

“The perplexity for the West lies in dealing with aggressors who hold values contrary to its own. . . . Congruent with their own views but in jarring discord with the West, terrorists invoke eternity and apocalypse, rather than the language and tactics of conventional political debate or economic competition.”

Terror: Measuring the Cost, Calculating the Response

FRANK C. SCHULLER AND THOMAS D. GRANT

Proportionality is a recurring theme in deliberating how to respond to aggression in international affairs. Indeed, the intuitive appeal of proportionate response elevated the concept to a status akin to principle long ago. Balance and symmetry, so valued in aesthetics, find their counterpart in statecraft through proportionality. But as much as proportionality may have served as the classic guide to dealings between nation-states, its utility as a defense against new challenges has grown weak. An “eye for an eye” may clash with the concept of justice in today’s circumstances.

The industrialized West has developed, in the centuries since the Peace of Westphalia, a code of acceptable behavior in the conduct of war. The code consists of observed though unwritten practices as well as formal treaties. It distinguishes combatants from civilians; prescribes procedures for the processing and treatment of prisoners and rules for the disposal of enemy property; and establishes recognizable modes for communicating belligerency, surrender, and terms for negotiation. Allegiance to the code, which has emerged as a notable feature of civilized order, limits battlefield options. This code, however, poses a functional hindrance to the protection of civilized order against enemies who reject the code. Despite limitation in means, terrorists enjoy operational advantage in their arrant willingness to transgress bounds regarded by the West as sacrosanct. Terrorists lacking the military organization and hardware to match that of the West must

resort to stratagems of so-called asymmetric warfare. They are likely to strike at the industrialized world’s vulnerable underside, choosing targets most effectively suited to their assets.

States with generally congruent notions of justice instinctively know how to calibrate responses to insults. An Australian diplomat is accused of espionage and expelled from China; the People’s Republic then expresses no more than ritualized distress when one of its diplomats of similar rank is sent packing from Canberra. In more complex cases, responses assume comparable intricacy. The European Union refuses to permit the importation of pineapples from allies of the United States. The United States in response places punitive tariffs on certain cheeses from France. In both situations, the country targeted by a response might protest the reaction as inappropriate, but, owing to a shared set of standards, both sides tacitly accept the result. Australia certainly would not have suspended all diplomatic relations, any more than the United States would have started an all-out economic war. Proportionate response prevails.

The perplexity for the West lies in dealing with aggressors who hold values contrary to its own. Despots ruling rogue states and terrorists with a moral orthodoxy divergent from the West simply disregard traditional conventions in international affairs. Congruent with their own views but in jarring discord with the West, terrorists invoke eternity and apocalypse, rather than the language and tactics of conventional political debate or economic competition.

The eye-for-an-eye calculus of proportionality breaks down in such a situation. At worst, some responses might be dangerous. Heads of fervent reli-

CONFRONTING TERRORISM

FRANK C. SCHULLER is an economist and director of the Center for Science, Medicine, and Society at Hertford College, Oxford University. THOMAS D. GRANT, an international lawyer and principal of the center, teaches at St. Anne’s College, Oxford University.

gious movements and their followers, instead of fearing death, may embrace it. Killing these individuals has the potential to spread the wildfire of fanaticism and adoration of martyrdom. An ill-conceived response might hit the wrong person altogether. Yet nonresponse in some contexts may amount to the greater folly (the response to the February 26, 1993 attack on the World Trade Center, with its legal wrangling and courtroom proceduralism, hardly deterred the terrorists from a deadly encore). Despite the current inadequacy of a proportionate response, the instinctive reflex toward retaliation by victims of a terrorist atrocity remains. Reflex, however, must be subdued by rational assessment if a nation attacked is to chart a course of action appropriately responsive to the provocation.

THE CONUNDRUM

A tentative approach may arise from applying the idea of magnitude of interference. Preserving core elements of proportionality, the concept would also embody such adjustments to classic understandings of response to aggression as are necessary to meet the asymmetric threats of the twenty-first century. Magnitude of interference entails calibrating a response that minimizes collateral tolls while restoring to the fullest possible extent the liberty, freedom, and welfare that obtained before the aggression.

Policymakers applying the concept of magnitude of interference should appraise the systemic impact of an aggressive act rather than focus narrowly on its immediate physical consequences. A terrorist attack that disrupts financial markets or impedes the flow of a vital commodity exacts costs on society well beyond the vicinity of targeted violence. The magnitude of response will be determined by the magnitude to which the aggression interfered with key values in the society attacked. A magnitude of interference of low order justifies reprisal of the magnitude necessary to reverse that interference. A magnitude of interference measured at the macroeconomic level or in terms of radically altered perceptions of liberty or freedom justifies commensurately more far-reaching response.

For example, a squad of Royal Marines, on a routine training exercise on February 17, 2002, inadvertently overshot its landing zone and instead of coming ashore in British Gibraltar, “invaded” Spain. The Spanish foreign ministry reacted with a few

good-natured remarks, declining even to issue a formal protest. The mistake caused little if any direct harm and, moreover, did nothing to disturb Spain’s expectations about safety or stability. The exchange of views between the United Kingdom and Spain, tinged with humor, marked a response well calibrated to the magnitude of interference.

