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TERROR AND REPRISAL - AN ETHICAL PERSPECTIVE

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A thesis submitted to the University of North Carolina at Chapel Hill, Chapel Hill, NC 27514, in partial fulfillment of the requirements for the degree of Master of Arts in Philosophy.

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The conclusion is that acceptable military actions with respect to terrorism, and in general, involve treating people as persons rather than objects, and strict avoidance of deliberate or even reckless attack on noncombatants.

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BENJAMIN FRANKLIN OVERBEY. Terror and Reprisal - An Ethical Perspective  
(Under the direction of E. Maynard Adams.)

The problem is posed as to how, from an ethical perspective, an established military force such as the United States Army, should respond to the challenge of terrorism. A basic ethical position is asserted which holds that the fact that an individual is a person imposes normative limits on what others can do to him, and what he can do to others. Terrorism is analyzed with respect to this ethical position, and is found to be an unacceptable form of human conduct. The legal and moral limitations which the military operates under are discussed, and specific recommendations are made concerning acceptable actions which can be taken by established military forces as they attempt to counter terrorism.

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## I. Introduction.

Terror is a weapon. It is a frightening weapon which the terrorist applies in the pursuit of his ends. Its strength is derived more from the fear which it provokes in the ordinary man than from the actual violence performed. When this weapon is applied against the citizens of a state, they look to their government to allay their fears and to ensure their security as they go about their day-to-day affairs. The government of the affected state is faced with the difficulties of determining not only an appropriate response to a particular terrorist activity, but also a means to counter future terrorist activities. Among the primary resources available to the state, as it responds to and attempts to counter terrorism, are its military forces. Since these military forces are the main repositories of violent force for a state, it seems reasonable that a state reacting to the violence or potential violence of a terrorist threat should resort to their use. The purpose of this paper is to determine, from an ethical perspective, how an established military force, such as the U.S. Army, should deal with terrorism. I will seek to determine what sorts of military actions are justified, and what sorts of military actions are not, and why.<sup>1</sup>

I contend that terrorism is not an appropriate form of behavior. No terrorist, whether blessed by heaven or in possession of an ultimate, philosophical truth, has the right to utilize murder, injury, and destruction or the threats of such, towards the achievement of his

designated ends. Further, I contend that military forces that resort to terrorist tactics, even in the form of reprisals and counterterror, undermine the legitimacy of the government that fields those forces, especially if those governments have a democratic tradition. During the course of this paper I will consider the nature of terrorism, its origins, and its use as a method of warfare. I will discuss military responses to terrorism, and the legal and moral limitations which established military forces operate under. Additionally, I will make some specific recommendations concerning acceptable actions which can be taken by established military forces as they attempt to counter terrorism.

There are some who will protest that this inquiry into the morality of terrorism and military responses to terrorism is misdirected. Contending that we can never justify the use of lethal force by man against man, they might accuse me of minimizing the inherent immorality of such violence by my explanations of the conditions that vindicate its use. My response to such criticism is to borrow Richard A. Falk's eloquent answer to similar protests raised with respect to his discussions of nuclear war:

Mankind depends everywhere upon the use of lethal force to regulate and protect the common good against external compulsion. The alternative to war is to give way to the violator of the peace, no matter how evil. The basis for inquiry, then, is established by the acceptance of force as a necessary incident of intrasocietal and intersocietal conflict. Law and morality seek to assure the beneficial management of force, to restrain its deployment by the acceptance of limitations upon its use and the intensity of its applications. Especially in an era of nuclear technology it is essential<sup>2</sup> to clarify the standards that govern the use of force in human affairs.

There are others who will protest that I am attempting to hobble the military establishment while it attempts to do its duty "as best it

can". They note, correctly, that the demands of national security, as well as the other real political challenges of our time, require our leaders to act. Accordingly, leaders make choices, set priorities and goals, determine courses of action, and activate the agents of the state, including the military, to meet these challenges. However, these people also claim that the press of time, high stakes of success, and tensity of the situation make ethics a luxury which must occasionally be discarded to meet the requirements of national security [or political expediency, fiscal independence, or any other of a number of very important challenges]. I contend that ethical considerations, far from being luxuries, are necessities which policy makers and other leaders are ill-advised to discard. Far from hobbling the military establishment, I am attempting to establish the ethical limits within which it can freely operate to combat the challenge of terror. To deliberately operate outside of those limits inevitably involves a violation of rights, both civil and personal, of other people.

There are, no doubt, those who will either sneer at or react incredulously to the preceding statement. What are the rights of a few people compared to the objectives of a major government, or for that matter, a fledgling revolutionary movement? I contend that those rights are significant, and in fact take priority over the affairs of state, conduct of war, or any other human endeavor. Morality is grounded in the being of a person. I agree with Kant when he declares:

Now I say that man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will: he must in all his actions, whether they are directed to himself or to other rational beings, always be viewed at the same time as an end.

Since a person constitutes an end, in and of himself, he or she should

not be used by another as a mere means. To do so is to ignore that individual's personhood. It is to treat him or her as an object, a thing to be manipulated and controlled. The fact that an individual is a person imposes limits, normative limits, on what others can do to him and what he can do to others. E. M. Adams writes:

What moral discourse reveals about persons is that they are beings who normatively have a life to live; that is, they are beings who ought to define and live a life of their own. It is not merely that people want to live their own lives and resist being yoked to the will of another; nor is it simply that they develop patterns of behavior and make plans. People feel themselves to be under an imperative to define and to live their own lives; they feel self-respect in doing so, and self-contempt in not doing so; they feel indignant, not just angry, at those who interfere with their doing so.<sup>4</sup>

To be a person is to have an awareness of oneself as a person. This involves a consciousness of one's ability to act as an individual, to define and live a life of one's own. This is what is meant when we talk of rational beings being ends in themselves. But with the realization of one's own personhood, of one's own need, indeed of one's responsibility to define and live a life of his own, there must be an accompanying realization that others have this same awareness, need and responsibility. To fail to realize this, to lack respect for the personhood of others, is to call one's own personhood into question. Adams observes that the responsibility of persons to define and live their own lives endows them with certain rights. These rights include the right to the freedom and opportunity to plan and to live one's life in accordance with that plan. The rights of each person impose normative limits and restraints on every other person, for that person's rights must be respected as the others formulate their own life plans. The right of one person to the opportunity to define and live a life of his own entails the same right for other persons. Someone who

establishes a life plan which fails to recognize this is both morally and logically at fault. He is logically at fault for failure to realize that the rational ground on which he conceives his existence is shared with all other persons. He is morally at fault in that his failure to respect others causes his own ability to accept responsibility for directing and living his own life to be called into question.<sup>5</sup>

These normative limits, which assist us in deciding how we should act with respect to other persons, do not cease to exist when we move from discussion of individuals to discussion of groups. A state is composed of individuals. Its rights are grounded in the rights of those individuals. Accordingly, the whole has no more right to violate the rights of other persons, either inside or outside the state, than does a single individual. The agents of a state, including the military, must respect the personhood of those individuals whom they interact with on behalf of the state. This is true even if that interaction involves countering terrorism.<sup>6</sup>

The military can be viewed as having two roles in countering terrorism. First, it has a defensive role. It is concerned with protecting its own resources and personnel from terrorist attacks. Second, it has an offensive role, in which it supports, "within tightly constrained legal parameters", the national program to counter terrorism.<sup>7</sup> The actual constraints placed on the military will vary from country to country.

There are three major scenarios in which the military might be called upon to counter terror. The first is conventional war, where the enemy forces utilize terrorist tactics in violation of the laws of war. Examples of such tactics include deliberate, systematic execution of

which, he implies, is a natural occurrence. Essentially, only when the slave turns on and destroys his master does he become truly free. Walzer effectively addresses this argument, raising two questions:

First, is the one-to-one relation necessary? Did it take one dead European to make one free Algerian? If so, there were not enough Europeans living in Algeria; more would have had to be brought over if the Algerian people were to free themselves by Sartrean means. If not, it must follow that someone else besides the man-who-kills can be liberated...How? By watching? By reading about the murder in the newspaper? It is hard to see how vicarious experience can play an important part in the process of personal liberation (as described by an existentialist philosopher).

The second question raises more familiar issues: will any European do? Unless Sartre thinks all Europeans, including children, are oppressors, he cannot believe that. But if it is only liberating to attack and kill an agent of oppression, we are back with the political code. From Sartre's perspective, that cannot be right, since the men and women he is defending had<sup>19</sup> explicitly rejected that code. They killed Europeans at random...

Sartre's argument in favor of terrorism appears to be ineffective.

The use of terror as a weapon is wrong, no matter what ends the terrorist might have. Terrorism is blackmail, and blackmail is one of the most outrageous crimes that can be perpetrated against an individual or a society. The type of blackmail to which I refer is not merely that type in which payment is extorted from the victim to prevent disclosure of information. I am using the term "blackmail" in the sense of black (or sinister) tribute - the payment demanded from villages and travelers by pirates and freebooters for protection from pillage and harm by those selfsame pirates and freebooters. In this sense the blackmailer is demanding payment for refraining from doing something which he should not be doing in the first place. The terrorist demands payment, in the form of political concessions, for not killing and injuring noncombatants - those whom he should not harm anyhow. The victim of such blackmail feels a special sense of outrage. Not only have his life

power over others does not constitute authority:

Authority is the right to command, and correlatively, the right to be obeyed. It must be distinguished from power, which is the ability to compel compliance, either through the use or threat of force. When I turn over my wallet to a thief who is holding me at gunpoint, I do so because the fate with which he threatens me is worse than the loss of money which I am made to suffer. I grant that he has power over me, but I would hardly suppose that he has authority, that is, that he has a right<sub>17</sub> to demand my money and that I have an obligation to give it to him.

The terrorist and the armed robber appear to have much in common when one compares their rights to pursue their individual courses of action.

The terrorist who abuses others to achieve his ends, no matter how noble those ends might be, is showing a significant lack of perspective in that he sees others as targets, hostages, or merely as part of his overall landscape. He fails to see them as persons. I find it highly improbable that any mind so skewed in its perspective as to confuse people with things would have the capability of constructing ends that would honestly justify the sacrifice of innocents to their pursuit. I would suggest that an appropriate test of such ends would be to allow the victims, possibly through a Rawlsian veil of ignorance, to determine if the sacrifice was necessary and right. I doubt that any terrorist ends would pass such a test.

