

LEGAL OBSTACLES TO COMBATTING INTERNATIONAL STATE-SPONSORED TERRORISM

I. INTRODUCTION

The 1970's saw a shift from individual terrorism to state sponsorship of terrorism that in turn has given weaker States an effective means of warfare against their more powerful enemies.¹ State-sponsored terrorism, an activity presently being practiced by communist states and other militant totalitarian regimes such as the Soviet Union, Iran, Libya, and Syria, purports to export terrorists and terroristic techniques into countries whose governments they seek to displace.² By creating extreme social and political conflict in contemporary life,³ such states use official or non-official groups of diverse national origins as their tools. They provide such sub-state groups with the funding, training, and arms necessary to accomplish their violent goals.⁴

Terrorist activities have been practiced in the twentieth century by several major terrorists who mastered the use of oppression for their own political gain. They include Adolf Hitler, Joseph Stalin, and Mao Tse-tung. These dictators created campaigns that encouraged their followers to destroy the established social and legal order. Hitler's and Stalin's regimes were typical examples of what is defined as state-sponsored terrorism—deliberate use of terrorism by the state against its own people.⁵ Such a system of terrorizing people in order to gain ideological and political goals has not only survived these tyrants, but has transcended national borders thereby causing serious international conflicts.

State sponsorship of terrorism has added an entirely new dimension to the already frightening realm of terrorist activity. Terrorist tactics have become more inventive, terrorist resources more readily available, and terrorist victims more numerous. Between 1975 and 1985 there were more than five thousand terrorist incidents that resulted in four thousand

1. N. LIVINGSTONE & T. ARNOLD, *FIGHTING BACK* 14 (1986).

2. SUBCOMMITTEE ON SEC. AND TERRORISM, COMM. OF THE JUDICIARY, 99TH CONG., 1ST SESS., *REPORT ON STATE-SPONSORED TERRORISM* 19 (Comm. Print 1985) [hereinafter *Committee Print*].

3. *Id.*

4. *Id.*

5. *Id.* at 4.

deaths and more than eight thousand wounded victims.⁶ Recent incidents include the Achille Lauro hijacking on October 7, 1985, in which four hundred civilians were taken hostage and one American national was murdered,⁷ the hijacking of TWA Flight 847 that resulted in the murder of an American officer,⁸ and the murder of three Israelis in Cyprus in September 1985.⁹

Since the problem of contemporary state-sponsored terrorism has been increasing each year, the United States has been continually struggling to find an appropriate response to such an appalling problem. At present there is no consensus in the international community as to what acts constitute state-sponsored terrorism, and in general what the phenomenon entails. Without a precise definition of terrorism, and more specifically state-sponsored terrorism, the United States and other nations of the free world have found it difficult to formulate appropriate national and military policy. Although many international agreements and conventions have been created, there has not been proper adherence to such treaties. In fact, international obligations have been outrightly ignored by signators. Additionally, states have had difficulty in obtaining jurisdiction over terrorists and their state sponsors. Even after an adequate basis for jurisdiction under international law has been established, a terrorist may escape prosecution through the political offense exception to extradition. This comment seeks to evaluate the obstacles that have made it difficult to deal successfully with the threat of international state-sponsored terrorism.

II. DEFINITIONAL PROBLEMS

A major obstacle to forming a consensus on the definition of terrorism is that each governmental agency, organization, and office defines this activity according to its own views and responsibilities.¹⁰ Therefore, there are numerous approaches to the same problem all consisting of different elements. Terrorism is difficult to define because one tries to "treat a highly complex set of factors as a simple, unitary theme which might

6. H. R. Con. Res. 228, 99 Stat. 227 (1985), reprinted in 24 I.L.M. 1562, 1563 (1985) [hereinafter H. R. Con. Res. 228].

7. See Note, *Towards a New Definition of Piracy: The Achille Lauro Incident*, 26 VA. J. INT'L L. 723, 745-46 (1986); McGinley, *The Achille Lauro Affair—Implications for International Law*, 52 TENN. L. REV. 691 (1985); Edelman, *Pirates and Passengers*, N.Y.L.J., Nov. 1, 1985, at 1, col. 1.

8. For further treatment see *TWA Flight 847: The Harvest of Arab Disillusionment with U.S.?*, L.A. Daily J., July 5, 1985, at 4, col. 3; *The Hostages Freed—A Sense of Relief and Painful Truths*, L.A. Daily J., July 2, 1985, at 4, col. 1; *Legal Remedies Available to Hijack Victims of TWA Flight 847*, N.Y.L.J., July 18, 1985, at 1, col. 1.

9. H. R. Con. Res. 228, *supra* note 6.

10. Committee Print, *supra* note 2, at 25. This problem is apparent in various governments of the free world.

be susceptible of simple representation by a universally acceptable symbol."¹¹

A. *Nature of the Act*

Disagreement as to precisely what acts constitute terrorism poses a significant problem. Previous treaties have contained definitions which identified certain acts as constituting specific crimes. The Convention for Prevention and Punishment of Terrorism¹² defined terrorism as 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.¹³ Along the same lines, the International Convention Against the Taking of Hostages identified some special offenses and tried to take judicial steps to deal with them.¹⁴ Such attempts at defining terrorism in treaties have specified certain actions in order to target certain crimes.¹⁵

However, these measures have not solved the definitional problem. Different entities continue to employ varied guidelines for pinpointing what they deem a terrorist act. For instance, the Foreign Intelligence Surveillance Act¹⁶ defines international terrorism as involving "violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States,"¹⁷ and an activity that "appear[s] to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnapping."¹⁸

The Federal Bureau of Investigation defines terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives."¹⁹ Such definitions and that used by the United States Army, which defines terrorism as "the calculated use of violence or the threat of violence to attain political, religious or ideological goals by instilling fear or using intimidation or

11. Cooper, *Terrorism: The Problem of the Problem of Definition*, 26 CHITTY'S L.J. 105, 106-07 (1978).

12. Convention for the Prevention and Punishment of Terrorism, *opened for signature* Nov. 16, 1937, *reprinted in* 7 INT'L LEGIS. 862. This Convention was adopted by the League of Nations, but it was not entered into force. Parties to the Convention were required to amend criminal laws to effectuate the treaty provisions. The Convention included articles regarding extradition of aggressors, but left the option of a political exception defense open.

13. *Id.* at 865.

14. International Convention Against the Taking of Hostages, Dec. 17, 1979, G.A. Res. 34/146, 34 U.N. GAOR Annex, U.N. Doc. A/34/819, at 5 (1979), *reprinted in* 74 AM. J. INT'L L. 277 (1980) [hereinafter International Convention].

15. Committee Print, *supra* note 2, at 26-27.

16. 50 U.S.C. § 1601 (1982).

