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U.S. Initiatives in the United Nations to Combat International Terrorism

W. Tapley Bennett Jr.

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The dramatic growth of global terrorism and violence in recent years has caused deep concern in the United States. The hijackings of civil aircraft, the assassination of diplomats, the sending of letter bombs through the international mails—these and similar terroristic acts have brought death and maiming indiscriminately throughout the world.

Victims are consumed quite haphazardly, often continents away from the scene of the political dispute which forms the background of the resort to violence. The killer is often as anonymous as the victim. Public opinion, moved by a sense of personal involvement and risk as in few other issues, has understandably taken a special interest in the violence of international terrorism.

This international violence in its various forms knows no geographic parameters. Nor is it confined to any one political cause. The United Nations Declaration of Human Rights affirms the right of every human being to life, liberty and the security of his person; but recent offenses against that right of individual security have occurred in every part of the world. The list is all-inclusive: East Africa, South America, Western Europe, the Middle East, Southeast Asia, the Caribbean, the Balkans and Eastern Europe, Australia—incidents of terrorist violence causing death and serious injury have taken place on every continent and on the islands in between. The problems faced in this field by Canada, the United States and Mexico hardly need emphasis to this reading audience.

Secretary of State William Rogers gave special attention to the issue in his address to the 27th General Assembly of the United Nations on

*A member of the U.S. Delegation to the 26th and 27th General Assemblies of the United Nations, W. Tapley Bennett, Jr. represented the United States in the Legal Committee. Having served formerly as U.S. Ambassador to Portugal and to the Dominican Republic, he is now Ambassador and Deputy U.S. Representative in the U.N. Security Council. LL.B., George Washington University Law School, 1948; A.B., University of Georgia, 1937.

September 25, 1972.[1] Underlining the gravity of the situation, he spoke as follows:

> The issue is not war—war between states, civil war or revolutionary war. The issue is not the strivings of people to achieve self-determination and independence.
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> Rather, it is whether millions of air travellers can continue to fly in safety each year. It is whether a person who receives a letter can open it without the fear of being blown up. It is whether diplomats can safely carry out their duties. It is whether international meetings—like the Olympic Games—like this Assembly—can proceed without the ever-present threat of violence.
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> In short, the issue is whether the vulnerable lines of international communication—the airways and the mails, diplomatic discourse and international meetings—can continue, without disruption, to bring nations and peoples together. All who have a stake in this have a stake in decisive action to suppress these demented acts of terrorism.

International law has an important contribution to make in efforts to reduce the threat of terrorism. United States efforts have been aimed at deterring terrorists acts by eliminating any safe haven for the perpetrators of these crimes. We are also attempting to establish a broad international legal and moral consensus that will discredit these activities and motivate both governments and private groups to discourage, rather than to support, these actions.

To this end the United States Government has supported a series of international treaties in which the states parties pledge themselves either to extradite or to prosecute the perpetrators of specific offenses defined in those instruments. This has, of course, involved as a corollary the establishment of a species of universal jurisdiction over the specified offenses—that of any state party where the perpetrator is found regardless of where the offense was committed.

Obviously, the key to the success of this approach is widespread acceptance of the obligations of these treaties by the international community. Despite the revulsion to acts of terrorism which is felt in most countries of the world, there are serious problems in obtaining general acceptance of binding and effective international measures against terrorist acts. In some cases, particular states are deeply interested in the political aspirations of the terrorist groups. In other cases, states are inhibited by their commercial and political interests from taking strong measures against states which support the political cause of the terrorist movement.

Further, in many countries of the free world there is a strong attachment to the legal institution of diplomatic or territorial asylum which has applied historically, not only to such strictly political crimes as treason or sedition,

[1] LXVII *Bulletin*, Department of State, No. 1378 at 425-430 (Oct. 16, 1972); USUN Press Release 104(72), Sept. 25, 1972.

but to certain common crimes directly connected with political activity such as organized rebellion. Perhaps most important is the regrettable fact that public opinion too often sees acts of terrorism from a political perspective, rather than from a legal or humanitarian viewpoint.

In this context, in the United States' view it would be counter productive, even if it were technically feasible, to attempt to reach an internationally agreed definition of terrorism. Instead, we have attempted to identify specific categories of offenses which, because of their grave and inhuman effect on innocent persons or because of their serious interference with the vital machinery of international life, should be condemned by states of every ideology and alignment.

