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A Legal Theory of International Terrorism

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A LEGAL THEORY OF INTERNATIONAL TERRORISM

by Ali Khan*

International terrorism is a political disorder that has grown to the detriment of the international legal system. A political disorder is like "a wasting disease," said Niccolo Machiavelli, "to start with it is easy to cure but difficult to diagnose; after a time, unless it has been diagnosed and treated at the outset, it becomes easy to diagnose but difficult to cure." To that remarkable insight, this must be added: A political disorder is further aggravated when quick-fix remedies are dispensed in frustration upon erroneous diagnosis. Such is the story of international terrorism. First, the international community has failed to diagnose correctly and to prescribe a proper treatment for international terrorism. Second, problems of terrorism are further complicated when frustrated individual states take unilateral action and administer questionable treatment to suppress the disorder.

This article suggests a new diagnostic approach to unravel the complexity of international terrorism. It treats terrorism as a political disorder at the core of which lies an aggrieved group. For example, Afghan refugees in South Asia, Palestinians in the Middle East, and the so-called "contra" rebels in Central America are aggrieved groups. Although the article does not suggest that the political demands of all aggrieved groups are necessarily legitimate, the members of all aggrieved groups do share the perception that they have been wronged and that their grievances have been ignored.

Even though terrorist activity sprouts from the existence of an aggrieved group, the terrorist phenomenon may involve several members of the international community. These members may be divided into two categories: supportive states and suppressive states. Supportive

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2. See Resolution on Basic Principles of the Legal Status of the Combatants Struggling
states stand behind the aggrieved group and support its political objectives, while suppressive states confront the group and oppose its objectives. This cleavage between members of the international community compounds the problem and makes it difficult to find a peaceful solution to a given political disorder. When suppressive states slight the demands or aggravate the sufferings of an aggrieved group, the political disorder further deteriorates. Vengeful members of the aggrieved group, with the help of supportive states, increasingly resort to terrorist activity in order to inflict injury upon the suppressive states, as well as to internationalize their political grievances.

Although some members of all aggrieved groups commit terrorist acts, not all members of these groups are terrorists. In fact, only a small minority of an aggrieved group may undertake terrorist activity. This distinction is important because there is a general tendency on the part of some suppressive states to condemn the entire aggrieved group as terrorists. Some supporting states, on the other hand, also do not make this distinction and may applaud the entire group as “freedom fighters.”

This conflicting characterization of violence is a distinctive feature of contemporary international politics. Different states use different terminologies to describe the same acts and actors of violence. In fact, the characterization of those fighting a war of resistance depends on whether a suppressive or supportive state is making the characterization. The United States government, for example, has consistently referred to the contras as “freedom fighters,” the “Nicaraguan democratic opposition,” or the “Nicaraguan democratic resistance.” See, e.g., Nicaragua, Dep’t St. Bull., Aug. 1985, at 88. The emphasis is on depicting the contras as defenders of democratic principles against the infiltration of Communist rule. Secretary of State George Shultz has said that “[i]n defending their families and communities, these young Nicaraguans are fighting for self-determination above all else.” Shultz, Nicaragua: Will Democracy Prevail?, Dep’t St. Bull., April 1986, at 32, 34. The strongly democratic label that the Reagan administration has attached to the contras has forced them to establish political principles in accord with the administration’s view. They

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*Against Colonial and Alien Domination and Racist Regimes, G.A. Res. 3103, 28 U.N. GAOR Supp. (No. 30) at 142, U.N. Doc. A/9030 (1973) (declaring that any attempt to suppress the struggle against colonial and alien domination and racist regimes is incompatible with the United Nations Charter). Because most aggrieved groups perceive that they are fighting for a just cause, it may be appropriate to call states that resist their political demands suppressive states.*


4. See Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 795 (D.C. Cir. 1984) (Edwards, J., concurring) (“While this nation unequivocally condemns all terrorist attacks, that sentiment is not universal. Indeed, the nations of the world are so divisively split on the legitimacy of such aggression as to make it impossible to pinpoint an area of harmony or consensus.”), cert. denied, 470 U.S. 1003 (1985).

5. Crenshaw, supra note 3, at 386 (suggesting that “[t]he most basic reason for terrorism is to gain recognition or attention. . . . Violence and bloodshed always excite human curiosity. . . .”).

6. The characterization of those fighting a war of resistance depends on whether a suppressive or supportive state is making the characterization. The United States government, for example, has consistently referred to the contras as “freedom fighters,” the “Nicaraguan democratic opposition,” or the “Nicaraguan democratic resistance.” See, e.g., Nicaragua, Dep’t St. Bull., Aug. 1985, at 88. The emphasis is on depicting the contras as defenders of democratic principles against the infiltration of Communist rule. Secretary of State George Shultz has said that “[i]n defending their families and communities, these young Nicaraguans are fighting for self-determination above all else.” Shultz, Nicaragua: Will Democracy Prevail?, Dep’t St. Bull., April 1986, at 32, 34. The strongly democratic label that the Reagan administration has attached to the contras has forced them to establish political principles in accord with the administration’s view. They
the same state may use conflicting terminologies to distinguish between similar acts of violence of different aggrieved groups, describing one as legitimate armed struggle but the other as terrorist activity. The Soviet Union, for example, views Palestinian violence as legitimate armed struggle, but Afghan resistance as terrorism. The United States, on the other hand, describes Afghan violence as legitimate armed struggle, but condemns Palestinian resistance as terrorism. Thus, if a state supports the political objectives of an aggrieved group, it uses positive labels to describe its radical members and their acts of violence. But if a state views unfavorably the political demands of an aggrieved group, it employs negative labels to condemn both the actors and the acts of violence.

Such differing characterization of acts of violence is a kind of psychological warfare between supportive and suppressive states. In order to discredit an aggrieved group both in the eyes of its own public and the international community, a suppressive state uses words like “terrorism” and “terrorists” that have negative emotional dimensions. On the other hand, because supportive states want to present the same aggrieved group positively, they use terms such as “freedom fighters” or

have attempted to portray themselves as advocating a conservative democratic government based on notions of political pluralism, family, private property, and natural law. The ultimate goal is to broaden the contra’s appeal to both the Nicaraguan and American peoples. See Ford, Contra’s Greatest Challenge: Boosting Credibility, Christian Science Monitor, Jan. 21, 1987, at 1, col. 1, 11, col. 2. By contrast, according to Nicaragua, the contras are no more than bands of “CIA-trained mercenaries” guilty of kidnapping, assassination, torture, rape, killing of prisoners and killing of civilians. See Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 64 (June 27).

7. While the Soviets regularly condemn the Afghan mujahideen as “terrorists” and “mercenary killers,” they have referred to PLO acts of terrorism as “legitimate wars of liberation.” R. Cline & Y. Alexander, Terrorism: The Soviet Connection 37 (1984).

8. In 1986, President Reagan issued a proclamation marking the Afghanistan New Year. In it he said:

For the heroic Afghan people it marks the beginning of yet another year in their struggle for national liberation against the ruthless Soviet Military force that seeks to conquer them. . . . [T]he Soviet army invaded Afghanistan, a small, friendly, nonaligned, and deeply religious neighbor. For six long years, the Soviets have sought to obliterate Afghan culture and remold that ancient nation into a replica of their own system. . . . The Afghan freedom fighters have shown they can render all of their country unsafe for the invader.

