International Terrorism: The Need for a Fresh Perspective

Introduction

As the United Nations nears the end of its third decade, the influence of the United States appears to be on the wane. Nowhere is this more apparent than in the recent debates on the issue of international terrorism. The inability or unwillingness of the United States to acknowledge and to come to grips with the reasoning of many so-called "Third World" nations regarding this issue, was a significant factor in the United Nations' failure to take any positive steps toward the resolution of terrorism during the 27th Session. This note examines those debates.†

Since the late sixties, scarcely a week has gone by without the appearance of press accounts, describing some shocking new act of international "terrorism," against international civil aviation, diplomatic personnel or unarmed...
and 26 other attempts were frustrated. In the same period, 140 airline passengers and crew were killed and 97 wounded in acts of terrorism. Address by Secretary of State William P. Rogers, United Nations General Assembly, September 25, 1972, Press Release USUN-104(72) at 7. From January 1, 1948, to July 1, 1971, there were 89 successful hijackings originating in the United States and 115 originating in other countries. See Evans, A Proposed Method of Control, 37 J. AIR L. & COM. 171, 172 n.5 (1971). See generally, Hearings on Aircraft Hijackings Before the House Comm. on Foreign Affairs, 91st Cong., 2d Sess. (1970).

1In the past five years prior to 1973, 27 diplomats from 11 countries have been kidnapped and three assassinated. Address of Secretary of State William P. Rogers, United Nations General Assembly, September 25, 1972, Press Release USUN-104(72) at 7. Some of the better known examples are the murder of West German Ambassador Karl von Spreti by urban guerrillas in Guatemala, N.Y. Times, April 6, 1970, at 1, col. 6, and the murder of Israeli Consul-General Ephraim Elrom by the Turkish People's Liberation Army, N.Y. Times, May 23, 1971, at 1, col. 5. In late 1970, a group of French-Canadian separatists kidnapped and murdered Pierre Laporte, the Minister of Labor and Immigration of Quebec. See G. More, Terror in Quebec: Case Studies of the FLO (Toronto, 1970). See also Hayter, Politics of Kidnapping, 4 INTERPLAY 14 (1971).

2Late in 1972, a rash of “letter-bombs” appeared throughout the world injuring or killing postal employees, secretaries, airport personnel and diplomats. Letter-bombs were posted into international mail channels from Amsterdam and New Delhi, from Belgrade and Singapore, from Bombay and Malaysia to a world-wide list of addresses in Canada, Austria, Argentina, the United Kingdom, Australia, Egypt, Brazil, Libya, Cambodia, Italy, Jordan, the United States and West Germany. Address of Ambassador W. Tapley Bennett, Jr., Sixth (Legal) Committee of the United Nations, November 13, 1972, Press Release USUN-134(72) at 2.


4A useful introduction to the several liberation groups operating in the Portuguese colonies of Angola, Mozambique, and Guinea-Bissau can be found in Howe, War in Southern Africa, 48 FORD. AFF. 150 (1969). Most longer treatments of terrorism in southern Africa are written by South Africans or Rhodesians or Portuguese and bear a recognizable bias. See M. Horrell, Terrorism in Southern Africa (Johannesburg, 1968); M. Morris, Terrorism: The First Full Account in Detail of Terrorism and Insurgency in Southern Africa (Capetown, 1971); R. Shay, The Silent War (Salisbury, 1971); B. Teixera, The Fabric of Terror: Three Days in Angola (1965); A. Venter, The Terror Fighters: A Profile of Guerrilla Warfare in Southern Africa (Capetown, 1969). A recent newspaper article captures the current mood of this generally unnoticed area of conflict, Mohr, Whites' Fear of Black Rebels Spreading in Rhodesia. N.Y. Times, May 13, 1973, at 1, col. 2, which is considered a major confrontation by many of the black African states attending the current meetings of the Organization of African Unity. The Washington Post, May 19, 1973, at A19, col. 8.

5The Arab-Israeli conflict has, since the 1940s, been the subject of an enormous amount of journalistic, scholarly, and governmental study, which—as might be expected—has served more to obscure than to clarify the factual picture. The most recent effort to describe the Palestinian movement is unfortunately a victim of the author's inarticulateness, but may be helpful. See D. Price-Jones, The Face of Defeat: Palestinian Refugees and Guerrillas (1972). Press accounts have devoted much of their space to attempts to identify who is who in the guerrilla infrastructure, and to some extent succeed in lifting some of the mystery from the so-called "Black September" terrorist organization. See NEWSWEEK, March 19, 1973, at 42; 216 NATION 356 (March 19, 1973); The Washington Post, March 15, 1973, at A1, col. 7; The Washington Post, May 17,
The unprecedented slaughter of 26 innocent tourists at Lod Airport in Tel Aviv in May 1972, the murder of 11 Israeli athletes at the Munich Olympics in September 1972, and the killing of three American and Belgian diplomats in Khartoum in March 1973 are only the most recent and well-publicized examples of this disheartening trend which cries out for reversal.

