

STATE      JOHN F. MURPHY  
SUPPORT OF  
INTERNATIONAL  
TERRORISM

LEGAL,  
POLITICAL, &  
ECONOMIC  
DIMENSIONS

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# State Support of International Terrorism

Legal, Political, and  
Economic Dimensions

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John F. Murphy

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# State Support of International Terrorism

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# Introduction

Few would dispute that a major factor contributing to the world community's difficulties in combatting international terrorism is the lack of cooperation among states. This failure to act in concert is tantamount to state support of international terrorism because it fosters a milieu in which terrorism flourishes.

This is not the kind of state support of international terrorism, however, that has captured the headlines, which instead focus on the terrorism that has become a kind of surrogate warfare, used as a substitute for more conventional means. States unfriendly to the United States and other Western democracies especially follow this path: Iran, some have claimed,<sup>1</sup> is the archetypal case. Allegedly, Iran has trained, equipped, and harbored terrorists and has directed armed attacks, some of which could be defined as terrorist, against U.S. nationals. Similar claims have recently been made with respect to Libya, Syria, and other states.

Taking a broader view, some have alleged that the U.S. government itself is a major sponsor of international terrorism. Those observers cite as examples the U.S. training and financing of the Contras and the Central Intelligence Agency's role in preparing training manuals endorsing the assassination of Nicaraguan civilians, the provision of arms to Iran in exchange for hostages, and the unconditional provision of military assistance to Israel despite its "terrorist" policies against Palestinians in the occupied territories.<sup>2</sup>

It will not be the purpose of this book to explore the evidence to evaluate the correctness of these charges. As we shall see later, one of the difficulties in combatting state supported terrorism is that the process for gathering pertinent information is grossly unsatisfactory. Moreover—and more important—it is my firm belief that the rhetoric on this subject should be softened, lest it generate more



heat than light and undermine rather than support efforts to combat state support of terrorism. To this end, I have made every effort to develop a typology of state support and state sponsorship of terrorism that minimizes reference to specific states. Rather the focus will be on individuals' particular acts that might be perceived as international terrorism and on states' acts that might be perceived as state support. The thesis of this book is that state support of terrorism is illegal and immoral, whatever state engages in such actions.

The effort, in other words, is to approach the subject of state support of international terrorism in as impartial a manner as possible. My goal is to suggest definitions of "international terrorism," "state support," and "state sponsorship" that in no way depend on political ideology.

Nevertheless, analysis in the abstract has its limitations, and concrete examples render discussion more meaningful. I have therefore referred on occasion to specific states in the section dealing with countermeasures against state sponsors of terrorism because some states have been targeted for such action in the past. For example, in Chapter 5, which addresses economic sanctions, I refer to Iran, Libya, and Syria, each of which has been subjected to economic sanctions for alleged sponsorship of terrorism.

Chapters 1 and 2 deal with the daunting problems of defining international terrorism and state support of international terrorism. In Chapter 3 I consider what steps might be taken to improve the gathering of information regarding international terrorism and state support of it. In Chapters 4 through 6 I review possible responses to state support of international terrorism, discussed in ascending order of coerciveness. They include quiet diplomacy; public protest; international and transnational claims; economic sanctions; and military responses. The primary focus is on the legal aspects of these responses, but political, economic, and cultural dimensions are also discussed insofar as they bear on the feasibility of the possible response. A concluding chapter sets forth my conclusions and recommendations.

## Notes

1. See, e.g., Bernstein, *In the U.S. War on Terrorism, Iran Is the Enemy*, THE HERITAGE FOUNDATION, BACKGROUNDER (Sept. 3, 1985).
2. See generally, R. FALK, *REVOLUTIONARIES AND FUNCTIONARIES* (1988).

# 1

## “International Terrorism”: The Definitional Quagmire

Walter Laqueur, a leading commentator on terrorism, recently pointed out that 109 different definitions of the term were advanced between 1936 and 1981, and more have appeared since, including a half dozen provided by the U.S. government.<sup>1</sup> None of these definitions has been adopted by the world community. Efforts in the academic world to reach agreement on a definition have been equally unavailing.

