

ACTS CHURCH AND SOCIETY NETWORK

Just War Criteria and the War in Afghanistan

Background

1 This short paper is a response to the Church and Society Network's request that an ecumenical working group should be set up to consider the situation in Afghanistan with particular reference to the 'just war' tradition within the Church. It follows up also the report of the Church of Scotland's Church and Society Council to the 2010 General Assembly and in particular four significant questions (see paragraphs 25 to 29) posed in section 14.1.3 of that report.

The 'Just War' tradition

2 There have been two broad traditions within Christianity. Nonviolence - pacifism - was the dominant Christian tradition in the first three centuries. The tradition of the just war, undertaken by legitimate human authority, was developed by Augustine and refined by Aquinas and others, and it has since been the majority Christian view - though some have continued to argue for pacifism. It is to be noted, however, that the just war view does not say that war is good, only that in certain limited circumstances Christians will not be condemned for supporting and participating in war. It is with this background in mind that we approach the difficult task of making a judgment about the justice of the present military operations in Afghanistan.

3 The circumstances in which engagement in war is justifiable are closely defined by reference to particular criteria that have been developed and refined over the years, in relation both to the period before hostilities start (*ius ad bellum*) and the conduct of war (*ius in bello*). The seven generally accepted criteria for a just war are as follows:

- legitimate/right authority** – a formal declaration of war (after an ultimatum) by a recognised government or international organisation;
- just cause** – defensive not aggressive, and the potential harm or damage caused by the aggressor must be lasting, grave and certain and can be mitigated by defensive action;
- right intention** – for example, to secure justice or remedy injustice;
- last resort** - all other means must have been shown to be impractical or ineffective, and in particular all attempts at diplomatic negotiation and reconciliation must have been exhausted;
- reasonable hope of success** – the chances of achieving the desired just outcome must be good;
- proportionate means** - the use of arms must not produce evils (for example, the violence and suffering caused) and disorders greater than the evil to be eliminated;
- non-combatant immunity** - the rights of civilians, prisoners and wounded soldiers must be respected; non-combatants must be treated humanely.

4 Attempts have been made in recent years to simplify these criteria. For example, the American Christian ethicist Paul Ramsey reduced them to two – the principle of discrimination and the principle of proportion; and John Stott, in *Issues facing Christians today*, Hodder 1990, suggested the seven criteria could be comprehended in three principles – righteous cause, controlled means, and predictable outcome. In

any case, in the application of just war theory to the prospect or course of a particular conflict, it is generally accepted that all criteria must be satisfied. In today's context, with the development of modern remotely launched and controlled weapons technology the *ius in bello* criteria (proportionality and non-combatant immunity) are often more difficult to satisfy. In relation to the possible use of nuclear weapons, as long ago as 1950, the English theologian CE Raven commented "atomic warfare makes nonsense of all the regularities defining just war".

5 There is also a series of very important subsidiary questions such as - Who decides what is just or legitimate? How predictable 'unintended' consequences (for example, significant civilian casualties) might be? Who assesses whether the war is really the last resort? What the balance is of evil as against good? What the likely outcome will be? and How 'success' is to be defined? There was a degree of clarity in the Falklands war, in that success lay in restoring the islands to British rule, and going on to invade Argentina or trying to bring about regime change in Argentina was certainly not part of the task. But the situation regarding Afghanistan does not have a clear-cut objective; and a 'war on terror' is very slippery and ill-defined.

Afghanistan

6 Afghanistan was established as an independent country in 1919 as a buffer state between British India and Russia. In 1978 a communist government took over in Kabul, and Soviet troops entered Afghanistan to support that government the following year. Pakistan and the United States were amongst the countries that channelled arms to anyone who would oppose the communist government and in so doing they encouraged the growth of the Mujahideen, which morphed into the Taliban, many of whom saw themselves (and still do) as fighting a holy war for the liberation of Afghanistan. By the time the Soviet troops withdrew in 1989, a million people had been killed and there were some six million refugees from Afghanistan, mainly in Pakistan and Iran.

