A ‘Good War,’ But Is It Just?

Applying Just War Criteria to the U.S. Military Mission in Afghanistan and Pakistan

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The day after the 9/11 attacks, I was asked to address an assembly at Goshen College, an important center of Mennonite learning in northern Indiana. I decided to accept the invitation as a way of exploring how peace advocates and pacifists might respond to such acts of extreme violence. Although I have been a vocal critic of U.S. wars in Vietnam, Central America, and Iraq, I have never considered myself an absolute pacifist. I emphasized the criminal nature of the 9/11 attacks, and the need for vigorous law enforcement to bring the perpetrators to justice. Nothing can justify such heinous acts of mass murder, and no lawful effort should be spared in tracking down those responsible. I suggested the use of the International Criminal Court or a special UN tribunal as possible vehicles for mobilizing cooperative legal action against the terrorists. I cautioned against unilateral military action that could make matters worse and urged greater U.S. cooperation with other nations in developing effective strategies for apprehending those responsible and preventing such attacks in the future. [JPT Practices]

Glen Stassen and his colleagues have developed a range of “just peacemaking” principles and practices for preventing armed conflict.\(^1\)

As the U.S. prepared to launch military strikes in Afghanistan in October 2001, most commentators supported the decision and considered the use of force a necessary and legitimate response. The U.S. Conference of Catholic Bishops issued a pastoral message on 14 November 2001 acknowledging the legitimacy of using force in response to the 9/11 attacks. “The dreadful deeds of September 11 cannot go unanswered,” the statement declared.

Not all peace advocates were convinced. The proper response to the criminal attacks of Al Qaeda was not military invasion, they asserted, but vigorous international police efforts to apprehend perpetrators and prevent future attacks. Jim Wallis of Sojourners and Bob Edgar of the National Council of Churches circulated a statement among religious leaders appealing for “sober restraint” and warning against indiscriminate retaliation that would cause more loss of innocent life. “Let us deny [the terrorists] their victory by refusing to submit to a world created in their image,” the declaration read. The statement was
eventually signed by more than 4,000 people and was published in The New York Times on 19 November 2001.2

An editorial in the Jesuit magazine America noted that, although the Afghan government did not accept the Bush administration’s ultimatum to turn over Osama bin Laden, Taliban leaders nonetheless offered “1) to negotiate, 2) to put him on trial in an Islamic court and 3) to turn him over to a third country if the United States provided evidence of his guilt.”3 Two years earlier, when the UN Security Council imposed sanctions against the Taliban regime in response to the bombing of U.S. embassies in Africa, officials in Kabul made similar gestures of diplomatic flexibility. In both instances the U.S. dismissed the offers as delaying tactics and rejected them as inadmissible legally and unacceptable politically. It is possible, however, that Taliban leaders may have been seeking ways to avoid external pressures and distance themselves from bin Laden.4 In the fall of 1999, as sanctions were about to be enacted, bin Laden wrote a letter to Taliban Leader Mullah Muhammad Omar offering to leave Afghanistan. Some observers believe that the Taliban would have been willing to see bin Laden and his terrorist network depart if a graceful exit could have been arranged.5

The Bush administration never seriously considered an alternative to war in Afghanistan. According to a Los Angeles Times report at the time, “Bush advisors say the president decided from the start he wanted to launch a large-scale military response to the attacks” and never veered from that determination. Asked whether Bush ever considered an alternative to military action, National Security Advisor Condoleezza Rice replied firmly, “No.”6 As Duane Shank wrote in an article for Mennonite Life, “Military force was the first resort, not the last.”7

II

The core objective has been and remains to prevent Al Qaeda-related extremist networks from using Afghan and Pakistani territory for global terrorist attacks. The White House Interagency Policy Group’s White Paper of March 2009 defined the priority goal of U.S. policy as “disrupting terrorist networks in Afghanistan and especially Pakistan to degrade any ability they have to plan and launch international terrorist attacks.”8

The U.S. administration’s White Paper speaks of promoting “a more capable, accountable, and effective government in Afghanistan.” It calls for developing “self reliant Afghan security forces” and assuring a stable government and “vibrant economy” in Pakistan.9 The question for both objectives is whether they can be met through military means.

