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Aspects of Terrorism: Personal Reflections

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Aspects of Terrorism: Personal Reflections

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> The world today is a battlefield in a psychological war in which words are weapons. There's little doubt that, so far, the Soviet Union has been winning hands down. When it comes to juggling words, that country—which lives in a neo-medieval verbal and ideological climate—has complete superiority over the pragmatic (therefore naive), bungling and clumsy West.
>
> *Stefan Kisielewski*

Shortly before departing from Poland in 1982, I had a revealing conversation with a communist professor who was just back from doing "research" in the West. While there he found time from his work to lecture extensively on socialist democracy, the achievements of "scientific communism," and such current issues as human rights, terrorism, the nuclear freeze, disarmament, détente, and cooperation—issues which, incidentally, Soviet propaganda is skillfully exploiting in its psychological war against the West.

I asked whether he really believed all those clichés that he dispensed from the lectern, especially when they flew in the face of the facts. For example, how could he reconcile a belief in "the Soviet commitment to peace with events in Afganistan, Poland, and elsewhere?"

"Theoretically, I can," he said. "Practically, however, it doesn't matter whether I believe these things or not. What counts is that the people in the West do. It is enough to appeal to their common sense."

Recently, I recalled these remarks on hearing a student make a statement of such political innocence that I was suddenly illuminated about the West's vulnerability to Soviet propaganda: "Our democracy is open, tolerant, attached to freedom. We can easily tolerate even totalitarian ideas because our democratic and liberal common sense have totally hardened us against them."

Nothing irritates me more than the fact that each semester I have to start teaching international and comparative law by fighting some myths which stem from similar "common sense approaches" to international problems. Almost every textbook and each course of public international law begin with an examination of the question: "Is there anything like 'international law'?" Similarly, each course of comparative law, and in particular each course of socialist law, begins with questions like: "Is there anything like socialist law or are we basically dealing with socialist lawlessness?"

I don't have anything against "common sense" until it persuades us to use the commonplace to explain quite complicated political, legal, and social phenomena. It always seemed to me that we should stop apologizing to our students because some of the institutions of international law do not come up to what our image of "law really should be." For example, that the United Nations is not totally successful as a peacekeeper or as a

protector of human rights, that the Security Council is not an effective instrument for conflict resolution, that the United States left the World Court and terminated its acceptance of the Court's compulsory jurisdiction, etc. We should stop exploring "why international law isn't like it should be" since that is academically unproductive, but instead we should discuss how it works, what is its meaning, force and effect. In fact, most experts agree that international law exists; unfortunately, laymen are more impressed by the reality of breaches in international law and thus find it difficult to fit international law into their concept of "law".[1] From an academic point of view, it also does not make sense to overemphasize the lawlessness of the socialist system or repeatedly argue that the socialist legal theory ended with Pashukanis[2] since it has been accepted that the socialist state and law are not going to wither away. It is unquestionable that there is a considerable gap between socialist theory and practice, but it is more important to consider what are the consequences of this gap than to attempt to answer the rhetorical question: whether these gaps mean that there is nothing like "socialist law."[3]

Within the framework of international studies the areas of human rights and terrorism were traditionally subject to the so-called "common sense approach" which, for lack of definitional discipline, contributed to several myths which frequently worked against the effective application of law in this sphere. The naive, stubborn, and often arrogant belief in our common sense works for the propagandist from the countries supporting terrorism, who ply their trade unchallenged, influencing the minds and common sense of the Americans. The layman and even the lawyer are often confronted with the questions: can we really sensibly speak about terrorism if we know that "one man's terrorist is another's freedom fighter, who is terrorizing whom?, isn't terrorism a continuation of the struggle for human freedoms via other means?, aren't terrorists 'outlaws' or 'knights of evolution' rather than criminals?" It seems to me, that if we want to advance studies on human rights and terrorism, some clarification of the "investigative foreground" is necessary.

