The war on terror was clearly not contemplated when the four Geneva Conventions, addressing wars between national entities, were signed in 1949.[1] The violence in Iraq currently perpetrated by al Qaeda and dissident elements of the former regime is being spearheaded by individuals under no known national authority, with no command structure that enforces the laws and customs of warfare, with no recognizable, distinguishing military insignia, and who do not carry arms openly. More importantly, they represent no identifiable national minority in Iraq, but rather largely draw their support from sponsors outside Iraq. Their attacks have injured and killed civilians of all ethnic groups, as well as more than 3,740 U.S. military personnel attempting to help the fledgling, democratic government in Baghdad to succeed. The terrorists' use of young people and women as human couriers for explosive devices is reminiscent of our experience in Vietnam and raises serious questions about the status of those individuals when they are acting on behalf of terrorist elements in Iraq.[2] The lack of legal status of the terrorists and their surrogates as other than common criminals is seldom, if ever, acknowledged publicly by unbiased news services, and this raises serious concerns for the military in their efforts to assure the public of their adherence to the law of war.

U.S. Army (Kieran Cuddihy)

Soldier guards suspected insurgents detained during patrol, Mosul, Iraq

"Operationalizing" Legal Requirements for Unconventional Warfare

By JAMES P. TERRY

The U.S. military participation on the ground in Iraq is dictated by approved rules of engagement (ROEs), which are a direct reflection of the law of war in its application to this specific conflict. This article addresses the legal considerations that must be part of our thinking when developing the ROEs that will both protect those lawful participants (U.S., coalition, and Iraqi) in the conflict and those who are innocent civilians, while denying any but required minimal legal protections accorded common criminals for the unlawful belligerents represented by al Qaeda and their outside sponsors.

Legal Status

It is important to understand that terrorist violence provides no legal gloss for its perpetrators. The critical international law principles applicable to the violence in Iraq are found in the 1949 Geneva Conventions in Common Article 3 relating to internal armed conflicts and the principles enunciated in the two Additional Protocols to these conventions negotiated in 1977.[3] The minimal protections afforded by Common Article 3, for example, include prohibitions on inhumane treatment of noncombatants, including members of the armed forces who have laid down their arms. Specifically forbidden are "murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment," and extrajudicial executions. Provision must also be made for collecting and caring for the sick and wounded.

The 1977 Geneva Protocols had their roots in the wars of national liberation following World War II. Colonial powers, to include the United States, Great Britain, and the Netherlands, had engaged these liberation movements militarily, often with little regard for the law of armed conflict. In the 1974 conference hosted by the Swiss government in Geneva, the need to address conflicts of a noninternational character was addressed in Article 96, paragraph 3, of Protocol I and in Protocol II. At the conference, the Swiss government invited members of national liberation organizations to participate, but not vote.

The participation of nonstate actors helped shape the drafting of Article 96, paragraph 3, of Protocol I. This section provides that a party to a conflict against a state army can unilaterally declare that it wants the 1949 Geneva Conventions and the 1977 Protocols to apply. This would offer, of course, greater protection for members of national liberation movements.

Colonel James P. Terry, USMC (Ret.), is the Chairman of the Board of Veterans Appeals in the Department of Veterans Affairs. He previously served as Principal Deputy Assistant Secretary and Deputy Assistant Secretary in the Department of State and as Legal Counsel to the Chairman of the Joint Chiefs of Staff.

Under Article 96, however, parties authorized to make such a declaration had to establish that they were involved in "armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination."[4] In Iraq, however, terrorists are trying to unseat the government that has been overwhelmingly approved by the people. Moreover, al Qaeda has made no statement that it desires the Geneva Conventions to apply in Iraq.

These terrorists, or unlawful combatants, however described, have no juridical existence other than as common criminals. Protocol I, Article I conflicts, or those between a nation and a recognized insurgency seeking a legal status, differ from the present terrorist violence in that participants in Article I conflicts opposing government forces are required to meet certain minimum requirements. The participants must:

- operate under responsible command and are subject to internal military discipline
- carry their arms openly
- otherwise distinguish themselves clearly from the civilian population.[5]

In return, they are accorded certain protections when captured. Those perpetuating violence in Iraq today do not meet these criteria, and they are viciously exploiting every ethnic group for their own ends, without regard for these requirements.

