that moral responsibility to stop such heinous crimes against people was a higher principle held by the international community as a whole.

The R2P doctrine, approved by the UN General Assembly in 2005 at the World Summit, pushed the discussion of legitimate authority to a new level. Beyond a tacit recognition of state sovereignty and the corresponding responsibility of states for the

¹⁵³ International Institute of Humanitarian Law, *Rules of Engagement Handbook*, (Sanremo, November 2009), 5-6.

protection of their citizens, the resolution affirmed that the international community through the United Nations and the Security Council also had the responsibility to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity in situations where their government was unwilling, negligent, or unable to do so. The means open to the international community to do this included military intervention.¹⁵⁴ Legitimate authority for peacekeeping or other multilateral operations was no longer dependant on the acquiescence of the host nation; it has been superseded by the moral responsibility of the international community. As signatory to this new convention and a committed supporter of United Nations missions, Canada now vests legitimate authority for its military to engage in conflict under this international moral responsibility to protect all peoples. R2P as a just cause or the stated authority for certain operations is not referenced in Canadian defence policy.

The final *jus ad bellum* criterion is last resort. Grotius insisted that this criterion be included to press states to solve their differences through negotiation or arbitration rather than the resort to war. This criterion perhaps more than any of the others in the *jus ad bellum* list has been given considerable attention in the modern just war tradition. At the 1899 Hague Conference, a draft convention on the peaceful settlement of international conflicts proposed a commission of inquiry and a permanent board of arbitration. The League of Nations established the Permanent Court of International Justice in 1922 and until its suspension in 1939 the court heard sixty-six cases brought by states for judicial review. The importance of this principle is self-evident: the capacity and desire to settle international disputes between states by means other than war is the best method to limit

¹⁵⁴ The text of the R2P resolution can be found in: Alex J. Bellamy, *Global Politics and the Responsibility to Protect, From Words to Deeds*, 23-24.

the excesses and destruction of war. In the Canadian context, there is ample evidence supporting the application of this principle in Canadian defence policy. As a founding member of the United Nations in June 1945, Canada has embraced the principles espoused in Articles 1 and 2, advocating the maintenance of peace and security by settling all international disputes by peaceful means, and refraining from the threat of or use of force against the territory and sovereignty of other states.¹⁵⁵ In the first Defence White Paper of 1947, The Honourable Brooke Claxton emphasized this Canadian commitment to peace.

The first aim of Canadian policy is to prevent war. The Canadian parliament and our representatives at international conferences have repeatedly affirmed our support of the United Nations as a means to this end.¹⁵⁶

In the 1964 White Paper, there was not only an affirmation of Canada's obligations under the United Nations Charter there was also the frank assessment that the United Nations was ineffective as a guarantee of Canadian security. Thus, Canada's participation in NATO and NORAD as defensive alliances was promoted as being consistent with Canada's desire to maintain international peace and stability. The 1971 White Paper stated unequivocally that, "it is in Canada's interest that war should be prevented" and acknowledged "that a constant criterion for evaluating all aspects of policy is the determination to avoid any suggestion of the offensive use of the Canadian Forces to commit aggression".¹⁵⁷ At the same time, the White Paper acknowledged that the deterrent value of NATO and NORAD and a combat capable military force was required for the security of Canada. Just as the principle of last resort does not advocate

¹⁵⁵ "The Charter of the United Nations", www.un.org/en/sections/un-charter

¹⁵⁶ *1947 Defence White Paper*, 51.

¹⁵⁷ *1971 White Paper on Defence*, 7.

not having the capacity to use force, military preparedness must not be understood as a predisposition for going to war.

The first challenge to this criterion emerged in the 1987 defence policy. In this document, the government declared that a NATO nuclear response to Soviet conventional war was an essential part of western deterrence and consistent with Canadian policy.¹⁵⁸ The nuance in this statement is that a nuclear response is really a last resort, because the nuclear decision would be taken in the event of a Soviet conventional victory. But in 1987, this option was not presented as a last resort, but as a viable deterrent response to conventional military action. Michael Walzer links the issue of nuclear deterrence in this way with the argument from extremity, suggesting that in order to avoid defeat, it may in some manner be defensible.¹⁵⁹ Thankfully, with the end of the Cold War, the question between “red or dead” was never presented, and a NATO nuclear decision was never required.

A second potential challenge to the principle of last resort comes with the 2001 acceptance of R2P. The criteria adopted by the United Nations for invoking R2P following its 2005 ratification at the World Summit, indicated that military intervention was to be a last resort, when diplomatic efforts, humanitarian support, economic sanctions, travel bans, and other methods of accountability had been exhausted.¹⁶⁰ The challenge that has existed in the past, and continues to exist, is that the humanitarian crises are rarely acknowledged until they are crises that require dramatic, forceful intervention to alleviate and stop. United Nations missions since 1990 have increasingly recognized the need for more robust military capabilities and wider authority for

¹⁵⁸ *Challenge and Commitment*, 17, 20.

¹⁵⁹ Walzer's argument from extremity is summarized in Chapter 2 of this project, 45.

¹⁶⁰ Bellamy, 43-44.

intervention, moving from Chapter VI to Chapter VII operations or in some cases being contracted out to military alliances such as NATO. If R2P becomes accepted as the norm of United Nations missions, it seems unlikely that military intervention can indeed be a last resort.

This chapter has examined Canadian defence policy from 1947 till 2005. Several points emerge from this analysis that demonstrate that Canadian defence policy although not specifically crafted to reflect the *jus ad bellum* principles of just war theory has with consistency and clarity articulated these principles in its policies.

There are some important points and transitions in the application of these principles that were evident in this analysis. The first is the principle of just cause, and the transition that brought it from protection of state sovereignty and national interests to a moral responsibility on the international community to protect persons impacted by conflict. Although not reflected in Canadian defence policy directly, this notion has been articulated by Canadian leaders, and supported through the ICISS. This transition to R2P reflects perhaps the most dramatic change in the application of just war theory for Canadian defence policy and the global community as a whole. A second, and closely related transition, occurred with the principle of legitimate authority. Here again, the traditional premise that authority rested on the sovereign right of states gave way in the post-Cold War period to the authority of the international community to act, based on a moral imperative, regardless of host nation support or permission.

The principle of proportional cause was also impacted by the dramatic changes in the post-Cold War period and the large number of multilateral operations under the United Nations and NATO. The moral imperative or responsibility to protect that defined the just cause for Canadian involvement in these missions did not define

legitimate threats to Canadian security or territory that are the traditional role for the Canadian military. There must be careful consideration of the risks to Canadian personnel, the financial costs of such intervention and the long-term sustainment of the military required to undertake them effectively. As insensitive as it may sound, Canadian foreign and defence policy must wrestle with the cost versus cause question of supporting operations that do not address issues of Canadian security. The principle of proportional cause demands as much caution and care in the allocation of one's own resources as it does of a careful assessment of the value added by military intervention.

CHAPTER FOUR: THE CANADIAN MISSION TO SOMALIA

Deployments offer an operational and tactical level for analysis of Canadian defence policy, and just war theory. Particularly at the tactical level, the *jus in bello* principles of discrimination and proportionality can be examined largely through the specifics of the operation order and the Rules of Engagement (ROE) written to support the operation. There are also *jus ad bellum* principles in play in the operation order and the government decision-making process to participate in the operation. United Nations and coalition operations provide interesting study of the *jus ad bellum* principles of just cause and legitimate authority. In the post-Cold War period, humanitarian crises bring the question of moral responsibility into the analysis and raise questions that later fall under Responsibility to Protect (R2P) doctrine. The question of moral responsibility that the post-Cold War humanitarian crises brought to light has the potential to fundamentally change how just war principles are understood and applied and this change is evident in the case studies that follow. Two case studies will be presented, in this chapter; the Canadian participation in Somalia under the United Nations Operation in Somalia (UNOSOM I) and the Unified Task Force (UNITAF) an American led coalition under United Nations sanction, and in the final chapter; Canadian participation in the former Yugoslavia under the United Nations Protection Force (UNPROFOR).

Somalia gained independence in 1960, when the former colonies of Italy and Britain were merged and recognized as a national entity. At that time, Somali nationalists indicated their desire to have all indigenous Somali peoples gathered under one state, and thus began the long period of popular revolution and civil conflict that has characterized the Horn of Africa ever since. In 1969, Mohamed Siyad Barre seized

power in a coup and instituted a socialist regime in order to marginalize the traditional clan structure of leadership and authority that was traditional among the semi-nomadic and agrarian population. First supported by the Soviet Union, and later by the United States, Siyad's regime had no shortage of weapons with which to prosecute their wars against Ethiopia, Kenya and internal opposition.¹⁶¹ In 1978, Somalia was soundly defeated by Ethiopia in a conflict over control of the Ethiopian province of Ogaden which is ethnically Somali. Following this defeat, internal struggle increased and in 1991, an alliance between the Somali Nationalist Movement (SNM), the United Somali Congress (USC), and the Somali Patriotic Movement (SPM) ousted Siyad from power and seized control of the capital city Mogadishu. The loose alliance fell apart soon afterwards, and Somalia became split as clan based factions developed. Of these, the Hawiye clan factions, one led by General Aideed, and a second led by a Mogadishu businessman named Ali Mahdi, dominated the south central region and Mogadishu, the Darod clan under the banner Somalia Salvation Democratic Front (SSDF) led by one of Sayid's son-in-law, a former general in the Somalian Army was located primarily in the north-west, and two others led by former army officers, General Adan Gabio, and the Isaq clan SNM led by Colonel Umar Jess, were the largest, most heavily armed and aggressive clan groupings. These factions warred against each other and neighbouring states resulting in widespread devastation and displacement. The United Nations estimated that in 1991, as many as 14,000 Somalis were killed in fighting, 30,000 were injured, 300,000 died from starvation and another 700,000 were at risk.¹⁶²

¹⁶¹ A concise and well written summary of Somali political history can be found in Ioan Lewis and James Mayall, "Somalia" in *United Nations Interventionism 1991-2004*, Mats Berdal and Spyros Economides eds, (Cambridge, Cambridge University Press, 2007), 108-120.

¹⁶² Lewis and Mayall, "Somalia", 119-120.

Formal United Nations intervention following the 1991 civil war began with Security Council Resolution 751, adopted in April 1992, requesting the Secretary General to deploy a team of fifty United Nations observers to monitor the ceasefire in Mogadishu, determine when and how humanitarian aid could resume, and plan for a full United Nations mission to Somalia to support reconciliation and restoration.¹⁶³ Further resolutions established a UN force of five hundred personnel to guard aid deliveries out of Mogadishu and an airlift operation to fly humanitarian supplies into the interior to support the work of UNICEF and the ICRC. It was as a result of the July 1992 Security Council resolution 767, that Canada became involved. Following persistent requests for Canadian participation, the Prime Minister, Brian Mulroney pledged Canadian support to Secretary General Boutros-Ghali in the form of three C-130 Hercules aircraft and crews to fly aid into Somalia from Nairobi, Kenya.¹⁶⁴

From the perspective of just war principles, the debate over Canadian participation in Somalia is illuminating. Between March and July 1992, the J3 Peacekeeping desk in the Joint Staff office at NDHQ prepared a number of reports. The first was a report prepared for the Minister of National Defence, Marcel Masse, examining a possible Somalia mission under the seven criteria that were set out in the 1987 White Paper, *Challenge and Commitment*. These criteria are:

1. A clear and enforceable mandate;
2. The principle antagonists agree to ceasefire and Canadian participation in the UN mission;
3. The mission will aid the cause of peace and contribute to a long-term political settlement;

¹⁶³ “United Nations Security Council Resolution 751”, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/751\(1992\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/751(1992))

¹⁶⁴ Grant Dawson, *Here is Hell, Canada's Engagement in Somalia*, (Vancouver, University of British Columbia Press, 2007), 49.

4. The size and composition of the UN force will be appropriate to the mandate and will not damage Canadian relations with other states;
5. Canadian participation will not jeopardize other Canadian commitments;
6. Is there a single identifiable authority (in the host nation) capable to support the operation and influence the disputants; and
7. Is the mission equitably and adequately funded and logistically supported through the United Nations and its Security Council.¹⁶⁵

The conclusion of this study was that Canada should not participate in Somalia because four (1, 2, 3, and 7) conditions had not been met. Furthermore, it was assessed that there was an unacceptable level of risk to Canadian personnel were they to deploy to Somalia, and finally, it was recognized that Canada had no national interests in Somalia that demanded Canadian participation.¹⁶⁶ The last of these rationale recognized that Canada lacked sufficient just cause from a military-political perspective to send military personnel to Somalia. However, near the end of July 1992, the Prime Minister overturned the decision not to participate and authorized Canadian support for the airlift. The justification given had nothing to do with military or political national interest, but a conviction that Canada had a moral obligation to respond to the humanitarian crisis that was developing in Somalia and a vested interest in a multilateral, UN led mission to address the crisis.¹⁶⁷ The mission, named Operation Relief ran from September 1992 until February 1993 during which time 547 flights delivered over 7200 tonnes of food.¹⁶⁸

In December 1992, the Security Council passed Resolution 794, which mandated a military force for deployment to Somalia under Chapter VII of the UN Charter.¹⁶⁹ This force, titled Unified Task Force (UNITAF), was led by the United States, with

¹⁶⁵ *Challenge and Commitment*, 24.

¹⁶⁶ Dawson, 36-37.

¹⁶⁷ Dawson, 49.