From the outset U.S. military involvement in Afghanistan and Pakistan has been based on three fundamental strategic assumptions: 1) that war and military action are necessary and appropriate means of defeating Al Qaeda and preventing global terrorist strikes, 2) that the Taliban is equivalent to Al Qaeda and thus a legitimate target of military attack, and 3) that the U.S. and its allies must fight and win a counterinsurgency war against the Taliban. All three assumptions are highly questionable strategically and pose serious dilemmas ethically.
A fourth strategic dimension has entered the equation in recent years—the extension of military operations to Pakistan. Whether the United States has legal authority to wage war in Afghanistan is at least arguable, but no such authority exists in the case of Pakistan. The self-defense argument does not apply, since Pakistan was in no way responsible for the 9/11 attacks. Pakistan’s government has not given consent for U.S. military operations or bombing strikes into its territory. Pakistani leaders have condemned such attacks as counterproductive militarily and as a violation of the nation’s sovereignty.

III

Al Qaeda’s attack on the United States was a politically motivated criminal act by international conspirators. It was not an act of war. The terrorist strikes were admittedly of monstrous proportions—killing nearly 3,000 people, striking the power centers of the world’s mightiest nation, and sending shock waves of fear and horror across the globe—but they were mounted by a non-state organization, not another government. Al Qaeda has the capability to inflict casualties, but not the power to threaten state power. The organization lacks substantial armed forces and does not pose a threat to the existence or military power of the United States or other major states. According to Glenn Carle, a twenty-three-year veteran of the CIA who served as deputy national intelligence officer for transnational threats, Al Qaeda’s “capabilities are far inferior to its desires.”

Osama bin Laden has vowed to wage war on the United States and overthrow corrupt Arab governments, but his organization has never had even the faintest capability of achieving such megalomaniacal purposes. To believe otherwise, as many U.S. officials apparently did in the days after 9/11, was to give credence to bin Laden’s pretensions and play into his hands. To declare the campaign against Al Qaeda a ‘war on terror’ was to give military status to a criminal organization. It transformed mass murderers into soldiers, inadvertently raising their credibility and moral stature in some Muslim communities.

Empirical evidence confirms that war is not an effective means of countering terrorist organizations. A recent RAND Corporation study shows that terrorist groups usually end through political processes and effective law enforcement, not the use of military force. An examination of 268 terrorist organizations that ended during a period of nearly forty years found that the primary factors accounting for their demise were participation in political processes (43 percent) and effective policing (40 percent). Military force accounted for the end of terrorist groups in only 7 percent of the cases examined.

Counterinsurgency specialists have long recognized that nonmilitary efforts are necessary for overcoming violent militancy. The classic book on the subject by David Galula calls for a struggle that is 80 percent nonmilitary. Senior Pentagon advisor David Kilcullen stated more recently that the struggle may be 100 percent nonmilitary. By contrast, the current U.S. military mission in Afghanistan is more than 80 percent military—exactly the reverse of what strategists recommend.

War policies are not only inappropriate, they are counterproductive. The invasion and occupation of Iraq generated what Francis Fukuyama termed a “frenzy of anti-Americanism” around the world. Al Qaeda and related extremist groups experienced a significant boost in recruitment and political support in response to the invasion and occupation of Iraq. While the hostility toward U.S. policy has started to ebb
under the Obama administration [NYT yesterday on Pew Global Survey], and Al Qaeda-related militancy has diminished significantly in Iraq, the recruitment of jihadi extremists has risen sharply in Afghanistan and Pakistan.

