TERRORISM, INSURGENCY AND GEOPOLITICS: THE ERRORS OF U.S. FOREIGN POLICY

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"Everything in this world exudes crime," says Baudelaire, "the newspapers, the walls and the face of man."[1] Today this is nowhere more apparent than in the growing peril of international terrorism, a dreadful assault on nations and individuals that ritually mocks our pretensions as a civilized species. Yet before we can respond effectively to this assault, we must first understand that not every instance of insurgency is an example of terrorism and recognize that the distinctions between lawful and unlawful insurgency are important. Although much current scholarship would have us believe that differentiating between terrorists and freedom fighters is entirely a subjective matter, international law offers a different position—one that is in the best interests of the United States to recognize and respect.

I.

International law has consistently proscribed particular acts of international terrorism.[2] At the same time, however, it has permit-

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1. Baudelaire, quoted in CAMUS, THE REBEL 52 (1956).

2. On December 9, 1985, the United Nations General Assembly unanimously adopted a resolution condemning all acts of terrorism as "criminal." Never before had the Assembly adopted such a comprehensive resolution on this question. Yet the issue of particular acts that actually constitute terrorism is left unresolved, except for acts such as hijacking, hostage-taking and attacks on internationally protected persons that had been criminalized by previous custom and conventions. The practical problem of gaining support for the "extradite or prosecute" formula even in these cases, remains a serious impediment to effective counterterrorism. On conventional law in force regarding terrorism, *see, e.g.*, the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6765, 704 U.N.T.S. 219; the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192; and the 1971 Montreal Convention for the Suppression of Unlawful Acts

ted certain uses of force that derive from

> the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination and the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and the relevant resolutions of the organs of the United Nations.[3]

This exemption is corroborated by the United Nations 1974 Definition of Aggression:

> Nothing in this definition, and in particular Article 3 [which lists an inventory of acts that qualify as aggression] could in any way prejudice the right to self-determination, freedom, and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.[4]

International law has also approved certain forms of insurgency that are directed toward improving human rights where repression is neither colonial nor racist. Together with a number of important covenants, treaties and declarations, the United Nations Charter codifies many binding norms on the protection of human rights. Comprising a well-defined "regime," these rules of international law are effectively enforceable only by the actions of individual states or by lawful insurgencies.

Where it is understood as resistance to despotism, insurgency also has roots as a permissible practice in the Bible and in the writings of ancient and medieval classics. Support for such insurgency is not the creation of modern international law. It can be found, for

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against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 565, T.I.A.S. No. 7570. *See also* the 1979 International Convention against the Taking of Hostages, Dec. 16, 1979, entered into force June 3, 1983, for the United States Jan. 16, 1985; the 1961 Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes, Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502; the 1973 Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1975, T.I.A.S. No. 8532; and the 1975 Helsinki Final Act.

3. 1973 G.A. Report of the Ad Hoc Committee on International Terrorism. *See With Friends Like These, The Americas Watch Report on Human Rights in U.S. Policy in Latin America* 175 (C. Brown ed. 1985) [hereinafter cited as Brown].

4. G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31), U.N. Doc. A/9631 (1974).

example, in Aristotles' *Politics*, Plutarch's *Lives* and Cicero's *De Officiis*. This brings us to the first jurisprudential standard, one commonly known as "just cause." Where individual states prevent the exercise of human rights, insurgency *may* express law-enforcing reactions under international law. For this to be the case, however, the *means* used in that insurgency must be consistent with the second jurisprudential standard, commonly known as "just means."

In deciding whether a particular insurgency is an instance of terrorism or law-enforcement, states must base their evaluations, in part, on judgments concerning discrimination, proportionality and military necessity. When force is applied broadly to any segment of human population without distinction between combatants and noncombatants, terrorism is taking place. Similarly, if force is applied to the fullest possible extent, restrained only by the limits of available weaponry, terrorism is underway.