17. *Id.* at § 1801(c)(1).

18. *Id.* at § 1801(c)(2).

19. N.Y. Times, Dec. 12, 1984, at 14Y, col. 3.

coercion. . . .,"²⁰ are not very helpful in formulating guidelines for punishing terrorist acts. These definitions are too general when it comes to applying them to specific incidents. They fail to narrow down which acts are covered, and against whom the acts are prohibited.

Other definitions are more specific. As one author explains, "the terroristic process—terrorism—involves the purposive use of violence or the threat of violence by the precipitator[s] against an instrumental target in order to communicate to a primary target a threat of future violence so as to coerce the primary target into behavior or attitudes through intense fear or anxiety in connection with a demanded power (political) outcome."²¹ According to another author, terrorism is "the exercise of violence or the threat thereof against an innocent third party, property or institutions by an individual or organization seeking to secure concessions from some individual or organization other than the victim."²² However, the problem here lies in the fact that terrorists continually invent new tactics that are totally unpredictable.

Therefore, without a unified definition of terrorism there can be no consensus for defining the branch of terrorism termed state-sponsored. As is the case with terrorism in general, it is necessary to achieve agreement on the definition of state-sponsored terrorism in order to coordinate a policy for preventing and punishing such activity. To date, this goal has not been reached although an attempt²³ is being made to promote a common understanding of the elements. It is imperative that all the agencies of the U.S. Government formulate a working definition of state-sponsored terrorism as a sub-set of terrorism. A suggested definition is as follows:

The deliberate employment of violence or the threat of use of violence by sovereign states (or sub-national groups encouraged or assisted by sovereign states) to attain strategic and political objectives by acts in violation of law intended to create overwhelming fear in a target population larger than the civilian or military victims attacked or threatened.²⁴

20. HEADQUARTERS DEPARTMENT OF THE ARMY, COUNTERING TERRORISM ON U.S. ARMY INSTALLATIONS, Army Reg. 190-52, at 1-1 (1983).

21. Paust, *Terrorism and the International Law of War*, 64 MIL. L. REV. 1, 3 (1974).

22. Green, *Terrorism and the Courts*, 11 MANITOBA L.J. 333 (1981).

23. All U.S. agencies are working to adopt a unified position on the definition of international terrorism as they recognize its international danger in the 1980's. Committee Print, *supra* note 2, at 40.

24. *Id.* This definition is favorable in that it illustrates the views of concerned Americans along with current policy expressed by President Reagan.

B. *Level of Involvement*

Any working definition of state-sponsored terrorism must address the involvement of government officials with terrorist groups. Generally, a close level of involvement exists between a government and the group chosen to carry out the violence; the aid to such a group being measured by the direction of activities, funding and supply of weapons, and the use of national territory and resources for training and intelligence functions.²⁵ This involvement is usually followed by ideological, religious, and political partiality between the government and the terrorist group.²⁶ As a result of state sponsorship, the contemporary terrorist group is no longer merely an "untrained, ill-equipped and disorganized band of criminals."²⁷

According to the U.N. resolution defining aggression, it is an act of aggression when a state sends terrorist groups to another state to carry out violent acts against it.²⁸ The General Assembly has reiterated its view against terrorism by drafting the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations.²⁹ This document provides:

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph, involve a threat or use of force. . . . Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed toward the violent overthrow of the regime of another State, or interfere in civil strife in another State. . . .³⁰

Congress has suggested that state support of international terrorism consists of certain acts that are committed deliberately by a state. Such acts consist of furnishing arms, explosives, or lethal substances to individuals, groups or organizations with the likelihood that they will be

25. Committee Print, *supra* note 2, at 59.

26. *Id.*

27. Wilder, *International Terrorism and Hostage-Taking: An Overview*, 11 MANITOBA L.J. 367, 370 (1981).

28. G.A. Res. 1186 (XII), 6 U.N. GAOR at 243 (1957). Aggression is. . ."the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein. . . ." Official Records of the Gen. Assembly, 12th Sess., Supp. No. 16 (A/3574).

29. G.A. Res. 2625 (XXV), 13 U.N. GAOR at 337 (1970). Official Records of the Gen. Assembly, 25th Sess., Supp. No. 18 (A/8018).

30. *See id.* Annex at 338.

used in the commission of any act of international terrorism; providing direct financial support for the commission of any act of international terrorism; providing diplomatic facilities intended to aid or abet the commission of any act of international terrorism; or allowing the use of its territory as a sanctuary from extradition or prosecution for any act of international terrorism.³¹ These guidelines serve as an aid in determining whether a certain activity is to be considered state-sponsored terrorism.

National support and backing of terrorism is a reality in the contemporary international scene.³² State-sponsored attacks have become quite common in recent years. A prime example was the truck bombings of the embassies in Beirut and Kuwait, and of the United States Marine headquarters.³³ The Islamic Jihad, a faction of the Shi'ites,³⁴ took responsibility for the acts. The terrorists were funded and supported by Iranian officials.³⁵ Another state which has supported and encouraged terrorist groups is Lebanon. Lebanon has housed a network of terrorist activity for a number of years.³⁶

III. THE RESPONSE

A question still remains as to the most effective means of responding to the international terrorist threat. At present, it is a problem facing all free world nations. Ideally, any response should not only prevent future terroristic acts but should also deter a successful terrorist by means of a penalty. Human rights are also a consideration in the solution. With so many considerations at hand, the U.S. Government attempts to respond to the problem. However, each response must be carefully evaluated to assure that the objective will be accomplished through the proper means and without resort to illegal acts.

A. *Humanitarian Response*

A major obstacle in defining terrorism on an international scale is

31. S. 333, 96th Cong., 1st Sess. § 5(b) (1979).

32. Committee Print, *supra* note 2, at 2.

33. *Id.* at 19.

34. *See generally* 20 *COLLIER'S ENCYCLOPEDIA* 677 (1986) (Shiite Muslims are a sect of Islam, generally identified with Iran. They are considered heretics by orthodox Sunnites because they recognize Ali and his descendants as the only rightful successors of Muhammed. The Ali of Shiite faith symbolizes the political objectives and religious ideals that are held in much of the Muslim world).

