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INTERNATIONAL TERRORISM

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UNDER
INTERNATIONAL LAW

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ABSTRACT

INTERNATIONAL TERRORISM UNDER INTERNATIONAL LAW

This thesis briefly evaluates the trends in current international relations -- the phenomenal increase in international terrorist attacks, and the sporadic growth of international law capable of combating this disturbance to world peace. The thrust of this study is directed toward a concise assessment of the concepts, precedents, and potential of international law as an instrument of restraint upon international terrorism.

In order to achieve an understanding of the conceptual framework of international law with respect to its relationship to the problem of international terrorism, this study employs a descriptive investigation of the following topics:

-The general nature of international law is described, with particular attention to its role as a catalyst of international political cultural norms. Its purposes, validity, sources, political acceptability, and functions are sketchily investigated to ascertain the relative strengths and weaknesses of the law as an instrument of international control.

-Current international terrorism is examined, within the limits of this term as they are prescribed by this study. Thresholds for the conceptualization of this term as a legitimate rather than a pejorative term are suggested; and types and trends of this phenomenon are identified. The question of the possible justification of international terrorism, particularly with respect to its multiplicity of causes, is also briefly discussed.

-A representative survey is made of those portions of international law that pertain to international terrorism next, in an attempt to discern the existing role of the law in curbing terrorism. Current treaties, conventions, protocols, resolutions, case laws, and principles of law are reviewed in this portion of the investigation.

-Finally, based on the preceding analysis, the potential for international law in the role of a deterrent of international terrorism is assessed. The possible avenues for the utilization of existing law in this area are scanned, and a few innovative approaches for new law in this context are suggested.

This study reveals at least two significant conclusions: that the strength of international law as an instrument of control of international terrorism has been handicapped by the piece-meal and half-hearted approach adopted by the community of nations in coping with this problem; and, that the law can be a viable instrument for this purpose when it receives the positive support of a consensus of the international community.

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Chapter 1

INTRODUCTION

The spate of terrorist activities during the 1970's has raised serious questions about the ability of any single government to protect its citizens and its system. With jet air travel and small but potent weapons freely available, terrorists can strike almost anywhere, and apparently no one is immune any longer. Radio, television, and the press cover such attacks lavishly, giving to terrorists and their causes the publicity that has become one of their primary objectives.

Recently, individual governments have begun to take a firm stand against terrorists. Single efforts by individual governments, however, have produced no sure defense against the nest group of zealots wielding guns and bombs or threatening the lives of hostages.¹ Moreover, some governments sympathetic to the causes espoused by the terrorists have made unilateral action by any one government seeking to punish these people virtually impossible by offering asylum to the renegades, or by refusing to extradite them. Lacking any uniform code of international law dealing with international terrorism, the situation thus deteriorates with each passing day, as terrorist attacks become more frequent.

The Sixth Committee of the General Assembly of the United Nations referred to the legal problem of international terrorism as

¹Report of the Ad Hoc Committee on International Terrorism, General Assembly, Official Records: Twenty-Eighth Session, Supplement No. 28 (A/9028) United Nations, New York (1973) p. 3.

being "too politically hot to handle."² Although the topic was placed on the Assembly's agenda by the Secretary General just after the massacre of Israeli athletes at the Munich Olympic Games in September 1972, progress on the item was virtually nil. Indeed, it generated an atmosphere of passionate political antagonism so fervid as to make debate on the issue not only futile but undesirable. The net result has been an uncooperative silence on the subject, with a concomitant absence of action of any sort on the problem.

Such inaction must, naturally, be replaced soon by some type of positive action, since the problem of international terrorism has not solved itself. Self-imposed muteness on the subject of any problem seldom results in an effective cure. Just as modern medicine would stagnate if doctors and medical researchers ceased to search for and test possible cures for today's diseases, international law's growth will be stunted if its practitioners and researchers fail to attempt to find and enunciate solutions to current international problems, such as terrorism. Moreover, as medical stagnation can result in continued loss of life to new diseases, so might international legal inactivity be said to result in continued loss of life in unchecked terrorist attacks.

Given, then, this imperative need for a positive response from international law on the issue of international terrorism, it is important to first examine several factors upon which an enlightened and effective response is contingent. Initially, of course, it is essential to have a generalized understanding of international law -- with its

²Issues Before the United Nations General Assembly in 1975, UNA-USA Publications, (A/10100) item 118, p. 70.

capabilities and its limitations -- and of international terrorism as it exists today. For the purposes of this study, international law will be viewed in terms of its role as an agent of international communication, socialization, and integration, and as a catalyst for the development of an international political culture.³ Therefore, it will be defined, its scope explored, and its impact on international terrorism studied in terms of this role.

Furthermore, a recognition of the scope and nature of the problem itself is essential. Just as any doctor must examine not only his tools for treatment but also the symptoms and nature of the disease to be cured, practitioners of international law must study the nature of international terrorism as well as examining the tools of international law at their disposal. This would naturally include an assessment of the precedents set by earlier attempts to deal with the problem.

Finally, an analysis of the possible courses of action available would be in order. Future measures of international law dealing with international terrorism could conceivably take a variety of actions simultaneously, once a consensus on the ultimate objective has been reached. Research on alternative courses of action is therefore imperative.⁴

Recognizing the critical need for action on this problem, the thrust of this study will be directed toward a concise assessment of concepts, precedents, and possibilities of international law as a

³Ahmed Sheikh, International Law and National Behavior, (New York: John Wiley and Sons, Inc., 1974), p. 122.

⁴John Norton Moore, "Toward Legal Restraints on International Terrorism," American Journal of International Law, 67 (November 1974), 88.

restraint upon international terrorism. Not in any sense a manual for the solution of the problem, this study will attempt to focus attention on elementary aspects of the situation and to suggest possible alternatives for action.

Statement of Problem

This study will attempt to evaluate the use of international law as a restraint upon international terrorism, conceptually, historically, and potentially. Ultimately, the objective of the study will be to suggest courses of action based upon an understanding of this assessment of the relationship between international law and terrorism in the international community.

Objectives and Scope of this Research

An intensive investigation of this topic should lead to an understanding of the conceptual framework of international law and of its relationship to the problem of international terrorism. In order to achieve this objective, this study will be organized as follows:

The general nature of international law, without regard to international terrorism, will be discussed in Chapter 2. This encompasses a study of its purposes, validity, sources, political acceptability, and functions, as well as an overview of various definitions as to its content. The focus of this portion of the study will be on the general capacity and limits of international law as a whole, with emphasis on its roles as a catalyst of international political culture. Particular attention will be paid to its limitations as an arbiter and its possibilities as a leader in international affairs.

Chapter 3 includes a brief study of terrorism today. Attempts

to define the concept will be given due consideration, including an overview of the controversy concerning the proscription of limits around this concept by those who seek to exclude activities of groups engaged in struggles for "self-determination and freedom" from the label of "terrorism."⁵ Events will be cited to illustrate the term "international terrorism," all of which will be drawn from occurrences over the past five years. Finally, current trends in international terrorism will be examined on a world-wide scale, with particular reference to organized terrorist groups currently in operation.

Next, having operationalized the concepts of international law and international terrorism, Chapter 4 will be devoted to a study of the past and present relationship between the two concepts. This will entail an overview of the current treaties, conventions, resolutions, case law, writings, and principles of international law in existence which are currently being utilized to curtail international terrorism to some extent.

Chapter 5 will include an investigation of possible methods of improved utilization of existing international law, as well as proposed innovations in this area, for the purpose of restriction upon international terrorism. Possible strategy for combining existing with future measures of international law in order to effect a more efficient criteria for dealing with the problem will also be dealt with briefly.

Finally, a summary of the study will be given in Chapter 6. This will include an assessment of the effectiveness of this study in terms of its original objectives, and an analysis of the possibilities for future

⁵Leo Gross, "International Terrorism and International Criminal Jurisdiction," American Journal of International Law, 67, No. 5 (November 1973), 508.

study in this area.

The remainder of this chapter will deal with a discussion of the limitation of the scope of this study.

Limits of this Study

Prior to further explication of this research, it is essential to ascribe certain limits to the study. In the first place, it would obviously be impossible and unnecessary to discuss all types of terrorism, since there are a number of types of terrorism that would not be within the scope of international legal jurisdiction.⁶ Then, too, this study will make no attempt to investigate or prescribe for the underlying causes of international terrorism. This omission is not intended to deny the fundamental causes of those forms of terrorism which lie in misery, frustration, grievance, and despair.⁷ However, it is seldom within the practical jurisdiction of international law to alleviate all such causes, and it is certainly beyond the scope of this study to undertake the massive investigation of conflicting reports on these causes.

Furthermore, this study will focus on international terrorism in the 1970's alone, in terms of current trends and specific events. Moreover, no attempt will be made to cite all of the recent occurrences of international terrorism. Such a listing would add bulk but little depth to the study. Instead, representative trends and incidents will be examined and utilized to illustrate the broader aspects of the problem.

Finally, this study focuses on multilateral action only on the problem of international terrorism. Action by any single nation will

⁶This limitation will be discussed more fully in Chapter 3.

⁷Issues Before the United Nations General Assembly 1975, p. 70.

not be assessed, nor will comparison be made between the actions of any two states on this issue. International law by its very nature requires international community concerted action or consensus of opinion. Single state activity would be relevant only in terms of its impact on that community action or consensus.

Summary

This study is an attempt to give insight into the problem of international law as an effective restraint upon international terrorism. By focusing upon the concepts and the reality of the problem today, it is possible that light may be shed on future avenues of approach in dealing with a burgeoning problem which is rapidly becoming of critical interest to political and social scientists throughout the world.

Chapter 2

INTERNATIONAL LAW, AN OVERVIEW

In order to accurately assimilate the possibilities for the use of international law in restraining international terrorism, it is essential initially to review the nature, functions, and practical viability of international law itself. Just as a physician first studies the instruments at his command to discover their strengths and weaknesses, it is logical to begin a study of international law as an instrument of international control to familiarize the investigator with its potential and its limitations before attempting to utilize it as a weapon of restraint. An unfamiliar weapon is either dangerous or useless; therefore, this study will begin with an attempt to become acquainted, on a very general level, with the instrument of international law.

If international law is defined as "a body of rules for human conduct, set and enforced by a sovereign political authority," then there is no international law in existence today. No sovereign political authority exists to enforce the laws, and there is no central judicial authority with the power to make decisions binding on all persons and states. However, if law is defined as "a body of rules for human conduct in a community, which by the consent of this community shall be enforced by any external power (not necessarily sovereign)," then international law is truly law.¹

¹Cyril E. Black and Richard A. Falk, ed., The Future of the International Legal Order: Volume III: Conflict Management (Princeton: Princeton University Press, 1971), p. 534.

Kulski has contributed to this process of attempting to define international law somewhat by adding that these "rules" define the mutual rights and obligations of states and derive their enforcement from the acknowledgement of the states.² Orfield expanded the concept a little further by encompassing "the body of rules and principles and standards which various states recognize to be binding in their relations with each other."³ This is a significant expansion in that international law is not in this definition limited to a body of rules; instead, those principles and standards recognized by the various states are incorporated into the body of international law.

While this extension of international legal material strengthens the comprehensive quality of international law, it also makes research as to the exact content of the law a thousandfold more difficult. Ascertaining the contents of a body of rules upon which consensus has been attained is quite difficult, but attempting to specify those abstract "principles and standards" which a wide and varied community of nations and persons have agreed to recognize as binding is a monumental task. Few writers or researchers, if any, have attempted a comprehensive survey of all possible materials included in every aspect of international law. Fragmentation of the research attempts made in the area of international law makes the study of any particular problem area very difficult; many "authorities" exist, and few agree on every point.⁴

²James Kulski, International Law in a Changing World (Princeton: Princeton University Press, 1972), p. 427.

³Lester B. Orfield and Edward D. Re, International Law: Cases and Materials (New York: The Bobbs-Merrill Co., Inc., 1955), p. 2.

⁴Charles de Visscher, Theory and Reality in Public International Law (Princeton: Princeton University Press, 1968), p. 5.

Lauterpacht, too, has added to the definition of international law by describing it as "that body of rules or laws which is binding on states and other international persons in their mutual relations."⁵ For the purposes of this study, this is an extremely important addition, since many of the terrorist attacks are enacted upon international persons rather than against states as a whole. By including such persons within the definition of contracting parties to international law, they are thus given standing in cases before the International Court of Justice, with the right to demand justice of any other state or international person.

This point is a very important one; however, consensus in the community of nations is not absolute on this point. Debate over the standing of such international persons as diplomats and consuls is still rife, and therefore the extent to which international law can be used by these persons is restricted, since consensus is essential to the enforcement of the law.

Nevertheless, in this study, international law will be defined to include all of the previously cited points. A comprehensive definition might thus read: "International law is that body of rules and principles and standards which the various states and international persons recognize to be binding in their mutual relations."⁶

⁵Hersh Lauterpacht, International Law and Human Rights (Princeton: Princeton University Press, 1950), p. 5. See also Robert Deming, Man and the World: International Law at Work (New York: St. Martin's Press, 1974), p. 37.

⁶John Bassett Moore, A Digest of International Law (New York: AMS Press, 1974), p. 7.

Sources of International Law

Having arrived at an acceptable definition of the concept of international law, it is necessary now to consider its content. There are five primary sources of international law: Treaties and conventions, custom, general principles of law, judicial decisions, and writings of qualified international judicial experts.⁷ This ordered listing of these sources is not random: They are listed in the order of priority accorded to them by Article 38 of the Statute of the International Court of Justice. Naturally, complete consensus on the correct rank-order of the sources has not yet been attained. Some scholars have argued that priority should be situation oriented. Nevertheless, for the sake of clarity, these sources will be examined in the order prescribed by the Court Statute.

Treaties have been termed "historical Facts" that give international law its force.⁸ A variety of definition have been attached to the term "treaty." Mendlovitz described treaties as "express agreements of any sort among governments, comprising, for example, conventions and protocols as well."⁹ On the other hand, Orfield limits his concept of treaties to "formal agreements among nations setting down rules and obligations which are to govern their mutual relationships."¹⁰ The discrepancy between these two definitions, while apparently innocuous at first glance, assumes monumental proportions when the settlement

⁷For more information, see Statute of the International Court of Justice, Article 38, section 1, pp. 75-76.

⁸Saul H. Mendlovitz, ed., Legal and Political Problems of World Order (New York: The Fund for Education Concerning World Peace Through World Law, 1962), p. 278.

⁹Ibid., p. 279.

¹⁰Orfield, p. 6.

of an international legal dispute depends upon the acceptance or rejection of an informal agreement, or a convention or protocol.

Again, in an effort to obtain a comprehensive view of international law, the broader definition of treaties will be used in this study. This should preclude any serious omission of international legal material on the subject.

There are two major types of treaties. Particular international law is derived from treaties between two or a few states, while treaties among a number of states result in general international law.¹¹ Officially, treaties involve only countries which are party to the agreement; however, others may voluntarily abide by their terms.¹² Thus, the impact of any treaty cannot be accurately assessed in terms of its signatory nations alone. It is essential to discern as well the extent to which it has contributed to a second source of international law: custom.

Treaties can also be differentiated as being of either a law-making or a contractual nature. Contract treaties, since they do not create new rules of general conduct and cannot modify general international law (except inter se) and have no legal effect on non-signatory states, are of less extended importance to international law as a whole. Law-making treaties, on the contrary, regulate matter of general (although not necessarily universal) concern. They are usually signed by all or almost all of the states which are interested in the subject

¹¹H. B. Jacobini, International Law: A Text (Minnesota: Burgess Publishing Co., 1972), p. 6.

¹²Mendlovitz, p. 279.

of the treaty. There are increasing numbers of such treaties, including those creating the Universal Postal Union, World Health Organization, and a host of others. Like domestic statutes, these treaties have the general effect of creating new rules of conduct which are accepted by all states concerned. They serve, moreover, to fill in gaps in customary law and to amend or replace existing customs.¹³

Customary international law is a very difficult area to investigate. Since international law itself is said to have first emerged from the practice of states consistently following the same pattern of conduct, it is obviously appropriate to attempt to come to an understanding of this important source of the law.

Custom is the oldest source of international law. Its growth is very gradual and difficult to discern. Among nations there is simply and implicit or explicit acknowledgement that certain patterns of behavior are obligatory and that other conduct would constitute a breach of law.¹⁴ Thus, rules, which began as general usages or imitation among governments and which have been so firmly accepted and are so generally applicable, ultimately emerge as rules of law. Some judicial experts regard this slow development as a disadvantage, particularly as it is difficult to ascertain beyond doubt when custom becomes generalized sufficiently to be termed law. Ideally, of course, custom eventually reaches all governments. In reality, though, much of customary international law today is not truly universally accepted.¹⁵

¹³Kulski, p. 428.

¹⁴*Ibid.*, p. 427.

¹⁵Jacobini, p. 4. See also Mendlovitz, p. 279; and Gerard J. Mangone, The Elements of International Law: A Casebook (Illinois: The Dorsey Press, Inc., 1963), p. 6.

Customary international law is unwritten, and therefore must be proved by recourse to writings of lawyers, treaties, court decisions, legislation, diplomatic documents, etc. For this reason, it is potentially a very controversial source of international law. Nevertheless, consensus on certain customary laws is evident. For example, treaties themselves are based on the general precept of pacta sunt servanda, the long-standing recognized customary obligation to adhere to the terms of an agreement.¹⁶ Diplomatic immunity, too, finds its origins in customary law, although numerous treaties and agreements now exist which document this custom.¹⁷

Finally, as Mr. Justice Gray, in the case of The Paquete Habana and The Lola, stated:

Where there are no treaties or national rules declarative of international law, resort must be made to the customs and usages of civilized nations.¹⁸

Principles of right and principles of law, a third source of international law, are almost as difficult to delineate as is customary law. Principles of right are generally derived from principles of "natural law;" that is, they are believed to be concepts of basic justice and right implicit in the nature of things. According to some philosophers, including Hugo Grotius, these principles are understandable by the use of right reason.¹⁹ Such a vague origin, obviously, leaves such principles open to widely varied interpretations and enunciations.

¹⁶Jacobini, p. 5.

¹⁷Kulski, p. 427.

¹⁸Jacobini, p. 5. See also Orfield, p. 10.

¹⁹Hans Kelsen, Principles of International Law (New York: Holt, Rinehart, and Winston, Inc., 1967), p. 9.

Consensus on these principles of right is quite difficult to obtain today, particularly when they must be discerned amid a vast conglomeration of philosophical treatises offering a plethora of conflicting ideas about "natural law" and "right reason."

Principles of law are abundant in early modern international law. These principles are adaptations of concrete tenets of Roman law to the exigencies of the modern international community. International society needed rules, and the principles of Roman law had achieved a pronounced degree of perfection. Moreover, Roman law was believed to be almost synonymous with the principles of natural law.²⁰ Thus, principles of law were at once easier to discern than the more abstract principles of right, and they were closely related to the principles of natural law, a point considered to be essential in early modern international law.

Perhaps the most familiar and surely one of the most universal examples of such principles is that associated with John Stuart Mill: the principle that it is permissible to restrict human freedom in order to prevent injury. Injury, in this principle is usually interpreted to include the broad categories of assault, theft, and fraud.²¹

Naturally, flexibility of interpretation of such broad principles sometimes leads to conflicts. It is true, however, that the core of such principles constitute relatively universal rules.