The legitimacy of a certain cause does not legitimize the use of certain forms of violence: The ends *do not* justify the means. As in the case of war between states, every use of force by insurgents must be judged twice, once with regard to the justness of the objective, and once with regard to the justness of the means used in pursuit of that objective.

Now, what does all of this have to do with America's efforts to combat terrorism? The answer, ironically, lies in the fabric of the American political tradition.[5] The people who celebrate the revolution of 1776 are selectively reluctant to recognize the claims of others to human rights. Or to put it more precisely, we are willing to recognize these claims when they issue from the Soviet Union or its allies, but we close our ears and hearts to those who cry out from anti-Soviet states. The resulting double standard, a condition created by our overriding commitment to *Realpolitik* and anti-Sovietism, will generate terrorism against the United States.

Contrary to prevailing views in Washington, terrorism is not es-

5. The actual conveyance of natural law thought into American constitutional theory—which is largely responsible for the irony of current American foreign policy on human rights—was the result of John Locke's *Second Treatise on Civil Government*. While Hobbes regarded natural law and civil law as coextensive, Locke echoed a more than two thousand year old tradition with his view that the validity of civil law must always be tested against antecedent natural law. The codified American "duty" to revolt when governments commit "a long train of abuses and usurpations" flows from Locke's notion that civil authority can never extend beyond the securing of man's natural rights. This theory of natural law, which had been fully secularized by Pufendorf and Vattel as well as by Grotius, is based on clarity, self-evidence and coherence. Its validity cannot be shaken by the "reality" of bad governments. And its preeminent emphasis on the value and dignity of each individual is not subject to revision by civil law.

sentially a tactical problem; it is a political problem. It threatens the United States largely because of our support of authoritarianism in other countries. During the next several years, opponents of United States-supported regimes in Latin America and South Africa will acquire power and authority, spawning bases for additional anti-Americanism. Sadly, this development can be avoided only if this country remains true to its own doctrinal foundations.

There has been no learning from lessons of the past. What can this country hope to accomplish by standing alongside such pariah states as Chile and South Africa while unleashing insurgents to "destabilize" less repressive regimes? If we are really interested in protecting ourselves against terrorism, why do we persist in support of governments that make terrorism inevitable? If we fear that Chile will become "another Nicaragua," why did we install the Pinochet regime in the first place? And if we fear that Nicaragua will become "another Cuba," why do we cling foolishly to interventionist policies that leave the Sandinistas no other choice?

In South Africa, one thing is certain: Sooner or later, the apartheid regime will be overthrown. When that happens, the successor black majority government will be more or less bitterly anti-American, depending on United States' willingness to change course during the next few years. Should this country begin to act on its own best traditions rather than the self-defeating expectations of geopolitics, it may still be possible to avoid an irreversible breach with South Africa. Even more important perhaps, such action would restore Americans' capacity to bear witness as a righteous people.

To succeed, our leaders must recognize an obligation to seriously oppose any system that outrages the conscience of humankind. Rejecting the cliched syntax of Cold War arguments, our leaders must take immediate steps to bring United States' policy into line with the rhetoric of democracy. If the philosophic and jurisprudential traditions of the Declaration of Independence are to mean more than ritual pap for fifth grade civics classes, and if we really do embrace the idea of "just cause" for revolution, then we must accept as self-evident the right of black South Africans to throw off a government whose design is "to reduce them under absolute Despotism."

The Declaration of Independence sets limits on the authority of *every* government. Since justice, according to the Founding Fathers, must bind all human society, the rights articulated by the

Declaration cannot be reserved only to Americans. Denying these rights to others in Latin America and South Africa is illogical and self-contradictory since such a refusal undermines the permanent and universal Law of Nature from which the Declaration derives.

The overriding risk of anti-United States terrorism does not lurk in guerrilla camps or in Soviet machinations. It rests on our own failure to understand that human rights *everywhere* are important and that they are important *in themselves*. To be effective against terrorism, United States' policies will require disengagement from support of all authoritarian regimes. And they will require an end to our sponsorship of counter-revolutionary forces in Nicaragua and elsewhere.

