

JUST-WAR DOCTRINE IN A NUCLEAR CONTEXT

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A SUSTAINED DEBATE continues over the moral issues of nuclear deterrence, defense, and arms control. Much attention has been given to the draft pastoral letters on this subject prepared by the NCCB Ad Hoc Committee on War and Peace. A final version of this letter is to be issued by the American Catholic bishops this spring.

The extensive publicity surrounding the drafts of the pastoral letter and the concomitant debates over the nuclear freeze and related anti-nuclear initiatives have resulted in a widespread familiarity with the principal assumptions and judgments, as well as the methodology, of the American bishops' committee. Official indications are that the final version of the letter will be essentially the same as the second draft. However, the committee chairman, Cardinal Joseph Bernardin, has stated that further clarification of the committee's views on the communist threat and nuclear deterrence will be forthcoming. In any event, the pastoral letter to be issued should be viewed more as a starting point for continued study and discussion than as a definitive moral analysis of the dilemmas of nuclear deterrence, defense, and arms control in a world of conflict.¹

Accordingly, this analysis proceeds independently of the work of the bishops' committee. Cognizance is taken of the pastoral letter as an important source of Catholic teaching. However, as the committee itself has acknowledged, many of the normative judgments in the letter turn on factual assumptions and projections about which reasonable people disagree. Moreover, the committee's application of just-war doctrine to nuclear issues is subject to criticism. This article anticipates the promulgation of the spring pastoral by submitting an alternative view. This view is based on a different reading of the material facts and just-war doctrine pertinent to nuclear deterrence, defense, and arms control than that evidenced in the second draft pastoral letter and to be anticipated in the final version. This alternative view is offered as a contribution to the further study and debate that will surely follow the bishops' letter.

The analysis will proceed in the following order: (1) The meaning of just-war doctrine will be explored in the light of the injunction of Vatican

¹ See NCCB Ad Hoc Committee on War and Peace, "New Draft of Pastoral Letter, The Challenge of Peace: God's Promise and Our Response," *Origins* 12 (1982) 305-28 (hereinafter cited NCCB, *Draft Pastoral Letter*); Kenneth J. Doyle, "No Major Changes Foreseen in Peace Pastoral," *Catholic Standard*, Jan. 27, 1983, 4; Matt Kane, "European Criticisms of Peace Pastoral Cited," *Catholic Standard*, Feb. 3, 1983, 5.

II to take "an entirely new attitude" toward war. (2) The just-war categories will be briefly reviewed. (3) The just-war *jus ad bellum*, the war-decision law, will be applied to the present strategic situation of the United States. (4) The just-war *jus in bello*, the war-conduct law, will be applied to the contingency of fighting a nuclear war if deterrence fails. (5) Present U.S. nuclear deterrence strategies and proposed alternatives will be analyzed in just-war terms. A concluding section will comment on the implications of a just-war approach for arms-control initiatives.

SOURCES AND FUTURE OF JUST-WAR DOCTRINE

Just-war doctrine is derived from an eclectic mixture of theological, philosophical-ethical, and legal sources. At its core is a theological presumption against the taking of human life. The doctrine provides for defense of the public order when the just-war conditions are met, thereby overcoming this presumption.

The war-decision part of just-war doctrine, the *jus ad bellum*, was essentially philosophical-ethical in its origins. The war-conduct part of the doctrine, the *jus in bello*, was predominantly the product of belligerent practice as reflected in the *jus gentium*, the emerging positive law of war. Both components of just-war doctrine reflected substantially the social environment in which they were developed.²

Indeed, many have claimed that just-war doctrine died with the older, limited war practices of earlier periods. However, the issues raised by just-war doctrine continue to confront us. War is still a condition that may be thrust upon us regardless of our peaceful intentions, e.g., Pearl Harbor. We still face situations in which a duty to defend the victims of aggression, repression, and monstrous genocidal extermination may be inescapable. If it is difficult to reconcile the realities of nuclear war with just-war doctrine, there remain conventional and revolutionary/counter-insurgency wars by the dozens that have been fought in the nuclear age. Moreover, the whole international system operates nervously under the nuclear balance of terror. It is logical to say that war in the nuclear age is irrational. However, experience has taught us that, irrational or not, war is still a threat to be deterred and resisted as well, in some cases, as a needed instrument of justice.

Whatever may be said about the formulation of issues in just-war doctrine, the clear teaching of the Church continues to acknowledge the right of legitimate self-defense.³ There may be better ways of posing the

² See the excellent historical and analytical studies of James T. Johnson in *Ideology, Reason and Limitation of War* (Princeton, N.J.: Princeton University, 1975), and *Just War Tradition and the Restraint of War* (Princeton, N.J.: Princeton University, 1981).

³ On the right and duty of legitimate self-defense, see John Courtney Murray, S.J., *We Hold These Truths* (New York: Sheed & Ward, 1960) 256-61; Paul VI, "Address to the UN

moral issues of defense than those provided by just-war doctrine. Perhaps the continuing debate on modern deterrence and war will elicit them. Nevertheless, the fundamental categories of the permissibility of recourse to armed force and the rules of conduct in war are perennial.

These perennial categories, however, have been explored in our time as never before. Efforts to develop positive international law, both in the realm of war-decision and war-conduct law, have generally been incorporated into the just-war teaching of the Church and of many moralists. Papal thought since Pius XII, the teaching of Vatican II in *Gaudium et spes*, and the work of national conferences of bishops have all contributed greatly to the elaboration of just-war doctrine in the context of modern deterrence and war.

Moreover, the moral challenges of modern deterrence and war have evoked from the scholarly community a response shaped by traditional just-war doctrine. A small ecumenical community of scholars has explored the roots of just-war doctrine to understand the perennial elements in it.⁴ As important, they have, after serious study of the material issues of modern deterrence and war, brought fresh insights to the study and practical application of just-war doctrine. Modern just-war scholars have, in effect, sought to do the same thing for contemporary just-war doctrine that St. Thomas, Vitoria, Suarez, and Grotius did for the doctrine in their time, namely, ask the traditional just-war questions in the light of the realities and problems of the present.⁵

It is fair to say that the level of scholarship in the modern just-war literature is substantially superior to that reflected in official Church statements. The Church pronouncements are usually held out as pastoral documents that do not aspire to the rigor of scholarly exposition. More-

Assembly, October 4, 1965," *The Pope Speaks* 11 (1966) 54-55; Pastoral Constitution on the Church in the Modern World (*Gaudium et spes*) no. 79 (*The Documents of Vatican II*, ed. Walter M. Abbott, S.J. [New York: Guild, 1966] 292-93); John J. O'Connor, *In Defense of Life* (Boston: St. Paul Editions, 1981) 37-96; NCCB, *Draft Pastoral Letter* 311-12.

⁴ John J. Ford, S.J., "The Morality of Obliteration Bombing," *TS* 5 (1944) 261-309; idem, "The Hydrogen Bombing of Cities," in *Morality and Modern Warfare*, ed. William J. Nagle (Baltimore: Helicon, 1960) 98-103; Murray, *We Hold These Truths* 249-73; Paul Ramsey, *War and the Christian Conscience* (Durham, N.C.: Duke University, 1961); idem, *The Just War* (New York: Scribner's, 1968); Robert E. Osgood & Robert W. Tucker, *Force, Order and Justice* (Baltimore: Johns Hopkins University, 1967); Johnson, *Ideology and Just War Tradition* (n. 2 above); Michael Walzer, *Just and Unjust Wars* (New York: Basic, 1977); William V. O'Brien, *Nuclear War, Deterrence and Morality* (New York: Newman, 1967); idem, *War and/or Survival* (Garden City, N.Y.: Doubleday, 1969); idem, *The Conduct of Just and Limited War* (New York: Praeger, 1981)

⁵ See the insightful comments of James T. Johnson regarding Paul Ramsey's work in "Morality and Force in Statecraft: Paul Ramsey and the Just War Tradition," *Love and Society: Essays in the Ethics of Paul Ramsey*, ed. James T. Johnson & David H. Smith (Missoula, Mont.: American Academy of Religion & Scholars Press, 1974) 93-114.

over, conciliar and bishops'-conference statements are the work of committees endorsed by large plenary assemblages. It is difficult to match the concentrated efforts of a dedicated scholar, produced over time after long study and reflection, with the product of multiple drafters as revised to meet the requirements of achieving consensus in a large group.⁶

Nevertheless, as pronouncements such as the 1983 pastoral letter of the American Catholic bishops reach more deeply into the details of public policy, the gap between scholarly just-war analyses and official Church teaching must be narrowed if that teaching is to command respect. This, however, is not a goal that is universally accepted. Some would eschew any further inquiry into just-war doctrine and its modern applications. Taking their inspiration from *Gaudium et spes*, they call for "an evaluation of war with an entirely new attitude." How reconcile this approach with a continued reliance on just-war doctrine?⁷

There is, as yet, no official definition of the entirely new attitude toward war enjoined by Vatican II. There are, however, some guidelines that partly join and partly distinguish just-war doctrine and the future teaching of the Church on deterrence and war. The element of continuity is the reiteration of the right and duty of self-defense against aggression and repression of human rights. No new approach to security is valid unless it makes adequate provision for legitimate self-defense. Beyond that, the guidelines in recent official Catholic teaching have emphasized (1) the imperative need for serious progress in arms control,⁸ (2) development of international law and organization,⁹ and (3) international development and progress in the quest for international economic and social justice.¹⁰

Detailed discussion of the last two elements of this entirely new approach to war is beyond the scope of this paper. However, some general observations, based on our experience since the Second World War, are in order. First, this is a very unpromising time for international law and organization. The revolutionary impact of Third World countries and

⁶ See John Langan, S.J., "The American Catholic Hierarchy and Nuclear Weapons," *TS* (1982) 447-67.