35. Committee Print, *supra* note 2, at 20.

36. *Id.* (stating that in 1983 and 1984 Lebanon was responsible for the most lethal attacks against American military forces and diplomatic personnel and their installations. The terrorists created much fear and panic in the target area and caused the entire multinational peacekeeping force to withdraw).

that one party to the conflict may deem a certain act of violence terrorism while the other party may claim to be a freedom fighter in a national liberation movement.³⁷ However, the general view is that terrorism violates the law of nations.³⁸ Many states have drawn up international resolutions and conventions in an attempt to discourage terrorism.³⁹ Several of these documents emphasize the fact that acts of terrorism violate human rights and for this reason cannot be tolerated. For instance, Article 55 of the U.N. Charter states that nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all."⁴⁰

In 1948, the Universal Declaration of Human Rights⁴¹ was adopted for the purpose of international recognition and protection of human rights. It states that "everyone has the right to life, liberty and security of person," and "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁴² This international resolution acknowledges the fact that terroristic activity may involve torts that produce a loss of liberty along with cruel, inhuman, and degrading punishment and torture.⁴³

The International Covenant on Civil and Political Rights⁴⁴ was drafted and passed with the same objectives in mind. It recognizes the fact that such fundamental human rights are infringed upon when one falls victim to an act of terrorism.⁴⁵ Since states are not permitted to violate these basic human rights, it would be inconsistent to allow other groups to do so in furthering their political goals.

37. See *supra* text accompanying notes 10-36.

38. 2 U.N. GAOR at 135. Note, *Terrorism as a Tort in Violation of the Law of Nations*, 6 *FORDHAM INT'L L.J.* 236 (1981); see U.N. CHARTER art. 55; Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 71 (1948) [hereinafter Universal Declaration]; International Covenant on Civil and Political Rights, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 52-53, U.N. Doc. A/6316 (1966) [hereinafter International Covenant].

39. See e.g., International Convention, *supra* note 14; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, *supra* note 29; Universal Declaration, *supra* note 38, at 71.

40. U.N. CHARTER art. 55, para. 1(c). With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

41. Universal Declaration, *supra* note 38.

42. See *id.* at arts. 3, 5.

43. *Id.*

44. International Covenant, *supra* note 38, at 52-53.

45. See *id.* at arts. 7, 10, 17. (Article 7 states: "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." Article 10, section 1 states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Article 17 states: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.").

Article 12 of the United Nations Convention Against the Taking of Hostages⁴⁶ provides that hostage-taking in the course of armed conflict is prohibited insofar as it is not already banned by the conventions of humanitarian law applicable to states that are parties to the United Nations Convention. Thus, hostage-taking is a crime which will be prosecuted and punished.⁴⁷ However, this standard applies only to those states which have signed the Convention. Non-signatory parties are not bound.

Civilians must not be the object of indiscriminate attacks, and "[a]cts or threats of violence the primary purpose of which is to spread terror⁴⁸ among the civilian population are prohibited." Hostage-taking and inhuman, humiliating or degrading treatment of civilians or combatants have also been banned.⁴⁹ This particular issue has been the subject of various international cases stemming from violent acts against civilians.⁵⁰

Terrorism as a violation of human rights was an issue in a 1979 U.S. case. In *Filartiga v. Pena-Irala*,⁵¹ the plaintiff brought suit against a Paraguayan policeman who had kidnapped the plaintiff's son and tortured him to death in retaliation for the plaintiff's political activities.⁵² The court held that "an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations."⁵³ According to the *Filartiga* court, official torture was prohibited by the law of nations, and the prohibition was "clear and unambiguous."⁵⁴ The opinion noted that "the international community has come to recognize the common danger posed by the flagrant disregard of basic human rights and particularly the right to be free of torture."⁵⁵ This case illustrates the

46. International Convention, *supra* note 14.

Insofar as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and insofar as States Parties to this Convention are bound under those Conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts. . . in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination. . . .

Id.

47. Cassese, *Terrorism and Human Rights*, 31 AM. U.L. REV. 945, 948-49 (1982).

48. Protocol Additional to the Geneva Conventions of 1949 (Protocol I), art. 51, para. 2, opened for signature Dec. 12, 1977, reprinted in 16 I.L.M. 1391, 1413 (1977). U.N. Doc. A/32/144 of Aug. 15, 1977, Annexes I and II. 75 U.N.T.S. 31.

49. *Id.*

50. See *infra* text accompanying notes 51-55.

51. 630 F.2d 876 (2d Cir. 1980).

52. *Id.* at 876.

53. *Id.* at 880.

54. *Id.* at 884.

55. *Id.* at 890.

fact that even those organizations purporting to represent political ideologies are required to abide by certain minimum standards.⁵⁶ Therefore, acts committed by groups acting on behalf of a state's government may be punishable as well. Where such activity consists of practices that result in infringement upon a victim's fundamental human rights, the offender's actions should be condemned and punished accordingly.

There are numerous options available to a state in dealing with international terrorism. However, many of the options are less than appealing and a state must carefully evaluate all of the circumstances and then weigh the advantages and disadvantages of each alternative.

B. Possible United States Measures

The U.S. government is continually searching for ways to counter effectively terrorist acts since American facilities and citizens abroad constitute thirty percent of all international terrorist incidents.⁵⁷ It has become extremely common for governments to use terroristic measures or to employ terrorist groups as foreign policy tools.⁵⁸ In the United States, the National Security Council advises the President concerning measures to take in a terrorist crisis situation.⁵⁹ Although the Council and the President are primarily concerned with saving the lives of the victims, general national policy is to refrain from negotiating with terrorists.⁶⁰ A conflict exists because even though the government desires to be strong, it fears that antagonism endangers victims. As a result, decisions often rest on the circumstances of a particular situation, such as which allies will be involved. Because such responses involve crisis situations, a strategic plan must be designed to deal with the continuing threat of international terrorism. Strategic planners often consider several military options: overthrowing the government head, hitting terrorist bases, or taking action immediately along with long-term tactics.⁶¹ Retaliation is also an option—whether to invade a state, kidnap a government head, bomb, blockade or conduct air strikes.⁶²

56. *Id.* at 883 (the court stated that the U.N. declarations regarding human rights "are significant because they specify with great precision the obligations of member nations under the charter." The court continued saying, "Since their adoption, members can no longer contend that they do not know what human rights they promised in the charter to promote.").

57. *International Terrorism, Insurgency, and Drug Trafficking: Present Trends in Terrorist Activity: Hearings on S. 381-4 Before the Comm. on Foreign Relations and the Comm. on the Judiciary, 99th Cong., 1st Sess. 11 (1985)* (statement of Brian Jenkins, Program Director, Security and Subnational Conflict, the Rand Corp.) [hereinafter *Hearings on S. 381-4*].

58. Committee Print, *supra* note 2, at 12.

59. *Id.* at 75.

60. *Fighting Terrorism—A National Security View* (documentary produced by the Georgetown Center for Strategic and International Studies, Sept. 17, 1986).

