

INTERNATIONAL  
**TERRORISM**  
AND  
POLITICAL  
CRIMES

*Edited by*

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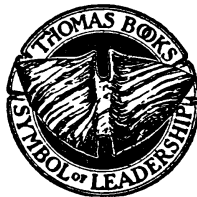
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**TO**  
**MAHMOUD BASSIOUNI**

**IN MEMORIAM**

**B**ORN IN ASSIUT, EGYPT in 1868 he died in 1944 after serving with rare distinction in many important positions. His career began as a practicing lawyer specializing in Criminal Law, but he soon became an activist politician. In 1919 he led upper Egypt in the first Egyptian revolt against Britain's occupation of his country since that colonial régime was established in 1881. He was arrested and tried by a British High Military Tribunal and charged with 14 counts of assorted crimes against the British crown and its domination of Egypt; each count carried the death penalty. The Military tribunal found him guilty and sentenced him to death. On appeal to the Privy Council the conviction was reversed on the grounds that no witness had testified against him in open court concerning any of the charges. Nonetheless in 1922 he was exiled temporarily to the Western desert in the Maharick Camp because of his continued peaceful militance against British domination. In 1923, the Egyptian independence movement, spearheaded by the Wafd party under the leadership of Saad Zaghloul, had succeeded in its efforts, and Egypt became Nominally, an independent state. Egypt's first constitution was adopted and Mahmoud Bassiouni was one of its drafters. He was then elected to the first senate in Egypt's history, and thereafter reelected until his death in 1944. He served as Vice President of the Senate from 1923 to 1936, and thereafter as its President.

A distinguished lawyer, he was elected President of the Bar Association four consecutive times and served the profession in that capacity for over 17 years until his death. A popular leader, who epitomized the highest calling of the legal profession throughout his life, he was a symbol of personal courage and in-

tegrity. Always dedicated to peace and human rights, he counted among his friends such other activist pacifists as Ghandi.

A hero to his people, a terrorist to their oppressors, he never engaged in violence, but was an apostle of peaceful resistance. To this man, my grandfather, whose inspiration has lead me to the same commitment, I dedicate this modest effort, which in part highlights the dilemma of peaceful evolution and violent revolution. To the late Mahmoud Bassiouni, only the observance of the Rule of Law and the preservation of human rights could mediate between human enmities, and thus right and not might was the only alternative to violence.

## PREFACE

THE CONTRIBUTIONS TO THIS VOLUME came primarily from papers presented at the III International Symposium sponsored by the International Institute for Advanced Criminal Sciences, (Siracuse-Italy). The Symposium which was organized and chaired by this writer benefited from the participation of several world renown experts whose names follow:

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The Conferees discussed various questions relating to terrorism from June 4 to June 16, 1972, often for up to eight hours a day. This was one of the most intense and productive international conferences to have ever been held on the subject. One of the interesting features of this conference was the interaction of penalists, publicists and social scientists from twenty-two different countries who represented all political ideologies and juridical trends. The debates were serious explorations of genuinely different points of view, but they were always friendly and in a cooperative spirit. These concerned and responsible scholars pursued their work in a realistic sense which enabled them to reach substantial conclusions. The conferees collaborated in small working groups to present certain conclusions and recommendations which were then drafted into a "Final Document," and follows this Preface. This document contains the ideas discussed at the conference as well as specific recommendations which deserve the

careful attention of scholars, decision makers and all persons interested in a rational regulation of this coercive process. Considering the diversity of the group which contributed to this document, it attests to the very real possibility of scholarly cooperation in the development of International Criminal Law. This writer is grateful to all Conferees for the privilege of having worked with them and for being part of their efforts.

In addition to the conference papers all relevant treaties and documents have appended where appropriate and additional contributions were added to complement and enhance this book.

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Lewis Sang and Kathleen Lahey graciously assisted me in some of the editorial tasks involved in the preparation of this book.

M. C. Bassiouni

## **FINAL DOCUMENT: CONCLUSIONS AND RECOMMENDATIONS\***

### **I. GENERAL PART**

1. The problem of the prevention and suppression of "terrorism" arises in part because there is no clear understanding of the causes leading to conduct constituting "terrorism." The International Community has been unable to arrive at a universally accepted definition of "terrorism" and has so far failed to control such activity.
2. Acts commonly referred to as "terrorism" are often done under the claim that they are intended to uphold human rights, but paradoxically, they also usually violate human rights by endangering the personal safety, fundamental freedoms and property of persons uninvolved in the original violation allegedly sought to be redressed. Acts of terror, both governmental and private, are prohibited by many international human rights documents presently or soon expected to be in force, including the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human

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\*This document embodies the various ideas, positions, conclusions and recommendations of the Conference participants. It contains the contributions of all conferees and was drafted by Professor M. C. Bassiouni with assistance from Professors George Levasseur (Paris), Bogdan Zlataric (Zagreb), Jacob Sundberg (Stockholm), John Murphy (Kansas) and Mr. Stephen Marks (Strasbourg) which is gratefully acknowledged.

