

HAIG KHATCHADOURIAN

COUNTER-TERRORISM: TORTURE AND ASSASSINATION

In “On Terrorism And Political Assassination” Kai Nielsen considers the question whether political assassinations are ever morally justified, and argues that “there are circumstances in which they are justified and that this is generally recognized”.¹ Later I shall examine his reasons for this claim; but what needs to be noted at this point is that, unlike Nielsen, who is concerned with assassinations committed *by* terrorists among others, one of the two themes of this paper concerns the ethics of the assassination *of* suspected terrorists, as a form of or element in counterterrorism, by the military forces of a country that is attacked by presumed terrorists. I have in mind, of course, Israel’s “targeted killing” of Palestinian militants in the ongoing al-Aqsa intifada. As far as I know, that is an entirely new putative form of counterterrorism, not witnessed prior to the *intifada*.

The second main theme of this paper is the ethics of a country’s use of torture of suspected terrorists in custody, as a further way of combating terrorism.

PART I: ASSASSINATION AND COUNTER-TERRORISM

In “Is Political Terrorism Ever Morally Justified?”² I argued that the answer to the question posed by the article’s title is a categorical No; that political assassination is never morally justified in principle, not just in practice.³ In this section I shall defend the more general claim that assassination in general, not only for political reasons, is never morally justified in principle, consequently also in practice. Since some moral philosophers as well as perhaps many non-philosophers claim that terrorism is morally justified in certain circumstances, I shall (1) provide my reasons for that general claim, and (2) criticize some main arguments – particularly by James Rachel in the *Assassination* volume, who also claims, though for different reasons than Nielsen, that assassination is sometimes morally justifiable.

Section II will attempt to evaluate arguments for and against the “targeted killing” of Palestinian militants suspected of planning terrorist acts, or individuals believed to be preparing to commit such acts, against Israel. That section will conclude with a discussion of the proposal debated in the American media in the wake of the September 11, 2001, as to whether the current prohibition of assassinations by American law ought to be changed with respect to international terrorism. Since, as I said, I believe that terrorism in general is always morally wrong, I shall argue that “state” assassinations of suspected – or even actual – international terrorists does not constitute a morally justifiable exception, and so is also always wrong.

Finally, in Part II I shall inquire whether the torture of suspected terrorists to extract information that may lead to the prevention of future terrorist acts is ever morally justifiable.

IS ASSASSINATION IN GENERAL EVER MORALLY JUSTIFIED?

Assassination and the Human Right to Life

In *IPAMJ* I claimed that political assassination is never morally justified

“even when the assassin’s motives and (2) the overall consequences of the action are good, whether actual or probable, and (3) the victim’s political activities *are* a threat to his country or the world, because it violates the victim’s human right to life.”⁴

My basic argument was that

“it is wrong in any circumstances to inflict avoidable or unnecessary pain or suffering on human beings and animals, i.e., that physical and mental cruelty is morally wrong. This itself is part of the more general principle that it is *prima facie* wrong to harm human beings and animals, in any manner or degree. The latter can be grounded on the celebrated principle that human beings have the right to life and the pursuit of happiness, though it can also be maintained, I think, as a separate human right.”⁵

Concentrating on rights, I argued that

“in all cases of political assassination the victim’s right to life is (i) forcibly abrogated, necessarily without his consent, and (ii) without due process of law, thereby denying him the opportunity to defend himself against the charges brought against him. Finally, (iii) the termination of the victim’s life is brought about by the assassin’s taking the law into his own hands, turning himself into a judge of the victim’s deeds or misdeeds, and arrogating to himself the ‘right’ to mete out punishment – and ‘capital punishment’ at that!”⁶

In his Introduction to *Assassination* the editor, Harold Zellner supposes that my claim is that “people have certain rights which cannot morally be over-ridden, *not even on the basis of the better consequences of doing so*”.⁷ He immediately adds that:

“It may be that these rights are ‘inalienable’ ...; they cannot be given up or taken away or lost. ... Even Hitler was a human being, and presumably had certain rights (at least at one time); Professor Khatchadourian seems to be arguing that assassination is all but impossible to justify on this sort of ground.”⁸

That is quite close to what I claimed. In saying that assassination violates the victim’s right to life (in addition to other moral rights) I was claiming that, as a *human* right, the right of life cannot be either *taken away* from a person or *forfeited* by him or her as long as he or she lives, as he or she continues to be a person, because of his or her committing

heinous acts. Nor can that right (and the other human rights) be *voluntarily given up* by him or her, *or be lost*.⁹

In his contribution to *Assassination* entitled “Political Assassination”, James Rachels takes issue with my position. In Zellner’s words,

“while admitting that some rights are inviolable, [Rachels] takes the somewhat more lenient position that such rights can be forfeited; Hitler lost his right to life when he violated the rights of so many others.”¹⁰

The following summarizes Rachels’ reason(s) for his view that in certain extreme circumstances, within certain limits, a person’s rights can be overridden, justifying his or her assassination. He writes:

“While it may be permissible for us to override our victim’s rights if it were necessary to eliminate great suffering, it would not be permissible to override his rights merely to increase the happiness of an already minimally contented population even though the net gain, according to some sort of utilitarian calculus, is the same in both cases.”¹¹

Concerning the “relation between human rights and social utility”, he adds:

“The achievement of a minimally decent society, where human suffering and pain has been reduced to a tolerable level, is such an important business that it may justify overriding people’s rights. Respecting people’s rights is not more important than bringing about this minimally decent sort of society. However, once this has been achieved, it is no longer permissible to flout people’s rights simply to make things still better. ... Thus, while it may be all right for a revolutionary temporarily to set aside the rule against killing in order to eliminate a great evil from a society, after the revolution the rule must be restored to its full force.”¹²

As this passage shows, Rachels gives a consequentialist rationale for the permissibility of forfeiture of a person’s (human) rights in certain extreme societal kinds of cases.

Rachels’ consequentialist view is considerably more textured and complex than the straightforward act-utilitarian position such as Kai Nielsen’s; inasmuch as it assigns an important role to human rights as well as to certain kinds of consequences; albeit, as we saw, these rights can be forfeited, hence overridden by certain consequences. According to Rachels these conditions are: (a) that the results of the assassination must be “good enough to outweigh the evil involved in destroying a human life”; (b) “assassination must be the only, or least objectionable, means of achieving these results”; and (c) “of all the possible actions available in the situation”, it must be the “best overall balance of maximizing good and minimizing evil”.¹³ If these conditions, together with a rule regarding human rights, are seen as rules regulating and evaluating any societal policy or practice of assassination, Rachels’ theory can be profitably viewed as a form of rule-utilitarianism.

However we may classify Rachels’ theory, what matters for our discussion of assassination is whether an individual’s human rights *can* be forfeited, hence overridden, by the kinds of consequences just described, or by any other kinds of consequences. To this question I shall now turn.