International law is also derived from judicial decisions, either from national courts or from international tribunals. Ordinarily, such

²⁰Jacobini, p. 10. For more detailed information, see also Kelsen.

²¹Richard Taylor, Freedom, Anarchy and the Law (Englewood Cliffs: Prentice-Hall, Inc., 1973), p. 126.

decisions are binding only in the case in question; they are rarely if ever binding in the sense of stare decisis.²² Some of the cases of international law are settled in international courts of adjudication, a few in arbitration tribunals, and many in national courts. While decisions in such cases are not universally binding, even upon the courts themselves, they can serve to crystalize customary law, and they occasionally help to formulate new rules for international law. However, there is no legal requirement for adherence to past decisions binding either judges or nations.²³ Consequently, while judges and heads of state can use any of the previous judicial decisions to justify an action or to substantiate a position, they are not compelled to do so, and may indeed find it hard to defend a decision based solely on court cases, since continuity is not among the virtues of this source of international law.

Therefore, while famous cases such as that of the Nuremberg trial of war criminals can command respect for its generalized acceptance, it is in no sense binding upon present or future trials of a similar nature. The non-binding aspect of judicial decisions is even more evident in the numerous conflicting decisions made on the issue of territorial waters.²⁴ Each decision has cited numerous principles of law and right in justification, yet few have been compatible, a paradox often found in the abstract realm of international judicial law.

Finally, international law is attributable to the writings of

²²Jacobini, p. 7.

²³Ibid., p. 8.

²⁴Mangone, p. 602.

"the most highly qualified publicists of the various nations,"²⁵ on the subject of international law. This is only a subsidiary source of international law, and is primarily a form of persuasive evidence. Often such writing merely confirms some point of international law, or attempts to give interpretations to treaties or court decisions. Occasionally, a venturesome writer may break new ground in some unexplored aspect of international law, but this is the exception rather than the rule. Again, Mr. Justice Gray, in the case previously cited, aptly expressed the value of writers as a source of international law in his comment that:

It is necessary to resort to the works of jurists and commentators, who by years of labor, research, and experience, have made themselves peculiarly well-acquainted with the subjects which they treat...They often present trustworthy evidence of what the law really is.²⁶

Validity of International Law

With such a varied assortment of indeterminate, potentially controversial sources of international law, the question as to the validity of international law as a viable instrument of control in the international community naturally arises. This question has been the subject of debate among philosophers and jurists for a number of years. The consummate opinion of this scholarly inquest has been that international law is indeed "true law,"²⁷ for a variety of reasons.

Hans Kelsen attributes its validity to the fact that it has been

²⁵Statute of the International Court of Justice, Article 38, section 1-d.

²⁶Jacobini, p. 8. See also Orfield, pp. 11-12.

²⁷J. L. Brierly, The Law of Nations (Oxford: Oxford University Press, 1961), pp. 69-71.

and continues to be followed by the majority of nations and peoples in today's world.²⁸ Leon Duquitt, on the other hand, concedes international law to be true law in that it represents a socially derived sanction or pressure for adherence.²⁹ Others, such as Hugo Krabbe, argue that its validity stems from its concurrence with the worldwide conception of what is just.³⁰

The French writer, Louis Le Fur, has argued that international law finds its justification in its embracing of the principles and concepts of natural law.³¹ This closely parallels the early modern international legal scholars' thoughts who sought to create as well as to justify international law through natural law, at least as it was perceived by the "right reason" of man.

Perhaps the most pragmatic validation of international law is found in the writings of scholars such as James Garner, who place primary emphasis on the consent of the states as the ultimate criteria for validity.³² Pragmatists like to argue that no law can be considered valid if it can command no general following, no consensus of opinion from those it seeks to govern.

The stark truth of such pragmatic arguments is difficult to contest. Yet many internationalists feel that to reduce international law

²⁸Kelsen, p. 3.

²⁹Jacobini, p. 2.

³⁰Ibid., p. 3.

³¹Wesley L. Gould and Michael Barkun, International Law and the Social Sciences (Princeton: Princeton University Press, 1970), p. 12.

³²Ibid., p. 13. See also Jacobini, p. 2; and F. S. Northedge, The Use of Force in International Relations (New York: The Free Press, 1974), p. 211.

to include only that which is enforceable would be to lose a perspective on the nature and function of international law with respect to force. Consequently, the relationship of force to legal obligation under international law should be explored further.

Force and International Law

A host of questions have been raised, and few absolute answers given, concerning the role of force in international law. Among the most pertinent of these are those that ask: Are states ruled by a law of power or by the power of the law? Do states obey international law and are their policies determined by the content of the law or by the alignment of force?³³

Without seeking to answer unequivocally these difficult questions, F. S. Northedge has made an assessment of the relationship between force and law that is worth noting. He has stated that:

Just as the force of violation cannot deny a legal obligation, it is difficult to deem law as binding because it is backed by force. Austin tried to describe the obligation of law in terms of the likelihood of evil or punishment in the event of the law being broken. This cannot be the case; were it so, it would mean that by getting away with a crime, one would escape from one's legal obligation as well.³⁴

According to this logic, then, the absence of force, which could enable one to escape punishment, would not make one's actions any less criminal under international law.

It has been suggested, in fact, that the ultimate basis of the

³³Gould and Barkun, p. 195.

³⁴*Ibid.*, p. 209. This will be discussed in Chapter 4 with respect to the culpability of terrorists who escape punishment under international law.

obligation to obey the law cannot be anything but moral.³⁵ The question of whether or not force can be brought to bear in enforcing a law is thus a philosophically moot point.

Nevertheless, in the realm of a very pragmatic world, the issue of the value and purpose of an international law that is not enforced has often been raised, and indeed merits investigation.

Roles of International Law Today

International law today is neither an ultimately sovereign ruler nor a slave to public opinion. It is simply one of many instruments used to build a better international order. Specifically, international law serves to prevent suffering in international conflicts; to uphold national rights; and to lessen in some degree the hardship of war on individuals, national groups, and governments.³⁶

In a broader sense, too, international law serves as an agent of international communication, socialization, and integration, and as a catalyst for the development of an international, political culture. Contemporary international law and the multiple institutional arrangements created to facilitate its role in the international system work to communicate a climate of opinion more conducive to the establishment of a lawful society. They also work to socialize the members of the international society to the norms of international law and the advantages in following them in their international relations. Furthermore, international law and its supportive institutions perform some important

³⁵Brierly, p. 56.

³⁶Mendlovitz, p. 279.

integrative functions in the international arena, thereby edging its members, gradually but inevitably, toward the development of a greater and wider consensus on the nature of the international system and the role of international law in it.³⁷

These functions international law performs without recourse to force. The effectiveness of the law in these areas increases as the nations of the world find it not only to their own advantage but also to the advantage of the community of nations to conduct their relations according to generally accepted standards which are both possible of performance and fair and reasonable.³⁸

Thus, political acceptability can be said to play a much more vital role in determining the viability of international law than does the actual use of force in inflicting the dictums of the law upon recalcitrants. Special acceptance of a treaty, tacit or express acquiescence in a principle, a custom, or the contents of a treaty: in such actions as these lie the true strength and justification of international law today.

Summary

International law, then, can be a viable instrument of international control in spite of various weaknesses in its nature and function. Difficulties in defining international law are not insurmountable, provided that the critical question remains the extent to

³⁷Sheikh, p. 122. For an interesting discussion on this point refer to William D. Coplin, "International Law and Assumptions About the State Systems," World Politics, 17 (1965), 615-635. This particular aspect of international law will also be developed further in Chapter 4, with respect to terrorism.

³⁸Orfield and Re, p. 8.

which the law can be expanded to include a majority of the actors in international affairs. In spite of a lack of sovereign political authority or central judicial authority with the power to enforce the law, there remains a fundamental strength within international law itself that must command respect. This strength resides in the continuing ability of nations to reach and retain a consensus among themselves on issues of right and wrong in spite of individual differences, and to express this consensus in the concrete form of treaties, principles, customs, writings, and court decisions.³⁹

In spite, too, of the proliferation of sources which often serves to camouflage its tenets, international law is not altogether impossible to research. The research of any international legal problem must of necessity be slow and meticulous; moreover, no definitive answer may be attainable to a specific question of law researched from these sources, since it is clearly not feasible to attempt to discover everything that has been written or enacted that could be construed to pertain to a particular subject and to reconcile all of said material to one coherent and consistent point of view. Therein lies the ultimate beauty of the law: it is too vast to admit to individual manipulation or misinterpretation.

International law could therefore be viewed as an ever-changing, growing process by which man arrives at rules with which to order his world and to meet his needs. As the world and the needs change, so must the law, if it is to remain a viable and politically acceptable instrument of world order.

³⁹Jacobini, p. 13. Further discussion of this concept in Chapter 5, concerning specific international law relating to international terrorism.

Thus, if the law can be accepted as an instrument of international control, an expression of an international culture, with dimensions too vast to be totally subject to the manipulations of and single individual, then it is possible to use this instrument, carefully and with respect, in assessing the possibilities of restraint in a problem area of world order. Beginning with this excessively brief acquaintance with international law, therefore, this study will henceforth concentrate on the specific problem area of international terrorism.

Chapter Three

INTERNATIONAL TERRORISM

Definition of International Terrorism

Terrorism has been described, not entirely facetiously, as "an idea whose time has come."¹ It is not a phenomenon of the twentieth century, for its roots lie in the French Revolution of the eighteenth century. Nor is international concern with this subject of recent vintage. Yet recent years have produced new and increasingly virulent forms of terrorism, and among the international experts today there is a growing belief that a solution to this problem is of critical importance to world peace and order.²

With the increase in the type and scope of terrorism in the modern world, the problem of defining precisely what is meant by this term has become incredibly complex and political. Noting that the dictionary definition of terrorism as "the use of terror, violence, and intimidation to achieve an end"³ could be used to describe the behavior of a professional football team, it becomes obvious that a variety of conditional terms must be added to this broad definition

¹Sandra Stencel, "Terrorism: An Idea Whose Time Has Come," Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 4.

²See General Assembly Resolution 3034 (XXVII) and the decision of 12 December, 1973. Refer also to the Report of the International Conference on the Repression of Terrorism, Geneva, 1937.

³Henry B. Burnett, Jr., "Your Terrorist Is My Patriot," Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 2.

in order to pare away those aspects of the problem not immediately relevant to the study of terrorism under the microscope of international law. Such a delimiting of scope appears to be essential to further research into the causes, types, trends, justification, and solutions to the problem of terrorism as it exists today.

The addition of the adjective "international" to the term "terrorism" has often proved to be euphemistic, since nations were politically motivated to crowd the concept of state terrorism under this unlikely umbrella, and to rescue all national liberation movements from this socially unacceptable label.⁴ However, properly applied, the term "international terrorism" can be very aptly used to focus attention on those terrorist acts susceptible to international law.

Terrorism is a term which is often used pejoratively. What is terrorism to one may be heroism to another; one man's terrorist may be another's patriot.⁵ The history of virtually every nation contains figures whose actions could be open to conflicting interpretations along these lines. Nevertheless, there are certain acts which evoke revulsion in the conscience of mankind, however noble may be the cause in furtherance of which the acts were attempted or committed.⁶ It is upon these "heinous acts of barbarism"⁷ that international law must focus.

⁴Report of the Ad Hoc Committee on International Terrorism, p. 8.

⁵Burnett, p. 3.

⁶Report of the Ad Hoc Committee on International Terrorism, p. 21. See also Statements in General Assembly Plenary Session debate, Meeting 2240 (Uruguay), 2253 (Spain), 2255 (Israel), and 2257 (Paraguay). Refer to the discussion in the G. A. Sixth Committee, Meeting 1521, for further remarks.

⁷Report of the Ad Hoc Committee on International Terrorism, draft proposal by France, p. 21.

In order for international law to be applicable, the term "international" must be apt; that is, the act must be international in scope. A variety of proposals have been made that would establish criteria for the applicability of this term. The draft proposal by Greece to the Ad Hoc Committee on International Terrorism would focus attention on

any violent act of a criminal nature by an individual or group of individuals against any innocent person or group of persons, irrespective of the nationality of the author or authors, which is committed in the territory of a third State with the aim of exercising pressure in any dispute, or with the aim of obtaining personal gain or emotional satisfaction.⁸

Venezuela's draft proposal was rather more specific, and therefore useful, in defining as international terrorism

any threat or act of violence which endangers or takes innocent human lives, or jeopardizes fundamental freedoms, committed by an individual or group of individuals on foreign territory, on the high seas or on board an aircraft in flight in the air space superjacent to the open or free seas for the purpose of instilling terror and designed to achieve a political goal.

This proposal also specifies as acts of international terrorism the inflicting of serious bodily harm, murder, the taking of hostages, kidnapping, the sending of letter bombs and damage to objects and property, when such acts are "committed in foreign territory, or by or against foreigners, for the purpose of instilling terror with a view to achieving a political objective."⁹

Unlike the majority of draft proposals, these did not seek to either include state terrorism or to exclude national liberation

⁸Report of the Ad Hoc Committee on International Terrorism, draft proposal by Greece, p. 22.

⁹Ibid., draft proposal by Venezuela, p. 23.

movements, and as such are useful criteria for international law. Such law, if it is to be effective, must be, like these proposals, impartial, condemning all acts which are of a similar nature and meet similar criteria for judgement, without partiality or vindictiveness.¹⁰ Abrogation of this doctrine of impartiality would result in a mockery of justice in its purest sense.

States have not yet yielded their sovereignty to international law to the extent of permitting such law to intervene in the internal domestic affairs without their express consent. Therefore, the legality or illegality of a state's actions within its borders with respect to its citizens can only be accessible to international law in certain cases. The law must work within the limits of its own strengths and weaknesses if it is to remain a credible and viable force.

Thus, if a state practices acts which could be considered terrorist against its own citizens, it cannot be within the purview of international law to condone or condemn such actions, except by treaty agreements, and then only with the consent of the state. Censure by the international community in such cases is feasible and practical; invoking of international law without said state's consent is both impractical and unrealistic.¹¹ Most critical to this study, however, is the point that, though state terrorism is deplorable and may require international legal action at some point, it is not intrinsically international in nature and scope, and therefore should not be dealt with in the context of international terrorism.

¹⁰Henry B. Burnett, Jr., "Interview with Sean MacBride, "Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976) p. 54. See also Christos L. Rozakis "Terrorism and the Internationally Protected Persons in the Light of the ILC's Draft Articles, "The International and Comparative Law Quarterly, 23 (January 1974), 32.

¹¹Lauterpacht, p. 34.

In order to fit the critical demands of impartial justice, too, international law must apply to terrorist acts, regardless of their causes. Machiavellian philosophy must not be used to exempt national liberation movements from penalties if they transgress the boundaries of international law with respect to international terrorism.¹² The Universal Declaration of Human Rights, the United Nations Charter, and a host of other treaties and agreements have helped to establish guidelines of acceptable conduct, regardless of the perceived justice of a cause.¹³ International law, in its purest form, must be similarly impartial and strict in application.

Thus, state terrorism, unless it is of a demonstrably international character and scope, cannot be dealt with in the context of international law concerning international terrorism. Persons or groups of persons committing acts of international terrorism under the auspices of a national liberation movement, however, must be held accountable for their transgressions under international law with respect to international terrorism.

Having thus established two critical, and undoubtedly controversial, boundaries for this study, it becomes essential to attempt to be more precise about which acts can be considered under the category of "international terrorism." John N. Moore, a counselor on international law for the United States Department of State has suggested four criteria for delineating international terrorist acts.¹⁴ Since

¹²Leo Gross, "International Terrorism and International Criminal Jurisdiction," The American Journal of International Law, 67, (July 1973), 508.

¹³The United Nations Charter and Human Rights, United Nations Office of Public Information (June 1973, p. 13.

¹⁴Moore, p. 92.

these criteria are consonant with the draft proposals submitted to the Ad Hoc Committee, and are rather more concise and explicit in legal terms than were those proposals, it seems appropriate to examine them with care, either accepting or rejecting them as adequate initial criteria for the development of international law in this area.

The conditions which Moore suggests derive from a draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, which was tabled in the General Assembly of the United Nations in 1972, due to political controversy.¹⁵ This convention, in designating certain acts as being of an international terrorist nature was attempting to focus on the common interest of all nations in preventing the spread of violence from countries involved in civil or international conflict to countries not parties to such conflict. It does not attempt to define terrorism, but seeks to interpret international terrorist acts in terms of the international laws of neutrality.¹⁶

The four conditions recommended in this convention are quite simple. First, the act must be committed or take effect outside the territory of the state of which the alleged offender is a national. Second, the act must be committed or take effect outside the territory of the state against which the act is directed. (One exception to this requirement under the draft convention is that acts committed or taking effect within the territory of the state against which the act is directed would be covered if they were knowingly directed against a non-national of that state.) Third, the act must not be committed either by or against a member of the

¹⁵Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism (Draft Convention to Prevent the Spread of Terrorist Violence) U.N. Doc. A/C.6/L.850 (September 25, 1972).

¹⁶Moore, p. 91.

armed forces of a state in the course of military hostilities. Finally, the act must be intended to damage the interests of or obtain concessions from a state or an international organization.¹⁷

All four of these criteria must be met for the term "international terrorism" to apply under international law, according to this convention. In spite of the careful focus of the conditions, though, most of the current acts of an international terrorist nature would be covered by this convention.¹⁸ If these criteria are taken conjunctively with the criteria already established concerning the hijacking of aircraft and the protection of diplomatic personnel, then an adequate skeletal framework for delineating international terrorist acts could be achieved.¹⁹

This, is, of course, only the foundation upon which a structure of international law may be built. As new needs arise, new additions to this portion of the house of justice may be made, provided that they are compatible with the foundation stones and will stand the test of time and circumstance. With this foundation, this very simplistic structure, much may be added, but very little deleted. These criteria serve to operationalize the concept of international terrorism in other than declamatory terms, to establish thresholds for determining which acts are properly associated with the term. Given thresholds such as these, international terrorism need no longer be a pejorative term, applied at will by those in power of those whose interests are at stake.²⁰ There is, with the use of such

¹⁷Moore, p. 92.

¹⁸Ibid., p. 93.

¹⁹Gross, p. 509. See also Moore, p. 92. For further discussion, read Alone E. Evans, "Terrorism and Political Crimes in International Law," The American Journal of International Law, 67, No. 5 (November 1973), 87.

²⁰Burnett, "Your Terrorist Is My Patriot," p. 2.

criteria, the capacity for fair and impartial formulation and application of international law in this area.