"legitimate armed struggle" to induce favorable psychological effects. By using psychologically negative words, suppressive states hope to show that these acts of violence are purely criminal acts without any redeeming value. By using positive terminologies, supportive states attempt to show that the aggrieved group is engaged in a heroic struggle against an evil regime. Labels become weapons to influence, and even to manipulate, domestic and international public opinion. If a state has successfully labelled a phenomenon according to its national viewpoint, it has won a major battle in an ongoing war. But while these ideological labels might make sense from national perspectives, they are, in


10. For instance, if most Americans and members of Congress come to regard the contras as freedom fighters, it will be easier for the Reagan administration to win congressional support for military aid to the contras. The absence of a neutral perspective in diagnosing the terrorist phenomenon is one reason why attempts at reconciling parties involved in a political disorder have proven to be futile. National perspectives and their concomitant ideologies have everything to do with labelling and categorizing acts of violence. They do not, however, involve objectivity. Therein lies the problem with the analysis of even the most trenchant commentators. Professor Robert Friedlander, for instance, has generally analyzed the symptoms of international terrorism. The motivations behind terrorism, however, receive little attention, and where mentioned, are dismissed as excuses for resorting to violence. See Friedlander, Terrorism and National Liberation Movements: Can Rights Derive from Wrongs, 13 CASE W. RES. J. INT'L L. 281 (1981) [hereinafter Friedlander, National Liberation Movements]. He has also attempted to distinguish between wrongs committed through acts of war and crimes against civilians committed by terrorists. See Friedlander, Comment: Unmuzzling the Dogs of War, 7 TERRORISM 169 (1984) [hereinafter Friedlander, The Dogs of War]. In making such a distinction, he argues that it would be counterproductive for members of the international community to allow "politically motivated terrorist actors" to be upgraded to the "status of regular combatants in armed conflicts." Id. at 169. Yet, he has also acknowledged that the "contras are in fact performing an important Central American security function." Friedlander, Confusing Victims and Victimizers: Nicaragua and the Reinterpretation of International Law, 14 DEN. J. INT'L L. & POL'Y 87, 96 (1985) [hereinafter Friedlander, Victims and Victimizers]. But, according to Professor Friedlander, "rights do not arise from wrongs," whether the cause is noble or not. Friedlander, National Liberation Movements, supra, at 288. A major concern in his diagnosis is the use or misuse of "rhetorical explications." Id. Accordingly, his focus is on conduct. For Friedlander, labelling serves a vital function in the determination of what is wrongful conduct. Friedlander, The Foundations of International Criminal Law: A Present Day Inquiry, 15 CASE W. RES. J. INT'L L. 13, 24 (1983) [hereinafter Friedlander, International Criminal Law]. See generally Friedlander, On the Prevention of Violence, 25 CATH. LAW. 95 (1980) [hereinafter Friedlander, Prevention of Violence]; Friedlander, Terrorism and International Law: Recent Developments, 13 RUTGERS L.J. 493 (1982) [hereinafter Friedlander, Recent Developments]. It appears that whether he attempts to state "objective reality" as in the case of the contras, or whether he denies the validity of political motivation and does not attach a label, Professor Friedlander cannot avoid the pitfalls of categorization in his diagnosis. Thus, his descriptive analysis inhibits any prescriptive suggestions. Reconciliation of a fragmented political world cannot occur when the analysis leads to a foregone conclusion that all terrorists acts are of a like nature—merely an "inexorable assault upon human dignity and world order," id. at 511—and when the analysis does not consider the motivations of an aggrieved group.
fact, part of the problem. When states reserve to themselves the au­
thority to determine what is and what is not terrorism and characterize
the same acts differently, the definition of terrorism itself becomes
disputed.\textsuperscript{11}

The theory of terrorism as a political disorder is neutral in that it
rejects national perspectives. It focuses on the disorder that causes ter­
rorism, but does not distinguish between terrorists and freedom fight­
ers. From this basis, the article argues that an international political
disorder that causes terrorism is a "dispute" within the meaning of Ar­
ticle 33 of the United Nations Charter, which mandates that the par­
ties to any dispute shall, first of all, seek a solution by peaceful means
including negotiation.\textsuperscript{12} Unless the parties to a dispute—the aggrieved
group, the suppressive states, and the supportive states—are willing to
resolve the political disorder through a negotiated settlement, the
problems of terrorism will remain. Finally, the article explores the inef­
ficacy of existing remedies to counter terrorism, and argues that the
current trend of non-negotiation between the parties not only under­
mines Article 33 of the Charter but intensifies the problems of interna­
tional terrorism.

I. PARTIES TO THE POLITICAL DISORDER

A. Aggrieved Groups

Terrorism sprouts from the existence of aggrieved groups. These
aggrieved groups share two essential characteristics: they have specific
political objectives, and they believe that violence is an inevitable
means to achieve their political ends. The political dimension of terror­
ist violence is the key factor that distinguishes it from other crimes.\textsuperscript{13} It
is hard to dispute that the nature and effect of terrorist actions are

\textsuperscript{11} This confusion is exacerbated when states take differing positions on the nature of ag­
rieved groups. See supra notes 7-8. See also Conference Report, State-Sponsored Terrorism:
The Threat and Possible Countermeasures, 8 TERRORISM 276 (1986) (reporting on a conference
organized by the Strategic Studies Center held in Washington, D.C. on Jan. 15, 1985) [hereinaf­
ter Conference Report].

\textsuperscript{12} U.N. CHARTER art. 33, para. 1 ("The parties to any dispute, the continuance of which is
likely to endanger the maintenance of international peace and security, shall, first of all, seek a
solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to
regional agencies or arrangements, or other peaceful means of their own choice."). See also U.N.
CHARTER, art. 2, para. 3 ("All members shall settle their international disputes by peaceful means
in such a manner that international peace and security, and justice are not endangered.").

\textsuperscript{13} Proceedings of the International Law Association Committee on Terrorism, 8 TERRORISM
similar to violent crimes and that good moral reasons therefore exist to treat them alike. Yet, a politically aggrieved group should not be confused with a mere gang of criminals. Furthermore, even though the political objectives sought by an aggrieved group are not always legitimate, members of the group share the perception that their grievances have been ignored. This shared perception helps to define an aggrieved group.

Aggrieved groups responsible for international terrorism belong to diverse regions, religions, nationalities and ideologies. Likewise, their political objectives vary. Some are fighting against occupation, foreign domination, and racist regimes. Others use violence to extract political concessions from their home state. Still others resort to violence in order to modify social, economic, military or foreign policies of their home state and, at times, those of a foreign state. Thus, each group may present a unique political disorder.

B. Supportive and Suppressive States

Both supportive and suppressive states are necessary parties to the phenomenon of terrorism. Their respective roles, however, are distinct. First, supportive states embrace and espouse the political demands of

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14. See id. See also id. at 400 (comments of Justice F. Makasiar of the Philippines); id. at 380 (observations of J. Lador-Lederer, a dissenting member of the Committee, arguing that terrorism is a crime against humanity).
15. See generally Crenshaw, supra note 3, at 385-89. The types of terrorists, as well as their aims, methods, and targets vary from group to group. Id. at 385-86. As Professor Crenshaw has noted:

[T]errorism is an attractive strategy to groups of different ideological persuasions who challenge the state’s authority. Groups who want to dramatize a cause, to demoralize the government, to gain popular support, to provoke regime violence, to inspire followers, or to dominate a wider resistance movement, who are weak vis-a-vis the regime, and who are impatient to act, often find terrorism a reasonable choice. Id. at 389. Moreover, it often "represents the disaffection of a fragment of the elite, who may take it upon themselves to act on behalf of a majority unaware of its plight, unwilling to take action to remedy grievances, or unable to express dissent." Id. at 396.


17. Among such groups, the Afghans, Palestinians, and African National Congress are noteworthy examples.

18. The Sikhs in India, for example, have resorted to terrorism to obtain more provincial autonomy in Punjab.

19. See State Department, Patterns of International Terrorism (1984), reprinted in Developments in Europe. 1984: Hearings on H.R. 381-73 Before the Subcomm. on Europe and the Middle East of the House Comm. on Foreign Affairs, 96th Cong., 2nd Sess. 31, app. 1. [hereinafter Patterns of International Terrorism] (asserting that terrorism has escalated due to the volatile situation in the Middle East, the instability in Central America, and the intensifying opposition to U.S. and NATO policies in Western Europe).
an aggrieved group, whereas suppressive states reject them. In fact, the suppressive states may have caused the perceived political grievances. Second, supportive states provide moral, financial and military assistance to the aggrieved group, whereas suppressive states arrest and punish them. Thus, the terrorist phenomenon assumes the character of surrogate warfare\(^{20}\) between supportive and suppressive states where members of an aggrieved group sacrifice human lives, including their own.

