



Stock Photo

11 September: The Terrorist Attack on the World Trade Center, New York.

## ETHICS AND THE NEW WAR

by Dr. Michael Ignatieff

*Editor's Note: This is the text of the 2001 Young Memorial Lecture, delivered by Dr. Ignatieff at Royal Military College on 25 October 2001.*

**T**he ethics of the war on terror involve a landscape of military action that is completely unfamiliar. We are facing a new world, especially the young officers in training at an institution like the Royal Military College. For you, 11 September represents a greater change than for any other professional group in Canada. We are peering into an unknown future. I am no expert in such matters; rather, I am a civilian amateur — but I would go so far as to say that there are no experts on this subject. We have experienced a convulsion in the global system that makes nonsense of any expertise. In a sense, all we can offer are mere stabs in the dark.

I am most honoured to present a paper dedicated to a man who died on D-Day, and it is very moving to present it in the presence of two of his brothers. It is often said that someone of my generation does not care about or remember the sacrifices of that time, but I would like to make it clear that my generation has not forgotten what such people did for us in the Second World War, and in the First. Their sacrifices were not made in vain; they are remembered with fierce pride here and everywhere, and the values of those people have made this a great country.

Preparing a paper in honour of a man who died in the Second World War reminds us, uncomfortably, of

the ways in which the memory of war imprisons us, because a war like the one in which that brave individual fought we are not likely to see again. So as we remember him, there is a risk of being imprisoned by that memory, and unable to look ahead to the wars that we will fight in the future. Anticipating the future requires us to accept that the past is not necessarily a guide. Generals are notorious for seeking to fight the previous war; teachers in military colleges inevitably re-fight the last war, and ethicists — like everybody else — are prone to fighting the last war. My most recent book, called *Virtual War*, examines the use of targeted air power in the defence of human rights and humanitarian intervention. That field of enquiry now seems ridiculously redundant. It now seems that the wars we will fight in the future will not be the slightest bit virtual; they will be exceedingly real. Once again, it appears I have acquired expertise in a field that is no longer relevant. We have to be candid in recognizing that this is a moving frontier in which the present mocks expertise.

So where can we turn for guidance about the future we now face? In looking at the moral challenges of this war on terror, I am going to go back to some of the oldest usable traditions we have — the basic canons of the

*Dr. Michael Ignatieff is Director of the Carr Center of Human Rights Policy at Harvard University and the author of several widely acclaimed books, including *Virtual War* and *The Rights Revolution*.*

'just war' theory. The criteria of just warfare, long studied in classrooms like those at RMC, can help us anticipate some of the challenges we will face in the months and years ahead. We will look at *jus in bello*, *jus ad bellum*, and at the asymmetries of morality in a war on terror. And we must look at the differences, the contrasts, between warriors and terrorists. We will have to try to identify the ethical problems in a war on terror, one which will focus largely on special operations. I will conclude by making a case — both pragmatic and ethical — for the exercise of maximum restraint even in this kind of combat.

Let us begin with 'just war' theory — *jus ad bellum* — the right to go to war. What is it that justifies this war on terror? In the classical just war tradition,

11 September. The US-led response has attained a unique degree of international legitimacy. The coalition forces have as much international law behind them as any military force has ever had.

But there is another question that honest minds have to ask, and that is whether the self-defence justification applies for an indefinite period of time. Most experts in international law will tell you that Article 51 legitimizes an immediate action in self-defence, but that it does not necessarily justify an indefinite, open-ended use of military force. One of the key questions of *jus ad bellum* is whether the law of self-defence justifies an indefinite campaign, or whether the United States should come back to the Security Council for further ratification. My political sense of this is that the longer the war goes on, the more threadbare the *jus ad bellum* criterion will become, and the more it will be necessary to reinforce it with Security Council resolutions. And frankly, I believe that it will become more and more difficult to secure such Security Council resolutions. So there is a window of legitimacy in the prosecution of this war that may disappear as the conflict continues. That is an issue for the future that needs to be carefully considered.