⁷ *Gaudium et spes*, no. 80 (*Documents* 293)

⁸ John XXIII, *Pacem in terris: Peace on earth*, nos. 109-19 (Washington, D.C.: NCWC, 1963) 26-28; *Gaudium et spes*, nos. 81-92 (*Documents* 294-97); NCCB, *Draft Pastoral Letter* 313-14, 317-22; John Paul II, "Message to the Second Special Session of the U.N. General Assembly Devoted to Disarmament" (June 1982).

⁹ *Pacem in terris*, nos. 130-45 (NCWC 26-28); *Gaudium et spes*, no. 84 (*Documents* 298-99); NCCB, *Draft Pastoral Letter* 320-22.

¹⁰ *Pacem in terris*, nos. 86-108 (22-26); nos. 12-25 (28-29); *Gaudium et spes*, nos. 85-88 (299-303); Paul VI, *On the Development of Peoples: Populorum Progressio*, Encyclical Letter of March 25, 1967 (Washington, D.C.: USCC, 1967); NCCB, *Draft Pastoral Letter* 320-22.

the generally unhelpful role of the communist states have upset the whole structure of international law. No substitute international order seems to be in prospect within any time frame that would be relevant to alleviation of current issues of deterrence and war. Second, while issues of international economic and social justice are important in their own right, they appear to have little bearing on the central issues of deterrence and war between the superpowers and their allies, the critical element in the current nuclear dilemmas.

This leaves the question of progress in arms control. This very term, as distinguished from "disarmament," emphasizes the integral relationship between security and arms reduction. For this reason, no discussion of arms control is possible without adequate analysis of the requirements of deterrence and defense. Moreover, within Church teaching there is a broad consensus that serious efforts in the field of arms control are, in effect, the price that must be paid for continued moral toleration of the risks of modern deterrence and war. Accordingly, this central component of the "new" attitude toward war will be treated briefly at the end of this paper, which concentrates on the issues of deterrence and defense.

The combination of a traditional just-war approach to deterrence and defense with a related emphasis on arms control could be said to reflect a new attitude toward war. Such an attitude undoubtedly falls short of the "entirely" new attitude demanded by Vatican II. However, many inferences might be derived from this interpretation. One, to which I incline, might be that it is not feasible in the present international system to adopt an entirely new attitude toward deterrence and defense. A better use of just-war guidelines, together with prudent arms-control efforts, may be all that can be practically expected. To repeat, this does not mean that efforts on behalf of international law, organization, development, and economic-social justice should not be pressed. It means that we should not beg the questions of deterrence and war while awaiting the appearance of world law, order, and justice in some distant utopia.

The attitude toward the moral issues of deterrence and defense that I recommend consists of three components. First, it holds that a *serious* effort to apply and abide by just-war conditions and prescriptions is *novel*. Just-war doctrine is old, but honest efforts to adhere to it have been rare. Just-war doctrine is undoubtedly being taken more seriously today because of the shocking character of modern war. Although it may not be an *entirely* new attitude, effective implementation of just-war guidelines in deterrence and defense policies constitutes a *new* attitude.

Second, as indicated, an integral link between deterrence and defense policies and arms control is a new element. It is a striking new development, for example, to have lawyers in the Department of Defense rou-

tinely and under legal mandate review proposed new weapons systems to make sure that they comply with our obligations under arms-control agreements and the international law of war.¹¹

Third, my new approach to war emphasizes that just-war considerations must be raised at all points in the national-security process, particularly at the early junctures where decisions about basic strategies, weapons systems, force structures, and training are made. This means that just-war doctrine must not always be held outside of the defense processes as a source only of post-factum moral evaluation and criticism. Rather, just-war guidelines in applied practical formulations must be imparted to the decision-makers continually, so that strategies and capabilities consonant with just-war requirements are likely to be developed. All of this requires that the teaching of the Church be practical and persuasive and that our educational efforts far exceed anything that has been done thus far.¹²

JUST-WAR DOCTRINE AND NUCLEAR WAR

It is difficult to separate the discussion of the morality of nuclear deterrence from that of the morality of nuclear war. Since the purpose of nuclear deterrence is to prevent a nuclear war, and perhaps other kinds of war, from occurring, there is an obvious difference in its rationale and in the moral questions it raises from the traditional rationale and moral questions of war itself. However, deterrence turns on the credible threat to go to war if the forbidden aggressions eventuate. No deterrent is likely to suffice for long if it is not based on the capability and will to fight the war threatened as the response to aggression. Logically, then, the moral issues of nuclear war should be discussed before addressing the moral issues of deterrence. No matter how unlikely the contingency, the carrying out of the deterrent threat by recourse to war is the critical point in the analysis of deterrence. Accordingly, the just-war issues of nuclear war will be treated first here.

In just-war literature a variety of organizations of the just-war conditions and principles appear.¹³ My organization of the war-decision law, the *jus ad bellum*, is compressed within the three categories of St. Thomas: (1) competent authority; (2) just cause: (a) the nature of the

¹¹ See W. Hays Parks, "The Law of War Adviser," *JAG Journal* 31 (1980) 1-52.

¹² See O'Brien, *Conduct of Just and Limited War* 301-60.

¹³ For some typical expositions of just-war doctrine, see Joseph C. McKenna, S.J., "Ethics and War: A Catholic View," *American Political Science Review* 54 (1960) 647-58; James F. Childress, "Just-War Theories," *TS* 39 (1978) 427-45; J. Bryan Hehir, "The Just-War Ethic and Catholic Theology: Dynamics of Change and Continuity," in *War and Peace: The Search for New Answers*, ed. Thomas A. Shannon (Maryknoll, N.Y.: Orbis, 1980) 15-39; David Hollenbach, S.J., "Nuclear Weapons and Nuclear War: The Shape of the Catholic Debate," *TS* 43 (1982) 577-605; NCCB, *Draft Pastoral Letter* 311-12.

just cause and the character of the just belligerent, (b) proportionality of proposed means and probable costs in the light of probability of success, (c) exhaustion of peaceful alternatives; (3) right intention. The two major components of war-conduct law, the *jus in bello*, are: (1) principle of proportion in terms of legitimate military necessity; (2) principle of discrimination; non-combatant immunity from direct intentional attack. To these components of war-conduct law are added: (3) means *mala in se* (genocide); (4) the laws of war (e.g., prohibition of chemical and bacteriological warfare, positive international law regulating the conduct of hostilities, protecting prisoners of war and civilian victims of war, etc.)¹⁴

Curiously, there seems to be little authoritative discussion of the question of the weight and relations of the just-war categories in the process of moral decision. A strict view would require full compliance with all the conditions and prescriptions of all categories. I am inclined to think, in the light of a substantial consensus regarding World War II as a just war, that a more flexible approach may be warranted. It appears that a strong just cause, as in the war against Hitler, and very substantial compliance with the just-war conditions may justify characterization of a war as just even if there are some serious violations of the just-war standards for the conduct of the war, e.g., area bombing of cities in World War II by the Allied forces. However, the war-decision law conditions must certainly be met substantially.¹⁵ Further analysis of this relatively unexplored subject is needed. Of course, the whole enterprise of applying just-war standards to past wars and to the scenarios and plans for possible future conflicts is, after many centuries of just-war theorizing, in a very primitive stage.

NUCLEAR WAR AND THE JUS AD BELLUM

In this discussion I will assume a NATO context in which, strategic and theater deterrence having failed, the Soviet/Warsaw Pact forces have attacked Western Europe. Even a brief analysis reveals the difficulties faced in any effort to mount a just and limited NATO defense in which there is the option to use nuclear weapons and the possibility that they may be used by the aggressor.

Competent Authority

There are serious problems with respect to competent authority. NATO rests on a concept of collective defense: an attack on any member is considered an attack against all. There is no automatic cobelligerency

¹⁴ O'Brien, *Conduct of Just and Limited War* 13-70.