In support of the principle that foreign intervention is unlawful unless it is an indispensable measure to correct gross violations of human rights, most major texts and treatises on international law have long expressed the opinion that a state is forbidden to engage in military or paramilitary operations against another state with which it is not at war.[6] Nevertheless, the legal systems, as embodied in the constitutions of individual states, reflect the principle that all states normally must defend against aggression. According to Hersch Lauterpacht:

> International law imposes upon the State the duty of restraining persons within its territory from engaging in such revolutionary activities against friendly States as amount to organized acts of force in the form of hostile expeditions against the territory of those States. It also obliges the States to repress and discourage activities in which attempts against the life of political opponents are regarded as a proper means of revolutionary action.[7]

Lauterpacht's rule reaffirms the Resolution on the Rights and Duties of Foreign Powers as Regards the Established and Recognized Governments in Case of Insurrection adopted by the Institute of International Law in 1900. His rule, however, stops short of the prescription offered in the 18th century by Emmerich de Vattel that states which support insurgency directed at states become law-

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6. Major texts and treaties are considered authoritative sources of international law according to Article 38 of the Statute of the International Court of Justice. 1977 YEARBOOK OF THE UNITED NATIONS 1190.

Today, the long-standing customary prohibition against foreign support for lawless insurgencies is codified in the United Nations Charter and in authoritative interpretations of that multilateral treaty at Article 1 and Article 3(g) of the Definition of Aggression Resolution, *supra* note 4.

7. *See* 3 LAUTERPACHT, INTERNATIONAL LAW (THE LAW OF PEACE) 274, pts. 2-6.

ful prey of the world community:

> If there should be found a restless and unprincipled nation, ever ready to do harm to others, to thwart their purposes, and to stir up civil strife among their citizens, there is no doubt that all others would have the right to unite together to subdue such a nation, to discipline it, and even to disable it from doing further harm.[8]

There is also, as noted earlier, an obligation of insurgent forces to comply with the humanitarian rules of armed conflict. Notwithstanding this obligation, United States-supported *contra* rebels in Nicaragua display indifference to prevailing civilized standards of international law. As revealed by the infamous manual for the contras prepared by the Central Intelligence Agency, the United States war against the Sandinistas is carried out with open contempt for the norms of discrimination, proportionality, and military necessity.[9] According to the Americas Watch report on human rights and United States policy in Latin America, the *contras* routinely engage in kidnappings, mutilations, torture and murder.[10]

States have a reciprocal obligation to treat captured insurgents in conformity with the basic dictates of international law. Although this obligation does not normally interfere with a state's right to regard as common or ordinary criminals those persons not engaged in armed conflict,[11] it does mean that all other captives "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."[12]

In cases where captive persons *are* engaged in armed conflict, this reciprocal obligation of states may mean an obligation to extend the privileged status of prisoner of war to such persons. This obligation is unaffected by insurgent respect for the laws of war of

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8. E. VATTEL, THE LAW OF NATIONS 130 (C.W. Fenwick trans. 1916).

9. *See* Tayacan, *Psychological Operations in Guerrilla Warfare*, Library of Congress, Washington, D.C. (1984). (This manual, translated from Spanish by Congressional Research Service, was prepared by the CIA for use by the *contras*.)

10. *See* Brown, *supra* note 3, at 175.

11. Such persons include, for example, those involved in internal disturbances, riots, isolated and specific acts of violence, or other acts of a similar nature. *See* THE HAGUE REGULATIONS CONVENTION (NO.IV) RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND WITH ANNEX REGULATIONS, done at The Hague, Oct. 18, 1907.

12. Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3314, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Aug. 12 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

international law. While all combatants must comply with the rules of international law applicable to armed conflict, violations of these rules do not automatically deprive an insurgent combatant of his right to protection equivalent in all respects to that accorded to prisoners of war. This right, codified in the Geneva Convention, is now complemented and enlarged by two protocols.

