

Ethics of Terrorism & Counter-Terrorism

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TERROR & COUNTER-TERROR. INITIAL ETHICAL REFLECTIONS *

*In memory of Georg Meggle (1900–1963),
my father.*

What is terrorism? What does someone have to do or plan in order to be justly considered a terrorist? Can terrorist actions be understood? Or are those acting thus per se irrational? What is it about terrorist acts which makes them so reprehensible to, as they say, “every single one of us”? Is terrorism intrinsically evil? Or do at least theoretical cases exist in which terrorist activity would be justified? And finally: Is everything permissible in the struggle against terrorism? Even counter-terror? Or what about wars?

These are questions we need to analyse. However, I shall have to ask for your patience. Merely the first question – “What is terrorism?” – will need much care and time, as you will shortly see. Political rhetoric may be swifter, but its aim is persuasion; mine is clarity. And one of the best ways to achieve clarity is to follow the advice of an Arab philosopher, who said: “The wise man possesses abstraction.” In times of war, this may also mean: The wise man keeps his distance.

* This is the paper I presented at a number of German universities in November/December 2001. As is especially apparent from Part II, the paper was written during the first phase of the war in Afghanistan. You might think that following the victory of the USA, the UK and the Northern Alliance, I ought to have updated my personal viewpoint from that time (and recorded here) to take the new circumstances into account. For many reasons I decided against this option.

Once again, many thinkers helped me out with both aid and criticism: above all Christoph Fehige, Franz von Kutschera, Wolfgang Lenzen, Herwig Lewy, Weyma Lübbe, Daniel Meßelken, Richard Raatzsch, Kazem Sadegh-Zadeh, Katinka Schulte-Ostermann, Eckhard Schulz, Rudolf Schübler, Thomas Spitzley, Ulla Wessels, Harald Wohlrapp and Georg Henrik von Wright. To make matters clear, philosophical aid doesn't automatically mean subscribing to the results. Moreover, I couldn't adopt every improvement offered; nor did I want to. Therefore if, as some listeners thought they had to warn me afterwards over a beer, this paper really does drive anyone to suggest someone is at fault, that someone should only be me.

The valuable objections and suggestions received when presenting this paper are too numerous to name all those behind them. I will address the main objections in the planned ex post reflections.

PART I

1 What is terrorism?1.1 I often think back to the first few hours of my philosophy degree, when the practical relevance of definitions of terms became apparent from the following example:

The local council decides that order needs to be restored to the seriously overgrown municipal parks. The instructions are as follows: *All rank growth bushes are to be removed.*

But what's a bush? And what exactly is a rank growth bush? This is an area where gardeners disagree. Some believe the new campaign will result in too much greenery being removed; for others too little. So they call in the experts – theoreticians from biology specializing in dendrology complete with their textbooks, as well as the practical specialists who have written manuals for municipal gardening. Yet the experts cannot agree. According to one school of thought, all bushes imported from China – irrespective of whether they grow wild – should be regarded as high-grade plants; the other school believes a bush's origin is totally irrelevant to the campaign against rank growth bushes.

Hence what counts as a rank growth bush depends on the definition adopted by the gardeners. Equally, what counts as terrorism depends on how it's defined by those in charge of hunting down those behind it.

Yet there's obviously a difference between the terms 'rank growth bush' and 'terrorism'. The term 'rank growth bush' is neutral. The prejudice that everything which is a rank growth bush needs to be removed is not harboured in the expression 'rank growth bush'. With terrorism it's a different kettle of fish. Those who are regarded as terrorists have already been condemned. 'Rank growth bush' is a classificatory term; 'terrorist' is currently (once again) a branding iron. Heaven help those to whom it's applied!

1.2 However, we shall have to leave the value component of the term 'terrorism' to one side, at least for the present. This is vital if we are to use it with maximum accuracy rather than blindly. This in turn entails drawing a sharp distinction between the following questions: 1) **The semantic question:** What do the terms 'terrorism', 'terrorist' and 'terrorist acts' etc. mean? 2) **The verification question:** How can we tell (when we know what the terms 'terrorism', 'terrorist' and 'terrorist acts' etc. mean) whether something or somebody is terrorism, a terrorist or a terrorist act, etc? 3) **The evaluation question:** How is terrorism etc. to be morally judged?