61. *Id.*

62. *Id.*

A serious threat to the nations of Central and South America was the catalyst for proposed U.S. action in Nicaragua.⁶³ In response to state-sponsored terrorism by the Soviet Union, President Reagan campaigned for aid to the Contras,⁶⁴ viewing the Soviet sponsorship as a threat to U.S. security. Reagan justified his policy under Article 51 of the U.N. Charter which recognizes the right of individual and collective self-defense of all sovereign nations.⁶⁵ Congress denied the President's request for aid to the Contras in April 1985⁶⁶—apparently because it felt that countering such hostilities was not the responsibility of the U.S. government.

The United States is not concerned with every form of terrorism,⁶⁷ only those certain acts that will always be threatening to the country. Such acts consist of attacks by domestic groups in the United States, attacks by foreign groups operating in the United States, and attacks on American facilities, personnel, and direct interests abroad.⁶⁸

Recently, several tactics have been employed by various U.S. administrations in dealing with the threat of terroristic attacks. The Nixon administration attempted a multilateral collective security system to deny terrorists sanctuary.⁶⁹ The Carter administration pushed human rights and sought to alleviate grievances that provoked violence.⁷⁰ Currently, President Reagan purports to employ a policy of strong retaliation.⁷¹ In 1985, Reagan announced his "war on terrorism."⁷² Claiming that the goals of Iran, Libya, North Korea, Cuba, and Nicaragua are "to expel America from the world," President Reagan stated that Americans

63. Committee Print, *supra* note 2, at 88.

64. Committee Print, *supra* note 2, at 89. "Contras" is a term used to refer to the group in Nicaragua opposing the Sandanista regime.

65. U.N. CHARTER art. 51.

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Id.

66. Committee Print, *supra* note 2, at 90.

67. A PANEL REPORT ON TERRORISM, COMBATting TERRORISM: A MATTER OF LEVERAGE 11 (1986). Examples include U.S. refusal to take strong action concerning the flow of U.S. financial support and arms to the Irish Republican Army, little U.S. concern for the Basque separatists in Spain, and U.S. inattention regarding the Red Brigades in Italy prior to the kidnapping of an American general [hereinafter PANEL REPORT].

68. *Id.*

69. N. LIVINGSTONE & T. ARNOLD, *supra* note 1, at 50.

70. *Id.* at 51.

71. PANEL REPORT, *supra* note 67, at 15.

72. Blodgett, *Fighting Terrorism: Reagan Asks Lawyers to Help*, 71 A.B.A.J. 17 (1985).

would not tolerate attacks from "outlaw States run by the strangest collection of misfits, looney tunes, and squalid criminals since the advent of the Third Reich."⁷³ Thus, the policy expressed by the present administration reflects a refusal to be intimidated, terrorized or victimized. However, none of these measures has proven successful because the threat of terrorism continues to expand in all directions.⁷⁴

The use of military force is an option to be considered as a means of freeing captives and punishing terrorists. However, terrorists suspect that the United States will not take such action under the threat of killing American captives.⁷⁵ Consequently, President Reagan has been forced to negotiate and compromise in terrorist situations.⁷⁶

However, a recent decision by the Reagan administration did not, in fact, reflect a policy of negotiation. On April 15, 1986, the United States conducted air strikes against Libya.⁷⁷ President Reagan announced that the bombings were directed against the headquarters, terrorist facilities, and military assets that support Colonel Quadafi's subversive activities.⁷⁸ The U.S. air strikes were in retaliation for the explosion of a bomb, believed to have been planted by Libyans, that injured fifty Americans in a West Berlin club, as well as other acts of terrorism.⁷⁹ If Libya was responsible for these violent acts, it clearly violated international law.⁸⁰ However, a counter-policy of violence arguably violates the U.N. Charter.⁸¹ This sort of U.S. policy is dangerous in that it could lead to violent conduct against other states which employ terrorist tactics, and could also be the justification for other states to use forceful measures against each other and the United States.⁸² Perhaps it is necessary to remove such decisions from the hands of government personnel. One suggestion is to form an international body of eminent citizens, academicians, and retired military leaders to negotiate in a crisis situation.⁸³

73. *Id.*

74. PANEL REPORT, *supra* note 67, at 15.

75. *Meanwhile Possible Solutions Perplex Even the Experts*, L.A. Daily J., July 10, 1985, at 4, col. 3 [hereinafter *Possible Solutions*].

76. *Id.*

77. Thornberry, *International Law and its Discontents: The U.S. Raid on Libya*, 8 LIVERPOOL L. REV. 53, 55 (1986).

78. *Id.*

79. *Id.*

80. *Id.* at 62.

81. U.N. CHARTER art. 2, para. 4. "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

82. PANEL REPORT, *supra* note 67, at 13.

83. *Possible Solutions*, *supra* note 75. This proposal was made by Frank Brenchley, a counter-terrorism expert, Arabist and former senior British diplomat. He believes negotiations in hostage crises should be taken over by a special council of negotiators rather than politicians who risk loss of face.

An unpopular response to terrorism lies in simply waiting. This involves taking a stance against concessions and showing an unwillingness to risk hostages' lives.⁸⁴ However, the majority of citizens feel that a state needs to take some action to deal effectively with such activity.⁸⁵ One expert suggests negotiating only with terrorist backers and paymasters; lack of recognition of the actual terrorists might discourage them.⁸⁶

At present, international collaboration should also be considered. Although attempts at such cooperation have been made, no sufficient results have been produced. For example, at the 1978 Bonn Economic Summit the main air transport companies agreed to boycott countries which harbored hijackers or terrorists.⁸⁷ This agreement, however, was never put into effect. Furthermore, at the European Economic Summit in 1984, participating states agreed on undisclosed steps against terrorism and the abuse of diplomatic immunity.⁸⁸ However, soon after this collaboration Greece released a suspect in the TWA hijacking incident without regard to the agreement.⁸⁹

In the aftermath of terrorist attacks on the Rome and Vienna airports, the U.S. government has consulted with its European allies and encouraged them to take steps to lessen the risk of terrorist incidents.⁹⁰ As a result, there has been a condemnation of states that support terrorism, a decision not to sell arms to such states, and a European Community declaration that such states will not have "normal" relations with the European Community.⁹¹ European ministers have set up permanent working groups in an attempt to establish better visa policies, to stop abuse of diplomatic immunity, to upgrade security at airports and railroad stations, and to assert more control over those entering and leaving the European Community.⁹² Even though these attempts at international cooperation are a step in the right direction, they have not totally deterred the terrorist community.

A question remains regarding the extent to which the United States can use armed force against nations sponsoring terrorism. According to the U.N. Charter, any armed reprisal by a modern state in response to terrorist activity is a forbidden act.⁹³

84. *International Law and Lawlessness*, L.A. Daily J., June 24, 1985, at 2, col. 5.

85. PANEL REPORT, *supra* note 67, at 15.

86. *Possible Solutions*, *supra* note 75.