These offenses have included: First, hijacking and sabotage of civil aircraft; second, the kidnapping and assassination of foreign diplomats and other foreign officials; and, third, as proposed in Secretary of State Rogers' address quoted above, the export of international terrorism to countries not involved in the underlying conflicts.

The United Nations system, both in the General Assembly and through the International Civil Aviation Organization, has taken important steps to deal with threats or attacks against international civil aviation. These steps have involved General Assembly and Security Council resolutions and multilateral agreements such as the Tokyo, Hague and Montreal Conventions.[2] These agreements have recognized that such attacks threaten the lives of large numbers of innocent persons and, indeed, the very fabric of world society by undermining our common reliance on international transportation and communications.

Because of general agreement that such acts are too serious to be tolerated, these steps have been taken without regard for the motive behind the attack. Much work remains to be done, and we are continuing our efforts within the International Civil Aviation Organization to achieve promptly the completion of a convention which will enable the international community to cooperate in asserting its will on certain agreed principles in an orderly manner against anyone who seeks to stand against that will.

Following action by the Organization of American States,[3] The United

[2]Convention on offenses and certain other acts committed on board aircraft, signed at Tokyo Sept. 14, 1963; in force for the United States; 20 U.S.T. 2941; T.I.A.S. 6768. Convention for the suppression of unlawful seizure of aircraft; signed at The Hague Dec. 16, 1970; in force for the United States; T.I.A.S. 7192. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; signed at Montreal, Sept. 23, 1971; Sen. Ex. T., 92d Cong., 2d Sess., Sept. 15, 1972; not in force.

[3]Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that Are of International Significance; signed at Washington Feb. 2, 1971; Sen. Ex. D, 92d Cong., 1st Sess., May 11, 1971; not in force.

Nations has also recognized the unacceptability of threats or attacks against diplomats or other internationally protected persons. The work on this aspect of the broader problem will be continued in the 28th session of the UN General Assembly in September 1973 with consideration, and hopefully completion, of draft articles prepared by the International Law Commission for a convention on the protection of diplomats, officials of foreign governments and international organizations and others entitled to special precautions because of the nature of their duties.[4]

The United States has already developed new legislation in this field, and Public Law 92-539 signed by President Nixon on October 24, 1972, provides the Federal Government with important new legal authority for the protection of foreign diplomats and official guests in this country.

At the 27th General Assembly in 1972 the United States undertook a new and specific initiative with respect to the third aspect of the scourge of terrorism—the growing trend of private groups or individuals to export their conflicts abroad to countries not parties to a particular conflict. The American action followed on, although it was entirely coincident to, the special initiative of the United Nations Secretary General[5] in submitting an item on international terrorism for consideration by the 27th Assembly.

The Secretary General's call for action had presumably, as in the case of the United States, been stimulated by the alarming increase in incidents of international violence, culminating in the tragedy at the Olympic Games in Munich in early September 1972. This stress on the need for urgent action against the brutal depredations of exported terrorism was met, paradoxically, by an increased resistance to early action of the part of some states who professed to believe that the calls for action, coming on the heels of Munich, were aimed at them.

Recognizing the strong political overtones which accompany the problem of terrorism in many areas of the world, the United States Government has sought to avoid the political, and to stress the legal and humanitarian, interests of all nations in its proposals. Unfortunately, it must be admitted that we have not been notably successful in our efforts to divorce action on international terrorism from political considerations.

This effort to restrict the issue within manageable limits was evident in the draft convention circulated by Secretary Rogers, in connection with his United Nations address of September 25, 1972. This document was en-

[4]For the text of the draft articles see Report of the International Law Commission, 24th Sess. (1972); U.N. Doc. A/8710/Rev.1 at 88-102.

[5]"Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms", U.N. Doc. A/8791, Add.1 & Corr. 1; Sept. 8, 1972.

titled a "Convention for the Prevention and Punishment of Certain Acts of International Terrorism."[6]

The draft Convention approached the issue in terms of the acts involved. It did not seek to define terrorism or to deal with *all* acts which might be called terrorism. Rather, it was a narrowly drawn convention which focused on the common interest of all nations in preventing the export of violence from areas involved in civil or international conflict or internal disturbances to countries not directly involved in the violence. The containment of violence within the narrowest feasible territorial limits has been a traditional function of international law, in cases where it has been difficult to eliminate violence completely.