Since the terrorist does not seem to have refuge in the traditional defense, that he has no choice but to resort to terror to achieve his ends, he needs assistance from another source. Sartre offered the following argument to justify FLN terrorism in Algeria:

To shoot down a European is to kill two birds with one stone, to destroy an oppressor and the man<sub>18</sub> he oppresses at the same time: there remains a dead man and a free man.

Sartre seems to be describing an act of psychological liberation

desire to have me in his absolute power unless it be to compel me by force to that which is against the right of my freedom, i.e., make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him as an enemy to my preservation who would take away that freedom which is the fence to it; so that he who makes an attempt to enslave me thereby puts himself into a state of war with me.<sup>15</sup>

By what right does a terrorist enslave others to his ends? The terrorist, and his apologists, point to his ends as the ultimate justification, but even if he is sufficiently organized to actually have ends, what could possibly be inherent in those ends to justify the terrorist's means? I suspect that most terrorists would be hard pressed to answer this question. Kriegraison, reasons of war, are inadequate to the task. Such reasons only justify the killing of those who hold positions in the armed forces, those who have responsibility for the management of violence. All others are considered noncombatants and correspondingly are considered to have immunity from deliberate attack.<sup>16</sup> Modern terrorists seem to specifically pick such noncombatants as their targets. Car bombs (or nuclear weapons for that matter) are designed to attack random groups of people, inflicting damage and death on those who would normally be accorded immunity from attack. Terrorists deny immunity to anyone, including children. Claims of religious inspiration, while they might carry considerable weight with the terrorists themselves, are highly suspect, especially from the viewpoint that a just God of the Hebraic, Christian, or Moslem traditions would not approve of the slaughter of innocents. In many, if not most cases, it appears that the "justification" the terrorist has for enslaving others to his ends lies in the terrorist's ability to do so, and his willingness to take advantage of that ability. The terrorist's ability to coerce obedience stems from his power. But mere

terrorist still needs to show that his designated ends actually justify the means he uses to achieve them. What means does the terrorist use? An examination of recent newspapers and magazines reveals that terrorists have been involved in activities such as hijacking of airliners; kidnapping of political officials, businessmen, and news correspondents; bombings of embassies, department stores, park concerts, and crowded streets; and assassinations of public officials ranging from cabinet level to office manager. From this survey it becomes apparent that the the terrorist uses destruction, kidnapping, murder, injury or the threats of the same to accomplish his goals. If we consider the targets against which these incidents of violence are directed, we find that they vary from government officials to businessmen to children playing in the streets. Old, young, male, female, rich, poor, educated or uneducated, no group is exempt. Virtually anyone can be held as a hostage or be a target. One of the few things which the targets of terrorists have in common is that they are generally persons who would be accorded noncombatant status in a wartime situation.

The terrorist uses people, not as individual rational beings who have lives of their own, but as pawns in his ruthless struggle with his adversaries. Even if the terrorist does not physically injure his pawns, he has still violated their rights. He has used them, having taken away their autonomy, to apply pressure on his adversaries and to draw public attention to his cause. John Locke has some interesting comments with respect to such activities:

...for I have reason to conclude that he who would get me into his power without my consent would use me as he pleased when he got me there, and destroy me, too, when he had a fancy to it; for nobody can

four or five semisecret forces, driven by duty, impassioned loyalty to a cause, despair and vindictiveness, were warring on one another - often for unclear tactical reasons - in a strange subterranean struggle where, as one OAS member remarked, "networks often resembled gangs." Ominously, the conflict<sup>13</sup> aggravated racial tension. In the process, normal city life died.

In this case, four or five different groups each felt that they had the best ends, and they were willing to kill anyone who interfered with their programs to achieve those ends; or anyone whose death they felt would help to further those ends.

Even if we accept the extremely questionable assumption that a given terrorist organization has adopted the best ends possible, it is still necessary to determine if terrorism is the only means available to achieve those ends. To state that terrorism is the only means to achieve a certain set of ends is to make an unconditional statement. The terrorist or his supporter is effectively saying that he has considered every possible course of action, and that terror was the only course of action available. The effectiveness of terrorism as a means is highly suspect, and the assertion that it is the only means available is equally dubious.

Seen in historical perspective, terrorism has been effective only in very specific circumstances. It has not succeeded against effective dictatorships, let alone modern totalitarian regimes. In democratic societies or against ineffective authoritarian regimes it has on occasion been more successful...past experience shows that terrorism frequently occurs where there are other, nonviolent, political alternatives; where terrorism might be justified as the ultima ratio, such as against totalitarian rule, it has no chance, and where it seemingly succeeds, the political results are in the long run often self-defeating.<sup>14</sup>

Even if we grant that terrorism provides the only means to achieve the terrorist's ends, as well as the assumption that the terrorist's ends are truly in the best interests of society as a whole, the

We began with abstract alternatives: either history is made spontaneously or else it is the leaders who make it through cunning and strategy - either one respects the freedom of the proletarians and the Revolution is a chimera or else one judges for them what they want and the Revolution becomes Terror. In practice Marxism goes beyond these alternatives: approximation, compromise, Terror are inevitable, since history is contingent.

Such arguments are very similar to arguments made from the viewpoint of military necessity. The terrorist is described as having no choice but to resort to terror to fulfill his ends.<sup>12</sup> This argument depends on the following assumptions:

1. The good to be gained by the ultimate ends justifies the pain and suffering endured to achieve them.

2. Terrorism is not only an effective means to the designated ends, it is the only means to those ends.

3. The designated ends are, in fact, in the best interests of society as a whole.

How does the terrorist know that his ends are, in fact, in the best interests of society? The possession of such knowledge and insight is unquestionably a magnificent accomplishment, however it appears that in all but a few cases the ends that terrorists actually articulate are not very well thought through. Additionally, if more than one organization is at work, each with radically different ends, which organization is right, and therefore justified in its actions? Consider the example of the city of Algiers in 1961:

Words like "counter-counterterrorism" are meaningless; they obfuscate reality.

From a  pied noir's point of view, FLN agents were terrorists, OAS militants were counterterrorists; by this yardstick, the  barbouzes  were counter-counterterrorists. But from a Moslem's point of view, the opposite held true: the original terrorists belonged to right wing European organizations, and when the FLN riposted, it was counterterrorism.

One must sum up matters in Algiers, as winter began, by saying that

the overthrow of the Turkish government. The Baader-Meinhof Gang operated in West Germany. The Irish Republican Army renewed its bombing attacks on targets in England. The list could continue indefinitely, for virtually every nontotalitarian government, including the United States, has had some form of terrorist activity within its borders over the past twenty years. Hopefully this brief history will give the reader a feel for the scope and historical nature of terrorism. As this history indicates, terrorism involves armed conflict. Accordingly, it can be categorized as a method or a weapon of warfare. It is no accident that many, though certainly not all, terrorists consider themselves to be soldiers in a state of war.<sup>9</sup>

What is wrong with terror as a weapon? This is a reasonable question that must be addressed by anyone who, like myself, contends that terrorism is an unsuitable course of action for any individual or group. Terrorism has many proponents, and the terrorist, especially the small-group, revolutionary, has often been portrayed in a sympathetic, if not a favorable light. He is most often described as a fighter for freedom and justice. He is considered to be the humanitarian forced, by an uncaring society and a cruel social order, to tragic extremes. Terrorism is most often defended from a utilitarian viewpoint that stresses the ultimate ends of the terrorist rather than the actions he uses to achieve those ends. Consider Leon Trotsky's statement:

The revolution "logically" does not demand terrorism, just as "logically" it does not demand an armed insurrection. What a profound commonplace! But the revolution does require of the revolutionary class that it should attain its end by all methods at its disposal - if necessary, by an armed rising; if required by terrorism.<sup>10</sup>

Lenin also defended the use of terror in revolution:

leader, Hassan Sibai, seems to have realized early on that his group was too small to confront the enemy in open battle but that a planned, systematic, long-term campaign of terror carried out by a small disciplined force could be a most effective political weapon."

The favorite weapon of the sicarii was the short sword. The only weapon of the Assassins was the dagger. Even with the introduction of the pistol and rifle in the seventeenth century, the nature of weapons available limited the scope and impact of terrorist activity. In the nineteenth century modern explosives, especially dynamite, became available. It was with the bomb that terrorism as we now know it truly came into being.

Zuletzt ein Hoch der Wissenschaft.  
Dem Dynamit, das heisst der Kraft  
Der Kraft in uns'ren Haenden  
Die Welt wird besser Tag fuer Tag.

(At last a toast to Science.  
To dynamite that is the force  
The force in our own hands  
The world gets better day by  
day.)"

The Russian revolutionaries of the late nineteenth and early twentieth century gladly included it among their weapons as they conducted a campaign of terror against the Tsarist regime. Their example inspired similar efforts by Armenian nationalists against the Turks (1890s and sporadically to the present day) and by the anarchists of Western Europe (1890s). Traditional areas of civil unrest such as Ireland proved fertile ground for terrorist philosophy and activities. Incidents of terrorism have steadily increased during the course of the twentieth century. The Indians, Israelis, Algerians, and Vietnamese pursued their struggles for independence and national autonomy. During the 1970s and 1980s, terrorism has continued. Small groups in several South American countries have sought the overthrow of their governments. Palestinian organizations such as Black September assaulted Israeli settlements, diplomats, and athletes. The Turkish People's Liberation Army caused

of this chapter, I will consider this phenomenon, reviewing its origins, and critically examining actions which have traditionally [within our own modern Western Civilization] been categorized as "terrorist". I will use the results of this evaluation to formulate a definition of terrorism. Since my purpose is to determine, from an ethical perspective, how an established military force should deal with the phenomenon of terrorism, such a definition is essential. We must understand what terrorism is, and what the parameters of the problem of terrorism are, before we can rationally and effectively deal with terrorism.