Another question that needs to be addressed is the purpose of military operations. A variety of purposes have been cited. We have been told that we are in this war to punish evildoers, that we are in this war to seek revenge, that we seek retribution and reprisal. But, in the *jus ad bellum* tradition, punishment, revenge and retribution are not justifiable reasons for going to war. We are not to use military violence to punish

people who have done us harm. We *may* use military violence to achieve political objectives — the neutralization of a terrorist camp, the neutralization of a state that harbours them. This is not punishment or retribution; it is the use of military force for determinant political means. In my view, this rhetoric of punishment acts not to reinforce the legitimacy of the military operation, but to erode it. Military violence is justified to the degree that it serves determinant and identifiable political objectives. You don't use military violence for psychodynamic, psychologically consoling objectives like punishment and retribution. You use it to do a certain job. And if young soldiers are ever asked to take an action designed simply to punish people, they would have every right to say, "That's not why I joined the armed services." As military officers in a democratic state, it is important that you always be aware of those boundaries, of the uses for which military violence is justified.

Let us look now at the *jus in bello* — the rules that govern the conduct of military operations once they are judged to be just. Every officer knows what those are. You employ proportional use of force. You obey the laws of military necessity. You have to respect civilian immunity from combat operations. You have to comply with international humanitarian law. This *jus in bello* system is now ratified in the Geneva Conventions. These were written to address the issues of war between states



US DOD

11 September: The Terrorist Attack on the Pentagon, Washington.

there were two principles that were used to evaluate whether we could legitimately go to war. One of them is the last resort principle: *Have you exhausted all peaceful means of resolving a particular problem before you resort to military violence?* Some people are arguing that we have not exhausted all such means, and it is important to be aware of something that has been forgotten in all the debate about 11 September. We must remind ourselves that normal tools of law and order — police investigation and prosecution of terror suspects — have been used and found wanting. International police work brought to justice the perpetrators of the World Trade Center bombing of 1993 and the perpetrators of the 1998 US embassy bombings, and those behind the 1986 bombing of American soldiers at a discotheque in Germany. Yet this has had no deterrent effect. Those who say that we should not go to war, that we should be handling this through an international police effort, are ignoring this salient fact. We tried it; it did not work.

The other issue related to *jus ad bellum* is that of proper authority. Who has the authority to wage a war on terror? The proper authority in the international system since 1945 has been the UN Charter, and in regard to the recent terrorist activities, the charter is absolutely clear. Article 51 mandates the use of military force in self-defence. And UN Security Council resolutions confirmed this in the days after

in another era, and the urgent question today is whether this body of international humanitarian law is of any relevance whatever in the new strategic challenge of a war against terror.

This is asymmetric war, and I see four main asymmetries. First, there is the asymmetry of power. It is the weak against the strong. The attack of 11 September is probably the most dramatic example in military history of a small terrorist cell taking on the might of the greatest power in the history of the world, and subjecting it to a stunning military defeat.

Second, there is the asymmetry of weaponry, low-tech against high-tech. The United States is a military power with intelligence satellites orbiting the planet, ten miles of tanks lined up at Fort Hood, five miles of warships lined up at the Navy yards in Norfolk, Virginia. And its enemies achieved this stunning blow against the US with what sort of weapon? Box cutters. I cannot think of a moment in the history of warfare where we have seen such asymmetry of weapons between combatants.

Third, we have the asymmetry of organization. As officer cadets, you are trained to fight wars against the armed combatants of another state. You have also been trained to deal with peacekeeping situations where you may be confronted by combatants who may not wear uniforms, but who nonetheless represent some collective organization like Republika Srpska, the Croatian militias of Bosnia, or the Kosovo Liberation Army. These are determinate political organizations with political goals. But now we are engaged in a situation where we face a small, private franchise operation. Its members may be funded, aided and abetted by an international intelligence network, but they still represent a private terrorist cell. This is a group akin in organizational structure to the mafia, and they are taking on a great state and its allies. This again is unprecedented in the history of the world. War now pits states against a private cartel.

