

Just Intervention and Police Action

Brian Wicker

I

The debate about the morality of using military force in the post-cold-war period has shifted decisively away from theories of 'just wars' between states, towards the concept of 'humanitarian intervention'. The Bosnian and Somalian crises have been widely discussed in this context. The reason for the shift is that aggression by one sovereign state against another is no longer the principal focus of attention. Most of the conflicts now going on, or likely to take place in the future, are within the borders of states, not across them. (The Kuwait case was anomalous rather than typical of the period since 1989.) Yet such conflicts can easily turn into threats to peace and security, rightly attracting the attention of the international community under the terms of the UN Charter.

Humanitarian intervention (henceforth, simply 'intervention') has been proposed for such purposes as the following:

to stop the fighting or enforce a cease-fire; to stop the forcible movement of populations (ethnic cleansing); to enforce the delivery of humanitarian aid and safe extraction of the sick and wounded; to preserve safe havens, zones, demilitarized areas or open cities; to restore pre-existing boundaries or enforce those newly agreed; to 'restore' democratic institutions — as in the ECOWAS declaration of 9 Aug. 1990; or, most ambitiously, to establish an international protectorate under UN control.¹

The morality of intervention in pursuit of such causes such is commonly discussed by applying the traditional criteria for a just war.² These criteria are directly relevant, in so far as they apply constraints to the use of organized force, or violence. But the attempt to interpret intervention as a kind of 'just war' on behalf of victims is fraught with difficulties.

In international law, and especially under the UN Charter, practically the only kind of war that is licit today occurs when one state is the victim of aggression by another. National 'self-defence' against 'international aggression' has become the sole foundation upon which the right to wage war in the modern world is built. It is what the right of

'self-defence' is about, as the Second Vatican Council made clear in *Gaudium et Spes* #79. But intervention undercuts this principle, challenging the principle of state sovereignty which lies behind it, by permitting interference in the internal affairs of another state [forbidden under the UN Charter Article 2(7)]. Intervention has become legally acceptable in recent years only because the situation in the state concerned (often because of violations of human rights) has been deemed by the UN Security Council to be a threat to international peace and security. Such a threat can be dealt with under Chapter VII of the UN Charter, which 'trumps' Article 2(7) since the latter specifically says that it shall not prejudice the application of enforcement measures under Chapter VII.³

Let us grant that, for example in Bosnia or Somalia, the situation is such that the intervention is for a just cause.⁴ Let us grant too that the intervention is under UN auspices, or at least is being undertaken with UN consent, so satisfying the criterion of competent authority. The case has still not been made out, for just cause and competent authority are not enough. Other criteria must be satisfied too. To begin with the *ad bellum* criteria, there must be a reasonable prospect of success. This criterion can only be fulfilled to the extent that the objective has been spelt out. Yet it is notorious that, as the military constantly complain, politicians are frequently unwilling to spell out their aims clearly enough to be translated into effective military operations. Often they also fail to will the means needed to achieve their ends. As Beach has said 'If what is proposed will not work, then, however lofty the motive, the action is simply immoral'.⁵

Secondly, it is hard to square the requirements of intervention with the criterion of last resort. The difficulty here is that to be effective, intervention often has to take place earlier rather than later. It is a commonplace of the Bosnian debate that the international community should have intervened long ago, during the early stages of the Serb/Croat conflict, when intervention might well have prevented a great deal of the subsequent suffering. True, 'last resort' does not necessarily mean a temporal 'waiting' until every alternative has been tried and has failed, but means rather that every alternative avenue has been thought through and rejected for good reasons. Nevertheless the purpose of intervention may be jeopardised if all the alternatives have to be examined and rejected first. Many non-violent alternatives — diplomatic, economic, cultural — take a long time to 'bite', so that intervention by force may well be too late by the time the failure of sanctions has become evident.

Finally, even if intervention has a reasonable prospect of success,

this must not be bought at a disproportionate price. There are special difficulties today with the criterion of 'proportionality'.

There are also special problems with applying the *in bello* criterion of discrimination. Even where a good case for intervention can be made the *in bello* distinction between combatants and non-combatants, or between 'military' and 'civilian' targets, is likely to be much harder to make even than in inter-state war. The 'enemy' are often part-timers fighting under the dubious authority of war-lords whose legal and moral status is at best unclear. Targeting only legitimate military targets and avoiding harm to civilians is exceptionally difficult, even with liberal employment of 'double effect' reasoning.

