I. C. J. DAMAGES: TORT REMEDY FOR FAILURE TO PUNISH OR EXTRADITE INTERNATIONAL TERRORISTS

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On December 18, 1973, Arab terrorists killed thirty-two people in Rome's Leonardo Da Vinci Airport during an attack on a United States airliner. Hostages were taken to Athens in support of a demand for the release of two Palestinian terrorists being held in Greece.[1] The aircraft was granted free passage to the Middle East Sheikdom of Kuwait, where local authorities indicated that there were no plans to try the hijackers.[2] A scramble for jurisdiction resulted,[3] but no one has faced trial for this tragedy.[4]

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The views expressed are solely those of the writer and are not to be construed as representing the position of any other person or agency.

1. N.Y. Times, Dec. 18, 1973, at 1, col. 8.

2. N.Y. Times, Dec. 20, 1973, at 1, col. 1.

3. Egypt's President Sadat and Jordan's King Hussein condemned the attack. N.Y. Times, Dec. 19, 1973, at 18, col. 5. The United States demanded that the perpetrators be tried or extradited so that justice would be done. N.Y. Times, Dec. 20, 1973, at 1, col. 2. Furthermore, a Palestinian guerilla organization negotiated with Kuwait for custody of the hijackers. N.Y. Times, Dec. 23, 1973, at 1, col. 4.

4. *Id.*, at 6, col. 1. It was probable that this was the same group that killed twenty-seven, and wounded eighty others at Tel Aviv's Lydda Airport in 1972. *See* N.Y. Times, Dec. 19, 1973, at 18, col. 5. Although many Arab terrorists responsible for hijackings, kidnappings, seizure and execution of hostages during 1973 surrendered or were captured, few received meaningful punishment. For example, on Sept. 5, 1973, two of five terrorists who plotted to shoot down an Israeli plane were released on their own recognizance and absent for trial before an Italian Court; July 24, 1973, five terrorists hijacked a Japanese 747 in flight from Amsterdam to Tokyo, then blew it up in Tripoli, Libya. None of the Japanese and Arab pirates were brought to trial. On April 9, 1973, eight Arab terrorists attacked an Israeli plane at Nicosia, Cyprus and were sentenced to seven years imprisonment. President Makarios quietly released them, indicating the hope that Cyprus would not become a battleground for Middle East conflicts. April 4, 1973, two Arabs unsuccessfully attacked Israeli passengers at the Rome airport. Although arrested, they were released and sent to Lebanon. *See generally* N.Y. Times, Dec. 20, 1973, § C, at 16, cols. 5-8. Further 1973 incidents of international terrorism included the murder of an Arab diplomat in Rome, maiming of a New York postal employee by letter-bomb from Malaysia, and aircraft hijackings or attempts in Turkey, Mexico, and Japan. *See* U.S. Votes Against U.N. General Assembly Resolution Calling for Study of Terrorism, U.S. U.N. Press

Terrorism will not be eradicated in advance of the solution of its major causes. Arab terrorists did not consider these airport travelers "innocent" since they did not share the same personal concern with Middle East problems. The hijackers relied upon the political motivation defense[5] as a premise of legitimacy for what the majority of nations consider criminal terrorism. Although there have been attempts to deal with the potential[6] causes of terrorism, an interim remedy for the injured must be implemented.

One proposed solution has been a World Criminal Court. Although this proposal is confronted with national sovereignty objections, this author recognizes its theoretical utility. Multilaterally defined "terrorism" could constitute a test case for its jurisdiction. Before this is feasible, an interim civil remedy for wrongful death, personal injury, and property damage is necessary. If a State fails to effectively punish or extradite international terrorists, it should be liable for damages in the International Court of Justice (I.C.J.). Adoption of such an international tort theory will not solve the problem, but will be one step closer toward mitigating the effects.

This remedy cannot be implemented until the scope of "international terrorism" has been multilaterally defined.

I. SCOPE OF THE CONTROVERSY

A. Fading Definitional Conflicts?

The United Nations General Assembly recently adopted a resolution intended to control international terrorism.[7] However, there was lack of precision in defining terrorism, which narrowed the resolution's effectiveness as a means toward ending the global exportation of terror and violence.[8] This imprecision is evidence

Release No. 163, 68 U.S. DEP'T STATE BULL. 81, 82 (1973) [hereinafter cited as U.S. Veto].

5. For a detailed definition of the political motivation defense beyond the scope of this Article, see Bassiouni, *Ideologically Motivated Offenses and the Political Offenses Exception in Extradition—A Proposed Juridical Standard for an Unruly Problem*, 19 DE PAUL L. REV. 217 [hereinafter cited as *Political Offenses Exception*].

6. *See, e.g.*, International Convention on the Suppression and Punishment of the Crime of Apartheid, U.N. Doc. A/RES/3068 (XXVIII) (1973), 13 INT'L LEGAL MATERIALS 50 (1974).

7. *See* Resolution on Measures to Prevent International Terrorism, G.A. Res. 3034 (XXVII, U.N. Doc. A/RES/3034 (1973), 12 INT'L LEGAL MATERIALS 218 (1973) [hereinafter cited as RES. 3034].

8. *See* Report of the *Ad Hoc* Committee on International Terrorism, 28 U.N. GAOR Supp. 28, at 5, U.N. Doc. A/9028 (1973) [hereinafter cited as

of a national willingness to tolerate terrorism when it furthers political objectives. Therefore, the United Nations (U.N.) has both an opportunity and obligation to assume primary responsibility to alleviate, if not eradicate, what should be characterized as universal[9] crimes. Clandestine national support probably fosters the inclination for what the U.N. has repeatedly referred to as:

> [I]nternational terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and . . . 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.[10]

The U.N. International Law Commission (I.L.C.) has been charged with the task of preparing new norms to combat international[11] terrorism.[12] Before the I.L.C. can submit its recom-

Report of the *Ad Hoc* Committee]. *See also* text accompanying notes 13-32, *infra.*

9. *Universal* crimes considered to be within the scope of this Article include: surface piracy, air hijacking, kidnapping and murder of diplomats, and the exportation of terrorism based upon essentially domestic or regional conflict. *See generally* authorities cited in note 206, *infra.* As urged herein, these enumerated acts or attempts should be punished by the captor if extradition claims are waived by the offended State. Absent an extradition commitment, a State wherein a terrorist is found cannot punish him since international terrorism is not now subject to universal jurisdiction. *See* Frank & Lockwood, *Preliminary Thoughts Towards an International Convention on Terrorism,* 68 AM. J. INT'L L. 69, 83 (1974). An important distinction would arise regarding an internal and international crime. A United States (U.S.) citizen might murder a U.S. citizen in the U.S. But a fanatic of Jewish extraction killing a U.S. diplomat of Arab extraction in Washington, D.C. would constitute a universal crime within the scope intended. Crimes not within the meaning of these limitations, in other words, not international in scope, are intended to include those crimes defined and punished in accordance with national and local statutes or rule of law. White slavery, genocide, and war crimes have been referred to as universal crimes. However, they are not dealt with herein. *See, e.g.,* Attorney General of Israel v. Eichmann, 36 I.L.R. 5 (Dist. Ct. Jerusalem, Israel 1961), excerpted in 56 AM. J. INT'L L. 805 (1962).

10. The implication of this particular wording is found in the following documents: Study prepared by the Secretariat in U.N. Doc. A/ 8969 (1972); G.A. Res. 3034 (XXVII, U.N. Doc. A/RES/3034 (1973); Letter from President of General Assembly to Secretary General, U.N. Doc. A/8993 (1973); Report on the *Ad Hoc* Committee on International Terrorism, 28 U.N. GAOR Supp. 28, at 5, U.N. Doc. A/9028 (1973).

11. For a discussion of the overlap of *universal* and *international* crimes for purposes of this Article, see note 9, *supra.* The terms "international crime" and "common crime against mankind" are used interchangeably herein.

12. *See* Report of the *Ad Hoc* Committee, *supra* note 8, at 34. The Ad Hoc Committee, meeting in July and August of 1973, considered various national draft proposals on measures for the prevention of international terrorism, finally adopting Uruguay's proposal designed to invite Member States to ratify interna-

mendations for General Assembly consideration, Member States must concur upon what constitutes an *international* crime against mankind. A modus operandi including the use of weapons and explosives, destruction of property, or death to bring attention to political problems is not necessarily international in scope. The conduct must cross a border or otherwise influence international relations.

For example, the assassination of a national leader cannot be summarily labeled as a common crime against mankind if directed against a chief of state for *internal* political purposes.[13] This same conduct would constitute an act of international significance in two situations. A foreign nation could furnish the local group with the necessary support for perpetrating the act; or, that nation could knowingly decline to either punish or extradite the escaped perpetrator to the offended nation. This political motivation defense is utilized when such a nation fails to recognize that international:

> [A]cts are generally committed by "secret institutions" or bands created precisely for the purpose of the imposition of their will by means of terror for the advancement of certain doctrines. Since the end does not justify the means, the use of violence and its companion, terror, constitutes a serious breach of [International Criminal Law]. It makes the offense lose its political characteristics.[14]

When a local government opts to achieve foreign policy objectives by quietly sanctioning liberation-group terror, that government shares responsibility for the consequences. For example, the

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tional instruments relevant to this problem. The Ad Hoc Committee therefore recommended:

> [T]hat the International Law Commission should continue its work in the light of the concrete recommendations received from the *Ad Hoc* Committee on International Terrorism by preparing new international norms capable of combating international terrorism, and submit them to the General Assembly for consideration at its twenty-ninth session.

Id. The U.S. proposal, calling for a convention on the prevention and punishment of terrorism, was thereby rejected in favor of a dilatory approach.

13. *See* N.Y. Times, Dec. 21, 1973, at 1, col. 8. Spain's Premiere was blown thirty feet into the air when his car passed over a remote controlled explosive while enroute to his place of worship. Unsatisfied leftists were blamed but not captured. This constitutes an example of internal civil strife, not within the meaning of international terrorism. The focus was purely internal and there was no export of terrorism to effect change as occurred in Munich, Germany when Arab terrorists slaughtered eleven Israeli olympic athletes in September of 1972.

14. Tran-Tam, *Crimes of Terrorism and International Criminal Law*, in 1 M. BASSIOUNI & V. NANDA, A TREATISE ON INTERNATIONAL CRIMINAL LAW, at 493 (1973).

December 1973 murder of Spain's Premier Blanco, reportedly involving only internal political dissidents,[15] would have required the patronage of foreign clandestine support in order to qualify as an international or common crime against mankind.[16] A State should be equally culpable as an accessory-after-the-fact if it permits free entry or safe passage when theoretically subject to international responsibility to punish or extradite terrorists. It can usually avoid these alternatives by providing asylum for *political* conduct, allegedly outside the scope of an international crime against mankind. The traditional analysis is that political criminals should not be extradited.[17]

Difficulties stem from the definition of the political crime in disputes regarding asylum.[18] Fortunately, the right or privilege of asylum,[19] is waning as a defense to punishment or extradition where universal jurisdiction[20] is appropriate. This appears to be

15. *See* N.Y. Times, Dec. 21, 1973, at 1, col. 8.

16. An international or common crime against mankind refers to:

> [F]orms of conduct by states and individuals which so offend the common morality of mankind that they rise to the level of international crimes.
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> . . .
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> State enforcement of sanctions to curb acts recognized as international crimes is fast becoming a useful tool in suppressing common crimes of an international character, such as piracy of the sea and air, ...

Preface to 1 M. BASSIOUNI & V. NANDA, A TREATISE ON INTERNATIONAL CRIMINAL LAW, at xi (1973). Therefore, foreign governmental support in the form of supplying weapons or getting the Spanish perpetrators out of the country would constitute an international crime.

17. Oppenheim bluntly stated, "It is due to the firm attitude of Great Britain, Switzerland, Belgium, France, and the United States that *the principle has conquered the world.*" 1 L. OPPENHEIM, INTERNATIONAL LAW 706 (8th ed. Lauterpacht 1955).

18. *See generally id.*, at 707-09 *and Political Offenses Exception, supra* note 5.

19. Diplomatic asylum is distinct from political asylum for terrorists. For a discussion of the former, *compare* the Columbian-Peruvian Asylum Case, [1950] I.C.J. 266, 276, *with* the Vienna Convention on Diplomatic Relations, *opened for signature* April 18, 1961, — Stat. —, T.I.A.S. No. 7502, 500 U.N.T.S. 95, 55 AM. J. INT'L L. 1064 (1961). Regarding the concept of "right to asylum," which can be interpreted to include the right to allow an international terrorist to enter and remain in a State under its protection, see Oppenheim, *supra* note 17, at 676-78. Diplomatic asylum has multiple facets, not the least of which involves power politics. Today's ruler often grants political asylum since he may need it tomorrow, if overthrown and in need of safe haven.