Terrorism and International Law

The basic provision restricting the threat or use of force in the Middle East and Southwest Asia, including restrictions on support for terrorist violence, is Article 2, paragraph 4, of the United Nations (UN) Charter. That provision states, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."[6]

The underlying purpose of Article 2, paragraph 4—to regulate aggressive behavior in international relations—is identical to that of its precursor in the Covenant of the League of Nations. Article 12 of the covenant stated that league members were obligated not "to resort to war."[7] This terminology, however, did not mention hostilities that, although violent, could not be considered war. The drafters of the UN Charter wished to ensure that the legal characterization of a conflict's status did not preclude cognizance by the international body. Thus, in drafting Article 2, paragraph 4, the term *war* was replaced by the phrase *threat or use of force*. The wording was interpreted as prohibiting a broad range of hostile activities including not only "war" and equally destructive conflicts, but also applications of force of a lesser intensity or magnitude such as those observed in Iraq today.[8]

The UN General Assembly has clarified the scope of Article 2 in two important resolutions, adopted unanimously.[9] Resolution 2625, the Declaration on Friendly Relations, describes behavior that constitutes the unlawful "threat or use of force" and enumerates standards of conduct by which states and their surrogates must abide. Contravention of any of these standards of conduct is declared to be in violation of Article 2, paragraph 4.[10]

Resolution 3314, the Definition of Aggression, provided a detailed statement on the meaning of *aggression*, defining it as "the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any manner inconsistent with the Charter of the United Nations."[11] This resolution contains a list of acts that, regardless of a declaration of war, qualify as acts of aggression. The resolution provides that a state committing an act of aggression through surrogates violates international law as embodied in the UN Charter.[12]

in Iraq, terrorists are trying to unseat the government that has been overwhelmingly approved by the people

The actions of states supporting terrorist activities, such as Iran and Syria, when interpreted in light of these resolutions, clearly fall within the scope of Article 2, paragraph 4. The illegality of aid to terrorist groups has been well established by the UN General Assembly. Both resolutions specifically prohibit the "organizing," "assisting," or "financing" of "armed bands" or "terrorists" for the purpose of aggression against another state.

With respect to the terrorists themselves, they seek on the one hand to achieve ad hoc protected status by blending in with the civilian populace, while on the other hand violating the law of war in terms of those they target (civilians and other noncombatants). In wars involving nation-states, all lawful combatants can be targeted (to include those sleeping, unarmed, and so forth) until or unless they achieve Protected Status as prisoners of war (POWs) or are sick or wounded under the Geneva Conventions. Similarly, lawful belligerents have immunity under the criminal law for warlike acts that do not violate the law of war. Terrorists, on the other hand, want it both ways. They seek the protection of civilians until they attack, then seek to be treated as combatants with all

U.S. Army (Sarah De Boise)

Iraqi woman shows picture of relative killed by terrorists

the protections of POWs when captured. Fortunately, the recent Jose Padilla case and others are carefully differentiating terrorists' status as unlawful combatants based on their actions.

Law of Self-Defense

Historically, rules on the lawful use of force have developed within a framework of state-to-state relationships. Little doubt exists, however, concerning their applicability in the terrorist arena where actors are surrogates or agents of state sponsors. The Long Commission, for example, in commenting on the devastating 1983 terrorist attack on the U.S. Marine Headquarters in Beirut, concluded:

> [S]*tate sponsored terrorism is an important part of the spectrum of warfare and . . . adequate response to this increasing threat requires an active national policy which seeks to deter attack or reduce its effectiveness. The Commission further concludes that this policy needs to be supported by political and diplomatic actions and by a wide range of timely military response capabilities.*[13]