The Vicious Circle

"The Soviet Union has always been and remains a principal opponent of the theory and practice of terrorism, including terrorism in international relations. Terrorism is organically alien to the world outlook of the Soviet people, to the policy of the Soviet state."[4] We will hear this opinion from the typical Soviet scholar who when asked about terrorism will inform us that with some rare exceptions socialist states are countries with no terrorism. Trying to be polite and full of understanding, he probably will indulgently admit that each country has its own problems—the Soviets have some problems with hooligans and the West has trouble with terrorists. If we try to argue that the Soviet "hooligans" are quite often regular "human rights fighters" we would learn that to the contrary our "terrorists" are "comrades in the struggle for the rights and freedom of people."[5] Our common sense convinces us that the vicious circle is closed; "one man's hooligan is another's human rights fighter, one man's terrorist is another man's comrade struggling for freedom." It is just a matter of which side we want to expose.[6] Obviously the international community opts for protection of human rights and is inclined to penalize terrorists, but how effectively can law operate as a regulator of international relations without breaking this vicious circle. As Abraham D. Sofaer, Legal Adviser to the Department of State, wrote, "The law has a poor record in dealing with international terrorism."[7] This record definitely will not be improved if our common sense will keep providing a basis for conflicting arguments which weaken the value system that justifies

the rule of law. In "a psychological war in which words are weapons" we still will be the losers—the human rights fighters will be treated effectively as hooligans or enemies of the people and "the common sense approach" will serve to legitimize international terrorism. As Sofaer concluded, "These deficiencies are not the product of negligence or mistake. They are intentional."[8]

Let us try, however, to take issue with the conventional wisdom and analyze more precisely what these few conflicting arguments mean. For example, is it true or to what extent is it true that "one man's hooligan is another's human rights fighter"?

"One Man's Hooligan Is Another's Civil Rights Fighter"

Theoretical study of socialist law brings us to the conclusion that the above-mentioned slogan does not have any backing in any socialist legal system. The Soviet Constitution provides for the protection of basic rights and freedoms of citizens of the U.S.S.R. in the way which would impress many political and civil rights activists in the West. Citizens of the U.S.S.R. have the right to labor, (art. 40), the right to leisure (art. 41), the right to health protection (art. 42), the right to material security in old age (art. 43), the right to housing (art. 44), the right to education, the right to use the achievements of culture, the freedom of scientific, technical, and artistic creativity (art. 45–47). The following articles guarantee electoral rights, freedom of speech, press, assemblies and meetings, street processions, freedom to demonstrate and freedom of conscience, and inviolability of the person (art. 48–54). "The Soviet spokespersons argue that the Western concepts of dignity and liberty are 'bourgeois' in character and devoid of meaning without the prior recognition and fulfillment of the essential human rights of food, shelter, and education."[9] Moreover, the Soviet Union is a signatory of the United Nations Charter, has ratified the U.N. convenants on economic, social, and cultural rights, as well as the Helsinki Declaration.

Hooliganism is formally defined in the Criminal Code of the R.S.F.S.R.[10] as "intentional actions flagrantly violating public order and expressing a clear disrespect for society" (art. 206), and malicious hooliganism is defined as "the same actions distinguished in their content by exceptional cynicism or special impudence, or connected with resistance to a representative of authority or a representative of the public fulfilling duties to protect public order, or to other citizens restraining hooligan actions, and likewise committed by a person previously convicted for hooliganism." It is not necessary to examine these provisions more profoundly to come to conclusion that the formal letter of the Soviet law by no means justifies the statement that "one man's hooligan is another's freedom activist."

The conclusion definitely sounds surprising when proclaimed by somebody who himself was treated as an "enemy of the people" and is most conscious of the Soviet record as far as political and civil rights violations are concerned.

The above assertion does not collide with the fact that charges of hooliganism, malicious hooliganism, parasitism (art. 209), anti-Soviet agitation and propaganda (art. 70), "circulation of fabrications which defame the Soviet political and social system" (art. 190–191), or "violation of laws on separation of church from state" (art. 142) are most frequently leveled against political activists.[11] The point which seems to be important for me is that not law *sensu stricto* but violations of law led to treating political and civil rights activists as criminals. Let me digress a little bit to illustrate this point better.