The final asymmetry is my real focus: the asymmetry of morality. As young officers, you are taught to fight combatants who obey the same rules you do — the rules of the Geneva Convention and the general laws of war. But here we are dealing with people who will systematically leverage your compliance with these rules of war into an advantage for their side. That, it seems to me, is the fundamental moral dilemma of a war against terror. This is essentially the asymmetry between the morality of the warrior and the morality of the terrorist. What distinguishes a warrior is not the uniform that you wear, or your complex chain of command, or your formal training in the use of arms. It is your ethical discrimination. That is what distinguishes a warrior from a bandit, a mere killer, a terrorist. A warrior uses vio-

lence according to certain rules. That is what defines you as a group of men and women. Warriors distinguish between civilians and non-civilians. A terrorist does not.

It is the definition of terror to obliterate that distinction, to attack civilians and make this the very purpose of the action. Military organizations tend to protect military targets, so the terrorist goes after civilian targets. Warriors keep violence proportional to objectives. Terrorists do not. The very definition of terror is to commit an act of violence which is disproportionate to its antecedent cause. Warriors observe reciprocity towards prisoners and wounded enemy soldiers, those who are *hors de combat*. Terrorists do not. Warriors use violence to secure political objectives, while terrorists use violence in order to terrify.

It is important to understand that terrorists count on the systematic exploitation of your reluctance to cross these lines. And that, it seems to me, is the nut of the moral and political problem we have in fighting a war against terrorism: How do we keep ourselves from being drawn over the line by an enemy whose whole rationale is to cross that line?

How do you identify an enemy when that enemy wears no uniform, is indistinguishable from civilians and hides amongst civilians to make your job more difficult? How do you destroy an enemy who is not fielded against you in an organized military structure, but is dispersed surreptitiously throughout sixty countries? In short, with all this to contend with, how do you avoid becoming like the enemy? How do you avoid becoming the enemy?

Already, we are dealing with these identification problems in the heart of our own society, because the battlefield is not *out there*, it's *right here*. How do you identify the enemy among us without racial harassment, without racial profiling, without betrayal of the values

<p>PUSHTO</p> <p>UP TO A \$25,000,000 REWARD FOR INFORMATION LEADING TO THE WHEREABOUTS OR CAPTURE OF THESE TWO MEN.</p>	<p>USAMA BIN LADEN</p> <p>AIMAN AL-ZAWAHIRI</p>	<p>DARI</p> <p>UP TO A \$25,000,000 REWARD FOR INFORMATION LEADING TO THE WHEREABOUTS OR CAPTURE OF THESE TWO MEN.</p>
--	---	--

you are mandated to defend as officers serving a democracy? Racial identification, which may unfortunately be necessary in this situation, can easily shade into racial harassment. All of this will test the structure and strength of our Charter of Rights and Freedoms, and you are tasked with defending that charter.



Identifying the enemy *without* is an equally great problem, because the enemy may be harboured within a state. When is it legitimate to go after such a harbouring state? There is enormous moral discomfort about targeting Afghanistan, one of the poorest countries in

ethics of a strike on Omar's home? If the US military sends a bomb down his chimney, it may not kill Mullah Omar but one of his children instead. When this kind of thing occurs, we are at risk of becoming recruiting sergeants for terror. And this has immediate consequences. It is not merely a regrettable by-product of a legitimate operation; it can affect the legitimacy of the whole operation and our capacity to make friends and influence opinion in the Arab world.

