Prolegomenon to Terror Violence

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PROLEGOMENON TO TERROR VIOLENCE

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INTRODUCTION**

Terrorism is the label affixed to certain unlawful acts of violence or to a strategy of unlawful terror-inspiring violence perpetrated or carried out by ideologically motivated persons and performed in such a way so as to produce a psychological impact exceeding the actual effects of danger or harm caused, in order to achieve a power-related outcome.1 Acts commonly described as terroristic violence consist of acts of violence against persons or property. They are invariably committed by individuals, even when in furtherance of the policy of a state, commanded by or directed through the authoritative processes of a state, or carried out by agents of a state in pursuit of their public functions.2 In fact the distinction between state and non-state terroristic violence is predicated on the following factors:

1) who commits the act (a public official or a private person);
2) who instigates the act (a public official or a private person);
3) why the act was committed (in furtherance of a public or governmental or a private goal).

Thus acts of terroristic violence are always committed by individuals and not by abstract entities called states.3 Consequently, the

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2. This was the basis upon which the International Military Tribunal for the Prosecution of Major War Criminals was established at Nuremberg, by virtue of its Charter declared by the Allies in London, August 8, 1945, see Government Printing Office, Trial of the Major War Criminals Before the International Military Tribunal at Nuremberg (1947-1949); Q. WRIGHT, HISTORY OF THE UNITED NATIONS WAR CRIMES COMMISSION (1947); “The Report of the International Law Commissions on the Formulation of the Nuremberg Principles,” 5 U.N. GAOR, Supp. (No. 12) 11-14 U.N. Doc. A/1316 (1950) [hereinafter cited as The Formulation of the Nuremberg Principles].

3. See R. JACKSON, THE NUREMBERG CASE, 30-94 (Cooper Square ed. 1971). See also Principle I, The Formulation of the Nuremberg Principles, supra note 2, at 11,
legal relevance of any distinction between individual and state terrorist violence is limited in its significance to the applicable sources of law and to the methods employed in its prevention and control.

The increasing volume and spectacular nature of terrorism acts since the 1960's, their transnational effects and all the implications of such acts fanned by the mass media, have generated disproportionate worldwide concern. Thus terrorism has become le mal du siècle (the illness of the century).

As a result, terrorism has become, like crime in the streets, an emotional law-and-order issue, with an added international dimension. As with other such value-laden problems, remedies have been rushed; ranging from armed preparedness to prevent such acts, to media censorship both to prevent the embarrassment such acts bring to governments and the terror that news of such acts evokes in the popular imagination. Practically every proposed or enacted legislation anywhere in the world which purports to prevent and control terrorism is nothing more than an ineffectual repressive measure which needlessly creates new categories of crimes or increase the penalties for existing ones. Yet it can hardly be advanced that there are insufficient substantive laws to prohibit such conduct. Nevertheless the common perception is different as international organizations as well as states feverishly seek the elaboration of new treaties and the enactment of new laws. The temptation is this respect is the same as with regard to

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4. This conclusion was reached after examining the laws of fifty-three states which had enacted antiterrorist measures in the last decade. The information was supplied by the U.S. Department of State and obtained through research in the Library of Congress by staff assistants to the Project on Legal Aspects of International Terrorism conducted by the American Society of International Law, 1976-1978, under the general direction of John Lawrence Hargrove and the specific direction of Professors Alona Evans and John Murphy, see LEGAL ASPECTS, supra note 1.

other crime-related problems, namely, to legislate them out of existence. Experience at the national and international levels has all too well proven the futility of this approach which common sense well recognizes without the need for empirical demonstration. What appears to be absent in the approach to prevent and control terror-violence is a rational policy; this presupposes a policy-oriented analysis of the phenomenon.

I. THE CONTEXT OF TERRORISTIC VIOLENCE

It is noteworthy that strategies of terror-inspiring violence are invariably predicated on the commission of some act of violence against the safety or well-being of a person or against property. No matter what means are employed against such targets, in whatever context, the result is invariably harm to a person or to property. This truism arises from examining the different contexts in which acts commonly referred to as terroristic violence take place. They are:

1) Armed conflicts of an international character and of a non-international character.
   (a) In conventional wars,
      (i) the intended power outcome is victory over the enemy or the subjection of enemy population or territory to foreign control.
   (b) In wars of national liberation,
      (i) against settler regimes, the intended power

outcome is either the removal of the settlers or the transfer of power from the settler group to the indigenous population;
(ii) against colonial regimes, the intended power outcome is the total removal of colonial presence.

2) Internal political conflicts which may or may not involve an armed conflict of a non-international character.
   (a) Between opposing ethnic, racial, religious, or linguistic communities,
       (i) the intended power outcome is either the social, economic or political transformation of existing structures, or the breaking of the political unity of the state.
   (b) Between those seeking to effect social or political transformation and those opposing it,
       (i) the power outcome is to achieve a certain change within the existing state unit.
   (c) Between individuals or groups seeking to propagandize a claim or grievance and organized society,
       (i) the power outcome is the advocacy of a given claim or grievance.

INCIDENCE

The incidence of terroristic violence throughout the world other than in the context of armed conflicts is increasing on every continent. The exception of armed conflicts is due to the decline in conventional wars which seem to have outlived their historical usefulness. Thus the incidence of terroristic violence in that context has diminished in direct proportion to the phenomenon of war itself. For similar reasons, as wars of national liberation seem to be reducing in number and intensity (existing only in South Africa, Rhodesia and Palastine/Israel), so is terroristic violence in that context.

Conversely, however, acts of terror violence not arising in a warfare context have increased significantly. This is particularly

8. See note 6 supra.
true within states consisting of factious ethnic, racial, religious or
linguistic groups, e.g., Lebanon, Northern Ireland, Cyprus, Yugoslav
Croats, Spanish Basques.

States with relatively homogenous populations have also wit-
nessed the emergence of terrorism as a means for accomplishing
or defeating socio-political transformation. This is particularly
true of states whose structures do not have the capacity to achieve
needed social and political changes. This applies to political
groups as well as governments. Groups resorting to terror violence
as a means of accelerating this process have manifested them-

selves in Italy (the Red Brigades), Germany (the Bader-Meinhofer
Group and the German Red Liberation Army), and Japan (the Red
Liberation Army). In some states, resistance to opposition groups
involved the use of terrorism by governments and government
agents against broad classes of individuals labeled “dissidents.”
This has been manifested in Argentina, Brazil, Chile, and Iran.

Conversely, where governments have sought to effect radical
social and economic change, terror violence has been used as a
means of overcoming popular resistance such as during
Robespierre’s reign of terror in France, Stalin’s consolidation of
power in the U.S.S.R. and the Khmer Rouge in Cambodia.

In addition, the complexities of modern, urbanized societies
have developed impersonal megalopolis mentalities that have led
some individuals to seek attention for their personal grievances
and claims through desperate acts of terror violence.

Considering the ease of transportation and volume of move-
ment of individuals and goods between states, the international
implications of terror violence have been significant and can be ex-
pected to become even more so.