Insert:

The official report of the United States Department of State on international terrorism shows the astounding increase in terrorist incidents since the Iraq War and the torture of prisoners:

• 208 terrorist attacks caused 625 deaths in 2003;
• 3,168 attacks caused 1,907 deaths in 2004.
• 11,111 attacks caused 14,602 deaths in 2005.
• 14,500 attacks caused 20,745 deaths in 2006.
• Approximately 14,500 attacks caused 22,605 deaths in 2007.¹

Former Secretary Rumsfeld has mused that more terrorists are being recruited than the United States is killing or capturing. The agreed assessment by the 16 U.S. intelligence agencies in 2006 says U.S. actions against Arab Muslims are increasing anger and increasing terrorist incidents and training for terrorism. Torture works: it works to cause widespread anger and to create increasing numbers of terrorists.

The presence of foreign troops is the principal factor motivating armed resistance and insurgency in the region. A recent report of the Carnegie Endowment for International Peace observed, “the more military pressure is put on a fragmented society like Afghanistan, the more a coalition against the invader becomes the likely outcome.” The presence of foreign troops is “the most important factor in mobilizing support for the Taliban.”¹⁵ Graham Fuller, former CIA Station Chief in Kabul, wrote: “Occupation everywhere creates hatred, as the U.S. is learning.” Although few Pashtuns support bin Laden’s global agenda, “many are . . . willing to ally themselves at home with Al Qaeda against the U.S. military.”¹⁶ Kilcullen makes the same point in the new book, The Accidental Guerrilla.¹⁷ The foot soldiers of the Afghan insurgency are fighting to drive out foreign military invaders, not to reinstate the caliphate or advance Al Qaeda’s globalist agenda. The larger the military force arrayed against them, the more intense the armed resistance.¹⁸ In Pakistan as well, U.S. military polices and air strikes are “driving more and more Pashtuns into the arms of Al Qaeda and its jihadi allies,” according to a report by Selig Harrison.¹⁹ The Taliban and Al Qaeda jihadist groups have benefited from opposition to foreign occupation and have gained support as leaders of the resistance.

The policies of waging war in Muslim countries have the inadvertent effect of validating bin Laden’s warped ideology of saving Islam from foreign infidels. When the United States invades and occupies Muslim countries, this undermines our moral standing and validates the false image of America waging war on Islam. Polls in Muslim countries have shown 80 percent agreement with bin Laden’s contention that American policy is directed against Islamic society.²⁰ As long as these attitudes prevail there will be no end of recruits willing to blow themselves up to kill Americans and their supporters.

¹ Los Angeles Times, April 29, 2006, A.7, and updated from news reports subsequently.
President Obama declared during his address in Cairo in June 2009 that “America is not—and never will be—at war with Islam.” His administration has discontinued the use of the phrase ‘war on terror’ and is seeking to emphasize civilian means of overcoming violent extremism. But the new tone of the administration has not yet been translated into substantive change on the ground. U.S. policies and commitments in the region remain heavily militarized, and are becoming more so with the addition of 21,000 troops.

IV

The critique of war as a strategy for countering terrorism does not mean that U.S. military forces have no role to play in Afghanistan and Pakistan. Reducing and removing the presence of foreign forces is necessary to diminish support for jihadi extremism, but military exit is likely to be a gradual process, one that should be linked to enhanced diplomatic efforts and a commitment of sustained economic assistance, as outlined below. Security is needed to protect the innocent and prevent attacks, to defend civilians who perform development and peacebuilding tasks, and to support civil society leaders and tribal chiefs who stand up against Taliban extremism. Schools and other development projects need to be defended. These security protections should be provided wherever possible by local forces, but U.S. and NATO units can play a supportive role by offering training and equipment.

Cooperative law enforcement has been and remains one of the most effective tools for countering terrorist networks. In the weeks after 9/11 the United States worked bilaterally with many countries and multilaterally through the UN Security Council to establish a global counterterrorism program focusing on law enforcement cooperation and the denial of financial assets to Al Qaeda and its supporters.21 This “invisible war” against terrorism has had significant results. In the months after the attacks, hundreds of suspected terrorists were arrested, and tens of millions of dollars in alleged terrorist financial assets were frozen. These efforts, which have continued to the present, have impeded Al Qaeda operations and impaired its ability to launch terrorist strikes.22 Multilateral police action has been successful in thwarting terrorist attacks. In August 2006 British law enforcement and intelligence officials cooperated with their counterparts in Pakistan and the United States to interdict plots against flights from London to U.S. cities that could have killed thousands.

