

Avoiding War: Using International Law to Compel a Problem-Solving Approach

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Necessity has been called "the mother of invention." Although the precise relationship between these concepts may be open to debate, they are certainly closely related in international law: The requirement that force may be used only when necessary should compel a search for alternatives to force and violence. After September 11, however, no such search occurred. There were and are alternatives to the U.S. war against Afghanistan, but the U.S. and the UN failed to work together to find any. As such, the war against Afghanistan is illegitimate under international law.²

This short paper argues that the search for alternatives to violence in international responses to terrorism is not merely an idealistic whim: it is a legal requirement. This paper thus also argues that U.S. and UN Security Council should have worked together to seek, and try, alternatives to force and violence. More generally, this paper encourages a broader search for alternatives, with broader participation, by the UN, individual nations, NGOs, human rights experts, scholars and lawyers. Finally, it speculates that changes in international law may help to ensure that this search is carried out. Because war is often the greatest human rights violation of all -- and triggers further violations -- seeking and investigating reasonable alternatives to war may be the most profound protection of all for human rights.

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² Because this paper focuses on the requirement of necessity and how it should work to compel the search for alternatives to force and violence, it does not undertake the analysis of whether the war against Afghanistan meets the requirements of self-defense under international law, the only legal basis the U.S. has claimed. To that end, see four analyses widely published and distributed by three members of Lawyers Against the War: Gail Davidson, "International Law: The Illegality of the War on Afghanistan," *The Lawyers Weekly*, November 2, 2001 (Toronto, Canada); Gail Davidson, "International Law: The Illegality of the War on Afghanistan," *Native News Online*, October 16, 2001 (<http://nativenewsonline.org/attackonus2.htm>); Brian J. Foley, "Legal Analysis: U.S. Campaign Against Afghanistan Not Self-Defense Under International Law," *Counter Punch*, November 6, 2001 (www.counterpunch.org/foley1.html); and Michael Mandel, "This War is Illegal and Immoral and Must be Stopped," Science For Peace Forum and Teach-In, University of Toronto, December 9, 2001 (http://scienceforpeace.sa.utoronto.ca/Special_Activities/Mandel_Page.html).

Additionally, for an excellent and broad discussion of the international laws applicable to the September 11 attacks and responses thereto, see Helen Duffy, "Responding to September 11: The Framework of International Law" (available at www.interights.org).

THE REQUIREMENT OF "NECESSITY" IN INTERNATIONAL LAW CONCERNING USE OF FORCE ("JUS AD BELLUM")

The UN Charter provides a sweeping prohibition against the use of force, commanding in Article 2(4) that, "All Members shall refrain in their international relations from the threat or use of force." Article 33 commands that all "[t]he parties to any dispute ... shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means...." That force is prohibited is not surprising, given that the very first words of the UN Charter declare, "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

Under the international law concerning when nations may apply force, "*jus ad bellum*,"³ force and violence are last resorts, to be used only if "necessary." This is the case under the UN Charter as well as under the longstanding "just war" doctrine.⁴ The rule traditionally used to determine when a nation may use force in self-defense explicitly requires and defines "necessity" as an absence of other means to address the danger: "There must be a '*necessity* of self-defense, instant, overwhelming, leaving *no choice of means*, and *no moment for deliberation*,' and the action taken must not be 'unreasonable or excessive,' and it must be 'limited by that necessity, and kept clearly within it.'"⁵

Under the UN Charter, decisions about using force fall within the province of the UN Security Council, except in the limited, temporary instance of a nation's need to use force in self-defense to fend off an armed attack. When a nation uses force in self-

³ As opposed to laws, including humanitarian laws, governing combatants in conflicts already underway, "*jus in bello*."

⁴ See UN Charter, Article 42: "Should the Security Council consider that measures provided for in Article 41 [measures not involving the used of armed force] would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces *as may be necessary* to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations (emphasis added)." For an expression of the just war doctrine, see, e.g., The National (U.S.) Conference of Catholic Bishops, "The Harvest of Justice is Sown in Peace " (1993) ("Last Resort: force may be used *only after all peaceful alternatives have been seriously tried and exhausted*. (emphasis added).") Most likely, the UN Charter displaces this doctrine, but in any event, the two do not conflict on this issue.