87. Bonn Economic Summit (1978).

88. European Economic Summit (1984).

89. *Possible Solutions*, *supra* note 75.

90. *Developments in Europe: Hearings on H. 381-40 Before the Comm. on Foreign Affairs and the Subcomm. on Europe and the Middle East*, 99th Cong., 2d Sess. 25-31 (1986).

91. *Id.*

92. *Id.*

93. U.N. CHARTER art. 2, para. 3, 4. "All members shall settle their disputes by peaceful

A worthwhile step for the United States in combatting terrorism would be towards more legal control. Possibilities would include expanding international anti-terrorist legislation, controlling the apprehension and prosecution of offenders by establishing standards for expulsion, and protecting the interests of terrorist victims, possibly by compensation.⁹⁴ Although non-violent responses as a means of countering terrorism are preferred, there is no guarantee of the success of legal sanctions. Attempts to expose terrorist leaders to law enforcement constraints and public disapproval may not be effective because of the problem of nonadherence to international law. Many states refuse to be bound by international legal standards, and even those that consider themselves obligated may refuse to appear before an international court.⁹⁵ "Measures to control international terrorism are effective only if they are founded on law and are carried out through cooperative state action."⁹⁶

V. JURISDICTION

A major issue in the realm of state-sponsored terrorism is whether a victimized state can impose sanctions against terrorists or their state sponsors under international law. In 1983 and 1984 terrorist attacks took the highest annual toll of lives and property on record—the majority of these attacks being initiated by state supported groups.⁹⁷ However, a sponsoring state, if implicated merely by circumstantial evidence, can readily disclaim responsibility for such attacks.⁹⁸ Although the prevailing view is that terrorists must be prosecuted, it is difficult to establish who will be held responsible and where they will be forced to stand trial. A state wishing to prosecute a terrorist must have an adequate basis for jurisdiction under international law; if there is no jurisdictional basis the state's court must decline jurisdiction.

A. *Traditional Means of Claiming Jurisdiction*

There are five bases for claiming jurisdiction under international law: territoriality, nationality, protectionist, universality, and passive personality.⁹⁹ The territorial theory allows a state jurisdiction when a crime is committed within that state or its effects are felt there regardless

means in such a manner that international peace and security, and justice are not endangered." (para. 4, *supra* note 81.).

94. Evans, *Perspectives on International Terrorism*, 17 WILLAMETTE L. REV. 151, 159 (1980).

95. Green, *International Crimes and the Legal Process*, 29 INT'L & COMP. L.Q. 567, 569 (1980).

96. Evans, *supra* note 94, at 164.

97. N. LIVINGSTONE & T. ARNOLD, *supra* note 1, at 12.

98. *Id.*

99. Paust, *Federal Jurisdiction Over Extraterritorial Acts of Terrorism and Nonimmunity*

of the offender's nationality.¹⁰⁰ Under the universality theory every country has the right to exercise criminal jurisdiction over certain crimes such as piracy and slave trade regardless of the offender's or the victim's nationality or the place of the act.¹⁰¹ Jurisdiction based on nationality gives a state competence to prescribe laws regulating the conduct of its nationals wherever they are.¹⁰² The protective theory permits the exercise of jurisdiction where a significant national interest is at stake.¹⁰³ The fifth basis of jurisdiction, passive personality, allows a state prescriptive jurisdiction over anyone anywhere who injures one of its nationals.¹⁰⁴

In addition, a state wishing to prosecute an offender may be able to obtain jurisdiction from another state by virtue of extradition.¹⁰⁵ Extradition is a means by which one state may get jurisdiction legally from another state in order to prosecute an offender by delivery of the offender who has allegedly violated the laws of the requesting state.¹⁰⁶ This is the usual method for international apprehension of criminals, either provided for by bilateral treaty or on the basis of international comity. There are several U.S. treaties allowing prosecution and extradition of terrorists.¹⁰⁷ However, these extradition treaties are not always strictly enforced when an incident occurs.

A flagrant example of the lack of adherence to extradition treaties is

for Foreign Violators of International Law Under the FSIA and the Act of State Doctrine, 23 VA. J. INT'L L. 191, 201 (1983).

100. Gilbert, *Terrorism and the Political Offense Exemption Reappraised*, 34 INT'L & COMP. L. Q. 695, 717 (1985).

101. Green, *supra* note 95.

102. Paust, *supra* note 99, at 202-03.

103. *Id.* at 209.

104. Paust, *supra* note 99.

105. 6 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 727 (1968). " 'Extradition' is the process by which persons charged with or convicted of crime against the law of a state and found in a foreign state are returned by the latter to the former for trial or punishment. It applies to those who are merely charged with an offense but have not been brought to trial; to those who have been tried and convicted and have subsequently escaped from custody; and to those who have been convicted in absentio." *Id.*

106. Lutz, Streiker & Champ, *International Terrorism: A Legal Bibliography of Selected Issues and Sources*, 20 INT'L LAW. 1083, 1090 (1986).

107. See also International Convention, *supra* note 14; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, Dec. 14, 1973, arts. 3, 6, 7, 28 U.S.T. 1975, T.I.A.S. No. 8532, 13 I.L.M. 43; Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance, Feb. 2, 1971, arts. 1, 3, 5, 8(d)(e), 27 U.S.T. 3949, T.I.A.S. No. 8413, 10 I.L.M. 255; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, arts. 3, 5, 7, 8, 24 U.S.T. 564, T.I.A.S. No. 7570, 10 I.L.M. 1151; Convention for the Suppression of the Unlawful Seizure of Aircraft (Hijacking), Dec. 16, 1970, arts. 2, 4, 7, 8, 10, 11, 22 U.S.T. 1641, T.I.A.S. No. 7192, 10 I.L.M. 133; Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, arts. 3, 4, 16, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219; Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Aug. 12, 1949, arts. 146-147, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

illustrated by the *Achille Lauro* incident.¹⁰⁸ Egypt had promised the terrorists safe passage provided they did not harm anyone on the ship.¹⁰⁹ However, despite the murder of an American national on board by the terrorists, Egypt provided the Palestinian terrorists with an airliner that was subsequently intercepted by the United States and forced to land at an Italian airbase.¹¹⁰ Clearly, Egypt did not fulfill its duties as a party to the International Convention Against the Taking of Hostages; Egyptian officials should have taken custody of the "boatjackers"¹¹¹ and either extradited or prosecuted them. As is often the case, Egypt put aside its treaty obligations in favor of political considerations.¹¹²

Territorial jurisdiction was in the hands of the Italian courts since the ship on which the incident took place was Italian and therefore constituted Italian "territory."¹¹³ Even though Italy is a signator to the Convention, it has never ratified it and therefore is not bound by it. However, there is an extradition treaty between the United States and Italy.¹¹⁴ The United States requested extradition of the four terrorists and their leader, Abu Abbas, but Italy refused. Italian officials failed to arrest Abbas during the period in which they tried to determine whether he was extraditable under Article 12 of the Treaty.¹¹⁵ Italy based this

108. *See Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 1, col. 3 [hereinafter *Achille Lauro Aftermath*] (concerning the hijacking of an Italian cruise liner thirty miles from Port Said, Egypt in international waters. The hijackers, members of the Palestinian Liberation Front, demanded the release of fifty Palestinians held in Israeli jails. When both Syria and Cyprus denied the ship permission to land, it sailed back to Egypt where the terrorists surrendered to Egyptian officials).

