

WORLD TERRORISM TODAY

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As legalistically inclined Americans, we tend to put a pox upon something as unsporting, unclean, dirty, and deplored as terrorism. But the world does not necessarily react the way we want it to react. And so we have a problem. It is particularly fitting, it seems to me, that terrorism should be discussed in terms of the problems involved in international law because resolution of these several emerging problems affects your future and your teaching — it affects the intellectual approach you take to your subject, and it reflects your legal methodology. I am reminded of Professor Dick Baxter's rather wry comment that we continue to practice outmoded, stereotyped, and absolutely rigorous means of teaching international law as if there was nothing in the world that was changing. In fact, we do not have the requisite instruments of international law to deal realistically and practically with the phenomenon of terror. Terror has been with us as a word and as a form of political action since Biblical days. There is nothing new *per se* in acts of individual terror. We have codified into national laws and statutes criminal punishment for acts of individual terror. Let me classify these acts as being criminal acts of terror — psychotic acts of terror, organized acts of terror, and political acts of terror. Our local jurisdictions have defined well what happens when a person commits a criminal act of terror, but we have not clearly defined requisite legislation to cope with what Professor Richard Clutterbuck calls the most prevalent form of warfare in the last quarter of the Twentieth Century — terror. This is indeed sad.

Recently, while working at the United Nations, I had an exchange with the Libyan Ambassador on the issue of terror. He quoted what is generally considered a truism in the terrorist trade in answer to my question: "Why does Libya remain open as a sanctuary for terrorists; why does Libya finance terrorist movements all the way from the Irish Republican Army in Northern Ireland to the Moros of the Philippines?" "One man's terrorist," he

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said, "is another man's freedom fighter, wouldn't you agree? And who is to decide? Who is to decide?" Lawyers around the world pose the same issue: who is to decide? In the world of terror there is no willingness to concede to a higher authority, to a sovereignty, to an international body, or to anyone else. After all, the Palestine Liberation Organization (PLO), with its commitment to terror as a matter of policy, has a headquarters in the United States and is represented at the United Nations. I was somewhat amused to notice that the PLO table position in the United Nations was next to the observer from the Vatican — a strange and unlikely combination. This shows you the difficulty and some of the irony in trying to deal with terrorism rationally, legally, and, if you will, with a certain amount of political intelligence. There is a terribly confusing problem of jurisdiction in the area of terrorist control, due principally to the nature of modern terror; a legal regime in the field of international terrorism is indeed needed. Here we have another world in which, for example, Israeli counter-terror teams in retaliation for Arab activity operate in Scandinavia and are detected in another national sovereignty. This is essentially a matter of law and not diplomacy.

Legal problems in the field of terrorism abound and cry out for definition. In the Federal Republic of Germany, for example, the structure of the federal government and its relations with the several German states required the creation of a special border guard unit (CSG-9) in order to cope with German internal terrorist problems. It is a highly unique paramilitary commando designed to walk the delicate line between a national force and state jurisdiction — required because of civil liberties and the remembrance of a Nazi past. A nervous German *Bundestag* would permit no risk of the perception of a supernational secret service. An original legal solution to a strange problem and yet — as was seen in Somalia — a rather effective solution to an extremist situation. This issue goes deeper. Terrorism is not just the actions of a group of international extremists calling for violent change outside the legal order; they are practitioners of a way of life, of a set of moral norms which are antithetical to the Western code. They draw their wisdom largely from the body of doctrine developed by international communism. Theorists from Lenin and Trotsky to Che Guevara and General Giap have forged a tactical experience and a motivational drive from which today's young terrorists find direction and sustenance. The contemporary terrorist is secure in his views; he is convinced

he is right and that decadent society, once destroyed, will appreciate catharsis. It is a peculiar state of mind: a form of arrogance, conceit, and intellectual pretense bounded on all sides by violence. This state of mind obviously is subject to rigorous review — legal review as well as philosophical review — but it has not as yet happened.

Part of the Italian problem, for example, is that Italy still operates under the laws of fascism that were written in the 1920's and 1930's. Another part stems from the defeat of fascism in which Italy properly splintered its security and intelligence forces and subdivided them into competing, conflicting little bureaucracies which do not exchange information and intelligence. When the terrorist crunch came, the agencies were incapable of mutual cooperation. The modern history of terrorism is a part of the modern history of wars and revolution, emphasizing randomness, arbitrariness and publicity. Terrorists are cleverly attacking the institutions of society and the credibility of the people who control these institutions.

How does national and international law react to this assault? Today, for instance, there are several Croatian terrorists in German jails who Tito would very much like to have returned to Yugoslavia. This issue is a legal one of extradition. Croatia, you will recall, was largely sympathetic to the Nazis during World War II and begot a native fascism of its own. The Germans say that the Croats are not extraditable, having determined that the Croats are not guilty of a political crime. The Yugoslavs retaliate by refusing to return to Germany several terrorists of the Baader-Meinhoff Gang. End of case. The treaty of extradition between Yugoslavia and the Federal German Republic simply does not cover a situation of this nature, to the frustration of both parties.

