

Canada and the Use of Force

Presented by

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Within and Between Nations*

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Introduction and Thesis

Canada should use force internationally when the Canadian Government, in light of the advice of ministers and the Chief of Defence Staff, and after consulting Parliament, decides on behalf of Canadians that it is necessary and legitimate to do so. Sometimes the objective will be to defend Canada and Canadians, sometimes it will be to defend an ally and sometimes it will be to protect the innocent in a humanitarian emergency. Force entails both the taking of others' lives and the loss of Canadian lives and must, therefore, only be employed when the stakes require it and no other course of action is likely to succeed. Aggression must never be its motive. Going along for the sake of getting along with another government or to advance an extraneous bilateral interest is not sufficient cause. Every decision to use force should be sui generis and should be made in light of our best understanding of the facts and in keeping with Canadian values.

I have been asked to discuss the criteria or guidelines that Canadian Governments should use when making such fundamental decisions. In the course of this brief paper I will make the argument that in considering the use of force we should be guided by the UN Charter and international law and that we should, ourselves, use the operational guidelines we have commended to the UN to help it make sound decisions on this crucial matter. These guidelines are derived from those set out in the Canadian commissioned report, "The Responsibility to Protect", and in the UN-commissioned report on Threats, Challenges and Change, the origins of both of which can be traced to "Just War" theory.

A major assumption of this paper is that Canada will continue to develop modern, combat capable armed forces that can be deployed, and employed, in the service of Canadian public policy.

Protecting Canada and Canadians

The recent Canadian International Policy Statement reiterated that the defence of Canada remains the first priority for the Canadian Forces. It is entirely appropriate that the most fundamental purpose of military force be the defence of the homeland, rather than the projection of power abroad, or even service to broader humanity. Bearing in mind such first principles discourages unnecessary adventures, and is an approach we could commend to others.

At the same time, it is difficult to see who Canada's enemy is. We have had a nearly exemplary relationship with our most immediate neighbour for nearly 200 years, exchanging little more offensive than diplomatic notes, off-colour comedians, cheesy entertainers, steroid-fueled athletes and the odd Neo-Can speech-writer. Abroad, we do have a residual need to keep an eye on the nuclear arsenal of Russia. Some, following Washington's lead, seem to see an emerging threat from China, or even from an alliance of China and Russia, in the medium term. Letting this anxiety become a self-fulfilling prophesy is one of the larger risks we face. Islam is not our enemy, at least not any more

than other religions are. Islamist extremists may pose a danger to Canadians but they do not constitute an existential threat to Canada as a country.

The Canadian Forces do have some significant capabilities with which to combat terrorists, particularly as regards intercepting tanker and air traffic, but counter-terrorism is the more natural domain of intelligence, policing, the justice system and diplomacy. The Canadian Forces, also, have responsibilities for the protection of sovereignty in the Canadian Arctic, which they are uniquely able to fulfill, but not even Hans Island is likely to become a cause de guerre. Aid-to-the-civil-power duties, although they must be provided for, mercifully rarely arise, and have typically been more a consequence of Mother Nature than of malevolence. The happy fact is that we remain extraordinarily fortunate in our geographic location which, while not a fireproof house, is certainly flame-resistant in its remoteness, at least in conventional warfare terms. Using the Canadian Forces to defend the father/motherland against another country is likely to be as rare in the foreseeable future as it has been in the rememberable past. At the same time, the military is a policy instrument whose uses go beyond the limited purpose of the defence of Canadian territory.

Canada and the United States

We share a major responsibility with the US for the defence of North America, one which has begun in recent years to pose some very difficult questions for Canadians and their governments. First, how do we at once acquit our responsibility for protecting North America in partnership with our US ally at a time when US foreign policy is provocative, and the US administration is widely feared around the world and, in some places, even loathed? According to the most recent 16 nation Pew Global Attitudes Survey, opinions of the US have plummeted over the last 5 years in every country surveyed except India, Russia and Lebanon. With the exception of Lebanon, this deterioration has been most marked in the Moslem countries, including in US ally Turkey where only 23% of the population has a favourable opinion of the US.

How do we, Canadians, differentiate between those US foreign policy actions that we believe are legitimate, and that we are prepared to support with Canadian soldiers and tax dollars, and those that we think are illegitimate, or outright illegal? (And how do we communicate such decisions least destructively to Washington?) How do we ensure that others, also, see the distinction we are making so that we are not simply tarred with the same anti-US foreign policy brush? This is a particular danger for us; we are imperfectly known abroad and seem to some like an extension of the US.