The early Soviet Criminal Codes provided for the principle of "analogy."[12] Article

16 of the Criminal Code of 1926 declared that under this principle "if any socially dangerous act has not been directly provided for by the present Code, the basis and extent of liability for it is determined by applying to it the articles of the Code which are most similar in nature."[13] This meant that a judge guided only by the formula that any crime is a "socially dangerous act" might convict any individual of a crime even though he had not violated any specific article of the criminal code.[14] Using the principle of analogy, having a few knives at home might be punished in the same way as the storing of dynamite. In one of the most famous or infamous cases, the husband, betrayed by his wife, successfully accused the seducer on the basis of "hunting without an appropriate permit." The seducer was convicted. My point is that the vague wording of Soviet laws might leave excessive freedom of interpretation up to the court which might as a result lead to judges' abusing their discretion. However, these abuses do not make a seducer "a hunter without permit." It would be ridiculous to argue that because of the decision in this case "one man's seducer is another's trespasser or hunter." Nobody, including the judges who decided this case, had any doubts "who was who" or against whom the provisions of the code were aimed. Nobody in the Soviet Union today believes that political or civil rights activists are hooligans neither under the letter of the law or in the opinion of the judges. The "human rights fighters" are as much "hooligans" as "seducers" are "hunters or trespassers." The socialist law does not provide a direct basis for such mistreatment. It is true that the Soviet Constitution adopted a flexible principle that constitutionally enumerated rights of the Soviet citizens which cannot be exercised in a manner contrary to the interests of society and the state (art. 39). It is also true that this principle and the vague wording of the articles of the criminal code might pave the way for abuses of law for political purposes. These imperfections of institutional protections of civil and political rights, however, explain only the channels through which the law is abused or manipulated. It still does not change the fact that to treat the political activist as a hooligan the letter of law has to be abused. The difference is important. The proper emphasis should be put on the violations and manipulations of law and the lack of legal protection against abuses of legal regulations. The common-sense slogan, "one man's human rights fighter is another's hooligan," obliterates this fact and takes a relativistic view of the firmly recognized human values. Instead of focusing the discussion on the gap between legal theory and practice, this slogan trivializes the problem and presents it in such a way that it may be approached from different but almost equally legitimte standpoints. It makes an impression that the above-mentioned vicious circle creates an unsolvable problem, not worthy of serious examination. For the countries violating basic human rights it is a very convenient approach and it would be an expression of "uncommon sense" for us to accept it.

"One Man's Terrorist Is Another's Freedom Fighter"

As Abraham Sofaer argued recently, "terrorist incidents have led to many efforts to use the law, virtually all of which have failed." The law failed because of "the absence of international agreement on the propriety of regulating terrorist activity," because "on some issues, the law leaves political violence unregulated, on other issues the law is ambivalent, providing a basis for conflicting arguments as to its purpose."[15] Let me add that the law failed because it still leaves enough room for those who claim that "one man's terrorist is another's freedom fighter."

Does it mean—I have often been asked by my confused students—that international

law puts "freedom fighters" on an equal footing with "terrorists" or fails to distinguish "who is who"? This is exactly what the above-mentioned slogan insinuates, but this "feeling" is precisely wrong.

Traditionally the laws of war (*jus in bello*) attempted to distinguish between *regular and irregular* participants of armed conflicts.[16] The Hague Convention of 1907 provided that "the laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps" (art. 1). Both *regular and irregular fighters* are recognized as *the lawful combatants* if they observe the laws of war. If wounded, sick, or "fallen into the power of the enemy" the combatants should be granted proper treatment and prisoner-of-war status. To qualify as combatants the regular and irregular fighters had traditionally to fulfill several conditions: to be commanded by a person responsible for his subordinates, to have fixed distinctive emblems recognizable at a distance, to carry arms openly and to conduct their operations in accordance with the laws and customs of war. These four conditions were formulated in Article 9 of the Brussels Declaration of 1874.[17] The unratified *Projet de Déclaration* became the basis of the Hague Convention of 1899 on the Laws and Customs of War on Land and the Regulations annexed to the Hague Convention of 1907.[18] The four conditions were repeated by the Geneva Conventions of 1949.[19]