In the recent past there was a meeting in Yugoslavia, a world summit of the major terrorist organizations, minus the United States, because we do not yet have a major terrorist organization. It was chaired by a superstar of world terrorism, Carlos Ilich Ramirez Sanchez — known to the world as Carlos — a Venezuelan of upper middle class but Marxist background educated in terror at Soviet training schools which are scattered worldwide from Moscow and Prague to Habana. In any event, this Summit of terrorists exchanged views, undoubtedly transferred experience, money, and perhaps assignments. Of interest to all is the fascinating fact that

the minutes of the Conference, now available in the West, were taken in Arabic.

United States presence in international terrorism is thankfully missing, though we have our own native enthusiasts, principally FALN, the Puerto Rican independence extremists, the residuals of the Weathermen, and the New World Liberation Front, a west coast Maoist organization. Terrorism, be it domestic or transnational, is essentially a movement of the young, not the old. The age group from twenty-two to twenty-nine is predominate, with slightly more men than women. The women are, however, far and away the better terrorists and their commitment is total.

What we see is a group of idealists, largely Marxist or anarchist in thought patterns, alienated from society and often disaffected with orthodox communism. The "Red Brigades" in Italy, for example, have as their sworn enemies the communists from whom they descended. The communists are as worried about the Red Brigadists as they are of the Christian Democrats. Why was Aldo Moro picked as a target? Because he was convenient? No, because he was the man most responsible for the historic opening to the left that brought together the Christian Democrats and the communists into a coalition to try to run a reasonably stable Italian government. Moro became a target, a symbol, a piece of contempt for the act of violence. The terrorists believed the Communist Party, and other European communists in particular, had betrayed the cause of revolution. They believe the same of the Soviet Union. They believe the Soviet Union has become a "have" nation with its own interests at heart and not those of the masses. They believe the Soviet Union has in effect copped out on its own revolution. Now, with an ideology as unstable as this, with a commitment to violence and romanticism as well-defined as their psychology makes it to be, it is very difficult for rational, legally oriented law enforcement officers or officers of the court to come to grips with these movements. Perhaps one of the most fascinating aspects of the entire Patty Hearst case is the fact that no one unearthed her in a frantic year of trying: an upper middle class woman with no criminal background who travelled about the United States for one year was never found. Think about that. Strike a parallel with Italy's terrorists. It also gives pause for thought. Italian police are lower middle class, with little education or entry to the right places. Who are the leaders of the Red Brigades? They are upper middle class university leaders, graduates, and intellectuals who travel comfortably and

undetected in those circles. Neither in the Hearst case nor in the Italian terrorist case could police or their informants travel easily. There is a psychological world of difference, and it is terribly important that we make the distinctions. As Dean Rusk has said, the world indeed is changing, and it is changing very rapidly; non-criminals become criminals, intellectuals become terrorists, the communist monolith becomes fragmented and itself the object of terror.

The process of terror becomes fascinating legally. With perhaps 3,000 activist terrorists in the world, of whom 200 have their fingers on triggers, organized into some fifty major groups, one begins to recognize certain training techniques. In Italy and Germany an immediate right of passage into the movement is to force candidates to commit a major crime. Under German and Italian law, as in most Western law, a crime is a crime. Not only does such action test a candidate, but it exposes the potential police penetration agent. A police informer who "kneecaps" a victim to prove his terrorist loyalties is guilty of a crime and would be so judged. Volunteers are understandably in short supply. The terrorists show their shrewdness by compromising all novices in the eyes of the law.

What manner of person is this terrorist? Most terrorists have no doubt about the mission or the movement and its particular violent slant. Terrorists are, after all, destroying institutions. Terrorists by definition are less able builders. They are visionaries without a dream. They just "pull down" and try to capture the situation. They are smart, well-educated, and thoroughly prepared; they have plenty of money. They are very careful in their planning apparatus, and they know psychology. Terrorists operate randomly, though they pick their targets with great care, and that is the point. Insofar as the target is concerned, he has been randomly selected, which spreads fear and anxiety. "I don't know anything about politics. Why me?" Eighty percent of terrorist efforts are successful. Terrorists want to erode credibility. This explains why terrorists are so insistent upon exploiting radio and television coverage as they did in the Munich Olympic slaughter and in the Black Muslim hostage-taking case in Washington. Terrorists are just as much interested in the publicity value of what they are trying to do as they are in its success. They are fanatic. Once you commit the initial violent crime, there is only one option open. The members of the Baader-Meinhoff Gang have shown us their willingness, in-

deed, enthusiasm to self-destruct through suicide or through some deadly confrontation.