The fixing of basic standards by which to judge acts as to their culpability under international law in terms of international terrorism is, naturally, only the beginning of the difficult struggle to deal with international terrorism in contemporary terms. The Ad Hoc Committee on this issue was instructed, not only to try to define the concept, but also to investigate its causes, and propose solutions to the problem as a whole.²¹

Causes of International Terrorism

Having thus established a few basic thresholds for the concept of international terrorism, it has been argued that the study of the causes from which such acts spring would be dilatory. While acknowledging that analysis of the causes should not be sacrificed to the devising of preventive measures, others have argued that the study of the political or socio-economic causes of international terrorism was by nature long-range and difficult, and that the adoption of necessary protective measures could not be postponed pending completion of that study.²² Moreover, it has been argued, with some merit, that it is quite unrealistic to expect that, upon completion of such a study, the underlying causes could be so eradicated as to lead to the prompt elimination of acts of international terrorism. In this connection, it has been noted that in their domestic legislation, states do not wait for the underlying causes

²¹Report of the Ad Hoc Committee on International Terrorism, p. 5.

²²Irving Howe, "The Ultimate Price of Random Terror," Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 14.

of most crimes to be identified prior to enacting some form of penal law.²³

However, in order to consider the issue of international terrorism in its proper perspective, it appears to be essential to understand the roots of the problem. The complementary character of the two studies (i.e., causes and measures to combat international terrorism) cannot be ignored.²⁴ Surely the most effective way to proceed to eliminate an evil is to attempt to understand its causes and its origins.²⁵ Predicting the behavior of terrorists would be an invaluable aid in combatting terrorism, and such prediction must be premised in an elementary understanding of the causes which prompt the actions.

Such a survey of the causes would not be in the nature of a justification of any terrorist act or organization. There are limits to what is permissible and acceptable to the international community.²⁶ Just as the fundamental right of a State to self-defense is limited by the laws of war in that there are acts so brutal that no State may undertake them even if its survival is at stake, so too there must be limits to any action permissible to an individual or group of individuals fighting for a cause.²⁷ Thus, the study of the causes of international terrorism is

²³Report of the Ad Hoc Committee on International Terrorism, p. 7. See also Howe, pp. 15-17 for further elucidation.

²⁴Evans, p. 89.

²⁵Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are Of International Significance, O.A.S. Doc. AG/88, rev. 1 (February 2, 1971).

²⁶Egon Schweld, "An Instance of Enforcing the Universal Declaration of Human Rights--Action by the Security Council." The International and Comparative Law Quarterly, 22 (January 1973), 161.

²⁷Richard A. Falk, Legal Order in a Violent World (Princeton: Princeton University Press, 1968), p. 24.

designed to facilitate understanding of the problem and hence to aid in its prevention, not to justify or in any sense sanction it.

The Origins of terrorist movements are seldom ideological, nor do they stem from one simple cause.²⁸ Rather, a host of factors inter-dependently act to evoke the response among a dissident faction that erupts into acts termed terrorism. These factors may include racial, religious, linguistic, or political differences, and the drives resulting from a clash in the important areas are similarly diverse. Conflicts may thus arise between commercial people and simple pastoral people, people of different historical backgrounds, people of different food cultures (e.g., wheat-eating and rice-eating peoples).

These differences alone will seldom spark a terrorist group into action. Instead, it is only when these divergences are dramatically highlighted, so that the "different" group or person is made to feel isolated and defensive, that terrorism may result. Thus, terrorist groups sometimes arise from enclaves left when empires clash or dissolve (e.g., the French in Canada and the Turks in Cyprus), or among descendants of settler-conquerors (e.g., Ulster Scots in Ireland). Such groups can also be the product of geographic artificial settlements (e.g., East Pakistan, Chad), or they may simply be tough, unassimilable groups (e.g., the Basques in Spain).²⁹

International terrorism may also have its roots in the remnants of colonialism remaining today, particularly among those countries which still hold policies of apartheid.³⁰ In such cases, the dissident group

²⁸Brian Crozier, ed., Annual of Power and Conflict: 1971 (New York: National Strategy Information Center, 1972), p. 10.

²⁹Ibid., p. 11.

³⁰Issues Before the United Nations General Assembly in 1975, p. 49.

will evolve through perceived policies of racism, domination, and exploitation, heightened by differences of culture, history, language, religion, etc.

Thus, terrorism may erupt from any one or more of a hundred different sources. Religion, race, language, culture -- any of several factors may provide the focal point for controversy. There is, too, no formula for determining at what point differences in such key areas, or historical divergences over the centuries, will provide sufficient impetus for terrorism. It is possible to identify factors which can lead to terrorism, and thus to give direction toward elimination of these causes for dissent.³¹ But there appears to be no threshold for terrorism, no level of acceptance or degree of accommodation at which one could positively state that terrorism could not find root.

Terrorism appears to find root in an open democratic system as well as in a closed totalitarian one. "Causes" for terrorists appear to be as readily available in an anti-colonialist nation as in a former imperialistic one.³² The only difference, perhaps, lies in the degree of success achievable by the terrorists, which, while it has no direct impact on the causes perceivable, may have an effect on the frequency with which those causes are espoused.³³

Some experts have argued that terrorism finds its roots, not in

³¹Report of the Ad Hoc Committee on International Terrorism, p. 5. For further discussion, see Howe's article, p. 60.

³²Ron Ridenour, "Who Are the Terrorists -- and What Do They Want?" Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 19.

³³Cyril E. Black and Richard A. Falk, ed., The Future of the International Legal Order: Volume I: Trends and Patterns (Princeton: Princeton University Press, 1969), p. 3.

specific causes, per se, but in the tremendous material and scientific revolution that has taken place in recent decades. Tremendous advances have been made on the material and medical levels, but none of this advance has been matched by an equivalent increase in moral and ethical responsibility. On the contrary, it appears to have been accompanied by an almost total breakdown in both public and private morality on a world-wide scale.³⁴

International terrorism, in this perspective, is viewed as resulting from a world-wide tendency toward violence and cruelty, in both the public and the private sector. Institutionalized torture of prisoners by governments is thus cited as a factor in the increasing violence among dissidents. As cruelty and a breakdown of public morality in the treatment of civilians is legitimized by governments, then terrorism becomes an increasingly acceptable tool of groups or persons in opposition to those governments.³⁵ Violence could thus be said to breed violence, as world-wide tolerance for such behavior grows lax.

Terrorism, then, is not a temporary phenomenon based upon some isolated situation or malaise which, if remedied, could secure that no more incidents would ever occur. Dissent is a form of social life, and, depending upon circumstances, it may assume many different expressions.³⁶ Terrorism is thus merely one of several techniques utilized in the process of dissent. Since it is, however, an exceptionally violent technique, attention should be directed briefly at some of the reasons why dissident groups choose to utilize it.

³⁴Burnett, "Interview With Sean MacBride," p. 11.

³⁵Ibid., p. 54.

³⁶Rozakis, p. 42. See also Civil Violence and the International System, (London: International Institute for Strategic Studies, 1971), p. 2.

In rebel groups not strong enough to overthrow a state, terrorism may be a technique which is part of their strategy to repudiate and remain independent of the authority system.³⁷ In such groups, terrorism is not in itself an end; instead it is used as a means of dramatizing the apartness of a group from the authority system; it is designed to induce fear, not to overthrow the government; it is symbolic rather than constructive.

It is important, here, to make a distinction between the violence perpetrated by rebel groups and actual acts of terrorism. Violence, meaning simply "destructive harm" can be complete within itself, not directed toward an end beyond itself. Terrorism by definition implies intentional violence designed to evoke a particular psychic effect and reactive behavior, and is thus not complete in the action alone. Violence may thus occur without terror, as in the destruction of military stores, while terror seldom occurs without violence of some sort, designed to induce fear.³⁸

A brief glance at the Palestinian Liberation Organization may yield some fruitful observations as to the reasons why such guerilla groups choose terrorism as a means to achieve their goals. This group cites the institutionalized terror practiced by the State of Israel against their people as one of their reasons for opting to use such violent measures as the murder of Israeli athletes at Munich.³⁹ There

³⁷Eugene Walter, Terror and Resistance (Oxford: Oxford University Press, 1972), p. 7.

³⁸Walter, p. 14.

³⁹Gerald Chaliand, The Palestinian Resistance, Penguin Books, Inc: Baltimore (1972) p. 31. Refer also to Majid Khudduri, Major Middle Eastern Problems in International Law, for more in-depth discussion.

is, moreover, among members of the PLO, an acute feeling of apartness and defensiveness (mentioned earlier as key factors). They consider themselves to be (as in fact they are) a people without a country.⁴⁰

Such a feeling of isolation, coupled with a realization of the desolation of their living conditions in refugee camps, have bred into this group a desperate feeling that they have "nothing to lose."⁴¹ Seeing themselves as abandoned, betrayed, and unbearably exploited, this group has sought to use drastic measures to seek to alleviate a drastic situation.⁴² Feeling victimized, they are therefore more willing to victimize others. Thus, interpreting their situation in such desperate terms, they are more apt to employ desperate measures, like terrorism, rather than seek more peaceful and less dramatic measures such as negotiation.

It would seem, then, that the perceived alienation and desperation of a group would be a critical factor in determining whether or not terrorism would be one of the tools chosen to accomplish its goal. Certainly this is true in some cases, but apparently not universally so. The example of the Front de Liberation du Quebec in Canada would seem to highlight other reasons for choosing terrorism as a technique in advancing a cause. According to the ideology of this dissident group, "terrorism is a lucid taking of sides in favour of violent action."⁴³ Members of the FLQ consider terrorism necessary in part, thus, because

⁴⁰Chaliand, p. 14.

⁴¹Ibid., p. 23. See also John J. McCuen, The Art of Counter-Revolutionary War (Pittsburgh: Stackpole Books, 1970).

⁴²Nathan Leites and Charles Wolf, Jr., Rebellion and Authority, (Markham Publishing Co.; Chicago, 1970), p. 25.

⁴³Gustave Morf, Terror in Quebec: Case Studies of the FLQ (Toronto: Clark Irwin and Co., Ltd., 1970) p. 153.

it forces people to take sides on the issue. "Confronted with these deeds of violence, every man and woman...has to stand up and be counted. There can be no ambiguity here, no neutrality, no whitewashing."⁴⁴

In this case, terrorism is espoused by a cause in order to force the issue, to compel action, to insure that both the population and the authority system must take a stand. This goes beyond the need for publicity, cited by some groups as justification for terrorism.⁴⁵ According to the FLQ school of thought, the actions by this group must be so violent, so outrageous, that ambiguity becomes impossible and positive action imperative. Terrorism on an international scale is chosen, then because of the flamboyant outrageousness of its violence, which cannot be ignored.⁴⁶

The FLQ, moreover, chooses terrorism as a technique because of a belief that society itself is by nature violent, and responds best to violent tactics. Terrorism is in that sense the best way to pay the authority system back in its own coin, and is thus far superior to other, less violent, techniques (a premise concerning societal violence already discussed).⁴⁷

Thus, terrorism, both in terms of causes and techniques, has its roots in several factors. Certain causes, by their very nature (e.g., PLO) lend themselves more readily to the desperation of terrorism. Other causes choose to use terrorism as a technique because of

⁴⁴Morf, p. 167.

⁴⁵The Weather Underground, "Prairie Fire," Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 30.

⁴⁶Morf, p. 168

⁴⁷The Weather Underground, p. 31.

various perceived merits in its effectiveness in achieving certain specific goals. Therefore, it could be effectively argued that elimination of various major causes for dissent (such as racism, apartheid, colonialism, etc.) will not necessarily lead to an elimination of terrorism.⁴⁸ As long as a person or group of persons perceives society itself to be violent, at fault, acquiescent to violence, etc., then terrorism may continue to be employed.

Oppression, racism, colonialism, and a host of other ills have afflicted society for centuries. Yet terrorism as a technique to combat those ills has been of fairly recent vintage. Within society itself must lie a key to the patterns of increased terrorism today, both in terms of long-term trends and present typologies of terror.⁴⁹ In order to understand the current phenomena of international terrorism, therefore, it seems appropriate to study these trends and patterns, both to comprehend the present situation and to seek remedies for the future.

Current Types and Trends in International Terrorism

There are a variety of methods for categorizing "types" of terrorism. International terrorism can be divided into "single person" and "group" efforts; it can be discussed in terms of selective or random actions; it can be categorized according to the form that the terrorist action takes (i.e., skyjacking, kidnapping, etc.); and there are no doubt a variety of other methods of classification.⁵⁰ These three

⁴⁸Howe, p. 61. See also Richard E. Kipling, "Is Terrorism Ever Justified?" Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 61.

⁴⁹Burnett, "Interview with Sean MacBride," p. 11. Further discussion of these trends will be included later in this chapter.

⁵⁰Howe, p. 13.

major categorical approaches, however, will encompass the critical characteristics important to a discussion of modern terrorism.

Terrorism may be the weapon of a lonely fanatic, but it is currently more often the technique of a small group of conspirators intent upon forcing history through their own self-sacrifice and other people's blood. It is rarely, however, the weapon of mass movements engaged in public politics. Individual terrorism has yet to evolve, but terrorism of a vast majority by a tiny minority of well-armed, well-organized and entrenched group of desperate people is a grim reality, and terrorism by a mass movement appears to be a phenomena of the French Revolution, unparalleled today, fortunately.⁵¹

Feliks Gross has suggested an interesting typology of terrorism based on the scope of the action. He made distinctions between individual, dynastic, focused random, and random terrorism. Individual terrorism involves the attack upon someone taken to be crucially representative of autocratic power. This type of terrorism is quite selective, and has in the past been characterized by notable attempts to spare innocent bystanders or relatives of the victim, a rare sense of scruple among terrorists today.⁵² Dynastic assassination is a self-explanatory term.

The terrorism that has come into fashion among insurgent conspiracies today, however, takes the form of focused random or random terror. Focused random terrorism on an international scale involves such actions as the placing of explosives where significant agents of

⁵¹Burnett, "Your Terrorist Is My Patriot," p. 13.

⁵²Howe, p. 14. Refer also to McCuen for more generalized discussion of this type of terrorism.

"oppression" are likely to gather, so that the victims, even if individually unknown, are judged to be more or less equally "appropriate."⁵³ For example, during World War II the Polish-Jewish underground planted explosives at a cafe where Nazi officers often met.⁵⁴ (This example illustrates the inherent flaw in such action, in that the lives of Polish waiters working at the cafe were also lost.)

Random terrorism is even less concerned with the guilt or innocence of those injured. Such an action includes, perhaps, the placing of explosives simply where people gather: in post offices, planes, hotels, etc. Unburdened by the moral scruples of the selective terrorism that is directed toward an individual, random terrorists choose to destroy whoever -- innocent or guilty, adult or child -- happens to be at the site where the bomb goes off.⁵⁵ The Irish Republican Army has left bombs in London post offices, pubs, and stores, apparently convinced that one Englishman blown to bits is pretty much like any other, even if a few of the victims may have been among those who had been agitating for the cause of the IRA. Algerian and Bulgarian revolutionists used the same methods, apparently out of similar persuasions, in their struggles for independence.⁵⁶

Thus, there can be said to be at least four distinctly different types of terrorism. Each form has a special set of ground rules, and its

⁵³Howe, p. 15.

⁵⁴Carl Leiden and Karl M. Schmitt, The Politics of Violence: Revolution in the Modern World (Englewood Cliffs: Prentice-Hall, Inc., 1968), p. 5.

⁵⁵Howe, p. 15.

⁵⁶Ernest Vanden Haag, Political Violence and Civil Disobedience (New York: Harper and Row, Publishers, 1972), p. 12.

peculiar type of logic in establishing boundaries for the scope of its actions. Today, however, the most virulent and prevalent form of international terrorism appears to be the totally unselective random type, difficult to predict, knowing no boundaries, recognizing no innocent bystanders, and following few if any moral scruples in limiting its scope.⁵⁷

International terrorism can also be categorized according to the form of action utilized. While an infinite variety of forms are possible, and a host of them have been attempted, there are perhaps a half a dozen major forms that international terrorism takes today. These include murder, kidnapping, skyjacking, robbery, bombing, damage to property alone, and nuclear blackmail.

The current flood of terrorism has reached an unprecedented peak in all of its manifestations.⁵⁸ Under present conditions, a handful of madmen or fanatics can cause a great deal of havoc, and the end is not yet in sight. The hijacking of aircraft was an early and, on the whole, ineffective prelude to this new age of terror. In 1969-70 some 164 civil aircraft were hijacked, in 1973-74 only a mere handful.⁵⁹ Recently, international terrorism has more often taken the form of kidnapping (and sometimes murder) of diplomatic personnel and civilians. From September 1969 to July 31, 1970, for example, thirteen innocent people, primarily foreign diplomats, were abducted in Central and South America. Of these, two were assassinated, one escaped, and the others were traded

⁵⁷Walter Lacquer, "Can Terrorism Succeed?" Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 24.

⁵⁸Gross, p. 509.

⁵⁹Lacquer, p. 29.

for political prisoners.⁶⁰

The FLQ was responsible for one of the most heinous crimes in this category when, in October of 1970, Mr. Pierre Laporte, the Canadian Minister of Labour and Immigration, was sadistically killed, following his kidnapping a week earlier.⁶¹ While this was not, in the strictest sense, an act of international terrorism, its implications and example reflect the trend of terrorism in this category.

A flood of international kidnap-murder acts of international terrorism are all too readily available for illustrative purposes. In May of 1971, the Turkish People's Liberation Army kidnapped and murdered the Israeli consul-general in Istanbul,⁶² while in that same month, the ERP in Argentina kidnapped Mr. Stanley Sylvester, the honorary British Consul in Rosario.⁶³ Earlier, in December 1970, the VPR and the ALN in Brazil kidnapped the Swiss ambassador to Brazil⁶⁴; and in July of that year, the Tupamaros in Uruguay kidnapped the Brazilian consul, Aloysio Dias Gomide.⁶⁵ Claude Fly, an American soil expert, was kidnapped by this same group in March of 1971.⁶⁶

The list of such incidents is monumental. Virtually all of the major, and many of the smaller, terrorist groups have resorted during the past

⁶⁰Gustave, p. 164. Refer also to Crozier, Annual of Power and Conflict: 1971.

⁶¹Ibid., p. 168.

⁶²Crozier, p. 16.

⁶³Ibid., p. 27. See also Gustave.

⁶⁴Ibid., p. 29.

⁶⁵Ibid., p. 32.

⁶⁶Ibid., p. 33.

few years, to kidnapping (and often murder). The TPLA, FLQ, ERP, (Argentina), VPR (Brazil), ALN, ELN (Columbia), MAR (Mexico), and liberation groups in Chad and Pakistan, have all resorted to this technique with alarming frequency in recent years. (This list is, of course, in no sense comprehensive; only those groups whose actions have been of recent vintage and sensational nature are cited here).⁶⁷

In addition to aerial hijacking, kidnapping, and murder, international terrorism has also adopted the age-old custom of bombing (usually, as mentioned earlier, random bombing, involving "innocent" people). This has been a favored tactic of the Irish Republican Army, SWAPO, the Naxalites (India), the Pakistani and Filipino insurgent groups, and Acao Revolutionaria Armada (Portugal), and Angry Brigade (United Kingdom), the Fuerzas Armadas Revolucionarias de Columbia, and the New People's Army (Philippines). Since the majority of those groups employing this tactic are liberation groups of a guerrilla nature, this type of terrorism could be generally held to be typical of most groups of this nature.⁶⁸

Sabotage, general damage to property alone, and robbery are among the least violent of the new forms of international terrorism. Although millions of dollars are lost yearly in such attacks, such loss when viewed in the context of human lives appears to be minimal. Many insurgent groups, in order to secure money for the purchase of arms, resort to robbery and extortion, occasionally netting as much as \$24,000 in a single month from robbery alone.⁶⁹ Ransoming of diplomatic hostages, naturally, nets even

⁶⁷Refer to the charts in the Appendix for further information on these groups.