Protocol I makes the law concerning international conflicts applicable to conflicts fought for self-determination against alien occupation and against colonialist and racist regimes.[13] The protocol, which was justified by the decolonization provisions of the Charter and by resolutions of the General Assembly, brings irregular forces within the full scope of the law of armed conflict.

Protocol II, also an addition to the Geneva Conventions, concerns protection of victims of non-international armed conflicts. Hence, Protocol II applies to all armed conflicts that are not covered by Protocol I, those within the territory of a state between its armed forces and dissidents. These dissident armed forces, to be subject to the jurisdiction of Protocol II, and therefore subject to international law, must be "under responsible command" and "must exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations . . . ."[14]

Significantly, even since President Duarte has served as an elected president, the government of El Salvador has consistently violated these laws of war. Indeed, according to recent congressional testimony by Aryeh Neier, vice chairman of Americas Watch, the Salvadoran armed forces are not only mistreating captive insurgents, they are also "causing incalculable harm, incalculable suffering to civilians."[15] With direct United States support, the Salvadoran army and air force continue to terrorize civilians by means of "indiscriminate attacks by air, by mortar shelling and by ground sweeps."[16] In spite of these serious violations of international law, the official position of the United States is that "there

13. Both protocols are products of the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts held through June 10, 1977. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *printed at* 72 AM. J. INT'L LAW at 457-502 (1978).

14. *See* Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-International Armed conflicts, *printed at* 72 AM. J. INT'L LAW at 502-09 (1978).

15. *See Developments in El Salvador, Hearing Before the Subcomm. on Western Hemisphere Affairs of the Comm. on Foreign Affairs*, 99th Cong., 1st Sess. at 3 (1985).

16. *Id.*

has been substantial progress" in ending human rights abuses in El Salvador.[17]

Of course, there are many expressions of current United States foreign policy that *are* fundamentally sound and cannot simply be changed to reduce the threat of terrorism.[18] Anti-Americanism cannot be eliminated altogether, and even the most correct foreign policies will not render us invulnerable. This means that viable strategies of prevention and control lie in part in high-quality intelligence gathering and in efficient police or military operations. Expanded patterns of cooperation between similarly postured governments could also contribute to a viable strategy. These patterns must be based on the idea that even sovereignty must yield to the requirements of justice.[19] They must, therefore, take the form of enforceable agreements between particular states which promise mutual protection and support for responsible acts of counter-terrorism.

Such arrangements must entail plans for cooperative intelligence activities and for exchange of the resulting information, an expanded and refined tapestry of agreements on extradition of terrorists and multi-lateral forces to infiltrate terrorist organizations and, if necessary, to take action against them. Counter-terrorism plans should also call for concerted use of the media to publicize terrorist activities and intentions as well as counter-terrorism emergency medical networks. Such arrangements might also entail limited and particular acts of cooperation between states directed toward effective counter-terrorism.

International arrangements for counter-terrorist cooperation must also include meaningful sanctions for states which sponsor or

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17. *See Country Reports on Human Rights Practices for 1984, Report Submitted to the Comm. on Foreign Relations, Senate, and Comm. on Foreign Affairs, House of Representatives, by the Department of State*, Washington, D.C., Feb. 1985, at 513.

18. One example is United States support for Israel, a country that supplies us with valuable intelligence information and with a reliable potential staging area for United States' military forces. Moreover, even if this country shifted its allegiance away from such support, it is unlikely we would benefit from a reduced threat of terrorism. America has been a supporter of Israel since 1948, but has become a victim of Middle Eastern terrorism only during the past several years. In view of the multiple bases of conflict in the Middle East, this country would continue to be perceived as an enemy by various states and terrorist groups in that region whatever its posture toward Israel. This is because these states and groups oppose what they perceive as (a) partisan United States intervention in their domestic political affairs (e.g., Lebanon); (b) partisan United States involvement on the side of the "moderate" Arabs; (c) partisan United States involvement on behalf of Iran; and (d) sectarian United States support for certain forces that resist the gathering tide of Islamic fundamentalism.

