

TERRORISM VERSUS LIBERATION MOVEMENTS IN INTERNATIONAL LAW

Prof. Dr. Türkkaya ATAÖV

I. A MATTER OF DEFINITION :

"Terrorism" has no completely accepted definition.¹ An attempt to define it was made in 1937 when the League of Nations formulated a Convention² against terrorism. According to Art. 1, acts of terrorism were "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or the general public". The United Nations has been unable to agree on a definition of the term.

Although it is difficult to use the term accurately within a legal context, "the man in the street" has a fairly well concept in his mind. It implies a defiance of law; it is a violent conduct directed against a person, a group of persons or the representatives of an authority such as a State,

¹ Gaston Bouthoul, "Definitions of Terrorism", *International Terrorism and World Security*, David Carlton and Carlo Schaerf, eds., New York, John Wiley and Sons, 1978, pp. 50-53; John Dugard, "International Terrorism: Problems of Definition", *International Affairs*, London, Vol. 50, No. 1 (January 1974); J.B.S. Hardman, "Terrorism", *Encyclopedia of the Social Sciences*, Vol. XIV, New York, Macmillan, 1964, p. 576. Two bibliographical studies: August Norton and Martin Greenberg, *International Terrorism: An Annotated Bibliography and Research Guide*, Boulder, Colorado, Westview, 1980; Edward Mickolus, *The Literature of Terrorism: A Selectively Annotated Bibliography*, Westport, Connecticut, Greenwood, 1980. Also: Walter Laqueur, *Terrorism*, London, Abacus, 1980; Yonah Alexander and Kenneth A. Myers, eds., *Terrorism in Europe*, London, Croom Helm, 1982; Richard Clutterbuck, *Guerillas and Terrorists*, London, Faber and Faber, 1977; Paul Wilkinson, *The New Fascists*, London, Grant McIntyre Ltd., 1981; James Adams, *The Financing of Terror*, London, the Adam Partnership, 1986; Jan Schreiber, *The Ultimate Weapon: Terrorist and World Order*, New York, William Morrow and Co., 1978, pp. 20-37; Lawrence Freedman et al., *Terrorism and International Order*, London, Routledge and Kegan Paul, 1986; L. A. Madjaryan, *Terrorizm: Pravda i Vımicel*, Moskva, Yuridicheskaya Literatura, 1983.

² For this and other Conventions on terrorism, see: Jonah Alexander et al., eds. *Control of Terrorism: International Documents*, New York, Crane, Russak, 1979.

planned to intimidate or coerce the latter to meet the demands underlying the terrorist act.

Even if it has a long-term objective, an act of terrorism has an immediate and a limited target, such as "removing" someone, obtaining the release of a prisoner, wringing ransom, gaining publicity, provoking reprisal or breaking public order. One reason for the difficulty in defining it stems from the fact that it may be committed for several purposes. Even after an operational definition, it is necessary to differentiate between various types. The difficulty that surrounds definition presents itself again in dealing with typologies.

In spite of the hard task, terrorism should not be considered as a "matter of opinion". Only "hostile" terrorists cannot be labeled as such and put together with all other opponents, including those who do **not** advocate terrorism. Such subjectivity befalls the dilemmas concerning terrorism.³

A short reference to the development and the internationalization of the problem may be appropriate. Although terrorism is a very old form of violent behaviour, it is becoming an increasingly important element of world politics. The dominant form of international terrorism in the early post-World War II years was the so-called "revanchist" terrorism. Its protagonists were members of extremist emigrant groups who had found refuge in different Western countries. Although the immediate targets were disturbed, events such as the storming of the Rumanian Legation in Berne in 1955 did not capture the imagination of the world. As it was true in the case of the Croatian hijackers, many of the terrorists of that decade were driven by fantasies; there was almost no evidence that the Croatians wanted independence.

Another type of international terrorism which emerged in the postwar years was the so-called "radicalism", the roots of which may be seen in anarchism and adventurism. This type of terrorists appeared to believe in desperate destruction as an alternative to political methods of opposition to the status quo. It is a petty-bourgeois phenomenon that embraces some young people, who may be outcasts in societies' productive and cultural life. Sometimes unemployed, they find themselves in the midst of a crisis of moral values. In most cases, much less than one percent, who identify with a movement, pretend to talk for all. It is their isolation

³ Some books don't mention certain well-known incidents of terrorism. For instance, Claire Sterling's *The Terror Network* does not refer to the bomb explosion at the Bologna Railway Station (killing 84) and a similar event in Munich (killing 12 and wounding 215).

from the overwhelming majority that pushes them to violence. Disregarding the laws of social development, they glorify the subjective factor and "play politics and revolution". Like the alchemists of old ages, the so-called "right" and "left" terrorists expected miracles from bombs and assassinations. But their "opposition", not only had no prospects, but also discredited the efforts of social forces which could otherwise achieve their goals. By reducing politics to criminal actions and by accepting violence as the method of struggle, this group of terrorists of our day disorganize the forces of change.

Another kind of international terrorism seeks to present itself as an instrument and a component part of a national liberation movement. It is trying to derive its justification from the understanding that the struggle for such an end is a form of expression of the lawful right of peoples to self-determination. It is wrong to place the liberation movements on the same level with terrorist acts. The former upholds the destiny of an entire nation. This is an objective diametrically opposite to that of a terrorist.

One can safely join the assumption that terrorism stems from the failure of its perpetrators to develop sufficient strength to present their case in a conventional manner. But it is no longer an isolated act; it has reached new dimensions. It may be unnecessary here to refer to various terroristic acts, which would make up a very long list. One may be content by stating that since the late 1960s, there has been more and more of alarming news about diplomatic missions attacked, internationally-protected persons kidnapped, aircraft hijacked, trains derailed, banks robbed, some world leaders (considered "undesirable" by certain circles) eliminated, raids staged against offices, parcel bombs exploding and theaters and pubs bombed. A "war" is being waged by tiny "platoons" of fanatics bearing strange devices. More people may regularly be killed in car accidents than in terrorist incidents. But in the case of terror, each death is a direct affront to normal life. Direct damage caused by such acts runs into billions of dollars. The declared ransom alone for people kidnapped total a few hundred million dollars.

In recent years, a new dimension was reached by the prominence of terrorism, arms smuggling and the marketing of narcotics. The money connected through donations and armed robbery is sometimes inadequate. There is some evidence as well as publications on the connection between terrorism and illegal narcotic traffic.⁴

⁴ For instance: **International Terrorism and the Drug Connection** (hereafter **Drug Connection**), Ankara, Ankara University Press, 1984.

II. THE INTERNATIONALISATION OF THE PROBLEM :

The internationalisation⁵ of the problem is associated with the changes in methods and the extension of zones of action. Although **not** a universal phenomenon encompassing the whole of mankind and **not** the predominant form of all conflicts of our epoch, terrorism is expanding by virtue of its brutality, number of victims, geographical range and media effects. The statement of the President of the Paris Court, set up in January 1984 to try the Armenian terrorists who had attacked the Turkish Consulate, to the effect that "everyone was more or less a terrorist" was not true then and is less true now.⁶

It is obvious that terror threatens to become institutionalized. Contacts and ties between political extremists in different countries are multiplying. The "right" and "left" extremist organizations in various places are giving each other practical assistance, providing shelter for terrorists who are on the run, smuggling arms and jointly planning operations. Although it would be wrong to assume that a uniform European terror organization exists, there is at least a selective cooperation, such as the one between **Action Directe** (France), **Rote Armee Fraction** (F.R. of Germany) and **Cellules Communistes Combattants** (Belgium), along with terrorist groupings in Greece. It has outgrown the confines of individual countries and can no longer be viewed in terms of sporadic actions on the part of desperate individuals.

Terrorist methods are also becoming more sophisticated.⁷ Technical advancement created the possibility to develop weapons enabling the use

⁵ B. Jenkins, *International Terrorism: A New Mode of Conflict*, Los Angeles, Crescent, 1975; Jonah Alexander, ed., *International Terrorism: National, Regional and Global Perspectives*, New York, Praeger, 1976; Benjamin Netanyahu, ed., *International Terrorism: Challenge and Response*, Proceedings of the Jerusalem Conference on International Terrorism, Jerusalem, the Jonathan Institute, 1981 (hereafter Jerusalem Conference); Paul Wilkinson, *Terrorism: International Dimensions*, London, Institute for the Study of Conflict, 1979.

⁶ *Le Figaro* editorial was prompt in making the point: "In France, the Armenians are absolutely free to militate in favour of their cause. They can create their associations, organize their reunions and demonstrations, print their own papers and use the television. Nothing can justify terrorist acts against the Turkish Government, perpetrated on our soil. One fails to understand how a high magistrate can excuse, from the very beginning, an act which is nothing but criminal". Max Clos, "Le Procès des Arméniens: perversion de l'esprit", *Le Figaro*, Paris, janvier 26, 1984, p. 1.