¹⁵ On the judgmental process in just-war analyses, see Childress, "Just-War Theories"; O'Brien, *Conduct* 35-36.

for all NATO members in the event of aggression against one or more members. However, all NATO members are expected to come to the assistance of those attacked. The deterrent and defensive effectiveness of the alliance turns in good measure on the assumption that all will come to the defense of victims of aggression.

This means that a president of the United States would have to decide very quickly what measures the U.S. would take as part of the joint defense were any NATO members attacked. Probably U.S. forces in Europe would already have been attacked in the initial phases of aggression. Although there are constitutional and statutory requirements to be considered, the decision of an American president confronting an attack against NATO would have to be taken primarily on his own authority and judgment.¹⁶ In the nature of things, if the attack were nuclear or of such a nature as to elicit an immediate or early nuclear response, the American president would have to be regarded as having competent authority to order the U.S. response. The issue is, of course, complicated by the international character of the NATO decision processes and the possibility of usurpation of authority which NATO safeguards are designed to prevent.¹⁷

An equally important problem increasingly claims the attention of political-military experts as well as moralists: control of nuclear weapons once they are committed in war. A good part of this problem is properly discussed below under the question of proportion, both in war-decision and war-conduct law. However, a war that escapes effective control may clearly be a war waged without competent authority.

The subject falls under the category designated C³, command control and communications, in defense terminology. Experts fear that C³ might be interrupted by the effects of nuclear war. If this were the case, subordinate commanders, e.g., the command of a nuclear submarine, might be left uninstructed and unrestrained, except by antecedent contingency plans and standing operating procedures.¹⁸

It is hard for those not expert in this matter and not having access to current plans and operations to judge the extent of this problem. A

¹⁶ Ibid. 17-18.

¹⁷ On the NATO nuclear decision process, see U.S. Congress, Congressional Budget Office, *Planning U.S. General Purpose Forces: The Theater Nuclear Forces* (Washington, D.C.: GPO, 1977); Robert Close, *Europe without Defense? Forty-eight Hours That Could Change the Face of the World* (New York: Pergamon, 1979).

¹⁸ Francis X. Winters, S.J., raises this point in his comments on my article, "The Peace Debate and American Catholics," *Washington Quarterly* 5 (1982) 219-22. Winters' comments appear in "Fair Hearing for the Bishops," *Washington Quarterly* 5 (1982) 132-37. I reply *ibid.* 137-42. Winters cites Desmond Ball, "Can Nuclear War Be Controlled?" *Adelphi Paper* no. 169 (London: Institute for Strategic Studies, 1981).

fortiori, it is difficult to evaluate prospects for solution of present C³ vulnerabilities. Two observations are in order. First, there is no justification for concluding that the C³ problems are hopelessly and permanently beyond remedy. Second, the greatest threat to C³ would surely come as the result of a major nuclear war of aggression against the United States. If U.S. responses were not as tightly controlled as we would prefer, responsibility for the consequences would seem to fall more on the aggressors than on the victims.¹⁹

I conclude that there are serious problems regarding competent authority in nuclear war but that these problems do not preclude the possibility of controlling the initiation and conduct of a nuclear response.

Just Cause

The just-cause category has been neglected in the Church's official pronouncements on war. Not since Pope Pius XII has there been explicit, serious recognition of the threats to peace and human rights that make necessary the deterrence and defense policies maintained in the free world at such cost, with such risks, and with such moral misgivings.²⁰ One can understand a propensity to believe that *no* just cause would justify nuclear war in any form. However, it is still incumbent upon moralists to acknowledge what would be lost by relinquishment of what may be an indispensable means of deterrence and defense in terms of unchecked aggression, intimidation, and subjugation of peoples by unscrupulous aggressors with nuclear means.

In any event, unless it is argued that any and all recourse to nuclear war is *malum in se*, just-war doctrine requires a calculation of proportionality between the just cause and the cost of its defense. How such a calculation can be attempted without an evaluation of the just cause, the referent of proportionality, is beyond my understanding. Yet the failure to offer a sufficient evaluation of the just cause as it emerges in the

¹⁹ See the assessment of the state of C³ and prospects for its improvement in The Organization of the Joint Chiefs of Staff, *United States Military Posture for FY 1983* (Washington, D.C.: GPO, 1982) 24, 81–83; Caspar W. Weinberger, Secretary of Defense, *Annual Report to the Congress, Fiscal Year 1984* (Washington, D.C.: GPO, 1983) 241–59.

²⁰ See particularly Pius XII's Christmas Message of Dec. 23, 1956, in the wake of the bloody repression of Hungary by the Soviet Union, in *Pattern for Peace*, ed. Harry W. Flannery (Westminster, Md.: Newman, 1962) 170–71. While John Paul II has cited as obstacles to peace and arms control "ideologies which . . . are opposed to the dignity of the human person . . . who see in struggle the motivating forces of history, which see in force the source of rights" ("Dialogue for Peace: A Challenge for Our Time," message for the World Day of Peace, released Dec. 20, 1982) and has alluded to communist repression in Poland, he has not addressed the threat to the free world comprehensively.

contemporary world of conflict is the single greatest deficiency in current official Church teaching on deterrence and war, including that of the American Catholic bishops through the second draft pastoral letter. Papal pronouncements and Vatican II's *Gaudium et spes* address their analysis to "nations" and "men," to anonymous actors in the international system. These actors are not recognized as having vastly different policies with respect to war, peace, and human dignity. The avowed enemies of Western civilization and of the Church itself are by implication addressed equally with the defenders of what is left of Christendom. Appeals for greater emphasis on international law and organization leading to the establishment of a world authority imply that the present world is ripe for such developments, when in fact it is engaged in a life-and-death protracted conflict to determine whether the future will be determined by the principles of Lenin, Stalin, and Mao or on those of Jefferson and Franklin Roosevelt.

The statements of the American bishops since 1968 have been less Olympian than those of Rome. However, they have consistently avoided the issue of the nature of the threat to which deterrence and defense policies respond. As these statements penetrate more and more deeply into the essence of U.S. strategic postures, as they become more "destabilizing" in their potential effects on the balance of terror, it surely ought to occur to Church authorities to say something about the threats, if any are perceived, to the United States and the free world.

A serious discussion of just cause in the contemporary situation would have to assess two questions in particular. First, what is the threat of Soviet and other communist aggression against the United States and the free world? Second, what are the probable implications of a defeat of free-world forces and the imposition of a communist totalitarian regime in the occupied territories?

What is required is a comprehensive evaluation by the American Catholic bishops, calling upon the best and most experienced witnesses and scholars from around the world, of the nature of the threat of communist aggression and the imposition of Gulag societies on the United States and its free-world allies. Lacking such an evaluation, the debate on the morality of nuclear deterrence and war becomes an exercise in judging means without reference to their ends. Apparently there is no consensus among the bishops and authoritative moralists to the effect that nuclear deterrence and war are so completely beyond the moral pale that they should be totally condemned out of hand and abandoned no matter what the practical consequences for human liberty and dignity. Only such a consensus would warrant continued avoidance of the issue of the just cause for which we make the sacrifices and take the risks demanded by a posture of nuclear deterrence and defense.

Proportion; Probability of Success

The calculation of proportionality of deterrence and defense means to the values defended must be made in the light of the probability of success. The need to judge the just cause in terms of values and threats to those values has been reiterated. What needs next to be addressed is the question of proposed means and the projected outcomes and effects of their employment.

Official Church pronouncements have moved slowly from generalized condemnations of "nuclear war" and "weapons of mass destruction" as an undifferentiated category to an occasional specification of "strategic" nuclear war as the proscribed means.²¹ There may be good reasons for classifying all nuclear weapons in one category for both practical and moral purposes. However, since in practice significant distinctions are made between strategic weapons systems that can strike reciprocally at the homelands of the superpowers, theater or intermediate nuclear weapons systems that are limited in range to a single theater, e.g., Europe, and tactical or battlefield nuclear weapons, one must distinguish different kinds and combinations of nuclear warfare. It is always possible to conclude, after having explored these distinctions, that they are unlikely to survive actual use of nuclear weapons and that escalation to the worst kind of strategic nuclear exchange is the inevitable result of the use of any nuclear weapons. But it is also possible to contend that some kind of limited nuclear war may be feasible and/or that it must be made feasible if a morally usable deterrent/defense posture is to be maintained.²²

For purposes of this analysis, the following categories of nuclear warfare may be distinguished: (1) strategic nuclear countervalue attacks on cities as such; (2) strategic nuclear countervalue attacks on political-military command, control, and communication centers, war-related industrial facilities, and military assets; (3) strategic nuclear counterforce attacks against military targets, e.g., missile sites, airfields, military facilities, staging areas, troop concentrations; (4) theater/intermediate nuclear counterforce attacks against military targets (as in 3); (5) tactical/battlefield nuclear counterforce attacks against military targets.²³

²¹ See *Pacem in terris*, nos. 111, 126-29 (29-30); *Gaudium et spes*, no. 80 (293); testimony of John Cardinal Krol, representing the USCC before the Senate Foreign Relations Committee, Sept. 6, 1979, in *The Nuclear Threat: Reading the Signs of the Times*, ed. Patricia L. Rengel (Washington, D.C.: Office of Justice and Peace/USCC, Oct. 1979) 9. The NCCB *Draft Pastoral Letter*, in contrast, distinguishes various nuclear strategies without accepting any.