As it was often pointed out, eighty percent of the victims of armed conflicts since World War II have been killed in internal armed conflicts.[20] The problem was widely discussed at the Diplomatic Conference on Humanitarian Law (held in Geneva from 1974 to 1977). The conference intensified the dispute about the legal status of combatants participating in wars of national liberation and revolutionary wars or using the tactics of "guerrilla warfare" (methods of surprise attacks, ambushes, or sabotage).[21] The problem was whether the guerrillas should be granted a special status less demanding than a minimum standard of conduct required from all combatants by the Hague or Geneva Conventions. Many experts warned that it does not seem justifiable to treat guerrillas differently than other *irregular* combatants and that the protection of civilians is a matter of utmost importance. The civilian population's fate becomes uncertain when every civilian may be suspected of being a camouflaged guerrilla. The guerrilla may camouflage himself as any regular soldier, but he may not camouflage himself as a civilian.[22]

The Diplomatic Conference in Geneva on June 8, 1977 adopted two Protocols Additional to the Geneva Conventions of 12 August 1949. Protocol I (Article 1(4)) extended the application of the rules of armed conflict to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination." Protocol I assures that "all combatants are obliged to comply with the rules of international law applicable in armed conflict" (Article 44(2.)[23] Most unfortunately, however, the Protocol modified the minimum standard of combatants' conduct as originally provided for by the Geneva Conventions. It confirmed that "in order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack." But the Protocol introduced the provision that "there are situations in armed conflicts where due to the nature of the hostilities, an armed combatant cannot so distinguish himself, he shall retain his status as combatant, provided that, in such situations, he carries his arms openly; (a) during each military engagement and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate." (Article 44(3)). The provisions of the Protocol were strongly criticized. As Abraham Sofaer wrote, "These changes in traditional rules undermine the notion that the protocol has secured an advantage for

humanitarian law by granting revolutionary groups protection as combatants. Under the Geneva Conventions, a terrorist could not hide among civilians until just before an attack. Under Protocol I, he may do so; he needs only carry his arms openly while he is visibly engaged in a deployment or while he is in an actual engagement."[24]

Do all these changes place the "freedom fighters" and "the terrorists" on the same footing or justify the saying that "one man's terrorist is . . . ." My answer is: definitely not. It has to be admitted that, even though criticized, Protocol I declares as a basic rule that "the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations against military objectives." (Article 48). And terrorism, as it is most often defined, is the premeditated use of violence against *noncombative targets* for political purposes.[25] With all the confusion caused by the Geneva Protocols the doctrine of international law still emphasizes strongly the distinction between *lawful and unlawful combatants*.

The group of *lawful combatants* includes "regular" and "irregular" fighters as described above.[26] The members of both (regular and irregular) groups might be deprived of the status of privileged combatants if they do not meet the *jus in bello* requirements concerning responsible command, arms, and distinctions. Moreover their conduct can constitute war crimes if, for example, they strike directly against the civilian population or blindly at civilians and military objects alike.[27]

It has been fairly often said that there is no rule that participation of the civilians in a war is *ipso facto* a war crime.[28] They are not "lawful combatants"; thus they participate in conflicts at their own risk. However, some of the acts and conducts of civilian participants are deemed international crimes: the perpetrators might be regarded not only as "unlawful combatants," who do not enjoy the privileges granted by the rules and customs of war, but as common criminals. The legal bases for international crimes can be found in the sources of international law: existing international conventions, customary international law, general principles of international law, and the writings of experts, although the last two rationales are usually challenged as not enforceable until embodied in a specific multilateral convention.[29] As Cherif Bassiouni argues, "Regardless of how a given conduct becomes an international crime, an empirical or experiential observation supports the conclusion that an international crime is any conduct which is designated as a crime in a multilateral convention with a significant number of states parties to it, provided that the instrument contains one of the ten penal characteristics." They are: (1) explicit recognition of proscribed conduct as constituting an international crime, or a crime under international law, or as a crime; (2) implicit recognition of the penal nature of the act by establishing a duty to prohibit, prevent, prosecute, punish, or the like; (3) criminalization of the proscribed conduct; (4) duty or right to prosecute; (5) duty or right to punish the proscribed conduct; (6) duty or right to extradite; (7) duty or right to cooperate in prosecution, punishment (including judicial assistance in penal proceedings); (8) establishment of a criminal jurisdictional basis (or theory of criminal jurisdiction or priority in ciminal jurisdiction); (9) reference to the establishment of an international criminal court or international tribunal with penal characteristics (or prerogatives); and (10) elimination of the defense of superior order.[30] Bassiouni deems that there are 22 international crimes.[31] Terrorism has not been included among the international crimes listed in either the Draft International Criminal Code or the Statute for an International Criminal Court but a number of acts were provided for in extradition conventions or treaties which declared that certain terrorist acts shall not be regarded as political offenses for purposes of extradition.[32] The most influential of these conventions was The European Convention