V

U.S./NATO strategy equates the goal of countering Al Qaeda with defeating the Taliban. The original decision to overthrow the Taliban regime in 2001 was based on this assumption, and current policy remains wedded to it. This assessment is crucial to the current military mission, since nearly all U.S. military action in the region is directed at the Taliban. Al Qaeda has had only a marginal role in recent armed attacks.23 Only a few hundred Al Qaeda militants are estimated to be active in the region, mostly in northern Pakistan. The movement as a whole has been widely discredited among Muslims around the world, especially in Iraq, and has lost political momentum.24 The U.S./NATO military operation in Afghanistan and Pakistan is primarily a war against the Taliban, not Al Qaeda. This alters the moral calculus and casts doubt on the assertion of self-defense as a justification for war.
Al Qaeda and the Taliban have indeed been closely intertwined over the years. Both are rooted in an extremist jihadi ideology and are fiercely opposed to the presence of foreign troops in Muslim communities. They are interdependent militarily, financially, and politically. Yet important distinctions exist between the two. The Taliban is a network of Pashtun militia groups in Afghanistan and Pakistan. Al Qaeda, by contrast, is an Arab-based network focused on a global agenda of attacking Western interests. Taliban groups do not have a transnational agenda and unlike Al Qaeda have not committed aggression against or declared war on the United States. They are focused on removing foreign troops from their soil and assuring Sharia law in their communities. Selig Harrison observed: “In contrast to Al Qaeda, with its global terrorist agenda, most of the Taliban factions focus primarily on local objectives in Afghanistan and [northern Pakistan] and do not pose a direct threat to the United States.”

The Taliban is not a unified organization but a complex, diverse movement encompassing more than a dozen separate insurgent organizations in Afghanistan and dozens of Islamist groups in Pakistan. Some Taliban elements are sympathetic to bin Laden’s global agenda, but most are motivated by local concerns. The various Taliban elements are divided by ideology and purpose, but they are united now by one overriding objective: to rid their region of foreign forces. The current increase in military operations and U.S. troops likely will deepen this common commitment and foster continued armed resistance. The bitter irony is that militarized strategies are providing the primary motivation to unify and strengthen the Taliban in its determination to resist foreign forces.

VI

Apart from concerns about the legitimacy and wisdom of waging war on the Taliban, serious questions arise about the viability of such a strategy. Probability of success is an important criterion in just war doctrine, requiring that military force not be used in a futile cause or in circumstances where disproportionate force would be needed to assure success. Public officials and expert analysts have raised doubts about the ability of the U.S. and its allies to achieve military victory in the current struggle. Afghanistan’s reputation as the graveyard of empires is well earned and based on a long history of fierce and often successful military resistance to foreign military intervention, most strikingly in the defeat of the Soviet occupation of 1979–89. A similar pattern of resistance has emerged now in the Pashtun regions of the country and has spread to northwest Pakistan. The meager results so far of nearly eight years of U.S./NATO military operations reinforce doubts about military viability.

Obama administration officials argue correctly that military efforts to date have been seriously under-resourced. The diversion of U.S. forces and strategic attention to a costly and unnecessary war in Iraq was a grave blow to the fight against Al Qaeda and the Taliban. U.S. and NATO forces have been woefully inadequate in the face of an increasingly robust Taliban insurgency. The administration asserts that these mistakes are being corrected now and that a change in strategy and increase in military forces will reverse the pattern of failure.