¹⁶⁸ "Operation Relief", <http://www.cmp-cpm.forces.gc.ca/dhh-dhp/od-bdo/di-ri-eng.asp?IntlOpId=208&CdnOpId=246>

¹⁶⁹ "United Nations Security Council Resolution 794", [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794\(1992\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794(1992))

participation from 18 other countries including Canada. This resolution is significant because for the first time a coalition, military force was being deployed into a sovereign state without the state's specific request, mandated under Chapter VII to use force as necessary to ensure the success of its mandate. The mandate as expressed in the Resolution was: "that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible."¹⁷⁰

Canadian participation in UNITAF was supported under the same premise as Operation Relief: a responsibility to alleviate humanitarian crisis and a commitment to help support the United Nations multilateral efforts. Neither the J3 planning staff at NDHQ nor the Prime Minister's Office addressed the need for a political solution to the Somalia crisis; although it was generally acknowledged that only a long-term political solution could really resolve the humanitarian concerns.¹⁷¹ Canadian participation in both UNOSOM I, and in UNITAF were justified under Canada's moral obligation to assist in a humanitarian crisis and its commitment to support the United Nations multilateral efforts for peace and security. These reasons challenge the just war principle of just cause because neither identifies an imminent threat to Canadian security or a redress of an injury Canada had suffered. Just cause in these operations was not premised on issues of state sovereignty and state's rights in the international community, but rather on moral responsibility for the wellbeing and protection of all people and the promotion of collective security and responsibility under the banner of the United Nations. For his part, Prime Minister Brian Mulroney endorsed the same high hopes and

¹⁷⁰ Ibid.

¹⁷¹ Dawson, 68.

expectations of the United Nations as Prime Minister Mackenzie-King had done in 1947 following the end of World War II. It was hoped then that the UN would become the arbiter of collective security and peace, and now, following the end of the Cold War, such hopes were reborn.

The corresponding question to just cause in these operations is the question of legitimate authority. As the previous chapter explained, this *jus ad bellum* principle rests on the sovereign rights of a state. The specific challenge in the case of UN support to Somalia is that in 1991, there was no central governing authority in Somalia that could specifically request UN assistance, approve the deployment of foreign troops into their territory, and serve as an identifiable authority to support a UN operation, or ensure compliance by the various armed factions. Part of the justification for the UN operations in Somalia was the recognition that the state of anarchy, lawlessness and violence that existed in Somalia represented a real threat to peace and security of surrounding states, as well as to the peoples of Somalia.¹⁷² Furthermore, no acknowledged governing authority existed in Somalia; the United Nations worked with other regional organizations such as the Organization of African Unity and the Islamic Conference to procure a ceasefire and appeal for Security Council action.¹⁷³

The mandate extended for UNOSOM I under Chapter VI of the United Nations, was expressly a humanitarian operation, and as such, under General Assembly Resolution 46, passed in December 1991, such assistance was constrained to not prejudice the territory, authority or sovereign rights of the state to which humanitarian

¹⁷² Lewis and Mayall, 108.

¹⁷³ Lewis and Mayall, 121.

assistance was sent.¹⁷⁴ The UNITAF mandate was adopted under Chapter VII and had no such limitations. In fact, a Chapter VII mandate was beyond the claims or prejudice of state's rights or the positions of various parties, and none of these precluded the Security Council right or responsibility to act.¹⁷⁵ The United Nations authority to act in both operations was substantiated by the United Nations Charter and as a signatory to the Charter, Canadian participation in these operations was also authorized. There has been however, a dramatic shift in United Nations procedure concerning peacekeeping operations since the Charter was written. Initially, peacekeeping operations were undertaken when the following criteria had been met:

1. Consent of the state or states engaged in the conflict to UN involvement,
2. An established and agreed upon political plan for peace and reconciliation that the UN peacekeeping mission deployed in support of,
3. A force that was constituted on the principles of lightly armed, non-hostile and impartial, and
4. A legitimate mandate and authority through the Security Council or General Assembly that defined and guided the formation and conduct of the mission.¹⁷⁶

In the Somalia situation, only the fourth criterion was met for both UNOSOM I and UNITAF and there are some who would argue that apart from Security Council authorization little was done to define the specifics of the operation or guide the mission's work in either case. There was no clear consent by Somali national leaders, actual or assumed, for either UN mission, and there was no approved peace program in place that these missions sought to support or enforce apart from a hastily arranged and limited ceasefire in Mogadishu. The question is whether authorization by the Security

¹⁷⁴ "United Nations General Assembly Resolution", <http://www.un.org/documents/ga/res/46/a46r182.html>

¹⁷⁵ "United Nations Charter", Chapter VII, Articles 40 and 51, <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>

¹⁷⁶ Allen G. Sens, *Somalia and the Changing Nature of Peacekeeping; Implications for Canada*, (Minister of Public Works and Government Services Canada, 1997), 17-19.

Council alone, without the other criterion being in place, constitutes in fact legitimacy for the UN to operate. This question may be more pertinent to the UNOSOM I mission as it was mounted under Chapter VI than the Chapter VII mandate of UNITAF, although in general, it appears essential for all UN peacekeeping missions to meet these criteria if they are going to achieve success and enhance the legitimacy of the United Nations in the international community. The third criterion was an essential component of how peacekeeping operations were developed and subsequently manned. Success by force of arms was not part of a mandate, hostility was counter-productive to the establishment and maintenance of peace, and impartiality a key part of UN legitimacy among the disputants. The challenges confronted by the UN in Somalia resulted from the negation of these important factors. Both UNOSOM I and UNITAF were developed specifically to protect and deliver relief supplies and as such they became inherently antagonistic in a country where food and water were power. The projection of force under UNITAF, though successful in the short-term delivery of food, worked against efforts to develop a ceasefire, build trust among the disputants and enhance stability. The merger of humanitarian aid delivery and the projection of force removed any sense of UN impartiality and resulted in the limited success of the UN to arrive at a more permanent solution.¹⁷⁷

An additional point under the principle of legitimate authority is the question of whether the prime minister and the cabinet have the authority to commit Canadian Forces personnel to such operations or whether this authorization must be sought from parliament as a whole. The Constitution Act of 1867 explicitly recognizes the authority of the federal cabinet under the leadership of the prime minister to place the Canadian

¹⁷⁷ Dawson, 53-55.

Forces on active service and deploy them as necessary.¹⁷⁸ The debates in the House of Commons over Canada's participation in the Korean War (29 June, 1950) and the Gulf War (15-19 January, 1991) both seemed to establish further precedent for parliamentary approval. In both cases, although the government declared its intent to deploy Canadian Forces personnel in accordance with UN Security Council Resolutions, the government sought and received House of Commons affirmation of their decision via a motion. Of particular interest was the apparent distinction made for these operations that Canadian Forces personnel would be entering into combat and that this necessitated House of Commons approval.¹⁷⁹ When the Secretary of State for External Affairs, Barbara MacDougall, announced Canada's decision to send troops in support of Security Council Resolution 794 as part of the U.S. led UNITAF under a Chapter VII mandate authorizing the use of force, opposition MPs challenged the government's authority to do so without a formal debate and motion in parliament. This was in sharp contrast to Canada's earlier deployment under UNOSOM I, for which there was no debate or vote in parliament and the deployment was authorized by an order in council.¹⁸⁰ MacDougall responded to the challenge by correctly pointing out that it was the government's responsibility to formulate plans, make decisions and take action in a timely manner for crises like the Somalia situation.¹⁸¹ Later that same day however, a debate was held in the House of Commons, affirming the government action.

The key point in all of this is the potential tension between government authority enshrined in the constitution and the precedent of parliamentary practice in 1950 and

¹⁷⁸ Michael Dewing and Corinne Macdonald, *International Deployment of Canadian Forces: Parliament's Role*, (Library of Parliament, May 2006), 1.

¹⁷⁹ Dewing and Macdonald, Appendix, 2.

¹⁸⁰ Dewing and Macdonald, Appendix, 5.

¹⁸¹ Dewing and Macdonald, Appendix, 3.

1991. By just war theory definition, the prime minister and cabinet constitute legitimate authority to commit Canada to engage in war or other military operations. However, the distinction made between traditional peacekeeping missions under Chapter VI and those operations mandated under Chapter VII of the UN Charter is significant. The heightened risk to Canadian Forces personnel in such operations and the authorization of the use of force to secure the mandate, suggests that the principle of legitimate authority is taken seriously by the Canadian government. Although the prime minister and his cabinet have this authority under the Constitution Act, for such operations, the full endorsement of parliament is sought. This tension was evident again in 1998 with Canada's participation in Kosovo as part of the NATO led coalition. Parliament pressed the government for debates and a motion in the event Canadian ground forces were to be deployed, and the Prime Minister accented.¹⁸²

Following the question of legitimate authority and just cause for Canadian deployment to Somalia, is the question of proportional cause. As a *jus ad bellum* principle, it questions the value added to the security and well-being of Canada and her citizens vis-à-vis the potential risks and costs of committing Canadian Forces personnel to this operation. Given that it has already been determined that Canada had no national interests in Somalia and no security risk was posed to either Canadian citizens or Canadian assets as a result of the Somali civil war, it would appear that there was little to substantiate Canadian involvement. The challenge here is to make an effective comparison of the two. The costs to Canada are, for the most part easily calculated. The contribution of three Hercules transport aircraft and crews to the airlift of UNOSOM I cost the Canadian government approximately \$18 million and impacted the Canadian

¹⁸² Dewing and Macdonald, Appendix, 5.

Forces ability to resupply and support other operations that were subsequently contracted to private companies.¹⁸³ A further \$22.8 million had been spent in 1992 providing food aid for Somalia.¹⁸⁴ The cost of Canadian participation in UNITAF was reported in the Royal Commission findings as \$75 million for the eight month commitment.¹⁸⁵ There were no Canadian fatalities specifically related to the operations, but there was considerable wear to and breakage of equipment resulting from the harsh conditions, the age of the equipment being used and the lack of sufficient engineer resources to service and maintain equipment.¹⁸⁶ Finally, although not specifically related to the mission, the cost to the Canadian Forces and Canada's prestige resulting from the incidents of March 4 and March 16, 1993 both in domestic and international arenas was immense.¹⁸⁷

The benefits to Canada from the UNOSOM I and UNITAF missions are harder to quantify. There is evidence that one of the perceived benefits was enhanced reputation in the international community and in the United Nations as a result of Canada's commitment to and support of these UN sponsored operations.¹⁸⁸ The Minister of National Defence, Marcel Masse, and the Associate Deputy Minister (ADM) for External Affairs, Jeremy Kinsman, both declared publicly that Canada's involvement was an indication of our commitment to providing humanitarian aid to the world's most

¹⁸³ Dawson, 64.

¹⁸⁴ Dawson, 45.

¹⁸⁵ Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, *Dishonoured Legacy: The Lessons of the Somalia Affair*, Volume 3, (Ottawa, Minister of Public Works and Government Services Canada, 1997), 738.

¹⁸⁶ *Dishonoured Legacy*, Vol. 3, 857, 911.

¹⁸⁷ John Conrad, *Scarce Heard Amid the Guns: An Inside Look at Canadian Peacekeeping*, (Toronto, Dundurn, 2011), 130. The Royal Commission reports, the removal of numerous senior leaders, the disbandment of the Canadian Airborne Regiment, the negative press all had a profound negative impact on CAF morale and operational capability for a number of years following the UNITAF mission.

¹⁸⁸ Dawson, 68.

desperate crises.¹⁸⁹ Canadian participation in UNITAF was also believed to enhance Canadian relations with the United States. Much as our role in Cyprus in 1964 may have positively influenced domestic trade concerns with the US, participation now would also create positive bilateral relations between Canada and the US.¹⁹⁰ There is also some evidence that the real rationale behind Canadian involvement in Somalia was the public image and support of the government of Prime Minister Brian Mulroney. When planning for UNITAF got underway, Canadian officials insisted on a high profile role to ensure media interest and support for the cost of the military mission. The Canadian public had to be convinced that they were getting good value for their tax dollar.¹⁹¹ Although the rationale of moral responsibility to act and the importance of states that take this responsibility seriously are significant, there is little in the way of tangible value to Canada that defends the decision to become involved in either UNOSOM I or UNITAF. If the risk assessment of deploying soldiers as part of UNOSOM I was justification not to deploy in July 1992, then the risk assessment of sending soldiers with UNITAF, under a Chapter VII mandate in December 1992 would be heightened and further justification not to deploy. The Royal Commission findings highlight this failure of threat assessment at several points as one of the persistent failures of the government decision-making and military planning processes of Canada's Somalia missions.¹⁹² Proportional cause as a just war principle was not applied well in the decision to send Canadian soldiers to Somalia.

¹⁸⁹ Dawson, 72-73.

¹⁹⁰ Dawson, 113.

¹⁹¹ Dawson, 131.

¹⁹² *Dishonoured Legacy*, Vol.3, 859, 877, 888, 899.