It must nonetheless be emphasized that while the overall inci-
dence of terror violence not related to state policy has been in-
creasing, the quantum of violence and actual harm produced is
comparatively slight. In fact such acts of international terror vio-

lence have been estimated to be over 4,000 between 1968-1978, with

9. See, e.g., INTERNATIONAL TERRORISM, supra note 5. Y. ALEXANDER, INTER-
ATIONAL TERRORISM: NATIONAL, REGIONAL AND GLOBAL PERSPECTIVES (1975); Legal
Aspects, supra note 1. See also A. BURTON, URBAN TERRORISM (1976); B. JENKINS,
INTERNATIONAL TERRORISM: A NEW MODE OF CONFLICT (1975); S. SARKESIAN, REVO-
LUTIONARY GUERILLA WARFARE (1975); P. WILKISON, POLITICAL TERRORISM (1975).
1973).
13. See also F. HACKER, CRUSADES, CRIMINALS, CRAZIES: TERROR AND TERROR-
ISM IN OUR TIME (1977).
casualties estimated at over 2,100 persons. As compared with vehicular casualties in many countries, particularly in the United States, which are approximately 50,000 per year, the total volume of actual harm is limited. Moreover, state strategies of terror violence in the various contexts indicated above (i.e., terror power) are much more harmful and pernicious. Curiously, however, it is the limited harm generated by terror violence which has attracted the most world-wide attention and interest, not the state-related terror violence whose harmful effect in war or in peace is so much greater.

**Contextual Proscriptions**

It is noteworthy to emphasize that the only context in which violence is legally permissible subject to certain limitations is within the context of armed conflicts of both international and non-international character. However, the regulation of armed conflicts which is extensive as to permissible and impermissible targets, authorized and unauthorized means, and the permissible weapons, prohibits terroristic violence. In regard to violence in

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14. See note 6 supra.


general and terroristic violence in particular, in the context of civil strife, political unrest, and internal dissidence, it is invariably prohibited by municipal and international criminal laws. Thus, terroristic violence, whatever its context, is prohibited by international criminal laws or by municipal criminal laws and as such is not a phenomenon developing in a vacuum of substantive laws proscribing it.

II. THE CHARACTERIZATION OF TERRORISM: A PROBLEM OF DEFINITION

The initial problem of characterizing terroristic violence stems from its popular perception which conditions its generally accepted meaning. The word "terrorism" may be found in any dictionary but is rather freely used by the media and by writers whose use of the term varies according to the meaning they wish to attribute to it. There appears to be a shared perception of what the word represents, but there also appears to be some disagreement as to its scope and meaning. This confusion stems in part from the indiscriminate and inconsistent application of a term whose value content can be conveniently used by the proponents or critics of a certain type of behavior to label it as terroristic or not. Thus, "what is terrorism to some is heroism to others." Accordingly, efforts to define terrorism have met with the resistance of those who, in the absence of a common basis of ideology, prefer the ambiguity of an undefined term.

2. See notes 16-18 infra.
3. See note 4 supra.
4. The shared perception was obvious among the participants of one of the first major international conferences on terrorism held in 1973 at the International Institute of Higher Studies in Criminal Sciences at Siracusa, see generally INTERNATIONAL TERRORISM, supra note 5, and during the deliberations of the A.S.I.L. Study Panel on Terrorism, see LEGAL ASPECTS, supra note 1.
Nevertheless, to speak of “terrorism” without first adequately defining the term has proven unsatisfactory if not frustrating with respect to developing an understanding of the phenomenon and thus a rational policy of prevention and control of its manifestations. Several efforts have been made and a consensus definition proposed by this author has achieved a significant degree of international acceptance. It generally defines “terrorism” as: “A strategy of unlawful violence calculated to inspire terror in the general public or a significant segment thereof in order to achieve a power-outcome or to propagandize a particular claim or grievance.”

Using this general definition, it was possible to draft a more specific definition of international terrorism in this manner:

International terrorism consists of acts of terrorism containing an international element or directed against an international target. Such conduct contains an international element when:
1) the perpetrator and victim are citizens of different states; or
2) the conduct is performed in whole or in part in more than one state.

Internationally protected targets are:
1) innocent civilians;
2) duly accredited diplomats and personnel of international organizations acting in their official capacities;
3) international civil aviations;
4) the mail and other means of international communications;
5) members of non-belligerent armed forces.

Under the above stated consensus definition of terrorism, it is distinguished from other forms of violence in that it employs a strategy calculated to inspire terror whereas in other acts of violence, terror is of incidental importance. In common crimes of violence, terror (other than the victim’s) is totally unintended. Moreover, common criminals shun publicity for obvious reasons whereas ideologically motivated offenders seek to instill terror in the general public in order to achieve their power-outcome. Thus, whereas all acts of violence are capable of producing some terror, “terroristic” acts are those calculated to produce terror as part of a coercive strategy to achieve an essentially political outcome. By an elaboration of this concept, acts of terrorism may be more readily contrasted with other forms of violence and consequently other sub-categories of terror violence may emerge.

23. See INTERNATIONAL TERRORISM, supra note 5.
24. Id. at XIV.
As was stated above, the general consensus definition recognizes certain acts as constituting acts of terrorism, and conversely excludes other acts of violence from constituting terrorism. Thus, this consensus does not extend to all acts of violence which have terror-inspiring effects. The assumption being that the purpose of any criminal definition is to clearly state the proscribed conduct to which a sanction is appendant and which will presumably prevent and control such harmful behavior and that existing criminal laws are sufficient to accomplish that function with respect to acts not within the scope of the definition. To distinguish between types of terror-inspiring violence, there must first be an identification of the characteristics commonly attributed thereto as contrasted to the same act of violence which is not deemed terroristic; and, second, there must be an appraisal of the reasons for the lack of consensus regarding the inclusion or exclusion of certain acts of violence from the category of terroristic violence.\footnote{See note 5 \textit{supra}. See also Baxter, \textit{A Skeptical Look at the Concept of Terrorism}, 7 Akron L. Rev. 380, 380-85 (1974).}

**Identification of Certain Characteristics of Terroristic Violence in the Consensus Definition**

An example of an act of violence which could be included in the category of terroristic violence (or excluded) is the bombing of a restaurant. Assume that the act is done by an individual claiming to be acting for and on behalf of a group dedicated to the overthrow of the government in the state wherein the act occurred; contrast this with the perpetrator being the owner of the restaurant who is seeking by its destruction to collect insurance proceeds for his personal enrichment. The former is considered "terrorism," the latter is not. The differences between these two incidents are as follows:


2) The resulting harm to property (or life) is for the ideologically motivated offender of no personal benefit, while it is so for the common criminal.

3) The ideologically motivated offender's selection of the target bears no relationship to his purpose, while for the com-
mon criminal the target is essentially linked to his purpose.

4) The ideologically motivated offender seeks publicity for the act while the common criminal shuns it.

5) The outcome sought by the ideologically motivated offender (usually the dissemination of a particular claim) bears no relationship to the target, while it does for the common criminal.

6) The ideologically motivated offender will weigh the risks incurred in the perpetration of the acts against the benefits related to other effects not necessarily inherent in the target proper, while the common criminal will weigh these risks against the immediate benefits deriving from the very act.

7) The ideologically motivated offender will perpetrate the act in a manner which will insure the maximum effect on his unrelated goals (thus usually without regard to the likely harm) while the common criminal will use only those means likely to accomplish the immediate result (usually with much concern for the minimization of the resulting harm).

