

I. Political violence

The dispute over political power is a reoccurring phenomenon throughout human history. Today, having access to and retaining political power is not much different from the past. Although societies have developed more sophisticated systems of governance, and some have broadened political participation with a constant renewal of the individuals and groups in power, the universal tendency to strive for power and not to give up authority and privilege once obtained has not been eradicated even from the most advanced societies.

This state of affairs cements the continuation of political conflict, which may be inauspiciously born as an angry peaceful protest against authorities unable to satisfy specific grievances. Although governments may find angry demonstrations necessary at times, most consider campaigns of disobedience and, more ominously, subversive activities not only troublesome political opposition, but outright illegal and dangerous political conflict. A protest movement may devolve into the chaos of unruly mobs rioting and clashing with police without further political consequences, or it may develop into a well-organized movement that transforms into an actual armed fighting force.

As an armed fighting force, a movement may pose a formidable challenge to an established government and its supporters. If formed by a military cadre, it may stage a mutiny against its commanders, or it may stage a coup d'état, taking immediate control of political power even without subscribing to a political agenda. If sustained by popular support, an organized movement may become a rebellion with the aim of overthrowing the government and changing its policies. If structured as an armed movement, it may be recognized as an insurgency with the capacity to sustain extended and effective armed combat and to attract popular support. And even if a movement consists of a purely strategic political attack using modern media and technology, it may be given credibility as a popular social-netwar movement and a true political threat should it produce a credible showing of actual military force.

All these possible transformations of an armed movement, if unstoppable, will surely fuel the flames of a conflict that will become protracted, destructive, and deadly—in a word, war.

Because of today's military imbalance between well-financed and technologically supported professional armies under the command of a government and poorly financed and barely trained fighters belonging to rebel groups, most internal wars are likely to be fought asymmetrically over a protracted period of discrete clashes involving, in one way or another, a large part of the population of a region. These forms of warfare are often broadly designated as "low-level conflicts," sharing an imprecise definition with more specific

- 1 Jeffrey Gettleman & Edward Wong, *Twin Bombings in Northern Iraq Kill at Least 56*, New York Times (Feb. 1, 2004).
- 2 News Michael Howard, *They came to celebrate. Minutes later, 70 were dead and Kurdistan was in turmoil* Guardian (Feb. 1, 2004) at <http://www.guardian.co.uk/world/2004/feb/02/iraq.michaelhoward>
- 3 Michael Rubin, *Ansar al-Sunna: Iraq's New Terrorist Threat*, 6:5 Middle East Intelligence Bulletin (May 2004) at http://www.meforum.org/meib/articles/0405_iraq1.htm

62. Japanese ambassador's residence siege

- A long hostage crisis (from December 17, 1996, to April 23, 1997) brought about by members of the Peruvian Tupac Amaru Revolutionary Movement (MRTA), who took hundreds of hostages during a reception at the residence of the Japanese ambassador in Lima, Peru, and demanded the liberation of as many as 400 of their jailed comrades.

The crisis culminated when Peruvian military commandos successfully stormed the ambassador's residence and ended the crisis. During the operation only one hostage and two commandos were killed, while all fourteen MRTA militants died.¹

In the aftermath, the government of Alberto Fujimori received praise from other Latin American governments; however, allegations of arbitrary executions of the militants soon surfaced and became part of the several criminal charges filed against Fujimori's advisor Vladimiro Montesinos and other top military commanders.² Warrants were issued for the arrest of several senior army officers who participated in the final raid, but the army and other important political forces rallied to their defense, proposing congressional amnesty and publicly supporting their cause. The Peruvian Supreme Court established that any crimes committed by military officers during the siege were under the jurisdiction of military courts, since those events occurred while under a state of emergency. A military tribunal found the accused officers not guilty.³

In 2004 a petition for violation of human rights filed by relatives of the militants before the Inter-American Human Rights Commission was ruled admissible.⁴