The final two just war principles to be considered under *jus ad bellum* are the reasonable chance of success and last resort. It is expedient to consider these together given the nature of the humanitarian crisis and the intractable political situation in Somalia in 1991. The gravity of the humanitarian crisis, 300,000 dead and 700,000 in imminent risk of death made the reasonable chance of success a moot point and the principle of last resort a foregone conclusion. Anything that could be done to alleviate the suffering and death of hundreds of thousands of Somalis had to be done. To this end, both UNOSOM I and UNITAF were undertaken as humanitarian missions. When it became evident that the uncontrolled and unsecured delivery of food and supplies during UNOSOM I was failing, additional powers were given to UNITAF to ensure these supplies reached those most in need. By August 1992, Mohammed Sahnoun, the UN's special representative to Somalia, reported that one and a half million Somalis were at risk of starvation.¹⁹³ Alongside the humanitarian operation there were ongoing efforts to establish a ceasefire and program for reconciliation, but these efforts were hampered by the anarchy that prevailed in Somalia, the plethora of competing factions, and the ill-informed UN advisors who poorly understood traditional Somali community structures.¹⁹⁴ To its credit, the Canadian government expressed its commitment to alleviate the humanitarian crisis in Somalia and accordingly participated in both missions and did so at least in part out of a sense of moral responsibility.

In July 1992, the Secretary General Boutros-Ghali implicitly accused the Security Council and western governments of neglecting the Somali crisis in favour of support

¹⁹³ Lewis and Mayall, 122.

¹⁹⁴ Lewis and Mayall, 125-126.

for the Balkan crisis.¹⁹⁵ In Canada too, comparisons were made between the extensive Canadian role in the former Yugoslavia and the limited support being offered to the UN for Somalia. There were several factors at play in the slow and limited response to the Somalia crisis. Most important among these was the scope and complexity of the problem. The humanitarian crisis was immense, there was no government in place to work with and the country was in a state of civil war between several rival factions. The UN had no precedent for peacekeeping in such a situation and had never deployed a force as large as would be necessary to achieve success. US estimates called for a minimum force of 30,000.¹⁹⁶ Following the collapse of UNOSOM I, Security Council Resolution 794, affirming the gravity of the crisis and the lawlessness that prevailed in Somalia, took the unprecedented step of authorizing a Chapter VII mandate and the use of force necessary to ensure the success of the humanitarian operation, implying that other options had failed and this step was a last resort. Was a Chapter VII mandate required to achieve the humanitarian mission or should there have been a reinforced and expanded Chapter VI mandate to address the crisis?¹⁹⁷ There is considerable evidence that Secretary General Boutros Ghali had pressed for a larger UN military force and an expansion of the UN mandate as early as July 1992 contrary to the plan and recommendations of his Special Advisor in Somalia, Mohammed Sahnoun.¹⁹⁸ Sahnoun believed that consensus and trust building with faction leaders would produce the stability needed to ensure humanitarian aid. The process was slow, ad hoc agreements were often disregarded by smaller factions and the local street gangs, and twenty percent

¹⁹⁵ Dawson, 48.

¹⁹⁶ Lewis and Mayall, 122-123.

¹⁹⁷ Umesh Palwankar, a researcher at the Geneva Center for International Peace and Security has suggested in numerous papers that Chapter VII mandates are inconsistent with humanitarian operations and negate International Humanitarian Law in the conduct of UN missions.

¹⁹⁸ Dawson, 99-100.

or more of food aid never reached those in most desperate need.¹⁹⁹ Boutros-Ghali was under international pressure to ensure the humanitarian aid to Somalis succeeded and believed a show of force to overawe the various armed factions would bring more direct and quicker results. The Secretary General believed that the situation was so grave that last resort was required. Sahnoun resigned from his position in October 1992 in protest of these developments.²⁰⁰

Apart from the humanitarian crisis there was a desperate need to enforce a ceasefire, restore order and rebuild government infrastructure. And while it was generally recognized that these steps were necessary to bring a long-term solution to the Somalia situation, neither the United Nations, the United States or Canada undertook these tasks. The Canadian High Commission in Nairobi and the Department of External Affairs counselled against Canadian involvement in a political solution because there was no hope of success.²⁰¹ In the context of the Somalia crisis success must be measured in what was accomplished to alleviate suffering, rather than what was not achieved in a political solution. Given the state of civil war and anarchy, focusing on the humanitarian crisis may have been the only resort open to the UN and its member states like Canada, willing to intervene in Somalia.

As mentioned in the introduction, the *jus in bello* principles of discrimination and proportionality can be best assessed through the Operations Order and the Rules of Engagement (ROE) that were developed for the Canadian Forces deployed with UNITAF. Briefly, the principle of discrimination is the responsibility to identify and protect those who are not engaged in fighting; non-combatants. The principle of

¹⁹⁹ Lewis and Mayall, 121.

²⁰⁰ Lewis and Mayall, 121, footnote 123.

²⁰¹ Dawson, 71. See also Lewis and Mayall, 123.

proportionality is the responsibility to ensure that the application of force in a military operation is proportional to the threat encountered. The aim is to ensure as little damage, injury or loss of life as possible is caused to achieve one's military objectives. In the modern era, these *jus in bello* principles are represented in the Law of Armed Conflict (LOAC) otherwise referred to as International Humanitarian Law (IHL) comprised of the 1949 Geneva Conventions and the 1977 Additional Protocols I and II.²⁰² The challenge in applying these conventions and protocols to the Somalia situation in 1992-93 was that neither the UNOSOM I mission nor the UNITAF mission constituted armed conflict in the legal context of LOAC. They were United Nations missions mandated by the Security Council Resolutions 751 and 794 to mount humanitarian operations in Somalia. Furthermore, as concerns the nature of violence perpetrated against the UN missions in Somalia by the various armed factions, gangs, and looters attempting to steal or impede the delivery of humanitarian aid; these constitute internal disturbances, riots, and sporadic acts of violence which are not armed conflict and therefore are not covered under LOAC.²⁰³ This being said, both the United Nations and Canada attempted to ensure compliance of LOAC restrictions by UN forces, in the mandate and operation of these missions.

The United Nations mandates which established the UNOSOM I and UNITAF missions under Chapter VI and Chapter VII contained specific instructions to mitigate violent conflict. Specifically the Chapter VII mandate for UNITAF, while authorizing the use of force, called for the establishment of a ceasefire, the control of heavy

²⁰² The distinction between LOAC and IHL is debated by academics and military jurists. The nature of the debate can be found in Solis, *The Law of Armed Conflict*, 23-25. The texts of these Conventions and Protocols can be viewed at: www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesHistoricalByDate.xsp.

²⁰³ Solis, 130.

weapons, the disarming of lawless gangs and the creation of a new police force.²⁰⁴ In a letter to the Security Council dated November 24, the Secretary General insisted that any operation led by the UN itself or by a coalition of member states under Security Council authorization, “be precisely defined and limited in time, in order to prepare the way for a return to peacekeeping and post-conflict peace-building”.²⁰⁵ The UN certainly did not conceive of either mission as an armed conflict.

Canadian support for UNOSOM I was focused on support for the airlift of food. Air Transport Group conducted detailed planning and reconnaissance prior to engaging the mission. In order to minimize threat to Canadian Forces personnel, the Hercules aircraft and crews were based in Nairobi, Kenya. Close coordination of delivery sites, strict neutrality, and leaving an engine running at all times were measures taken to reduce the operational risks.²⁰⁶ No specific ROE were developed because no encounter with warring factions was anticipated. In truth, the aircrews had numerous experiences of sporadic gunfire, riots among the locals at delivery points, and threats posed by “technical” who were “hired” to provide security for the delivery once offloaded.²⁰⁷ No Canadian Forces personnel or equipment were injured or destroyed as a result of violence during UNOSOM I.

The Canadian perspective on UNITAF was the same as that of the UN. The CDS, General de Chastelain, explained that Canada was “going into these operations ... with forces that are much more heavily armed than they have been in the past ... with the idea

²⁰⁴ “UNITAF Mandate”, <http://www.un.org/en/peacekeeping/missions/past/unosom1backgr2.html#five>

²⁰⁵ “Secretary General Letter”,

<http://www.un.org/en/peacekeeping/missions/past/unosom1backgr2.html#five>

²⁰⁶ Dawson, 67.

²⁰⁷ Dawson, 67. “Technical” was the name given to the patrols sent out by the various factions, usually mounted in a pick-up truck with a heavy machine gun or cannon.

that should somebody at a low level try to impede us, we can do something about it.”²⁰⁸

The Chapter VII mandate from UNSCR 794 changed this operation from peacekeeping to a peace enforcement operation. The change was significant as the CDS noted, and Canada sent an armoured squadron and a mortar platoon to enhance the military capability of the Canadian Airborne Regiment Battle Group (CARBG). But peace enforcement is not armed conflict. There was the potential for conflict and the potential need to use arms, but the CARBG was constrained on how and in what circumstances it could use force. It could use force in self-defence and in response to a violent action that would jeopardize success of the mission. Heavy weapons were brought to ensure the CARBG fighting capability was sufficient for their self-defence and to intimidate the Somali factions and gangs, and ensure their cooperation.

How force was to be used during Operation Deliverance, the name given to Canada’s UNITAF mission, should have been spelled out in the operation order and the ROE that were prepared for the mission. In the operation order, the essential paragraphs are the Mission Statement and the Execution paragraph. In the case of Operation Deliverance, the operation order prepared at the Army Command level contained only a vague and generic mission statement, repeated from the one issued by the CDS on December 5. The mission statement read: “to provide a Canadian joint force consisting of a HQ, an infantry battle group based on CAR and HMCS *Preserver* to participate in enforcement operations in Somalia under the auspices of UN Security Council Resolution 794.”²⁰⁹

²⁰⁸ Dawson, 124.

²⁰⁹ *Dishonoured Legacy*, Vol.3, 838.

Accompanying this mission were equally vague probable tasks: security of sea and air ports, security of food convoys and distribution centers, disarmament of factions/locals, and protection of humanitarian relief operations.²¹⁰ On December 10, the CARBG received its first operation order. It did not contain a mission, provided no geographical context for the operation and did not elaborate on the probable tasks.²¹¹ From this mission and probable tasks, the J3 Plans cell at NDHQ wrote the ROE for Operation Deliverance. They were based loosely on the US ROE and were approved by the CDS and the Canadian Joint Force Commander, Colonel Serge Labbé before being sent to the CARBG.²¹² The ROE are the primary means of regulating the use of force in armed conflict or operations short of armed conflict.²¹³ CAF doctrine lists four components necessary for the formulation of ROE: legal prescriptions (customary law and LOAC), political and policy considerations, diplomatic and coalition considerations, and operational requirements (mission, tasks and threat assessment).²¹⁴ *The ROE Handbook* instructs that ROE must be developed and staffed as part of the operational planning process, included in the operation plan, and issued with the operation order to complement the mission, facilitate the execution of tasks and reflect the threat assessment of the area of operations.²¹⁵ Given the lack of firm information about the mission or specific tasks, the relative inexperience of the CAF with the preparation of ROE, and the short time-line to prepare them, the ROE prepared for Operation

²¹⁰ *Dishonoured Legacy*, Vol.3, 859.

²¹¹ *Dishonoured Legacy*, Vol.3, 859.

²¹² Dawson, 126.

²¹³ Solis, 495.

²¹⁴ James Simpson, *Law Applicable to the Canadian Forces in Somalia 1992-1993*, (Ottawa, Minister of Public Works and Government Services Canada, 1997), 36-37.

²¹⁵ ROE Handbook, 10.

Deliverance were basic and sometimes vague, but provided most of the necessary information.

The principle of discrimination was addressed by explaining who were the enemy and how they could be identified under definitions of hostility. A hostile force was: “Any individual or group, whether civilian, paramilitary or military, with or without national designation that has committed a hostile act or demonstrated hostile intent.”²¹⁶ Anyone who attacked, used armed force, or threatened the imminent use of force against CAF personnel, coalition forces, relief personnel, destroyed supplies or impeded the mission was subsequently considered an enemy and could be engaged “to the degree necessary to overcome the immediate threat, [and] be limited in scope and intensity and conducted in such a manner as to discourage escalation.”²¹⁷ Under a section entitled Defence Concept, it was further indicated that CAF personnel could use all means up to and including deadly force to protect themselves, coalition forces, relief personnel and non-combatant civilians.²¹⁸

Though convoluted, the orders laid out in the ROE identified who could be engaged and under what circumstances, and further it recognized the groups represented in the area of operations; CAF personnel, coalition forces, relief workers, non-combatant civilians and hostile forces. The challenge that was left with the soldier on the ground was the ability to delineate one group from another, especially civilian non-combatants and hostile forces as many of the first group were armed and the second bore no uniform or badge to distinguish them from the rest of the general population. The significance of

²¹⁶ “Canadian Joint Forces Somalia Rules of Engagement-Operation Deliverance”, in Simpson, *Law Applicable to the Canadian Forces in Somalia 1992-1993*, Appendix, paragraph 7, 74.

²¹⁷ “Somalia Rules of Engagement”, paragraph 4, 74.

²¹⁸ “Somalia Rules of Engagement”, paragraphs 10-12, 75, 76.

this challenge rests with Article 50 of the 1977 Additional Protocol 1, which requires that “in case of doubt whether a person is a civilian, that person shall be considered a civilian [and] the presence of those in the population who may not be civilian does not deprive the population of its civilian designation.”²¹⁹ In a situation like Somalia, this placed an immense amount of strain on the CAF personnel to be vigilant and exercise careful judgement when dealing with the local population, even in the presence of real threat or actual attack. It is also important to recognize that this challenge was not reflective of the humanitarian nature of the UN mission, or even Canadian deployment under a UN mandate, but a reflection of the LOAC that is applicable to all CAF personnel serving on operations.²²⁰

The principle of proportionality was addressed directly. The ROE stated that the application of force was dependant on two elements: necessity – a hostile act has occurred or appears imminent, and proportionality – that the use of force be in all circumstances reasonable in intensity, duration and magnitude, to counter the hostile act or intent.²²¹ Under a later section, the ROE provided guidelines for engagement using a gradual escalation of the use of force. The levels were: attempt to control without use of force, minimum force to control the situation, attack to disable or destroy, and pursuit of hostile forces. For all of these levels it was reiterated that the use of deadly force was a last resort, and the use of force must always be proportional to the threat faced.²²² At a third section of the ROE detailing the CAF response to unarmed mobs or riots, the guidelines reinforced the minimum use of force to bring the situation under control, and

²¹⁹ “1977 Additional Protocol 1”, <https://ihl-databases.icrc.org/ihl/INTRO/470>

²²⁰ Simpson, 26, 27.