In order to fully understand the complexity of the terrorist phenomenon, a further distinction must be made between principal supportive states and accessory supportive states. While all accessory supportive states show sympathy for at least some of the basic political demands of an aggrieved group, not all provide arms or other assistance to the group.\(^{21}\) Some may not even support all acts of violence committed by radical members of the group.\(^{22}\) Others may show only muted support for such acts of violence.\(^{23}\) Still others may outrightly condemn such violence.\(^{24}\) Despite these varied responses, accessory supportive states play an important role in providing a moral climate from which the radical members of an aggrieved group draw both the courage of their convictions and the inspiration to resort to violence.\(^{25}\)

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20. The level of involvement by both suppressive and supportive states in combating or encouraging terrorist activity is a policy choice influenced by the ideological disposition of the foreign government. See W. WAUGH, supra note 16, at 76.

21. At the January 1987 Organization of the Islamic Conference in Kuwait, the one item on the agenda was the condemnation of terrorism. Although Libya, Syria, and Iran (Iran did not attend the conference) are thought to be the principal supportive states of Palestinian and Lebanese violence and therefore the least likely to favor such condemnation, Islamic states have generally supported the Palestinians and Afghans even when they criticize their violent acts. The draft resolution from the conference emphasized the difference between acts of terrorism and “legitimate liberation struggles,” which would include Palestinian attacks on Israel. See Curtis, Gulf War, Terrorism Top Islamic Summit Agenda, Christian Science Monitor, Jan. 27, 1987, at 7, col. 1.

22. Even though almost all Islamic countries support the political demand for a Palestinian homeland, not all support all terrorist acts that various Palestinian groups perpetrate. Egypt, for example, supports the Palestinian cause, yet it arrests members of Palestinian terrorist groups. See Statistics, 6 TERRORISM 150 (1982).

23. For example, fearing that the Soviet Union might attack Pakistan as well, the Pakistani government does not openly support Afghan attacks on Soviet targets located within Afghanistan.

24. Japan, for example, does not condone Palestinian terrorism, and yet it has granted diplomatic status to the PLO representative in Tokyo. See Statistics, supra note 22, at 311.

25. Additional factors may come into play with regard to the role of the accessory supportive states. Beyond the supplying of passports, diplomatic cover, and safe harbor, these states may provide a social or political environment that gives popular credence to the strength of a movement by sanctioning certain types of behavior ancillary to terrorist activity but primary to the movement of the aggrieved group itself. Such behavior might include government sponsorship or
Principal supportive states, on the other hand, not only support the political demands of an aggrieved group, but provide a financial and military infrastructure to facilitate acts of violence. Some such states even allow an aggrieved group to use their territory for setting up camps where radical members are recruited, trained, and armed in order to carry out acts of violence. These states also provide legal protection to the perpetrators of violence both within and across their national boundaries.

Although principal supportive states may have some sympathy for the political objectives of aggrieved groups, they are not always motivated by compassion. Nor do they always support such groups for advancing the cause of international law or morality. Often, their active support for a particular aggrieved group is grounded in their own national, ideological, or geopolitical interests. Indeed, some principal supportive states use aggrieved groups to conduct surrogate warfare to influence the politics of other countries and, at times, to establish or

encouragement of public protest, fostering revolutionary ideologies in education or through political indoctrination, or the deliberate failure to condemn or to adopt a policy condemning terrorist acts. See generally Hegman, Diffusion of Transnational Terrorism, in RESPONDING TO THE TERRORIST THREAT: SECURITY AND CRISIS MANAGEMENT 190 (R. Shultz & S. Sloan eds. 1980).

26. See PATTERNS OF INTERNATIONAL TERRORISM, supra note 19, at 44.

27. Id.

28. Syria and the Soviet Union, for example, provide such facilities to several aggrieved groups including Palestinians. Id. Likewise, the United States is a principal supportive state for several aggrieved groups, including the contras. See Concerning Military Activities, supra note 6, at 63 ("In the view of the Court it is established that the contra force has, at least at one period, been so dependent on the United States that it could not conduct its crucial or most significant military and paramilitary activities without the multi-faceted support of the United States."). The Government of Afghanistan has accused the United States of supporting terrorist groups in various regions of the world. See Measures to Prevent International Terrorism: Report of the Secretary-General, 40 U.N. GAOR Annex (Agenda Item 130) at 4, U.N. Doc. A/40/445 (1985) [hereinafter Report of the Secretary-General].

29. For example, the Soviet affinity for the PLO may not be motivated solely by the Leninist predisposition for wars of national liberation. The Soviets, their allies, and the PLO share a common distrust of western states, including the United States. Whether the Soviets have developed a sympathetic attachment to the Palestinian cause is largely beside the point. Rather, the point is that support of the PLO is a convenient and effective mechanism by which the Soviets can spread their revolutionary "anti-imperialist" ideology and struggle against nations allied with the United States. See generally R. CLINE & Y. ALEXANDER, supra note 7.

30. The CIA, for example, prepared and distributed among the contras two manuals. The Freedom Fighter's Manual was subtitled "A Guide to Liberating Nicaragua from Oppression and Misery by Paralyzing the Military-Industrial Complex of the Traitorous Marxist State. . . ." See Concerning Military Activities, 1986 I.C.J. at 65. The second manual, Psychological Operations in Guerilla Warfare, was meant to help the "Christian and democratic crusade being waged in Nicaragua by the Freedom Commandos." Id. "The manual is devoted to techniques for winning the minds of the population . . . [it] also includes direction[s] to destroy military or police instal-
further entrench their regional or global influence.\(^\text{31}\)

Suppressive states may also be divided into principal suppressive states and accessory suppressive states. Although all suppressive states may resist the political demands of an aggrieved group, principal suppressive states oppose them more openly and consistently. In characterizing principal and accessory suppressive states, the aggrieved group's perception is critical.\(^\text{32}\) First, an aggrieved group may perceive that all unfriendly states are suppressive states. Second, it may regard its own home state as the main source of their grievances.\(^\text{33}\) Third, an aggrieved group may believe that a regional or a global power is the principal suppressive state.\(^\text{34}\)

The division of the international community into supportive and suppressive states is more complex than it might seem. Because states take different positions regarding different aggrieved groups, they may act both as supportive and suppressive states. The same state may provide financial and military assistance to one group and condemn the violence of another. Each state defends its conflicting responses to the violence of different groups from its own national perspective.\(^\text{35}\) This dual approach toward terrorism confounds the definition of terrorism and impairs the orderly functioning of the international system.

II. THE POLITICAL DISORDER

A political disorder is essentially a conflict in which an aggrieved group uses violence to achieve its political objectives. Further, such a disorder involves at least one principal suppressive state that ignores or rejects the political demands of the group. When an aggrieved group perceives that the commission of violence is inevitable or necessary for...
achieving its political objectives, it attacks the nationals and property of that principal suppressive state. The group may also attack the nationals and property of an accessory suppressive state that either supports the principal suppressive state or opposes the political demands of the aggrieved group. Even though aggrieved groups do not always carefully select their targets, their violence is often directed against the states that the group believes are frustrating its political goals.

It is important to distinguish a domestic political disorder from an international political disorder. Four characteristics are essential to a domestic political disorder. First, the aggrieved group's political grievances are addressed to its home state. Second, the aggrieved group, for the most part, remains within the home state. Third, it directs its terrorist activity against domestic targets. Fourth, it does not receive, directly or indirectly, any financial or military assistance from a foreign state. A political disorder with these four characteristics will generally lie within the domestic jurisdiction of the home state. To abate domestic terrorism, the home state may either accept the political demands of the aggrieved group or may suppress the group through rigor-

36. For example, religious fundamentalists seized a mosque in Algeria to appoint their own imams (prayer leaders) rather than those appointed by the government. See Statistics, supra note 22.

37. All members of the aggrieved group need not remain within the home state. Instead, it is quite likely that some radical members of the group may leave the home state and conduct their terrorist activity against domestic targets located in foreign countries. Such terrorism will ordinarily constitute domestic terrorism, especially if no foreign state is supporting these terrorists. For example, Sikh radicals planted a bomb in an Indian airliner that later blew up over the Atlantic, killing all on board. Even though the act of planting the bomb occurred in Canada, this terrorist act may qualify as domestic terrorism.