The United States—as one of the states most victimized by the terrorists—has understandably been outraged, and has taken an aggressive lead in seeking international control of this sort of ignoble activity. With vigorous United States support, the three I.C.A.O.-sponsored hijacking conventions—the Tokyo Convention, the Hague Convention, and the Montreal Convention—have now entered into effect, and the O.A.S.-sponsored convention on the kidnapping of diplomats is now in the ratification stage.

In the United Nations, since Secretary-General Kurt Waldheim requested the inclusion of the issue of terrorism on the agenda of the General Assembly on

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* N.Y. Times, September 6, 1972, at 1, col. 8. Three of the participants in the Munich episode were subsequently released by the West German government after other Black Septemberists hijacked a Lufthansa jetliner. N.Y. Times, October 30, 1972, at 1, col. 1.

* The Washington Post, March 9, 1973, at Al, col. 3. The diplomats—Ambassador Cleo A. Noel, Jr., George C. Moore, and Belgian diplomat Guy Eid—were seized in an effort to free 17 Palestinian guerrillas held in Jordan. The prisoners were not released and the diplomats were executed. *Time*, March 19, 1973, at 26.

* See note 2 supra; Note, Terrorist Kidnapping of Diplomatic Personnel, 5 CORNELL INT’L L.J. 289, 204 n.70 (1972).


September 8, 1973,\(^{16}\) the United States has been particularly outspoken in urging the adoption of both an international convention to protect diplomats specifically,\(^{17}\) and one to protect nationals of neutral states more generally from terrorist attacks.\(^{18}\)

Despite these strenuous efforts, however, the kidnapping of diplomats\(^{19}\) and hijacking of aircraft\(^{20}\) goes on, and, from the tone of debates in the last session of the United Nations, it appears that a substantial majority of states do not accept the United States' approach to the subject.\(^{21}\) This difference of opinion is so significant that it threatens to impede any further steps to limit the use of violence in an all-too-violent world, and must be closely examined.

As originally proposed by the Secretary-General, the issue of terrorist deeds

\[^{16}\text{U.N. Doc. A/8791/ Add. 1 (1972). "The Secretary-General considers that the current trends towards terrorism and senseless violence is so alarming and has such grave implications that it should be considered by the General Assembly, with the hope that agreed measures can be found which will help to reverse this trend and prevent such tragedies in the future." Id. at 2.}\]


\[^{18}\text{Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, Circulated in the Sixth (Legal) Committee of the United Nations, September 25, 1972. U.N. Doc. A/C.6/L.85 (1972). See Statement by Ambassador W. Tapley Bennett, Jr., Sixth (Legal) Committee of the United Nations, September 25, 1972, Press Release USUN-105(72); Address by John Norton Moore, Counselor on International Law, Office of the Legal Advisor, Department of State, at the American Society of International Law, 67th Annual Meeting, April 12, 1973. This convention would require either extradition or prosecution of anyone who is apprehended after killing, injuring, or kidnapping another person if, within the meaning of Article 1(a) the offense occurs outside the State of which the offender is a national; (b) occurs outside the territory of the State against which the act is directed or within such territory but is committed against a person who is not a national of such State; (c) is not committed by a member of the armed services in the course of hostilities; and (d) is intended to damage the interests of, or obtain concessions from, a State or international organization. No action was taken on this draft convention in the 27th Session of the United Nations.}\]

\[^{19}\text{The United States Consul-General in Guadalajara, Mexico, Terrence G. Leonhardy was kidnapped and held hostage until 30 political prisoners were released into the custody of the Cuban government, certain political press releases regarding poverty in Mexico were printed by newspapers, and $80,000 in ransom was paid to the guerrilla terrorists. The Washington Post, May 6, 1973, at A1, col. 5; id., May 7, 1973, at A1, col. 1; id., May 9, 1973, at A1, col. 1.}\]

\[^{20}\text{A Venezuelan airliner carrying 42 passengers was hijacked by guerrillas demanding the release of 79 political prisoners held by the Venezuelan government. Despite threats to blow up the plane, the demands were not met and the terrorists ultimately flew the plane to Cuba where they disembarked and allowed the plane to return to Mexico. The Washington Post, May 20, 1973, at A4, col. 4; id., May 21, 1973, at A19, col. 1.}\]

\[^{21}\text{See Report of the Chairman of the Sixth Committee on his Consultations with regard to the Question of International Terrorism, Undertaken in Pursuance of the Decision Taken by the Committee on September 27, 1972, U.N. Doc. A/C.6/L.866 (November 9, 1972). This preliminary report noted the reluctance of most members to move precipitously towards any specific convention which would perhaps be unbalanced in its aims and effects. In the Sixth Committee, the members voted 76 to 43 with 7 abstentions not to give priority to a United States-sponsored resolution in its proceedings. Report of the Sixth Committee, U.N. Doc. A/8969 at 13 (December 16, 1972).}\]
was to have been considered by the United Nations under the title: "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms." On the suggestion of Ambassador Baroody of Saudia Arabia, however, the General Assembly amended this title to include the significantly revealing phrase:

... and study of the underlying causes of those forms of terrorism and acts of violence which result in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical change.