The conclusions which can be derived from these characteristics are that ideologically motivated acts of terror violence are usually divided in three stages while the common criminal's act usually involves one stage. The common criminal seeks a personal benefit derived directly from the commission of the criminal act; his act is usually a single level operation. Not so however for the ideologically motivated offender, whose act usually involves three stages:

1) The primary stage; the tactical objective is the target directly attacked.

2) The secondary stage; the strategic objective is the dissemination by the media of the ideological claim or the effect of the act.

3) The final stage or ultimate power outcome; the objective is the achievement of the desired political result.

Nevertheless, the same type of act when committed by a common criminal could have the same terroristic characteristics yet not be so regarded or described. It must be observed that the degree of

27. Consider the following instances relating to an identical physical act (the bombing of a restaurant) when committed by:

1) a rival insurance company seeking to drive out of business the company that insured the restaurant;

2) a rival restaurant owner seeking to persuade the first to go out of business;
public consensus as to what type of act is or is not labelled terrorist will vary from one act to another; but essentially an act is generally considered terrorist when it is committed by an ideologically motivated offender, irrespective of the particular characteristics of the act. Conversely, when the same act is committed by persons who are not ideologically motivated, it will almost never be labelled as terrorist. This labelling process appears to focus on three elements:

1) the motive of the perpetrator;
2) the audience which is or could be subject to the terror-inspiring act of violence; and
3) the selection of the target and the identification of the secondary and ultimate goals and objectives of the perpetrator.

**Classification of the Motives of Perpetrators and Their Strategies**

Perpetrators are classified according to their acts or according to their motives. In the context of terrorist violence irrespective of any other distinction the classification is made essentially on the basis of the perpetrator’s motives. Similarly this motivational factor applies to the distinction between individual and state terrorism. It is as follows:

1) Individual motivation in the commission of acts of terror violence.
   (a) persons acting to secure some form of personal gain by committing a common crime;

3) a criminal organization seeking to extort “protection money” from restauranteurs; or,
4) a criminal organization wishing to kill a patron who planned to testify as a witness against it.

All four instances demonstrate the similarity in tactics, strategies, and goals that are contained in acts deemed to be terrorist, yet these instances will not be deemed so. They will continue to fall within the category of common crimes. The only reason is that the perpetrator of such acts is not an ideologically motivated offender. Conversely it should be noted that an ideologically motivated offender may engage in the commission of a common crime for the same reasons and in the same way as would a common criminal. An example would be when a hostage is taken for a ransom to be used for the support and maintenance of the political movement. The act would have none of the characteristics of terrorist violence. In fact, it would have all of the characteristics of a common crime, yet the common perception would likely extend an ideological connotation to such a crime only on the basis of its remote connection to the actor’s ulterior motives. Thus, it is inconclusive to rely exclusively on the impact of the act, or its consequences, to characterize it as terrorist or not, even though the factors stated above are relevant to distinctions leading to the selection of the appropriate prevention and control measures.
persons seeking to vindicate a personal claim or focus attention on a given grievance;

(c) persons acting as a consequence of a psychopathological condition;

(d) persons seeking to fulfill an ideological commitment.

2) The motivation of states in the commission of acts of terror violence committed by persons acting for or on its behalf.

(a) to assert or consolidate control over a given territory;

(b) to destroy or eliminate political opposition.

The distinguishing motivational factor is indeed most relevant to the development of a rational policy-oriented approach to the prevention and control of such acts. However, that distinction alone is insufficient since it can hardly be deemed conclusive as a given perpetrator may fall into more than one of these three categories. Thus a broader analysis is required which would seek to identify and appraise the many characteristics and factors relating to the phenomenon and the problems inherent to its effective and rational prevention and control within a system of law. A common sense observation would lead to the conclusion that the quantum of violence and harm is greater with respect to the category of acts committed for or on behalf of a state. Nevertheless it is the category of individual terror violence which attracts the most public attention. Within this latter category it is the ideologically motivated group which creates the greatest concern in world public opinion. Suffice it to illustrate this proposition by recalling that state depredation of human rights (such as during World War II, in Biafra, Bangladesh, and in Democratic Kampouchea) attract less attention than a spectacular airplane hijacking or a single hostage taking act like the kidnapping and assassination in May, 1978, of Italy’s former premier Aldo Moro. The difference between such events is not represented in terms of the quantum of the resulting harm, but rather in terms of its media-generating interest. Thus it is to a large extent the strategies employed by ideologically motivated offenders in reliance on the media-created impact which conditions the public’s response to the type of action committed and consequently to the label affixed to the act.

SUMMARY OF THE COMMON CHARACTERISTICS OF IDEOLOGICALLY MOTIVATED TERROR VIOLENCE

Individual ideologically motivated terror violence (as opposed to a public policy of state terrorism) has the following common characteristics:
1) The actor claims to be ideologically motivated.
2) The purported outcome is alleged or designed to achieve a certain power outcome.
3) The means employed and the methods pursued are designed to have a psychological impact on the population at large or a selected segment thereof.
4) The psychological impact produced is largely disproportionate to the actual harm.
5) The immediate tactical objective is limited in scope as is the actual harm.
6) The tactical objective whether it be a person or property is either chosen at random to highlight the public's vulnerability or very carefully selected to avoid a negative public reaction (sometimes even to generate a positive public reaction).
7) The long-range strategic objectives are consistently varied, but they generally are chosen so as to:
   (a) demonstrate the vulnerability and weakness of the organs of power;
   (b) attract broader public sympathy by the choice of a carefully selected target that may be publicly rationalized;
   (c) force the organs of power to react in a manner likely to create other conflicts, crises or simply to bring them into ridicule or disrepute;
   (d) cause a polarization and radicalization among the public or a segment thereof;
   (e) force the organs of power into repressive action likely to discredit them and to bring new support to the terroristic cause.
8) One tactical objective which is invariably present is the instrumentalization of the mass media as a disseminator of the terror-inspiring nature of the act or of its political message, or of both.
9) Power outcomes notwithstanding, the variety of the act is usually determined by the context in which the action takes place.
10) The perpetrators rely on the existence of a certain degree of public apathy, sympathy, or tolerance for a certain level of violence.

Public policy of state related strategies of terror violence (as opposed to individual ideologically motivated terror violence) has the following common characteristics:

1) The actor claims to be acting for or on behalf of the state,
or under color of law or authority and will either claim to be ideologically motivated or acting under superior orders.

2) The purported outcome is alleged or designed to achieve a certain power outcome (acquisition or consolidation of power).

3) The means employed are designed to produce severe harm to a segment of society or certain representative personalities in order to achieve psychological impact.

4) The actual harm produced is often disproportionally greater than publicly acknowledged, yet its rumored effects are more widely propagated.

5) The actual harm produced is usually derived or concealed, as is the identity of the actor.

**Assessment**

The difference in strategy and outcome between individual ideologically motivated offender terror violence and state related policy of terror violence is most significant with respect to its public perception; state related strategy will usually seek to diminish the public perception of the acts of violence while the individual's strategy will seek to publicize the act and the desired outcome. Interestingly enough, however, the popular perception of what is or is not terroristic violence depends essentially on the degree of the terror-inspiring quality of the act, which is no way inherent to the act but derivative of its impact—an impact which is not intrinsically produced by the very act or inherent to its perpetrator, but which derives from the mass media's coverage thereof. Thus the distinction between the terroristic quality of the act and its ensuing labelling is arbitrary, mostly impressionistic, and thus devoid of any rational criminological basis.