When the UN Charter was drafted in 1945, the right of self-defense was the only included exception to the prohibition of the use of force. Customary international law had previously accepted reprisal, retaliation, and retribution as legitimate responses as well. *Reprisal* allows a state to commit an act that is otherwise illegal to counter the illegal act of another state or its surrogate. *Retaliation* is the infliction upon the delinquent state of the same injury that it or its surrogate has caused the victim. *Retribution* is a criminal law concept, implying vengeance, which is sometimes used loosely in the international law context as a synonym for retaliation. While debate continues as to the present status of these responses with respect to terrorist violence, the American position has always been that actions protective of U.S. and Iraqi interests, rather than punitive in nature, offer the greatest hope for securing a lasting, peaceful resolution of the crisis in Iraq.[14]

terrorists seek the protection of civilians until they attack, then seek to be treated as combatants with all the protections of POWs when captured

United Nations (Fred Noy)

Young Sudanese Liberation Army combatants do not conform to Geneva Convention uniform and insignia rules

The right of self-defense was codified in Article 51 of the charter. That article provides that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations."[15] The use of the word *inherent* in the text of Article 51 suggests that self-defense is broader than the immediate charter parameters. During the drafting of the Kellogg-Briand Treaty in 1928, for example, the United States expressed its views thus:

> *There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense.*[16]

Because self-defense is an inherent right, its contours have been shaped by custom and are subject to customary interpretation. Although the drafters of Article 51 may not have anticipated its use in protecting states from the effects of terrorist violence, international law has long recognized the need for flexible application. Former Secretary of State George Shultz emphasized this point when he stated, "The U.N. Charter is not a suicide pact. The law is a weapon on our side and it is up to us to use it to its maximum extent. . . . There should be no confusion about the status of nations that sponsor terrorism."[17] The final clause of Article 2, paragraph 4, of the charter supports this interpretation and forbids the threat or use of force "in any manner inconsistent with the Purposes of the United Nations."[18]

Myres McDougal of Yale University placed the relationship between Article 2, paragraph 4, and Article 51 in clearer perspective:

> *Article 2(4) refers to both the threat and the use of force and commits the Members to refrain from the "threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations;" the customary right of self-defense, as limited by the requirements of necessity and proportionality, can scarcely be regarded as inconsistent with the purpose of the United Nations, and a decent respect for balance and effectiveness would suggest that a conception of impermissible coercion, which includes threats of force, should be countered with an equally comprehensive and adequate conception of permissible or defensive coercion.*[19]

Significant in Professor McDougal's interpretation is the recognition of the right to counter the imminent threat of unlawful coercion as well as an actual attack. This comprehensive conception of permissible or defensive coercion, honoring appropriate response to threats of an imminent nature, is merely reflective of the customary international law. It is precisely this anticipatory element of lawful self-defense that is critical to an effective policy to counter terrorist violence in Iraq.

Presidential Initiatives

Early in 1984, President Ronald Reagan issued the seminal *modern* "preemption" doctrine addressing legal response to terrorist violence. President Reagan's National Security Decision Directive (NSDD) 138, issued April 3, 1984, "represent[ed] a quantum leap in countering terrorism, from the reactive mode to recognition that pro-active steps [were] needed."[20] Although NSDD 138 remains classified to this day, National Security Advisor Robert McFarlane suggested at the Defense

Strategy Forum on March 25, 1985, that it includes the following key elements:

The practice of terrorism under all circumstances is a threat to the national security of the United States; the practice of international terrorism must be resisted by all legal means; the United States has the responsibility to take protective measures whenever there is evidence that terrorism is about to be committed; and the threat of terrorism constitutes a form of aggression and justifies acts in self-defense.[21]

Similarly, in 1998, the Clinton administration determined that the existing legal framework was inadequate to deal with threats of terrorism to critical infrastructure. On May 22, 1998, the President signed Presidential Decision Directives (PDD) 62 and 63 in implementation of his new counterterrorism policy framework. PDD 62, *Combating Terrorism*, was the successor to NSDD 138, which determined that the threat of terrorism constitutes a form of aggression and justifies acts in self-defense.[22] PDD 62 was more expansive in its coverage than NSDD 138 and addressed a broad range of unconventional threats, to include attacks on critical infrastructure, terrorist acts, and the threat of the use of weapons of mass destruction. The aim of the directive was to establish a more pragmatic and systems-based approach to protection of critical infrastructure and counterterrorism, with preparedness being the key to effective consequence management. PDD 62 created the position of National Coordinator for Security, Infrastructure Protection and Counter-terrorism, which would coordinate program management through the Office of the National Security Advisor.

