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Security and Defense Guideline #7 for Government and Citizenship

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The first affirmation of the Center's *Guideline* (www.cpjustice.org/guidelines) on security and defense reads: (1) "Government's responsibility, under law, entails the protection of the political community from those who threaten life, property, and public peace. Government alone has the right to monopolize control of force for the purpose of upholding and enforcing the law."

The long historical process that led to the "constitutionalizing" of government under the rule of law bears witness to countless attempts to control the use of force. Sometimes the primary challenge people faced was to overcome or limit the arbitrary use of force by established governments. At other times the struggle was to try to bring an end to cycles of vengeance taking between competing clans or groups within a nation. Yet once it became possible to uphold a system of government in which governments were authorized to use force only in accord with constitutional and statute laws, it also then became possible to mandate that no other institution in society has the right to use force.

Constituting government under law for the just use of force has also come to mean, therefore, that one of government's chief responsibilities is to protect citizens from threats to their lives and properties from those who would use force unjustly, whether that threat is from a thief or a foreign military force. If private citizens have no right to take the law into their own hands or to take up arms against their neighbors, then the one authority that does have the right to use force must protect those who may be threatened by the illegitimate use of force.

This, then, is the basis for the establishment and control—under law—of police forces, as the *Guideline's* second affirmation makes clear. (2) "Government's responsibility for domestic security and retributive justice is institutionalized in the form of police forces

and court systems, which enforce and adjudicate the law against lawbreakers and ensure restitution for victims. As much as possible, the policy and the courts should aim to reconcile victim and offender and to restore a just order.”

The fact that police officers do not make all the decisions related to upholding the law is also a testimony to the transcendence of the rule of law above every legitimate (as well as illegitimate) use of force. Court systems for the trial of criminals and the settlement of civil disputes are also important for domestic peace and security. People can feel secure only if they know that police officers as well as civilians are subject to the law and that judges and juries bear responsibility for adjudicating the law.

It is also clear, as the second affirmation makes clear, that security can never be assured simply by the punishment of lawbreakers. Lawbreakers disrupt and disquiet a community, particularly the life of those who suffer a crime. Consequently, real security requires restorative justice for the victim, as far as that is possible, and the restoration of tranquility to the community. And more than restoration, reconciliation is needed between victim and offender, insofar as that can be achieved. The benchmark for successful criminal justice, in other words, is not merely catching and punishing lawbreakers (though that is important), but maintaining a just and peaceful community.

With respect to security for states in the international arena the basic principles are the same, though the circumstances are different: (3) “Government’s responsibility to protect society from unjust military aggression and foreign criminal violation is institutionalized in the form of defense forces, foreign intelligence services, a diplomatic corps, and other offices for international relations.”

Here, too, all such means of trying to maintain a country’s security must be governed by law, which is one reason why the United States requires civilian control of the military. It is also why one of the foremost just-war criteria is that the use of military force should always come as a last resort when every non-military means to avoid or overcome conflict has failed. Defense and security can never be assured simply by maintaining large military forces and employing them against enemies and potential enemies. The benchmark for successful defense is the maintenance of healthy and lawful relations among states internationally, and that is achieved primarily through diplomatic and other means of communication, trade, exchanges, and dispute settlement. This is why another very important just-war criterion is that if a government has solid justification to use military force, it must not do so unless it has a strong possibility of bringing about a rightly ordered outcome. In other words, to employ military forces in a way that only makes the situation worse or that will prolong conflict, leading to more and more deaths and destruction, is not just and will likely lead to greater insecurity for the nation that otherwise may have a just cause for going to war to defend itself.

All of this brings us to the central and summary affirmation of the guideline: (4) “Both police forces and defense forces should be bound by law to use force justly and in support of government’s broader responsibility to uphold just, healthy societies. Laws governing the use of force have been articulated in American state and federal statutes, in international laws such as the Geneva conventions on war, and in the historic Christian ‘just war doctrine.’ Only a legitimate public authority may command the use of force for purposes of upholding public security, protecting the innocent, punishing criminals, and capturing or, in certain circumstances, killing those who are using force illegitimately. Government may use lethal force only for just cause, as a last resort, and when the success of such retributive action appears probable.”