⁷ Johann Most invented the letter bomb and advocated mass slaughter in public places. Frederic Trautmann, *The Voice of Terror: a Biography of Johann Most*, Westport, Conn., Greenwood, 1980.

of newer forms of terrorist devices capable of destroying designated targets. Explosives enhanced with cylinders of gas or remotely set off are examples of technical innovation. About 80 people died and almost 200 were badly injured as a result of bomb explosion at the Bologna railway terminal (1980). The U.S. Embassy in Beirut was practically destroyed by a vehicle bomb (1983). Another attack, a few months later, almost succeeded in destroying the U.S. Embassy in Kuwait. An Armenian attack at the Oriy Airport (Paris, 1983) killed eight and wounded about 60.⁸ 31 people were injured in an attack on an American department store in Frankfurt. Such acts stun one with their utter brutality, their wanton disregard for the rights of innocent bystanders.

There are some writers who consider the possession of nuclear arms and the eventuality of their being used as acts of terrorism.⁹ The terrorists have attacked nuclear power plants in Argentina, France and Spain. Some threatened to use chemical munitions. There has been a case of iodine radio-isotopes spreading on a train in the Federal Republic of Germany.

Will terrorists go nuclear?¹⁰ One can think of several forms nuclear terrorism can take. Terrorists may steal a nuclear material and offer it back for ransom. They may seize a nuclear facility. They may sabotage a nuclear reactor, causing radioactive fallout. New terrorist groups may be inclined to use nuclear means to achieve their aims. Their demands would be commensurate with the magnitude of the threat. A so-called "Armenian Scientific Group" claimed that it had small nuclear devices at its disposal and could destroy Turkey's largest cities.¹¹ The actions of terrorists are sometimes limited by political calculations, but they may be brutalized by the nature and length of the struggle, making killing easier. Or their lack of success may call for desperate measures. Governments should unite in acting quickly to prevent new and more lethal weapons from falling into their hands.¹²

Terrorism, then, is increasingly assuming military dimensions. And with the help of a sponsoring or a sympathizing state, small groups of

⁸ **Terrorist Attack at Orly: Statements and Evidence Presented at the Trial, February 19-March 2, 1985**, Ankara, Faculty of Political Science, 1985. Also available in French, Spanish, German, Italian and Arabic.

⁹ For instance: Louis René Beres, **Terrorism and Global Security: the Nuclear Threat**, New York, Westview Press, 1979; Paul Leventhal and Yonah Alexander, eds., **Nuclear Terrorism: Defining the Threat**, Washington, Pergamon-Brassey's, 1986.

¹⁰ Brian M. Jenkins, "Will Terrorists Go Nuclear?" *Orbis*, Philadelphia, Vol. 29, No. 3 (Fall 1985), pp. 507-515.

¹¹ Quoted in the Turkish Armenian daily *Marmara*, Istanbul, January 14, 1984.

¹² Edward Teller, "The Spectre of Nuclear Terrorism", *Jerusalem Conference*, *op. cit.*, pp. 141-145.

terrorists can be extraordinarily destructive. The issue cannot be reduced to the terrorism of a country's adversary or enemy.

One other aspect that helps to "internationalize" the issue is the media that the terrorists have been able to use to mobilize public opinion.¹³ A lot has been written about the "information explosion" which one is witnessing today. The discussion over the question of how the democratic societies should respond to violence is most timely.¹⁴ One certainly does not want to "throw out the baby with the bath water", but ways have to be found to starve the terrorists of the "oxygen of publicity". What purpose does the information now disseminated in the world on an unheard-of-scale serve? Does it promote the progress of human society or does it make violence a main element of its content? Noone would have heard of the *Hrvatsko Revolucionarno Bratstvo* and their "case" had the international media not placed them on the headlines. Terrorism is never justifiable whatever the so-called "provocation".¹⁵

III. THE NEED TO REACT :

International terrorism must be resisted by all legal means. It is hoped that the international community reached such a stage of perceptency that attempts to impose a minority opinion is looked upon with disfavour. Anyone can be a victim by accepting the "wrong" post abroad, by passing in front of the "wrong" embassy, by opening the "wrong" mail or by taking the "wrong" train or plane. The world should outlive the implication, "if we kill, it is your fault!"

Any appropriate response involves the cooperation of all countries. States may have different perceptions of what terrorism is or the threat may not be constant, waxing and waning creating further difficulties in coming to grips with it. But terrorism is warfare without territory, taking place worldwide.¹⁶ And modern man is one "in organizations".

¹³ Richard Clutterbuck, *The Media and Political Violence*, London, Macmillan, 1983; Philip Schlesinger, Graham Murdock and Philip Elliott, *Televising Terrorism: Political Violence in Popular Culture*, London, Comedia, 1983.

¹⁴ J. Bowyer Bell, *A Time of Terror: How Democratic Societies Respond to Revolutionary Violence*, New York, Basic Books Inc., 1978; Paul Wilkinson, *Terrorism and the Liberal State*, London, Macmillan, 1979; ———, *Terrorism versus Liberal Democracy: the Problem of Response*, London, Institute for the Study of Conflict, 1976; Richard Clutterbuck, *Living with Terrorism*, London, Faber and Faber, 1975.

¹⁵ Paul Wilkinson, "Can a State be 'Terrorist'?" *International Affairs*, London, Vol. 57, No. 3 (Summer 1981), p. 468.

¹⁶ Stephan Sloan, *The Anatomy of Non-Territorial Terrorism: An Analytical Essay*, Geithersburg, International Association of Chiefs of Police, 1978.

The international organizations that man has created disallow terrorism. It is prohibited under the United Nations Charter and is in contrast with the provisions of the Universal Declaration of Human Rights. There are a number of international documents designed to prevent and punish terrorism.¹⁷ They include multinational treaties (historical¹⁸ as well as contemporary,)¹⁹ international conventions,²⁰ draft treaty texts,²¹ U.N. re-

¹⁷ Apart from Jonah Alexander's *Control of Terrorism* (see *supra*, fn. 2) : Robert Friedlander, *Terrorism: Documents of International Local Control*, New York, Oceana, 1979; Robert Linke, *International Cooperation in the Fight against Terrorism*, Strasbourg, 1980; Alona E. Evans and John F. Murphy, eds., *Legal Aspects of International Terrorism*, Lexington, Mass., Lexington Books, 1978; Jordan J. Paust, "A Survey of Possible Legal Responses to International Terrorism: Prevention, Punishment and Cooperative Action", *Georgia Journal of International and Comparative Law*, Vol. 5 (1975), pp. 434-435.

¹⁸ Treaty for the Extradition of Criminals and for Protection Against Anarchism, Mexico City, January 28, 1902; Police Convention, Buenos Aires, February 29, 1920; Agreement Concerning Mutual Defense Against Undesirable Foreigners, Quito, August 10, 1935; Convention for the Prevention and Punishment of Terrorism, Geneva, November 16, 1937; Convention for the Creation of an International Criminal Court, Geneva, November 16, 1937.

¹⁹ The European Convention on Extradition, December 13, 1957, and its additional protocols; the European Convention on Mutual Assistance in Criminal Matters, April 20, 1959, and its additional protocol; the Convention on Offences and Certain Other Acts Committed on Board Aircraft, September 14, 1963; the European Convention on the International Validity of Criminal Judgements, May 28, 1970; the Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970; the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, September 23, 1971; Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That are of International Significance, February 2, 1971; the European Convention on the Transfer of Proceedings in Criminal Matters, May 15, 1972; the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, December 14, 1973; the European Convention on the Suppression of Terrorism, January 27, 1977; the Convention on the Transfer of Sentenced Persons of March 21, 1983; the European Convention on the Compensation of the Victims of Violent Crimes, November 24, 1983.

²⁰ Apart from the Tokyo (1963), The Hague (1970) and the Montreal (1971) Conventions and the one on the diplomats (1973), *supra* fn. 19: the International Convention Against the Taking of Hostages, December 17, 1979; the International Convention on the Physical Protection of Nuclear Materials, March 3, 1980.

²¹ Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, Submitted by the United States to the United Nations General Assembly, September 26, 1972; Draft Articles Aimed at Cutting Off Air Service to States Which Do Not Punish Hijackers, 1972; Draft Convention Against the Taking of Hostages, Submitted to the United Nations by the Federal Republic of Germany, July 22, 1977.

solutions,²² resolutions of other international bodies²³ and other international documents.²⁴ Some of the outstanding ones will be elaborated below.

As to war-time, international law provides a set of criteria administering the prohibition and punishment of terrorist acts in respect to combatants, prisoners of war, civilians, guerillas, militias and cultural property.²⁵

A. The 1937 Convention :

The Convention for the Prevention and Punishment of Terrorism (1937) was the earliest international effort to combat terrorism. It was worked out as a result of certain dramatic events such as the assassination of King Alexander I (Yugoslavia) and Premier Louis Barthou (France) on October 9, 1934.²⁶ The Council of the League of Nations unanimously decided to institute a Committee of Experts to draft an International Convention to curb political terrorism. The Assembly of the League decided that the contemplated Convention should have the following objectives : (a) to prohibit any form of preparation or execution of terrorist outrages upon the life or liberty of persons taking part in the work of foreign public authorities and services; (b) to ensure the effective prevention of such outrages and, in particular, to establish collaboration to facilitate early discovery of such preparations; and (c) to insure punishment.