109. *Id.*

110. *Id.*

111. A term sometimes used in connection with the *Achille Lauro* incident to refer to hijackers of the vessel. Interview with Jordan Paust, Professor of Law—University of Houston Law Center, in Houston (Oct. 16, 1987).

112. *Achille Lauro Aftermath*, *supra* note 108, at 3, col. 2. An extradition treaty between the United States and Egypt has existed since 1875. *See* Convention Between the United States and Ottoman Empire Relating to Extradition, Aug. 11, 1874.

113. McGinley, *supra* note 7, at 713.

114. Treaty Doc. 98-20, 98th Cong., 2d Sess. (Senate). Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Italy, Oct. 13, 1983, entered into force Sept. 24, 1984, *reprinted in* 24 I.L.M. 1527 (1985). This treaty provides for extradition for any crime punishable under the laws of both states. Article 3 allows extradition for extraterritorial crimes if the offense meets the requirement of double criminality. Articles 7 & 9 respectively, permit refusal of extradition if the State is proceeding against the accused for the same offense or the offense is punishable by death in the requesting state only.

115. *Id.* at art. 12. Article 12 provides:

1. In case of urgency, either Contracting Party may apply for the provisional arrests of any person charged or convicted of an extraditable offense. The application for provisional arrest shall be made either through the diplomatic channel or directly between the United States Department of Justice and the Italian Ministry of Grace and Justice, in which case the communication facilities of the International Criminal Police Organization (Interpol) may be used.
2. The application shall contain: a description of the person sought including, if

inaction on diplomatic immunity since Abbas had a diplomatic passport. However, such a basis is invalid even if the passport was real.¹¹⁶

The lack of action on Italy's part following the *Achille Lauro* incident illustrates the unfortunate reality of the international legal system. Extradition treaties appear futile since a signatory state can simply ignore the provisions and obligations if it so chooses.

In addition to nonadherence to treaties, there are other problems present in facilitating extradition. For instance, it is still difficult to define which crimes are subject to extradition since a certain act may be considered a crime in one state, but not in another state.¹¹⁷ The major obstacle to obtaining jurisdiction through extradition is the political offense exemption which allows an offender to avoid extradition if the act of which he is accused was politically motivated.¹¹⁸

The political offense exemption was originally justified as a means for an asylum state to remain neutral concerning the internal affairs of other sovereign states.¹¹⁹ Exactly what constitutes a "political offense" is a highly controversial issue, however.¹²⁰

available, the person's nationality; the probable location of that person; a brief statement of the facts of the case including, if possible, the time and location of the offense and the available evidence; a statement of the existence of a warrant of arrest, with the date it was issued and the name of the issuing court; a description of the type of offenses, a citation to the section of law violated and the maximum penalty possible upon conviction, or a statement of the existence of a judgment of conviction against that person, with the date of conviction, the name of the sentencing court and the sentence imposed, if any; and a statement that a formal request for extradition of the person sought will follow.

3. On receipt of the application, the Requested Party shall take the appropriate steps to secure the arrest of the person sought. The Requesting Party shall be promptly notified of the result of its application.

4. Provisional arrest shall be terminated if, within a period of 45 days after the apprehension of the person sought, the Executive Authority of the Requested Party has not received a formal request for extradition and the supporting documents required by Article X.

5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the re-arrest and extradition of the person sought if the extradition request and the supporting documents are delivered at a later date.

Id.

116. See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502. According to the Convention, diplomatic immunity is granted only if a diplomat was acting within the scope of his duties. Abbas was not performing an official function and thus was not entitled to immunity. Article 38 provides in part:

Except insofar as additional privileges and immunities may be granted by the receiving state, a diplomatic agent who is a national of or permanently resident in that state shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

Id.

117. Hall, *A Possible Legal Solution to International Terrorism*, 85 CASE & COM. 30, 31 (1980).

118. *Id.* at 32.

119. Gilbert, *supra* note 100, at 695.

120. See *infra* notes 121-130 and accompanying text.

An early case that dealt with this issue was *In re Castioni*¹²¹ where the court held that a political offense was a crime which was "incidental to and formed a part of political disturbances."¹²² Thus, the act must be committed "in the course of" and "in furtherance of the political disturbance."¹²³ This test has been applied in subsequent cases.¹²⁴ Unfortunately, however, terrorists have been able to use this standard to escape extradition and a controversy regarding the political offense test has resulted. Apparently, the exception has provided shelter for those charged with a crime merely because they express a political opinion or participate in a political rally. However, the majority opinion appears reluctant to allow terrorists to hide behind the political excuse.¹²⁵ It has been suggested that courts should only extend the exception to legitimate rebels or actual contenders in a national struggle for power.¹²⁶

This opinion was expressed in *Eain v. Wilkes*,¹²⁷ where the court acknowledged the international terrorist problem. Here, the Palestinian Liberation Organization (P.L.O.) had claimed responsibility for indiscriminate bombings in Tiberias, Israel. When the P.L.O. member charged with the bombings relocated to the United States, he was arrested by F.B.I. agents as a result of an extradition treaty between the United States and Israel.¹²⁸ Israel requested extradition and the accused pleaded the political offense exception. The court held that Eain had not proven that the bombings were directly linked to P.L.O. goals of destroying Israel.¹²⁹ Apparently, U.S. courts will refuse to recognize the political offense exception unless there is a direct political effect from the act.¹³⁰

121. 1891 Q.B. 149, 159.

122. *Id.* at 153.

123. *Id.* at 156, 165-66.

124. *See also In re McMullen*, Mag. No. 37-81-099 MG (N.D. Cal. 1979) (here, the defendant was charged with bombing a British army installation in England. The court held that the defendant was not extraditable "even though the offense be deplorable and heinous.") *Id.* at 3; *In re Mackin*, 668 F.2d 122 (2d Cir. 1981) (in which the defendant was charged with the attempted murder of a British soldier waiting at a bustop in Belfast); *Quinn v. Robinson*, 783 F.2d 776 (9th Cir. 1986) (in which the defendant was charged with murdering a London police officer and taking part in eight bombings. The court held that extradition was impermissible since a political "disturbance" or "uprising" was going on in Northern Ireland, and therefore, acts by members of the Provisional Irish Republican Army were only "incidental to" disturbances).