⁶⁸Peter Paret and John W. Shy, Guerrillas in the 1960's (New York: Frederick A. Praeger, Publisher, 1962), p. 15.

⁶⁹Ibid., p. 21. Refer also to Crozier for detailed study.

larger sums of money. Recently, too, extortion has become a key method of getting money from foreign companies, using kidnapped executives for ransom.⁷⁰ Sabotage and property damage (to consulates, embassies, foreign holdings, etc.) are costly in monetary terms, difficult to control, but less heinous acts in the conscience of mankind.⁷¹

The final category of international terrorist activity is a very new, very frightening one: nuclear blackmail. It appears to be only a question of time before weapons like the SAM-7, which weighs a mere 25 pounds, costs less than \$1,000 to produce, and can be operated by a child, will be used against civilian planes. The first recorded attempt, at Ostia near Rome, was thwarted in time.⁷² Next time, the terrorists may be more successful.

Naturally, a nuclear device is more expensive. Bombs like the one produced by India cost an estimated \$15 million -- which does not, though, put it out of the reach of the more affluent groups.⁷³ Indeed, in the near future it may be possible to produce nuclear material at a fraction of the cost, or simply to steal it. This nuclear blackmail or the explosion of nuclear devices by terrorist groups seems at least as likely a possibility as nuclear war between states, perhaps more so.⁷⁴ It is an appalling thought.

International terrorism, then, can be characterized by the number of

⁷⁰David Daniels, *Violence and the Struggle for Existence* (New York: Frederick A. Praeger, Publisher, 1970), p. 12. See also John M. Swomley, *Liberation Ethics*, (New York: Harper and Rowe, Publishers, 1972).

⁷¹Report of the Ad Hoc Committee on International Terrorism, p. 5.

⁷²Laquer, p. 29.

⁷³*Ibid.*, p. 30.

⁷⁴*Ibid.*, p. 31.

its perpetrators, by the range of its victims, or by the form the particular action takes. It is important to be able to understand each of these categories in order to fully comprehend the vast scope of the problem of international terrorism today. A vast panorama of persons and groups must be dealt with, a host of protections afforded to a wide variety of people (due to "random" attacks) and a score of different contingencies must be provided for in order to cope with the multiple types of attacks. The task appears to be enormous as well as critically urgent.

An examination of the trends in international terrorism as a whole today may also yield some fruitful observations. There are innumerable trends discernible in the realm of current terrorism, but these can all be discussed in terms of about six general trends of critical importance. These include an increase in cruelty and violence, a growing tendency to include innocent victims in attacks, a burgeoning rise towards sensationalism, a growth in generalized acceptance of heinous acts of barbarism, an increasing cold-bloodedness in the commission of barbarous acts, and incredible progress in the technology available to groups, resulting in increases in mobility, weaponry sophistication, and surprise attack capacity.

There appears to be currently a rapid escalation of violence and cruelty in the world as a whole.⁷⁵ In fact, the entire human race seems, as one expert stated, "to be going through a cycle in which violence and cruelty dominate in many spheres."⁷⁶ People resort to violence and cruelty much more readily than they did in the past.⁷⁷ Cruelty is a disease, a very contagious disease.⁷⁸ Terrorism today has become reflective of this

⁷⁵Burnett, "Interview With Sean MacBride," p. 10.

⁷⁶*Ibid.*, p. 11.

⁷⁷Ridenour, p. 18.

⁷⁸Burnett, p. 54.

proclivity toward cruelty. The Irish Republican Army, for example, has evolved from a group whose activities were originally directed toward merely a destruction of property and, occasionally, passive resistance, to a terrorist group wielding letter-bombs, guns, bombs in public places, snipes, and a host of other violent and cruel acts.⁷⁹

There appears to be, moreover, a tendency toward a much more virulent form of terrorism, which considers innocents to be fair game. It used to be the rule, always, that assassins and insurgents took precautions not to injure innocents or civilians.⁸⁰ Ivan Kalayev, a Socialist Revolutionary, postponed a 1905 attempt upon the Grand Duke Sergei because the family of this prince was standing nearby and might have been hurt.⁸¹

For terrorism today, however, to be effective, at least momentarily, it must go beyond limits previously accepted. Thus it tends to become increasingly more unselective in its victims, more random in its scope. To qualify as an appropriate victim of a terrorist today, one need be neither a tyrant nor one of their sympathizers, one need not be connected in any way with the evils the terrorist perceives, one need not belong to a particular group. One needs only to be in the wrong place at the wrong time.⁸²

Three United States students from Stanford University -- Barbara Smuts, Jane Hunter, and Kenneth Smith -- were kidnapped in June 1975 by African marauders. In December 1974 Dejean Replogle, a sixteen-year-old girl from Jacksonville, Florida who was on a Christmas visit to the Holy

⁷⁹Burnett, "Interview with Sean MacBride," p. 10.

⁸⁰Ibid., p. 11.

⁸¹Howe, p. 14.

⁸²Ibid., p. 13.

Land, lost her leg when a grenade thrown by a Palestinian guerrilla struck the bus in which she was riding.⁸³ These civilians' only "crime" was being in the wrong place at the wrong time.

Perhaps, then, one of the key elements common to various types of terrorism today is an increasing tendency to try to create unmanageable fear through a use of violence that breaks down traditionally accepted distinctions between combatant and civilian. Lacking the strength to engage in conventional, which is to say, limited war, the terrorists of today tend to adopt the rationale of total war, in which there are no "innocent people."⁸⁴ Whatever the intentions, however, that terrorists bring to their acts, they tend out of desperation and through repetition, to become increasingly unselective.⁸⁵

Closely related to this tendency of random terror is the growing trend of sensationalism in terrorist attacks. In all strategies of terror there is an inherent impetus toward going beyond the limits previously accepted, to go "one step further" than anything previously attempted.⁸⁶ This tendency is multiplied a thousandfold in today's society where channels of information require increasing quantities of sensation in order to hold attention. Thus, a terrorist wishing to become the conscience of society may find himself "playing society's game."⁸⁷ He must arrange events or stage pseudoevents that will yield a moment

⁸³Sandra Stencel, "How to Protect Yourself From Terrorism," Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976, p. 37.

⁸⁴Howe, p. 15.

⁸⁵Ridenour, p. 20.

⁸⁶Howe, p. 15.

⁸⁷Ibid., p. 58.

of notoriety; he must threaten and act upon his threats so as to seize his fifty seconds of the six o'clock news; he must continue to raise the ante. A solitary murder, criminal or political, has by now become so much a part of "normal" life, it rarely excites much interest.⁸⁸ So to hold his "public", a terrorist must increasingly resort to acts that he had initially, one hopes, found repugnant, such as random bombings, the murder of innocent people.

This acceptance of murder as an integral part of "normal" life marks another trend in terrorism. Terrorism is experiencing today a rapid growth in acceptability.⁸⁹ Emile de Antonio, director of several documentary films has admitted that "given the choice between passivity and terrorism, I'll take terrorism." Rabbi Meir Kahane, executive director of the Jewish Defense League, too, has openly stated that "violence and terror are things to be devoutly opposed -- when they are not needed."⁹⁰ Such comments reflect a growing willingness to accept the necessity of terrorist tactics to gain desired ends.

Part of this climate of acceptance, too, stems from a willingness among governments to institutionalize cruelty and terrorist tactics. It was recently revealed, for example, that NATO forces have training courses in the torture of prisoners. (This came to light when, in the course of war games in Belgium, they actually tortured and injured some Belgian soldiers).⁹¹ It has been argued that, if those vested with authority

⁸⁸ Howe, p. 59. Refer also to Edmund Taylor, The Strategy of Terror, (New York: Frederick A. Praeger, Publisher, 1970).

⁸⁹ Kipling, p. 34.

⁹⁰ Ibid., p. 36.

⁹¹ Burnett, "Interview With Sean MacBride," p. 10.

and power resort to torture and murder, it is inevitable that terrorist groups will react with similar methods, while an apathetic public accepts both as "normal."⁹² Whether or not this is strictly true, there is indeed today a climate of acceptance that has nourished and encouraged the growth of international terrorism.

Another trend evident in modern international terrorism is an increase in callousness, or perhaps a decrease in humanity. Individual recklessness, even irresponsibility, can certainly be found among 19th-century bomb-throwers, but the more principled anarchists who resorted to the bomb usually did try to limit their attacks to individuals or groups held to be directly responsible for social evils.⁹³ Today, however, there is among terrorists a kind of cold-blooded readiness to murder innocents -- any Englishman, any Israeli.⁹⁴ This characteristic is certainly peculiar to the more "advanced" modern world.

Finally, there is a trend among terrorists that is directly attributable to modern technological advances: Terrorists can strike almost anywhere, with sophisticated weapons, and with surprise.⁹⁵ The concentration of modern technology has given terrorism both new mobility and strength, and an ability to concentrate attacks to increase effectiveness. A bomb placed in an airplane can destroy several hundred people; a city can be rendered helpless by a few desperate persons.⁹⁶ Terrorists from all over the world can unite to perpetrate a single act, and disperse

⁹² Burnett, p. 55.

⁹³ Howe, p. 58.

⁹⁴ Ibid., p. 59.

⁹⁵ Ibid., p. 57. See also Taylor's The Strategy of Terror.

⁹⁶ Crozier, p. 15. Refer also to Howe for discussion.

with equal facility. Ironically, technology has made terrorism easier and more effective today than ever before.

No overview of types and trends of international terrorism would be complete without a comprehensive look at World-wide patterns of national liberation movements and area conflicts. Many terrorist groups belong to both categories, and it is important to note the type of group in order to comprehend roughly the scope of its activities. The international impact of these groups cannot, of course, be assessed according to this classification. Nevertheless, patterns of international terrorism are more readily grasped when one comprehends the extent and nature of terrorist movements on a world-wide scale.

The tables and maps in the Appendix can be of assistance in realizing the extent of the problem of international terrorism today. The tables indicate the nature, number, and approximate strength of groups or movements that use violence for political ends, regardless of ideology. The list is not intended to be exhaustive, and the figures (for strength) are given only where they could be estimated with relative accuracy.⁹⁷ Nevertheless, this list serves to highlight the truly world-wide scope of terrorism today, a point of great significance in emphasizing the crucial need for a comprehensive international response to the problem.

As both the list and the maps illustrate, there is virtually no area of the world that is immune to terrorist attack, or that is exempted from dealing with at least one extremist movement. The problem, having thus an undeniably international scope, must be dealt with on an international as well as a national level. Some progress in the realm of

⁹⁷Crozier, p. 129.

international law concerning international terrorism has been effected, but massive amounts of efforts remain to be made, if a solution is to be effected.

Before moving into a study of the international law on this problem currently in existence, however, it is essential to ascertain whether or not terrorism is, or can be, justified. Obviously, if it can be justified, then legal action would be not only superfluous but detrimental. Thus, this critical issue of justification must be carefully examined, in order that whatever remedies to the current problems are chosen will be in accordance with the just principles of human rights and freedoms.

The Question of Justification

Debates about just wars and just causes are as old as civilization. Similarly, questions of justification are always raised after terrorist acts. In fact, the debate about terrorism is ultimately a debate about ends and means, about justification.⁹⁸ As mentioned earlier, nearly every nation has at some point experienced a revolution, whose early "patriots" may well have been considered by some to be terrorists. Yet their descendants today would argue vehemently that these founding fathers were justified: the protagonists were patriots, fighting for their liberty against tyrants.⁹⁹

This rationale highlights one of the critical problems in the debate about terrorism today. Terrorists invariably refer to themselves as revolutionaries or members of a liberation movement.¹⁰⁰ The question

⁹⁸Kipling, p. 34.

⁹⁹Burnett, "Your Terrorist Is My Patriot," p. 2.

¹⁰⁰Donald C. Hodges and Robert Elias Abu Shanub, ed., NLF: National Liberation Fronts, 1960/1970 (New York: William Morrow & Co., Inc., 1972), p. 4.

therefore arises as to the point at which terrorists become certified revolutionaries in the eyes of the world. It seems absurd to argue that terrorism becomes acceptable or justified when it works; that is, when terrorism has been sufficiently successful to secure power or influence of a sort for the terrorists. Yet, in the course of history, this could be the construction placed on the acceptance by the world of revolutionary leaders as legitimate heads of governments.

There are, however, deeper legal and normative questions involved. As most nations have agreed, there are certain acts so heinous as to be repugnant to the conscience of mankind.¹⁰¹ Such acts would appear to be without justification, regardless of the intent of the perpetrator. Nevertheless, there are two distinct schools of thought with respect to this issue: one contends that terrorism is a necessary tool, justified by the justice of the cause; and the other asserting that terrorist acts are never justifiable, regardless of the cause or provocation. Both points of view merit further investigation and elucidation.

Countless revolutionaries and their sympathizers have argued that terrorism is both essential and just. Robespierre, in 1794, during the birth of "terrorism" in France, claimed that "terror is nothing else than justice, prompt, secure and inflexible."¹⁰² Similarly, terrorists of today assert vehemently the necessity and justice of their actions, in statements similar to that of the Jewish rabbi who advanced the argument that:

If Arab terrorists murder innocent civilians in Israel and all else having been tried and failed, terror against the Arab

¹⁰¹John Druggars, "Toward the Definition of International Terrorism," *American Journal of International Law*, 67, No. 5 (November 1973), p. 94.

¹⁰²Kipling, p. 61.

host nations is attempted in order to persuade them to expel the terrorists -- that is proper and obligatory to save innocent lives.

Rabbi Meir Kahane¹⁰³

Terrorists themselves make similar claims to justification, as in the statement by ex-Weatherman Susan Stern that

When a people or race or nation want to obtain their basic, essential rights as human beings, and when every means has proved useless -- the ballot, door-to-door organizing, community organizing, newspapers, educational forums, everything -- then one has to employ terrorism.

Susan Stern, ex-Weatherman¹⁰⁴

The rationale of such statements appears to be based upon a variety of rather dubious premises, the most important of which is that denial of one's essential rights, or crimes of a similar nature, in some sense justifies one's actions in using any means to retaliate or recover those rights. Such an argument is obviously untenable. The old adage concerning two wrongs not making a right is trite, but apt. The laws of nations and international norms at no point defend the logic of denying the basic rights of innocent persons in order to retaliate against similar denials of rights by authority systems.¹⁰⁵ There can be no justice in the injury and slaughter of innocents in order to procure "justice" for others.

The revolution must not "use every tool."¹⁰⁶ Just as there are certain parameters of acceptable behavior by nations during times of war established by international law, so are there international norms and laws of acceptable behavior established for struggles of oppressed peoples.

¹⁰³Kipling, p. 36.

¹⁰⁴Ibid., p. 35.

¹⁰⁵Kenneth W. Grundy, Guerrilla Struggle in Africa (New York: Grossman Publishers, 1971), p. 178.

¹⁰⁶Kipling, p. 35.

Nations, even when their survival is threatened, are prohibited from the use of certain measures and actions. Revolutionaries, too, must remain within the realm of civilized action if their acts are to be justified in the eyes of the international community. To transgress these norms, in the commission of heinous acts offensive to the conscience of mankind and illegal under its laws, is to lose justification for those actions (not necessarily, however, for the cause which prompted them).

Indeed, even Che Guevara, the celebrated guerrilla warrior, has stated that "terrorism is of negative value... it by no means produces the desired effects... it can turn a people against a revolutionary movement."¹⁰⁷ Vladimir I. Lenin, too recognized the need for revolutionaries to confine their actions to those consonant with the conscience of mankind, and hence he stressed the "inefficacy" of terrorism as a revolutionary tool.¹⁰⁸

Among some extremists today, there is a philosophy that terrorism is just in that it acts as a "purifying shock," to point out the seriousness of a cause and to highlight injustices in a system.¹⁰⁹ As the New Dawn Party, a Marxist-Leninist-Maoist organization, put it, "Terror by revolutionary forces is used to drive home the point that we are in a war to the finish."¹¹⁰ Such a "shock" is presumed to be necessary to stir indifferent masses into an awareness of prevalent injustice. Yet to perpetrate injustice in order to protest injustice is illogical and reprehensible.

¹⁰⁷Kipling, p. 57.

¹⁰⁸Ibid., p. 55.

¹⁰⁹Howe, p. 58.

¹¹⁰Kipling, p. 35.

Terrorism can be termed unjustifiable for a variety of reasons. It is wrong because it is inhumane; it is wrong because it creates an atmosphere in which brute violence replaces democratic discussion; it is wrong because minority in a democratic society, as long as their freedom to dissent is largely protected, do not have the right to impose their will upon the majority through violence.¹¹¹ Primarily, however, terrorism can never be justified because it involves the deliberate murder of innocent and defenseless people. As Brian Jenkins, director of the Rand Corporation's Project on International Terrorism, stated, "Terrorist violence, insofar as it is directed against innocent bystanders who have nothing to do at all with the struggle the terrorists are engaged in, is simply unjustifiable."¹¹² Or, as another expert has put it "Terrorism usually involves punishing somebody else in order to make a third party behave in a certain way. I would tend to say that that is never justified."¹¹³

Under international law, the action itself must meet certain criteria, certain norms, in order to be justified under the law. Thus in this case, it is the acts of terrorism alone that are "on trial," not the relative merits or justice of the causes, or the rights of terrorists to consider themselves revolutionaries. Terrorists or revolutionaries, whatever their causes, are bound, just as nations are, to certain rules of behavior. If their actions fail to meet these legal (and normative) requirements, if they transgress these boundaries, then the actions cannot be said to be justified under the law. It now becomes essential to determine what international law states with respect to such actions as skyjacking, kidnapping,

¹¹¹Van den Haag, p. 12. See also Howe, p. 60, for further discussion.

¹¹²Kipling, p. 62.

¹¹³Ibid., p. 63. Read Richard Falk's Legal Order in a Violent World for an interesting commentary on this point.

murder -- those actions already discussed as types of terrorist acts -- in order to establish criteria for justification.

Summary

International terrorism, then, as an operationalized concept in this research, does not include State terrorism (confined to the boundaries and nationals thereof), but does include actions by all persons and groups -- including national liberation movements -- that fit the conditions suggested in the draft resolution. International law, in order to be just, must apply to all acts meeting those conditions, regardless of the causes involved.

Furthermore, it has been established that terrorism springs from a host of causes, as diverse in character as they are legion in number. It has been noted that it is not necessarily true that a serious terrorist campaign is the product of genuine social grievances that can only be dealt with by sweeping social reforms. It is generally true, however, that terrorists seek to capitalize on real or imagined injustices within an imperfect society.

Unquestionably, the types and trends of terrorism indicate that the incidence of international terrorism is going to get worse, as groups promoting it are well-armed, well-organized and deeply entrenched. Although it is sometimes argued that terrorism is bound to decrease once society becomes less repressive, such an assessment rests on an overly optimistic view of the rationality of human behavior. As even some of the sympathizers of terrorism state it, "there are moments when revolutionary parties just don't think things out."¹¹⁴

¹¹⁴Kipling, p. 36.