²²¹ “Somalia Rules of Engagement”, paragraph 9, 75.

²²² “Somalia Rules of Engagement”, paragraph 15, 77, 78.

detailed escalation from verbal warnings, a show of force, and warning shots. Beyond these restrictive measures, no use of force was authorized against unarmed elements.²²³

As with the principle of discrimination, proportionality brought particular challenges to the CAF personnel in Somalia. The 1977 Additional Protocols I have two articles which relate to proportionality; Article 51 and Article 57. Together they reinforce the idea that incidental loss of civilian life, civilian injury, or damage to civilian property caused by an attack which is excessive in relation to the military objective or advantage achieved is a violation of the LOAC.²²⁴ It is important to recognize that in this case, the restrictions applicable to the CAF personnel in Somalia stems from both the LOAC and the UN mandate under which they were operating. Operation Deliverance was a humanitarian mission, mandated under Chapter VII to use the force necessary to ensure the protection and distribution of food, but it was not a military operation per se and it did not provide for the UNITAF forces to undertake offensive operations against any group in Somalia. There were no military objectives or military advantages defined in the operation order that would substantiate offensive operations. Despite the lack of authority for offensive operations, the LOAC restrictions concerning no civilian injury, death or destruction of civilian property remained applicable to CAF personnel in Somalia. Any operations or activities conducted by the CAF in Somalia were obligated in their planning and conduct to mitigate the potential for civilian deaths, injury or destruction of civilian property. Thus the indemnity of proportionality was directly connected to that of discrimination, and the ability to clearly identify the hostile force. If force was required to respond to any hostile act or intent, the

²²³ Somalia Rules of Engagement , paragraph 20, 78-79.

²²⁴ “1977 Additional Protocol 1”, <https://ihl-databases.icrc.org/ihl/INTRO/470>

commander on the ground must ensure that civilian life and property were duly protected against collateral damage from any military action.

Aside from the ROE that was written for Operation Deliverance, there were at least three versions of the Soldier Card that were distributed among the CARBG personnel. These cards were pocket sized guidelines that each soldier could refer to ensure their actions conformed to the ROE. The difficulty with these cards is that they diverged from the ROE in some significant points. The cards did not use the terms necessity or proportionality to define restrictions on the use of force. The card added a step to escalation in situations involving hostile forces, authorizing warning shots as an additional deterrent measure. It also added the use of deadly force as a final option to the escalation for dealing with unarmed mobs or riots.²²⁵ Given that many of the CARBG personnel never received a copy of the full ROE or a detailed brief on its contents and application, these cards are believed to have blurred the understanding and application of ROE in theater.²²⁶

The ROE written for UNITAF/Operation Deliverance provided sufficient clarity to ensure the *jus in bello* principles of discrimination and proportionality were defined and understood in the operational context. Unfortunately, at various levels in the Canadian government, the ROE were not well understood and the application of the ROE in operations was flawed and inconsistent. In a well reported statement, the Secretary of State for External Affairs, Barbara McDougall indicated that the ROE permitted Canadian soldiers to “shoot first and ask questions later” clearly a gross

²²⁵ “The CAR Soldiers Card”, <http://www.commando.org/somalia.php?page=policy.txt>

²²⁶ *Dishonoured Legacy*, Vol.2, 656-657.

misrepresentation of the truth.²²⁷ When requests were sent to NDHQ for clarification on specific terms like “hostile action” and “hostile intent”, the NDHQ J3, Lt General Clive Addy declined to offer further clarification or reissue amended ROE.²²⁸ The CARBG Commander, Lieutenant-Colonel Carol Mathieu, in an Orders Group on January 28, 1993, ignored the ROE when he instructed his troops that deadly force could be used against Somalis found inside the CARBG compound or stealing materials regardless of whether or not they were armed.²²⁹ These instructions and the alleged use of bait (rations and water) to lure Somalis to the CARBG compound resulted in two unarmed Somalis being shot on March 4, 1993 as they fled the compound perimeter.²³⁰ This incident along with the beating death of a Somali man on March 16, 1993 while in Canadian custody at the CARBG compound resulted in a Commission of Inquiry into the Somalia mission. The testimony and report of this Commission revealed that there were systemic failures to train soldiers on the ROE and effectively apply the ROE in operations.²³¹ These are clearly failures of leadership, but responsibility shouldn’t rest solely with the leadership. It doesn’t require training on ROE or a detailed understanding of LOAC or just war principles for a soldier to know and understand instinctively that baiting starving people with food and water, or shooting a fleeing person in the back, or beating a young man to death in a bunker is wrong. These are not the complex rules of armed conflict, but the moral discipline all soldiers are called upon to exercise. Despite the impressive humanitarian work that the Canadian Joint Force Somalia did during Operation

²²⁷ *Dishonoured Legacy*, Vol.2, 659. See also the “Rouse Journal”, <http://www.commando.org/somalia.php?page=predeployment.txt>

²²⁸ *Dishonoured Legacy*, 662.

²²⁹ *Dishonoured Legacy*, Vol.2, 659.

²³⁰ John Conrad, 128-129. See also, Scott Taylor and Brian Nolan, *Tested Mettle; Canada’s Peacekeepers at War*, (Ottawa, Esprit de Corps Books, 1998), 81.

²³¹ *Dishonoured Legacy*, Vols.1-5.

Deliverance, the deployment remains almost singularly remembered for the failure of Canadian soldiers to uphold the *jus in bello* principles of discrimination and proportionality.²³²

²³² The CARBG secured their area of operations, escorted thousands of tons of food aid, opened a hospital, built three schools, conducted a program of disarmament, and helped institute local government. They were recognized by the UNITAF Commander, the ICRC and UNICEF directors and the Canadian Consul in Nairobi for their professionalism and hard work.

CHAPTER FIVE: THE CANADIAN MISSION IN THE FORMER YUGOSLAVIA

This chapter examines the Canadian contribution to the United Nations mission in the former Yugoslavia from 1992 to 1995, highlighting the ways in which Just War Theory principles helped to shape the UN mandate and guide the deployment and operations of Canadian soldiers under this mandate. The UN mandate tasked Canadian soldiers to monitor ceasefire agreements, protect civilian populations in the designated UN Protected Areas, and escort humanitarian aid convoys. As the situation in the former Yugoslavia deteriorated additional tasks were assigned by the UN or assumed by Canadian Commanders as necessary to their operation. The United Nations Protection Force (UNPROFOR) which deployed to the former Yugoslavia from 1992-1995 saw thousands of Canadian soldiers deploy to the region as part of two Canadian Battle groups. This examination of Just War Theory principles and their application in the UN mission to the former Yugoslavia starts with the United Nations mandate and resolutions that established and directed Canadian military operations there. It then then examines two of the most perilous operations Canadian troops were engaged in during their time in Yugoslavia; the Canadian deployment to the enclave of Srebrenica in November 1992 and the Medak Pocket in September 1993.

In order to understand the crisis that confronted the United Nations in the Balkans, and compelled Canada to send military forces to the region as part of an international peace mission, it is necessary to review the political and military situation in the Balkans in the early 1990s. Yugoslavia, meaning literally “Union of Slavs” was a federated state of six republics: Croatia, Slovenia, Bosnia-Herzegovina, Serbia,

Macedonia and Montenegro.²³³ Most agree that the death of Marshall Joep Tito, President of Yugoslavia in 1980, removed the central unifying figure of the Slavic peoples in the Balkans. During the 1980s, nationalist leaders in the Republics of Slovenia, Croatia, Bosnia-Herzegovina, and Serbia replaced the former communist, pan Slav ideology of the Tito era. Serbian domination of the Yugoslav government under the leadership of Slobodan Milosevic had been achieved already in 1989 when he was elected President of Serbia, and in the power vacuum of the failed politburo installed Serb nationalists in key political appointments. Already in 1989, the international community was aware of the threat of ethnic cleansing in the Balkan region. Slobodan Milosevic introduced the idea of national homogenization in the Yugoslav Central Committee and spoke of a 'Great Serbia'.²³⁴ He dominated the government of Montenegro, annexed Vojvodina and Kosovo to the Serbian state and called the new institution the Federal Republic of Yugoslavia (FRY).²³⁵ With the collapse of the Soviet Union in 1990 it was not long before Croatia and Slovenia, the two states closest to central Europe, moved to assert their independence and cede from the Yugoslav federation. They both declared independence on June 25, 1991. The Yugoslav federation which was now largely controlled by Serbia moved to intervene and the Yugoslav National Army (JNA) was deployed to the two breakaway republics. The Slovenian conflict lasted only two weeks after which the JNA withdrew and Slovenian independence was affirmed in January 1992 when it was recognized by the European

²³³ Carol Off, *The Ghosts of Medak Pocket*, (Toronto, Harper Collins, 2004), 27.

²³⁴ Ivo Banac, "The Politics of National Homogeneity" in *War and Change in the Balkans, Nationalism, Conflict and Cooperation*, Brad K. Blitz, ed., (Cambridge, Cambridge University Press, 2006), 31.

²³⁵ Dawn M. Hewitt, *From Canada to Sarajevo, Canadian Peacekeepers in the Balkans*, (Kingston, Queen's University, 1998), 9.

Union and accepted as a member state.²³⁶ The conflict in Croatia between the newly formed Croatian Army (HV) and the JNA persisted in part because there was a minority of ethnic Serbs living in Croatia who feared Franjo Tudjman the new Croatian President, and the return of a fascist Ustache regime in Croatia, of the sort remembered from the Second World War.²³⁷ Milosevic and the JNA were determined to either return Croatia to the federation or at the least wrest the Serb occupied territories from her to remain part of a greater Serbian state. Leadership of the Croatian Serbs fell to a Serb nationalist named Milan Babic, who established the Croatian Serbian Militia (RSK) and held a referendum among Croatian Serbs to form an autonomous state, the Serbian Republic of Krajina.²³⁸ With war raging in Croatia, the JNA and the RSK, now led by a former JNA officer named Ratko Mladic, attacked and destroyed numerous Croatian towns and cities, evicted or killed the Croat inhabitants, and by the end of 1991 had seized approximately one third of Croatian territory, mostly in the ethnically Serbian Krajina region of southern Croatia.²³⁹ The first of the towns to fall was Kijevo, reported in the Belgrade media as the successful “cleansing of territory” from which the term ethnic cleansing was coined.²⁴⁰ By the end of 1991, there were thousands of refugees and over 20,000 persons were dead or missing.²⁴¹

The instability in the region spilled over almost unavoidably to Bosnia-Herzegovina (BiH). If the Serb minority in Croatia was the impetus for conflict there, the ethnically diverse BiH was destined for a similar crisis. The majority of the BiH

²³⁶ M.Gen Lewis MacKenzie, *Peacekeeper, the Road to Sarajevo*, (Toronto, Douglas and McIntyre, 1993), 118.

²³⁷ Sabrina P. Ramet, *Balkan Babel; The Disintegration Of Yugoslavia From The Death Of Tito To The Fall Of Milosevic*, (New York: Westview Press, 2002), 55.

²³⁸ Hewitt, 12.

²³⁹ Ramet, 67-69.

²⁴⁰ Off, 123.

²⁴¹ Off, 58.

population were Bosniak Muslims (44%), followed by Bosnian Serbs (33%) and Bosnian Croats (17%), the remainder of the population composed of Jewish, Gypsy, Ukrainian and other Balkan communities.²⁴² The President of Bosnia-Herzegovina was Alija Izetbegovic, a Muslim, and the government fairly represented the other ethnic groups. Following the recognition of Slovenia and Croatia by the European Union, a BiH referendum called in February 1992 chose independence as well. The difficulty was the vote had been boycotted by the Bosnian Serbs who wished to remain with Serbia.²⁴³ In response to the referendum, a Bosnian Serb political leader named Radovan Karadzic with backing from Milosevic established the Bosnian-Serb Republic. Paramilitary groups like the Arkan Tigers and the White Eagles, aided openly by the JNA began to move into BiH territory systematically executing Muslim leaders and ethnically cleansing the new “state”. The Muslim populations of Zvornik, Bijeljina, Foca, Visegrad, Brcko, Banja Luka, Prijedor, and Sanski were targeted; driven out of their homes, imprisoned, tortured and killed.²⁴⁴ Later in 1992, Mate Boban, a Bosnian Croat member of the Franjo Tudjman’s ruling party in Croatia established the Croat Union of Herceg-Bosnia using the same practice of mass expulsion, torture and ethnic cleansing.²⁴⁵ This new regime formed the Croat Defence Council (HVO) armed by Croatia and intended to fight the Serbs. However, the machinations of alliances and partnerships saw this group fight with and against both the Bosnia-Herzegovina government forces (ABiH) and the Bosnian Serb Army (BSA) of the new Republika

²⁴² Fran Markowitz, *Sarajevo; A Bosnian Kaleidoscope*, 80.

²⁴³ MacKenzie, 119.