In practice, the terms “terrorism” and “terrorists” have been used by politicians as labels to pin on their enemies. The cliché “One man’s terrorist is another man’s freedom fighter” is a notorious reflection of this game of semantics. This practice and other reasons once led the late Richard Baxter, professor of law at Harvard University and judge on the International Court of Justice, to remark, “We have cause to regret that a legal concept of ‘terrorism’ was ever inflicted upon us. The term is imprecise; it is ambiguous; and above all, it serves no operative legal purpose.”<sup>2</sup> The substance of Judge Baxter’s remarks is compelling, and from an ideal perspective, a strong argument could be made that the world community should stop using the term “terrorism” entirely. However, we must live in the real rather than an ideal world, and it is too late in the day for the ideal approach. Accordingly, we will consider some of the primary proposals for definition that have been advanced, evaluate their usefulness, and attempt to develop a working definition for purposes of this book.

This chapter provides first a brief historical background of the alternative approaches to definition and then considers definitions

advanced by governments. These governmental definitions are found at the global, regional, and bilateral levels (in treaties or resolutions of international organizations) and at the national level (in legislation or in policy statements). Examined next are definitions advanced in the private sector by individual scholars or groups such as the International Law Association. The chapter concludes with my thoughts on the appropriate definitional approach for this book.

### **Historical Background**

The word "terror" was first used in connection with the Jacobin "Reign of Terror" following the French Revolution.<sup>3</sup> Some governments even today would confine the definition to government action only, so-called state terrorism. As we shall see, however, this approach has relatively few supporters. Today the term "terrorism" is primarily applied to actions by private individuals or groups.

Until relatively recently, actions by individuals that today would be described as "terrorist" were subsumed under different labels. For example, assassinations, especially of a head of state, have a long history; only recently have they been treated as terrorist acts. As Professor Robert Friedlander has pointed out, the word "assassin" derives from Arabic and literally translated means "hashish-eater" or "one addicted to hashish."<sup>4</sup> Acting under the influence of drugs, Moslem assassins murdered prominent Christians and other religious enemies at the end of the Middle Ages.

Assassination was a prime weapon of the anarchist movement that reached its height at the end of the nineteenth century. Revolting against the state and other manifestations of authority, anarchists had succeeded in assassinating ten national leaders by the turn of the century.<sup>5</sup> Closely aligned with anarchism was the doctrine of revolutionary syndicalism. As influenced by the writings of Georges Sorel, this doctrine stressed the reformation of society through a militant working class and the general strike, as well as the moral purification of revolutionary violence.<sup>6</sup>

As applied to actions by individuals, the term "terrorism" was apparently used for the first time in an international penal instrument at the Third (Brussels) International Conference for the Unification of Penal Law held on June 26–30, 1930, in response to an increase

in terrorist activity following World War I.<sup>7</sup> This interest in terrorism intensified with the assassination at Marseilles on October 9, 1934, of King Alexander of Yugoslavia and Louis Barthou, foreign minister of the French Republic, and led to the League of Nations drafting the Convention for the Prevention and Punishment of Terrorism.<sup>8</sup> This convention defined terrorism broadly to include "criminal acts directed against a state and intended to or calculated to create a state of terror in the minds of particular persons, or a group of persons, or the general public."<sup>9</sup> The convention received only one ratification and one accession and never came into force. In large part this may have been because of the approach of World War II, but it has also been suggested that a number of states were reluctant to ratify the convention because of the breadth of its definition of terrorism.<sup>10</sup> In any event, since it was not listed among the treaties and conventions for which the League was a depository and with respect to which the United Nations had taken any responsibility, the convention sank into obscurity.

Besides declining to revive the League convention, the United Nations made no attempt to replace it with one of its own. However, a similarly broad approach to the problem was taken by the International Law Commission in its 1954 Draft Code of Offenses Against the Peace and Security of Mankind.<sup>11</sup> The draft code, moreover, introduced the concept of state sponsorship—"the undertaking or encouragement by the authorities of a State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State" was declared to be an offense against the peace and security of mankind and a crime under international law.<sup>12</sup> The General Assembly deferred consideration of the draft code pending agreement on a general definition of aggression, finally reached in 1974. Work on the draft code resumed, but has not yet produced a final agreement despite thirty-five years that have passed since 1954.