20. Relevant "universal" crimes are enumerated in note 9, *supra*. They in turn should give rise to the universality principle of international criminal jurisdiction, one of the five recognized jurisdictional bases for prosecution of treaty-based extradition demands. It has been submitted that "[a] state has jurisdiction with respect to any crime committed in whole or in part within its territory." HAR-

due to international concern with the exportation of terrorism for political purposes.

For example, Cuba and the United States concluded a bilateral extradition agreement in 1973. It provided that if a particular air or sea hijacking offense is not punishable under the laws of the country in which the offenders arrive, each country will be obliged to return them to the territory of the other party.[21] This undertaking represents a significant departure from earlier views which did not recognize hijacking as a common international crime when motivated by political goals of the hijacker.[22] The option to grant asylum was foreclosed by this agreement although it has not been tested by either party.

Further efforts to bridge definitional conflicts as to the characterization of terrorist conduct as either a common or political crime was evidenced by a recent Canada-United States treaty which established a number of new extraditable offenses not previously

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VARD RESEARCH IN INTERNATIONAL LAW, Jurisdiction with Respect to Crime, 29 AM. J. INT'L L. SUPP. 435 (1935). *See also* The Schooner Exchange v. McFadden, 11 U.S. (7 Cranch) 116, 136 (1812): "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself." However, such jurisdiction is not absolute in international law: (1) *territorial* jurisdiction refers to the place where the act occurred; (2) the *nationality* principle of criminal jurisdiction is a basis for an alien's home State claiming jurisdiction although acts are committed in the host State; (3) *protective* jurisdiction can be claimed, based upon the national interest harmed by the act; (4) *universal* jurisdiction accompanies the perpetrator of a common international crime wherever he is found so that jurisdiction is determined in reference to whichever State has custody regardless of where the act occurred; (5) the *passive personality* principle bases jurisdiction upon the nationality of the injured person. *See* W. BISHOP, INTERNATIONAL LAW 558-561 (1971); *see also* Bassiouni, *Theories of Jurisdiction and Their Application in Extradition Law and Practice*, 5 CALIF. W. INT'L L.J. 1 (1974).

21. Cuba-United States Memorandum of Understanding on the Hijacking of Aircraft and Vessels, U.S. Dep't of State Press Release No. 35 (Feb. 15, 1973), 68 U.S. DEP'T STATE BULL. 260 (1973), 12 INT'L LEGAL MATERIALS 370 (1973) [hereinafter cited as Cuba-U.S. Memorandum of Understanding].

22. In 1971, the U.S. had over eighty bilateral extradition treaties in force, only four of which listed hijacking as an extraditable offense. Statement by John Stevenson, Legal Advisor Dep't of State, before Senate Committee on Foreign Relations, June 7, 1971, 65 U.S. DEP'T STATE BULL. 84 (1971). The 1973 "understanding" with Cuba, a nation clearly at ideological odds with the U.S., indicates that terrorist hijackings should be staunchly ingrained in international law as international crimes, devoid of their former political character. However, four Argentine hijackers were granted safe passage to Cuba after the October 20, 1973 seizure of an Argentinian 747. *See* N.Y. Times, Oct. 23, 1973, at 5, col. 4. Argentina and Cuba do not have a similar "understanding."

covered.[23] This treaty contains a provision never before utilized in United States extradition treaties. The traditional political-exclusion clause is unavailable to the terrorist who kidnaps, murders, or assaults a person who is either an "internationally protected person"[24] or a passenger aboard a commercial aircraft.[25]

The political motivation defense has endured elsewhere. The Organization of American States' 1971 Convention on Terrorism constituted the first international agreement to specify that murder or kidnapping of State representatives would not be considered political offenses, and thereby precludes the shelter of asylum for the perpetrators.[26] Dissension mounted when a coalition of Republics walked out of the Convention.[27] The majority was unwilling to accede to this coalition's demands that extradition be required for *all* persons accused of "political" terrorism.[28] Therefore, the Convention adhered to the traditional concept that the State granting asylum would continue to determine the nature of the offense, the motive, and whether or not it will result in prosecution.[29] Undoubtedly, inconsistent characterization of terrorist crimes as either

23. The offenses include any acts done with the intent to endanger the safety of passangers on railways, aircraft, or any other means of transportation; piracy; unlawful seizure of aircraft; manufacture or possession of any explosive substance with the intent to endanger life or cause damage to property. *See* U.S.-Canada Extradition Treaty, U.S. Dep't of State Press Release No. 282 (Dec. 3, 1971), 65 U.S. DEP'T STATE BULL. 741, 743-46 (1971), 11 INT'L LEGAL MATERIALS 22 (1972) [hereinafter cited as U.S.-Canada Extradition Treaty].

24. *Id.*, art. 4, para. (2)(i). Internationally protected persons are typically diplomats, consuls, and their staffs. For an examination of terrorism and "internationally protected persons," see Comment, *Terrorist Kidnapping of Diplomatic Personnel*, 5 CORNELL INT'L L.J. 189 (1972).

25. U.S.-Canada Extradition Treaty, *supra* note 23, art. 4, para. (2)(ii). The political-exclusion clause cannot be invoked when there is:

> [A]ny unlawful seizure or exercise of control of an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, on board such aircraft.

Id., Schedule offense 23.

26. Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, O.A.S. Doc. No. AG/88 rev. 1 (1971), 64 U.S. DEP'T STATE BULL. 231 (1971) [hereinafter cited as O.A.S. Convention on Terrorism].

27. Argentina, Brazil, Ecuador, Guatemala, Haiti, and Paraguay, are militarily-dominated leftist governments not plagued with international terrorism. *See* N.Y. Times, Feb. 2, 1971, at 5, col. 1.

28. Most delegations, including the United States, opted for a more restricted approach regarding only diplomatic or foreign official kidnappings. *Id.*

29. Article 6 of the O.A.S. Convention on Terrorism states, "None of the provisions of this convention shall be interpreted so as to impair the right of asylum." *See* O.A.S. Convention on Terrorism, *supra* note 26, art. 6.

political or common will dilute the effectiveness of the Convention in suppressing international terrorism.[30]

Hopes of an expeditious solution, intended to transcend both jurisdictional disputes and the differing technical meanings among the municipal criminal laws of various nations, have been retarded by disagreement as to the optimum breadth or narrowness of conventions, characterization of terrorist crimes as political or common, and the right to asylum. This was evident at the International Civil Aviation Organization (I.C.A.O.) eighteenth session in 1971. Notwithstanding the importance of issues of violence and death at the hands of aircraft hijackers, the failure to solve even the mere procedural issue of the proper priority of items for discussion resulted in failure of the I.C.A.O. to impose sanctions on Member States.

This result is attributable to the attitude that questions of international security would be more properly studied by the United Nations[31] combined with the realization that the U.N. has little power, or insufficient juridical personality, to solve this issue without the vigorous support of its powerful Members. The current stalemate is rooted in the underdeveloped nations' focus on the reasons for terrorism while the developed nations emphasize prevention. Concerted action is therefore essential against States in default of their international obligations of extradition or prosecution.[32] Although a few smaller nations might claim that power politics cannot mold consensus, it has done so throughout the history of mankind. Political terrorism has violated fundamental rights of travel, privacy, and life itself. Kidnapping, murder, and extortion generate the same effect regardless of motive. In spite

30. The O.A.S. Convention on Terrorism was adopted by a vote of thirteen (including the U.S.) to one with two abstentions and six Republics not present for the vote due to possible characterization of the enumerated offenses as *political* rather than *common*. *See* text accompanying notes 27-29, *supra*. Thirteen of twenty-two possible votes composed too slender a margin to ensure continued Latin-American adherence to the traditional sovereign right to grant asylum for terrorist activities not specifically prohibited by article 2. The recent international rash of terrorism will hopefully generate among nations the realization that a State should also protect persons other than those to whom it has the duty to give special protection, regardless of political motives.

31. Report and Minutes of the Legal Commission, Ass. 18th Sess., I.C.A.O. Doc. 8954 A18-LE (1971).

32. *See* Fitzgerald, *Concerted Action Against States Found in Default of Their International Obligations in Respect of Unlawful Interference with International Civil Aviation*, 10 CAN. Y.B. INT'L L. 261, 276 (1972). *See also id.*, n.52.

of the need for agreement, the political motivation defense has stymied U.N. measures to abort these fear tactics.

B. Initiative or Inertia

The United Nations Membership must confront the international aspects of the difficult legal and social ramifications of international terrorism. The increasing frequency of violence and terror directed at chiefs of state, diplomats, passengers, and other innocent civilians has created a climate of fear from which no one is immune.[33]

On September 6, 1972, following the massacre of eleven Israeli Olympic competitors by Arab terrorists in Munich, Germany, the United States Senate and House of Representatives approved identical resolutions urging other countries to cut off all contacts with nations providing sanctuary or support to terrorists.[34] United Nations' Secretary-General Waldheim promptly asked the General Assembly to seriously consider measures to block the terrorist menace.[35] Several Western diplomats proposed the drafting of an international treaty obligating governments to punish or extradite terrorists.[36] West German Minister Scheel stated that he would propose closer cooperation among Western European countries in combating terrorists at the next meeting of the Common Market.[37] However, some nations preferred that acts of terrorism, synonymous with patriotism, not be discussed by the U.N. As a result, vetoes by Communist China and Russia, were factors which led to

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33. Yoset Tekoah, Permanent Israeli Representative to the United Nations, pointed out to the Secretary-General of the United Nations that "Despite requests to it by the Federal Republic of Germany, the Egyptian Government refused to cooperate in any steps that might have averted the Munich outrage." Letter dated 8 Sept., 1972, from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General, U.N. Doc. A/8784, S/10779, at 2 (1972). This letter alleged that:

> The Government of Egypt has recently called for the intensification of Arab terror warfare and the radio stations of the terror organizations operate from Egypt and Syria while their headquarters, bases and institutions are located in Lebanon, Syria, Egypt and Libya. The intelligence services of the Arab States, and particularly those of Egypt, maintain close ties with the terror organizations and assist them in their criminal activities.

Id., at 1.

34. *See generally* N.Y. Times, Sept. 7, 1972, at 1, col. 7.

35. *See* Note by the Secretary General Regarding Measures to Prevent Terrorisms, U.N. Doc. 8791 (1972).

36. *See* N.Y. Times, Sept. 9, 1972, at 2, col. 4.

37. *See* N.Y. Times, Sept. 10, 1972, at 1, col. 4.

the failure to include a condemnation of all acts of terrorism in resolutions calling for a cease-fire in the Middle East.[38] In spite of this attitude, Secretary-General Waldheim declared that:

> I am fully aware that the problem of terrorism and violence is an immensely complex one to which there are no short cuts and no easy solutions. I know that a number of Governments will have difficulties in formulating their approach to this problem.[39]

It would have been difficult to consider this complex phenomenon without a simultaneous examination of the underlying situations giving rise to terrorism and violence throughout the world. The United Nations has been criticized when it does act and criticized when it does not.[40] Therefore, the General Assembly supported the proposal to at least study, but not implement, measures to prevent international terrorism.

A study was published in November of 1972 which was essentially a scholastic endeavor by the Secretariat to provide the subsequent session of the United Nations with a thorough analysis of origins and causes of this phenomenon.[41] The consensus was that in order:

> [T]o come within the scope of the subject, 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.[42]

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38. *See* N.Y. Times, Sept. 11, 1972, at 1, col. 8.

39. *See* Statement by the Secretary General Regarding Measures to Prevent Terrorism, U.N. Doc. A/8791/Add.1, at 2 (1972). He further stated:

> I proposed this item, nevertheless, because there is deep and general concern with the phenomenon of international terrorism, because the scope of terrorist activity as well as its underlying causes have become increasingly international, and because modern technology has added a formidable new dimension to this ancient problem.

Id.

40. *Id.*, at 3.

41. *See generally* Study on measures to Prevent International Terrorism, U.N. Doc. A/C.6/418 (1972) [hereinafter cited as Study on Measures to Prevent International Terrorism]. Chapter one deals with origins and fundamental causes of international terrorism; chapter two relates to action taken in the field of international penal law for the prevention and punishment of terrorism.

42. *Id.*, at 6. The requisite conduct:

> [M]ust 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.

