

PHILOSOPHICAL PERSPECTIVES  
ON THE  
ISRAELI-PALESTINIAN  
CONFLICT

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# Contents

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happening in the Gaza Strip and the West Bank could describe events in South Africa" (*New York Times*, December 24, 1989).

U.S. support for this country engaged in state terrorism is regrettably not an isolated phenomenon, as I have earlier shown. Indeed, as this chapter was being completed, the *Baltimore Sun* reported results of a fourteen-month investigation showing that the CIA and State Department collaborated with a secret Honduran military unit known as Battalion 316 in the 1980s, even though U.S. officials knew the battalion was kidnapping, torturing, and executing its own people. The newspaper also found that in order to keep up public support for the Reagan administration's wars in Central America, U.S. officials deliberately misled Congress and the public about Honduran military abuses. Battalion 316 members were flown to a secret U.S. location for training in surveillance and interrogation, and a CIA officer based at the U.S. Embassy in Honduras frequently visited a secret jail where torture was conducted (*Baltimore Sun*, June 12, 1995).

It has been an objective of this chapter to demonstrate that a compelling philosophical argument exists for bringing various morally grotesque acts of governments as well as of subnational groups under the concept of terrorism. It has also been my purpose to establish that Israel, in its treatment of Palestinians, is a terrorist state. That Palestinian insurgents employ violent means of resistance to systematic governmental abuse of their human rights is also argued here to be within limits of justifiable disobedience to oppressive rule, a moral right of those insurgents. It is not inappropriate here to recall the words of General Philip Sheridan concerning U.S. campaigns against the American Indians: "We took away their country; broke up their mode of living, their habits of life; introduced disease and decay among them; and it was for this and against this that they make war. Could anyone expect less?"<sup>9</sup>

#### Notes

1. This excerpt from Ben Gurion's diary appeared in *Yediot Ahronot*, April 17, 1983.
2. This and succeeding quotations are taken from the documentary "The Way West," written and directed by Ric Burns; a Steeplechase Films production for *The American Experience* on PBS, May 1995.
3. For extensive analysis of the history and current condition of the Kurds, see *Middle East Report*, no. 189 (July–August 1994).
4. What follows is a summation of what can be found in Wardlaw (1982, 5–11).
5. Further discussion of the state's power to intimidate or coerce both domestic and foreign opponents and to do so efficiently is found in Perdue (1989).
6. Abusive interference with Palestinian educational efforts is detailed in Ashmore (1986).
7. Dewey is here arguing, in chapter 8, for abolishing the separation between politics and morals.
8. Even though the vast majority of Palestinian acts of resistance during the Intifada were nonviolent, the media focused almost entirely on violent incidents. See Ashmore (1990).
9. See note 2.

# *Jus in Bello and the Intifada*

Daniel Statman

In this chapter I seek to use some distinctions and arguments developed in the field of military ethics in order to shed light on the moral status of the Palestinian Intifada and on the Israeli reaction to it. Such a discussion is warranted only if we start with a nonpacifist view, namely, if we assume that fighting is not always, and unconditionally, morally wrong. From a pacifist point of view, both the Intifada and Israel's response would be *a priori* immoral, *tout court*. Such a discussion would also be useless from a realist point of view, according to which *inter arma silent leges*, or, in the time of war the law is silent. If there are no limits to the use of violence in conflict, there is no room left for moral distinctions in the Intifada. Thus, while in pacifism the moral status of the Intifada is determined *a priori* because nothing goes, in realism it is similarly determined *a priori* because anything goes. In contrast to the pacifist view, I assume here that it is sometimes morally justified to use violence or to go to war against other human beings. In contrast to the realist view, I assume that the use of violence and the conduct of war are subject to significant moral constraints.

I thus am approaching the topic from the "just war" tradition. This tradition presupposes a strong presumption that it is wrong to kill human beings, a presumption that only powerful considerations can override. The presumption grows stronger when the victims of war are noncombatants, that is to say, an attack on civilians imposes a much heavier burden of justification than an attack on combatants. Notwithstanding this presumption, just-war theory argues that there are circumstances in which it is justified to go to war. I cannot defend these general claims here and have to rely on the work of others in this area, in particular, Walzer (1977) and, more recently, Norman (1995).<sup>1</sup>

What is unique about the Intifada from the point of view of military ethics? The following features come immediately to the fore: First, it was<sup>2</sup> a genuine mass resistance, initiated and carried out by the people. (The PLO was surprised by the breakout of the Intifada no less than the government of Israel and the IDF were—Schiff and Ya'ari 1989, 21–22). In this respect the Intifada differed from the rebellion in Algeria, for instance, which was planned well ahead and started with a coordinated attack by the FLN on the night of October 31, 1954. Second, unlike the Algerian case and most other instances of resistance against occupation,<sup>3</sup> in the Intifada—especially in its early years—there was hardly any use of

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guns and explosives. The main weapons used by the Palestinians were stones, which were thrown and slung at IDF soldiers and at passing Israeli vehicles. Thus the arms used in this struggle were rather unusual<sup>4</sup> and relatively nonlethal. Third, the resistance not only arose from a civilian population but was also directed against another civilian population (in addition to soldiers), in particular against Israeli settlers.

Whether, and in what way, these factors are relevant to the moral understanding of the Intifada will become clearer, I hope, in the course of the discussion. In the first section, I seek to explore the moral status of Israeli civilians. I argue that the attacks on them were unjustified. In the second section I proceed to examine the charge that Israel's reaction to the Intifada was indiscriminate and too harsh and thus a violation of *jus in bello*.<sup>5</sup> I mean to show that this charge is misplaced. In the third section, I reject the "no-choice" argument, which tries to justify terror on the grounds that freedom fighters have no other weapon. Finally, in the fourth, I discuss the question whether considerations of *jus in bello* play any role in an unjust war or an unjust occupation. I argue that they do and suggest therefore that even if the Israeli occupation was unjust, this does not put an end to questions concerning *jus in bello*.

### Attacks on Israeli Civilians

The use of stones as the main weapon to fight against a perceived enemy would seem to be a way of avoiding the difficulties of *jus in bello* altogether. As the damage, suffering and killing caused by throwing stones is so slight in comparison to the destruction caused by tanks, artillery, and aircraft, it is hard to think of a more moral way to conduct a war. In one sense, this observation is no doubt true; if all modern weapons were replaced by stones, the amount of suffering and killing in wars would be very much less. In a different sense, however, this observation is certainly false. In just-war theory, to fight a war in a morally acceptable manner means primarily to adhere to the distinction between combatants and noncombatants (Walzer 1977, ch. 9; Norman 1995, ch. 5), and in this respect it makes no difference what sort of weapon one is using: one can ignore this distinction by using an atomic bomb (as in Hiroshima), by conventionally bombing (as in the bombing of Dresden during World War II), by directly shooting innocent people (as in Vietnam), or, finally, by using stones. Hence, though there is a *huge* moral difference between bombing people and stoning them, this difference does not put an end to the moral discussion and leaves open the question whether the objects of the attack are legitimate objects.

The expression "throwing stones" is misleading. It may evoke images of childhood violence in individual rivalry or fights between gangs, a practice that rarely causes serious harm. Yet in the current case we are speaking of throwing heavy stones ("rocks" would often be a more suitable description), often from high positions such as rooftops, on the faces and heads of people passing below

and at the windscreens of passing cars. These practices could be, and actually often were, very harmful. It is thus odd to find that such attacks, whether justified or not, were so often described as "demonstrations" or "protests." These attacks certainly *did* demonstrate and protest, but the violent nature of their protest is altogether disguised by the use of these expressions. Moreover, the stoning was not merely a violent way of protest; it was deliberately intended to injure or kill its victims. Finally, we must remember that although stones were, so to say, the "personal weapon" of the Palestinian fighter, many utilized other weapons too, for example, Molotov cocktails,<sup>6</sup> knives, hand grenades, and explosive charges.<sup>7</sup> These facts do not of course entail that the Intifada was morally wrong or that it was morally justified. But they do help us to understand what it was: a series of thousands of violent actions that, as in all wars, aimed at realizing a political goal by causing damage, suffering, and death to the perceived enemy.<sup>8</sup>