- 1 James Brooke, *For Revolutionary Group, an All-Out Offensive Turns Into Disastrous Defeat*, New York Times (Apr. 23, 1997).
- 2 News in Context, *On this day 1997: Troops storm embassy in Peru*, BBC (Apr. 22, 1997) at http://news.bbc.co.uk/onthisdayhi/dates/stories/april/22/newsid_4297000/4297347.stm
- 3 News, *A new bill a major step backwards for human rights in Peru*, Amnesty International (Nov. 10, 2008) at <http://www.amnesty.org/en/news-and-updates/news/new-bill-major-step-backwards-human-rights-peru-20081110>; see *The trial of Fujimori: the End of impunity*, Asociacion Pro Derechos Humanos (APRODEH) at <http://www.fidh.org/The-trial-of-Fujimori-the-end-of>
- 4 Eduardo Nicolas Cruz Sanchez et al., Inter-American Human Rights Commission, Petition 136/03 (2004).

63. Khobar Towers barracks bombing

- Bombing of a portion of a housing complex used as barracks by U.S. servicemen in Saudi Arabia, killing 19 and wounding 372 persons.

192a. Torture INTERROGATION

- “The intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused [of a crime against humanity]; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”¹

The generally accepted international legal standard of what constitutes torture is when “severe pain or suffering,” either physical or mental, is inflicted upon a person in an attempt to obtain information or carry out punishment. Although both domestic and international law prohibit torture, its practitioners insist on its necessity, and legal scholars, lawyers, and judges sometimes advance arguments attempting to justify it.²

All major international legal instruments on torture, and the Convention on Torture in particular, include an absolute prohibition of the practice.³ Likewise, most countries have introduced the prohibition of torture either by implementing the terms of the Convention or by adopting their own laws.⁴

The advent of modern terrorism, however, has given greater force to the argument that torture is, in certain cases, a necessary element of interrogation, now under the banner of the defense of national security. Today torture has been retooled, at least in some Western countries, as necessary to intelligence operations seeking to uncover the next terrorist plot or attack or to reveal the hidden identity of individuals constituting a terrorist cell.

In these circumstances, the control and permissiveness of torture is determined ultimately by the law and those creating and implementing it. Unfortunately, laws regarding torture are often not respected, and when such laws are applied, they are often misinterpreted and misapplied. In 1984, an official inquiry⁵ into alleged torture claims of Palestinian prisoners during interrogations in Israeli jails found that torture was practiced and that interrogators perjured themselves in court. The report concluded that “controlled moderate physical duress,” including violent shaking, “could be allowed”⁶ in limited cases, such as in a “ticking bomb” scenario. Following the report, the General Security Service (GSS) in charge of interrogations was accused of applying violent shaking and other torture routinely to virtually every Palestinian detainee. In spite of continual complaints, the authorities did not act until 1995, when the Israeli High Court of Justice limited GSS torture abuses (but, notably, did not put an end to possible torture and ill-treatment of Palestinian prisoners).⁷ In another publicly reported case, reports surfaced in 2004 that U.S. military and civilian personnel were engaged in despicable acts of torture during interrogations at the Abu Ghraib prison in Iraq. This disclosure forced the U.S. military and government to investigate, despite U.S. administration reassurances that the breakdown could be blamed on a “few bad eggs.” The report issued following the investigation showed that “culpability extended far beyond a handful of low-level military police personnel to include military intelligence soldiers in Iraq and up the chain of command

219. Death penalty

Also: capital punishment

- Imposition of death to a convicted defendant as punishment for the commission of a heinous crime.

“The trend worldwide among developed nations is towards a gradual decrease in the use of the death penalty. . . . In 1997 the UN Commission on Human Rights called on member countries to abolish their death penalty,”¹ but capital punishment is not forbidden under international law. Article 6 of the International Covenant on Civil and Political Rights establishes that in all cases the capital punishment pronouncement must be issued by a competent court established by law, and in conformity with due process rules and norms. Humanitarian law forbids capital punishment during a time of armed conflict for persons under eighteen years of age, pregnant women, and mothers of young children.²

The death penalty for acts of terrorism is supported in some countries as a form of retribution, especially when the crime committed has caused public shock and outrage. Since punishment by death is unlikely to be a deterrent to terrorist extremists who are willing to die for a cause, death sentences to terrorists may be imposed more to placate an irate public or to attain popularity by public officials than to stop future attacks. Many countries have established prison sentences, including life sentences, for terrorist crimes under the theory that not allowing the death penalty for terrorists deprives them of martyrdom and the propaganda it entails.