Id. (emphasis added). Unfortunately, the emphasized wording may give rise to

If nothing else, there is unanimous agreement that the terrorist's main purpose is to draw attention to his cause. His immediate aim is limited to such objectives as liberation of prisoners, general spread of terror, demonstration of the impotence of government control, or provocation of repressive measures in order to alienate public opinion. Terrorist activity typically lacks any immediate possibility of achieving its proclaimed ultimate purpose.[43]

The U.N. study on terrorism is evidence of a disagreement as to whether given conduct violates the territorial integrity or political independence of a State, or else constitutes patriotic bravery, even though use of force in international relations is prohibited.[44] The classic example of the sharp split over what is either an act of the political process or an international crime was demonstrated by the debate preceeding the U.N. General Assembly's adoption of Resolution 3034 regarding measures to prevent international terrorism.[45] Various U.N. Legal Committee proposals[46] regarding measures to prevent international terrorism exposed two conflicting theories as to the appropriate remedy: immediate measures versus an interim study of causation. These theories were proliferated into mutually exclusive approaches by both the general debate and final draft measures.

The first of three distinguishing features of the proposed draft resolutions involved the appropriate *characterization* of terrorist acts. Regarding the loss of innocent human lives due to acts of international terrorism, the United States (U.S.) "deplored"

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potential definitional conflict as to whether conduct not *necessarily conspicuously violent* qualifies. For example, two Britons were arrested in an aborted conspiracy to blow up an El Al Aircraft at London's Heathrow Airport. A conspiracy that fails is arguably not conspicuously violent, especially if the arresting sovereign has some reason not to punish or extradite the latent terrorist. One of the two conspirators was freed after turning state's evidence. *See* N.Y. Times, Dec. 20, 1973, § C, at 16, col. 4.

43. *See* Study on Measures to Prevent International Terrorism, *supra* note 41, at 7.

44. The United States Charter states:

> [A]ll 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.

U.N. CHARTER, art. 2, para. 4. If the accusation of Israel regarding Egyptian, Syrian, Lebanese, and Lybian clandestine national support for terrorist activities is accurate, all of the latter nations have clearly violated the quoted provision.

45. *See* RES. 3034, *supra* note 7.

46. As a result of the Secretary General's placement of "measures to prevent international terrorism" on the agenda, various national blocs coalesced in produc-

such acts,[47] a Western bloc "condemned" them,[48] and the African-Mideast Bloc "expressed deep concern."[49]

The second distinguishing feature of the several drafts centered upon the *time frame* for cure. The U.S. draft, with a view toward immediate and concrete measures, envisaged "early 1973"[50] as the target date for a plenipotentiary conference to consider a convention on prevention and punishment.[51] The Western bloc sought an International Law Commission draft for adoption by a conference of plenipotentiaries in "November 1973,"[52] based upon the bloc's request for an ad hoc committee study in the interim.[53] Italy sponsored a revision to this draft by replacing the specific target date with "the earliest practical date."[54] The African-Mideast bloc's draft recommended appropriate measures at the national level[55] and an analytical study of causes of terrorism by an ad hoc body.[56] Both suggestions were designed to delay

ing three possible draft resolutions for adoption by the General Assembly based upon selection of the optimum draft by the Legal (Sixth) Committee.

47. *See* Draft Resolution on Measures to Prevent International Terrorism, U.N. Doc. A/C.6/L.851 (1972) [hereinafter cited as U.S. Draft Resolution]. *See also* Report of the Sixth Committee on Measures to Prevent International Terrorism, para. 9, at 4, U.N. Doc. A/8969 (1972).

48. *See* Draft Resolution on Measures to Prevent International Terrorism, U.N. Doc. A/C.6/L.879 (1972) [hereinafter cited as Western Bloc Draft Resolution]. *See also* Report of the Sixth Committee on Measures to Prevent International Terrorism, para. 10, at 6, U.N. Doc. A/8969 (1972). This bloc was composed of Australia, Belgium, Canada, Costa Rica, Italy, Japan, and was later joined by Austria, Guatemala, Honduras, Iran, Luxemburg, Nicaragua, and United Kingdom of Great Britain and Northern Ireland.

49. *See* Draft Resolution on Measures to Prevent International Terrorism, U.N. Doc. A/C.6/L.880 (1972) [hereinafter cited as African-Mideast Draft Resolution]. *See also* Report of the Sixth Committee on Measures to Prevent International Terrorism, para. 11, at 8, U.N. Doc. A/8969 (1972). This bloc was initially composed of Afghanistan, Algeria, Guyana, India, Kenya, Yugoslavia, Zambia, and was later joined by Cameroon, Chad, the Congo, Equatorial Guinea, Guinea, Madagascar, Mauritania, Mali, and the Sudan.

50. U.S. Draft Resolution, *supra* note 47, preambular para. 2.

51. The U.S. simultaneously submitted a working paper for consideration by the General Assembly's Legal Committee. U.S. Draft Convention for Prevention and Punishment of Terrorism Acts, U.N. Doc. A/C.6/L.850 (1972), 11 INT'L LEGAL MATERIALS 1382 (1972) [hereinafter cited as U.S. Convention for Prevention and Punishment of Terrorism].

52. Western Bloc Draft Resolution, *supra* note 48, para. 5.

53. *Id.*, para. 7.

54. *See* Revised Draft Resolution on Measures to Prevent International Terrorism, U.N. Doc. A/C.6/L. 879/Rev. 1 (1972). *See also* Report of the Sixth Committee on Measures to Prevent International Terrorism, para. 12 at 9, U.N. Doc. A/8969 (1972).

55. African-Mideast Draft Resolution, *supra* note 49, para. 6.

56. *Id.*, para. 8.

immediate measures. A revision to this draft, introduced by Zambia, sought speedy elimination of international terrorism bearing in mind the legitimacy of the struggle of national liberation movements.[57] This was proposed to implement the African-Mideast Bloc's rationale for cautious deliberation. Immediate measures to prevent international terrorism might thwart liberation group violence aimed at colonial or alien domination. This Bloc thereby manifested its concern that multinational suppression of transboundary murder and terror might also suppress self-determination.

The final distinguishing feature of the draft resolutions pertained to *actual measures.* The U.S. preambular wording asserted that:

> Every State has the duty to refrain from organizing, instigating, assisting or participating in . . . terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts . . . involve a threat or use of force.[58]

Saudi Arabia's wording, by the negative implication of its draft revision, was far narrower than the scope of the U.S. version:

> [The African-Mideast Draft] requests the *ad hoc* Committee to consider . . . international legal measures in respect to those acts of terrorism motivated by *personal* lucrative gain or for usurping power for strictly *personal* ends, whereas in regard to terrorism emanating from repressed national aspirations, the report should include the exploration of special measures calculated to avoid the sacrifice of innocent lives.[59]

Conversely, if acts of international terrorism were motivated by *political* lucrative gain, or usurpation of power for strictly *political* ends, adoption of the Saudi Arabian draft by the Legal Committee would preclude international legal sanctions. The unexplained special measures in reference to the sacrifice of innocent lives could only urge special efforts in and out of the U.N. which could not be multilaterally implemented due to the ideological rift as to political

57. *See* Revised Draft Resolution on Measures to Prevent International Terrorism, U.N. Doc. A/C.6/880/Rev. 1 (1972). *See also* Report of the Sixth Committee on Measures to Prevent International Terrorism, para. 13, at 9, U.N. Doc. A/8969 (1972).

58. U.S. Draft Resolution, *supra* note 47, preambular para. 6.

59. Draft Resolution on Measures to Prevent International Terrorism, U.N. Doc. A/C.6/L.895 (1972) (emphasis added). *See* Report of the Sixth Committee on Measures to Prevent International Terrorism, para. 14, at 10, U.N. Doc. A/8969 (1972).

versus common or international crimes.[60] The African nation of Lesotho submitted amendments to the African Bloc resolution, which the Legal Committee decided to treat as a draft resolution. It was unique in that it urged "immediate measures"[61] against international terrorism[62] resorted to by "oppressed peoples . . . forced to respond by resorting to violence and retaliatory use of terror . . . ."[63] The thrust of Lesotho's draft was to invite big Powers to exert influence on racist, colonial, and foreign regimes that suppress the legitimate rights of internal social groups.[64] This in turn would bring attention to the alleged racism, colonialism, and foreign domination that causes resort to violence and terrorism.

The Legal Committee adopted the sixteen-power draft resolution of the African-Mideast Bloc.[65] The nations that called upon the U.N. for strong international legal action against terrorism suffered a dismal defeat. Nations supporting a stronger resolution indicated that they would bypass future U.N. efforts to deal with terrorism. They considered terrorism as a subject matter of greatest international concern, requiring immediate preventative measures rather than an interim study of causation.[66] The General Assembly subsequently adopted another resolution, incorporating the Legal Committee's adopted draft on Measures to Prevent Terrorism.[67] The Assembly resolution called for submission of concrete proposals, but since none were submitted,[68] the established

60. *See generally* text accompanying notes 14-30, *supra.*

61. Revised Draft Resolution (Amendments) on Measures to Prevent International Terrorism, para. 15, at 11, U.N. Doc. A/8969 (1972).

62. Lesotho declared:

> [T]he use or threat of violence by individuals, organizations in or organs of the State against the innocent citizens or persons of other States or their property either for security, political objectives or for purposes of extortion constitutes *International Terrorism*; . . . .

Id., para. 15, at 11. This draft wording is not directed toward independent bands of fanatics, rather to dependent pressure groups, in or of another nation, threatening foreign citizens.

63. *Id.*, para. 15, at 12.

64. *Id.*

65. *Id.*, para. 18(b), at 14. The recorded vote was seventy-six (including African-Mideast Bloc) to thirty-four (including Western Bloc), with sixteen abstentions (none of whom supported any of the three possible draft resolutions).

66. *See* N.Y. Times, Dec. 12, 1972, at 1, col. 6. These nations included the U.S., Great Britain, Canada, Costa Rica, Australia, and Belgium.

67. *See* RES. 3034, *supra* note 7.

68. RES. 3034 "invites States to . . . submit observations to the Secretary General by 10 April 1973, including concrete proposals for finding an effective solution . . . ." *Id.* This author's telephone call to the Office of the Secretary

Ad Hoc Committee on International Terrorism[69] proceeded to pick up where the General Assembly debate left off.[70] The Ad Hoc Committee again considered the definition, causes, and measures to end international terrorism but failed to agree upon recommendations to the General Assembly.[71] Greece[72] and the United States[73] submitted concrete proposals as to specific crimes and punishment. However, the Committee finally adopted the Uruguayan draft recommending that the International Law Commission continue its work[74] in light of the "concrete" recommendations received from the Ad Hoc Committee.

The General Assembly opted for delay by studying causation rather than multilaterally implementing preventative measures. The Ad Hoc Committee was unable to agree upon recommendations for the 1973-1974 General Assembly. These results were predictable due to definitional conflicts as to when an act is political or a common crime, and whether violence for the sake of national or regional liberation is justified. Therefore, the United States is at least one power that probably views the present stalemate as a:

General on April 30, 1973, revealed that no proposals were submitted. The United States had previously submitted a draft convention prior to RES. 3034's invitation to all nations. *See* U.S. Convention for Prevention and Punishment of Terrorism, *supra* note 51.

69. *See* Letter from the President of the Twenty-Seventh Session to the Secretary General dated April 24, 1973, U.N. Doc. A/8993 (1973), establishing committee membership.

70. *See* Committee on International Terrorism Continues General Debate, U.N. Press Release GA/4475 (1973). For an unofficial summary of Committee proceedings, see U.N. Press Releases (1973) GA/4764; GA/4767, BIO/1031; GA/4775-4776; GA/4778-4780; GA/4784-4785; GA/4788-GA/4785; GA/4788-GA/4889.

71. The concluding statement of the Terrorism Committee reads, in part:

> [T]he resulting frank and extensive exchange of ideas brought out the diversity of existing views on the various aspects of the subject submitted for consideration to the *Ad Hoc* Committee. Those views are . . . contained in the report, the careful consideration of which the *Ad Hoc* Committee recommends to the General Assembly.

See Report of the *Ad Hoc* Committee, *supra* note 8, at 20. *See also* U.N. Press Release (unofficial) GA/4789 (1973).

72. *See* Report of the *Ad Hoc* Committee, *supra* note 8, at 26.

73. *Id.*, at 28.