In my recent *Community and Communitarianism*¹⁴ I claimed, as William Blackstone cogently argues in “Human Rights and Human Dignity”,¹⁵ that

“human rights are not *prima facie* entitlements, hence open to forfeiture. Only the entitlement to their exercise is a *prima facie* entitlement. One attraction of the view that human rights are *prima facie* entitlements is that it provides an attractive moral justification for legal punishment by incarceration or execution, and for the political assassination of dictators and others who commit heinous crimes. But Blackstone correctly argues that human rights are ‘inalienable’ and consequently not *prima facie* rights.”

As he writes:

“What could it mean to renounce, transfer, or waive one’s right to be treated as a person, for example? Such renouncement seems to make no sense as long as one *exists* as a person [i.e., as a human being]. [And with respect to renouncement or transfer of one’s human rights, he adds:] If being respected as a person means that one’s preferences, needs, choices, and actions are to be respected, surely it is nonsensical to speak of *someone else* having or being given my right to have my preferences, needs, choices and actions respected.”¹⁶

“Similarly, it makes no sense to speak of the forfeiture of one’s right to be treated as a person “as long as one exists as a person”. Blackstone’s argument against the claim that human rights are *prima facie* rests on his rejection of the view that persons are “open to forfeiture of all rights. This ... amounts to allowing the conceptual possibility of viewing persons as *things*”,¹⁷ as not worthy of respect. Blackstone’s argument is cogent if by “all rights” we understand “all human rights”, not necessarily also civil or (some?)¹⁸ legal rights.”¹⁹

I should add that, besides arguing for the “inalienability” of human rights in the sense described above, I also argued in the same book that, with one fundamental exception, these rights – including the rights to life, to be free (both positive and negative), to privacy, and so on – are not absolute but form a set of interrelated rights that limit – and sometimes conflict with – one another. If this is correct it follows that these, non-absolute rights, such as the right to life, can be *overridden* by stronger moral claims, if such claims can and do exist. The only absolute human right, the only right not open to being overridden in principle is the foundational human right: the right to be treated as a moral being; to be treated with respect and consideration as a *person*, not to be treated as a “thing” or an “object”.²⁰ That right is the logical-*cum*-moral foundation on which all non-absolute rights are grounded, which these rights presuppose.

It might be thought that if, notwithstanding the non-absolute character of the human right to life, it cannot be ever forfeited (e.g., as a result of one’s committing heinous crimes), (a) it would follow that *no* stronger moral claim(s) that can override it exist; or that if (b) it *can be* overridden, it would follow that assassination is sometimes justified: that is, whenever a stronger moral claim exists. My response is No to both (a) and (b): the

right to life *can* be overridden; but No, it does *not* follow that assassination is sometimes justified.

The reason for my negative reply to (a) is that the right to life can be overridden by at least one stronger moral claim; viz., the claim of criminal justice. I have murderers in mind, persons who deprive their victims²¹ of their right to life (and, as a result, of all their other human rights) by ending their life, or persons who commit other heinous crimes, such as oppressing others or subjecting them to their evil wills. But – and this pertains to (b) – the criminal's right to life can only be overridden, in principle and in practice, only if and when the demands of criminal justice are fully satisfied. For – and this is extremely important – *the right to life* – and, by implication, the right to be treated as a moral person – *entitles one to defend that right, i.e., one's life, against evidence intended to override that right; so that right can only be overridden by sufficient evidence against the individual in a fair and just trial.* That is, provided that (i) the criminal's violation of the victim's/victims' right to life, or other human rights, is proved beyond a shadow of a doubt in a fair trial, in which the defendant's moral and legal defenses and rights are fully respected (e.g., in the U.S. in accordance with the Constitution and the Bill of Rights); and provided that (ii) no extenuating circumstances that serve to mitigate his or her just sentence can be found. This means that the demands of criminal justice may require that an individual who has been justly shown in a court of law to have, say, committed murder, may be justly put to death if countervailing moral claims – such as the claim that capital punishment fails to deter potential murderer, or other countervailing consequentialist claims – do not render the death penalty itself morally wrong. The phrase “has been shown in a court of law” is crucial. In its absence – and this point will be reiterated in the rest of this section and the next – the killing, including the assassination of someone who is only *suspected* of having committed acts of terrorism, would itself be murder.²²

I said that the demands of criminal justice may require the overriding of an individual's right to life. But can that right not be also overridden if doing so serves to enlarge or expand *others'* human right to life, etc. – in short, the human right to be treated as a person – particularly, of a large number of persons? For instance, assassinating a dictator in order to enable his people to enjoy their human rights, including the freedoms to which, as moral persons, they are entitled? For are not the human rights of the many of greater worth than a single individual's human rights?

It is granted that the answer to the last question is Yes – but! For by the very nature of assassination, the victim is denied the opportunity to defend himself or herself, either physically or in a court of law, before his or her life, hence all that his or her life entails, for ever forcibly taken away.²³

Again, the ability of as many individuals as possible – ideally, of all human beings on earth – freely to exercise their human rights so as to achieve self-fulfilment and therefore happiness is indeed a great good. If a powerful individual or group of individuals prevents others from exercising their human rights, stopping him or them from continuing to do so would be morally justified, particularly if achieved by a minimal *restriction* of their human rights. But depriving them of their very capacity to exercise their rights once and for all by killing them is, in my view, quite another matter.

Assassination and Consequentialism

Act-Utilitarianism and Assassination

On act-utilitarian grounds assassination is justified whenever the assassination's bad consequences are outweighed by its good consequences. But act-utilitarianism suffers from certain well-known difficulties in addition to those involving, e.g., the application of the concept of consequences of actions to actual or possible cases difficulties that face rule-utilitarianism as well. The problem of the comparative weighing of such goods as pleasure and pain, happiness and unhappiness, or of liberty,²⁴ is a serious theoretical problem faced by consequentialism in general,²⁵ while the problem of predicting the actual or even the probable consequences of actions – particularly the long-range, often widespread consequences of important actions by political leaders that affect the lives of large numbers of people, often for long periods of time²⁶ – is a further serious practical problem for consequentialism. Another familiar theoretical problem is whether the probable or the actual consequences should be weighed when trying to assess the overall goodness or badness of particular actions or classes of actions; or whether the agent's having "good reason to believe that ... [the] act will produce good results"²⁷ should be considered the criterion of right action.

I shall now point out certain central difficulties with act-utilitarianism that vitiate it as a way of justifying assassination in certain circumstances. Some of these difficulties also vitiate "pure" rule-utilitarianism. In the next sub-section and especially in Section II I shall discuss some special difficulties facing rule-utilitarian attempts to justify the assassination of suspected terrorists.