Rights, the Nuremberg principles and the 1949 Geneva Conventions.

3. These texts are admirable statements of international law, but by themselves do not assure that human rights will be protected in the absence of implementation and enforcement. It must therefore be recognized that failure to implement and enforce human rights breeds terror. It is therefore acknowledged that whenever states engage in serious and repeated violations of fundamental human rights, especially those involving strategies of violence and terror, this is likely to breed individual terrorism.
4. The Universal Declaration of Human Rights reminds us that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” We must, however, distinguish between legitimate rebellion and indiscriminate terror tactics. The resort to violence by individuals or groups engaging in wars of national liberation is lawful whenever it remains within the confines of international law which recognize such activities. It is when acts of violence are committed indiscriminately, disproportionately and contain an international element or are against internationally protected targets that such acts become terrorism.
5. Article 30 of the Universal Declaration of Human Rights specifies that “[n]othing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.” This provision and its equivalent in Article 5 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, Article 17 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms and Article 29 (a) of the American Convention on Human Rights amount to a condemnation of both individual and state terrorism. Consequently, there can be no contextual excep-

tions drawn between individual actors or state agents who engage in conduct defined as “terrorism.” The law must apply equally to all.

6. Recognizing that no one group of scholars can exhaustively study all forms of terror violence, the focus of this Conference and the subject of its proposals and recommendations relate essentially to individual forms of international terrorism.
7. The methodology pursued has been to define certain conduct containing an “international element” or directed against “internationally protected targets” in order to place certain targets and arenas outside the scope of “strategies of terror violence.” The proposed doctrine of “internationally protected targets” is intended to neutralize such objectives and unequivocally prohibit the use of certain coercive conduct against them. In so doing, this removes these targets from the purview of any conflict, insuring thereby to some extent a reduction in the level of applied violence.
8. Acts committed by agents of a state, which fall within the definition of terrorism as stated below, subject such persons to the same criminal responsibility as other individuals without the benefit of the act of state doctrine, the defense of obedience to superior orders and international immunities of otherwise applicable.
9. After defining terrorism and discussing its elements and application, certain proposals are made in the “Special Part.” These include, *inter alia*: 1) to require states to prosecute persons who violate these proscriptions, or 2) in the alternative, to extradite such persons, or 3) in the alternative, in the event an international criminal court exists, to surrender such persons thereto, 4) to vest all states with universal jurisdiction to prosecute such offenders; 5) to hold states responsible for failure to undertake such obligations whenever they induce, encourage or harbor such persons. In view of the need for worldwide cooperation in this area, a multilateral treaty on terrorism is recommended as well as the creation of an International Criminal Court.

## **10. DEFINITION OF TERRORISM**

Individual or collective coercive conduct employing strategies of terror violence which contain an international element or are directed against an internationally protected target and whose aim is to produce a power-oriented outcome. Such conduct contains an international element when:

- 1) the perpetrator and victim are citizens of different states or
- 2) the conduct is performed in whole or in part in more than one state.

Internationally protected targets are:

- 1) innocent civilians;
- 2) duly accredited diplomats and personnel of international organizations acting within the scope of their functions;
- 3) international civil aviation;
- 4) the mail and other means of international communications;
- and
- 5) members of nonbelligerent armed forces.

A power oriented-outcome is: an outcome which is aimed at changing or preserving the political, social or economic structures or policies of a given state or territory by means of coercive strategies.

## **II. SPECIAL PART**

The following are specific areas which, because of their importance, are dealt with explicitly.

### **1. Terrorism and the Role of the Mass Media**

1. The problem of sensational press reports concerning terrorism, which encourage and promote future terrorism, suggests that the mass media has the responsibility of exercising restraint in this regard.
2. Recognizing the basic human rights to free speech and freedom of information, and condemning any attempts at censorship, it is nonetheless necessary that the mass media establish guidelines and procedures for reports on terrorism and violence.

3. Consideration should be given by the mass media to the establishment of a press council or council of editors, representing all forms of mass media, which would meet periodically to regulate this problem. (Such a procedure is presently employed in certain countries.)