Was this violence directed only toward combatants? The answer is a clear no. From the beginning of the Intifada, not only was the IDF under attack, but all Israelis within the territories were designated legitimate targets, especially those living in the settlements. Stoning Israeli cars and buses was the most popular activity within the Intifada and was expressly directed at all Israeli vehicles, military and civilian alike. The Israeli civilians who suffered especially from these attacks were, of course, the settlers, but they were not the only victims. Any Israeli travelling through the West Bank or the Gaza Strip was at risk. The moral outrage of such stoning can be overlooked only if one refuses to apprehend what such stoning meant by describing the situation as "a protest of kids against the occupation." That stoning passing cars is wrong in a specially strong sense has been argued in passing by Judith Lichtenberg in a recent article on moral certainty. The opening lines of her article run as follows:

A man has sexual intercourse with his three-year-old niece. *Teenagers standing beside a highway throw large rocks through the windshields of passing cars.* A woman intentionally drives her car into a child on a bicycle. . . . Are these actions wrong? If we hesitate to say yes, that is because the word "wrong" is too mild to express our responses to such acts. (Lichtenberg 1994, 181; emphasis added)

Yet this was precisely the situation during the Intifada: Palestinian teenagers standing beside the roads and throwing rocks through the windshields of passing cars. Sometimes Molotov cocktails were added to the stones, with terrible results.<sup>9</sup>

These indiscriminate attacks on civilians, among them many children and women, were not, of course, a merely incidental corollary to the attacks on the army. In most cases they had nothing to do with military targets. According to the IDF spokesman, from the beginning of the Intifada until April 1989, there were *more* violent attacks in the West Bank against civilians than against soldiers, resulting in the death of 9 civilians (compared to 6 soldiers) and the injury of 584 civilians (compared to 748 soldiers) (Shalev 1990, 80). Statistics are

These objections are quite useful when we return to the status of the settlers. Let us assume that the occupation was unjust and that the war it involved was an unjust one on the part of Israel. Thus, on just-war theory, the army was definitely a legitimate object for attack. Now to say that the settlers were also such an object would mean—on the above account—that they were guilty. Of what? The answer would seem to be, for the occupation and its unjust results. But surely they were no more guilty than the many politicians who supported and assisted the settlements and who encouraged the army to take stronger measures to control the Intifada. And there were many others who were responsible for the above policies; the right-wing parties, the people who gave money to the settlements, and the many thousands of Israelis who were active in one way or another in supporting, and enhancing the policy of occupation and settlement. But to say that all these people were legitimate objects for attack is plainly to reject the central idea of *jus in bello*.

Norman's point about the assumed guilt of soldiers is also relevant here. It is common knowledge that the IDF is based on conscripts, who cannot choose whether to serve in the army or not, nor can they choose the location of their service.<sup>12</sup> In this respect, their responsibility *qua* soldiers to the large political and military decisions is rather low. Moreover, with regard to these larger issues, we know as a matter of fact that approximately 50 percent of the soldiers voted in the 1992 elections for parties such as the Labor Party and the more extreme left-wing liberal parties, all of which were quite opposed to the policy of settlement. So if responsibility is the central notion governing the ethics of fighting, the distinction between legitimate and illegitimate objects of attack will be rather different than the common *jus in bello* one, that is, the distinction between combatants and noncombatants.

One might argue that because the settlers carried weapons, and at times used them against Palestinians, they were rightly considered as combatants and deserved no immunity. But this argument flies against the fact that in most cases the use of weapons by the settlers was in self-defense, usually when their cars were being stoned. With a few exceptions, outrageous as they indeed were,<sup>13</sup> the settlers did not use their weapons to initiate attacks on Palestinian cars or villages. Needless to say, the fact that the settlers were willing to use their weapons in self-defense does not justify viewing them as combatants, thereby allegedly justifying attacks on them. By stretching the notion of combatants one might be able to justify attacks on some kind of militia of settlers organized to help the army in keeping order. But the day-to-day Intifada was not directed against such militia but against thousands of Israeli children, women, and men, who were on their way to school or to work, with no aggressive intentions whatsoever.

One might suggest a different use of the notion of responsibility here, namely, that by moving to live on Palestinian land, the settlers "took the risk" of being attacked and getting themselves and their families hurt, and thus it is they who bear responsibility for such results. This line of argument is very dangerous.

always debatable (though I don't know of other recorded numbers of Israeli casualties), but the general picture is not; any Israeli in the territories was regarded as an appropriate target for attack, soldier or civilian, man or woman, child or adult. A double-effect kind of doctrine would therefore not be of much help here. We must conclude that these attacks on civilians, which were encouraged and praised by all the Palestinian organizations, were a clear violation of *jus in bello*.<sup>10</sup>

Or were they? After all, those civilians were driving in a land where—from the Palestinian point of view—they had no rightful business. That is particularly true with regard to the settlers, who were regarded by the Palestinians as thieves who were stealing their land and water, and as part and parcel of the occupying policy of Israel. So if one is justified in fighting against a colonialist army, why should not one be equally justified in fighting against colonialist settlers?

Our question, then, concerns the moral status of civilians settled by an occupying state in the occupied lands; should these civilians be regarded as "innocent" and hence not a legitimate object of attack, or should they be considered as part of the military framework and hence not be entitled to any special moral immunity? This question provides a good opportunity to revisit a central idea of *jus in bello*, namely, the moral immunity of civilians.

Why is it morally acceptable to kill the nineteen-year-old soldiers of the enemy but morally wrong to kill their parents and families? A common way of answering this question is by saying that civilians are "innocent," while soldiers, presumably, are not. Yet, as Norman persuasively shows, this line of reasoning (I shall call it "the innocence theory") is not very persuasive. If civilians, or non-combatants, are innocent, then soldiers must be "guilty." But guilty of what? Presumably of fighting the war. As they are responsible for the war and the killing, they are a legitimate object for attack. But, Norman argues,

combatants, whether they are conscripts or professional soldiers, are acting under orders. They did not decide that the war should be fought, or how it should be fought. . . . Many people in the civilian population are likely to carry a much greater burden of guilt for an unjust war. . . . Above all, of course, the burden of guilt must lie with the politicians. They are the people who must be held primarily responsible for the decision to go to war in an unjust war. (1995, 167)

The distinction between innocent and guilty, therefore, falls short of justifying the required distinction between combatants and noncombatants. When we consider the moral status of combatants in a *just* war, the notion of innocence is even less helpful; what sort of guilt would be carried by anybody involved in a just war that might make him or her a legitimate object for attack? Thus, with regard to just wars, the notion of innocence fails to distinguish between combatants and noncombatants because all the people on the just side are equally innocent. And with regard to unjust wars it fails because the distinction it yields is not the one we are looking for; the distinction between combatants and noncombatants does not correspond to that between (respectively) the guilty and the innocent.<sup>11</sup>

enjoyed by ordinary civilians. Note that the objection is not based on the actual intentions of the settlers (many moved to live in the territories merely to improve their quality of life, not to make a political statement), but on their role as executors of government policy.

Though this argument does not justify attacks on Israeli children, it does make some sense with regard to adults. I believe, however, that if we accept it we open the door to dangerous implications that, if followed through, would justify almost any attack on civilians. Consider, for example, the suicidal attack on an Israeli bus in Jerusalem on August 22, 1995, which caused the deaths of five civilians and the injury of a few dozens. The attack took place in Ramot Eshkol, an area of Jerusalem annexed by Israel in 1967 and settled as part of a deliberate government policy to expand the territory of Jerusalem in order to make sure that the occupied sections of Jerusalem would remain forever part of (Israeli) Jerusalem. Thus, according to the logic of the above argument, the Palestinians would be justified in regarding the Israelis in Ramot Eshkol as the main agents of the occupation and colonialization and hence legitimate targets for lethal. Yet such a conclusion is surely repugnant and would be denied by anyone with even the slightest commitment to the idea of *ius in bello*. Moreover, why, on the above argument, should Israelis lose their immunity as civilians only in territories gained by Israel in 1967? Prior to 1967 many Israelis lived in territories that were not under Israeli jurisdiction according to the 1947 UN original plan. They lived in Jerusalem, in Galilee and in other areas, often in settlements established precisely with the aim of securing Israeli sovereignty in disputed areas. Would these facts justify lethal attacks on peaceful civilians living in (or passing through) these areas? Would Syria be justified in mounting an attack on the Israeli farmers of the Golan Heights because these farmers are the main agents of (what Syria sees as) Israeli imperialism? Any positive reply to these questions would lead to the justification of almost every attack on civilians and to the practical abandonment of the idea of *ius in bello*.

Further support for my position will emerge from looking at Norman's thesis on the distinction between combatants and noncombatants, which runs as follows: As the innocence account fails, we must acknowledge that the difference between killing combatants and noncombatants is a difference in degree, not a difference in kind. All (or almost all) killing in wars is wrong, as it reduces people to the status of things and does not genuinely respect them as human beings. Individuals are depersonalized by being looked at as "the enemy," rather than as autonomous individuals. Yet some forms of killing are even worse than others:

Some forms of war are indiscriminate and totally dehumanizing. Others may at least pay some minimal respect to the humanity of the enemy, if only by directing the war against those on the other side who are themselves doing the fighting. The principle of noncombatant immunity does, albeit imperfectly, reflect relevant moral distinctions, even if it cannot furnish the conception of moral responsibility which 'just war' theory needs. (Norman 1995, 206)

Suppose an African American young man decides to fight racism by demonstrating in front of the offices of the Ku Klux Klan in some small white town in the South. His presence and posters make the local residents furious, and they stone him to death. This young man certainly "took a risk," but his doing so hardly justifies lynching him. Similarly, think of a Palestinian entering into some radical right-wing settlement with posters calling for a *jihad* against Israel. Would this taking of a risk justify lethal attacks on him? Clearly not, and the same argument applies to the risks taken by Jewish settlers. The taking-of-risk argument could work only if supplemented by a different and an independent claim to the effect that the settlers "had no business" being in the territories and hence carry responsibility to the results for this unjust act of colonialization. The right analogy is not that of the African American, but of people who invade my land, thereby taking responsibility for getting hurt by my legitimate acts of defense. Thieves have no immunity.

The example of stealing land, however, is misleading in the current context. Note, first, that it is only an analogy; many of the lands on which the settlements were built had been legitimately bought from their owners, and, in any event, the attackers made no distinction between settlers who were living on land purchased legally and those living on land illegitimately taken from their owners. The assumed thief was not some particular settler living on the land of some particular Palestinian, but the state of Israel, which, on this account, had stolen the lands of the Palestinians by occupation and colonialization. In other words, at stake was a struggle for independence and for the ending of the occupation, and not a police-like operation against land robbers. Yet, as I argued earlier, the settlers were no more responsible for the policy of occupation than many other Israeli civilians, who would not count as legitimate objects of attack by any sane notion of *ius in bello*. Thus, if the notion of responsibility is supposed to do most of the work in identifying legitimate targets for attack, it either does not support regarding the settlers as such targets or entails an unacceptable widening of the category of legitimate targets.

I started by pointing out the weaknesses of the suggestion that the notions of innocence and responsibility can ground the distinction between soldiers and civilians. I then sought to show that the Intifada provides us with a good manifestation of these weaknesses. The above notions are insufficient to pile the IDF and the settlers on one side, as morally proper targets, and the rest of Israeli civilians on the other side, as illegitimate objects for attack.

One might object to my argument as follows. Though many people in Israel supported the policy of settlement and occupation in various ways, the settlers had a different status in this respect, as they were the actual executors of this policy. As such, the status of the settlers was similar to that of soldiers. Just as soldiers are those who execute the policy of their government and therefore are legitimate targets for attack, the settlers were those who actually carried out the policy of occupation and thus were not entitled to the same immunity as that

that might be used to justify indiscriminate attacks against Israeli civilians. Though philosophers disagree about the exact definition of terrorism,<sup>15</sup> they agree that indiscriminate attacks on civilians are an essential part of any such definition.<sup>16</sup> If my argument above is sound, then many of the actions carried out by Palestinians in the Intifada were terrorist actions.

But, and here I present the "standard" last resort of the terrorist, no other means were available to the Palestinians. As a famous slogan puts it, "Terrorism is the poor man's atom bomb," and to take this "bomb" from him would mean depriving him of his last means to fight for liberty. Teichman (1989, 515) nicely explains this argument: "Struggles of national liberation are struggles of the poor against the rich, the weak against the strong. As such they cannot succeed unless inexpensive methods are used. Terrorist techniques are relatively inexpensive. Hence it is said that they are either the *only* techniques available, or the *only effective* techniques available." In other words, freedom fighters turn to terrorism, not because they like it, but because they have no other choice. Assuming that their cause is just and that they cannot achieve their goals by conventional methods of fighting, isn't it reasonable to conclude that they are entitled to use whatever other means they may have at their disposal?

Applying the no-choice argument to the Palestinian case would lead to something like the following position: "You are right that hurting children and women is morally repugnant and in normal circumstances we certainly would not use such violence. Unfortunately, however, in the present circumstances these attacks are the only available way to get our freedom. Therefore, these actions are justified (or excused)."<sup>17</sup>

The no-choice argument invites two kinds of response. According to the first, the argument is simply invalid because the fact that I have no other option to achieve my goal but to use means M does not entail that means M is morally justified. Some actions, such as killing innocent people, are unconditionally prohibited, even if they are crucial to my survival. To recycle an old example: if I can survive only by killing some young person and having his heart and liver implanted in my dying body, such an action would still be intolerable. If one's only choice is to kill an innocent third party, then, morally speaking, one has no choice, period.<sup>18</sup>

The second response to the no-choice argument concedes that the argument might, in principle, apply to some extreme cases, what Winston Churchill called "supreme emergency," but, as a matter of fact, it almost always fails. The argument assumes that, roughly speaking, there are two main ways to achieve some political aim, the conventional way of fighting and that of the terrorist. As the aim is a just one and as the option of conventional war is unavailable to freedom fighters, a plain disjunctive syllogism leads us to the conclusion that they must take the route of terror. Yet, as many writers have argued, the causal connection between terrorism and the accomplishment of a political aim is very hard to establish (especially Graham 1985, 43-53). Because the moral stakes here are

This approach seems to me very helpful. It manages to ground three basic intuitions we hold with regard to justice in war. First, the distinction between combatants and noncombatants makes some moral sense; second, in spite of this distinction there is something morally wrong and regrettable even in (most cases of) killing combatants; and third, these two points apply to both just and unjust wars. On the innocence theory, it is hard to see why soldiers fighting a just war should be less morally immune than civilians, in a way that makes the attacks of the enemy on them morally acceptable. This makes more sense on Norman's view, because in any war, just or unjust, there are better or worse ways of fighting, that is, ways that express some respect for the humanity of the enemy and ways that are totally dehumanizing and depersonalizing. I come back to this point later in the chapter.

The application of these ideas to the present discussion is clear. The attacks of the Palestinians during the Intifada were an example of a dehumanizing attitude that assumed no distinction between combatants and civilians and viewed any Israeli passing in the territories as an "enemy," irrespective of his or her actions, beliefs, or political views.

At this stage I should note that my description of the Palestinian attitude to Israeli civilians during the Intifada was really rather inaccurate, that is, my presupposition that the Palestinians regarded the Israelis in the territories and the IDF as legitimate targets while granting immunity to other Israeli civilians. I did so in order to highlight a general philosophical problem regarding the status of settlers in occupied territories. The above distinction, however, was not sustained and was denied by most Palestinian organizations. That most of the activity during the Intifada was directed at Israeli soldiers and settlers was less a matter of principle than of opportunity, and whenever possible, attacks were carried out within the international borders of Israel too. The attacks on Israeli civilians were thus seriously indiscriminate and dehumanizing.<sup>14</sup>

In closing this section, I would like to make a general claim about the attempts by the Palestinian side to widen the category of legitimate targets in wartime; if successful, these attempts immediately backfire. The Palestinians not only wanted to show that their attacks on Israeli civilians were morally justified but also that Israeli attacks on Palestinian civilians were *not*. These two positions are simply incompatible because the arguments that are supposed to prove the moral rightness of indiscriminate attacks on civilian buses and cars would certainly justify attacks on Palestinians who take part in stoning and other forms of violence. Therefore, from the point of view of the Palestinians, the best option would be to concede the immoral nature of the attacks on Israeli civilians, thereby making it at least apparently possible to demonstrate the immorality and the injustice in the ways Israel fought against the Intifada.

### Terrorism and the "No Choice" Argument

As the word *terrorism* is so loaded, I have refrained from using it until now. The reason I am introducing it now is that it can help us identify one last argument

very high—the killing of innocent people—the burden of justification is heavy, and it is very rarely met. Even from a utilitarian point of view, most terrorist acts would be unjustified in practice; they cause death and suffering yet do not accomplish the desired goal (Graham 1985, 49). Think how many people were killed and injured by the IRA and by the Basques, without any serious progress being achieved by this violence (Teichman 1989, 516).

Moreover, not only is terrorism unnecessary and insufficient to accomplish political aims, it more often stands in the way of political accomplishment. The use of violence as a means of national liberation is supposed to achieve two main goals: (1) to attract international attention and support, and (2) to bring pressure to bear on the population in the occupying (democratic) state to encourage their governments to “get out of there.” With regard to both goals, the use of terror is often counterproductive. Public opinion in the free world is not sympathetic to the indiscriminate killing of civilians, so such killing gains only negative points in the battle for international public opinion. And the same holds true for the effects on the morale and the determination of the occupying state, and for the chances of initiating a significant change in its policy.<sup>19</sup> Occupying states present freedom fighters as criminals and fight against them as such. The interest of any national liberation organization is to convince the population of these states, as well as to influence the international community, that this description is false. The way to do so is by avoiding terror altogether.

These considerations apply to the Palestinian case. The great political progress that the Palestinians achieved by the Intifada was not the result of the terrorist aspects of the Intifada but the struggle with the army and the various forms of nonviolent resistance and protest. The attacks on Israeli women and children were damaging for the Palestinian interests, both with regard to the attempt to change commonly held views and stereotypes within Israel and on the international level. In fact, only when the PLO officially and unequivocally declared its objection to terror in December 1988 was it possible to make real progress on the political level.

The terrorist aspects of the Intifada thus provide a further example for the failure of the “no-choice” argument and, more generally, for the failure to justify broadening the category of combatants. Once one starts to broaden the circle of legitimate targets beyond soldiers, the descent down a very slippery slope begins. A recent policy statement of the IRA illustrates this point well. The IRA announced that construction workers doing repair work on bomb-damaged bases will be considered “collaborators” and, as such, legitimate targets for attack. At least twenty people were killed by the IRA on this charge. Then the category of targets was widened even more, to include those who work in the kitchens of British military bases or those who rent a car to British soldiers (according to Reuters, February 11, 1991). These moves always have some logic, but if the argument of this section is sound, they are almost always unjustified.

### Israel's Reaction

While in terms of *jus in bello* the Palestinian attacks on Israeli civilians were unjustified, nothing of the like can be said about the attacks on military targets. Irrespective of questions concerning *jus ad bellum*, one can hardly think of a more decent way of fighting than throwing stones and Molotov cocktails at the soldiers of the enemy. In this section, I wish to make some comments about Israel's reaction to this violence and see whether there is any general conclusion we can draw from it.

A common complaint against Israel is that it violated the rules of war during the Intifada by taking indiscriminate measures against the Palestinian population, including, in particular, young children. The pictures of wounded and dead Palestinian children played a major role in the Palestinian campaign and generated a lot of sympathy with the Palestinian struggle around the world. Were these attacks a plain violation of *jus in bello* by the IDF, or was the situation rather more complex?

The intuition underlying the distinction between *jus ad bellum* and *jus in bello* is that one can fight a war in a decent or in an indecent way, irrespective of the larger question about the justice of the war; one can fight a just war in a barbaric and inhumane manner, and one can fight an unjust war in a morally clean way (Rommel is probably a good example of this last possibility) (Walzer 1977, 37–38). If Israel's struggle against the Intifada was unjust, then probably there was a better way to conduct the struggle, one that did not violate the moral rules of fighting. What was this other way?

We saw earlier that the central point of *jus in bello* is the immunity of noncombatants, an immunity that Israel allegedly brutally violated. So we must conclude that Israel should have limited its attacks only to combatants. But of course no such distinction existed in the Intifada because almost *everybody* on the Palestinian side took part in the violence. The Intifada was a true mass movement of resistance that included all sections of the population. Most of the violent incidents, especially in the first few months, were a result of local initiation and not of orders from above. Thus, in a sense, the “combatants” on the Palestinian side bore more responsibility for their attacks than ordinary soldiers in fighting armies, whose responsibility is curtailed by the fact that they fulfill orders. Hence, if the criterion for immunity is innocence, the youngsters who threw stones and Molotov cocktails at IDF soldiers were definitely not innocent; in fact, they were more “guilty” than ordinary soldiers. And if indiscriminate attacks against civilians are wrong because they express a lack of respect for human life, then no such lack of respect is expressed when civilians themselves are the main perpetrators of these acts.

My argument here reflects in a particularly powerful way a standard dilemma for guerrilla warfare. Guerrilla warfare appears to be far more effective when the fighters can hide within the civilian population and enjoy its support. By pretend-



The stone throwers, the foot soldiers, as it were, of the uprising, were described . . . as children who had learned the language of resistance early in life. . . . Whereas parents used to be protective of school-age youths and apprehensive about their participation in political demonstrations and activity, many now support and even encourage their children to become involved. To be the parent of a young man or woman who has become a martyr in the struggle against the occupation, though tragic, is a source of pride. (Peretz 1990, 84)

Peretz goes on to describe a consistent pattern in organizing youthful participation in demonstrations:

The youngest group was between ages 7 and 10 [I], entrusted with the task of rolling tires into roads, pouring gasoline on them, and setting them afire. Those under 10 are usually not arrested if caught, but, rather, are beaten and let go. The 11 to 14 year olds place large rocks in the roads to block traffic. . . . The 15 to 19 year olds are "the veteran stone throwers" who inflict the most damage on passing cars. (Peretz 1990, 84)

The Palestinians learned very fast that young children, even if caught, "are usually not arrested," and certainly are not shot at by the IDF, for very good tactical and moral reasons. Therefore, they wisely concluded that the more young children they placed in the front lines of the riots, the harder it would be for the army to control the situation. Whether or not it is morally right for parents to send their second graders to participate in such violence is a question I shall not discuss here. One thing, however, is quite clear: in almost all cases where children were hurt during the Intifada, they were not sitting peacefully at home playing dominoes when suddenly Israeli soldiers came in and shot at them, but either actively participating in violence or, at any rate, not being kept far away from the fighting zone by their parents or patrons.

One could, of course, say that children, as such, lack the personal autonomy that is necessary to make them responsible for what they do. Hence, even when children do take part in violent acts, they do not thereby lose their inherent innocence. Children, as it were, can never be really guilty. I find this a romantic and a simplistic view of children, but for the present argument I need only a rather weak thesis, namely, that children aged 7-19 bear some responsibility for what they do, though maybe (on the average) not the same responsibility as adults (cf. Zohar 1993, 610). If this is granted, I can now reiterate the argument I made earlier: if the Allies were justified in (unintentionally) causing the deaths of thousands of Iraqi children, though these children did absolutely nothing to deserve such fate, how much more so were Israelis justified with regard to their (unintentionally) causing the deaths of Palestinian children who played an active role in the violence against the IDF? Taking into consideration this role of children and their parents' encouragement, it is again hard to see how Israel could be blamed *bona fide* for "fighting against children." The same applies—in

ing to be "only civilians," the guerrilla fighters seek to enjoy the privileged status of civilians in wartime. Yet if the guerrilla fighters and the population that supports them do not keep the distinction between combatants and noncombatants, why should the enemy be committed to this distinction? Walzer quotes the British *Manual of Military Law*, which states that "an individual [shall] not be allowed to kill or wound members of the army of the opposed nation and subsequently, if captured or in danger of life, pretend to be a peaceful citizen" (Walzer 1977, 179). Such a pretense was, however, typical of the Intifada; thousands of civilians would throw stones and initiate other forms of violence against the IDF and then complain about the injustice of IDF's reaction, which did not distinguish between combatants and civilians. These complaints just cannot be made *bona fide*.

The issue of Palestinian children deserves special attention in this context. That children are among the victims of all modern wars is a well-known and tragic fact. Given this fact, one can either opt for a pacifist position or try to defend some sort of justification for the inevitable killing of children. One common way of doing so is by using the doctrine of double-effect in the following way: killing children is morally acceptable when the war is justified, the killing of children is not a direct end, and the good of crushing the enemy compensates for the evil of killing the children.<sup>20</sup> A different argument is based on an attempt to shift responsibility: as the enemy is blameworthy for the war, the enemy is also responsible for its inevitable results, such as the killing of children. To elaborate on these arguments would deflect from my main argument. All I want to say is that *some* version of them is necessary if one refuses to opt for pacifism. There is simply no way of fighting nowadays without hurting children, even when the war is totally just and conducted by the most moral of nations.

The Gulf War provides further support for this tragic fact. I assume that the war was fought for a just cause, which was also how the matter was seen by most of the international community led by the United States. Yet the war did not spare the lives of Iraqi children. The numbers are really shocking: thousands of children were killed in the war itself and tens of thousands died in subsequent years as an indirect result of the war (i.e., disease, lack of food and supplies, and the collapse of the medical system).<sup>21</sup> This death toll might lead some people to have second thoughts about the justification for the Gulf War,<sup>22</sup> but I guess most of them would still support the war had the death toll been much lower, let's say "only" a few thousand. The unintentional killing of children is thus not considered as necessarily violating the *jus in bello*.<sup>23</sup> All the more so, I would argue, when children are not merely "innocent bystanders," as in the Iraqi case, but when they play an active role in the violence, as in the Intifada. Let us remind ourselves of this role.

Don Peretz, relying on the Palestinian journalist Daoud Kuttab, says the following about the participation of children in the Intifada:

trained combatants and moral saints, people who always do the morally right thing (I assume that moral sainthood does not imply pacifism). We then form a small unit of these saints and provide it with any available weapons or equipment they request (they are not allowed to ask for imaginary weapons). We then send them on a routine patrol in al-Bourej refugee camp in the Gaza Strip. Their mission is plain: to show an example of how the *jus in bello* principles can be kept in this sort of fighting. When they start the patrol, at 6 A.M., the camp seems peaceful and unthreatening. But then, around 7 A.M., while walking through one of the narrow streets of the camp, they are ambushed by at least 200 Palestinians, who throw stones and rocks at the saints. Three Molotov cocktails are thrown too, without causing any damage. The saints shoot in the air, but this has absolutely no effect on the attackers, because they know that these shots will not be followed by directed fire. Meanwhile, two saints are wounded by rocks thrown down from a nearby roof. One soldier suggests that they try to catch the stone throwers, who are getting closer and closer. But they notice that most of them are children and thus ought not to be beaten or arrested (it is their parents who should be punished, but they are not in the area). Another suggests breaking into the house whose roof is a major source of trouble. But when the door is opened, the saints see a room with a big crowd of women and frightened children, not the sort of place they would break into without permission. They think of using gas grenades, but immediately reject the idea because of the inevitable damage to civilians. The same consideration rules out some other ideas, such as asking the army to impose an immediate curfew all over the camp; why punish an entire camp for the behavior of 200 people? The only morally acceptable route is a fast escape, which is indeed ordered by the saints' commander. The saints return to their headquarters with clean hands, three wounded (one of whom has lost his eye after a stone was fired at him from a thirteen-year-old child's homemade slingshot), and an unequivocal military failure.

"You have disappointed me," says their spiritual leader, "you were supposed to show how soldiers can keep their hands clean while fighting, not by refraining from fighting. You have forgotten that we are not pacifist-saints but just-war-theory saints. And certainly you have a right to defend your own lives in the face of violence directed at you. Let's hope that tomorrow you will do better."

So the day afterward the saints return to the camp. This time they use most of the tactics that were rejected on the first day. They use gas, which appears to be less effective than they thought, they break into houses to catch stone throwers, and in the next few weeks they make an extensive use of curfews, which seem to be a good way of minimizing violence. During the time of curfews, they try to put their hands on the people who are especially active in the riots, and very soon the number of the people arrested exceeds many hundreds. At this stage the saints end their mission and move to places where they are far more needed.

The lesson from this imaginary story is not that the IDF soldiers were saints. They were not. Instead, the lesson is that the general tactics that the IDF used to

a stronger sense—to the alleged injustice of the fighting against Palestinian women,<sup>24</sup> and there is no need to recapitulate the arguments.

A similar conclusion will emerge if we consider the matter from the point of view of self-defense. Though self-defense is usually regarded as the only justification for going to war, its application to both *jus ad bellum* and *jus in bello* is, as Norman shows, highly problematic. The primary problem is that most wars and most forms of fighting are not, strictly speaking, cases of self-defense. Except under threat of genocide, nations cannot be said to fight in self-defense in the ordinary sense, and similarly, when a pilot drops bombs in the course of a war, he cannot be said to acting out of self-defense (Norman 1995, 132–39, 169–73). In the present context, however, and with regard to *jus in bello*, the idea of self-defense seems more applicable. If soldiers are walking in the streets of Gaza and are ambushed by dozens of youngsters who block the road and attack them with stones, Molotov cocktails, or whatever, then these soldiers have a right to defend themselves. And in this respect, the fact that many of the attackers are children does not make a significant difference. If I am attacked by a lunatic who has just escaped from a mental hospital and the only way I can protect myself is by shooting him, then, according to most accounts of self-defense,<sup>25</sup> I have a right to do so. Children whose violence poses a similar threat to me certainly enjoy no greater immunity.

Let us pause to see where the argument stands. I started this section with the claim that Palestinian attacks on the army were legitimate by any notion of *jus in bello*. I then set myself to examine the charge that Israel's way of fighting back was unjust. I explored one version of this charge, the one arguing that Israel was immoral because of her failure to distinguish between combatants and noncombatants. I argued that as the Palestinians did not maintain this distinction and deliberately encouraged women and children to take part in the violence, Israel had no obligation to stick to it either. I also argued that the tragic killing and injuring of Palestinian children during the Intifada poses less difficulties, in terms of *jus in bello*, than in conventional wars, because of the active participation of children in the Intifada, encouraged by their parents, in comparison to the absolute innocence of children in conventional wars. I now turn to a different version of the above charge against Israel, one based on the alleged moral inadequacy of the measures Israel used.

According to this version, though Israel might have been justified in not granting immunity to the civilian population, it still violated *jus in bello* in its use of unfair and harsh measures against an uprising in which mainly cold weapons, stones and knives, were used. Long curfews, plastic bullets, the violent beating of stone throwers, mass arrests without trial—all these and other measures ought not to have been used. If Israel wanted to fight the war decently, the argument goes, it should have fought it differently.

But how? To help us think about this question, let us imagine the following situation. Imagine that we look around the world for people who are both well-

fight the Intifada were of the same kind that even a moral saint who was not a pacifist would recommend. The guiding line was to control the situation with minimum casualties on all sides, and this goal determined the means: curfews, economic pressure, deportations, tear gas, arrests and so forth.<sup>26</sup> The high number of Israeli soldiers who were hurt during the Intifada<sup>27</sup> was a direct result of this policy. They were hurt not only because of the daring of Palestinian youth but because of the severe restrictions placed on the IDF in the use of conventional weapons.

Maybe, however, a different lesson should be drawn from this story, namely, that when fighting a war means fighting against women and children, the war—morally speaking—simply cannot be fought. Hence, the right way to tell the above story is to say that the spiritual leader does not send the saints back to the refugee camp but praises them for realizing that in such circumstances no respectable way of fighting exists.

Yet this move would lead immediately to the collapse of the position of just-theory saints to that of pacifist-saints. No modern war can be conducted without causing significant harm to women and children, harm that is definitely no less destructive and painful than that caused in fighting against mass riots like the Intifada. Think, again, of the poor Iraqi children trapped under bombed houses in Baghdad or dying from cholera. Moreover, I argued above that if there is any justification for (unintentionally) hurting children in wartime, such justification would be particularly strong when the children play an active role in the fighting. As I said earlier, one standard response to accusations of injuries suffered by civilians is to shift the responsibility to the enemy.<sup>28</sup> This is not an unproblematic move. If it could be defended, however, it would apply to cases like the Intifada in a much stronger way than to conventional wars. Unlike the situation in conventional wars, in the Intifada children were explicitly encouraged by their parents and by the political leaders to participate in the violence. Hence, the claim that the Palestinians are responsible for the fact that the war was directed "against women and children" makes good sense; had the Intifada been conducted by adults, with the children kept far away, the number of casualties among children would no doubt have significantly diminished.

The objector might still not be convinced by this comparison of fighting against a rebelling civil population and fighting a conventional war. I suspect that what fuels this objection is a strong feeling that in the former case the army just "has no business" to be there. I soon return to this point. But first let us look at an imaginary case of mass revolt where the use of force against civilians might sound more plausible. Imagine this big city, let's call it "Los Angeles," in which the great majority of people, let's call them "blacks," feel that they are exploited and discriminated against by the minority, let's call them "whites." One day, as a result of a trial in which a "white" policeman is found not guilty in abusing a "black" suspect, violent riots break out all over the city. "White" people are beaten and shot in the streets, shops are set on fire, and cars are stoned all around

and within the "white" neighborhoods. The police try to stop the riots using ordinary means but fail and finally have to retreat from downtown. Many people are injured and killed and the situation gets out of control. The "black" neighborhoods are completely inaccessible to the police, and "black" leaders declare they will go on until they are fully compensated for years of discrimination and exploitation. On the second day, the situation gets even worse. The riots spread to other "black" population areas and the clashes between the "black" community and the police get more and more violent. I assume that in this imaginary scenario, most people would agree that the police, or the army, is allowed to—indeed is *obliged* to—take harsh measures to control the situation, including curfews, mass arrests of "black" leaders, and all possible ways to stop the riots, even if children and women might be hurt. (Of course, the police are not allowed to use all means, but only those that are reasonable and necessary in these very difficult circumstances.)

The objector might concede that in "Los Angeles" violence against women and children would be justified, but still insist that the Intifada is different, precisely because it is a national liberation movement. Putting down such a revolt amounts to "punishing a nation"<sup>29</sup> and is therefore morally unjustified; not because of the fact that it involves violence against children, but because it is an immoral attempt to violate a nation's right to self-determination. *That* is why the Israeli army "had no business" in walking around the streets of Gaza and Nablus, and that is why the objector would argue Israel bears all the responsibility for the results of this walking around. According to this objection, a unit of moral saints of the sort mentioned above would never march into the refugee camp in the first place. No person with any moral commitment would take part in the crushing of a legitimate national uprising, and when we understand this truism, all the previous discussion is beside the point. To speculate about the means that Israeli soldiers could use once trapped in the narrow alleys of Gaza misses the central issue—they should never have been there in the first place.

This is a powerful argument. On a more general level, it amounts to saying that when a war is fought for an unjust cause, then, necessarily, any way of fighting it is morally wrong. In more technical terms, the argument seeks to blur the traditional distinction between *ius ad bellum* and *ius in bello*, at least with regard to armies fighting for unjust causes. An evaluation of this argument is the subject of the next section.

### Fighting Justly in Unjust Wars?

The current charge against Israel can now be formulated as follows: The fundamental problem with Israel's military reaction to the Intifada was not that Israel used measures that were too harsh or that directed its attacks at the wrong objects (at civilians rather than at combatants), but rather that the political aim of these military activities was unjust and inhumane. To assess this charge, we must

elaborate on some points I mentioned earlier concerning the relation between *jus ad bellum* and *jus in bello*.

The common distinction between these two levels of judgment assumes that when you kill enemy soldiers on the battlefield, your behavior is morally acceptable even if it was your state that initiated the war with no justification; whereas if you intentionally direct your fire at noncombatants, you are a war criminal. Thus, there is a moral equality of soldiers, whether they are fighting just wars or unjust ones. Yet this sounds highly implausible. Shooting and killing human beings in an illegitimate attempt to take their land is murder, and the fact that these human beings wear uniforms and try to defend themselves does not make it any less so. Murder is murder. True, the soldiers who fight an unjust war might be unaware of its injustice because of the powerful propaganda of their government, which hides crucial facts, distorts others, and causes the soldiers to construct a wrong picture of what is really going on. (For these reasons, soldiers might bear a diminished responsibility for killing noncombatants too.) But these considerations concerning the blameworthiness of soldiers do not touch on the moral status of the fighting itself, which, so the argument goes, is plain murder.<sup>30</sup>

Well, maybe not "plain" murder, since in most cases the killing is not a direct goal of the unjust army but a means to achieve some political goal, such as annexing a bordering state. The killing of soldiers in an unjust war would be like the killing of the guards of a house I break into. The fact that these guards wear uniform and carry guns does not make them a legitimate target, either morally or legally.

I find this argument quite persuasive. Among other things, it provokes fresh thoughts about the blameworthiness—indeed, the criminality—of those responsible for initiating and conducting unjust wars, irrespective of how the war is actually fought. I shall not pursue these matters here. What I do want to show is that even given this argument, the distinction between *jus ad bellum* and *jus in bello*, is not significantly undermined and still plays an important moral role.

As I mentioned earlier, following Norman, all acts of unjustly killing human beings are wrong, as they express a lack of respect for human life. Yet some forms of killing are worse than others; they reflect a deeper lack of such respect. By the same token, forms of warfare that do not discriminate between combatants and noncombatants are much more dehumanizing than forms of warfare that take such a discrimination as a guiding principle—and this applies to both the just and the unjust aspects of the war. Varying degrees of moral wrongness also exist in the example I used above: breaking into a house to steal its goods is no doubt bad; doing so with arms and shooting the guards when discovered is worse; killing the guards at the beginning of the operation, just to make sure they don't interfere is even worse; and killing the guards and everybody inside the house so that the burglary goes really smoothly, is far, far worse.<sup>31</sup> Thus understood, keeping the rules of *jus in bello* cannot ensure that one is behaving

correctly from a moral point of view, especially if the war itself is unjust. It can, however, ensure that one is behaving in the *less evil* way.<sup>32</sup>

That the evils involved in fighting a war can be reduced, as well as increased, needs no argument. For the present inquiry, however, it is worthwhile to recall that this truism applies equally to conventional wars and to wars against guerrilla fighters and national resistance movements. The Nazi way of dealing with such resistance was especially indiscriminate and cruel. So was the Chinese tactic in Tiananmen Square in 1989 and the Syrian reaction to the 1982 riots in Hama. By contrast, the British tactic, for example, toward the Jewish resistance in Palestine in the 1940s was more moderate. To be sure, the British made extensive use of mass arrests, mass deportation, curfews, executions, and other problematic measures. But evil as these measures might have been, they were far kinder than those taken by the Nazi, Chinese, and Syrian regimes in similar circumstances.

Let's return to our unit of saints. Their mission should not have been to show how to fight while keeping their hands clean but to fight while keeping their hands as clean as possible. Assuming that they had no business being in Gaza, any force they would have used would have been morally problematic. But they ought to have shown how, given these problematic circumstances, one could choose the lesser evil and not behave as if anything goes. This, I contend, was precisely the policy of the IDF during the Intifada; trying to control the situation while minimizing casualties, even at a risk to its soldiers. The past and present reactions to mass revolts and riots in other corners of the world provide one with no better example for dealing with such situations (and with many worse examples).<sup>33</sup>

I conclude, then, that the distinction between *jus ad bellum* and *jus in bello* is a valid one, which applies to all wars, just or unjust. The fact that Israel had no right to defend its control of the territories, if indeed this were the fact, does not by itself erail that the tactics it used during the Intifada were a violation of *jus in bello*. Unfortunately, there was no significantly better way the army could have used to defend itself, control the situation, and prevent casualties among the Palestinian population.

### Summary

The case of the Intifada raises two interesting questions for military ethics: the status of civilians of an occupying state in the occupied area, and the validity of the distinction between *jus ad bellum* and *jus in bello*. Regarding the first question, I argued that such civilians should be kept out of the battleground, and I pointed to the danger of extending the circle of those defined as combatants and hence as legitimate targets for attack. Regarding the second question, I argued that the separation between *jus ad bellum* and *jus in bello* is well established and that giving it up would result in the loss of a crucial moral distinction.<sup>34</sup>

The application of these general philosophical lessons to the Intifada shows (1) that the Palestinians were unjustified in attacking Israeli civilians and should

have limited their attacks to military targets, and (2) that even if Israel "had no business" being in the territories, this fact is insufficient to show that Israel's reaction to the Intifada was a violation of *jus in bello*.

Throughout the chapter, I assumed a similarity between the main problems concerning conventional wars and those concerning wars against guerrilla fighters and against mass resistance. If we start with a strong presumption against violence, then both conventional wars and guerrilla warfare become hard to justify. The killing of noncombatants is a serious moral problem in any modern war, and Intifada-like situations are no different in this respect. It is often argued, and rightly so, that modern wars cannot be fought without hurting noncombatants. The "cannot" here should not be taken literally but should be understood to stand for "cannot effectively" be fought. In principle, it is possible for a nation to avoid killing noncombatants, but such a policy would seriously weaken its military position, not to mention the advantage it would give to a less morally scrupulous adversary. The same is true of situations like the Intifada: one could, in principle, avoid causing hurt and damage to civilians, but, practically speaking, that would mean losing the battle, as happened to our imaginary saints unit. Moreover, such situations are in a better position from a moral point of view because of the active role of civilians in the struggle and the intended absence of distinction between combatants and noncombatants. Whatever doctrine one might use to justify the killing of noncombatants in conventional wars would apply equally to less conventional ones of the sort discussed here. If one thinks that no such doctrine exists, then pacifism is the only remaining option.

The similarity in the philosophical problems pertaining to all wars is admittedly not reflected in common emotional reactions. A picture of Palestinian teenagers being beaten up by IDF soldiers to stop their violence arouses more bad feelings and moral protest than an item about the high death rate of Iraqi children killed by the allies' bombing or dying from starvation and disease as an indirect result of the war and the international boycott. That our emotions are discriminate, however, is not news (Ben Ze'ev 1992, 214–20), and the above examples simply provide further support for this fact.

I have said nothing here about the large issues of *jus ad bellum* in this conflict, which deserve a separate and lengthy discussion. I would only note that the Palestinian position has become morally more problematic recently as a result of two factors. The first is the growth in the influence of the Hamas and other organizations whose aim is not merely national self-determination, but very explicitly, the destruction of the state of Israel. According to polls conducted in 1994, 39 percent of the Palestinian population in the West Bank and Gaza support what the poll questionnaire termed "The Islamic Solution (calling for the liberation of Palestine from the sea to the river)."<sup>35</sup> For Hamas, this political solution is not the end of the story because the killing of Jews is a central religious value,<sup>36</sup> a step necessary in preparing the way for the Last Hour, as stated in the *hadith*, which the Hamas Charter explicitly quotes:

The Last Hour would not come until the Muslims fight against the Jews and the Muslims would kill the Jews, and until the Jews would hide themselves behind a stone or a tree and a stone or a tree would say: Muslim or Servant of Allah, there is a Jew behind me; come and kill him; but the tree of Gharqad would not say it, for it is the tree of the Jews.<sup>37</sup>

Any armed struggle against people who support such ideas and who encourage their practical implementation seems to be a paradigm of a just war based on self-defense.

The second factor is the current peace process. Israel's withdrawal from the Gaza Strip and from the central cities in the West Bank, and its ongoing involvement in negotiations about the future of the territories make the use of violence on the Palestinian side<sup>38</sup> less and less justified. This should be a period of healing old wounds and seeking reconciliation, not of opening new wounds and spreading more hostility.<sup>39</sup>

### Notes

1. In spite of important differences between these two thinkers and the fact that Norman often seems to be an opponent of the just-war tradition, in the end their practical conclusions, as Norman himself mentions (1995, 156), are quite similar.

2. I refer to the Intifada in the past tense because the forms of violence that characterized its first years—mass riots and violent demonstrations—hardly occur any more. The use of the past tense also reflects the hope that by the time this article is published, the peace process will have succeeded in bringing most forms of violence in the region to an end.

3. I use the term "occupation" as a purely technical term with no connotations or implications as to the justice or injustice of the occupation. The same goes for the expression "Occupied Territories," which I use to refer to those territories captured by Israel in the 1967 war.

4. Both sides in the conflict have made some original contributions to the world inventory of weapons. The Palestinians achieved impressive results in the improvement of homemade slingshots used to sling small metal balls at IDF soldiers, among other innovations. The most original invention on the Israeli side was the "gravel-car" (*hazazit*), a large truck with a special mechanism mounted on it designed to fight the Intifada with its own weapons, by "shooting" back dozens of small stones.

5. I use *jus ad bellum* and *jus in bello* in a moral sense and not in the more strictly legal sense. Needless to say, the overlap between the moral and the legal domains is not perfect.

6. According to the IDF spokesman, 1,760 Molotov cocktails were thrown between December 1987 and June 1989 (Shalev 1990; Hebrew, 210).

7. According to the IDF spokesman, there were 321 cases of shooting, the use of hand grenades and explosive charges from December 1987 to June 1989 (Shalev 1990, 216).

8. I am rather puzzled by Ibrahim Abu-Lughod's claim that the Intifada "expressed itself in extremely militant but not violent means" (Nassar and Heacock 1990, 7). If stoning passing cars, throwing Molotov cocktails, and attacking civilians and soldiers with knives and axes are "nonviolent means," then what would violent means be? In any case, these and other "nonviolent" means caused the death of 15 Israelis and the injury of approximately 2,000 from December 1987 to June 1989 (Shalev 1990, 211–12). By the

end of 1994 the number of Israelis killed by Palestinians reached a total of 251 (*B'Tselem Human Rights Report 3* (Spring 1995): 1). Abu-Lughod continues to argue that referring to stones thrown by kids as "violent" (his quote marks) is ludicrous. I urge Professor Abu-Lughod to imagine himself driving home with his family and finding his car blocked by heavy rocks put on the road, and then, while trying to maneuver between the rocks, having his car stoned by dozens of these kids standing on a hill nearby. Wouldn't "violent" be an appropriate term to use here? If it is not, that is only because it is too mild to describe the situation. To be sure, all the attacks on Israelis might be thought to be justified, and I trust that Abu-Lughod believes they are; but that does not make them less violent. Finally, I should note that while the option of nonviolent resistance was indeed ventured at some stage, it did not prove very successful (Schiff and Ya'ari 1989, ch. 9; Peretz 1990, 52–55).

9. Cf. the attack on a bus traveling from Tiberias to Jerusalem on November 30, 1988, that resulted in the burning to death of Rachel Weiss and her three little children and in the death of a soldier who tried to rescue them. The throwing of Molotov cocktails decreased when the IDF issued instructions to shoot Palestinians trying to throw them (Shalev 1990, 125).

10. It is interesting to note that the Islamic tradition does not support attacks on noncombatants. See Harbour (1995, 74), especially the quotations she cites from al-Shaybani's "Allah's Apostle forbade the killing of women and children." See also Sonn (1990, 145), who concludes by saying that "it is difficult to find support for the use of irregular or terrorist tactics in Islamic tradition."

11. For criticism of the innocence theory, see also Zohar (1993, 607).

12. A few dozen soldiers who refused to serve in the Occupied Territories were sentenced to varying periods of imprisonment in military jails.

13. I refer mainly to the "Jewish underground" in the 1980s, and to the massacre in Hebron in 1994 carried out by one person.

14. These conclusions apply, of course, to other struggles for independence. For instance, I agree with Coady (1985, 62) that even if we suppose that the IRA's activity in Northern Ireland is justified, "its use of bombs on railways and in pubs would clearly be illegitimate and a case of terrorism since such attacks necessarily fail to discriminate between combatants and noncombatants."

15. For some recent discussions, see Coady (1985); Walzer (1977, ch. 12); Hare (1979, 241–49); Wellman (1979, 250–58); Primoraz (1990, 129–38); Dardis (1992, 93–97); Teichman (1989, 505–17).

16. See, for example, Coady (1985, 52); Dardis (1992, 97); Walzer (1977, 241–42); Teichman (1989, 513).

17. It is not clear whether the no-choice argument seeks to establish an all-things-considered justification for terrorist actions or merely an excuse, but this has no bearing on the objection I present.

18. According to the Talmud (Sanhedrin 74:1), if A says to B: "Kill C, or else I shall kill you," B ought not to kill C even at the price of his/her death.

19. It is often argued that the bombing of German cities in World War II was not only morally wrong but also counterproductive to Britain's goals. Instead of breaking the spirit of the Germans, the bombing made them more determined and more united.

20. For a defense of this doctrine, see Walzer (1977, 151–54). That acts are justified on the basis of this doctrine means, of course, that they justified *all things considered*, and not that there is nothing (morally) regrettable about them. For this distinction in general, see Statman (1995).

21. The first estimates of children killed in the war were no doubt exaggerated; see, for example, the estimate of 30,000 dead in *USA Today*, September 24, 1992. Yet that a

few thousands were killed in the war itself strikes me as quite possible. For the estimate of the number of children who died from diseases etc., see the report of the Harvard team as reported by *New Scientist*, November 9, 1991. According to this report, the death rate of children has increased almost fourfold since the war. The report estimated that 170,000 children would die by the end of that year due to the shortage of food and medicine. The situation has not changed much since. A recent report by the UN World Program estimated recently that mortality rates in many parts of Iraq were five times higher than before the Gulf War, with children under the age of five accounting for 39 percent of all deaths (World Food Program News Update, May 5, 1995).

