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Doctrine of military necessity

Dr. Levins T.C. Rajaratnam

The duly elected Executive President of the Democratic Socialist Republic of Sri Lanka, President Mahinda Rajapaksa, as the Commander in Chief of the Armed Forces has taken the correct decision as he is morally and legally bound to protect his subjects from all forms of terror. It is in this connection that President Rajapaksa has rightly liberated the Tamil people who have been in bondage in the North. The exodus is like Moses giving freedom to the Jews from Egypt. But the stunning difference is that the Tamil people are being given freedom by President Rajapaksa, whilst the international community has from time to time been misled by those marketing terrorism for their own corporate interests. These civilians have been held captive in the North by the terrorists.



It was a necessity to advance militarily in the best interests of the Nation.
Picture by Rukmal Gamage

No country has any moral or legal right to interfere or intervene in the internal affairs of Sri Lanka. President Mahinda Rajapaksa has exercised his jurisdiction by protecting the territorial integrity of Sri Lanka and eradicating terrorism. The process is not over, the President has to save the Nation from all the terrorists.

The President is not only duty bound to protect the citizens from the terrorists in the North but also those who have their Tamil political parties with the name "Eelam"-most of whom have still arms and continue in the act of abductions, kidnapping, murders and extortion. These groups should be disarmed and should be stripped of their Eelam identities.

It was a necessity to advance militarily in the best interests of the Nation. We are passing through the darkest hours of our history, the dawn cannot be far off.

The doctrine

The doctrine of necessity underlies both jus ad bellum and jus in bello. Jus ad bellum refers to the legal norms which restrict the circumstances in which states can resort to the use of force, while jus in bello refers to the placing of limits on the manner in which hostilities are conducted when restraints on the use of force fail. This distinction is reflected in the notion that jus in bello applies at the advent of armed conflict to all parties, irrespective of which party was the aggressor or the basis upon which the armed conflict is waged (jus ad bellum). The relationship between jus ad bellum and jus in bello is, however, more complex than may be first apparent. Jus ad bellum focuses on the actions of states, and the principle of necessity determines whether a situation warrants the use of Armed Force.

In contrast to the application of necessity in jus ad bellum, necessity in jus in bello has developed to take the form of the more elusive doctrine of "military necessity." The nature and scope of this doctrine have long been uncertain. The doctrine is most often used in a sense which requires a balance between the need to achieve a military victory and the needs of humanity. In this sense, necessity has been

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viewed as a limitation to unbridled barbarity. The application of the doctrine of military necessity makes use of the principle of proportionality as a mechanism for determining the positioning of a fulcrum between these competing poles. Using proportionality thus gives effect to the recognition that the choice of methods and means of conducting war or armed conflict are not unlimited.

While in theory necessity and proportionality are applied differently in *jus ad bellum* and *jus in bello*, in practice it may be difficult to satisfactorily distinguish and apply these concepts. This difficulty is due to the challenges of relating military necessity as a restraint on actions to the objectives of those actions. The means and methods of conducting war operate to achieve a particular military objective, which consequently assists in achieving a larger political objective.

While necessity might determine the legitimacy of the armed attack, proportionality determines the amount of force that might be used.

Difficulty

In a sense, necessity operates at a macro level, while international humanitarian law operates at a micro level, though both might lie on the same continuum given the difficulties in the transition between *jus ad bellum* and *jus in bello*.

This difficulty is most apparent when the principles of necessity and proportionality have been incorporated into conventional international law, particularly international humanitarian conventions. The development of these conventions, and the application of these principles require some consideration if one is to arrive at an understanding of their application in a modern armed conflict. The distinction in the Sri Lanka situation is that it is within our territory.

Combatant and civilians

Throughout history, mankind's most basic human nature has restricted the manner in which wars are fought. The earliest writings of ancient civilizations evince attempts to limit the ways of war and to codify the resulting rules.

Military necessity has been described as "a basic principle of the law of war, so basic, indeed, that without it there could be no law of war at all." The acceptance that, while the object of warfare is to achieve the submission of the enemy, which may require the disabling of as many enemy combatants as possible, this should only be achieved in a manner that does not cause any unnecessary suffering or damage.

This limitation to the means of waging war is not, however, necessarily humanitarian in nature, and much of the early restraints were based on economic, political, and military considerations. However, the need for a balance between the considerations of humanity and the military actions necessary to win a war is regarded as defining the very nature of international humanitarian law, making military necessity a central principle in this balance.