⁵ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* 314 (7th Rev. ed. 1997) (quoting Daniel Webster, *British and Foreign State Papers 1841-1842*, Vol. 30, 1858, 193) (emphasis added). This rule was penned by U.S. Secretary of State Daniel Webster in an exchange of diplomatic papers concerning an 1837 incident where British forces crossed the border from Canada and destroyed the *Caroline*, an American ship, in a New York state port, because it was being used to assist Canadian rebels against Great Britain. The rule is widely regarded as the "classic" rule on self-defense in international law. *Id.*

defense, the UN Security Council is supposed to take control over that use of force as soon as possible.⁶

The UN Charter sets out what could be described as a pattern for the use of force only when necessary, and escalation only by necessity. Indeed, the Charter is structured in this pattern. Chapter V creates the Security Council and enumerates its powers; Chapter VI is entitled "Pacific Settlement of Disputes," and Chapter VII is entitled "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." Article 33, in Chapter VI, commands, "[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a resolution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." The rest of Chapter VI discusses Security Council involvement in solving these disputes should the nations' efforts at pacific solution fail.

Chapter VII, "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," outlines how the Security Council decides when to use force, and the measures it may take. The requirement that force may be applied only when necessary, and that escalation must also be of necessity, runs throughout.⁷ Article 41 states that, in dealing with threats to peace and security,

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

The following Article, 42, states,

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations.

Article 42 requires careful, thorough consideration of -- if not actual attempts to implement -- the means set forth in Article 41, which can be broadly described as

⁶ See Article 24 ("Members confer on the Security Council primary responsibility for the maintenance of international peace and security") and Article 46 ("Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee."); Article 51 (nations may use force in self-defense "until the Security Council has taken measures necessary to maintain international peace and security").

⁷ See Helen Duffy, *supra* note 2, at 29 n. 10.

economic sanctions. Military forces may be used "as may be necessary," but those uses should at first be non-violent: "demonstrations" and/or "blockade." Actual violence seems to fall under "other operations." Although I am not arguing that violence is *never* permissible, I note that a canon of legal interpretation is to construe terms such as "other operations" in light of the preceding list. Here, the list clearly encourages the non-violent use of armed forces before any resort to violence.

It is clear, therefore, that the UN Charter permits force only when necessary, and encourages the use of pacific means to settle disputes, by nations and with the involvement of the Security Council and other organs of the UN, such as the General Assembly and International Court of Justice.⁸ After September 11, however, there was no meaningful search for alternatives -- at least that the public can point to.⁹ The United States simply claimed it could act alone under the right of self-defense set forth in Article 51.¹⁰ It is fair to say that Article 51, even read broadly, does not allow the ongoing situation of single nation's deciding if and when it will use force, how much force to use - - and to draw up, unilaterally, a list of nations it aims to attack, in "self-defense." Yet this is precisely what the U.S. is doing.¹¹

THE MOTHER OF INVENTION: REQUIRING A PROBLEM-SOLVING APPROACH IN *JUS AD BELLUM*

Under international law, the UN Security Council and Member Nations must think up and try peaceful means of resolving disputes. But how can they find such means? How does one find such means to respond to the attacks of September 11? Or to respond to the problem of terrorism generally? A problem is that terrorism does not neatly fit within existing categories in international law; indeed, there is not even an agreed-upon definition of terrorism under international law. After September 11, there were debates over whether the attacks were "acts of war" or "crimes," based on the belief that the answer to this question would yield an adequate course of action.¹² Yet this distinction does not make a difference; an "act of war" does not, logically, *necessitate* a military response, or award a nation a blank check to respond with armed force. As discussed above, the UN Charter sets forth how to deal with acts of war.

⁸ See generally Chapter VI, "Pacific Settlement of Disputes."

⁹ Below I discuss the importance of public awareness of this search for alternatives.

¹⁰ See Letter from the Permanent UN Representative of the United States to the President of the UN Security Council (October 7, 2001), UN Doc. S/2002/946 (October 7, 2001).

¹¹ For specific examination of the legality of the U.S. course of action, see the articles listed in the first paragraph of Footnote 2.