A central problem with both act- and rule-utilitarianism is the absence of *independent* deontological side-constraints, such as the constraints of human rights and the principles of justice, thus allowing acts or kinds of acts that violate these principles. For rights as well as the principles of justice are subordinated by both to the (general) good; as we saw for example in Rachels' case.²⁸ The problem of "telishment" – which permits the "punishment" of innocent persons whenever doing so serves the "general good", has "good consequences on the whole", notwithstanding its blatant violation of the victim's human rights as well as the principles of criminal justice²⁹ – illustrates this central difficulty well.

Another, perhaps less known difficulty with "pure", traditional utilitarianism/consequentialism³⁰ stems from the consequentialist's duty to maximize the "general good". As Bernard Williams argues, that saddles the utilitarian/consequentialist with what Williams calls the "strong doctrine of negative responsibility".³¹ Since the difficulty is discussed at some length in *Community and Communitarianism* (pages 95 ff.), I shall only give the gist of that central difficulty here.

According to Williams "the strong doctrine of negative responsibility flows directly from consequentialism's assignment of ultimate (intrinsic) value to states of affairs". In *Ethics and the Limits of Philosophy* he states the matter thus:

"There are states of affairs I can affect with respect to welfare which, because I can do so, turn out to be my concern when, on nonutilitarian assumptions, they would be someone else's concern."³²

In *Utilitarianism For and Against* he gives two examples to show what is wrong with the strong doctrine of negative responsibility. The first example concerns George, a chemist with heavy family responsibilities who is faced with the dilemma of whether to accept, against his moral principles, a job “in a certain laboratory which pursues research into chemical and biological warfare”.³³

If he refuses the position his family will be in financial difficulty and the position

“will certainly go to a [chemist] who is ... likely ... to push along the research with greater zeal than George would.”³⁴

The second example finds Jim, an American traveler on a botanical expedition, “in the central square of a small South American town” where the captain in charge has rounded up a random group of Indians who,

“after recent acts of protest against the government, are just about to be killed to remind other possible protestors of the advantages of not protesting”.³⁵ “The captain tells Jim that if he kills one of the Indians he will let the other Indians go free.”³⁶

William thinks that the utilitarian resolution of the dilemmas would be,

“in the first case, that George should accept the job, and in the second, that Jim should kill the Indian”³⁷ (Cf. “telishment”).

Williams argues that

“in its strong doctrine of negative responsibility, utilitarianism [consequentialism] ‘cuts out’ the fact ‘that each of us is specially responsible for what *he* does, rather than for what other people do’.”³⁸

For Williams ‘this is an idea connected with the value of integrity’, a value he thinks utilitarianism makes ‘more or less unintelligible’.³⁹

“Integrity as Williams understands it involves ‘the relation between a man’s projects and his actions’.”⁴⁰ The idea of integrity essentially arises in relation to a person’s projects, which Williams calls ‘commitments, those with which one is more deeply and extensively involved and identified’.”⁴¹

Rule-Utilitarianism and Assassination

The basic question for the rule-utilitarian would be whether a state or societal *policy* or *practice* of assassination of terrorist suspects would have greater benefits than bad consequences for the particular country or society (or even for human society in general). For instance, whether it would deter and so prevent future acts of terrorism. The belief that it does do so is perhaps the rationale for e.g., the Israeli government’s practicing targeted killing of suspected Palestinian militants or terrorists during the ongoing al-Aqsa *intifada*; although, in point of fact, these assassinations have definitely failed as a deterrent. Prevention or deterrence is also unlikely to happen so long as people are willing and ready to die for what they consider to be a great cause – in this particular case, liberation from Israeli rule. That is above all true if the militants consider death in

the cause of liberation as a religious *jihad*, and thus both consider themselves and are considered by their compatriots as martyrs, in the event of their death.

The danger that the people would lose faith in their system of justice is another main reason why a consistent rule-utilitarian country or society would not adopt an *overt*, *public* political-legal *policy* or *practice*⁴² of assassination of the “enemies of the people” and/or of the state. Instead, it would adopt a *public* policy or practice that includes (in the latter case, would include a “regulative”) moral/legal rule⁴³ that prohibits all assassinations in principle. A government or society that adopted assassination, even if, theoretically, only against suspected terrorists, is likely to be considered by its own people as undermining, or on its way to undermining, the rule of law in general indeed, of the very idea of due process – by violating the principle that a person is innocent until proven guilty. In short, the people would tend to believe that a slippery slope effect will gradually take effect. In fact, once the government comes to believe that the assassination of suspected terrorists deters terrorist violence, it may be tempted to think it desirable to deter ordinary murders, rapes, kidnaping and other garden variety felonies too by the “taking out” of individuals suspected of having committed one of more of these crimes.

It might be thought that a *covert* policy or practice of assassination of perceived enemies such as suspected terrorists or heads of enemy or terrorist states by the state’s intelligence agencies (e.g., the FBI or CIA in the case of the U.S.A.) would avoid the preceding difficulties. But that is not really so; since it is always possible that the covert policy would be exposed by the domestic or foreign media, particularly whenever the assassination attempts fail. Such revelations are likely to result in a domestic and international outcry and condemnation; not least by the particular country’s enemies if one or more of their political leaders happen to be the targets of the assassination or assassination attempts.⁴⁴

Another reason why an *overt* or a *covert* practice or policy permitting the assassination of a country’s real or perceived enemies would tend to be counterproductive is that hostile states would be encouraged to pay that country with its own coin, targeting its own agents and/or political leaders, perhaps even its head of state. (I shall return to these points later, in Section III, in relation to debates in the American media following September 11, 2001, as to whether the U.S. prohibition against assassination, which has been in effect for some time, should be lifted in relation to terrorists.)

A public, governmental institution or practice *IP* that adopts a given policy *P* in order to help realize the state’s particular goals *G* would spell out or define *G* by, among other things, stipulating a rule that enjoins certain methods of realizing *G*, and, thereby, furthering *IP*’s broader national and international goals. For *P* to be properly executed, *IP* would include, among its regulative rules, a regulative rule that (a) regulates and periodically evaluates *P*’s implementation; determining when and how its personnel should implement *P*; and (b) enables the particular agency or branch of government periodically to evaluate the (degree of) success or failure of *P*’s, hence *PI*’s, implementation.

In the case of an (e.g., a covert) institution/practice *IP* whose objective is to protect the country by, among other things, gathering sensitive political, military and strategic, and, perhaps, economic intelligence or information, and even aims hence has a policy *P* to destabilize or overthrow hostile regimes through political assassinations, would indicate the nature and aims of that policy *P* by, among other things, issuing a directive

that permits, even encourages “well-timed”, “well-executed” political assassinations. In addition, *IP* would include in its regulative rules a rule that (a) regulates and (b) periodically evaluates *P*’s implementation. In this case it would determine, and evaluate, the appropriateness and effectiveness of the assassinations planned or implemented in a given period of time, hence the extent to which they are or have been serving *P*’s, and so *IP*’s, and – with it – the state’s or country’s goals.

