'A conversation to be had' on war and law: Obama's Nobel speech

By Chibli Mallat

Even more than in the Cairo address, the Nobel speech will mark the Obama legacy. The subject is pithy, combining defense, foreign affairs and international law on the most difficult subject that human kind has ever addressed: war. Thanks to the entreaty of the Nobel committee, which forced the US president to articulate his vision of best use for the most powerful military machine in the world, one is now able to measure action against words.

Traditionally, US defense and state departments chiefs articulate their vision of foreign or defense policy toward the end of their tenure, often in the establishment's journal, *Foreign Affairs*. Obama has actually articulated a semblance of a coherent vision as presidential candidate, in a 2007 *Foreign Affairs* article where his keenness to get out of Iraq was most emphatic, and earlier in a long chapter in his 2006 book as senator, *The Audacity of Hope*. This, however, is qualitatively different. The American president has trumped generally inconsequential contributions by fusing defense and foreign policy around a vision of war and law, as commander- and diplomat-in-chief. I believe the world must take him to his word. One of the marking aphorisms in his senatorial book is that "democracy [must not be seen] as a house to be built, but as conversation to be had."

Obama is an extraordinary political and intellectual figure, which allows the world to engage with him at dizzying heights. Let us engage the US president into that worldwide conversation. *The Daily Star* law page will contribute its modest share to the conversation, and hopes to feature in the coming weeks several "conversations" on the speech, particularly on its legal side. We start today and next week with the full publication of the speech, together with marginal comments on some of its said and unsaid background. Next week's comments focus on the Middle East. The comments are in bold and the paragraph titles from the editor.

Following is the transcript of President Obama's speech at the Nobel Peace Prize ceremony in Oslo on Wednesday [9 December], as released by the White House:

Your Majesties, Your Royal Highnesses, distinguished members of the Norwegian Nobel Committee, citizens of America, and citizens of the world:

"Just war"

I receive this honor with deep gratitude and great humility. It is an award that speaks to our highest aspirations – that for all the cruelty and hardship of our world, we are not mere prisoners of fate. Our actions matter, and can bend history in the direction of justice.

And yet I would be remiss if I did not acknowledge the considerable controversy that your generous decision has generated. (Laughter.) In part, this is because I am at the beginning, and not the end, of my labors on the world stage. Compared to some of the giants of history who've received this prize – Schweitzer and King; Marshall and Mandela – my accomplishments are slight. And then there are the men and women around the world who have been jailed and beaten in the pursuit of justice; those who toil in humanitarian organizations to relieve suffering; the unrecognized millions whose quiet acts of courage and compassion inspire even the most hardened cynics. I cannot argue with those who find these men and women – some known, some obscure to all but those they help – to be far more deserving of this honor than I.

But perhaps the most profound issue surrounding my receipt of this prize is the fact

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that I am the Commander-in-Chief of the military of a nation in the midst of two wars. One of these wars is winding down. The other is a conflict that America did not seek; one in which we are joined by 42 other countries – including Norway – in an effort to defend ourselves and all nations from further attacks.

Still, we are at war, and I'm responsible for the deployment of thousands of young Americans to battle in a distant land. Some will kill, and some will be killed. And so I come here with an acute sense of the costs of armed conflict – filled with difficult questions about the relationship between war and peace, and our effort to replace one with the other.

Now these questions are not new. War, in one form or another, appeared with the first man. At the dawn of history, its morality was not questioned; it was simply a fact, like drought or disease – the manner in which tribes and then civilizations sought power and settled their differences.

And over time, as codes of law sought to control violence within groups, so did philosophers and clerics and statesmen seek to regulate the destructive power of war. The concept of a "just war" emerged, suggesting that war is justified only when certain conditions were met: if it is waged as a last resort or in self-defense; if the force used is proportional; and if, whenever possible, civilians are spared from violence.

CM: The speech is already remembered as the "just war speech." The origins of the concept are generally associated with the great theologians of the Christian church. Obama makes Saint Thomas Aquinas current to date. In his Summa Theologica (Part II, Question 40) Aquinas writes that the principle is that "war is contrary to peace. Therefore war is always a sin." To wage a just war, he lists three conditions: (1) "the authority of the sovereign by whose command the war is to be waged" – so no private wars are allowed, but we also have in this the prodromes of a democratic ruler, (2) "a just cause is required" – typically self-defense, Art.42 of the UN Charter; or in post-1990 international law, a war to prevent genocide; (3) The "belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil." This translates into the refusal of war by conquest (e.g. UN Security Council Resolution 242) and peace as the objective of war, an elastic concept that loses some of its precision when associated with the requirement that war should achieve democracy and human rights in the vanquished country, and the forbearance of collective punishment, for instance war reparations inflicted on its population (as in Germany in 1918 and Iraq now).