¹² See, e.g., Geoffrey Robertson QC, "There is a Legal Way Out of This ... As Long as It is Handled as an Act of International Crime, Not One of War," *Guardian* (London), September 14, 2001 (advocating treating the attacks as crimes against humanity and applying judicial efforts before any military strikes are launched).

If anything, this problem of how to conceptualize terrorism should be regarded as an opportunity to investigate different and fresh approaches. One approach is to use the method of problem-solving where one defines the problem, generates a wide variety of possible solutions using a variety of thinking methods, and then, using reason and experience, chooses the best among them.¹³ A characteristic of competent problem-solving is to ask the right questions. For example, in generating solutions, one might keep asking, "What else might we do here?" To guide that inquiry, one might also ask, "How can we see this problem as an opportunity to address the needs of a wide spectrum of people and constituencies?" To generate answers, a person would use an array of thinking techniques and methods, both traditional and innovative, all of which can be taught and learned.¹⁴ It may not be easy to come up with different approaches, but it is possible, especially when many people with relevant and broad experience are included in the process.

That such an approach was not taken by the U.S. and UN in response to September 11 is apparent. The all-important first step down this road was never taken, which has led to disastrous consequences for human rights: The problem to be solved or goal to be achieved was never adequately defined. For example, was it (1) apprehending Osama bin Laden and key Al Qaeda members, or (2) preventing further terrorist attacks from Al Qaeda and other sources? The military solution -- and the backing of repressive, anti-Muslim regimes in countries such as Uzbekistan,¹⁵ as well as deal-making that, *inter alia*, lifted sanctions imposed on Pakistan and India for their nuclear proliferation¹⁶ -- will quite possibly prove counter-productive to these ends, especially that of limiting violence in the future. One thing that should be clear is that the solution chosen should be reasonably expected to be effective, and not exacerbate the problem.¹⁷

¹³ "Creative Problem Solving," which employs this method, is a growing movement in legal education and beyond, in the U.S. and beyond. This method is described as follows: Creative problem solving is an evolving intellectual discipline that requires lawyers to define problems so as to permit the broadest possible array of solutions, both legal and non-legal. Creative problem solving seeks many points of view, and systematically examines problems for their relational implications at the individual, institutional and societal levels. It seeks a caring approach and solutions that are imaginative or transformative in nature. This explanation comes from Professor Janeen Kerper, Academic Director, McGill Center for Creative Problem Solving, California Western School of Law, San Diego, California, USA. Cal Western has built its curriculum around this approach.

¹⁴ See, e.g., Edward de Bono, *de Bono's Thinking Course*, 1-10 (1982, 1985) (Chapter entitled, "Thinking as a Skill"). See also James L. Adams, *Conceptual Blockbusting: A Guide to Better Ideas* 3d ed. 1-3 (1985). These are but two of many outstanding books in this field.

¹⁵ See Simon Churchyard, "Supporting Tyranny in the Name of Freedom," *Red Pepper*, February, 2002.

¹⁶ Carl Conetta, "Beyond bin Laden: The Temptations of a Wider War," Project on Defense Alternatives, Cambridge, MA (USA): Commonwealth Institute, 28 September 2001, endnote 2 (<http://www.comw.org/pda/0109bm22.html>).

¹⁷ The requirement that the chosen solution be effective is closely related to the *jus ad bellum* requirement of necessity. "Logically, for measures to be necessary to avert a threat, they must be capable of doing so. A relevant question in determining the right to self defence is therefore the

The U.S failure to define the problem and goal caused "mission creep," a term used to describe the tendency of a military incursion to grow in size and objectives. What appeared to be a mission to apprehend one man, Osama bin Laden, or destroy Al Qaeda camps and capabilities, seemed to turn into a mission to liberate Afghans from the Taliban -- a U.S. humanitarian incursion. But whether that was the mission became murky when the U.S. refused to stop bombing to allow food to be trucked in for millions of Afghans facing starvation.¹⁸ What started as a "War on Terrorism" (again, vaguely defined) seemed to become something else.¹⁹ Many Americans whom I know personally and believe to be reasonable asserted that this "liberation" justified, even if only *post hoc*, the military campaign.