In the world today where many countries face the threat of international as well as domestic terrorism, standards of justice that hold for international military engagements may seem inadequate or beside the point. But they are not. One of the key statements in the paragraph above is that the use of force requires decision by a “legitimate public authority.” That criterion has always meant that if a state is threatened by illegitimate force, whether from a domestic perpetrator or a foreign perpetrator (including a terrorist group), that government is obligated to respond in order to protect its citizens. Domestic terrorists should be treated as criminals and dealt with by domestic intelligence agencies, such as the FBI, the police, and the courts. Those threatening terrorist actions from abroad should be headed off beforehand by thorough security measures at home and by the police and intelligence agencies of other countries, as the German government was able to do for our protection in the early days of September this year. Often terrorists will be uncovered by the cooperative efforts of U.S. and foreign intelligence and security agencies. And when it happens, as it did on 9/11, that terrorists, whether domestic or foreign, are able to accomplish some violent purpose, the response to such non-military perpetration of violence may need to be a multi-dimensional domestic and international cooperative effort to capture and punish perpetrators who are still alive and to locate and destroy the original sponsors or cells of such aggression.

The point is that the legitimate authorities of several states need to cooperate in accord with just-war and just-policing criteria in order to meet their mutual security and defense needs. Unless terrorist organizations either become self-sustaining military entities or are backed up by a government that should be capturing or destroying them, the detection and elimination of terrorists is not first of all a *military* matter. If, for reasons of self-defense, it is appropriate for a state (or several states in cooperation) to take military action against an aggressive violent attack or an impending attack from the outside, then the legitimate governments of those countries have authority to act, according to just-war criteria. There is no legitimate rationale, however, in the just-war criteria or owing to the rise of international terrorism to justify the initiation of warfare by a single nation against other governments (or against suspected terrorists within the territory of other nations) when its own security is not threatened by military aggression. Moreover, since the U.S. and many other states agreed, when establishing the United Nations, to act through the UN Security Council in cases of international violence or threats of violence, the U.S. and every

other country in the UN has an obligation to take into account the potential role of that international authority to deal with terrorist groups particularly when individual states are not facing immediate danger themselves.

When we next move to consider what justice demands for the way police and military forces conduct themselves, additional criteria come to the fore and they are highlighted in the fifth affirmation of the guideline: (5) “Police and defense forces must conduct themselves in a just manner by upholding noncombatant immunity, limiting the use of force to a proportionate measure, seeking to end conflict as quickly as possible and with the least possible destruction, and aiming to restore conditions of peace and stability.”

One of the reasons why police officers and military personnel in the United States can be arrested and tried for illegitimate conduct in the use of force is because the rule of law binds even those who are commissioned to use force to do so only in accord with the law. This is of central importance in keeping the use of force within check.

Affirmation number six of the guideline turns our attention to the reality of our shrinking globe and emphasizes the increasing limitations on unilateral actions by individual states even with respect to their own security and defense. (6) “Our ‘shrinking’ globe, with its increasing dangers of warfare and terrorism, has led most countries to join a growing number of alliances and international organizations. These alliances aim to settle disputes peacefully; to develop international law; and to foster arms control, mutual security, and the multilateral enforcement of international law and peacekeeping efforts. Countries should see their responsibilities for security, defense, and retributive justice as increasingly interdependent, and should cooperate to strengthen international law and institutions.”

Citizens of the United States, which is so strong militarily and has such a large economy, may want our government to act with the primary aim of maintaining American freedom of action—our own “absolute” sovereignty—in the world. Yet even as large and powerful as we are, the U.S. has less and less freedom of movement on its own, by itself. We are tied in tightly to the World Trade Organization, to NATO, and to dozens of treaties, free trade agreements, and other cooperative agencies. However, large our economy is, it is increasingly intertwined with, and thus dependent on, Europe, China, Japan, and other countries. And even though our military strength towers above that of every other country in the world, it is also clear that sheer military might is less and less useful for most of what concerns American health and well-being in the world. If we and other countries are not working together to build better and more just international organizations and agreements, we will all suffer the consequences, including negative consequences for the U.S.

What good will it do for the U.S. to try to maintain the world’s most powerful military operation if the dangers that threaten international peace and stability arise from insurgent groups, terrorist organizations, poverty, disease, and declining resources such as water and a healthy environment—none of which the American military can eliminate or

overcome? The point here is not to play down the importance of military and police forces, which are critically important within the limits of just governance, but rather to heighten awareness of all those factors that are crucial for domestic and international security and defense that have little to do with the capability or responsibility of a country's military establishment. Taking all of this into account, we come to the seventh and last affirmation of the guideline.

(7) "The United States, currently the world's dominant military power, should take the lead in helping to strengthen international law and institutions. It should do this for its own and the world's security, and to defend the innocent against unjust aggression, whether from terrorists or the armed forces of other countries."

This statement speaks for itself and among other things puts a premium on the behavior of the United States—that its actions must meet criteria of justice or else it decreases its potential to defend the innocent, to strengthen international law, and to build trust that is necessary for cooperation among the nations of the world.