## **2. Terrorism in Armed Conflicts**

1. The customary law of armed conflicts and the Geneva Conventions of 1949 prohibit acts of terrorism.
2. Because of the limited scope of the IVth Geneva Convention for the Protection of Civilian Populations, particularly concerning protected persons in the territory of the parties to a conflict and in occupied territories, it is necessary to enlarge the application of the convention and to extend the prohibition against acts of terrorism so as to protect all civilian populations.
3. Regarding conflicts not of an international character, though the Geneva Conventions do prohibit in Article 3 several forms of terrorism, improvements are necessary in the substance and implementation of rules on such conflicts.
4. For these reasons the recent efforts of the 1971 and 1972 Conferences of Governmental Experts for the Reaffirmation and Development of Humanitarian Law are commended.
5. Furthermore, the Draft Additional Protocol to Article 3, which prohibits acts of terrorism in noninternational conflicts, is recommended for adoption at the next Diplomatic Conference of 1974, and for ratification by all states.
6. It is also recommended that governments and other interested organizations take all necessary and appropriate measures for the dissemination of information on the humanitarian law of armed conflict.

## **3. Terrorism and Wars of National Liberation**

1. Self-determination is a right recognized by international law.
2. The exercise of this right may result, *inter alia*, in:
  - 1) the political independence of a people, or
  - 2) various forms of political association.

3. When the right of self-determination results in various forms of political association, every group is entitled to the preservation of its ethnic and cultural identity.
4. Recognizing that in many instances the right of self-determination is not implemented and, as a result, various groups have resorted to the use of force in order to exercise this right, we recommend that present international procedures for conflict resolution be improved and that the existing machinery of negotiation, inquiry, mediation, conciliation, arbitration and the advisory and contentious jurisdiction of the International Court of Justice, including the jurisdiction to decide cases *ex aequo et bono*, be more fully utilized.
5. In the event of the use of violence, all parties to the conflict are obligated to confine the use of violence so as to avoid injury to uninvolved states and their nationals.
6. At all times, the parties to the conflict must apply international humanitarian law, specifically the four Geneva Conventions of 1949, the Genocide Convention of 1948, the Hague codification of the customary rules of war and the Nuremberg principles. Recognizing that there is disagreement as to the definition of "peoples," "minorities," and "ethnic groups," and as to the methods of implementing the right of self-determination, we, therefore, recommend that the United Nations establish a special committee for the study of this problem and make appropriate recommendations.

#### **4. Aircraft Hijacking**

1. International civil aviation is a vital link between nations and peoples of the world and consequently it is of paramount importance that its activities be unimpaired.
2. International civil aviation must be considered neutral with respect to all types of conflicts.
3. International recognition of this principle is manifested in the 1963 Tokyo Convention, the 1970 Hague Convention and the 1971 Montreal Convention.
4. All signatory states are urged to ratify these conventions and are called upon to enforce their provisions.



5. Nonsignatory States are urged to accede to these conventions at the earliest opportunity.
6. An international conference should be convened with the view to propose a multilateral convention on implementing existing conventions such as: established principles of State responsibility and other appropriate sanctions against States who, by their consistent conduct, encourage violations and refuse to take any measures to cooperate in the world community's effort to prevent unlawful seizures of aircrafts and other crimes against international civil aviation.

#### **5. Kidnapping of Diplomatic Personnel and Other Persons**

1. The frequency of kidnappings in some countries has reached an alarming level.
2. Such conduct threatens international diplomacy, economic stability and relations, in some cases the sovereignty and territorial integrity of states and, in all cases, it destroys or threatens the life and physical integrity of individuals.
3. In order to protect diplomats and personnel of international organizations within the scope of their functions, civilians uninvolved in a conflict situation and members of the armed forces, public agents and officials of uninvolved states, such persons must be deemed "protected targets" and attacks upon them must be prohibited.
4. Whenever such acts fall within the definition of terrorism as stated above they are to be considered international crimes.
5. All persons who engage in such prohibited conduct are to be held responsible whether they are acting in their individual capacity or as agents of a state.
6. States who encourage, entice, induce or protect individuals who engage in such conduct are to be held responsible under international law principles of state responsibility.
7. We recommend that appropriate sanctions be established in the form of a multilateral convention imposing upon States the obligation to extradite or effectively prosecute and punish the perpetrators of such acts.

8. We also recommend that States take immediate steps including, *inter alia*, convening an international conference to determine appropriate collective action against States who by their consistent conduct, encourage or condone such acts and refuse to take any measures to cooperate in the world community's effort to prevent and suppress them.