7 Traditionally central government in Kabul has often only had direct control of Kabul and the area round it. There are major divides between urban and rural attitudes. The north of the country has been run by local war lords; other areas are effectively autonomous and split along ethnic and tribal lines. The south is predominantly Pashtun and, as the border between Pakistan and Afghanistan was not drawn with any sense of tribal boundaries, the Pashtuns straddle both Pakistan and Afghanistan. Tajiks and Uzbeks are more prevalent in the north. By 1998 the predominantly Pashtun Taliban controlled 90% of Afghanistan, drastically reduced drug production, and provided security to the rural population but within a very strict moral code with harsh punishments.

8 Under this regime Osama bin Laden took refuge in Afghanistan and several al-Qaeda training camps were established. After the attack on the twin towers in New York in September 2001 the US launched its war on terror which led to the US implementing its plans for attacking the Taliban government with the aim of arresting Bin-laden and destroying the al-Qaeda leadership. The legality of this intervention, named Operation Enduring Freedom (OEF), is still debatable as it is difficult to defend it as an example of collective self-defence under article 51 of the United Nations Charter. At the time of the invasion of Afghanistan the UN Security Council

had deliberated on the question of intervention and had declined to act. It is even more difficult to defend it either in terms of international law or in the somewhat more restricted terms of the just war when the operation is still continuing some eight years after the intervention without clear objectives. The US did not declare war on Afghanistan, did not consider the Taliban as combatants but as terrorists (and so refused to extend the safeguards of the Geneva Conventions to them) and many non-combatants were killed in indiscriminate air strikes. The OEF had the support of the United Kingdom (although the decision making process by which Britain became involved is still not entirely clear) and of many of the northern warlords, who subsequently ended up in senior positions in the Kabul government. The intervention was successful in ousting the Taliban government (an illegal objective) but has still not been successful in capturing bin Laden. As Lord Malloch Brown noted in the House of Lords in November 2008 this operation is still continuing.

9 The United Nations mission in Afghanistan was set up in late 2001 to contribute to security and state building in Afghanistan. The UN Security Council also authorised a force to assist the Afghan government in the maintenance of security in Kabul and the surrounding areas. This force is the International Security Assistance Force (ISAF). It is a coalition of the willing rather than a UN force, although it operates under a UN peace enforcement mandate. This mandate has been renewed each year and the area in which the force can operate has been slowly extended to cover the whole country. NATO has been in control of this force since 2003 and now has over 60,000 troops in Afghanistan.

10 The 9,500 or so British forces in Afghanistan are mainly operating with ISAF although elements of the RAF and of the special forces are operating within the OEF. The Ministry of Defence understandably refuse to give operational details but *Wikipedia* reported that, as of November 2009, of the then 220 members of the British armed forces who had died in Afghanistan, over 90 of the fatalities were within OEF. It has become increasingly difficult to distinguish between OEF and ISAF operations as the forces on the ground are often integrated and support each other, and the US command structure for ISAF is largely shared by the OEF. This is borne out by an answer given in Parliament by David Cameron on 22nd November 2010 in which he said “I think that NATO in Afghanistan did initially suffer from having a slightly divided command between an ISAF mission to secure Afghanistan and Operation Enduring Freedom to combat al-Qaeda, particularly in the Tora Bora. It has taken some time to have a more unified command and a greater focus on what was necessary not only militarily, but politically and diplomatically.”

Is the war just?

11 There are four broad areas of concern in respect of whether the war in Afghanistan can be considered just - Is the war legitimate? Is there a good prospect of success? Is the harm prevented outweighed by the harm caused? Are the rights of non-combatants being respected?

12 Firstly, while the ISAF force operates under arguably legitimate authority, there is serious doubt as to whether Operation Enduring Freedom can be classified in 2010 as legitimate self-defence by the United Kingdom, or any other nation for that matter. There is a particular problem in relation to those British forces still currently

operating in Afghanistan other than those operating as part of the UN authorised ISAF. There is also a problem if any British troops are asked to operate outwith Afghanistan. Both of these situations are clearly not covered by just war criteria.

13 Eight years on these offensive operations are not hot pursuit across international borders nor can they be legitimately described as self defence. Where is the direct threat to the UK? In any case there is still no explicit authorisation from the United Nations as the legitimating body for OEF activities undertaken by British troops in Afghanistan. There are also questions as to the legitimacy of reported action engaged in by British troops in Pakistan.