The draft U.S. Convention was drafted so as to deal only with the most serious criminal threats: acts involving unlawful killing, serious bodily harm, or kidnapping. The mechanism employed to limit the convention's scope to those cases in which there should be an international consensus for joint action was to require that each of four separate conditions must be met before its terms apply. There follows a discussion of those conditions.

First, the act must be committed or take effect outside the territory of a State of which the alleged offender is a national. The problem of maintaining civil order within a given country is of course primarily a domestic matter. Assume, for example, that a national of one state kidnaps in that state another national of the same state, or even a foreign national, in an attempt to obtain the release of imprisoned persons. That act would be a crime under the state's criminal law and would not be covered by the Convention.

Second, the act must be committed or take effect outside the territory of the State against which the act is directed. The Convention is not aimed at conflicts taking place within a particular state and directed against that State even if non-nationals are involved. Although the involvement of non-nationals in civil strife is an important problem, it is a problem dealt with elsewhere, most recently in the unanimously adopted Declaration on Friendly Relations Among States.[7]

One exception permitted under the Convention to this second requirement is that acts committed or taking effect within the territory of the State against which the act is directed, would be covered if the act is knowingly directed against a non-national of that State—an armed attack in the pas-

[6]Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, U.N. Doc. A/C.6/L.850; Sept. 25, 1972.

[7]General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations; Oct. 24, 1970.

senger lounge of an international airport, for instance. Such acts which knowingly endanger foreign nationals have the same potential to involve other states as direct expansion of the violence to their territory.

Third, the act must not be committed either by or against a member of the armed forces of a State in the course of military hostilities, since acts of this type are covered elsewhere in the international law. The draft Convention is aimed at the largely unregulated activities of irregular groups or individuals. It does not seek to replace existing or emerging régimes of human rights in armed conflict such as the 1949 Geneva Conventions[8] or the projected protocol for non-international conflicts. Moreover, this third requirement also limits coverage to attacks against innocent persons.

Fourth, the act must be intended to damage the interests of or obtain concessions from a State or an international organization. It is acts of international violence – the *export* of violence to areas not involved in the conflict – with which we are here concerned and not ordinary crimes dealt with by national criminal codes. For example, assume a citizen of another country is kidnapped in the United States. If it is done for ransom from a relative in the United States, it is a crime under U.S. law. If, however, it is done to obtain the release of guerrillas in the prisons of another country, it would be covered by the draft Convention.

It must be emphasized that all four of the above conditions would have to be met for the Convention to apply. And to repeat, the Convention deals only with the most serious threats; acts involving killing, serious bodily harm or kidnapping.

Despite its precisely limited focus, the Convention would cover most of the recent acts of international terrorism which have been evidencing the dangerous trend toward expansion of violence to States not parties to a particular conflict. The draft convention, by its terms, would yield to other more specialized treaties covering attacks against diplomats or civil aviation where applicable. There has been concentration, as an urgent first step, on those categories of international terrorism which present the greatest current global threat and which ironically have received the least attention.

By not seeking at this time to cover all types of international violence, there is of course no intent to imply that all excluded activity is permissible. Many other kinds of terrorist acts, particularly the involvement of

[8]Convention for the amelioration of the condition of the wounded and sick in armed forces in the field. Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea. Geneva convention relative to the treatment of prisoners of war. Convention relative to the protection of civilian persons in time of war. All signed at Geneva Aug. 12, 1949; all in force for the United States. Respectively 6 U.S.T. 3114, 3217, 3316 and 3516; T.I.A.S. 3362, 3363 and 3365; 71 U.N.T.S. 31, 85, 135 and 287.

States in assisting terrorist groups or the use of force to deny the right of self-determination are already prohibited under international law. They would remain illegal, wholly apart from the new Convention. The draft Convention's specific affirmation of the obligation of all States under the United Nations Charter and other relevant treaties merely makes express what would otherwise be implicit.

Once the critical threshold of coverage is reached, the draft Convention establishes substantially the same régime for dealing with offenses as the Hague hijacking and Montreal sabotage Conventions. That is, states parties to the Convention would be required to establish severe penalties for covered acts and either to prosecute or extradite offenders found in their territory.

