
The Case for Armed Intervention against the Islamic State of Iraq and Syria

— ◆ —

FERNANDO R. TESÓN

In this essay, I make the case for armed intervention to destroy the group that calls itself the Islamic State of Iraq and Syria (ISIS). The central burden of the article is to establish the moral case for intervention.

Some preliminary concepts are in order. Wars can be classified into at least three types. A war of *national self-defense* is military force to defend one's state and one's compatriots from external aggression. Influential writers such as Michael Walzer claim that only the response to international aggression against a state is just (2006, 58). But this view is misleading. All attacks are against persons. An aggression against the state is an aggression against the citizens of the state. As Walzer himself says, the crime of aggression is that it forces persons to abandon their life projects and fight for survival (2006, 28). But if this is so, then *any* attack against persons forces them to fight for survival and justifies defensive force. The state is simply an institution created by individuals to serve human ends. A state is no more than the individuals who inhabit its territory and who created the institutions of government (Lomasky and Tesón 2015, 218). When state A attacks state B, it attacks the persons in state B, thus forcing them to fight to defend their lives, liberty, and possessions. A war of self-defense is a military

Fernando R. Tesón is Simon Eminent Scholar in the Florida State University College of Law.

The Independent Review, v. 21, n. 2, Fall 2016, ISSN 1086-1653, Copyright © 2016, pp. 181-197.

response to a war of aggression. But a war would be aggressive and criminal even if it were not directed at any state, but at persons living, say, in the state of nature, each one occupying his or her own land. The fact that in the real world those who fight are uniformed soldiers is irrelevant to the moral justification of self-defense and to the moral condemnation of aggression. National self-defense is individual self-defense writ large.

A war of *collective self-defense* is military force to defend the citizens of *another* state from aggression by a third state.¹ Suppose state A unjustly attacks state B. State B, unable to resist, requests help from its ally, state C. State C is justified in waging a defensive war against state A. Here again, states must be disaggregated. The army of state C uses justified military force against the army of state A, which attacked the citizens of state B and forced them to fight for their lives and property. Collective self-defense, like national self-defense, is a case of justified force in defense of *others*. In national self-defense, each citizen fights to defend himself and his compatriots. In collective self-defense, citizens of foreign states (usually organized in armies) help the citizens of the state victim of aggression by resisting with military force.

A *humanitarian intervention* is a war to defend persons from attacks in their territory by their own government or other groups. When state A invades state B and commits atrocities against civilians there, then the action by third party C to save B's victims is at the same time collective self-defense and humanitarian intervention. The focus of humanitarian intervention is precisely that: humanitarian. It is armed action to rescue people from genocide, crimes against humanity, war crimes, and other severe forms of tyranny and oppression (Tesón 2005b).

The important point here is that all three forms of war are justified by a single rationale: *the defense of persons*. In national self-defense, the defenders act for themselves and for their compatriots. In collective self-defense, the defenders act on behalf of foreigners who are attacked. In humanitarian intervention, the interveners act to rescue victims of (usually governmental) atrocities.

The three types of war—national self-defense, collective self-defense, and humanitarian intervention—stantiate the traditional requirement of a *just* cause to meet the standard of *jus ad bellum*. The just cause in all three types of war is essentially the same: the defense of persons whose lives and possessions are threatened by the aggressor. The dichotomy between national self-defense as a defensive war (and presumptively justified for that reason) and humanitarian intervention as an offensive war (and presumptively unjustified for that reason) is untenable. Both wars in self-defense and wars in defense of others (humanitarian intervention) are wars in defense of persons. Only defense of persons qualifies as a just cause; war is never justified for economic gain, national glory, reputation, and similar incarnations of the national interest.

1. My terminology here differs from that used in Article 51 of the United Nations Charter. There, "individual self-defense" refers to what I call here "national self-defense." In my sense, individual self-defense is instead the justified force by an *individual* who is unjustly attacked—in other words, self-defense according to criminal law.

A war against ISIS has a just cause under *all three* kinds of just war: national self-defense, collective self-defense, and humanitarian intervention. ISIS has directed or inspired attacks against France, Belgium, the United States, Turkey, Egypt, Yemen, Tunisia, Indonesia, and others.² ISIS has ordered armed attacks in the territories of France and Belgium, thus triggering the right of the French and Belgian governments to react in self-defense. It has invaded Iraq and Syria, thus triggering the right of national self-defense by those states (although the case of Syria has important qualifications), and it has committed terrible crimes against persons under its rule. I start with the most widely accepted rationale: collective self-defense.

Collective Self-Defense

Because ISIS has mounted massive military attacks against Iraq and Syria, third parties such as the United States are entitled to assist the victims of those attacks. Iraq has requested help and authorized the use of military force in its territory. The case of Syria is more complex, but there, too, the Syrian government has apparently authorized Russian troops in its territory (Birnbaum 2016).

With respect to Iraq, ISIS can be defined as a rebel belligerent group. As such, ISIS has risen against the government of Iraq. It is not difficult to see that in this civil war ISIS does not have a just cause. ISIS is avowedly devoted to establishing a hardline Islamic caliphate in the Middle East (Condon 2014). Whether it has global ambitions to attack the West is uncertain, but the intensity of its terrorist actions outside the Middle East suggests a positive answer. At the very least, ISIS's goal is to establish a tyrannical Islamic state. This is exactly the opposite of a just cause. The government of Iraq, therefore, is justified to resist ISIS, and third parties are justified in providing assistance to the government of Iraq. The current air strikes conducted by the United States and others are, then, justified, although, as I explain later, they are insufficient to secure victory.