It is hard then to fit intervention into the moral and legal principles of just war theory. Yet, especially in a world of television, the political and moral pressures for ever more intervention are likely to increase exponentially in the future. For this reason, another way of understanding the justice of intervention seems to be urgently needed.

II

As Clausewitz saw, a war is a *duel* between two opposing parties. The criterion of success in war is simply that side A compels side B to submit to its will. Of course there must be a reasonable prospect of succeeding in attaining that objective, but this is a purely practical calculation. It is not so much wicked as stupid to go to war without first satisfying it.

In saying this, Clausewitz is a child of his own time. We have to remember that the criteria for a just war were not developed according to Clausewitzian assumptions. On the contrary, they arose in conditions in which some concept of overarching moral authority is recognised. Thus Aquinas could take for granted not just a Church which played the role of arbiter and moral guide, but also a natural law which the Church was expected to promulgate and apply. Victoria's post-mediaeval concept of a universal natural law of nations, binding even where the Church's authority lacked reach, still embodied, at least in theory, a supranational morality which (for example) gave the American Indians jurisdiction over their own lands and denied the Spaniards any right to conquer them by war, despite Pope Alexander VI's Bull of 1493. In Grotius's work we can see the beginnings of the breakdown of this morality. Finally Clausewitz takes for granted its complete collapse under the weight of the Napoleonic onslaught. Yet as modern war became ever more destructive and total, calls for legal restraint of war became ever louder. In our own century, supranational institutions have produced a huge body of international law. Yet humankind still lacks an adequate culture of law and morality on the global scale. The criteria for

'just intervention' are still being mulled over in a moral no-mans land.

This may be illustrated by the just war criterion of proportionality. The fundamental idea behind proportionality is that of the *just price* payable for the evils of war — whether in terms of lives, treasure, political upheaval, destruction of spiritual values or whatever. (War has always been an economic activity: hence the ties — too little noticed by moralists — between its economic and ethical aspects.) To the mediaeval just war writers, the idea of a just (i.e. proportionate) 'price' doubtless seemed so familiar that it was hardly necessary to allude to it explicitly. Perhaps this is why the proportionality test does not figure prominently in mediaeval just war thought.⁷ A just price was based on an estimate of the producer's real needs (as distinct from what he might avariciously want).⁸ The right price was a matter of *justice*: it was to be determined by what was for the common good. Public officials were expected to enquire into the supplies available and make an estimate of the requirements of different groups. On this basis a just price could be set and the sin of avarice be contained. 'To leave the prices of goods at the discretion of the sellers is to give rein to the cupidity which goads almost all of them to seek excessive gain' (Henry of Langenstein.). While not ignoring the variations of markets, Aquinas held that a price should correspond first of all with the amount of labour and costs to the producer. Such a calculation would lead to a consensus ('*communis estimatio*') as to the just price, and this consensus would be the principal safeguard against extortion and avarice. So much at any rate for the theory.

Inevitably attempts were made to combine the 'just price' doctrine with that of the market but such a combination was hardly stable. Eventually, under the pressure of increasing commercial activity, the theory of a 'just price' had to give way to that of the market.

Now I suggest this explains why the criterion of proportionality only appears explicitly in just war theory after the breakdown of the theory of the just price. A proportionality criterion was always implicit in just war theory: but mediaeval assumptions about justice in the economic sphere made it hardly necessary to point it out. The theory of just war, like the theory of just trade, was premised upon the truth that all virtuous human activity was for the common good of all (including of course for the actor himself). In trade, what first of all stood in the way of justice was the sin of avarice. Justice in war was similarly hampered by related sins such as 'the craving to hurt people, the cruel thirst for revenge . . . the lust to dominate'.⁹ For mediaeval theory, the concept of just price was structural, while what stood in its way was a private vice, avarice. Whereas in a market society, avarice — in the

shape of the maximisation of profit, or the 'lust to dominate' — is structural while judgement of the just price, or proportionality, has become a matter of private judgement.