For example, along with most of the rest of the United Nations membership, we saw the US action against Afghanistan as legitimate self-defence under Article 51 of the UN Charter. We saw the US attack on Iraq, nevertheless, as neither legal nor even legitimate under international law. As a consequence we sent troops to Afghanistan and not to Iraq. Our position was clear enough at the time, to anyone who paid any attention but does

everyone remember that distinction now. For how long will this distinction itself be legitimate? What is our objective currently in Afghanistan? Is it peace-building, to safeguard the government in Afghanistan so that it can create enduring institutions and escape the ranks of failed states? Or is it to buy ourselves some credit in Washington, to compensate for staying out of Iraq? Or are we beginning to buy into President Bush's "War on Terror", or at least his rhetoric? How are we viewed by others, particularly in the Islamic world?

It may seem to labour the obvious but US and Canadian foreign policy goals are not identical. The differences are very clear in our respective wills and capacity for international leadership. These have grown progressively in the US at a time when other industrialized countries, including Canada, have been content to retrench, to see Washington lead if it wants to. This is in part because of the US's sheer capacity to lead, in part because others see no international threat to themselves or, less noble, no obligation to others, requiring heavy investments in military capability. As a consequence of the leadership role that the US has voluntarily assumed and others have readily conceded to the US, and because of the considerable costs and risks of such leadership, especially of the US's self-appointed mission to propagate democracy, many in Washington have come increasingly to see the US as bearing a disproportionate burden and as a consequence meriting exceptional dispensations from international law and norms of behaviour.

The notion of America-as-exceptional dates from the Puritan migration and has ebbed and flowed in the American psyche ever since. US "exceptionalism" was given modern currency in the 1980's when President Ronald Reagan borrowed from the Puritans and from the Bible for his favoured metaphor of the United States as the "shining city on a hill". American "exceptionalism" unquestionably has its positive as well as its negative characteristics. The US has exercised exceptional leadership, for example, in the development of international law post World War II and, more contemporaneously, in the preservation of stability, particularly among Japan, the Koreas, China and Russia in North-East Asia. The US's more self-serving expressions of exceptionalism, however, have led to an American questioning of the applicability of the UN Charter, indeed of international law writ large, to the United States. Not the least significant questioner on this point has been John Bolton, the new US Permanent Representative to the UN.

It is worth bearing in mind that the preservation and promotion of international law is a major Canadian interest. US opposition to the International Criminal Court took exceptionalism to extreme lengths, an unvarnished, bear-knuckled and unapologetic effort to codify one law for the goose and another for the gander.

It was not always thus. At the end of the Second World War, the US bestrode the world even more colossally than it does today. In 1945, the US share of the world economy was about 40%; today, it's about 32% (22% at purchasing power parity). In 1945, US defence spending totaled, in constant 2005 dollars, approximately \$900 billion; today the equivalent figure is \$400 billion. President Truman, nevertheless, told the assembled UN delegates in San Francisco in 1945 that "[w]e all have to recognize that no

matter how great our strength, we must deny ourselves the license to do always as we please". The gulf between many Americans' view of their country and the perception of it by the rest of the world is becoming dangerously wide.

It would be a mistake to think that this phenomenon is attributable exclusively to President George W. Bush. At the 2004 Democratic convention, Senator Kerry said: "The USA never goes to war because it wants to. We only go to war because we have to." President Bush not long before told a Memorial Day commemoration audience that: "it is not in our nature to seek out wars and conflicts. We only get involved when adversaries have left us no alternative." With respect to World War II and 9/11, this self-perception is true. But, overall, to put it most charitably, history cannot carry the weight of these beliefs. There were the Mexican Wars, Nicaragua (several times), the Spanish American War, the Philippines, Cuba (several times), Panama (several times), Haiti (several times) the Dominican Republic, Grenada, China, Viet Nam, Cambodia and Iraq.

Nor, by the way, has the US championed democracy consistently. There was Iran in the '50's, and the overthrow of Mossadeq, the democratically elected leader, an act still being paid for today, the Congo in the '60's and the overthrow of Patrice Lumumba, its democratically elected leader, and Chile in the 70's and the overthrow of Salvatore Allende, its democratically elected leader. In amnesiac North America, especially in the US, we have "moved on" with scarcely a backward glance. In the countries concerned, however, and there are many, these events are enduring parts of the national narratives, and not positive parts.

