



War on terror : Hitler would have approved

As war loomed over Kosovo 10 years ago, Germany's then foreign-minister, Joschka Fischer, explained that the principle that had always governed his involvement in politics was: "Never again war; never again Auschwitz!" Ethnic cleansing and violence in Kosovo, however, soon made it clear to him that there were moments when one had to choose between those two imperatives: a new Auschwitz sometimes could be prevented only by means of war.

The idea of a "just war", legitimised by a *justa causa* (just cause), though scorned for many years, is thus back in vogue. The notion used to be frowned upon because any warring party tends to view its own cause as just. Moreover, in the absence of an impartial judge, a winner can always impose his "truth" upon the vanquished.

While "just wars" seem to be back, international law has also come to condemn waging aggressive ("unjust") war as a punishable crime, with the consequence that every warring party now declares its wars to be a defence against foreign attack, much as Adolf Hitler did in 1939. (Indeed, all war ministries have become "defence ministries", leaving one to wonder against whom a country must be defended if there are no longer any attackers.) But, in this matter as well, the winner gets to judge who was the aggressor, so it is fortunate that Hitler did not prevail.

Of course, military intervention for purposes beyond defending one's country remains possible, but requires a UN Security Council resolution. The latter alone, provided no permanent member of the Security Council disagrees, can decide whether a war is legitimised by a just cause (nowadays generally a gross breach of human rights).

The Security Council's permanent members thus remain *legibus soluti*, that is, sovereign in the 17th-century sense of the word, meaning "able to do evil with impunity". The right of humanitarian intervention limits the sovereignty of all other countries. Behind this is the notion that respect for human rights can be enforced externally, together with the hope that rulers will behave better if it appears they may be held accountable for violating human rights.

Whether this hope is justified remains to be seen. In the meantime, the return to the idea of a just cause carries big risks, especially evident when, as happened in Georgia, a great power claims the mantle of a protector of the rights of its nationals in a neighbouring country. If this idea stands, Russian minorities from the Baltic to the Crimea may turn out to be ticking time bombs.

So the object of international law is not to ban "unjust" wars and permit "just" ones, but to assure that wars are waged for limited aims, and don't rage out of control. You have to be able to lose without losing everything. The language of justice and injustice, and demands of unconditional surrender and criminal

retribution for the vanquished only promote - indeed, provoke - total war.

The flip side of the criminalisation of "aggressive" war is the fact that peace is also no longer a reliable legal state that can be ended only by a formal declaration of war. When state leaders decide to bomb a city like Belgrade without any formal end to peace, they are not engaging in war, but in a form of state terrorism.

Terrorism will prevail if its mentality infects the civilised world, and if state leaders resort to terror to fight terror. Fighting terrorism is not a war, because terrorism itself is not a warring party, but a means to an end.

Countries unwilling or unable to prevent terrorist violence emanating from their territory forfeit their right to territorial integrity, and others can declare war on them to pursue the problem at its root. But those who adhere to the motto "terror can only be countered with terror" should remember who coined it: Hitler.

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文章編號: 200901050270458

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