38. If a domestic target is attacked in international airspace or on high seas, such a terrorist act may constitute domestic terrorism. If a domestic target is attacked in a foreign country, however, such attack may create international implications. If the country in which the domestic target is attacked is a suppressive state, it will probably make efforts to arrest the terrorists and punish them. On September 29, 1981, five Sikhs hijacked an Indian passenger jet, and demanded $500,000 ransom and the release of their leader. The terrorists were overpowered and arrested by Pakistani commandos. See Statistics, supra note 22, at 202. It may also extradite the terrorists to their home state if an extradition treaty exists, assuming that the political-offense exception allows such extradition. For example, the Paris Court of Appeals accepted the Italian request to extradite two Italian fugitives implicated in the brutal kidnap-murder of Aldo Moro, rejected the political nature of the crime, and refused to apply the political offense exception. See 2 M. BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE § 2-74 (1983). If the country is a supportive state, however, and it refuses to arrest terrorists, the resulting disorder may constitute international terrorism.

39. For example, several terrorist groups in Germany are indigenous in character, and use local sources to commit their terrorist activity. See Schiller, Germany's Other Terrorists, 9 TERRORISM 87 (1987).
ous enforcement of law and order.

An international political disorder, on the other hand, occurs when one of four other conditions exist. First, the aggrieved group's political grievances involve a foreign state. Second, the group seeks or has been forced to seek asylum in a foreign state. Third, the group directs its violence against the nationals or property of a foreign state. Fourth, the group receives, directly or indirectly, financial or military support from a foreign state. If any one of these four elements is present, the group activity may constitute international terrorism. Stated differently, when one or more foreign states are involved directly or indirectly in a given conflict, such a disorder acquires an international dimension. Although it is difficult to classify multifaceted international political disorders responsible for terrorism into mutually exclusive categories, two distinct sources of international terrorism are ideological disorders and refugee disorders.

A. Ideological Disorders

Ideological disorders occur when an aggrieved group uses violence in order to register its ideological disapproval of a perceived menace such as capitalism, communism, nuclear weapons, or United States or Soviet "imperialism." If an ideological group remains within its home state and directs its terrorist activity against domestic targets, such activity may constitute a matter essentially within the domestic jurisdiction of the home state. However, terrorist actions committed by an ideological group within its own home state do not always constitute a purely domestic matter that does not affect the international legal order. Even indigenous terrorist groups may cause international anguish when, in pursuit of their political objectives, they attack foreign targets within their home state. Thus, ideological terrorism may have inter-

40. See supra note 34.
41. For example, the Soviet policy of "migratory genocide" had driven at least one-third of Afghanistan's population from their homes. See H. BRADSHER, AFGHANISTAN AND THE SOVIET UNION 297 (1985).
42. See supra note 34.
43. See supra notes 26-28 and accompanying text.
44. See supra notes 36-39 and accompanying text.
45. The Marxist-Leninist Popular Revolutionary Forces—Lorenzo Zelaya, for example, an active terrorist group in Honduras, attacks foreign targets located in Honduras. In 1982, for example, it attacked American, British, and Salvadoran facilities in Honduras. See PATTERNS OF INTERNATIONAL TERRORISM, supra note 19, at 34. In West Germany, Revolutionary Cells (RZ), a domestic leftist group, links its terrorist activities to both national and international issues. In bombing the American Memorial Library in West Berlin to show its disapproval, among other
national ramifications when aggrieved groups attack foreign targets. It becomes unmanageable when the home state lacks sufficient law-enforcement resources to curb such conduct.

Almost all states are vulnerable to revolutionary violence. This form of violence is rampant in developing countries, particularly those that fail to achieve a national consensus as to which fundamental values constitute a viable political system. When a population is morally confused and politically fragmentated, revolutionary groups may exploit the resulting chaos and use force to advance their respective ideologies. Further, when the authority of a government is not rooted in the will of the people, domestic ideological groups find it expedient to label their violence as a struggle to restore democracy. These ideological disorders become more complex when indigenous revolutionary groups receive financial and military support from foreign states.

Regional and global powers often give such support to undermine existing governments. They encourage local terrorism as part of a long-term campaign to promote their important strategic interests, to extend regional or global influence, and to establish sympathetic regimes in developing countries. Moreover, they support domestic revolutionaries conducting terrorism because warfare by surrogates is both effective and economical, especially when the use of their own conventional armed forces is deemed inappropriate or too risky.

The international legal system has failed to curb ideological terrorism because states continue to take morally inconsistent positions re-

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46. Such acts of terrorism may be categorized as:

propaganda by the deed . . . [,] a significant strategy for political action which was formulated in the 1870's by a few socialist revolutionaries who felt that the avenues of the existing political order could offer no prospect for significant social and political reform . . . . [I]t bound theoreticians and terrorists in a working alliance against the existing system to the point where theory was at the mercy of practice and compelled by its own internal logic to respond favorably to the violence committed in its name.

Fleming, Propaganda by the Deed: Terrorism and Anarchist Theory in the Late Nineteenth Century Europe, in TERRORISM IN EUROPE 8, 25-26 (1982).

47. The Al-Zulfiquar group—named after Prime Minister Zulfiquar Ali Bhutto who was executed by the military government of the current Prime Minister Zia of Pakistan after a dubious court trial—hijacked a Pakistani airliner in 1981. Because of the widespread popularity of the executed Prime Minister, Zia’s government conceded to the demands of the terrorists and released several political prisoners. Al-Zulfiquar characterized its violence as an attempt to restore democracy in Pakistan. See Statistics, supra note 22, at 294.

48. See Pluchinsky, Political Terrorism in Western Europe: Some Themes and Variations in TERRORISM IN EUROPE 64 (1982).

49. See Conference Report, supra note 11.
garding such terrorism. They foment revolutionary terrorism when it
suits their strategic ends, but resent it when it is directed against
them. This selective condemnation of ideological terrorism is likely to
remain a fruitless enterprise until states in general, and regional and
global powers in particular, conform their behavior to universal prin-
ciples of international law and take seriously the political independence
and territorial integrity of every other state.

The distinction between ideological groups and other aggrieved
groups is particularly crucial in view of the differing responses they
may receive from the international community. Although the interna-
tional community often recognizes the plight of aggrieved groups under
colonial and racist regimes and other forms of alien domination, and
upholds the legitimacy of their struggle, no such recognition is gener-
ally accorded to groups promoting a specific economic ideology. Of
course, the international community recognizes that all peoples, in ex-
cercising their collective right of self-determination, may freely choose
their own domestic institutions. Except for a few states, however, the
international community does not show much sympathy or support for
small groups of dissidents that use violence to impose on their home
state their own brand of socio-political or economic ideology. World

50. See, e.g., Report of the Secretary-General, supra note 28 (reporting that communications
received from Afghanistan and the Ukraine accused the United States of supporting terrorism).

51. See, e.g., Shultz, supra note 8, at 445-46 (concluding that Soviet-sponsored terrorism is a
serious threat to western moral values and that western democracies and their strategic interests
are at stake). See supra note 6.

52. See U.N. Charter art. 2, para. 4 (providing that: "All members shall refrain in their
international relations from threat or use of force against the territorial integrity or political inde-
pendence of any state"). See also Franck, Of Gnats and Camels: Is There a Double Standard at
including the United States, a majority of the members of the United Nations consistently con-
demns any aggression against the political independence of other states).