The same would be true, *mutatis mutandis*, of a state policy prohibiting political assassinations except perhaps in wartime; insofar as state assassinations would hurt – or would hurt more than advance – the particular state’s or country’s political, military-strategic or other goals. (As we shall see later, the same kinds of argument would show that a rule-utilitarian would prohibit or condemn a societal or state practice or policy of torture of suspected terrorists or indicted alleged terrorists in custody.)

State-sponsored assassinations and national self-defense

I now turn to the question whether state assassinations are morally and legally justified in time of defensive war.

It is common knowledge that the Israeli government of Prime Minister Ariel Sharon claims to be fighting a “defensive war” against Palestinian terrorism during the ongoing *Aqsa intifada*, and that, consequently, is justified in destroying what it calls “the infrastructure of terrorism” in the Palestinian territories. Although that declaration came some time after Israel had all but stopped targeted killing of suspected terrorists (possibly after legal restrictions were placed on targeted killings by the Israeli government)⁴⁵ during its recent massive military incursions into the West Bank and Gaza, I shall now turn to the claim that (a) the wartime assassination of enemy military and political leaders would be morally justified on act-utilitarian grounds; that is, whenever it helps the country perpetrating the assassination to win the war.⁴⁶ It might even be thought that (b) a policy of assassination of enemy leaders in wartime can also be justified on *rule-utilitarian* grounds. For it might be claimed that a policy that includes a regulative rule permitting such assassinations whenever it is likely to advance the *just* party’s war efforts, can be justified on rule-utilitarian grounds.

In light of our earlier discussion of act-utilitarianism, claim (a) would undoubtedly be true. But it is otherwise with claim (b), for reasons similar to those I gave against assassination as a state policy in general. I mean that a warring party’s policy of that nature would encourage the enemy to pay it back with the same coin; although it is granted that that may not be possible in a particular case. For example, the Japanese did not assassinate any American military leader in retaliation for the assassination of a Japanese Admiral in the Pacific Theater during World War II. But the real possibility of a pay-back cannot be excluded.

Even if we leave aside our earlier general criticism of “pure” act- and rule-utilitarianism, it would still remain that claims (a) and (b) are inapplicable to Israel’s assassination of Palestinian militant leaders such as Abu Ali Mustafa, “the leader of the Popular Front for the Liberation of Palestine”, and the Hamas leader, Mahmoud Abu Hanoud.⁴⁷ The perfectly obvious reason is that war consists in actual belligerence between states: something which is not the case with the current Palestinian-Israeli conflict; although the rhetoric of “war against Palestinian terrorism” has enabled Israel to extract considerable psychological-rhetorical advantage during especially when its army

“made lengthy, repeated incursions” into the West Bank and Gaza strip. Similarly President Bush’s ‘war’ in ‘war on terrorism’ applies to the al-Qa’ida and other international terrorist organizations (as opposed to the Taliban Afghan regime) only in an extended, *metaphorical* sense. While deterrence is obviously not a realistic goal of wartime assassinations, deterrence (together with the desire for retaliation if not revenge) is clearly the Israeli government’s goal in assassinating suspected terrorists.

It is worth noting here the Israeli writer David Grossman’s criticism of the Israeli assassination of Abu Ali Mustafa, the leader of the Popular Front for the Liberation of Palestine, which he calls

“foolish and dangerous even within this tangled context. It was an act of revenge meant, first and foremost, to bolster Israeli deterrence. It was also aimed at dealing a blow to Palestinian morale, one that would force the Palestinian Authority to talk with Israel.”

He significantly adds:

“Neither of these goals was achieved. It seems to me that it shouldn’t have been difficult to guess that the action would achieve the precise opposite and only make matters worse.”

But Grossman goes beyond the assassination of Abu Ali Mustafa, and rightly equating assassination with murder, he adds:

“Apparently, we have all become so callous, have become so accustomed to the unbearable lightness of death in our region, *that we need to remember that to murder a human being, whether Israeli or Palestinian, is blatantly to cross a red line.*”⁴⁸

Amos Oz, another well-known Israeli writer, defends the opposite position.⁴⁹ Pleading that Israel is

“entitled to defend itself, though not by hurting or killing innocent civilians, not by killing politicians, ideologists or even dreadful inciters and agitators. [Although] with a heavy heart”,

he justifies the

“killing of Palestinian fighters, uniformed or not, but of no one else. The term assassination is a very misleading one. Killing unarmed civilians is assassination; killing fighting Palestinians or active terrorists is self-defense, and I justify it.”

“Israel deserves very serious criticism when it kills civilians. It does not deserve criticism when in a state of war [note the use of the word] it kills fighting enemies. In principle, when a country is attacked, it can choose among three ways: it can indiscriminately kill the ‘others’, it can turn the other cheek to its enemies, or it can fight back against those who carry weapons. I prefer not to fight at all, but if there is a war I definitely prefer the last way.”⁵⁰

Like Oz, Grossman maintains that

“Israel has every right to defend itself. If official spokesmen for the Palestinians declare that they intend to send dozens of suicide bombers to Israeli city centers, they should hardly be surprised that Israel responds with a lopsided display of force aimed at foiling such deeds and impeding their perpetrators. When Palestinian leaders declare that Israel has ‘crossed a red line’ they sound disingenuous. After all, it is they who have encouraged acts of indiscriminate mass murder of innocent citizens, children and infants within the borders of the state of Israel.”⁵¹

In conclusion, Grossman, like Oz, eloquently pleads for a peaceful resolution of the conflict:

“in the current circumstances, Israel and the Palestinians must show less ‘creativity’ in killing and attacking each other and more in seeking a resolution of the conflict. But parties must resume negotiations unconditionally. Without negotiation we will all be helplessly caught in a spiral of murder and revenge. Without hope, we will all be doomed to be battered time and again by the deadly symptoms of our *disease until, perhaps very soon, we will find ourselves powerless to treat the illness itself.*”⁵²

*To this I can only say “Amen”.*⁵³

It remains that genuine, morally justified Israeli self-defense against Palestinian militants – terrorists and non-terrorists – who attack Israeli civilians and soldiers, must be distinguished from the assassination of suspected terrorists, which, I have argued, is nothing short of murder, hence morally wrong, as well as a violation of international law.