19. An example of this can be found in the involvement of three United States military officers in the ill-fated Egyptian commando hostage rescue effort on Malta in November, 1985.

support terrorist groups and activities.[20] As in the case of sanctions applied directly to terrorists, such sanctions may include carrots as well as sticks. Until every state in the world system acknowledges that support of counter-terrorist measures is in their own interests, individual terrorist groups will have reason and opportunity to mount their violent excursions.

II.

Since the end of the Second World War, there has been a revolution in international legal affairs. Among other things, this revolution has essentially removed a state's treatment of its own nationals from the realm of "domestic jurisdiction" whenever such treatment fails to conform to particular normative standards. Expanding on the long-standing principle of humanitarian intervention, the Nuremberg Judgment and Nuremberg Principles placed additional and far-reaching limits on the authority of particular states. The individual human being, as the ultimate unit of all law, is entitled to the protection of humankind when the state tramples on his rights "in a manner that outrages the conscience of mankind." Based on this reasoning, the Tribunal firmly established the *obligation* of states to intervene in the affairs of other states whenever such outrages are committed.[21] The United States, of course, cannot undertake to be the world's policeman, but it can do better than base its policies of intervention on a self-defeating political distinction between "totalitarian" and "authoritarian" regimes.

In the absence of viable community enforcement capabilities and given our decentralized international society, the opportunities for justice require voluntary patterns of compliance and support by individual governments. The prevailing expectation is that such patterns will be especially and consistently acknowledged by the world's major powers. It follows that punishment of gross violations

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20. In this connection, it is more than a little ironic that while the United States seeks sanctions against Libya for its support of terrorism, the Reagan administration continues to support the *contra* terrorists in their actions against the Nicaraguan government. Although support of foreign insurgencies may be lawful if it is occasioned by a genuine commitment to humanitarian intervention and if it is conducted according to the obligations of *jus in bello*, neither criterion is met by the United States in its operations against Nicaragua. Indeed, the Reagan administration now lists Nicaragua as a principal state sponsor of terrorism because of its alleged support for Salvadoran insurgents—a charge that has never been credibly documented.

21. International Military Tribunal, I Trial of the Major War Criminals Before the International Military Tribunal at Nuremburg, Judgment 218 (Nov. 1, 1945—Oct. 1, 1946), published by the Secretariat of the Tribunal, Nuremberg, 1947-1949.

of human rights is now well within the jurisdictional scope of American foreign policy.

If the United States continues to turn its back on responsible enforcement of the international law of human rights, it will lose not only its few remaining claims to moral leadership, but also its last practical chance for coping with terrorism. Indeed, the Reagan administration's policy on human rights may soon lose this country its friends as well. The problem lies in recognizing the principle of "just cause" for insurgency (a principle enshrined in our traditions and in the law of nations), and in distinguishing between lawful and unlawful insurgencies under international law.[22]

The American imperative, therefore, must be to condemn not only insurgent terror, but also "regime" terror. Regime terror, which contradicts the extant rules and principles of international law, *breeds* insurgent terror. If the United States is to be true to the basic ideals of its founding documents as well as to its international legal obligations and long-term geopolitical interests, it cannot continue to support the former while combatting the latter.[23]

Today, the United States still tolerates many countries denying their citizens essential human rights so long as there is consistent support for cooperative anti-Sovietism. Founded on the spurious dichotomy between "authoritarian" and "totalitarian" regimes, this policy stipulates that violations of human dignity from the political right are acceptable, but that from the left they are not. Myopic and misconceived, this policy will inevitably fail as the oligarchs are eclipsed and their successors join the expanding legion of anti-American states.

