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The Case of Abimael Guzman - An Example of the Consequences of the "Legalization" of the Notion of Terrorism

The case of Abimael Guzman constitutes a precedent which allows the Peruvian government to make summary judgments against all those suspected of terrorism, and this "jurisprudence" could eventually be invoked by other countries in Latin America in order to eliminate their own revolutionary movements. It is also an extreme example of the threat to human rights that one can find now all over the world.

The Additional II Protocol of the 4 Geneva Conventions created in its preamble a new juridical category specifying that the requirements of the humanitarian order in the Geneva Convention must be applied equally in the case of an internal armed conflict, especially in cases of conflicts between governmental armed forces and armed insurgents or armed organized groups under the direction and leadership of a leader, exercising control of part of the country which allows them to conduct continuous and concerted military operations. This describes exactly the case of the Sendero Luminoso in Peru.

This protocol prescribes for the detained persons some measures concerning the preservation of their moral and physical integrity. It prohibits in particular the violations against human dignity, notably humiliating and degrading treatment. It cites the principle of individual penal responsibility, the requirement of the accused to know the precise charges against him, it affords the accused the benefit of the presumption of innocence, the right for all people to be judged by a tribunal which is impartial and independent. All these prescriptions were violated in the case of Abimael Guzman -- see report on my mission to Lima. It prevents the application of a heavier penalty than that which was legally permitted when the act was committed. From recent information, it appears that there is a risk that this prescription is about to be violated also. #

The Peruvian government has also cut the heart out of the juridical category created by additional protocol of the Geneva Convention by arguing that the actions are "terrorist". The notion of a political crime is appearing also in many other countries: the "perpetrators" are categorized as terrorist and at the same time lose their all or some of their rights. Besides to the infractions of common law -- such as stealing without political purpose-- and political infractions which have become increasingly rare, there has now been created a third category of infractions which is called "terrorist" infraction.

For example, the European Convention of struggle against terrorism requires that "for the needs of extradition between contracting states, none of the infractions mentioned herein would be considered as a political infraction or as an infraction inspired by a political purpose." What are those infractions? "use of bombs, grenades, missiles, firearms, letterbombs or any significant threat against the life, physical integrity or liberty of other people, or any significant act against the property when it creates collective danger to people." All these are acts which are at the core of an armed action against the government are now depolitized and categorized as "terrorist."

The word "terrorism" is recent in its actual sense. If one consults dictionaries in all case up until 1920, one reads simply: one who is related to the Terror -- referring to the political regime of France in 1792. The meaning changed between the two world wars. It was used during the

second world war to designating the resistance, during the Algerian war for the members of the liberation movement, FLN. And today, the word is used to refer to Palestinian militants, members of PKK - Kurdish fighters -- and those of the Sendero Luminoso, and so on. The "Micro Robert" dictionary gives the following definition: "systematic use of violence for attaining a political aim; acts of violence designed to provoke political changes".

During the last ten years that the notion of terrorism, which had been more or less a vague political notion used by the media, has progressively entered into the law of numerous countries, without becoming any more precise or clearer in its meaning. In France, the law of 8 September 1986, article 706-16 of the Code of Penal Procedure characterizes the notion of terrorism in the following terms: "when the infraction is in relation to an individual or collective enterprise having the aim of seriously compromise the public order by intimidation or terror." If the term "intimidation" is relatively a little more precise in the sense of alluding to a threat, by contrast the term "terror" relates to a psychological phenomenon, difficult to discern.

This new legislation has become contagious. As said by one Turkish lawyer: "The concept of terrorism in Western legislation serves to legitimize the repression of the state in the other countries of the world."

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