It is not unusual to hear terrorism described as a relatively modern phenomenon which surfaced during the revolutionary struggles of the eighteenth and nineteenth centuries. This is incorrect. Although the term "terrorism" was introduced into common usage by the Jacobins during the French Revolution<sup>4</sup>, the origins of the phenomenon of terror are ancient. One of the earliest, and most successful, examples of terrorist activity was reported by the Jewish historian Josephus who recorded the exploits of the sicarii, participants in the Zealot struggle against the Roman occupation of Palestine during the first century A.D. Their repertoire of terror included political assassination, arson, and sabotage of water and food supplies for the city of Jerusalem.<sup>5</sup> Their actions succeeded in inducing a major popular uprising against the Romans from 66-70 AD.<sup>6</sup> Another early example is the order of Assassins which operated during the eleventh, twelfth, and thirteenth centuries A.D.

Based in Persia the Assassins spread to Syria, killing prefects, governors, caliphs and even Conrad of Montferrat, the Crusader King of Jerusalem. They tried twice to kill Saladin but failed. Their first

the United States, introduced the 1972 Draft Treaty on International Terrorism for consideration by the U.N. General Assembly. It was soundly defeated by a coalition of Third world and Communist states. The supporters of the convention argued that terrorism was a humanitarian issue, assuming that a broad consensus existed that terrorism is in fact a problem and that disagreements about the issue were limited to technical questions of how the problem of terrorism should be dealt with. In debate, these nations' representatives stressed humanitarian themes, such as the preservation of innocent lives from terrorist attack and the need for preserving international order. The coalition of Third World and Communist states which blocked these efforts for a multilateral convention rejected the humanitarian theme. They considered terrorism to be a political issue resulting from struggles against what they considered to be racist and colonialist regimes. These states refused to accept both the United States' draft convention, and a resolution urging ratification of three anti-hijacking conventions and calling for measures against international terrorism. They also rejected a second resolution, introduced by some Western European and Latin American states, which called for similar actions but which reaffirmed the right of national self-determination. Instead, the Third World and Communist states coalition introduced and passed their own resolution which condemned racist and colonialistic regimes as terroristic, and called for formation of an ad hoc committee to consider international terrorism. Nothing resulted from the meetings of the ad hoc committee, probably because the coalition was not interested in taking constructive steps to curtail terrorism.<sup>3</sup>

What then is this phenomenon called "terrorism"? During the course

## II. The Nature of Terrorism:

Terrorism is a confusing topic, in no small part because of the diversity of people who practice it as well as the general mystique which surrounds most terrorist organizations. Much of the confusion surrounding the ongoing international and domestic discussion of the problems of terrorism stems from the simple fact that the term "terrorism" lacks a precise and internationally accepted definition.<sup>1</sup>

E.M. Adams has noted that the term "terrorist" seems to be acquiring a status similar to that of the word "murderer", resulting in a prejudged difficulty in calling one's own organization "terrorist". Adams' observation is reinforced by David Rapoport who notes that although the Anarchists of the nineteenth century proudly called themselves terrorists, and Trotsky proclaimed the benefits of the Red Terror, the Zionist "Stern Gang" (circa 1940s) was the last major organization to describe itself as a terrorist organization. Rapoport states:

Today, the term has so many abusive connotations that no terrorist will ever call himself one publicly, and he will make every effort to pin that term on his enemy.<sup>2</sup>

Despite this general animosity to being called "terrorist", the term itself lacks the relative preciseness, and acceptance, of definition that "murderer" possesses. The problems posed by this lack of a precise definition were highlighted in 1972 in the United Nations General Assembly.

In September 1972, William Rogers, then the Secretary of State for

publications (such as FM 22-100 Military Leadership (Washington, DC: Headquarters Department of the Army, 31 October 1983) and Soldiers magazine) and semi-official publications (such as Military Review and Soldier Support Journal)]

<sup>7</sup>The two roles of the military in countering terrorism are identified by William Regis Farrell, The U.S. Government Response to Terrorism: In Search of an Effective Strategy (Boulder, CO: Westview Press, 1982), p.44.

(usually a scenario three occurrence) are included in this range of terrorist activity. Terrorists might be uniformed soldiers (scenario one), un-uniformed guerrillas (scenario two), or members of glorified street gangs (scenario three). This diversity of actions and participants makes the task of determining the actual nature of terrorism confusingly difficult. In the next chapter, we will consider the origins and nature of terror.

#### NOTES FOR CHAPTER I

<sup>1</sup>In this paper I am concerned more with actions which tend to fall exclusively into the province of the military rather than those which are executed by the police and other government agencies. Soldiers, unlike policemen and other government officials, are trained for war. While police usually use deadly force only as a last resort, soldiers generally use nothing but deadly force in dealing with the enemy, seeking to kill or neutralize him as efficiently as possible.

<sup>2</sup>Richard A. Falk, Law, Morality, and War in the Contemporary World (New York: Frederick A. Praeger, 1963), p.7.

<sup>3</sup>Immanuel Kant, Groundwork of the Metaphysic of Morals, trans. H.J. Paton. (New York: Harper & Row, Publishers, Incorporated, 1964), p.95.

<sup>4</sup>E.M. Adams, "The Ground of Human Rights", American Philosophical Quarterly. Volume 19, Number 2, April 1982, p. 195.

<sup>5</sup>E.M. Adams, "Persons and Morality", Philosophy and Phenomenological Research, March 1982, p.387.

<sup>6</sup>I acknowledge that the ethical position which I have just stated is controversial. I suspect all types of consequentialists (including utilitarians), egoists, and even a fair number who ascribe to some form of deontological ethics, will disagree with the stand I have taken. However, my purpose in this paper is not to argue for a specific system of ethics. Rather, I am expounding a position on military counters to terror, and that position is based on a specific ethical stance. Per my observations, this ethical position is compatible with and approximates the corporate ethical position of the United States military establishment and the state which that establishment serves.

[My observations concerning this corporate ethical position are grounded in official views expressed by senior officers and civilian government officials in speeches, discussions, lectures, and news reports. This corporate ethical position is also expressed in official

prisoners of war, and use of prisoners of war or civilians as shields during an attack. The second scenario is that of unconventional war, often called guerrilla war, where the opposing force is a revolutionary organization, operating with significant support from the local populace, utilizing terror to advance its aims. Recent examples of such organizations are the Viet Minh, and the Algerian National Liberation Front (FLN). The third scenario is that of domestic instability, where the military is called upon to augment local law enforcement agencies in their efforts to deal with the effects of small group terror, possibly transnational in nature, but most probably indigenous groups seeking to influence the government's behavior. These situations will probably be complicated by social conditions, such as poverty and lack of employment, which are conducive to domestic unrest. The Tupamaros in Uruguay provide a good example of such a group.

Admittedly, this list of scenarios is an extreme simplification of the actual possibilities. Overlapping scenarios might very well be the rule rather than the exception. For instance, during the course of the war in Vietnam, U.S. and South Vietnamese forces encountered both the guerrilla forces of the Viet Cong and the regular forces of North Vietnam. This appears to have been a blending of scenarios one and two. The British Army's experience with the Irish Republican Army (IRA) tends to fall between scenarios two and three, as did the French Army's experience in Algeria. Despite this defect of oversimplification, this list remains useful in that it serves to show the wide range of terrorist activities to which a military force might be called upon to respond. Actions as diverse as the aerial bombing of cities (scenario one) and the selective assassination of minor government officials

and property been affected, his basic human rights and his self-respect are violated.<sup>20</sup> To hold that any projected good ends could counterbalance this blatant misuse of another person or persons would require a true Pollyanna. Arguments of expediency and necessity are feeble, more designed to appease the troubled consciences of the terrorists and their advocates than to explain the outrages of their conduct to the victims, or at least to those victims who survive. Per the conventions of war, soldiers who pursue their duties consistent with certain standards of behavior and conduct are considered to have moral immunity, even if they accidentally kill noncombatants in the course of accomplishing a true military objective. The terrorist, although he is also in a state of war, has no such moral immunity, for in his efforts to shock the enemy into compliance with his will, he attacks or threatens those whom soldiers, acting under the conventions of war, would consider to be noncombatants. When the terrorist suspends moral conventions in the pursuit of his ends, he simultaneously suspends his claims to morally justifiable behavior.

Terrorism is often viewed as a tool of revolutionaries, suitable because it provides a means to assault the oppressor without a tremendous public uprising.

Killing, as Colonel Saxby pointed out some three hundred years ago, is not always murder and armed resistance cannot always proceed in open battle according to some chevalresque code: "Nein, eine Grenze hat Tyrannenmacht..zum letzen Mittel, wenn kenin anderes mehr verfangen will, ist ihm das Schwert gegeben" (No, tyranny does have a limit, and as a last resort, one has the sword if nothing else avails). Schiller's famous statement of the ultima ratio has been invoked by generations of rebels against tyranny. But for every Wilhelm Tell there have been many self-appointed saviors of freedom and justice, impatient men, fanatics and madmen invoking the right of self-defense in vain, using the sword not as the last refuge but as a panacea for all evils, real or imaginary.<sup>21</sup>

The concept of the terrorist as the saint with dynamite, who provides others with the means to their liberation from the oppressive state, is the stuff of which legends and myths are comprised. As is the case with many legends and myths, this concept's ties with reality are tenuous at best. The nineteenth century terrorist formula for revolutionary success was simple. Prince Kropotkin, a Russian Anarchist, explained it in 1880. The terrorist was to provide permanent incitement, by any means available - the written or spoken word, knives, firearms, bombs - so long as the actions were illegal and would provoke official reaction. One deed would create more propaganda than a thousand leaflets. The government, attempting to defend itself, would intensify oppression. The revolutionaries would intensify their actions, performing more heroic acts. More and more people would join the revolution as the government became more oppressive. Eventually the government would lose its sense of self-confidence and cohesiveness. By that time a general revolution would be occurring, and the government would not have time to make concessions.<sup>22</sup> Such an approach would be acceptable, and totally in keeping with Schiller's ultima ratio if the revolutionaries, having declared war on the government, applied such measures only against those who actually carry out oppression on behalf of the government. In fact, if the revolutionaries did this it is doubtful that their actions would be categorized as "terrorist", at least not in the sense we encounter in our current magazines and newspapers. The problem is that having declared war, terrorists go far beyond mere assassination. Frustrated by their inability to assault well protected senior officials, they attack lesser officials or the population at large. It is at this point that the terrorist usually loses his credibility as a hero of the people

and begins to erode his base of support. Walzer comments on the killing of government officials:

One might argue, I suppose, that any official is by definition engaged in the political efforts of the (putatively) unjust regime, just as any soldier, whether he is actually fighting or not, is engaged in the war effort. But the variety of activities sponsored and paid for by the modern state is extraordinary, and it seems intemperate and extravagant to make all such activities into occasions for assassination. Assuming that the regime is in fact oppressive, one should look for agents of oppression and not simply for government agents. As for private persons, they seem to me immune entirely. They are subject, of course, to the conventional forms of social and political pressure (which are conventionally intensified in guerrilla wars) but not to political violence.<sup>23</sup>

One aspect concerning the use of terrorism that any revolutionary would be well advised to consider is the fact that any rights he might have to pursue a course of terror can be equally claimed by the government that revolutionary is challenging. If the terrorist's ends provide justification for the means of terror, the affected government can easily justify a repression by terror, counterterror, on essentially the same basis. Once insecurity and concern spreads, and terrorism becomes more than a mere nuisance, the general population is far less likely to blame authorities for disregarding human rights in counterterror operations. It is extremely rare to find a government which is so weak and irresolute, with a society in such a state of decay, that that government is unable to defend itself against a terrorist challenge. Even third-rate dictatorships have shown the ability to defeat terrorism. Virtually any modern state is far better equipped, economically and militarily, to wage terror than any indigenous terrorist organization that might form within the borders of that state.<sup>24</sup>

The terrorist can only operate effectively in a state that already possesses significant political freedom.

That terrorism has been in certain circumstances a liberating force goes without saying. But whereas the terrorism of the Narodnaya Volya and similar such groups was directed against despotic regimes, this is no longer so; today it is directed almost exclusively against permissive democratic societies and ineffective authoritarian regimes. Having been the ultima ratio of the oppressed, it has all too often become the prima ratio of a motley crowd of people of varying motivations. It is no longer directed against the worst types of dictatorships; there were no terrorist movements in Nazi Germany or Fascist Italy nor are there any in the Communist regimes.<sup>25</sup>

Although the terrorist defies social and moral conventions, he depends on the state to limit its reaction to his terrorism on the basis of those same conventions. Menachem Begin noted this in his book Revolt:

...We often encountered the argument that the British government if it so chose could take revenge by destroying us all and thus our operations were endangering the whole Jewish population. This was indeed a very serious question, perhaps the most serious we ever faced. General Cunningham, the last High Commissioner, referred to it in his report on the storming of Acre fortress. The General argued that there was no means of destroying the Jewish underground except by the application of the whole military might against the entire population.

But, added the General, the British, unlike the Germans, could not do such a thing..."<sup>26</sup>

When the state does not limit its actions, terrorism stands little chance for success. In some cases, the terrorists succeed in toppling liberal governments, causing the emergence of right-wing military dictatorships.

True, the Uruguay of the 1960s was far from perfect and was faced with serious economic and social problems, but it is in any case doubtful that the Tupamaros had a better answer to these problems than the government of the day. The Tupamaros' campaign resulted in the emergence of a right-wing military dictatorship; in destroying the democratic system, they also destroyed their own movement. By the 1970s they and their sympathizers were reduced to bitter protests in exile against the crimes of a repressive regime which, but for their own action, would not have come into existence...

Terrorism from below produced massive and infinitely more effective terror from above.<sup>27</sup>

A similar example can be found in Turkey where, in September 1980, the military, frustrated by the growing strength of terrorists and the apparent unwillingness of the democratic government to counter the growing economic and political disruption caused by the terrorists, seized control of the government and began a systematic eradication of terrorists. The week prior to the coup there were ninety-nine terrorist murders reported. The week following the coup, only five murders were reported. Public hangings were reintroduced, and permission was given for law enforcement officials to shoot on sight anyone in performance of a terrorist act. It appears that the Turkish people, by in large, support the military takeover and the restoration of some degree of normality to their lives.<sup>28</sup>

The revolutionary who plans to use terror had best pick his situation carefully. As the examples of Turkey and Uruguay show, liberal governments might indeed be overthrown, but the forces of order within a society might be the ones that do the overthrowing.

I contend that the best (and the only morally acceptable) course for the revolutionary is to eschew terror altogether. The sincere revolutionary has a responsibility to the society that he is seeking to aid by means of his revolution. He is seeking to overthrow a government which he declares is illegitimate. He must be prepared to substitute a legitimate government for the one he overthrows. This means that the revolutionary government must correspond to the needs and desires of the society it is intended to nurture and protect. The actions of terrorists rip at the very fabric of morality and society. The terrorist's willingness to trample on the rights and lives of others sets a

dangerous precedent which could easily be used against whatever government the revolutionary might establish. Expediency, in the form of terrorism, is a Pandora's box for the revolutionary. The revolutionary who considers the course of terrorism is faced with a paradox of sorts. His actions are acceptable only in light of his desire to recreate the social order, but it seems that any social order, so constructed, would be demented to the point of being incapable of functioning on behalf of those it was constituted for.

The revolutionary has no exclusive claim on the use of terrorist tactics. Governments are quite capable of using such tactics, not only against their own citizenry, but against other states as well. This is not a recent development. Consider the "marching orders" given by Moses to the Israelites circa 1260 BC:

When you advance on a city to attack it, make an offer of peace. If the city accepts the offer and opens its gates to you, then all the people in it shall be put to forced labour and shall serve you. If it does not make peace with you, but offers battle, you shall besiege it, and the Lord your God will deliver it into your hands. You shall put all its males to the sword, but you may take the women, the dependents, and the cattle for yourselves, and plunder everything else in the city. You may enjoy the use of the spoil of your enemies which the Lord your God gives you. That is what you shall do to cities at a great distance, as opposed to those which belong to nations near at hand. In the cities of these nations whose land the Lord your God is giving you as a patrimony, you shall not leave any creature alive. You shall annihilate them - Hittites, Amorites, Canaanites, Perizzites, Hivites, Jebusites - as the Lord your God commanded you, so that they may not teach you to imitate all the abominable things that they have done for their gods and so cause you to sin against the Lord your God.

These orders provide us with a picture of terror as a military weapon. To a large extent, terror is a weapon of psychological warfare. Tamerlane's infamous pyramids, built with the skulls of every inhabitant of any city which refused to surrender, were not built for aesthetic reasons. Even as the enemies of the Israelites were strongly encouraged

to either surrender or, especially in the case of the six named nations, to leave the area, the enemies of Tamerlane were encouraged to meekly acquiesce to the conqueror's terms of surrender.

The purpose of terror, as a means of warfare, is to "strike terror into the hearts of the foe", the ultimate goal being to demoralize the enemy, causing him to cease resistance. The destruction of material, disruption of enemy operations, and infliction of casualties among military personnel are often results of terrorist activities, and may in fact be the primary objectives of the organization, however these are objectives shared by non-terrorist military forces. Use of surprise tactics against military forces, even in rear echelons, cannot be regarded as terrorist in nature. Clausewitz considered the desire to surprise the enemy to be "more or less basic to all operations, for without it superiority at the decisive point is hardly conceivable."<sup>30</sup> If the enemy's military forces are surprised by a raid, aerial bombardment, an ambush, or a general assault, it is their misfortune, but military forces are supposed to anticipate and to be prepared for such attacks. Terror enters the picture when war-like violence is directed against those who would normally be considered immune from attack by virtue of noncombatant status, such as civilians or prisoners of war. An air raid against a military installation well behind enemy lines is an attack against combatants. An ambush of a school bus containing children on the way to school is terrorist, as is the execution of bona-fide prisoners of war.

How then, are we to define "terrorism"? War has been defined as "an act of force to compel our enemy to do our will".<sup>31</sup> Clearly this is what terrorists are attempting to do. They are attempting to coerce

individuals or a government to do their will. Terrorists are involved in warfare, yet there is something quite different about the way in which terrorists use force to achieve their ends as opposed to the way that we expect soldiers use to use force to achieve the ends of a state. The soldier's use of force occurs within the legal parameters of his state. He is limited in how he can use force, killing not for self-benefit or personal gratification, but rather for reasons of state. Those whom he kills are combatants, people who are acting in a similar capacity for the enemy state. This is a legitimate use of force - combatant against combatant. We have seen that the terrorist uses destruction, murder (which is illegitimate, unjustified killing), injury, or the threats of the same against people who would normally be accorded noncombatant status by soldiers. The terrorist, like the soldier, uses violence, but the terrorist's violence is of the sort which we can classify as illegitimate.

For the purposes of this paper, terrorism will be defined as the illegitimate use of violence by an individual or group to achieve political ends. Terrorist violence is characterized by the systematic use of murder, injury, destruction or threats to use the same against planned or indiscriminate targets. The targets of terrorists are those individuals who under conditions of conventional war would be considered to possess noncombatant immunity.

By virtue of this definition, the appellation of terrorist applies not only to the "bomb-throwing, alien anarchist, disheveled, with a black beard and a satanic (or idiotic) smile, fanatic, immoral, sinister and ridiculous at the same time"<sup>32</sup>, but also to the clean-shaven, carefully groomed politician and his equally groomed

military technicians who plan and execute the destruction of civilian population centers under the banner of military necessity. My definition encompasses both the revolutionary who resorts to terror and the government official who approves counterterror. If this definition is somewhat disquieting, it should be.<sup>33</sup> Terrorism is a course of action actively pursued by major governments which not only fund and finance third world surrogate terror organizations, but which also pursue policies which hold millions hostage with threats of extermination. Each and every citizen of both the United States and of the Soviet Union is currently the victim of a terrorist threat that is unprecedented in its total disregard for human life and individual autonomy. The threat of nuclear war, as well as the conduct of nuclear war, fit within the parameters of my definition. The fact that these threats are made by major powers does not alter their nature. They are terrorist in that they are designed to achieve political ends by means of holding noncombatants hostage.

#### NOTES FOR CHAPTER II

<sup>1</sup>William Regis Farrell, The U.S. Government Response to Terrorism: In Search of an Effective Strategy (Boulder, CO: Westview Press, 1982), p.6.

<sup>2</sup>David Rapoport, "The Politics of Atrocity" in Terrorism: Interdisciplinary Perspectives, eds. Yonah Alexander and Seymour Maxwell Finger. (New York: The John Jay Press, 1977), p.44.

<sup>3</sup>Ernest Evans observes that the treaty would have required its signatories to either extradite or punish any individuals on their territory who could be shown to have committed terrorist acts of international significance. Four conditions were required for an act of terror to be of international significance:

(1)The act either had to occur or to have effects outside the territory of the state in which the offender was a citizen.

(2)The victims of the attack had to be citizens of a state other

than that state where the attack occurred.

(3)The attack had to be committed by someone other than a member of an armed forces against other than members of armed forces during the course of military hostilities.

(4)The terrorist act had to be intended to damage the interests of or to coerce a state or international organization. It was hoped that deterrence of terrorism could be achieved by punishment, increasing the costs and risks of terrorist activity to the point where its use would be curtailed.

Ernest Evans, "American Policy Response to International Terrorism: Problems of Deterrence", Terrorism: Interdisciplinary Perspectives, pp.110-116.

<sup>4</sup>Walter Laquer, Terrorism (Boston: Little, Brown and Company, 1977), p.6.

Much of what follows in this chapter is taken directly from my unpublished paper "Terrorism - A Perspective", written at University of North Carolina at Chapel Hill in Fall of 1983.

<sup>5</sup>Laquer, pp.7-8.

<sup>6</sup>This conflict ended with the fall of Jerusalem, the destruction of the temple, and the spectacular mass suicide at Masada. The entire garrison of nearly one thousand sicarii, to include women and children, chose to die rather than surrender to the Romans. David C. Rapoport's article "Terror and the Messiah: An Ancient Experience and Some Modern Parallels" in The Morality of Terrorism: Religious and Secular Justifications, eds. David C. Rapoport and Yonah Alexander (New York: Pergamon Press, 1982), discusses the sicarii in detail, comparing them to modern terrorist organizations.

<sup>7</sup>Laquer, p.8.

<sup>8</sup>Poem in the Anarchist publication Freiheit, May 5 and May 26, 1873, quoted by Laquer, p.59.

<sup>9</sup>Some terrorists, notably kidnapers in Italy and brigands in Argentina, are more concerned with money than politics. Jay Mallin remarks on these financially motivated terrorists in his article "Terrorism as a Military Weapon" in Terrorism: Interdisciplinary Perspectives, p. 93.

<sup>10</sup>Leon Trotsky, Terrorism and Communism(University of Michigan Press), pp.57-59, included in The Age of Permanent Revolution: A Trotsky Anthology, ed. Issac Deutscher (New York: Dell Publishing Co., Inc., 1973), p.115.

<sup>11</sup>Lenin, "Left-Wing Communism - An Infantile Disorder" in Collected Works, Vol.31 (Moscow: Progress Publishers, 1966), p.74, quoted by Maurice Merleau-Ponty, Humanism and Terror: An Essay on the Communist Problem, translated by John O'Neill (Boston: Beacon Press, 1969), pp.117-118.

<sup>12</sup>Michael Walzer, Just and Unjust Wars (New York: Basic Books, Inc., 1977), pp.203-204.

<sup>13</sup>Paul Henissart, Wolves in the City: The Death of French Algeria (New York: Simon and Shuster, 1970), pp.257-258.

<sup>14</sup>Laquer, p.119.

<sup>15</sup>John Locke, The Second Treatise of Government (New York: Bobbs-Merrill Co.,1952), p.12.

<sup>16</sup>Walzer, p.144.

This combatant/noncombatant distinction is not always an easy one to make, especially in situations where some combatants are not wearing uniforms. There is a temptation to extend combatant status beyond the class of soldiers to include civilians engaged in activities such as logistical support of military forces, law enforcement, or war related planning and policy making. Douglas Long has suggested that the terrorist might argue, "To focus on those with swords in their hands or guns pointed at their enemies, and to ignore those pulling the strings of the puppets in the field is just another establishment ploy to undermine the revolution." Indeed, the noncombatant politician might be more guilty than the eighteen year old draftee he sends to suppress the revolution. But the politician's guilt, whether real or imagined, does not make him a combatant. Unlike the draftee, who is a soldier, the politician is not responsible for performing acts of violence. The politician does not have the right to kill for reasons of state, and as a result, he has not forfeited his rights to noncombatant status. This does not mean that the revolutionaries can take no action against the politician. If the revolution is successful, and the revolutionary government is imposed, the politician can be tried and punished under the laws of the new government. If the revolutionaries are unwilling to wait until completion of the revolution, the option of assassination is available. However, it must be remembered that assassination is not a military option. It is a political option. An assassin who is captured is not entitled to the same treatment as a combatant.

<sup>17</sup>Robert P. Wolff, In Defense of Anarchism (New York: Harper and Row, Publishers, 1976),p.4.

<sup>18</sup>Jean-Paul Sartre, The Wretched of the Earth, trans. Constance Farrington (New York:n.d.), pp.18-19, quoted by Walzer, p.204.

<sup>19</sup>Walzer, p.205.

<sup>20</sup>Laquer, p.226.

<sup>21</sup>Laquer, p.4.

<sup>22</sup>Pyotr Kropotkin, "The Spirit of Revolt", first published in Le Révolté (Geneva,1880), trans. Arnold Roller, in The Terrorism Reader : A Historical Anthology, ed. Walter Laquer. (Philadelphia: Temple University Press, 1978), pp.90-96.

<sup>23</sup>Walzer, p. 202.

<sup>24</sup>Laquer, p. 221.

<sup>25</sup>Laquer, p. 219.

<sup>26</sup>Menachem Begin, The Revolt (London: W.H. Allen, 1951) quoted by Robert B. Asprey, War in the Shadows: The Guerrilla in History (Garden City, N.Y.: Doubleday and Company, 1975), p.778.

<sup>27</sup>Laquer, p.118.

<sup>28</sup>James R. Fay, "Terrorism in Turkey: Threat to NATO's Troubled Ally", Military Review, LXI, April 1981, pp. 16-26.

<sup>29</sup>The New English Bible: With The Apocrypha (Oxford University Press and Cambridge University Press, 1970), Deuteronomy 20: verses 10 -18, pp. 218-219.

<sup>30</sup>Carl Von Clausewitz, On War, ed. and trans. Michael Howard and Peter Paret. (Princeton, NJ: Princeton University Press, 1976), p.198.

<sup>31</sup>Clausewitz, p. 75.

<sup>32</sup>Laquer, p.3.

<sup>33</sup>It seems worth noting that some of the distress can be alleviated by "correct" wording of the definition. For instance, the current (1983) Department of Defense definition is:

...the unlawful use or threatened use of force or violence by a revolutionary organization against individuals or property with the intention of coercing or intimidating governments or societies, often for ideological purposes.

Extracted from Report of the DOD Commission on Beirut International Airport Terrorist Act, October 23, 1983, US Government Printing Office, Washington, D.C., 20 December 1983, p.112, by Jeffrey W. Wright, "Terrorism: A Mode of Warfare", Military Review, LXIV, October 1984, p.44. Wright notes (on page 45 of this same article) that the Long Commission found that the DOD definition needs to incorporate the reality that sovereign states are also capable of terrorism, whether through surrogates or directly. The definition as written avoids the "nasty" possibility that non-revolutionary organizations, such as the U.S. Army, might ever be considered terrorist. The Long Commission's suggestion rectifies that shortcoming. It seems worth noting that the definition of "International Terrorism" in the Foreign Intelligence Surveillance Act of 1978 is more compatible with the definition I have adopted.

"International terrorism" means activities that:

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or

that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended (A) to intimidate or coerce a civilian population; (B) to influence the policy of a government by intimidation or coercion; or (C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

quoted in The Washington Post, 29 April 1984, Section B, p. 8.

### III. Acceptable Military Responses to Terrorism.

In 1946, General Douglas MacArthur had the duty of confirming the death sentence imposed by a United States military commission on General Tomoyuki Yamashita. General Yamashita was convicted for failure to discharge his responsibilities as a commander to insure lawful conduct of his subordinates. Yamashita's soldiers, stationed in the Philippine Islands, massacred prisoners of war and civilians during the closing months of the war in the Philippines.<sup>1</sup> MacArthur wrote:

The soldier, be he friend or foe, is charged with the protection of the weak and unarmed. It is the very essence and reason for his being. When he violates this sacred trust, he not only profanes his entire cult but threatens the very fabric of international society. The traditions of fighting men are long and honorable. They are based upon the noblest of human traits - sacrifice.<sup>2</sup>

Underlying MacArthur's eloquent statement is a long tradition of "proper" conduct in war. Telford Taylor, chief counsel for the prosecution at the Nuremberg trials, comments:

War consists largely of acts that would be criminal if performed in time of peace - killing, wounding, kidnapping, destroying or carrying off other peoples' property. Such conduct is not regarded as criminal if it takes place in the course of war,<sup>3</sup> because the state of war lays a blanket of immunity over the warriors.

But this moral and legal immunity does not give the soldier license to do as he pleases. The soldier is a servant of the state which he represents. He operates under the authority of that state, and his actions are limited by the moral and legal constraints imposed by his state. This can be contrasted with terrorism in which there is a

states." from Crimes of War, eds. Richard A. Falk, Gabriel Kolko, and Robert Jay Lifton (New York: Random House, 1971), p.48.

<sup>9</sup>Adam Roberts and Richard Guelff, eds., Documents on the Laws of War (Oxford: Clarendon Press, 1982), p. 273.

<sup>10</sup>Roberts and Guelff, p.330.

<sup>11</sup>Taylor, p.29.

<sup>12</sup>Roberts and Guelff, p.45.

<sup>13</sup>Taylor, p. 29-30.

<sup>14</sup>Taylor, p.30.

<sup>15</sup>Department of the Army, FM 27-10: The Law of Land Warfare, with change 1 (Washington, DC: U.S. Government Printing Office, 15 July 1976), p.7.

<sup>16</sup>Ambassador (General) Maxwell Taylor seems to reflect this in a mission report from Saigon, on 10 August 1964, transmitted to the Joint Chiefs of Staff. Taylor urges reprisals in kind for sabotage and mining, however he acknowledges the difficulties involved in trying to find an appropriate reprisal target for terrorist attacks against U.S. dependents. From Neil Sheehan and others, The Pentagon Papers (Chicago: Bantam Books, Inc., 1971), p.297.

<sup>17</sup>G. Lowes Dickenson, War: Its Nature, Cause, and Curse (1923), p.16, quoted by Taylor, p.33.

<sup>18</sup>Carl Von Clausewitz, On War, ed. and trans. Michael Howard and Peter Paret. (Princeton, NJ: Princeton University Press, 1976), p.198.

<sup>19</sup>Much of this discussion concerning 'reason of war' echoes that found in Walzer, p.144.

E.M Adams has observed, concerning kriegsraison in Twentieth Century warfare, that some actions necessary to win wars may actually discredit the winning. One does not make a country "safe for democracy" by making it ecologically unfit for human existence, and bombing its citizens into oblivion. If "winning" involves the effective eradication of the human race, "losing" appears to be the more attractive alternative.

<sup>20</sup>Walzer, p. 146.

<sup>21</sup>Thomas Nagel, "War and Massacre", War and Moral Responsibility, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon. (Princeton, NJ: Princeton University Press, 1974), p. 18.

<sup>22</sup>Actually, from a purely technical point of view, military forces involved in active combat operations in scenario one or scenario two situations cannot be considered targets for terrorism. Per my definition, terror is directed at noncombatants, people who have no reason to expect attack. The techniques of attack may be similar

nature of the incursions, as well as the small size of the assault forces is proof, in and of itself, that the raiding nations had no plans of conquest and that the limited operation had no purpose other than restoring the status quo.

In this chapter, I have made specific recommendations concerning acceptable actions which military forces can take in response to terrorism. There are, I am sure, many more acceptable actions which can be taken. However, my list, no matter how deficient, shows that the military, while limited in what actions it can legally and morally take concerning terrorism, is certainly not hobbled. The military's options for response include a wide range of actions, many of which involve violence. All of these options, properly applied, have the potential to diminish the capabilities of, or to destroy a terrorist threat.

#### NOTES FOR CHAPTER III

<sup>1</sup>Telford Taylor, Nuremberg and Vietnam : An American Tragedy (Chicago: Quadrangle Books, 1970), p.91-92.

<sup>2</sup>From General Douglas MacArthur's statement on the confirmation, quoted by Taylor, p.9.

<sup>3</sup>Taylor, p.19.

<sup>4</sup>Taylor, p.20.

<sup>5</sup>Michael Walzer, Just and Unjust Wars (New York: Basic Books, Inc., 1977) p.45.

<sup>6</sup>Walzer, p.36.

<sup>7</sup>Walzer, p.42-43.

<sup>8</sup>Article 3 is common to all four of the Geneva Conventions of 1949. It "represents an effort to extend some coverage of humanitarian international law to conditions of civil war, that is, to warfare in which the opposing parties may not be governments of separate sovereign

United States of committing federal military forces only as a last resort, once police and National Guard have employed all their available force. Since soldiers are trained almost exclusively in lethal force, they should not be used in lieu of police. Rather, they should be used to provide security to vulnerable installations and institutions in order to free regular police officers to deal with the threat. Selected units might also act as immediate action forces to supplement or relieve police special weapons and tactics units.

Commando operations are also in the province of the military, and pose special problems with respect to legality and morality of international operations. The laws of war apply in all cases, and terror on the part of military participants is not acceptable. Operations in one's own country, such as the May 6, 1980 storming of the besieged Iranian embassy in London by British Special Air Service personnel, tend to belong to scenario three. Operations such as the ill-fated U. S. rescue attempt in Iran and the successful Israeli rescue effort at Entebbe, Uganda seem to overlap features from the first two scenarios. These operations are best described as raids. There is some question as to whether they constitute illegal aggression, in that they involve placing military forces, uninvited, onto foreign soil. How can one nation justify the conduct of a military raid or a strike in a country with which it is not at war? Normally, such actions could not be justified. In the cases mentioned above, however, the nations whose territory was the scene of the strike had effectively allied themselves with the terrorists, and their deliberate failure to intervene to stop the illegal actions by the terrorists on their territory seemingly left Israel and the United States with no recourse save force. The limited

nor immoral. They failed to do either.<sup>24</sup> I suspect the major difficulty the American people had in accepting "Phoenix" lay in the "neutralization" sphere. It was fairly obvious that the "neutralization" squads were essentially assassins, and it was equally obvious that they were not restricting their efforts to key figures. It strains credibility to claim that 20,000 people, enough to man two Soviet motorized rifle divisions, were truly key figures whose removal could make a difference in the terror movement. Reports of mass executions and torture make for bad press and (rightly) offend moral sensibilities.

Despite this, I think it would be a major mistake, simply on the basis of Operation Phoenix, to reject the concept which Gazit describes. Infiltration of terrorist organizations provides intelligence which enables terrorist actions to be stymied. Removal, preferably by arrest, but if necessary by assassination, of truly key figures will have a demoralizing effect on the rank and file members of the organization. [This can be contrasted with the effect of Operation Phoenix which seemed to have the overall effect of solidifying and intensifying opposition to the United States and South Vietnam governments.† The lesson which we can learn from Operation Phoenix is that intelligence operations of the sort which Gazit describes must be carefully controlled to avoid illegal or immoral actions. Further, such operations must be directed against an actual terrorist threat.

With respect to scenario three (domestic instability), the military is not involved in a combat situation. While the terrorists might consider themselves to be soldiers, they might more appropriately be considered criminals. There is a strong, and wise, tradition in the

peers to cease and desist such actions. This process can be enhanced by use of propaganda pamphlet (artillery or aerial) bombardments and radio intercept transmissions informing the soldiers of the target unit of their special status, and why that status is in effect.

With respect to scenario two (unconventional war), the military establishment is still bound by the legal and moral constraints of the laws of war. This does not preclude aggressive (nonterroristic) counterterror operations [eg. air raids, artillery bombardment, infantry attack] which, on the basis of verified intelligence information, attack terrorist bases, lines of supply, and interfere with the conduct of terrorist operations. The importance of good intelligence cannot be overemphasized. Shlomo Gazit, former head of Israeli military intelligence notes:

First, good intelligence permits attacks to be stopped before people are killed and before the terrorist message is broadcast to the world...second, if the terrorists feel they have been penetrated they will be forced to suspect each other and to compartmentalize their operations, and this will hinder them. Finally...good intelligence allows the surgical removal of the truly key figures who can make the whole difference in a terror movement.<sup>23</sup>

Operation "Phoenix", a joint antiterrorist venture by the American military and the Central Intelligence Agency, was organized to make use of intelligence to identify and neutralize members of Viet Cong cells. [Ostensively on the somewhat questionable assumption that every member of the Viet Cong was also a terrorist.] Between 1965 and 1969, when the counter terror teams were disbanded due to public pressure in the United States, more than 20,000 Viet Cong members were removed from action. The main problem which this operation encountered was persuading the American people and Congress that their techniques were neither illegal

to treat their prisoners of war and the enemy's civilian populace with respect, protecting them from harm as much as possible. This does not eliminate taking action to respond to and counter terrorism. The war crimes trials that followed World War II provide an example of an international effort to hold individuals responsible for their illegal and immoral actions. Such trials do not have to wait until the end of a war. For example, if guards are captured during a liberation of a prisoner of war camp, those who have violated the laws of war can, per section III, articles 99 through 108, of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, legitimately be tried for such violations, even if the war is still in progress.

Another response option might involve placing enemy units known to utilize terror tactics high on the list of planned targets for military action. This response is, of course, subject to the overall military situation. Making a response to terror should never take priority over the necessary conduct of the war. However, when an option is available to assault either unit A or unit B, and unit B has a history of terrorist actions, then unit B should be assaulted. The bulk of harassing fires and harassing air raids could be directed at unit B rather than unit A. Since troop units, such as B, are already bona-fide targets, this response is in no way terrorist. Soldiers who realize that their unit has become a preferred target for the enemy tend to become disenchanted with remaining in that unit. Morale and fighting spirit tend to be adversely affected. War is a dangerous enough enterprise without receiving "extra" attention from the enemy. If they realize that this "extra" attention is related to their terrorist actions, there is a good chance they will encourage their superiors and

children are not threatening your life, that would be to treat them as a means with a vengeance.<sup>21</sup>

Let's apply what has been discussed so far to the specific question of reacting to terrorism.

In the introduction to this paper, I noted that the military has two roles in countering terrorism, the first being a defensive role, the second being an offensive role. The defensive role offers few if any problems concerning appropriateness of reaction. It is by and large a passive reaction to terrorism which involves increasing physical security and security alertness among personnel in order to protect resources and personnel from terrorist attacks of the types likely in scenarios two (guerrilla warfare) and three (domestic unrest). Long standing operating procedures concerning the use of deadly force by guards on duty [not dissimilar to most police procedures] provide adequate guidance concerning reaction to small group terrorist attacks. Essentially, guards who perceive a life/death situation may fire without warning, whereas guards who have significant lethal advantage over the terrorists must warn them to surrender. If the warning to surrender is not heeded, and the terrorist continues to be a threat, then deadly force can be used. In scenario one situations, standard precautions to protect against infiltration and surprise attack are sufficient.<sup>22</sup>

Determining the offensive role of the military in countering terrorism can present us with difficulties. With respect to scenario one (conventional war), the laws of war, which are part of the legal code, combined with the moral and ethical traditions of the citizens of the United States, eliminate the option of response in kind. Even if the enemy terrorizes prisoners of war and the civilian populace, the members of the United States Army are bound, by law and moral tradition,

status of the workers, is to change the type of attack. If the attack on the munitions plant was being conducted by an infantry unit, the attacking soldiers would not deliberately kill the workers unless the workers resisted the attack.

There are limits to military necessity, both legal and moral. In no case, does military necessity justify acts of terrorism, including terrorist reprisals, terror bombing, and torture. Actions such as these are illegal because they violate the traditions of written and unwritten law of war. However, even if they were not illegal, they would be immoral. Terror ultimately involves blackmail. Terrorists hold people hostage, whether physically or psychologically, to coerce individuals or governments to accede to their demands. The victims of terrorists are not treated as persons, but as objects, things to be manipulated and controlled. The terrorist who bombs a busy commercial district, or who machineguns a school bus full of children is not treating his victims as people. He is using them to draw attention to his cause, to create fear and apprehension, to coerce government concessions. The terrorist is totally ignoring the victims' rights to define and live their own lives. He ignores their personhood.

Legitimate military actions do not involve this insult to personhood. Thomas Nagel comments on this in his paper "War and Massacre"

It may seem paradoxical to assert that to fire a machine gun at someone who is throwing hand grenades at your emplacement is to treat him as a human being. Yet the relation with him is direct and straightforward. The attack is aimed specifically against the threat presented by a dangerous adversary, and not against a peripheral target through which he happens to be vulnerable but which has nothing to do with that threat. For example, you might stop him by machine-gunning his wife and children who are standing nearby, thus distracting him from his aim of blowing you up and enabling you to capture him. But if his wife and

Hiroshima, and Nagasaki. Similar examples are available from the Vietnam War. Walzer suggests that the line for military necessity should be drawn with attacks on those working in war peculiar industries. As a result, tank factories could be attacked, but food processing plants could not.<sup>20</sup> I agree with Walzer on this point. Military necessity in no way justifies the terrorism of bombing population centers in an effort to "break the enemy's will to resist", or even as an act of reprisal, to punish the enemy for his acts of terror. Actions, directed specifically against non-combatants cannot be justified. On the other hand, the aerial bombing of a major munitions plant in the heart of a city is, from my point of view, justifiable, even if a significant loss of civilian life is involved. My only proviso with respect to such bombardment would be that the attack should be proportionate to the actual target, the plant itself, rather than deliberately extend into the city at large. As long as the attack is proportionate to the threat, the responsibility for noncombatant casualties lies not with the airmen and their superiors, but with the enemy leaders who placed a legitimate military target in the center of a populated area.

But aren't munitions plant workers civilian, and therefore noncombatants per the laws of war? Yes, they are noncombatants. However, as E.M Adams has noted, the munitions plant workers are not the targets of the air raid. The munitions plant itself is the target. The workers can be considered to have accepted the risks of working in a target area, even as civilians living in the vicinity of the plant have accepted the risk of living near a target.

A simple way of reviewing the situation, and determining the actual

drive its opponent toward extremes, and the only limiting factors are the counterpoises inherent in war...

...To introduce the principle of moderation into the theory of war itself would always lead to logical absurdity.<sup>18</sup>

I disagree with this stand. Kriegsraison, or reason of war, justifies not only those actions which are necessary to win a war, but also those actions necessary to reduce the risks of losing or to simply reduce losses during the course of a war. Strictly speaking, military necessity is rarely if ever true necessity. It is most commonly a means, within a wartime structure involving probability and risks, of minimizing the risks to one's own forces. While such minimizing of risks is understandable, a given course of action becomes necessary if and only if no other course of action is available to improve the odds. This is unlikely. Inevitably, a range of choices is available. Some of these choices will be moral as well as military in nature. Some will involve the choice between following or disregarding the laws of war as they are currently understood. Whatever the choices may be, Walzer is quite correct when he comments that "'Reason of war' can only justify the killing of people we already have reason to think are liable to be killed." In other words, kriegsraison justifies only the killing of those who are directly involved in the war effort. Anyone else must be considered a noncombatant and as a result is not liable (subject) to being killed. Because of his status as a noncombatant, he is considered to have immunity from direct attack.<sup>19</sup>

It is not difficult to find examples of supposed military necessity which have impacted on the laws of war. Teleford Taylor comments on the "terrible example" during the Second World War of the aerial bombardment of population centers, the most infamous including Dresden, Tokyo,

United States Army, treaties relating to the law of war have the same standing as laws enacted by Congress. These conventions are part of the "Supreme Law of the Land" per the Constitution of the United States, article VI, clause 2.<sup>15</sup> Consequently, from a legal standpoint, since the various Hague and Geneva conventions prohibit mistreatment of noncombatants, the armed forces of the United States are forbidden, by law, from participating in terrorist activities. The option of adopting military terror as a tactic, whether during the course of a conventional war, guerrilla war, or in domestic disturbances is not legally available to military commanders in the United States, and for that matter in most of the signatory states.

The United States Army cannot legally respond to terrorism in a tit-for-tat fashion.<sup>16</sup> Even if the enemy is killing American soldiers who have surrendered, American soldiers cannot retaliate by killing or even mistreating enemy prisoners of war in their custody. Similarly for any other violation of the law of war involving non-combatants, American forces may not legally take reprisals against non-combatants.

The fact that such actions are illegal does not mean that they are not committed by U.S. forces or any other established military force for that matter. War is a demanding enterprise in which men who would normally be law-abiding find themselves in situations where they feel it is absolutely necessary to disregard the laws of war in order to achieve victory over the enemy. Lowes Dickinson has stated that "no rule to restrain the conduct of war will ever be observed if victory seems to depend upon the breach of them."<sup>17</sup> Clausewitz would have agreed:

If one side uses force without compunction, undeterred by the bloodshed it involves, while the other side refrains, the first will gain the upper hand. That side will force the other to follow suit; each will

degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.<sup>9</sup>

As of 1970, 147 nations had ratified, accessed, or succeeded the four conventions which contained this article.<sup>10</sup> For the majority of these states, including the United States, these conventions have been incorporated into the laws of the state. But treaties such as the Hague and Geneva conventions are only partial embodiments of the laws of war on which they are based.<sup>11</sup> The Preamble of the Fourth Hague Convention of 1907 declares:

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples,<sup>12</sup> from the laws of humanity, and the dictates of the public conscience.

Similar language is found in Article 158 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949. In this article, provisions are made for a signatory nation to denounce the convention, but nevertheless, that nation is still bound to observe the "principles of the laws of nations".<sup>13</sup>

As a consequence of this, nations are regarded as bound by the laws of war whether they are signatories to the Hague and Geneva conventions, or not. Nonsignatory nations are not bound to the precise wording of the conventions, but they are considered bound by the customary laws of war.<sup>14</sup> A war does not have to be an international war to bring these laws into effect. The wording of article 3 for each of the Geneva Conventions of 1949 was intended to encompass civil wars. For the

a relation between persons but between political entities and their human instruments. These human instruments are not comrades-in-arms of the old style, members of the fellowship of warriors; they are "poor sods, just like me," trapped in a war they didn't make. I find in them my moral equals.

The soldier finds that killing such opponents when they are trying to kill him is justifiable, but if they are wounded and defenseless, or have surrendered, they have ceased to be a threat, killing them is nothing short of murder.

Accompanying this recognition that there are circumstances where the enemy soldier ceases to be a target, is the realization that war involves combat between combatants. There exists an almost universal tendency to set certain classes of people outside the permissible range of war, so that the deliberate killing of any of these people constitutes a crime rather than a legitimate act of war. Most commonly, such protection is afforded to those who do not or cannot fight, such as women with their children, clergy, the elderly, neutrals, and wounded or captured soldiers.<sup>7</sup> This tendency is recognized in written form in Article 3 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.<sup>8</sup>

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and

deliberate flaunting of moral and legal conventions, although, as I have noted previously, the terrorist depends on his opponent adhering to those same conventions.

The legal limitations which soldiers and other members of the military establishment work under are generally known as the "laws of war". These laws, until recently were largely a matter of unwritten tradition. Taylor notes that they come from two sources, the first being notions of medieval knightly chivalry, and the second from the age old concept that the ravages of war should be mitigated, preventing needless cruelties and wanton death and destruction.<sup>4</sup> The first source, based largely upon combat between equals who have chosen to fight, is often reflected in the views of professional soldiers.

Though chivalry is dead and fighting unfree, professional soldiers remain sensitive (or some of them do) to those limits and restraints that distinguish their life's work from mere butchery. No doubt, they know with General Sherman that war is butchery, but they are likely to believe that it is also, simultaneously, something else. That is why army and navy officers, defending a long tradition, will often protest commands of their civilian superiors that would require them to violate the rules of war and turn them into mere instruments for killing...Sometimes, at least, it matters to soldiers just whom they kill.<sup>5</sup>

The second source has gained importance as the concept of freely chosen combat between aristocratic warriors has waned. Modern war involves vast numbers of people, the majority of whom are unwilling participants. Modern warfare is based not on aristocratic freedom, but on military servitude. Walzer describes the line soldier's recognition of this servitude:

Hatred is interrupted or overridden by a more reflective understanding, which one finds expressed again and again in letters and war memoirs. It is the sense that the enemy soldier, though his war may well be criminal, is nevertheless as blameless as oneself. Armed, he is an enemy; but he isn't my enemy in any specific sense; the war itself isn't

(usually bombs or sniper assaults), but the attack must be regarded as an unconventional military assault (perhaps conducted by a terrorist organization) rather than a terrorist attack. A case in point is the bombing of the marine barracks in Beirut. The naval task force had become involved in military operations involving shelling of militia positions and aerial assaults. At that point, all elements of the task force, to include the marines at the airport ceased to be noncombatants. The bombing was directed against combatants who should have been prepared for hostile action. The success of the bombing can be tied to traditional military principles of war. The terrorists concentrated the combat power of a 12,000 pound bomb in the immediate vicinity of a large concentration of marines expending minimum force while attaining maximum surprise. The operation was simple, economical, and succeeded in embarrassing the military force of a major power. This was a classic unconventional military operation. However, the bombing of the U.S. embassy which occurred earlier that year, using similar techniques, was addressed against noncombatants. It was unquestionably a terrorist action.

<sup>23</sup>Shlomo Gazit, quoted by Thomas L. Friedman, "Israel Turns Back on the Terrorists, but Finds No Political Solution", The New York Times, December 4, 1984, p.8.

<sup>24</sup>"Phoenix" is discussed, in a positive manner, by John B. Wolf, Fear of Fear : A Survey of Terrorist Operations and Controls in Open Societies(New York: Plenum Press, 1981), p.91.