²⁴⁴ Kemal Kurspahic, “From Bosnia to Kosovo and Beyond: Mistakes and Lessons” in *War and Change in the Balkans; Nationalism, Conflict and Cooperation*, Brad K. Blitz ed., (Cambridge, Cambridge University Press, 2006), 78.

²⁴⁵ Kurspahic, 78.

Srpska in the Bosnian Civil War.²⁴⁶ By the end of 1992, there were six state entities at war in the former Yugoslavia, three recognized states of Bosnia-Herzegovina, Croatia and Serbia and three not recognized: the Republic of Serbian Krajina, the Bosnian Serb Republic and the Croat Union of Herceg-Bosnia. There were at least nine military organizations operating in the region. Aside from the armies of the “states” just mentioned, there were also the Serbian paramilitary groups such as the Arkan Tigers, Seselj’s Chetniks, and the White Eagles of the Serbian Renaissance Movement as well as the Bosnian Muslim militia, the TKO.²⁴⁷ The world watched with dismay the violent dissection of Yugoslavia into various ethnic-nationalist entities, while the United Nations struggled to respond to the atrocities of ethnic cleansing and the mounting humanitarian crisis. This is the morass that Canadian peacekeepers in United Nations Protection Force found themselves operating in; a tangled mess of ethnic tensions, ultra-nationalist fervor, political instability and unlimited weapons for everyone.

The United Nations involvement in the former Yugoslavia began in September 1991. The United Nations Security Council (UNSC) adopted five resolutions to manage the situation in Yugoslavia. The first, Resolution 713 under Chapter VII of the Charter, established an arms embargo over the entire Balkan region to be monitored by the European Union.²⁴⁸ The Secretary General’s special envoy to Yugoslavia, Cyrus Vance, secured the agreement of the various parties for a UN monitored peace settlement and UNSC Resolution 743, adopted 21 February 1992, established the United Nations Protection Force (UNPROFOR). The one year mandate was to “create the conditions of

²⁴⁶ Off, 72-73.

²⁴⁷ Banac, “The Politics of National Homogeneity”, 31.

²⁴⁸ “United Nations Security Council Resolutions”,
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/743\(1991\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/743(1991)) and (1992).

peace and security required for the negotiation of an overall settlement of the Yugoslav crisis.”²⁴⁹ The mission was to be comprised of units from 29 states, among them France, the United Kingdom, Russia, Australia, Argentina, Canada, Kenya, Nepal, and Jordan.²⁵⁰ The resolution had been passed on the grounds that it would support an accepted ceasefire between the Croatian Army and the Serbian forces of the JNA and the Krajina militias.

Though a peace plan had been worked out for the former Yugoslavia the crisis was far from over. The Vance Plan had been negotiated in and reflected the status quo of November 1991. UNPROFOR units did not arrive in theater until April 1992. In the intervening five months, fighting had continued between the various forces and the ceasefire lines and municipal boundaries referred to in the plan and used to demarcate the position of the belligerent forces and the designated safe areas no longer existed. Furthermore, the negotiations had not worked out many of the technical issues of the ceasefire such as ethnic issues of repatriation or resettlement, the composition of local police forces or the disarmament protocols. According to Brigadier General Lewis MacKenzie, the Canadian Chief of Staff for UNPROFOR, these details were to be hammered out by the UNPROFOR Commander once UN troops were on the ground.²⁵¹ The result was an incomplete plan with little detail on how the UN troops would secure their areas of responsibility, enforce the ceasefire, protect the civilian populations and affect the disarmament and withdrawal of the various belligerents.

²⁴⁹ “United Nations Security Council Resolution 743”,
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/743\(1992\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/743(1992))

²⁵⁰ Letter of the Secretary General dated 25 February, 1992,
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/743\(1992\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/743(1992))

²⁵¹ MacKenzie, 01, 131.

UNPROFOR was mandated under Chapter VI of the UN Charter, making it a classic peacekeeping mission with the task of preventing actions that disrupted the peace process. It was premised on traditional ideas of an impartial international force interposed between consenting ‘former’ warring parties.²⁵² The problem was that in 1992 there was no consistent peace agreement to enforce and it was impossible to interpose UN peacekeepers in between two factions that were insistent on continuing the conflict. It was widely reported that key leaders including Croatian President Franjo Tudjman, the Croatian senior military officer General Bobetko, the Serbian President, Slobodan Milosevic and the military leader of the Krajina Serbs, Ratko Mladic all opposed the idea of a ceasefire and undermined the UN efforts and deployment.²⁵³ This raises the question of the authority of the Security Council to authorize such a mission. Presumably, the authority of the Security Council to establish a UN peacekeeping mission, utilising the military personnel and resources of member nations, rests on the effective application of Charter criteria. These criteria call for:

1. Consent of the parties in the conflict to UN intervention. Consent includes a commitment to a political process and support for the peacekeeping operation mandated to support that process;
2. The non-use of force, except in self-defence and defence of the mandate. Robust peacekeeping involves the use of force at the tactical level with the authorization of the Security Council and consent of the host nation and/or the main parties to the conflict.
3. Impartiality, the implementation of the mandate by the UN peacekeeping force without favour or prejudice to any party. Impartiality is crucial to maintaining the consent and cooperation of the main parties.²⁵⁴

²⁵² S. Economides and P. Taylor. “The Former Yugoslavia” in Berdal and Economides (eds.) *United Nations Interventionism 1991-2004*, 70.

²⁵³ Conrad, 175-176. See also Hewitt, 27.

²⁵⁴ These criteria are at: <http://www.un.org/en/peacekeeping/operations/principles.shtml>. Although the document dates from late 2004, the criteria are noted as being in place since the UNEF mission in 1956.

Furthermore, the obligation of the Security Council is twofold in the establishment of a mission: as per Article 24 of the Charter they are responsible for maintaining international peace and security, as well as acting in accordance with the principles of the United Nations. The Security Council has a responsibility when confronted by a dispute or conflict to seek resolution. The Security Council also has a responsibility to all member nations who provide personnel and resources for military missions to ensure that the risk to UN personnel is mitigated and the potential for success of the mission commensurate with the risk and cost.²⁵⁵ The challenge for the Security Council in the former Yugoslavia were the conflicting pressures to act within the constraints of the UN peacekeeping criteria and to respond forcefully against the mounting evidence of ethnic cleansing and a fast developing humanitarian crisis. The moral obligation to intervene, i.e. the just cause principle, was contradicted by the UN criteria for intervention premised on the consent of sovereign states enshrined in the legal authority principle. This principle and the sovereignty of states on which rested was a key component of the Westphalian tradition of the inviolability of sovereign states and guaranteed in the UN Charter²⁵⁶ In 1991, Just War Theory principles were ill-suited to the complexities of an international military intervention to end the violence and protect the innocent on behalf of the civilian population caught in the conflict without host nation permission in a regional and civil war.

If the Security Council can be found at fault in its handling of the situation in the former Yugoslavia, it rests under the principle of a reasonable chance of success.

²⁵⁵ “Security Council Mandate”, Chapter V of the United Nations Charter, <http://www.un.org/en/sections/un-charter/chapter-v/index.html>

²⁵⁶ The sovereignty of states over their own territory is guaranteed under Article 2, Paragraph 4 of the United Nations Charter.

Despite numerous resolutions and reports that acknowledged the ceasefire violations, instability, lack of cooperation by all parties, and the evidence of ethnic cleansing, the mandate was never amended to permit the use of force under Chapter VII of the UN Charter.²⁵⁷ The Security Council at no point moved to expand UNPROFOR's authority to use force or transition the mission from peacekeeping to peace enforcement. The result according to David Bercuson is that Canadian soldiers and those from the other participating nations were equipped and trained for a Chapter VI traditional peacekeeping operation in Yugoslavia but arrived to an active conflict zone, that required a Chapter VII mandate and the full complement of weapons for soldiers who were as much targeted as combatants as they were acknowledged as peacekeepers.²⁵⁸

The same challenge of competing Just War principles that plagued the United Nations mandate in the former Yugoslavia challenged the Canadian Government's decision to participate in UNPROFOR. In the 1987 White Paper on defence, *Challenge and Commitment*, the government laid out seven criteria for considering Canadian participation in UN missions:

1. A clear and enforceable mandate;
2. The principle antagonists agree to ceasefire and Canadian participation in the UN mission;
3. The mission will aid the cause of peace and contribute to a long-term political settlement;
4. The size and composition of the UN force will be appropriate to the mandate and will not damage Canadian relations with other states;
5. Canadian participation will not jeopardize other Canadian commitments;
6. Is there a single identifiable authority (in the host nation) capable to support the operation and influence the disputants; and

²⁵⁷ "United Nations Security Council" Resolution 749, approved 7 April, 1992.

²⁵⁸ David Bercuson, *Significant Incident, Canada's Army, the Airborne, and the Murder in Somalia*, (Toronto, McClelland and Stuart, 1996), 139-140.

7. Is the mission equitably and adequately funded and logistically supported through the United Nations and its Security Council.²⁵⁹

These policy guidelines follow the United Nations criteria and reflect a traditional acceptance of state sovereignty as the authority for any intervention, the prerogative of the host nation to control any intervention in its territory and the minimum use of force in support of a negotiated peace. They also reinforce a traditional understanding of the Just War principles of just cause, legal authority and a reasonable chance of success. However, it was obvious that few of these criteria were met prior to the commitment of Canadian Forces personnel for UNPROFOR. There was never a clear and enforceable mandate. The initial mission was ill conceived by the Security Council and the mandate given to UNPROFOR insufficient for the conditions they experienced once deployed. There was no real support on the part of the various belligerents for a ceasefire or a negotiated peace. Upon arrival in Croatia in April 1992, the Canadian contingent reported 100-200 ceasefire violations a day and regularly came under fire.²⁶⁰ Brigadier General MacKenzie, the UNPROFOR Chief of Staff visited the first Canadian contingent to arrive in Croatia and assured them that a ceasefire was in place and the UN was welcomed by the belligerents. Within the hour, the Canadian contingent was shelled by mortars and artillery.²⁶¹ Although the Vance Plan had been signed in November 1991, the third criteria, the probability for a long-term political solution, was questionable given the continued fighting and lack of support from the Croat and Serb political leaders. The fourth criterion, a force composition adequate to the mandate was also not met. When the first Canadian battalion began planning, the UN limit for

²⁵⁹ *Challenge and Commitment*, 24.

²⁶⁰ Hewitt, 30.

²⁶¹ MacKenzie, 148.

armoured vehicles was fifteen. There was no allowance made for bringing medium or heavy weapons or a combat load of ammunition. Canadian 81 mm mortars were deployed, but the UN only authorized illumination rounds. An anti-tank weapons system (TOW – tube launched, optically controlled, wire guided) was permitted for its observation capability but no missiles were authorized by the UN.²⁶² The reason for the restrictions on vehicles, weapons and ammunition was financial. Brigadier General MacKenzie indicates in his book *Peacekeeper* that the UN refused to pay for the additional vehicles and ammunition because it could not afford to do so.²⁶³ The UN lacked the financial capacity to adequately equip the soldiers it was sending to the former Yugoslavia. In the end, Canada absorbed the cost of the additional equipment, sending eighty-three armoured vehicles, high explosive mortar rounds and missiles for the TOW.

The failure on the part of the Canadian government to use the established criteria made the decision to send CAF personnel into the former Yugoslavia ill-advised. Barry Cooper summarizes this idea by asking, “How did the Canadian government and its citizens come to support peacekeeping with such thoughtlessness that the criteria developed to guide decision-making in a sensible direction could be so completely ignored?”²⁶⁴ David Bercuson goes farther, condemning the government for sending CAF personnel “into a place where their lives were recklessly risked by politicians who appear not to have cared for their welfare.”²⁶⁵ The real issue is that like the UN, the

²⁶² Hewitt, 29. See also MacKenzie, 205.

²⁶³ MacKenzie, 134-135.

²⁶⁴ Barry Cooper, “Canadian Discourse on Peacekeeping” in *Calgary Papers in Military and Strategic Studies*, Vol. 2, (2007), 89.

²⁶⁵ Bercuson, 157. The subordination of projects for a Kevlar helmet, new ballistic protection, and a new armoured vehicle for the purchase of 5 Airbus 300 jets (one for the PM) seems to bear out Bercuson’s criticism. See Taylor and Nolan, 48-51.

Canadian Government was struggling to respond to a crisis that exceeded the traditional criteria for international intervention and thus negated the usefulness of the government's own policy guidelines. In a speech for the Stanford University convocation delivered on September 29, 1991 Prime Minister Brian Mulroney challenged the notion of state sovereignty or political borders and invoked the responsibility of Canada and other leading industrialized nations to assert their values, to feed and care for needy people, and to support the United Nations as the leading actor in the international community.²⁶⁶ The prime minister and his cabinet believed they had an obligation to support the UN, to intervene to stop the atrocities and respond to the humanitarian crisis in the former Yugoslavia. In a statement made in early 1992, the Prime Minister emphasized the moral obligation to act:

If the option is risk or the destruction of human life on a scale unparalleled since the Second World War, the biggest wave of refugees since World War II, then I know what choice I'm going to make. Ethnic cleansing . . . is repulsive, repugnant and totally unacceptable to Canada . . . We will do everything we can - recognizing that we are not a superpower - to make certain this kind of activity stops and a degree of justice is restored to Bosnia-Herzegovina.²⁶⁷

The prime minister and his cabinet committed CAF personnel to UNPROFOR even though the guidelines for deployment were not met. The principle of just cause reinforced by the perceived moral responsibility to act was deemed more pressing than the guidelines articulated under traditional principles of sovereignty, or the reasonable chance of success. The fact remains however, that this moral obligation of just cause

²⁶⁶ Stanford University News Service, "Mulroney on Canadian, US roles in new world order", www.news.stanford.edu/pr/91/910929Arc1160.html

²⁶⁷ Prime Minister Mulroney speaking after to the UN Security Council meeting on the former Yugoslavia, August 14, 1992. *Toronto Star*, August 14, 1992 at: <https://login.proxy.hil.unb.ca/login?url=http://search.proquest.com/docview/436691177?>

does not remove the government's responsibility to exercise due caution when deciding to send Canadian soldiers into harm's way. The responsibility to act is met with an equal responsibility to ensure the viability and reasonable chance for success of the mission. Even though Canada did augment the meager resources authorized by the UN, there was overwhelming evidence that Canadian soldiers would not be employed in a traditional peacekeeping role. Additional equipment, a larger force, and changes to the ROE should have been undertaken by Canadian officials prior to deployment in the interest of Canadian soldier's safety and success in the former Yugoslavia.