U.S. officials pin their hopes for success on the effective implementation of the principles of counterinsurgency warfare. General David Petraeus, former commanding general in Iraq, literally wrote
the book on counterinsurgency in coauthoring a new military manual that took effect in December 2006.26

The distinguished military historian Martin van Creveld has noted that attempts to suppress insurgency usually end in failure. When guerrilla forces are able to maintain armed struggle for prolonged periods, often for decades, they are able to prevail over stronger and more technologically advanced adversaries.27 The occupying forces may win every battle and destroy much of the insurgent capability, yet in the long run the guerrilla forces usually win.

Of particular concern is the use of unmanned aerial vehicles, known as drones. The U.S. government has employed Predator and Reaper drones with increasing frequency for remote-controlled bombing strikes in Pakistan. According to the congressional testimony of former Pentagon adviser Kilcullen, drone strikes in Pakistan since 2006 have killed fourteen alleged senior Al Qaeda leaders. At the same time these strikes have killed nearly 700 Pakistani civilians. According to Kilcullen, these attacks “are deeply aggravating to the population” and have “given rise to a feeling of anger that coalesces the population around extremists and leads to spikes in extremism” in other parts of the country.28 An October 2008 opinion survey found that respondents in Pakistan were more than twice as concerned about U.S. missile strikes (54 percent) than about Al Qaeda and Taliban operations (23 percent).29 Law professor Mary Ellen O’Connell notes in a new paper on the subject that these drone attacks lack legal justification and violate fundamental moral principles. “Fifty civilians killed for one suspected combatant killed is a textbook example of a violation of the proportionality principle,” writes O’Connell.30

VIII

If counterinsurgency warfare against the Taliban violates moral principles and is counterproductive militarily and politically, alternative means must be found for meeting the legitimate objective of countering Al Qaeda and preventing global terrorist attacks. The just war principle of last resort demands that peaceful means be tried and exhausted before war is permissible.

The new U.S. plan includes an attempt to enhance economic development and democracy building as necessary means of ameliorating the conditions that give rise to terrorism. The proposed increase in civilian programs is grossly inadequate, however, and is dwarfed by the enormous commitment to military operations. A few hundred civilians are being deployed to assist with governance and economic development programs, but 21,000 more troops are arriving, on top of the 70,000 international forces already there. The U.S. has been spending approximately $2 billion a month on military operations in Afghanistan and will spend significantly more under the new plan. The proposed civilian effort pales by comparison and will fail if it is subordinated to military operations.

Many of the new civilian aid programs are being integrated into military operations. This continues a controversial practice of utilizing development assistance as a tool of security policy, subordinating traditional goals of mitigating poverty to the broader agenda of counterterrorism and international security. The new approach blurs the analytic boundaries between security and development while politicizing both and detracting from efforts to improve the lives of disadvantaged communities. To date
much of the U.S. funding for development in Afghanistan has been channeled through Provincial Reconstruction Teams (PRTs). The PRTs have been criticized in a report from the Center for Global Development as being “overwhelmingly military in scope and operation.” Their primary focus is force protection and security assistance. The PRTs have suffered from “generally poor development practice” and “relative lack of attention to promoting good governance and the rule of law.” Problems identified with the PRTs include “an overly-militarized focus, the absence of inter-agency doctrine, inadequate civilian resources and personnel, no baseline assessments, meager strategic planning, and few metrics for assessing the impact of activities.”

Development programs are traditionally the province of civilian agencies, not military services. U.S. armed forces are not designed, trained, or equipped for nation building and social stabilization purposes. Assigning such tasks to soldiers rather than civilians displaces the role of civil society and undermines the principles of local self-reliance and grassroots empowerment that are vital to genuine development and democratic governance. The work of development and democracy building must be performed by civilians, especially local people, through the active engagement of public officials and civil society.