74. *Id.*, at 34. The International Law Commission is presently working to prepare new international norms capable of combating international terrorism. It previously prepared draft articles on the prevention and punishment of crimes against diplomatic personnel. *See* Report of the International Law Commission on the Work of Its Twenty-fourth Session, U.N. Doc. 8710 (1972), 11 INT'L LEGAL MATERIALS 977 (1972) [hereinafter cited as "Internationally Protected Persons" Draft Articles].

> [C]lear signal to the world that the United Nations as a body has chosen to take minimal action rather than meaningful action on this very urgent problem.[75]

This viewpoint tends to improperly distinguish between the U.N. as a "body" and its nation Members participating in negotiations. The Membership is not differently constituted or motivated if negotiating under the aegis of the U.N. than it would be if bargaining in a non-U.N. atmosphere. Other proposed solutions, not under the auspices of the United Nations, have not succeeded either. As a result, two potential remedies must be carefully considered since one of them may prevail as a result of the endeavors of the U.N. International Law Commission.

II. CRIMINAL I. C. J.—JURISDICTIONAL FRICTION

Customary international law acknowledges extraterritorial jurisdiction with respect to crimes committed outside a nation's borders,[76] on its aircraft[77] and ships,[78] by its nationals and aliens in connection with the discharge of functions for the injured

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75. *See* U.S. Veto, *supra* note 4, at 90.

76. *See* nationality, protective, and passive personality principles of international criminal jurisdiction, note 20, *supra.*

77. In January of 1973, the I.C.A.O.'s Legal Committee adopted a resolution recommending that the I.C.A.O. Council take specific action with regard to the French, Swiss-United Kingdom, Nordic, and U.S.S.R. draft amendments to the Chicago Convention on International Civil Aviation, *done*, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. 1591, 15 U.N.T.S. 295. Representative of the consensus as to the jurisdictional strings attached to the offender, though beyond the boundary of the State of registry, is the U.S.S.R. draft provision that:

> [E]ach Contracting State undertakes to return offenders to the State of registration of the aircraft when so requested by it, except where the persons concerned are nationals of the State on the territory of which the offender is present.

Draft Protocol to the Convention for the Suppression of Unlawful Seizure of Aircraft, I.C.A.O. Doc. LC/Working Draft No. 826, art. 1, (1973), 12 INT'L LEGAL MATERIALS 377, 380 (1973). For examples of internal statutory penalties recently enacted to combat the skyjacking menace at the municipal level, see Decree on Criminal Liability for the Hijacking of Aircraft, 25 CURR. DIGEST OF SOVIET PRESS 7 (1973), 12 INT'L LEGAL MATERIALS 1160 (1973) and Gesetzblatt der Deutschen Demokratischen Republik, July 20, 1973, Issue 33, at 337-38, 12 INT'L LEGAL MATERIALS 1158 (1973).

78. *See* Case of the S.S. "Lotus," [1927] P.C.I.J., ser. A. No. 9; 2 HUDSON, WORLD COURT REPORTS 20 (1935). A violation of Turkey's interests due to a collision caused by a French naval vessel constituted a sufficient basis for Turkey to prosecute the officer-of-the-deck for involuntary manslaughter when the *Lotus* entered port. Therefore, a terrorist seizure of a vessel on the high seas would provide protective, passive personality, and universal jurisdictional claims for a multitude of possible sovereigns. *See generally* note 20, *supra.*

State,[79] and for acts which harm internal interests.[80] The legal bases for international criminal jurisdiction are meaningless when municipal authorities fail to assert territorial or universal jurisdiction.[81] There is concurrent jurisdiction over a terrorist who commits a crime against the interests of one State and is found in another. This gives rise to disputes as to whether the offender must be internally punished or returned to the harmed nation. The conflict is especially evident where a nation having custody, or knowledge of the presence of an international terrorist, is sympathetic to his cause but neither punishes nor extradites[82] him. Concurrent jurisdiction over mutually recognized criminal defendants is realistically implemented only by bilateral extradition treaties.[83]

Although a world wide extradition convention would be ideal, many States prefer bilateral agreements.[84] Even this tool is ineffective since international terrorists often circulate with impunity in nations or regions that are sympathetic to their motives. Furthermore, the customary practice is to denounce extradition treaties in anticipation of war or changes in internal law.[85] The ineffective-

79. *See* "Internationally Protected Persons" Draft Articles, *supra* note 74.

80. *See* protective principle of international criminal jurisdiction, *supra* note 20.

81. The classic example involves the five international terrorists who killed thirty-two people and were granted free passage to Kuwait. They were taken into custody upon their surrender but never tried or extradited. *See* text accompanying notes 1-4, *supra*. Terrorism per se has not been accepted as a *universal* crime. *See* generally offenses enumerated in authority in note 206, *infra*. As suggested in note 9, *supra*, it is the opinion of this author that international terrorism, once defined, should be categorized as a universal crime.

82. On extradition, *see generally* 6 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW xvi (1968); 4 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 1 (1942); 2 C. HYDE, INTERNATIONAL LAW 1012 (2d ed. 1945). The right to demand extradition and the correlative duty to surrender an individual to the demanding country both spring from treaty only. The United States view is that "The principles of international law recognize no right to extradition apart from treaty." Factor v. Laubenheimer, 290 U.S. 276, 287 (1933).

83. Concurrent criminal jurisdiction may exist although one of the nations may be unable to obtain custody of the "accused." A number of countries have procedures for trying persons *in abstentia* for offenses within the harmed nation. This appears to constitute concurrent jurisdiction even though the nation is unable to gain physical custody of the individual being tried. The court may have subject matter jurisdiction over the offense without in personam jurisdiction over the defendant.

84. *See* I. SHEARER, EXTRADITION IN INTERNATIONAL LAW 42 (1971).

85. *Id.*, at 43. Terrorist mobility is assured when a nation too weak to accomplish desired military objectives supplies covert support for such activity. This analysis applies to Arab-Israeli terrorist organizations probable training of Irish

ness of extradition commitments has been very influential upon proposals for the establishment of a World Criminal Court.[86]

After the assassination of King Alexander I of Yugoslavia at Marseilles in 1934, the League of Nations established a Committee for the International Repression of Terrorism.[87] After several years of drafting, a convention creating an International Criminal Court was opened for signature.[88] This striking innovation provided a method to relieve States of embarrassing burdens accidentally cast upon them, as well as assuring other States due concern for the suppression of terrorist activities beyond their own borders. If a terrorist sought asylum in a sympathetic nation, that nation could avoid prosecuting him itself by binding him over to an international judiciary.[89] Jurisdiction of the court was to be optional.[90] Realistically, it would have been utilized only to avoid political

terrorists in communist countries and Cuban efforts to revolutionize Latin America. Clandestine support includes denying an extradition obligation in anticipation of hostilities with the nation against which terrorist activity is directed.

86. I.C.J. jurisdiction would have to be expanded to overcome, *inter alia*, two procedural limitations: "1. Only States may be parties in cases before the Court." I.C.J. STAT., art. 34, para. 1. Therefore trial of natural persons is presently impossible since they are objects of international law. "2. The States parties to the present Statute *may* at any time declare that they recognize as compulsory . . . the jurisdiction of the Court . . . ." *Id.*, art. 36, para. 2 (emphasis added). Acceptance by the United States of compulsory jurisdiction under this optional paragraph did "not apply to . . . disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America *as determined by the United States of America*; . . ." (emphasis indicates Connally Amendment). *See* Declaration on the Part of the United States of America, 61 Stat. 1218, 15 U.S. DEP'T STATE BULL. 452 (1946) [hereinafter cited as Connally Amendment].

87. *See* Report Adopted by the Committee for the International Repression of Terrorism, app. II, L.O.N. Doc. C. 222.M.162.1937V (1937). For a brief history of previous attempts to establish international, regional, or ad hoc criminal courts in 1919, 1920, 1924, and 1926, see Hudson, *The Proposed International Criminal Court*, 32 AM. J. INT'L L. 549-51 (1938).

88. Convention for the Creation of an International Criminal Court, L.O.N. Doc. C.547.M.384.1937V (1937). It was signed by Belgium, Bulgaria, Czechoslovakia, France, Greece, Netherlands, Rumania, Spain, Turkey, and Yugoslavia. The court was supposed to try persons accused of offenses dealt with in the companion Convention for the Prevention and Punishment of Terrorism, arts. 2, 3, L.O.N. Doc. C.546(1).M.383(1).1937V (1937). "Acts of terrorism" meant "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public." *Id.*, art. 1, para. 2.

89. *See* Hudson, *supra* note 87. Nations could try offenders in municipal courts, extradite, or thrust the case upon the proposed court. Hijackers who claim to be political refugees may embarrass the nation in which they are found since that nation's denial of asylum may contribute accusations of betraying allies.

embarrassment and:

> It would thus seem that the restricted experiment instituted by this Convention is to be classified under the head of international criminal procedure rather than as a commencement of a substantive international criminal law.[91]

Unfortunately, the effectiveness of this approach was never tested. No trials were conducted since the treaty never entered into force.

The next tangible attempt to establish a transnational criminal court materialized in the 1951[92] and 1953 revised draft statutes,[93] prepared by special United Nations Committees on International Criminal Jurisdiction. Finally, the General Assembly decided to:

> [D]eter consideration of an International Criminal Jurisdiction until such times as the General Assembly takes up again the question of defining aggression and the question of a draft code of offenses against the peace and security of mankind.[94]

Furthermore, many nations, and internal guerilla groups, do not want to bear responsibility for terrorists conduct which harms all interests concerned. A World Criminal Court would permit ideological sympathy with defectors bound over for international trial.

90. Note similarity to Connally Amendment, *supra* note 86.

91. Convention for the Creation of an International Criminal Court, 19 BRIT. Y.B. INT'L L. 217 (C. Hurst ed. 1938).

92. *See* Report of the Committee on International Criminal Jurisdiction, Annex I, DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT, U.N. Doc. A/AC.48/4 (1951); 46 AM. J. INT'L L. SUPP. 1 (1952) [hereinafter cited as 1951 DRAFT I.C.C. STATUTE]. The thirty-year period previous to this draft statute spawned more than a dozen similar proposals or drafts. *See* Wright, *Proposal for an International Criminal Court*, 46 AM. J. INT'L L. 60 n.2 (1952). For an official review of the issue of International Criminal Jurisdiction, see Historical Survey of the Question of International Criminal Jurisdiction, U.N. Doc. A/CN.4/7/Rev. 1 (1949); U.N. PUB. Sales No. 1949.V.8 (1950).

93. Subsequent to the 1951 draft, a revision was negotiated. However, as voiced in General Assembly Debate,

> [D]oubts had been raised concerning the General Assembly's right to establish an International Criminal Court. If it was agreed that those doubts were not valid in the present case, it might be most appropriate to say "A tribunal *should* be established by the General Assembly."

[1953] 1 Y.B. INT'L L. COMM'N 322, U.N. Doc. A/CN.4/SER.A (1953). The membership of the American Bar Association was not in agreement as to the protection of the rights of the accused. *Compare* Parker, *An International Criminal Court: The Case for Its Adoption*, 38 A.B.A.J. 641 (1952) *with* Finch, *An International Criminal Court: The Case Against Its Adoption*, 38 A.B.A.J. 644 (1952).

94. 12 U.N. GAOR, Annexes, Agenda Item No. 56, at 3, U.N. Doc. A/3649 (1957). In 1968, the General Assembly again deferred consideration of "International Criminal Jurisdiction" and no further action has since been taken with respect to the draft code. *See generally* Secretary General's Survey of International Law, U.N. Doc. A/CN.4/245 (1971).

These draft codes were not implemented and the subsequent United Nations approach to the problem of international terrorism has continued to be one of crisis-reaction.[95] It is doubtful whether such a piecemeal approach will support the foundation necessary for a comprehensive system of solving the contemporary terrorist dilemma. A leading scholar urges that:

> Without a tribunal to give a degree of coherence and consistency to the several international instruments, their [potential] application by national tribunals may well fall short of the objectives of certainty and impartiality.[96]

This ineffectiveness recently prompted the establishment of an organization solely dedicated to the World Criminal Court remedy, the Foundation for the Establishment of an International Criminal Court (F.E.I.C.C.).[97] This foundation cooperates with the International Criminal Law Commission[98] of the World Peace Through Law Center in a combined effort to establish this Court.