To prevent such failure, the Administration need only begin to adhere to its own national legal obligations. The basic principles of the international law of human rights have already been "incorporated" into the laws of the United States. Complying with these

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22. Interestingly, the most recent official United States government definition of terrorism does not allow for "just cause." According to a September 1984 definition offered by the Department of State, Bureau of Public Affairs, "[t]errorism is the use or threatened use of violence for political purposes to create a state of fear that will aid in extorting, coercing, intimidating, or otherwise causing individuals and groups to alter their behavior." Dep't of State Bureau of Public Affairs, *International Terrorism*, GIST, Sept. 1984. By this definition, of course, the 18th century revolutionary insurgency that led to the creation of the United States was *pure terrorism*. Similarly, the United States-supported *contras* are also terrorists by this definition.

23. In this connection, the Administration should take another look at its own annual State Department Report, *Country Reports on Human Rights Practices*, *supra* note 17, a report that regularly identifies a large number of countries that engage in the systematic and unlawful denial of essential human rights to their citizens.

principles would effectively limit terrorism against the United States. This point was understood by former Secretary of State Cyrus Vance who offered the following observation: "We pursue our human rights objectives, not only because they are right, but because we have a stake in the stability that comes when people can express their hopes and find their futures freely. Our ideals and our interests coincide."[24] Who, exactly, are the terrorists? Are they the black South African guerrillas who oppose a white minority-ruled apartheid regime?[25] Are they the individuals among the neighboring frontline states who support black South African insurgents? Are they the Namibians who support the South-West African People's Organization (SWAPO) in a United Nations-sanctioned opposition to South African control? Are they the Salvadoran rebels? Are they also the rightist "death squads" that operate throughout Latin America? What about the Afghan Moslem guerrillas combatting Soviet troops or Iran's ethnic Kurds? What about *Unita* and the *contras*?

The problem, of course, is exceedingly complex. During the coming months, the United States will have to make very critical distinctions between terrorists and legitimate insurgent movements. These distinctions will have to be based on more important criteria than shortsighted Cold War positions. Even in narrow geopolitical terms, a continuing American retreat from human rights in foreign affairs will ultimately have devastating repercussions. In South Africa, for example, the winds of change are clear and unstoppable. At some point in the near future, as Bishop Tutu observed on a visit to the United States in January, 1986, our access to that country's vital mineral resources will depend on our commitment to black majority rule.

This country has not always been opposed to its own best traditions. In America's early years, George Washington noted: "The foundations of our national policy must be laid in the pure and immutable principles of private morality."[26] Accepting the wisdom of

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24. Testimony of Cyrus Vance before the U.S. Senate Committee on Foreign Relations, Mar. 27, 1980, 97th Cong., 2d Sess. (Washington D.C., U.S. Government Printing Office).

25. On the particular crime of apartheid, *see International Convention on the Suppression and Punishment of the Crime of Apartheid*, July 18, 1976, G.A. Res. 3068, 28 U.N. GAOR Supp. (No. 30), U.N. Doc. A/9030 (1973). *See also* International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, G.A. Res. 2106A, 20 U.N. GAOR Supp. (No. 14), U.N. Doc. A/6014 (1965).

26. *See* Washington's Farewell Address, Sept. 17, 1776, *Message and Papers of the Presidents*, Washington D.C., 1897, Vol. 1, at 219 (J. Richardson ed.).

our first president, President Reagan must change the current direction of United States policy before it is too late. Although opposing terrorism in every form is both correct and pragmatic, we must first acknowledge that there is a lawful definition of terrorism.

As we have seen, current policies that spawn terrorism against the United States also ensure the opposition of burgeoning governments. During the next few years, insurgents fighting against regime terror in various countries will likely prevail. Installed with authority, these former rebels will become enemies of the United States.

What will happen when the opponents of the United States supported regimes in Latin America and South Africa mount successful insurgencies, creating successor governments with strongly anti-American views? The answer is entirely predictable. Unless there is a prompt shift to lucidity in Washington, this country will begin the next phase of geopolitical competition, starting its own insurgencies to topple regimes that are now left-wing. Resembling the administration's current war against Nicaragua, these insurgencies—conducted by "freedom fighters"—will seek to bring down governments that will be denounced as "Soviet pawns." By this reasoning, the present conditions of apartheid and repression (as with Somoza's rule in Nicaragua) will be described as the "lesser evil."