An incursion of much different intent and result took place in 1916 in the American Southwest. Beginning in 1915, General Francisco “Pancho” Villa, leader of revolutionary forces in northern Mexico, began to carry out raids into Texas and New Mexico, where his men rustled cattle and terrorized the civilian populace. This pattern of intentional conduct culminated on March 9, 1916 with a raid on Columbus, New Mexico, in which 17 of the town’s inhabitants were slaughtered and the village razed. The United States, unable to tolerate the terror and economic uncertainty spreading across an expanse of its territory, dispatched General John Pershing and 10,000 soldiers to strike back at the Mexican raiders

on their home turf. The resultant “Punitive Expedition” marched 400 miles into Mexico, where it spent nearly a year stamping out the revolutionary general’s network

(but never capturing Villa himself). The magnitude of interference generated by vicious marauders demanded—and justified—a far-reaching and forceful response.

The concept is consonant with several premises basic to contemporary conceptions of international order. First, each sovereign state enjoys a right to govern its affairs free from external interference. Although international lawyers debate the extent that international law penetrates national borders, a core of sovereign competence remains immune from dictates other than those of the national polity. An aspect of the sovereign core in economically advanced democracies is to secure for citizens certain rights, liberties, and welfare, especially freedom to pursue self-betterment in a plural society through market economics. An act of aggression with the intent directly to diminish the autonomy of domestic governance or to disrupt it altogether constitutes interference justifying response. If, in the case of the United States, for example, the target of aggression is a feature of domestic governance as fundamental as the freedom to pursue self-betterment, then the interference ranks as a profound grievance. Commensurate response is justified.

*Terrorists enjoy operational advantage
in their arrant willingness to transgress bounds
regarded by the West as sacrosanct.*

Justification for reprisal derives from the concept of externalities in economics. An externality imposes costs (or for that matter, may even endow benefits) on affected parties without their consent. Industrial air pollution is a textbook example of a negative externality. Use of force without justification could serve as such just as well. The society targeted by unprovoked aggression must shoulder the burden of a diminishment of values caused by the aggression, even though that society in no way consented to it.

Other societies removed from the target zone of the aggressor may also find costs forced on themselves as the effects of a violent act ripple across nations. Dulling commercial vibrancy, hindering international interconnection, and increasing zero-sum activities such as armament and troop deployment required by the uncertainties of a new reality typify the sort of external effects induced by an attack on another state. The strike on the World Trade Center in New York radiated serious economic and security consequences across the globe.

Second, magnitude of interference looks to degree of intent and not the result alone. The harm that an aggressor intended to effect against a targeted nation may well exceed the harm in fact caused by a particular act of violence. Conversely, the aggressor's strike may fall short of its intended goal. When the German General Staff chose to resort to unrestricted undersea warfare in 1916, the objective was to halt transatlantic shipping and strangle the enemy entente. As events took their course, the intended extensiveness and pervasiveness of the U-boat blockade was unachievable. The United States fashioned a response that went well beyond what could have been called proportionate, if measured solely in terms of tons of shipping actually lost. American forces went to Europe and, dealing a terrific, if belated, hammer blow, crushed the Central Powers.

Third and finally, response to an act of aggression extends to the identities and the connections of related parties. Terrorist organizations may seek haven in failed states, where public order has disintegrated entirely, or in destabilized states, where a substantial hinterland has fallen outside the government's control. In either case, the state is a host, but only in the limited sense that the terrorists locate themselves on territory that the political map assigns the state to govern. The state in truth has little say in its role as a base for marauders.

Governments such as those in Yemen and Georgia do not actively sponsor terrorism, but the geo-

graphic breadth of their effective control is incomplete; parts of the national territory have simply fallen outside the writ of law. An errant backcountry in both these states, and in others such as Colombia and the Philippines, has become the preferred base for terrorists, even though no state authority has invited or even encouraged them. The law of state responsibility does place a duty on states to control activities within their frontiers. Nonetheless, a state in collapse, unable to resist terrorist incursion, requires a response distinct from that for the state in full control of its territory that invited aggressors to rest within its borders.

The state in the former condition may well find common cause with the terrorists' chief adversaries. The active state sponsor of terrorism is a different phenomenon altogether. In practice, the failed or failing state may itself approach active sponsorship. Afghanistan under the Taliban regime exemplifies an abettor state. Such a state has a choice: cooperate in the appropriate response to aggression, or create a partnership between itself and the aggressor. Choosing the latter, the state exposes itself to response gauged according to the magnitude to which the aggression interfered in the affairs of the nation attacked.

Afghanistan constitutes a state that sided with the aggressor. President George W. Bush requested that the Taliban government in Afghanistan surrender Osama bin Laden and the rest of the Al Qaeda chieftains. The Taliban government ignored this and other international appeals. Denied cooperation in the capture of bin Laden and his confederates, the United States and its allies, according to the principle of magnitude of interference, could justifiably and morally resort to force against the Taliban government.

A response to aggression guided by the concept of magnitude of interference can hardly restore an aggrieved society to its starting position in every particular. Some of the damages of an attack of the magnitude of the atrocities of September 11 will linger a very long time. Some will prove permanent. Ending the terrorist activities of Osama bin Laden and Al Qaeda may well restore a semblance of freedom from fear and in turn permit the intertwined economic and psychological recoveries so necessary to the general welfare. Other damage, not least the human toll of aggression, constitutes interference in the life of a nation that even the best response can scarcely redress. ■