53. The General Assembly has passed a long series of resolutions dating back to 1972 that
condemns terrorism while upholding the legitimacy of certain aggrieved groups' struggles, espe-
cially national liberation movements in accordance with the U.N. Charter. See G.A. Res. 61, 40

54. See International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16,
1966, art. 1, 993 U.N.T.S. 5 (entered into force Jan. 3, 1976) ("All peoples have the right of self-
determination. By virtue of that right they freely determine their political status and freely pursue
their economic, social and cultural development."); International Covenant on Civil and Political
(recognizing the same right in the same words). See generally Franck, supra note 52, at 819.
opinion generally remains unsupportive even when the dissidents leave their home state and conduct their terrorist operations from a foreign country. 88

B. Refugee Disorders

Serious international disorders occur when states fail to resolve the grievances of a refugee group. Some aggrieved groups, owing to external aggression, occupation or foreign domination, have either fled or have been compelled to leave their home state; others have become stateless. 84 These refugee groups resort to terrorist activity in order to assert their right to have a home state or return to their home state. 87

55. This might explain, for example, why the contras, who want to overthrow the communist regime in Nicaragua, have failed to muster any substantial support from the international community. See generally Concerning Military Activities, supra note 6 at 146. (deciding, by twelve votes to three, that the United States, by training, arming, equipping, financing and supplying the contra forces, had breached its obligations under international law). One might question why the international community has shown widespread support for the Afghans, but not for the contras, even though both groups are resisting communist regimes in their home states. There are two possible explanations. First, the Soviet invasion of Afghanistan and the consequent imposition of a communist puppet regime are considered as serious breaches of acceptable international behavior, while the Sandinista revolution is generally regarded as a matter within the domestic jurisdiction of Nicaragua. Second, the international community seems to pay special attention to the size of the aggrieved group. If the group is large, the international community generally becomes supportive of its political demands. The overwhelming number of Afghan refugees, as compared to a few thousand contras, is illustrative. See infra note 56.

56. Among such refugee groups, Palestinians and Afghans are noted examples. The total number of Palestinians is approximately 4 million. About one-half of these are registered as refugees with the United Nations, and the other half are located in Israel, the West Bank, and the Gaza Strip. See The Middle East—A Birds Eye View, Christian Science Monitor, Jan. 16, 1987, at 16, col. 1. The number of Afghan refugees has been estimated at approximately 4.6 million as of December 1985—2.7 million in Pakistan and 1.9 million in Iran. Telephone interview with Terry Kratovil, Office of United Nations High Commissioner for Refugees (Jan. 16, 1987). See also H. Bradsher, supra note 41, at 217-18. The Nicaraguan refugee population is estimated to be more than 35,000. Most of them are in Honduras, El Salvador, and Costa Rica. Telephone interview with Terry Kratovil, Office of the United Nations High Commissioner for Refugees (Jan. 16, 1987). See also Refugees in Central America: What Lies Ahead?, REFUGEES, July 1986, at 27. The figures must be read with care since U.N. registered refugees and governmental statistics do not always account for complete refugee populations. Governmental statistics must be read with the caveat that supportive states might deliberately inflate the refugee population.

57. See Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984) (per curiam), cert. denied, 105 S. Ct. 1354 (1985). Judge Bork, in a concurring opinion, noted that:

One important sign of the lack of consensus about terrorism generally, and about PLO activities in particular, is that accusations of terrorism are often met not by the denial of the fact of responsibility but by a justification for the challenged actions . . . . Attempts to secure greater consensus on terrorism have foundered on just such issues as the lawfulness of violent actions by groups like the PLO fighting what some states view as "wars of national liberation."
Refugee groups resorting to violence are thus distinguishable from aggrieved groups that remain within their home state. The terrorist activity perpetrated by refugee groups poses radically different and far more serious international problems, simply because their activity inevitably brings asylum states into the conflict. If the home state of a refugee group is under foreign occupation, refugee terrorism persists because those elements that have left or have been forced to leave their home state show a determined resolve to use violence in establishing their right to return. When a refugee group has no home state to which it may return, its violence becomes totally unscrupulous.  

Supportive world opinion regarding the political demands of refugee groups plays a key role in both encouraging and perpetuating acts of violence. It is evident from United Nations General Assembly resolutions that even when the international community condemns terrorism, it simultaneously upholds the legitimacy of the struggle against occupation and foreign domination, as well as reaffirming the right of self-determination.  

When an aggrieved group perceives to have succeeded in obtaining moral support from the international community, its sense of indignation and inequity is reinforced. It then becomes much more militant, using violence vigorously and persistently.  

The adverse circumstances under which refugee groups are forced

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Id. at 807 (Bork, J., concurring).  

58. When refugees are deprived of their fundamental rights and human dignity, they may lose their sense of compassion and, believing that justice does not exist in the world, may resort to indiscriminate violence. See infra note 86. See also Lee, The Right to Compensation: Refugees and Countries of Asylum, 80 Am. J. Int'l L. 532, 539 (1986) (arguing that an effective enjoyment of fundamental rights—for example, right to life, liberty and security, the right to property, the right to family, the right to expression—depends on a person's ability to live in his own country, and that when a state forces groups of people to become refugees, it commits an "international crime" on par with slavery, genocide and apartheid).  

59. See, e.g., Basic Principles of the Legal Status of the Combattants Struggling Against Colonial and Alien Domination and Racist Regimes, G.A. Res. 3103, 28 U.N. GAOR Supp. (No. 30) at 512, U.N. Doc. A/9102 (1973) (declaring that "[t]he struggle of peoples under colonial and alien domination and racist regimes for the implementation of their right to self-determination and independence is legitimate and in full accordance with the principles of international law"). See also Definition of Aggression, G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142-44, U.N. Doc. A/9613 (1974) (stating that nothing in definition of aggression should prejudice right of self-determination or struggle of peoples under colonial and racist regimes or other forms of alien domination and their right to seek support).  

60. For instance, aggrieved groups such as the Afghans and the Palestinians have received a good deal of moral support for some of their political objectives from the international community and, therefore, regard their use of violence as legitimate. See Yoder, United Nations Resolutions Against International Terrorism, 6 Terrorism 503, 509 (1983) ("Much of the terrorist activity arises from the Palestinians, yet every year the General Assembly passes pro-Palestinian resolutions condemning Israel and Zionism.").
to live is an important factor in understanding the refugee disorder. When a refugee group is large and its living conditions are miserable, such an environment may create a climate of frustration and anxiety. This frustration is further aggravated when a refugee group perceives that it has become stateless. Under such circumstances, members of a refugee group susceptible to violence may release their frustration by the commission of terrorist acts. In this regard, one must be careful in labelling the entire refugee group as terrorists. Yet some suppressive states, in order to undermine the political demands of a refugee group and to divert public attention from the underlying causes of violence, may condemn the group as bandits or terrorists.

Refugee disorders stagnate when states are divided in their support of and opposition to the political demands of refugee groups. The dynamics of refugee-group terrorism emerge from a triangular relationship among the refugee group, supportive states, and suppressive states. One side of this triangle is made up of supportive states that provide moral, financial and military support to the refugee group. The second side is composed of suppressive states that not only condemn the methodology of violence, but may question, ignore, or flatly reject the political objectives of the refugee group. The triangle is completed when the refugee group receives assistance from the supportive states and directs its violence against the suppressive states.

When a refugee disorder lingers, the triangular relationship between the refugee group and supportive and suppressive states loses its moral constraints. Principal supportive states use the aggrieved group as expendable pawns to advance their own geopolitical interests. Principal suppressive states treat the entire group as terrorists and attack refugee camps, killing not only terrorists but innocent men, women,

61. Members of refugee groups may be perceived to be fighting what is known in Western or Christian philosophy as just ad bellum or a "just war." The model of an aggrieved group fits the traditional notion of a just war where a shared perception of having been wronged exists and fault lies with the suppressive state. See Dugard, International Terrorism and the Just War, in The Morality of Terrorism: Religious and Secular Justifications 77-98 (1982).
62. There are, for instance, millions of Afghan and Palestinian refugees who live in silent despair but who do not resort to violence. See generally H. Bradshe, supra note 41, at 297 (stating the danger to refugees does not come from enemy aircraft and missiles but rather from starvation).
63. See Report of the Secretary-General, supra note 28. (noting that the government of Afghanistan has condemned the radical Afghan refugees as "terrorist" and alleging that they implant bombs in crowded public places, including restaurants, buses, and mosques; blow up electric power lines; murder teachers, doctors, and civil workers; mutilate human bodies; scalp and skin school children; and hand over bombs disguised as toys).
and children.\textsuperscript{64} To dramatize its misery, frustration and revenge, the refugee group attacks symbols of the suppressive states including soldiers,\textsuperscript{65} diplomats\textsuperscript{66} and businessmen.\textsuperscript{67} Even innocent lives are sacrificed.\textsuperscript{68}

Refugee disorders remain uncured because supportive and suppressive states fail to resolve the problem through peaceful means. This stalemate deepens when influential members of the international community are equally divided. Often, the legal and moral issues raised by a refugee problem are complex and seem insoluble.\textsuperscript{69} These issues are further complicated when international processes for finding a solution are pursued half-heartedly or not initiated at all.