The kidnapping and killing at Munich on September 6, 1972, of eleven Israeli Olympic competitors by Arab terrorists, as well as a number of other spectacular acts of terrorism, resulted in a more narrowly focused approach: The United States on September 25 introduced a Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism.<sup>13</sup> In proposing the convention and in subsequent debates, U.S. representatives attempted

to alleviate the concern of some member states that the convention was directed against wars of national liberation, pointing out that its coverage was limited to "any person who unlawfully kills, causes serious bodily harm or kidnaps another person." They noted further that these acts had to meet four separate conditions before the terms of the convention applied: First, the act had to be committed or take effect outside the territory of a state of which an alleged offender was a national. Second, the act had to be committed or take effect outside the state against which the act was directed, unless such acts were knowingly directed against a nonnational of that state. (Under this provision, an armed attack in the passenger lounge of an international airport would be covered.) Third, the act must not be committed either by or against a member of the armed forces of a state in the course of military hostilities. And fourth, the act had to be intended to damage the interests of or obtain concessions from a state or an international organization. Accordingly, U.S. representatives pointed out, certain controversial activities arguably terrorist in nature—such as fedayeen attacks in Israel against Israeli citizens and a wide range of activities by armed forces in Indochina and in southern Africa—were deliberately excluded from the convention's coverage. A particularly broad loophole was the first requirement about the identity of the alleged offender's state, a provision that excluded from the convention's scope most terrorist attacks in Latin America and elsewhere against transnational business personnel and facilities. As to persons allegedly committing offenses covered by the convention and apprehended in their territories, the draft required states adopting the convention to establish severe penalties for covered acts and either to prosecute such persons or extradite them to another state party for prosecution. Whether to prosecute or extradite the alleged offender was a decision left to the sole discretion of the apprehending state.

The U.S. draft resolution accompanying the draft convention requested that the General Assembly convene a plenipotentiary conference in early 1973 for the purpose of adopting the convention, call upon all states as a matter of urgency to become parties to and implement the International Civil Aviation Organization (ICAO) conventions on hijacking of and other offenses against aircraft (discussed in the next section), and request ICAO to draft as an

urgent matter a convention on arrangements to enforce the principles of the conventions.<sup>14</sup> From the outset, however, it was apparent that the U.S. initiative faced substantial opposition from the Arab states, China, and a block of African states. In the general debate this opposition was expressed in perhaps its most extreme form by the Libyan representative, who described the United States initiative as a "ploy . . . against the legitimate struggle of the people under the yoke of colonialism and alien domination" and warned against the United Nations becoming "an instrument in local elections campaigns and a pawn of international propaganda based on falsehood and deceit."<sup>15</sup>

Despite several efforts to reach a compromise, the U.S. initiative failed. On December 11, 1972, the Sixth Committee (Legal) of the General Assembly adopted a draft resolution submitted by Algeria and other cosponsors by a vote of 76 to 34 (including the United States), with 16 abstentions. On December 18 the assembly approved the committee's decision by adopting Resolution 3034(XXVII) by a vote of 76 to 35 (U.S.), with 17 abstentions. Though the resolution expressed "*deep concern* over increasing acts of violence which endanger or take innocent human lives or jeopardize fundamental freedoms" and invited states to become parties to existing conventions on international terrorism and to take appropriate measures at the national level to eliminate it, the resolution's primary focus was on "finding just and peaceful solutions to the underlying causes which give rise to such acts of violence." The resolution also "[r]eaffirms the inalienable right to self-determination and independence of all peoples under the colonial and racist regimes and other forms of alien domination and upholds the legitimacy of their struggle." By way of implementation the resolution invited states to study the problem on an urgent basis and submit their observations to the secretary-general by April 10, 1973, and established an ad hoc committee, to be appointed by the president of the General Assembly, to study these observations and to submit a report with recommendations for elimination of the problem to the 28th session of the General Assembly.<sup>16</sup> The committee was appointed, but after meeting from July 16 through August 10, 1973, it reported that it was unable to agree on any recommendations for dealing with the problem.