State related strategy of terror violence, because it shuns media coverage and its scrutiny, will usually be conducted with some secrecy (like torture and other human rights violations).28 But frequently the dissemination of repressive state tactics will be propagated by state controlled media or by the propagation of rumors to produce the desired terror-inspiring effect. Unlike individual ideologically motivated terror violence which may have diverse desired outcomes, state motivated terror violence has one primary objective outcome, the preservation of power. But like its counterpart it may also have diverse secondary objectives and intended outcomes which are, however, invariably related to the central issue of power.

28. See note 15 *supra.*
IV. TERROR-INSPIRING VIOLENCE BY IDEOLOGICALLY MOTIVATED OFFENDERS AND ITS MEDIA CREATED IMPACT

The basic vehicle relied upon by the ideologically motivated offender in achieving his or her objective (whether it is the tactical objective of the action itself or the strategic objective of disseminating the effect of the action or the claims of the actor) is the mass media. Because the mass media have the capacity to disseminate news about terror violence occurrences, it has also the ability to create the social impact desired by the perpetrator of such acts. In fact the ideologically motivated offender relies on that medium to accomplish the tactical, strategic and ultimate objectives intended by the commission of such acts. To be sure, not all acts of terror violence are committed solely for media dissemination, or even partially in reliance thereon. Equally as true is the fact that many acts of terror violence are self-fulfilling, such as the elimination of a given person. Nevertheless reliance on the media's dissemination of the act itself plays a key role in every terror violence act. Thus, ideologically motivated persons usually select targets likely to attract the widest media and public interest.

Accordingly, the acts undertaken by ideologically motivated individuals are among the most dramatic criminal events. Such acts by their very nature draw media coverage and thus incidentally produce an impact usually intended by the perpetrator. For all practical purposes the media’s own public function condemns itself to be the medium of the ideologically motivated offender’s message; that message is conveyed implicitly and explicitly by vir-


30. The kinds of actions which serve the ends of such individuals include:
   1) hijacking aircrafts;
   2) kidnapping or assassinating diplomats;
   3) kidnapping or assassinating business executives;
   4) seizing innocent hostages;
   5) mailing letter bombs;
   6) threatened or actual use of explosives against vulnerable or sensitive installations (water pumping and filtration stations, dams, electrical power plants, nuclear reactors, fuel storage facilities, offshore drilling platforms, records storage centers, communications and transportation centers, government buildings, and corporate headquarters);
   7) theft or use of conventional weapons of great destructive force or long range effect (such as wide-guided or heat-seeking missiles, rocket launchers and the like).

The only category left concerns the theft or use of nuclear explosives. See M. Wilrich & T. Taylor, Nuclear Theft: Risks and Safeguards (1974); Brown, Nuclear Facilities and Materials, in LEGAL ASPECTS, supra note 1, at 149.
The inevitability corollary to such coverage is the diffusion of its significance, thus creating a social impact which would not otherwise exist. Consequently a symbiotic relationship exists between terror violence and the media, with perpetrators of terror violence relying on the media to serve their terror-inspiring purpose and the media utilizing terror violence acts as news items. The relationship between these strategies of terror-inspiring violence and the media deserves a closer examination. However, this analysis must be made in the context of the various stages and objectives of acts of terroristic violence.

**TACTICAL OBJECTIVES**

The tactical objective of ideologically motivated offenders is the actual target of the act. It requires:

1) locating a suitable target;
2) securing access to the target;
3) inflicting harm or threatening imminent harm upon the target;
4) committing the act in a manner likely to present a current drama of immediate and compelling public interest;
5) publicizing specific conditions for termination of the threat of danger when applicable.

Tactical objectives are inherently served by the mere reporting of the event staged by the perpetrators, which is purposefully designed to be dramatic and publicly significant. Accordingly, reporting of such events is essential to the news media's objective of keeping the population informed of newsworthy events, and its curtailment tends to conflict with the function, integrity and reliability of the media. The media may at times unnecessarily aid ideologically motivated offenders. With respect to tactical objectives it may identify targets by providing detailed accounts of security procedures or other factors of vulnerability of various facilities.

The most significant problem in media impact on the tactical objectives of ideologically motivated offenders is in the area of hostage taking and airplane hijacking. Because such events may last many hours, the broadcast media may disseminate numerous reports of developments while the event is still in progress. Also, representatives of all the media (print and electronic) have newsgathering access while the event is still underway. The problems generated by this legitimate activity are numerous and their con-
sequences are sometimes disastrous. Clearly media coverage and its attendant problems are not only related to the tactical objectives of the perpetrators; they also spill over (as to their im-

31. The following are examples of the kinds of problems created for law enforcement authorities, during ongoing terror violence occurrences:

1) The media may become the intelligence arm of the terrorists; the perpetrators are often equipped with radio or television bands, and sometimes with other devices which allow them to listen to all news broadcasts, and therefore to eavesdrop on law enforcement communications. Consequently, when tactical information is openly expressed, the perpetrators become parties to the decision-making. Thus, the media becomes unwittingly the eyes and ears of the perpetrators who are isolated in the confines of their area of control. This occurs in the following instances, which are detrimental to effective law enforcement activities, and are likely to pose a threat to the life and well-being of hostages and law enforcement personnel, and, where applicable, to negotiators:

(a) describing the number and positions of law enforcement personnel, potential escape routes, impending assaults and other valuable tactical information;
(b) describing the movements of persons in the area, hidden persons who could become hostages, or escaping hostages;
(c) disclosing the bargaining strategy, including the sincerity or lack thereof of law enforcement negotiators; and
(d) revealing any deception or tricks planned by law enforcement officials.

2) Media interference in the confrontation:

(a) media representatives may physically interfere with the free movement of law enforcement agents, or attract crowds that threaten such interference and burden police with crowd control problems;
(b) questioning of law enforcement officials during such events may distract them and make it difficult for them to perform their decision-making roles effectively;
(c) media reports of the negotiation process may occasion unnecessary political pressures on law enforcement negotiators; and
(d) direct media contacts with terrorists may: (i) tie up scarce telephone lines; (ii) result in a media representative’s becoming a party at negotiations, thereby complicating communications and insulating trained professional negotiators from the bargaining process; or (iii) alter the psychological environment in which the terrorists operate, by unnecessarily upsetting them or giving them comfort of company.

3) Media aid in inspiring terror:

(a) excessively dramatic reports may make the event appear more significant than it actually is;
(b) exaggeration of the dangers posed by the event to the general public.

4) Media aid in propaganda dissemination—broadcasting all matters the terrorists wish broadcasted, not withstanding the fact that:

(a) such publicity itself could have been an item used in bargaining between terrorists and law enforcement authorities;
(b) such views or statements may possess no interest value or importance, except for that derived from the dramatic circumstances surrounding them.
pact) into the strategic objectives and ultimate goals of the perpe-
trators.