Two immediate advantages would benefit international relations if the United Nations International Law Commission would recommend a Criminal Court approach for General Assembly consideration. Politically, such countries as the United States and Algeria could both deal with defectors who hijack their way to free-

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95. *See, e.g.*, RES. 3034, *supra* note 7, which was a direct result of the terrorist slayings at the 1972 Olympic games at Munich, Germany. *See also* "Internationally Protected Persons" Draft Articles, *supra* note 74. From 1968 to 1972, twenty-seven diplomats from eleven countries were kidnapped and three murdered. Address by John Stevenson before Ass'n of the Bar of the City of New York and American Society of International Law, Nov. 9, 1972, 27 RECORD OF N.Y.C.B.A. 716 (1972), 67 U.S. DEP'T OF STATE BULL. 645 (1972). Many national leaders similarly reacted to the Munich exportation of terror. For example, U.S. President Richard M. Nixon established a Cabinet Committee to Combat Terrorism. *See* White House Press Release, Sept. 26, 1972, 67 U.S. DEP'T STATE BULL. 475, 476 (1972). Results of the Committee's deliberations were recently published in *The U.S. Government Response to Terrorism: A Global Approach*, 70 U.S. DEP'T STATE BULL. 274 (1974).

96. Gross, *International Terrorism and International Criminal Jurisdiction*, 67 AM. J. INT'L L. 509 (1973).

97. The Foundation was established in 1970 for the purpose of sponsoring the First International Criminal Law Conference (Racine, Wisconsin 1971), at which the concepts of a Convention on Crimes and a World Criminal Court, which had been submerged by the U.N., could resurface.

98. This Commission was established in 1965 as the working group of the International Criminal Law Committee of the World Peace Through Law Center. The collective effort of the Commission resulted in the accomplishment of advocating an international criminal forum. *See* Woetzel, *Acknowledgements* to WORLD PEACE THROUGH LAW CENTER, TOWARD A FEASIBLE INTERNATIONAL CRIMINAL COURT (Geneva 1970).

dom in a manner consistent with their own policies. Binding them over for trial in an impartial World Court would support the strong stand of the United States in preventing aircraft hijacking,[99] while at the same time prevent Algeria from granting absolute asylum to those who have defected to freedom. At least minimum humanitarian standards would be observed in dealing with perpetrators of international crimes involving terrorism. The accused would not face inhumane treatment that might otherwise occur if extradited to the national authority from which he fled.

The task of drafting appropriate measures regarding international crimes and a World Criminal Court was pioneered by the F.E.I.C.C. in conjunction with the International Criminal Law Commission (I.C.L.C.).[100] A model convention[101] and court statute[102] were presented at the Ivory Coast's Abidjan World Conference on World Peace Through Law in August of 1973.[103] Ratification of the Convention on International Crimes would necessitate recognition of the jurisdiction of the International Criminal Court (I.C.C.) whether or not the enumerated offenses[104] constitute crimes under national law.[105] The I.C.L.C. apparently drafted ar-

99. *See, e.g.*, U.S. Draft Convention for Prevention and Punishment of Terrorism Acts, *supra* note 51; U.S.S.R. Decree on Criminal Liability for the Hijacking of Aircraft, *supra* note 77.

100. Initial drafts were prepared by the International Criminal Law Commission in 1971 and 1973 as educational efforts to persuade nations to expand the use and jurisdiction of the I.C.J. *See* F.E.I.C.C., REPORT ON THE FIRST INTERNATIONAL CRIMINAL LAW CONFERENCE (Racine, Wis. 1971); F.E.I.C.C., REPORT ON THE FIRST AND SECOND INTERNATIONAL CRIMINAL LAW CONFERENCES (Racine, Wis. 1973).

101. F.E.I.C.C., DRAFT CONVENTION ON INTERNATIONAL CRIMES AND DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT 1-3 (Wash. 1973) [hereinafter cited as either DRAFT CRIME CONVENTION or DRAFT I.C.C. STATUTE].

102. *Id.*, at 3-9.

103. The work and scope of this Conference is summarized by the President of the World Peace Through Law Center in Rhyne, *Internationalization of Law to Meet Internalization of Life*, 4 CALIF. W. INT'L L.J. 1 (1973).

104. The Convention features twenty-two subparagraphs dealing with the broad range of offenses giving rise to I.C.C. jurisdiction. The offenses within the scope of this Article generally include piracy, hijacking, and kidnapping of "internationally protected persons" and specifically:

> [I]nternational acts of terrorism, being criminal acts and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public; . . . .
>
> . . . .
>
> Acts which constitute . . . complicity in or culpable failure to prevent the commission of any of the above offenses; . . . .

DRAFT CRIME CONVENTION, *supra* note 101, arts. 3(i) and 4(a).

105. *Id.*, art. 1.

ticle 6 with a view toward mitigating the national sovereignty objections which are currently diminishing prospects for utilizing the I.C.C. remedy:

> 2. Each Party to this Convention shall be under the obligation to search for and detain persons alleged to have committed any offense to which this Convention applies.
>
> 3. Each Party . . . shall have jurisdiction to try and punish any person for having committed any offense to which this Convention applies.
>
> 4. Each Party . . . undertakes either to prosecute an alleged offender of this Convention in its custody, or to extradite him, or to surrender him to an international criminal court.[106]

Sovereign objections to expansion of the present I.C.J.'s jurisdiction to include an I.C.C. chamber, notwithstanding the statutory flexibility of article 6, are rooted in the same political quicksand that has retarded United Nations' efforts to control international terrorism. There still exists the political problem of convincing major powers to agree on a remedy which would theoretically reduce national sovereignty between a government and its nationals or aliens—a relationship traditionally considered to be within the domestic jurisdiction of each sovereign State.[107]

This potential conflict, rooted in multilateral reluctance to relinquish absolute authority over an international criminal, can be best illustrated by probing some of the foreseeable objections to procedure and competence of an I.C.C. under the 1973 draft statute. For example, many Third World nations[108] adhere to

106. *Id.*, art. 6. Furthermore, post-ratification procedure permits a Party to give notice as to "which acts specified in this Article or any other international agreement [whereby] it . . . will not accept such obligations." *Id.*, art. 5. It is foreseeable that many nations would not accede to compulsory jurisdiction of the I.C.C. without declaring a "Connally Amendment" reservation. *See* Connally Amendment, *supra* note 86.

107. *See generally* KREINDLER, DRAFT REPORT OF THE COMMITTEE OF EXPERTS ON EXPANDING THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE 3-5 (Wash. 1973) [hereinafter cited as DRAFT I.C.J. EXPANSION REPORT]. Previous non-terrorist related U.N. consideration of, *inter alia*, expanding the I.C.J.'s jurisdiction, indicated that many representatives agreed that the Court did not function as hoped. This was due to national reluctance to apply to the Court due to varied systems of values and excessive attachment to national sovereignty. *See* Report of the Sixth Committee on the Role of the International Court of Justice 12, U.N. Doc. A/8238 (1970).

108. The term "Third World" originated from the French term *tiers monde*. This term was popularized in France between 1947 and 1949 to describe a group of splinter parties who stood midway politically between DeGaulle's R.P.F. party

the political motivation defense in cases involving murder and some other forms of terrorism. Applicable judicial standards would not accommodate this adherence as evidenced by article 6, which dictates that judicial election shall represent the main forms of civilization and principal legal systems of the world.[109] Western legal principles, which abhor conduct such as the murder of thirty-two innocent travelers which occurred in the Munich disaster,[110] do not balance with the fact that the responsible Palestinian terrorists were never punished.[111] The United Nations inability to implement immediate measures for preventing international terrorism subsequent to the Munich disaster[112] is a clear indication that such perspectives as those of the Middle East and Africa may justify conduct that is reprehensible in the Western Hemisphere. This variance in philosophies cannot be ignored since:

> The general body of states has . . . no machinery . . . which allows a majority to cultivate a dissentient minority and to pass measures into law which will then become binding on all, whether they have agreed or not.[113]

(Rally of the French People) and the Fourth Republic which it opposed. When De Gaulle came to power he used the expression on many occasions to define the position which he felt France should play in world politics as a non-aligned State between the polarised ideologies of the United States and the Soviet Union. He felt that France should remain non-aligned and should thus be a *tiers monde* between the two great World Powers.

Gradually the expression Third World has come to mean a grouping of nations who believe that by their very numbers, with particular emphasis in the United Nations, they can make themselves into a third force capable of resisting the might of the great powers. Since almost all of these non-aligned nations are under-developed countries, the expression Third World is now used almost synonymously with underdeveloped nation. *See* Memorandum from Dr. Marcus Grantham, Lecturer in Law at California Western School of Law, Sept. 5, 1974, on file with CALIF. W. INT'L L.J.

109. *See* DRAFT I.C.C. STATUTE, *supra* note 101, art. 6. The 1951 U.N. Draft I.C.C. Statute bore nearly identical wording. *See* 1951 DRAFT I.C.C. STATUTE, *supra* note 92, art. 10.

110. *See, e.g.*, U.S. demand that these terrorists must be brought to trial so that appropriate justice would be done. N.Y. Times, Dec. 20, 1973, at 1, col. 2.

111. *See* N.Y. Times, Dec. 23, 1973, at 6, col. 1.

112. *See* text accompanying notes 7, 8, and 65-75, *supra*.

113. BRIERLY, OUTLOOK FOR INTERNATIONAL LAW 99 (1944). National legislative bodies are frequently prevented from taking action due to political paralysis rather than lack of legislative power under a constitution. The U.N.'s lack of ability to act as an institution is often based upon lack of constitutional authorization to act other than by vote of nations. *Compare* U.S. CONST., art. I, § 1 with U.N. CHARTER, art. 18, paras. 2 & 3.

Therefore, since the political probability is that no judge would be elected from the significant minority of nations that do not identify the perpetrators as international criminals,[114] these nations would not ratify the Draft I.C.C. Statute if the decision turned upon the basis of representation since:

> Judges shall be elected by an absolute *majority* of votes of the States Parties at a meeting of representatives of the States Parties to be convened . . . by the Secretary General of the United Nations.[115]

Article 17 suggests another potential problem. The Court and its subsidiary organs may sit and exercise judicial functions at places other than the permanent seat.[116] Therefore, subsidiary organs such as the Commission of Inquiry, Commission of Prosecution, or Board of Clemancy and Parole could operate in different areas which vary greatly in competence and ideology. Potential subchambers of the I.C.C. could develop which might result in inquiries, prosecutions, and clemancy standards at odds with procedure at the permanent seat. This could diversify the application of customary international legal standards from region to region. A somewhat federalized conglomerate of subsidiary organs would not nourish the needed universal international legal norms. Hopefully, this problem is one of conjecture, and the implementation of article 17 would result only in the designed objective of flexibility for an I.C.C.

Another procedural problem involves article 22.[117] It provides that "The Court shall be competent to judge persons whether or not they are constitutionally responsible rulers, public officials or private individuals."[118] The condition precedent to trial proceedings is the conferring of jurisdiction by the individual's State, the State where the alleged crime was committed, or the custodial State.[119] Assuming that Italy were to seek indictment of the Sheik of Kuwait as an accessory-after-the-fact for failure to punish or extradite terrorists,[120] it would be impossible to con-

114. *See generally* African Mideast Draft Resolution, *supra* note 49.

115. DRAFT I.C.C. STATUTE, *supra* note 101, art. 5, para. 4 (emphasis added).

116. The 1951 U.N. Draft I.C.C. Statute was quite similar, although it was not as specific as to the mobility of the Court's organs. *See* 1951 DRAFT I.C.C. STATUTE, *supra* note 92, art. 21.

117. DRAFT I.C.C. STATUTE, *supra* note 101, art. 22.

118. *Id.*

119. *Id.*, art. 24.

120. *See* text accompanying notes 1-4, *supra.*

fer jurisdiction based upon the "obligation to search for and detain persons alleged to have committed any offense to which this Convention applies."[121] Italy would not have standing, in accordance with article 24,[122] to either unilaterally assume jurisdiction of the Sheik or establish I.C.C. jurisdiction absent Kuwait's consent. Thus a procedural stalemate arises.

A fourth problem involves the fact that trial by jury and appeal are basic tenets of Anglo-American jurisprudence. Objections to the United Nations draft statutes,[123] based upon the threat to these typical constitutional rights, may be appropriately voiced in reference to the 1973 F.E.I.C.C. draft statute which denies these "rights" to the accused.[124] A government will not be a Party to an agreement that would be unconstitutional if internally applied to its own citizens.