ISIS has also occupied parts of Syria. May the Syrian government then legitimately request assistance against ISIS? This is problematic because, unlike the elected Iraqi government, the unelected Syrian government has rendered itself guilty of serious war crimes in the course of the civil war in that country.³ Indeed, these atrocities started long before the civil war began. This is one of those cases where we can say that neither of the parties has a just cause. ISIS aims to topple the Syrian government, and the Syrian government is itself illegitimate. But ISIS seeks to replace the al-Assad regime with an even worse regime, and, for all we can tell, ISIS's atrocities are likely to eclipse Bashar al-Assad's, bad as the latter are. Helping the Syrian government fight ISIS, therefore, is justified, independently of whether the

2. For a list of the attacks ordered or inspired by ISIS worldwide, see Sanchez et al. 2016.

3. Syria has resorted to starvation as a weapon (Barrington and Nebehay 2016) as well as mass killings in its jails (Nebehay 2016). See also United Nations Office of the High Commissioner n.d.

victors would have a further obligation to deal with the al-Assad regime later—even eventually remove him from power.

National Self-Defense

In the wake of the attacks in Paris in early November 2015, President François Hollande declared that France was at war with ISIS (Mullen and Haddad 2015). The question then arises: Do these attacks justify a French *military* response to ISIS, quite apart from France's right to help Iraq in its war against ISIS? Here we must draw a careful distinction. I think the French government is entitled to respond militarily to ISIS in the territory that ISIS occupies in Syria and Iraq. The concept of self-defense has evolved, in law and morality, to allow an armed response against nonstate actors in these cases. ISIS's attacks in Paris exceed the boundaries of common criminality and entitle France to conduct military operations against ISIS, to take the war to ISIS in the Middle East. However, France may not treat *French territory* as a battlefield and use the war tools to identify and kill members of ISIS in its territory as if they simply were enemy combatants (Tesón 2012, 423). France, a liberal democracy, must resort to *police* tools consistent with human rights and the rule of law that French institutions honor. French military action in Syria and Iraq, then, is justified both as collective self-defense (assisting Iraq against ISIS's onslaught) and as national self-defense (responding to ISIS for the Paris attacks).

The case of the United States is different, however. The June 12, 2016 attack in Orlando, FL was carried out by a man who swore allegiance to ISIS (Ellis et al. 2016), and the December 2015 San Bernardino attackers were inspired by ISIS. However, both the San Bernardino and Orlando attackers appear to have acted independently of ISIS and not to have been legitimate ISIS agents. If ISIS had been behind either attack, then the United States would have had a right not only to use military force in collective self-defense to assist Iraq because ISIS attacked Iraq but also to invade Iraq as an exercise of its own right to national self-defense. Within U.S. territory, however, the United States is entitled to use police tools, not war tools, to confront the crimes committed in San Bernardino and Orlando.

The question is not moot. If the United States is acting only in collective self-defense to assist Iraq and not on its own behalf, the Iraqi government may revoke its request for assistance and ask the United States to leave. If instead the United States is acting *by its own right*, the Iraqi government would not be entitled to terminate the U.S. operations. Similar reasoning applies to ISIS's attacks elsewhere. If ISIS *directed* militants to attack in another state, then that state has a right to respond militarily in self-defense in the Middle East battlefield. If ISIS merely *inspired* militants to attack in another state, then that state should respond only with police tools within its own territory (and perhaps with raids short of war in the territories of other states). Because ISIS attacked the United States, the latter's deployment in Iraq, where ISIS operates, does not need the consent of the Iraqi government.

Humanitarian Intervention

Now assume that all I have said about self-defense is wrong and that states other than Syria and Iraq should refrain from acting in national or collective self-defense against ISIS. Assume that ISIS is a Middle Eastern problem or a problem for Iraq and Syria only and that outside interference from France, the United States, and others to defend those countries from ISIS is unwise or wrong. Even then there is a strong case for the international community to act militarily against ISIS because ISIS, quite independently of its revolutionary goals (to conquer territory and form its own state), has rendered itself guilty of egregious atrocities in the territories under its control. ISIS has perpetrated crimes against humanity and other severe violations of individual rights, so any state is entitled to use military force to protect the victims.

ISIS's crimes are so numerous and ferocious that a summary does not even begin to depict its cruelty. Its members routinely execute apostates, homosexuals, and adulterers (Chastain 2015; Nordland 2015).⁴ They capture Yazidi girls and women and sell them as sex slaves. Many of these women choose to kill themselves rather than endure the torment (Shubert and Naik 2015). Indeed, ISIS uses sex slavery and rape as recruiting tools (Callimachi 2015). To this list of crimes against humanity I should add the numerous beheadings and other war crimes against Syrian and Iraqi soldiers, journalists, and others, many of which are amply documented in videos proudly provided by ISIS itself. Jeff McMahan provides a grim summary:

In areas where they rule, beheadings in public spaces are daily occurrences. Execution by the sword is the penalty for offenses including apostasy, blasphemy, and homosexuality. According to many members of the Islamic State, indications of apostasy among Muslims include shaving, voting, selling alcohol and being Shiite rather than Sunni. . . . Adultery is punished by stoning, theft by mutilation, consumption of alcohol by 80 lashes, and other offenses by crucifixion. Trials, to the extent that they occur at all, are conducted by fanatical clerics and may last only a few minutes. Hostages are routinely tortured. Captured infidel women, such as those from the ethnic and religious Yazidi minority in Iraq, are sold as sexual slaves whose treatment is governed by a set of arbitrary religious ordinances which state, for example, the conditions in which it is permissible for a man to rape a pre-pubescent girl. Sunni males as young as seven are being conscripted into the fighting units, and are taught techniques of beheading by practicing on captured soldiers from the Syrian army. The least intelligent are chosen for suicide missions. (2015)

4. For an overview of what ISIS is, does, and stands for, see Wood 2015.

It is true that atrocities are common in war, but they are usually the work of a handful of fanatics. ISIS, however, has taken such violations to another level. The atrocities permeate the organization, and the orders to perpetrate them come from the top. These crimes are not, therefore, collateral to the war effort. They are essential to the way in which ISIS defines itself. These atrocities alone, without even considering the Paris, Brussels, San Bernardino, and Orlando massacres, justify military action to destroy this group. Even if we have a narrow definition of what triggers the permissibility of humanitarian intervention, these actions surely qualify. It is not hard to agree with McMahan that ISIS's rule in Syria is a modern holocaust. As such, it generates a moral obligation (and not just a permission) to act. This obligation distinguishes humanitarian intervention from collective self-defense in the ISIS case. Arguably, collective self-defense is permissible, not obligatory. But rescuing the victims of ISIS's atrocities seems to me morally obligatory. The question is: Who has the obligation to act? This question brings us to the issue of right authority.

Right Authority

Traditional just-war theory has added the requirement of right authority (Fabre 2008). Even if there is just cause to wage war, questions arise about *who* should wage it. The case of ISIS exemplifies this problem. Suppose we all agree that ISIS's atrocities have generated a just cause for others to use force to save the victims. Given the gravity of the crimes, we may say that ISIS *must be defeated*, that there is an obligation (and not just a permission) to defeat ISIS. Notice the use of the impersonal form here: *there is* a moral obligation to fight ISIS, but we do not know who the obligated party is. This puzzle arises generally with the duty to rescue. Suppose a child is drowning in a stream, and a number of persons are close. If all of them are able to rescue the child at no cost, then we could say that each of them has the obligation: it is a case of joint and several obligation. However, if rescue is costly—if, for example, one of the rescuers would be risking her life—then it is unclear who has the all-things-considered obligation even if we can say that *there is* an obligation to rescue the drowning child.

Similarly, we say that ISIS *must be* defeated, but at the same time states' positions toward this obligation vary. The fact that all of us are citizens of humanity does not mean that all of us have the same degree of responsibility in righting these wrongs. Past actions, military and financial capabilities, and closeness to the facts may indicate different degrees of responsibility. Brazil arguably has a weaker responsibility for the problem than the United States and France. In turn, the United States and France have a lesser responsibility than, say, Arab states in general. And other Arab states have a lesser responsibility than Iraq and Syria, the territorial states. A plausible answer is that the international community has the obligation to act. But the international community is a notoriously slippery entity. Perhaps one should say that the United Nations (UN) Security Council, acting on behalf of the international community, must act. But even if the council were to expressly authorize the use of force against

ISIS, the resolution would be just that, an authorization. No nation would be *obligated* to act. Aside from legal mechanisms, what is the preferable solution?

As a preliminary matter, it stands to reason that only ground troops can defeat ISIS (“Counterinsurgency Expert” 2014).⁵ President Barack Obama has taken the position that the United States and others can assist with air strikes, which they are presently conducting, but that any ground troops should come from the states in the region (2014). Jeff McMahan agrees, warning that using U.S. troops would facilitate anti-American propaganda (2015). I am not entirely convinced by this argument because I think local politicians and others always will have incentives to engage in anti-American propaganda and blame the hegemon for anything that happens, ground troops or not. But I agree with the president’s position for a more fundamental reason: local troops are preferable because their region, their future, their land, and their rights are at stake. Local populations should claim the responsibility and bear a considerable part of the cost of destroying this scourge and recovering their societies. So in principle Western nations should provide aerial military support to local troops in the battle against ISIS. However, unlike the president, I think that should local troops be unable to oust ISIS, then a Western invasion would be justified on humanitarian grounds. Stopping genocide is the highest priority; the nationality of troops, although important, is secondary to that goal.

The principle, then, is not hard to formulate in the abstract. The fight against ISIS should be waged by an appropriate international coalition. When I say “appropriate,” I mean the inclusion of communities that have a long-term interest in the region—that have, figuratively, long-term “property” rights there. The land that is Iraq belongs (in some sense) to the relevant local collective communities. It does not belong to the United States or to anyone else. Therefore, the Iraqis must take the lead and bear at least some of the cost of eradicating ISIS. But it is important to stress also that this international coalition would act in the name of the people of the world. Even if the troops are Iraqi and the warplanes American, these forces represent the international community, understood here not as a random collection of leaders, each pursuing his or her national interests, but as an enforcer of elementary norms of humanity. ISIS, by committing atrocious crimes, has become *hostis humani generis*, the enemy of humankind. The armies that will defeat it represent, therefore, all of us.