#### **6. Creation of an International Criminal Court**

1. The proposal to create such a court reaffirms a lengthy history on the subject, support for which has been expressed by distinguished jurists since the end of World War I, and was manifested in the 1937 Convention on the Prevention and Punishment of Terrorism and the two draft conventions elaborated by United Nations Committees in 1951 and 1953.
2. It is recommended once again that such a court be established with jurisdiction over international crimes and in particular over acts falling within the definition of terrorism.
3. A draft statute for such court should be elaborated at the earliest opportunity, taking into consideration several existing proposals and in particular the proposed 1953 United Nations draft. Such a statute should also include questions of enforcement and sanctions.
4. The court should exercise its jurisdiction over persons and corporate entities but not over states, since questions involving states are within the jurisdiction of the International Court of Justice.
5. The proposed International Criminal Court could be created by the United Nations or be an organ thereof, as in the case of the International Court of Justice, or be independently created and operate as an autonomous international body. The realization of such a proposal could be by virtue of:
  - a) a single multilateral treaty-statute;
  - b) multilateral treaties on this and other subjects;
  - c) bilateral treaties;
  - d) amending protocols to existing international conventions;
  - e) unilateral declarations;

- f) enactment of national legislation; or,
- g) voluntary submission to the jurisdiction of such Court or any other special arrangement.

### **7. Jurisdiction and Extradition**

1. Insofar as it has been established that terrorism is an international crime, any such offender should be effectively prosecuted and punished or extradited to a requesting state. This position embodies the maxim *aut dedere aut iudicare*.
2. Extradition to a requesting state should be granted in the absence of prosecution by the requested state unless an international criminal court is created with jurisdiction over such matters, in which case the accused should be surrendered to the court's jurisdiction.
3. All states should be vested with universal jurisdiction with respect to crimes of terrorism.
4. Whenever a state other than the state in which the act of terrorism was committed seeks to prosecute a terrorist, a reasonable number of observers from interested states and international organizations should be allowed to see the evidence and attend all proceedings.
5. Whenever extradition is contemplated the ideological motives of the accused should not be the sole basis for the granting of asylum or for denying the extradition request.
6. Whenever an act of terrorism as defined herein is committed, or whenever other international crimes, i.e. crimes against humanity, grave breaches of the Geneva Conventions, or serious violation of fundamental human rights are committed, extradition should be granted regardless of the ideological motives of the actor.
7. In all other cases in which the political offense exception shall apply, the judge or other person making the decision must, *inter alia*, weigh the harm committed against the values sought to be preserved by the actor and the means employed in relationship to the goal pursued in light of the proportionality theory.
8. In the event of multiple extradition requests for the same

offender, priority should be given to the requesting state relying on territorial jurisdiction in its request, followed by the state relying on the theory of protecting fundamental national interests.

9. The rights of the individual in extradition proceedings must always be upheld and he or she should not be precluded from raising any defenses available under extradition law and other relevant aspects of national and international law.
10. Extradition should not be granted when the individual sought is to be tried by an exceptional tribunal or under a procedure patently violative of fundamental human rights. In such cases, however, the requested state must, prosecute the accused.
11. To avoid that requesting states resort to means other than extradition to secure a person, extradition procedures should be expedited but without sacrificing the protections afforded to the individuals. Furthermore, to ensure against unlawful seizure of persons, requested states who do not wish to extradite such an offender must prosecute them without unnecessary delay.
12. In order to ensure adequate administration of justice, judges, public officials and lawyers should be familiar with international criminal law and comparative law and those public officials directly involved should be specialists in the subject matter. Furthermore, it is recommended that special educational programs be established in legal institutions and other institutions of learning in the subject of international criminal law.

#### **8. Treatment of Political Offenders and Nondelinquent Detainees**

1. Among the aims of Criminal Law are deterrence, prevention and the resocialization of offenders, but these can seldom be achieved with respect to ideologically motivated offenders. It is therefore recommended that studies be undertaken concerning such offenders and that programs suited to them during imprisonment and the use of alternative measures of in-

- capacitation or social defense oriented programs be developed.
2. Consideration should be given to the establishment of a uniform standard of penalties imposed on terrorists in different countries in order to eliminate significant disparities.
  3. All offenders must be treated without discrimination and in accordance with international human rights protections, as enunciated in the Universal Declaration of Human Rights, the International Covenant for the Protection of Civil and Political Rights and, specifically, the United Nations Standard Minimum Rules for the Treatment of Offenders.
  4. Political offenders and nondelinquent detainees are persons deprived of their liberty without having been accused, prosecuted or convicted of penal offenses arising out of national or international law. Such persons should not be treated by lesser standards than other offenders and should at least benefit from the protections and standards stated in paragraph 3 above.