At the debate on the inscription of this item on the agenda, and later during the Sixth (Legal) Committee and General Assembly debates, the United States and a minority of other states adamantly but unsuccessfully insisted that the acts of terrorists were logically and legally separable from the political or social motivation behind them, and could be legislated against as easily as any "common" crime. Before the General Assembly, Secretary of State William Rogers articulated the United States' position 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. . . .

We are all aware that, aside from the psychotic and the purely felonious, many criminal acts of terrorism derive from political origins. We all recognize that issues such as self-determination must continue to be addressed seriously by the international community. But political passion, however deeply held, cannot be a justification for criminal violence against innocent persons.

Nevertheless, the General Assembly accepted the recommendation of the Sixth Committee in Resolution 3034 to appoint an ad hoc committee whose task would be to study both terrorism and its causes, and to make "recommendations for possible co-operation for the speedy elimination of the problem, bearing in mind the provisions [which reaffirm the inalienable right to self-determination]."

The United States feels quite strongly that the adoption of Resolution 3034

23U.N. Doc. A/8791/Add.1 (1972); item 92.
27The President of the General Assembly, Stanislaw Trepczynski, notified the Secretary General on April 20, 1973, that he had named the 35 members of the committee, including the United States. U.N. Doc. A/8993 (April 24, 1973). The membership includes 19 Member States that voted for Res. 3034; 13 that voted against it; and 3 that abstained.
and the failure of the Sixth Committee to take any positive action on its Draft Convention on Terrorism amount to a tragic mistake, which can only serve to "weaken the only world-wide mechanism for international cooperation that exists." To American policy-makers, the causes of terrorism are irrelevant since, as the study prepared by the United Nations Secretariat itself emphasizes, "the legitimacy of a cause does not in itself legitimize the use of certain forms of violence, especially against the innocent."

But to acknowledge that a just cause can neither justify nor legitimize terrorism does not mean that a study of such causes is irrelevant. For it may very well reveal not only that some politically-motivated acts are rooted so deeply in a dedication to a cause that no sanction can deter them, but also that other acts of terrorism spring from a frustration of legitimate means, caused in turn by acts of governmental repression and "terrorism" which it would be anomalous for an international organization like the United Nations—dedicated to equal rights and justice—to ignore.

To underestimate the significance of either of these possibilities, as the United States has apparently done, is perhaps a failure of moral perspective, but more importantly it is a miscalculation in the one area which should be paramount: the effectiveness of any proposed solution.

In considering the issue of terrorism, one must ultimately face up to the realities and possibilities of controlling its use. Certainly there are some unilateral, preventive measures that states may adopt with reasonable expectation of making it more difficult for terrorists to hijack aircraft or to kidnap diplomats. Elaborate airport security measures in the United States seem to be the decisive factor in forestalling any domestic hijackings in the period between

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27 See note 18 supra.
30 President Richard Nixon has stated:
There are those who would tell us that terror is the last resort of the weak and the oppressed, a product of despair in an age of indifference, and that it seeks only political justice. This is nonsense. The way to seek justice is through negotiation. We have sought in our own relations to turn from confrontation to negotiation. We believe that this is the only way for grievances to be resolved in a way that will contribute to peace and stability.
Press Release USUN-107(72) (September 27, 1972).
31 Study Prepared by the Secretariat in Accordance with the Decision Taken by the Sixth Committee at its 1314th Meeting on September 27, 1972, U.N. Doc. A/C.6/418 (November 2, 1972) at 7. This useful study compiles and comments on all of the major efforts at controlling the sorts of violence subsumed under the heading of "terrorism" in the past, including the three hijacking conventions, the OAS convention on the kidnapping of diplomats, and the terrorism convention of 1937.
32 The goals of the United Nations include not only maintaining peace and security, but also achieving international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms." United Nations Charter, art. 1(3). See also Internation Declaration of Human Rights, 3 U.N. GAOR, 1, at 71, U.N. Doc. A/810 (1948).
Stepped-up intelligence operations and increased protection of United States diplomats and officials, however, can never be entirely effective, as the recent kidnapping of a U.S. consul-general in Mexico illustrates. More broadly, it would be impossible to extend physical protection to the hundreds of thousands of American citizens and businesses abroad that, like Ford Motor Co. and its executives in Argentina, can be the target of terrorist attack as well.

The inherent limitations of this sort of unilateral effort to control terrorism—and even unilateral efforts such as the use of illegal, aggressive acts of retaliation by the Israeli government—has prompted the United States to initiate a simultaneous effort to push for the adoption of various multilateral treaties which would require prosecution or extradition of terrorists wherever apprehended. This international convention approach calls to mind the

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34The elaborate search and screening operations, now in effect at all of the United States' 531 airports, apparently is responsible for the drastic reduction in hijackings and attempted hijackings since November 1972. In the first four months of 1973, there had been no attempts, but 617 persons were denied permission to board aircraft and 504 unauthorized weapons were seized by Federal Aviation Administration officers. The Washington Post, May 12, 1973, at A8, col. 2.