1.3 Of the trinity of **T-terms**:

- Terrorism
- Terrorist
- Terrorist Action or Terrorist Act

the third is the fundamental one. It can be used to define the other two, but not the other way round. Not everything that terrorists do is terrorist; just in the same way that not everything sexists or racists do is sexist or racist. Terrorists, put very roughly, are people who accomplish, prepare or plan terrorist acts, or who are deliberately involved in them in some other way. And *terrorism* refers to the broad field of terrorist actions.

To make it easier for us to abandon our prejudice in connection with terrorist acts, I will resort to a trick. From now on, terrorist acts will be referred to simply as **T-acts**. T-acts are hence **terrorist acts minus their evaluation**.

1.4 When is an act a T-act?

Let's have a look at the following example:

X, a separatist from a certain province, activates the timing mechanism of a bomb hidden in his briefcase in a room next door to a marketplace café in the capital city of his country with the intention of blowing up dozens of people in the café in order to make the government release his imprisoned secessionist comrades.

This is the first level of the example. It is supervened by a second:

X expects or hopes that the government's decision to release his comrades will be prompted by the horror generated among the population by his T-act.

The first layer contains the "**violence calculation**". X assumes that his acts of violence will pay off by leading to the release of his comrades. The second level contains the corresponding "**terror calculation**": X assumes he will achieve his aim by means of the terror caused by his act of violence, i.e. that by using terror he will be able to make the government do something it would not otherwise do were it not for this terror. In other words, the terror calculation says: X expects that the horror induced by his terror will cause things to happen which would not have happened without this horror. The terror calculation is based on the expected **horror function**. In T-acts both calculations – the violence calculation and the terror calculation – are closely interlinked. In X's view, the violence calculation works precisely because the terror calculation works.

The T-act concerned – in this case activating the time bomb together with the related intentions – is so far merely an **attempt**. To make it **successful**, X would also have to actually achieve the intentions mentioned in the first layer, and his expectation mentioned in the second layer would also have to be fulfilled. This means the following would have to hold:

Success in the first layer:

X's bomb blew up dozens of café customers and thus caused his comrades to be released.

& success in the second layer:

It really was the terror impact on the population which caused the government to decide to release his comrades.

Thus T-acts are successful iff both the violence calculation and the terror calculation actually work – the former with the help of the latter. Every T-act aims at this successful connection between the two calculations. It is precisely this double calculation link which differentiates T-acts from non-T-acts.

Let's put this all into plain English:

D1: T-acts are acts in which purposes are (attempted to be) brought about by means of terror

More precisely:

D2: T-acts are acts in which purposes are (attempted to be) brought about by means of terror induced by violence

1.5 T-acts may vary enormously. Let's list the elements we have mentioned so far.

Elements:	In our example:
Act/Action a	Activation of the bomb
Actor X	Provincial separatist
Violence addressee Y	Café customers
Terror addressee Z	The general public
Ultimate addressee U	The government
Intended effect R	Release of prisoners

Let's try and detach ourselves from the example. Stop looking at the right-hand column; just concentrate on the left and recall a few things.

- The **T-act a** itself: Apart from placing a bomb in a briefcase, this could be a thousand and one other things: anthrax powder in the mail; poisoning the water supply; deploying computer viruses; atomic, biological or chemical weapons; threatening the use of torture; deliberate false alarms which create panic; etc. etc. The arsenal with which humans can create hell on earth for other people is inexhaustible.
- **Actor X** needn't be acting alone. Actors may also be groups and collectives, organizations, institutions and their networks; even states or coalitions of states.
- The same goes for the **addressees**.

- **X** may even be **an element of Y, the target group** of the violence – just think of suicide bombers.
- **Violence and terror addressees** may be **identical** – and of course the ultimate target group **U** (or parts thereof) may also be the addressee of the violence and terror.
- **X** may even be a **member of U**, in which case the T-act would be targeted at his own group. And ultimately:
- The range of all the possible **reactions or effects R** as ultimate or other aims of T-acts for T-actors is just as limitless as the arsenal of possible T-act methods. Given everything humans believe to be worth striving for, everything is possible. The attempt to classify T-acts in terms of their aims as political, religious, merely criminal, etc., is an initial attempt to structure this huge class. Interest is currently focused on political T-acts.

1.6 So far I've missed out one important point. T-acts can also be directed at uninvolved outsiders who happen to be in the wrong place at the wrong time – or, as we often say, against “innocent victims”.

At least, this was the case in our café example. The direct victims of the bomb attack came from all over the world. They had nothing to do with the suppression of the province whose secession was desired by the T-actor (a native of the province); moreover they couldn't do anything about his comrades being in prison. None of them were hired mercenaries, or overt or covert agents of the regime **X** is fighting.

Does the same apply by definition to all T-acts? Does our definition need to be made stronger as follows?

D3: T-acts are acts in which purposes are (attempted to be) brought about by means of terror induced by violence committed against indiscriminate innocents

Or can acts count as T-acts if they only affect “non-innocent victims” in the sense relevant here, e.g. the leaders of the oppressive regime itself? This is one of the most contentious issues, and I won't be able to settle it here.

The reason why innocent victims – and usually totally indiscriminately at that – are the favourite target of T-actions is obvious. This is the way to most efficiently maximize the horror function. This is for two reasons: (i) The more unpredictable terror is, the more effective it is. This unpredictability means that everyone has to somehow expect being among the next victims. (ii) The more visible the horror scenarios caused by terror are for as many people as possible, the more effective they are. One important multiplication factor for terror is its **media quality** – the supreme example being September 11. Reports or even **pictures of innocent victims**, of burnt children for example, are **ideal for the horror function** (although this ‘optimization’ was prevented by our media regarding the victims of the September 11 attacks).

Whether this focus on innocent parties or indiscriminate victims is necessarily part of T-acts is something I shall leave undecided. But one thing is certain: **The worst T-acts are of this type**. This is a fact – and simultaneously a tangible value judgment. This brings to an end our introductory digression into the semantics of terror. Now let's turn to its ethics.

2 The ethics of violence and war

The ethics of terror is a special case of the **ethics of violence and war**.

Therefore, let's first ask the following general question: What is the maximum justifiable violence? And here I ask in particular: Is the **violence** exercised in the period **following September 11**, in particular the war against Afghanistan, still within this maxim?

2.1 I subscribe to the classical theory of the justifiability of violence. According to this theory, violence is allowed in cases of self-defence and emergency aid – and is allowed for both individuals and collectives. As far as collectives are concerned (and only they are of interest to us here), this justification approach leads directly to the criteria **for justified war**. These criteria regulate two things: when war may be waged in the first place (**ius ad bellum**) and how such a permitted war is to be waged (**ius in bello**). They may be formulated for violence in general as follows:

(AD) **ius ad vim/ad bellum**

- (1) Reason which justifies violence/war (**causa iusta**)
 - [(2) intentio recta]
- (3) Correct decision authority (**auctoritas principis**)
 - [(4) open declaration]
- (5) No alternative (ultima ratio)
- (6) Success likely
- (7) Injustice can be removed by violence/peace can be achieved with war
- (8) Macro-proportionality

(IN) **ius in vi/in bello**

The following must apply to the way in which violence is committed/war is waged:

- (1) It is required and conducive for the aim of violence/war
- (2) It is not directed against uninvolved outsiders (innocent victims), i.e.:
 - (2.1) Not directly
 - (2.2) There is no strongly reprehensible collateral damage

As little harm as possible is caused:

- (3) To your own side
- (4) To the enemy

(5) No “mala in se” methods/weapons are used

2.2 As far as wars are concerned, **causa iusta** include – in accordance with self-defence – large armed attacks. Hence **wars of self-defence** are permitted, and other parties may join in, i.e. the formation of coalitions is also allowed. Moreover, corresponding to self-defence, **causa iusta** also include very severe and systematic violations of human rights. Hence **wars of humanitarian intervention** are also allowed.

2.3 The condition of **macro-proportionality** demands that before war starts, the action’s anticipated overall gain (excluding any additional gain going beyond the achievement of the war’s aim) must be compared with the anticipated overall harm caused by the war. The gain must be ‘worth’ the damage.

2.4 Of the ad bellum criteria, the most important one after the **causa iusta** (AD.1) is that of **necessity** (AD.5). Entering a war is only permitted as the ultima ratio. By contrast, the in bello criterion IN.1 refers to the type of warfare – which must be a means which is both required and suitable for achieving the war’s aims.

2.5 “**Mala in se**” methods include for example ethnic expulsions, mass rape, using nuclear weapons or carpet bombing.

2.6 One **example** of the permissible entering of a war would be the Allies’ declaration of war against the Axis powers, particularly Germany, in World War II. The fact that this does not sanction the type of warfare is shown by the same example: According to IN.2&5 both the atom bombs on Hiroshima and Nagasaki and the bombing of Dresden were war crimes.

2.7 **International law** has hitherto mainly only been tailored to classic wars of self-defence. By the time of the Kosovo War it became apparent it lacked clear guidelines for weighing up state sovereignty against intervention rights in the event of severe violations of human rights. As strange as it might sound, the criteria for justified wars developed in the Middle Ages still provide the better moral arguments in some cases. This is not an argument against international law, but rather one in favour of improving it.

This goes in particular for cases concerning armed uprisings or civil wars and wars of secession. And it goes even more so for various forms of terrorist violence and various forms of combating terror. The criteria of justified war are also relevant to the assessment of terror and counter-terror.

2.8 These **criteria** are **double-edged**: in addition to providing **reasons for justification**, i.e. reasons why violence, war and perhaps also terror and counter-terror are allowed (owing to certain criteria being met), they also provide reasons for their condemnation, i.e. reasons

why violence, war, terror and counter-terror are not allowed (owing to certain criteria not being met), or in other words forbidden.

The application problem of what happens if one criterion leans in one direction and another in another direction can't be solved without further appraisal. However, this discussion really needs to be carried out separately for different types of violence. The either/or nature of the deontological criteria AD.1-5 and IN.2&5 usually gives way anyway to a more flexible more-or-less scale. Just how far this flexibility can go is *the* main bone of contention in the "application discourse". In order to focus discussion on the more important aspects, regarding the application of these criteria I shall express myself apodictically in a carefully considered manner; we are dealing here with "initial ethical reflections", not the "last word".

3 The ethics of terror

3.1 Can T-acts be morally allowed? Can they be justifiable in accordance with the criteria of justified war?

This all depends on the type of T-act concerned.

Recall that under our strongest T-term, the actor's violence is directed against indiscriminate innocent victims. This is a clear violation of criterion IN.2 (innocent victims may not be the direct target; hence T-acts which have innocent victims as the direct target are morally forbidden) – isn't it?

3.2 IN.2.1 says: Direct violence against innocent victims is forbidden. Does this mean that indirect violence is allowed? This brings us to the topic of **collateral damage**, something we ought to look at in more detail.

X's violence being directed against Y (as an uninvolved outsider) can mean various things:

(D) The actor X deliberately directs his violence against Y, knowing full well that Y is innocent.

In this case of direct violence against innocent parties, it is thus assumed that Y is an individual or a group of individuals who are not 'guilty' with respect to the political etc. intentions of X. X's violence against or even killing of 'innocent victims' cannot of course be counted as collateral damage. With Y and Z representing different groups, the following can be said about collateral damage:

(CD) X's violence, which is directed deliberately against Z, also affects innocent parties from Y.

As far as (CD) is concerned, we would have to distinguish between the following cases:

- (CD.1) X knew his violence against Z might also affect innocent parties from Y, but this didn't worry X in the slightest.
- (CD.2) X knew his violence against Z might also affect innocent parties from Y, but took this into the bargain.
- (CD.3) X didn't realize his violence against Z might also affect Y – but could have known this if he'd done his homework beforehand.
- (CD.4) X knew his violence against Z might also affect innocent parties from Y, and so tried – albeit unsuccessfully – to prevent this from happening.
- (CD.5) X simply couldn't know his violence against Z would also affect innocent parties from Y.