on the Suppression of Terrorism, signed by seventeen Member States of the Council of Europe on January 27, 1977. The Convention declared that "for the purposes of extradition . . . none of the following offenses shall be regarded as a political offense . . . : unlawful seizure of aircraft, unlawful acts against the safety of civil aviation, attacks against the life, physical integrity or liberty of internationally protected persons; an offense of kidnapping; the taking of a hostage or a serious unlawful detention; the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; an attempt or participation in such offenses." (Art. 1).

It is not the intention of this writer to analyze in this article the key principles of international criminal law. However, the point I attempt to make is that, in spite of all the "failures" of international law, it does not put "terrorists" and "freedom fighters" on the same footing. I agree with Sofaer that the recent development of international criminal law is not satisfactory and the Geneva Protocols particularly did not contribute to the clear-cut distinction between combatants and noncombatants. But I disagree with the statement that "law . . . has been placed very much at the service of those who embrace political violence."[33] Law is used and misused by the people, and as I tried to argue when discussing the Soviet civil rights policy, the most splendid legal declarations might be violated if the people do not control their enforcement. This is exactly the problem that international law faces. This problem resides in the imperfection of the schemes for the enforcement of international criminal law rather than in deficiencies of the law itself. I disagree that on the basis of current international law the terrorists can safely claim that "they are part of a revolutionary movement", "military people fighting a war, rather than criminals committing murder."[34] We may have problems qualifying their acts in very specific circumstances or apprehending terrorists or bringing them to justice at all but the criminal character of acts generally described as terrorist acts is recognized by international law. If we want to increase our effectiveness in dealing with terrorism, we have to admit that they are not "outlaws" or "knights of revolution." They are not only "unlawful" combatants—they are criminals.

"Who Is Terrorizing Whom?"

Alfred Louch writes in his interesting article "Terrorism: The Immorality of Belief," "If anything more is to be said, it must be by way of extenuation. The terrorist's reasons, or the context of his action, must make a difference. And here, I think, the friends of terror say one of two things. First, they say, you must sometimes fight fire with fire, a slogan designed to show that violence is the only means to a worthy or a necessary end. Second, they complain that systematic (and cunningly disguised) repression prevents legitimate points of view from being heard; violence is the only remaining way to express a certain range of beliefs about politics and society."[35] Louch tries to take issue with several common-sense arguments which emphasize the extenuating circumstances of terrorist actions. He finds unpersuasive the claims that "bloody work is done to prevent bloodier consequences," that terrorists through violence are "seeking an audience for their views in the only way open to them," or that they are not guilty of "slaughtering the innocents because no man is innocent."[36]

Regardless of the moral objections against "fighting violence with violence" the slogan "who is terrorizing whom?" suggests several things which are confusing to our common sense. It insinuates that some governments (particularly racist, authoritarian, or colonial regimes) may terrorize their societies and freedom fighters use "terror against

terror'' in the struggle for liberation. The word ''terrorizing'' used in this context is most confusing. This time it puts the actions of the oppressive governments and human rights fighters on an equal footing. The problem is that neither one ''terrorizes'' in the strict sense of the word.

It is surprising that common sense does not tell us that the ''terrorist'' label was not applied to the members of the underground liberation movements in Yugoslavia, Poland, or France during World War II. It was not, as I tried to argue above, because the freedom fighters use violence but *they do not terrorize* women and children. If they do, they become terrorists subject to criminal liability. These are methods of fighting which make the difference. The goals, noble as they are, cannot justify all means; at least, they cannot justify them on legal or moral grounds.