35On September 25, 1972, President Nixon named a 10-member Cabinet Committee to Combat Terrorism, to coordinate United States efforts in this area, which in turn appointed a Working Group on Terrorism headed by Armin H. Meyer, former Ambassador to Japan. One result of these groups' efforts has been tighter security for embassies and more aggressive counterintelligence operations to detect possible kidnap plots. The Washington Post, March 18, 1973, at A1, col. 8.

36See note 19 supra.

37The Ford Motor Company in Argentina agreed to pay more than $1 million to various hospitals and charities as "protection money" demanded by the Trotskyite People's Revolutionary Army, under threat of kidnapping Ford executives. Earlier, one Ford executive had been shot by the terrorists. The Washington Post, May 29, 1973, at A14, col. 6.

38On several occasions, the Israeli government has launched retaliatory raids against Palestinian guerrilla forces camped in neighboring states. Following the Khartoum murders, see note 10 supra, Israeli soldiers staged a midnight raid against alleged terrorists living in Beirut, Lebanon, killing or wounding 40 individuals—including several innocent civilians. The Washington Post, April 10, 1973, at A1, col. 5. Subsequently, the United Nations Security Council censured Israel for this attack by a vote of 11 to 0, with China, Guinea, the Soviet Union, and the United States abstaining. The Washington Post, April 22, 1973, at A1, col. 8. Although the proscriptions against the use of armed force except as a direct response to "armed attack" contained in United Nations Charter Articles 2(4) and 51 seem clearly to apply to this sort of retaliation, some scholars have sought to stretch the self-defense category to fit the Israeli response to Palestinian terrorism. See Taubbe, *Retaliation and Irregular Warfare in Contemporary International Law*, 7 Int'l L. Law. 195 (1973).

39See Article 3 in the United States draft convention, note 18 supra, and Article 6 in the International Law Commission draft articles, note 17 supra. If there were no other objections to these conventions, there would be substantial and perhaps unresolvable debate over the requirement of either extraditing or prosecuting. The so-called "political offenses" exception to extradition treaties as well as the long-recognized Latin American tradition of asylum are not at all clear in terms of their appropriateness in the circumstance of terrorist activity. See generally Bassiouni, *Ideologically Motivated Offenses and the Political Offenses Exception in Extradition—A Proposed Judicial Standard*, 19 DePaul L. Rev. 217 (1969); Green, *Hijacking and the Right of Asylum*, in *Aerial Piracy and International Law* 124 (McWhinney, ed. 1971); Nayar, *The Right of Asylum in International Law: Its Status and Prospects*, 17 St. Louis U. L.J. 17 (1972); Szabo, *Political Crimes; A Historical Perspective*, 2 Denver J. Int'l & Comp. L 7 (1972); Note, *Hijacking as a Political Crime—Who Should Judge?* 2 Calif. W.L.J. 92 (1971).
ill-fated Terrorism Convention of 1937 sponsored by the League of Nations which succeeded in attracting only one ratification—that of India.

The three recent conventions on hijacking have obtained substantially more ratifications, but it is yet to be shown that they have had or will have any positive effect on the basic problem of political terrorism. The convention approach is of course always limited by the parameters of its acceptability among nations, and on the issue of terrorism those nations most crucial to effective measures—the nations that tolerate, support, and harbor the guerrilla bands from which the terrorists are drawn—find the American initiatives unacceptable. So long as one or more states are willing—for whatever reason—to play a role like that of Cuba in the recent kidnapping and hijacking

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4Convention for the Prevention and Punishment of Terrorism, opened for signature at Geneva, November 16, 1937, 7 Hudson Int’l Leg. 862 (1941). See Note, Brit. Y.B. Int’l L. 214 (1938); see also the background materials regarding this convention in the study prepared by the Secretariat, note 32 supra, at 22. The initiative for this convention was sparked primarily by the assassination of King Alexander of Yugoslavia in 1934.

4'See notes 12-14 supra.

4The relationship between groups which perpetrate specific acts of terrorism and other revolutionary or guerrilla organizations, operating against the same target but through more conventional means is frequently unclear. The so-called “Black September” group which has claimed responsibility for the most outrageous acts in the past year—Lod, Munich and Khartoum—is apparently an official tool of the Palestinian guerrilla organization, Al Fatah, which is in turn part of the larger Palestinian Liberation Organization, but for obvious public relations purposes, both Fatah and PLO deny the links. The Washington Post, April 14, 1973, at A6, col. 1. The relationship between the Popular Front for the Liberation of Palestine, a Marxist group which claimed credit for several spectacular hijackings in 1971, and the PLO is equally indefinable. D. Pryce-Jones, The Face of Defeat: Palestinian Refugees and Guerrillas (1972) at 145. A number of states give support to guerrilla bands operating against neighboring states waging what are ostensibly “wars of national liberation.” Zambia, for example, has regularly harbored contingents from various liberation forces operating against Rhodesia, South Africa, and the Portuguese colonies. See Howe, War in Southern Africa, 48 For. Aff. 150 (1969); N.Y. Times, May 13, 1973, at 1, col. 2. Libya has taken an active role in financing liberation movements throughout the world as well as in the Mideast, using millions of dollars obtained from oil royalties, since the coming to power of its fiery, revolutionary leader, Co. Muammar Qaddafi. The Washington Post, May 20, 1973, at A1, col. 1. In addition to supplying, training and sheltering Palestinian guerrillas—including apparently the terrorists involved in the Khartoum murders. The Washington Post, April 8, 1973, at A16, col. 1—Libya has supported Moslem insurgents in the Philippines, The Washington Post, May 11, 1973, at A20, col. 1, and the outlawed Irish Republican Army in Northern Ireland, The Washington Post, May 14, 1973, at A1, col. 1.