The international conference, meeting in Geneva (November 1-16, 1937) adopted two Conventions : One for the prevention and punishment of terrorism and the other for the creation of an international criminal

²² General Assembly Resolutions : 2551 (XXIV), December 12, 1969; 2645 (XXV), November 25, 1970; 3034 (XXVII), December 18, 1972; 31/102 (December 15, 1976; 31/103; December 15, 1976; 32/8, November 3, 1977; 32/147, December 16, 1977; 32/148; December 16, 1977. Security Council Resolutions : 286 (1970), September 9, 1970; June 20, 1972; 332, April 21, 1973 337, August 15, 1973.

²³ International Civil Aviation Organization Resolutions : April 10, 1969; July 7, 1971; June 19, 1972; February 28, 1973; August 20, 1973; August 30, 1973; September 21, 1973; February 27, 1975; September 13, 1977; September 13, 1977; December 2 1977.

²⁴ Bonn Summit Declaration, July 17, 1978; Council of Europe Declaration, November 4-5, 1986 and Resolutions.

²⁵ These criteria may be seen in Art. 6 (b,c) of the Charter of the International Military Tribunal, the Geneva Convention for the Protection of War Victims (1949), The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and the Convention on Non-Applicability of Statutes of Limitation to War Crimes and Crimes Against Humanity (1968).

²⁶ On May 10, 1923, the Soviet Ambassador V.V. Vorovsky was killed in Switzerland. On February 5, 1926, Soviet diplomatic couriers I. Machmastal and T. Nette were attacked in Latvia. On June 7, 1927, Ambassador P.L. Voikov was killed in Warsaw.

court. The former consisted of a preamble and 29 articles. It reaffirmed the principle of international law in virtue of which it was the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State. It defined what constituted an act of terrorism of an international character and comprised a commitment of the participating States to have their respective criminal legislation stipulate liability for any breach of the law within the meaning of the Convention. Constituting "acts of terrorism of an international character" were (a) any act causing death or grievous bodily harm or loss of liberty to Heads of States, their wives or husbands, persons charged with public functions; (b) destruction of, or damage to, public property; (c) act calculated to endanger the lives of members of the public; and (d) the manufacture, obtaining, possession or supplying of arms, ammunition, explosives or harmful substances falling within the Convention. Each of the offences was to be treated by the law as a distinct offence in all cases in order to prevent an offender escaping punishment. It emphasized that each party would provide the same punishment for the same acts. It provided for legislative and administrative measures to ensure the purpose of the Convention. It stipulated the order, method and form of exchange and cooperation between the Parties.

To summarize, the 1937 Convention contained well-elaborated individual provisions such as a definition of an act of terrorism with an international character; it assured the principle of inescapable punishment; it required cooperation for the application of the Convention; and it guaranteed its enforcement through appropriate legislation as well as administrative organisation. But it could not provide universal protection because it contained the right to "colonial reservation" (Art. 25), and it received only one ratification although signed by 26 States.

B. Conventions for Safer Air Services :

There has been an increase of acts against the safety of international air travel. Civil airlines have been subjected to hijackings, air traffic has been disrupted, people killed or wounded.²⁷ Although there is some evidence of decline in the number of overall incidents and in the percentage of successful hijacks, this has been offset by attacks on grounded aircraft and airport facilities. The aim of the hijacking is not only to seize the craft,

²⁷ James A. Arey, *The Sky Pirates*, New York, Scribner's, 1972; Peter Clyne, *An Anatomy of Skyjacking*, London, Abelard-Schuman, 1973; Alona E. Evans, "Aircraft Hijacking: What is Being Done", *American Journal of International Law*, Vol. 67 (October 1973), pp. 641-671; ———, "Aircraft Hijacking: Its Cause and Cure", *ibid.*, Vol. 63, No. 4 (October 1969).

but to use it, its passengers and crew as a weapon of coercion directed against certain governments.

Some attempts have led to large-scale loss of life. For instance, the *Sekigun* (Japanese "Red Army") attack at Lod Airport killed 25 and wounded 76 (1972). A grounded Pan American plane in Rome was attacked, involving 32 deaths and 18 wounded people (1973). When a hijacker reportedly exploded a hand-grenade, an Air Vietnam plane crashed killing all passengers (1974). An Air France airbus with 258 passengers were seized in Athens (1976). An Armenian terrorist attack at the Ankara Airport killed 9 and wounded 82 (1982). If it was a terrorist bomb that destroyed the Air India jet, then its 539 victims also fall within this category (1985). "Carlos" tried to destroy an El Al Airlines office in Paris from the outside by SAM-7 rockets.²⁸

It is difficult to draw a distinction between international and domestic hijacking incidents, because the passengers are likely to be international, and usually foreign authorities are also involved. There are inter-governmental negotiations pertaining to communications with the hijackers, landing permissions and extradition or punishment.

In the late 1960s, there seemed to be no defence against hijacking. A set of security procedures ensured some measure of safety. The task of searching every one of the millions of passengers per year to prevent a single weapon slipping through seemed impossible, but it was attempted and hijacking lessened.

International measures, concluded to counter the growth of the danger jeopardizing civil aviation, are the following three Conventions: (a) the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, September 14, 1963), (b) the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, December 16, 1970) and (c) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, September 23, 1971).

The least elaborated among the three is the Tokyo Convention. Before the 1970s, it was the only international document, providing in some measure, action to counter the rising incidents of aircraft hijacking. Although it was drafted in 1963, it came into effect on December 4, 1969. It applied in respect to acts done by a person on board of an aircraft registered in a Contracting Party, while that aircraft was in flight or on the surface of the high seas or in any other areas outside the territory

²⁸ Christopher Dobson and Ronald Payne, *The Carlos Complex: A Pattern of Violence*, London, Hodder and Stoughton, 1977, p. 233.

of any State. The deficiencies of the Convention comprised the absence of a definition of the **corpus delicti**, the failure to include domestic airlines, the absence of inescapable punishment and the qualification as criminal regardless of the motives of the offence.

Considering the deficiencies in the Tokyo Convention and the rising incidence of acts of unlawful seizure of aircraft, the General Assembly of the International Civil Aviation Organization (ICAO) passed a resolution requesting the ICAO Council to consider new measures to resolve the problem. The 24th Session of the U.N. General Assembly (1969) urged full support for the efforts of the ICAO. Consequently, a conference at The Hague adopted a new Convention. It defined any person who on board an aircraft in flight unlawfully seizing or attempting to seize an aircraft or an accomplice of such a person as one committing an offence. The Convention required the Parties to make the offence punishable by severe penalties. Its extension to domestic traffic should be regarded as a positive aspect, apart from setting out the **corpus delicti**. An important provision of the Convention is that it makes it imperative for the Parties in the territory of which the alleged offender is found, if it does not extradite him, to submit the case, without any exception whatsoever, to its competent authorities for the purpose of prosecution. The distinguishing feature of The Hague Convention is that it deals with the problem of hijacking of aircraft as such. It protects only an aircraft in flight. Further, it protects the aircraft only in the event of it being an object of an act of seizure. Moreover, this act is qualified as an offence only when committed by someone on board that particular aircraft. The Hague Convention, then, excludes all other acts which may also cause threats for civil aviation.

The Convention that the Montreal Conference adopted is directed not only against acts of seizure to use it as a transport vehicle, but also against acts of terrorism whether on the ground or in the air. What distinguishes the Montreal Convention from the Hague Convention is not only in scope, but also the presence of a provision, whereby the Parties shall endeavour to take all measures against the offences.

One cannot underestimate the importance of these three Conventions. They constitute the first stage in the development of an international régime for the control of hijacking. However, they do not resolve all issues pertaining to unlawful interference with air services. There are still some states which have not signed or ratified them. They do not encompass acts involving the destruction of aircraft parked out of service or airfield installations. Another deficiency is the absence of provisions to make punishable acts of violence in respect to airport ground personnel. The events at the Fiumicino Airport of Rome (1973) showed how

important it could be to have additional and more comprehensive provisions.²⁹ They also fail to provide an effective system of enforcement sanctions to ensure extradition, prosecution and punishment.³⁰

Suggestions have been made to overcome the impasse.³¹ The first step is to strengthen the international legal doctrine of state responsibility. Governments should toughen their own domestic procedures. Secondly, more bilateral pacts, on the U.S.-Cuba Hijack Pact (1973) model,³² may be signed. Thirdly, regional treaties on extradition, punishment and enforcement may also be realized. Fourthly, the existing Conventions on hijacking may be reinforced with the adoption of an enforcement sanctions convention. Fifthly, the trade unions and professional organizations in the aviation industry may threaten to boycott flights and technical services vis-a-vis the party which provides sanctuary to air terrorists. Suspending the air services is a concrete measure. Lastly, there is also the possibility of establishing an Air Crimes Commission with its own court and code.