The US National Security Strategy of 2002, adopted in the wake of the shock of 9/11 to the American national psyche, risks bringing more of the same. It is a codification of a new American militarism that has emerged over recent decades. Washington has persuaded itself that US security can best, in fact, only be assured by American military power. Neither treaties nor international law nor institutions, including the United Nations and NATO, are deemed to be either relevant to protecting US interests or necessary to confer legitimacy on US action. War is no longer seen as a last resort but is rather an instrument of American foreign policy; there have been more major US military operations abroad in the last 15 years than there were in the previous 45.

After the Cold war, unlike the aftermath of the Second World War, the US did not cut back on military spending. In fact, the Pentagon's long range plans call for a budget more than 20% higher than the Cold War average, which will likely preserve the US's position of outspending the rest of the world combined on the military. This spending level is in the absence of any obvious challenger. The US military's reputation has recovered from the Vietnam era to the point that it is now believed to embody the best qualities of Americans, an institution that every American political office holder feels the need to salute, literally and figuratively.

The international problem with the US National Security Strategy lies in the strategy's preventive posture and its intent to preserve US dominance perpetually. On the first, the Strategy talks of pre-emption, which is permitted under customary international

law, but has been implemented as prevention, which is not. The difference is not just legalistic hair splitting. Pre-emption imposes much more rigorous tests than prevention does, as regards the capability and intent of an adversary to do harm, the urgency of the need for self-defence and the absence of effective alternatives to immediate military action. The war in Iraq was preventive, not pre-emptive – to bring down a tyrant with possible malevolent intentions towards the US and potential capabilities to act on such intentions. The National Security Strategy also promises to preserve US dominance in perpetuity, which is a prescription for war without end. Perhaps the most glaring problem with this Bush Doctrine is the assumption that the US can go it alone, that US power creates its own reality. This belief is imploding in the harsh political science laboratory of Iraq.

When Washington declared war on terrorism, essentially on a heinous tactic but a tactic nonetheless, not on a tangible enemy, specifically the Al Qaeda network, that could be defeated, Washington gave itself mission impossible. In portraying terrorism in monolithic terms – a terrorist is a terrorist, without reference to political context or root causes, the US acquired strange bedfellows. In conflating Iraq with the “War on Terror”, despite the sketchiest of links between Al Qaeda and the Iraqi regime and despite having no hard evidence of weapons of mass destruction, and over the objections of undoubtedly the great majority of UN members, the US isolated itself in world public opinion. Further, the indefinite time frame and violent character of the US presence in Iraq, and Afghanistan, and largely uncritical American support for Israel pit the US against Islam in the minds of many Moslems.

The “War on Terror” need not necessarily morph into a conflict of the West versus Islam. But there is a danger that it could and that danger would be unwise for Canadian policy-makers to ignore. Around the world, US foreign policy itself has come to be seen by many as the heart of the problem. That is not to exculpate the Islamist terrorists for the atrocities they have perpetrated. Attacking civilians and non-combatants in order to terrorize a population is never justifiable. It is to say that it is in the interest of Americans that Washington dispense with the self-excusing mantra that “terrorists hate us for our freedom” and start to accept that the impact of US foreign policy on others is significant and often negative, not benign.

It should be obvious from the above that circumspection about association with US foreign policy is in the interests of Canadians. We, Canadians, tend to underestimate the hostility to the US in the world at large and the importance to the security of Canadians of our not becoming identified with it. We need to recognize that we are dealing with a more militaristic, self-deluding, aggressive Washington than we have seen in recent history. It follows those Canadian decisions about using force abroad in cooperation with the US need to be taken only after careful consideration of their risky consequences. So, in acquitting ourselves of our responsibilities for defending North America in partnership with the US, we need to do everything reasonably possible to help safeguard American homeland security, and we need to do nothing to undermine our capacity to act, and be seen to act, independently abroad.

Collective Security and the UN

This necessarily makes multilateral cooperation a priority policy interest for Canada, and a reformed UN a major interest for us. At a time of historical amnesia, strategic myopia and diplomatic inertia, we need to remind ourselves why the world needs a system of collective security based on the rule of law and why the United Nations is at the heart of that system. Most basically, we need to remember what the world looked like before Woodrow Wilson and Franklin Roosevelt and the other architects of multilateral cooperation created the system they did.