The success stories in the world of terror dating from 1970 are reflected in the statistics; they reflect the inability of the law, national and international, to control the issue.¹

Let's talk first about kidnappings. There have been, excluding the United States, Israel, and Northern Ireland for various reasons, 232 terrorist kidnappings in the last seven years. Eighty percent of these have been successful. In total, \$146 million in ransom was collected. In one single case in Argentina, a branch manager of a United States subsidiary was ransomed without question for \$14 million. Along with this ransom, 27 terrorists were released from prison.

In terms of terrorist kidnapping, 43% were businessmen; the others were military personnel, diplomats, and nationals of other countries selected arbitrarily. The abductions, incidentally, generally occur while one is in transit, to and from work, for example. The United States CIA station chief in Athens, you may remember, was assassinated as he returned home from a party. The easiest place in the world. Most of us are creatures of habit, and we detest changing the habits acquired in adulthood.

There have been 257 assassinations in the last seven years; a 78% success rate. Ten percent were Americans. Seventeen percent were businessmen. Victims were mainly government officials. Sixty-one percent were in transit. Latin America is the overwhelming favorite for site location.

There have been 924 bombings outside the United States, with 212 people killed. These have resulted in \$92 million in damage. Recently, I spoke to a group of insurance executives, and they were appalled by these figures. They had no idea that the figure was that high. If Northern Ireland and the United States are included, this figure nearly triples. Corporate offices are essentially the main target; overseas offices of United States missions and businesses are the usual targets. France, Italy, Spain, and Argentina are the main target areas.

With regard to hijacking, the application of applied cost-effective security detection technology to control and minimize terrorist opportunity has worked. With \$15 million paid in ransoms over the past decade, skyjacking is down 24% in the last three years. The

1. Data supplied by Dr. Charles Russell, Retired Air Force analyst.

most secure airport locations are in the United States; the weakest are in Southern Europe.

The fastest growing area of terrorist activity is the facility attack. There have been 290 of them in the last seven years with 58 people killed, 332 wounded, 664 taken hostage, \$30 million in damage, with corporate targets representing 50% of the effort in Latin America and Germany. The trendline looks steady and upward.

What does all of this suggest in terms of legal interest? Permit me to mention a few things that I think you might like to give some thought to and, in terms of teaching, you might wish to explore. Obviously, there is first the treaty area — extradition. You teach extradition, but how well does it work? Some updated research should be done in this area and in the criminal codes of various world political systems. What is a crime in the United States is not necessarily a crime in the Soviet Union. The classic dilemma would be a genuine Polish political refugee who hijacks a LOT airliner and lands in Berlin. What is it? How would you adjudicate? This is an actual on-going case. The Soviets and the Poles would say, "Send him back," because he is a terrorist. The Berlin state government, the United States Command, the United States mission to Bonn, Amnesty International, and various other groups would hopefully argue that the Pole is a political refugee, but what would the law say, and who is going to make a final determination? When someone, a Puerto Rican extremist, for example, hijacks a plane from Miami and flies to East Berlin, what happens? Past experience suggests that nothing happens. That is about where we are, although there is a certain movement in this area. For example, Bulgaria has sent back two Baader-Meinhoff members who were identified by a German security man on a Black Sea beach. Why should they have engaged in this precedent-setting act? No one really knows. One theory suggests the Soviets are getting a little anxious about terrorism themselves. Obviously, from their historic point of view, terrorism is only for export, not for import into the motherland. It is conceivable that as strong as Soviet security is, communist leadership is doubly tender on the subject of successful individual acts of terrorism. The dissident rate in the Soviet Union is rising, and the Soviets understand well the erosion of coercion.

Secondly, the law today is faced with a problem between competing, often conflicting, political ideologies and diverse worldwide splinter groups. Law looked at as an organized body of norms —

developed upon precedent and establishing a series of incentives and punishments for behavior — is basically a set of moral and cultural values accepted by a given society. What is law for us may not be law for someone else. And political ideology largely takes precedence over law in some societies, for example, the Soviet Union. So we have a problem with political events involved in international law.

Thirdly, the law confronts a psychology of terrorist activity as a form of warfare. There is no incentive to promote an international covenant or regime to treat terrorism as long as a single bloc of nations considers terror to be politically advantageous. Nations know and recognize that there is a criminal injunction against acts of terror under criminal statutes and the law of war. But terror is a cost effective weapon of the politically weak and the revolutionary extremist, with serious implications for international law and multinational corporations alike. This is something for you to think about.