**Strategic Objectives**

These objectives are frequently so interwoven with the com-
mision of the act of terror violence and its tactical objectives that it is very difficult to differentiate between the media created im-
pact on the tactical and strategic objectives. Regarding tactical objectives, the media's impact concerns reporting the commission of the act and the success or failure of its control and suppression. With respect to strategic objectives, the media's created impact bears a direct relation to the social and public reaction it may gen-
erate. Thus the strategic objective's relationship to media cover-
age and the problems inherent thereto are related essentially to:

1) publicizing the claims of the perpetrators;
2) disseminating specific information about the perpetra-
tors' ideology;
3) destroying or reducing confidence in the government or specific public authorities;
4) extracting certain specific concessions;
5) creating a general climate of public vulnerability;
6) stimulating a feeling of general apprehension coupled with the feeling of ineffective police protection;
7) projecting the perpetrators in a hero-like image;
8) projecting the government, public authorities or specific decision-makers in negative images;
9) conveying the general impression that the perpetrators or their followers can act at will;
10) providing a basis for the public's justification or retional-
ization of the act;
11) compelling the government or law enforcement authori-
ties to engage in conduct or take measures which would be inimical to public sentiment;
12) placing the government or public authorities in dilemmas which highlight their weaknesses, indecision, or ten-
dency to act contrary to the laws or public sentiment;
13) securing sympathy or new adherants to the movement, ideology in question or support for a specific claim.

In all of these respects the media is trapped between the news-
worthiness of the events and the public's desire to know, and is likewise responsible for the direct or pervasive impact of the dis-
semination of information likely to produce any one or more of the
results listed above. The media therefore has to provide the basic services to which they are pledged, particularly in societies guaranteeing freedom of the press, while refraining from the generation of certain negative results which are not inherent to the news gathering and dissemination function. In this respect there are two factors which influence the outcome of such coverage: the commercial competitiveness of media organizations; and the competitive political climate of the society in question. The impact of both factors' effect on the media's behavior is self evident.

Ultimate Goals

The ultimate goals of a given act of terror violence will vary depending upon a variety of facts. It is not always the case that a given act of terror violence may aim at anything more than the act of violence itself, or its tactical or strategic objectives. Only where an ongoing political struggle exists will there be an ultimate goal; and it will vary depending upon the context of that conflict. If such a goal exists, however, it may not be predominant in the particular act of terror violence. In the context of a war of national liberation, a given act of terror violence may be only a link in a long chain of events which are planned over a period of time to produce the desired effect of liberation, independence or transformation of the political power structure. In this situation the media may play a significant role in the attainment of that result by creating or stimulating the belief in the inevitable triumph of the ideologically motivated out-group which engages in acts of terror violence against the in-group, the establishment. In internal political conflicts between a group seeking to achieve a certain social, political or economic transformation within the state, the media may have the effect of accelerating the attainment of this desired outcome. It is therefore clear that depending upon the context of the conflict and the goals of the ideologically motivated persons who engage in terror violence the media created impact and its effect on the ultimate goals sought to be achieved by such persons will vary significantly. Precisely because such questions are essentially value-laden it is difficult if not impossible, in the absence of shared values, to draw up criteria which will validly aid in distinguishing between situations in which the media acts responsibly and situations in which it does not. The notion of a sense of perspective is thus, by its very nature, subject to the competing values at stake in each situation. Adding to these difficulties is the fact that in those democratic societies which place a high value on freedom of the press, the remedies are few and sometimes even more drastic than the problem
itself. Threats to the freedom of the press are often taken more seriously than the dangers of an irresponsible press which gives aid, comfort, assistance, information or even justification to acts of terror violence. Certainly a head-on conflict with the principles of freedom of the press should be avoided; that would shift the problem away from a terrorism-media coverage problem to a higher conflict of values. One such example arose in Italy in June, 1978, after the assassination of Aldo Moro. The Roman Daily *Il Messaggero* received a message from the Red Brigades which it felt compelled to publish. The result was a clash between proponents and opponents of freedom of the press. The issue was elevated to a higher level of conflicting values which transcended the fact itself. Interestingly this very strategy by the Red Brigades produced some valuable strategic gains in that it shifted the focus of attention from their action in the Moro assassination to a more gripping social issue which involved the entire society.

Curtailment of negative results may be accomplished by the media portraying that:

1) Social values are contrary to such acts of terror violence;
2) Law enforcement officers operate under three drastic, practical handicaps in relation to terror violence;
   (a) whereas the terrorists are willing to destroy as much property or as many lives as may be necessary to their purpose, law enforcement officials are constrained to minimize loss of life and property damage;
   (b) the perpetrators are in an offensive position, which is decidedly advantageous in any contest of brute strength, and the law enforcement officers are on the defensive, a position whose chief disadvantage is an inability to control development of events; and
   (c) the nature of terrorism as an attack on the population-at-large rather than on the political powers themselves permits perpetrators to attack virtually anywhere making protection against such attacks a monumental task.
3) The claims of the perpetrators are not widely accepted, or else their holders would have utilized other means to work for social or political transformation, and therefore the value of such views is placed in question rather than enhanced by their association with acts of terrorism;
4) The risks taken by terrorists are also being taken by the law enforcement officials operating against them;
5) Invariably terrorism is the practice of small groups whose potential for drama far exceeds their potential for genuine harm, and fewer persons are harmed by terrorist events than by such hazards as common crime, automobile accidents and major diseases.

6) Society is neither powerless nor helpless but rather it acts within a certain legal framework;

7) Society represented by its public authorities will not be freed in drastically affecting the life of its citizens in response to terror violence strategies.

The suggestions articulated above are only some illustrations of what the media may do; it has the duty to highlight social defects and must act responsibly to effectuate needed changes within the system where and when it is required. Again, the problem is one of basic values, and the choice of appropriate means depends on the nature of the social conflict and its context. To highlight that conflict one may pose the extreme problem of whether the plot to assassinate Adolf Hitler in July, 1944, as carried out by Colonel Count Von Stauffenberg was an act of terrorism or heroism. The discussion above has focused on acts of terror violence committed by individuals (or small groups) of ideologically motivated persons; it does not take into account legitimate claims by people whose oppression by a given government can only be opposed by such extreme measures. In that case the ultimate goals of the perpetrators of terror violence may be the same as those identified by the media; the difference being one of means and not ends. To a large extent this question embodies the greater dilemma of dealing with any type of change in a society.

V. TERRORISTIC STATE STRATEGY

The aim of a state in its use of terrorism is the same whether in the context of war or peace, and whether against its rivals in particular or its population in general. This aim is the destruction of the will of its primary targets to resist its efforts at control. Absent a state of war, such actions may be taken to destroy either active resistance or passive resistance to its control.


DESTROYING ACTIVE RESISTANCE—NULLIFYING OPPOSITION

The strategy of the state in using terror violence against opposition groups involves the designation of such groups as the primary target. The incidental target in such cases may be those persons of a similar political tendency, relatives of members of opposition groups, or any other class of persons who are vulnerable in the practical sense of being accessible and easily subject to harm, and sufficiently related to the members of the group constituting the primary target that the message to them will be clear; that such harm will also come their way unless they abandon their present course of action.

For publicity, the state may alternatively use the vast power of propaganda at its disposal or, if the nature of its actions could prove embarrassing, it may choose to allow information concerning its actions to be conveyed by rumor.

The reason for resorting to terrorism in this situation is generally that although the state has ample power to punish its opponents, it is unable to determine with certainty their identity, and often fears negative popular reaction.