In addition to these statutory objections to a transnational criminal forum, several legitimate State interests must be accommodated prior to foreseeable acceptance of this remedy for controlling international crimes.[125]

Some nations might take a dim view toward a potential executive or enforcement organ for the proposed I.C.C. In 1971, the

121. DRAFT CRIME CONVENTION, *supra* note 101, art. 6, para. 2. Another procedural barrier would involve the nonapplicability of this obligation if the appropriate Party or Parties were to ratify only the I.C.C. Statute. A State might identify with this transnational court remedy, yet be unwilling to ever concede jurisdiction in any case of hijacking or political kidnapping that it clandestinely supports. Even if such a State did ratify the Draft Crime Convention, it would not be obligated to assent to jurisdiction of the I.C.C. in accordance with article 24 of the Draft I.C.C. Statute.

122. *See* text accompanying note 119, *supra*.

123. *See, e.g.*, Finch, *supra* note 93.

124. The 1951 draft articles 37 and 50 precluded the right to trial by jury and the right to appeal. *See* 1951 DRAFT I.C.C. STATUTE, *supra* note 92. The recent draft I.C.C. statute has the specific article on trial by jury, but by negative implication of article 34 (Rights of the Accused), this prerogative is unavailable to the accused. Article 45 of this statute specifically denies the right of appeal, although the subsidiary Board of Clemancy and Parole might practically achieve what is technically nonexistent since "The judgment shall be final and without appeal." *See* DRAFT I.C.C. STATUTE, *supra* note 101, art. 50.

125. *See* Connally Amendment, *supra* note 86, and text accompanying notes 118-124, *supra*. Further objections, in relation to war crimes which are beyond the scope of this Article, would emanate from nations that might not align with the concept of the Nuremberg Trials. Fundamental information about the world's first international criminal assizes can be obtained from R. JACKSON, THE NUREMBERG CASE (1971). Mr. Jackson was Chief Prosecuting Counsel for the United States and involved in trying Nazi leaders for the international or universal crime of genocide.

International Criminal Police Organization (Interpol)[126] was invited by the United Nations to cooperate in the elimination of the international crime of slavery.[127] However, Interpol was barred from involvement in United Nations efforts to combat international crimes involving terrorism.[128] National concern with sharing crime-fighting duties was apparently outweighed by fears that Interpol, an essentially European organization, would consider as criminal conduct what some African or Middle East nations might consider to be political conduct.[129]

Another State interest would be threatened by the probable computer invasion of privacy that would be nurtured by international law enforcement. The zeal for eradicating the terrorist menace would facilitate exposure of clandestine national support. This could be embarrasing and dangerous. Political blackmail could result from threatened exposure of secret records and other information if an I.C.C.'s enforcement organ were able to use international resources to compile appropriate dossiers[130] involving conduct not considered criminal by all nations. As required by its constitution, Interpol has always refrained from investigating political questions and conduct.[131] Since many countries view terrorism as political, this helps explain recent U.N. consideration and rejection of Interpol for fighting international terrorism.[132] Concern at the recent U.N. meeting focused upon fears that an

126. The history, organization, and present activities of Interpol can be ascertained in M. FOONER, INTERPOL (1973).

127. *See* Report of the Twenty-Fourth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, U.N. Doc. E/CN.4/1070, E/CN.4/Sub.2/323 (1971).

128. *See generally* N.Y. Times, Sept. 26, 1972, at 19, col. 1.

129. *See* text accompanying notes 55-65, *supra*. The U.S. made terrorism a major issue at the Interpol General Assembly, which met at Frankfurt, Germany in 1972. The U.S. sought the help of Interpol to fight international terrorists. The organization resolved to utilize its machinery to prevent and suppress terrorist activity. *See President Nixon Establishes Cabinet Committee to Combat Terrorism*, 67 U.S. DEP'T STATE BULL. 475, 479 (1972).

130. Interpol has provided studies, dossiers, and other terrorist-fighting information to international organizations with which it maintains special relationships—the International Civil Aviation Organization, the United Nations General Assembly, and the International Air Transport Association. These organizations have access to their own national police agencies, so that coordinated efforts against hijackers are now possible. *See* FOONER, *supra* note 126, at 29-30.

131. Art. 4 of the Interpol Constitution provides for membership of official police bodies only if their activities are not political, including espionage and counter espionage. *Id.*, at 30.

132. *See* text accompanying notes 126-129, *supra*.

executive subsidiary of an I.C.C. would face the possibility of a takeover by a nation or bloc. Such a takeover by a particular nation or bloc may result in the use of classified documents for political blackmail or other terrorist purposes.[133] It is quite simple to overlook the existing reality that national and individual seclusion are no longer immune from the possibility of unwarranted intrusion insofar as the United Nations International Computing Centre functions in Geneva.[134]

In spite of the objections to an I.C.C., one must not lose sight of the grim reality that multilateral inability to agree upon immediate measures to prevent terrorism has resulted in one of the most objectionable impasses in United Nations history. The same conduct that constitutes either an international delict[135] or an act of brotherhood and bravery[136] surely signals the need for an international judiciary in order to avoid skirting the thin line of demarcation between peacetime terrorism and international war. Notwithstanding national sovereignty objections, "teachings of the most highly qualified publicists of the various nations, as subsid-

133. Eastern bloc nations have been shadowed by the Western bloc in the Security Council and General Assembly. The machinery of the U.N. is directed at studying the right of self-determination and causes of international terrorism, rather than implementing preventative measures. *See* text accompanying notes 65-75, *supra*. Now that the African-Eastern bloc has placed the shoe on the other foot, Western nations may similarly fear forceful takeover or political domination of an international information network under the auspices of Interpol or any potential enforcement arm of an I.C.C. However, the U.S. recently lauded Interpol's participation in discouraging the international terrorist. *See* Address by Lewis Hoffacker, U.S. Coordinator for Combating Terrorism, *The U.S. Government Response to Terrorism: A Global Approach*, 70 U.S. DEP'T STATE BULL. 274, 276 (1974).

134. *See* Report of the Secretary General on Electronic Data Processing and Information Systems in the United Nations Family of Organizations, U.N. Doc. A/C.5/1475 (1972). *See also* Report of the Secretary General on Coordination and Integration of International Statistical Programmer, U.N. Doc. E/CN.3/422 (1972).

135. U.S. President Nixon stated, in response to the Palestinian terrorist murder of thirty-two airport passengers in Italy:

> [T]errorists must be made to understand that senseless violence against innocent bystanders, including helpless women and children in this instance, will not be tolerated by people and governments who wish to live in peace within the law.

N.Y. Times, Dec. 19, 1973, at 18, col. 8.

136. One of the terrorists involved in the murder and hijacking in the Rome-Athens-Kuwait incident stated upon "surrender" in Kuwait:

> [W]e consider ourselves on a visit to an Arab country which is friendly and a brother country. We are sure we will be accorded proper treatment and we are proud of Kuwait's support for the Palestinian cause.

Id., col. 5.

iary means for the determination of rules of law,"[137] have recently reiterated that:

> It is recommended once again that such a court [I.C.C.] be established with jurisdiction over international crimes and in particular over acts falling within the definition of terrorism.[138]

Crimes such as hijacking and kidnapping of diplomats are closely related to the transportation revolution in which the Twentieth Century now finds itself. Modern technology and its impact on mobility between nations dictates that control of such offenses is possible only through the combined efforts of the international community.[139] Although a World Criminal Court constitutes an academic[140] alternative to classical concepts of territorial jurisdiction and extradition:

> A World Criminal Court is absolutely necessary if we are to think seriously of establishing a long lasting peace in the world. This necessity becomes more obvious every day as we witness conflicts and wars between states, even though they are not officially declared as such.[141]

Terrorism may easily escalate into war. Establishment of an I.C.C. would mitigate the future use of peacetime tactics designed to export what is essentially an internal or domestic conflict.[142]

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137. The operation of I.C.J. Statute provides that the Court's deliberation of an international law dispute shall include application of the teachings of prominent individuals as a subsidiary source of international legal principles. *See* I.C.J. STAT., art. 38, para. 1(d).

138. Final Document of the International Conference on Terrorism and Political Crimes, at 10 (M. Bassiouni ed. 1973). The Conference advocated creation of an I.C.C. The proceedings will be published in 1974.

139. *See* FEICC, REPORT ON THE FIRST AND SECOND INTERNATIONAL CRIMINAL LAW CONFERENCES, at 8 (Racine, Wis. 1973).

140. This author forwarded a general questionnaire, regarding a U.N. multilaterally established I.C.C., to fifty-four international legal scholars, jurists, criminal scientists, and U.N. diplomats. The twenty-one responses included six indications that an I.C.C. was a viable alternative; two others indicated "not at present;" two responses were "part viable, part academic." Eleven responses signified the academic nature of this possible remedy.

141. Letter from Georges Sliwowski, Associate Dean, International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy, to this author dated Jan. 22, 1974.

142. For example, fifteen explosive devices were found in London department stores and mail in a new campaign by sympathizers of the Irish Republican Army. *See* N.Y. Times, Aug. 22, 1972, at 4, col. 4. The left hand of a British Embassy (Wash.) secretary was blown up when she opened the morning mail. The letter bomb was similar to thirty such devices dispatched in London during the previous week. *See* N.Y. Times, Aug. 28, 1972, at 1, col. 5.

Before this universal recognition of a World Court is feasible, an interim device must be implemented that is simpler than the I.C.C. remedy, and is not as restrained by national sovereignty objections.

III. CIVIL ANTIDOTE WITHIN AN EXISTING MOLD

A. Alterius v. Botania

Ideological and political differences must be subordinated to the interlocking needs of diverse nations, uniformly pursuing "the goal of perfecting judicial machinery to replace the instruments of war."[143] This goal provided the inspiration for the 1973 World Peace Through Law Conference convened at Abidjan, Ivory Coast.

The Draft Report of the Committee of Experts on Expanding the Jurisdiction of the I.C.J. reasoned that:

> Recent history has shown that political differences among the major powers move towards resolution when the advantages of cooperation . . . clearly outweigh the restricting force of ideological differences.[144]

The 123-nation conference resolved that States reluctant to consent to compulsory jurisdiction of the Court may nevertheless consent to jurisdiction in matters devoid of political sensitivity.[145] Another Conference resolution advocates amendment of the United Nations Charter to require all Members to submit international disputes for *mandatory* settlement.[146]

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143. DRAFT I.C.J. EXPANSION REPORT, *supra* note 107, at 8.

144. *Id.*, at 5.

145. *See* WORLD PEACE THROUGH LAW CENTER, THE CHALLENGE OF ABIDJAN AND RESOLUTIONS ADOPTED BY THE ABIDJAN WORLD CONFERENCE ON WORLD PEACE THROUGH LAW, Res. 5, at 7 (Wash. 1973) [hereinafter cited as CHALLENGE OF ABIDJAN]. The work of the Conference, including the demonstration Skyjacking Trial, is summarized in Allen, *World Peace Through Law Center Holds Tenth Anniversary Conference in Ivory Coast*, 59 A.B.A.J. 1289 (1973) [hereinafter cited as *Tenth Anniversary Conference*]. The trial proceedings will be officially published when all decisions have been submitted to the World Peace Through Law Center. Letter from Charles S. Rhyne, President, World Peace Through Law Center, to this author, dated Feb. 15, 1974.

146. *See* CHALLENGE OF ABIDJAN, *supra* note 145, Res. 19, at 16 (emphasis added). This resolution is generally geared toward the outlawing of war. Its implication could include submission of disputes to the U.N.'s judicial organ recognizing, *inter alia*, that world habeas corpus and redress to a universal court of human rights, when the self-determination is allegedly suppressed, would alleviate some of the tensions that motivate terrorists to act. Regarding habeas corpus and redress to a human rights court, see CHALLENGE OF ABIDJAN, *supra* note 145, Res. 17, at 15.

This ideological commitment to expanded I.C.J. jurisdiction for settlement of disputes provided the background for the moot court trial of *Republic of Alterius v. Democratic State of Botania.*[147] Francisco Xaviere, a citizen of Alterius, hijacked a local airliner. He forced it to land in Botania, seeking asylum and publicity for the cause of his people. Robert Yellman, a passenger from a third nation identified as the Coronado Republic, was killed while attempting to disarm Xaviere. Botania conducted a preliminary hearing but declined to punish or extradite Xaviere.[148] Alterius brought an action against Botania and Xaviere in the "I.C.J." for extradition. Coronado sought damages for the wrongful death of Yellman. Botania, a member of the United Nations and Party to the I.C.J. Statute,[149] procedurally defended and lost on the basis of lack of jurisdiction to entertain these claims.[150] Xaviere's article 34(1)[151] defense[152] was successful.[153] However, Botania was ordered to extradite him.[154]

The thrust of the case centered upon Botania's two primary defenses. First, Botania contended that the hijacking constituted

147. This demonstration trial was initially scheduled for argument as a criminal trial at the 1971 World Peace Through Law Center Conference in Yugoslavia. *See* Rhyne, *Foreword* to THE BELGRADE SPACESHIP TRIAL, at 2 (B. Segal ed. 1972). Presentation was rescheduled for the 1973 Conference. The proceedings were civil rather than criminal in nature, being heard before a hypothetical I.C.J. composed of leading world jurists. The attendance included chief justices or high court justices from ninety-six nations and ministers of justice, attorneys general, or bar president from fifty-one nations. *See Tenth Anniversary Conference, supra* note 145, at 1291.