²² On limited-nuclear-war options, see O'Brien, *Conduct* 134-41. These options are rejected as too questionable and dangerous in NCCB, *Draft Pastoral Letter* 312-18.

²³ O'Brien, *Conduct* 127-29.

It is widely believed that the present deterrent threat to inflict "unacceptable damage" by a strategic nuclear countervalue attack on enemy cities is the essence of the U.S. deterrence posture under MAD (mutual assured destruction). To the extent that this belief is warranted, the MAD system requires the threatening of acts of war which, if ever carried out, would surely be disproportionate, indiscriminate, and suicidal by any calculation. Certainly, the relation of a MAD countervalue counter-city strategic nuclear exchange to the values to be protected from aggression would fail the test of war-decision proportionality. One need hardly add that there would be no significant "probability of success" in such a war.²⁴

However, the U.S. government has developed a different kind of countervalue strategic nuclear deterrent posture. Trends in deterrence doctrine and policies to which Secretaries of Defense Schlesinger and Brown contributed have produced a new countervalue strategy that is not targeted on cities as such, although it may well endanger many cities. Since somehow this new strategy has not acquired an official designation, I will refer to it henceforth as the Reagan countervalue strategy.²⁵ This strategy is based on the conviction that, while "value" for the West means population centers, people, "value" for the Soviet leadership has other meanings. On this assumption, the trend in U.S. strategic nuclear countervalue deterrence policy is to "hold at risk those things that the Soviet leadership values most highly—military and political control, nuclear and conventional military assets, and the industrial capability to sustain war." Targeting of "civilian populations as such" is not U.S. strategic policy, "for moral, political and military reasons."²⁶

The Reagan countervalue deterrent will be considered further under war-conduct just-war doctrine and in terms of the morality of deterrence. It is important to introduce it here to make the point that even the

²⁴ See Donald M. Snow, *Nuclear Strategy in a Dynamic World: American Policy in the 1980s* (University, Ala.: University of Alabama, 1981) 65–66.

²⁵ See Robert A. Gessert & J. Bryan Hehir, *The New Nuclear Debate* (New York: Council on Religion and International Affairs, 1976); Snow, *Nuclear Strategy* 69–85; Secretary of Defense Harold Brown, *Remarks . . . Prepared for Delivery . . . at the Convocation Ceremonies for the 97th Naval War College Class, August 20, 1980* (DOD Release no. 344–80); Robert A. Gessert, "P.D. 59: The Better Way," and J. Bryan Hehir, "P.D. 59: New Issue in an Old Argument," in *Worldview* 23 (1980) 7–9, 10–12; Colin Gray, "Presidential Directive 59: Flawed but Useful," *Parameters* 11 (1981) 28–57; Thomas Powers, "Choosing a Strategy for World War III," *Atlantic* 250 (1982) 82–100.

²⁶ Quotations are from an unclassified but unpublished document currently in use among U.S. government officials for their guidance and for briefing the public. They reflect formulations made in national-security adviser William Clark's letter to the NCCB committee drafting the pastoral letter, July 30, 1982. See *Draft Pastoral Letter*, n. 40 (327). See Richard Halloran, "Pentagon Draws up First Strategy for Fighting a Long Nuclear War," *New York Times* (May 30, 1982) 1, 12.

extreme case of fighting a strategic nuclear war in response to a nuclear attack on the United States and its allies need not necessarily involve the kind of massive mutual destruction of cities that most of us have assumed to be our fate if MAD ever failed. On its face, the new Reagan countervalue strategy threatens destruction and responses that may in the end come close to the consequences to be feared from execution of the strategic countervalue countercity threat. Still, given the continuing need for deterrence, the possibility of a countervalue strategy that is not totally countercity in character deserves further empirical and normative analysis.

Another form of strategic nuclear war that would be more consonant with just-war requirements is strategic nuclear counterforce war, aimed at military targets, e.g., missile sites, airfields, military facilities, staging areas, troop concentrations. Strategic counterforce nuclear war could conceivably comply with just-war principles of proportion and discrimination (to be discussed below), and it could hold out some possibility of survival and perpetuation of the values embraced in the just cause.

Moreover, counterforce strategies are usually associated with such concepts as flexible response, controlled response, and selected options, connoting a very limited rather than general nuclear exchange. Flexible response also refers to the spectrum of means ranging from conventional to theater/tactical nuclear to strategic nuclear envisaged in deterrence/defense postures of NATO and other collective defense systems.²⁷

The issue with any kind of counterforce nuclear doctrine is feasibility. The problems include: (1) concern over C³ in a nuclear-war environment; (2) uncertainty over the accuracy and penetrability of counterforce weapons; (3) doubts about the extent of collateral damage, including radioactive fallout, related to counterforce strikes; (4) fear that a credible counterforce strategy and capability might be interpreted as a first-strike threat and lead an enemy to develop and use its own first-strike capability, i.e., better counterforce policies may be destabilizing.²⁸

The important point to be made about strategic nuclear counterforce deterrence is that, as a war-fighting posture for the contingencies where deterrence has failed, it could offer the greatest hope for conformity to just-war conditions and principles. As in the case of the Reagan countervalue deterrent strategy, nuclear war is not desired but there is a readiness to fight a limited nuclear war if necessary. The United States emphasizes effective deterrence so that nuclear war will not occur. Any strategic nuclear deterrent position, when viewed as a war-fighting strategy, is a last-ditch approach to the dilemmas raised by a failure of deterrence

²⁷ Weinberger, *Annual Report FY 1984* 31-39.

²⁸ Snow, *Nuclear Strategy* 32-33, 205-16, 237-40.

leading to a choice between trying to fight a just and limited war and surrendering. The present deterrent leaves little prospect of observing just-war limitations, although it is an improvement over basic MAD countervalue countercity deterrence. Since deterrence continues to be necessary, possibly effective alternatives to the present strategy must be considered.²⁹

The two countervalue strategies here discussed, as well as the strategic counterforce strategy which overlaps the emerging new U.S. countervalue approach, are directed to the mission of retaliating after a Soviet nuclear attack on the United States or, possibly, an ally. These strategies would not be put into effect in response to a conventional Warsaw Pact attack on NATO or even to a mixed limited nuclear-conventional aggression. However, in terms of preferred U.S. options, nuclear strategies in defense of NATO take the form of theater and tactical limited nuclear war.

Discussion of theater and tactical limited nuclear war is difficult. Much of the critical factual material about NATO's plans and capabilities is classified. That is true, of course, with respect to strategic contingencies as well. However, there are more variables in the mix of nuclear and conventional options in theater defense, and the probability of war at this level is more clear and present than at the strategic level. So there are important nuances in theater strategies that are hard to grasp. Moreover, NATO has always relied on "creative ambiguity" as to the definition of the nuclear threshold in its defenses as an important asset.³⁰ Creative ambiguity regarding introduction of nuclear weapons serves two purposes. First, it adds considerably to the deterrent posture of NATO's conventional forces. Second, it obliges the Warsaw Pact forces to base their strategies and tactical plans on the assumption that they might be resisted with nuclear weapons, thereby necessitating very different troop dispositions and maneuvers than would be the case in a purely conventional war.

Since I believe that creative ambiguity about recourse to nuclear weapons may have outlived its usefulness and that both we and our enemies should be clear about the prospects for nuclear war, I cite the continuation of this nuclear deterrent as a fact to be addressed and, if possible, changed. In any event, creative ambiguity makes it very difficult for those outside the NATO decision process to come to grips with theater and tactical nuclear-war issues. This has been demonstrated

²⁹ Weinberger, *Annual Report FY 1984* 51-58.

³⁰ See Laurence Martin, "Limited Nuclear War," in Michael Howard, ed., *Restraints on War: Studies in the Limitation of Armed Conflict* (Oxford: Oxford University, 1979) 103-21.

recently in the latest phase of the "no-first-use-of-nuclear-weapons" debate.³¹

Another related reason for the difficulty in discussing theater and tactical nuclear war is the sensitivity of the subject to the governments and peoples of the threatened countries, particularly the Federal Republic of Germany. Even a conventional defense of NATO would probably produce destruction exceeding that of hostilities in populated areas in World War II. To combine this conventional destruction with any substantial amount of nuclear damage, including radiation fallout, would obviously go far to destroy the society defended. Accordingly, Germans and other Western Europeans tend to favor an emphasis on deterrence as opposed to war-fighting defense.