3.3 All cases under (CD) are cases of collateral damage. Case (D) is not, because here the actor's violence is directed with full intent against Y. This is reprehensible. So is the case when the actor (as in CD.1) doesn't worry at all about whether his violence will strike innocent or guilty parties. And it is no less reprehensible when (as in CD.2) innocent victims are simply taken into the bargain or (as in CD.3) the actor makes insufficient effort to find out whether innocent parties can be completely ruled out as victims (although whether anyone can really be accused of this in the heat of battle is admittedly a moot point; then again it must be pointed out that most such attacks are planned long in advance). The only excusable case would be CD.5. By contrast, in CD.4 a great deal more would have to be known about the exact circumstances involved. How great was the danger of innocent victims being affected? Just how serious and of what quality were the attempts at prevention? Etc.

In other words, the more reprehensible the collateral damage covered by (CD), the closer T-acts are to case (D) in which direct violence is committed with full intent against innocent parties, and hence the worse they are. ((D) and collateral damage cases CD.1–3 are strongly reprehensible, and hence blameworthy.)

3.4 Let's sum up what we have found so far. If T-acts are at all justifiable in accordance with the criteria of justified war, they are so only iff they are neither T-acts which are directed with full intent against innocent parties nor T-acts which involve strongly reprehensible collateral damage (SRCD).

I shall refer to T-acts whose violence and terror are addressed either directly against uninvolved outsiders (innocent parties) (case D) or whose violence or terror cause SRCD among uninvolved outsiders (cases CD.1 and CD.2/3) simply as **strong T-acts**. Accordingly I shall use the term **strong terrorism** to refer to terrorism which is based on **strong T-acts**; by contrast, weak terrorism is a terrorism which excludes strong T. Note that the words 'strong' and 'weak' only refer to the criterion of the strong reprehensibility of violence against uninvolved outsiders; they don't say anything about the intensity of this violence.

I left unanswered the question of whether T-acts should by definition be counted among these strong reprehensibilities. But one thing is now clear: if T-acts in general were already to be defined as strong T-acts, T-acts would not be justifiable. This would stem directly from their definition plus the strict *in bello* criterion (IN.2).

Hence the question concerning justifiability is only still open if it is based on a weaker concept of T-acts. But there this question certainly is open!

3.5 Hence *if* violence-induced terror against a criminal regime really were the only way to halt serious violations of human rights against one's own group (AD.1&5), *if* this strategy seemed promising given the support for the guerrillas among one's own people (AD.6), and *if* in the event of the guerrillas winning, something approaching peace would return to the province after decades of oppression (AD.7), *if* the whole struggle ultimately proved worthwhile (Ad.8), and *if all the in bello criteria* were met – well, what then?

In this case, *this particular guerrilla struggle* would be a **special case of justified war**. In fact, no less so than the above-mentioned intervention by the Allies in World War II; in fact even more clear cut since, unlike the Americans and the Britons, the guerrillas would also ex hypothesi meet the criteria of *ius in bello*. By the way, the fact that such groups *can* also exist in our world was the basic postulate of the liberation theology mostly based on the special circumstances in South America.

Hence, T-acts (in the weak sense) *may* also be morally allowed.

4 The ethics of anti-terror

What does this mean for the struggle *against* terror?

4.1 If a war is just – and for us this means nothing more than justifiable or permitted – the opponent or enemy must be in the wrong. It cannot be possible for a war to be simultaneously permitted in the same respect for both sides. The same also goes for T-actions. But this means that if a T-action is permitted, fighting it is forbidden. To remain by the above example, anybody who oppresses a justified guerrilla struggle must be in the wrong.

We can thus summarize the results achieved so far as follows. In accordance with the criteria for justified war:

- Strong terrorism is forbidden.
- Weak terrorism may be permitted.

4.2 What does this mean for the present? In particular, what does this mean for the current general rallying cry GRC?

GRC: Terrorism must be combated worldwide!!!

Assuming that only forbidden terrorism may be combated (which in other contexts would be trivial), this evidently means various things. If the rallying cry refers to **strong terrorism**, it is **absolutely correct**. **Strong terrorism** is forbidden not only always but also everywhere.