"Jus ad bellum, jus in bello"

Of course, we know that for most of history, this concept of "just war" was rarely observed. The capacity of human beings to think up new ways to kill one another proved inexhaustible, as did our capacity to exempt from mercy those who look different or pray to a different God. Wars between armies gave way to wars between nations – total wars in which the distinction between combatant and civilian became blurred. In the span of 30 years, such carnage would twice engulf this continent. And while it's hard to conceive of a cause more just than the defeat of the Third Reich and the Axis powers, World War II was a conflict in which the total number of civilians who died exceeded the number of soldiers who perished.

CM: The reasons why "just war was rarely observed" have less to do with the consequences of the Aquinas tripartite proposal than with the wrong premises on which it may have been built.

One unexpressed premise is that a just war is rooted in the superiority of Christian civilization, and that wars between religions and civilizations are endlessly recurring, because both sides, Muslims-Christians; Catholics-Protestants; Muslims-Hindus; Sunnis-Shiites; Jews-non-Jews (whether Muslims or Christians) consider themselves to be vested with the three above premises: their sovereign is rightfully superior to the sovereign opposite; he naturally has a rightful intention as opposed to the barbarian on the other side; his cause is peace (Christian, Muslim, Jewish, Hindu …) Ever since Shaybani's "Siyar" in the late 8th century, Muslim theoreticians of war have tended to be more forthcoming, as jihad is premised on the declared superiority of the land of Islam.

A second premise is wrong. War is not driven morally. Machiavelli, then Clausewitz, showed that "war was a continuation of domestic politics by another means."

A third premise is a fusion in the US president's intellectual compass between jus ad bellum, which is why a just war could be waged, and jus in bello, about the rules to be observed once the war is started, typically the Geneva conventions of 1949. Here Clausewitz provides the profoundly immoral measure of modern war, and Obama's "total war" comes from Clausewitz's observation in 1812 that war has become inevitably "gesamt, total." War's objective is to reduce the enemy, and part of the destruction in the modern state is to deprive him from material and psychological support in his population, essentially composed of civilians.

"Third, fourth … world war? Obama's heroes"

In the wake of such destruction, and with the advent of the nuclear age, it became clear to victor and vanquished alike that the world needed institutions to prevent another world war. And so, a quarter century after the United States Senate rejected the League of Nations – an idea for which Woodrow Wilson received this prize – America led the world in constructing an architecture to keep the peace: a Marshall Plan and a United Nations, mechanisms to govern the waging of war, treaties to protect human rights, prevent genocide, restrict the most dangerous weapons.

In many ways, these efforts succeeded. Yes, terrible wars have been fought, and atrocities committed. But there has been no Third World War. The Cold War ended with jubilant crowds dismantling a wall. Commerce has stitched much of the world together. Billions have been lifted from poverty. The ideals of liberty and self-determination, equality and the rule of law have haltingly advanced. We are the heirs of the fortitude and foresight of generations past, and it is a legacy for which my own country is rightfully proud.

CM: On the absence of a Third World War, which no doubt is true, the argument has been made of a third world war being cold, and in many place like Vietnam, Cuba, Africa and the Middle East, not so cold albeit vicarious. In a similar stretched concept of 'war', the fourth World War started on 9/11 according to the able former CIA chief James Woolsey, and was since argued in a full book by Irving Kristol. It features prominently in Obama's discourse, but is tied squarely with the Middle East, which Obama addresses later in the

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speech. Meanwhile, a big kudo to the president on his heroes (Wilson, failed hero on the League of Nations, but great international statesman nonetheless; unnamed Jean Monnet, EU founder, thanks to whom Europe has known its longest peace ever.) Kudos also on the importance of international law, especially treaties and adherence thereto, human rights protection and genocide prevention, and a special accolade is due to Professor Samantha Power, who has inspired Obama more than anyone else on the horror of passivity in genocide. I am less certain that trade is to be so glorified, it has brought colonialism, and probably the first world war which Lenin continues to describe best as "the last stage of imperialism," i.e. the division of world markets between industrial powers by way of war.

"Terrorism and nukes"

And yet, a decade into a new century, this old architecture is buckling under the weight of new threats. The world may no longer shudder at the prospect of war between two nuclear superpowers, but proliferation may increase the risk of catastrophe. Terrorism has long been a tactic, but modern technology allows a few small men with outsized rage to murder innocents on a horrific scale.

CM: On terrorism, let me don my professorial mantle with a dose of provocation: can we, Mr President, remove the concept from our international lexicon, for the two well-known reasons of state terrorism (and please pay attention to the unconscionable "targeted assassination" quality of drones, and the impending ease of use by "terrorists" against your next presidential campaign); and of right of resistance/national liberation/fight against colonialism under which much 'legitimate terrorism' happens. I am happy to replace the crime of 'terrorism' by political murder, when directed at few, and crime against humanity, as in 9/11.