No wonder then that, with the breakdown of the mediaeval world view, Victoria felt it necessary to remind princes that 'one must beware lest greater evils follow from the war itself than are avoided by the war'.¹⁰ In other words, the price payable for the evils of war must be a just price. For the moral, like the economic marketplace was by now suggesting something quite different: namely that for practical purposes it was morally licit for the 'just price' for the evils of war to be determined by the prince's own judgement as to how much he could get away with.¹¹ International avarice (the lust for gold) and the 'lust to dominate' had become structural. Opposition had been marginalised into a realm of theological opinion. Economic and just war considerations thus remained linked, just as they had been in the period of 'just price' doctrine.¹²

The same lust still leads states today to try to maximise their influence whether or not this is for the common good. The nuclear hegemony built into the Nuclear Non-Proliferation Treaty, for example, through domination of the bargaining process by the nuclear powers, is a characteristic example. What until recently has stood in the way of this hegemony has only been 'private' protest through NGO's and pressure groups.¹³ Hegemonies such as this are modern forms of the 'lust to dominate', which Augustine and Aquinas diagnosed as sins against the right intention criterion of just war theory, namely the establishment of genuine and lasting peace.

Bearing in mind the connection of the economic and the moral, let us now consider a characteristic modern proportionality judgement in war: namely the judgement by the British commander Sir Peter de la Billière in the Kuwait war of 1991, that the liberation of Kuwait might involve up to 1700 British dead, and that this was 'a figure totally unacceptable to me. I did not think this was worth that amount of lives to us'.¹⁴ What sort of judgement is this? And on what is it founded? Are 1700 British lives thought to be as many as the market will bear, in the sense that British public opinion will not tolerate any more? If so the judgement is analogous to that of a manufacturer who has to decide on a price for his product. If he gets the price wrong, the market will punish him for his mistake. Similarly, if a politician (or a general) gets the price for intervening wrong, the political market will punish him for his mistake. Quite apart from whether the political 'market' actually works as it should (would a British General have to resign if the price paid turned out to be higher than he had expected? Modern British politicians

certainly do not resign over such mistakes), this is hardly a judgement about the *justice* of the proposed price for liberating Kuwait. Where then is the *justice* component to come from?

I can see no way through this difficulty in the absence of a procedure for getting an unbiased verdict by a disinterested official. Where the goods and harms to be considered are clearly incommensurate, a just 'price' in a market society can be arrived at only through a verdict by some disinterested tribunal, working within a tradition of comparable cases, and acceptable to both sides. Only thus is it possible to settle the issue of the 'just price'. But usually such a judgement can only come after the event; whereas to be of any practical use, the just war criterion of proportionality needs to be applied, and its judgements made, before (*ad bellum*) and during (*in bello*) the event. We need somebody corresponding to the public officials of mediaeval theory, authorised to decide a just price in advance of the transactions being done. Today we have some such officials, in the shape of 'watchdogs' appointed to interfere in the working of utilities on behalf of the consumer. The international court of justice has a parallel function in certain kinds of cases, for example concerning the violation of human rights. Boutros Ghali has said he would like to see it used much more.¹⁵ But there is little hope as yet of any such officials being able to give authoritative proportionality verdicts on wars before (or while) they happen. In their absence, proportionality in war will remain one of those issues over which debate will necessarily be interminable.¹⁶

I conclude that what in the abstract seems to be an unexceptionable principle of justice turns out, in practice, to be little more than a question for my private conscience: i.e. it only answers the question, what price am I prepared to pay, or to ask others to pay? General de la Billière decided on his 'price'; but others could equally justly have named a higher — or indeed a lower — figure. Doubtless the unfortunate Kuwaitis would have thought a much higher price in British lives worth paying. Of course, the demands of just war theory (as distinct from a Clausewitzian theory of war) will hardly be satisfied if I decide my price simply by reference to the moral marketplace: that is, by what I think I can get away with. Just war thinking about proportionality reminds us that in going to war there are more things to consider than expediencies. It tells us that we are answerable for what we do to a sort of inner moral tribunal, and perhaps to the creator who put it there. A private examination of conscience as to the proportionality of what is proposed doubtless helps to ensure that the requirements of justice are taken into account. But by itself this does little to ensure that justice is *seen* to be done. It does not meet the danger of an arbitrary private fiat

masquerading as a proportionality calculation.