PDD 63, *Critical Infrastructure Protection*, mandated that the National Coordinator established by PDD 62 initiate immediate action between the public and private sectors to assure the continuity and viability of our political infrastructures. The goal established within PDD 63 was to significantly increase security for government systems and a reliable interconnected and secure information system.

To counter the worldwide al Qaeda threat, President George W. Bush implemented the proactive policies in 2002 later incorporated in the critically important 2006 National Security Strategy. When President Bush released the National Security Strategy for his second term on March 16, 2006, his administration continued the emphasis on preemption articulated in his 2003 speech at West Point and included the points made earlier in the National Security Strategy announced for his first term in 2002.

The language in the 2006 version clearly relates the doctrine to events in Iraq and other areas currently experiencing terrorist violence. For example, one section is entitled "Prevent attacks by terrorist networks before they occur."[23] In another section, the text claims, "We are committed to keeping the world's most dangerous weapons out of the hands of the world's most dangerous people."[24] A further section states, "We do not rule out the use of force before attack occurs, even if uncertainty remains as to the time and place of the enemy's attack."[25] The Doctrine of Preemption, or Anticipatory Self-Defense as it is otherwise known, was clarified in terms of its use by the Bush administration, just as it had been by the Reagan Presidency, which was the first to formally adopt this venerable legal principle as an administration policy.

These policies required that we make the fullest use of all the weapons in our arsenal. These include not only those defensive and protective measures that reduce U.S. systems vulnerability, but also new legal tools and agreements on international sanctions, as well as the collaboration of other concerned governments. We should use our military power only as a last resort and where lesser means are not available, such as in those instances where the use of force is the only way to eliminate the threat to critical civil or military infrastructure. The response to al Qaeda poses such a requirement.

Full implementation of the Bush National Security Strategy, as in that articulated by President Reagan, should lead to increased planning for protective and defensive measures to address this challenge to our national security, and where deterrence fails, to respond in a manner that eliminates the threat—rather than, as prior to the articulation of NSDD 138 by President Reagan, treating each incident after the fact as a singular crisis provoked by international criminals. By treating terrorists and others attempting to destroy our critical infrastructure as participants in international coercion where clear linkage can be tied to a state actor or its surrogates, the right of self-defense against their sponsor is triggered, and responding coercion (political, economic, or military) may be the only proportional response to the threat.

This proactive strategy to the threat posed by attacks on our critical national security interests embraces the use of legal, protective, defensive, nonmilitary, and military measures. The Bush Doctrine attempts, as did the Reagan initiative, to define acts designed to destabilize our national interests in terms of "aggression," with the concomitant right of self-defense available as a lawful and effective response. The use of international law, and more specifically, the Law of Armed Conflict, has not only complemented the prior criminal law approach, but also should give pause to those who would target vital U.S. and allied interests in the future.

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ROEs in the Terrorist Environment

Operational planning, while classified for each military operation, provides the legal and operational roadmap for our military's response to an attack by terrorists and/or their surrogates. The operational planning cycle in each of our unified commands first addresses legal and international considerations. That is, the operational planners must consider whether:

- the operation is UN-sanctioned
- it has been approved by the relevant regional organization
- a strong legal rationale can be articulated publicly
- there is allied political support
- the operation can be justified under the customary international law principles of necessity and proportionality.

Geography is also a critical element of an operation's development, with topography, avenues of approach, delimiting mountain ranges and rivers, and legally prohibited and politically sensitive areas accounted for (for example, dams, dikes, powerplants, and so forth). The civilian populace must be addressed in terms of location, involvement, and commitment to the opposing forces. The selection of weapons systems is dictated by the capability of the opposing force and the force's size and makeup, as well as the political impact the use of certain weapons may have on nations supporting the terrorist force. In this regard,

we must consider the use of available special weapons, laser-guided munitions, and conventional weapons. Targeting considerations are a key element in operational planning, with authorized military targets, targets requiring prior approval, high-value targets, economic targets, and intelligence-related targets.