On nukes, we must give its due to Robert Fossaert's concept of "dissuasive duos," that is the deterrence effect of two smaller regional powers. If you can however pick up the mantle of Bill Clinton's late attempt during his tenure to rid the world of nuclear weapons altogether, let's do it. I propose we start with Israel, Iran and Pakistan in the Middle East under the banner of "WMD Free Middle East." And why not the EU? British and French nuclear arsenals are totally redundant.

"On war and non-violence"

Moreover, wars between nations have increasingly given way to wars within nations. The resurgence of ethnic or sectarian conflicts; the growth of secessionist movements, insurgencies, and failed states – all these things have increasingly trapped civilians in unending chaos. In today's wars, many more civilians are killed than soldiers; the seeds of future conflict are sown, economies are wrecked, civil societies torn asunder, refugees amassed, children scarred.

I do not bring with me today a definitive solution to the problems of war. What I do know is that meeting these challenges will require the same vision, hard work, and persistence of those men and women who acted so boldly decades ago. And it will require us to think in new ways about the notions of just war and the imperatives of a just peace.

We must begin by acknowledging the hard truth: We will not eradicate violent conflict in our lifetimes. There will be times when nations – acting individually or in concert – will find the use of force not only necessary but morally justified.

I make this statement mindful of what Martin Luther King Jr. said in this same ceremony years ago: "Violence never brings permanent peace. It solves no social problem: it merely creates new and more complicated ones." As someone who stands here as a direct consequence of Dr. King's life work, I am living testimony to the moral force of non-violence. I know there's nothing weak – nothing passive – nothing naïve – in the creed and lives of Gandhi and King.

But as a head of state sworn to protect and defend my nation, I cannot be guided by their examples alone. I face the world as it is, and cannot stand idle in the face of threats to the American people. For make no mistake: Evil does exist in the world. A non-violent movement could not have halted Hitler's armies. Negotiations cannot convince Al-Qaeda's leaders to lay down their arms. To say that force may sometimes be necessary is not a call to cynicism – it is a recognition of history; the imperfections of man and the limits of reason.

I raise this point, I begin with this point because in many countries there is a deep ambivalence about military action today, no matter what the cause. And at times, this is joined by a reflexive suspicion of America, the world's sole military superpower.

But the world must remember that it was not simply international institutions – not just treaties and declarations – that brought stability to a post-World War II world. Whatever mistakes we have made, the plain fact is this: The United States of America has helped underwrite global security for more than six decades with the blood of our citizens and the strength of our arms. The service and sacrifice of our men and women in uniform has promoted peace and prosperity from Germany to Korea, and enabled democracy to take hold in places like the Balkans. We have borne this burden not because we seek to impose our will. We have done so out of enlightened self-interest – because we seek a better future for our children and grandchildren, and we believe that their lives will be better if others' children and grandchildren can live in freedom and prosperity.

So yes, the instruments of war do have a role to play in preserving the peace. And yet this truth must coexist with another – that no matter how justified, war promises human tragedy. The soldier's courage and sacrifice is full of glory, expressing devotion to country, to cause, to comrades in arms. But war itself is never glorious, and we must never trumpet it as such.

CM: Obama has made the point in his "the world beyond our borders" chapter of "the Audacity of Hope" that there is no return to isolationism for the US. Excellent. He also offers here a genuine dilemma the heirs of Jesus, Gandhi and Martin Luther King face. How do you make non-violence effective?

I think we can do better than expressing our impotence as he modestly suggests. Here are two ideas, one is preventive, the other reactive.

Preventive: We could have avoided World War II by preventing Hitler from coming to power, at least since the Munich putsch in 1923. He was briefly jailed then released. We need that early warning everywhere and the US and the world democracies can offer it, indeed the EU has much to be commended for isolating Jorg Haider in Austria. Whenever a dictator is looming, democratic powers must oppose him by denouncing him, and if undeterred, by supporting his democratic opponents.

Reactive: Mr President, it's time to join the International Criminal Court. With the ICC, Bin Laden, Gadhafi, Sharon and the likes of them would have long been indicted as perpetrators of "crimes against humanity." This means that every single country ruled by law (i.e. democratic) would have been required to actively pursue them, and not leave the matter to the isolated effort of the United States in the case of 9/11. The proof is in the pudding: thanks to the ICC, Darfur's assassin is on the defensive, and could not visit New York last September to parade before the world. One wishes it happened with Qaddafi and Ahmadi-Nejad.

Join the ICC. The law, effective through an independent judiciary, is the non-violent tool that Jesus, Gandhi and King have been missing. It will take the length of the 21st century, but "law as it could be" is the nemesis of war.

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Obama speaks after receiving the Nobel Peace Prize during a ceremony in the Main Hall of Oslo City Hall in Oslo, Norway, Thursday, Dec. 10, 2009.