If there are difficulties with proportionality in war, they are redoubled in the case of intervention. What may seem an acceptable price to pay for winning a war, especially a war for our own survival, may appear to be far too high a price for defending others whose fate does not determine our own. De la Billière's 'price' would doubtless have been far higher if he had seriously thought that liberating Kuwait was a *sine qua non* of Britain's own liberty, or even of the liberty of a British dependency. (I do not recall Mrs. Thatcher setting so low a price for the liberation of the Falkland Islands.) The market price payable in an intervention always tends to be lower than in the case of a war of self-defence. But is this just? The proposed price may, of course, turn out—even in the marketplace sense—to be a mistake. History may judge that defending the rights of the Bosnians was more important to British interests than we expected. But this is not the central issue. The question is whether it is just—given the principle that all lives are equally valuable—to name a lower price for an intervention on behalf of others than for a war of survival on our own behalf, or on behalf of those regarded as part of the 'family' (e.g. our 'kith and kin', or former 'subjects'). After all, belonging to this 'family' is a rather shaky metaphor. On the other hand an indiscriminating and promiscuous sense of moral responsibility is no responsibility at all.

III

My argument so far has been that it is not very helpful to think about the justice of intervention in 'just war' terms, even though the just war criteria taken severally are valid measures as far as they go for deciding what should be done. There is, I suggest, only one way out of this impasse: namely to reject the notion of intervention as any kind of just war, and to replace it with the notion of a *police action*. What difference does this shift of perspective make?

First of all, a police action is not a duel in Clausewitz's sense. On the contrary, it is an action by people duly authorized to use force against law-breakers for the common good of all. Secondly, a police action *by definition* will be governed by moral and legal restraints, since its purpose is to uphold the law and the rights of citizens. (An action by policemen which ignored these would have degenerated into something else—an action by criminals in uniform.)

We have now arrived at a point in human affairs when humankind as a whole has to be thought of as a single community of common interests. We have come full circle from the time when Aquinas, in justification of the lawfulness of war, could write that 'those who may lawfully use the sword to defend a commonwealth against criminals

disturbing it from within may also use the sword to protect it from enemies without'.¹⁷ Today those who were once regarded as 'enemies without' (i.e. aggressors from another state) need to be seen as 'criminals disturbing it from within' (i.e. people who are breaking laws framed for the common good of all mankind). When Pope John Paul II said in 1991 concerning the former Yugoslavia, that 'populations are succumbing to the attacks of an unjust aggressor' and that therefore 'states no longer have a right of indifference (but) their duty is to disarm the aggressor, if all other means have proved ineffective'¹⁸ he was speaking at perhaps the last moment when this was a relevant diagnosis. By 1993 identifying the aggressor had become less straightforward. Things in Bosnia have now gone so far that all parties are 'aggressors' to some extent, whatever may have been the case in the beginning. The 'last resort' criterion has been applied all too effectively. This is why the problem is not now susceptible to a 'just war' treatment.

For a war to be just, according to the traditional criteria, it must be waged by a competent authority. This rules out the use of armed force by warlords whose private armies would otherwise be able to roam at will, making life intolerable for everyone. Making military power a monopoly of the state, so that only the governments of sovereign states have the right to go to war, was a major advance in limiting the use of violence. However, is that in the just war tradition there is also a right of just rebellion against tyranny. (Today there is also, perhaps, a right of just secession, under the rubric of self-determination.) A rebellion is, of course, a duel between would-be sovereign powers. Thus in an action such as Mr. Yeltsin's against the Parliament in Moscow we have to ask: was this a war? or was what Mr. Yeltsin did a police action? The Parliament saw itself as engaged in rebellion against a tyrannical President, i.e. a kind of war. Whereas Yeltsin saw it as matter of restoring law and order and putting down a riot. Something similar can be said about Northern Ireland. The IRA claims to be at war with the British government; but the British government says it is engaged in a police action against the IRA. Which of the two is correct? And what exactly is the distinction? This is a crucial question.

