

UNDER NO CONDITION OR CIRCUMSTANCE IS WAR LEGAL OR JUST

Posted by Joan Russow
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Joan Russow (PhD)

Submission at the mock trial declaring the “Delegitimization of War”

Organized by the Canadian Voice of Women at the Canadian Peace Alliance Annual General Meeting in Toronto, Saturday, November 6, 2004

Originally performed and taped at the United Nations as part of the NGO programme at the CSW

THE SERIOUS IRREVERSIBLE HUMAN, ENVIRONMENTAL, HEALTH, PSYCHOLOGICAL ECONOMIC AND SOCIAL CONSEQUENCES OF WAR SUPPORT THE CONTENTION THAT UNDER NO CONDITIONS OR CIRCUMSTANCES IS WAR LEGAL OR JUST

A. Under no condition is the act of war legal

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Often war is declared to be legal if under Chapter VII of the Charter of the United Nations the UN Security Council deems that the necessary conditions required for a war to be legal have been met.

Chapter VII, however, of the Charter of the United Nations contravenes the purpose of the Charter: to prevent the scourge of war

UNDER THE PREAMBLE OF THE CHARTER OF THE UNITED NATIONS THE
FUNDAMENTAL PURPOSES OF THE CHARTER ARE DELINEATED:

-to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind [HUMANITY]

-to establish conditions under which justice and respect for the obligations arising from

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treaties and other sources of international law can be maintained, and

-to promote social progress and better standards of life in larger freedom,

ON THE OTHER HAND, Chapter VI, entitled "Peaceful Solutions of Disputes", conforms TO AND UPHOLDS the fundamental purposes of the Charter of the United Nations, ADVANCES THE DE-LEGITIMIZATION OF WAR, and AND PROMOTES RESPECT FOR THE RULE OF INTERNATIONAL LAW THROUGH THE INTERNATIONAL COURT OF JUSTICE.

Under Chapter VI of the Charter of the United Nations a number of provisions have been established to bring about the peaceful settlement of disputes:

(i) The first, provision is to counter conflict of interest in decision making related to peaceful solutions of disputes

Decisions under Chapter VI, are constrained by Article 27 which reads that a party to a

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dispute shall abstain from voting.

This provision which is present in Chapter VI but is absent in Chapter VII, is consistently violated by the UN Security Council

(i) The second provision to bring about peaceful settlement of disputes is recourse, under article 36, to the rule of international law, through the International Court of Justice:

Article 36 reads: illegal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Chapter XIV complements Chapter VI in outlining the role of the International Court of Justice

Under Chapter XIV, Article 92 states that the International Court of Justice shall be the principal judicial organ of the United Nations...and under Article 93 all members of the UN are ipso facto parties to the statute of the International Court of Justice, and under Article 94, each member of the United Nations undertakes to comply with the decision of the International Court of Justice in a case to which it is a party

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and under Article 96 there is the provision for the UN General Assembly, UN Security Council and other organs of the UN to request the International Court of Justice to give an advisory opinion on any legal question.

Sadly, Chapter VII of the Charter of the United Nations, continues to be used to justify military intervention if supported by the UN Security Council.

It can be argued that Chapter vii not only violates the purposes of the Charter of the United Nations

but also violates a fundamental Charter principle under Article 2 - the sovereign equality of states because the Security Council blatantly defies this principle.

THUS

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TO PREVENT THE SCOURGE OF WAR AND TO REMOVE THE CONDITIONS WHICH ARE CLAIMED TO SUPPORT THE LEGALITY OF WAR, THE GLOBAL COMMUNITY MUST DEFINITELY CONCUR THAT THE CONDITIONS THAT HAVE BEEN USED TO DECLARE WAR TO BE LEGAL MUST BE ABANDONED

AND I URGE THE COURT TO SUPPORT THE STRIKING OF CHAPTER VII WHICH CONDONES CONDITIONAL LEGITIMIZATION OF WAR IN CONTRAVENTION OF THE PURPOSE OF THE UN CHARTER ITSELF.

I ALSO URGE THE COURT TO CALL FOR THE STRENGTHENING OF CHAPTER VI OF THE CHARTER OF UNITED NATIONS AND IN PARTICULAR THE INSTITUTING OF THE MANDATORY REQUIREMENT FOR STATES TO APPEAR BEFORE THE INTERNATIONAL COURT OF JUSTICE, TO ACCEPT ITS JURISDICTION AND TO ACT ON ITS DECISIONS.