III.

The true danger of terrorism lies not in the guerrilla camps of Central America and southern Africa. The enemy lies in ourselves. To meet the requirements of effective counter-terrorism, the United States must oppose repressive regimes and movements whatever their ideological stripe. It must also support those insurgencies that spring genuinely from "just cause," and that are carried out with due regard for the laws of war of international law.

The United States cannot have it both ways. There is little point to our condemnations of state-supported terrorism against American interests in the Middle East if we support our own terrorists in Central America. Moreover, there is little point in bemoaning terrorist indifference to the humanitarian rules of armed conflict when *contra* rebels display total disregard for them.[27]

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27. Ironically, Secretary of State Shultz has often stated his commitment to the laws of war of international law and to the understanding that these humanitarian rules of armed conflict apply as well to insurgent forces: "The grievances that terrorists supposedly seek to redress through acts of violence may or may not be legitimate. The terrorist acts themselves,

The correct actions taken by the Reagan administration to oppose terrorism in the Middle East stands in ironic contrast to its pro-terrorist stance in Nicaragua. By its forceful action against the Palestinian hijackers who defiled every civilized standard of humanitarian international law in the *Achille Lauro* tragedy, the Reagan administration advanced the highest principles of engagement in the war against terrorism. Yet by its relations with Nicaragua, the administration still casts its lot with the terrorists. But in refusing to submit to the compulsory jurisdiction of the International Court of Justice in the case brought by Nicaragua, the administration can hardly lay claim to lawfulness. In this connection, United States' credibility as a rule-abiding member of the community of nations is further undermined by the administration's direct violation of the World Court's interim judgment of May 10, 1984, a judgment requiring the United States to refrain from any continued support of the *contras*.

Driven by ideological antipathy for a Marxist regime in this hemisphere, President Reagan has willfully subordinated the rule of law to the presumed imperatives of power politics. Left unchanged, our inconsistent policies toward terrorism will generate worldwide indifference to American indignation and far-reaching constraints on American power.

In the end, as we learn from Goethe, "we depend upon creatures of our own making." Understood in terms of the American imperative to combat terrorism, Goethe's wisdom suggests a far-reaching United States disengagement from the self-defeating dynamics of anti-Sovietism. Without such disengagement, this country will continue to support authoritarian regimes as a "necessary evil."

There is another reason why steps toward United States-Soviet reconciliation would reduce the threat of anti-American terrorism. At a moment in history where the Soviets seek far-reaching efforts at arms control and disarmament, such steps could encourage them to offer certain geopolitical concessions in exchange for greater security from nuclear war. An example of such concessions might well be diminished Soviet support for states that sustain terrorists groups, for example, Libya.

If, indeed, the Soviet Union were genuinely assimilable to the

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however, can never be legitimate. And legitimate causes can never justify or excuse terrorism. Terrorists' means discredit their ends." *See Terrorism and the Modern World*, Dep't of State Bureau of Public Affairs, Washington, D.C., Oct. 25, 1984, Current Policy No. 629, at 3.

spirit of evil—a current article of faith in Washington—no reconciliation would be possible. If this were so, the United States would perceive no alternative but to support repressive anti-Soviet regimes. And it would further perceive no alternative to constant struggle for geopolitical advantage, a judgment that would be reciprocated by the Soviet Union. As a result, we could expect an increasing incidence of terrorism against the United States.

But the prevailing American view of the Soviet Union is a caricature, not a reality. Fashioned in the ruins of thought, this caricature draws the United States further and further away from its own interests. There is still time for a change in direction, toward secular political competition and away from dangerous theological conflict between "good" and "evil." In acknowledging this differentiation, America could begin to understand the imperatives of effective counter-terrorism. Abandoning the sterile polarity that obscures its mental horizon, we could begin to take our first essential steps toward real safety from terrorist attack.