Moreover, no matter how just the social order, how democratic the political regime, there will always be "disaffected, alienated, and highly aggressive" people claiming that the present state of affairs is intolerable and that any change will be for the better.¹¹⁵ The techniques used by these people, too, have caught a dangerous "contagious" cruelty, a new virulence, a "total war" philosophy that justifies and advocates the taking of innocent lives.

Finally, it has been argued that there is no justification under law for terrorism that takes innocent lives. Judge Thomas J. MacBride has enunciated clearly this concept in his statement:

I suggest that the most precious natural resource in the world is a human life, and to casually and coldly and consciously take a life solely for the purpose of calling attention to a cause is to me the most reprehensible and despicable crime that a person can commit.¹¹⁶

If indeed, the terrorist acts are to be declared unjustifiable under international law, then a survey of such law is essential to determine criteria for the basis of such a judgement. The law must therefore be examined to ascertain in what respects if any terrorist acts transgress international standards, and to establish methods, if any, for dealing with such transgressions.

¹¹⁵Laquer, p. 29.

¹¹⁶"Lynette Fromme Sentenced to Life," The New York Times (January 6, 1976) CXXV, No. 43, p. 2A.

Chapter Four

INTERNATIONAL LAW REGARDING INTERNATIONAL TERRORISM

Introduction

International law attempts, in general, to prevent suffering in international conflicts, to uphold national rights, and to provide safeguards for the rights of individuals, nations, and governments in times of peace as in times of war.¹ In order to accomplish these very broad yet necessarily specific ends, international law takes at least two major forms: comprehensive laws governing general areas of conduct during times of conflict and protecting broad concepts of human rights, and specific laws designed to regulate conduct in a particular situation (i.e., civil aviation rules, protection of diplomatic personnel, etc.).

In order, then, to investigate international law as it can be found to relate to international terrorism, it will be necessary to view such law from a macroscopic as well as a microscopic perspective. The broad contours of the guidelines established by international law dealing with fundamental rules of behavior and basic human rights are as critical to this study as are the special treaties and conventions relating to particular persons or arenas of activity vulnerable to international terrorism. The overview may facilitate the discovery of areas in which special treaty law is needed to fill a gap in international legal protection relating to international terrorism.

Moreover, the macroscopic view is principally useful in delineating

¹De Grazia and Stevenson, p. 279.

limits of acceptable behavior, minimums of legal conduct, parameters. Thus, from these very general and extensive limits, it can be roughly ascertained whether or not international terrorism transgresses these edges of the conscience of mankind, and is therefore not justifiable under present international law.² This is particularly useful in areas not specifically dealt with in current treaties on terrorism.

Finally, draft treaties and articles relating to suggested avenues of new international law to deal with current aspects of international terrorism must be carefully examined. Initially, it is important to discover whether such suggestions are consonant with the spirit and letter of the law as it exists today. Then, too, it is important to investigate the practicality of these suggestions, their acceptability and the possibility of their implementation. Furthermore, it would be useful to look briefly at the implications of these suggestions in terms of long-term solutions to the current problem of international terrorism.

The Laws of War and International Terrorism

Civilized nations have developed, over time, a host of rules and regulations, some tacit and some explicit, to govern conduct during conflicts. After the heinous crimes committed during World War II, however, the leaders of the modern world realized that the veneer of civilization was very, very thin, and they saw in this need for more laws of war a contingency requiring immediate and urgent attention.³ Therefore, at

²Report of the Ad Hoc Committee on International Terrorism, p. 13. For further remarks, see Grenville Clark and Louis B. Sohn, World Peace Through World Law (Cambridge: Harvard University Press, 1967).

³Burnett, "Interview With Sean MacBride," p. 54.

Nuremburg (and after) the body of explicit laws of warfare grew to immense proportions.⁴

Of this mass of rules and laws, however, a few are centrally important to the question of the legality of international terrorism. These are the laws relating to persons taking no active part in the hostilities, as enunciated in the Geneva Convention signed shortly after the Nuremburg Trials. This Convention specified minimal limits to behavior of parties engaged in hostilities, with respect to civilian populations and other innocent persons.⁵

Article Three of this Convention states that:

Persons taking no active part in the hostilities...shall in all circumstances be treated humanely.⁶

This Article also lists various prohibited actions, "at any time and in any place whatsoever with respect to such persons."⁷ These include "violence to life and person, in particular murder of all kinds, mutilations, cruel treatment, and torture; taking of hostages; and outrages upon the personal dignity, in particular humiliating and degrading treatment."⁸

This Convention reiterates the rights of all such persons, not directly involved in a conflict, to humane treatment. Article 27 emphasizes that they "are entitled, in all circumstances, to respect for their

⁴Orfield, p. 703.

⁵Principles of the Nuremberg Charter and Judgement, formulated by the International Law Commission, 1950. (U.N. General Assembly Records 5th Session, Supp. 12 a/1315). See also Geneva Convention (1949).

⁶Marjorie M. Whiteman, Digest of International Law, Department of State: Washington, D. C., 11 (1968), Chap. XXXV, Art. 2, p. 3518.

⁷Ibid., Art. 3, p. 3519.

⁸Ibid., Art. 3, p. 3520, section (a).

persons, their honor, their family rights, their religious convictions and practices, and their manners and customs... and shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof."⁹ Moreover, this Convention provides that "no physical or moral coercion shall be exercised against protected persons,"¹⁰ and prohibits causing physical suffering or death or any measure of brutality to be inflicted by civilian or military agents on these innocent people.¹¹

Finally, (and quite significantly for the study of international terrorism) this Convention explicitly states that "no protected person may be punished for an offense he or she has not personally committed. Collective penalties and similarly all measures of intimidation or of terrorism are prohibited."¹² No reprisals may be made against protected persons and their property.

Of all the laws of warfare, this point, prohibiting, collective penalties, punishment for offenses not personally committed, and other similar measures of terrorism or intimidation, is perhaps the most critical in terms of modern international terrorism. By this law, terrorist attacks on "any Englishman" or "any Israeli"¹³ for a perceived injustice not personally committed by the victim are illegal. Similarly, it is illegal to kidnap diplomats or citizens as a form of punishment or reprisal for some "injustice" for which they were not directly responsible.

⁹Whiteman, Art. 27, section 1, p. 3536.

¹⁰Ibid., Art. 31, p. 3538.

¹¹Ibid., Art. 32, p. 3538.

¹²Ibid., Art. 33, p. 3540.

¹³Howe, p. 15.

Moreover, collective punishment, in the form of bombs, snipers, aerial hijacking, or kidnapping, is illegal every time it is carried out against persons not personally responsible for the commission of an offense.

Thus, the rationale of total warfare currently popular among terrorist groups¹⁴ cannot even, under international law, justify the punishment of persons for "crimes" which they did not personally commit. Under the laws of war there is no justification, no legal premise supporting such action.

Certainly, these laws of war are not always consistently adhered to, even by civilized nations. Nevertheless, the law itself is quite clear on this point, and as such the actions of terrorist groups contravening this law must be regarded as illegal. The fact that murders are committed does not move society to legalize the action; similarly, the fact that some States do exact collective penalties, in violation of this law, does not force the international community to legalize such actions.

Thus, the laws of warfare do not permit terrorism. Military necessity does not admit of cruelty -- that is, the infliction of suffering, merely for spite or revenge; nor of maiming or wounding except in combat.¹⁵ No army, either State, revolutionary, or terrorist, is permitted to fire on undefended localities, to pillage or purposelessly destroy property.¹⁶ Indeed, the Principles of the Nuremberg Charter listed as "grave breaches" of the laws of war such acts as "wilfull killing, wilfully causing great suffering or serious injury to body or health, taking of hostages, and

¹⁴Howe, p. 16.

¹⁵"Rules of Land Warfare," Basic Field Manual, War Department of the United States (FM27-10, 1940), p. 8.

¹⁶Ibid., p. 9, paragraph 347.

extensive destruction and appropriation of property, when such acts are committed against persons not directly involved in the conflict."¹⁷ This same document, finally, declares such breaches of international laws of war to be crimes under international law, and those who perpetrate, or are guilty of complicity in such acts to be guilty of crimes under international law.¹⁸

In the absence of treaties, conventions, protocols, or any other significant document of international law contravening the principles expressed in this Charter concerning international laws of war, it may therefore be assumed that these principles still express prevalent international law. When, therefore, these laws of war are applied to international terrorist actions -- specifically murder, bombing, kidnapping, and sniper attacks -- the obvious conclusion must be that such actions are illegal under international laws of war. The law makes no exceptions for States under siege; no exceptions can be made under this same law for groups perceiving themselves to be involved in a siege.¹⁹ The actions are illegal under laws of warfare, regardless of the causes.

Human Rights Under International Law

International law, as discussed in Chapter Two, has a variety of sources, each of which can contribute significantly to its development. The growth of international law with respect to basic human rights and individual interests reflects this diversity of origin with unusual clarity. Positive international law, custom, judicial decisions, and particularly treaties and conventions have, within the past few decades created a

¹⁷Whiteman, p. 3618.

¹⁸Principles of the Nuremberg Charter and Judgement, Article 7, p. 702.

¹⁹Orfield, p. 310. See also John M. Swomley, Liberation Ethics, 1902.

substantial and innovative body of law relating to recognition of the rights of individuals.

Such recognition is of rather recent vintage.²⁰ The major portion of international law has been heretofore directed toward protection and limitation of the rights of States in times of peace and war. Very little positive action was taken to insure, or even to officially recognize, the interests of individuals in international inter-action. Few if any treaties were written to safeguard individual interests; international legal jurists and writers who concerned themselves with the protection of individual rights and freedoms were rare indeed. This was not, certainly, from a callousness on the part of internationalists; it was simply due to the fact that the critical need for such laws had not yet been exposed.

World War II highlighted the barbarism that fomented below the thin veneer of civilization.²¹ The brutal disregard by "civilized" people of essential human rights drove internationalists to the conclusion that law in this area was of critical and immediate importance. Some of this concern is evident in the Charter of the Nuremberg Tribunal; even more is evident in the subsequent declarations, treaties, conventions, and protocols that followed in the next few years.

Positive international law, today, is moving towards wider recognition of the interests of the individual, even in so definitely inter-State an institution as diplomatic protection.²² In the field of customary

²⁰Alona E. Evans, "Terrorism and Political Crimes in International Law," *The American Journal of International Law*, 67, No. 5 (November 1973), p. 87.

²¹*Ibid.*, p. 88.

²²John Bassett Moore, *A Digest of International Law* (New York: AMS Press, 1970), I, p. 51.

international law, the enjoyment of benefits of international law by individuals as a matter of right followed from the doctrine that generally recognized that rules of the law of nations form part of the law of the land.²³ In the sphere of duties imposed by international law, the principle that the obligations of international law bind individuals directly regardless of the law of their State and of any contrary order received by their superiors.²⁴

Thus, in these two critical source areas, an individual's rights to certain basic things (i.e., life, liberty, and security of person) are gradually being recognized under international law. At the same time, these sources of law are beginning to recognize the culpability of an individual for violations of international law, particularly with respect to the laws protecting basic human rights.²⁵ There is, evidently, a growing awareness that crimes against international law are committed by men, not by abstract entities, and only by punishing the individuals who commit such crimes can the provisions of international law be enforced.²⁶

The major portion of the plethora of international law concerning the protection of human rights, however, is attributable to treaties, resolutions, declarations, protocols, reports, etc., negotiated on multi-lateral levels in current international affairs. Of these, perhaps the most significant in terms of universality and on-going impact

²³Moore, p. 52.

²⁴*Ibid.*, p. 53.

²⁵*Ibid.*, II, p. 835. See also Principles of the Nuremberg Charter and Judgement; and Orfield, p. 704.

²⁶Moore, p. 52. Refer also to Nuremberg Charter, annexed to the agreement of 8 August 1945, at Nuremberg.

is the Universal Declaration of Human Rights. On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed this historic Declaration, calling at the same time upon all Member countries to publicize the text of the Declaration, and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."²⁷

The impact of this pioneer document in international human rights is incalculable. It was adopted without dissent by the entire General Assembly; solemnly accepted by many countries of varying cultural, social, and political backgrounds, and incorporated in (or reflected in) the constitutions of a number of countries.²⁸ Its provisions have been cited as the justification for actions taken by the United Nations, and have inspired international conventions both within and outside the U. N.²⁹ It, therefore, deserves serious consideration.

Although this document deals with economic and social as well as civil and political rights, it is the latter which are of primary concern in the study of international law with respect to international terrorism. All these civil and political rights, those described in Article 3 of the Declaration are of principal importance to this study. This Article states that "everyone has the right to life, liberty, and

²⁷Universal Declaration of Human Rights, United Nations Office of Public Information (1976) p. 1.

²⁸The United Nations and Human Rights, United Nations Publication E. 73. I. 13 (New York: United Nations, 1973), p. 13.

²⁹Questions and Answers on Human Rights, United Nations Publication OPI/493 (New York: United Nations Office of Public Information, June 1973), p. 9.

security of person."³⁰ These rights may not be abrogated by any institution, State, or individual. Even though the original intent of this Declaration was undoubtedly to protect individuals against institutionalized injustice, terrorists today are still bound under the law to respect these rights. Therefore, any international terrorist act that deprives any person of life (by murder), liberty (by kidnap or hijacking), or security of person (by threat or jeopardy), is in violation of international law as it is defined by this Declaration and its subsequent covenants. Similarly, "torture or cruel, inhuman, or degrading treatment or punishment," by international terrorists is illegal, under Article 5.³¹

Furthermore, under the premises of this Declaration, it is unjust and illegal for States or persons to administer collective punishment, or punishment of any person for a crime which he or she did not personally commit.³² This document, moreover, emphasizes the necessity of fair trials and equal justice before the law, thereby reinforcing the illegality of arbitrary murder of persons for perceived injustices.³³ Thus, it becomes obvious that the terrorist rationale of "total warfare," which recognizes no "innocent" victims and administers indiscriminate punishment (in the form of death, destruction, kidnapping, etc.) for perceived injustices, is illegal, in light of this and subsequent documents guaranteeing human rights.

³⁰Universal Declaration of Human Rights, p. 3. See also The United Nations and Human Rights, p. 14-15.

³¹Universal Declaration of Human Rights, p. 4.

³²The United Nations and Human Rights, p. 19.

³³Universal Declaration of Human Rights, Articles 7-11. See also The United Nations and Human Rights, p. 20.

The Declaration, it may be argued, had no binding effect in international law, and hence is not a satisfactory basis for the establishment of the illegality of international terrorism. The Declaration- itself, however, is only a part of an attempt to draft an "international bill of rights," an attempt to codify what the United Nations considered to be fundamental and unalienable rights.³⁴ It was preceded by more than a dozen multi-lateral treaties of a more limited scope.³⁵ This broad attempt at codifying general principals was, in fact, not felt by most governments to be initially binding under law.³⁶ However, over the past two decades, some international legal experts have argued that the Declaration is now slowly developing into international customary law, as well as acquiring legal force through incorporation in a variety of treaties, convention, resolution, etc. It has, thus, acquired "an independent vitality of its own" in the law.³⁷

Thus, as a resolution of the General Assembly, the Declaration has no binding effect. Yet, as a consequence of consistent action by Governments and the United Nations organs over the period of almost a quarter of a century, it has become a living document that has acquired an authority of growing importance, greater than that of a non-binding exhortation. For example, in 1972, Security Council Resolution 310 called on the Government of South Africa "to end immediately those repressive measures and to abolish any system of labour which may be in conflict with basic

³⁴Christopher H. Zimmerli, "Human Rights and the Rule of Law in Southern Rhodesia," International and Comparative Law Quarterly, 20 (April 1971), 272.

³⁵Ibid., p. 273.

³⁶Ibid., p. 274.

³⁷Ibid., p. 273.

provisions of the Universal Declaration of Human Rights."³⁸ In this case, as in countless others, the Security Council treated respect for the provisions of the Declaration as a legal obligation of States as well as of their nationals.

The entire legal justification for the condemnation of international terrorism under international law does not, moreover, rest entirely with this Declaration. A host of subsequent (and a few previous) treaties and conventions support this premise of illegality. Various regional conventions, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights, support this indirect approach toward the establishment of the illegal nature of international terrorism by the delineation of basic protected human rights.³⁹ Similarly, the charters of various international organizations, which are of a treaty nature, specifically extend protection to the basic human rights to life, liberty, and security of person (i.e., the Preamble to the Charter of the United Nations).

Recently, however, new treaties and conventions have been drafted to deal specifically with the problems of international terrorism. Such current documents are generally quite narrow in scope, and are directed at particular types of international terrorism, unlike earlier conventions broadly dealing with terrorism as a whole. Both types, general

³⁸Egon Schweld, "An Instance of Enforcing the Universal Declaration of Human Rights -- Action by the Security Council," The International and Comparative Law Quarterly, 22 (January 1973), 161.

³⁹See records of the "Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms," signed November 4, 1950, in Rome; and the "American Declaration of the Rights and Duties of Man" from the Ninth International Conference of American States, meeting March 30 - May 2, 1948, in Bogota, Columbia.

treaties and specific conventions must be examined to determine their impact upon the question of legality regarding international terrorism today.

Treaties and Conventions on Terrorism

International concern with international terrorism is a relatively new phenomenon. International law in this vital area has been deplorably slow in development. It took the assassination of the King of Yugoslavia in Marseilles in 1934 by a group of terrorists who had allegedly been previously active on Hungarian territory, to prompt the Council of the League of Nations to adopt a resolution stating

that it is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose; That every State must do all in its power to prevent and repress acts of this nature and must for this purpose lend its assistance to Governments which request it...

Two years later, the League of Nations established the first Draft Convention for the Prevention and Punishment of Terrorism.⁴¹ This Convention was, like its predecessor, quite vague in its denunciation of that undefined thing called "terrorism." It is, however, significant as a landmark attempt by the international community to deal with the growing problem.

After the Second World War, however, a variety of conventions on terrorism were drafted, and received varying degrees of support. The Draft Convention for the Prevention and Punishment of Certain Acts of

⁴⁰Green Haywood Hackworth, *Digest of International Law*, 2, (New York: Garland Publishing Co., 1973), p. 336.

⁴¹League of Nations, *Official Journal* (July - December, 1934) p. 1759.

International Terrorism (Draft Convention to Prevent the Spread of Terrorist Violence) was tabled by the United States in the General Assembly.⁴² The U. N. has, however, enacted many resolutions and prepared many documents to further the development of international law with respect to international terrorism as a whole. Of these, perhaps one of the most significant was a study prepared by the Secretariat in accordance with a decision by the Sixth Committee of the U. N. General Assembly in 1972. In this document, legal arguments are given to substantiate the premise that

...even when the use of force is legally and morally justified, there are some means, as in every form of human conflict, which must not be used; the legitimacy of a cause does not in itself legitimize the use of certain forms of violence, especially against the innocent.⁴³

Although this concept is in no sense new, having long been recognized in customary law and currently incorporated into the laws of war by the Geneva Convention, it is significant in that this document does not pertain to laws of war, and is in fact written specifically to enunciate international law with respect to international terrorism. Subsequent resolutions passed by the General Assembly serve to substantiate this point.⁴⁴

⁴²Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, U. N. Doc. A/C.6/L.850 (September 25, 1972).