Moral/Juridical Arguments against State Assassination of Suspected Militants or Terrorists, as a Form of Counter Terrorism

As will be recalled I have maintained that (1) human rights, with the exception of the right to be treated as a (moral) person are not absolute and can be overridden by stronger moral claims, (2) a human person cannot possibly forfeit his or her human rights, nor can they be taken away from him or her as long as he or she lives, and (3) a person’s human right to life can be morally overridden by the demands of criminal justice, if or when he or she commits heinous crimes. From (1) and (3) it may seem that a person’s right to life can be overridden if (a) he or she commits acts of terrorism or other serious crimes, whenever it is impossible or practically impossible for the authorities to arrest him or her and bring him or her to justice; or perhaps even (b) preemptively, whenever convincing evidence exists that an individual (who has hitherto not committed acts of terrorism, and the like) is actively engaged in planning to commit acts of terrorism. In either case, (a) or (b), it might be held that the individual’s assassination would be morally justified, satisfying the demands of criminal justice. The advocate of assassination under conditions (a) or (b) may exempt juveniles engaged in or planning acts of terrorism.

The defender of assassination in the case of both (a) and (b) may additionally argue that terrorist acts are more evil and more felonious than “ordinary”, garden variety acts of

murder, rape, kidnaping, and other morally and juridically wrong acts; indeed, as specially heinous acts, they are *sui generis*, in a class by themselves as evil acts. Hence (i) a terrorist's targeted killing would be a lesser evil than the evil he or she perpetrates by his terrorist acts. Moreover, (ii) refraining from killing a terrorist may well enable him or her to strike again. Assassinating a terrorist would therefore be justified as a preemptive or preventive act. Thus a terrorist's assassination would be justified on act-utilitarian grounds. It would be added that in the case of (a) above the assassinations would also be morally and juridically justified as acts of national self-defense; while they would be justified as acts of national self-protection in the case of (b).

My response to (a) and (b) is as follows:

With regard to (a) let us assume for the same of argument that terrorist acts are morally or juridically *sui generis*: that they are essentially different in kind from ordinary kidnaping, killing of innocents, and other morally evil acts;⁵⁴ and let us also assume that overriding a terrorist's right to life is morally justified. It would remain that that justification cannot justly apply either in relation to merely *suspected* terrorists or to individuals who *plan* to commit terrorist acts; but only in relation to *actual, bona fide* terrorists, who have been to be legally guilty of terrorism in a fair and just court of law. To assassinate alleged, suspected militants or terrorists is to act "extra-judicially as judge, jury, and executioner", as Professor Shibley Telhami⁵⁵ recently observed in criticism of Israeli targeted killings; especially when, as he added, Israel is able to arrest Palestinian militants and bring them to justice – as it has in fact been recently doing during repeated massive incursions into Palestinian territories – as well as applying great pressure on the Palestinian Authority to arrest suspected terrorists.⁵⁶

The ethical issues concerning the ethics of terrorism and counter terrorism are complicated by the widespread confusions about what terrorism is: not surprisingly given that vague and loose conventional concept. But the problem goes well beyond unintended confusion or misunderstanding. For instance, crucial distinction or differences between "terrorism" and "freedom fighting" in general and therefore between acts of terrorism and acts of freedom fighting, have been practically obliterated, particularly by governments intent on preserving the status quo against bona fide liberation movements.⁵⁷ Since September 11, 2001 in particular, many governments as well as the media have been exploiting the term's ill-defined character, arbitrarily redefining or stretching the word in different directions to further their own political-military agendas.

As I argued in "Terrorism and Morality" and *The Morality of Terrorism*, terrorism is an essentially "bifocal" concept. I mean the crucial distinction between (a) the "immediate victims", the individuals who are the immediate targets of terrorism, and (b) "the victimized", those who are the indirect but real targets of terrorist acts. Normally the latter are individual governments or countries or certain groups of governments or countries, or specific institutions or groups within a given country. The ultimate targets may also be certain social, economic or political systems or regimes which the terrorists dislike and hope to change or destroy by their terrorist activities.⁵⁸ The indiscriminate harming killing, wounding, hostage taking, etc. of innocent civilians, which is most widely thought to constitute terrorism, neither defines nor distinguishes it from other forms of violence. In terrorist violence, the discriminate or indiscriminate violence is motivated by certain political, military, economic, moralistic/religious or other ends, and is but a *means* to the "real", political, economic, military, moralistic/religious or other

objective(s) of terrorist acts. Additionally as Mark Juergensmeyer shows,⁵⁹ especially significant terrorist acts and their immediate targets (such as the September 11, 2001 attacks in the U.S.) are symbolic acts. And by their very nature, symbols in general, including symbolic acts, are “bifocal” in the sense that they refer to or represent something beyond themselves, the object(ive) symbolized.

Moral Evaluation of the Palestinian al-Aqsa intifada and Israel’s military response to it

Neither the Palestinian *intifada* nor Israel’s military response to it, *as a whole*, satisfy all conditions of a morally justified military struggle. The *intifada* does have just cause, insofar as it is a liberation movement, but violates the principle of discrimination by frequently targeted innocent Israeli civilians, whether by acts of terrorism which are always morally wrong, wrong in all possible circumstances,⁶⁰ or by non-terrorist acts of vengeance or retaliation against innocent civilians. The *intifada* is, also, far from a last resort. Yasser Arafat could and should have accepted the Clinton-Barak plan with respect to the West Bank and Gaza Strip, with the proviso that the future of the Old City of Jerusalem and the Palestinian refugees whose homes were originally in what is now Israel would have to be later negotiated, for example, when the precise borders of the Palestinian state are agreed upon.⁶¹ Arafat’s rejection of the Clinton proposals is the absolutely worst mistake an Arab leader has made since the Palestinian and other Arab leaders rejected the U. N. Partition Plan fifty-four years ago.

Israel’s military response to the *intifada* also violates several conditions of morally justified self-defense. The most obvious are: its gross violation of the principle of proportionality as a *jus ad bellum* and as a *jus in bello* principle, by its use of excessive military force against Palestinians, and its violation of the principle of discrimination, involving the death or wounding of a hitherto unknown but nonetheless large number of innocent civilians its forces killed or wounded during the *intifada* as a whole, and massive destruction of dwellings and homes, especially during its repeated military incursions into Palestinian territories; in particular, the Palestinian refugee camp in Jenin, which led the Human Rights Watch and Amnesty International to condemn Israel’s human rights violations.⁶²

To these we must add the moral wrongness of Israel’s targeted assassinations of suspected terrorists and other militants, which we discussed at some length. Fortunately, Israel has recently switched from targeted killings to arresting suspected militants – possibly as a result of recent legal advice against targeted killing it has come, as I mentioned, at a terrible price to innocent Palestinian civilians during the Israeli military incursions.

Israel has just cause in responding with military force against members of Hamas and Palestinian Islamic Jihad, who attack its military forces and/or civilian population – since their long-range aim is to destroy Israel – and against other militants who kill or wound innocent Israeli civilians. Still Israel’s self-defense morally only extends to those who actually commit acts of violence, including terrorism, against Israeli citizens. Its self-defense also justifiably includes – whenever it does not unnecessarily place innocent civilians in harm’s way – the arrest and trial of suspected militants, either by its own forces or by the Palestinian Authority under pressure from it.