The form of harm inflicted on members of the class constituting the incidental target may vary widely (e.g., destruction of buildings harboring persons in any way associated with opposition groups, detention of family members of persons in opposition groups even where such family members are not reasonably believed to have contact with that person), but the most common form is that of torture. Torture serves two functions: it may in fact result in information concerning the opposition if the person tortured has any such knowledge; or if the person has no such knowledge, the example of his or her experience will serve to frighten the opposition toward who it was supposedly intended, and any persons contemplating any form of association, however remote, with groups unfriendly to the government in power.

DESTROYING PASSIVE RESISTANCE—ASSERTING CONTROL

Occasions for the use of terror violence in peacetime against passive resistance arise where a sweeping policy is to be implemented which necessitates drastic changes in the social and economic structure of the state. In such cases the government may lack the persuasive power or resources to achieve the contem-

34. See note 15 supra.
plated transformation. Thus it feels compelled to convert the passivity of the population into active participation in the process of change, by means of terror-inspiring violence.

In such a context the primary target of the acts of terror violence is an unidentifiable class of persons who would ordinarily not wilfully cooperate in the state's transformative programs (e.g., large landowners in the face of land reform, urban residents where a return to agriculture is ordained). Subsequently they may be identified for direct coercive action on a general or selective basis to further the transformative programs of the state. The selection of incidental targets is particularly arbitrary in this context because suitable victims would include first, persons or groups colorably fitting the description of the primary target class, whether cooperating actively or not; and second, any person or group not actively cooperating in the program, whether a member of the primary target class or not.

This second category of potential incidental targets describes a class that may also constitute the state's agents implementing the coercive acts. Thus, when landless peasants are urged to take over the estates of large landowners, the state may effectively "terrorize" not only large and medium sized landowners who do not quickly abandon their estates but also peasants who do not demonstrate an interest in evicting landowners.

In this situation, the required publicity may be satisfied either by rumor or by carefully worded propaganda published through state-controlled channels. The coercive message becomes clear to two classes of persons; all holders of more than one insignificant piece of land are convinced to relinquish it and all peasants are afraid to refrain from evicting landowners.

The result is a form of controlled anarchy in which the state can play a relatively inactive role allowing the victims of terror to do its work for it. This result may economize governmental resources, but may often work unnecessary hardships on thousands upon thousands of its citizens (e.g., the forced exodus from Phnom Penh as a measure to reduce reliance on bourgeoise occupations and foreign income; the North Vietnamese land reform of 1957-1958).

At times the state may allow such terrorism to be performed by unofficial groups (e.g., the role in Chilean land reform of communist organizations under Allende as an example of overcoming passive resistance; blacklisting by private employers of suspected communists by United States industry in the 1950's as an example of destroying opposition), creating problems of proof of agency. As
will be discussed below, the principles of state responsibility and obligations under international human rights principles are applicable to such activities.\textsuperscript{35} It is noteworthy that in these and other instances of state related terror-inspiring strategies the media never enjoys any freedom. It is invariably controlled and manipulated to serve as the instrument of the state's policies. Thus the media as a disseminating agent remains indispensable to the effective implementation of a strategy of terror violence. Conversely it must be emphasized that a free press carrying out its responsibilities would be the most effective bulwark against such state practices, because it would not only deprive the state of the terror-inspiring propagating means of dissemination, but counteract whatever similar means the state may use.

\textbf{VI. COUNTER-STRATEGIES TO TERROR VIOLENCE}\textsuperscript{36}

\textbf{CONTROLLING THE INDIVIDUAL}

\textit{Criminal Law Sanctions}\textsuperscript{37}

A basic postulate of criminal law is that as an instrument of social control it employs socially accepted coercive strategies in an effort to obtain socially conceived goals. That postulate is predicated on the assumption that society, having adopted value judgments concerning the significance of certain social interests which seek to protect and preserve, only resorts to coercive means in order to achieve its essential goals of protection and preservation of those social interests. Thus, the purpose of a criminal law is to attain value-oriented goals by means which conform to certain socially accepted standards.

These social interests reflect certain basic values, the preservation of the social order and the protection of individual members of society from unwarranted harm. The ideologically motivated offender, who personally perceives a basic value conflict with these criminal laws, avoids the question of individual harm; rather he fo-


\textsuperscript{36} This point is adapted from Bassiouni, Criminological Policy, in LEGAL ASPECTS, supra note 1, at 523-34.

\textsuperscript{37} M.C. BASSIOUNI, SUBSTANTIVE CRIMINAL LAW 75-105 (1978).
cuses upon the issue of social order. Such a person perceives the violation of a criminal law as a clash of ideologies; he notes that the conflict is necessary, and conveniently ignores its consequences. Thus, if the victim is a person who holds political office (or has a symbolic or representative capacity in the system attacked), then the harm caused to such a person is justified as punishment or self defense. However, if the victim is an innocent person, harmed as a result of random violence, then the offender rationalizes the result as a political necessity; the system under attack shoulders the blame for causing or compelling the violent action which produced the regrettable result.

The ideologically motivated offender is essentially unconcerned with the fact that he or she is committing a violation of the criminal law which embodies certain social values and which is likely to cause harm to individuals. Consequently, only preventive control measures can provide effective limits upon that person's decision to commit or to refrain from committing a criminal violation. In that respect, however, the sanction of the criminal law can only be effective if the personal risks which the actor may incur outweigh the importance of the political objective sought. Thus, the effectiveness of the criminal sanction is relative to the personal commitment the actor feels to his or her ideological purpose in light of the importance that he or she attributes to the contemplated act. Consequently, attention must be directed toward the sanctions employed by the criminal law and its application to such offenders in order to assess its effectiveness.

1. The Death Penalty

The death penalty has been abolished in a significant number of states and countries, and is rarely applied even where it is retained. Throughout the world community it has been under attack since the late seventeenth century. For a variety of reasons, since 1945, it has seldom been employed in cases of international terrorism. The incapacitating nature of that sanction is unquestionable but its finality has raised serious moral questions. Indeed, whether the death penalty is or is not a cruel, unusual or inhumane punishment is still debated, and even its deterrent value remains questionable. Its use is ultimately a policy decision.

Out of its finality arises only one advantage, that the individual

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38. Id. at 120-27.
is eliminated as a plausible target for release through further terrorist acts by his fellow terrorists.

However, several factors militate against the death penalty as a policy choice. Among these considerations are: 1) it is seldom if ever employed; 2) it applies only to a limited number of violations; 3) it tends to make martyrs of the executed persons and thus brings sympathy to the deceased and to his or her movement; 4) it is somewhat offensive to public morality and rejected by a large segment of the world; 5) it tends to discredit the society which employs it as revenge against individuals; and 6) it diminishes the moral authority of the state which seeks to enlist public support against violence.  

2. Imprisonment

Criminologists, penologists and other observers of the corrections system of the world have contended that imprisonment has failed as an instrument of social control and resocialization, and that therefore it should be reconsidered. Some have even maintained that imprisonment should be abolished altogether. Moreover, there is a trend toward reducing prison sentences and developing alternatives to imprisonment.

The question arises, therefore, as to whether imprisonment is still a valid means of controlling violent behavior.

3. Theories of Punishment and Their Application to "Terrorists"

A. Rehabilitation

This theory is predicated on a quasi-medical model which assumes that a person in an institutional setting will be resocialized once released. Irrespective of the merits of this theory (which is now almost uniformly discredited) it is inapplicable to the ideologically motivated offender because such a person will remain anti-social (in that social context); he is opposed in whole or in part to the social system into which he is to be resocialized. There can be no success in resocializing one whose basic values are opposed to the preservation of the society's existing structures and institutions.