Moving away from straight ethical questions to those of operational difficulties, how do you defeat an enemy that avoids combat? How do you destroy from the air a mobile enemy that refuses engagement and simply goes 200 metres underground? Such strategic difficulty makes it tempting to begin carpet bombing, to become less and less discriminating in our attempt to catch somebody we cannot eliminate with precision weapons. A further difficulty is how you incapacitate a network that may have no centre. If Osama bin Laden didn't exist we might well have to invent him, because in the whole mythology of military operations, there has to be a spider at the centre of the web. But consider this — what if there is no spider at the centre of the web, if there is only the web? Even after destroying the supposed spider, we could be left with the same web, spread throughout sixty countries. We have to consider all of this and avoid being seduced by our own demonization of Osama bin Laden, because demonization is a military mistake. It is entirely possible that he didn't actually give the order for 11 September. This is such a decentralized network that it cannot be neutralized by a lethal strike on one individual.

Let me now raise another issue of our response to terrorism. And this is the role of Special Forces operations. These are a black hole in international, humanitarian law, and for good reason. Special forces operations work in a fundamentally different moral environment than the one described in the standard laws of armed conflict. They operate behind enemy lines with no supply lines, with limited capacity for evacuation, and with limited personnel. And of course, their capacity for taking prisoners, holding prisoners, and repatriating the wounded is thus limited.

US Senator Bob Kerrey recently shared with the public his appalling experience behind enemy lines when he served with the Navy Seals in Vietnam. Special Forces are a dark Conradian world, where terrible things can happen quickly in the shadows of night, and where the normal Geneva Convention rules are almost impossible to apply. How do you silence a child who cries out in the dark, startled by your presence? Do you kill the wounded? Do you kill prisoners? In other words, the military operation drives you into an ethical place that poses intense leadership challenges for you as young officers. Because if you are in this kind of Conradian world, it is essential for a leader to keep that team — while they are in a fearful, dark, desperate place — from going down the moral stairway into the basement. There are no clear Geneva Convention rules about that kind of situation, and that kind of operation is occurring right now.

the world. We worry about harming innocent bystanders who are themselves being exploited by terrorist groups. My view on this subject is that, unfortunately, Afghanistan is not just harbouring terror; it has become a terrorist state. Its political objective has been literally taken over by al Qaeda, and that is what makes allied actions there legitimate. But what about actions involving other nations, like Sudan, that have sponsored terrorism? At what point does a state that harbours terrorists become a legitimate target for military violence?

The problems that occur when you're targeting the enemy, dispersed among a civilian population, are complex. Mullah Mohammed Omar, head of the Taliban, lives in Kandahar. He lives there with his wife and children. Mullah Omar doesn't don a uniform, go out to a battlefield, step into a tank and become a soldier. As the chief political operative of the Taliban, he works hand-in-glove with Osama bin Laden, and then goes home at night to his family. What are the targeting



Members of the ship's crew line the deck as HMCS *Preserver* slips out of Halifax Harbour for service on Operation "Apollo" with the multi-national coalition in the Arabian Gulf.

DND JSPA Combat Camera by: MCpl Brian Walsh, ISD O1-9583a

At this point, we come to the question of why you should be concerned about ethical restraint at all. We are dealing with an enemy who shows no ethical restraint. This is an enemy who has hijacked aircraft along with their civilian passengers and then crashed them into office towers, vaporizing five thousand innocent human beings. Can we come up with one good reason to exercise ethical restraint, display ethical obligation, to an enemy who has displayed zero obligation to us? The Geneva Convention rules that you are taught as officers are, after all, premised on reciprocity. I will not abuse your prisoners because I don't want you to abuse mine. I will take care of your wounded because I want you to take care of mine. Today we are dealing with an enemy who is not interested in moral reciprocity. So the ethical problem for teachers and for leaders is to give your subordinates good pragmatic and ethical reasons why they should play by the rules at all. The rules simply seem to tie our hands behind our backs.