4'Taking as their starting point the frequent reaffirmations by the United Nations of the Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66, U.N. Doc. A/4684 (1961), which declares that “All peoples have the right to self-determination,” these states defend the right of “colonial” peoples to wage wars of national liberation against their oppressors. See, e.g., G.A. Res. 2548 (XXIV) of December 11, 1969, on the implementation of Res. 1514; G.A. Res. 2787 (XXVI) of December 6, 1971 on the same subject. The Economic and Social Council of the United Nations has recently stated that it “confirms the legality of all peoples’ struggle for self-determination and liberation from colonial and foreign domination by all available means.” ESOSOC Res. 1592 of May 21, 1971. The majority of the states in the United Nations, thus, have apparently endorsed liberation movements, and any international effort which could be construed as infringing this right can be expected to draw their opposition. A number of states during the debates on terrorism expressed concern that proposed conventions such as the United States’ could be used or interpreted in such a way as to restrict the legitimate activities of “freedom fighters.” The remarks of Ambassador Diaz Casanueva of Chile
incidents, or like that of Libya after the Munich Olympics incident or, indeed, like that of Lebanon in relation to the Palestinian movement generally, those states will not agree to any convention that purports to impose on them the duty of *aut dedere aut judicare*.

It is absolutely essential that the United States—if it wishes to achieve a truly effective system of controls on terrorism—understand and respect the rationale followed in this matter by the states who have not, and most likely will not, adhere to any of the present or proposed conventions. To these states, the United States approach presents an unrelenting “quid” without a “pro quo” which is either flexible or equitable.

Terrorism, from the point of view of many of the underdeveloped and emerging nations of the world, is more likely to be employed by governments than against governments—especially those of totalitarian, primitive or...
The study of terrorism prepared by the United Nations Secretariat notes that the term "terrorism" originally applied "mainly to those acts and policies of Governments which were designed to spread terror among a population for the purpose of ensuring its submission to and conformity with the will of those Governments," but concludes that the term is now limited to the actions of individuals. During the United Nations debates on this subject, a substantial number of states refused to accept such a narrowing either of the term or of the activities which the international community should seek to control. The remarks of Ambassador Farah of Somalia on this point are illustrative:

The General Assembly must view this question of terrorism with a sense of historical perspective. While the world organization has a duty to use the peace-keeping machinery at its disposal to deal with all forms of violence, including international terrorism, it must be realized that this phenomenon is not new; it has only been brought closer home because a world which had accepted violence and terror as the natural lot of the poor, the weak, and the oppressed, is shocked to see these evils applied to the rich and successful.

Though these comments may overstate the element of hypocrisy somewhat, they do emphasize the critical nature of the scope of the terrorism issue. For a definition of terrorism that casts its net too narrowly will fail of support as surely as one that casts it too broadly. It should not be forgotten that efforts to secure acceptance of a Draft Code of Offenses Against the Peace and Security of Mankind have themselves regularly foundered on the rocks of defining...
"aggression." And the issue of controlling terrorism has all the earmarks of succumbing to the same fate, since the debate over nomenclature and scope of "terrorism" goes to the ultimate issue of how far international organizations may involve themselves in "domestic" conflicts, and to the dismal issue of how competent the United Nations in particular is at resolving "international" conflicts.

The latter issue dovetails with the first of the possible results of the study of "causes" mentioned above, in relation to terrorism conducted by Palestinian guerrillas. Deplorable and inexcusable though the Lod, Munich and Khartoum murders are, it is not inconceivable that there will be other such incidents so long as the Palestinian "question" goes unresolved, or worse, goes unnoticed while some future resolution of the Arab-Israeli conflict is consummated.

The bitter dedication of the Palestinians to their cause, which they perceive as being ignored by the great powers and betrayed by some of the Arab states is immune to pity, immune to deterrence. So dedicated are the Palestinians, the


In 1957, the General Assembly deferred consideration of the question of the draft code until it again considered the question of defining aggression, which was a significant element in many of the offenses within the draft code which was directed primarily at authorities of States. At the 23rd session of the General Assembly in 1968, the question was again raised and deferred pending some agreement on a definition of aggression. 23 U.N. GAOR, Annexes, Agenda Item No. 87, U.N. Doc. A/BUR/171 (1968); id., U.N. Doc. A/7250 (1968). See generally Ferencz, Defining Aggression: Where it Stands and Where It's Going. 66 Am. J. Int'l L. 491 (1972).