Military necessity is here firstly defined in a *jus ad bellum* context, applying the principle to the measures that are indispensable, and not simply convenient or expedient, to achieve the aim of the actual conflict. Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

The 'principle of distinction' is fundamental to humanitarian law, but its precise content varies according to the kind of conflict. In national liberation struggles -

and international armed conflicts - the distinction is between 'civilians' and 'combatants.' Combatants have no right to life under humanitarian law.

Every individual is classified as either a combatant or as a kind of protected person, such as a prisoner of war (a captured combatant) or a civilian. An individual's rights change when his classification changes. A civilian has the right not to be targeted for attack and the right to receive some protection from attack. If the civilian joins the armed forces, he exchanges the rights of a civilian for the rights of a combatant. A combatant has the right to take part in hostilities.

International actors

Every citizen owes his or her allegiance to the Constitution and to the Head of State- the duly elected President of the Democratic Socialist Republic of Sri Lanka. We don't need people from the 'international community' to cast aspersions on our President and our Government. Our Nation has been torn apart by the evils of terrorism and natural disaster. We have all suffered - there is no answer - there is no justification for the pain. Freedom of choice alone does not guarantee justice. Equal rights are not defined only by political values. Social justice is a triad of freedom, an equation of liberty. Justice is political liberty. Justice is economic independence. Justice is social equality.

Due to our internal conflicts which we could have long resolved, external forces with vested interests have all sought to intervene some in the pretext of resolving the conflict but our experience has proved that the gap of resolution of conflict does not seem to be narrower now.

Those who finance terror, those who launder their money, those that cover their tracks are every bit as guilty as the fanatic who commits the final act.

We look for diplomacy. But there is no diplomacy with some of those opposed to us. We do not consider them opponents but they oppose every conceivable move we make to develop the country.

Sometimes, there is no compromise with such people, no meeting of minds - no point of understanding - so we would have a just choice -defeat it or be defeated by it. This is where there was a necessity for military intervention. We learnt that however much we strive for peace, we need a strong defence capability where a peaceful approach fails. Whatever the dangers of the action we take, the dangers of inaction are far greater.

Laws will have to be changed not to deny the basic liberties but to prevent their abuse and protect the most basic liberty of all; freedom from terror. The people are terrorized by certain vested interests in their vile pursuits for power committing crimes and targeting a reflex scenario as if the Government was responsible.

Media's role

All Tamil political parties with the name "eelam" should be banned forthwith. All Tamil militant groups should be disarmed and tried for their crimes against humanity.

People are being tainted by the reckless media. It is a national catastrophe for the nation. We must enact new laws amend the old.

We must work as a community to ensure that everyone not just a privileged few get the collective ability to further the individual's interests.

The governing idea of modern social democracy is community founded on the principles of social justice. That people should rise according to merit not birth; that the test of any decent society is not the contentment of the wealthy and strong, but the commitment to the poor and weak.

We learnt that equality is about equal worth and not equal outcomes.

We are not alone in this. All round the world governments are struggling with the same problems. We must have co-operation, determination and consensus.

We are a community of people, whose self interest and mutual interest at crucial points merge and that it is through a sense of justice that community is born and nurtured. This is the moment to bring the faiths closer together in understanding of our common values and heritage a source of unity and strength.

By the strength of our common endeavour we achieve more together than we can alone. We must reach beyond our fears and our divisions to a new time of great and common purpose.

Let us trace the roots of affirmative action. Let us determine what it is and what it isn't. Let us see where it has worked and where it hasn't and ask ourselves what we need to do now.

Private media freedom is running amok. The news that millions of people in this country including foreign correspondents who convey news overseas receive each night is determined by a handful of men responsible only their corporate employers. The State should have control not to permit abuse of the freedom of the press.

The people love the President. His achievements are remarkable. He has been a stoic in the face of adversity. He has earnestly endeavoured to unify the nation. He is totally committed to serve the people. It is genuine unwavering and it is selfless.

We must not permit a contaminated moral environment. Let us not negotiate out of fear, but let us never fear to negotiate.

There are individuals and groups who may be critical of the President for political gain, but the President has always taken affirmative action within the norms required of the President.

No progress can be made unless a common ground is established. To endeavour to establish common ground certain specific responsibilities on the people and political leaders should be imposed. We must learn to discuss matters with those who are different from us.

We cannot restore peace unless we can find some way to bring the nation close together. We must be Patriotic.

We must uphold and defend the Constitution and the Head of State-the President. We owe allegiance to the President and the Constitution as Citizens of Sri Lanka. We must uphold the norms of the Constitution apprehend and prosecute those who terrorize us by their actions and threats, then economic prosperity will follow suit. Our destiny lies in our hands.

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