All these counter-measures are essentially defensive. Hijacking is probably not a passing fashion. Although its frequency diminishes, some groups either successfully advertise their cause or receive huge ransom or realize the release of their colleagues.

C. Prevention of Crimes Against Internationally-Protected Persons :

In recent years, criminal acts have been directed against diplomatic agents.³³ By no means in all these cases the offenders have been detected

²⁹ A group of terrorists blew up a Pan-American airliner. They captured a Lufthansa airliner with passengers, airport officials and some policemen. They flew to Kuwait, where they were arrested. There were no provisions in the previous Conventions protecting airport officials.

³⁰ I.A. Shearer, *Extradition and International Law*, Manchester, Manchester University Press, 1971; M.C. Bassiouni, *International Extradition and World Public Order*, Leydon/Dobbs Ferry, Sijthoff/Oceana, 1974.

³¹ For instance; Wilkinson, *Terrorism and the Liberal State*, op. cit., pp. 221-224.

³² A U.S.-Cuba Hijack Pact, signed in February 1973, states that the signatories will either return hijackers or try them in their own courts. Although the agreement still leaves the signatories free to exercise their rights to grant political asylum, it has been effective in achieving its purpose.

³³ U.S., State Department, *Terrorist Incidents Involving Diplomats: A Statistical Overview of International Terrorist Incidents Involving Diplomatic Personnel and Facilities from January 1968 through April 1983*, Washington, D.C., 1983; Carol Edler Baumann, *The Diplomatic Kidnappings: A Revolutionary Tactic of Urban Terrorism*, The Hague, Martinus Nijhoff, 1973; M.F. Herz, ed., *Diplomats and Terrorists: What Works, What Doesn't: A Symposium*, Washington, Georgetown University, 1982; B.M. Jenkins, *Diplomats on the Front Line*, Santa Monica, Rand Corporation, 1982; ———, *Embassies Under Siege: A Review of 48 Embassy*

and brought to justice. In many instances, the official authorities have even failed to resort to proper action to prevent such criminal assaults. It is well-known that the practice of diplomacy between modern sovereign states is founded on reciprocity that emerged from the Peace of Westphalia (1684).³⁴ The present status of accredited diplomats under international law is that of specially protected persons. They are accorded more privileges and immunities than private individuals or other aliens. Hence, an attack against a diplomat is an offence, not only against domestic law, but against international law as well.

Such acts jeopardize the principle of inviolability of the person of the diplomatic agent or consular officers. This principle was formulated in Articles 22 and 29 of the 1961 Vienna Convention on Diplomatic Relations and Articles 31 and 40 of the 1963 Vienna Convention on Consular Relations as well as in a few thousand bilateral consular agreements. The inviolability of the representatives of the sending state and that of the members of the diplomatic staff of a special mission as well as the premises of that mission is envisaged by Articles 25 and 29 of the 1969 Convention on Special Missions.

Although diplomatic and consular law represents one of the oldest branches of international law, attacks on diplomats and their facilities became a significant part of terrorist campaigns, especially beginning with the late 1960s. In 1963, a terrorist group kidnapped a member of the U.S. Military Mission in Caracas (Venezuela); another was kidnapped a year later. However, both were released in a few days. Four years later, on the other hand, two American Military Attachés and some months afterwards, the U.S. Ambassador in Guatemala were killed.

It was in 1969 in Brazil that the terrorists successfully used for the first time the tactic of abducting diplomats to secure concessions. "MR-8" (**Movimento Revolucionario do Outubro 8**, the Revolutionary Movement of

Takeovers, 1971-1980, Santa Monica, Rand Corporation, 1981; Andrew Selth, *The Terrorist Threat to Diplomacy: An Australian Perspective*, Canberra, the Australian National University, 1986; ———, "Diplomats as Terrorist Targets: An Historical Overview", *Australian Foreign Affairs Record*, Vol. 56, No. 7 (July 1985), pp. 597-603; J.F. Murphy, "Report on Conference on International Terrorism: Protection of Diplomatic Premises and Personnel, Bellagio, Italy, March 8-12, 1982", *Terrorism*, Vol. 6, No. 3 (1983); H.F. Shamwell, "Implementing the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents", *Terrorism*, Vol. 6, No. 4 (1983); I. Stechel, "Terrorist Kidnapping of Diplomatic Personnel", *Cornell International Law Journal*, 5, 189 (Spring 1972).

³⁴ C.E. Wilson, *Diplomatic Privileges and Immunities*, Tucson, University of Arizona Press, 1967.

October 8)³⁵ demanded the release of political prisoners and the publication of their manifesto for the U.S. Ambassador's safe return. The foreign diplomat was released when the government in question agreed to the demands. It was apparently this success that induced the terrorists to try again. In 1970, the Japanese Consul-General in Sao Paulo, the Ambassador of the Federal Republic of Germany and the Swiss Ambassador (both in Brazil) were kidnapped and set free for the release of more political prisoners, the number generally rising.

The tactic of diplomatic kidnappings were resorted to elsewhere. The kidnappings of the U.S. Political Secretary in Jordan (1970), the U.K. Consul in Canada (1970), the German Honorary Consul in Spain (1970) and the Israeli Consul-General in Turkey (1971) took place outside Latin America. The murder of the F.R.G. Ambassador to Guatemala was significant for several reasons. It was the first time that the terrorists demanded money, the first time a diplomat was killed by the captors and the first time the receiving government was criticized for failing to protect a person with special immunities and privileges.

Beginning with the early 1970s, there was an increase of such incidents, with bomb attacks and seizures of diplomatic facilities overshadowing kidnappings. A significant new threat emerged when the Israeli Embassy in Bangkok was seized and its occupants held hostage. The Thai authorities persuaded the attackers to free their captives. But when a few months later, the Saudi Arabian Embassy in Khartoum was taken over and when demands were refused, the captors killed two U.S. diplomats and a Belgian diplomat. It is generally accepted that this initial attack set a pattern for other embassy or consulate seizures. The organized Armenian terrorist campaign against the Turkish diplomats and the diplomatic facilities began in 1975.

As both sending and receiving States took measures against kidnappings and seizures, the terrorists increasingly turned to personal attacks on diplomats. By 1981, more than three-fourth of the attacks were against individuals. Although attacks were carried out with hand-guns, bombs caused more casualties. The year 1983 witnessed a new development with the use of big vehicles filled with explosives and driven to targets, such as the U.S. Embassy in Beirut, causing the greatest damage.

The terrorists are not only attacking diplomatic targets more often, but also attacking diplomats of increasing number of States. The U.S. State Department lists incidents involving diplomats from 113 countries,

³⁵ A sub-group of ALN (Acao Libertadora Nacional, National Liberating Action). Carlos Marighela, *For the Liberation of Brazil*, Harmondsworth, Penguin, 1971.

the events occurring in 125 States.³⁶ Over the last decade and a half, more than one-hundred groups claimed responsibility for attacks on diplomatic targets. By doing so, the terrorists hope to register protests, induce certain responses, embarrass governments, attain the release of prisoners, guarantee greater publicity or win additional operating funds. Although most of the offences are committed with a view to derive political benefit, much blood is shed.

On account of attacks on diplomatic targets, the sending States have been compelled to divert resources to protect their missions abroad, and the receiving governments have been embarrassed because of their failure to properly protect the missions and their personnel. While some embassies turn into miniature fortresses, the receiving States shoulder expenses much beyond the normal amounts.

In response to 21 diplomatic kidnappings between 1968 and 1971, 17 of which took place in Latin America, the Organization of American States (OAS) formulated (1971) a Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance. This Convention was a precursor of the U.N. Convention on the protection of diplomats (1973). In terms of Latin American tradition, the 1971 Convention was a bold departure from it, since the Latin American countries have held to the principle of political asylum. Art. 2 stipulates :

“For the purposes of this Convention, kidnapping, murder and other assaults against the life or personal integrity of those persons to whom the State has the duty to give special protection according to international law, as well as extortion in connection with those crimes, shall be considered common crimes of international significance, regardless of motive”.

On December 3, 1971, the U.N. General Assembly requested the Secretary General to invite comments from members on the question of the protection of diplomats and asked the International Law Commission to study the subject as soon as possible. The members submitted their comments. An overwhelming majority stood for a special Convention to be adopted on that subject. The said Commission set up a working group, which held seven meetings before it could prepare its first report containing twelve articles. The Commission examined the second and third reports and adopted the draft articles.

Draft Art. 1 described an “internationally protected person” as a Head of State or a Head of Government, whenever he is in a foreign State, as well as members of his family who accompany him; any official of either

³⁶ *Terrorist Incidents Involving Diplomats, op. cit.*, p. 3.

a State or an international organization as well as members of his family. Therefore, the grounds for granting special protection for such people are, first, their status as official representative and, second, the fact that they perform the function imposed on them. Conversely, a diplomatic agent who is on leave in a State which is not an accrediting or receiving State will not be entitled to special protection. However, some members of the Commission argued that if the Convention aimed to discourage the attacks as such, the Convention had to cover the internationally protected persons, irrespective of whether they were on an official visit in a foreign State or not. The Commission concluded, however, that such an extension of rules would not be justified. On the other hand, immunities and privileges are accorded to a diplomatic agent by virtue of his occupation and passport, recognized by the host State as being of diplomatic character. By the very act of issuing such a passport, the accrediting State is asking for the extension of immunities and privileges during the given person's travels abroad. Since the main object of the draft was to render inescapable the punishment of the crimes against persons entitled to special protection, special protection here must qualify offences as criminal regardless of motive, choose maximum penalties under domestic law and ensure the inescapability of punishment.