But there are a number of pragmatic reasons for ethical restraint, even in a war on terror. You will operate in a highly visible world, a world where your mistakes are visible. You will operate in a world under close public scrutiny. This is a world where journalists and ordinary civilians with video cameras will be all over your operations, whether you like it or not. Your military careers will be carried out in a fishbowl. The distance between the front line where you operate and the hometown you come from is shrinking to zero in the modern world. And this places you under a substantially greater degree of obligation to play by the rules. And this close scrutiny will not only come from your own society. Right now in Afghanistan, *al-Jazeera* is interpreting the war from a different perspective. The presence of the Arabic satellite channel is a crucial factor that is disciplining American conduct in military operations. If the US could operate under a media blackout, I am not sure that this targeting would be as careful as it has been. I believe it would be — but let's not bet on it. The presence of a hostile television station that broadcasts to 500 million Arabic-speaking viewers is an enormous pragmatic reason why it's not a good idea to hit a hospital. Moreover, what is different about this war on terror is that it is not about conquering territory, or taking and holding ground. We are in the business of neutralizing specific military objectives, but we are also emphatically in the business of hearts and minds. And if we fail in this, the international coalition supporting this effort will disintegrate. Even the support of the domestic constituency will vanish. If these terrorists are the piranhas in the fishbowl, you cannot drain the fishbowl — the world in which they swim — by using indiscriminate, incoherent military violence. In a war for hearts and minds, discrimination is the only game to play.

As for the more high-minded reasons to act in this way — the straight ethical ones — I am afraid they are all very inconvenient and unpleasant. It is at moments of history like the present when we discover the price of having certain beliefs. One of the most difficult ideas about human rights — the least popular one — is that all human beings have them and no human being

can lose them. Civil and political rights can be derogated; if you commit a crime, you may lose some civil and political rights. In some places you may lose the right to vote, but you never lose your human rights. You cannot lose your human rights because of conduct. The bottom line here — unfortunate as it may seem — is that even terrorists have human rights. Osama bin Laden and Mullah Omar have human rights. Therefore, to violate them is to violate the principles you hold dear.

The second point is perhaps an easier one to deal with, and a very important one for military officers in training. And this is that we do continue to have moral obligations in the use of military violence. And we have these obligations not primarily to others but to ourselves. As military officers, you know only too well that there are things that you can do with violence and arms which will damage your moral integrity as human beings, which will cause you sleepless nights, which will make it difficult for you to look at yourself in the mirror. The driving motive for ethical restraint is the obligation we have for our own moral identity and principles. You cannot fight a war on terror and hope to win if you betray your own moral



DND USPA Combat Camera Photo by: MCpl Brian Walsh, ISD 01-9588a

A send-off for HMC ships *Preserver*, *Iroquois* and *Charlottetown* as they begin their deployment to the Arabian Gulf, 17 October 2001.



identity, and that is the core of the leadership function of any modern officer. It is not simply about rules and compliance. It is not simply a matter of courage under fire. It is about holding together the moral identity of the command that you exercise. Holding your subordinates' sense of who they are as agents, who they rep-

inhibitors — restraints that make the use of force less than optimal. One of the most difficult aspects of understanding the force of ethical imperatives in the use of military violence is to drop that idea of ethics as a set of handcuffs and to begin to think of ethics as a force enabler — to think of ethics not in a negative sense but in a positive sense, as a force multiplier. The Canadian Forces, because of their long peacekeeping tradition, know that ethical behaviour in the field is a powerful force multiplier — precisely because we don't have that much force anyway.



Stock photo

The reason there is a need to win hearts and minds in the War against Terrorism.

resent, the type of society that they are bound to defend. Holding on to that is extremely difficult under fire, under pressure, under strain. That is the core challenge of leadership.

And this brings us to a final observation. One of the things I notice whenever I talk to military people is that they are extremely alive to ethical issues, often much more so than civilians, because they know that they deal in violence, and violence is inherently an explosive ethical issue. But many of the military people in the various services in the many academies where I have lectured have a tendency to think of ethical restraint as a series of handcuffs, essentially as force

war against terror, because this war will be much dirtier and much nastier than anything we have faced in peacekeeping. And we will not be able to face it well if we think of ethics as handcuffs.

We have to think of ethics as our enabler and multiplier. You are in the legitimacy business — reproducing, building and strengthening the legitimacy of your society here and abroad. If you understand the role of ethics in doing that, you will be doing your job.