On the other hand, if the rallying cry also refers to **weak terrorism**, it would be:

- 1) poorly substantiated;
- 2) possibly wrong;

and whenever this rallying cry encouraged severe crimes

- 3) its implementation would have to be **resisted**.

4.3 I have another objection to this rallying cry. And that is that I simply can't buy it from Bush and the others; I simply can't imagine they take this rallying cry seriously. Otherwise, they themselves and their own countries would quickly get into hot water. The USA, for example, is probably involved in actions which are clear cases of T-acts in several parts of the world, especially in South America, and to cap it all clear cases which cannot be ethically justified. And the same probably goes for a whole number of other members of the grand anti-terror coalition.

But that's merely by the by. Political rhetoric always overdoes things. Of course, what the GRC really means is currently combating the **terrorism of others**, especially that of the terrorist network which (probably) was at least co-responsible for the attacks on September 11.

4.4 As far as the *causa iusta* criterion is concerned, there is no question that the struggle against this **terrorism** is legitimate. The **causa iusta** for permissible defence could hardly be clearer. But does this automatically mean that the current war against Afghanistan is a just war?

This is the end of Part I – the part in which mainly analytical, philosophical reflections predominate. The following Part II increasingly contains my own personal views. The important thing is that even if (contrary to expectations) you have accepted everything so far, you may nevertheless and with perhaps better reasons be of a completely different opinion from me as far as the moral assessment of current world events is concerned

PART II

5 Is the war in Afghanistan a justified war?

Do the attacks of September 11 justify the war against Afghanistan?

AD BELLUM

5.1 Let's start with the first ad bellum criterion: the **causa iusta**. As we stated above, this exists. The attacks on the World Trade Center clearly violated IN.2. Therefore, even if the attacks were, *contra rem*, to be regarded as acts of war, this wouldn't change anything regarding the classification of these acts as crimes against humanity. Even if the USA had been at a state of war with the attackers, the attacks on the World Trade Center would still have been a clear case of war crimes.

Yet did they provide a reason for war? At first it was uncertain whether the attacks came from outside in the first place. After certainty had been declared, there was no state which could be regarded as the attacker: there was 'only' the al-Qa'eda network spread throughout several countries with Bin Laden at its centre. The conditions for a war of self-defence in the classic sense under international law were thus not met – and hence neither were the conditions the NATO pact had originally envisaged as justifying assistance among the allies.

5.2 In this grey area between war and non-war there were 2 x 2 alternatives:

Alternative A: The **decision-making authority** regarding counter-reactions is either (i) the **USA** or (ii) an **international authority**. (See also the *auctoritas principis* = (AD.3))

Alternative B: Either (i) **classification of the attacks as equivalent to war** and thus as the potential trigger for a national **war of self-defence** or (ii) **classification as a crime** and thus the transfer of the case (including responsibility for punishment) to a national or international investigative body and then a national or international **court of justice**.

In both cases the first option was chosen – and the decision was taken solely by the USA.

Re: **Alternative A:** In the first few days after September 11, it was constantly emphasized that the attacks were an attack on the entire international community of states (and sometimes “on the entire civilized world”). Nevertheless, it wasn't its representation in the form of the United Nations but rather solely the USA which was to be responsible for deciding on an appropriate response. Consequently, the media in the USA now nearly always just refer to an “attack on America”.

Re: **Alternative B:** The decision on **Alternative A** automatically decided **Alternative B**. The *attack on America* was turned into *America at war*. And the responsible authority since then under the President has been the Pentagon.

5.3 Note that these two alternatives are completely independent of the third decision:

Alternative C: Should military force be deployed or not?

Even if you agree with me that after September 11 the destruction of the al-Qa'eda network's training camps by for example pinpoint air strikes was perhaps inevitable and ethically justified, this doesn't nail you down to either of the options under A and B.

The use of military force can also be ordered by an international court. Supreme command authority could be delegated to a special anti-terror Security Council (in which none of the countries directly affected could be involved in current decisions). Missions would then be undertaken by the national armed forces of the nations (or coalitions) represented in the UN.