⁴³"Measures to Prevent International Terrorism Which Endangers or Takes Innocent Human Lives or Jeopardizes Fundamental Freedoms, and Study of the Underlying Causes of Those Forms of Terrorism and Acts of Violence Which Lie in Misery, Frustration, Grievance and Despair and Which Cause Some People to Sacrifice Human Lives, Including Their Own, in an Attempt to Effect Radical Changes," U. N. Doc. A/C.6/418 (November 2, 1972).

⁴⁴See texts of General Assembly Resolutions 1186 and 1187 (Dec. 11, 1957); United Nations Doc. A/7250, article 3, para. 10 (September 26, 1968); and General Assembly Resolutions 2780 (February 28, 1972) and 3034 (December 18, 1972).

Thus, it is logical to conclude that random international terrorism, which victimizes persons not personally responsible for a perceived societal "crime," cannot be considered legal under the laws of war or those of peace, by custom or treaty. Furthermore, any act of terrorism which claims a life, takes a hostage, abuses, or destroys in "punishment" for a perceived "crime" without due process of law cannot be considered legal under the international law expressed by the Geneva Convention, the Universal Declaration of Human Rights, and the various other documents already cited. As the Secretariat Study stated, "the legitimacy of a cause does not in itself legitimize the use of certain forms of violence, especially against the innocent." International law, like the law of any civilized State, has a supreme obligation to protect the basic rights of innocent persons, and is constantly being re-designed to facilitate the accomplishment of this objective.

With this end in view, the international community in recent years has begun to adopt increasingly specialized treaties and conventions to deal with specific problem areas of international terrorism. As the current flood of international terrorism has reached an unprecedented peak in all its manifestations, the toll of deaths, kidnappings, and hijackings has aroused concern in the international community. Although general conferences on terrorism as a whole have proved to be singularly futile, due to major divergences in viewpoints among nations, a mutual interest was found in curbing terrorist activities against diplomatic personnel and civil aviation.⁴⁵ Therefore, impressive progress has been made in the formulation of laws relating to these two areas of concern. The pattern of these laws may be useful in formulating similar conventions

⁴⁵Zimmerli, p. 76.

to fill in other gaps in international law on international terrorism as they are discerned.

Diplomatic personnel have become easy targets for organized groups of terrorists who want to attract the interest of the public in the cause of their protest, or to gain a negotiating leverage through the retention of hostages or the threat of murder.⁴⁶ Moreover, governments have failed to tighten security or to issue warnings, even in the face of blatant evidence and warning of planned kidnapping attempts.⁴⁷ Thus, the potential objects of future kidnappings continue to live in a care-free, relaxed atmosphere, while governments bury their heads in the sand and try to pretend that such things cannot happen, when tightened security could help to prevent such disasters from occurring.

Governments have been equally - and criminally - remiss in failing to draft definitive treaties to deal decisively with this problem. Until 1971, the community of nations were carelessly confident that the Vienna Convention on Diplomatic Relations (1961) provided sufficient "protection" for diplomatic personnel. Under this Convention, it is loosely termed "the responsibility of the States" to prevent attacks on a diplomatic agent's person, freedom, or dignity.⁴⁸ This broad delegation of responsibility sounds quite impressive, but has proved to be totally ineffective. As one expert has expressed it, "what is needed, beyond the incidental

⁴⁶Christos L. Rozakis, "Terrorism and the Internationally Protected Person in the Light of the ILC's Draft Articles," The International and Comparative Law Quarterly, 23 (January 1974), 33.

⁴⁷Gustave, p. 163.

⁴⁸Rozakis, p. 35. See also Carol Edler Baumann, The Diplomatic Kidnappings, for a perceptive survey of the current situation.

tightening of police measures, is a constant vigilance on the part of States, acting individually and collectively in an organized way, to prevent the occurrence of incidents."⁴⁹

In an effort to achieve this collective and organized approach, the first convention for the protection of diplomats was drafted by the Organization of American States at a special session of the OAS General Assembly held in Washington in 1971. This Convention provides that kidnapping, murder, and other assaults against the life or personal integrity of those persons to whom the state has the duty under international law to give special protection, as well as extortion in connection with those crimes, "shall be considered common crimes of international significance, regardless of motive."⁵⁰

Similarly, the International Law Commission submitted draft articles as a basis for another convention, to the 27th General Assembly of the United Nations, which also criminalized and internationalized attacks and threats to diplomatic personnel. These articles suggested the internationalization of such crimes as the international commission, regardless of motive (of

- (a) a violent attack upon the person or liberty of an internationally protected person;
- (b) a violent attack upon the official premises or the private accommodation of an internationally protected person likely to endanger his person or his liberty;
- (c) a threat to commit any such attack;
- (d) an attempt to commit any such attack; and,
- (e) participation as an accomplice in any such attack.⁵¹

⁴⁹Rozakis, p. 72.

⁵⁰"Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance," OAS Doc. AG/88, rev. 1 (February 2, 1971).

⁵¹Rozakis, p. 49.

These draft articles suggest that commission of such international crimes be met with severe punishment.⁵² In its accompanying report, the International Law Commission urged the adoption of rules to deal effectively with this aspect of terrorism, at least.⁵³ These suggestions were partially fulfilled by the draft convention adopted by the General Assembly in its Twenty-Eighth Session. This convention was incorporated into G.A. Resolution 2780, and it essentially establishes the same criteria for international criminalization of terrorist acts against diplomatic personnel. In this convention, "murder, kidnap, and infliction of grievous bodily harm" are substituted for the more general "violent attack"; and the protection of accommodations and official premises is omitted. Moreover, this convention makes extortion of anything of value, or affecting of governmental actions or decisions of any State, by the commission or threat to commit any such act (i.e., murder, kidnap, etc., of diplomatic personnel), an international crime.⁵⁴

Of critical importance, however, is the description of measures open to States to prevent and to punish such acts. Severe penalties are urged in Article Seven⁵⁵; and Articles Eight through Eighteen describe the responsibilities of States individually and collectively in the search, seizure, trial, extradition, and punishment of the persons accused of such crimes. Inter-State cooperation is stressed, and

⁵²Rozakis, p. 51.

⁵³Ibid., p. 72.

⁵⁴"Question of the Protection and Inviolability of Diplomatic Agents and Other Persons Entitled to Special Protection Under International Law," General Assembly Resolution 2780 (XXVII) Doc. A/CN.4/L.182 (February 28, 1972), p. 1.

⁵⁵Ibid., p. 2.

expeditious handling of such cases is both provided for and strongly recommended.⁵⁶ It is thus to date one of the most comprehensive and workable documented approaches for an international community to take in preventing and punishing one aspect of international terrorism. It also provides an excellent pattern for creating similar measures to deal with other equally virulent forms of international terrorism.

The problem of aerial hijacking has met with a more piece-meal approach in international law. Due to the political nature of most acts of skyjacking, it was apparently difficult to reach a consensus of opinion as to the correct measures for prevention and punishment; the result was a triad of efforts in the international community. The first of these efforts produced the 1969 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft. One of the four principle purposes of the Tokyo Convention was to deal with a spate of aircraft seizures.⁵⁷ This Convention did not, however, attempt to create an international offense of hijacking; it only obliged contracting States to take certain steps following the commission by violence of any act of interference, seizure or other wrongful exercise of control of an aircraft in flight, or the threat of such an act.⁵⁸

At this point, hijacking was not itself an offense, in most States, and therefore prosecution had to be for other offenses committed in the course of the hijacking. Moreover, while the State of registration had

⁵⁶"Question of the Protection and Inviolability of Diplomatic Agents and Other Persons Entitled to Special Protection Under International Law," p. 3.

⁵⁷C.S. Thomas and M.J. Kirby, "The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation." The International and Comparative Law Quarterly, 22 (January 1973), 163.

⁵⁸Thomas and Kirby, p. 164.

often the greatest incentive to punish the hijackers, it might be unable to extradite such persons, while States in which the hijackers were found were not always able to prosecute, since the offenses committed in the course of the hijacking might be out of the jurisdiction of that State.⁵⁹

In order to help to remedy these obvious deficiencies in international law protecting civil aviation, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft was drawn up in 1970. This Convention defined the offense of unlawful seizure of aircraft as a model for individual national legislation on this crime. Article Two of this Convention called upon each State to inflict severe penalties for this offense. Then, too, whereas the Tokyo Convention had deliberately made no provision making extradition obligatory or expeditious, the Hague Convention contained provisions making the offense extraditable under any existing or future treaties between contracting States.⁶⁰ Yet this Convention left the loophole of granting asylum open to States wishing to circumvent the extradition provisions.

The issue of jurisdiction is adequately resolved by the Hague Convention, by placing the obligation on the State in whose territory the alleged offender was found, without exception, and whether or not the offense was committed in its territory. This State is obliged under this Convention to bring the case to competent authorities within the legal processes of its own system, or to an appropriate international

⁵⁹Alona E. Evans, "Aircraft Hijacking: What Is Being Done," The American Journal of International Law, 67, No. 5 (October 1973), 641.

⁶⁰Thomas and Kirby, p. 164.

authority, unless the State decides to extradite the accused.⁶¹

While leaving the problem of political asylum unresolved, the final convention in the triad added several significant details to the existing law. The 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, for example, specifies international offenses aboard an aircraft. These are of three general types: Performing an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft; destroying an aircraft in service or causing damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or, putting a "device" or "substance" (i.e., a bomb) on board an aircraft.⁶² This detailing and similar other clarification of ambiguous terms in the earlier Conventions make this final Convention quite essential to the comprehensive approach of the triad in designing international law for this particular aspect of an international problem.

These various draft articles and conventions are, of course, only a portion of the entire body of international law that could be interpreted to pertain to international terrorism.⁶³ They are simply a few of the more obvious attempts by the international community to draft international legal precepts to deal with the current issues, and are

⁶¹Thomas and Kirby, p. 165. Refer also to D. G. Hubbard, The Sky-Jackers, for an interesting analysis of the impact of this Convention.

⁶²Ibid., p. 166. See also Moore, p. 90.

⁶³For additional information regarding earlier efforts to combat international terrorism, see the Draft Convention for the Prevention and Punishment of Terrorism, by the League of Nations (1936); the report from the Committee for the International Repression of Terrorism, by the League of Nations (1937); and the records from the International Conference on the Repression of Terrorism held in Geneva (1937).

therefore perhaps more clear in terms of the law as it relates specifically to international terrorism than are the more general precepts in the human rights declarations.

Summary

In attempting to ascertain the dictates of international law with respect to so difficult and ambiguous an action as "international terrorism," it is immediately obvious that literally hundreds of declarations, treaties, conventions, resolutions, protocols, draft articles, court decisions, legal writings, and a host of other documents could be interpreted as being related to the issue. There is, moreover, the difficult task of attempting to include custom and general principles into this survey. Further, the issue itself is clouded by the claims of terrorist groups to being engaged in legal warfare, thereby making another mass of international law possibly relevant.

In order to extricate the appropriate threads of international law from this tangled and confusing skein of international legal yarn, it is first essential to draw together certain broadly discernible patterns of thought and principles relating to general human welfare. The pattern of concern which colors these principles is, quite evidently, a general desire to protect the basic rights of individuals to life, liberty, and security of person, as is evidenced by the Universal Declaration of Human Rights. Similarly, threads of thought relating to individual responsibility before the law are discernible in such documents as the rules of warfare and the Nuremberg Charter.

Then, having pulled certain key types of threads from the multi-colored skein of international law as being indicative of general patterns of thought, the base colors from which the rainbow garment of the law is

woven, it is necessary to extract those threads most closely related to the specific topic of international terrorism, and most suited to the creation of a fabric of law in this area. These threads of law are fairly simple to extricate, since most of them bear the mark of the topic itself in their very names.

It thus remains only to draw from these conventions, these treaties, these threads of law a few basic principles, some pattern from which to begin to fashion the garment of law to cover this area of concern. From this brief study of these specific laws, it can be discerned that international terrorism as a whole has not yet received sufficient attention by the law to merit an absolute and unequivocal condemnation. Consensus on this issue has not yet been reached by treaty, convention, or resolution. Every general condemnation of terrorism which could be construed as grounds for ruling it to be illegal has been virtually negated and smothered in layers of exceptions, for political reasons. While expressing general humanitarian concern, and drafting countless documents to safeguard basic human rights, the international community has been exceptionally remiss in not writing specific laws to outlaw the flagrant violations of these rights through international terrorism.

Only in two very specific areas has the international community managed to reach a consensus which would permit the drafting of laws to prevent and punish acts of international terrorism. In the areas of the protection of diplomatic personnel and the safe-guarding of civil aviation, significant progress has been made in the drafting of conventions and treaties which provide specific legal methods for coping with these two types of terrorism. These draft conventions, articles, and other similar materials that spell out methods of prevention and punishment of special types of terrorism are particularly

significant, moreover, in that they represent concrete and conscientious efforts by the community of nations to reach a solution to a common problem, and are indicative of an international consensus of opinion that at least these particular acts of international terrorism are and should be illegal, and hence, criminal, actions under international law.

Draft articles, conventions, and other such documents by no means indicate that the problem of international terrorism is resolved, or even that the international community has unanimously reached an agreement to eradicate terroristic threats and actions. For nearly every draft article and convention multilaterally condemning terrorism as a whole, one can find an opinion of some internationalist or a proposal by some government that urges the justice of the use of terrorism to achieve worthy objectives.

Nevertheless, the pattern of international legal consciousness has begun to evolve into one in which acts of random international terrorism are increasingly unacceptable. Certain of these acts have already been declared to be illegal under international law; others can be denounced as illegal on the basis of certain general principles of human rights protected by the law. The knotty problem of political asylum, and the related questions of justification by virtue of the cause prompting the action, have not yet been adequately dealt with in the law, but the rough pattern of the law in dealing with international terrorism is emerging as one on condemnation. The fabric of such law is as yet weak and barren of strong threads, but the potential for development is enormous, and the pattern of its design is unmistakable.

Much, however, remains to be done if every individual is to be

guaranteed the essential rights expressed in the Universal Declaration. In this document, the community of nations pledged that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence," and that "everyone has the right to the protection of the law against such interference or attacks." Yet international law today extends this protection only to diplomats and airplanes, by treaty. Tacit assent to general principles has never been and is not today sufficient legal grounds for protection of individuals in crisis situations such as those generated by international terrorism.

To expect international law to effectively deal with the difficult problems of international terrorism armed only with "general principles" and a handful of sharply limited treaties is comparable to giving a water gun to a single policeman while charging him with the responsibility to prevent murders and robberies in a large city. The law must be fully armed with comprehensive treaties and well-defended by all of the host of nations, just as a policeman needs good equipment, a supportive police force, and a cooperative citizenry. Law, in the final analysis, must be a comprehensive and a cooperative effort if it is to be successful.

Chapter Five

POTENTIAL INTERNATIONAL LEGAL APPROACHES TO INTERNATIONAL TERRORISM

Use of Existing Law

The efforts of the international community to deal with the problem of international terrorism have approximated a tactic-by-tactic approach, with laws created hastily to meet only that aspect of the problem which is of momentary critical importance. A mutual interest was formed in the community of nations in meeting the threat of the hijacking of aircraft; therefore, some progress has been made against this terrorist tactic. The same situation is true for the protection of diplomatic personnel. The work of the United Nations on international terrorism in its various manifestations has been similarly evolved in response to events and is consequently piece-meal.

The net result has been a morass of confusing and occasionally conflicting laws, derived from a number of sources, each of which is singly incapable of combating the problem as a whole. Indeed, some of the laws have effectively negated any advantages gained in other law-making treaties, by providing a host of exceptions and options which take the "teeth" out of laws combating terrorism. For example, conventions providing for extradition of terrorists are severely hampered by treaties guaranteeing to States the right to grant political asylum.¹ Similarly, most general conventions on terrorism are made less effective

¹Draft of the Protocol to the Convention on Diplomatic Asylum, Inter-American Council of Jurists, Santiago, Chile (1959).

by numerous exceptions to the law, notably those pertaining to a people's right to self-determination.

Nevertheless, if those treaties and conventions already signed into law were systematically and thoroughly applied, the advantage to the international community in terms of restricting international terrorism would be incalculable. If, for instance, all three of the Conventions on skyjacking were fully implemented, and those accused of such crimes adequately and persistently prosecuted under these laws, then a diminishing of this form of violence might be achieved. Certainly, if every State solemnly fulfilled its duties under the laws regarding the protection of diplomats, there would be fewer incidents involving these protected people and those incidents still occurring would be met with suitably severe punishment.

Every nation has laws, similar to the precepts expressed in the Universal Declaration of Human Rights, protecting the rights of individuals. If, therefore, every State fulfilled the letter of these laws, and sternly prosecuted any person or group responsible for violating any of these rights, then the matter of curbing international terrorism through law could be expedited. Provided that there is such an adequate legal base, and that there is a moral commitment on the part of the majority of the people, then it becomes a simple matter to deal with terrorism.

However, it is obvious that international terrorism is not being adequately handled by existing international law. This is partially due to certain flaws in the law itself, partly to inconsistencies in its application, and partly to the lack of a consistent international community effort to come to grips with the problem as a whole. As it exists today,

international law in this area is incomplete and in a sense unjust. Definitive and comprehensive treaties need to be written, without crippling exceptions, and such treaties must be written to protect all citizens, not just those protected by diplomatic status. In order to be consistent with general principles of human rights, the right of every person to life, liberty, and security of person must be safeguarded. The law must not remain a raincoat to cover a few protected persons; it must be an umbrella under which all who need shelter may gather.

Finally, in order to be effective, existing law in this area must be applied consistently by all States. If one State harbours fugitives accused of crimes of international terrorism, it not only temporarily thwarts the justice of the law, but it also cripples that law in terms of its credibility in future applications. Collective effort is an imperative, if the law is to be effective.

Suggestions as to methods of achieving a more comprehensive approach have been many and varied. Many of the possibilities are impractical, since they would lack the necessary public support and moral commitment to make such laws feasible. A few of the possible additions to the field of international law in this area are, however, meritorious, and deserve at least a brief investigation.

Alternatives in Legal Approaches

Of the host of suggestions offered among internationalists to improve international law with respect to international terrorism, the possibility of the creation of an International Criminal Court has attracted the longest, and perhaps the most serious, attention. When the League of Nations in 1934 took up the question of defining more

precisely the rules of international law concerning the repression of terrorist activity, its committee of experts drew up two Conventions (later Adopted). One of these called for the creation of an International Criminal Court.² Then, in 1954, the International Law Commission drew up a Draft Code of Offenses Against the Peace and Security of Mankind in conjunction with another General Assembly organ which drafted the Statute for an International Criminal Court. All of these efforts, however, met with no success in the community of nations.