Proportionality

The hardest requirement to satisfy in any war is the requirement that it should do more good than harm—that it should be proportionate. Proportionality is a difficult concept because the benefits and costs cannot be established in any simple terms. Take the example of Britain in World War II. It seems well established that Germany

5. The debate in the United States is whether *the United States* should provide ground troops. Few doubt that ground troops are needed for victory.

offered Britain a separate peace (Lukacs 2001). Winston Churchill would have saved many lives had he accepted the offer, but he turned it down and decided to fight. Most people approve of Churchill's decision. This decision shows that the calculus of proportionality—whether the effort is worth the cost—cannot be done solely in terms of lost and saved lives. Sometimes the right thing to do is to fight, even if compromising would save lives, because proportionality should take into account material benefits and costs *as well as* the urgency of realizing the just cause, the urgency of winning (Lomasky and Tesón 2015, 253–54)

But even considering only material costs such as blood, property, and treasure, the calculation is difficult. Leaders estimate *ex ante* the effects of a just military intervention. Assuming a war is justified, the public is entitled to demand that leaders predict as best they can what the effects of their decisions and actions will be. Responsible leaders have an obligation to collect reliable information about the likely effects of military action. They have to plan properly. Unfortunately, leaders will act strategically, not morally. They will systematically inflate benefits and deflate costs. Moreover, wars lead to bigger government and diminished liberties at home. These pathologies have led many scholars, especially those of a libertarian persuasion, to embrace pacifism (Caplan 2010). I am sympathetic to these objections and agree that they suffice to condemn most wars that politicians may be eager to pursue. But I believe that when all is said and done, *some* wars are worth fighting. Pacifism entails consequences that in those rare occasions are harder to digest than the bad consequences of war. ISIS is one of those cases.

We know that even the best of plans can go wrong. A difficult question is how to judge decisions to go to war when the consequences of the war, once fought, were bad but unpredictable. Those who supported the Iraq War in 2003 (myself included: see Tesón 2005a) did not accurately predict all the bad things that the invasion would enable, including the prolonged insurgency and the Iraqi leadership's continued inability to preserve what was gained with Saddam Hussein's ouster. The stronger predictions about the short- and midterm effects of the war came from noninterventionists, who argued that the invasion would open a Pandora's box in the region. It might therefore be tempting to say that those who make the case for inaction most often have the facts and justice on their side. On their view, the Iraq experience indicates that restraint should be exercised in the case of ISIS.

I disagree with this position for two reasons. First, critics of the Iraq War are looking at the consequences *ex post*, after a number of bad things are known to have happened. There is nothing wrong with trying to learn from your mistakes, but it is easy to criticize the Iraq decision in hindsight. If events had unfolded differently—if there had been no Baathist insurgency, if the Arab Spring had consolidated some liberal reform, if the democratic institutions in Iraq had taken root—then we would regard the invasion in 2003 differently today. Perhaps believing in those outcomes was foolhardy from the start. Perhaps the Bush administration planned poorly and should have predicted the bad consequences that ensued. But because we are human,

we tend to believe retroactively that what actually happened was inevitable and what did not happen was unlikely. But history is not that linear, and acting as if it were can lead to bad decisions in the future. Hard though it may be to accept, a bad outcome is not itself proof that a decision to go to war was the wrong one at the time it was made.

Second, inaction, too, can lead to great miseries. Leaders should consider the consequences of both action *and* inaction. In the case of ISIS, inaction means allowing the current genocide in Iraq and Syria to continue unabated. It means that the world is bound to tolerate indefinitely the torture, killings, beheadings, and rapes that we see, horrified, almost weekly on the screen. But even beyond that, from a more general political standpoint, I do not think that letting the current situation develop “naturally” will have better results than a military intervention would. To see this, assume for a moment that the United States were to rule out even airstrikes against ISIS over fears of short-term costs. ISIS, in that scenario, would be free to solidify its own totalitarian state. In all likelihood, the chances of war and other ills in the region would increase because the new state’s harsh and expansionist worldview would mortally threaten its neighbors. And it is quite possible that the United States would eventually be dragged into the very war it seeks to avoid. All indications are that any new ISIS caliphate would be militantly committed to violent strikes against U.S. interests everywhere, including on American soil. The Paris and Brussels attacks have increased this worry. If a handful of modestly financed individuals could pull off the attacks on September 11, 2001, imagine the damage that a sovereign state exponentially more rich and powerful would be able to inflict.

Consider a notorious case of inaction: the genocide in Rwanda in 1994. If the United States had intervened at a comparably low cost of American lives and money, approximately eight hundred thousand people could have been saved. Many made the case for inaction at the time, arguing that it was not the proper role of the United States to act in other nations’ affairs. But the cost in human lives received insufficient weight in the discussion, leading to a bad decision.

Many wars that might seem justified, such as the war on ISIS, are nonetheless troubling because they will predictably cause the death of a high number of innocent persons. If there is an acceptable level of collateral damage, then a war that exceeds that level is unjustified because it is disproportionate: the harm caused is greater than whatever good the intervention brings about. If defeating ISIS will predictably bring about the deaths of hundreds of thousands of persons, then the United States should not act. But this way of thinking about consequences, although essentially correct, raises the following question: What if military intervention causes great harm now but improves the lives of millions in the future? Even if invading Iraq and Syria and defeating ISIS would cause a troubling number of civilian deaths now, it is possible that failure to intervene will mean death and suffering for millions more people for years to come. Balancing present certain harm against future uncertain harm is always problematic. But leaders must evaluate both the immediate and remote effects of both action and inaction when making foreign-policy decisions and hope for the best.