#### IV. Conclusions.

How then, should an established military force deal with the challenge of terrorism? What sort of military actions are justified, and what sort of military actions are not? Clearly, "tit-for-tat" reprisal of the sort which meets terrorist activity with terrorist activity is inappropriate. Not only is it illegal, per the established laws of war<sup>1</sup>, it is also immoral. As we have seen, the use of terror is dehumanizing, not only to the people it is used against, but also to those who use it. Its use cannot be justified, for no man has the right, no matter what his cause might be, to disregard the personhood of other human beings. To treat others as targets, hostages or pawns is to deny their personhood. In that denial, the terrorist, be he soldier or revolutionary, loses some of his humanity.<sup>2</sup> His perspective is distorted and his values become suspect. The values of the terrorist are not those of the soldier. When one resorts to terror as a military weapon, he is deliberately assaulting the weak and unarmed. General MacArthur, appropriately, deemed this a violation of a "sacred trust". The soldier is entrusted with what Samuel Huntington has called "the management of violence".<sup>3</sup> If he manages that violence improperly, deliberately or recklessly harming those who should not be harmed, the soldier is bringing disgrace to himself, his profession, and the state which has entrusted him with lethal power.

We might find ourselves tempted to declare that military actions

taken to counter terrorist activity are acceptable if they comply with the laws of war, both written and unwritten, and with the moral judgment of the civilized world. This however is inadequate for two reasons. First, the moral judgment of the civilized world and the laws of war are the products of past experience. With the constantly changing nature of modern warfare, it is easily possible that a modern soldier might encounter situations, requiring moral decisions, which are not covered in the laws of war or the moral judgment of the civilized world. Such decisions would require a transcending of moral tradition. Secondly, the soldier in the midst of combat is in no position to consider each and every action he is about to take, comparing it against the laws of war and the moral traditions of his state and of the civilized world. Officers are generally far too busy coordinating action and logistics to review the highlights of their legal and ethical education, and most enlisted men lack such education, at least in the formal sense required here.

The typical solution of a modern bureaucratic military establishment would be to establish an office of moral planning and policy which would issue yet another checklist containing rules of engagement or publish a new field manual on the laws of war. This is inadequate. To attempt to enforce morality by means of checklists and manuals is inane. The solution lies in simplification of the requirements so that they are easily understood, remembered, accepted, and acted on by soldiers at all levels.

I submit that when the various aspects of acceptable and unacceptable military conduct are considered, we find that acceptable military conduct involves treating people as persons rather than

objects, and strict avoidance of deliberate or even reckless attack on noncombatants. How do we treat people as persons rather than targets? As a start, we have to abandon our tendency to use dehumanizing symbols and accept the realities of the situation. A search and destroy mission against the structure at grid AD454656 sounds like a clinical operation. It acquires far different meaning when we find out that the structure is a farmhouse occupied by a thirty year old farmer with a wife, three children, and a mother-in-law. If we are told his name and some of his background, the mission becomes far more human. The farmer is no longer a point on the map or an "indigenous male", he is a person who possesses rights which are as capable of being violated by a 500 pound bomb as by a rifle bullet. In the process of recognizing and respecting his rights we reaffirm our own humanity.

But this process is not easy. Military actions must be constantly appraised and reappraised for appropriateness in a given situation.<sup>4</sup> It must also be realized that war itself is a brutalizing experience. Philip Caputo notes this when he writes, concerning Vietnam:

Everything rotted and corroded quickly over there: bodies, boot leather, canvas, metal, morals. Scorched by the sun, wracked by the wind and rain of the monsoon, fighting in alien swamps and jungles, our humanity rubbed off of us as the protective bluing rubbed off the barrels of our rifles. We were fighting in the cruelest kind of conflict, a people's war. It was no orderly campaign, as in Europe, but a war for survival waged in a wilderness without rules or laws; a war in which each soldier fought for his own life and the lives of the men beside him, not caring who he killed in that personal cause or how many or in what manner and feeling only contempt for those who sought to impose on his savage struggle the mincing distinctions of civilized warfare - the code of battlefield ethics that attempted to humanize an essentially inhuman war. According to those "rules of engagement," it was morally right to shoot an unarmed Vietnamese who was running, but wrong to shoot one who was standing or walking; it was wrong to shoot an enemy prisoner at close range, but right for a sniper at long range to kill an enemy soldier who was no more able than a prisoner to defend himself; it was wrong for infantrymen to destroy a village with white-phosphorus grenades, but right for a fighter pilot to drop napalm

on it. Ethics seemed to be a matter of distance and technology. You could never go wrong if you killed people at long range with sophisticated weapons.

At the heart of this protest lies confusion. Caputo's soldiers were confused concerning who the enemy was. This is evidenced by the reference to the "orderly" campaign in Europe. They were also confused by the seemingly arbitrary application of the laws of war. In short, Caputo's soldiers were not adequately prepared to fight in Vietnam. They had had their shots, were issued jungle equipment, and in many cases had learned special jungle tactics, but despite extensive physical preparation, they were not morally prepared for the conflict. The military leaders who allowed them to go to war in this condition were negligent, and that negligence caused them to fail in their primary role, that of managing violence. Soldiers fought personal wars for survival, killing for personal reasons rather than for reasons of state. Terror became an accepted weapon on both sides.

There is a tendency on the part of many soldiers to try to dehumanize the enemy, to portray him as racially or morally inferior to one's own forces. The motivation for this tendency is understandable. As J. Glenn Gray notes, "if the enemy is regarded as a beast or a devil, guilt feelings are not likely to arise if he is slain by your hand."<sup>6</sup> This tendency must be fought by the military leadership on all levels. The enemy, even if he is a terrorist, must be regarded as a human being. Soldiers must be educated to respect him as such while he is a combatant, otherwise they will fail to treat him as a person once he ceases to be a combatant, thus violating the laws of war as well as moral conventions. From a practical viewpoint, soldiers who have been carefully and objectively briefed on the enemy; his military training,

his cultural background, and his national heritage, will be in a better position not only to treat the enemy as a human being, but also to confront him in battle. "Know your enemy" is an ancient adage which has served wise commanders well through the centuries. The soldier who is convinced the enemy is a beast might very well fight with an irrational fury, but he might also run from a mysterious threat. Far better is the soldier who fights rationally, respecting the enemy, recognizing that his opponent is a human being with the strengths and weaknesses of all human beings. He is also far less likely to resort to terrorist tactics against the enemy and the local populace.

Soldiers must also be educated, well before the battle starts, concerning the difference between combatants and noncombatants. Such identification would seem to be a simple thing, but as American experience in Vietnam showed, it is not always easy to distinguish between the two, especially in guerrilla warfare situations. Technology adds an additional problem. Discrimination between combatants and noncombatants at long distance is not easy. When people are reduced to blips on radar screens or fuzzy outlines in infrared photographs, special care must be taken to remember that not all people are enemy combatants. Not all blips or fuzzy shapes are legitimate targets for violence.<sup>7</sup> Ultimately, morality demands that when we are in doubt, and that doubt cannot be easily resolved, we must treat the individuals concerned as noncombatants. Some might protest that there is a risk involved in "turning your back" on a potential enemy. Indeed there is, but there is an even greater risk involved in wantonly slaughtering anyone who might conceivably be a threat. The possible loss of one's life pales before the virtually guaranteed loss of one's humanity.

## NOTES FOR CHAPTER IV

<sup>1</sup>In the United States, this means that it is illegal per the Supreme Law of the land, since the laws of war, at least per the Hague and Geneva Conventions, have been incorporated into the laws of the United States.

<sup>2</sup>This is not to say that the terrorist ceases to be a member of the species homo sapiens. The terrorist, when he denies the personhood of others, brutalizes himself. When he 'cheapens' the value of another's life, he calls into question not only his own life plan, but also (as I discussed on page 5), he calls into question his ability and willingness to accept responsibility as a self-defining and self-directing agent. An individual who has "lost his humanity" has lost his sensitivity to the common state of all persons. Such a person is both logically and morally impaired. He is incapable of defining and living a life of his own that would stand justified under moral and rational criticism. He is ineligible for the respect, responsibilities, and liberties that are given the mature, active person. He retains the title of "person" in the same sense that lunatics, who are defective persons, retain it.

<sup>3</sup>Huntington attributes the original use of the phrase to Harold Lasswell, however Huntington's use of the phrase, to describe the central skill of the military profession, is of greater interest here. He introduces the phrase in his chapter "Officership as a Profession", The Soldier and the State (Cambridge, Mass.: the Belnap Press of Harvard University Press, 1957). This chapter is reproduced in War Morality and the Military Profession, ed. Malham M. Wakin (Boulder, CO: Westview Press, 1979), pp.11-24.

<sup>4</sup>There is the distinct possibility that the same kind of military action, done by two different soldiers, can in one case be morally acceptable, and in the other morally unacceptable. Consider two pilots of attack helicopters, armed with rockets, supporting infantrymen entering a town which may or may not be occupied by enemy forces. If pilot<sub>1</sub> detects what he is convinced is enemy movement in a house (i.e., light<sub>1</sub> reflecting off rifle barrels) he is justified in destroying that house. If pilot<sub>2</sub> simply destroys the house and its occupants because it might be a threat to the ground forces he is supporting, he has engaged in an inappropriate action.

<sup>5</sup>Philip Caputo, A Rumor of War (New York: Ballantine Books, 1983), pp.217-218.

<sup>6</sup>J. Glenn Gray, The Warriors : Reflections on Men in Battle(New York: Harper & Row, Publishers, 1970), p.172.

<sup>7</sup>Some might protest that long range artillery crews and tactical air support pilots and crews are in no position to make exact identifications, yet their machines of violence are considered

acceptable, if not essential for the conduct of modern war. These are indeed acceptable weapons, provided that they are targeted in a morally responsible manner. Field artillery is fired under the direction of forward observers, people on the scene who direct their fire to appropriate targets. Tactical aircraft respond to similar guidance by forward observers or ground force commanders. The people who target the weapons are the ones who hold primary responsibility for their legitimate use. The crewmen hold a secondary responsibility in the sense that if they suspect the weapon is being directed inappropriately they have the moral responsibility of questioning that targeting.

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