## **9. Terrorism and Human Rights**

1. Legitimate resistance to oppression and tyranny is an internationally recognized right as a “last resort” when political and juridical avenues of redress have been exhausted. This does not justify, however, indiscriminate, disproportionate and unlawful use of violence or terrorism as defined in paragraph 10. Such matters must be adjudicated preferably by an international body taking into account all factors underlying such acts for purposes of mitigation and aggravation.
2. While international human rights law is fully consistent with the vigorous prosecution of terrorism (as defined herein), international controls must, however, observe, *inter alia*, the following guidelines:
  - a) Norms of international human rights law must not be infringed;
  - b) Norms of international human rights law such as minimum standards of fairness and justice must be observed and references should be made to specific provisions in human rights conventions;

- c) Accused terrorists like all other offenders should be treated at all times in accordance with human rights standards;
- d) Condemnation of terrorism should not give rise to over-reaction, which becomes the basis for infringement of the human rights of other persons; and,
- e) The condemnation of terror and terrorism must be evenhanded and apply to all of its forms and manifestations.

#### **10. Education and Information**

1. The general and special parts of this document indicate the need for general and specific information and education in various areas concerning the causes, prevention, control and suppression of terrorism.
2. It is therefore recommended that the United Nations and its specialized agencies and policy makers in the informational and educational fields develop programs to increase public knowledge in the areas discussed in this document. It is particularly recommended that human rights, international criminal law and conflict resolution become the subjects of universal attention.
3. A special recommendation is made to all institutions of legal learning to provide in their curricula courses on human rights, international criminal law and conflict resolution.
4. Furthermore, scholars and experts in these fields and related disciplines should meet frequently to discuss and clarify international legal norms and disseminate their findings to the general public through all available means.

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**INTERNATIONAL  
TERRORISM AND  
POLITICAL CRIMES**



**CHAPTER I**

**PERSPECTIVES ON  
THE ORIGINS AND  
CAUSES OF TERRORISM**



## SECTION 1

# THE ORIGINS AND FUNDAMENTAL CAUSES OF INTERNATIONAL TERRORISM

### A UNITED NATIONS STUDY ON:

“Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.”\*

### THE NATURE OF INTERNATIONAL TERRORISM

THE ELABORATION OF A PRECISE definition of international terrorism is a task which may eventually devolve on the General Assembly or on some other body. For the purpose, however, of preparing a report dealing with the origins and underlying causes of international terrorism, it is necessary to formulate, at least in broad outline, a concept of the area to be dealt with.

The present agenda item deals only with *international* terrorism. It thus excludes activities that are the internal affairs of individual States. The acts of Governments within their own territories in respect of their own citizens have already been extensively dealt with in the work of the United Nations, in particular in that on human rights. To come within the scope of the subjects, the interests of more than one State must be involved, as, for example, when the perpetrator or the victim is a foreigner in the country where the act is done, or the perpetrator has fled to another country.

\*Study prepared by the United Nations Secretariat in accordance with the decision taken by the Sixth Committee at its 1314th meeting, on 27 September 1972.

The ordinary meaning of the word *terrorism* has undergone an evolution since it first came into use at the end of the eighteenth century, and has been differently interpreted according to the different types of acts which were uppermost at the time in the minds of those discussing the subject. While at first it 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, it now seems to be mainly applied to actions by individuals, or groups of individuals.

Terrorism, as shown by the derivation of the word, involves the infliction of terror. This is not always done to the immediate victims, who may be destroyed without warning, but the act must be such as to spread terror or alarm among a given population, or among broad groups of people. The act is necessarily a conspicuously violent one, which is often intended to focus public attention and to coerce a State into a particular action. One of the most effective means towards that aim is to endanger, threaten or take innocent human lives and to jeopardize fundamental freedoms.

At various times during the previous work on the subject at the international level, discussion was restricted to terrorist acts with political motives. Yet it is now found that quite similar acts, spreading similar terror or alarm among the population, are done for ordinary criminal motives, such as extortion of large sums. It seems difficult to delimit a legal topic on the basis of motives, which often lie hidden deep in the minds of men. Both political and nonpolitical acts constitute current problems. From the standpoint of the effect on the innocent, there is no reason to limit international discussion to terrorist acts with political aims, while leaving aside very similar acts with ordinary criminal aims.

The subject of international terrorism has, as the Secretary-General has already emphasized, nothing to do with the question of when the use of force is legitimate in international life. On that question the provisions of the Charter, general international law, and the declarations and resolutions of the United Nations organs, in particular those of the General Assembly relating to



national liberation movements, are not and cannot be affected. But even when the use of force is legally and morally justified, there are some means, as in every form of human conflict, which must not be used; the legitimacy of a cause does not in itself legitimize the use of certain forms of violence, especially against the innocent. This has long been recognized even in the customary law of war.