Shortly after the Khartoum murders, a Beirut newspaper with close ties to the Palestinians, carried a story quoting a Black September spokesman as follows: "This operation will teach the world to take our words seriously. We will not be double-crossed again or allow our demands to be the subject of bargaining." The Washington Post, March 14, 1973, at A21, col. 1. What they want, it should be remembered, is their land back from the Israelis—not just the right to live in Israel unmolested, but to have their own Palestinian state returned in the same condition it was before the Zionists "stole" it in 1947. Objective observers of the Arab-Israeli-Palestinian "conflict" have charitably described this incredibly involved legal, moral and emotional problem as both a battle of "rights versus rights" and, alternatively, "wrongs versus wrongs." The limbo of this problem has been described also in these words:

 Whatever the rights of the Israelis, Arabs once possessed Palestine. Whatever the rights of the Arabs, Israelis now possess it. Instead of ghettos, these camps. Instead of an identity, a diaspora. . . . But any new state for them would have to be at Jordan's or Israel's expense. The subject revolves, like history itself, looking for a solution, for a moral. The refugees remain where they are.


The Palestinians—with good cause—are concerned about being ignored in any ultimate settlement of the current dispute between the Arabs and the Israelis, and it is this fear which directly relates to the displays of terrorism which the Palestinians have used to keep themselves before the world's eyes. The Washington Post, March 14, 1973, at A21, col. 1; id., May 17, 1973, at F2, col. 1.
argument goes, there can be no respite from the cycle of terrorism and retaliation until the political questions are settled. This argument was articulated during the General Assembly in a particularly forceful manner by Ambassador Lopes of the Congo:

We cannot separate [the Palestinians'] actions from the circumstances that have engendered them. They were born in conditions that we have made favorable by ignoring their rights, by dissociating ourselves from their fate, and by throwing them into a ghetto like the dregs of humanity. If the Europeans of 1972 no longer blow up trains and bridges [like the Resistance], it is because their countries are free. Palestinians in a Palestine regained will go to the Olympic games, not to take hostages but to compete with other nations in the stadium, just as Palestinians in a Palestine regained will no longer have any reason to hijack aircraft.

Whether one chooses to agree with the Palestinians' cause or not is immaterial to an understanding of this influential perspective on the terrorism issue. What matters is that all states concerned about the terrible effects of Palestinian terrorism, must recognize that these acts cannot be dismissed simply as odious "common crimes."

In the present circumstances, they are acts of communication which are too costly and brutal to permit in the future, but which are also too important to ignore. They are as directly related to the Mideast conflict as any other outbreak of armed violence that has occurred in that arena, and should serve as a goad to achieving a peaceful solution of the entire problem, rather than as an excuse to sanction the Palestinian "question" out of existence.

Similarly, it is argued, terrorist acts by guerrilla movements in other parts of the world, should be recognized not as a merely vicious abuse of international lines of communication and diplomacy, but rather as an anguished outcry by patriots who are themselves abused by governmental repression which violates the most sacred standards of human conduct.

Pointing to studies of the systematic use of torture by certain regimes in Latin America, Africa and Asia, to reports of wide-scale violations of human rights

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58See note 38 supra.
60The study prepared by the Secretariat on the terrorism issue points out:
A terrorist act focuses world attention upon the terrorist and upon any cause he may claim to represent. In these circumstances, some such acts—which . . . cannot possibly by themselves effect radical social changes—are really acts of communication.
61At a panel in New York City, officials of Amnesty International charged that the use of torture by governments against political prisoners was growing, and has reached "epidemic" proportions. They concluded, from evidence gathered throughout the world, that at least 60 governments were
in Israeli-occupied territory,\textsuperscript{62} and to the continued existence of remorseless and unremitting racism in Rhodesia and South Africa, many states have suggested that it is the coldest and most self-serving sort of cynicism for the United States to inveigh against “exporting” terrorism,\textsuperscript{63} while ignoring equally reprehensible acts of home-grown, official “terrorism.”\textsuperscript{64} The viewpoint of these states can be gleaned from the comments of Ambassador al-Khalifah of Bahrain on the floor of the General Assembly:

It is not our intention to condone terrorism or acts of violence, which are alien to our history, civilization and culture. But while studying the underlying causes, we should avoid applying double standards and not allow this item to be used as a means of undermining liberation movements, challenging basic human rights, or exonerating from blame those States which, by their disregard of political and human rights, have driven some people to despair.\textsuperscript{65}

Once again, to understand this perspective on the terrorism issue, one need not accept the assertions of violations of human rights as true. If they are true, then it would seem to be only elementary justice for the United Nations to strive to establish some effective means of peaceful redress when all legitimate internal means fail. None of the nations that have spoken to this issue have sought to hold a brief for terrorism itself; although a pragmatist might acknowledge the undoubted effectiveness of terrorism in contributing towards revolutionary political change\textsuperscript{66} and an ideologue might accept the myopic thesis that the end

\textsuperscript{62}Ambassador Amerasinghe of Sri Lanka, the Chairman of the Special Committee on Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, made these comments on the floor of the General Assembly:

I have been deeply disturbed by the attitude of many Members of this organization when the reports of the Special Committee are considered, Members who think it fair and proper to abstain on resolutions protesting against unmistakable and proven violations of the human rights of the populations of the occupied territories, but find themselves suddenly roused out of their torpor by the senseless savagery of Munich and Lod Airport. Had this Organization acted in a responsible manner, Munich and Lod would not have stained the pages of contemporary history.