National policy sometimes prevents negotiations with the terrorists. For example, the United States holds no compromise with terrorists. A nation must maintain its integrity in the face of such threat as presented by terrorist attack. We take a strong position even if lives are threatened. That does not mean the United States does not or will not ultimately negotiate. It means that authorities will not immediately accept ransoming. Indeed, such a stance is the first negotiating position. In private international companies overseas, managers and officials who have been hostages have found themselves in trauma upon their return to the United States, with personal and family difficulties, including career dead ends. Such situations have even come into the court system to determine whether a company satisfactorily stood by the employee. Colombia once expelled a United States multinational corporation because Colombia has a law forbidding negotiation; there is no ransom to be paid, period. The company, however, secretly arranged to pay ransom, and it became known.

There is another case that would be fascinating to discuss in law classes. When Aldo Moro was abducted, the Italian investigators asked the Dutch, the French, the Germans, and the Americans to provide expertise in their futile search. Each responded except the United States. The United States declined because the CIA feared a positive reaction would be contrary to the rule of Congress limiting covert cooperation and actions abroad. This is obviously a

misinterpretation of congressional intent. But in any event, the government considered the request to be sufficiently legal and politically sensitive that cooperation was denied.

The question of civil liberties is very basic in Germany because of the country's Nazi past. So is the question of terrorists very basic. They want Germany to look Nazi before the eyes of the world. The Federal German Republic has thus had to walk a very delicate legal line in its effort to control its own insurgents. There was a meeting of the major European powers and Japan on this issue of terrorism, triggered, of course, by the Moro assassination. Out of this meeting has grown a heightened degree of organizational cooperation amongst the Western nations. In fact, I have before me a document issued by the Italian Red Brigades containing resolutions of a strategic directive that reflects accurate insight into that meeting, and which declares that the "anti-imperialist forces have decided to collaborate in their movement to try to stop the forces of liberation from bringing down the decadent Western democracies." In effect, the directive is also a declaration of war on the part of the Red Brigades against the Italian republic.

Finally, there is the problem of multilateralism as expressed in terms of international cooperation by established authorities to stem worldwide terror. This transnational collaboration will doubtless center on a computerized intelligence system such as the Germans now have available, in addition to an INTERPOL-type organization dedicated to the control of terrorists. There are dangers and legal pitfalls; international law is concerned in all of this. Yet, transnational collaboration seems to be the quickest way to direct international technological facilities to squeezing the terrorist movement. United States interest, of course, is self-interest — to prevent worldwide terrorism from erupting here. You read of the recent arrival into the United States of Christina Vista, an alleged terrorist supporter. Armed with an Iranian passport and without a United States visa, she crossed the border from Canada into the United States and was picked up quickly through sensor activity in her illegal crossing. How did the United States know she had a "terrorist" background? The German computer system. Her fingerprints were relayed by facsimile satellite communications to the United States. That sort of teamwork is an example of what is theoretically possible. But a tremendous amount of work, legal, political, and diplomatic, must be done before that system is complete and safeguarded against misuse. Yet, this system seems cost effective.

tive and efficient in terms of the common enemy — international terrorism.

Thank you very much.

Q. Why have governments seemed to be so uncertain as to how to handle terrorists?

A. I think the involved governments were so embarrassed and so ill-equipped that they fumbled their initial reactions. They did anything to try to get the abducted people back. They gradually learned that the only way to save face and to achieve positive results was to be tough and smart. Strangely enough, the country that pioneered the successful counter-reaction happened to be Holland. You will notice that with the South Moluccan terrorists and with the Japanese Red Army terrorists present in Holland, the Dutch took a very hard stand. The Dutch ultimately used force and won. The Germans, for example, realized that they had to organize themselves. It was quite painful and unsuccessful to begin with, but with the encouragement of other nations the Germans have now taken the lead in combatting terror. I think you will now see a general worldwide toughening stance.

Q. What about Soviet reactions to terror?

A. The coerciveness and harshness of the Soviet security system has stood in place for sixty years. It is so good that it is very difficult not to admire the courage of the dissidents in the Soviet Union. Incidentally, the continued presence of the dissidents reflects the increasing power of worldwide publicity. The Soviets themselves can no longer afford to ignore totally world reaction to dissidence.

Q. How does all this affect the future?

A. We have been listening in one way or another for the last two days to various pragmatic approaches to this central issue — world change. The world is changing. We are in a period of vast social, legal, and political change the outcome of which is not at all predetermined. We are groping for solutions, whether it be in the law of the sea and the question of common heritage of man, or whatever.

My answer is yes, there is a great rolling movement of change. The old system is dead. We do not yet know with what to replace the old system. We are trying to do it logically, with some adherence to the old norms. In certain areas this has resulted in violence and in terror. Evolutionary change in this mode has broken down completely. There are as many people fighting Marxism, to wit, the Red Brigades, as there are people fighting the capitalists, to wit, the Red Brigades also. There are those in the world who are in the middle fighting everybody else on a 360-degree circle. What of the future? Well, the best I can suggest is like day following night, the Twenty-first Century is coming and hopefully we will have some measures to go by.