First of all, we cannot distinguish a police action from a war just by looking at what is happening on the ground. The behaviour of people, the weapons used, even the tactical judgements that have to be made by police in putting down a riot may all make a police action look exactly like a war. Riot police in full gear look very like an army of heavy infantry under Alexander the Great.

Secondly, the distinction is not just semantic. It is not enough for the IRA to say they are at war for them to be at war. For the British

government does not admit that it is in a war in Northern Ireland: they say their army is simply helping the police. Both cannot be right because either both sides are at war, or neither is. This is a logically unavoidable consequence of war's being a duel, as Clausewitz saw. Finally, in a just war *self-defence* is justification enough. There is no requirement for the injured belligerent to do more than defend its own. But a police action by definition is an action done for the common good of all, not for one party to a quarrel.

How then can we empirically tell whether some fighting that is happening is a police action and not a war? My contention is this: *a police action is an action authorized by competent authority designed to protect the community as a whole by enforcing the law against law-breakers.* It is only in the context of a police action, undertaken for the common good of all, that we can talk about a *just* price for the harm that is bound to be done in pursuit of the good end.

The thought behind the application of this distinction to the intervention problem is this. The people against whom the intervention is being undertaken are not engaged in any sort of war with the intervening forces, even if they think and say they are. They are in essence *criminals* on the international plane, and should be treated as such. The warlords and ringleaders in Somalia or Bosnia (to name but a couple of cases) are essentially law-breakers who have gone on the rampage against the (international) community. If the evidence warrants it they deserve to be arrested, tried and (if found guilty) punished.

It goes without saying that the riots they have instigated have to be put down first, for the sake of protecting those unwillingly caught up in them, and to remove a threat to peace and security. The priority is that law and order must be re-established. It is not necessarily for the common good that the ring-leaders of a riot should be caught and put on trial: for if the riot had underlying social causes which need to be addressed by the competent authority, it may be (for example) expedient for negotiations to take place, and criminal prosecutions postponed or even abandoned. My point is the purely logical one, that the enemy in an intervention situation is to be regarded as engaged in a criminal riot rather than in a war. The implications of this distinction are far-reaching.

Many of the criteria for a just police action against rioters will be the same as those for a just war: but the underlying objective is different. The purpose is not to destroy the capacity of the opponent to resist, but to restore law and order for the sake of the common good and, if is deemed to be for the common good, to arrest, try and punish the criminals responsible.

I cannot emphasise too strongly that this is a logical, not a moral

distinction. In saying that the purpose of an intervention is to restore law and order and to catch the responsible criminals, I am not suggesting that this must necessarily be the top priority in the minds of those taking part. Simply coming to the rescue of those suffering, bringing them supplies, evacuating the sick and wounded etc. is doubtless the first moral priority. Trying too hard to catch Aideded did more harm than good in Somalia. But what makes it justifiable to use *lethal force* against the 'rioters' in order to relieve the sufferings of their victims is that they are breaking the law, and are engaged in criminal activity. If in a public disturbance the police were not engaged in law-enforcement (and therefore in trying to catch criminals) there would be no justification for their using force at all (except in self defence). Similarly, if the international interveners are not engaged in law-enforcement, but are solely engaged in bringing succour to the victims, they are doing less than they need to be doing (and be seen to be doing) to justify their use of force. The Bosnian example is instructive here. As long as the intervention was solely for humanitarian purposes, i.e. to bring succour to victims, there was a case for the interveners to go in unarmed. They were then clearly a disinterested group trying to help the helpless. Unfortunately, such a strategy failed because the conflicting parties took advantage of the interveners' weakness, for example by stealing humanitarian supplies for the benefit of their own forces, using roads that had been cleared by the interveners to move their own military supplies etc. For reasons such as these, it became necessary for the interveners to consider using offensive force against the 'rioters', in order to make the humanitarian effort possible. It is at points like this that the underlying purpose of law-enforcement and of catching the criminals comes into view as the fundamental justification of what is being done.

