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**The Intifadeh and the Just War Tradition**

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## ABSTRACT

*Is the Intifadeh morally justifiable? I propose to use the Just War Doctrine framework to answer this question. It will be argued that the Palestinians do have a just cause, but that having a just cause does not morally justify the use of any means. In other words, the jus ad bellum, the just cause, cannot be separated from the jus in bello, the conduct of war. The morality of the ends demands the morality of the means; the two are inseparable.*

*The core issue is terrorism. The question then becomes whether terrorism is a justifiable response to flagrant and prolonged injustice, and if so, in what circumstances? It will be argued, that terrorism in itself is never morally right, but in the case of the Intifadeh, it may be morally justifiable at the strategic level as a weapon of last resort, when no other means, or no other forms of warfare are available, as a form of military necessity in the case of a supreme emergency. But even then, this does not constitute a blanket moral endorsement for every conceivable act of terrorism. The paper will conclude that there are acts of violence that are never morally acceptable, others that are acceptable, but also that there is a category of violent acts, a gray zone, that may be tolerable in given circumstances and only for a limited period of time.*

*When absolute principles conflict with one another in such a way that it is impossible to reconcile them, "the lesser evil then assumes the character of the good". Nevertheless, these 'excusable' acts remain morally wrong, and the political leaders responsible for them must admit that if these acts are excusable "it must be that there is some immorality to be excused."*

*“You must know, then, that there are two methods of fighting, the one by law, the other by force: the first method is that of men, the second of beasts; but as the first method is often insufficient, one must have recourse to the second....as I said before, do not deviate from what is good, if possible, but be able to do evil if constrained.” (Machiavelli, The Prince)*

## **Introduction**

This paper is not about legality but morality. The laws of war were developed to regulate traditional conflicts between states, what Martin Van Creveld refers to as the Trinitarian War<sup>1</sup>, which involves state actors. As Sheldon M. Cohen points out, these laws have a “statist bias”<sup>2</sup>, in that they advantage state actors against non-state actors. Consequently, these laws do not address the reality of modern warfare, that is the Non-trinitarian Wars<sup>3</sup> of today, where the belligerents can be a mixture of state and non-state actors.<sup>4</sup> As well, these laws apply to states, and therefore do not bind non-state actors. For instance, the strict definition of combatants and the dress code obligations are too restrictive and irrelevant to that kind of warfare. Furthermore, “what is legal may be immoral. And what is illegal may not be inherently immoral.”<sup>5</sup> Slavery used to be legal, but was profoundly immoral. A destitute person may steal to eat, but his action although illegal is not inherently immoral. So the question remains: is the ongoing Palestinian Intifadeh morally justifiable? By Intifadeh<sup>6</sup>, I refer to the

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<sup>1</sup> Martin van Creveld, The Transformation of War, ( New York: The Free Press, 1991), 37-42.

<sup>2</sup> Sheldon M. Cohen, Arms and Judgment. Law, Morality, and the Conduct of War in the Twentieth Century, ( San Francisco, & London: Westview Press, 1989), 160.

<sup>3</sup> Van Creveld, 49-57.

<sup>4</sup> Thomas J. Begines, An Ethical Response to State-Sponsored Terrorism, ( North Carolina: University of North Carolina, 1987), 125.

<sup>5</sup> Cohen., 7.

<sup>6</sup> On September 28, 2000 Ariel Sharon, then a member of Parliament, accompanied by a thousand-strong security force, paid a provocative visit approved by Prime Minister Barak to the site of the Al Aqsa mosque. The next day Barak sent another large force of police and soldiers to the area and, when the anticipated rock throwing by some Palestinians occurred, the heavily-augmented police responded with lethal fire, killing four and wounding hundreds. Thus began the second Intifadeh. The underlying cause was the tremendous anger and frustration among the population of the Occupied Territories, who saw things

political and military struggle personified by Yassar Arafat and his party the Fatah, whose stated aim is the creation of a Palestinian state that would coexist peacefully with Israel. I exclude the Hamas and the Jihad Islamic, whose aim, the destruction of Israel, cannot be considered morally acceptable. Although at the beginning the Intifadeh, which consisted in demonstrations and rock throwing, was certainly not immoral, the recent escalation of violence to include suicide bombings against civilians creates a new moral dilemma. As a result, the morality of the Intifadeh remains questionable.

I propose to use the Just War Doctrine framework to answer this question. But as the Just War Doctrine was also developed to address traditional conflicts between states, the same comments made above regarding the laws of war could be extended to the Just War framework. Consequently, I will examine the applicability of the Just War criteria, and the extent to which the *jus ad bellum* and the *jus in bello* can be applied to the Palestinian case. I will argue that the Palestinians do have a just cause, but that having a just cause does not morally justify the use of any means. In other words, the *jus ad bellum*, the just cause, cannot be separated from the *jus in bello*, the conduct of war. The morality of the ends demands the morality of the means; the two are inseparable.

Since both sides in the Intifadeh have accused the other of terrorism, a core issue for this paper is to examine to what extent terrorism can be reconciled with the Just War tradition. Although states have not been able to agree for various political reasons on an official definition of terrorism, in practice experts do agree on the characteristics of terrorism.<sup>7</sup> The U.S. State Department defines terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”<sup>8</sup> Interestingly, this definition omits to mention

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getting worse, not better, under Oslo, whose hopes had been shattered, and whose patience after 33 years of occupation had reached the boiling point.

<sup>7</sup> R.C. Smith, *Ethics and Informal Wars*, (New York: Vantage Press, 1991), Appendix 1, 197-200.

<sup>8</sup> *Terrorism: questions & answers*, Council on Foreign Relations, [wysiwyg://2.17/http://www.terrorism.com/terrorism/introduction.html](http://www.terrorism.com/terrorism/introduction.html)

another form of terrorism practiced by state actors, called state terrorism.<sup>9</sup> More to the point, political terrorism is defined as “ the use, or threat of use, of violence by an individual or group, whether acting for or in opposition to established authority, when such action is designed to create extreme anxiety and/or fear in a target group larger than the immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators.”<sup>10</sup>

“In many spiritual traditions, what matters essentially is not the kind of pressure, but that the right pressure be applied at the right time and in the right way.”<sup>11</sup> The question then becomes whether terrorism is a justifiable response to flagrant and prolonged injustice, and if so, in what circumstances? When “absolute” principles conflict with one another in such a way that all available alternatives violate these same principles, there is no choice but to decide on the basis of the probable consequences. In this situation, the lesser evil assumes the character of the good.<sup>12</sup> I will argue, that if “strategic war” is necessary, terrorism may be justifiable as a weapon of last resort, when no other means, or no other forms of warfare are available. In other words, terrorism can be morally justifiable as a form of military necessity in the case of supreme emergency. But even then, this does not constitute a blanket moral endorsement for every conceivable act of terrorism.

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<sup>9</sup> Smith, 1990. Alex P. Schmid (1984) having reviewed one hundred key authors on terrorism elaborated the following definition: Terrorism is a method of combat in which random or symbolic victims serve as instrumental target(s) of violence. These instrumental targets share group or class characteristics which form the basis for their selection for victimization. Through previous use of violence or the credible threat of violence other members of that group or class are put in a state of chronic fear (terror). The victimization of the target of violence is considered **extranormal** by most observers...on the basis of atrocity; the time (e.g., peacetime) or the place (not a battlefield) of victimization or the disregard for the rules of combat accepted in conventional warfare. The norm violation creates an attentive audience beyond the target of terror; sectors of this audience might in turn form the main object of manipulation. The purpose of this **indirect method of combat** is either to immobilize the target of terror in order to produce disorientation and/or compliance, or to mobilize secondary targets of demand (e.g., a government) or targets of attention (e.g., public opinion) to changes of attitude or behaviour favouring the short-or long-term interests of the users of this method of combat.

<sup>10</sup> Smith, 197. The definition is from Grant Wardlaw, an Australian criminologist.

<sup>11</sup> Douglas P.Lackey, The Ethics of War and Peace, ( New Jersey: Prentice Hall, 1989), 16.

<sup>12</sup> Paul Christopher, The Ethics of War & Peace. An introduction to legal and moral issues (New Jersey: Prentice-Hall, Inc., 1994), 184.

I will conclude that there are acts of violence that are never morally acceptable, others that are acceptable, but also that there is a category of violent acts, a gray zone, that may be tolerable in given circumstances and only for a limited period of time. The necessity of success then becomes a key factor. Nevertheless, these 'excusable' acts remain morally wrong, and the political leaders responsible for them must admit that if these acts are excusable "it must be that there is some immorality to be excused."<sup>13</sup>

To complete this analysis, the paper will first look in broad terms at three moral perspectives and at the just war doctrine. I will then, examine some cultural similarities between the Muslim and the Western cultures, as well as the psychological and political dimensions of the Intifadeh, before exploring in more detail *the jus ad bellum and the jus in bello* criteria. Finally, I will highlight the necessity of success to rest our case.