An invasion to defeat ISIS might be necessary to defend us effectively against future attacks emanating from the Islamic State. I know that similar arguments were made in the lead-up to the Iraq War. But the fact that those arguments were wrong then (if they were wrong) does not mean they are wrong now. And the terrible consequences of inaction are as hard to gauge as the terrible consequences of invading. It may be suggested that ISIS could be contained Cold War style until the conditions change or the organization falls apart. I do not believe that such an alternative, which made sense in the case of the Soviet Union, would be acceptable here. Protracted containment means tolerating the genocide that is occurring right now in the territories ruled by ISIS. Unlike the Soviet Union, ISIS can and must be defeated. Unfortunately, it is unclear where the consequential calculus might lead. But it is simply false to assert that in the face of uncertainty it is invariably best simply not to act. I think that the United States and the international community should attempt to overcome the “Iraq syndrome” when contemplating action against ISIS. In the next section, I outline a possible way to do this.

Jus Post Bellum

Any state that starts a war must have a just cause and comply with the laws of war, including proportionality. But these requirements are still insufficient to justify war. A just war must also lead to a *just end*. A war fought lawfully for a just cause may nonetheless fail to achieve a just end. I define “just end” as *the realization of the just cause*. Suppose state A attacks state B. If state B successfully repels the attack and there is low probability that the attack will recur (perhaps A has been deterred by B’s successful defense), then repelling A, without more, is the just end. Now let us complicate the example. Suppose A attacks B, and B successfully repels the attack, but the probability of recurrence of aggression is high. Then the just end would not have been achieved by having successfully repelled the attack because aggression is likely to recur. In this case, I think B is entitled to take further steps to ensure that A will not attack again. For example, B is entitled to disarm A. The example of the Gulf War in 1991 is instructive. After the UN-sponsored coalition defeated Iraq and drove it out of Kuwait, the UN Security Council enacted Resolution 687 (April 8, 1991), which sought to prevent Saddam Hussein from perpetrating new aggressions. The coalition decided that disarmament, not regime change, was enough to achieve the just end.

Michael Walzer has suggested that a war against ISIS, including the current airstrikes, is unjust because it is impossible for the victors to achieve a just end. He writes: “Suppose that ISIS is defeated, what then? Are the Sunni Muslims in the caliphate to be returned to Shiite rule in Iraq and Alawite rule in Syria? That isn’t a prospect likely to inspire any of our Sunni allies. A just war must aim at a just ending, but this war is being fought without any likely end and without any vision of what a morally just end would look like. Without those two, I find it hard to defend the

current air war—which may well kill more innocent people than ISIS fighters and produce more ISIS fighters than it kills” (2015). Walzer’s worry focuses on what happens *after* the war. He expressly concedes that states have a just cause to defeat ISIS, but he does not think that the victory could be consolidated justly. There is no state of affairs, he argues, that the war could produce that would amount to a realization of justice. I agree, as I must, that the task of achieving a just peace is very difficult. However, I am not as pessimistic as Walzer and believe that it can be done.

Let us assume that an international coalition effectively defeats ISIS. The literature on *jus post bellum* offers a list of guidelines on the rights and obligations of the victorious warriors, but in the end all of these rights and obligations collapse into the realization of the just cause. One possibility is for the foreign troops to withdraw immediately, thus allowing the territorial governments of Syria and Iraq to regain control over the territory previously occupied by ISIS. This approach is appealing for a number of reasons. In many and perhaps most situations, such an action would devolve control to the local populations (assuming the governments represent those populations). It would put the reconstruction of those ravaged societies in the hands of the legitimate territorial “owners.” By the same token, the foreign states who helped would demonstrate purity of intention by withdrawing because their military action would have demonstrably served only the purpose of eradicating ISIS and nothing else. Moreover, the main objective, saving the immediate victims, would have been achieved. For these and other reasons, some writers suggest that there should be a presumption against reconstruction (Bass 2004, 396).

Unfortunately, withdrawal after victory is unlikely to realize the just cause in this case. A withdrawal of the coalition after defeating ISIS would simply allow the resurgence of ISIS and similar jihadist groups. The experiences in the Gulf War, the Iraq War, the Libyan War, and the Afghanistan War have shown that these groups are particularly adept at “waiting out” their Western enemies and successfully regrouping to resume their crimes. In those cases, terrorists have reemerged for a variety of reasons, not the least of which is a failure on the part of the victorious states to take the further steps necessary to realize the just cause. In the case of the war against ISIS, the just cause includes making sure that ISIS and other eventual jihadist groups are forever eradicated. The governments of Syria and Iraq have proven unable to do so, for different reasons. The Syrian regime is itself a criminal outfit that instead of preventing the emergence of radical jihadists makes them flourish. The Iraqi government, although legitimate, has been unable to prevent the proliferation of radical jihadists—in particular ISIS—in its territory. This remains true even if, as some contend, the U.S. invasion of Iraq is responsible for the emergence of ISIS. More: if the U.S. invasion is the cause (and I do not know that it is), then the United States has a special responsibility not to repeat that mistake. (I confess not to understand the argument that because the United States allowed the surge of ISIS, it now has an obligation to leave ISIS alone.)