The rulers of various countries used ''terror'' for centuries but ''state terror'' and ''terrorism'' have little spiritual kinship. They are differently motivated forms of violence and we should emphasize the difference between them rather than accidental linguistic similarity.[37] If we want to successfully fight against terrorism we cannot use this term to label all forms of violence. As Max Singer argued correctly, ''The value and strength of the label 'terrorism' is reduced if it is applied to many other forms of violence, some of which are always wrong, and some of which are illegitimate only in some circumstances.''[38]

In the light of these reservations, the examined slogan loses the moral message it apparently was to convey. Even if we agree that terrorism is a response to state terror, both kinds of violence victimize civilian populations and both cannot be justified either in moral or legal terms. One can admit that freedom fighters use ''fire against fire.'' Terrorists use ''fire'' against defenseless citizens. It is an important difference. Terrorism is not a legitimate response to terror. The proper question we should ask is, ''Who is terrorized?'' not ''Who is terrorizing whom?'' The examined slogan in its common meaning turns out to be nothing but a confusing play on words.

Conclusions

This author does not have a great liking for definitional disputes and it is by no means his intention to encourage them. On the contrary, it seems to be that instead of looking for a trivial, one sentence-long description of this complicated phenomenon we should consider ''what is not'' terrorism. Instead of complaining that international law does not live up to our image of law we should carefully analyze our current provisions in international law and how much we might contribute to their improvement. The law is not usually good or wrong by itself. Our Constitution has seven articles, the Soviet Constitution has one hundred seventy-four articles. Does it mean that their Constitution is better than our basic law or, for example, than the British unwritten constitution? International law can only be as good as the legal and political culture of the members of the international community. Our culture is definitely more mature if it is purified of myths and slogans which burden on our common sense. If we will not at last try to attack these myths and slogans, our opponents in a psychological war in which words are weapons will be winning hands down.

Notes

1. See ''The Force and Effect of International Law'' in Burns H. Weston, Richard A. Falk, Anthony A. D'Amato, *International Law and World Order*, pp. 116–223.

2. Eugeny Pashukanis was the Soviet theorist of the postrevolutionary period and the author of the so-called "commodity exchange theory of law" who claimed, following Marx, that law is only a bourgeois relic and will wither away along with the extinction of the bourgeois state. In early 1937, he was denounced as a "traitor" and probably liquidated at Stalin's order.

3. See Rett R. Ludwikowski, "Socialist Legal Theory in the Post-Pashukanis Era", *Boston College Law Review* (Fall 1987).

4. *Pravda,* June 20, 1981.

5. From Brezhnev's welcoming address to Libya's Colonel Mu'ammar el Quaddafi in Moscow, April 27, 1981. See, Ray S. Cline and Yonah Alexander, *Terrorism: The Soviet Connection* (Crane Russak, New York, 1984), p. 22.

6. Compare Max Singer, "Care in the Exact Meaning of Terrorism," in *Governmental Responses to Terrorism,* Yonah Alexander and James Denton eds. (Hero Books, Fairfax, 1987), p. 107.

7. "Terrorism and the Law," *Foreign Affairs,* Summer 1986, p. 901.

8. Ibid., p. 903.

9. *Human Rights and American Foreign Policy,* Donald P. Kommers and Gilburt D. Loescher, eds. (University of Notre Dame Press, Notre Dame, 1979), p. 111.

10. Confirmed by Law of the R.S.F.S.R. Supreme Soviet on October 27, 1960, as amended to August 1, 1983.

11. Compare Oeter B. Reddaway, "Theory and Practice of Human Rights in the Soviet Union," in *Human Rights and American Foreign Policy,* pp. 115–129; see also, Harold Berman, see note 13.

12. This principle of analogy, which obviously violated the broadly recognized formula *nulla poena sine lege,* was abolished by the Fundamental Principles of Criminal law enacted by the Supreme Soviet in 1958. Compare John N. Hazard, Isaac Shapiro, Peter B. Maggs, *The Soviet Legal System* (Oceana Publications, Inc., Dobbs Ferry, 1969), pp. 6, 136; also John N. Hazard, William E. Butler, Peter B. Maggs, *The Soviet Legal System: The Law in the 1980's* (Oceana Publications, Inc., New York, 1984), p. 93.

13. Harold Berman, *Soviet Criminal Law and Procedure* (Harvard University Press, Cambridge, 1966), p. 26.

14. Ibid., p. 43.

15. "Terrorism and the Law," pp. 902–903.