AND FOR THE COURT TO SUPPORT THE REPHRASING OF ARTICLE 36 TO READ "LEGAL DISPUTES 'SHALL' RATHER THAN 'SHOULD AS A GENERAL RULE', BE REFERRED BY THE PARTIES TO THE INTERNATIONAL COURT OF JUSTICE..." INCLUDING AN INTERPRETATION OF WHAT CONSTITUTES SELF DEFENCE.

AND FINALLY,

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I URGE THE COURT TO CALL FOR THE STRENGTHENING OF THE ROLE OF THE UN GENERAL ASSEMBLY --WHICH UPHOLDS THE PRINCIPLE OF SOVEREIGN EQUALITY, AND FOR THE DISMANTLING THE UN SECURITY COUNCIL WHICH CONTRAVENES THE PRINCIPLE OF "SOVEREIGN EQUALTY" - AN INTRINSIC PROVISION OF THE CHARTER.

;

B. UNDER NO CIRCUMSTANCE IS THE ACT OF WAR, JUST.

NEVER AGAIN WOULD THE NOTION OF THE JUST WAR BE TOLERATED.

Just war theory has too long plagued the global society and been used to counter the

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movement to advance the "de-legitimization of war.

"Just war" theory advances circumstances under which war has been deemed to be "just"

The rules that govern the justness of war (jus ad bellum) and the rules that govern just and fair conduct in war (jus in bello) are flawed and have been abused

THE PREMISES UPON WHICH THE RULES AND SO-CALLED "PRINCIPLES" OF JUST WAR CAN NO LONGER BE SUBSTANTIATED BECAUSE OF THE UNACCEPTABLE IRREVERSIBLE HUMAN, PSYCHOLOGICAL, ENVIRONMENTAL, ECONOMIC AND SOCIAL COSTS OF WAR.

(i) no longer can war be claimed to be just and religious absolutions sought for atrocities and transgressions:

it can be demonstrated that global society has moved beyond the disturbing practices legitimized under the crusades

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(ii) no longer will the notion of the "ethic" of war be deemed to be beyond the norms of peaceful ethics and to be deserving of a separate moral realm:

it can be demonstrated that years of academic treatises and niceties have given proponents of war supporting segregating the ethic of war into a separate moral realm;

it can be demonstrated that just war notions have been promulgated in military academies, yet war crimes continue, and violations of civilians, particularly women and children persist

(iii) never again can war be claimed to just because of the notion of just cause:

it can be demonstrated that "just cause" has been constantly based on disguised corporate or state vested interest, on staged attacks decried as provocation, and on false appeals to humanitarian concerns, feigned altruism or to responsibility to protect

(iv) never again can the "precautionary principle" be used to support the responsibility to protect:

it can be demonstrated internationally that government/ industry collusion has contributed to the undermining of and disregarding of the precautionary principle- which reads that where there is a threat to the environment or [human health], the lack of full scientific certainty should not be used as a reason for postponing measures to prevent the threat. Now, instead the

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Sunday, 23 August 2015 12:16 -

precautionary principle is being re-vitalized to give legitimacy to "military intervention"

(v) no longer can the so-called "principle of just cause" be designated as a "principle" and used to declare the justice of war:

it can be demonstrated that the principle of just cause is not a principle but a device, a tactic or a strategy to rationalize military intervention;

(vi) never again can war be just because of the so-called principle of "reasonable success":

it can be demonstrated that reasonable success has been misinterpreted to mean military success with little consideration for so-called "collateral damage" or for long term irreversible human, health, environmental, social costs.

reasonable success has also been misinterpreted to entail the entrenchment of corporate interests in exploiting natural and human resources of the conquered state.

(vii) never again can initiating an act of aggression or pre-emptive aggression be deemed to

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be just:

it can be demonstrated that initiating act of aggression is not just even if it is held that aggressive war is permissible if its purpose is to retaliate against a wrong already committed (e.g., to pursue and punish an aggressor), or to pre-empt an anticipated attack.

(viii) never again can a war be claimed to be just because it is supported by the UN Security Council:

it can be demonstrated that the UN Security Council has often supported resolutions authorizing war because of state interests promoted through cajoling, intimidation, and bribery, and thus the decision is discredited:

it can be demonstrated that the UN General Assembly has been intimidated and thus hindered in invoking the 1951 "Uniting for Peace" Resolution to prevent the scourge of war

(ix) never again will a war be claimed to be just because it has been authorized by the right authority such as a sovereign state:

it has been demonstrated that right authority such as state authority often has no legitimate mandate and is not even a proper or just form a government

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(x) no longer can states claim a war to be just through the manufacturing of consent or consensus:

it has been demonstrated that often right authority has been granted based on flawed evidence, or faulty intelligence