\textsuperscript{63}John Norton Moore, the author of the United States draft convention on terrorism, see note 18 supra, has described its function as follows: “the Convention focuses on the common interest of all nations in preventing the spread of violence from countries involved in civil or international conflict to countries not a party to such conflict.” Address by John Norton Moore, American Society of International Law meeting, April 12, 1973. The clear intent is not to peer behind the domestic violence at all. Whether such a view is correct or not is, of course, arguable.

\textsuperscript{64}“The United States, for example, abstained in the recent Security Council vote censuring Israel for its brutal, illegal attack on the apartment of guerrilla leaders in Beirut. See note 38 supra.

\textsuperscript{65}“Terror was employed tactically in 50 of 61 insurrections [between 1907 and 1947] analyzed. . . . Perhaps terror is most popular as a weapon of nationalist revolutionaries. . . . The terrorist in nationalist struggles often becomes glorified as a hero or martyr.” H. CHISHOLM, THE FUNCTION OF
justifies the means.67

The fears expressed by the United States and others notwithstanding,68 there appears to be an astonishingly universal acceptance of the notion that all is not fair in love and war—that certain tactics, even in pursuit of the most honorable goals, are unacceptable. But what the United States seems to have misunderstood is that a majority of the nations of the world insist that this universal normative value actually be made universal, and be applied evenhandedly if it is to be applied at all. To these states, it is as important that fair means be exacted from all parties to armed conflicts—domestic or international—both those resisting wars of national liberation as well as those waging them.

This goal is a difficult one to reach, and the mechanism by which to accomplish it is as yet not readily at hand. But it is likely that it will not be the sort of constricted, seemingly one-sided convention proposed by the United States in the United Nations last September. Ultimately perhaps, the United Nations should strive toward a broad-spectrum convention on human rights, defining specific crimes of international significance such as the Draft Code of Offenses,69 enforceable against both individuals and governments in an International Criminal Court, such as that proposed by a special United Nations committee in 195170 or the one devised to accompany the Terrorism

Terror and Violence in Revolution (1948) (unpublished thesis in Library of Congress). While noting that merely indiscriminate terror is counter-productive, several analysts have recognized that selective terrorism can disrupt governmental control over the citizenry, cause citizens to lose confidence in the government, publicize the cause, and, if aimed at despised elements of society, cause the terrorists to appear as liberators. See A. Molnar et al., Human Factors Considerations in Undergrounds in Insurgencies (D.A. Pamphlet 1966) at 169 et seq.; Silverman & Jackson, Terror in Insurgency Warfare, 50 Military Rev. 61 (1971); Thornton, Terror as a Weapon of Political Agitation, in Internal War 81 (Eckstein, ed. 1964).

6See L. Trotsky, The Defense of Terrorism (1961). Trotsky points out in this seminal essay:

A victorious army generally destroys only an insignificant part of the conquered army, intimidating the remainder and breaking their will. The revolution works in the same way: it kills individuals and intimidates thousands.

Id. at 63.

6The comments of the United States and other nations, after the vote on G.A. Res. 3034, were extremely pessimistic and ominous. The statement of Ambassador Longerstaey of Belgium is characteristic:

What the co-sponsors of the draft resolution just adopted wanted was to take a step backwards, to abrogate principles acknowledged many times by the United Nations family. They wanted to abrogate the prohibition against the taking of hostages, acts of violence intentionally carried out against civilians who take no part in existing conflicts; they wanted to prevent condemnation of the export of such actions to the territories of third countries.


6Though the draft code is presently limited to the acts of governmental authorities, see note 53 supra, as the study prepared by the Secretariat points out, there is no necessity to limit a code of international crime to these sorts of individuals. U.N. Doc. A/C.6/418 (1972) at 26.