To those reasons I add the following: even if there is a presumption against reconstruction, it is overcome in the case of groups or governments that engage in crimes against humanity and genocide (Bass 2004, 396–404). It is imperative that when those groups are defeated by the sword, the victorious powers secure their eradication and prevent a resurgence. The reconstruction attempted by the United States and others in Iraq and Afghanistan was defective and insufficient. In Iraq, the United States enabled the establishment of a democratic constitution that could have cemented freedom, peace, and prosperity. But the United States withdrew too soon, due mostly to relentless domestic opposition to the war (Alawi 2007). Many of the intended goals of reconstruction were frustrated. The most important one was building an Iraqi state that would be a democratic ally of the West and a bulwark against both the resurgence of Baathism and radical jihadist groups. The enemy was able to “wait us out” and come back with a vengeance. It is beyond my capabilities to apportion the blame for the Iraq fiasco. There is no question that the United States deserves much of that blame. The Iraqis themselves, especially the leaders, should also bear responsibility. But the two deciding factors that frustrated reconstruction were the criminal insurgency against the new and feeble democratic institutions and the increased opposition to the war in the United States, fueled mostly by electoral politics.

The Need for Reconstruction

In my opinion, *jus post bellum* requires that the victorious coalition occupy Iraq for a relatively long time. That occupation would have two related goals. The first would be to ensure that groups such as ISIS will not reemerge. Coalition members would of course be pursuing their own interests in that they will be aiming to prevent terrorist attacks in their own territories. But they would at the same time be ensuring the protection of the local populations, the direct victims of ISIS’s crimes. The second goal would be to reconstruct Iraq—to create the bases for freedom and prosperity there. In a way, this effort will complete the task initiated following the Iraq War. It will do what was not done then.

The most important precedent for postwar reconstruction is Germany. There is no question in my mind that this effort was successful. There are differences between Germany and Iraq, of course. Germany is a Western nation, so the reconstruction efforts did not have to face cultural obstacles. Iraq, in contrast, is a Muslim society where, it is thought, most people resent attempts to impose Western values. Cultural obstacles to reconstruction are particularly strong there. It is important, therefore, that the occupation be directed almost exclusively to reconstruct the Iraqi society *for them*, for the Iraqis. This means adopting a scrupulous attitude of respect for their culture, in particular for Muslim values and traditions consistent with modern international human rights.

I said that the reconstruction should focus *almost* exclusively on the Iraqis. The occupiers have also a legitimate interest in suppressing jihadist terrorists. The terrorists

are as much the occupiers' enemies as the Iraqi people's enemies and, indeed, as I indicated, the whole world's enemies. In Germany, too, the reconstruction aimed at de-Nazification. In Iraq, perhaps the early de-Baathification was misguided because it resulted in discarding elements that could have been salvaged for a democratic Iraq (Pfiffner 2010). A related issue is to what extent reconstruction should include trials of ISIS war criminals. Writers have discussed this question extensively; they disagree about the scope and justification of such purges (Chiu 2011). In my view, the focus should be forward looking rather than punitive, but I agree that at least the main leaders of ISIS should be brought to justice to respond for their crimes.

Another crucial issue is economic reconstruction. In my judgment, this means creating the conditions for free markets, with a view to making Iraq a bulwark of free enterprise in the region. It is true that Iraq's economy is based largely on oil, but there is no reason why the reconstruction should not accompany Iraq's comparative advantages in the global market, as is the case with many oil-producing societies. Economic reconstruction should not be about who gets lucrative contracts. It should be instead about allowing the Iraqis to participate in the world economy as producers and consumers. This means lifting restraints such as trade and financial barriers and closing genuine free-trade deals for Iraq.

A final thorny issue is the duration of the reconstruction effort. As I indicated, many people are wary of long occupations for a number of reasons. It is costly for the occupier and often humiliating for the occupied. Long occupations will inevitably nurture suspicion and create perverse incentives for the search of privileges and perquisites. However, these concerns should give way to the imperative of realizing the cause for which the war was fought. Failures of the past are in part due to failures to stay the course. In view of these considerations and in the light of past experience, it is unrealistic to think that a successful reconstruction will be short. It is impossible to determine in advance the length of reconstruction, but I would be surprised if the goals of successfully eradicating jihadists and restoring freedom and prosperity to the region would take less than ten years. It would exceed the aim of this article for it to suggest concrete funding schemes for the reconstruction effort. But given that the war would be undertaken on behalf of the international community, it would make sense to require other states, especially those in the region, to contribute to that funding.

A Note on Cost

It is easy to recommend wars and long occupations from the safety of one's professorial chair. I am aware of and sensitive to the fact that the costs of the war would be borne by others. I have heard angry reactions, especially from my libertarian friends, against calls to arms made by those like myself who will not bear the cost. On this issue, I offer a couple of thoughts.

The first concerns the intervener. Only persons who agree to fight in wars, such as those enrolled in a voluntary army, can be expected to fight. Forced conscription is

a grave violation of persons' moral rights. True, the war will be financed by the taxpayers. I do not have the space to expand on this point, but I can say only that the use of taxpayers' money to defeat ISIS and save its victims is more justified than many other expenditures indulged by the modern state. The problem, as I see it, boils down to the strength of the moral obligation for citizens in powerful countries, especially in the United States, the world's hegemon, to defeat ISIS as well as to take on a fair allotment of cost. At any rate, the war should be financed by the international community as a whole, not just by those who intervene.