Draft Art. 2 stated that a violent attack upon the person or liberty of an internationally protected person, or upon the official premises or the private accommodation; a threat or an attempt to commit such an attack; participation as an accomplice in any such attack was to be made by each party a crime under domestic law. Each party was to make these crimes punishable by severe penalties and was to take such measures as may be necessary to establish its jurisdiction over these crimes. Art. 2 refers to two different but inter-related questions: (a) that of delimiting the scope by defining the crimes the Convention is to be applied against; and (b) of specifying the competence of the parties in respect to criminal proceedings and punishment. Some members maintained that the articles pertaining to the criminality must be as specific as possible. The Commission used, however, the general expression of "violent attack". The commentary on this article states that examples of violent attack are the murder, wounding or kidnapping of an internationally protected person. An important provision of this article is that it reaffirms the generally accepted legal principle whereby it is the *intent* to commit an offence, rather than the reasons behind it, that is the determining factor. It should also be noted that, unlike The Hague and the Montreal Conventions and the Rome Draft which use the word "offence", the present article employs the expression "crime" and also underlines that the official status of the victim is a factor aggravating the guilt.

Draft Art. 3 intends to ensure more effective measures to prevent such crimes. It says that the parties shall cooperate, taking measures to preclude the preparation in their respective territories for the commission of those crimes and exchanging information and coordinating the taking of administrative measures.

Art. 5 concerns the immediate action to be taken when the offender is discovered on the territory of a party following the crime. This action is directed towards securing criminal proceedings or the extradition of the offender. Art. 6 declares that the party in whose territory the offender is present shall, if it does not extradite him, submit, without any exception and delay, the case to its competent authorities, for the purpose of prosecution. Yugoslavia claimed a more effective approach to the suppression of such crimes. Although it agreed with the view that request for extradition may be refused, provided that the State in whose territory the crime was committed and culprit was found instigates without undue delay legal proceedings against the said person, it suggested that when several states at the same time claim the right to extradition, this right should be granted to the State to which the victim of the crime belongs.

The 28th Session of the U.N. General Assembly adopted the Convention, enlarged from twelve to twenty articles with a Preamble added. This Convention corresponds to the view that the question of the protection and inviolability of diplomats and other persons entitled to special protection under international law is urgent and deserves most serious attention.

There are a few resolutions or declarations which express regret over violations of international law governing diplomatic relations. For instance, a U.N. General Assembly Resolution (January 30, 1981) deplores such violations and invites all States to report to the Secretary General infringements as well as the measures taken to bring to justice the offenders.³⁷ A NATO Declaration (December 11, 1980) expressed deep concern over the holding of U.S. diplomatic personnel in Iran.

Although improved security measures by certain States and the firm 'no ransom' policy by others have reduced the kidnap risk, diplomats are still vulnerable to assassinations and kidnapping attempts.

D. The 1977 European Convention :

Almost half of all the acts of terrorism committed in the 1970s occurred in Western Europe. To stem the wave of terrorism through improvements

³⁷ U.N., General Assembly, A/Res/35/168 (January 30, 1981).

in the performance of the police force and in legal machinery, some Western European countries set up special commando-type anti-terrorist groups. But the escalation of murders (Schleyer and Moro, for instance) induced those States to accelerate their cooperation. In April 1978, the nine Common Market countries as well as Austria and Switzerland reached an agreement on pooling their resources. France acceded to it five months later.

The European Convention on the Suppression of Terrorism was signed at Strasbourg on January 27, 1977.³⁸ It consisted of a Preamble and sixteen articles. As stated in the Preamble, the purpose of the Convention was to ensure that the perpetrators of acts of terrorism did not escape prosecution and punishment. It stressed that extradition was a particularly effective measure to achieve this result. It eliminated or restricted the possibility for the requested State of invoking the political nature of an offence in order to oppose an extradition request. This aim is achieved by providing that, for extradition purposes, certain specified offences shall never be regarded as "political" (Art. 1) and other specified offences may not be (Art. 2), notwithstanding their political content or motivation. The authors of the Convention believe that the system established by these two articles reflects a consensus reconciling the arguments put forward in favour of an obligation, on the one hand, and an option, on the other. They maintain that the solution adopted consists of an obligation for some offences (Art. 1) and an option for others (Art. 2).³⁹

The Convention has been criticized for containing loose definition of offences, leaving it open to arbitrary application. It does not also envisage cooperation of the parties in the suppression of the national or international neo-fascist and the "left" extremist terrorist organizations. Hence, it is not an adequately elaborated document with a view to standardize the principles of national law to prevent and punish terrorist acts of international nature. Finally, it is not a treaty on extradition nor one on mutual assistance in criminal matters. It is the general international extradition or mutual assistance agreements that remain valid in such cases, or the principle of reciprocity in their absence. However, Articles 3 and 8 contain a provision whereby extradition or assistance may not be denied on grounds that the crime is of a political nature. The Convention contains provisions permitting a State to refuse to extradite a terrorist. More importantly, it does not draw a clear line of distinction between a

³⁸ Council of Europe, *Explanatory Report on the European Convention on the Suppression of Terrorism*, Strasbourg, 1979.

³⁹ Hans-Jürgen Bartsch, "Das Europäische Übereinkommen zur Bekämpfung des Terrorismus", *Neue Juristische Wochenschrift*, 44 (2, November 1977), p. 1986.

terrorist act of international significance and one of a domestic character.

In the context of initiatives undertaken by the Council of Europe, the Committee of Experts, which had prepared the European Convention, continued examining further measures. "Recommendation No. R (82) 1", which was the result of this work, was adopted by the Committee of Ministers on January 15, 1982.⁴⁰ The Recommendation⁴¹ set out a number of measures which would contribute to developing international cooperation. It extended to three areas of cooperation, namely, the means of (a) rendering mutual judicial assistance simpler, (b) speeding up the exchange of relevant information and (c) coordinating prosecution and trial. In several respects, the Recommendation is complementary to the European Convention on Mutual Assistance in Criminal Matters. However, it is confined to setting out measures likely to improve cooperation between member states, but it does not indicate how these measures may be implemented at national level.

On November 4-5, 1986, the Ministers of the member States of the Council of Europe adopted a Declaration and three Resolutions.⁴² Apart from calling on members to adopt a policy of firmness in response to terrorists' demands based on blackmail, it requests them to influence any State supporting terrorist acts to refrain from doing so. "Resolution No. 1" recommended to entrust the closest counsellors of the Ministers responsible for combatting terrorism with a study of questions relating to the implementation of the Declaration and the Resolutions adopted at the 1980 Conference. The counsellors were to study appropriate ways of impeding the movements of terrorists from one country to another, the experience acquired in the field of investigation, existing national laws and their progressive harmonisation as well as the possibilities to unite in the struggle against terrorism. "Resolution No. 2" concerned adherence to international instruments. It recommended to the member States which have not yet done so to become parties to the relevant Conventions. "Resolution No. 3" concerned measures to counter terrorism involving abuse

⁴⁰ Other initiatives between the European Convention (1977) and the Recommendation were the Additional Protocol (1978) to the European Convention on Extradition (1957), the Additional Protocol (1978) to the European Convention on Mutual Assistance in Criminal Matters (1959), Declaration on Terrorism adopted by the Committee of Ministers (1978), Communiqués of the Committee of Ministers (1980 and 1981), Assembly Recommendations 852 (1979) and 916 (1981) and conference on the "Defence of Democracy Against Terrorism in Europe: Tasks and Problems" (1980).

⁴¹ Council of Europe, *International Cooperation in the Prosecution and Punishment of Acts of Terrorism: Recommendation No. R (82) 1*, Strasbourg, 1983.

⁴² Council of Europe, *European Conference of Ministers Responsible for Combatting Terrorism*, Strasbourg, November 4-5 1986, MCT (86) 3.

of diplomatic privileges and immunities. It stated that members would consider not accepting as a diplomatic or consular representative any person with regard to whom they have concrete information implicating him in an act of terrorism.

E. The 1979 Convention on Hostages :

World attention was drawn to the taking of hostages when a Lufthansa airliner was taken (1977) to the Mogadishu airport together with its passengers. Although there was in international law some proscriptions for specific circumstances,⁴³ there was a need for a uniform international convention against the taking of hostages. The U.N. General Assembly provided for an *ad hoc* committee (1976), which met from August 1 to 19, 1977. The Federal Republic of Germany brought before it a draft Convention, and the International Convention Against the Taking of Hostages, consisting of 20 articles, was adopted on December 17, 1979.