22. See McMahan and McKim (1993, 501–42). See also Hoskins, *New Statesman*, January 17, 1992, 13: "So we have succeeded in liberating Kuwait. And we will never know whether we could have accomplished the same result without the use of force. But we do know, with great certainty, that, had we not resorted to violence, there would not have been 50,000 dead Iraqi children."

23. I suspect that the information about the Iraqi children is unknown to many readers. This information was indeed underreported. In fact, Mike Royko, a columnist at the *Chicago Tribune*, won honors for picking on this story as it was one of the ten most underreported U.S. news stories of 1992 (*Toronto Star*, July 11, 1993, B5).

24. For the role of Palestinian women in the Intifada, see Jad (1991) and Hilterman (1991, ch. 5). I should say that though I refer in the text to the category of "women and children" in line with common usage, I do find the inclusion of women in this category rather anachronistic. In our day and age, with its emphasis on equal rights, there is no justification for seeing women as more morally immune than men; female soldiers should have the status of combatants, and males should be able to enjoy the status of noncombatants.

25. The case of the lunatic is an example of what is called in philosophical literature "an innocent aggressor." For the right to kill such an aggressor in self-defense, see, for example, Thomson (1991, 283–10). For an opposing view, see Otsuka (1994, 74–94). When applied to the ethics of war, Otsuka's view seems to lead to a pacifist position, at least for those who assume that self-defense is the only acceptable justification against Israel (i.e. the use of clubs), was introduced as an alternative to shooting, with the purpose of reducing the number of casualties on the Palestinian side for both moral and pragmatic reasons (Schiff and Ya'ari 1989, 149–53). Needless to say, I do not argue that all the methods that Israel used were morally acceptable or that the behavior of individual soldiers was always morally right.

27. According to the IDF spokesman, 1,220 soldiers were wounded in the period from December 1987 until June 1989 (Shalev 1990, 211–12).

28. See, for instance, the response of White House Spokesman Marvon Fitzwater after the bombing of a bunker in Baghdad that killed approximately 400 people, most of them women and children: "We don't know why civilians were at this location, but we do know that Saddam Hussein does not share our value in the sanctity of life. Indeed, he has time after the other shown a willingness to sacrifice civilian lives and property that further his war aims" (*Jerusalem Post*, February 14, 1991).

29. See *Punishing a Nation: Human Rights Violations during the Palestinian Uprising December 1987–December 1988*. A report by Al-Haq, Law in the Service of Man. Boston: South End Press.

30. For further opposition to the equality of soldiers, see Coady (1980, esp. 278–84), who argues that the responsibility of soldiers fighting an unjust war is much larger than that assumed by Walzer.

31. For a similar line of reasoning and rather similar illustrations, see Coady (1980, 284–85).

32. Cf. Norman (1995, 198–200). A similar conclusion emerges from Noam Zohar's insightful discussion of just war in his "Collective War and Individualistic Ethics." According to Zohar, all, of most, killing in war is morally problematic, as it neglects what he calls the individualistic perspective. The killing of noncombatants, however, is even worse, as it amounts to a total abandonment of this perspective.

33. Unfortunately the Palestinians themselves are not setting a better example (to say the least) for dealing with violent demonstrations. On November 18, 1994, the Palestinian police opened fire on a Hamas demonstration in Gaza, resulting in the deaths of at least thirteen people and the injury of more than a hundred. The number of Palestinians killed by Palestinians during the Intifada in the charge of "collaboration" is hard to compute. According to the IDF spokesman, by July 1995, 997 were killed in these circumstances (compared to a total of 1,075 Palestinians killed by the Israeli security services).

34. That these two issues are logically separate helps us to understand a seemingly surprising fact about the shift in Israeli public opinion following the Intifada. According to surveys carried out by Arian (1991, 269–92), the shift consists of two apparently conflicting tendencies: (1) a short-term *hardening* of positions, (2) a steady and increasing *moderation* of Israeli public opinion on certain issues of security policy (p. 280). But these tendencies are fully compatible and their combination makes good sense. A readiness for compromise with regard to the large issues of the conflict is compatible with maintaining the right for self-defense with regard to the lives of Israelis (soldiers or civilians) in the territories and with regard to the need to keep a minimal level of order in them.

35. Ross and Sa'id (1995, 19). Support for the one-state option is more prevalent among younger Palestinians, aged eighteen to thirty, than among those thirty-one years or older, and the same holds true for support for Hamas: Hamas is more popular among Palestinian youth at all educational levels, especially those with high school and two-year college degrees (p. 17). At the time of submitting this essay it is hard to know whether Hamas will participate in the elections for the Palestinian Authority and, it does so, whether it will win or lose. There is basis for concern about the results of such elections. In what may be considered the first open election under the Palestinian Authority, the elections for the nurses' union governing board, Hamas candidates who ran against PLO and PFLP won all eleven seats (p. 21). More recently, Hamas won the student union elections in three colleges in the territories (BBC World Broadcasts, May 25, 1995).

36. The anti-Semitic character of the Hamas ideology, which draws on both Muslim and Christian traditions, is overwhelming and profoundly disturbing. The notorious "Protocols of the Learned Elders of Zion," for example, is explicitly referred to in the Hamas Charter (ch. 3, art. 32).

37. *Ibid.*, ch. 1, art. 7.

38. From the signing of the Oslo Accord to the end of 1994, ninety-one Israelis were killed by Palestinians, a figure that represents 36 percent of the Israelis killed from the beginning of the Intifada (see *B'Tselem*, 1). That violent attacks on Israelis continue after the Declaration of Principles is not surprising when we look at further results of Ross and Sa'id's research "Palestinians: Yes to Negotiations, Yes to Violence." According to these results, 46 percent of the Palestinians in the territories support armed operations against Israel, with only 34 percent opposing (and 20 percent with "no opinion"). It is frustrating to find that among those affiliated to Fatah—the organization that leads the peace process on the Palestinian side—40 percent still support such armed operations.

39. For helpful comments and discussions on earlier versions I am greatly indebted to Saul Smilansky, Michael Walzer, and Noam Zohar.

# 6 Targeting Children

## Rights versus Realpolitik

James A. Graff

For many, images of Palestinian youngsters throwing stones and Israeli soldiers responding with tear gas and bullets became the symbols and even the meaning of the Intifada. Some may remember a news clip in January 1988 showing an Israeli soldier smashing the hand of a young boy. Others may recall the image of a youth strapped to the hood of an Israeli jeep, used as a human shield against Palestinian stones. But few who followed the Intifada on television or in the mainstream press would have any sense of the scale and nature of Israeli state, and state-condoned, violence against Palestinian children.

Palestinian youngsters participated actively in their community's struggle to end twenty years of Israeli military occupation and a decade of colonization of the West Bank, East Jerusalem, and the Gaza Strip. Palestinian youngsters resisted by stoning Israeli patrols, military and civilian vehicles marked with their distinctive yellow license plates, erecting roadblocks, burning tires, marching in demonstrations, serving as lookouts, writing political slogans on walls, displaying the Palestinian flag and other nationalist symbols, and confronting Israeli soldiers and settlers during raids on refugee camps, villages, and entire neighborhoods. If it was to crush the Intifada, the Israeli state had to target Palestinian youngsters—and it did. Between December 9, 1987, when the Intifada began, and December 31, 1993, minors sixteen years or under constituted between 35 percent and 40 percent of an estimated 130,000 Palestinians seriously injured by Israeli soldiers, roughly one out of every twenty Palestinian children.<sup>1</sup> Of medically treated injuries to Palestinian children fifteen years old or younger, approximately 34 percent were caused by Israeli gunfire, 50 percent by beatings administered by Israeli soldiers, and 14.5 percent by tear gas.<sup>2</sup>

The stakes were very high for the Israeli government: control of West Bank water, most of which was consumed by Israelis inside Israel proper and in Israeli settlements. Occupation ensured access to cheap Palestinian labor and guaranteed control over Israel's second-largest external market for its goods. By 1987, more than 60 percent of West Bank land and almost 35 percent of Gaza had been