14 Secondly, there is serious doubt as to the prospect of success. Gordon Brown in his speech of 4th September 2009 said that British troops are in Afghanistan as a result of an assessment of the terrorist threat facing Britain and that success would be the Afghans themselves defeating the Taliban and al-Qaeda and denying the territory of Afghanistan as a base for terrorists. There has since been a change of government but no change in the rationale for British involvement. Liam Fox MP reaffirmed that view in the Commons debate of 9th September 2010. He said ‘Our clear aim in Afghanistan is to prevent Afghan territory from again being used by al-Qaeda as a base from which to plan attacks on the UK and our allies. Our engagement in Afghanistan is first and foremost about national security.’

15 The Ministry of Defence, in a letter to the Church of Scotland in November 2009, saw this aim being realised through ‘...providing long term sustainable support for the Afghan National Development Strategy, particularly on governance, rule of law, reconstruction and security. The UK is dedicated to achieving this through a comprehensive approach to the rebuilding of Afghanistan.’ The imprecision of aims was queried by John Glen MP (Con) in the debate in the House of Commons on Afghanistan in September 2010. He asked, ‘By what measure will we gauge our success? Does it mean free and democratic elections? The removal of corruption? A well-trained and effective army and police force, new roads, new schools, rights for women? Where does the list end and what is realistic?’ The problems caused for UK troops were highlighted by Sarah Newton MP (Con) in the same debate. She reported on a conversation with a soldier from her constituency who reflected on the constantly changing role of serving soldiers due to changing objectives. In Afghanistan ‘the roles changed from war fighting to peace keeping to counter terrorism to riot control and back to peace keeping.’

16 In practice the government sees the objective of establishing a non-Taliban government with effective control of the country, a strong police force and army and effective programmes for economic development as the way to achieve its aim of safeguarding UK national security. It is very difficult to argue that this objective is being achieved or is feasible. The Taliban have substantial support in parts of Afghanistan. Their view that the Kabul government is corrupt, that it is being propped up by foreign troops who have no right to be in Afghanistan, that its police force is in no way impartial and that it cannot guarantee security, let alone development, to the mass of the population is shared by many in Afghanistan, including many aid and development workers. There is a strong argument that sections of the Taliban must be part of the solution and are unlikely to be defeated militarily.

17 There are many indications that the war is being lost rather than won. David Pratt in *The Herald* (17.9.2010) commented that previously subdued regions such as Wardak, Kunduz and Badakshan are now experiencing an ‘insurgent advance’. The general election in September lacked any credible level of international monitoring and Pratt described the exercise as ‘worse than useless’. Aid workers now find security increasingly difficult. The deaths of Dr Karen Woo and now Linda Norgrove have made the headlines. But, as David Garavelli reported in *Scotland on Sunday* (3.10.2010), the security situation has deteriorated greatly over the past few years. ‘In 2004 it was possible to travel almost anywhere in Afghanistan; to-day it is incredibly difficult as an international worker to move out of Kabul.’

18 Our conclusion is that there is no real chance of success with the present strategy in Afghanistan and that, in some ways, UK security is more at risk as a result of continuing military involvement by British forces in Afghanistan.

19 Thirdly, it is difficult to compare the harm caused by a particular action with the harm prevented. War and civil strife are destructive of people and of social capital. The UN give a figure of 2118 civilians killed in 2008. They reckon that some 55% of civilians were killed by the insurgents and some 39% by coalition forces. (*The Herald* 11.7.2009). Over 2,400 civilians were killed in 2009 and some 1250 in the first half of 2010. (*The Observer*, 26.9.10) Philip Alston, recently retired UN rapporteur on extrajudicial, summary or arbitrary executions called for a UN Human Rights Council enquiry into the conduct of the war in Afghanistan along the lines of the enquiry into Gaza. The peoples of Afghanistan have suffered conditions of civil strife for most of the past 30 years. This has been worse when foreign troops have been present. It could be argued that a policy of working for development with the various tribes and areas in Afghanistan is much more likely to lead to stability and an improvement in human rights rather than a policy in which there is a heavy military presence and foreign troops. The majority of the Afghan population see foreign troops, the aid programme, the Afghan police and the Afghan army as tools of a corrupt and incompetent Kabul government.