A hundred years ago, the only protection against aggression was power. The only checks on would-be aggressors were the costs of fighting and the risks of failing. The issue was not law; it was ambition, and capacity. Alliances emerged to deter aggression but ultimately collapsed and catastrophic conflict followed. In World War I, as armies democratized and war industrialized, 10 million people died. In World War II, with technology advancing, 60 million people died. In World War III, with the advent of sophisticated weapons of mass destruction, especially nuclear weapons, how many people would die?

The generation that fought and survived the last world war knew that World War III could not be won, in any reasonable meaning of the word “won”, and must never be fought. There had to be a better way and they believed that better way to be collective security, through was the United Nations. Unlike the creators of the League of Nations, the architects of the UN were determined that this time security would be assured by combining both power and principle. The United States, then as now the militarily dominant country, would be a founding member and the other major powers would likewise be present at the creation; all would contribute actively to international peace and security. The world would prevent war cooperatively, where it could, and prosecute war, collectively, where it must. At least equally important, the UN would help the world develop new norms and standards of international behaviour.

The aspirations for United Nations exceeded its grasp but it has nevertheless served the world better in the intervening period than its critics realize or care to admit. The UN gave birth to a body of international law that stigmatized aggression and created a strong norm against it. Although the Cold War saw international law breached by both sides, the norm against aggression has been much more respected than not, as has the legal force of the Charter. One result has been that there were fewer inter-state wars in the second half of the 20th century than in the first half, despite a nearly four-fold increase in the number of states. While the Cold War destroyed the post-war consensus, hobbling the security vocation of the UN for many years, and the prevention of World War III owed at least as much to nuclear deterrence and collective defence through NATO as it did to the UN, there is no doubt that the world would have been a much bloodier place in the last 50 years without the world body.

The UN gave birth to new concepts such as peace-keeping that provided a buffer between protagonists, so that inter-state wars did not reignite, and more recently peace-

building, in order to help states from falling back into dysfunctionality and conflict. It helped the two heavily armed camps avoid a nuclear Armageddon by, inter alia, pioneering arms control treaties and verification, notably, the Non-Proliferation Treaty regime. That regime has made us all safer by limiting the numbers of nuclear-armed states, current challenges to the IAEA notwithstanding. The success of the United Nations has gone far beyond its security vocation, from human rights to sustainable development to health services, to education, to humanitarian coordination to international regulation in the public interest.

Sixty years is, nevertheless, a long time in the lives of institutions, as it is in the lives of people. Through the vicissitudes of time, the UN has not kept up with change nor lived up to all of our expectations. In fact, there have been embarrassing difficulties and distressing failures. In the Alice-in-Wonderland like sessions of the Human Rights Commission, perpetrators condemn others and escape censure themselves, which would be funny were it not so tragic for the victims of the abuses. Worse have been the conscience-shocking failures: Cambodia, the Congo, Bosnia and Kosovo, Rwanda and now Darfur, where Security Council action has been slow, inadequate or lacking altogether. What hope do ordinary people have when the Council becomes tangled in the complexities of sovereignty, ethnicity, religion and economic interest, especially when by the Nineties the great majority of war casualties were civilians, most of whom were targeted deliberately.

It was with the UN's failures in mind that Secretary General Annan launched a major reform effort last year, establishing his High Level Panel to advise him and member countries on what needs to be done to make the UN more responsive. Intense negotiations are underway currently in New York on a very large number of ideas generated by the Secretary General and the panel, in anticipation of the Millennium plus five Summit, which is expected to attract approximately 150 heads of government. Two particularly important points under negotiation concern the emerging norm of "The Responsibility to Protect" and the guidelines for Council decisions on the use of force. The first seeks to accelerate acceptance of an emerging norm of international behaviour and the second would provide guidance to the Security Council on when it should authorize the use of force.

The two are intimately related. The Canadian-commissioned report on "The Responsibility to Protect" postulated two grounds for international intervention in an internal conflict: large scale loss of innocent life, and large scale "ethnic cleansing". For all of its peace-keeping experience, such protection mandates have been rare. The UN first mandated its peacekeeping forces specifically to protect civilians in 1999 when, under pressure particularly from Canada, Security Council resolution 1270 gave UNAMSIL very limited authority to do so. This still very circumscribed authority appears in the mandates of the UN mission to Liberia, Eastern Congo, and Darfur. Member states of the UN are being asked at the highest level to subscribe to the emerging norm that when sovereign states cannot or will not protect their own populations from avoidable catastrophe, the broader community of states must accept the responsibility temporarily to do so.