40. For these reasons the death penalty cannot be considered a viable sanction for the prevention and control of terrorism; therefore, this paper will focus upon imprisonment.
42. Id. at 101 n.93.
43. Id. at 96.
B. Deterrence

The criminal sanction is a deterrent when its general impact outweighs the benefits of the contemplated transgression of the law. Its "special effect deterrence" is felt when, in the evaluation of a given transgressor, the particular penalty outweighs the personal benefits derived from the violation. In the case of the ideologically motivated offender, such evaluation is made in the light of the degree of the personal commitment of that individual to the ideological value sought, weighed against the personal risks involved. In this evaluative framework, two other factors should be taken into account: (1) the tactical importance of the objective to be attained by the commission of the criminal violation, and (2) the risk of neutralization resulting from the actor's apprehension and detention.

For a committed ideological offender, the threat of imprisonment is counterbalanced if the importance of the objective to be attained by a given act of terrorism is very great; or the consequences of capture and imprisonment include an opportunity to obtain valuable publicity to demonstrate the willingness of those holding such ideological beliefs to sacrifice themselves on behalf of the cause.

Thus, the first of these factors is satisfied by merely choosing a sufficiently important objective or incidental target, and the second may be met even where the target is unimportant if the need for publicity is very great. The deterrent effect of imprisonment is therefore largely ineffective with respect to ideologically motivated offenders.

C. Retribution

Retribution is a discredited theory because it has almost invariably been presented as the embodiment of a purely retributive lex talonis; however, this analysis is not entirely accurate. Retributive justice is part of social justice in that it redresses an imbalance between the victim and the aggressor, an imbalance occasioned by the aggressor's action. There can be no effective deterrent value to the criminal sanction in the absence of a retributive or punitive element. Thus, to the extent that a punitive element is indispensable to deterrence, retribution cannot be ignored. Considering that (to the ideologically motivated offender) rehabilitation is inapplicable and deterrence is largely ineffective,

44. Id. at 93.
45. Id. at 92-93.
unless it contains a punitive element which can outweigh (in the mind of the act) the gains to be derived from the violation, the punitive theory is indispensible to the effectiveness of the criminal sanction.

The punitive element in the criminal sanction may well be the principal basis on which to mete out punishment to the ideologically motivated offender. It may be the only way to redress an imbalance with respect to the affected rights of the victim. In essence, this is a form of retributive justice and not a form of repressive injustice, as the punitive approach in the criminal sanction is all too often characterized. It is, nevertheless, important to realize that retributive justice, which is a response to instinctual justice, must balance the social and individual need for vengeance and certain standards of humaneness. The values of each society will determine that balance subject to the overall standards of humaneness achieved by world community standards and mores. As a matter of criminal justice policy, it is better to err on the side of humaneness than on the side of retributiveness in order to avoid the martyrdom with which the offender might be endowed by excessively severe punishment. On the other hand, leniency should not reach a level which would remove all retribution from the criminal sanction because so far behavioral studies have found retribution to be the principal ingredient of deterrence.

D. Incapacitation

Incapacitation is the most logical and credible theory. Its premise is that the offender is dangerous and so he must be neutralized in an institutional setting in order to prevent a repetition of similar anti-social behavior. The problem is one of predicting the offender's future threat to society, assumed all too often from prior acts. A seductive yet deluding appeal is present in this approach of prophylactic punishment whereby dangerous persons are identified among criminal violators and are incapacitated thereafter in prisons. The determination of dangerousness and its future predictability is a hazardous guessing game, all too often based on little more than hunches derived more from common tales than from reliable data. The length of time for which an ideologically motivated offender should be imprisoned is also a problem, compounded by the fact that penalties must be meted out for crimes actually committed and not for foreseeable crimes. In any event, incapacitation serves as a control only as long as a person is imprisoned. It serves no purpose beyond that.

46. Id. at 96-97.
E. Appraisal of the Sanctions

Imprisonment is, therefore, of limited effectiveness except insofar as it neutralizes a person who has already committed a violation; consequently, attention must turn away from imprisonment as a presumed deterrent and focus instead on the effectiveness of preventive law enforcement. Ultimately, this may be the more important factor in that it determines, in the evaluation of the prospective violator, the chances of success or failure of the contemplated criminal scheme and, thus is the principle factor in his decision to engage in such conduct.

4. International Cooperation

Although the deterrent sanctions available are of inconclusive value, there is no question that whenever possible, terrorists must be apprehended, prosecuted and punished. However, due to the character of their activities, terrorists often succeed in escaping the state in which their crimes were committed; this gives rise to problems of international enforcement.

Because the component acts of terrorist crimes are recognized generally as crimes under all legal systems, the difficulty in international enforcement does not stem to any great degree from difficulty in defining the specific acts of terrorism.

A. The Machinery for Cooperation

It is the machinery of cooperation itself which presents impediments to effective international enforcement. Treaties, customary practice, and the national laws of states establish the basis for international cooperation in the prevention and suppression of criminality. The maxim commonly referred to in this context is aut dedere aut iudicare. The state's cooperative duty is restricted to

47. Id. at 101.
49. The maxim aut dedere aut punire is attributable to H. Grotius, De JURE BELLII AC PACIS (1624), reprinted in CLASSICS OF INTERNATIONAL LAW (1944); its slight change from aut punire to aut iudicare was made by this author, see Bassiouni, An Appraisal of the Growth and Developing Trends in International Criminal Law, 45 REVUE INTERNATIONALE DE DROIT PENAL 405, 430 (1974); Costello, International Terrorism and the Development of the Principle Aut Dedere Aut Judicare, 10 J. INT'L L. ECON. 483 (1975).
the submission to prosecution of the alleged violator, or to his extradition. Consequently, this duty is an extension of the state's criminological policy for the prevention and control of violence; the failure of a state to carry out such a duty can only frustrate the effectiveness of any domestic crime control scheme. The effectiveness of the international duty to extradite or prosecute becomes a significant factor in assessing the effectiveness of the domestic preventive and enforcement scheme. It should be observed, however, that the principal impediment to this international duty is the political offense exception.

B. The Political Offense Exception

Not all acts of violence are committed with a view to achieving a power outcome. Indeed, such acts may be committed as a last resort, by reason of necessity or self-defense. These cases arise whenever the actor's fundamental human commitment to personal freedom and safety is the object of serious and repeated repression which by "reasonable standards" can only be averted through the commission of such an act. This person is an ideologically motivated offender who could easily satisfy the definition of a terrorist. Thus, persons who commit acts of violence against others as a means of safeguarding themselves or others for humanitarian or political reasons violate positive law; they may, however, possess a claim to the defense of "necessity" or to mitigation of punishment. This is the classic justification advanced for the preservation of the "political-offense exception" in extradition. Thus states may refuse to limit their prerogative of denying extradition whenever they deem that the political or humanitarian "necessity" motivates the actor's criminal act.

It is essentially in recognition of this consideration that the duty to extradite in international criminal law is an alternative to the duty to prosecute. However, the trial of an ideologically motivated offender by a sympathetic tribunal could result in exonerating the accused, or imposing a slight or conditional sentence. In these cases the trial and the criminal sanction are not intended to


52. This is the present trend in international criminal law as witnessed by the existence of such a requirement in all international criminal law conventions, see generally Legal Aspects, supra note 1; International Criminal Law (Vols. I & II), supra note 16.
deter such a person or others, but are merely a formality designed to appease another state or world public opinion. As such, it is designed, at best, to justify the denial of extradition and to provide the state in which the violation took place, and whose request for extradition has been denied, with some face-saving device.