20 It is sometimes argued that the presence of the NATO troops is essential to protect the rights of women. Recent laws passed by the Afghanistan parliament legalise rape within marriage. Sonali Kolhatkar who co-directs the Afghan Women’s Mission (a US based non-profit organisation that supports women’s rights activist in Afghanistan) explains, ‘There are incidents happening every day in Afghanistan of women and girls being harassed and raped, flogged and killed by pro-US warlords and local commanders who are not working with the Taliban – such incidents are rarely covered in the Western media. Afghan women activists I work with have long called for US forces to leave Afghanistan.’

21 Also, the current policy, as presently being carried out with cross-border incursions, risks destabilising the situation in Pakistan which, as Pakistan possesses a nuclear capability, would be a very significant threat to international security.

22 If there is an opportunity for a non-violent ending to the conflict, then both Islamic and Christian teaching encourage such an option to be explored. In 2007 the upper house of the Afghanistan parliament called for a military ceasefire, negotiations with

the Taliban and a date for the withdrawal of foreign troops. According to *The Sunday Times* in March 2010, the Taliban's supreme leader, Mullah Omar gave his approval for entering into talks aimed at bringing the war in Afghanistan to an end. The United States National Council of Churches on 9th November 2010 adopted a resolution calling on the United States to negotiate a withdrawal of U.S. and NATO forces from Afghanistan to be completed as soon as possible. They were persuaded that continuing U.S. and coalition military operations against Afghan insurgents solidified resistance and stimulated support for the Taliban.

23 It is at least arguable that a better way to reduce acts of terrorism in the United Kingdom is by a transparent and impartial exercise of the rule of law in our own country and by showing that the UK is committed to upholding the rule of law in its international relations, working for global development and working to tackle major causes of concern, especially the Israeli/Palestinian conflict and nuclear proliferation.

24 Fourthly, the treatment of non-combatants, civilians, and wounded and captured combatants gives grave cause for concern. The extended information now available through *Wikileaks* paints a picture of considerable death and injury caused to civilians and non-combatants and chronicles over 20 separate occasions when British troops are said to have bombed or shot Afghan civilians – identifying at least 26 people killed and another 20 wounded as a result. According to *The Observer*, (26 September 2010), no British soldier has been prosecuted in relations to operations in Afghanistan. A report in September 2010 by the Afghanistan Study Group, a reputable and specialist US organisation, said that ‘many more civilian deaths have occurred than have been officially acknowledged as a result of US and allied strike accidents’. The use of drones in particular raises concerns as to whether the methods being used adequately take into account the likelihood of casualties among or the duty to protect them. John Baron MP (Con), a former army officer, in a speech in September 2010, expressed the view that ‘high civilian casualty rates exponentially increase hostility. They might not force Afghans actively to support the Taliban but it will certainly stop them opposing anyone who wants to kill those who have killed their loved ones.’ Non-combatant immunity is fundamental to the just war theory. The huge loss of civilian lives, regardless of whether they were directly or indirectly intended, undermines any justification of the war.

The report of the Church and Society Council to the 2010 General Assembly

25 At the end of the section of their report on Afghanistan the Council suggested that further thinking was necessary on the ‘wider global consequences’ of the war in Afghanistan and that such thinking might be guided by the four questions set out, with responses interpolated, in the following excerpt from their report.

26 ‘14.1.3.9 In 2002 the Assembly said that “if military action was to take place in Afghanistan, then it should be proportionate, accurate and have a reasonable expectation of success”. **What are the benchmarks now being used to define success given that the war in Afghanistan is now 8 years old?’**

The concerns explored above (paragraphs **11 to 24**) lead unequivocally to the conclusion that the war in Afghanistan, given the course of events and the scale of suffering involved, can no longer (if it ever could) be justified by the traditional (or

any reduced list of) 'just war' criteria and that continuing military engagement in Afghanistan is questionable even if the transfer of power to a democratically elected government (and the containment or defeat accordingly of the Taliban) is regarded as the benchmark that the war has been successful. There is still no UN mandate to support the legitimacy of the OEF offensive action against the Taliban, the ISAF force is having very limited success in stabilising Afghanistan and unacceptable levels of civilian casualties are continuing. Overall, as long as foreign troops remain, it seems that the situation is being inflamed.