International terrorism has also a different character from revolutionary mass movements, which are directly aimed at, and capable of, effecting radical changes in society, involving changes of conduct and attitude on the part of large numbers of people. The terrorist act, on the other hand, even if its main purpose is to draw attention to a political cause or situation, has as its immediate aim something comparatively limited, although important, such as the acquisition of funds, the liberation of prisoners, the spread of general terror, the demonstration of the impotence of Government authorities, or the provocation of ill-judged measures of repression which will alienate public opinion. Thus the terrorist act usually lacks any immediate possibility of achieving its proclaimed ultimate purpose.

### **ORIGINS AND UNDERLYING CAUSES OF TERRORISM**

The causation of human action has as yet been most incompletely explained by modern psychology, genetics, sociology and related disciplines. In particular, in the field of use of violence by individuals, barely a beginning has been made in identifying underlying conditions and correlating them with particular acts; and such correlations, even if established, do not explain why only a few at most of those exposed to those conditions become criminals. The discussion of the causes of terrorism is thus apt to give rise to disagreement. This is all the more so since certain terrorist acts may be viewed by some as serious crimes, while to others they are acts of patriotism or heroism. The following remarks are made in compliance with the request of the Sixth Committee, but cannot aspire to be either complete or universally convincing, nor has any attempt been made to deal with any

specific historical or current situations with which terrorism has been associated.

Man is one of the few species that frequently uses violence against its own kind. He has done so since the dawn of history. In the past, periods in which violence has been especially conspicuous have been those of rapid social change. During the years of the existence of the United Nations, when in most parts of the world, and in both the developed and the developing countries, the patterns of society are changing with almost unprecedented speed, violence has been frequent.

The interlinked growth of technology and growth of population have tended to create new hopes, expectations and needs in many social groups. These new attitudes mark a departure from the resignation and passivity with which most men in the past accepted the ills of life. The United Nations Charter is the voice of the aspirations of mankind when it contemplates the establishment of a world in which aggression and the threat or use of force in international relations would be effectively outlawed, friendly relations would exist among nations on the basis of respect for the principles of equal rights and self-determination of peoples, international disputes would be settled justly by peaceful means, and international cooperation would solve international economic and social problems and promote respect for human rights and fundamental freedoms for all.

The period of the existence of the United Nations, however, has shown very incomplete and uneven progress towards these goals. While major wars involving the great Powers have not occurred, force has often been resorted to, and has inflicted suffering and exile upon peoples. While progress has been made against colonialism and racism; those evils have not yet been completely eliminated. Even where political independence has been established, in many cases much remains to be done in assisting the populations to attain the minimum level necessary for decent conditions of life. Few advances have been made towards the peaceful settlement of some major international disputes, which are too often left to fester and poison international relations. Among groups where economic and social progress has been rela-

tively slow, conditions have been unfavourable to the exercise of and the respect for human rights and fundamental freedoms.

The lack or slowness of advance towards these goals has contributed toward the “misery, frustration, grievance and despair” which, while not themselves causes of terrorism, are psychological conditions or states of being which sometimes lead, directly or indirectly, to the commission of acts of violence. While in the United Nations context it is perhaps appropriate to give special attention to the international factors that contribute to violence, there are also many situations in individual nations which may give rise to the grievance of a particular group or person, leading to acts having international repercussions. Purely personal circumstances can also often have the same result. There are also cases in which there is no genuine grievance at all, and a violent crime affecting more than one country seems to have been committed from mere cupidity, or a desire to escape criminal prosecution. The General Assembly, however, in stressing “misery, frustration, grievance and despair,” seems to have singled out for special attention those situations which have the common characteristic of calling for redress.

Why is it that the violence resulting from these circumstances takes with increasing frequency the form of international terrorism, threatening, endangering or killing innocent victims? As the peoples of the world grow more interdependent the solution of many problems no longer hangs on any local ruler or government, but on actions and decisions taken thousands of miles away. Men think their ills have been produced by some vast impersonal force, which is deaf to their pleas for justice or impotent to find solutions, rather than by other men, striving for similar although opposed ends and bound to them by the claims of a common humanity. Modern communications and the growth of the public information media have transformed local incidents into world events, especially when the incidents have an international character. 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, as has already been said, cannot possibly by themselves effect radical social changes—are really

acts of communication. They are intended to show the world that the determination and devotion of the terrorists are sufficient to compensate in the long run for their apparent inferiority in strength; that their cause is more holy to them than life itself, must be taken seriously, and is worthy of support; and that neither their foe nor the world at large is able to prevent their success in their purpose, or ensure punishment of their deeds and those of their associates.