125. *See infra* text accompanying notes 125-130.

126. Hannay, *Legislative Reform of U.S. Extradition Statutes: Plugging the Terrorist's Loophole*, 13 DEN. J. INT'L L. & POL'Y 53, 64 (1983).

127. 641 F.2d 504 (7th Cir. 1981), *cert. denied*, 454 U.S. 894 (1981).

128. Convention on Extradition, Dec. 5, 1963, United States-Israel, arts. I & II, 14 U.S.T. 1707, 1708-09, T.I.A.S. No. 5476.

129. 641 F.2d at 520.

130. *See Quinn v. Robinson*, 783 F.2d at 800-01 (in which England sought extradition of a member of the Irish Republican Army in order to try him for the commission of a murder and conspiring to cause explosions in London. The court held that the political offense exception

To date, there are no sufficient guidelines for courts to rely on in determining what constitutes a political offense.¹³¹ However, Congress has suggested several factors courts should consider: 1) whether the victim is governmental, civilian or military, 2) the offender's relationship to a certain political organization, 3) whether the crime was committed to further political goals of the organization, and 4) the seriousness of the offense.¹³²

The European Community has made a concerted effort to establish an extradition framework in recent years. A major accomplishment was made in 1977 by the drafting of the European Convention on the Suppression of Terrorism.¹³³ This document sets out specific procedures for dealing with a terrorist after he has been apprehended. Article 1 of the Convention provides negative guidelines concerning political offenses—the signators are obligated not to extradite for the mentioned offenses.¹³⁴ This document was an attempt to deal with a major obstacle in the suppression of terrorism: defining the crime.¹³⁵

Meanwhile, Congress has been debating a bill that would authorize the prosecution of terrorists and others who attack U.S. government employees abroad.¹³⁶ The purpose of the bill is to make certain offenses

did not extend to protect individuals carrying out government policy which resulted in "acts of destruction whose nature and scope exceed human imagination."); *In re Artukovic*, 628 F. Supp. 1370, 1376 (C.D. Cal. 1986) (in which the government of Yugoslavia sought extradition of an alleged war criminal. The court held that the political offense exception was not available to the defendant because to successfully assert such exception, a defendant must show that there was a political uprising or disturbance at the time of the offense and that the offense charged was "incidental" to, or part of a political disturbance); *In re Paziienza*, 619 F. Supp. 611, 621 (S.D.N.Y. 1985) (in which the United States, representing the Republic of Italy, requested extradition of a defendant charged with the Italian crime of fraudulent bankruptcy. The court concluded that fraudulent bankruptcy was not a crime to which the political offense exception could be applied, even though the defendant had claimed that crimes in Italy were "really part and parcel of a political struggle within the country of Italy between the Socialist and Communist factions within the Government and the Christian Democratic faction.").

131. See *supra* text accompanying notes 121-130.

132. H.R. REP. NO. 627, 97th Cong., 2d Sess., pt. 1 (1982).

133. European Convention on the Suppression of Terrorism, Jan. 27, 1977.

134. *Id.* Art. 1 provides:

An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 Dec. 1970;

An offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 Sept. 1971;

A serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

An offence involving kidnapping, the taking of a hostage or serious unlawful detention;

An offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;

An attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Id.

135. N. GAL-OR, INTERNATIONAL COOPERATION TO SUPPRESS TERRORISM 75 (1985).

136. Prevention of Terrorist Actions, 131 CONG. REC. S1373 (daily ed. June 27, 1985).

federal crimes if committed against the person of a United States subject who is outside the jurisdiction of the United States.¹³⁷ However, there is still controversy over whether the bill's assertion of extraterritorial jurisdiction conforms to known and accepted bases of jurisdiction to prescribe criminal law under international law.¹³⁸

Measures such as the bill discussed above are necessary to assure prosecution of terrorists. Too often terrorists go unpunished and state sponsors are not held responsible as in the case of *Tel-Oren v. Libyan Arab Republic*¹³⁹ which involved civilian shootings and bombings by members of El Fatah, a faction of the P.L.O. that killed thirty-seven Israelis. The victims' families sued the P.L.O., the Libyan Arab Republic, and the National Association of Arab Americans for tortious acts, but their claims were dismissed for lack of federal question jurisdiction.¹⁴⁰ In *McKeel v. Islamic Republic of Iran*,¹⁴¹ tort claims brought by former Iranian hostages were also dismissed. The hostages had been held for fourteen months in Iran after militants stormed the U.S. Embassy in Tehran on November 4, 1979. The court held that the U.S. Embassy was the territory of the host country and not subject to federal law.¹⁴²

A policy of ignoring terrorist acts is not conducive to solving the

137. *Id.*

138. *Id.*

139. 517 F. Supp. 542 (D.D.C. 1981) (terrorists came by ship from Lebanon to the beach near Haifa. They shot someone who saw them land, then shot through a bus windshield to stop the bus. The gunmen shot civilian passengers, then filled passing cars with guns and explosives. Next, they entered the bus and forced the driver to go to Tel Aviv, breaking through police barricades. When they left the bus they threw grenades at it that exploded killing thirty-seven Israelis); Note, *Hanoch Tel Oren: The Retreat from Filartiga*, 4 CARDOZO L. REV. 665, 667, n.13 (1983).

140. *Tel-Oren*, 517 F. Supp. at 551.

141. 722 F.2d 582 (9th Cir. 1983) (twelve former hostages and the wives of two former hostages filed suit seeking damages. The Ninth Circuit ruled that federal courts have no jurisdiction over the Iranian government for acts done by Iranians in Iran).

142. *Id.* at 588. See also *Sanchez-Espinoza v. Reagan*, 568 F. Supp. 596, 601-02 (D.D.C. 1983) (members of Congress, citizens and residents of Nicaragua and two Florida residents brought action against President Reagan and other federal defendants, alleging claims arising out of the United States' actions in Nicaragua. Said claims involved atrocities allegedly committed against the plaintiffs by U.S. sponsored terrorist forces in Nicaragua. The court deemed the claims nonjusticiable political questions since the court could not determine the precise nature and extent of U.S. involvement. The court eventually dismissed the claims because they did not have the resources and expertise required to oversee U.S. military affairs in Central America); *But compare* *Von Dardle v. Union of Soviet Socialist Republics*, 623 F. Supp. 246, 250 (D.D.C. 1985) (a suit against the U.S.S.R. for the unlawful seizure, subsequent imprisonment and possible death of a Swedish diplomat. The court held that the U.S.S.R.'s seizure and detention of the diplomat violated the law of nations, international treaties and conventions to which the U.S.S.R. was signatory, and domestic laws of the U.S. and U.S.S.R. regarding diplomatic immunity. The court exercised subject matter jurisdiction over this proceeding since it was a civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the U.S.).

growing international terrorist problem. Where state sponsors are readily identifiable, it is necessary to take action against them, both for purposes of retribution and deterrence. The United States and other free world nations must gain the power to prosecute terrorists and their sponsors through legal international methods.