The Convention makes it imperative for the parties to prosecute or extradite any person committing an act of hostage taking and also to take appropriate measures of punishment. This Convention signifies a progress in international law in respect to resolving the question of hostage taking. The Preamble records that the parties consider it "urgently necessary" to develop international cooperation in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestation of international terrorism. The party in the territory of which the offender is found shall, if it does not extradite him, submit the case to its competent authorities. This ensures inescapable punishment. A request for extradition shall not be met if the party has substantial grounds to believe that the request has been made to punish a person on account of his race, religion, nationality, ethnic origin or political opinion or that the person's position may be prejudiced. The references to "political opinion" and "person's position" may be used as excuse to apply the Convention at will. It does not apply to hostage taking committed during armed conflicts as defined in the Geneva Conventions (1949) and the Additional Protocols, including that of 1977 (Art. 1/4), which refer to people fighting against colonial domination, alien occupation or racist régimes. Articles 5-7 and 10-11 encompass the details of cooperation.

⁴³ Art. 3 of the Third Geneva Convention for the Protection of War Victims (1949) forbids hostage taking during armed conflicts. There are similar bans in the Hague (1970) and the Montreal (1971) Conventions, in the Convention on the Prosecution and Punishment of Crimes Against Internationally Protected Persons (1973) and the U.N. General Assembly Resolution 2645 (25th Session).

The Convention is a significant legal instrument. A weakness is the absence of a special article for the suppression of terrorist organizations committing acts of hostage taking. One may add here that hostage taking occurs during the national liberation struggles, and it is sometimes exploited to disrepute the movement as a whole.

IV. THE NATIONAL LIBERATION MOVEMENTS VERSUS TERRORISM :

The rational of the international community supports the right of nations to freedom and independence from foreign domination. The collapse of the world colonial system and the emergence of dozens of newly independent states, inhabited by some two billion people, have not been brought about by "international terrorism". Many past examples may be given to the propensity to label one's rival or opponent as "terrorist". Contemptuous of the right of nations, some circles, not only try to portray the emancipation struggle as "terrorism", but also themselves resort to the use of force in opposing the national liberation movements. Indeed, they set out to achieve the impossible -to arrest the just and progressive changes in the world. The struggle for independence, on the other hand, constitutes the most glorious chapters of history. The striving to achieve self-government and self-reliance cannot be equated with terrorism. One cannot draw a parallel between these two different concepts. On the contrary, it is the legitimate right of a people which is very often violated by terroristic methods.

Secondly and consequently, no action or measure undertaken within the framework of curbing international terrorism should be directed against, or construed as a restriction of the legitimate struggle of emancipation.

Thirdly, it should also follow that the brand of international terrorism which prentends to be a vehicle of "emancipatory" endeavors is not connected with the right of peoples to necessary self-defence. Instead, it is a dangerous form of abuse of the anti-colonial and liberatory struggle; or it is an indication of a separate aim, with interests of its own. The so-called "anti-colonial terrorism" cannot be on a level with the goals of peoples fighting for national liberation. Such a movement does not endorse terrorist acts claiming human lives among innocent civilian populations either in the area of conflict or anywhere else. The struggle for independence should not be confused with terroristic undertakings.

Only a few decades ago, an overwhelming majority of mankind, as oppressed peoples, were depicted as an enormous mass, forever stagnating

in apathy and submissive indifference. Thus ruled as late as 1939, the situation changed radically after the Second World War. The colonial peoples wrested their independence in various ways, including armed struggle and methods of political pressure. But whatever the concrete means, the basis of liberation has been a struggle of the broad masses of people. Although the process of decolonization was bloody in some countries and nonviolent in others, the major part of humanity has regained its spiritual, intellectual and physical potential with the emergence of millions of people from domination to independence.

It is well-known that the United Nations' role in decolonization is written into its Charter, which contains three chapters dealing with colonial territories. The struggle waged against colonialism and racism is absolutely legitimate from the point of view of international law. The U.N. has repeatedly reaffirmed the inalienable right of the colonial nations to struggle against those which suppress their striving after freedom and independence.

Under the aegis of the Trusteeship Council, 11 territories had been placed under the international Trusteeship System, and there were, in addition, more than 74 dependent territories listed by the General Assembly as non-self-governing. In an effort to speed up decolonization, the G.A. adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples (December 14, 1960). Perhaps no other U.N. document has had greater impact around the world. It became the basis for continuing interest in ending systems of colonial oppression. To oversee implementation of the Declaration, the G.A. also set up a Special Committee (1961). The Declaration on the Strengthening of International Security, adopted by the 25th G.A., reads that all states should render help to the U.N. and also to the oppressed nations in their legitimate struggle.

In over two decades after the adoption of the Declaration on decolonization, the world stands politically transformed. The colonial system is now virtually non-existent in the classical form. Since the founding of the U.N., more than seventy former dependent territories have become Members of the Organization, with, for example, the African group increasing its membership from 3 in 1945 to 50 in 1984 and the Latin American group, with the addition of the Caribbean States, reaching 33 in 1984.

Many of the former colonial societies moved into the second phase of their liberation movement. In terms of its historical importance, this second stage may be compared with the disintegration of the colonial system. This is a complex process, likely to continue for a long time yet. It directly affects the structure of economic relations in the world today, the existing

division of labour and the positions of certain privileged forces. Since the end of the 1960s, a new correlation of forces within the national liberation movement has been taking shape through changes in the social structures. Gradually, the struggle around issues of social progress assumed more and more the form of confrontation. Today the term "national liberation" is the sum-total of the existence and action of various patriotic forces, which set for themselves important tasks in opposing what they call "neo-colonialism".

The role of the newly independent countries in international relations has grown. They are no longer passive objects of others; they have become increasingly important actors. The majority of them are defending their rights with mounting energy. Being the biggest source of many raw materials, the young states want to make independent decisions concerning their economic present and future. With this end in mind, some pursue isolated actions and some cooperate in concerted campaigns designed to do away with unequal relations and establish a "new international economic order".

The efforts of the U.N. helped arouse world-wide sympathy for these aims. The application of the principles inherent in the U.N. resolutions pertaining to the relations with the emergent states means the following: (a) to respect their national independence and territorial integrity; to refrain from supporting separatist movements aiming to destabilize or to divide them; to support their efforts to eliminate the vestiges of colonialism and racial discrimination; (b) to recognize their right to pursue their own internal and foreign policy without any interference; to renounce attempts to impose hegemony over them; to respect their status; to refrain from sending mercenaries to quench the national liberation movements; (c) to recognize their right to participate equally in international affairs and to develop relations with all countries; (d) to acknowledge their right to their own natural resources; to concede in deed their equality in international economic relations. All these objectives are in keeping with the known resolutions of the U.N.

One may remember at this point that there are still a few remnants of colonial possessions. The combined population of the few dependent territories is around two-and-a-half million. Namibia remains a major decolonization problem in southern Africa today. In the face of South Africa's refusal to implement U.N. decisions on Namibia, the General Assembly terminated the Mandate given to South Africa and placed the Territory under its direct responsibility, establishing in 1967 the U.N. Council for Namibia as the legal Administering Authority for the Territory until independence. South Africa's continuing refusal to withdraw left no

other choice for the people of Namibia to begin an armed struggle under the leadership of the South West Africa People's Organization (SWAPO), recognized as a liberation movement by the General Assembly and endorsed to supplement political efforts.

Sometimes, a State becomes a protagonist of terrorism instead of preventing it. It is ironical that the Republic of South Africa, for instance, which is extremely vociferous in condemning various forms of terrorism, should be proscribed as a champion of State terrorism itself. It is well-known that in the Republic of South Africa, **apartheid** continues as an institutionalized racist domination and exploitation, resting on the plunder of the African majority by colonial settlers and their descendents.⁴⁴ There, it is the forces of liberation, not terrorism, that have intensified the political and armed struggle against the **apartheid** régime, which is resorting to the most brutal repression using criminal methods to destroy the unity of the black people.

When the Palestine Liberation Organization (PLO) was invited on November 22, 1974, to participate in the sessions and the work of the U.N. General Assembly in the capacity of an observer, some writers criticized this move as "the legalization of terrorism".⁴⁵ The PLO is a non-State actor in international relations. By virtue of its elaborate linkages with the Palestinian people and its undeniable impact upon Middle Eastern politics, the PLO, although not a State, is a major Arab actor.⁴⁶ According to a resolution of the Arab summit in Rabat in 1974, it is recognized by all Arab countries as the sole legitimate representative of the Palestinian people. The PLO is recognized by 112 countries as the representative of the Palestinian people, sometimes with full diplomatic status, and maintains official bureaus in about 100 countries.

The establishment of the PLO in 1964 was the outcome of the resurgence of Palestinian national feeling and the inter-Arab consensus for a common strategy against Israel. The Algerian victory in 1962 convinced the Palestinians that self-reliance would be a more viable strategy to achieve their national goals. In response to this new Palestinian militancy, the first Arab summit, held in Cairo in early 1964, decided to help the Palestinians organize themselves with a view to realize their goals.