5.4 “Utopian!” you will cry. Certainly, after the decisions which have since been taken. But definitely not as impossible **before** these decisions.

Apart from the chance of achieving with options (A.i) and (B.i) within a few days what the USA (not just according to its enemies) mainly wanted to achieve, namely simply achieving a position approximating to world domination – what actually argued *against* the unchosen options (A.ii) and (B.ii)? Was it because the UN or a world court of justice set up under its auspices couldn't work? Neither legally nor militarily?

This argument convinces many, but it's too weak. After all, what's the main cause of the UN's weakness? The blockades imposed by the USA. And the USA would easily have been in a position in concert with other countries to make the UN as strong as it needs to be so that it is better able to cope with such responsibilities.

5.5 In this context, the argument is repeatedly voiced that no power on earth – and especially not a superpower like the USA – can be expected to cede important decisions concerning its own welfare to the UN. This may be true. But if a power has the possibility to cede important decisions concerning its welfare to the UN, not taking recourse to this possibility reflects in the moral judgement of what it does. It boils down to morality, not just what's best from the viewpoints of power.

Just imagine if between September 12 and 14 the Secretary-General of the United Nations had taken the initiative, declared a state of world emergency, acting on his own authority summoned the International Court of Justice (which was already being prepared), and then on the basis of the majority vote to be anticipated in this case by the General Assembly appealed to every state in the world (including the USA) to regard the United Nations as the supreme decision-making authority in the event of international terror acts of the scale?

Yes, I know. This is a Utopian vision, whose accomplishment by Kofi Annan or anybody else for that matter would be (almost) superhuman. But supposing he could have relied on the complete support of the heads of government of some of the most important countries, including perhaps some of the USA's main friends? In other words, what would have happened if we had suddenly discovered that the current heads of government included

people like Willy Brandt, Olaf Palme, Mikhail Gorbachev or even Mahatmi Gandhi? What then?

5.6 I fear that since October 7 – since the USA and the UK began waging war against Afghanistan – perhaps not the war against Afghanistan but instead the **great war against terror has already been lost**. Millions of people probably regard this anti-terror war as simply further proof of the imperialism of the West, especially the USA. Note that you need not necessarily share this view in order to be convinced of its enormous validity. After all, a conviction need not be true in order to be valid.

This assessment does not change in the slightest even if we take into account that so far the USA has based its actions in the war Afghanistan on a broad “**anti-terror coalition**”. I’m talking about people and nations, not governments. Who really believes that the grand anti-terror coalition – even if it only exists at governmental level – is voluntary? Or that the anti-terror component really is the primary motive behind the coalition? This coalition – like others before it – is based on all sorts of things: on the possibility of reshuffling the deck; the anticipation of being able to grab larger slices of the cakes which can be baked in the fire of the anti-terror war; the pride of being the ones to congratulate their own people on ‘growing up’ after ‘their’ decision to enter the war; as well as on how the coalition came about in the first place – blackmail, cowardice and fear.

5.7 Why am I against this war?

Allow me to leave aside all the subtleties regarding the further ad bellum criteria. My rejection of this war does not result from the mere fact that arms have been taken up. Precise strikes destroying al-Qa’eda’s training camps may well have been justifiable.

My main objection is twofold. **Firstly**, the fact that instead of such a limited intervention against carefully selected targets, the whole of Afghanistan has been and is being consumed by war. And **secondly**, the way in which this war is being fought.

5.8 Overrunning Afghanistan with a broadly organized and initially unlimited war – what does this option mean? And what does the announcement (made in early October) that this option will shortly be carried out mean?

Let’s have a look at the following report given to the world by the aid organizations working in the border area between Afghanistan and Pakistan in late September/early October.¹

Currently about 3–5 million people – and if the situation deteriorates perhaps as many as 7–8 million people – face death by starvation in Afghanistan owing to the effects of war in the past few decades and the failed harvests of recent years. This danger is extremely exacerbated by the upcoming winter. In winter, numerous

¹ Source: WHO, UNICEF, OXFAM and Conscience International.

valleys will be cut off from our supply convoys. In order to save these people, it is essential that within 14 days at the latest international humanitarian aid intervention be launched. Afterwards, even if peace prevails, any assistance will be too late for the suffering population cut off in the valleys. If the border with Pakistan is closed, even the current, totally inadequate aid transports will no longer reach their destinations in time. Under the conditions of war, all aid organizations would have to cease their activities. We appeal to the conscience of the world.... etc. etc.