There are still those who believe, though, that without a tribunal to give a degree of coherence and consistency to the several international instruments, their application by national tribunals may well fall short of the objectives of certainty and impartiality. There is, in fact, a Foundation for the Establishment of an International Court, which is currently devoted to the study of the problem of terrorism in the broad framework of the League and the Draft Code of Offenses Against the Peace and Security of Mankind. This Foundation has held two major conferences, one at the Villa Serbelloni and the other at Wingspread, which were attended by international experts, and from which several drafts on international crimes have emerged.³

The theory behind such an approach is simple, yet comprehensive. Those offenses designated by law as international crimes would be handled by each State in one of three ways. Each State would be obligated to prosecute the alleged offender, or to extradite him, or to surrender him

²Gross, p. 508. However, the General Assembly, in adopting these proposals, still in its resolution reaffirmed the unalienable right of all peoples under colonial and racist regimes to self-determination and national liberation.

³*Ibid.*, p. 510.

to the International Criminal Court. Thus, in all cases, the government concerned has a choice which it may find to its advantage to exercise. Yet an over-all consistency of prosecution and punishment is made possible, while allowing States whose politics forbid direct prosecution of terrorists an alternative to this sensitive problem: an impartial and non-political Court, specially designed and instructed in this difficult area of law.

Certainly there are obvious advantages in such a proposal. The sensitivity of the politics surrounding international terrorism could perhaps be circumvented through a use of this Court. Moreover, since an International Court already exists, the question of a yielding of sovereignty is negligible. Furthermore, it seems obvious that the intricate and complex questions of international law regarding crimes of international terrorism could be dealt with more expertly by a panel of jurists who specialize in this field than by any ad hoc tribunal or national jury.

However, those who seek to inject the right of self-determination as a controlling factor into the issue have resolutely blocked all efforts to establish such a Court. Lacking a consensus, lacking even a majority of support among nations, this proposal is apparently doomed to remain a subject for study -- and nothing more.

Other efforts to achieve a more cohesive approach have met with rather more success, at least on a nominal basis. The Convention on the protection of diplomatic personnel, for example, provided for the creation of an ad hoc tribunal to settle inter-State differences.⁴ If such an approach could be broadened to include all incidents of

⁴See discussion in Chapter Four.

international terrorism, perhaps, then a more comprehensive approach could be achieved.

Many have argued that a tightening of national and international security, and an increase in inter-State police cooperation would facilitate matters. Advocates of such an approach argue that new and stricter laws, and strict application of existing laws, concerning at least a few aspects of international terrorism would be sufficient to effect a cure for the problem. Such persons argue that "the first concern of the international community must be to enforce the rule of law against those who make war against it,"⁵ and to increase the severity of that law in dealing with offenders. Thus, advocates of this position argue for stricter mandatory penalties, made obligatory by extensive treaty law.

All of these alternatives, however, have stressed one common theme: the necessity of seeking closer cooperation in the international community to obtain a universal condemnation of terrorism. National and international legislation will be necessary if the problem is to be adequately engaged on all fronts. In addition to international action regarding coordination of efforts to prevent and punish through intelligence gathering cooperation and extradicting, there are several other critical areas needing attention. These include cooperative efforts to discourage or prohibit fund raising for foreign terrorists, control of the distribution of explosives, and control of an extremely egregious world polulation. Each of these areas deserves serious consideration, and would surely benefit from multi-lateral treaties encouraging international cooperation in these key areas of combat with the spread of international terrorism.

⁵Institute for the Study of Conflict, "Terrorism Can Be Stopped," Skeptic: The Forum for Contemporary History, No. 11 (January/February 1976), p. 44.

International law can be effectively used to cope with international terrorism. The potential for development is enormous, but so are the obstacles. Only through comprehensive and dedicated international cooperation can the full potential of the law in this area be realized; only through this effort can a blunt and unwieldy broad axe be honed into an effective rapier of justice, able to slay the dragons of injustice that continue to destroy the unprotected people in today's violent society.

Chapter Six

SUMMARY AND CONCLUSIONS

Summary

This thesis has examined international law in terms of its potential as a curb on the recent spate of international terrorism, and the fledgling attempts by the international community to utilize this tool. The objectives of this research have been to determine the relative strengths and weaknesses of the law as such an instrument; to discover a basic understanding of the nature of the problem of terrorism; and to ascertain the patterns of international law concerning this problem to date. Ultimately, such research should lead to conclusions concerning the merits and demerits of international law, both de facto and in potential, with respect to this critical area of international concern.

The general nature of international law as an instrument of international control was analyzed in Chapter Two. This included a study of its purposes, validity, sources, political acceptability, and functions; and focus was made on the general capabilities and limitations of international law as both a controlling and a catalytic force in the international political culture.

As a whole, the difficulties in defining international law were not found to be insurmountable, providing that the critical question remains the extent to which the law can be expanded to include more actors in international affairs. The importance of this point became obvious in Chapter Four in the issue of the inclusion of the rights and duties of individuals in the realm of international law.

Then, too, it was discerned that, in spite of a lack of sovereign political authority or central judicial authority with the power to enforce the law, there remains a fundamental strength within the law itself that commands respect. This strength lies in the ability of nations to reach a consensus on issues of right and wrong, and to express this consensus through general principles, declarations, treaties, protocols, etc. In the case of international terrorism, the strength of such a consensus is evident in the Universal Declaration of Human Rights, which set forth general principles that carried sufficient popular moral support to find implementation in a host of ways, without the benefit of a guiding authority.

Furthermore, in spite of the diversity of sources of international law, which necessarily makes research on any issue slow and difficult, such research is not impossible. From the five major sources of international law -- treaties, custom, principles, writings, and court decisions -- it is virtually impossible to discover everything that has ever been written on a particular subject, or to reconcile all of that material to one point of view. This becomes increasingly clear as the scope of the research sharpens to the single issue of international terrorism.

Thus, international law emerges as an ever-changing, growing process by which a community of nations arrives at rules with which to order their world and to meet their needs. It is both an instrument of international control and an expression of an international culture, with dimensions too vast to be totally subject to the control of any special interest. As such it could be regarded as both the parent and the child of the international community: the parent, in that it seeks to guide and instruct; and the child, in that it is the creation, the offspring of that community, and as such, reflective of its attributes, inheriting its strengths

and its weaknesses.

With this knowledge of the law gleaned in the second chapter, the next focal point for research was the problem of international terrorism itself. Chapter Three included a brief study of international terrorism, conceptually, historically, and politically. Attempts to define the concept were given due consideration, including a study of the difficulties involved in prescribing limits to this rather ambiguous concept.

Terrorism, it was discovered, is a term which is often used pejoratively, and the adjective "international" often is euphemistic. In order to alleviate one of these difficulties, criteria from the Report of the Ad Hoc Committee on International Terrorism were used to establish certain thresholds for determining which actions were truly of a terroristic nature, "heinous crimes offensive to the conscience of mankind." Then, too, four conditions suggested in a Draft Convention to Prevent the Spread of Terrorist Violence were used to depict feasible boundaries for what could logically be defined as international terrorism. These include specifications that the act must

- be committed or take effect outside the territory of the State of which the alleged offender is a national,
- be committed or take effect outside the territory of the State against which the act is directed.
- not be committed either by or against a member of the armed forces of a State in the course of military hostilities.
- be intended to damage the interests of or obtain concessions from a state or an international organization.

Furthermore, it was established that terrorism springs from a variety of causes, diverse in character. It was noted that, although there is not a consensus of opinion on the necessity of studying the causes, it nevertheless appears to be essential to understand the roots

of the problem in order to cope effectively with the resulting plant. It was noted that the major factors evoking terrorist responses were racial, religious, linguistic, or political, although these factors alone will seldom spark a terrorist group into action.

Terrorism, it was found, is not a temporary phenomenon based upon some isolated situation or malaise which, if remedied, could secure that no more incidents would ever occur. It is a technique used by dissenting groups, with increasing frequency, since the French Revolution; and it is preferable to other techniques for a variety of reasons, including sensationalism and efficacy.

Terrorism, too, has taken a variety of forms. These were found to include individual, dynastic, focused random, and random terrorism -- with random terrorism being currently the most popular and virulent form. It is this form which research revealed received the brunt of international legal censure, for this type of terrorism is virtually unconcerned with the guilt or innocence of those injured. International terrorism of all forms was found to erupt into several types of actions, including murder, kidnapping, skyjacking, bombing, damage to property alone, and nuclear blackmail. It was later discovered, however, that only the first three of these types have been listed as international crimes under international law thus far.

Various trends in international terrorism were also examined. These include an increase in cruelty and violence, a growing tendency to include innocent victims in attacks, a burgeoning rise toward sensationalism, a growth in generalized acceptance of heinous acts of barbarism, an increasing cold-bloodedness in the commission of barbarous acts, and incredible progress in the technology available to groups. Each of

these trends has increased the alienation of groups responsible for international terrorism from the law of a civilized international community. As the virulence of the attacks increased, so did the divergence of such actions from international legal norms.

The issue of justification, briefly discussed in Chapter Three, could not be adequately resolved without recourse to the law itself. The premise derived, however, in this portion of the research, that there can be no justification under law for terrorism that takes innocent lives was substantiated in the study of international law with respect to international terrorism in Chapter Four. This chapter was devoted to a study of the past and present relationships between the law and terrorism, including a brief but comprehensive review of the treaties, conventions, protocols, articles, principles, declarations, resolutions and other documents of international law pertinent to the issue of international terrorism.

In order to investigate international law as it could be discerned to relate to international terrorism, it was essential to view such law from a macroscopic as well as a microscopic perspective. The broad guidelines established in international law concerning basic human rights and rules of behavior were derived, for the purposes of this study, from such documents as the Universal Declaration of Human Rights and the principles from the Nuremberg Charter. Paramount among the precepts enunciated by such documents emerged the fundamental right of every person to life, liberty, and security of person.

In these general guidelines, too, was found a growing tendency to hold individuals as well as States accountable to international law, including laws of war. Thus, it became evident that international terrorism

which involved murder, kidnapping, and similar actions were illegal under the very general principles described in a few outstanding documents of international law. Collective punishment and punishment for offenses not personally committed -- tactics adopted under the "total war" philosophy of international terrorism -- were thus found to be prohibited under international law, as well as the more selective forms of terrorism dealing in individual murder and kidnapping.

Although the Declaration and other similar documents were not essentially binding under international law, they were demonstrated to have been significant in terms of future impact and in light of the basic consensus of opinion as to parameters of acceptable conduct within the international community.

Special international concern with the immediate problem of international terrorism was found to be a relatively recent vintage. The new treaties and conventions drafted to deal with the problem were obviously quite specific, indicating a tactic-by-tactic approach to the problem that is deplorably piecemeal and demonstrably insufficient. Most of the more general documents relating to terrorism as a whole merely insisted that States

- not encourage or tolerate terrorist activity in their territory.
- do all in their power to prevent and repress acts of this nature.
- assist other Governments in prevention and repression of such acts.

Certain key points were made by these rather general treaties, however. Perhaps the most significant cited in this research was the concept that there are some means which must not be used, that "the legitimacy of a cause does not in itself legitimize the use of certain

forms of violence, especially against the innocent." This was shown to lead inevitably to the conclusion that random international terrorism, which takes countless innocent victims, is not justifiable under international law, regardless of the merit of the cause.

Treaty law relating to specific topics such as protection of diplomatic personnel and civil aviation was also reviewed. In both areas, it was discovered that a comprehensive law was lacking; in its place were a variety of half-hearted pieces of legislation, crippled by exceptions relating to political asylum and self-determination. The political problems of drafting acceptable articles and treaties was evident in the numerous attempts made, each of which individually fell short of the desired comprehensive solution to either problem area.

These draft articles, conventions and other such documents in no sense were found to indicate that the problem of international terrorism has been resolved, or even that the international community has unanimously reached an agreement on the need to eradicate all forms of terroristic threats and actions. However, the pattern of international legal consciousness was, in this research, shown to be evolving into one in which acts of random international terrorism are increasingly unacceptable. Certain acts were indicated as being already declared to be illegal; others were found to be under general condemnation, but lacking in specific legal denunciation.

These deficiencies were dealt with briefly in Chapter Six. It was proved that the law cannot be completely effective without cohesiveness and cooperation. Utilization of existing law to its fullest extent would be advantageous, but the adoption of some comprehensive plan for coping with the entire problem was indicated as being the most desirable option. Mutual interest must help to breed full-scale mutual cooperation

in order to reach a complete solution to this world-wide problem. The concept of an International Criminal Court was sketchily explored as a possible avenue of future legal action, but it was only one of several alternatives. The critical point remained that community effort of a consistent and comprehensive nature was absolutely essential to the accomplishment of a just and lasting solution.

Conclusions

From this research, a few central conclusions may be drawn, or perhaps just emphasized. It is obvious that international law is an extremely complex instrument, difficult to handle and incredibly hard to design. If it is to be used to successfully combat the problem of international terrorism, then it must be carefully written and judiciously applied, so that only those clearly transgressing the conscience of mankind are punished, but also that such punishment is swift, inevitable, and just.

The difficulties in fashioning such an instrument in international law are mammoth, as this study has indicated. Political objectives of nations clash, and it is virtually impossible to extract the problem from the realm of the political. Perhaps only through strictly objective criteria (such as those suggested in Chapter Three) applied by a non-political body, such as an International Criminal Court, can this pinnacle of absolute justice in international law regarding international terrorism be reached.

If, however, these avenues for action are not wholly acceptable, if they are adopted with only nominal support, then they will not succeed. The strength of the law lies in the positive support of the international community; laws that do not accurately reflect the consensus of

that body, regardless of their merit, are unworkable, and can do infinite harm to the credibility of the law as a whole.

It is for this reason that the piece-meal approach, studied in this thesis, to the problem of coping with international terrorism through a variety of sources of international law was discussed. While such an approach has obvious weaknesses, it has evidently been the only one acceptable to the community of nations. Moreover, while it has flaws, it does provide some modicum of a check on international terrorism -- and a leaky umbrella is better than no shelter at all in a storm.

However, the situation cannot remain static. The purpose of international law is to protect the innocent, and as long as terrorism flourishes, it cannot be said to be fulfilling that purpose adequately. Nor can it extend protection only to a special group of people alone, without seriously endangering its status as a guarantor of basic human rights to every person. The law must not be allowed to become the guarded citadel of a chosen few; it must remain essentially a commodious bastion, offering protection to all who seek a refuge from the assault of international terrorism.

Appendix

WORLD EXTREMIST MOVEMENTS*

Figures are given only where they can be estimated with reasonable accuracy, as claims vary widely. The list is not intended to be exhaustive, and in the main includes movements that were active in 1971.

By "extremist" is meant men, groups or movements that use violence for political ends, regardless of ideology. In 1971, the overwhelming majority of these professed extreme left-wing views.

EUROPE

ORGANIZATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Ireland</i>			
Irish Republican Army (IRA) "Official" and "Provisional" wings	Catholic nationalist but Official under Marxist control	Active. The militant "Provisional" wing stepped up armed and bomb attacks in 1971	Unknown
<i>Italy</i>			
Il Manifesto	Eclectic (left-wing)	Active. Il Manifesto is a focal point for dissident intellectuals	Unknown
Lotta Continua	Eclectic (left-wing)	Active. Mainly involved in industrial disturbances	Unknown
<i>Portugal</i>			
Ação Revolucionária Armada (ARA)	Eclectic (left-wing)	Active. Clandestine urban terrorist group which has carried out bomb attacks on national and NATO property	Unknown
<i>Spain</i>			
Euzkadi ta Azkatasuna (ETA) "Freedom for the Basque Homeland"	Basque separatist	Sporadically active—1971	Unknown

Source: Brian Crozier, *Annual of Power and Conflict: 1971*, New York: National Strategy Information Center, 1972.

EUROPE—cont.

ORGANIZATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Turkey</i>			
Dev-Genc ("Revolutionary Youth Movement")	Eclectic (left-wing)	Active in 1971. Involved in abortive kidnapping in May; main leaders arrested and sentenced	Unknown
<i>United Kingdom</i>			
Angry Brigade	Anarchist	Involved in bomb attacks in 1971	Small
<i>Yugoslavia</i>			
USTASHE	Autonomous Croatian	Active. Mainly in emigré circles	Unknown

NORTH AMERICA

<i>Canada</i>			
Front de Libération du Québec (FLQ)	Extreme left	Inactive in 1971, apart from attempts at minor thefts in September. Main FLQ leaders detained	Unknown
<i>United States</i>			
Black Panther Party for Self-Defense (BPP)	Extreme left, anti-White	Divided and in disarray in 1971. In May, the BPP swore violent tactics in order to work "within the system"	700
Revolutionary People's Communications Network (RPCN)	Peking	Algiers-based splinter of the BPP. Leader, Eldridge Cleaver	100
Weatherman	Peking	The Weatherman has remained underground since 1970. In March, the Weatherman claimed to have caused the bomb explosion in the US Senate	Unknown

LATIN AMERICA

ORGANIZATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Argentina</i>			
Ejército Revolucionario del Pueblo (ERP)	Trotskyist	Active. Formed 1969, the ERP kidnapped the UK consul in Rosario in May 1971	Unknown
Fuerzas Armadas de Liberación (FAL)	Castroite	Active in 1969 and 1970, but little activity in 1971	Unknown
Fuerzas Armadas Peronistas (FAP)	Mixed Peronism & Castroism	Active since 1950s and in 1971 carried out bank raids, and bomb attacks	Unknown
Fuerzas Armadas Revolucionarias (FAR)	Castroite	Active since 1967. In 1971, the FAR attempted to unify the extremist movements into a common front	Unknown
Montoneros	Castroite	Active. The Montoneros seek a "Socialist" revolution in the country. Assassinated ex-President Aramburu in 1971	Unknown
<i>Colombia</i>			
Ejército de Liberación Nacional (ELN)	Castroite	Active. Revived in 1970 after three years' inaction, but checked in 1971, following capture of ELN leader, "Chapo" Peredo	Unknown
<i>Brazil</i>			
Ação Libertadora Nacional (ALN)	Castroite	Active, but in 1971 the ALN has been weakened by the death of two of its leaders—Carlos Marighella (1969) and Joaquim Carneiro Ferreira (1970)	Unknown
Esquadra da Morte (Death Squad)	—	Right-wing terrorist organization	Unknown

LATIN AMERICA—cont.

ORGANISATION	ORIENTA- TION	STATUS	STRENGTH (Approx)
<i>Brazil — continued</i>			
Vanguardia Popular Revolu- cionario (VPR)	Castroite	Active, but in September 1971, the VPR lost its leader, Carlos Lamarca, when he was shot by security forces	Unknown
<i>Chile</i>			
Movimiento de la Izquierda Revolucionaria (MIR)	Castroite	Active, known as the "Miristas" and in 1971, remained in uneasy alliance with the ruling <i>Unidad Popular</i>	Unknown
<i>Colombia</i>			
Ejército de Liberación Nacional (ELN)	Castroite	Active. In 1971 the ELN, led by Fabio Vasquez, stepped up its activities by embarking on bank raids, ambushes and kidnappings. An attempt by the ELN to set up an urban network in January 1971, was destroyed by security forces. The ELN is split by rivalry over leadership	Unknown
Ejército Popular de Liberación (EPL)	Peking	Active. In April 1971, an urban network of the EPL was discovered by security forces	Unknown
Fuerzas Armadas Revolucionarias de Colombia (FARC)	Moscow	Active, but mainly in rural areas. Until September 1971, the FARC had been inactive, when a new phase began of ambushes, raids on police posts and kidnappings	200
<i>Dominican Republic</i>			
Movimiento Popular Domini- cano (MPD)	Castroite	Active but weak. In May 1971, the exiled leader of the MPD, Maximiliano Gómez, was murdered in a Brussels hotel. By 15 September leading members of the MPD were under arrest	Unknown

LATIN-AMERICA—cont.