In hindsight, the establishment of the UN Protection Force in the Former Yugoslavia did not meet the *jus ad bellum* principle of having a reasonable chance of success. At the beginning of the UN intervention in 1991, Secretary General Boutros-Ghali, asked the Security Council to authorize a force of 14,000 UN troops for one year to establish peace and stability in the former Yugoslavia under a Chapter VI mandate. Troop strength was increased to 23,000 in 1993, and grudgingly the use of force limitations were amended when it became clear that the mission was failing. Atrocities committed against Bosnian-Muslims and the intransigence of the Serbs in the peace process negated UN impartiality and further compromised the UN ability to act. In 1995, with the signing of the Dayton Accord, the UN passed the former Yugoslavia to the NATO led Implementation Force (IFOR), which deployed over 60,000 troops with heavy armour, air support, and a mandate to use force to ensure the success of the peace process.²⁶⁸ The inability of the United Nations mandate in the former Yugoslavia to effectively combine just cause; the moral obligation to intervene to protect people, with the existing models of authority and proportionality used in the past for peacekeeping

²⁶⁸ MacKenzie, 101, and Cooper, 88-89.

operations set the conditions for the Responsibility to Protect (R2P) movement. This movement endeavoured to redefine Just War Theory principles on the foundation of moral responsibility for individual rights instead of the traditional foundation of state sovereignty.

Canadian support for the United Nations mission in the former Yugoslavia began in April 1992 with the arrival of a battalion of the Royal 22nd Regiment (VanDoos) as part of UNPROFOR. Named CANBAT1, the VanDoos were assigned to Sector West near the Croatian city of Daruvar. As the UNPROFOR mission grew a second Canadian contingent was sent to the former Yugoslavia. This mission, distinguished as UNPROFOR II was tasked to provide security for infrastructure repairs (roads, power stations, and communications sites), security for the daily convoys and traffic control throughout the greater Sarajevo region to assist with humanitarian aid movement, and security for the aid convoys to the eastern enclaves of Srebrenica, Zepa and Gorazde.²⁶⁹ The first Canadian unit to deploy for this mission was the Second Battalion, The Royal Canadian Regiment (2RCR) which arrived in Bosnia in November 1992 and was designated CANBAT2.

On February 8, 1993 the Bosnian Serb Army (BSA) attacked Srebrenica, swelling the refugee population there to over 30,000 mostly Bosnian Muslims. The UN Commander of Sector Sarajevo, General Phillipe Morillon, determined to save the enclave. In a series of rash and unapproved measures, General Morillon led two sections of CANBAT 2 into Srebrenica, and established a UN presence in the enclave.²⁷⁰ By April, it was clear that the enclave would fall to the Serbs. Via Resolution 819, the

²⁶⁹ Hewitt, 77.

²⁷⁰ Hewitt, 79-82.

Security Council declared Srebrenica a UN Safe Area, demanded that the BSA cease all attacks on the area and instructed the Secretary General to enhance UNPROFOR presence in the enclave. In the Resolution the SC made the deployment of UNPROFOR troops into Srebrenica part of their condemnation of, and counter to the Bosnian Serb practice of ethnic cleansing.²⁷¹ In response to this resolution, General Morillon encouraged Lieutenant Colonel Tom Geburt, 2RCR Commanding Officer to lead a company group of 175 soldiers into Srebrenica in mid-April. This reinforced company built around G (Golf) Company included anti-armour, engineers and medical detachments. Once they had been given access to the Srebrenica enclave by the BSA who controlled all the access routes, Golf Company remained in place until August 1993. Throughout their deployment to the enclave, the RCR maintained perimeter OPs, disarmed the enclave's population, forced the ABiH unit out of the enclave, negotiated the removal of Serb heavy weapons from the perimeter, and successfully protected the 30,000 refugees living in the enclave.

Once established, it quickly became clear that CANBAT2 lacked sufficient troops in Srebrenica to protect the enclave from the 6000 BSA soldiers surrounding it should they attack. Ostensibly, the UN soldiers became hostages of the BSA along with the 30,000 Bosnian-Muslim refugees. Despite the rhetoric of using force to protect the enclave, the UN placed the Canadians in the enclave to act as a shield against possible BSA attack. The rationale was simple; without UNPROFOR presence in Srebrenica the Bosnian-Muslims were certain to be ethnically cleansed. With UNPROFOR present, the Serbs might not risk such an action for fear of killing UN troops or more likely for fear

²⁷¹“United Nations Security Council” Resolution 819,
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/819\(1993\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/819(1993))

of the international outcry if their activities were witnessed and reported.²⁷² This strategy stood in clear contradiction to the *jus ad bellum* principle of proportionality. The risk to the Canadian peacekeepers was immense because there were no other UN forces in the former Yugoslavia able to come to their aid if they were attacked by the BSA. Although the moral responsibility to protect civilians and prevent such heinous acts as ethnic cleansing undoubtedly guided the UN decisions, the reckless manner in which it employed the Canadians in the Srebrenica enclave highlighted the inherent contradiction between the moral responsibility to protect the Bosnian-Muslims in Srebrenica, and the Just War principle of proportionality that would have insisted on a much more robust force than a company of Canadian soldiers capable of defending the enclave from attack by the BSA should it have happened. As in the Security Council resolutions, the moral responsibility to protect the civilian population of Srebrenica superseded the military imperative under the principle of proportionality to commit troops only when there was adequate capability to ensure success of the mission. The Canadian government was aware of the tenuous position of their soldiers; the Secretary of State for External Affairs, Barbara McDougall searched for other countries to contribute additional troops for the United Nations safe area around Srebrenica but she found none willing to send their troops into such an indefensible military position. The British did offer air support to the Canadians if they were attacked, but future events dispelled the value of this support.²⁷³

As a result of General Morillon's actions at Srebrenica, the UNPROFOR mandate in the eastern enclaves expanded to include the physical protection of Bosnian Muslim

²⁷² Taylor and Nolan, 102.

²⁷³ Hewitt, 85.

civilians. Security Council Resolution 824 extended the same status of UN Safe Areas to Sarajevo, Gorazde, Zepa, Tuzla, and Bihac, and Resolution 836 allowed soldiers from the Bosnian Army (ABiH) to remain in these safe areas.²⁷⁴ This new task negated one of the UN's cardinal principles for peacekeeping; impartiality. Although borne from a commitment to protect civilians from ethnic cleansing and other atrocities, these resolutions created the appearance that the United Nations was siding with the Bosnian government (Bosnian-Muslims) against the Bosnian Serb Army. Without cooperation from all sides in the conflict, based on the accepted impartiality of the UN in the conflict, the humanitarian mission of food convoys and evacuations of injured civilians and UN personnel became untenable. Protection from attack and humanitarian aid provided to the Bosnian-Muslims in the UN Protected Areas established the UN as taking sides in the midst of a civil war.²⁷⁵ The result was that the UN forces were regularly engaged by Bosnian Serb forces, and some were captured and used as human shields against the threat of NATO led air attacks.²⁷⁶ The moral responsibility to protect the civilian population compromised one of the UN's cardinal principles for intervention and as a result the UN would begin to rethink its criteria for intervention in the face of humanitarian crisis or crimes against humanity. Just as the conflict in the former Yugoslavia would change the political criteria for UN intervention, it would also begin to change the operational and tactical considerations for deployment in such situations. Impartiality and minimum use of force, like host nation consent would become less

²⁷⁴ "United Nations Security Council" Resolutions,
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/819\(1993](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/819(1993)

²⁷⁵ Michael Bothe, "Peacekeeping and the Use of Force – Back to the Charter or Political Incident?" in *International Peacekeeping*, (January-February 1994), 4.

²⁷⁶ *Washington Post*, May 29, 1995 "Bosnian Serbs Seize More U.N. Troops".

important factors as responsibility to protect became more often the just cause of intervention.

When UNPROFOR provided its estimate for the expanded role of UN safe areas, it asked the Security Council for 34,000 additional soldiers. The Security Council authorized an additional 3,600. The expanded role and the failure to provide sufficient resources negated the *jus ad bellum* principle of a reasonable chance of success. In July 1995 while a Dutch battalion was serving as the UNPROFOR in Srebrenica, the BSA overran the enclave. They captured Dutch soldiers and used them as human shields against NATO air support. After raping and assaulting many, they evacuated the Bosnian-Muslim women, children and elderly from Srebrenica, and executed approximately 7,000 Bosnian-Muslim men.²⁷⁷ The Srebrenica genocide (as this event was later called) bleakly demonstrated the inherent limitations of the UNs traditional peacekeeping criteria when used to guide intervention in a brutal war and humanitarian crisis. The failure to protect the people in the Srebrenica enclave also demonstrated that the Just War principles as traditionally understood and applied were insufficient to guide the actions of the United Nations or any of the supporting countries to prevent such a horrible event. Speaking to the Organization for Security and Cooperation in Europe (OSCE) in July 1995 Prime Minister Jean Chretien acknowledged that the UN and other international organizations are being challenged to intervene in ethnic, nationalist and sectarian conflicts and as result will have to expand their definitions and strengthen their institutions to deal with these new challenges. "Our institutions have not proven they can

²⁷⁷ Hewitt, 87.

prevent the repetition of a Bosnian scenario."²⁷⁸ In 2005, Secretary General Kofi Annan, speaking at the 10th anniversary of the Srebrenica genocide noted:

that although blame lies, first and foremost, with those who planned and carried out the massacre, we can say -- and it is true -- that great nations failed to respond adequately. We can say -- and it is also true -- that there should have been stronger military forces in place, and a stronger will to use them. [The United Nations] made serious errors of judgement, rooted in a philosophy of impartiality and non-violence which, however admirable, was unsuited to the conflict in Bosnia. [But] our most important duty, even while addressing the crimes of the past, is to prevent such systematic slaughter from recurring anywhere in the present and future. The world must equip itself to act collectively against genocide, ethnic cleansing and crimes against humanity. The "responsibility to protect" must be given tangible meaning, not just rhetorical support.²⁷⁹

The redefinition of Just War Theory principles to address the changes Kofi Annan identified in this speech were undertaken by Canada and the United Nations in the CISS study committee on Responsibility to Protect begun in 1999. This new doctrine challenged the traditional understanding and inviolability of state sovereignty by insisting that moral responsibility to stop such heinous crimes against people was a higher principle held by the international community as a whole. The R2P doctrine, approved by the UN General Assembly in 2005 at the World Summit, pushed the discussion of legal authority to a new level. Beyond a tacit recognition of state sovereignty and the corresponding responsibility of states for the protection of their citizens, the resolution affirmed that the international community through the United Nations and the Security Council also had the responsibility to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity in situations where

²⁷⁸ Prime Minister Chretien speaking before the OSCE. "Bosnia shows up UN's weakness, PM says Chretien expresses serious doubts about Canada's role in peacekeeping where there is no peace." *Globe & Mail* [Toronto, Canada], 6 July 1995, A1.

²⁷⁹ Speech of Secretary General, Kofi Annan, <http://www.un.org/press/en/2005/sgsm9993.doc.htm>

their government was unwilling, negligent, or unable to do so. The means open to the international community to do this included military intervention.²⁸⁰ Legal authority for peacekeeping or other multilateral operations was no longer dependant on the acquiescence of the host state; it has been superseded by the moral responsibility of the international community. Responsibility to Protect re-defines just cause as the collective responsibility of all nations and organizations to protect people from crimes against humanity. It re-defines proportionality as an obligation for collective action and committal of necessary forces, and the reasonable chance of success to an international imperative to protect human life. The failure of UNPROFOR in the former Yugoslavia contributed to the ground swell of support for these changes to our understanding and application of Just War Theory principles.

There was no single event in the former Yugoslavia that more clearly demonstrated the limitations of the UN mandate than the Canadian intervention in the Medak Pocket in September 1993. By then, the Second Battalion, The Princess Patricia's Canadian Light Infantry (2PPCLI) rotated into the role of CANBAT 1, as part of the original UNPROFOR mission in Croatia. They arrived in Croatia in March 1993 and initially moved into position in Sector West near Daruvar. The UN tasks in Croatia remained part of the Vance Plan from November 1991 and involved the protection of the United Nations Protected Areas (UNPAs), interposition between the Croatians and Serbians, monitoring the ceasefire and disarmament of the belligerents.²⁸¹ In August 1993, General Jean Cot, the UNPROFOR Commander determined that the UN forces in Sector South, the region between Gospic and Dibrovnik in the southern region of

²⁸⁰ "The R2P Resolution" in Alex J. Bellamy, *Global Politics and the Responsibility to Protect, From Words to Deeds*, 23-24.