Yet questions persist: Has the U.S. "won"? When will the war "end"? Is the threat of terrorism gone? U.S. officials have given ever-changing, often contradictory reports that: Osama bin Laden has escaped from Afghanistan; he remains in Afghanistan; he was probably vaporized by U.S. bombs. Another question persists: What happens if U.S. forces never capture bin Laden -- and is finding him the key to ending international terrorism? That terrorism would somehow end with the destruction of al Qaeda -- even the destruction of all its cells in every country it is said to infest -- is highly unlikely. Terrorism, of course, is a tactic, not a doctrine, form of government, or idea *per se*. In this light, waging a military campaign against it is a fool's errand.

These nagging questions evince the failure to define the problem to be solved. If one does not know whether or when one can declare victory, then the problem has not been defined: Won *what*? Victory over *what*? The U.S. government may have been in shock after September 11. It may have felt compelled, by public opinion, to wage war. That said, the resulting war has been violent and, destructive, and has violated human rights. As a result, it may have increased the likelihood of terrorist attacks in the future.

If the above analysis is correct, then *at the least* it shows the inappropriateness, and, moreover, the danger, of allowing a single nation to determine how it will respond to a major terrorist attack. A collective approach such as the UN Charter provides is necessary, and people of conscience should continue to argue for it.

effectiveness of any proposed measure. If measures against those responsible for an attack will increase the threat then they can hardly be said to be necessary to avert it." Helen Duffy, *supra* note 2 at 11.

¹⁸ See Deborah Barfield, "Afghanistan Edges Toward Famine - Relief efforts hampered by bombing, weather," *Newsday* (New York, NY, USA), November 11, 2001, at 5.

¹⁹ It is unclear that destroying the Taliban was necessary to defeat Al Qaeda, which has been described as having "cells" in up to 60 nations. Indeed, the relationship between the Taliban and Al Qaeda could support an argument for leaving the Taliban in place and infiltrating and/or working with it to gather information about the widespread cells, their training, their capabilities, and the like. Or, the Taliban could have been provided incentives to split off from Al Qaeda, as a report released just after the Symposium for which this paper was written -- suggests. See Carl Conetta, "Strange Victory: A critical appraisal of Operation Enduring Freedom and the Afghanistan war," Cambridge, MA (USA): Commonwealth Institute Project on Defense Alternatives Research Monograph #6, 30 January 2002 (<http://www.comw.org/pda/0201strangevic.pdf>).

Toward A More Inclusive And Open Security Council: Changing International Law And Practice

The chances of effective problem-solving increase when a range of people with broad and relevant experience are included in the process.²⁰ The UN Security Council could facilitate the search for answers to the questions above by calling upon experts, and in particular leaders, workers and scholars from the human rights community. Who better to help think up ways to resolve conflicts while safeguarding human rights? Currently, the Security Council does not encourage such participation from these constituencies; it is the other way around. For example, The NGO Working Group on the Security Council, a group of about 30 NGO representatives from groups such as Amnesty International, CARE, and Oxfam, has worked since 1995 to build informal relationships with members of the Security Council.²¹ This involvement is a step in the right direction. Yet there exists no mechanism to *force* the Security Council to work with such groups; the relationships and meetings are for the most part voluntary, and promoting "cordiality" appears to be an important concern of the working group, which, of course, can impede dialogue and problem-solving.²² International law could be interpreted to force the Security Council to consult with such groups; at the least, this practice should be encouraged and promoted. Indeed, with the weight of the world upon it -- and the potential to be criticized by the world -- the Security Council should welcome such input.

Yet that grave weight also encourages secrecy, which collides with another good way to improve the consideration of peaceful means: increase the openness of UN Security Council deliberations. More openness would likely encourage the inquiry and debate that can lead to better ideas. Openness often disciplines decision-making by encouraging it to follow principles of reason and equity. As the names of groups such as Human Rights Watch suggest, it is easier to ignore human rights when no one is looking.

Thus it is time to reform current Security Council and UN rules and practice to encourage inclusiveness and openness. The Security Council should "judicialize," i.e., show the thinking behind, its conclusions regarding its own uses of force as well as the use of force by individual nations. For example, the Security Council could be required to produce a document discussing alternatives to force and whether and why each would fail. In this way, the range of the search could be seen, and specious, tendentious arguments exposed. Again, there are few decisions that are graver, and thus more worthy

²⁰ The chances are also increased when the decision-makers are trained in problem-solving. One suggestion would be to encourage the Security Council to attend seminars to develop these skills. In fact, such training is often provided by consultants to high level management of large corporations and other institutions.