(xi) never again can war be claimed to be just because of the misconstrued claim of "self defence":

it has been demonstrated that the recourse of "self defence" has been extrapolated to anticipate probable acts of aggression, to assist others against an oppressive government from another external threat, or to pre-empt an anticipated attack (interventionism);

(xii) never again can war be claimed to be just because of self-defence being tolerated as an excuse for revenge or retaliation:

it has been demonstrated that the initiation of physical force for revenge and retaliation such as an eye for an eye have to be relegated to the dust-bin of uncivilized religious dogma

(xiii) never again can war be claimed to be just because it is engaged in for the sake of

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spreading freedom and democracy:

it has been demonstrated that the feigned altruism and the rationalization of spreading freedom and democracy is grounded in imperialistic territorial pursuits, or in ideological or religious obsessions

(xiv) never again can war be claimed to be just because of the alleged "right intention"- such as humanitarian intervention or responsibility to protect :

it has been demonstrated that those proclaiming right intention have often intentionally or negligently through corporate, state or ideological interests been responsible for contributing to the destabilization of states;

it has been demonstrated that often national interest, self-interest and aggrandizement are paramount and overwhelmed by the pretext of fighting aggression

(xv) never again can actions in war be misperceived to be just because the military actions are couched in well-crafted euphemistic "operations":

it can be demonstrated that military actions have

obfuscated vested military/corporate interest through well-crafted covert and overt operations such as

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(xvi) never again can war be claimed to be just because of "just cause" being deemed a sufficient condition for pursuing whatever means necessary to win:

it has been demonstrated that "whatever means" has resulted in deception, duplicity, distortion and misrepresentation, as well in tolerance for increased use of lethal weapons systems with long term health, environment and social consequences

(xvii) never again can war be claimed to be just and just war theory justify the bombing of civilian centres in the pursuit of military necessity:

it has been demonstrated that the excuse of military necessity has been used to justify the killing of civilians and the violate of Geneva conventions

xviii) no longer will the declaration of the justice of war depend on the so-called principle of the end being proportional to the means:

it can be demonstrated that the means used often has unattended consequences that have been disproportionate to the end

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(xix) never again can actions in war be claimed to be just because attacks are only limited to permissible targets:

it can be demonstrated that there are no permissible targets that are completely dissociated from the civilian populations and that do not have long term irreversible human, environmental, health, social, economic and psychological consequences

(xx) never again can actions in war be claimed to be just because of the perception that the consequences of war are irreversible through reparation:

It has been demonstrated that the serious human, environmental, health, psychological, economic and social consequences of war are irreversible and usual defy true reparation

I THEREFORE, URGE THE PANEL, TO DECLARE THAT THE NOTION OF JUST WAR CAN NO LONGER BE USED TO COUNTER THE CALL FOR THE DE-LEGITIMIZATION OF WAR

THE SERIOUS IRREVERSIBLE HUMAN, ENVIRONMENTAL, HEALTH, PSYCHOLOGICAL,

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ECONOMIC AND SOCIAL CONSEQUENCES OF WAR SUPPORT THE CONTENTION THAT UNDER NO CONDITIONS OR CIRCUMSTANCES IS WAR LEGAL OR JUST

Annex:

-Prevention of threats and violence through the furtherance of the force of compliance and common security.

THE SEEDS FOR ELIMINATION OF THREATS TO COMMON SECURITY AND FOR THE DELEGITIMIZING WAR HAVE BEEN PLANTED THROUGH THE CHARTER OF THE UNITED NATIONS AND THROUGH OVER ALMOST 60 YEARS OF UN INSTRUMENTS,

FOR YEARS, MEMBER STATES HAVE INCURRED OBLIGATIONS UNDER THE CHARTER, TREATIES, CONVENTIONS, AND COVENANTS MADE COMMITMENT UNDER CONFERENCE ACTION PLANS, AND CREATED EXPECTATIONS THROUGH UN GENERAL ASSEMBLY RESOLUTIONS. THAT WOULD IF IMPLEMENTED AND ENFORCED GIVE SUBSTANCE TO THE DE-LEGITIMIZATION OF WAR.

FORCE OF COMPLIANCE

PEACE WAS DESIGNATED AS A RIGHT OF ALL PEOPLES.