The report on the Responsibility to Protect, also, postulated several precautionary principles to guide Security Council decision-making on this score. The High Level Panel broadly endorsed these precautionary principles. The Secretary General's report recognized the salience of these ideas to the use of force more generally and proposed guidelines for the Council to consider in any circumstance when deciding whether to authorize or endorse. He asked the Council to come to a common view on:

- the seriousness of the threat;
- the proper purpose of the proposed military action;
- whether means short of the use of force might plausibly succeed in stopping the threat;
- whether the military option is proportional to the threat at hand;
- and whether there is a reasonable chance of success.

These ideas are unlikely to be endorsed easily this fall but are likely stay on the UN agenda for further consideration. While immediate action would be preferable from a Canadian point of view, the thesis and guidelines of the Responsibility to Protect have come a long way in a short time and are now a crucial part of the UN's discourse. This should lead over time to better, more coherent, more consistent UN practice.

Canada and the Use of Force

There are several circumstances in which Canada might use force;

- sometimes the purpose will be to defend Canada and Canadians,
- sometimes it will be to defend an ally, including particularly the United States were it to come under attack, including from terrorists,
- and sometimes it will be to help the broader international community to acquit its responsibility to protect the innocent in cases of conscience-shocking loss of life and large scale ethnic cleansing.

The first point, defending Canada and Canadians, is as the recent international policy statement indicated, the most fundamental responsibility of any Canadian government. This is one of the few absolutes of governance. As regards terrorism, we should neither condone violence against civilians and non-combatants nor turn a blind eye to root causes of dissatisfaction and policies that effectively incubate or provoke extremism. Aggression must never be its motive, nor going along for the sake of getting along with another government, including in particular the US government. Force should never be used abroad to advance an extraneous bilateral interest.

Regarding the last circumstance in which we might decide to use force, to protect the innocent when their own governments cannot or will not do so, we know that in this

globalized age, the consequences of failed states in terms of refugee flows, destroyed investments, forgone development, disease, organized crime, drug and human trafficking, and, not least, terrorism are felt far from the conflict, and can have very negative consequences for Canada. A decision to use force abroad should be made in full awareness of the international context. That context includes issues as diverse as the nefarious impact of the veto power in the UN Security Council, the new phenomenon of Islamist terrorism, the dysfunctionalities of failed and failing states and the sometimes pernicious impacts of aggressive foreign policies, whether those of allies or of adversaries. Each such decision to use force can only be made by the Cabinet, in consultation with Parliament. Such decisions can not be subcontracted to others, nor to the UN Security Council, nor to the NATO Council, nor to a coalition of the willing and nor to even our closest ally, the United States.

We always have the right to decide between acting and not acting; there is never a case when we have no choice. As with any decision, we need to reckon with the consequences. The issue is costs, not choice.

We need to be guided in every case by the UN Charter and international law, which, except in cases of self-defence, authorizes the Security Council alone to mandate military action. As a party to the United Nations Charter, we formally acknowledge the Security Council's authority to make decisions mandating the use of force. We ought, also, to avail ourselves of the guidelines laid out in the report on the Responsibility to Protect as they may be modified by the UN, including the precautionary principles with respect to

- right intention,
- last resort,
- proportionate means,
- and prospects of success.

Each decision to use force is *sui generis* and should be made in full awareness of Canadian interests and full consciousness of Canadian values, and with the best knowledge of the facts we can assemble. It is manifestly in Canada's interest to promote the rule of law in international relations, above all on the primordial issues of war and military conflict. That means paying due respect and deference to the UN Charter and the past 60 years of precedent-creating action. In making our decisions, we need to remember that, while there is a difference between legitimacy and legality, legitimacy does not derive from the systematic flouting of international law.

In circumstances of grave conflict, especially in cases of humanitarian necessity, where the UN is paralyzed by the veto, we need to consider what, absent the veto, the consensus of UN member states would be. When, as in the case of the Iraq war, the Security Council is divided on the legitimacy and urgency of the *casus belli* and there is more nearly a consensus among the membership against war than in favour of it, Canada should be wary of participation. Further, if countries with comparable values to our own are not persuaded of the necessity to use force, the case in all probability for doing so is not a compelling one. In the end, against this background, we need to make up our own

minds on the issues involved. On this the most fraught of policy decisions a cabinet can make, the use of military force abroad, it is the dictates of our own conscience that must prevail.