27 "14.1.3.10 'While the fall of the Taliban is to be welcomed, it is far too early to know whether the new Afghan Government will be able to stabilise the country in the long term'. What are the indications that the present elected structures have brought any sense of stability to Afghanistan?"

There is little indication at present of any prospect of lasting stability. Claims of defeat for the Taliban have been numerous but seldom sustainable. Both the UK and US governments have now set time-limits on their military involvement. As discussed above (paragraphs **11 to 24**), despite the recent elections and the efforts, through the UN mission and a range of supporting aid organisations, to strengthen the civic infrastructure within Afghanistan, recent reports refer consistently to 'continued instability' and hardening of support for the Taliban.

28 "14.1.3.11 The UN's role, as is the case in many other international conflict situations, seems to be viewed as one of picking up the pieces when the fighting is over and providing humanitarian assistance. Is this yet another sign that any commitment by nations to the UN does not include relinquishing the right to attack another country without reference to the collective international view?"

As discussed above, the role of the United Nations in Afghanistan is a highly complex issue; but what has happened here (as in some other cases also) does not induce much confidence in the level of regard and respect within the international community for the authority of the UN. There seems little prospect of overall success while the UN ISAF work to peacekeeping, stabilising and restructuring in Afghanistan is being undermined by the continued offensive nature and lack of UN mandate for OEF actions.

29 "14.1.3.12 What role has the Church in encouraging and even facilitating alternative approaches like the traditional Afghan method of bringing as many leaders as possible from the ranks of opposing forces into a general assembly or *Loya Jirga* in order to actively take part in conflict resolution and the negotiation of a cease-fire?"

In the light of the conclusions reached in this paper, there is no doubt that the Churches have a responsibility to make clear, to HM Government and in the public arena, that they are resolutely opposed to the continuation of the war and to press for the early withdrawal of British troops, especially those focussed on the OEF operations and that 'alternative approaches' of negotiation, peace-making and conflict resolution should be urgently pursued (as have proved worthwhile in Northern Ireland, South Africa and elsewhere).

The present situation clearly challenges in particular those Churches who adopt a just war approach to conflicts. If the war in Afghanistan is no longer regarded as 'just', as this paper contends (or if some of the British troops are under orders to participate in unjust operations), then those Churches should publicly distance themselves from the war.

The Continuing Challenge for Christians

30 Christians, especially those who are members in the armed forces, have a particular problem and witness in this situation. If a specific conflict is no longer considered to be a 'just war', then it is clearly very hard if not impossible for a Christian to support or continue to participate in it. The issues explored above are some of those with which Christians have to grapple in terms of forming their consciences on this matter. In this context questions are frequently raised concerning the Churches' support for and pastoral responsibility towards serving soldiers. Again what John Baron MP said in the Commons debate in September 2010 is especially helpful and instructive: 'As an ex-soldier, I do not buy the line that by withdrawing in an orderly fashion we are somehow letting down our troops and wasting their sacrifice. Our troops have done everything we have asked of them and we can all be proud of their achievements. It is incumbent on the leadership to assess realistically a situation. We cannot win the war as it is currently constituted and a leadership that acknowledges that will save lives.'

31 Finally, while there may have been morally supportable reasons for earlier military intervention in Afghanistan most of these do not apply now. This is a classic case of 'mission creep', or more colloquially, of 'shifting the goal-posts'. What is going on now in Afghanistan amounts to forced regime change and support to one side of a civil war, in the kind of counter insurgency conflict in which civilians and non-combatants will inevitably continue to be harmed, and which cannot be morally justified by reference to just war criteria. The UK Government's argument for continuing engagement ultimately rests on removing or at least reducing the threat of terrorism and thus increasing security on the streets of Britain. But the Christian perspective tells us that, despite all the best human, technological and military efforts, we can never be completely secure in a physical sense while we perpetuate injustice as we claim to strive for peace: security lies with God alone, and in our closer relationship with God and one another.