The second point concerns the civilians on the ground. As I indicated, to be just the war must be proportionate. Because a war to save the victims of ISIS is a humanitarian intervention, it stands to reason that these victims must welcome the war. I assume that they want to be liberated. If so, the interveners should expect cooperation from the local population. The problem is that many will be caught in the crossfire between the two armies. Here again, the principle of proportionality comes into play. It is reasonable to expect some degree of sacrifice of local populations for the sake of liberating and reconstructing their society, but it is surely possible that such sacrifice might turn out to be excessive. One of the tragedies of war is that no one can tell in advance whether the good caused by the war has in the end justified the cost. Yet unless one thinks that no war is ever justified, one has to accept that justified wars will bring about the deaths of innocents. The objection that the war on ISIS kills innocent persons and is for that reason unjustified must assume that all wars are unjustified because all wars kill innocent persons. If, on the other hand, one thinks that some wars are justified, then it follows that sometimes, unfortunately, it is justified to bring about, as a side effect, the deaths of innocent persons in the pursuit of a just cause.

Finally, reconstruction should be coupled with a generous immigration policy. Space prevents me here from elaborating on the important migratory issue, but I endorse the mainstream classical liberal position (Lomasky and Tesón 2015, chaps. 4 and 5). Nations should welcome migrants from the region that is seeking liberty and opportunity. The war effort, designed to protect persons, should be supplemented with a willingness to admit those same persons and thus allow them to engage in mutually advantageous transactions and prosper. (I should add that the refugee model, which usually *forbids* refugees to work, gets it exactly wrong.)

Conclusion

In summary, I propose the following just-war framework for the war on ISIS:

1. The international community, represented by an appropriate military coalition, has a just cause to wage war on ISIS. That just cause is threefold: (*a*) the right of national self-defense against attacks directed by ISIS in other states' territories; (*b*) the right of collective self-defense to assist Iraq and Syria against ISIS's

- attacks against these states; and (c) a right to humanitarian intervention aimed at saving the populations in Syria and Iraq that are presently victimized by ISIS.
2. The coalition should include ground troops, which should ideally be recruited from states in the region.
 3. The coalition should conduct the war in accordance with the standard *jus in bello*, including the principle of proportionality. The Geneva Conventions are a reasonable approximation to such norms.
 4. The immediate aim of the war should be to defeat ISIS and put an end to its rule in the region. The long-term end of the war should be a reconstruction of Iraq and other ravaged territories. This effort will help local populations establish the political institutions that will secure peace, freedom from violence, the rule of law, and human rights. It will create the conditions for freedom and prosperity and prevent the resurgence of ISIS or similar murderous organizations. The length of time of the reconstruction cannot be established in advance, but it should not be expected to be short.
 5. The war and the reconstruction should be financed by the international community as a whole, with a special responsibility falling on the states of the region.
 6. At home, states struck by terrorist violence should employ the tools of just policing in a manner consistent with civil liberties and due process. In particular, states may not employ the tools of war to confront domestic terrorists.
 7. All nations should simultaneously implement a generous immigration policy.

References

- Alawi, Ali A. 2007. *The Occupation of Iraq: Winning the War, Losing the Peace*. New Haven, Conn.: Yale University Press.
- Bass, Gary J. 2004. Jus Post Bellum. *Philosophy & Public Affairs* 32:384–412.
- Barrington, Lisa, and Stephanie Nebehay. 2016. U.N. War Crimes Investigators Gathering Testimony from Starving Syrian Town. Reuters, January 12. At <http://www.reuters.com/article/us-mideast-crisis-syria-idUSKCN0UP0VM20160113>.
- Birnbaum, Michael. 2016. The Secret Pact between Russia and Syria That Gives Moscow Carte Blanche. *Washington Post*, January 15. At <https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/the-secret-pact-between-russia-and-syria-that-gives-moscow-carte-blanche/>.
- Callimachi, Rukmini. 2015. ISIS Enshrines a Theology of Rape. *New York Times*, August 13. At <http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html>.
- Caplan, Brian. 2010. The Common-sense Case for Pacifism. Library of Economics and Liberty, April 5. At http://econlog.econlib.org/archives/2010/04/the_common-sens.html.
- Chastain, Mary. 2015. ISIS Executes Nine More “Homosexuals” by Throwing Them off Roof. *Breitbart*, August 25. At <http://www.breitbart.com/national-security/2015/08/25/isis-executes-nine-more-homosexuals-by-throwing-them-off-roof/>.