Other such acts, however, seem to be more the result of blind fanaticism, or of the adoption of an extremist ideology which subordinates morality and all other human values to a single aim. In either case, the result is the same; modern life and modern weapons bring more and more strangers and foreigners within the reach of the terrorist, and he uses them as instruments for his purpose. As violence breeds violence, so terrorism begets counter-terrorism, which in turn leads to more terrorism in an ever-increasing spiral.

The modern aircraft—which is perhaps the most vulnerable of all the high and complex developments of technology, which contains assemblages of people from many countries, and which if brought under the terrorists' control, offers a speedy and safe means of reaching a distant asylum abroad—is often a factor in modern forms of international terrorism. The many problems of protecting aircraft without destroying the speed and convenience of air travel, or imposing unacceptable procedures upon air travellers, have not yet been completely solved.

It thus appears that the "misery, frustration, grievance and despair" which lead to terrorism have many roots in international and national political, economic and social situations affecting the terrorist, as well as in his personal circumstances. The precise chain of causation of particular acts cannot be traced with scientific exactitude. Nevertheless, the General Assembly may wish to identify types of situations which, if a remedy could be found to bring them more into accord with justice, will cease to contribute to the spreading terrorism which has shocked the world.

## SECTION 2

### POLITICAL CRIME: A PSYCHOLOGIST'S PERSPECTIVE

ALAN F. SEWELL

LAWYERS MAY OR MAY NOT AGREE that the term crime is subject to a variety of interpretations. In a simplistic legal sense, a crime is simply a violation of certain laws which are in the criminal codes of a given jurisdiction. Following this line of argument, criminal behavior in one jurisdiction may not be criminal behavior in another; and this amounts to an extension of cultural relativism to the law and its processes.

When pressed, lawyers frequently resort to a *social values* definition of crime. The essential ingredient of such a definition is an assertion that society establishes what is and what is not permissible, what goals should and should not be sought, what means may and may not be employed. When suitably codified, these values become the wellsprings of law and sometimes the law itself. Crime thereby achieves legal definition, presumably on the basis of negative social values consensually deplored by society.

The *social values* approach to a definition of crime provokes a number of difficulties. The primary difficulty concerns the identification of the society which provides the values to be codified. In a pluralistic society, it seems inevitable that certain behaviors deplored by the majority will attain the status of *crime*, whether or not minorities within the society regard these behaviors as reprehensible; indeed, history has noted many examples in which the mere existence of a minority is regarded as criminal.

A second difficulty lies in the possibility that the social values upon which laws are based may either have been incorrectly understood by the lawmakers or they may have changed since the time of the lawmaking. Certainly every criminal code contains exam-

ples of laws which are no longer enforced because they have outlived their usefulness.

Certain other difficulties stemming from a *social values* definition of crime could easily be demonstrated by those more concerned with legal theory. Despite such difficulties, this approach to a definition has a long history, and, if only in default of a more satisfactory approach, seems likely to continue. It is clearly preferable to an absolutist approach, wherein criminality is defined on an authoritarian basis.

The two difficulties noted here—potential tyranny of the majority and potential irrelevance of the law—are particularly acute because of law's inherent conservatism. Laws, although sometimes difficult to enact, tend to be extraordinarily difficult to modify or repeal. The sources of this conservatism are of special interest to the psychologist, and in particular to the psychologist concerned with the structures and operations of society. One source of conservatism seems to be almost biological in nature, or at least to have biological analogs: the first obligation of any organism, including a society, is to perpetuate itself. To the extent that laws embody the values of a society, changes in those laws imply changes in the values which typify the society and must lead to changes in the society itself.

The second source of law's conservatism is very closely related to the first; indeed, it constitutes one of the major ways in which social values are maintained. Laws, which are presumably based upon consensual values, establish norms of behavior, and to the extent that behavior of individuals conforms to these norms, the legitimacy of the law is upheld. That is, laws not only encodify social values; they also tend to shape behavior into patterns which reinforce those values. Although a given law may originally have been arbitrarily imposed, adherence to it can easily become *natural*. In such a way, a law which has long ceased to accommodate social value can continue to maintain that value.

If the problem of defining *crime* seems both difficult and circular, in no aspect of criminal law is the difficulty more acute than in defining *political crime*. The ostensibly distinctive feature of the political crime is that it constitutes a violation of the political

values of a society. But *political values* are even more resistant to delineation than *social values*. Are political values different from social values? There are some who might argue that any violation of social values is an attack upon the social system and, hence, a simultaneous violation of political values; in such a view, any crime is a political crime.