Finally, if the condition of “just peace” is to be even partially met once a Palestinian state alongside Israel has been created, Palestinians and Israel must pay restitution for the

lives and property destroyed by both sides as a result of the latest Palestinian-Israeli conflict.

PART II: TORTURE AND COUNTER-TERRORISM

Our next question is whether torture, whether psychological or physical, is ever morally justifiable in general; consequently, as a counterterrorist measure.

Part I, Article I of the U.N. General Assembly RES 39/46, Annex⁶³ defines ‘torture’ as follows:

“1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁶⁴

Following the recent changes in American law respecting suspected foreign terrorists after September 11, 2001, effected under President George W. Bush and the attorney general John Ashcroft, some members of the American media have debated whether the torture of suspected terrorists should now be allowed. For instance, in “Time To Think About Torture”,⁶⁵ Jonathan Alter suggested that the psychological torture of terrorists should be legalized. In a readers letter in the November 19, 2001 issue of *Newsweek*, he responded to readers who took issue with his suggestion in an earlier issue of the magazine by observing that he “opposes legalizing physical torture ... It is contrary to American values and doesn’t generally work well.” His reasons were that:

“I placed psychological torture in a different moral category. At a minimum, the problem of extracting critical information that could save thousands or even millions of lives should not be off-limits for public discussion.”⁶⁶

(1) William F. Schulz, Executive Director, Amnesty International USA, in a readers letter in the same issue as Alter’s response, states a number of cogent reasons against the use of torture against suspected terrorists. He writes:

“Alter fails to understand that not only is the use of torture illegal and immoral: it could also place Americans’ lives in danger by increasing hostility toward the United States. Moreover, nothing would alienate the international community, whose support the United States desperately needs, more than the abandonment of the most widely agreed-upon human right, the prohibition against torture. The 1984 Convention Against Torture states: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public

emergency, may be invoked as a justification for torture.” Few other prohibitions under international law are so absolute. Although banned by Israel’s Supreme Court in 1999, the use of torture is not uncommon there. It has not brought the country peace or security, nor will it in the United States. On both moral and practical terms, torture is dead wrong.”⁶⁷

(2) Jean-Francois Benard, President of ACAT- (Action of Christians for the Abolition of Torture) France, responds to Jonathan Alter’s statement that “we can’t legalize physical torture because ‘it’s contrary to American values’” and concludes that ‘We’ll have to think about transferring some suspects to our less squeamish allies, even if that’s hypocritical.’ “In fact”, Benard counters,

“this would be more than hypocritical – any authority that made such a transfer would be a direct accomplice to the foreign torturers to whom the suspects would be turned over. All over the world, free citizens dedicated to the rights and duties that underpin this civilization are supporting the fight against terrorism. They sincerely hope that this struggle will not be diminished by inhuman practices like torture, which would negate the values on which this civilization is founded. Torture is a crime under international law, and ACAT ... is fully confident that U.S. citizens will resist the dubious arguments made in an attempt to justify its use, whether practiced in their own country or, by virtue of a skewed delegation of power, by barely scrupulous allies.”⁶⁸

(3) Besides violating international law, as Benard states, torture can violate municipal (domestic) law, given the fact, noted earlier, that ‘terrorism’ is unfortunately being constantly stretched in many countries around the world in all sorts of ways to suit their political interests and goals, is made to cover kinds of violations of municipal law very different from bona fide terrorism. This laxity and vagueness in the term’s employment can lead to the torture and/or execution of individuals who commit *non*-terrorist capital crimes for which the punishment prescribed by law is life imprisonment or a lesser prison term.⁶⁹ The torture and conviction of “suspected terrorists” in the name of counterterrorism, may even result in the conviction and execution of perfectly innocent persons.

(4) It is an empirical fact that psychological and not only physical torture is quite unreliable as a means of extracting reliable information designed to preempt or prevent acts of violence. It does not work. because, as Arthur Koestler writes in *Darkness at Noon*, in his powerful portrayal of Stalin’s use of torture against his political victims in 1936-37, which culminated in the notorious Moscow Trials,

“human beings able to resist any amount of physical pressure do not exist. I have never seen one. Experience shows me that the resistance of the human nerve system is limited by Nature.”⁷⁰

Under prolonged torture even the most determined and resistant victims will eventually crack and confess to any crimes their torturers want them to confess. Koestler graphically shows that in relation to the novel’s central character, Rubashov (a fictional composite of several leading communist party members, including Trotsky and Bukharin). The mainly

mental-psychological torture and humiliation Rubashov endures, coupled with his own political convictions as an Old Bolshevik, lead him at the end to confess to all the trumped-up crimes of which his torturers accuse him.

In “And they all confessed ...”,⁷¹ Gudrun Persson writes as follows about the Moscow Trials:

“There is no doubt that torture was used to force confessions. Though by no means uncommon earlier, torture only became an approved method of examination during the investigations leading up to the first Moscow trial. On 29 July, 1936, an official, albeit secret, document was drawn up, sanctioning the use of “all means” to extract confessions.⁷² Krostinsky’s submission was clearly the result of a night of brutal torture. Naturally, psychological torture in the form of threats to relatives and the rest of the family members also played their part in the confessions.”⁷³

(5) Given these and similar facts about the results of torture, even an act-utilitarian would be hard pressed to justify torture in practice; while any rule-utilitarian view worth its salt would expressly prohibit psychological and physical torture *in principle*, for essentially the same sorts of reasons that, I argued earlier, would lead a country to prohibit a policy or practice of assassination. Unfortunately, as noted earlier, unethical governments continue to practice torture with impunity, in the absence of any international force ready and able and to stop or penalize them, even when they are repeatedly exposed by Amnesty International or other human rights watches. These governments act not on act- or rule-utilitarian grounds but on the dangerous and immoral “principle” that the “end” – here, the state’s alleged interests – justifies the “means”.

(6) In light of the preceding, it is not surprising that the principle of “double effect” cannot justify torture, notwithstanding the fact that the evil of the pain and suffering inflicted would be intended to help realize a putative greater good,⁷⁴ and the torturer may claim (as the Spanish Inquisitors claimed) that they only intended the good, not (or not also) the torture’s evil consequences. For as Elizabeth Anscombe has cogently argued, one cannot validly detach the intention from the act performed, with (as we say) “that intention”.⁷⁵ Moreover, the principle of double effect proscribes certain acts, such as murder, as inherently immoral.

(7) In the passage quoted earlier, Schulz rightly speaks of the prohibition against torture as a human right. For to torture a human being is to treat him not as a moral person, possessing dignity and deserving of respect, but as a tool, an “object”, nothing but an instrument for the torturer’s ends, even when these ends happen to be moral ones. In fact, torture is not unlike rape in its physical aspect; while psychological torture is not dissimilar to the emotional and mental aspects of rape. In both types of cases the victim selfhood is violated; and as I earlier maintained, the fundamental, Ur-right to be treated as a moral person is *absolute*, and so, cannot be overridden by any putative superior moral claim or claims.