In addition, operational considerations include tactical concerns, intelligence matters, and opposing force information. As an example, planners must address choice and mix of forces, allied participation, aviation/ground relationships and deconfliction, weapons restrictions for political reasons, availability of lift, fuel, food, ammunition concerns, and resupply planning. Tactical considerations include determining whether the ingress will involve clandestine or open entry, force sizing, access to critical targets, transportation requirements, time constraints, and weapons selection. Intelligence considerations address overhead requirements and capabilities, available human intelligence assets, ability to monitor enemy communications, security of friendly communications, and ability to neutralize enemy computer systems. Opposing force considerations include size, capability, support of populace, available weaponry, delivery capability, communications, will and training, intelligence capability, aviation assets, artillery, hardened transportation capability, communications jamming capacity, logistics, and weapons of mass destruction. Finally, every planning evolution addresses an exit strategy.

ROEs, a subset of the planning process, effectively *operationalize* the national security directives executed by our recent Presidents within the parameters of international law for each military campaign. The customary international law requirements of necessity of military action and proportionality in response to enemy attack are given operational significance in the terrorist scenario through ROEs, which, in simplest terms, are directives that a government has established to define the circumstances and limitations under which its forces will initiate and continue engagement with terrorist forces. In the U.S. context, this ensures that the President and Secretary of Defense's guidance for handling crisis responses to terrorist violence and other threats is provided, through the Joint Chiefs of Staff (JCS), to deployed forces during armed conflict.

ROEs reflect domestic law requirements and U.S. commitments to international law. They are impacted by political and operational considerations. J. Ashley Roach has noted that ROEs "should never substitute for a strategy governing the use of deployed forces, in a peacetime crisis or in wartime."[26] For the military commander concerned with responding to a terrorist threat, ROEs represent limitations or upper bounds on the disposition of forces and the designation of weapons systems, without diminishing the commander's authority to effectively protect his own forces from attack.

Terrorist violence against U.S. and allied forces in Iraq and Afghanistan represents hostile acts that trigger applicable standing ROEs. The first standing rules applicable worldwide were promulgated in 1980, as a result of a commander, U.S. Pacific Command, initiative under Admiral Robert Long, and were denominated the "JCS Peacetime ROEs for U.S. Seaborne Forces."[27] These rules, which served as the bases for all commands' subsequent standing ROEs, were designed exclusively for the maritime environment. More comprehensive national ROEs for land, sea, and air operations were promulgated by Secretary of Defense Caspar Weinberger in June 1986.[28]

The 1986 ROEs were designated the "JCS Peacetime ROEs for U.S. Forces." These provided the on-scene commander with the flexibility to respond to the hostile intent of terrorists with minimum necessary force and to limit the scope and intensity of the terrorist threat. The strategy underlying the 1986 rules sought to terminate violence quickly and decisively, and on terms favorable to the United States.

In October 1, 1994, President Clinton's first Secretary of Defense, Les Aspin, approved the Standing Rules of Engagement (SROEs) for U.S. Forces, which significantly broadened the scope of our national ROEs.[29] As established in the SROEs, U.S. policy, should deterrence fail, provides flexibility to respond to crises with options that are proportional to the provocation, and is designed to limit the scope and intensity of the conflict, discourage escalation, and achieve political and military objectives. The inherent right of self-defense, as in prior national ROEs, establishes the policy framework for the SROE. These SROEs—which remain in effect, although with certain amendments to accommodate specific new threats—are intended to provide general guidelines on self-defense and are applicable worldwide to all echelons of command, and provide guidance governing the use of force consistent with mission accomplishment. They are to be used in operations representing the spectrum of conflict—that is, operations other than war, during transition from peacetime to armed conflict or war, and during armed conflict, to include response to terrorist violence—in the absence of superseding guidance.[30]

The expanded national guidance represented in the SROEs has greatly assisted in providing both clarity and flexibility for our combatant commanders. The approval of amendments by the Secretary of Defense and promulgation by the Chairman of the Joint Chiefs of Staff have ensured consistency in the way all military commanders, wherever assigned, address unconventional threats such as those posed by terrorist elements in Iraq, supported clandestinely by regional adversaries.