\textsuperscript{64} For example, when Israeli jets attack Palestinian targets in Lebanon, civilians are killed, too. See Statistics, supra note 22, at 265, 272, 274, 280. The Security Council resolutions drafted to condemn Israeli practices and measures against the civilian population in southern Lebanon were vetoed by the United States. See Bureau of Public Affairs, Office of the Historian, U.S. Dept of State, American Foreign Policy Current Documents 581-84 (1985).

\textsuperscript{65} Between 1973 and 1982, 9.1 percent of the victims of international terrorism were military personnel. Patterns of International Terrorism, supra note 19, at 34.

\textsuperscript{66} Between 1973 and 1982, 39.4 percent of the victims of international terrorism were diplomats. Id. Diplomats have been long considered a favorite target of terrorists. The recurrence of terrorist acts against diplomatic personnel and embassy facilities illustrates the political dimension of terrorist attacks on behalf of an aggrieved group.

\textsuperscript{67} Between 1973 and 1982, 22.2 percent of the victims of international terrorism were corporate officials. Id. See also Document: Terrorist Attacks Against U.S. Business, 8 Terrorism 185 (1986).

\textsuperscript{68} If a terrorist action occurs against an individual who has no connection with the dispute between the parties (the aggrieved group, suppressive states, and supportive states), the target is innocent. See International Terrorism: Fourth Interim Report of the Committee, 7 Terrorism 123, 132 (1984) (Professor Green & J. Lador-Lederer dissenting).

\textsuperscript{69} Refugee groups may invoke several rights protected under The Universal Declaration of Human Rights, G.A. Res. 217 (III), at 71, U.N. Doc. A/810 (1948). These claimed rights include the right to have a nationality, id. at art. 15; the right not to be subjected to arbitrary exile, id. at art. 9; the right to life, liberty, and security, id. at art. 3; the right to human dignity, id. at art. 1; the right to education, id. at art. 26; the right to employment, id. at art. 23; equality before the law, id. at art. 7; and the right to family, id. at art. 17. Under the International Covenant of Economic, Social, and Cultural Rights, adopted Dec. 16, 1966, 993 U.N.T.S. (entered into force Jan. 3, 1976), refugees may claim: that there is a right to self-determination, id. at art. 1; the right to an adequate standard of living including adequate food, clothing, and housing, id. at art. 11; the right to physical and mental health, id. at art. 12; and the right to take part in cultural life, id. at art. 15. See also Lee, supra note 58. Suppressive states, on the other hand, may invoke the United Nations Charter to assert the sanctity of territorial integrity and political independence, U.N. Charter art. 2, para. 4, and the right to self-defense, id. at art. 51. These competing rights may complicate a given political disorder. Thus, a negotiated solution must address the wrongs claimed by aggrieved groups as well as the claims made against them.
III. TRADITIONAL RESPONSES TO TERRORISM

Three kinds of remedies to the problems of terrorism are frequently suggested by government officials and scholars. First, some contend that all terrorists must be treated as criminals and that stiff punishments must be prescribed for all terrorist acts. Second, some argue for more extradition treaties and urge that political-offense exceptions in such treaties should either be narrowed or totally eliminated. Third, still others contend that states that sponsor terrorism should be punished. These strict laws are often proposed for sup-

70. Some have argued that terrorism is a violation of international law. See, e.g., Note, Terrorism as a Tort in Violation of the Law of Nations, 6 FORDHAM INT’L L.J. 236 (1982). Others suggest that terrorism, like piracy, ought to be treated as a crime against humanity. This analogy is problematic. Although there was a universal consensus that piracy was an offense against the law of nations, see, e.g., United States v. Smith, 18 U.S. (5 Wheat.) 153 (1820), no such universal agreement prescribes that all “terrorist acts” amount to violations of that law. When an act is committed for purely political motives, it is difficult to compare it with an act of piracy. See Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 814 n.23 (D.C. Cir. 1984) (Bork, J., concurring) (citing G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 681 (1941)), cert. denied, 470 U.S. 1003 (1985).

71. The expression “political offense” includes an ordinary offense committed wholly or in part for political motives. There is no precise definition of what constitutes a political offense, and judges may decide each case on its own facts. In recent years, the scope of the political offense exception has been considerably restricted. Socialist countries among themselves do not include this exception in their extradition treaties. See C. VAN DEN WUNGAERT, THE POLITICAL OFFENCE EXCEPTION TO EXTRADITION 1-2 (1980). Even extradition treaties do not precisely define the meaning of a political offense exception. For example, the extradition treaty between the United States and Japan provides:

Extradition shall not be granted under this Treaty in any of the following circumstances:
1) When the offense for which extradition is requested is a political offense or when it appears that the request for extradition is made with a view to prosecuting or punishing the person sought for a political offense. If any question arises as to the application of this provision, the decision of the requested Party shall prevail.


73. Punishment or retribution of states that sponsor terrorism, it is argued, serves as a way to resolve the internationalization of armed conflict. On April 14, 1986, for example, the United States bombed Libya in retaliation for the April 5, 1986 bombing of a West Berlin nightclub. U.S. EXERCISES RIGHT OF SELF-DEFENSE AGAINST LIByan TERRORISM, DEP’T ST. BULL., June 1986 at 1. The international legal justification for the United States operation was self-defense, under article 51 of the U.N. Charter. Id. at 2. See U.N. CHARTER art. 51 (providing that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”). It was justified under domestic law pursuant to the President’s authority as Commander-in-Chief under article II, section 2 of the Consti-
pressing the activities of only select aggrieved groups. Because almost all states and some scholars make the distinction between terrorists and freedom fighters,\textsuperscript{74} such remedies are generally employed to deter only disfavored aggrieved groups. A suppressive state, for example, may attempt to extradite and punish members of an aggrieved group that it suppresses, but at the same time may refuse to extradite and punish members of a group that it supports.\textsuperscript{76} These three traditional responses to the problems of terrorism, although useful in limited circumstances, are inadequate.

Obviously, if more extradition treaties were signed and if political-offense exceptions were eliminated, the system could become more effective in dealing with terrorists.\textsuperscript{75} Even so, the critical question re-
mains which states would sign such treaties. States that suppress the same aggrieved groups have often entered into extradition treaties among themselves. These treaties are useful only to the extent that suppressive states will be able to extradite terrorists among themselves. Extradition treaties, however, are ineffective to check refugee terrorism because refugee terrorists do not live in suppressive states. Instead, they live in and operate from states that support them. Principal supportive states not only provide refugee terrorists with funds and weapons, but they also give them legal protection both within and across their national boundaries. It is unlikely that such a supportive state will enter into an extradition treaty with a suppressive state. Moreover, if an extradition treaty already exists, the supportive state probably would not agree to eliminate the political-offense exception those who oppose an oppressive regime and use force to protest against massive violation of fundamental rights. Kittrie, Patriots and Terrorists: Reconciling Human Rights with World Order, 13 Case W. Res. J. Int'l L. 291 (1981).

77. One commentator has suggested that:

Generally, most western countries are willing to extradite terrorists among themselves, whereas Afro-Asian countries are fundamentally opposed to extradition. . . . [S]ince the [Afro-Asian] countries in question generally have no extradition treaties with western countries . . . extradition cannot be requested anyway. Moreover, asylum is usually sought in those states which share or sympathize with the political ideas of the terrorists and which, under any circumstances would not be inclined to grant extradition.