148. This imaginary situation was well conceived in view of Kuwait's factual failure to punish or extradite the Palestinian terrorists who killed thirty-two airport travellers and took hostages pursuant to an attack on a U.S. airliner in Rome. *See* text accompanying notes 1-4, *supra.* Both the imaginary nation of Botania and the real world nation of Kuwait exhonerated terrorists as political refugees.

149. The real world nation of Kuwait shares this same status.

150. Statement of Facts in Issue in explanatory statement by Tafari Berhane of Ethiopia, Chairman, Demonstration Trial, Abidjan, Ivory Coast, Aug. 28, 1973.

151. The International Court of Justice Statute dictates that "Only *states* may be parties in cases before the Court." I.C.J. STAT., art. 34, para. 1 (emphasis added).

152. *See* Brief for Defendant at 2, Republic of Alterius v. Democratic State of Botania, Demonstration "I.C.J." Trial (Abidjan 1973) [hereinafter cited as Brief for Individual Defendant].

153. The "holding" of the "I.C.J." was silent as to this defense. However, Alterius' claim for extradition was granted, thereby achieving a similar result due to Botania's adjudicated responsibility to extradite. *See Tenth Anniversary Conference, supra* note 145, at 1293.

154. *Id.*

a political offense.[155] This defense allegedly qualified Xaviere for political asylym[156] and rendered the Court incompetent to assume jurisdiction over a political question.[157] Alterius countered with the argument that "[a]cts of aerial hijacking cannot in themselves be political acts, that is, directed against a sovereign alone."[158] Coronado submitted that the:

> [I]njurious results of a denial of justice are not necessarily confined to the individual victim or his family, but include such consequences to the victim's country as the mistrust and lack of safety felt by it [and] other nationals similarly situated.[159]

Coronado asserted that all States must prosecute such criminals to safeguard the interests of their own nationals as well as to prevent crimes against international law.[160] Therefore, Botania's failure to apprehend and punish Xaviere was viewed as direct complicity with the murderer.

Secondly, Botania defended by arguing that there was no question of international law presented.[161] In other words, extradition is a legal question purely within the domestic jurisdiction of every State.[162] Therefore, neither a United Nations Resolu-

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155. *See* Brief for Defendant at 8, Republic of Alterius v. Democratic State of Botania, Demonstration "I.C.J." Trial (Abidjan 1973) [hereinafter cited as Brief for Botania].

156. *Id.*, at 11. Botania relied upon the U.S. position that:

> States generally refuse to enforce in their territory the criminal law of another state and to surrender fugitives from the criminal jurisdiction of another state, except as they may have committed themselves to do so by international agreement.

RESTATEMENT (SECOND) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, § 9, comment *e*, at 27 (1965).

157. Some nation's Supreme Judiciaries avoid involvement in political affairs of State by declining to hear "political questions." *See, e.g.*, Baker v. Carr, 369 U.S. 186 (1962). Neither the U.N. Charter nor I.C.J. Statute specifically prohibit determination of a political question. *See, e.g.*, U.N. CHARTER, art. 96 and I.C.J. STAT., arts. 36 & 65, referring to *legal* questions. The Abidjan Resolution on Expanding the Jurisdiction of the International Court of Justice proposes a statutory amendment "to entertain claims . . . in subjects of limited political sensitivity." *See* CHALLENGE OF ABIDJAN, *supra* note 145, Res. 5, at 7.

158. *See* Brief for Plaintiff at 11, Republic of Alterius v. Democratic State of Botania, Demonstration "I.C.J." Trial (Abidjan 1973) [hereinafter cited as Brief for Alterius].

159. *See Coronado's Brief for Plaintiff*, at 2, Republic of Alterius v. Democratic State of Botania, Demonstration "I.C.J." Trial (Abidjan 1973).

160. *Id.*, at 5.

161. Brief for Botania, *supra* note 155, at 5.

162. *Id.*, at 6-7.

tion[163] nor a multilateral convention[164] condemning hijacking would create a rule of customary international law which would bind Botania.[165]

Chief Justice Elias of Nigeria delivered the opinion of the Court, holding that "Only the I.C.J. has the power to decide . . . whether or not it has jurisdiction . . . ."[166] He continued writing that no one state "can unilaterally characterize an offense as 'political';"[167] that hijacking is an international crime triable in either a municipal or international forum;[168] and that Member States, as well as nonmember States of the United Nations, are bound by resolutions of the General Assembly regarding fundamental issues, including this form of international terrorism.[169]

This holding, if in fact evidence of peremptory norms of international law from which States cannot derogate,[170] foreshadows a civil antidote for international terrorism. The existing I.C.J. could provide the mold for an approach which would be currently more acceptable than a criminal court. Utilizing the exist-

163. *Id.*, at 8.

164. *See* Brief for Botania, *supra* note 155, at 8.

165. *Id.*, at 10.

166. *See Tenth Anniversary Conference, supra* note 145, para. 1(d) at 1293. This holding was based upon the statutory provision that "[i]n the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." I.C.J. STAT., art. 38, para. 6.

167. *See Tenth Anniversary Conference, supra* note 145, para. 1(a) at 1293. This result was based upon a 1950 I.C.J. case holding that the Court has jurisdiction in extradition cases and that neither Plaintiff nor Defendant nations can unilaterally attach political characterizations to actionable conduct. *See* Colombian-Peruvian Asylum Case, [1950] I.C.J. 266.

168. *See Tenth Anniversary Conference, supra* note 145, at 1293. The import of a holding lies in the Court's determination that this form of terrorism is an international crime which constitutes a preemptory norm of general international law.

169. Although Botania contended that it was not bound by U.N. General Assembly resolutions against hijacking, the Court applied the *Namibia Case*, involving self-determination, by analogy to this hypothetical case. The former held that U.N. General Assembly resolutions bind member and nonmember States on certain fundamental issues such as the right of self-determination. *See* Advisory Opinion on the Continued Presence of South Africa in Namibia, [1971] I.C.J. Rep. 16.

170. Such a norm is defined as:

> [A] norm accepted and recognized by the international community of states as a whole as a *norm from which no derogation is permitted* and which can be modified only by a subsequent norm of general international law having the same character.

Vienna Convention on the Law of Treaties, *open for signature* May 23, 1969, U.N. Doc. A/CONF.39/27, art. 53 (1969), 63 AM. J. INT'L L., at 891 (1969) (emphasis added) [hereinafter cited as Vienna Convention on Treaties].

ing statute of the International Court of Justice could lead to a solution to the United Nations discord[171] exemplified by failure to resolve the Rome-Athens-Kuwait violence and murders.[172]

B. International Tort: A Proposal

Membership in the United Nations endows a nation with *ipso facto* membership to the Statute of the International Court of Justice.[173] However, competence of the Court may be qualified by a reservation[174] limiting compulsory jurisdiction in regard to breaches of international obligations or the nature and extent of reparation.[175] The Court cannot adjudicate personal injury, wrongful death, or property damage by and between persons and corporations from different countries.[176] It cannot adjudicate criminal actions against individuals.[177] Therefore, terrorists, as individuals, continue to circulate with immunity from the injunctive remedy of extradition ordered by the mock I.C.J. in *Republic of Alterius v. Democratic State of Botania.*[178] Enlarging I.C.J. jurisdiction to permit extradition of an individual would require all permanent Members of the Security Council, and a two-thirds majority of the General Assembly,[179] to amend the United Nations Charter.

Present attempts to frame a remedy for international terrorism need not begin with the labyrinthe of statutory amendments necessary for creating jurisdictional machinery to try terrorists as individuals.[180] The United Nations Charter affirms this principle:

> Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially

171. *See* text accompanying notes 46-75, *supra.*

172. *See* text accompanying notes 1-4, *supra.*

173. U.N. CHARTER, art. 93, para. 1.

174. *See* Connally Amendment, *supra* note 86.

175. I.C.J. STAT., art. 36, para. 2.

176. *See* note 151, *supra.*

177. *Id.*

178. Demonstration "I.C.J." Trial, Abidjan, Ivory Coast (1973), *supra* note 147. *See also* text accompanying notes 147-54, *supra.*

179. U.N. CHARTER, art. 108. Two-thirds of the members of the General Assembly, including all permanent members of the Security Council, must ratify amendments to the Charter. This procedure applies also to the I.C.J. Statute which is an integral part of the Charter. *Id.*, art. 92.

180. The present I.C.J. is competent only in disputes between nation States. I.C.J. STAT., art. 34, para. 1. The existing Statute does not provide for appeal. I.C.J. STAT., art. 60. It is probable that national jurisprudence rooted in Anglo-American or European civil law would be considerably threatened by prospects of criminal proceedings without appeal.

> within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present charter . . . .[181]

Substantive provisions of municipal law, linked to the territorial and protective principles of international criminal jurisdiction,[182] are not designed to correlate with the jurisdiction of a transnational forum. For example, if a United States citizen of Jewish extraction was inclined to kidnap an Arab diplomat in Washington, D.C., it would be difficult to imagine United States extradition to an international court. This act would constitute a generally defined international crime;[183] but the possibility of an Interpol transfer to a European jail[184] pending World Criminal Court proceedings cannot be seriously considered until the world community has a satisfactory interim civil device facilitating enforcement of justified claims.

A three-step process is necessary to facilitate the use of the proposed international tort for failure to punish or extradite international terrorists. This process should supplement U.N. and national solutions to the causes of terrorism.

1. Expanding the Definition of International Terrorism, Not the Scope of the I.C.J.—Current efforts to curb terrorism[185]

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181. U.N. CHARTER, art. 2, para. 7.

182. *See generally* note 20, *supra.*

183. *See generally* "Internationally Protected Persons" Draft Articles, *supra* note 74; FEICC, REPORT ON THE FIRST AND SECOND INTERNATIONAL CRIMINAL LAW CONFERENCES, *supra* note 100; DRAFT I.C.J. EXPANSION REPORT, *supra* note 107; CHALLENGE OF ABIDJAN, *supra* note 145, Res. 20, at 16.

184. Regarding the role of an international criminal police force attached to a World Criminal Court, see Nepote, *The Role of an International Criminal Police in the Context of an International Criminal Court and Police Cooperation with Respect to International Crimes*, in 1 M. BASSIOUNI & V. NANDA, A TREATISE ON INTERNATIONAL CRIMINAL LAW 676 (1973). There are 111 Member nations in Interpol with a roster that ranges from Algeria to Zambia, including the U.S. *See* FOONER, *supra* note 126, at 33. However, excessive attachment to national sovereignty over criminal individuals constitutes the major barrier to Interpol's ripening into a legitimate executive arm of a criminal court. Interpol's object is to bypass protocol and formality when necessary to counter crime. This perspective allegedly impinges on national sovereignty. *Id.*, at 42.

185. The Abidjan World Peace Through Law Conference resolved to expand I.C.J. jurisdiction to include suits between individuals and corporations in the commercial trade arena. This could serve as a testing ground for States suing individuals on causes of actions related to terrorist conduct. The Foundation for establishing the World Criminal Court remedy seeks to change the existing statutory structure of the I.C.J. or else develop a new statute for trying individuals. *See* text accompanying notes 97-103, *supra.* Numerous criminal procedure provisions would have to be negotiated and implemented.

have repeatedly clashed with the existing framework of the I.C.J. The concept of a separate criminal court or criminal subchamber of the I.C.J. necessitates altering the Statute so that individuals may be parties.[186] The decision of the Skyjacking Trial[187] correctly held that the Court was competent to order extradition by the hypothetical nation of Botania, but not direct extradition by the Court itself. There is no real world basis for in personam jurisdiction in international law.[188]

If this problem is to be remedied before terrorists are able to hijack aerospace vehicles, concentration must focus upon expanding world-wide agreement as to the definition of international terrorism. Surface or air piracy, kidnapping or murder of internationally protected persons, and any multilaterally defined exportation of terrorism rooted in domestic or regional conflict should constitute universal crimes which all nations have a duty to prevent. It can no longer be asserted that this is *not* a "question of international law;"[189] therefore, it falls within one of the jurisdictional bases enumerated in article 36 of the current I.C.J. Statute.[190]

The tough problem involves pressing claims against nations who are unwilling defendants.[191] It is very simple for them to construe any conduct occurring within a nation's borders as being "essentially within the domestic jurisdiction of any state . . . ."[192] However, whether international terrorism may be characterized as either a common crime against mankind or a politically justifiable act is a question of international, not municipal, law. Therefore, a solution may lie in the contemporary I.C.J. deciding such jurisdictional disputes by resort to "international custom, as evidence of a general practice accepted as law;"[193] and "[t]he general principles of law recognized by civilized nations . . . ."[194]

The next step in the process will have to be to link interna-

186. *See* note 151, *supra.*

187. *See* text accompanying note 154, *supra.*

188. *See* note 151, *supra.*

189. The Court may adjudicate disputes concerning "any question of international law." I.C.J. STAT., art. 36, para. 2(b).