### **Moral Perspective**

Simply stated, the whole issue of whether moral principles should play a role in the conduct of international affairs can be summarized by the question: Does the end justify the means? This question applies both to the state that takes unethical actions and to the one that does not take action to further moral objectives.

Basically, there exist three schools of thought that may be used to answer that question. First, the amoral point of view, which corresponds to the extreme Realpolitik approach or to the extreme nationalists or terrorists points of view, believes that the end justifies the means. For them the "question of morality applies only to the ends or goals of foreign policy, not to the selection of means to achieve those ends."<sup>14</sup> This is in substance what Yassar Arafat said in 1984 :

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<sup>13</sup> Lackey, 20.

<sup>14</sup> Gordon A. Craig, and Alexander L. George, Force and Statecraft. Diplomatic Problems of Our Time, (New York: Oxford University Press, 1983), 271.

“He who fights for a just cause, he who fights for the liberation of his country, he who fights against invasion and exploitation, or single-mindedly against colonialism, can never be defined a terrorist.”<sup>15</sup>

The amoral approach conflicts with the Kantian principle: “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.”<sup>16</sup> Thus, in terms of the Just War Doctrine, the amoral point of view stresses the *just ad bellum*, but ignores the *jus in bello*, as any means is justifiable as long as it is effective. Amoralists may choose to restrain themselves from using certain means, but only out of prudence and calculated self-interest, based on legal, financial, or public opinion concerns, having nothing to do with moral principles.

The second approach is the idealist or perfectionist point of view that can be summarized as follows: “Do justice even if the heavens fall.”<sup>17</sup> This approach is absolute. It argues that no matter the morality of the end, the use of unethical means is never justified.<sup>18</sup> This is the point of view of extreme pacifists or moralists. This leads easily to a self-righteous approach in foreign policy where conflicts of interests among states become conflicts between “good and evil”.

The third approach is known as the contextual or non-perfectionist school. To the question: “Does the end justifies the means? The answer is that there exists no simple answer. The real question becomes: Under what conditions do which ends justify what means? This approach corresponds to the original *Realpolitik* and realist school and can be tracked back to Machiavelli’s *The Prince*. As pointed out by Kenneth Waltz and Michael Walzer, many people forget that Machiavelli qualified his advice when he has *The Prince* saying that “the end justifies the means,” by adding that not all ends, but only some ends,

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<sup>15</sup> Smith, 30.

<sup>16</sup> Singer, Peter (ed). “Kant’s Ethics of Duty- The Categorical Imperative.” *Ethics*. (Oxford: Oxford University Press, 1994), 279.

<sup>17</sup> J. Carl Ficarrotta (ed.), *The Leader’s Imperative. Ethics, Integrity and Responsibility*, (West Lafayette, Indiana: Purdue University Press, 2001), 128.

<sup>18</sup> Craig, 271.



justify morally dubious means. These ends must be constructive, beneficent ends. He further added that “whether unsavory, morally questionable means are justified depends upon what he calls ‘the necessity of the cause’- that is whether in a given situation there are no alternative modes of action that promise success in achieving the constructive end.”<sup>19</sup>

The non-perfectionist school is however difficult to apply in practice. According to Hans J. Morgenthau, the father of the realist school, the difficulty is that “in the political sphere, man is precluded from acting morally, and the best he can do is to minimize the intrinsic immorality of the political act by choosing the lesser evil, or that the best man is capable of is to be guided by a vision of a life lived in compliance with the Christian code and to narrow the gap between his conduct and that code.”<sup>20</sup> In the final analysis, the challenge is “to define who is allowed to kill whom, for what ends, under what circumstances, and by what means.”<sup>21</sup>

## **Just War Doctrine**

The initial development of the Just War Doctrine goes back over 1,500 years to Saint-Augustine (A.D. 354-430). Later, Saint-Thomas Aquinas (A.D. 1225-1274) is credited with having refined it further. The purpose of this doctrine is “to resolve the inherent tension between the principle of natural law that

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<sup>19</sup> Craig, 274-275.

<sup>20</sup> William Werpehowski and Stephen D. Crocco, (eds.), The Essential Paul Ramsey, A Collection, (New Haven and London: Yale University Press, 1994), 73. Arnold Wolfers has developed four general guidelines rather than specific rules to help narrow the morality gap. The first is that the political end must be “genuinely constructive and praiseworthy”. In other words, the end must be truly vital to the nation. The second is that morally questionable means should not be employed if morally better means exist to achieve the same end. Third, the political authority should opt for a means which, in the circumstances, will cause the least destruction. Finally, the principle of proportionality regarding the choice of means does apply. That is the morally questionable means “must at least have a rational relationship to the ends pursued.”<sup>20</sup> In practice, this means avoiding an excessive use of force that will inflict more loss of life and more damage than is “necessary or congruent with what is at stake.” As we shall see, these guidelines are totally compatible with the Just War criteria.

<sup>21</sup> Creveld, 225.

proscribes the deliberate taking of an innocent human life and the duty of a state to defend its citizens and other states against unjust aggression.<sup>22</sup> The Just War Doctrine provides rules that determine when it is permissible or obligatory to begin a war (*jus ad bellum*) and rules that determine how a war should be fought, once it has begun (*jus in bello*). There are six primary rules concerning the *jus ad bellum*:

1. *Just Cause*. The cause must be just. Today, “the only widely accepted legitimate cause is the defence of the state, allies, or vital national security interests from unjust aggression.”<sup>23</sup> However, it is important to note that there are two types of just wars: wars that are morally permissible and those that are morally obligatory.<sup>24</sup>
2. *Competent Authority*. A head-of-state or constitutionally designated authority must declare a just war.
3. *Right Intent*. The motive must be just, such as the restoration of peace or the end of oppression, i.e., that “a just war be a war for the right, fought for the sake of the right.”<sup>25</sup> This excludes revenge, cruelty, annihilation of whole societies or subjugation of a people. A just war must lead to a just peace.
4. *Probability of success*. There must be a reasonable chance of success of achieving the war objective.
5. *Last Resort*. Other peaceful alternatives for resolving the dispute must be exhausted.
6. *Proportionality at the strategic level*. First the five previous conditions must be met. “The gain or value expected from the use of force must be greater than the costs or harm expected.”<sup>26</sup>

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<sup>22</sup> Raymond A. Shulstad, Peace is my profession. A soldier’s view of the moral dimension of US nuclear policy, (Washington, DC: National Defense University Press, 1986), 25-28.

<sup>23</sup> Shulstad, 26.

<sup>24</sup> Lackey, 29.

<sup>25</sup> Lackey, 31. For a complete discussion of the *jus ad bellum* rules, see Lackey pp.28-52.

<sup>26</sup> Shulstad, 27.

An underlying principle of the *jus in bello* is that “destruction of life and property, even enemy life and property, is inherently bad. It follows that military forces should cause no more destruction than is strictly necessary to achieve their objectives....This is the principle of necessity: that wanton destruction is forbidden. More specifically, the **principle of necessity** specifies that a military operation is forbidden if there is **some alternative operation** that causes less destruction but has the **same probability of producing a successful military result.**”<sup>27</sup>

There are two fundamental principles that govern the just war conduct: the principle of discrimination and the principle of proportionality:

1. *Discrimination*. This principle refers to non-combatant immunity. Clearly, when civilians are deliberately and intentionally chosen as targets, such as in a terrorist act, this principle is violated.
2. *Proportionality*. Here it refers to the military (operational and tactical levels) principle of proportionality. The amount of destruction must be proportionate to the importance of the objective or to the gains to be expected. No more force shall be used than necessary to achieve the aim.

However, it is worth remembering that these criteria were developed by westerners for the traditional Trinitarian War, where the state and the military actors predominate. In that kind of war the third actor, the people, act either as observers, bystanders, or as victims. As war became total with the *levée en masse* and the industrial age, civilians became more and more the targets and the victims of modern warfare. Therefore, before trying to apply the Just War Doctrine criteria to the Intifadeh, let's examine the cultural aspect and the nature of that kind of war. What is it all about?

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<sup>27</sup> Lackey, 59.

## The cultural difference

There is a fundamental difference between the Western and the Oriental and Middle East cultures. The latter two cultures stress “ humanistic values and the attainment of spiritual welfare, even at the expense of physical welfare, to a degree which westerners find unfathomable.”<sup>28</sup> Acts judged by westerners as being terrorist and immoral acts can be viewed as morally permissible, even laudable, when viewed by people from the Middle East or Orientals. After all, the use of kamikazes came from Japan, although in this case the target was military. A similar tactic, but this time against civilians, is now being used by Palestinians, and its use is condoned by the Islamic world.<sup>29</sup> Once an individual has decided that his own life is immaterial and secondary to his spiritual welfare, others’ lives becomes unimportant to him.<sup>30</sup> “The honorable Arab is the one who refuses to suffer shame and dies in dignity.”<sup>31</sup> For these cultures, humanitarian laws are perceived as an instrument of unfair repression precisely because they are perceived as lacking the ‘correct’ moral basis.<sup>32</sup>

Jihad is part of the overall defense of Islam. It means “to struggle to the utmost of one’s capacity.” It is “used specifically for the war waged solely in the name of God against those who perpetrate oppression as enemies of Islam.”<sup>33</sup> This duty is the responsibility of all Muslims, especially when an Islamic state is attacked by a non-Muslim power. Jihad is seen as the greatest sacrifice a man can make to God. Islam absolutely forbids suicide since life belongs to God, but

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<sup>28</sup> Thomas J. Begines, An Ethical Response to State-Sponsored Terrorism, ( North Carolina: University of North Carolina, 1987), 31.

<sup>29</sup> Helle Dale, “Palestinian cannon fodder,” Washington Times, 17 April, 2002. The article explains that suicide-bombing is gaining an unprecedented level of acceptance and respect in the Arab world.

<sup>30</sup> Begines, 35.

<sup>31</sup> Time, 8 April 2002, 28.

<sup>32</sup> Begines, 66.

<sup>33</sup> Abul A’la Mawdudi, Towards Understanding Islam, (Canada: The Message Publications, 1997), 125. Originally published in 1932, the author is seen as a great Islamic thinker, scholar, reformer and revolutionary leader.

to give one's life as part of a Jihad is not suicide. The Islamic principle is that "we should suffer a lesser loss in order to save ourselves from a greater one. What comparison would the loss of some lives – even if it were thousands or more – be to the calamity that would befall mankind as the result of the victory of evil over good."<sup>34</sup> But contrary to some popular beliefs, true Islam allows for only the minimum sacrifice of life, property, and the rights of others. Thus, Islam forbids unnecessary bloodshed. "Women, children, the crippled, the old, the sick and the wounded should under no circumstances be harmed...His order is to fight only those who rise to fight...The defeated must be dealt with fairly and honorably."<sup>35</sup>

The baby killers of Algeria are not therefore pious Muslims.<sup>36</sup> Actually, the leaders of the radical Arab national movements, are not particularly devout people. At the present time, 80 percent of world violence occurs inside and between Muslim countries, and among the myriad factions within the Muslim world.<sup>37</sup> Thus, the principles of Islam governing warfare appear to be compatible with those of the western Just War Doctrine

The main difficulty remains the Jihad or Holy War. The concept is not foreign to the Judaic tradition either. Indeed, the Old Testament gives many examples of what is known as *milchemet mitzvah* (Holy War), which is waged either against enemies designated by God as His enemies, such as the Amalekites, or to achieve some sacred end, such as the possession of the Land of Israel. However, this type of war differs from the ordinary secular war in that it is a war of total extermination whereby men, women, children and cattle are to be killed.<sup>38</sup> This is particularly troublesome, because for the Arab world, the Intifadeh is a Jihad against a non-Muslim state, and for the Orthodox Jews, it is a sacred

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<sup>34</sup> Mawdudi, 139.

<sup>35</sup> Idem.

<sup>36</sup> Walter Laqueur, The New Terrorism. Fanaticism and the Arms of Mass Destruction, (New York: Oxford University Press, 1999), 280.

<sup>37</sup> Ibidem, 238 and 277.

<sup>38</sup> Van Creveld, 134-135.

war for the possession of the Land of Israel. The fact that no Israeli government can be formed without the support of the Orthodox Jews and the pro-settlement Israeli voters certainly complicates the search for a just peace.<sup>39</sup>

I do not suggest that today Israel is prepared to commit genocide against the Palestinian people, but culturally they are certainly willing to use whatever force they believe is necessary, even if it goes against international law. For years Israel has used F-16 jet fighters to indiscriminately bomb civilians living in Palestinian camps, a clear violation of the *jus in bello* principle of discrimination, as well as a violation of the Law of Armed Conflict.<sup>40</sup>

### **The nature of the Intifadeh**

In psychological terms, the conflict between Israel and the Palestinians is a deep-rooted conflict about identity. Such a conflict occurs “when the most significant need satisfiers of a group are taken away or threatened.... There is a relationship between human needs and cultural values. While basic human needs are universal, values form the culturally specific array of needs satisfiers for particular individuals, groups and communities. In other words, values help to give specific definition to identity.”<sup>41</sup> The negation of these need satisfiers by oppression, lack of recognition, lack of status, indifference, or harassment generates negative self-esteem which in turn will result in a growing sense of despair in everyday life.<sup>42</sup>

A key feature of deep-rooted conflict is “ the willingness of people to put at risk both the sense of order that follows from compliance with authorities and the

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<sup>39</sup> Tony Blankley, “Down the rabbit hole”, The Washington Times, 8 May 2002.

<sup>40</sup> U.S. Department of State, Israel and the Occupied Territories. Country Reports on Human Rights Practice-2001, (Washington: Bureau of Democracy, Human Rights, and Labor, March 4, 2002), 21 and 31.

<sup>41</sup> Vernon Neufeld Redekop, A Hermeneutic of Deep-Rooted Conflict: An Exploration of René Girard’s Theory of Mimetic Desire and Scapegoating and its Applicability to the Oka/Kanehsata:ke Crisis of 1990, (Ottawa: Universite St-Paul, 1998), 17.

<sup>42</sup> *Ibid.*, 17.

sense of security and physical well-being associated with the status quo.”<sup>43</sup> For an external observer, the symptoms of deep-rooted conflict, such as suicide bombing, appear to be irrational. But, as noted by Van Creveld, war begins when people are willing to risk their own life to kill others.<sup>44</sup> Ultimately, from a psychological perspective, solutions to deep-rooted conflict require structural changes to meet the identity needs of each cultural group, including security, connectedness, meaning and recognition.<sup>45</sup>

From a political science point of view, the Intifadeh is referred to as a ‘limited war’. According to R. Osgood, “a limited war is generally conceived to be a war fought for ends far short of the complete subordination of one state’s will to another’s, and by means involving far less than the total military resources of the belligerents, leaving the civilian life and the armed forces of the belligerents largely intact and leading to a bargained termination.”<sup>46</sup> Therefore, limited wars are “conceived of as having both limited ends and constrained means and for just war theorists this type of war may sometimes be morally justified.”<sup>47</sup> In other words, “it is a political process conducted by military means, a sort of tough bargaining in which the aim is not to win,<sup>48</sup> but rather not to lose, and to fight in such a way that the enemy will settle for a compromise peace.”<sup>49</sup>

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<sup>43</sup> *Ibid.*, 19.

<sup>44</sup> Van Creveld, 159.

<sup>45</sup> Redekop, 30.

<sup>46</sup> Baylis, John, et al. Contemporary Strategy I, (New York: Holmes & Meier, 1987), 194.

<sup>47</sup> Malham M. Wakin, Integrity First. Reflections of a Military Philosopher, (New York: Lexington Books, 2000), 153.

<sup>48</sup> John W. Soule, A Case Study of Terrorism: Northern Ireland 1970-1990, (San Diego: San Diego State University, 1990), 17. In summary, the lessons from Northern Ireland are: 1) authorities must make every effort to make political compromises with dissidents before violence becomes institutionalized; 2) the authorities cannot achieve a military victory over terrorists and still maintain civil liberties and democratic institutions; 3) counter-terrorist techniques by authorities that kill, injure, or frighten noncombatants provide support for terrorist groups. Indeed, revolutionary terrorist groups depend a good deal on the authorities to perpetrate provocations and outrages against noncombatants; 4) terrorist groups can be devastatingly effective with very few members; 5) terrorist groups can sustain community support by using both the latent sympathy of citizens as well as intimidation; and 6) even the most technologically

Ultimately, this is what terrorism is all about. Lenin captured its essence when he said that the use of terror “will terrorize the society into submission.”<sup>50</sup> The logic of terrorism, as noted by Raymond Aron, is that “the lack of discrimination helps spread fear, for if no one in particular is a target, then no one can be safe.”<sup>51</sup> The ultimate objective is to destabilize the society to which this is happening to the point where the terrorists’ demands will be met. Or to generate an over-response from the government, which will generate more sympathy for the terrorist’s cause, again undermining the government’s legitimacy both internally and externally.

According to Paul Ramsey, a renowned Protestant moralist, the purpose of a just war for Christians is to maintain a tolerable justice.<sup>52</sup> “Readiness to suffer and die as well as to kill represents the most important factor.”<sup>53</sup> This is a trait, I believe, that morally differentiates the kamikaze from the ordinary terrorist, who kills indiscriminately without risking his own life, for example in the use of a car bomb. Psychologically, coping with danger gives meaning to one’s life. Unfortunately, he who has no future before him is free of care.<sup>54</sup>

### **Just Cause - The Palestinian argument**

Palestinians have a just cause: self-defence and self-determination. In 1973, a UN resolution was adopted declaring that the struggle of people for self-determination and independence against alien domination and racist regimes

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sophisticated, well-organized, well-financed, highly motivated counter-terrorist methods can be frustrated by a small group of terrorists with some community support.

<sup>49</sup> Baylis, 201. See also Van Creveld, 142-149.

<sup>50</sup> David E. Johnson, “*Terror Tactics: A Conceptual Analysis*,” in Moral Obligation and the Military, Collected Essays, (Washington, DC: National Defense University Press, 1988), 21.

<sup>51</sup> Raymond Aron, Peace and War, (London: Wiedenfeld and Nocholson, 1966), 233. See also Smith, 25.

<sup>52</sup> Ramsey, 80.

<sup>53</sup> Ramsey, 160.

<sup>54</sup> Creveld, 164.



was fully in accordance with the principles of international law.<sup>55</sup> Today there exists a strong international consensus, challenged obviously by Israel, that the Israeli occupation of Palestinian territories since 1967 is in violation of international law, that the Palestinians are entitled to a viable state on these territories, that Israel is entitled to security within its borders, and that Palestinians refugees are entitled to a just solution.<sup>56</sup>

Last April, the UN Security Council adopted Resolution 1397, calling for a Palestinian State alongside Israel. In short, Palestinians fight to preserve their identity. Roland Breton refers to the “decatalog of the rights of ethnic groups” things like the right to life, security, a collective existence, and an identity; territory, self-determination, language, ethnic culture, the benefits of production, and a self-centered administrative organization.<sup>57</sup> In the case of the Palestinians, it could even be argued that they are facing a situation of supreme emergency where the survival and the liberation of the Palestinian people is at stake.

According to Walzer, “supreme emergency exists when our deepest values and our collective survival are in imminent danger.”<sup>58</sup> In those circumstances, Walzer argues “first, that [moral] constraints still have a hold on us; and second, that political leaders can do whatever is required to meet the danger.” In other words, moral limits are never suspended, “but there are moments when the rules can be and perhaps have to be overridden.”<sup>59</sup> The doctrine of supreme emergency tries to reconcile two dramatically conflicting

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<sup>55</sup> Laqueur, , 279.

<sup>56</sup> Michael Lynk, “International Law. Taking aim at justice,” Globe and Mail, 12 April 2002, A15. UN Security Council Resolution 242 in 1967 reminded parties of the “inadmissibility of the acquisition of territory by war,” and directed Israel to return territories it captured in the war that year. Until Israel does, the occupation remains a breach of international law. Michael Lynk is a law professor at the University of Western Ontario, who has worked with the UN in Jerusalem, and as a human-rights observer in Lebanon.

<sup>57</sup> Roland Breton, Les Ethnies, (Paris : Presses Universitaires de France, 1981), 159.

<sup>58</sup> Michael Walzer, “*Emergency Ethics*,” in The Leader’s Imperative, ed. J. Carl Ficarrotta (West Lafayette, Indiana: Purdue University Press, 2001), 126.

<sup>59</sup> Walzer, “*Emergency Ethics*,” 127.

views of morality. The first reflects the absolutist view, according to which innocent human beings can never be intentionally attacked. The second view stipulates that innocence is only one value that must be weighed against other values in the pursuit of “the greatest good of the greatest number.”<sup>60</sup> When “absolute” principles conflict with one another in such a way that all available alternatives violate these same principles, there is no choice but to decide on the basis of the probable consequences. In this situation, the lesser evil assumes the character of the good.<sup>61</sup> In the Palestinian case, sporadic attacks on Israeli civilians, is a much lesser evil than thirty-five years of heavy-handed military Israeli oppression and injustice.

Violence appears when there is a power imbalance which makes it virtually impossible for one group to close the gap in relative well-being. Political violence, including terrorism, comes out of the conviction that further threats can only be reduced by the use of force. Moral community consists of people living in a certain way. It is a source of a people’s identity and self-understanding. Its replacement would require either their physical elimination or the coercive transformation of their way of life. Neither of these actions is morally acceptable. **“Moral communities make great immoralities morally permissible. But they do this only in the face of a greater immorality...and only insofar as the immoral response is the only way of holding off that success.”**<sup>62</sup>

Supreme emergency is not a permissive doctrine. The extreme case wherein a collectivity is using terrorism as the only (or one of the few) means available of forcibly preventing its physical destruction, or serious and continuing oppression by another collectivity does constitute a supreme emergency.<sup>63</sup> The use of terrorist tactics would appear “to be immoral **were it not the case** that no

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<sup>60</sup> Walzer, “*Emergency Ethics*,” 127-128.

<sup>61</sup> Paul Christopher, *The Ethics of War & Peace. An introduction to legal and moral issues* (New Jersey: Prentice-Hall, Inc., 1994), 184.

<sup>62</sup> J. Carl Ficarrotta (ed.), *The Leader’s Imperative. Ethics, Integrity and Responsibility*, (West Lafayette, Indiana: Purdue University Press, 2001), 137.

<sup>63</sup> Begines, 62.

other effective remedy was available.”<sup>64</sup> Mr. Joewono, the Indonesian representative to the UN in 1972, made the following remarks regarding the extra-legal use of force to secure justice by disenfranchised peoples. At the time, his intervention did not refer to the Palestinians, but his comments can easily be transposed to the Palestinian cause:

A distinction should be drawn between terrorism perpetrated for personal gain and other acts of violence committed for political purposes....it must be borne in mind that certain kinds of violence were bred by oppression, injustice, and the denial of basic human rights, and the fact that whole nations were deprived of their homeland and their property. **It would be unjust to expect such peoples to adhere to the same code of ethics as those who possessed more sophisticated means of advancing their interests....**Such acts are not to be classified as terrorism; on the contrary, they are to a

by 'one hundred cuts', which does not seem compatible with the criterion of "right intent".

Despite the UN Security Council Resolution 242 adopted in 1967, and eight years after the Oslo accord, Israel still occupies eighty-three per cent of the West Bank, all of east Jerusalem, and twenty per cent of Gaza. As the occupying power, Israel is required to observe the fourth Geneva Convention, which stipulates that an occupying power must treat the occupied civilian population humanely, and ensure that the occupation be as brief as possible. Furthermore, article 49 of the same Convention forbids "an occupying power from transferring parts of its own civilian population into the territories it occupies." Israel has been violating this treaty since 1967. Even more, although the Oslo peace agreement committed Israel to stop the construction of new settlements, Israel has during the last eight years almost doubled the number of settlers in the Occupied Territories, including east Jerusalem, to 410, 000.<sup>66</sup> Ariel Sharon alone has established thirty-four new settlements in the last fourteen months.<sup>67</sup> In any event, we will return to the issue of supreme emergency when we discuss the *jus in bello* and the notion of 'military necessity'.

### **Just Cause - the Israeli argument**

Unfortunately, when the UN created the state of Israel in 1947, it took no measures to guarantee the security of the newly created state. In 1967, when Syria and Jordan allied themselves with Egypt, Israel was surrounded by a numerically superior enemy committed to its destruction. Israel felt that there was a state of supreme emergency. At that point the number of Israeli casualties appeared irrelevant, the survival of the state took precedence, and Israel went to war.<sup>68</sup> Today most people agree that Israel is entitled to secure borders, and that

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<sup>66</sup> 216,000 new settlers coming mostly from Eastern Europe and the former Soviet Union.

<sup>67</sup> Lynk, A15.

<sup>68</sup> Crevelde, 144.

it has the right to defend itself against terrorism. However, Ariel Sharon cannot claim that Israel “is fighting for its survival”. At best, he can reasonably make the case for the right of Israel to protect its citizens; an aim that constitutes a just cause.

Sharon’s survivability argument is undermined by the fact that there is no Palestinian military force capable of destroying Israel. In this conflict, Israel’s military supremacy is unquestionable.<sup>69</sup> The simple fact that Israeli tanks can roam freely in urban areas demonstrates beyond doubt the military weakness of the Palestinians.

As Van Creveld explains, a war where the strong fights against the weak is problematic for two reasons. Firstly, with time, the two sides become more like each other. A mutual learning process takes place. Both sides adopt the same tactics. In the case of the Intifadeh, both belligerents use terror as a weapon. One side uses suicide-bombers, the other F-16 fighter aircraft, attack helicopters and tanks. Secondly, “a strong force fighting a weak one is almost certain to suffer from a drop in morale, because nothing is more futile than a string of meaningless victories.”<sup>70</sup>

Citing the example of the Israelis attacking into Lebanon in 1982, he concludes that “over the long run....fighting the weak demeans those who engage in it and, therefore, undermines its own purpose.... Provided only the exercise is repeated often enough, as surely as night follows day the point will come when enterprise collapses.”<sup>71</sup> Indeed, more and more Israeli Reservists refuse to fight in the Occupied Territories, which they do not consider as part of Israel, because they judge Israel military occupation as morally wrong.

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<sup>69</sup> According to the British Broadcasting Corporation, Israel has the following assets: 134,000 army troops, 32,000 air force, 7,000 navy and 8,000 border police. To these figures you can add 400,000 army reservists. Israel has 440 combat aircraft, 3,900 main battle tanks, 130 helicopters, 9,600 artillery pieces and a number of nuclear weapons.

<sup>70</sup> Creveld, 174.

<sup>71</sup> Creveld, 175.

Sooner or later the strong will commit abuses which will undermine its moral and political legitimacy, turn internal and external public opinions against the war effort, and cause a drop in discipline and morale of the armed forces. Eventually, all these factors will cumulate to bring about a rupture of the social cohesion and political support<sup>72</sup>. It is so because war for survival knows no bounds. Necessity knows no rules; so the weak can commit atrocities without losing his political support and without compromising his moral principles. But the strong has no choice but to win quickly, otherwise almost anything that he does or does not do is perceived “in one sense, unnecessary and, therefore, cruel.”<sup>73</sup>

### **Competent authority**

On both sides, this criterion does not represent a problem. Both parties have either a head-of-state or a constitutionally designated authority.

### **Right intent**

Israel's strategy, as expressed by Ariel Sharon, is one of reprisals, that is to break Palestinian will by using terror aimed at inflicting so much pain that the Palestinians will eventually desist. There is no intent here to work towards a just peace. The stated aim is the security of Israel, which is obviously legitimate, but the real aim seems to be the eradication of the Palestinian resistance. Reprisals are an example of a legal act that condones an immoral act. Reprisals remain legitimate only if they show success and are sporadic. For instance, the bombing of Libya by President Reagan. But when they become routine, a normal way of conducting business, and are not successful as demonstrated since Sharon took power a year ago, reprisals become both immoral and illegal.

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<sup>72</sup> The Vietnam War remains the best example of this process.

<sup>73</sup> Crevelde, 175.

Furthermore, one cannot ignore the continuous occupation of the West Bank and the daily oppression of the Palestinian people as well as innumerable violations of basic human rights duly recorded by Amnesty International, Human Rights Watch, the International Committee of the Red Cross, the United Nations, B'Tselem (the Israeli Information Center for Human Rights), and even the US State Department.<sup>74</sup> These violations range from assassinations (33 in 2001 alone), the killing of unarmed demonstrators, including children, illegal detention without due process (2,200 detainees), degrading treatment or punishment, torture of prisoners, destruction of private houses, crops, orchards, public infrastructures like universities and schools, denial of access to medical treatment (32 Palestinians, including pregnant women died last year as a result of the strict enforcement of internal closures)<sup>75</sup>, excessive and indiscriminate use of lethal force such as retaliations against Palestinian towns and cities in the West Bank and in Gaza, firing tank shells, rockets from helicopters and F-16s, which resulted in 6,600 casualties in 2001 alone<sup>76</sup>. In these conditions, it becomes very difficult to pretend that Prime Minister Sharon is acting with the right intent towards achieving a just peace. "More is demanded from those who can afford more. Restraint is demanded of the powerful. And accountability is rightly demanded of all."<sup>77</sup>

For the Palestinians, the intent to create a Palestinian state that would coexist peacefully with Israel, which is the stated aim of Yassar Arafat and the El Fatha, certainly meets the right intent criterion. However, the Palestinian Human

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<sup>74</sup> See the US Department of State 2001 Report on Israel and the Occupied Territories. See also Amnesty International report 2002, Human Rights Watch World Report 2002 and the UN web site, specifically the UN Commission on Human Rights Report of March 2001 and the subsequent CHR resolution 2001/7. The reports from the previous years are not better. Israel's violations of human rights have been going on for years and are very well recorded for those who bother to consult the various existing public documents.

<sup>75</sup> U.S. Department of State, Israel and the Occupied Territories. Country Reports on Human Rights Practice-2001, 19.

<sup>76</sup> *Ibid.*, 20.

<sup>77</sup> Richard T. De George, "When Integrity Is Not Enough. Guidelines for Responding to Unethical Adversaries," in The Leader's Imperative. Ethics, Integrity, and Responsibility, ed. J. Carl Ficarrotta (West Lafayette, Indiana: Purdue University Press, 2001), 227.

Rights record is far from being perfect, they too have committed numerous violations but to a much lesser extent than the Israelis. Overall, there is no doubt that the Palestinians have respected better the letter and the spirit of the *right intent* criterion, since it is to their advantage.

### **Probability of success**

Israel's violent response cannot be expected to end the terrorist activities of a collectivity unless it is prepared to commit genocide. Ariel Sharon used the same strategy in the 80's in Lebanon, with no success. At best, it can result in a pause. However, Israel's response acquires the aura of state terrorism, because it violates the principle of proportionality. It causes unnecessary harm and suffering with no hope of long-term success. It further erodes the chances of arriving to a just peace, as it only generates more hate and a desire for revenge.<sup>78</sup>

Palestinian terrorism has been morally condemned on the premise that it cannot be successful,<sup>79</sup> but in the case of the Intifadeh, the use of terrorism has actually been very successful. However, it cannot become a long-term strategy, as its value is political, not military, and the short-term political gains must be exploited immediately. A continuation of terrorism would be suicidal, as it would destroy the support acquired during the last year.

### **Last resort**

After thirty-five years of Israeli occupation and oppression, numerous UN resolutions that have all been ignored by Israel, and its refusal to implement the Oslo peace accord, coupled with the accelerated development of Jewish settlements in the Occupied Territories and the unsuccessful use of conventional

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<sup>78</sup> Begines, 105.

<sup>79</sup> David E. Johnson, 29-30; Smith, 67-68.



military tactics against Israeli soldiers and settlers, one can reasonably ask: What else could be done? The use of terrorism is actually an act of despair, because nothing else seems to have an impact on the Israelis or on international public opinion.

## **Proportionality**

The Palestinians are in fact saying to the Israelis, you will not succeed, we will suffer, we will sustain pain, because we have no other choice. We will do so until the international community reacts to the immorality of what you are doing, or until you the Israelis realize that the more pain you inflict upon us, the more desperate we become. The less we have to lose, the more radical we will become. We will continue to commit terrorist acts, whose purpose is not to win the war or prevent defeat, but simply to enforce the rules, and we will do so until you recognize that violence and terror will not bring you security, or until Israel's internal social cohesion breaks down.

Statistics demonstrate clearly that Palestinians are suffering much more than the Israelis, a ratio of three Palestinian casualties for every Israeli one for the Intifadeh II alone.<sup>80</sup> For the Palestinians, the value expected from resorting to terrorism is greater than the costs or harm anticipated, as they seem to have nothing to lose anymore. For them, the evil resulting from the terrorist acts is less than the continuous occupation and oppression of Israel.

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<sup>80</sup> For the Intifada II, up to March 2002, but excluding Operation Defensive Shield, the Palestinians have suffered a total of 1286 casualties versus 419 for the Israelis. Among the Palestinian casualties 83.8 percent were civilians including 151 children 15 and younger, 138 teenagers between 16 and 18 years old. The rest, 208 were members of the Palestinian police and security forces. The official dead toll following Operation Defensive Shield is 56 Palestinians dead, according to Palestinian authorities and 51 according to Israel.

## Jus in bello

The tension between *jus in bello* and *jus ad bellum* can be resolved in four different ways:<sup>81</sup>

- a. The criteria of the *jus in bello* are simply ignored;
- b. The principle of discrimination yields slowly to the moral urgency of the cause: the rights of the righteous take precedence over those of the enemy;
- c. There is no exception, rights are strictly respected, whatever the consequences; and
- d. Morality is overridden, but only in the face of an imminent catastrophe.

There are two fundamental principles that govern the just war conduct: the principle of discrimination and the principle of proportionality.<sup>82</sup> The basis of our discussion is the assumption that human beings have a moral obligation not to harm innocent persons intentionally. Paul Ramsey argues however, as Saint Augustine and Saint Thomas Aquinas before him, that there are grounds in Scripture and tradition for an ethic that prefers the victim rather than the perpetrator of injustice. Resistance against injustice and not self-defence is the Christian justification for resorting to violence to right a wrong.<sup>83</sup> “Love for neighbors threatened by violence, by aggression, or tyranny, provided the grounds for admitting the legitimacy of the use of military force. Love for neighbors at the same time required that such force be limited...and so he can

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<sup>81</sup> Walzer, 231-232.

<sup>82</sup> Richard J. Regan, *Just War. Principles and Cases* (Washington, D. C.: The Catholic University of America Press, 1996), 87.

<sup>83</sup> William Werpehowski and Stephen D. Crocco, (eds.), *The Essential Paul Ramsey. A Collection*, (New Haven and London: Yale University Press, 1994), 41-59.

never approve of unlimited attack upon any human life **not closely cooperating in or directly engaged in the force that ought to be repelled.**<sup>84</sup> Therefore, ordinary citizens, housewives, children, the sick and the elderly are not legitimate targets **as long as they are not engaged in war-related activities.**<sup>85</sup>

There is also a morality of means. He further describes as legitimate objects of direct violence “those persons who are formally directing or participating in the military forces, or materially yet closely cooperating in the force that should be repelled and can only be repelled by violent means.”<sup>86</sup> The notion of ‘innocent’ has nothing to do with being ‘blameless’, but everything to do with being ‘harmful’ or not.<sup>87</sup> To be a defenceless civilian is not sufficient either, since that civilian may be a scientist working on a new weapon system. **The crucial distinction is “not whether the person is military or civilian, defenceless or armed, but whether he is a source of danger.”**<sup>88</sup> In other words, “there is no justification for intentionally harming those who are not involved in attempting to harm others.”<sup>89</sup>

The degree of risk that is permissible will vary with the nature and importance of the target, the urgency of the moment, and the military technology available. Because modern war, even when conducted with discrimination, will likely result in the death of non-combatants, the principle of proportionality needs to be applied to the conduct of the war. In fact, the principle of proportionality is impossible to dissociate from the principle of discrimination. The principle of proportionality is incorporated into the law of double effect.<sup>90</sup> This involves

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<sup>84</sup> Ramsey, 64.

<sup>85</sup> Lackey, 60.

<sup>86</sup> Ramsey, 70.

<sup>87</sup> A.J. Coates, The Ethics of War, (Manchester: Manchester University Press, 1997), 235.

<sup>88</sup> Cohen, 26.

<sup>89</sup> Christopher, 170; see also Walzer, 133.

<sup>90</sup> Regan, 95-96. The law of double effect tries to reconcile the absolute interdiction against attacking non-combatants with the legitimate conduct of military activity. According to the law of double effect, the killing of non-combatants is permitted if and only if certain conditions are satisfied. First, the action itself,

practical judgements about the likely outcomes of military actions. The amount of destruction permitted must be proportionate to the importance of the objective. The principle of proportionality has to do with the distinction between direct killing and indirect killing, between death as a means or end, and death as a side effect. **The death of non-combatants is morally acceptable only when death is an indirect effect and not an end or a means in itself.** <sup>91</sup>

Therefore, the Passover bombing perpetrated by Hamas, which killed mainly elderly people and members of their families, and which triggered Israel's Operation Defensive Shield<sup>92</sup>, can never be justified morally. In this case, both the end, the destruction of Israel, and the means, killing people who clearly were not directly engaged in war-related activities, violates all principles. However, the bombing of a bus full of Israeli soldiers and a few Arab Israelis could meet the criteria of the law of the double effect. The primary target, a squad of Israeli soldiers, is a legitimate target, and the killing of non-combatants is an indirect effect. Similarly, Israel's indiscriminate killing of unarmed demonstrators, including children, is immoral, but the indirect killing of civilians resulting from an exchange of fire between Palestinian street fighters and Israeli soldiers is not.

Ramsey, not surprisingly, makes the point that acts which directly intend and directly cause the death of non-combatants are to be classified morally with

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as defined in specific circumstances, should be a legitimate act of war, i.e., at least morally neutral, that is, not morally bad. Second, the human agent should desire the morally good effect, that is, the direct effect that is morally acceptable, and not desire the morally bad effect. Third, the intention of the actor is good. The morally bad effect must not be either the end or the means by which the morally good effect is achieved, as it would be the case if one were deliberately to kill an innocent human being in order to save one's own or another's life. The fourth condition corresponds to the principle of proportionality and stipulates that the morally good effect should equal or outweigh the morally bad effect. Bombing of military targets, for instance, would be morally permissible only if the importance of the military target equals or outweighs the resulting deaths of ordinary civilians.

<sup>91</sup> Lackey, 66.

<sup>92</sup> On 27 March 2002, as the Arab League was meeting to endorse a Saudi peace proposal -- recognition of Israel in return for full Israeli withdrawal to the 1967 borders -- a Hamas suicide bomber struck in Jerusalem, killing 20 Jews and wounding more than 130 others, who were sitting down to celebrate the Jewish Passover. In response to a series of Palestinian suicide bombings which cumulated into what became known as the Passover massacre, Prime Minister Sharon responded on 5 April with a broad military offensive operation, known as operation Defensive Shield. Initially, the Israeli Defense Force broke into Arafat's compound in Ramallah, but later invaded all the Palestinian cities in the West Bank.

murder, and are never excusable. If they were, the end would justify any means. The distinction is not determined by the amount of the devastation or the number of deaths, but by the direction of the action itself, i.e., by what is deliberately intended and directly done.”<sup>93</sup>

The decision maker is left with making a prudential judgment to try to balance good and evil, or lesser evil, consequences. Again the principle of proportionality comes into play. “This requires a prudential estimate of the consequences to see whether there is in the good effect sufficiently grave reason for also indirectly producing the evil effect.”<sup>94</sup> Ramsey rejects the notion that the distinction between combatant and noncombatant is far less clear today than in the past. “We have only to know that there are noncombatants—even only small children and the helpless sick and aged—in order to know the basic moral difference between limited and total war.”<sup>95</sup> For Ramsey, just war today is necessarily a limited war.<sup>96</sup> This position is congruent with the insistence by the Roman Catholic Church and other Christian Churches that whole populations or cities cannot be targeted and that violence in war must remain controllable. Indeed, Christianity has in the last thirty years developed a consensus that declares total war immoral.<sup>97</sup>

From this, it is clear that bombing of children, women, the sick and elderly people, whether it is being carried out by artillery fire, attack helicopters, or by F-16 jetfighters dropping dumb bombs on Palestinian camps, or by a Palestinian suicide bomber killing twenty Israelis, mostly women, children and elderly people during the Passover, fails to meet the principle of discrimination. Such an act is immoral according to the just war theory and illegal according to the laws of

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<sup>93</sup> Ramsey, 75.

<sup>94</sup> *Idem.*

<sup>95</sup> Ramsey, 78.

<sup>96</sup> *Ibid.*, 82.

<sup>97</sup> Christian Mellon, Chrétiens devant la guerre et la paix, (Paris : Le Centurion, 1984), 126. The book examines Roman Catholic documents since Vatican II in 1965 and various other Christian Churches’ positions on war to formulate a Christian corpus on the morality of war.

armed conflict. On the other hand, the members of the Israeli Defense Forces, the political authorities and government officials are legitimate targets as they **closely cooperate with or are directly engaged in the force** that has ensured the occupation of Palestine for over thirty-five years. Included in that group are the well-armed and trigger prone Jewish settlers who participate in the Israeli occupation by enforcing a government policy that consists in physically occupying Palestinian land in order to deny its use to Palestinians. The long-term aim of that policy is to prevent the return of Palestinian refugees and to make the creation of a Palestinian state impossible by placing before the Palestinian people and the world 'un fait accompli'. This policy is also contrary to the 'right intent' criterion as it makes the restoration of peace even more difficult.

William O'Brien considers the difficulty of applying the principles of *jus in bello* to non-traditional forms of conflicts. Military necessity, he believes, permits the use of force necessary for military success, but "purely military success may not be congruent with the political, economic, and social successes that are equally, if not more important in such conflicts."<sup>98</sup> As discussed above, in the logic of terrorism, the value of the target may have nothing to do with its military importance, but everything to do with the psychological and its political impact. The most problematic aspect is to determine when, if ever, intentionally targeting non-combatants<sup>99</sup> can be justified by military necessity. The notion of 'military necessity' originates from the resulting conflict between two moral obligations; namely to win the war and at the same time to do everything to minimise

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<sup>98</sup> William V. O'Brien, The Conduct of Just and Limited War, (New York: Praeger, 1981), 178.

<sup>99</sup> Modern history gives us many examples in which civilians have been intentionally targeted. During the Gulf War, Iraq used Scud missiles to target civilians; the Allied coalition targeted communications and electrical power facilities. During the Vietnam War, President Nixon ordered the Christmas bombing of Hanoi to force the North Vietnamese to negotiate and end the war. During World War II, both Germany and the Allies targeted each other's cities. The United States employed nuclear weapon against Hiroshima and Nagasaki in order to break the will of the Japanese people.

destruction and human suffering.<sup>100</sup> In wartime, the two prescriptions often come into conflict.

### **The Necessity of Success**

The notion of “necessity of success” could be stated as follows: “An action is justified by military necessity if it will contribute significantly to the success of the mission.”<sup>101</sup> The most challenging aspect is that success can be defined at the tactical, strategic and political levels. Thus, the “necessity of success” would allow soldiers at every level to ignore the rules of war in order to be successful. Doing so is tantamount to doing away with the rules altogether. Furthermore, if one accepts that the “necessity of success” justifies setting aside the Law of Armed Conflict, only the winning side needs to follow them. The losing side will be justified to invoke “military necessity” to resort to atrocities.<sup>102</sup>

Thomas Nagel points out that “in situations of deadly conflict, particularly where a weaker party is threatened with annihilation or enslavement by a stronger one, as it is the case of the Palestinian people, the argument for resort to atrocities can be powerful, and the dilemma acute. There may exist principles, not yet codified, which would enable us to resolve such dilemmas. But then again there may not.”<sup>103</sup> He argues that it is naïve to believe that there is a solution to every moral problem. When “absolute” principles conflict with one another in such a way that all available alternatives violate these same principles, there is

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<sup>100</sup> Cohen, 28-33. In practice, the Law of Armed Conflict “allows troops under fire to return fire without ascertaining that there are no civilians mixed with the troops who are engaging them. Actually, it allows troops under fire to fire back even if they know civilians are mingled with the enemy. This rules out discriminatory (selective) attacks on innocents but allows the indiscriminate shelling or bombing of defended areas containing innocents.” In other words, if the objective is a legitimate military target, i.e. a defended locality, and this objective is subjected to indiscriminate bombing or shelling, attacking troops are not under a moral obligation not to attack innocents.

<sup>101</sup> Christopher, 178.

<sup>102</sup> Christopher, 181-182.

<sup>103</sup> Thomas Nagel, “War and Massacre,” in *War and Moral Responsibilities*. Ed. by Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, N.J.: Princeton University Press, 1974), 23.

no choice but to decide on the basis of the probable consequences. In this situation, the lesser evil assumes the character of the good.<sup>104</sup> The British Bomber offensive against Germany in 1942 is a good example of this dilemma.<sup>105</sup>

Michael Walzer presents thoughtful guidelines for determining when military necessity would justify setting aside the laws of war.<sup>106</sup> He believes that the laws of war must be obeyed “until the heavens fall.” He calls such an extreme situation a supreme emergency. He sees the British situation in 1942 as an example of such a calamity. He argues that only in the case of imminent defeat, with “backs to the wall,” the Western Allies may have been justified in bombing German population centers because of military necessity. But only during the early part of the conflict when the outcome of the war was doubtful, i.e. in 1942, which excludes the bombing of Dresden in 1945.<sup>107</sup>

So for Walzer, **military necessity corresponds in fact to political necessity**. Supreme emergencies as he defines them do not exist at the tactical or operational levels. At those levels the prohibitions of *jus in bello* are absolute. Only in cases where a nation faces imminent defeat, which would likely result in enslavement or genocide, may military necessity be invoked. In other words, **only when self-defence applies to the whole of society does “necessity know no law.”** This is, I believe, the case of the Palestinian people, whose

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<sup>104</sup> Christopher, 184.

<sup>105</sup> Lackey, 71. Starting in September 1939, both Britain and Germany attempted to abide by the guidelines of The Hague established in 1923. The Royal Air Force (RAF) discovered quickly that striking specific targets on the ground amounted practically to a death sentence. Night navigation was difficult, fighter resistance was stiff, and the attrition rate became very severe. At the end of 1941, it became clear that the British Bomber Command had suffered terrible losses, with apparently no effect on the German war effort. It was discovered in August 1941 that less than one-third of British aircraft were dropping their bombs within five miles of their objectives although one-third of British war production, which was badly needed elsewhere, was devoted to the bomber offensive.

<sup>106</sup> Walzer, 251-68. Though the new policy was never publicly announced the British public was not fooled and a public debate followed.

<sup>107</sup> Christopher, 74. “From February 1942 to May 1945, the Allied air offensive destroyed 3.7 million German homes and killed 593,000 German civilians, 80,000 or more in the city of Dresden on the single night of 12 February 1945. The destruction of Dresden provoked sufficient revulsion in England to give even Churchill pause.”



situation is one of subjugation, marked by continuous violations of basic human rights over a very long period of time, and the violation of collective rights, such as the right to self-determination and the creation of a Palestinian state.<sup>108</sup> The situation of the Palestinians, whereby a whole people is being deprived of its political and economic rights on account of their race and religion, is in fact similar to the oppression of the black people in South Africa in the 80's.<sup>109</sup>

In other words, there may be “substantial and morally important causes which cannot be pursued otherwise than by violent means, that in these cases some violent means would thus be justified, and that this may apply equally to non-state as to state actors.”<sup>110</sup> This applies also in the particular cases of campaigns “to reverse historical dispossession from traditional lands.”<sup>111</sup> According to Christopher,<sup>112</sup> the only justification for going against the fundamental principal that “it is wrong to intentionally harm innocent persons” is to satisfy the second principle that “one is sometimes obligated to protect innocent persons from harm.” Therefore, only the same *jus ad bellum* criteria that justify resorting to force in the first place would satisfy the conditions when military necessity might be invoked to violate the laws of war and the principle of discrimination. It follows that such a decision can only be political, and made by a lawful authority. The importance of the end must be proportional to the amount of human suffering that will be incurred. In other words, the decision-makers

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<sup>108</sup> Yehuda Melzer, Concepts of Just War, (Leyden: A.W. Sijthoff International Publishing Company, 1975), 61. In 1950 at the request of the United Nations General Assembly, the Nuremberg Tribunal formulated a series of principles on the elements of international law recognised in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal. Principle VI defines war crimes as “violations of the laws or customs of war which include, but are not limited to, **murder, ill-treatment** or deportation to slave-labour or for any other purpose **of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.**

<sup>109</sup> Smith, 187-189, for a discussion on South Africa.

<sup>110</sup> Smith, 19.

<sup>111</sup> Smith, 186.

<sup>112</sup> Christopher, 186.

must be prepared to sacrifice the same number of lives of their own citizens to achieve their objectives.

In that regard, Cohen argues that “an appeal to military necessity is a subterfuge for what is actually a mere military advantage, and not a necessity at all, if the commander would cancel the attack were the casualties friendly. Where the perception of real military necessity is at work, a commander may, though with reluctance, engage in a practice even if the civilians who are being put in harm’s way by it are friendly.”<sup>113</sup> In the Palestinian case, the casualty figures show a ratio of three Palestinian casualties for every Israeli one. Clearly, Palestinians are willing to sacrifice their own, indicating that they consider the situation to be critical. It therefore meets the military necessity criterion.

When invoking military necessity, the means used must be both necessary and sufficient to attain the desired end. Necessary means that overriding the prohibition against the killing of innocents must truly be a last resort and the means sufficient to guarantee a reasonable chance of success. Christopher believes that adopting such criteria would eliminate the ambiguity inherent in the international laws of war without eliminating the use of military necessity as a justification at the national or strategic level<sup>114</sup>

In the case of the Palestinians, the resort to terrorist acts such as the use of kamikazes, by Arafat, is a measure of last resort. The occupation by Israel of the Palestinian land has been going on for thirty-five years, and there is no sign that Israel intends to stop either the creation of new Israeli settlements, or to stop expanding the existing ones. Other forms of warfare are not available to the Palestinians. They have no army to challenge the military supremacy of Israel.

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<sup>113</sup> Cohen, 31- 33. A case in point is the massive air and artillery bombardment of the French town of St-Lô during the Normandy campaign. St-Lô was selected because the roads leading out of western Normandy ran through it. “The town was attacked on July 25, by 1,500 heavy bombers, 380 medium bombers, and 550 fighter bombers, one of the largest air attacks in World War II. Panzer Lehr was virtually wiped out, and the town was turned into rubble. But in the next few days Americans, advancing through the hole created by the bombardment, drove more deeply into France than they had in the seven weeks that had passed since D Day, reaching the base of Normandy peninsula at Avranches. They did not stop until they reached the German border. The bombing of St-Lô led to victory not only in the battle of Normandy but in the battle of France as well.”