C. Van Den Wijngaert, supra note 71, at 154 (footnotes omitted).

78. In In re Mackin, 668 F.2d 122 (2d Cir. 1981), the U.S. Court of Appeals for the Second Circuit dismissed an appeal by the United States government from an order of a federal magistrate denying a British request for the extradition of Desmond Mackin, a member of the Provisional Irish Republican Army. Extradition was denied because of the political-offense exception in the U.S.-U.K. extradition treaty. Id. at 123 (citing Extradition Treaty, June 8, 1972, United States-Great Britain, 28 U.S.T. 227, T.I.A.S. No. 8468). The United States has since signed a supplemental extradition treaty with Great Britain that limits the scope of the political-offense exception and does not include terrorist acts of hijacking, murder, and other crimes of violence. Supplemental Extradition Treaty, United States-United Kingdom, June 25, 1985, 24 I.L.M. 1104 (1985) (entered into force Dec. 23, 1986). The United States government has supported a policy of narrowing and eliminating the political offense exception, claiming that the exception can be subject to abuse, that it obstructs "the development of law through decisions of our highest courts," and that the United States should not become a "haven for terrorists who belong to groups that use indiscriminate violence against the citizens of other countries." Sofaer, The Political Offense Exception and Terrorism, Dep't St. Bull., Dec. 1985, at 61 (statement before the Senate Foreign Relations Committee, Aug. 1, 1985). Though the United States intends to complete similar agreements with other nations, id., its effectiveness in curbing terrorism is undermined by the fact that the signatories will be limited to those who would ordinarily cooperate with the United States or prosecute terrorists themselves.

79. See supra note 20 and accompanying text.

80. It is unlikely, for example, given the current tension between the two governments, that Israel and Syria will enter into an extradition treaty.
and extradite those whom it supports.81 This remedy, therefore, is unavailable where it is most needed.

Similarly, those who argue that all terrorists must be treated as criminals and given severe punishments miss the point.82 Of course, suppressive states may impose severe sanctions on terrorists, but again, most refugee terrorists, after committing their terrorist actions, return to safe havens in supportive states where they are treated as heroes, not as criminals.83 Furthermore, when a suppressive state arrests refugee terrorists, others are not necessarily deterred. In fact, others commit more acts of terrorism to free the captives.84 Unfortunately, with respect to the unique phenomenon of refugee terrorism, when force is met with force, the violence is further compounded.85 Moreover, refugee groups in general, and stateless groups in particular, are composed of desperate people who do not seem to be easily deterred from violence.86

81. See supra note 75.

82. Professor Friedlander advocates treating terrorists as enemies of humanity. See R. Friedlander, The Dogs of War, supra note 10, at 169; R. FRIEDLANDER, TERROR-VIOLENCE: ASPECTS OF SOCIAL CONTROL 130 (1983). See also Gerstein, Do Terrorists Have Rights?, in THE MORALITY OF TERRORISM 290 (1982). See generally, supra note 13. The United States government has traditionally taken the view that terrorists should either be prosecuted for criminal acts of terrorism where a crime was committed or extradited to a jurisdiction where they can be successfully prosecuted. See W. FARRELL, THE U.S. GOVERNMENT RESPONSE TO TERRORISM 34 (1982). The recent demand for the extradition of Muhammad Ali Hamadei from West Germany illustrates the continuation of this policy. See Richey, Extradition of Hijack Suspect a Fruit of U.S. Terrorism Policy, Christian Science Monitor, Jan. 21, 1987, at 3, col. 3. See also infra note 84.

83. See Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 799 (D.C. Cir. 1984) (Bork, J., concurring) (complaint alleged that Libya, one of the defendants in the case, not only trained the PLO instructors who trained the thirteen terrorists accused of attacking a civilian bus in Israel, but also gave an official "hero's welcome" to the ship that carried the terrorists to Israel), cert. denied, 470 U.S. 1003 (1985).

84. For example, when West Germany arrested Mohammed Hamadei and was considering to extradite him to the United States for his alleged role in the June 1985 hijacking of a Trans World Airlines plane, some members of the Hamadei family, in order to free Mohammed Hamadei, kidnapped two West German businessmen. After a spate of further kidnappings in Lebanon, the West German officials stalled the process of extradition. See N.Y. Times, Feb. 1, 1987, at 8, col. 2.

85. There may indeed be a high price to pay for intensified sanctions against terrorist acts. Sanctions may produce "crime displacement." See Minor, Skyjacking Crime Control Models, 66 J. CRM L. & CRIMINOLOGY 94, 104 (1974) ("[C]rime control efforts may have more effect on the form and location of crime than on its actual incidence.").

86. One commentator has referred to aggrieved groups as "terrorist-generating communities" that feel, rightly or wrongly, that they have exhausted every channel in getting their needs met. No one cares about them, and thus violent force will give a sense of movement to their cause, galvanizing internal support, and attracting international attention to it. Because community causes are righteous[,] indeed often religious, the terrorist acts of community members are not condemned by the community.
Several theories have been advanced to explain the psychology of terrorists: that the subculture in which terrorists live or have been forced to live breeds frustration and violence; that terrorists are only doing what they must do; that they are fanatics; that they have no respect for authority; or that they suffer from mental diseases. These explanations, although useful for understanding the minds of terrorists, provide no evidence that refugee terrorists would be deterred by sanctions. Nor do they suggest that fear of punishment would modify their violent behavior.

Even if severe punishments were successful in diminishing purely domestic violence, and even helped to suppress revolutionary groups, they do not resolve the root causes of refugee terrorism. In fact, punishment can radicalize still more members of an aggrieved group, resulting in a suppressive state labelling the entire group as terrorists. Such labelling not only generates sentiments of hatred, but indeed dehumanizes the entire group.

The third remedy—punishing states that sponsor terrorism—seems equally problematic. First, even a powerful nation would likely find it

Beeman, Terrorism: Community Based or State Supported?, 16 AM.-ARAB AFF. 29, 30 (1986).


89. Moslem terrorists are often characterized by the West as fanatics. The word “jihad,” meaning a holy war, is invoked to show the religious roots of Islamic terrorism. Even Islamic groups themselves use religious labels to characterize their own struggle. The Islamic Jihad in Lebanon and the Mujahideen in Afghanistan are two noted examples. This fanaticism, however, is often selectively criticized by some states. The United States, for instance, condemns the Islamic Jihad but supports the Afghan Mujahideen. Further, it is a mistake to believe that Islamic fanaticism is directed only against western civilization. For instance, most Islamic countries support the Afghan Mujahideen in its struggle against the Soviet Union.


92. This dehumanization, if pushed to its emotional limit, could even lead to genocide of an aggrieved group. Genocide, however, is prohibited under contemporary norms of international law and morality. See Convention on the Prevention and Punishment of Crime of Genocide, Dec. 9, 1948, U.N.T.S. 277 (entered into force Jan. 12, 1951). In fact, genocide would probably prove ineffective, given that groups previously subjected to such action, such as Jews and Armenians, have emerged with a determined resolve to avenge and defend themselves. See PATTERNS OF INTERNATIONAL TERRORISM, supra note 19, at 36. The Armenian Secret Army for the Liberation of Armenia (ASALA) carried out more international terrorist incidents in 1982 than any other terrorist group. Id. See also Gunter, Contemporary Armenian Terrorism, 8 TERRORISM 213 (1986).
difficult to punish all supportive states. Of course, supportive states can be punished selectively, but selective punishment poses serious international problems. Selective punishment is arbitrary in that it allows each suppressive state to determine for itself which supportive state it will punish. It is also dangerous because it destabilizes the international legal order. More important, selective punishment can be undermined if the international community regards such measures as acts of aggression. Finally, such punitive measures can lose their moral legitimacy if the punishing state itself is supporting other aggrieved groups.

IV. An Approach to Negotiated Settlement and Terrorism

Given the inefficacy of existing remedies, states involved in or affected by terrorism should seek solutions by direct or indirect negotiation. Because terrorism has endangered the maintenance of international peace and security, both suppressive and supportive states are under a legal obligation to settle the disorder, first of all, by pacific means. Article 33 of the United Nations Charter requires parties to

93. Selective punishment of supportive states violates several principles of international law. First, selective punishment violates article 2(4) of the United Nations Charter, which prohibits all members from using force against the territorial integrity and political independence of any state. See supra note 52 and accompanying text. This article prohibits suppressive states from curbing terrorism—especially when states differ on the very definition of terrorism—by breaching the principles of territorial integrity and political independence. See Paust, Responding Lawfully to International Terrorism: The Use of Force Abroad, 8 WHITTIER L. REV. 711, 714-16 (1986). Second, selective punishment gives a dangerous dimension to the principle of self-defense, embodied in article 51 of the U.N. Charter. Id. at 716. See also supra note 73. The use of a self-defense rationale to punish supportive states will give an unprecedented interpretation to article 51. This new interpretation will favor militarily stronger states that can punish weaker states without fear of retaliation. Thus, under this new interpretation weaker states will become highly vulnerable to armed aggression by stronger states. Third, in view of this new concept of self-defense, weaker states may lose their political independence in foreign affairs and some may even join the socialist camp—as Libya has recently indicated an interest in joining the Warsaw Pact—thereby polarizing an already divided world. This polarization may disturb the existing geo-political balance between the superpowers, and may threaten international peace and security.

