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978-0-521-68510-8 - Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict

Michael L. Gross

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Moral Dilemmas of Modern War

*Torture, Assassination, and Blackmail in an Age of
Asymmetric Conflict*

Asymmetric conflict is changing the way that we practice and think about war. Torture, rendition, assassination, blackmail, extortion, direct attacks on civilians, and chemical weapons are all finding their way to the battlefield despite long-standing prohibitions. This book offers a practical guide for policymakers, military officers, lawyers, students, journalists, and others who ask how to adapt the laws and conventions of war to the changing demands of asymmetric conflict. As war wages between state and nonstate parties, difficult questions arise about the status of guerrillas, the methods each side may use to disable the other, and the means necessary to identify and protect civilians caught in the crossfire. Answering these questions while providing each side a reasonable chance to press its claims by force of arms requires us to reevaluate the principle of noncombatant immunity, adjust the standards of proportionality, and redefine the limits of unnecessary suffering and superfluous injury. In doing so, many practices that conventional war prohibits are slowly evolving into new norms of asymmetric conflict.

Michael L. Gross is professor of political science and chair of the Department of International Relations at the University of Haifa, Israel. He is the author of *Ethics and Activism: The Theory and Practice of Political Morality* (Cambridge University Press, 1997) and *Bioethics and Armed Conflict: Moral Dilemmas of Medicine and War* (2006).

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To Stuart

Family and Friend

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MICHAEL L. GROSS

The University of Haifa



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Preface

I completed this book just as the Gaza War broke out in December 2008. After having experienced the Second Lebanon War as a civilian under fire, I had a sense of déjà vu during this latest war. As the bombing continued, it was soon obvious to nearly any observer that the Israeli Air Force might run out of military targets before Hamas threw in the towel. “Then what?” asked my 16-year-old daughter. “Do we start shelling civilians?”

Her question goes to the heart of this book, as contemporary warfare raises difficult dilemmas about fighting small armies whose soldiers wear no uniforms and who fight in and among civilian population centers. The question, Who do you bomb when there are no more military targets? increasingly occupies state armies as they fight asymmetric wars, but it is not very far from the one guerrillas have asked themselves for decades, namely, Who do you bomb when you cannot reach military targets?

I try to answer both questions by explaining how the idea of civilian vulnerability expands during asymmetric conflict to allow strikes that in traditional wars violate the principle of noncombatant immunity. In Gaza, for example, police officers were among the first targeted in the early days of the fighting. Since when are police officers armed combatants? What nation would want to expose itself to such havoc as comes from destroying the very mechanism that prevents chaos and anarchy? In conventional war, mutual fear of retaliation makes the parties wary about targeting political leaders and agents

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of law enforcement. In asymmetric war, this convention breaks down very early.

This book is about several different types of asymmetric conflict, including wars against occupation, the war on terror, and wars against rogue regimes. I see it as a practical guide, because it aims to answer the moral and legal questions posed by policymakers, military officers, political leaders, journalists, philosophers, lawyers, students, and citizens as they confront the different tactics, weapons, and practices placed on the table during asymmetric conflict: Are guerrillas honorable foes or criminals? Do they deserve respect or long jail sentences? Are there grounds to torture guerrillas for information or to assassinate them on the battlefield? Is there room to use nonlethal weapons to subdue militants and safeguard the lives of noncombatants? Who are noncombatants anyway? What is the status of all those civilians who shelter and aid guerrillas? Are they as vulnerable as fighters are or do they deserve some measure of immunity? As important, How do things look from the other side? Do guerrillas fighting occupation have any right to attack civilians, particularly those who aid and shelter members of the stronger army? If one side can expand the scope of civilian vulnerability, then why can't the other? Might there be some symmetry to asymmetric war after all?

These are some of the immediate questions of asymmetric war that will bother anyone having the time and inclination to read a daily newspaper. In this book I hope to provide a convincing and dispassionate framework for answering them. This is not always easy. When I wrote *Bioethics and Armed Conflict* several years ago, I believed that living and writing in the shadow of the Montalbano Castle just outside Florence would bring some measure of objective distance. But the idea of objective distance is sometimes naïve. Studying the ethics of war requires a little bit of being both near to and far from the front lines. Studying war also requires some help from friends and family. Here, I want to thank my colleagues who corresponded with me and discussed the many topics this book explores. I owe a particular debt of gratitude to those closer to home. I opened this preface with a piercing observation from my daughter Elisheva. My son Saul, the young soldier mentioned in Chapter 3, carefully read the entire

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manuscript, and his insights into the dilemmas of asymmetric war were as incisive as they were invaluable. Finally, my hat goes off to my oldest daughter, Daphna, who is pursuing a career that takes human rights seriously and trades academic theory for legal practice. These are the people we hope to guide and inspire with our teaching.

Haifa, Israel – January 2009

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Abbreviations

ADS	Active Denial System
API	Additional Protocol I
BWC	Biological Weapons Convention
CAR conflict	Conflict against colonial domination, alien occupation, and racist regimes
CAT	Convention Against Torture
CWC	Chemical Weapons Convention
DDE	doctrine of double effect
EU	European Union
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
IDF	Israel Defense Forces
IHL	international humanitarian law
IRA	Irish Republican Army
LOAC	law of armed conflict
MOOTW	military operations other than war
MRC	major regional conflict
NLW	nonlethal weapons
PLO	Palestine Liberation Organization
POW	prisoner of war
SIrUS	superfluous injury or unnecessary suffering
UN	United Nations