Convention of 1937. 71

More modestly, it might be wiser to move towards bringing guerrilla activities under international conventions on the laws of war—both for protections and for controls. 72 Only by convincing the revolutionary movements of the present day to limit their tactics to "acceptable" ones will the terrorist threat pass away from innocent persons, but this will never occur unless the international community convinces or coerces the target governments to abide by the laws of warfare, the Geneva 73 and Hague 74 conventions, Articles 2(4) and 51 of the United Nations Charter. 75

The potential success of such efforts can only be speculated on, but it is clear that the current initiatives of the United States can never receive enough constitutionality, authority and power over states, selection of prosecutors, execution of sentences, appellate review, substantive jurisdiction, and penalties as well as issues of how it would be set up and funded, see Wright, Proposal for an International Criminal Court, 46 Am. J. Int’l L. 60 (1952); Liang, Notes on Legal Questions Concerning the United Nations, id. at 89; Klein & Wilkes, United Nations Draft Statute for an International Criminal Court: An American Evaluation, in Int’l Crim. L. 526 (Mueller & Wise, ed. 1965); Bridge, The Case for an International Criminal Court and the Formulation of International Criminal Law, 13 Int’l & Comp. L. Q. 1255 (1964); Wilkes, Courts of International Criminal Jurisdiction, in World Peace Through Law 792 (1967); Sundberg, The Case for an International Criminal Court, 37 J. Air L. & Comm. 211 (1971); Golt, The Necessity of an International Court of Criminal Justice, 6 Washburn L.J. 13 (1966). One obvious and enormous advantage of enforcing an international anti-terrorism convention through an international court would be the opportunity to "break" the political cycle by resorting to neutral judges. This could well be a useful alternative to "host" states, of terrorists who certainly don’t want to return "allies" to a hostile victim nation, and who may be reluctant to prosecute the terrorists domestically for local political reasons.

"See note 40 supra. Many of the articles listed in note 70 supra also discuss the international court proposed in the 1937 Convention.

* Ultimately, it is arguable whether the nations of the world truly desire to regulate themselves through international mechanisms, but the advantage of attempting to bring guerrillas under the laws of war is that there is a quid pro quo here where there was none for the guerrillas in the United States approach. See Lawrence, The Status under International Law of Recent Guerrilla Movements in Latin America, 7 Int’l Law. 405 (1973); Schwarzenberger, Terrorists, Guerrilleros and Mercenaries, 1971 Toledo L. Rev. 71. In 1972, the International Commission of the Red Cross submitted a draft article to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law which would have accorded guerrilla forces the protection of the Geneva Conventions. There was substantial debate over the desirability and effectiveness of such a provision, and no conclusion was reached by this conference. Report of the Secretary-General, Human Rights in Armed Conflicts, U.N. Doc. A/8781 (1972) at 55-57, 86-87. The General Assembly voted to place the general subject of human rights in armed conflicts on the agenda for the 28th session and urged governments to work with the Swiss Federal Council, which is the depository of the Geneva Conventions, in setting up and successfully concluding a diplomatic conference on the subject. G.A. Res. 3032 (XXVII) (January 23, 1973).


support to become effective. For as long as there are revolutionary movements, struggling against what some may consider injustice, there will in the present world be nations which will support such movements and provide assistance and asylum to their members.

As the current debate on terrorism progresses at the United Nations, therefore, it would not be inane to suggest that the members of the United States delegation take time to view a new motion picture by writer-director Costa-Gavras, entitled *State of Siege*, which they might usefully juxtapose with their past experiences, thereby gaining an additional perspective on the pathetic issue of terrorism. Rightly or wrongly, though Art may indeed mirror Reality, when it comes to legal matters the former seems seldom in the past to have influenced the latter.

For all the bitter parody of its interminable lawsuits, *Bleak House* did nothing to improve probate litigation in Victorian England; nor has Albert Camus' metaphysical dissection of proof in *The Stranger* found its way into evidentiary treatises. Yet, in an age when science and logic have left universal answers to ultimate questions as elusive as ever, fiction may sometimes move a person to understanding more effectively than mere scholarly musings or white-papered reports.

In his film, Costa-Gavras takes the factual framework of an actual occurrence—the kidnapping and murder of an American A.I.D. official by Tupamaros guerrillas in Uruguay in 1970—and elucidates the moral dilemma that lies at the very heart of the issue of political terrorism. Costa-Gavras the artist interposes the point of view of the terrorists—who have been hunted, imprisoned and brutalized for trying to achieve reforms through democratic means—between the audience and its normal object of sympathy, the victim.

Costa-Gavras shows us ordinary, just men turned into rebels because of their treatment at the hands of unjust, venal tyrants. Faced with such a ruthless foe, the would-be reformer comes finally to his own crisis of conscience: the anguished and irreversible choice between giving up his worthy ends or resorting to unworthy means. Confronted by such a savage Hobson's choice, who is to say which is the better, which the worse?

This is the dilemma. To many of the Third World nations, it is a real one, and in calling attention to it they have repudiated the short-sighted efforts of the United States to forge an international convention whose only real effect would have been to foreclose one horn of the dilemma, while leaving the luckless

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76C. Dickens, *Bleak House*
77A. Camus, *The Stranger*.
78The guerrillas demanded the release of 150 prisoners who were apparently not "political" prisoners as such in return for the life of Dan A. Mitrione, an advisor of the Uruguay police forces. When the government rejected the demand, Mitrione was shot. U.S. *News & World Report*, August 24, 1970, at 22.
reformer still impaled on the other. The irony of this prospect would not have been lost on Jean Valjean.