- Chiu, Ivonne. 2011. Liberal Lustration. *Journal of Political Philosophy* 19:440–64.
- Condon, Stephanie. 2014. As ISIS Grows, Questions Remain about Its Goals. *CBS News*, August 13. At <http://www.cbsnews.com/news/as-isis-grows-questions-remain-about-its-goals/>.
- Counterinsurgency Expert: Beating ISIS Will Require U.S. Ground Troops in Iraq. 2014. *Yahoo News*, October 22. At <http://news.yahoo.com/blogs/power-players-abc-news/counterinsurgency-expert-beating-isis-will-require-u-s-ground-troops-in-iraq-230548829.html>.
- Ellis, Ralph, Ashley Fantz, Faith Karimi, and Elliot C. McLaughlin. 2016. Orlando Shooting: 49 Killed, Shooter Pledged ISIS Allegiance. CNN, June 13. At <http://www.cnn.com/2016/06/12/us/orlando-nightclub-shooting/>.
- Fabre, Cécile. 2008. Cosmopolitanism, Legitimate Authority, and the Just War. *International Affairs* 84:963–76.
- Lomasky, Loren, and Fernando R. Tesón. 2015. *Justice at a Distance: Extending Freedom Globally*. New York: Cambridge University Press.
- Lukacs, John. 2001. *Five Days in London: May 1940*. 3rd ed. New Haven, Conn.: Yale University Press.
- McMahan, Jeff. 2015. Syria Is a Modern Holocaust. We Must Act. *Washington Post*, November 30. At <https://www.washingtonpost.com/news/in-theory/wp/2015/11/30/syria-is-a-modern-day-holocaust-we-must-act/>.
- Mullen, Jethro, and Margot Haddad. 2015. “France Is at War,” President François Hollande Says after Attack. CNN, November 16. At <http://www.cnn.com/2015/11/16/world/paris-attacks/>.
- Nebehay, Stephanie. 2016. Mass Deaths in Syrian Jails Amount to “Extermination”: UN. *Globe and Mail*, February 8. At <http://www.theglobeandmail.com/news/world/un-investigators-find-extermiation-of-detainees-in-syria/article28643430/>.
- Nordland, Rod. 2015. ISIS Militants Stone an Iraqi Couple Accused of Adultery. *New York Times*, March 24. At http://www.nytimes.com/2015/03/25/world/middleeast/isis-stones-couple-accused-of-adultery-in-mosul-iraq.html?_r=0.
- Obama, Barack. 2014. Statement by the President on ISIL. Office of the President, September 10. At <https://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1>.
- Pfiffner, James P. 2010. US Blunders in War: De-Baathification and Disbanding. *Intelligence and National Security* 25:76–85.
- Sanchez, Ray, Tim Lister, Mark Bixler, Sean O’Key, Michael Hogenmiller, and Mohammed Tawfeeq. 2016. ISIS Goes Global: 90 Attacks in 21 Countries Have Killed Nearly 1,400 People. CNN, April 29. At <http://www.cnn.com/2015/12/17/world/mapping-isis-attacks-around-the-world/>.
- Shubert, Atika, and Bharati Naik. 2015. “Hundreds” of Yazidi Women Killing Themselves in ISIS Captivity. CNN, October 5. At <http://www.cnn.com/2015/10/05/middleeast/yazidi-women-suicide-in-isis-captivity/>.
- Tesón, Fernando. 2005a. Ending Tyranny in Iraq. *Ethics and International Affairs* 10:1–20.

- . 2005b. *Humanitarian Intervention: An Inquiry into Law and Morality*. Ardsley, N.Y.: Transnational.
- . 2012. Targeted Killings in War and Peace: A Philosophical Analysis. In *Targeted Killings: Law and Morality in an Asymmetrical World*, edited by Claire Finkelstein, Jens Ohlin, and Andrew Altman, 403–33. Oxford: Oxford University Press.
- United Nations Office of the High Commissioner of Human Rights. n.d. Independent International Commission of Inquiry on the Syrian Arab Republic. At <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/AboutCoI.aspx>.
- Walzer, Michael. 2006. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. 2nd ed. New York: Basic Books.
- . 2015. What Kind of War Is This? *Dissent*, December 3. At <https://www.dissentmagazine.org/blog/france-us-uk-air-strikes-isis-just-war-theory>.
- Wood, Graeme. 2015. What ISIS Really Wants. *Atlantic*, March. At <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/>.

SUBSCRIBE NOW AND RECEIVE A FREE BOOK!



“*The Independent Review* does not accept pronouncements of government officials nor the conventional wisdom at face value.”

—**JOHN R. MACARTHUR**, Publisher, *Harper’s*

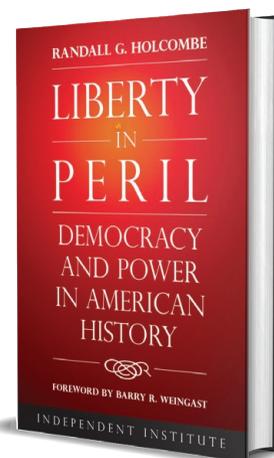
“*The Independent Review* is excellent.”

—**GARY BECKER**, Nobel Laureate in Economic Sciences

Subscribe to [*The Independent Review*](#) and receive a free book of your choice such as *Liberty in Peril: Democracy and Power in American History*, by Randall G. Holcombe.

Thought-provoking and educational, [*The Independent Review*](#) is blazing the way toward informed debate. This quarterly journal offers leading-edge insights on today’s most critical issues in economics, healthcare, education, the environment, energy, defense, law, history, political science, philosophy, and sociology.

Student? Educator? Journalist? Business or civic leader? Engaged citizen? This journal is for YOU!



Order today for more **FREE** book options

SUBSCRIBE

The Independent Review is now available digitally on mobile devices and tablets via the Apple/Android App Stores and Magzter. Subscriptions and single issues start at \$2.99. [Learn More.](#)