the use of force directed by President Reagan in 1986 was preceded by conclusive evidence of Libyan responsibility for other acts of terrorism against the United States, with clear evidence that more were planned

Observations and Conclusions

The United States was jolted into an awareness of the changing character of aggression when its Embassy in Tehran was seized on November 4, 1979, by Iranian militants who enjoyed the support of Ayatollah Ruhollah Khomeini's revolutionary government. The 1983 terrorist attack on the Marine battalion on the green line at the Beirut International Airport was followed in March 1986 by the bombing of a discotheque by Libyan terrorists acting on Muammar Qadhafi's orders in Berlin. The United States responded to the Libyan attack by launching defensive strikes on military targets in Tripoli and Benghazi. The use of force directed by President Reagan in 1986 was preceded by conclusive evidence of Libyan responsibility for other acts of terrorism against the United States, with clear evidence that more were planned.

In August 1998, al Qaeda terrorists bombed the U.S. Embassies in Nairobi and Dar es Salaam, with significant loss of life. This was followed in October 2000 with a terrorist attack on the USS *Cole* in Yemeni waters. Finally, in September 2001, al Qaeda began a campaign

against the United States with attacks in New York and Washington, DC, with spillover in Afghanistan and Iraq.

An examination of authorized responses to terrorist violence requires an understanding that terrorism is a strategy that does not adhere to any of the military or legal norms reflected in the Geneva Conventions of 1929 and 1949 or The Hague Conventions of 1899 and 1907. In fact, the fundamental characteristic of terrorism is reflected in its violation of the principles of discrimination, necessity, and proportionality. The only norm for terrorist violence is effectiveness. While traditional international law requires clear discrimination among those affected by an attack and proportion in an attack's intensity, the nature of terrorism is such that success is measured by the extent and duration of destructiveness, with no concern for those affected. In the contemporary language of defense economics, terrorists wage countervalue rather than counterforce warfare.

A clear understanding of the terrorist mindset is important because the only credible response to terrorism is deterrence. There must be, as in the case of our response against al Qaeda in Afghanistan, and currently with the surge in Baghdad, an assured, effective response that imposes unacceptable costs on perpetrators and those who make their activities possible. For domestic intruders such as Jose Padilla, criminal law may suffice. For those operating outside the United States, the American reaction must counter the terrorists' strategy within the parameters of international law, and more specifically, the law of armed conflict. Those who suggest otherwise understand neither the inherent flexibility of international law nor the cost of violating that law.

The thrust of the U.S. strategy in response to international terrorism, beginning with President Reagan's articulation of NSDD 138 in April 1984, has been to reclaim the initiative lost while the United States pursued a reactive policy toward unconventional threats such as terrorist violence. With the signing of NSDD 138, followed by President Clinton's issuing of PDD 62, and President Bush's declaration of the Bush Doctrine in the 2002 and 2006 National Security Strategies, preemptive self-defense measures have been authorized through carefully drawn national rules of engagement that ensure that our forces do not absorb the first hit where clear indicators of enemy attack are detected.

The inherent right of self-defense has provided the policy framework for all U.S. ROEs. Within that framework, the concept of "necessity" in the counterterrorism context has always required that a hostile act occur or that a terrorist unit demonstrate hostile intent. The implementation of national guidance through promulgation of the 1980, 1986, and the current 1994 ROEs, frequently amended since, has greatly assisted in providing both clarity and flexibility of action for our theater commanders. The approval in each instance by the sitting Secretary of Defense has ensured consistency in the way all military commanders, wherever assigned, have addressed terrorist threat situations while providing the mechanism for the automatic amending of ROEs or the issuance of supplemental measures on the occurrence of specified conditions or events. **JFQ**

NOTES

[1] Geneva Conventions of 1949 and 1977. Additional Protocols are reproduced in John N. Moore, Guy B. Roberts, and Robert F. Turner, eds., *National Security Law Documents* (Durham, NC: Carolina Academic Press, 1995).