All states presently exclude the category of political offenders from the scope of their criminological policy, and some states expand the definition, raising questions as to what constitutes a political offense and under what conditions a person can claim a defense of necessity which would result in the denial of extradition (or in the case of a trial, exonerate him from criminal responsibility). In the absence of an absolute duty to extradite or prosecute, and in the absence of a clear policy on the defense of necessity in exoneration of responsibility or in mitigation of punishment, the effectiveness of a domestic control scheme will usually be commensurate with the opportunities for freedom of movement from that state to another. It must be concluded, therefore, that the weaknesses of any domestic scheme for the control of violence are compounded by the opportunity of evading that scheme altogether by resorting to safe-havens or to countries from which the likelihood of extradition is remote, or where the prospects of a trial and punishment are limited.

C. Summary

Thus, in addition to the endemic problems of the ineffectiveness of criminal sanctions in the domestic processes of prevention and control of violence, we must add those of any international control scheme. The destruction of the credibility of the criminal sanction is pervasive, and the consequences which derive from the ineffectiveness of the criminal sanction in the controversy of terror violence are likely to affect other aspects of criminal control of social deviance.

CONTROL OF STATE TERRORISM

The Legal Framework

Generally, sovereign states are subject to few international legal controls within their own territory, except to the extent that they are committed by international agreement to limit the exercise of their sovereignty. A number of international conventions relating to human rights presently exist which forbid arbitrary interference with the welfare and security of individuals; signatories to such conventions are bound to refrain from terrorizing popula-
tions under their control. But such conventions provide for no means of direct enforcement.

Human rights conventions such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and Four Geneva Conventions of August 12, 1949 also stand as a bar to state terrorism. However, enforcement is left to the discretion of the various states while international agencies are subservient and helpless to prevent their violation.

The right of humanitarian intervention by one state in the domestic affairs of another might serve as a justification for such action in response to extreme conduct, but would in no way require any state or international organization to take such action. At the regional level the European Convention on Human Rights and Fundamental Freedoms is much more effective in preventing state violations of human rights.

Assessment of Enforcement Means

Accordingly, state terrorism occasions no sure sanctions whatever. It does, however, create the possibility of sanctions in the following ways:

1) Severe instances of state terrorism may be viewed as con-

53. See notes 17 and 35 supra. For a detailed analysis of the humanitarian aspects of the Geneva Conventions, see J. Pictet, Commentary on the Geneva Convention (1956).


56. See note 17 supra.


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stituting widespread and continuing serious violations of human rights, resulting in a claim by another state of a right of humanitarian intervention to end such conduct.61

2) Severe instances of state action may result in the imposition of sanctions by the United Nations agencies (intervention in the Congo may be capable of interpretation in this light); if done by non-United Nations members, this may result in delay in admission to the United Nations.

3) Even moderately severe instances of such conduct may result in sanctions by other states, particularly where the offending state is a signatory with states elevating the position of human rights. Such sanctions might include: diplomatic protests; withdrawal or curtailment of international aid; imposition of trade barriers; suspension of diplomatic relations; and covert or open support of persons or groups advocating overthrow of the government of the state engaging in such conduct.

4) Less severe conduct can be engaged in with no likely adverse international consequences.62

It should be noted, however, that the effectiveness of any potential sanction against a state engaging in terrorism would depend greatly on concerted action by other states or cooperation of member states with the United Nations, and no mechanism for securing such effort is in existence.63

In conclusion, there is no threat of sanction great enough to deter state terrorism generally, but the slight possibility of humanitarian intervention or United Nations involvement may tend to discourage state excesses in this area.64 It is however noteworthy that in this respect world public opinion fostered by public interest groups and a free press is the only bulwark against such violations.65

61. An example of such an instance would include India's intervention into humanitarian concerns in Bangladesh. See Mac Dermot, Crimes Against Humanity in Bangladesh, 7 INT'L LAW. 476 (1973). See also note 58 supra.


64. There remains however the possibility of private self-help measures. See note 57 supra.

65. For a discussion of the importance of a free press as a control against state
CONCLUSION

The phenomenon of terror violence may be here to stay for awhile. Indeed, so long as the veneer of civilization remains thin, human activism will emerge in its many forms. The extermination of Armenians by the Turks during World War I was then said to be the worst human manifestation ever witnessed; an estimated one million people were killed.\textsuperscript{66} A few years later the Jewish Holocaust of World War II elevated the estimated number of victims to six million people.\textsuperscript{67} The world settled to the comforting belief that the Nazi anomaly was peculiar and would never reappear. Then came Biafra with an estimated one million killed in the 1960's, followed by more than one million killed in Bangladesh in the early 1970's,\textsuperscript{68} followed by an estimated three million in Cambodia\textsuperscript{69} in the last two years. That does not even start to assess state conducted or condoned torture, arbitrary arrests and detentions, expulsions and expropriations committed against entire populations such as the Palestinians,\textsuperscript{70} Vietnamese, Cambodians, as well as against certain classes of persons, and individuals in countless countries. To that can be added the more subtle forms of economic coercion in some state controlled economies and so many other forms of human deprivation.

Finally we have individual acts of terror violence committed by ideologically motivated offenders who equally violate the basic human rights of innocent civilians in the name of a higher purpose, and thus destroy the peace and tranquility of many a society.

A climate of terror is today a part of life, unfortunately accepted by our heightened tolerance for violence as a necessary evil in contemporary modern urban industrial societies. Rejection of violence in all its forms in unfortunately reducing in almost direct proportion to its increase. And so the vicious cycle continues to spiral and the tendency to respond to violence by more violence prevails. The humanism that should have characterized the post-World War II era, if memory still serves one right, appears to be eroding fast, if it ever existed.

\textsuperscript{67} See L. Dawidowicz, War Against the Jews 1933-1945 (1975).
\textsuperscript{68} See generally Mac Dermot, Crimes Against Humanity in Bangladesh, 7 Int'l Law 476 (1973); Nanda, Self-Determination in International Law, 66 Am. J. Int'l L. 321, 331-33 (1972).
\textsuperscript{69} See note 12 supra.
\textsuperscript{70} See generally M.C. Bassiouni, The Palestinian's Rights of Self-Determination and National Independence (1978).
An attempt to rationally explain terror violence as proposed in this article is not to serve the reader's dispassionate intellectual curiosity, but to highlight among other things the paradoxes of violence and the distorted public perceptions about that form called "terrorism." Maybe in some way this study will prove helpful in placing the problem in perspective and will stimulate a rational policy toward prevention and control which can only stem from a better understanding of the phenomenon. In that way we could hope to prevent the dangerous trend of escalating violent responses to violence. The repressiveness which could result from present attitudes and tendencies in certain countries as a response to individual terror violence, while conveniently ignoring its state activated counterpart, could cause greater and more lasting harm than the terror violence itself. It is during such times of crisis reactions as we are witnessing in many parts of the world that the voice of reason must be heard above the engulfing tumult of panic before it indiscriminately submerges the good with the evil.