16. These terms, not very fortunately chosen, are still used. See Sydney D. Bailey, *Prohibitions and Restraints in War* (The Royal Institute of International Affairs, Oxford, 1972), p. 82; also *Report of the Conference on Contemporary Problems of the Law of Armed Conflicts.* Geneva: 15–20 September 1969 (Carnegie Endowment for International Peace, New York, 1971), p. 39.

17. Compare Bailey, p. 83.

18. Compare William I. Hull, *The Two Hague Conferences and Their Contribution to International Law* (Kraus Reprint Co., New York, 1970), pp. 213–215.

19. Article 4(A)2 of the Convention Relative to the Treatment of Prisoners of War and Article 13 in the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

20. David P. Forsythe, "Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflicts," in *The American Journal of International Law* 72 (1978): p. 272.

21. As Denise Bindschedler-Robert wrote, "By the term 'guerrilla warfare' we refer exclusively to a method of fighting which is characterized grosso as fighting by dispersed and mobile groups of men employing methods of surprise attacks, ambushes and sabotage, and avoiding, as a rule, pitched battles. Guerrilla warfare is employed by an enemy which is weak in numbers and resources. The guerrilla strikes at the most unexpected moments and places while remaining elusive himself; he uses light arms—which is all he needs for that type of operation." (*Report of the Conference on Contemporary Problems of the Law of Armed Conflicts*), supra note 16, p. 38.

22. Ibid., pp. 39–44.

23. The text of Protocol I and II was published in *The American Journal of International Law* 72 (1978): pp. 457–509.

24. "Terrorism and the Law," p. 915; The United States participated in the Geneva Conference and signed the Protocol. It was not, however, submitted to the Senate for ratification.

25. See Robert Oakley, "International Terrorism," in *Foreign Affairs* 65, 3 (1987): p. 611.

26. Protocol II adopted at the Geneva Conference of 1977 provided for additional requirements concerning civil war conflicts. The most important was the provision that the dissident armed forces should "exercise control over a part of its territory (territory of the country experiencing internal disturbances) as to enable them to carry out sustained and concerted military operations and to implement this Protocol." Article 2 (1). See also Forsythe, op. cit., pp. 284–289.

27. *Report of the Conference on Contemporary Problems of the Law of Armed Conflicts*, p. 42.

28. Ibid., p. 78.

29. M. Cherif Bassiouni, *International Criminal Law*, vol. I. Crimes (Transnational Publishers, Inc. Dobbs Ferry, New York, 1986) p. 2.

30. Ibid., pp. 2–3.

31. These crimes are: war crimes; unlawful use of weapons; slavery and related crimes; torture; unlawful medical experimentation; piracy; aircraft hijacking; threat and use of force against internationally protected persons; taking of civilian hostages; drug offense; international traffic in obscene publications; destruction and/or theft of national treasures; endangering the environment; theft of nuclear materials; unlawful use of the mails; interference wth submarine cables; falsification and counterfeiting; and bribery of foreign public officials. Ibid., pp. 1–2.

32. Ibid., p. 94.

33. See *Bulletin of the Federal Courts* 19, 2 (February 1987): pp. 8–9.

34. Ibid.

35. *The Morality of Terrorism: Religious and Secular Justifications*, ed. by David C. Rapoport and Yonah Alexander, eds., (Pergamon Press, New York, 1982), p. 271.

36. Ibid., pp. 271–274.

37. It might be said that the state can also support international terrorism or sponsor the actions of domestic terrorism. Both examples are, however, irrelevant to the message conveyed by the slogan, "Who is terrorizing whom?" The first usually involes the terrorists' actions in one state supported by the other state that may provoke governmental response from the country affected by terrorism but not the counteractions of the freedom fighters. The second possibility refers to the relatively rare situations in which state officials use noncombatant units, composed of undercover agents, to terrorize the civilian population in quasi-terrorist actions. (The typical action of this kind was the murder on October 19, 1984 in Poland of the Rev. Jerzy Popieluszko, who was kidnaped and killed by two senior intelligence officers who were encouraged by their superiors and pretended to act as civilian terrorists). So far these acts do not provoke the response of either freedom fighters or terrorists. However, it has to be admitted that the problem of state-controlled domestic terrorism is interesting and has not been satisfactorily examined.

38. *Governmental Responses to Terrorism*, p. 109.