²⁸¹ Conrad, 187.

Croatia, were struggling to maintain control of the UNPAs and the established ceasefire lines. Part of General Cot's challenge derived from the limited UN forces deployed to that region; a French battalion of conscripts and a lightly armed Kenyan Battalion. Both had been intimidated by the Croatian and Serb forces in the region; patrolling had ceased, UN weapons and equipment were confiscated and observation posts were shelled and subsequently removed or left unmanned.²⁸² As a result, CANBAT 1 was moved from Sector West into Sector South to restore the UN Protected Areas near the Peruca Dam, the Maslencia Bridge, the Molavaki Plateau and the Zemunik airport and support the Erdut Agreement that General Cot had negotiated with the Croats.²⁸³ On September 9, 1993, as the Canadian Battlegroup was consolidating its positions in Sector South, the Croatian Army launched an offensive on the Serbian positions near the town of Medak. Following a hectic process of negotiation a ceasefire was again established and an agreement struck between UNPROFOR HQ and the Croatian government to withdraw to their pre-September 9 positions. The four phase plan called for the renewed interposition of Canadian and French soldiers between the warring sides, the restoration of a buffer zone of separation, and pushing the Croats back to their previous positions.²⁸⁴ When soldiers of 2PPCLI moved to interpose themselves between the two sides on September 15, they came under direct fire from the Croatian side. Over the next 15 hours, members of C (Charlie) Company exchanged fire with Croatian forces. Using personal weapons, section and platoon machine guns, and the .50

²⁸² Off, 116, 125, 129.

²⁸³ L.Col Jim Calvin recounting the deployment of 2PPCLI to Sector South in Sean Maloney and John Llambias, *Chances for Peace; Canadian Soldiers in the Balkans, 1992-1995*, (St. Catharines, VanWell Publishing, 2002), 115.

²⁸⁴ A succinct and clear description of the events surrounding Medak Pocket can be found in: Lee Windsor, "Professionalism Under Fire: Canadian Implementation of the Medak Pocket Agreement, Croatia 1993" in *Canadian Military History*, Vol.9 Issue 3, (2000).

caliber machine gun mounted on their armoured vehicles, the Canadians responded in kind to fire directed at them from the Croat side. The Canadians held their ground, covered their arcs, employed appropriate fire control and refused to be dislodged from their position. The following morning, the Croats abandoned their position.²⁸⁵ LCol Calvin reported that his soldiers engaged in numerous fire-fights with the Croatian Army (HV), some lasting more than an hour.²⁸⁶

These events highlight a number of significant points related to the UN mandate. First, the inability of the French conscripts and Kenyan forces to enforce the UN ceasefire and effectively patrol and protect the UNPA's indicates the disconnect that existed between the Chapter VI mandate and the conditions that existed in the theater of operations. Lightly armed, ill-trained conscripts may have been suitable for a peacekeeping mission (as the UN had described the former Yugoslavia) but the French and Kenyan soldiers in Sector South were ill-equipped to confront either the Croatian Army (HV) or the Serbian Militia (RSK) and the active conflict that persisted in the region. Any reasonable chance for success was constrained because the forces deployed were ill-suited to the task given and the tactical reality on the ground. The result was that both the Serb and Croat civilian populations in the area and the UN soldiers deployed there were endangered because the capability of the UN forces did not match the threat posed or the tactical reality. Proportionality (matching military capability to mission) was compromised largely because the mission was mandated under Chapter VI – and described as a peacekeeping operation.

²⁸⁵ Windsor, 30-31.

²⁸⁶ LCol Calvin in Maloney and Llambias, 123-124.

General Cot moved the Canadian battalion to Sector South because they were the most capable military force under his command. They were professional soldiers, well trained, well-led and equipped with enough armoured vehicles to make a statement. General Cot needed to make a bold statement about UN credibility and capability to regain control of the sector.²⁸⁷ Unfortunately, the Canadian capability was also limited. They were equipped with M-113 Armoured Personnel Carriers (APCs) that were of 1960's vintage. They were not armoured well enough to protect from heavy caliber machine guns or direct anti-armour weapons. The Cougar tank trainers (AVGP), were so decrepit that most were unserviceable, spare parts were unavailable, and the main gun, a 76mm training cannon, had a maximum range of only 700m and insufficient velocity to penetrate any armoured vehicles.²⁸⁸ Many of the Canadians in Bosnia drove in soft-skinned vehicles like the Iltis jeep without any armour or protection at all. The heaviest direct fire weapons at the platoon level was a .50 caliber machine gun mounted (exposed) on the APCs, and a 7.62mm medium machine gun and the 84mm Carl Gustav anti-armour rocket in the platoon weapons detachment. None were effective against armoured vehicles. In 1996 the Department of National Defence acknowledged that the Canadian Forces operating in the former Yugoslavia experienced deficiencies in equipment that limited firepower, mobility and capacity, including their ability for self-defence.²⁸⁹ The Canadians had not been sent to the former Yugoslavia equipped for war, they were sent as peacekeepers. They were the best equipped UN contingent because they ignored the UN limitations imposed on armoured vehicles, ammunition and weapons. Their success in operations like Medak Pocket was due primarily to their

²⁸⁷ Windsor, 28. See also Conrad, 188.

²⁸⁸ Taylor and Nolan, 113.

²⁸⁹ Hewitt, 54.

professionalism and courage. They were soldiers trained first and foremost to fight – skills that served them well at Medak.

The situation in Sector South deteriorated with the Croat assault on September 9, and General Cot involved the Canadians in an operation to re-establish the UN presence and re-assert UN control of the protected area around Medak. The interposition of the Canadian battalion between the Serb and Croat forces in the Medak Pocket was a decision taken not only to reassert UN control of the area, it was a decision taken to address an even greater concern: ethnic cleansing. Calvin recounted that he anticipated seeing the results of Croat ethnic cleansing once the Canadians had secured the Medak Pocket and had prepared a team to search the destroyed buildings, recover bodies, investigate what had happened, and record evidence for later prosecution.²⁹⁰ The truth of what was happening behind the Croatian front line became clearer the day after the engagement between the Croatian forces and the Canadian UN troops. As Canadian soldiers were lined up waiting to cross into the Medak Pocket they heard and saw explosions, machine gun fire, fires and dark smoke. As the Canadians moved in Orinici and later Liki Citluk, the systematic destruction of every building, the killing of all livestock, and the torture and assassination of Serb civilians sickened and horrified the Canadian soldiers.²⁹¹ Calvin summarized his reaction to what he witnessed by explaining that:

...you started to get an anger building up inside you...that armed people, military people, were killing civilians who had no means to defend themselves...it was just

²⁹⁰ LCol. Jim Calvin in Maloney and Llambias, 121.

²⁹¹ In the Medak Pocket, 164 houses and 148 barns had been destroyed, all livestock had been shot, any crops burned and the wells poisoned. The bodies of sixteen civilians and four Serbian paramilitaries were discovered, all of them bearing the evidence of torture and assassination. Later, Croatia returned the bodies of fifty more victims from the area. Hewitt, 66.

such a violation of everything that you'd been taught...armies make war on armies, armies don't make war on civilians.²⁹²

The events and the grisly discoveries by 2PPCLI in the Medak Pocket illustrate what is perhaps the failure of the UN mandate in the former Yugoslavia. Constrained by its own policies for intervention premised on a traditional understanding of Just War Theory principles, the UN could not act with sufficient speed or force necessary to prevent the ethnic cleansing in the Medak Pocket. Despite the efforts of General Cot who pushed the limits of his authority to intervene and deploy UN forces in the manner he did, and the professionalism and courage of the Canadian and French troops who responded to the crisis, the reasonable chance for success to prevent ethnic cleansing in the former Yugoslavia was precluded by the limitations imposed by the mandate, the equipment which was authorized for the UN forces on the ground, and the hesitation of the UN and the international community to insist on decisive military force in support of a moral obligation to act. In writing about the Medak Pocket operation General Cot said:

While we could not prevent the slaughter of Serbs by the Croatians, including elderly people and children, we drove back a well-equipped Croatian battalion of some thousand men. They [the Canadians] did everything I expected from them and showed what real soldiers can do, even when the indefensible political mistake was made of forcing them to wear blue helmets and to paint their vehicles white, in a theater of operations where it was no longer realistic to pretend to maintain peace, but where indeed it was crucial to curtail the war. Concerning the use of force by the UN, I am not convinced that the lessons drawn from Medak in particular or the former Yugoslavia in general have been understood in New York. Where massacres are being planned as in Vokovar before November 1991, [and] in Srebrenica in 1995, in Sierra Leone, in Timor, or in Sudan, only the UN can legitimize the use of force necessary under Chapter VII of its Charter.²⁹³

²⁹² LCol. Jim Calvin in Maloney and Llambias, 126.

²⁹³ General Jean Cot, Commander of UNPROFOR in Maloney and Llambias, "Introduction", viii.

If General Cot had not seized the initiative to deploy the Canadians and exceed his authority as the UNPROFOR Commander, and had LCol Calvin refused the new tasking, clearly beyond the scope of his mission, the result could well have been far more atrocities committed against the Serbian people in Sector South. It is a dilemma of UN operations that Lieutenant Colonel Calvin wrestled with as well. The change in mission required approval from higher Canadian authority. The risk associated with interposing Canadian soldiers between two sides openly at war was well beyond what the Canadian government had authorized when they agreed to participate in UNPROFOR. The potential for armed combat against the host nation to enforce a newly agreed upon buffer zone was a significant encroachment on the ROE.²⁹⁴ Each Canadian soldier deploying to the former Yugoslavia was issued a card outlining the Rules of Engagement. Canadians could fire their weapons:

1. To defend themselves, other UN personnel, or persons and areas under their protection against direct attack, acting under the order of the senior rank at the scene.
2. To resist attempts by force to prevent CCUNPROFOR from discharging their duties.
3. To resist deliberate military or paramilitary incursions in the UN protected areas or safe areas.
4. To engage a clearly identified target with aimed shots.²⁹⁵

These are appropriate ROE for a peacekeeping mission where a ceasefire exists and all parties abide by it, but there was no ceasefire, and UNPROFOR soldiers were engaged by a full range of weapons including sniper attacks, small caliber weapons, medium and heavy machine guns, canon, mortar, artillery and tank fire. Not only did the ROE limit when and how return fire could be offered, the Canadians and most other UNPROFOR

²⁹⁴ Off, 172-173.

²⁹⁵ Hewitt, 31. See also Taylor and Nolan, 112.

troops lacked the necessary weapons to respond in kind. Calvin acknowledges that the Medak Pocket operation was an offensive operation, during which most of the ROE became void. “For a soldier on the ground in his 200 square yards, when somebody starts firing at him, this is the rule of engagement. He is in a war and has to react just like its a little war.”²⁹⁶ He was also candid about the interpretation of the rules that governed Canadian engagement. The ROE indicated that soldiers could respond in kind – but enemy fire was enemy fire and whether you engaged with your personal weapon or one of the crew served machine guns, and whether a soldier fired five or fifteen rounds, according to LCol. Calvin it was all within the ROE.²⁹⁷

Srebrenica and Medak Pocket indicate the importance that must be given to a decision to commit Canadian Forces personnel to any UN operation in which the ROE and command is ceded to another institution. The lack of a clear UN mandate, the restrictions of Chapter VI use of force, and the failure of the UN to authorize the force necessary to intervene even when ethnic cleansing was well known to be happening across the former Yugoslavia is not only a failure of the UN to appropriately respond to the crisis, but a failure of the Canadian government to monitor the operation, amend the ROE as necessary and insist that its soldiers were given the best possible chance for success in their mission.²⁹⁸

One of the challenges that faced every Canadian unit that deployed as part of UNPROFOR was the application of the Just War Theory principles concerning conduct in war. These *jus in bello* principles are Discrimination and Proportionality.

²⁹⁶ LCol. Jim Calvin in Maloney and Llambias, 129.

²⁹⁷ LCol. Jim Calvin in Maloney and Llambias, 123-124.

²⁹⁸ Off, 222. LCol. Calvin has noted on a number of occasions, the lack of regular contact between the field commander of CANBAT 1 and any officials from NDHQ. There was no guidance, no support, no leadership offered by the highest levels of command in the CAF for the soldiers they had placed into this difficult situation.

Discrimination is being able to distinguish between non-combatants (civilians) and combatants and ensuring that no deliberate harm is planned in military operations to non-combatants or property that does not have military value.²⁹⁹ This principle was difficult to apply in a region where virtually everyone was armed, and many participated in the conflict as partisans or members of paramilitary organizations. UNPROFOR soldiers encountered and were engaged by the regular military and police units from Croatia, Bosnia-Herzegovina and Serbia, including the former Yugoslav Army, the regular armies of the Serb para-states of Krajina and Republika Srpska, and numerous paramilitary groups like the Bosnian-Serb Arkan Tigers, the White Eagles, Seselj's Chetniks and the Bosnian-Muslim TDO. Partial uniforms, the absence of clear insignia, civilian clothes, the ages of those carrying weapons, and the need to assess their threat toward UN troops further complicated determining who could or should be engaged.³⁰⁰ The continually changing and expanded tasks given to UNPROFOR meant that all of these warring factions at times opposed the UN presence and attacked UN personnel and facilities. It was a constant challenge to determine who had engaged UNPROFOR soldiers and positions and what the real level of threat was to UN safety. The end result was that often no return fire could be given – the belligerent was unconfirmed, the potential to harm non-combatants was high and there was little or no value of engaging in retaliation because it would not substantively improve the tactical situation. The irony is that this Just War Theory principle is more restrictive than the ROE that Canadians had been issued. It rested not so much on the right of the UN to use force in certain

²⁹⁹ Guthrie and Quinlan, *Just War : Ethics in Modern Warfare*, 35.