Hence there was a clear alternative. The decision taken is known. Now the conscience of the world knows what giving highest priority to the fight against terror means. As was to be expected, the mere *announcement* of war led to the border is being closed, rendering the necessary international rescue campaigns impossible.

We don't know how many deaths are to blame on the mere *announcement* of war. Nor can we say how many of the 3–4 million or in the meantime even 7–8 million people threatened by starvation can now be counted as indirect victims of the war since it began on 7 October. Does anybody really care? Of course, the estimates vary enormously. The indirect consequences of the announcement of war are estimated to be on average around 5,000; the indirect consequences of the war itself to be so far at least 10 or 20 times higher. The *Süddeutsche Zeitung* (22 November) mentioned a figure of some 400,000.

Let me ask a simple question: How many deaths would be acceptable given the importance of the anti-terror campaign? To put it another way: How many innocent corpses is the corpse of a terrorist worth?

5.9 The argument always produced in defence is that all these deaths are just collateral damage. No American or Briton did anything to hurt a single one of these poor people. Terribly sorry: collateral damage.

The aim of my paper was to achieve clarity. In other words, spoken by a terrorist, this “terribly sorry” wouldn't wash with us – not if the collateral damage was strongly reprehensible collateral damage. But the numbers of dead I cite here certainly are. It all boils down to special case CD.2.: The actor knew his violence could also affect innocent victims – but consciously took this into the bargain.

We cannot simultaneously regard reasons which in our eyes make terrorism reprehensible as an excuse for ourselves. Hence to sum up:

Both the announcement of war and the opening and continuation of the war in Afghanistan violated the *in bello* criterion (2), which forbids violence against uninvolved outsiders in the sense of strongly reprehensible collateral damage. We are thus dealing with a case in which merely the announcement and start of hostilities constitute a war crime.

5.10 Moreover, the way in which the war is being fought also violates this criterion. Fragmentation bombs and carpet bombing in areas where it is impossible to distinguish between soldiers and the civilian population are again clear (CD.2) – i.e. strongly reprehensible collateral damage, and hence are forbidden by criterion (2). This type of war crime is nothing new; we have come across it (of course not personally) in Vietnam and the Russian war in Chechnya, as well as in a host of other wars.

Fragmentation bombs, they say, are sometimes the best way to maximize success when hunting an enemy. This may be true. But what would we think of hunters who, in order to kill a herd of deer, carpeted their escape route with fragmentation bombs, knowing that plenty of other game would be blown up in the process? Why do we think this is unsuitable when hunting for deer – but not when hunting for terrorists in Afghanistan?

5.11 Now we would have to discuss things such as the *in bello* criterion (1), in particular whether this type of war is required given its aim, and moreover whether it is expedient. One problem is that we ought not to know anything about the exact aims of the war, they say, in order for them to be achieved.

So we'll have to make do without them. But *one* aim of the war is not secret. The supreme sense and purpose of this war is to maximize the security of our own (American, British, Germany, etc.) populations against further terror attacks. For this purpose, the elimination of T-networks may well be necessary and, assuming actions are restricted to their elimination, perhaps even expedient – but not if this elimination has to be bought at the expense of the death and increased misery of uninvolved outsiders at a ratio of 1:10 or even 1:20. In my view, the war in Afghanistan (or to be more accurate its first phase until the victory by the Northern Alliance) also violates criterion AD.1.

5.12 Wars which aren't allowed, i.e. which are not just wars, are – given the nature of war – a crime against humanity. The war in Afghanistan is and was not a just war.

5.13 Therefore, since one cannot be obliged to take part in crimes, we are under no obligation to participate in the campaign against terror by fighting in Afghanistan. As this war is a crime against humanity, it is instead everybody's moral duty not to take part in it.

So what's the next step? Have a think about it!