²¹ Information about the NGO Working Group on the Security Council can be found on the Global Policy Forum website, www.globalpolicy.org.

²² *See id* (describing relationships between the Working Group and Council members as "cordial").

of discussion, than whether to unleash a modern war machine, which always kills civilians and forces others to flee and live in refugee camps.

Of course there may be an objection that such a "judicialization" of the Security Council would deprive it of necessary speed in making such decisions by turning it into a "debating society." Yet the UN Charter accounts for this requirement of speed, allowing, for example, nations to use force to defend themselves from armed attack "until the Security Council has taken measures necessary to maintain international peace and security."²³ The Security Council is in fact designed as a deliberative body, as the Charter sections outlining its powers make clear.²⁴ In any case, whether lighting speed was necessary after September 11 is doubtful. U.S. officials globe-trotted to negotiate rights to use bases in, and fly bombers over, various nations, and to shore up support from allies, for more than three weeks. Surely, U.S. officials could have made better use of the Security Council in this time. Indeed, had the Security Council deemed military force necessary, it simply could have used its powers under the UN Charter to require member nations to provide the bases and fly-over rights the U.S. spent time negotiating on its own -- and possibly more quickly.²⁵

Pressure from the General Assembly

If the Security Council will not conduct such an inquiry regarding the necessity for using force and violence in a given case, then the General Assembly should conduct its own. The General Assembly could also work with experts, activists and scholars to find alternatives to force in impending conflicts, which might pressure the Security Council to justify its decisions.

Solutions also could be generated "proactively" to address other, perhaps less pressing problems that might lead to military incursions if left to fester; Afghanistan in 2000 comes to mind. These suggestions could be published widely. The General Assembly, as a "voice for the South," has more of an interest in preventing military campaigns by the North, which dominates the Security Council; efforts at "judicialization" might have to begin here.

Pressure from the International Court of Justice (ICJ)

When possible, member nations can initiate claims to the International Court of Justice concerning particular uses of force. Nations indirectly affected by a particular use of force could develop legal theories on which to base claims for these effects. Such action can help create doctrines to prevent future uses of force.

In other instances, the General Assembly or qualified UN organizations could use their powers under Article 96 to request the ICJ to issue an advisory opinion concerning the legality of a particular use of force. Although working through the Court can be time-

²³ UN Charter, Article 51.

²⁴ See UN Charter, Chapters V - VII.

²⁵ See UN Charter, Article 43(1) ("All Members of the United Nations ... undertake to make available to the Security Council ... armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining peace and security.").

consuming, the Court by its nature can conduct fairly searching inquiries concerning the legality of the use of force.²⁶

Advisory opinions offer a real opportunity for guidance. Questions can be framed more broadly than the question a particular member nation might be able to pose in the context of an actual claim for damages. For example, in 1996 the ICJ issued an advisory opinion in response to a request by the General Assembly, which the ICJ framed as follows: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"²⁷ The advantage of the advisory opinion here is clear: No nation had to wait to be attacked by nuclear weapons before raising the question. Perhaps a similar question could be framed by the General Assembly to ask whether the use of military force to topple the governments of "terrorist nations" is ever legal, or under what circumstances it would be legal to use force in response to terrorist attacks. Obviously, great care would be needed to frame such a question, and I do not attempt to frame it here; I am merely suggesting the possibility. Similarly, there may be a risk of an unsatisfactory answer; again, I merely suggest the possibility of seeking an advisory opinion, as a way of voicing these concerns, and of challenging the dominant powers.

Pressure from Outside the UN

In lieu of, or in addition to, these efforts by the various UN organs, human rights experts and scholars must step up their own efforts to generate and publish alternatives to using force, and to generate popular support by showing the common benefits that will accrue from protecting human rights. One of the things that struck me after September 11, as an American arguing against an impending, and then actual, war against Afghanistan, was the lack of alternatives presented. The questions I heard most were, "If you oppose war, then what do you suggest instead?" and, "What are you saying, we do nothing?"²⁸ Notwithstanding that to criticize a proposal one need not posit an alternative, alternatives are what many grieving, fearful and angry Americans demanded in response to any criticism of the war. Despite that international law may seem calm and deliberative concerning *jus ad bellum* decisions, a population responding to an outrageous terrorist attack is anything but calm and deliberative. The legal mechanisms

²⁶ See, e.g. *Nicaragua v. USA*, ICJ Rep. 1986, 14.