[2] All major news outlets reported on February 1, 2008, that two women with mental disabilities were used as bomb couriers in a Baghdad pet market bombing, resulting in significant loss of Iraqi lives.

[3] Moore, Roberts, and Turner, Common Article 3, 185.

[4] See Waldemar Solf and E. Cummings, "A Survey of Penal Sanctions Under Protocol I to the Geneva Conventions of August 12, 1949," *Case Western Reserve Journal of International Law* (Spring 1977), 205.

[5] Article 1(2) of Protocol I states that "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

[6] United Nations (UN) Charter, Article 2, paragraph 4, available at <www.un.org/aboutun/charter/>.

[7] See League of Nations Covenant, Article 12, available at <www.yale.edu/lawweb/avalon/leagcov.htm#art12>.

[8] Myres S. McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order* (New Haven: Yale University Press, 1961), 142–143.

[9] See "Definition of Aggression," G.A. Res. 3314, 29 UN GAOR Supp. (No. 31) at 142, UN Doc. A/9631 (1974); "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations," G.A. Res. 2625, 25 UN GAOR Supp. (No. 28) at 121, UN Doc. A/8028 (1970) [hereinafter cited as Declaration on Friendly Relations].

[10] "By accepting the respective texts [of the Declaration on Friendly Relations], states have acknowledged that the principles represent their interpretation of the obligations of the Charter." See Robert Rosenstock, "The Declaration of Principles of International Law Concerning Friendly Relations: A Survey," *American Journal of International Law* 65 (1971), 713, 715.

[11] "Definition of Aggression," 142.

[12] A fundamental purpose of the UN Charter is to "maintain international peace and security." See UN Charter, Article 1, paragraph 1. Article 5, paragraph 2, of the Definition of Aggression provides: "A war of aggression is a crime against international peace. Aggression gives rise to international responsibility." See "Definition of Aggression," 144.

[13] "Report of Department of Defense Commission on Beirut International Airport Terrorist Act of 23 October 1983," 129 (December 20, 1983), reprinted in American Foreign Policy Document 122 (1983), 349.

[14] See, for example, Arthur W. Rovine, "Contemporary Practice of the United States Relating to International Law," *American Journal of International Law* 68 (1974), 720, 736 (statement of then–Acting Secretary of State Dean Rusk).

[15] UN Charter, Article 51.

[16] Marjorie M. Whiteman, *Digest of International Law Volume I* (Washington, DC: U.S. Government Printing Office, 1963), sec. 25, 971–972.

[17] George P. Shultz, "Low Intensity Warfare: The Challenge of Ambiguity," U.S. Department of State Current Policy No. 783, January 1986, 1.

[18] UN Charter, Article 2, paragraph 4.

[19] Myres S. McDougal, "The Soviet-Cuban Quarantine and Self-Defense," *American Journal of International Law* 57 (1963), 697, 600.

[20] U.S. Defense official Noel Koch, quoted in "Preemptive Anti-Terrorism Raids Allowed," *The Washington Post*, April 16, 1984, A19.

[21] Robert C. McFarlane, "Terrorism and the Future of Free Society," speech delivered at the National Strategic Information Center, Defense Strategy Forum, Washington, DC, March 25, 1985.

[22] Classified document described by McFarlane. See James P. Terry, "An Appraisal of Lawful Military Response to State-Sponsored Terrorism," *Naval War College Review* (May-June 1986), 58.

[23] *The National Security Strategy of the United States of America* (Washington, DC: The White House, March 16, 2006), 12.

[24] Ibid., 19.

[25] Ibid., 23.

[26] J. Ashley Roach, "Rules of Engagement," *Naval War College Review* (January-February 1983), 46.

[27] Joint Chiefs of Staff, "Peacetime Rules of Engagement for U.S. Seaborne Forces" (May 1980).

[28] Joint Chiefs of Staff, "Peacetime Rules of Engagement for U.S. Forces" (June 1986).

[29] Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01, "Standing Rules of Engagement for U.S. Forces," October 1, 1994, as amended December 22, 1994, and thereafter. The most recent amendment is CJCSI 3121.01B, June 13, 2005.

[30] Ibid.