ORGANISATION	ORIENTA- TION	STATUS	STRENGTH (Approx)
<i>Guatemala</i>			
Fuerzas Armadas Rebeldes (FAR)	Castroite	Active. Formerly rural based, the FAR moved into the towns in 1970. Right-wing terrorist action in 1971 has momentarily checked FAR	700
<i>Mexico</i>			
Movimiento Revolucionario 13 de Noviembre (MIR-13)	Peking	Active. By 1971, the MIR-13 had made a tactical alliance with FAR	Unknown
Movimiento de Acción Naciona- lista Organizado (MANO)	Right-wing para-military	Formed 1966 and in 1971 the principal terrorist movement	Unknown
Nueva Organi- zación Anti- comunista (NOA)	Right-wing para-mili-	Formed 1967. In 1971 mainly active in capital	Unknown
Ojo por ojo ("Eye for an eye")	Right-wing mainly students	Formed 1970. In 1971 mainly active in San Carlos Univ.	Unknown
<i>Nicaragua</i>			
Frente Sandinista de Liberación Nacional (FSLN)	Castroite	Inactive in 1971, following arrest of leaders in 1970	Unknown
<i>Panama</i>			
Ejército de Liberación Nacional (ELN)	Castroite	Inactive. Dispersed by security forces in late 1960s	Unknown

LATIN-AMERICA—cont.

ORGANIZATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Peru — continued</i>			
Movimiento de la Izquierda Revolucionaria (MAR)	Castroite	Sporadically active. Leaders released in 1970, began to resume their activities	Unknown
<i>Uruguay</i>			
Movimiento de Liberación Nacional (MLN) "Tupamaros"	Originally Castroite, but now eclectic	Active. The Tupamaros were sufficiently effective to impel the government to maintain a state of siege, declared in 1970. The most successful movement in Latin America	800-1,000 hard-core
<i>Venezuela</i>			
Fuerzas Armadas de Liberación Nacional (FALN)	Formerly Castroite, but now fragmented	Sporadically active in January and February, when an urban cell and an arms cache were discovered near Caracas	Unknown
Movimiento de la Izquierda Revolucionaria (MIR)	Castroite now fragmented	Sporadically active in urban areas, but weakened by the desertions of 1970. In 1971, the MIR carried out kidnappings and bank raids	Unknown

NON-ARAB AFRICA

<i>Angola</i>			
Movimento Popular Libertação de Angola (MPLA)	Moscow	Active. Led by Agostinho Neto. During 1971, MPLA was on the defensive	5,000
Gouvernement Révolutionnaire Angolais en Exil (GRAE)	Moscow	Fitfully active in northern and central Angola. Leader: Holden Roberto, alias José Gilmore	Unknown

NON-ARAB AFRICA—cont.

ORGANIZATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Chad</i>			
Front de Libération Nationale du Tchad (FROLINAT)	Independent	Active. Revolt led by Muslim tribesmen against African government. FROLINAT is reported to have been contained in the southern provinces but is still active in the north. Leader: Dr. Abba Siddick	1,400
<i>Ethiopia</i>			
Eritrean Liberation Front (ELF)	Independent	Active. ELF is a Muslim-dominated movement based in Damascus. Leader: Idriss Mohamed Aden	1,500
<i>Guinea (Portuguese)</i>			
Partido Africano da Independência da Guiné, "Portuguesa" e das Ilhas de Cabo Verde (PAIGC)	Moscow	Most publicised African liberation movement in 1971. In June, PAIGC forces launched artillery attack on colony. Led by Amílcar Cabral; PAIGC is recognised by Organisation for African Unity (OAU)	6,000
<i>Madagascar</i>			
Mouvement National pour l'Indépendance de Madagascar (MONIMO)	Left-wing Nationalist	Active in the southern province of Tuléar. MONIMO clashed with government forces in April 1971. Leader: Monji Jaona	3,000
<i>Mozambique</i>			
Frontes de Libertação de Moçambique (FRELIMO)	Moscow	Active, but during 1971 was being seriously weakened by counter-insurgency operations. Leaders: Samora Moisés Machel and Marcelino dos Santos. FRELIMO is recognised by the OAU	3,000

NON-ARAB AFRICA—cont.

ORGANISATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Mozambique — continued</i>			
Comité Revolucionario de Moçambique (COREMO)	Peking	Sporadically active, mainly in the Tete district. Leader: Paulo José Gumane	unknown
<i>Rhodesia</i>			
Zimbabwe African People's Union (ZAPU)	Moscow	Active, but split by internal dissension. Leaders: Joshua Nkomo and James Chikerema	2,000
Zimbabwe African National Union (ZANU)	Peking	Active, but divided. Leaders: Rev. N'Dabaningi Sithole and Herbert Chitepo	600
(On 1 October 1971, ZAPU and ZANU announced a merger. The new movement was called the Front for the Liberation of Zimbabwe [FROLIZI] and was to be based in Lusaka. FROLIZI's leader is Shelton Siwela. FROLIZI was to seek OAU recognition.)			
<i>South Africa</i>			
African National Congress (ANC)	Moscow	Largely inactive	Unknown
Spear of the Nation (SON)	Moscow	Military arm of ANC	Unknown
Pan Africanist Congress (PAC)	Peking	Inactive, due largely to dissension over leadership and superiority of security forces	Unknown
POQO ("Our selves")	Peking	Military arm of PAC	Unknown
<i>South-West Africa</i>			
South-West Africa People's Organisation (SWAPO)	Moscow	Desultory, but in May and October, SWAPO terrorists, in the Caprivi strip, blew up South African police vehicles in which several policemen were killed	Unknown

ARAB WORLD and SOUTH-WEST ASIA

ORGANISATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Iran</i>			
Unnamed group, but there is a faction calling itself TUPAMAROS	Iraq	An urban terrorist movement front appeared in Gilan province and carried out assassinations and provoked wild-cat strikes	130-200
<i>Oman</i>			
Popular Front for the Liberation of the Occupied Arabian Gulf (PFLOAG)	Peking	The most successful movement in the Middle East. By late 1971, PFLOAG had achieved a strong position	1,500
National Democratic Front for the Liberation of Oman and the Persian Gulf (NDFLOPG)	Peking/Baghdad	Inactive during 1971	Unknown
<i>Palestine</i>			
Palestine National Liberation Movement (AL FATAH)	Radical nationalist	By late 1971, Fatah had been militarily defeated	
Popular Front for the Liberation of Palestine (PFLP)	Maoist tendencies	By late 1971, the PFLP led by George Habbash had been militarily defeated	
Popular Democratic Front for the Liberation of Palestine (PDFLP)	Peking	Defeated by Jordan Army but PDFLP cells were being set up in the Gulf	

ARAB WORLD and SOUTH-WEST ASIA—cont.

ORGANIZATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Palestine — continued</i>			
Vanguard of the People's Liberation War (al-Sa'iqa)	Syrian Ba'athist	A branch of Syrian military intelligence which was contained by Jordan Army in late 1971	All four groups in 1971, had an estimated strength of 3,000
<i>Spanish Sahara</i>			
"Nidam" (Arabic for "organisation")	Independent	Active. Founded in 1969, reconstituted in 1970, Nidam is anti-colonial (anti-Spanish) and seeks independence for Spanish Sahara. Armed warfare not discounted	5,000
<i>Sudan</i>			
Anyanya (South Sudan)	Independent	Active, mainly in the form of sporadic skirmishings. A negro, mainly Christian, movement of the south which is opposed to northern Muslim rule	5,000

SOUTH and EAST ASIA

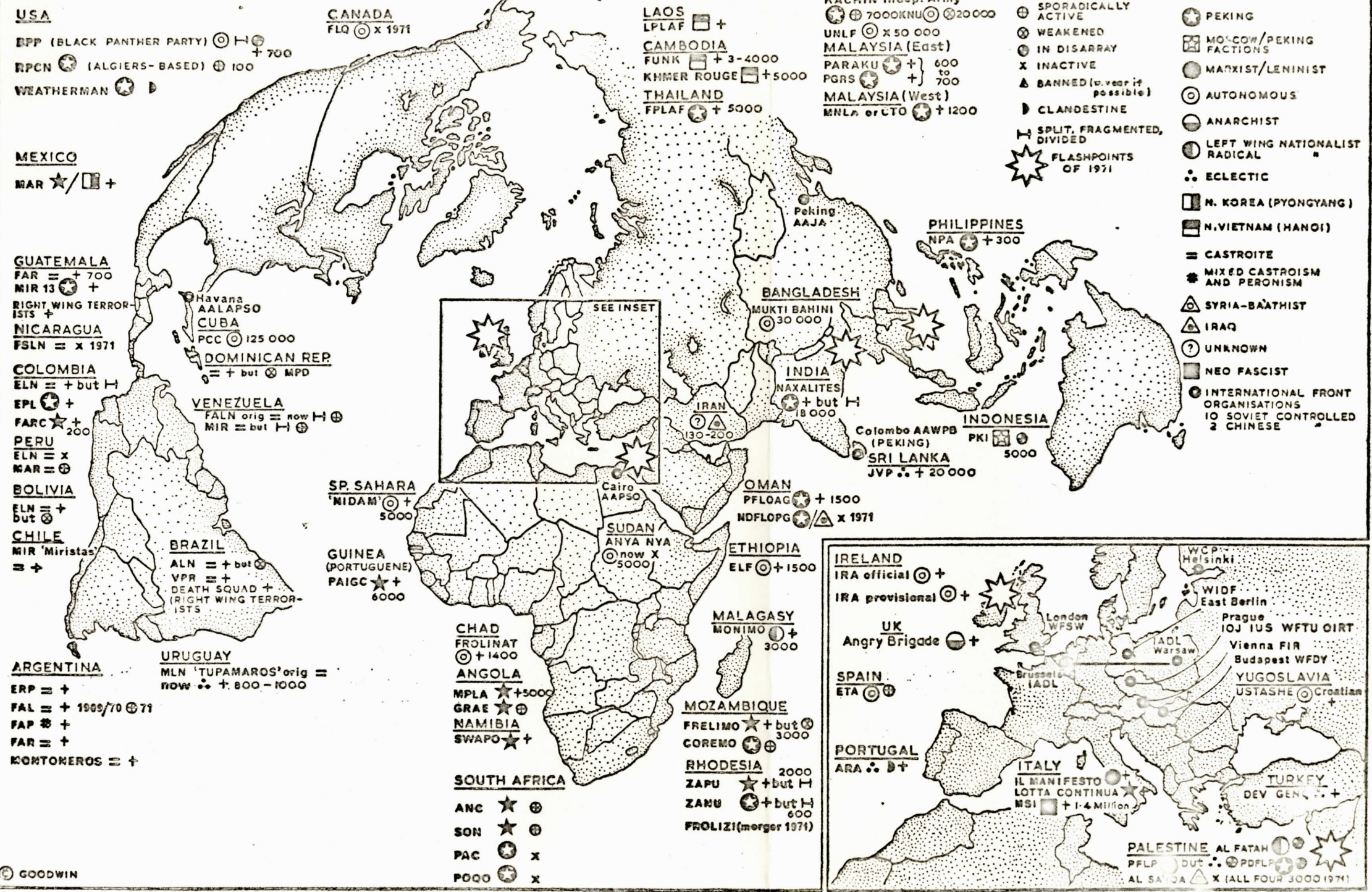
<i>Burma</i>			
White Flags	Peking	In 1971 the White Flags were not a cohesive force. Defections, mutinies and counter-insurgency activities had weakened the movement	1,500
Kachin Independence Army	Peking anti-Burmese	Sporadically active in Kachin State, north Burma	7,000
Karen National Union (KNU)	Autonomous	The KNU was severely mauled by security forces in May	20,000

SOUTH and EAST ASIA—cont.

ORGANIZATION	ORIENTATION	STATUS	STRENGTH (Approx)
<i>Burma — continued</i>			
United National Liberation Front (UNLF)	Autonomous	Inactive in 1971. The UNLF is front alliance of ethnic minorities led by U Nu	50,000
<i>Cambodia</i>			
Front Uni National de Kampuchea (FUNK)	Hanoi	Active but activity has been obscured by North Vietnamese regular army battalions	3,000-4,000
Khmers Rouges	Hanoi	Military arm of FUNK	5,000
<i>Ceylon</i>			
Janata Vimukhti Peramuna (JVP)	Eclectic (left-wing)	Active, mainly north-central districts	20,000
<i>India</i>			
Naxalites (Communist Party of India—Marxist/Leninist)	Peking	Active but deeply divided over leadership and tactics	18,000
<i>Indonesia</i>			
Partai Komunis Indonesia (PKI)	Peking and Moscow factions	Desultory and in disarray	5,000
<i>Laos</i>			
Laotian People's Liberation Armed Forces (LPLAF)	Hanoi	Active but role obscured by presence of N.Vietnamese regular forces	Unknown
<i>Malaysia (West)</i>			
Malayan National Liberation Army (MNLA) or Communist Terrorist Organisation (CTO)	Peking	Increasingly active in March 1971 mainly in northern state of Perak	1,200

SOUTH and EAST ASIA—cont.

ORGANISATION	ORIENTA- TION	STATUS	STRENGTH (Approx)
<i>Malaysia (East)</i>			
Pasokan Rakyat Kalimantan Utara N-Kalimantan People's Forces (PARAKU)	Peking	Active. The PARAKU/PGRS operate jointly and clashed with security forces in June 1971	600-700
Pergerakan Guerilja Rakyat Sarawak People's Guerrilla Forces (PGRS)	Peking		
<i>Pakistan (East)</i>			
Mukti Fouj (or Mukti Bahini)— "Liberation Forces"	Autonomous	Active in East Pakistan (now Bangladesh) and stiffened by defectors from East Pakistan Rifles Regiment	30,000
<i>Philippines</i>			
New People's Army (NPA)	Peking	Active. The NPA carried out raids (on arsenals) and bomb attacks in 1971	300
<i>South Vietnam</i>			
National Front for the Liberation of South Vietnam (NFLSV): the Vietcong	Hanoi	Active but role obscured by presence of N.Vietnamese regular forces	Unknown
<i>Thailand</i>			
Thai People's Liberation Armed Forces (TPLAF)	Peking	Active in North and Central Thailand. Increasing TPLAF presence in Central provinces during 1971	5,000

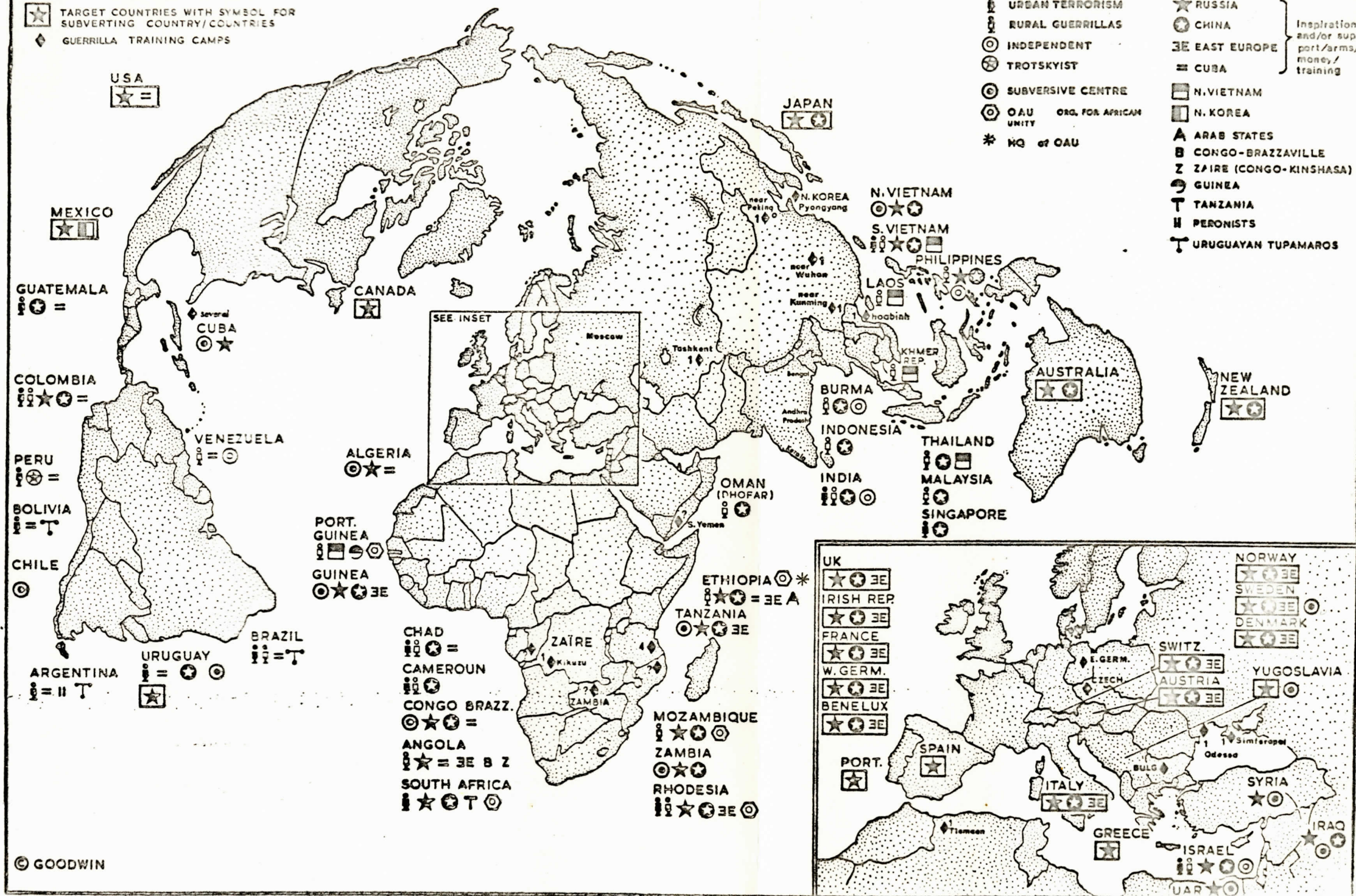


- ★ TARGET COUNTRIES WITH SYMBOL FOR SUBVERTING COUNTRY/COUNTRIES
 ◆ GUERRILLA TRAINING CAMPS

- URBAN TERRORISM
 RURAL GUERRILLAS
 INDEPENDENT
 TROTSKYIST
 SUBVERSIVE CENTRE
 OAU ORG. FOR AFRICAN UNITY
 * HQ of OAU

- RUSSIA
 CHINA
 EAST EUROPE
 CUBA
 N. VIETNAM
 N. KOREA
 ARAB STATES
 CONGO-BRAZZAVILLE
 ZAIRE (CONGO-KINSHASA)
 GUINEA
 TANZANIA
 PERONISTS
 URUGUAYAN TUPAMAROS

Inspiration and/or support/arms/money/training



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