²⁷ *ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 35 ILM 809 (1996). This question was originally, "Is the threat or use of nuclear weapons in any circumstance permitted under international law? (Est-il permis en droit international de recourir a la menace ou a l'emploi d'armes nucleaire en toute circonstance?)" UNGA Res. 49/75K (Dec. 15, 1994). This question was not novel: The General Assembly passed a resolution in 1961 declaring nuclear weapons illegal, and the request for the advisory opinion from the ICJ was originally brought in 1993 by the WHO. Peter Malanczuk, *supra note* 5, 346-50.

²⁸ Some writers did, of course, suggest alternatives. See, e.g., Stuart Diamond, "A Violent War Against Terrorism is Doomed to Fail," *The Philadelphia Inquirer*, September 23, 2001; Jamie Lowther Pinkerton, "Brains, Not Bombs," *The Spectator*, October 27, 2001; The Rev. Dr. Peter Wells and Sally Milbury-Steen, "War is Not the Only Way," *Delaware News-Journal*, October 16, 2001; Philip W. Wilcox, "The Terror," *The New York Review of Books*, October 18, 2001 at 4. For a creative, wide-ranging, general list of ways to combat terrorism, see United Nations Office for Drug Control and Crime Prevention, "A Classification of Counter-Terrorism Measures" (http://www.undcp.org/terrorism_measures.html).

to determine the responses to such attacks must take this reality into account. (As should the fact that a superpower might avoid the UN altogether.) Ideally, human rights activists would have been able, after September 11, to point to concrete alternatives to war that would have proved less costly, in both lives and money; to pose less of a danger of increasing the likelihood of responsive terrorist attacks; and to punish the planners and perpetrators of the September 11 attacks. Human rights activists should keep in mind that for many people, war will seem like the best response to an outrageous terrorist attack. We should try to defuse the fear, anger and other feelings that fuel such a belief.

Ultimately, governments respond to their people, and UN Security Council members are not oblivious to their own governments' positions and needs. Promoting effective alternatives to using force -- both when conflict is imminent and when it is not -- will help expose some decisions by the Security Council (and nations) to use force as unreasonable and inequitable, and thus illegal. Shining light on the decision-making process could increase the incentive to find, and try, peaceful options.

CONCLUSION

The concept of necessity in *jus ad bellum* requires that before force may be used to resolve conflicts between nations, the UN Security Council and, in the case of self-defense, national officials, must undertake a penetrating and careful search for and consideration of peaceful means, and must try these peaceful means unless they would prove futile. This is a legal requirement. It is not simply idealistic.

The best way to carry out this requirement is for the actual decision-makers to use a problem-solving approach and expand the pool of those who can help generate possible solutions. To that end, the Security Council must embrace other actors, such as government and NGO officials, experts, scholars, and in particular human rights activists, experts, and leaders from around the world. Concern for peace and human rights is not the province of "peaceniks" or "human rights activists" alone; it is the province, too, of those whose job it is to follow and carry out international law. Thus, for the human rights community to tackle the problem of how to make the Security Council decision-making process more inclusive and more open, we must ask, as a first step, "How can we get the Security Council and governments to seek other means, and to include us in that process?" One way to do this now is by focusing ourselves on finding peaceful alternatives to force and convincing the public of their efficacy, which could expose particular uses of force as unreasonable and unnecessary. We can also use organs of the UN such as the General Assembly and International Court of Justice in raising these concerns. In turn, this exposure could put pressure on the Security Council and governments to consider and adopt reasonable, effective and equitable peaceful means.

The wide search for alternatives is eminently practical and reasonable, and necessary. There appears to be no other way for humankind to make the leap to peaceful resolution of conflicts and problems. Human rights are among the first to fall by the wayside in war. Preventing war is a necessary first step in protecting human rights, and we must turn much of our energy toward finding alternatives, and toward forcing governments to try them.