A Just War? Hardly

Noam Chomsky

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Spurred by these times of invasions and evasions, discussion of "just war" has had a renaissance among scholars and even among policy-makers.

Concepts aside, actions in the real world all too often reinforce the maxim of Thucydides that "The strong do as they can, while the weak suffer what they must" — which is not only indisputably unjust, but at the present stage of human civilisation, a literal threat to the survival of the species.

In his highly praised reflections on just war, Michael Walzer describes the invasion of Afghanistan as "a triumph of just war theory," standing alongside Kosovo as a "just war." Unfortunately, in these two cases, as throughout, his arguments rely crucially on premises like "seems to me entirely justified," or "I believe" or "no doubt."

Facts are ignored, even the most obvious ones. Consider Afghanistan. As the bombing began in October 2001, President Bush warned Afghans that it would continue until they handed over people that the US suspected of terrorism.

The word "suspected" is important. Eight months later, FBI head Robert S. Mueller III told editors at The Washington Post that after what must have been the most intense manhunt in history, "We think the masterminds of (the Sept. 11 attacks) were in Afghanistan, high in the al-Qaida leadership. Plotters and others — the principals — came together in Germany and perhaps elsewhere."

What was still unclear in June 2002 could not have been known definitively the preceding October, though few doubted at once that it was true. Nor did I, for what it's worth, but surmise and evidence are two different things. At least it seems fair to say that the circumstances raise a question about whether bombing Afghans was a transparent example of "just war."

Walzer's arguments are directed to unnamed targets — for example, campus opponents who are "pacifists." He adds that their "pacifism" is a "bad argument," because he thinks violence is sometimes legitimate. We may well agree that violence is sometimes legitimate (I do), but "I think" is hardly an overwhelming argument in the real-world cases that he discusses.

By "just war," counterterrorism or some other rationale, the US exempts itself from the fundamental principles of world order that it played the primary role in formulating and enacting.

After World War II, a new regime of international law was instituted. Its provisions on laws of war are codified in the UN Charter, the Geneva Conventions and the Nuremberg principles, adopted by the General Assembly. The Charter bars the threat or use of force unless authorized by

the Security Council or, under Article 51, in self-defense against armed attack until the Security Council acts.

In 2004, a high level UN panel, including, among others, former National Security Adviser Brent Scowcroft, concluded that "Article 51 needs neither extension nor restriction of its long-understood scope … In a world full of perceived potential threats, the risk to the global order and the norm of nonintervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all."

The National Security Strategy of September 2002, just largely reiterated in March, grants the US the right to carry out what it calls "pre-emptive war," which means not pre-emptive, but "preventive war." That's the right to commit aggression, plain and simple.

In the wording of the Nuremberg Tribunal, aggression is "the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole" — all the evil in the tortured land of Iraq that flowed from the US-UK invasion, for example.

The concept of aggression was defined clearly enough by US Supreme Court Justice Robert Jackson, who was chief prosecutor for the United States at Nuremberg. The concept was restated in an authoritative General Assembly resolution. An "aggressor," Jackson proposed to the tribunal, is a state that is the first to commit such actions as "invasion of its armed forces, with or without a declaration of war, of the territory of another State."

That applies to the invasion of Iraq. Also relevant are Justice Jackson's eloquent words at Nuremberg: "If certain acts of violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us." And elsewhere: "We must never forget that the record on which we judge these defendants is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well."

For the political leadership, the threat of adherence to these principles — and to the rule of law in general — is serious indeed. Or it would be, if anyone dared to defy "the single ruthless superpower whose leadership intends to shape the world according to its own forceful world view," as Reuven Pedatzur wrote in Haaretz last May.

Let me state a couple of simple truths. The first is that actions are evaluated in terms of the range of likely consequences. A second is the principle of universality; we apply to ourselves the same standards we apply to others, if not more stringent ones.

Apart from being the merest truisms, these principles are also the foundation of just war theory, at least any version of it that deserves to be taken seriously.

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