⁴⁴ Türkkiye Ataöv, *The Case in South Africa*, London, EAFORD, 1981.

⁴⁵ L.C. Green, "The Legalization of Terrorism", *Terrorism: Theory and Practice*, eds., Yonah Alexander, David Carlton and Paul Wilkinson, Boulder, Colorado, Westview Press, 1979, especially pp. 189-191.

⁴⁶ Mohammed E. Salim, "The Survival of a Non-State Actor: the Foreign Policy of the Palestine Liberation Organization", *The Foreign Policies of Arab States*, Bahgat Korany and Ali E. Hillal, eds., Boulder, Colorado, Westview Press, 1984.

One can identify certain historical and social factors that have influenced the evolution of the Palestinian society as well as the functioning of the PLO. The historical legacy, that is, various social cleavages are reflected in PLO politics in different ways. The formation of various commando organizations may be compared to the politics of the old family cleavage. Further, some resistance organizations have evolved mainly around certain personalities. Following the 1948 exodus, the Palestinian society developed a middle class and a class of workers, which now constitute the power base of the PLO.

The PLO has created an elaborate set of political institutions, which form an integrated régime. The Palestinian National Council (PNC) is the highest policy-making organ, which embraces various groups. The Executive Committee represents the Palestinian people, supervises all the formations of the PLO and issues instructions. The Central Council is an advisory organ between the PNC and the Executive Committee. In addition to these three institutions, the PLO maintains nine departments that do the work of ministries in State governments.

The PLO exercises what amounts to sovereign powers over the Palestinians in war situations. It represented them in armed conflicts with Israel, Jordan and Lebanon. It tried and sentenced by the PLO judicial system certain Palestinians charged with criminal activities and turned over to the PLO by Arab governments. With an established court, penal code and a code of criminal procedures, it exercises judicial powers. It also exercises taxation powers over the Palestinians through Arab governments. It plays a role in inter-Palestinian conflict resolution. It sponsors various social, economic and educational services. All these functions increase its capacity as an actor in international relations. Although one may distinguish several phases in the PLO's conception of the role of military force in goal attainment, the Palestinians struggle by military, political, diplomatic and information means.

There are two cases of contemporary terrorism, on the other hand, that of some emigrant Yugoslavs and small groups of Armenians, whose aspirations do not realistically agree with the goals of a movement of national liberation. As to the former, immediately following the close of the Second World War, about 250,000 citizens of pre-war Yugoslavia emigrated to the West. Sweeping social upheavals generally cause large-scale emigration, chiefly for political reasons. The majority of the emigrants held a fair attitude towards Yugoslavia. Some have even returned home. Some, on the other hand, formed small groups which based their activity against the Socialist Federal Republic of Yugoslavia on the ideo-

logy and practice of the Chetnik Movement (of Dravza Mihailovic), the Ustashis, the Ljoticists, the Ballists, the Nedicists, the White Guards and the Vanca Mihajlovists.⁴⁷ The first mentioned movement carried out the initial act against post-war Yugoslavia when it killed the Yugoslav Consul in Italy. From 1945 to September 1985, terrorists perpetrated 657 acts against Yugoslavia abroad, killing 82 and injuring 186 persons. From 1945 to 1981, they performed 30 and attempted 54 acts in Yugoslavia, in which 30 were killed and 73 injured.

Directly, after the war, in the period which ended in 1950, their goal seemed to obstruct the consolidation of the new Yugoslav Government. Certain emigration groups incited armed border incidents and some of their members entered the country illegally. Reactions showed, however, that they had no national support. The period between 1950 and 1960 was one of improved relations of Yugoslavia with a number of Western countries. These circumstances led to a decrease in the number of terrorist acts committed by the emigrants against Yugoslavia. But the years following the establishment of the non-aligned movement, in which Yugoslavia played a very important role, witnessed numerous brutal terrorist acts in the country and abroad. After 1960, groups of emigrants threw more efforts into propaganda, primarily through their newspapers, periodicals, bulletins and other publications, all of which generally served the ends of terrorism while some overtly encouraged it. For example, **Odpor** wrote: "Our platform is clear: Yugoslavia in any form must be destroyed... Destroy it... together with anyone... Destroy it with the dialectics of words and dynamite but destroy it unconditionally..."⁴⁸ Certain publications served as a manual for the training of terrorists and contained detailed instructions on the preparation and execution of all norms of terror and force. For instance, in 34 issues of the **Odpor**, a total of 205 articles were favourable to terrorism. Since 1971, there has been an increased number and various kinds of terrorist acts, including a JAT plane crash in Czechoslovakia, the murder of Yugoslav Ambassadors, Vice-Consuls and Consuls, the hijacking of Swedish and American planes, attacks on the building of the Yugoslav Permanent Mission to the U.N., the illegal entry into the country of armed groups, as well as attacks on police patrols, clubs of Yugoslav people working abroad and business facilities of Yugoslav emigrants who maintain normal relations with their old homeland. In contrast with many other countries, Yugoslavia has had

⁴⁷ Stephan Clissold, *Croat Separatism: Nationalism, Dissidence and Terrorism*, London, Institute for the Study of Conflict, 1979.

⁴⁸ Andjelko Meslic, *Terrorism by Fascist Emigration of Yugoslav Origin*, Beograd, Socialist Thought and Practice, 1981, p. 11.

no domestic terrorism. Attempts from abroad found no support inside the country. Moreover, the Yugoslav authorities have been counteracting these attempts with growing success. The emigrant terrorists have achieved nothing — except to make the world aware that it has one more problem to face.

The United States Under Secretary of Defense for Policy, Fred Iklé, referred to Armenian actions as “one of the most dangerous and most neglected of all terrorist movements”.⁴⁹ An American professor says, “too many states and individuals have been too lenient” on Armenian terrorism.⁵⁰ Sometimes, authorities display sympathy towards the Armenian terrorists for domestic political reasons.

Geographically, the Armenian terrorist operations have occurred in Western Europe, North America, Asia and Australia. France (37), Switzerland (25), Italy (20), Lebanon (17), and the United States (15) are the first five, where the greatest number of Armenian terrorist activity has occurred. Indiscriminate Armenian bombings left many people dead or wounded. Terrorist groups warned travellers not to use any Turkish transportations. The Armenian terrorists have assassinated 31 Turkish diplomats or members of their immediate families as well as approximately equal number of non-Turks.

The Armenian terrorists, who are estimated to number a few hundred, are either emigrants from or are living in regions like Lebanon where disorder and turbulence are usual. The Lebanese roots were demonstrated during the trial of the four ASALA members in Paris who had seized the Turkish Consulate General in the French capital in 1981 as well as the seizure of the Turkish Embassy in Lisbon in 1983.

Another professor of history believes that “Armenian terrorism is rooted in a false view of history and only by correcting that view will Armenian terrorism be defeated”.⁵¹ He adds that there are no people to liberate. No one seriously believes that the Armenians in Turkey are politically persecuted. An Armenian state in Eastern Anatolia, where now close to fifteen million Moslem Turks live, is impossible.

⁴⁹ “Testimony by the Honorable Fred C. Iklé, Under Secretary of Defense for Policy, Before the Subcommittee on Security and Terrorism of the Senate Judiciary Committee”, mimeograph, Washington, D.C., March 11, 1982, p. 6 quoted in Michael Gunter, “Contemporary Armenian Terrorism”, *Terrorism*, New York, Vol. 8, No. 3 (1986), p. 213.

⁵⁰ *Ibid.*, p. 216.

⁵¹ Wilfred Burchett and Derek Roebuck, *The Whores of War: Mercenaries Today*, Harmondsworth, Penguin, 1977.

A royalist Croat state in the Balkans or an independent Armenian state in Eastern Anatolia is very much removed from reality. Neither Yugoslavia, nor Turkey will ever accede to the demands of a handful of terrorists. The wanton murder of diplomats is not going to effect the decision-making process of these states.

V. MERCENARISM :

A large number of terrorist acts are committed against national liberation movements. Those who commit such acts are mercenaries.⁵² They were quite common in ancient Rome and in the Middle Ages. The age of colonialism institutionalized it as national policy. Today, some states, especially the racist régimes, employ mercenaries, this choice being a more covert form of intervention.

Some countries have appropriate legislation directed against mercenarism. For instance, the United States promulgated its first laws in the days of George Washington to control the recruitment of citizens of one State in the armed forces of another. Britain had adopted a Foreign Enlistment Act in 1870, forbidding its subjects from serving in the army of a foreign State. In 1968, Britain passed another law forbidding its subjects to enter such service in Rhodesia. The French Penal Code (Art. 85) provides for imprisonment and a fine for the recruitment of soldiers on behalf of a foreign power in time of peace. The Belgian Penal Code as well (Art. 135) envisages imprisonment. Swedish laws forbid, even in the last century, the recruitment of subjects for foreign armed service. A law, adopted in 1948, envisages fine or imprisonment for this crime.