Deterrence necessarily means emphasis on nuclear response to any aggression, even conventional. Yet initiation of even tactical battlefield nuclear war risks the dangers of an escalatory spiral to general strategic nuclear war. Sensitivity to contemplation of actual defense of Western Europe is surely reflected in the ebbs and flows of European opinion about modernization of NATO's nuclear forces through the introduction of Pershing II and cruise missiles as agreed in December 1979. Ironically, the debate has taken place in the context of an existing and growing Soviet theater nuclear threat to Western Europe, particularly that posed by the Soviet SS-20s already in place and being reinforced.

There are other, more general, problems of evaluating theater and/or tactical nuclear war in practical and moral terms. Among them are the following: (1) difficulty of distinguishing a "theater" attack on military targets in the Soviet Union from a "strategic" attack that might bring a Soviet escalation to strategic nuclear war directed against the United States; (2) the uncertainty, in any event, as to Soviet willingness to observe nuclear thresholds and tacit rules of conflict in a limited nuclear war, particularly if NATO strategies were successful; (3) doubt as to the capabilities of the NATO and Warsaw Pact high commands to control a war involving thousands of nuclear strikes.³²

The upshot is that the calculus of *jus ad bellum* proportionality of probable good and evil, in the light of the probability of success, in a

³¹ See McGeorge Bundy, George F. Kennan, Robert McNamara, & Gerard Smith, "Nuclear Weapons and the Atlantic Alliance," *Foreign Affairs* 60 (1982) 756-68; Karl Kaiser, Georg Leber, Alois Mertes, & Franz-Joseph Schulze, "Nuclear Weapons and the Preservation of Peace," *ibid.* 1157-70; Secretary of State Alexander Haig, Jr., "Peace and Deterrence," Address at the Center for Strategic and International Studies, Georgetown University, Washington, D.C., April 6, 1982 (Washington, D.C.: U.S. Department of State, Current Policy No. 383, 1982).

³² O'Brien, *Conduct* 128-29; 229-30.

theater/tactical nuclear defense of NATO produces conclusions that discourage recourse to such a strategy. Of course, this is also true of a conventional defense of NATO. The difference is that probable destruction within NATO would be greater in a nuclear war, plus the critical fact that escalation might bring devastation to the Soviet Union, the United States, and, to varying degrees, other parts of the world. The calculus of proportionality is complex because it includes neutrals and the world itself in addition to the belligerents.³³

I conclude that a war fought with theater/tactical nuclear weapons in defense of NATO might be managed within just-war limitations but that the odds against this being the case are considerable. Maximum improvement of conventional defense of NATO is required. This could necessitate, *inter alia*, revival of the draft in the United States and greater rather than less expenditure on defense.³⁴

In the preceding brief survey of the principal nuclear war-fighting strategies, I have only indirectly alluded to the general probability of success in the sense of defeating the communist aggressors. I have indicated that, regardless of the course of such wars, prospective damage to the societies defended will tend to be disproportionate by any calculation short of one that literally holds out death and destruction as preferable to defeat and subjugation. The analysis can only be more sobering if one contemplates the probabilities of success in the light of the present strategic and theater balances between the U.S./NATO and Soviet Union/Warsaw Pact forces.³⁵

The free world is certainly not in a hopeless military position, but it has placed itself in a vulnerable, disadvantaged posture. Since the prospects for meaningful success in the sense of the just-war war-decision requirement of proportionality are so slim and problematic, it should be evident that more and better defensive means are required, not less, as proponents of freezes and defense rollbacks tend to hold. However, even this brief survey should suffice to make the point that improved defense is not simply a matter of quantitative increases in defense expenditures and military assets. Improved defense consonant with just-war requirements means qualitatively improved means that are either exclusively or primarily directed to counterforce missions and are subject to the greatest possible degree of control.

³³ Ibid. 134-37.

³⁴ See Haig, "Peace and Deterrence."

³⁵ See Weinberger, *Annual Report FY 1984* 19-29; JCS, *Military Posture FY 1983* 1-50; John M. Collins, *American and Soviet Military Trends since the Cuban Missile Crisis* (Washington, D.C.: Center for Strategic and International Studies, Georgetown Univ., 1978).

Wherever possible, conventional strategies and capabilities should take precedence over reliance on nuclear weapons. This conclusion is at odds with Western European approaches but, increasingly, their propensity to rely on nuclear deterrence has become acceptable only on the assumption that there is no clear and present threat. This approaches escapism. Some of the issues raised generally in this overview of problems of proportionality in war-decision law will be considered again in the discussion of war-conduct requirements of just-war doctrine.

Exhaustion of Peaceful Alternatives

The last of the just-war conditions that I include within the larger category of just cause is that of exhaustion of peaceful alternatives to war in pursuit of the just cause. This is difficult to interpret in our present circumstances. Our enemies are dedicated to our defeat and subjugation as a matter of profound ideological necessity and alleged historical inevitability. In the deeper sense, there is nothing to negotiate except for the tactical cease-fires and truces of competitive coexistence that punctuate our protracted conflict. Nevertheless, we are obliged to avoid war as best we can so long as we do not fall into self-defeating appeasement leading to surrender.

In these circumstances the just belligerent should be able to look back on a record of willingness to reach reasonable accommodations with the avowed enemy as regards general relations and arms control in particular. Such a record should be the condition precedent for permissible recourse to armed force. The record of the United States and its allies in this regard is good. However, it must be observed that it is highly unlikely that the United States or its allies would initiate a war with the Soviet Union and/or its allies. Hence, the issue of exhaustion of peaceful remedies would arise for the victim of communist attack only if that state had itself previously engaged in blatantly aggressive and immoral activities inviting military countermeasures, a most improbable contingency.

Once in a war, the just-war requirement to find peaceful alternatives to continuation of the conflict persists. The just belligerent must be alert to possibilities for abating or terminating the conflict, as well as to strengthening any rules of conflict that might mitigate the destructiveness of the hostilities. Such a moral requirement parallels the political-military guidelines of limited war that the belligerent must always hold the military instrument subordinate to the political purposes of the war and the political leadership.³⁶

³⁶ O'Brien, *Conduct* 31-33.

Right Intention

The last of the war-decision just-war conditions is right intention. Right intention requires that the just belligerent confine military operations to pursuit of the just cause, that charity rather than hatred and desire for vengeance motivate his policies toward the enemies, and that a just and lasting peace be the ultimate aim of the war. These conditions are not easily met in modern ideological wars characterized by enormous destruction and suffering. Nevertheless, they are enjoined by just-war doctrine, not only because of their limiting and mitigating effects on the conduct of war but out of concern for the spiritual state of the just belligerent. That observance of the condition of right intention is difficult in modern war is demonstrated by American attitudes toward the "Nazis" and "Japs" in World War II. That such attitudes can eventually be overcome and right intention prevail, leading to a just and lasting peace, is illustrated by the enlightened postwar policies that turned hated enemies into our German and Japanese allies.³⁷

The experience of a nuclear war would certainly produce emotions at odds with right intention. The goal of a just and lasting peace might well be hard to reconcile with the devastation and contamination of such a war. On the other hand, such a frightful experience might actually encourage greater charity toward other survivors of the ordeal. There appears to be no intrinsic reason for condemning all forms of nuclear war as necessarily precluding right intention, provided those who possess nuclear weapons view them only as a means of deterrent protection and last-ditch defense rather than as a readily available instrument of power politics.

NUCLEAR WAR AND THE *JUS IN BELLO*

In just-war doctrine the war-conduct law, the *jus in bello*, requires observance of the principles of proportion and discrimination. It also would prohibit any means found to be *mala in se*.

Proportion

The war-conduct concept of proportion is one of legitimate military necessity. The subordination of military necessity (*raison de guerre*) to just cause (*raison d'état*) is a precept of just-war doctrine, international law, and the political-military guidelines of limited war. This is an important issue in nuclear war, since any use of nuclear weapons, no matter how "tactical" or "limited," may have implications for the entire war effort.³⁸

³⁷ Ibid. 33-35, 76-78.

³⁸ Ibid. 38-42, 223-24.

Subordination of military necessity to *raison d'état* in the form of just cause is the crucial issue with respect to the military proportionality of nuclear weapons. It is obviously possible to envisage discrete use of tactical, theater, or even strategic counterforce nuclear weapons in circumstances that would satisfy the requirement of proportionality: e.g., tactical nuclear weapons used against advancing tank formations in open country; theater nuclear forces used against a heavy concentration of attacking enemy forces or an enemy airfield; strategic nuclear weapons used against a missile base in the wilderness of Siberia.