There would be no requirement to return a person to a place in which there were reason to believe he might be subjected to unfair treatment. The choice of extradition or prosecution would be in the hands of the State in whose territory the alleged offender is found. The fundamental principle of *non-refoulment* would be in no way impaired.

The debate in the Assembly's Legal Committee on the Secretary General's initiative, and on the United States proposal, involved a wide range of legal and political issues. While there was a measure of support for the American approach, a number of representatives raised doubts as to the feasibility or utility of proceeding along such lines.

In the first place, there were some states who did not wish to take any action at all on this problem—in part because they believed that the proposals coming so soon after the Munich tragedy, were aimed at them. Some few of those states frankly espoused the employment of terroristic methods as a part of their revolutionary philosophy. Others insisted that before proceeding to elaborate a legal régime it would be necessary to define international terrorism.

Others expressed fear that, so long as oppression remains in any part of the world, any weakening of the traditional international law notion of excepting perpetrators of political crimes from extradition or punishment would have very harmful consequences. Not all of those holding this view were convinced that the alternative of submitting the perpetrator for trial in their own jurisdiction instead of extraditing him would solve the problem. They argued that trial would be inconsistent with the right of asylum.

A large body of opinion argued that the incidence of terrorism is merely a reflection of existing injustices and that, until the root-causes which drive men to commit desperate acts are eliminated, there can be no effective international legal measures against violence. Expulsion from territory, military occupation, denial of fundamental human rights, and poverty were among the causes cited.

Implicit in this argument was the view that the developed world had not shown sufficient concern with the plight of the oppressed in the "Third World," until terrorists began to export violence and make life somewhat less secure in the developed world. A refinement of this general argument took the form of insisting that any international legal measures to combat terrorism be drafted to except activities undertaken in the name of self-determination.

Those stressing this latter position were not convinced by the argument that, no matter what the motification or justification for violence or the use of force, there are limits to the levels and types of violence that the international community should tolerate.

It was not possible in the time available to the 27th Assembly to bridge these very wide gaps in the views of 132 sovereign members. It would be less than candid if the present author did not express the considerable disappointment of the United States, that we were not able to accomplish more at the 27th General Assembly. It is believed the United Nations in 1972 let pass an opportunity to take effective action on a pressing world problem touching individual rights everywhere.

The United States voted against the Resolution[9] which finally emerged from weeks of debate and negotiation, in the conviction that it did not really face up to the problem and would in fact do nothing to discourage certain forms of violence.

Nevertheless, the Resolution did establish an *Ad Hoc* Committee to study the matter further before the 28th General Assembly. The United States has expressed a willingness to serve on the Committee. Meetings will be held at the United Nations in New York during July and August 1973; and the United States, while prepared to cooperate fully in a study of the causes of international violence as called for in the resolution, will seek to advance the consideration of a convention along the lines of the draft submitted in 1972.

Meanwhile, an important step forward was taken on April 21, 1973 by the U.N. Security Council.[10] In a Resolution resulting from a complaint by Lebanon over raids by Israeli forces on Lebanese territory on April 10, the Council deplored "all recent acts of violence resulting in the loss of innocent individuals and the endangering of international civil aviation," a clear reference to the Khartoum assassinations and other recent terrorist

[9]General Assembly Resolution 3034, (XXVII), 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; Dec. 18, 1972.

[10]Security Council Resolution 332 (1973); April 21, 1973.

incidents. In the same Resolution the Council voted to condemn "all acts of violence which endanger or take innocent human lives."

While the United States would have preferred stronger and more specific language, the action of the Security Council on April 21 did mark the first time in the history of the world organization, that the international community had actually taken the step of forthrightly deploring and condemning the type of international violence, which takes the lives of innocent persons having no part in the cause or conflict which the killers represent.

Progress will be neither quick nor easy in forging among the disparate member states of the world community agreement on effective measures to combat international violence. Efforts for the control and elimination of international violence, as with domestic violence, are difficult, long-range tasks. A convention by itself will not make the world safe from terrorism.

But the tasks are not to be shunned because of obstacles in the way. The problem is urgent. The challenge demands that we press on in the search for effective measures to protect the innocent bystander from brute, indiscriminate violence visited on him from afar, and from quarrels not his own.