The principle of proportionality, or minimum force, has to be taken into account in a police action just as much as in war. But there are two points to make here, which distinguish the problem from that of war. The first is that law enforcement is not optional within a community. It is an unconditional requirement. A community has a choice whether or not to go to war—even if the only alternative is surrender. As Pope Pius XII pointed out in 1953: 'When the damages caused by war are not comparable to those of "tolerated injustice" one may have a duty to "suffer the injustice".'¹⁹ But this not so in the case of law-enforcement, for law is a *sine qua non* of community itself. A communal decision not to try to enforce the law would be tantamount to collective suicide. This is why no government could possibly announce that the price for law enforcement had become disproportionate and that it was now the duty

of citizens to 'suffer the injustice', for those they were addressing would *ipso facto* cease to be citizens, since there would no longer be anything for them to be citizens of. (I assume here that genuine anarchy is a political impossibility.) Thus calculation of a 'just price' for a police action which we have no option but to undertake is not quite the same thing as judging the price for a war which we are not strictly compelled to enter into. Secondly, the public authority which exists to authorize a police action must be accountable for its actions. (This is perhaps the biggest difficulty with Boutros Ghali's conception of a UN standing force.)²⁰ Whereas, as we have seen, a proportionality judgement in war ~~may be in reality no more than a private examination of conscience~~ by those in power. In deciding to undertake a police action, any democratically legitimate public authority has to take account in advance of the possibility that it will be held accountable for what it does.

The justification of any casualties that unfortunately occur among ringleaders in a public disturbance will be that they are suspects evading lawful arrest, and that in extreme cases policemen may use lethal weapons in pursuit of them. This distinction comes out in the debate over whether or not the British are committed to a 'shoot to kill' policy in Northern Ireland. In a war both sides *must* have a 'shoot to kill' policy: that is part of what it means to be in a war. It is only in war that such a policy is permissible. Whereas in a police action shooting to kill must not be a policy at all. It must remain no more than the unavoidable lesser of two evils in a critical situation.

The above argument may go some way to satisfy those pacifists who have principled and absolute objections to the use of lethal force in war. For as long as such people accept the possibility that the police may use such force, *in extremis*, for the common good of re-establishing the rule of law, they will perhaps be prepared to accept intervention as I have analysed it; whereas under the just war argument they would not be able to do so.

IV

Unfortunately the procedure for arresting, trying and punishing offenders at the international level, and the machinery needed to carry it into effect, does not yet exist, or exists only in a very inchoate form. Nevertheless, I maintain that intervention can only be just as long as there is the possibility of a criminal process at the end of it. Further, the possibility must be evident to all. It follows that *an impartial international tribunal to try cases of personal or collective guilt is essential to the very concept of just intervention*. This being so, we must take all necessary steps to create the necessary legal machinery. It is not

388

enough simply to set up a tribunal to deal with each case as it comes along. A permanent international criminal court is a *sine qua non* of justice for the new world that we have entered into.

A difficult question that has to be faced is how to justify intervention in one place but not in another, where there are many good claims on the world's attention. Why Bosnia and Somalia but not Azerbaijan or Sudan? Of course there are good 'marketplace' explanations for what happens at present, in terms of the disposition of real power in the world and the distribution of media coverage etc. But these are not good enough reasons in justice. Perhaps there can be no better answer than that the police are limited in what they can do and that it is a matter for the head of the police force to decide how best to use his limited resources. So too with an international police force, such as is envisaged in *Agenda for Peace*. Presumably we are here talking about the UN Secretary-General and his role in relation to the Security Council. The key point here must be accountability. Whoever decides where the 'police' are to be sent must be accountable for his decisions to some 'police authority' which has adequate democratic credentials and powers to scrutinize what he does. The Security Council of the UN is hardly as yet able to fulfil that function. Reform of the UN in such a way that real accountability becomes possible is urgently needed.

V

The problem with the concept of just humanitarian intervention at the present time is its political, legal and moral ambiguity. What are we to say about it as long as the necessary legal machinery does not exist? Where should we stand on intervention during the period when the conditions for its proper application are only slowly evolving? It would, I think, be a mistake to dismiss intervention altogether as being wholly inadmissible until all the legal conditions have been fully met: for it seems likely that continuing to intervene, or being prepared to intervene, will be necessary for the successful evolution of the necessary machinery. Unless the international community continues to be exercised, in a practical way, with humanitarian intervention, by doing what it can to intervene successfully even under the unsatisfactory conditions currently prevailing, the whole process of creating adequate international machinery for the apprehension and punishment of international criminals may grind to a halt. Then the Balkanisation of the Balkans may well turn into the Balkanisation of all Europe, not to mention of Africa, South Asia and the former Soviet Union. So we have to live, for the time being, in an ambiguous and uncomfortable moral limbo, supporting the practice of intervention wherever it seems to be practicable and necessary, provided that it is working in the right

direction; namely the direction of helping to promote, rather than hinder, the creation of a system of international criminal justice that works. Being able to discern that direction, amid the confusions of contemporary politics, is what statesmen are paid to do. Let us make sure that we pay only those who can do it.