The problem is to assess the number of such individual proportionate uses, their cumulative effects and their propensity to engender escalation to levels that would clearly be disproportionate to the military advantages pursued. Although the discussion of strategic nuclear means indicated that some forms of strategic nuclear countervalue war or of theater/tactical nuclear war in heavily populated areas might be *prima facie* disproportionate, one has to be careful about generalizations when assessing proportionality. The high costs of means do not automatically render them disproportionate. Much depends on the weight given to the ends. We do not consider the costs of defeating Hitler to have been disproportionate, even though they were appalling. One practical and moral option in certain cases may be to hold that an end is so precious that its defenders are justified in going down fighting for it. This option, of course, does not warrant a last-stand defense of the just cause that imperils innocent third parties and the world itself, a serious consideration in nuclear war.³⁹

I conclude that it is certainly possible to envisage use of nuclear weapons proportionate to legitimate military necessities but that the proportionality of any intended use of nuclear means must be judged in the full context of contemplated use and of the probable outcomes and effects of each case.

Discrimination

The principle of discrimination has dominated most moral analyses of modern war. The standard of proportionality is hard to generalize about and may be subject to manipulation by extending the ends to justify the means.⁴⁰ Discrimination, on the other hand, the principle of noncombatant immunity from direct intentional attack, has the appearance of a firm rule of conduct, perhaps the heart of the limiting effort of just-war *jus in bello*.

³⁹ See the analysis of proportion in Johnson, *Just War Tradition* 196–224.

⁴⁰ See Tucker in Osgood & Tucker, *Force, Order and Justice* 233–38, 266–84, 289–90, 300–301, 319.

Predictably, it has proven very difficult to reconcile the principle of discrimination with modern war at any level of intensity. Indeed, by the end of World War II international-law publicists were confessing that the principle of noncombatant immunity in positive international law had been so universally violated that it was not a reliable source of war-conduct law. Since, historically, the principle of discrimination originated in belligerent practice, in the *jus gentium* or law of nations rather than in theological or philosophical formulations of just-war doctrine, the decline and fall of the principle of discrimination in international-law practice, while not settling the moral issues in question, signaled the difficulties of upholding it in the century of total war.⁴¹

It must be acknowledged that the official teaching of the Church on war since 1945 has not contributed to the resuscitation of the principle of discrimination. A major flaw of the papal and Vatican II analyses has been their failure to use just-war *jus in bello* concepts explicitly and clearly. Nuclear war, modern war, and weapons of mass destruction have been considered and condemned without specification as to the rationales for the judgments in just-war *jus in bello* terms.

It is understandable that the enormity of the destructiveness of modern war would evoke general statements of moral condemnation. But, given the futility of hopes for world law and order, much less justice, and the continued need for deterrence and defense, it has been necessary for responsible statesmen and citizens to seek the means still permitted by just-war doctrine to protect their countries. This quest for moral policies of deterrence and defense has been hampered by the conspicuous failure of official Church teaching to explain in just-war terms what was clearly prohibited, what might be permissible, and, above all, why. The case of the debate over the meaning of discrimination demonstrates this failure.

Two approaches to the principle of discrimination appear prominently in the modern literature on morality and war. The first approach is that of the literal, unqualified application of the prohibition against direct intentional attacks on noncombatants and civilian targets. While this approach may be practically feasible in direct combat between belligerents, it could not be applied even to the indirect combat of a siege of a target including noncombatants without substantially precluding the conduct of war. The literal application of noncombatant immunity is incompatible with modern war, wherein much of the hostilities are carried out by weapons with great ranges and destructive powers. If discrimination means no direct intentional killing of noncombatants in the sense that no such killing would be foreseeable in using the modern means of

⁴¹ See, e.g., Myers S. McDougal & Florentino P. Feliciano, *Law and Minimum World Public Order* (New Haven: Yale University, 1961) 79-80 and authorities cited therein.

war, no warfare waged in an environment including noncombatants and civilian targets would be morally permissible.

This pacifist position is rejected, tacitly but clearly, in the official teaching of the Church when the right of legitimate self-defense is reaffirmed. It would be meaningless to reaffirm this right and bar the means necessary to make it efficacious. At this point the official Church teaching leaves it to moralists and perplexed laymen to determine how to fight a war of legitimate self-defense without violating the principle of discrimination. The agonies of this endeavor are manifest in the noble efforts of Paul Ramsey's work.⁴² The dilemmas are not made easier by the fact, previously mentioned, that the official Church teaching generally eschews the use of the term "discrimination" or "noncombatant immunity." A tortured debate among modern just-war scholars finds no parallel in the official Church teaching on war.⁴³

A second approach to discrimination qualifies the principle by recourse to the principle of double effect. A complex of issues shrouds this second approach to the interpretation of the principle of discrimination. What is "intentional"? What is "direct"? What is "accidental"? Who is a "noncombatant" or "innocent"?⁴⁴ Whatever the better answers may be to these questions within the ranks of theologians and philosophers, the ordinary statesman, military commander, or citizen finds it difficult to understand and accept interpretations of discrimination that hold that a belligerent somehow does not "intend" to kill the noncombatants known to be living in a mixed military-civilian target area. It is hard to view the deaths of civilians killed under collateral damage as "accidental." Michael Walzer has provided humanist reinforcements for this ancient scholastic enterprise, but the ultimate fate of the double-effect approach to discrimination remains in doubt.⁴⁵

I adopt a third approach. Discrimination is not an ironclad principle. It is a relative prescription that enjoins us to concentrate our attacks on military objectives and to minimize our destruction of noncombatants and civilian targets, i.e., in contemporary strategic usage, collateral damage. The standard of judging the sufficiency of the effort to minimize civilian damage is one of proportionality. Destruction of a critical military target, e.g., a nuclear-missile site, justifies a proportionate destruction of

⁴² See Ramsey, *Just War* passim.

⁴³ See O'Brien, *Conduct* 44-45, with examples of official Church pronouncements cited in 378, n. 14.

⁴⁴ See R. A. McCormick, "War, Morality of," *New Catholic Encyclopedia* 14 (1967) 802-7; J. Bryan Hehir, "The Just-War Ethic" 15-39; Walzer, *Just and Unjust Wars* 151-59; O'Brien, *Conduct* 46-47.

⁴⁵ Walzer, *Just and Unjust Wars* 151-59; see Tucker's skeptical comments in Osgood & Tucker, *Force, Order and Justice* 311-13.

noncombatant and civilian targets within or adjacent to the military target. Destruction of a military target of ordinary importance at the expense of disproportionate damage to a primarily civilian area is not justified, e.g., the World War II bombing of Dresden. As in all cases of proportionality, the judgment of permissibility depends on the context.⁴⁶

Literal application of the principle of discrimination is incompatible with nuclear war, as it is with virtually any kind of modern war. Discrimination modified by some form of the principle of double effect may manage to salvage some forms of counterforce nuclear war and of modern conventional war. Neither discrimination qualified by double-effect reasoning nor any concept of discrimination with proportionate collateral damage condones attacks on cities as such. My approach to discrimination would be more likely to accept major collateral damage in essentially counterforce attacks or in countervalue attacks against enemy command, control, and communications centers and industrial complexes (current U.S. policy) than would the approaches that employ double-effect reasoning.

The conclusion is inescapable that even the approaches to discrimination that accept some collateral damage in essentially counterforce nuclear attacks draw a line at the destruction of cities as such and condemn such acts as indiscriminate.

Means mala in se

Many of the condemnations of nuclear war as a general category that are found in modern official Church pronouncements seem to consider it to be *malum in se*.⁴⁷ Since nuclear deterrence is deplored but not clearly condemned, however, it is not so certain that nuclear war has been declared *malum in se*. Certainly, official Church teaching is not yet sufficiently elaborated to make a conclusion that nuclear war is *malum in se* persuasive, much less mandatory.⁴⁸

Given the variety of possible forms of nuclear war and the great spectrum of circumstances in which it might occur, a finding that it is *malum in se* would be valid only if it could be shown that nuclear war inevitably escapes control. It is impossible to prove today whether or not nuclear war must inevitably escape control. One is then reduced to arguing whether the odds for or against its escaping control are such as to raise a moral and practical presumption against its use. I conclude

⁴⁶ O'Brien, *Conduct* 44-46.

⁴⁷ *Pacem in terris*, nos. 109-19 (26-28), 126-29 (29-30); *Gaudium et spes*, nos. 79-82 (291-97); Cardinal Krol's 1979 testimony in *New Nuclear Threat* 9-10.