94. See supra note 73.

95. See U.N. CHARTER, art. 1 (providing that the “purposes of the United Nations are to maintain international peace and security ... to achieve international co-operation in solving international problems ... and to be a centre for harmonizing the actions of nations in the attainment of these common ends”); art. 31 (providing that “[a]ny Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specifically affected”). Several attempts have already been made to pursue peaceful means to resolve international disorders causing terrorism. For example, President Reagan’s proposal for peace in the Middle East calls for direct negotiation on several topics: resolution of the “legitimate rights” of the Palestinians; Arab acceptance of “the reality of Israel”; support of King Hussein’s efforts for “joint Jordanian-Pales-
any dispute, the continuance of which is likely to endanger international peace and security, to seek a solution, among other peaceful means, by negotiation, mediation, and conciliation. A negotiated settlement among the supportive and suppresive states and the aggrieved group not only facilitates understanding between opposing states, but could alleviate some of the root causes of terrorism.

The process of negotiation itself will be useful for several reasons.

96. U.N. CHARTER, art. 33 (providing that disputing parties seek a peaceful negotiation in matters that affect international peace). See supra note 12.

97. See generally M. Heller, A PALESTINIAN STATE (1983) (concluding that an independent Palestine is in Israel's interest).
First, it will establish channels of communication between the parties. Second, the principal supportive states may influence the refugee group to refrain from violence while the process is under way. Third, a refugee group in the hope of achieving at least some of their political objectives may be inclined to exercise self-restraint. Fourth, the suppressive states, by showing their willingness to negotiate, may establish their credibility among the international community, including some supportive states. Hence, the process of negotiation itself may reduce at least to some degree the intensity of refugee terrorism.

Seeking a negotiated solution may modify the seemingly irreconcilable positions of the parties. When the principal supportive and principal suppressive states are serious about finding a negotiated solution, the negotiation process by its nature will change their positions. Even radical members will have to tone down their rhetoric and violence. If they continue their violence during the process of negotiation, the principal supportive states might cut off financial and military support, and might even use coercive force against them.

The process of negotiation can begin only if the parties recognize the conflict and show mutual respect for each other's existence. Often, parties decline to negotiate believing that negotiation in itself will legitimize and give respectability to political demands of the other party. This belief is an impediment to the negotiation process because it refuses to recognize the existence of a dispute between the parties, and is contrary to the spirit of international law, which obligates states to resolve their conflicts through peaceful means.

Fruitful negotiation will require that all necessary parties be joined in the process. Obviously, the aggrieved group and the principal supportive and suppressive states are indispensable. To achieve a more stable negotiated solution, accessory supportive and suppressive states may be included, especially when such states have regional influence and will be later helpful in implementing the solution.

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99. For example, Israel and the PLO do not recognize each other. See M. HELLER, supra note 97, at 57.
100. See supra notes 95-96 and accompanying text.
101. See M. HELLER, supra note 97, at 6. Heller suggests a settlement regarding the Palestinian issue and concludes that the peace settlement should be directly negotiated by Israel and the PLO. Because the two entities are necessary parties and because they do not recognize each other, the negotiation process between the two has been stymied. Id. at 4-6.
102. See id. at 6 (suggesting that the peace settlement between Israel and the PLO should be ratified by the most critical Arab states, such as Jordan, Saudi Arabia, Syria and Egypt).
that could play an effective role in laying the groundwork for negotiation and its successful conclusion would be crucial to the process.

To further facilitate the process of negotiation, the influential members of the international community, including the United States, can play an important role by encouraging, assisting and even pressuring the parties to find a negotiated solution. Although such pressure does not affect the positions of the parties, it keeps intact the process of negotiation. 106

A negotiated settlement may be the most appropriate method to resolve refugee disorders. 104 As suggested earlier, a refugee disorder is not only a conflict between a refugee group and principal suppressive states, it also constitutes a dispute between principal supportive and principal suppressive states. 106 Almost every refugee disorder involves one or more principal supportive states that provide asylum to the group. Other principal supportive states may provide financial and military support to equip the group for an armed struggle. 106 Thus, a refugee disorder results in a struggle between the refugee group and principal suppressive states on the one hand, and a conflict between principal supportive and principal suppressive states on the other. 107

Given the complexity of refugee disorders, the division of the international community into ideological blocks, and the inclination of states to pursue their selfish interests, a negotiated solution to terrorism may appear to be an unrealistic remedy, if not a fool's dream. Nevertheless, even if there are reasons to be skeptical, the international community must be forced to face up to its commitment to “bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace” 108—a cardinal principle embodied in the United Nations Charter.

Although a negotiated settlement appears to be the most effective

103. For example, the United States has played a critical role in facilitating the negotiated settlement between Egypt and Israel that led to the signing of a peace treaty in March, 1979. See Treaty of Peace, Israel-Egypt, March 26, 1979, 18 I.L.M. 362.
104. See M. Heller, supra note 97, at 6.
105. See supra notes 61-69 and accompanying text.
106. See supra notes 27-28 and accompanying text.
107. The political objectives of a refugee group that seeks to return to its home state, however, are different from the demand of a hijacker who seeks the release of prisoners, even if the hijacker belongs to the same refugee group. The first instance exhibits the cause of the disorder, whereas the second is a symptom. Although traditional remedies for terrorism attempt to relieve symptoms of the disorder, the process of negotiation is more likely to resolve its causes.
course to deal with refugee terrorism, it is not suggested that all disorders causing terrorism can or should be resolved through negotiation. For instance, it may be appropriate for each state to determine whether it will curb domestic terrorism by domestic political processes or by stiff law-enforcement measures. Likewise, it may or may not be prudent to negotiate with an ideological cell.\textsuperscript{109}

Ideological terrorism supported by foreign states will not diminish unless supportive states conform their behavior to the stated principles of international law that impose upon every state a duty to refrain from encouraging, instigating, assisting or participating in acts of civil strife or terrorist acts in another state.\textsuperscript{110} When ideological groups are unable to receive support from foreign countries, their capacity to commit violence will be substantially reduced. Consequently, it may be easier for the home state to curb terrorism against domestic and foreign targets.\textsuperscript{111} Without foreign support, ideological groups might also turn to domestic political processes to air their grievances. The assumption of most ideological groups that regional and global powers will continue supporting them is largely illusory.

\textbf{Conclusion}

A legal theory of international political disorders focuses on the triangular relationship among an aggrieved group, supportive states and suppressive states. Supportive states promote political objectives of aggrieved groups, whereas suppressive states reject them. When a group's demands are ignored, it directs its violence against the nationals and property of suppressive states. Because supportive and suppressive states fail to resolve the political disorder, the aggrieved group intensifies its terrorist activity. Ideological disorders, as distinguished from refugee disorders, are caused when revolutionary groups with the assistance of supportive states use violence to register their disapproval of a perceived ideological menace. These disorders will continue to exist unless states take seriously the principles of international law and refrain from supporting such revolutionary factions. Refugee disorders,

\textsuperscript{109} It is beyond the scope of this article to examine when negotiation with ideological groups will be appropriate.


\textsuperscript{111} \textit{See supra} notes 44-45 and accompanying text.
on the other hand, occur when an aggrieved group becomes stateless or when the home state of that group fails to resolve its grievances. Such disorders are internationalized when foreign states are directly involved in support of and in opposition to a refugee group’s grievances. Given the complexity of refugee disorders, the supportive and suppressive states involved should seek negotiated solutions under established international legal principles.