190. *See* Brief for Botania, *supra* note 155, at 5.

191. Most States Parties to the Statute have not opted to accept compulsory jurisdiction of the Court. *See, e.g.*, Connally Amendment, *supra* note 86.

192. U.N. CHARTER, art. 2, para. 7.

193. I.C.J. STAT., art. 38, para. 1(b).

194. *Id.*, art. 1(c).

tional custom and general principles of international law with the recognition that no one State can unilaterally characterize conduct as political when innocent people are kidnapped, murdered, or otherwise harmed. Such unilateral characterization is damaging in relations with countries that consider such terrorism a crime. As international relations deteriorate, it becomes less advantageous to grant asylum or other support to those who communicate their political ills by utilizing fear to effect radical change. Tort liability for failure to punish or extradite perpetrators of the appropriate crimes[195] is a logical result of multilateral recognition of the obligation to adopt measures to prevent international terrorism.

2. *Elements of the Tort.*—Before this tort can be multilaterally established, its elements must be defined and its scope refined. The prima facie case would include the duty to effectively[196] punish or extradite those who perpetrate acts of terror which "cannot in themselves be political acts, that is, directed against a sovereign alone."[197]

Breach of the duty to punish or extradite could result in the causes of action listed in following illustration. Three Cuban guerillas seized a Greek ship in Pakistan on February 3, 1974, threatening to blow it up and kill their hostages.[198] Greece released the bargained-for Palestinian terrorists from local custody and the Cubans flew from Pakistan to Saudi Arabia.[199] If the latter nation fails to punish or extradite the Cubans and Palestinians, it would breach a responsibility to the United Nations Membership requiring appropriate measures to prevent further acts of international terrorism. Both Greece and Pakistan could sue for damages[200]

195. *See* notes 9, *supra* & 206, *infra.*

196. *See* Brief for Botania, *supra* note 155, at 15. Botania defended its failure to extradite Xaviere by its convening of a preliminary hearing. The hijacker was previously politically excused in accordance with Botania's internal law. Therefore, Botania advocated that extradition would result in double jeopardy.

197. *See* Brief for Alterius, *supra* note 158, at 11.

198. *See* L.A. Times, Feb. 4, 1974, at 1, col. 3. Greece had previously sentenced Palestinian terrorists to death for the machine gun-grenade attack in the crowded transit lounge of Athens' International Airport which killed five and wounded fifty-five. *See* N.Y. Times, Aug. 6, 1973, at 1, col. 6. This was the first known trial and scheduled execution sentence for international terrorists.

199. *See* L.A. Times, Feb. 4, 1974, at 1, col. 3.

200. The "I.C.J." in the demonstration trial at Abidjan held that:

> [F]ailure on the part of Botania to punish or extradite Xaviere [terrorist hijacker] . . . engages its international responsibility, and it should make adequate reparation to Alterius, the exact amount of which will be fixed by this Court after the necessary particulars are made available to it by a referee appointed by this Court.

See Tenth Anniversary Conference, supra note 145, at 1293.

caused by Saudi Arabia's international tort.[201] On these facts, Pakistan could have the duty to sue since inaction would suggest approval rather than forced submission to terrorist blackmail. Universal jurisdiction[202] would constitute the appropriate basis for I.C.J. competence in an international dispute based on this tort.

3. Establishing the Tort.—Disagreement exists as to what constitutes an apolitical crime against mankind. However, fundamental differences on the issue of the political motivation defense to international murder, kidnapping, and hijacking is currently on the decline. If Cuba and the United States can agree that politically motivated hijacking terminating in either country is now punishable or extraditable,[203] the prospect for multilateral consensus is far less academic. Furthermore, the nations of the U.N. General Assembly recently adopted a Convention on the protection of diplomats *without objection.*[204] These landmark negotiations are evidence, but not dispositive, of an international custom supporting the general principle that "terrorists"[205] should be punished or extradited. The political motivation defense should be clearly disposed of, thereby ensuring a practical future for this tort in I.C.J. case law.

A General Assembly resolution should recommend that its Members establish the duty to punish or extradite, based upon the mere presence of perpetrators of specific international terrorist crimes.[206] This resolution would be evidence of a customary rule

201. At least twenty-eight terrorists surrendered to Arab governments in 1973, however, none have been brought to trial. *See* L.A. Times, Feb. 4, 1974, at 1, col. 3.

202. *See* note 20, *supra.*

203. *See* text accompanying notes 21 & 22, *supra.*

204. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, U.N. Doc. A/RES/3166 (XXVIII) (1973), 70 U.S. DEP'T STATE BULL. 91 (1974).

205. *See* note 9, *supra.*

206. Such a resolution could draw upon the appropriate enumerated offenses from the following documents: Convention for the Prevention and Punishment of Terrorism, arts. 2, 3, L.O.N. Doc. C.546(1).M.383(1). 1937V (1937); Report Adopted by the Committee for the International Repression of Terrorism, L.O.N. Doc. C.222.M.162. 1937V (1937); O.A.S. Convention on Terrorism, *supra* note 26; Study on Measures to Prevent International Terrorism, *supra* note 41, referring to the I.C.A.O. Tokyo, Hague, and Montreal Conventions regarding suppression of unlawful aircraft seizure; International Law Commission's "Internationally Protected Persons" Draft Articles, *supra* note 74; Cuba-U.S. Memorandum of Understanding, *supra* note 21; U.S.-Canada Extradition Treaty, *supra* note 23; and DRAFT I.C.J. EXPANSION REPORT, *supra* note 107.

of international law, but would not constitute a peremptory norm of general international law from which States could not derogate.[207] The key issue will be whether this resolution could influence an unwilling State to accept mandatory jurisdiction of the I.C.J. when the defined "terrorism" occurs.

The United Nations Charter provides that:

> Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security . . . .[208]

The proposed "recommendation" of the U.N. would not necessarily be binding upon all nations, but would be strong evidence of customary law, once adopted by the requisite two-thirds majority.[209] The proposed mandatory jurisdiction "resolution" should be approved by all U.N. Members who wish to take advantage of effective association with this foremost problem-solving institution. Although a few nations adhere to the political motivation defense to international terrorism, they cannot continue indefinitely. Power politics will result in economic or social pressure to conform. The I.C.J. Statute permits the Court to look to international custom and general principles of law.[210] There is no justifiable motivation that outweighs an innocent human's right to live and travel under the protection afforded both nationals and aliens by the law of nations. It is argued that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution."[211]

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207. *See Tenth Anniversary Conference, supra* note 145, at 1293, and note 170, *supra*. The "holding" of the demonstration "I.C.J." at Abidjan advocated, but overstated, that hijacking was an example of an international crime not subject to the political motivation defense. *Compare Tenth Anniversary Conference, supra* note 145, para. 2 at 1293, *with* note 170, *supra*. This author shares the hopeful expectation that hijacking and other forms of international terrorism will rise from the level of violations of customary international law to violations of *jus cogens*.

208. U.N. CHARTER, art. 18, para. 2.

209. *Cf.* Brief for Alterius, *supra* note 158, at 7. Alterius advocated that a rule set forth in a treaty could bind a third State as a customary rule of international law. By analogy, this author urges that a widely supported General Assembly resolution could define the proscribed conduct and establish a duty to punish or extradite terrorists.

210. *See* notes 193 & 194, *supra*.

211. *See* Brief for Individual Defendant, *supra* note 152, at 12. The Defendant drew this wording from the Universal Declaration on Human Rights, U.N. Doc. A/810, art. 14, para. 1 (1948).

However, this human right[212] cannot be asserted at the expense of murder, kidnapping, hijacking, or other forms of terrorism which jeopardize an individual's right to expect the inviolability of his person.

Another premise may validate the resolution's binding effect even upon unwilling States. The 1969 Vienna Convention on the Law of Treaties states that: "Nothing . . . precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such."[213] This Convention recognizes that treaties can generate customary international law. By analogy, the mandatory jurisdiction resolution could similarly constitute a customary rule if widely accepted.

United Nations Members should join in adoption of this recommendation in order to avoid the uncontrolled repercussions of transnational terrorism. As stated by Professor Bassiouni, regarding piracy and air hijacking:

> Offenses against the Law of Nations . . . by their very nature affect the world community as a whole. [T]hey cannot fall within the "political offense" exception because . . . they are in derogation of the laws of mankind in general and international criminal law in particular. [S]uch an exception would be in itself violative of international law and disruptive of world public order . . . .[214]

Mandatory jurisdiction, when a nation fails to punish or extradite one accused of defined terrorist acts, is not very startling in view of this basic proposition. Adoption of a tort theory of recovery will not solve the causes of terrorism nor immediately deter the individual perpetrators. It will be one step closer to establishing an international duty to compensate the victims. If a State is unwilling to punish or extradite the guilty party, it must indemnify the recipient of his actions.

IV. CONCLUSION

This article focuses upon suggesting a civil procedural device which might become a step toward an international criminal proc-

212. The Defendant's brief conveniently deleted the second paragraph of the article which further states that "[t]his right may not be involved in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations." *Id.*, art. 14, para. 2. The heart of the case centered upon the characterization of the hijacker's conduct as political or common crime.

213. *See* Vienna Convention on Treaties, *supra* note 170.

214. *Political Offenses Exception, supra* note 5, at 241.

ess for dealing with problems such as terrorism. Curing the local problems which spawn the exportation of terrorism has not been considered a condition precedent to seeking an interim method of thwarting the terrorist cancer spreading throughout the world.

The underdeveloped nation, adverse to colonial regimes, is unable to establish its own political objectives through internal mechanisms. Consequently, terrorism is tolerated as a means of communicating regional problems to the international community. If these ills were cured, the symptoms would not manifest themselves in the form of terrorist activity. But they have not as yet been cured. Thus a dilemma has arisen because the powerful nations of the world do not sympathize with the right of self-determination as a justification for politically motivated terrorism.

It may be argued that the terrorist's cause is more holy than life itself, and that the international stalemate regarding cure does not constitute a serious problem because deterence of such terrorism would be futile. But this proposition fails to recognize that a concerted remedy against nations furnishing clandestine support would result in mitigating the effect of terrorist activity emanating from or within such nations. Supporting nations would thus be forced to seek alternate, hopefully more peaceful, means of expression. Contemporary multilateral attempts to abort common or international crimes have failed, in part, due to reluctance to renounce support for national or regional liberation movements.

The current crisis regarding international terrorism has accentuated the obligation of the world community to promptly cure the ills of minority groups which motivate such conduct. Ironically, those who would criticize United Nations minimal action[215] tend to overlook "unofficial"[216] attempts which will fail to control this escalating problem without U.N. support.

The United Nation's International Law Commission can assume the unique position of persuading the political minds of its Member-nations to adopt both the proposed international tort theory and mandatory I.C.J. jurisdiction. The country that adheres to an unpopular philosophy cannot avoid the foreseeable political and economic consequences that emanate from support

215. *See* U.S. Veto, *supra* note 4, at 90.

216. Attempts to remedy international terrorism are in progress under the auspices of the Foundation for the establishment of an International Criminal Court, the International Criminal Law Commission, and the World Peace Through Law Center.

of terrorist politics. Legal and economic liability for damages would suppress the covert support that has fostered overt terrorism and disrespect for fundamental rights of individuals and sovereign nations. Terrorist acts threaten the

> [E]xistence and operation of the international system founded upon mutual respect for international law and the common customs and traditions of the world's civilizations.[217]

One man's terrorist can no longer be another man's hero.

217. *See* CHALLENGE OF ABIDJAN, *supra* note 145, Res. 20, at 16.