⁴⁸ The second draft pastoral letter does not totally condemn nuclear weapons as *mala in se*, although it finds no use of them that it can approve as a war-fighting instrument.

that there is, indeed, a strong moral presumption against the use of nuclear weapons but that nuclear war is not *malum in se*. The only war-related activity singled out by international law and by the official teaching of the Church as *malum in se* is genocide. Genocide, a much abused and exploited term, is actually not a means of war but of gratuitous extermination and cruelty unrelated to any legitimate military necessity.⁴⁹

JUST-WAR DOCTRINE AND DETERRENCE

The just-war analysis of nuclear war given above indicated that some possible forms of nuclear war could be employed without exceeding just-war limits. The problem of nuclear deterrence is that by its nature it emphasizes the effectiveness of the deterrent threat rather than the practical and moral implications of the execution of the threat should deterrence fail. In this analysis I will discuss: (1) the relation of war-fighting strategies and capabilities to deterrence; (2) countervalue and counterforce deterrents; (3) the issue of control of nuclear war.

Deterrence and War-fighting Strategies

Just-war doctrine is mainly about fighting war, not deterring it. If, as I contend, only that which could be done morally should be threatened for deterrence, just-war limits should shape a deterrent posture. However, the overwhelming thrust in modern deterrence theory and practice is to pose a threat so horrendous, so "unthinkable," so disproportionate that it will be effective. As long as such threats are effective, we live under the balance of terror without nuclear war. However, if the deterrent ever fails, we confront the choices of carrying out our disproportionate, unthinkable threat, of substituting some lesser action that might conform to just-war requirements, or of surrender in one form or another.⁵⁰

In just-war terms, the essence of deterrence has tended to be the threat to engage in acts of war that, by an interpretation, would be disproportionate and indiscriminate. Such threats to do immoral damage have been justified by the argument that no nuclear war is far better than a limited nuclear war and that threats of disproportionate, indiscriminate nuclear war prevent the lesser war as well as an all-out nuclear war. Neither official Church teaching nor the efforts of just-war scholars have thus far provided us with satisfactory tools of moral analysis for nuclear deterrence, much less realistic and helpful guidance for policy.

⁴⁹ See the Convention on Genocide, Res. No. 260 (III) A, UN GAOR 3d sess. (I), Resolutions, 174; UN Doc. No. A/810; *U.S. Department of State Bulletin* no. 3416 (1946); *Gaudium et spes*, no. 79 (292); William V. O'Brien, "Genocide," *New Catholic Encyclopedia* 6 (1967) 336-37.

⁵⁰ See Ramsey, *Just War* 285-313.

The official teaching of the Church, to be made more explicit than formerly in the American bishops' 1983 pastoral letter, is that the mutual assured destruction (MAD) balance-of-terror deterrence system is immoral.⁵¹ However, cognizant of the difficulties and risks involved in altering the nuclear balance of terror, the Church teaching tolerates this moral evil pending sincere and effective efforts to escape the treacherous trap of the arms race and nuclear deterrence.⁵² Clearly, the American Catholic bishops consider that what is now being threatened under MAD would be immoral if carried out. At present, the Church is enjoining us to make progress in arms control and the settlement of international conflicts, as it were, "with all deliberate speed."

I will comment briefly on the problems of achieving this progress in arms control below. The issue here is deterrence, the basis for all contemporary arms control. If the present MAD deterrent is morally unacceptable, does this mean that no other form of nuclear deterrence would be permissible? This is an issue that seems to have placed the bishops and moralists in some disarray. Every instinct is to look to a complete escape from the nuclear treacherous trap through dramatic breakthroughs in arms control and peaceful settlement of conflicts. But surely it is unrealistic to expect such early and drastic progress in these endeavors as to provide early relief from the need to maintain a nuclear deterrent. Deterrence will continue to be a necessity for states such as the United States, and it will be nuclear as long as there are nuclear powers—and the trend is toward more nuclear powers.

Countervalue and Counterforce Deterrents

In these circumstances two positions on deterrence have emerged: (1) Maintain the present MAD deterrent posture and its deterrent benefits while resolving never to carry out the deterrent threat and while making every effort to reduce U.S. contributions to the arms race and the nuclear balance of terror. (2) Replace the present MAD deterrent posture with a flexible-response counterforce strategy that might be morally permissible if translated into a war-fighting strategy.

Paul Ramsey at one point explored the possibility of a kind of moral nuclear bluff.⁵³ This would involve possession and deployment of nuclear weapons systems as though they were intended for use. From this

⁵¹ NCCB, *Draft Pastoral Letter* 315–18. However, while the countercity countervalue destruction threatened by MAD is condemned, the deterrence system that depends on this threat is condoned, leaving the issue uncertain.

⁵² *Ibid.*, reflecting *Gaudium et spes*, nos. 80–82 (293–97); Krol, *Nuclear Threat* 9–10.

⁵³ See Ramsey, *Just War* 249–58. Hehir appears to adopt Ramsey's bluff approach in Gessert & Hehir, *New Nuclear Debate* 44, 47–53, 66–69.

possession and deployment a deterrent effect would be derived immanently. However, the moral decision-maker in a nuclear power would be constrained by just-war principles, particularly discrimination, from ever carrying out this deterrent threat. The theory held out possibilities ranging from actually making deterrent threats without intention of carrying them out to simply possessing the capability to carry out immanent threats. Ramsey argued that the enemy would not risk calling the moral bluff. The enemy could not be sure that our moral scruples would, in the case of aggression, actually restrain us from nuclear retaliation. The bluff would be too risky to call. Thus one could renounce the intention of using nuclear weapons while benefiting from their possession. Confronted with criticism of this approach, notably by practical men who could not imagine how one would operate an entire national-security system on the basis of a bluff, Ramsey ultimately abandoned this idea.⁵⁴

The idea of a nuclear bluff still persists in the minds of some of the American bishops and their advisers. By condemning nuclear deterrence and war without calling for the dismantlement of the U.S./NATO nuclear capabilities, official Church pronouncements have, in effect, condoned the continued deployment of the nuclear deterrent forces. However, even this has been put in question by statements such as that of Cardinal Krol in 1979 before the Senate Foreign Relations Committee. The formulation now seems to be that it is still morally permissible to *possess* nuclear weapons but that it is not moral to *use* them.⁵⁵

This has encouraged the discussion of possession of nuclear weapons as a discrete part of the problem of deterrence. It is argued that mere possession of nuclear weapons serves deterrent purposes in the period of arms-control negotiations before deterrence somehow ceases to be necessary. It is further asserted that the nuclear weapons in our possession are essential bargaining chips in the arms-control process and should not be relinquished unilaterally. The second reason is plausible, although a weapon that is possessed but not deployed by a party disclaiming on moral grounds any intention of using it is a questionable bargaining chip. It is the first argument that needs to be rejected before further confusion is spread.⁵⁶

⁵⁴ "I now think that an imput of deliberate ambiguity about the counter-people use of nuclear weapons is not possible unless it is (immorally) meant, and not a very good idea in the first place" (Paul Ramsey, "A Political Ethics Context for Strategic Thinking," in Morton A. Kaplan, ed., *Strategic Thinking and its Moral Implications* [Chicago: University of Chicago Center for Policy Study, 1973] 142).

⁵⁵ See Krol, *Nuclear Threat* 10; NCCB, *Draft Pastoral Letter* 314-18.

⁵⁶ See my exchange with Winters, *Washington Quarterly* 5 (1982) 132-42.

Nuclear deterrence is based on the capability and will to inflict unacceptable damage on an aggressor. Without the credible will to carry out the deterrent threat, there is little potential deterrent effectiveness in weapons lying about like so much hardware. Deterrence is derived from the enemy's knowledge that weapons are deployed and ready, targeted on things the loss of which would be unacceptable. In brief, possession of nuclear weapons cannot meaningfully be separated from ready deployment. Ready deployment cannot be separated from a credible intention to use the weapons if the deterrent fails.

In any event, a nuclear bluff based simply on the possession of nuclear weapons is neither sufficient as a credible deterrent nor practical as a posture for a defense establishment. Thus the first position on deterrence currently being taken in debates within the Church, the present position of the American Catholic bishops, is unrealistic and provides no answer to the problem of maintaining deterrence while working for arms control.

The second position, which I espouse, is to develop flexible-response counterforce deterrent strategies and capabilities sufficient to replace MAD while complying with just-war requirements. I withhold judgment on the possibility that the emerging U.S. countervalue deterrent that does not target cities as such may be compatible with the principles of proportion and discrimination. Deterrence through threat of nuclear response at the theater/local level, e.g., NATO, should be limited to counterforce deterrence against nuclear attack. This means that there is an urgent need to increase conventional capabilities so as to make possible reduction of reliance on nuclear weapons for any purpose other than to deter attacks with nuclear weapons.