But Southern Rhodesia and the Republic of South Africa have employed mercenaries. One of them disclosed⁵³ that he and his accomplices attacked native villages in Southern Rhodesia, tortured captured peasants and killed non-combatants. The Republic of South Africa used mercenaries during the aggression against Angola in September 1981. The 32nd Special Buffalo Battalion was the strike force of terror against the civilian population. They were also used against Mozambique and SWAPO. In late 1981, they attacked the Republic of Seychelles. Oil had been found off its shores. Mercenaries landed on the Island of Mahé. The Seychelles Armed Forces quashed the mercenaries, but some of them hijacked an Indian airliner and flew to South Africa. The latter authorities did not extradite

⁵² *Nouvel Observateur*, juillet 3, 1978.

⁵³ Adopted on December 20, 1968; December 11, 1969; December 14, 1970; December 12, 1973.

them. In the same year, South Africa used mercenaries against the Republic of Domenica in the Caribbean.

The most effective way to end the drafting of mercenaries would be to draw up national and international legal standards banning, prosecuting and punishing such services, including their recruitment, transportation and use. The 1907 Hague Convention was the first attempt to outlaw mercenaries. It imposed a ban on mercenarism but acknowledged the institution of volunteers. The participation of volunteers in an international armed conflict is permitted only if such action favours the victim of aggression on those waging a national liberation struggle against foreign occupation, colonialism or racist régimes and if the volunteers have no material interest. The 1949 Geneva Convention for the Protection of War Victims extended the status of prisoners of war to volunteers. But mercenaries have not been generally considered as legitimate combatants.

Several U.N. General Assembly resolutions⁵⁴ proclaimed that the practice of using mercenaries against struggles of national liberation was punishable as a criminal act. When the G.A. adopted in 1974 a Definition of Aggression, its Art. 3 also qualified "the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries" as an act of aggression.⁵⁵

In 1977, the diplomatic conference on international humanitarian law in Geneva adopted Art. 47 of the Protocol on international armed conflict additional to the Geneva Conventions for the Protection of War Victims (1949), which contains a generally accepted definition of a mercenary: "A mercenary is any person who: (a) is especially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled of a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as member of its armed forces".⁵⁶

⁵⁴ U.N., *Yearbook of the United Nations*: 1974, New York, 1977, p. 847.

⁵⁵ International Committee of the Red Cross, *Protocols Additional to the Geneva Conventions of 12 August 1949*, Geneva, 1977, p. 32.

⁵⁶ For instance, such is the case in Argentina (Art. 221 of the Penal Code), Bulgaria (Arts. 106-107). Colombia (the 1956 Decree 3135), German Democratic Republic

When mercenaries posed a threat to the Republic of Guinea in 1970, the Organization of African Unity Council of Ministers passed a resolution condemning them. A similar resolution was adopted at the OAU Summit meeting in Addis Ababa in 1971. A Draft Convention for the international control of mercenaries, submitted to the 19th Session of the Council of Ministers in Rabat in 1972 declared that the activities of mercenaries were criminal and terrorist, that the States ought to take forceful and operative measures to prevent the organisation, recruitment and movement of mercenaries in their territories and that the States ought to bring them to justice.

A group of mercenaries were tried in May-June 1976 in Luanda, the capital of the People's Republic of Angola. The trial was important because it brought out the criminal nature of mercenaries. The example of Angola was useful also from the legal point of view. An International Commission of Inquiry on Mercenaries looked into the record of the U.N. and OAU resolutions and drafted a Convention. It declares them as outlaws, denies them prisoner of war status and reinforces extradition. Several sessions of the General Assembly debated the draft Convention.

VI. CONCLUSIONS : COOPERATION OF STATES

The possible methods of legal cooperation of States at an international level in the prosecution and punishment of acts of terrorism may proceed along the following lines : (a) unification of the criteria of national legislation in respect to offences; (b) machinery of legal cooperation; and (c) creation of a system of international criminal jurisdiction.

In compliance with the recommendation adopted by the First International Congress of Penal Law (Brussels, 1926), a number of conferences for the unification of criminal legislation to control terrorism was held. The issue was considered by the Third through the Sixth International Conferences for the Unification of Penal Law. The Fifth Conference (Madrid, 1934) stated that the unification of criteria relating to the suppression of terrorism was insufficient for the prosecution of this crime on an international scale. This Sixth Conference (Copenhagen, 1935) adopted a document on terrorism. It recommended that, in the absence of an agreement about the extradition of the offender, the latter should be referred to an international criminal court (unless the State concerned wishes to

(Art. 109), Madagascar (Art. 28 of the Act. 59-29), Mongolia (Art. 64), Poland (Arts. 283-285), Rumania (Arts. 219-222, 224) and the USSR, Art. 4 of the Law of December 25, 1958.

try him in its own court). In short, the Sixth Conference aimed to create a universal international machinery.

Some States have appropriate articles in their criminal law codes which identify the object and subject of the commission of an international terrorist act as well as the sanctions applicable.⁵⁷ Some States resorted to new organizational processes to counter terrorism.⁵⁸ The U.S. Government felt, for instance, that some type of federal response was needed to deter terrorist acts on American soil. The then President Richard N. Nixon established in 1972 (probably in reaction to the Lod Airport and Munich Olympics slayings) a Cabinet Committee to Combat Terrorism. President Nixon also signed on October 24, 1972, an Act for the Protection of Foreign Official Guests of the U.S.⁵⁹ The Act operates within the territory under U.S. jurisdiction. It does not cover the representatives of national liberation movements before they have been recognized by the U.S. Government. The Cabinet Committee referred to above was abolished in 1977. A reorganized Special Coordination Committee worked under the National Security Council. While the succeeding presidents revised the way the latter worked, the U.S. Congress conducted several hearings concerning various aspects of terrorism.

National legislations do not yet resolve all the problems connected with the legal cooperation of States in suppressing international terrorist acts. It must be the concern of special conventions to formulate the scope of persons and objects of such acts.

The U.N. has been considering the completion of a universal convention to combat international terrorism or specialized conventions dealing with different types. Although there are divergent interpretations even as to the meaning of the term, all nations agree that cooperation is necessary to suppress it. In case a universal convention is drawn up, it could include the following items as its major provisions: (a) affirmation of international cooperation in devising measures; (b) recommendation for States to join the existing Conventions; (c) proposal to States to take appropriate measures at national levels; (d) reaffirmation of the inalienable right of all nations under colonialist or racist oppression and other forms of foreign domination to self-determination and independence; (e) definition of the *corpus delicti* falling within the Convention to avoid difference in content; (f) qualification of offences as criminal regardless of

⁵⁷ Yonah Alexander and James S. Denton, eds., *Governmental Responses to Terrorism*, New York, Hero Books, 1987.

⁵⁸ William Regis Farrell, *The U.S. Government Responses to Terrorism: In Search of an Effective Strategy*, Boulder, Colorado, Westview Press, 1982.

⁵⁹ *American Journal of International Law*, Vol. 67, No. 3 (July 1973), pp. 622-626.

motive; (g) assuring inescapable punishment; (h) obligation of signatories to qualify such offences as the gravest crimes; (i) commitment of the signatories to maintain legal cooperation regarding the application of the Convention; and (j) the need to make it of unlimited duration.

There have also been suggestions as to prosecution and punishment in an International Criminal Court. In 1937, the League of Nations had drafted a Convention to this effect. It consisted of a Preamble and 56 Articles. It established the Court for the trial of persons accused of offences dealt with in the Convention for the Prevention and Punishment of Terrorism. Each signatory was entitled to pursue one of the three possible alternatives: (a) to hear the case in its own legislation; (b) to grant extradition; or (c) to commit the offender to the Court for trial. The country which had to execute the sentence also had the right to pardon, provided it first consulted the President of the Court. In the supplement agreement to the Convention, thirteen signatories agreed to set up the International Criminal Court, but none ratified it, and the idea was not realized.

The above-mentioned provisions show that the international community has undertaken, even if unsuccessfully, to create a legal machinery of prosecution and punishment. The problem of constituting such a machinery is still in the agenda.

A draft statute, prepared in 1972, established (on paper) an International Criminal Court and empowered it to try persons accused of crimes under international law and, upon conviction, to impose sanctions. It is supposed to be composed of nine independent judges (no two being nationals of the same State) representing the main forms of civilization and the principal legal systems of the world and elected for nine years. To aid the Court, the following organs were thought of: procurator, public defender, Commission of Inquiry, prosecution and a Board of Clemency and Parole.

Two important issues arising from the establishment of such a Court are (a) about the way it is to be set up and (b) about who may have access to it. In respect to the former, four methods have been suggested, that is, the establishment of the Court (a) by an amendment of the U.N. Charter, (b) by multilateral Convention, (c) by a General Assembly resolution, and (d) by a General Assembly resolution to be followed by Conventions. In respect to the access to the Court, the Geneva draft Statute stipulated that proceedings might be instituted by the General Assembly, by any organization of States so authorized by the General Assembly and by the States parties to the Statute.

The wave of terrorist acts keeps attracting attention to the issue of setting up a Court. This topic has been discussed in several conferences. The draft submitted to the Boston Conference (1977) contains several new elements, notably, the offence of mercenarism against national liberation movements.