<sup>114</sup> Christopher, 187.

Guerilla warfare is also not an option, the space and the terrain do not allow the creation of safe heavens. Nor can the Palestinians, in the words of Mao Tse-tung, “swim in the innocent ocean of the people” and hide themselves amongst the Israeli population. Furthermore, the Palestinians do not possess sophisticated weapons that would allow them to be more discriminating. Finally, other forms of more moderate attacks, targeting strictly Israeli soldiers and Jewish settlers for instance, have given no results, leaving the targeting of civilians in Israel the only option that would possibly fragment Israel political and social cohesion and offer some prospect of success.

Interestingly, back in 1947, when the new state of Israel was surrounded by vehemently hostile Arab states, and its survival was at stake, the Israelis resorted to the use of terrorism against the more powerful Arab countries to guarantee their survival, out of military necessity, as a weapon of last resort in a situation of supreme emergency.<sup>115</sup>

The success of the Palestinian kamikazes is undeniable. Eighteen months ago, the international community was paying no attention at all to the Palestinian cause. Now numerous UN resolutions have been adopted supporting the Palestinians and condemning Israel. The Bush Administration, which has tried its best to avoid being caught up in that conflict, now has no choice but to get involved. Israeli society shows signs that social cohesion is falling apart. The coalition in power has lost its most extreme partner. Reservist officers and enlisted men refuse to serve in the occupied territories on the premise that the occupation of Palestinian land is immoral. A committee of senior retired generals, called the Council for Peace and Security, also opposes the strategy employed by Prime Minister Sharon, and proposed in a recent document the withdrawal of all Israeli occupied territories back to the 1967 borders and the dismantlement of the Jewish settlements and finally the recognition of a Palestinian state.<sup>116</sup> Operation Defensive Shield itself is the best proof that the

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<sup>115</sup> Begines, 50-51.

<sup>116</sup> La Presse, Monday 25 March 02, A11 and Saturday 9 March 02, B3.

Palestinian terror campaign is working and that the pressure in Israel has become unbearable (seventy-two per cent of Israelis do support the operation<sup>117</sup>) to the point where Israel has been willing to defy the UN and the world in a renewed attempt to achieve a military solution. Finally, the Arab world has never been so united in support of the Palestinian cause.

Observers then agree that Israeli strategy to stop Palestinian terror will not be anymore successful this time than in 1982 when Defence Minister Sharon invaded Lebanon to destroy the PLO infrastructure and expel Yassar Arafat.<sup>118</sup> Time magazine reports that even “the most hawkish Israeli Cabinet member would say that for the immediate future at least,” Israel will not succeed.<sup>119</sup> Even worse, leaders of Hamas are already rejoicing publicly and claiming that Operation Defensive Shield will bring them more recruits and more kamikazes. This view is shared by specialists, who claim that the military push in the Occupied Territories will simply fuel more resentment and hate, and that resistance will resume as soon as the Israeli Army departs. In fact, a clear indication of the political failure of the operation, besides its worldwide condemnation, has been to transform Yassar Arafat into a hero, both locally and internationally. The legitimacy of the Palestinian cause is such that the UN Security Council, supported for the first time by the US, has adopted the resolution 1397 "affirming a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders."<sup>120</sup>

Consequently, I believe Arafat would be foolish not to capitalize on the international support he now enjoys and not to take advantage of the political opportunity that Operation Defensive Shield has created. The use of terrorism is not a viable strategy in the long run; it has delivered as much as it can. To persist in that vein can only backfire and be detrimental to the Palestinian cause. It is

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<sup>117</sup> Radio Canada evening news, Friday 5 April 02.

<sup>118</sup> La Presse, Saturday 6 April 02, A-12.

<sup>119</sup> Time, 8 April 2002, 23.

<sup>120</sup> Adopted by the Security Council at its 4489th meeting, on 12 March 2002

now time for him to negotiate a political solution by having the Arab world, the US and obviously Israel seriously involved. It is time for Arafat to renounce publicly the use of terrorism by the Al-Aqsa Martyrs Brigades, which he controls, contrary to the Hamas and the Islamic Jihad, which operate outside Arafat's authority, and to exploit the political gains he has made in the last few months. It is time to give peace a chance and to build upon the Saudi's peace plan. No one, especially Arafat, can afford another Camp David failure.

Hopefully, Ariel Sharon will understand the fundamental nature of the conflict he is waging, that a limited war "is a political process conducted by military means, a sort of tough bargaining in which the aim is not to win, but rather not to lose, and to fight in such a way that the enemy will settle for a compromise peace."<sup>121</sup> In this type of conflict, as in Vietnam, military victories may be irrelevant. What matters is the political impact of the military operations. Shaping perception becomes a strategic weapon.<sup>122</sup> The decision will come after a long phase of negotiation towards the form of a more or less honourable compromise.

## Conclusion

Is the Intifadeh morally justifiable? The answer is yes, as there can be no doubt that the political end, which is to create a Palestinian state and free Palestinians from Israel's oppression is vital to the nation. But to the question whether terrorism is morally acceptable? The short answer is unquestionably no. In other words the Intifadeh does meet the *jus ad bellum* criteria, but terrorism will never meet the *jus in bello* criterion of discrimination between combatants and non-combatants.

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<sup>121</sup> Baylis, 201.

<sup>122</sup> In Vietnam it subverted American war support at home, ruined American diplomacy abroad, and inhibited American response. Similarly, Operation Defensive Shield has turned the Arab world and Western public opinion (with the exception of the US) against Israel.

Terrorism, however, must be examined in its global strategic context and not as a tactical act. Going back to the contextual school, and our analysis of the Just War doctrine, terrorism may become a necessity at the strategic level, and be justified in response to flagrant and prolonged injustice (thirty-five years in the case of the Palestinian people), but only as a weapon of last resort in a case of supreme emergency. And only in such a case when the survival of a people is at stake, and where more morally acceptable means have been unsuccessful. In the case of the Intifadeh, terrorist acts become tolerable out of necessity, as the only alternative would be to submit to gross injustice, and because they represent the lesser of two evils. In the end, when both sides continuously violate the *jus in bello* criteria and the Law of Armed Conflict, international public opinion is left with no recourse but to judge on the merits of the *jus ad bellum*.

In the case of the Intifadeh, the verdict is clearly in favour of the Palestinians, because morally our preference goes to the victim rather than the perpetrator of injustice. The two causes do not have the same weight, there is no comparison between the survival of the Palestinian people, which, as I have argued, represents a case of supreme emergency and the security of Israel's citizens, especially when Israel's insecurity results from its own policies. That conclusion is reinforced when looking at the other *jus ad bellum* criteria.

Both sides meet the *competent authority* criterion, although Arafat, who was elected in 1996, does not have full control over the Palestinians, having to compete for political authority with the Hamas and the Islamic Jihad. As to *the probability of success*, both sides have achieved some success, but neither can achieve a decisive military victory without going beyond the bonds of morality and legality. As well, we have argued that for the Palestinians, this is really a case of *last resort*. Having tried in vain all other means to obtain justice over the last thirty-years, the use of terrorism as a strategic weapon is actually an act of despair, because nothing else seems to have an impact on Israelis and on international public opinion. The Intifadeh, furthermore, does not violate the *principle of proportionality* as it does not inflict more loss of life and more damage

than is “necessary or congruent with what is at stake”. Indeed, Palestinians are suffering three to four times as many casualties as the Israelis.

But it is the *right intent* criterion that seems to decisively tilt the balance in favour of the Palestinians. Israel has for the last thirty-five years continuously ignored all UN resolutions and still refuses to implement the Oslo Accords signed in 1993. Not only does Israel not respect the Accords, but in a flagrant violation of the agreement Israel has intensified the expansion and development of new Jewish settlements in the West Bank. One must also consider the continuous occupation of the West Bank and the daily oppression of the Palestinian people as well as innumerable violations of basic human rights as described earlier. When one considers all the above recorded facts, it becomes very hard to conclude that Prime Minister Sharon’s actions meet the *right intent* criterion - that he seriously wants to achieve a just peace.

This having been said, terrorist acts remain morally wrong as they violate the most basic moral obligation in both the Christian and Islamic traditions not to harm an innocent person intentionally. In the end, as remarked by Machiavelli, the Prince should know when he is using morally questionable means so that he should suffer a bad conscience in order that moral values survive their violation.<sup>123</sup>

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<sup>123</sup> Craig, 278.

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