Convinced that life without war "peace with justice" and not just the absence of war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms. (United Nations Declaration on the Right of Peoples to Peace approved by General Assembly Resolution 39/11 of 12, 1984)

AND IN THE NAIROBI FORWARD LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN, A commitment was made to recognize that "peace depends on the prevention of the use or threat of the use of force, aggression, military occupation, interference in the internal affairs of others, the elimination of domination, discrimination, oppression and exploitation, as well as of gross and mass violations of human rights and fundamental freedoms. (1985)

Unfortunately, states have (a) either failed to sign and ratify international Treaties, Conventions, and Covenants, (b) have failed, if they have signed Treaties, Conventions, and Covenants, to act to prevent the defeating of the purpose of the treaties, Conventions, and Covenants, (c) or have failed, if they have ratified Treaties, Conventions, and Covenants, to enact the necessary national legislation to ensure compliance.

In addition, States have failed to act on commitments made through UN General Assembly Resolutions, and have failed to fulfill expectations created by Un General Assembly Resolutions and Declarations.

It is necessary to institute the proposal for an International Court of Compliance, lined to the International Court of Justice, where citizens and civil society could take states for non-compliance with obligations and commitments.

(ii) THE FURTHERANCE OF THE CULTURE OF PEACE THROUGH "COMMON SECURITY"

"SECURITY" HAS OFTEN BEEN MISCONSTRUED AS "MILITARY SECURITY" ; AND

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HUMAN SECURITY, /"RESPONSIBILITY TO PROTECT" ,.HAS BEEN EXTENDED TO JUSTIFY MILITARY INTERVENTION; ALL ATTEMPTS TO LEGITIMIZE MILITARY INTERVENTION CONTRIBUTES TO THE CYCLE OF INCESSANT WAR AND COUNTER REVENGES

CYCLE OF ERROR

:Responsibility to protect", along with "human security" and humanitarian intervention" has been used to justify military intervention and thus perpetuates the cycle of error.

incessant poverty and debt, induced structural adjustment plans, privatization of the commons and essential services

inequitable distribution resources,

exploitation of natural resources,

perpetuation of the overconsumptive development

inappropriate development, conflict, intolerance, religious extremism, war

victimization of civilians especially women and children,

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violation of human rights,

intolerance

increased militarization and ,

potential conflict, supply of arms, increased state and individual terrorism, genocide, humanitarian intervention (military intervention” seduction through incentives of youth to defend freedom, guarantees to military for jobs and education, rationalization for heavenly rewards for those that sacrifice for freedom, excessive and irrational patriotism,

, conflict escalation of ethnic, religious, ideological, territorial conflict, war, human disasters, refugees, long term health, social and environmental consequences- depletion of resources, scarcity of resources, conflict over resources and territory, de-humanization of opponents, war, increased intervention, and poverty; then the cycle of error continues

TRUE SECURITY IS COMMON SECURITY

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COMMON SECURITY- PEACE, ENVIRONMENT, SOCIAL JUSTICE HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION- REFLECTS MORE ACCURATELY, THAN THE CONCEPT OF "HUMAN SECURITY" THE PURPOSE OF THE CHARTER OF THE UNITED NATIONS, AND THE YEARS OF UN TREATIES, CONVENTIONS,

Common security - PEACE, ENVIRONMENT AND SOCIAL JUSTICE embodies the following actions:

• to promote and fully guarantee respect for human rights, including the right to security, civil and political rights, and tolerance of difference

• to ensure the preservation and protection of the environment, respect the inherent worth of nature beyond human purpose reduce the ecological footprint and move away from the current model of overconsumptive development.

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Ô to achieve a state of peace, justice and security;

Ô to reallocate the global military expenses

to enable social justice,

Ô to guarantee labor rights, civil and political rights, social and cultural rights- right to food, right to housing, right to health care, right to education and social justice;

Ô to create a global structure that respects the rule of law; and RIGHTS OF CITIZENS

I URGE THE COURT TO DECIDE IN FAVOUR OF TRUE SECURITY: WHICH EMBODIES THE DELEGITIMATION OF WAR

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COMMON SECURITY- PEACE, ENVIRONMENT, SOCIAL JUSTICE HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION- EMBODIES THE PURPOSES OF THE CHARTER OF THE UNITED NATIONS, AND THE YEARS OF UN TREATIES, CONVENTIONS, CONFERENCES ACTION PLANS, AND UN GENERAL ASSEMBLY RESOLUTIONS AND DECLARATIONS.

I URGE THE COURT TO ABANDON THE NOTION OF "MILITARY SECURITY AND "HUMAN SECURITY/ HUMANITARIAN INTERVENTION AND RESPONSIBILITY TO PROTECT ALL OF WHICH RESULT IN military intervention and THE LEGALIZATION OF THE INFRASTRUCTURE FOR AND OF WAR ITSELF.