³⁰⁰ Maloney and Llambias, 118, 170, 180. They record several soldiers who served in the former Yugoslavia talking about boys aged 10-12, farmers, and even elderly women carrying weapons, wearing no identifiable uniforms.

situations but on a moral judgment whether the use of force really added to the safety and effectiveness of the UN soldiers in achieving their mandate.

The second *jus in bello* principle is Proportionality; the obligation to ensure that whatever military force is used and whatever loss of life and damage to property is caused is justified by the operational and tactical value obtained through the use of force. This applies not only to non-combatants and personal property but also to our own soldiers and equipment and even the adversary's soldiers.³⁰¹ The complexity of the UN mission in the former Yugoslavia was that the UN was not mandated to use force to obtain military objectives, it was mandated under Chapter VI to establish the conditions necessary for peace and stability and a political solution to the crisis. UNPROFOR was not in the former Yugoslavia as part of a military operation; it was to be impartial towards all the belligerent groups, and use minimum force to achieve its mission. Yet, it was clear that there was a state of general war in the region and both the Serbs and Croats had conducting ethnic cleansing and committed war crimes. Already in 1992, it was reported that in the Krajina region over 20,000 people were dead or missing.³⁰² The just war principle of proportionality demanded that any troops deployed to the region be adequately equipped for the tactical condition in the region and given a mandate that would enable them to stop the reckless destruction of civilian life and property. The failure to take decisive action to stop the ethnic cleansing was a failure on the part of both the UN and Canada in the application of this *jus in bello* principle. If the just cause to intervene was the moral responsibility to protect, the mission needed the corresponding proportional force to intervene effectively. This failure is reinforced

³⁰¹ Guthrie and Quinlan, 40-41, and 14.

³⁰² Economides and Taylor, 80. See also Off, 58.

under the LOAC concerning war crimes. According to the London Charter, which established the Nuremberg Tribunal standards, a war crime is any action that involves:

the murder, ill-treatment or deportation of the civilian population, murder or ill-treatment of prisoners of war, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.³⁰³

It is hard to contemplate that the United Nations and an ardent supporter such as Canada could ignore the fundamental tenets of the UN Charter let alone the well-defined legal responsibility regarding war crimes. Once the first evidence of these crimes was discovered, the onus on the UN generally and the Security Council specifically was to do more than condemn them in additional resolutions. In 1999, Secretary General Kofi Annan challenged the UN to consider how it should respond to “gross and systematic violations of human rights” as had been witnessed in Rwanda and the former Yugoslavia. Canada shared a commitment to finding the answer to this question. In response to Kofi Annan’s challenge, the Canadian Prime Minister pledged to convene a study committee to bring a report before the United Nations. From this committee emerged the Responsibility to Protect (R2P) doctrine that advocated:

Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.³⁰⁴

The doctrine, adopted by the UN in 2005, established the responsibility of the Security Council to intervene in direct and forceful ways to stop such crimes. In 1992 however, it

³⁰³ Solis, *The Law of Armed Conflict*, 302.

³⁰⁴ *The Responsibility to Protect; Report of the International Commission on Intervention and State Sovereignty*, xi.

is arguable that the Just War Theory principles of just cause and proportionality ostensibly gave the Security Council the same responsibility and impetus to act. They did not, and for three more years, war crimes were committed by all sides of the conflict in the former Yugoslavia and Canadian and other countries peacekeepers endeavoured to protect the civilian populations and provide humanitarian aid in the midst of a war.

Canadian participation in UNPROFOR challenged the Canadian government and the CAF in myriad ways. There was much to be recognized and commended in the way in which our soldiers represented our country and demonstrated professionalism, courage and compassion in the former Yugoslavia. But there is also much to be learned in the decision-making process that landed them there, the restrictions imposed on their actions, and the manner in which they were deployed. The examination of the Just War Theory principles in the United Nations mandate and the Canadian government's committal of soldiers undertaken in this chapter has revealed the challenges that the crisis in the former Yugoslavia created. The United Nations struggled to address the horrors of ethnic cleansing and the resultant humanitarian crisis. They were confronted with ideas of state sovereignty and territorial integrity that blocked their ability to do what needed to be done. The decision to forge ahead with UNPROFOR indicated the commitment to intervene but raised new concerns over the United Nations failure to understand the tactical situation, the unnecessary risk to UN soldiers, ineffective operations toward an uncertain objective and the death of thousands of civilians hopelessly caught in conflict.

The Canadian experience was similar. Convinced of the moral imperative to act, Canada committed its soldiers constrained by the UN mandate under which it participated and obligated them to endure extreme risk with insufficient equipment and

authority to intervene effectively to stop the war and heinous acts being perpetrated. Again, the just cause identified was not matched to the proportional force required resulting in little chance of success. That Canadian soldiers in the former Yugoslavia achieved as much as they did in their myriad tasks is a credit to their professionalism, courage and determination in the face of overwhelming challenges.

It is as a result of the UN and Canadian experience in the former Yugoslavia that impetus developed in the international community to place the value of life ahead of the value of state's rights. It is as a result of these same experiences that just war theory has transitioned from its Westphalian origins into a set of guiding principles that no longer rests on the sovereignty of nations but on the conviction of moral responsibility to protect those who cannot protect themselves. If the international community's collective response to the brutal war in the former Yugoslavia has been the emergence of Responsibility to Protect (R2P), some benefit has come from so much suffering.

CONCLUSION

This project has traced the development of just war theory from Augustine to Vattel and the establishment of just war principles in the codes and conventions that evolved into the modern law of armed conflict or international humanitarian law. The Western philosophical, intellectual, and legal development that created the Just War principles that frame modern Canadian defence policy were 1600 years in the making. However, for Canada and the world, the last 70 years have been particularly transformational. This study of Canadian defence policy from the end of the Second World War through the Cold War, to the establishment of a new internationalist era in the 1990's captures a period where many hoped that the risk of war between nations had finally ended and attention could now focus on the sovereignty and safety of individual humans. That hope created the United Nations Responsibility to Protect (R2P) doctrine, finally adopted in 2005. That hope inspired the two post-Cold War deployments of Canadian soldiers on UN peacekeeping missions examined above. The question that now remains is what has this analysis taught us about Just War Theory and Canadian defence policy?

First of all, it is important to recognize the continuity that exists between Just War Theory, the Just War principles that derived from this theory and their modern embodiment in the Law of Armed Conflict and international humanitarian law. The development of these laws merged the customary law and the natural law foundations of Just War Theory to produce a code that theoretically obligates all combatants to protect the individual human rights of persons in the midst of conflict.

Second, this project demonstrates that the Just War principles continue to influence government policy and the conduct of military operations, at least in Canada. The criteria laid out by Aquinas and Grotius that in time became the Just War principles, have equal application and validity today as they did when they were first articulated. Governments still weigh matters of just cause, legitimate authority, proportional cause, and last resort when they consider the use of military power. Given the destructive power of modern weapons systems, it is more important than ever before to carefully consider *jus in bello* principles of discrimination and proportionality when planning operations and empowering soldiers to use force, perhaps deadly force, to engage an enemy or ensure the successful completion of their mission. It is important to recognize that unlike the modern application of the Law of Armed Conflict, as a codified set of rules with implied penalties for those who violate them, Just War principles are not punitive in nature, they are instructive; guideposts to help ensure that military plans and operations are conducted with the highest degree of moral and ethical certitude possible for actions that may well cause death and destruction to others.

Third, this paper demonstrates that the Just War principles apply equally well to governing conduct in conventional warfare as it is for military operations other than war including humanitarian interventions, peacekeeping and stability operations. The case studies on Somalia and the former Yugoslavia demonstrated the relevance of many *jus ad bellum* principles to United Nations decision-making and planning for peace support operations. Just cause, proportional cause, and the reasonable chance of success are doubly important for multi-national organizations like the United Nations to consider before despatching soldiers from member countries into harm's way. The question of legitimate authority challenged the UN in the post-Cold War period in Somalia and the

former Yugoslavia. The movement from protecting state sovereignty as the basis for such authority to a moral responsibility to protect individuals marked a significant development in Just War Theory, emerging from a difficult decade of UN interventions in intra-state conflicts and failed states. It is now formally established in the Responsibility to Protect (R2P) doctrine.

This paper demonstrates that the Canadian government and the Department of National Defence have, since 1947, consistently applied Just War principles in the formulation of policy. From 1949 to 1990 these principles were embodied in the alliance relationships formed through NATO and NORAD. Those alliances were based on collective security, defensive posture, nuclear deterrence, and the threat of massive nuclear destruction rooted in the *jus ad bellum* principles of just cause, proportional cause and last resort. As well, during this period it was understood that if war did occur, Canadian Forces personnel would engage in combat against a Warsaw Pact enemy in a European conventional war in which all participants were signatories of the Geneva Conventions. That context made the *jus in bello* principles of discrimination and proportionality simple to define and apply. However, two areas of contradiction between Just War principles and Canadian defence policy did appear during the Cold War. The first stemmed from the question of authority and the transference of CAF personnel to the command of an allied headquarters and a foreign commanding officer. Under NATO and NORAD, CAF personnel could be engaged in combat without a formal declaration of war or specific approval by the prime minister or cabinet.

The second contradiction stemmed from the terrible destructive power of the vast nuclear arsenals possessed by both sides. Not only did nuclear weapons make an absurdity of the *jus in bello* principle of proportionality, the movement toward a pre-

emptive strike posture in the event that a conventional war would be lost, made the principle of last resort a difficult one to defend. It is in this context that the principle of last resort began to reflect the “argument from extremity”, or “supreme emergency” as opposed to the resort to war when all diplomatic, economic and political measures had been exhausted.

Throughout the Cold War Canada provided CAF personnel for United Nations peacekeeping operations. These were traditional peacekeeping operations in which consent of the belligerents and a comprehensive ceasefire agreement formed part of the UN peace mission. During the Cold War, Canadian governments participated in these operations to maintain international peace and stability, and to minimize the risk of global nuclear war. This rationale fits within the principle of just cause as Canadian security rested on balancing the super powers, as it was generally acknowledged that Canada had little or no national interests in most of the countries or regions to which it sent soldiers under the UN banner. With the end of the Cold War, the rationale for Canada to participate in UN peace support missions changed. The rationale moved from a strategic security framework to a moral framework that espoused a responsibility to alleviate the suffering of civilians caught in the middle of bitter civil wars and to contribute to the peaceful settlement of disputes. This shift in rationale had a profound impact on Canadian defence policy and Canadian participation in UN missions. It also fundamentally changed the way in which Just War Theory was understood and applied in Canadian defence policy. The *jus ad bellum* principles so easily incorporated into the alliance structures of the Cold War were re-defined in this environment. Just cause no longer rested on the protection of Canadian security or territory, it now rested on a moral responsibility shared with the international community. Legitimate authority resting on

state sovereignty under which countries deployed troops to intervene in crises was superseded by the imperative of individual human rights and protection of persons suffering from conflict or humanitarian crises. The so-called 'human security' imperative no longer depended on host nation consent, turning 1990s peace building missions into interventions, often requiring the use of force. Proportional cause was no longer assured given that humanitarian crises and intrastate conflicts in the far reaches of the globe did not constitute threats to Canada or impinge on Canadian national interests. The reasonable chance of success was no longer a question of war-fighting capabilities or alliance relationships, but now rested on the UN Security Council's response to crises and the UN's ability to galvanize sufficient international support. The *jus in bello* principles of discrimination and proportionality became more and more complex as UN operations were undertaken in the midst of civil wars, failed states, humanitarian crises, often involving non-state belligerents. The case studies on Somalia and the former Yugoslavia demonstrated, in numerous incidents, where government decision-making and operational planning failed to recognize or apply these principles effectively in this new context of international service. Caught in the midst of the shift between state sovereignty and international responsibility to protect human security the government of Canada and the Department of National Defence struggled to apply guidelines for participation in UN missions that had been developed already in 1987. Those guidelines, which effectively referenced Just War principles, would have kept Canada out of Somalia and Yugoslavia, if they remained the primary criteria for the decision to deploy troops. However, there were a myriad of factors that influenced decisions to commit soldiers to operations. It was perhaps appropriate that these guidelines were ignored in favour of the moral responsibility to act and the Canadian commitment to support

internationalism, particularly when one considers the gravity of the crises that confronted the world in Somalia and the former Yugoslavia. Unfortunately, ignoring those guidelines created un-necessary risk to CAF personnel, burgeoning costs to CAF infrastructure, the erosion of defence capability, and the inability of the Canadian Armed Forces to sustain the tasks they had been given. The result was limited success at humanitarian intervention in either country under UN auspices and serious issues of capability, morale and well-being of the Canadian Armed Forces following these missions. Responsibility for these shortcomings rests with both the Canadian Government and CAF senior leadership as well as the United Nations.

The use of Just War principles to examine Canadian defence policy reveals that moral discipline and a robust sense of humanity are essential components for planning and conducting military operations by modern liberal democracies. Where morality and humanity contradict these principles, the principles must be re-defined and re-applied to ensure that morality and humanity always remain fundamental components of any notion of Just War.

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