IX

Peacemaking and diplomacy are essential elements of an alternative strategy for preventing armed conflict and violent extremism. South Asia experts Barnett Rubin and Ahmed Rashid have proposed a political and diplomatic initiative to split the Taliban movement and peel away support from Al Qaeda-related groups. Their plan calls for luring ‘reconcilable’ elements into a political accommodation with existing governments. They propose a ‘grand bargain’ that would “seek a political solution with as much of the Afghan and Pakistani insurgencies as possible, offering political inclusion, the integration of Pakistan’s indirectly ruled Federally Administered Tribal Areas (FATA) into the mainstream political and administrative institutions of Pakistan, and an end to hostile action by international troops in return for cooperation against Al Qaeda.” The Afghan and Pakistani governments have supported such an approach and are trying to find political means of ending the war. A February 2009 opinion poll in Afghanistan found 64 percent of respondents supporting a policy of negotiating with the Taliban and allowing its members to hold public office if they agree to stop fighting.

A related but more localized and limited conception of this approach is presented in the July/August issue of Foreign Affairs by Fotini Christia and Michael Semple. The authors advocate a “nimble, sophisticated political campaign” to persuade Taliban groups to give up the fight and flip to the side of the Afghan government. A number of Taliban commanders have turned and a national reconciliation commission has been established, but to date these efforts have been meager and under-resourced. Christia and Semple urge more vigorous efforts to engage Taliban militia leaders and to protect and compensate those who go over to the government side. The main objective should be to obtain commitments from tribal leaders to cooperate in isolating Al Qaeda and preventing the use of their territory for global terrorist strikes.

Rubin and Rashid assert that local Taliban representatives have expressed interest in such a bargain, in return for the withdrawal of foreign troops. Christia and Semple also report Taliban interest in a timeline
for troop withdrawal, although the authors argue that this should be linked to prior “progress on reconciliation.” An agreement for prohibiting terror attacks from Afghanistan and ending foreign military operations would “constitute a strategic defeat for Al Qaeda,” according to Rubin and Rashid. The proposed diplomatic strategy would need to be combined with a commitment of sustained international political support and large-scale development aid. Most of all it needs the political support of the United States, a willingness in Washington to demilitarize the struggle and place greater emphasis on political and economic solutions.

Negotiations with militant groups in Afghanistan and Pakistan are already underway, but the results to date are not encouraging. The so called peace agreement negotiated in Swat between the Pakistani government and Taliban militias quickly collapsed and was followed by a bloody military offensive by the Pakistani army that left hundreds dead and wounded and that displaced hundreds of thousands of civilians, creating the largest refugee crisis in Pakistan in decades. U.S. officials have actively discouraged concessions to the Taliban and have pressured the Pakistani army to increase its military attacks against militia groups.

Representatives of Taliban and militia leaders have offered to halt their attacks against foreign and government troops, in return for the removal of outside forces. They have demanded a pullback of foreign forces to their bases, followed by a cease-fire and a timetable for phased military withdrawal. They have proposed replacing U.S./NATO troops with an international peacekeeping force drawn from predominantly Muslim nations, pledging not to attack such a force. U.S. officials have rejected these terms and have asserted that negotiations should occur only after American military pressures have inflicted greater pain on the Taliban and the militia groups have agreed to lay down their arms.

The alternative to a dubious strategy of continuous war is the pursuit of military exit as a means of winning political concessions. This is the approach recommended in the Carnegie Endowment report. It would reverse the logic of current U.S. strategy, using the presence of foreign troops not in pursuit of illusory victory over Taliban insurgency but as a bargaining chip to induce political agreement and reconciliation. The strategy of de-escalation would undercut Taliban claims that the U.S. seeks permanent bases in the region and neutralize appeals for jihad against ‘infidel’ foreign invaders. It would open up space for Afghan institutions and political solutions. The foreign troops that remain would forego combat operations and focus on limited missions where they can make a difference, training local security forces and providing civilian protection. Military disengagement would be linked to a greatly increased commitment to development, democracy, and human rights. The goal would be to reduce support for violent extremism and enhance the ability and legitimacy of local governments to provide security and public services.

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those polled in four Muslim countries, “8 in 10 believe that the U.S. seeks to ‘weaken and divide the Islamic world.’”


30 Mary Ellen O’Connell, “Legal Limits on Combat Drones: A Case Study of their Use in Pakistan” (draft manuscript, June 2009), 15.


