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Justified War, Iraq and Reform of the United Nations

One day colloquium

Conference Room, Millbank House, 2 Millbank, London 20 May 2004

The first session, chaired by Ambassador Bottai, explored the usefulness of the Just War tradition. Professor Biggar cogently defended the Iraq war by reference to Just War criteria. Lord Garden equally cogently attacked the Iraq war using Just War criteria. This established the main strength of this tradition: the possibility of arguing from the same premises. Father Kukah reminded us that Just War is not the only Christian tradition of war; moreover it is a fluid concept which can be manipulated. It dates from days when God was sovereign, not nations, and therefore its applicability to contemporary conditions is open to question.

To Kukah's charge that nations applied their morality selectively, Biggar answered that it was better to be responsible inconsistently than consistently irresponsible. Professor Halliday was sceptical about setting up 'angelic' standards to judge the conduct of international relations: everything was determined by politics, including the angelic standards.

The second session was devoted to the United Nations and rogue states. Professor Greppi argued that 'a Westphalian response to a non-Westphalian' challenge might not be effective. The self-defence criterion of the UN Charter was not adequate to deal with the terrorist challenge. Terrorism must be added to aggression as a ground for coercive intervention. The UN should develop a new conception of 'prevention'. Professor Greppi hoped the UN Security Council would become a global 'Concert' of Great Powers.

Lord Owen argued that the will to go to war was more important than paper agreements. The UN Charter was a sufficiently robust document: it was the will to apply it which was lacking. He traced the split between Britain and the Continent of Europe to Margaret Thatcher's opposition to German reunification. He insisted that containment hadn't worked in Iraq. The post-invasion treatment of Iraq had been mishandled, but it would be fatal to retreat. In particular, a unified state was needed to guarantee central control of oil production & revenues. The Security Council needed to be reformed.

In the third session, devoted to the question of the legality of the war on Iraq, both speakers, Professor Marc Weller and Mark Littman, QC agreed that the war was illegal, Mr. Littman more emphatically. Lord Dahrendorf then raised the question: if the war was illegal was it therefore wrong, or did it show that international law was inadequate? It was pointed out in discussion that the implication of Dahrendorf's question was that the legal analysis of the war reached the wrong conclusion. But it may have reached the right conclusion. Mr. Chiesa said that it was essential to the concept of international law that no one state had the right to declare what it was unilaterally. Security Council mandated intervention had to be consensual. The US invasion of Iraq was a revolutionary act. Professor Halliday asked what the difference



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was, in terms of international law, between the invasions of Kosovo and Iraq. Politics, not law, decided in each case.

The fourth and final session considered the issue of humanitarian intervention. Mary Kaldor had a problem with the Just War framework, especially as it applied to humanitarian intervention. Humanitarian aims cannot be fulfilled by warlike methods. 'There is no such thing as a 'civilized war'. 'Civil society' is the alternative to war. Robert Skidelsky argued that states remain the decisive actors in any humanitarian intervention. They alone are in a position to commit troops and resources. This reflects the fact that there is no world government, no legal or moral authority to which a state is bound to submit. Lord Skidelsky advocated activating the UN 'trusteeship' system to deal with the failed state problem.

Professor Prins pointed out that new military technology had made the proportionality and discrimination criteria of jus in bello applicable again for the first time in a hundred years. Lord Hannay preferred the Just War linguistic usage 'duty to protect' to 'humanitarian intervention'. It was further pointed out in discussion that the notion of enemy defeat no longer applied in the usual way. Iraq showed that the lack of decisive victories meant that there was no end to war. Mr. Yahia Said said that the very lack of destructiveness of modern war meant that there was no 'shock' of defeat such as in 1945.

Robert Skidelsky, 25 May 2004