Probably the most common definition of political crime concerns actions intended to disrupt or destroy the integrity of a governmental system. At least two subdivisions of political crime seem immediately appropriate: those directed against a system governing the offender, and those directed against an external system. The first of these might be termed "internal political crime;" and the second, "external political crime." In a more popular terminology, the second of these would be referred to as "international political crime." The "internal political crime" would involve violations of political values presumably endorsed by the offender's society, while the "international political crime" would involve violations of either supra-national political values or values of a foreign political system.

Those acquainted with international law will certainly be familiar with the numerous historical and current attempts to define political crime.<sup>1</sup> Most of these have adopted very limited objectives, typically in the form of identifying and condemning such highly specific offenses as assassination of a head of state and piracy. The list of such attempts is far longer than the list of adoption of international agreements stemming from the attempts. The core of the problem appears to be an inability to agree that all behaviors intended to harm a foreign political system are internationally opprobrious; most states are quite willing to overlook the disruption of a competitive state. It would seem that as long as states pursue competitive programs and policies, international agreement on political crime is unlikely.

<sup>1</sup>A survey of some historical attempts to deal with varieties of international political crimes was recently provided by John Dugard, Professor of Law, University of the Witwatersrand, Johannesburg, South Africa. Delivered at the 67th Annual Meeting of the American Society of International Law, Washington, D.C., April 12, 1973, Prof. Dugard's paper was titled "Toward the Definition of International Terrorism." 1973 *Proceedings of The American Society of International Law*. See also Bassiouni, *intra* note 8.

### **TOWARD A BEHAVIORAL DEFINITION OF POLITICAL CRIME**

There appears to be a general tendency to consider political crime as an uncomplicated, unitary act. In actual practice, however, it seems virtually impossible for this to be the case; the political crime seems necessarily to be complex—to combine elements of common crime with political intent. Even such an apparently simple political offense as espionage, for example, which by definition is intended against a state, will typically include such typically common crime elements as burglary or theft.

But the political crimes which most trouble contemporary society are far more complex, even in the legal sense. These offenses are terrorism, assassination, kidnapping, skyjacking, and a variety of other activities which are reported almost daily in newspapers throughout the world. The notable characteristic of all these activities, apart from the social unrest they create, is that each prominently includes a major element of common crime. Assassination is, of course, murder, an offense condemned by all societies. Kidnapping is a common crime in itself. The problem which must be dealt with is that of determining in precisely which cases the common crime becomes a complex political crime.

This problem may be exemplified by reference to a Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism submitted to the General Assembly of the United Nations by the United States in September, 1972.<sup>2</sup> Although intentionally limited in scope, this Draft Convention does undertake to define at least one variety of political crime: international terrorism, which is defined to include homicide, serious assaults, kidnapping, and participation in such offenses. At least by implication, a political crime is such an act when it has “international significance,” and “international significance” is scrupulously defined as being involved if the act:

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<sup>2</sup>The full text occurs in 67 *Department of State Bulletin*, 431, October 16; 1972. See also *Appendix R*, p. 557.



- “(a) is committed or takes effect outside the territory of a State of which the alleged offender is a national; and
- (b) is committed or takes effect:
  - (i) outside the territory of the State against which the act is directed, or
  - (ii) within the territory of the State against which the act is directed and the alleged offender knows or has reason to know that a person against whom the act is directed is not a national of that State; and
- (c) is committed neither by or against a member of the Armed Forces of a State in the course of military hostilities; and
- (d) is intended to damage the interests of or obtain concessions from a State or an international organization.”<sup>3</sup>

Hence the killing of a citizen of Switzerland by a citizen of the United States within the boundaries of Italy is at least potentially an act of “international significance”—a political crime. Clearly much more must be known of the specifics of the incident before such a determination can be made. Various interesting possibilities can be imagined.

1. The offender and his victim are both diplomats, and preceding the offense, national insults were exchanged between the participants, stemming from disagreement on an international trade protocol.

2. The victim was a diplomat, and the offender acted in the course of a robbery attempt.

3. The victim was attempting a robbery, and the offender was a diplomat in process of being the robber's victim.

4. The offender and his victim were both diplomats, and the act occurred in the course of an argument centering on an *affaire de coeur*.

5. The offender and the victim were both businessmen secretly conducting trade negotiations on behalf of their governments; the act stemmed from a disagreement about the negotiations.

6. The offender and victim were patrons of an art exhibition; the offender became incensed by what he considered a national in-

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<sup>3</sup>*Ibid.*, Article 1.