NOTES

¹ *Assassination*, Harold M. Zellner, ed. (Cambridge, MA, 1974), p. 97. The same is true of the other contributors to that volume who share Nielsen's view of the justifiability of political assassination in certain circumstances.

² *Ibid.*, pp. 41-55. Hereafter referred to as *IPAMJ*. See also "Responses to Terrorism", in my *The Morality of Terrorism* (New York, 1998), Chapter 6, pp. 113-135.

³ To use a distinction Zellner makes in his Introduction. See later.

⁴ *Ibid.*, p. 49. Italics in original.

⁵ *Ibid.*, p. 50.

⁶ *Ibid.*, p. 51. Thus in the Introduction, p. 6, Zellner misconstrues my position by stating that "all of the philosophers writing herein agree, ... that there are circumstances in which assassination could be justified", since I argued that there are *no* [theoretical or practical] circumstances in which assassination could be justified; although a little later he states that "at least Professor Khatchadourian seems to take the other view".

⁷ Introduction, p. 7.

⁸ *Ibid.*

⁹ *Ibid.* However, in certain circumstances, one can freely and voluntarily *refrain from exercising* his or her right to life; for example, in order to allow another person morally to terminate his or her life, or to assist him or her to do so, out of compassion and caring.

¹⁰ *Ibid.*, p. 7.

¹¹ Rachels, *op cit.*, pp. 15-16.

¹² *Ibid.*, p. 16.

¹³ Rachels, *op cit.*, p. 13.

¹⁴ New York, 1999.

¹⁵ *Philosophical Forum*, vol. 9, March 1971, pp. 3-38.

¹⁶ *Op cit.*, p. 6. Italics in original.

¹⁷ Blackstone, *op cit.*, p. 7. Italics in original.

¹⁸ "I say *some*? because it can be plausibly argued that a society's stripping a criminal of *all* of his or her legal rights "amounts to treating him or her as a thing: an argument that may have some force against capital punishment." (*Community and Communitarianism*, note 36, p. 134. Italics in original.)

¹⁹ *Ibid.*, p. 122.

²⁰ *Op cit.*, Chapters 6, pp. 115 ff.

²¹ That is, at least in the case of a multiple or mass murderer: above all, in the case of someone who commits genocide or crimes against humanity. With regard to the latter, see "Humanitarian Military Intervention: Justice vs. Rights", in this volume.

²² At the beginning of his contribution to *Assassination*, titled "Assassination, Responsibility And Retribution", Douglas Lackey states that murder is the "deliberate killing of the *innocent*, and given this definition, we know that murder is always wrong" (*ibid.*, p. 57). True, murder is always wrong, but not because, by definition, it is the killing of "the innocent", unless by 'the innocent' we mean "the legally innocent"; e.g., persons in custody who have not yet been tried and so are *legally* innocent before the law, or persons who are at large and are not suspects in any crime. Lackey's definition would be incorrect if by 'the innocent' we mean "the morally innocent": those who are innocent of any at least of any serious – *moral* wrong. Killing another and we must add the proviso, "if not done in self-defense" – constitutes murder whether the victim is morally innocent or no. (Indeed, how many human beings are innocent of any, including any serious, moral wrong?)

²³ The fundamental concept of self-defense is also crucial to the concept of a just war. See, for example, my "Self-Defense and the Just War". In the relevant papers on war in this volume I concurred with the theoretical possibility of just wars on consequentialist-cum-deontological grounds (the latter, e.g., with respect to the discrimination rule). But can any conception of human rights e.g., the conception of human rights I expressed in *Community and Communitarianism* and in this paper – allow for the theoretical possibility of just war? Drawing on the concept of self-defense, my answer is Yes. In terms of human rights, a just war would be, *inter*

alia, a war whose goal is to defend – to preserve or to enhance – the human rights, or these rights among other values, of a country or people.

²⁴ This pertains to e.g., Douglas Lackey's view that "an act is justified if the person who performs it has good reason to believe that it will produce good results". He defines 'good results' as "an increase in the amount of happiness and liberty, in the world, provided that this increase in happiness and freedom is fairly distributed". In the case of terrorism, he adds: "that is, that it is enjoyed by nearly everyone, not just the friends, associates, or favored groups of the assassin." (Assassination, Responsibility And Retribution, *Assassination*, p. 57.)

²⁵ Except an ethic of caring (or of care), which is a very special form of "consequentialist" ethic. See *Community and Communitarianism*, Part 2.

²⁶ The assassination of the head of a government is a particularly good example.

²⁷ Douglas Lackey, op cit., p. 62.

²⁸ For an extended discussion of this see *Community and Communitarianism*.

²⁹ It can be shown that the general principle of utility results in a similar kind of injustice with respect to distributive justice. But I am not concerned with that here.

³⁰ The special, feminist form of consequentialism known as the ethic of care or of caring, is a noteworthy exception. For this the interested reader is referred to *Community and Communitarianism*.

³¹ "A Critique of Utilitarianism", *Utilitarianism For and Against*, Bernard Williams and J. J. Smart, editors (Cambridge, 1973), p. 95 ff.

³² *Community and Communitarianism*, p. 96; Williams, op cit., p. 77.

³³ *Ibid.*, p. 98.

³⁴ *Ibid.* Quoted from *Community and Communitarianism*, p. 96.

³⁵ Williams, and Smart, *ibid.*

³⁶ *Community and Communitarianism*, p. 96.

³⁷ Williams, and Smart, op cit, p. 99. *Community and Communitarianism*, p. 96.

³⁸ *Ibid.* Italics in original.

³⁹ *Ibid.* *Community and Communitarianism*, pp. 96-97.

⁴⁰ *Ibid.*, p. 100.

⁴¹ Williams, and Smart, op cit., p. 116. *C and C*, p. 97.

⁴² In the semi-technical use of the word defined by John Searle in e.g., *Speech Acts*.

⁴³ A practice's (or an institution's) "regulative rules or principles", as distinguished from its "constitutive rules", which set up or define the practice or institution, regulate and evaluate the practice or institution as a whole.

⁴⁴ We will have to wait to see whether this kind of fallout will actually occur in the wake of President Bush's latest (June 17, 2002) dangerous directive to the FBI and CIA to try to covertly oust Saddam Hussein, and if need be kill him, "in [*sic*.]self-defense".

⁴⁵ I say "all but stopped targeted killings" because, after a considerable lull, the Israeli forces, on June 17, 2002, BBC reported that a prominent member of Hamas. Was pulled out of a car and shot dead point blank by Israeli soldiers, hours after a Hamas suicide bomber killed 19 and wounded dozens more Israelis civilians.