The technical difficulties of achieving a morally usable spectrum of flexible-response counterforce deterrents have been mentioned above.⁵⁷ It is by no means certain that such an approach is feasible. Moreover, it is problematic whether the thresholds and rules of conflict necessary to maintain such a counterforce strategy could survive a nuclear war. The answer to these objections—and here is where I disagree with the American Catholic bishops' committee—is that there really is no alternative. We need a deterrent, and the kind of MAD countervalue deterrent we have now appears to be morally unacceptable. Counterforce deterrence appears to be the only option whereby effective deterrence might be joined to a just-war war-fighting posture.

It is sometimes argued that "limited nuclear war" approaches discount the horrors of nuclear war and may tend to make war more likely. It is also argued, as mentioned above, that counterforce strategies are desta-

⁵⁷ See Victor Utgoff, "In Defense of Counterforce," *International Security* 6 (1982) 44–60.

bilizing and may encourage initiatives on the other side to develop first-strike policies and capabilities.⁵⁸ The second argument poses a real problem, but it is not sufficiently weighty to preclude efforts to develop counterforce policies needed for an effective and moral deterrence posture against an enemy that is quite capable of developing first-strike policies on his own.

As to the first argument, the American experience, including that of President Reagan, has been that statesmen who fully understand the implications of nuclear war will do everything possible to avoid risking it. The purpose of counterforce deterrence is still deterrence, not war-fighting. As deterrence, however, it has the potential advantage of permitting a just and limited strategy in the event of aggression rather than a choice between unleashing an immoral countervalue response or surrender.

Control of Nuclear War

It appears that the most serious objection to a flexible-response counterforce deterrence policy is the fear that any use of nuclear weapons will inevitably mean that they will "escape control." As mentioned above, there are serious questions about the ability of C³ systems to survive a nuclear war sufficiently to ensure control of it. There is good reason to believe that this is a priority concern of the U.S. government. While the outcome of efforts to improve C³ is open to speculation, it does not seem justified to write off the one feasible line of reconciliation between the requirements of deterrence and just-war principles on the assumption that C³ will not be adequate.⁵⁹

Another objection to flexible-response counterforce policies is that in practice they will inflict collateral damage so great as to make them little less objectionable than outright countervalue strategies. The same argument, a fortiori, can be made regarding the Reagan countervalue strategy. As earlier noted, fear of fallout in counterforce strikes contributes to the argument that there is insufficient control.⁶⁰

There is no immediate, clear-cut answer to these serious objections. Nonexperts cannot easily determine whether the threat of counterforce would be effective as a deterrent strategy operating within the limits of just-war doctrine. Abstractly, one can imagine discrete counterforce attacks on military targets that, if confined to these targets, would not

⁵⁸ See the differing views of Snow, *Nuclear Strategy* 32–33, 205–16, 237–40, and Utgoff, "In Defense of Counterforce."

⁵⁹ See the indications of the U.S. government's concern and actions with respect to C³ problems in the reports cited in n. 19 above.

⁶⁰ See Snow, *Nuclear Strategy* 32–33.

cause excessive collateral damage or escape control. One can also imagine attacks intended to be solely counterforce that did cause excessive collateral damage and did escape control. Much would depend on the location and nature of the targets. There is no doubt that these objections are serious and that, given other choices, it would be better to forgo the effort to reconcile any form of nuclear war with just-war standards, starting with the requirement of control. The real issue, however, is whether there is any alternative to attempting to mount a counterforce deterrence posture that would maximize control in order to comply with the principles of proportion and discrimination.⁶¹

As acknowledged above, a major and intractable problem for any kind of controlled-response nuclear deterrent and/or war is uncertainty as to the extent to which the enemy would observe tacit thresholds and rules of conflict. There is no answer to this problem except the hope that self-interest would induce the enemy to co-operate in keeping any nuclear war limited.

A final word needs to be said about the concept of control itself. It is not difficult to find statements by experienced statesmen and military commanders despairing of the possibility of controlling a nuclear war.⁶² No doubt, the chances that such a war might escape control are substantial. However, some thought needs to be given to the degree of certitude that should be required with respect to control of a nuclear war. Just-war doctrine requires an estimate of probable costs weighed against the probable benefits of a war in the light of the probability of success. A particularly thorough and conservative calculation would be required before ordering the use of nuclear weapons. Beyond that, generalizations are difficult.

I conclude that, following just-war standards, a flexible-response counterforce deterrence strategy should be developed to replace the current modified version of countervalue MAD. I acknowledge that the practical obstacles to the maintenance of a flexible-response counterforce strategy are serious and the reconciliation of such a strategy with just-war requirements is not easy. However, given the just cause of protecting the United States and its allies from nuclear aggression, intimidation, and subjugation by an enemy dedicated to the destruction of our society, our values, and of the Church itself, it seems to me that we have no alternative

⁶¹ Utgoff, "In Defense of Counterforce."

⁶² The NCCB *Draft Pastoral Letter* cited a number of authorities on the difficulty, if not impossibility, of controlling nuclear war in notes 27, 28, and 29 (327). See, e.g., John Steinbrumer, "Nuclear Decapitation." *Foreign Policy* 45 (1981-82) 16-28; Desmond Ball, "Can Nuclear War Be Controlled?" See Henry Kissinger's more optimistic view in "Nuclear Weapons and the Peace Movement," *Washington Quarterly* 5 (1982) 31-39.

but to attempt to find a deterrence strategy that will be both practically effective and morally permissible. We should also review all possibilities of defending our own populations, hostages under the MAD system, by active and passive defense measures, including ABM, space defense, and civil defense.⁶³

ARMS CONTROL IN A WORLD OF CONFLICT

As indicated above, the contemporary term "arms control" connotes an approach to disarmament that emphasizes the balance of opposing forces so that the security of all remains secure. A just-war approach to arms control should begin with a reaffirmation of the just cause that has led to the development of opposing military policies and capabilities. A state should not endanger through arms-control concessions its ability to protect the just cause—in the case of the United States and its allies, survival as free societies.

If this is understood, it should follow that arms-control agreements must be made with full awareness of their potential effects on stable deterrence. Ironically, the whole existing network of arms-control agreements stands on the foundation of the MAD balance of terror. Indeed, the stability of the nuclear deterrence system has been called the "theology of stability."⁶⁴ Yet, just-war analysis of the existing MAD deterrent system reveals that it is based on threats to engage in nuclear war that would almost certainly be immoral if carried out. So there is a paradox. Hopes for arms control, required in an entirely new approach to war, rest at present on nuclear deterrent stability, which in turn depends on an immoral balance of terror that must be changed. But all change, even if morally motivated, is risky and suspect in the charged atmosphere of the delicate balance of terror.

A potential dilemma emerges. It seems likely that the greatest near-to-medium-term progress that could be made in arms-control negotiations would be made in the context of perpetuation of the present MAD system. If we move toward development of the kind of flexible-response counterforce deterrence strategy and capability that would better conform to just-war requirements as a war-fighting posture should deterrence fail, arms-control negotiations might very well become more difficult.⁶⁵

It could be that a move to a strategic posture more in keeping with just-war guidelines would complicate arms-control negotiations with an apprehensive Soviet Union. In the long run, however, arms control must

⁶³ On counterforce and damage limitation, see Keith B. Payne, *Nuclear Deterrence in U.S.-Soviet Relations* (Boulder, Colo.: Westview, 1982).

⁶⁴ John Newhouse, *Cold Dawn* (New York: Holt, Rinehart & Winston, 1973).

⁶⁵ Thus violating the guidelines suggested by Hollenbach, "Nuclear Weapons and Nuclear War" 602-5.

rest on stable deterrence. It is difficult to see how our part of the deterrence system can remain stable when we increasingly agitate to have it condemned as immoral. We must have a morally acceptable deterrence posture in order to pursue arms control with confidence. This requirement must be viewed in the light of the prospects for major problems in the arms-control process with respect to verification issues. Given Soviet attitudes regarding on-site inspection and the prospect that the subjects of future arms-control agreements (e.g., qualitative improvements in existing weapons systems and R & D) may not lend themselves to adequate verification by national technical means of verification (e.g., satellite reconnaissance, seismographic techniques, and remote sensors), stable deterrence based on morally permissible means is the foundation of any realistic progress in arms control.⁶⁶ In this connection it must be added that nuclear freezes may not be "steps in the right direction" but rather obstacles to developing counterforce capabilities that would permit counterforce strategies possibly consonant with just-war doctrine. Freezes would tend to freeze us into an immoral and disadvantaged nuclear posture.

This negotiation-from-strength approach is far removed from the total elimination of nuclear weapons and other arms-control goals held out in the Church's recent teaching. It may not be considered by some to be sufficiently informed by "an entirely new attitude" toward war. However, the goals set by the Church's official teaching are very remote at best, and the reality of our present MAD posture casts a shadow over all discussions of just war and arms control. The first steps toward arms control may have to be based not so much on an entirely new attitude as on the revival and serious application of an old approach, that of the just-war doctrine.

⁶⁶ Snow, *Nuclear Strategy* 166-68, 205-6.