Ref: (IL) Covenant on Civil and Political Rights (ICCPR) art. 6; Geneva Convention IV (GCIV) art. 68, 75; Geneva Convention III (GCIII) art. 100, 101 (US) *Furman v. Georgia* 408 U.S. 238 (1972); *Edmund v. Florida* 458 U.S. 782 (1982); *Atkins v. Virginia* 536 U.S. 304 (2002); *Roper v. Simmons* 543 U.S. 551 (2005); *House v. Bell* 547 U.S. 518 (2006).

1 Harry Henderson, *Capital Punishment* 38 (3rd ed. 2005).

2 API art. 76(3), 77(5); APII art. 6(4).

IV. Terrorism as an act of war

In contemporary society, international law controls the use of force to resolve disputes among States. It prohibits the use of force as a general rule and carefully specifies two situations in which this rule temporarily may not apply.

The law permits a State to engage in the use of force only when it is under attack (as an act of self-defense) or when carrying on a collective security action sponsored by the Security Council of the United Nations in pursuit of the maintenance or restoration of peace and security.

This state of affairs underlines the consideration that any war under current international law requires clear legal justification to be established as a legitimate war and to be regarded as such by all other countries.

378b. Extraordinary rendition // Arar Maher

- A Canadian-Syrian engineer who was detained in the United States, deported to Syria and tortured under the Bush Administration's extraordinary rendition program.

Based on what turned out to be faulty information, Arar was detained while changing planes in New York on his way home, confined for two weeks without access to a lawyer, and then sent to Syria where he was tortured, interrogated, and kept prisoner in a small cell for nearly a year.¹

After Arar was released by Syria, a Canadian government investigation found that Canadian officials were likely the source on which American agents justified Arar's detention. The Canadian government exonerated Arar of any allegations of terrorism, and after lengthy negotiations issued a formal apology and agreed to pay compensation in the amount of \$10.5 million Canadian dollars plus legal costs.²

In the United States, the Center for Constitutional rights filed a civil suit for damages on behalf of Arar alleging violations of his right to due process and other rights, under the Torture Victim Protection Act and international law. Filed before a federal court in January 2004, this case was dismissed on State secrets privilege grounds under the argument that presenting the State case in court would harm intelligence methods, national security, and foreign policy interests.³ The plaintiff appealed without success in November 2007,⁴ but in August the following year the Appeals court at its own request (*sua sponte*) agreed to hear the case with all judges present (*in banc*). The court upheld the dismissal (in a 7 to 4 decision), indicating that judicial review for cases in the form of civil relief for damages suffered in relation to extraordinary rendition was only possible if Congress would create such cause of action through legislation.⁵

1 Times Topics, *Maher Arar*, New York Times (updated Nov. 3, 2009) available at http://topics.nytimes.com/top/reference/timestopics/people/a/maher_arar/index.html

2 Gloria Galloway, *Harper apologizes to Arar for torture in Syria*, Globe and Mail (Jan. 26, 2007).

3 *Arar v. Ashcroft* 414 F. Supp. 2d 250 (2006); *Arar v. Ashcroft et al.*, Center for Constitutional Rights at ccrjustice.org/arar

4 *Arar v. Ashcroft* 532 F.3d 157 (2008).

5 *Arar v. Ashcroft* 585 F.3d 559 (2009).

379. Amnesty

- A pardon from criminal punishment that is extended to a group or class of persons usually, but not exclusively, to excuse political offenses.

Amnesty is essentially a political tool used to solve a political controversy or conflict. It is an attempt to restore the breaches caused by the perpetrators, allowing them to be part of society again.

“Amnesties may or may not contain pardons for those who are convicted or under indictment for political offenses. Although amnesties may include par-