B. *Forcible Abduction*

Although the usual method for apprehending international criminals is through extradition, there are also extra-legal methods. A primary example is forcible abduction which is a means of "kidnapping" a criminal from a foreign state and bringing him to another state to stand trial.¹⁴³ Extraterritorial abductions violate customary international law because such action violates another state's sovereignty.¹⁴⁴ Yet, a victim of forcible abduction has no standing in court to complain, no right, and no remedy.¹⁴⁵ In the United States, jurisdiction is considered acquired if the individual is before the court; how he got there has little relevance.¹⁴⁶ Several courts have held that a violation of customary international law is not relevant to the question of jurisdiction.¹⁴⁷ However, there is a limit as to what courts will ignore when the forcible abduction involves torture and brutality.¹⁴⁸ A majority of courts appear to view forcible abduction as a violation of human rights.¹⁴⁹

Therefore, it is getting increasingly difficult to acquire jurisdiction over international terrorists. When dealing with state sponsors, the problem is magnified because of the additional obstacle of identifying exactly who is the party responsible for state-sponsored attacks. Additionally,

143. Feinrider, *Extraterritorial Abductions: A Newly Developing International Standard*, 14 AKRON L. REV. 27, 28 (1980).

144. *Id.* at 29.

145. *Id.* E.g., Attorney General of Israel v. Eichman, 36 I.L.R. (D. Ct. Jerusalem, 1961), *aff'd* 36 I.L.R. 277 (Supreme Court, Israel, 1962); Geldof v. Meulemeester and Steffen, 31 I.L.R. 385 (Cour de Cassation, Belgium, 1961); Re Argoud, 45 I.L.R. 90 (Cass. Crim., France, 1964).

146. See *infra* note 147.

147. See *Ker v. Illinois*, 119 U.S. 436 (1886) (in which an American officer forcibly abducted the defendant from Peru. The court held that "mere irregularities" in apprehending a suspect did not deprive the trial court of jurisdiction); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952) (the defendant was forcibly abducted and taken from one state to another state by state officers. The court ruled that due process was not violated where the suspect was forcibly kidnapped by police agents acting outside of their jurisdictional boundaries).

148. See *Rochin v. California*, 342 U.S. 165, 172-74 (1952) (in which three county sheriffs broke into the defendant's home and then took him to a hospital where they inflicted brutal treatment on him. The court held that illegal conduct so brutal as to shock the conscience and offend notions of justice violated the defendant's due process rights); *United States v. Toscanino*, 500 F.2d 267, 275-76 (2d Cir. 1974) (the defendant was abducted and taken from Uruguay to the United States by foreign agents in Brazil working with American officials. The defendant was tortured and drugged and the court held that this misconduct was condemned by *Rochin*).

149. See Paust, *supra* note 21, at 217; Cassese, *supra* note 47.

rarely does a guilty party voluntarily come before an international tribunal for reprimand. Keeping in mind the importance of customary international law and human rights, one possibility is to bring the accused before an unbiased international tribunal in which all nations are represented. Although, a terrorist would be forced to appear in court, he/she would be assured of a more fair trial before a panel of judges from different countries as opposed to judges solely from the nation in which the violence was committed.

CONCLUSION

Due to the alarming frequency of terrorist activities throughout the international community in recent years, the search for a solution has increased substantially. Although policy makers have been working to develop laws that would enable states to deal effectively with terrorism, limitations inherent in the legal system make such lawmaking a difficult task.

Present international laws, treaties, and agreements are not sufficient to deter state sponsored terrorism. These documents are too easily ignored by signatory-states who often consider treaty obligations inferior to political considerations. International agreements that are not completely binding on the parties have little value. Therefore, it becomes necessary to develop a more effective legal system to coordinate policy regarding state-sponsored terrorism. The majority of states agree that the world community must prohibit terrorist activity that offends the principles of the United Nations Charter and other international policies.¹⁵⁰

States do not want to see acts of terrorism ignored due to technicalities or lack of jurisdictional basis.¹⁵¹ Yet the present legal system often allows terrorists an escape from any sort of prosecution or extradition on these very grounds. It is not always possible for a state to establish jurisdiction over an offender, and even when it is established, the terrorist may be able to escape jurisdiction if the act of which he is accused was politically motivated. Special laws must be created that will allow criminal jurisdiction over international terrorists.¹⁵² States need to establish universal jurisdiction so that any nation can try an international criminal or so that states can force terrorists to appear before an international tribunal.¹⁵³ A framework must be designed wherein both state sponsors

150. Paust, *supra* note 21.

151. Hall, *supra* note 117.

152. Paust, *supra* note 99, at 211.

153. *Id.* at 31. The author suggests creating a World Treaty to define subject crimes, create

and the terrorists themselves will be sufficiently deterred by strict prosecution and punishment. "We ought to at least bring some persistence to showing that sponsoring or sheltering terrorists carries a price."¹⁵⁴

Additionally, states must begin to take measures to respond to the terrorist threat. Such steps should include increasing security, improving the gathering and evaluation of intelligence, using sophisticated tactics in dealing with hostage-takers, and having a flexible policy of negotiations.¹⁵⁵ The world community should also consider broadening legal control by expanding international anti-terrorist legislation, designing stricter standards for expulsion, and awarding damages to compensate victims of terrorist acts.¹⁵⁶

State-sponsored terrorism is such a substantial threat to the security and strategic interests of free-world nations that definitional obstacles must be overcome. To frame an effective counter-terrorist policy, states must resign themselves to mutual cooperation in formulating definitions and doctrines. Apparently, this will be a continuing struggle. "We cannot expect to eradicate terrorism at any time in the near future. It has become a chronic problem, and combatting it will demand continuing attention and probably a continuing and growing diversion of our resources."¹⁵⁷

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substantive rules for procedure and extradition, and establish jurisdiction over the person of the offender.

154. *Next Step: Simple and Direct*, L.A. Daily J., April 7, 1986, at 4, col. 1.

155. Shestack, *Of Private and State Terror*, 13 RUTGERS L. J. 453 (1982).

156. Evans, *supra* note 94, at 159-61.

157. *Hearings on S. 381-4*, *supra* note 57.