- 1 This list of objectives is suggested by Sir Hugh Beach (see note 2).
- 2 Examples are: John Langan SJ, *A Moral Case for Military Intervention in Bosnia*, a paper given to the CCADD International Conference for 1993; Sir Hugh Beach, *Do We need a Doctrine of Just Intervention?* published by the Council for Arms Control, London, 1993; David Fisher, *The Ethics of Intervention*, a paper given to the Pembroke Group, London, 1993, now published in *Survival* (I.I.S.S.) Vol 36, No. 1 (Spring 1994) pp. 51–9; Kenneth R. Himes, 'Just War, Pacifism and Humanitarian Intervention' in *America*, Vol. 169 No. 4 (August 14, 1993), p. 10–31. Also relevant, from the point of view of international law, is Christopher Greenwood, 'Is There a Right of Humanitarian Intervention?' in *The World Today*, February 1993.
- 3 *Gaudium et Spes* #79. On the legality of intervention see C. Greenwood, *op. cit.* (note 2).
- 4 See D. Fisher, *op. cit.* for a good discussion of what just cause might mean.
- 5 Beach, *op. cit.* p. 6.
- 6 See Geoffrey Best, *Humanity in Warfare* (London, 1983) Ch. 3 *passim*.
- 7 It does not appear in Aquinas's discussion of war in *Summa Theologiae* II IIae, Q.40. However, he does raise the issue of the use of disproportionate force in the case of the right of the individual to defend himself against unjust attack, II IIae, Q. 64 Art 7.
- 8 My discussion of 'just price' is based on R. H. Tawney, *Religion and the Rise of Capitalism* (Pelican Books, 1948) Chapter 1, ii.
- 9 St. Augustine, *Contra Faustus*, lib. 22, Cap. 74 quoted in Aquinas, *Summa Theologiae* II IIae, Q. 40, Art. 1: 'Nocendi cupiditas, ulciscendi crudelitas . . . libido dominandi'.
- 10 Victoria, *de Jure Bello*, 37.
- 11 However, Luther continued to preach the old doctrine. See Tawney, Ch. 2, ii.
- 12 Some later writers, such as Suarez, still held to the old idea of a public official who could settle just war questions, namely the Pope.
- 13 On the NPT hegemony, see a speech by Archbishop Martino, speaking for the Holy See to the UN on 25th October 1993. (*Origins*, 1993 pp. 381–83).
- 14 Sir Peter de la Billière, *Storm Command* (Harper Collins, London, 1992) p.94.
- 15 See *Agenda for Peace* #38–39. The court may soon be asked to adjudicate on the legality of nuclear weapons.
- 16 On the interminability of modern moral debate, see Alasdair McIntyre, *After Virtue*, (London, 1981), p.6. There have been a few tentative steps towards legal condemnation of particular actions on grounds of disproportionality. Rosalyn Higgins records a UN debate in which criticism of Israeli behaviour in connection with the 1956 war was voiced on proportionality grounds. (R. Higgins, *Development of International Law Through the Political Organs of the United Nations* (OUP, 1963) pp. 203–5). More recently an official British committee criticised Iran for prolonging the Iran/Iraq war after 1987 on the grounds that its behaviour had become disproportionate. A 'disproportionality criticism' of the American action to protect medical students in Grenada is also on record. (The latter two examples were suggested to me in conversation with Christopher Greenwood.)
- 17 Aquinas, *Summa Theologiae*, *loc. cit.* (note 9).
- 18 John Paul II, speech to diplomats, January 1991, quoted in Himes, *op. cit.*
- 19 Pius XII, *Address to the International Office of Documentation for Military Medicine*, 19 October, 1953
- 20 *Agenda for Peace* #43