⁴⁶ Note Michael Walzer's remarks on World War II in Europe: "Now it may be the case I am more than open to this suggestion that the German army in France had attacked civilians in ways that justified the assassination of individual soldiers, just as it may be the case that the public official or party leader is a brutal tyrant who deserves to die. But assassins cannot claim the protection of the rules of war; they are engaged in a different activity." (*Just and Unjust Wars*, p. 183.) Walzer does not say on what ethical grounds assassination can be justified in wartime.

⁴⁷ "'No Choice' in killing Hamas figure, defiant Israel says", *Milwaukee Journal Sentinel*, November 25, 2001, p. 3A. "Abu Hanoud, 34, was killed late Friday when an Israeli helicopter fired missiles into a car near the West Bank village of Kfar Farah. Also killed were an aide identified as Mahmoud Rashid Hashaika, and his brother Ahmed." Israel's Foreign Minister Shimon Peres defended Hanoud's killing, "calling ... [him] 'a professional terrorist' who was planning more attacks". "We had no choice", Peres said. "Israeli officials described Hanoud as a key figure in the Izzedine al Qassam Brigades, Hamas' military wing."

⁴⁸ "Does Israel Have a Right to Assassinate Leaders of the Palestinian *Intifadeh*?", *Time*, September 10, 2001, p.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, p. 40.

⁵¹ *Ibid.*

⁵² *Ibid.*, p. 41.

⁵³ *Ibid.*

⁵³ In this connection, see my *The Quest for Peace between Israel and the Palestinians* (New York, 2000), which, in its author's view, is even more urgently relevant now than before the start of the latest Palestinian *intifada*.

⁵⁴ I say "most" since it can hardly be claimed that they are as serious as massacres, pogroms, and, above all, unjust wars, genocides or other crimes against humanity.

⁵⁵ Professor Telhami is Chair of the University of Maryland's Peace and Development Center. The words I quoted were part of his talk, "US Policy in the Middle East", presented at the Middle East Institute meeting, October 19, 2001.

⁵⁶ Particularly regarding the assassination of Israel's minister of tourism. Under great Israeli pressure, Yasser Arafat finally arrested five suspects of the murder.

⁵⁷ For important differences between "freedom fighting" and terrorism, see my *The Morality of Terrorism* (New York, 1998), Chapters 5.

⁵⁸ *Ibid.*, p. 6.

⁵⁹ *Terror in the mind of God: the global rise of religious violence* (Berkeley, CA, c.2000).

⁶⁰ See my "Terrorism and Morality", in: War, Terrorism, Genocide, and the Quest for Peace: Contemporary Problems in Political Ethics (Lewiston, 2003), S. 123-145. The violation of the discrimination rule is but one reason among several why all terrorist acts are always morally wrong.

⁶¹ See in this connection my *The Quest for Peace between Israel and the Palestinians* (New York, 2000), *passim*.

⁶² For example, in "Amnesty report raps post-Sept 11 policies" (CNN.com, May 29, 2002), William F. Schulz, executive director of Amnesty International, U.S.A., criticized the United States "for failing to push Israel to stop human rights abuses against Palestinians during incursions into the West Bank".

⁶³ *Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment*.

⁶⁴ *Ibid.*, p. 1.

⁶⁵ *Newsweek*, November 5, 2001.

⁶⁶ Degrees of Coercion. "Jonathan Alter Responds", p. 19. It may be wondered why psychological torture is supposed to be different in that respect. Does it cause less (albeit mental, not physical) suffering, less agony than physical torture? In the case of physical torture there are limits to the physical pain that a person can endure before he or she mercifully loses consciousness, while, in the case of psychological torture no such limits exist.

The interested reader is referred to other readers letters in the "Degrees of Coercion" section of that issue, some of which agree with Alter while others disagree with him. For instance, one reader states: "Jonathan Alter makes the assumption that coercion of a terrorist suspect by means of "torture" is considered by most Americans to be a human-rights violation. But can we really consider people *human* if their whole concept of the value of life is tainted by hate? ... We must rationalize their being brought to justice in a way that strongly takes into consideration the inhumanity of their acts. It is eerily ironic that some of these monsters are now being protected by the very system that they hope to destroy." (*ibid.*, pp. 19-20)

This is a good example of the dehumanization or objectification of "suspected terrorists" discussed in this section, which is supposed to justify not protecting them by the "system of justice that they hope to destroy".

⁶⁷ *Ibid.* Schulz's quotation is the text of Article 2 of the Convention. Among the countries that have been mentioned in the media as practicing torture are Egypt and Pakistan. Thus, concerning these two countries, in its June 24, 2002 issue, "War and Terror", *Newsweek* speaks of "a shadow war [that followed the war against Al Qaeda in Afghanistan] that is equal parts Tom Clancy and John le Carre, with a little Torquemada thrown in, as U.S. allies like Pakistan and Egypt apply their own harsh interrogation techniques. The bounds of morality are unclear and it may not be known until decades from how, when the histories are written, just how far America was willing to go to rid itself of this [terrorism's] scourge." For Israel's torture of Palestinian inmates in Al-Arish jail in the Negev, see, for example, Judith Miller, *God has Ninety-Nine Names* (New York, 1996), and my *The Morality of Terrorism*, Chapter 6, and *The Quest for Peace between Israel and the Palestinians* (New York, 2000), p. 76. The Palestinian authority has also used torture (in some instances, resulting in death) of incarcerated suspects or convicted terrorists.

⁶⁸ Readers Letter, *Newsweek*, December 10, 2001.

⁶⁹ If, say, the Wisconsin lawmakers who want to restore the death penalty in the State for the express purpose of executing convicted terrorists, have their way.

⁷⁰ *Ibid.*, pp. 101-102.

⁷¹ *The Art Bin*, Articles and Essays, translated from the Swedish. (On *The Art Bin* website)

⁷² Conquest, Robert, *The Great Terror: A Reassessment* (Oxford, 1990), pp. 121-122.

⁷³ Ibid. She adds: "But important though it was, torture was not the whole explanation. Many of the accused were hardened revolutionaries. Prosecuted and punished by the Czar's courts, they were themselves advocates of hard methods. Here lies an important part of the explanation: ideological loyalty." Since the torture victims of Stalin's torture machine were all high level communist party members, it created a special type of situation absent from other cases of torture. See also Robert Conquest, *op cit.*; especially Chapters 4-7, and Appendix A.

⁷⁴ I say "putative good" since the prevention of violence against a given country is a good only if the latter is fighting a just fight against the violence. If an authoritarian or dictatorial regime tortures its suspected opponents to prevent future acts of violence against it, the desired end cannot be considered as a good if those using force against it as part of a just liberation movement.

⁷⁵ "War and Murder", *War and Morality*, Richard A. Wasserstrom, ed. (Belmont, CA, 1979), pp. 51 ff.