## Modern Developments

### *Global*

The U.S. draft convention was the last attempt to define international terrorism in a binding international legal instrument. In place of these efforts the United Nations or its specialized agencies have adopted treaty provisions aimed at suppressing aircraft hijacking;<sup>17</sup> unlawful acts against the safety of civil aviation<sup>18</sup> or of airports serving international civil aviation;<sup>19</sup> unlawful acts against internationally protected persons, including diplomatic agents;<sup>20</sup> taking of hostages;<sup>21</sup> theft of nuclear material;<sup>22</sup> and unlawful acts against the safety of maritime navigation.<sup>23</sup> Although these treaty provisions are often loosely described as "antiterrorist," the acts they cover are criminalized regardless of whether, in a particular case, they could be described as "terrorism." All of these conventions require that a state party apprehending an alleged offender in its territory either extradite the person or submit the case to its own authorities for purposes of prosecution.

On December 9, 1985, the General Assembly adopted a resolution<sup>24</sup> that Vernon A. Walters, U.S. ambassador to the United Nations, described as "a symbol of new times."<sup>25</sup> Adopted by consensus, the resolution loosely defines terrorism as acts "which endanger or take innocent human lives, jeopardize fundamental freedoms, and seriously impair the dignity of human beings." In its operative paragraphs, it "[u]nequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security"; invites states "[t]o take all appropriate measures at the national level . . . such as the harmonization of domestic legislation with existing international conventions, the fulfillment of assumed international obligations, and the prevention of the preparation and organization in their respective territories of acts directed against other States"; calls upon states "to fulfill their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in activities within their territory directed towards the commission of such acts"; appeals to all states to become parties to the existing antiterrorist conventions; and urges all states:

to cooperate with one another more closely, especially through the exchange of relevant information concerning the prevention and combatting of terrorism, apprehension and prosecution or extradition of the perpetrators of such acts, the conclusion of special treaties and/or the incorporation into appropriate bilateral treaties of special clauses, in particular regarding the extradition or prosecution of terrorists.

Some have claimed that the provision in the resolution reaffirming "the inalienable right to self-determination" should be interpreted to permit "national liberation groups" to engage in terrorism as part of their struggle against "colonial and racist regimes and other forms of alien domination." However, the same provision provides that the struggle of national liberation movements must be conducted "in accordance with the purposes and principles of the Charter and of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations." The UN Charter implicitly and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States<sup>26</sup> explicitly prohibit recourse to terrorism.

Most recently the UN General Assembly adopted a Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations.<sup>27</sup> Although the declaration does not contain a definition of terrorism, it does call upon states to cooperate at the bilateral, regional, and international levels in order to prevent and combat international terrorism and to "contribute actively to the elimination of causes underlying international terrorism." It further provides that states should fulfill their obligations under international law to refrain from organizing, instigating, assisting, or participating in paramilitary, terrorist, or subversive acts in other states, or acquiescing in organized activities within their territory directed toward the commission of such acts.

### *Regional*

Three regional conventions have been adopted in an effort to combat international terrorism. These include the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of



Crimes Against Persons and Related Extortion That Are of International Significance (OAS Convention),<sup>28</sup> the European Convention on the Suppression of Terrorism (European Convention),<sup>29</sup> and the Agreement on the Application of the European Convention for the Suppression of Terrorism (Dublin Agreement).<sup>30</sup> None of these conventions attempts to define international terrorism. Rather, like the conventions concluded under the auspices of the United Nations and its specialized agencies, these regional conventions focus on particular actions and the protection of particular targets from attack.

For example, Article 1 of the OAS Convention obligates states that are parties to cooperate "to prevent and punish acts of terrorism, especially kidnapping, murder and other assaults against the life or physical integrity of those persons to whom the state has the duty according to international law to give special protection, as well as extortion in connection with those crimes." Although there is a question as to the precise scope of this convention, its basic focus is on the protection of diplomats.

Nor does the European Convention, an antiterrorist initiative, attempt to define international terrorism. Its approach is to list a series of crimes that states that are parties are to exclude, as between themselves, from the political-offense exception to extradition. Specifically, Article 1 provides:

For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:

(a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

(b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;

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

(d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention;