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Douglas Kash

ABDUCTIONS OF TERRORISTS IN INTERNATIONAL AIRSPACE AND ON THE HIGH SEAS

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The solutions for successfully defining, preventing, and punishing terrorist acts remain elusive. After decades of international, regional, and domestic conventions and drafts, resolutions, and statutes, the world community has yet to accept any single definition as universally sound. This

* B.A., M.S., J.D. The author practices law in Washington D.C. and is an adjunct professor of criminal justice at Northern Virginia Community College. Mr. Kash is also the legal editor of COUNTERTERRORISM AND SECURITY MAGAZINE.

article will describe some of these conventions which, due to the perceived and real ineffectiveness of earlier legislation, have been modified by later conventions. This article also will describe and justify incidents in which countries have had little choice but to resort to self-help measures and apprehend terrorists from within international airspace and on the high seas. Events such as the Pan Am 103 Lockerbie bombing and the murder of CIA employees outside of the entrance of CIA Headquarters provide explicit examples of how a terrorist can literally and figuratively "get away" with murder. A nation must not only have the operational ability but also the legal authority to apprehend suspects as they make their escapes. Finally, a recommendation will be proposed for a definition of terrorism that all sovereign nations should find acceptable. The world community finds itself in a dilemma at the present time; the crux of the dilemma is finding a definition on which all nations can agree and can utilize to address incidents of terrorism as a cohesive, multilateral unit.

I. TERRORISM — DEFINED

A. *United Nations Resolutions*

The nations of the world first attempted to define terrorism during a series of conferences which came to be known as the International Conferences for the Unification of Penal Law.[1] This grew out of the work by Quintilliano Saladana who, while at the Hague Academy in 1925, introduced the category of "international crime" and included in it crimes against the rights of people and crimes committed against heads of foreign states or their diplomatic representatives.[2] Many attempts, such as the first five conventions, were made to reach an international agreement on terrorism, but all failed. This failure was a result of the inability of states to agree on a definition of "political crime" and to determine what exactly constituted a "terrorist" act.[3] As a result of the assassinations of King Alexander I of Yugoslavia, French Foreign Minister Louis Barthou and Austrian Chancellor Dr. Dollfuss, the sixth convention of the series was held.[4] During this Sixth Convention in Copenhagen in 1935, a definition of terrorism was drafted which defined terrorist acts as "willful acts directed against the life, physical integrity, health or freedom" of various officials, "causing a disaster" by "impeding" or "interrupting" transport or utility services, "willful destruction of . . . public buildings," "willful use of explosives in a

1. Geoffrey Levitt, *Is 'Terrorism' Worth Defining*?, 13 OHIO N.U. L. REV. 97, 97 (1986).

2. Caleb M. Pilgrim, *Terrorism in National and International Law*, 8 DICK. J. INT'L L. 147, 157 (1990).

3. *Id.*

4. JAMES M. POLAND, UNDERSTANDING TERRORISM — GROUPS, STRATEGIES, AND RESPONSES 211 (1988).

public place," or "any other willful act which endangers human lives and the community," where any of the acts "has endangered the community or created a state of terror calculated to cause a change in or impediment to the operation of the public authorities or to disturb international relations."[5] The series of conventions culminated with the League of Nations Convention for the Prevention and Punishment of Terrorism which, in order to suppress terrorism, adopted the definition of an act of terrorism as "criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons, or the general public."[6]

In the late 1960s and early 1970s, the international concerns about terrorism began to re-emerge. In 1972, the United States submitted a draft (the United States 1972 Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism) to the Sixth Committee of the U.N. General Assembly.[7] This draft did not use the word "terrorism" in the operative content of the body, but instead substituted "offense of international significance."[8] Partly as a result of this, the U.N. established an Ad Hoc Committee on International Terrorism.[9] This Committee created three Sub-Committees, only one of which was designated to devise an operative definition of "terrorism."[10]

This group was unable to reach a unanimous legal definition of terrorism, but did propose examples of what should be included in a definition of "international terrorism." These included:

> (1) Acts of violence and other repressive acts by colonial, racist, and alien regimes against peoples struggling for their liberation . . . ;
> (2) Toleration or assistance by a State to the organizations of the remnants of fascist or mercenary groups whose terrorist activity is directed against other sovereign countries;
> (3) Acts of violence committed by individuals or groups of individuals which endanger or take innocent human lives or jeopardize fundamental freedoms. This should not affect the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination and the legitimacy of their struggle . . . ;
> (4) Acts of violence committed by individuals or groups of

5. Levitt, *supra* note 1, at 97-98.
6. League of Nations Doc. C.546 M.383 1937 V (1937); Levitt, *supra* note 1, at 98.
7. U.N. Doc A/C.6/L.850 (1972); Levitt, *supra* note 1, at 99.
8. Levitt, *supra* note 1, at 99.
9. *Id.*
10. *Id.* at 99-100.

individuals for private gain, the effects of which are not confined to one state.[11]

Soon thereafter, a variety of other definitions of terrorism were proposed and adopted by various regional and international organizations. However, it was not until the mid-1980s that a more significant and thoughtful approach to defining "terrorism" began to emerge. In 1985, Minister Doudou Thiam, Special Rapporteur for the International Law Commission in Draft Code of Offenses Against Peace and Security of Mankind, referred to the definition provided by the 1937 Convention in his report to the U.N.[12] In his report the following year — the Report of the International Law Commission on the Work of its 38th Session — Thiam incorporated a definition almost verbatim from the 1937 Convention.[13] The working definition which developed was that the action — the *actus reas* — must be a punishable offense, which is directed against a state or its population, and intended or calculated — the *mens rea* — to create a state of fear or "terror" in the minds of individuals or the general public.[14]

However, it was on December 9, 1985, that the United Nations finally, and for the first time, adopted a resolution condemning all acts of terrorism as "criminal" acts.[15] During the debate, fifty-seven countries participated by speaking out on the subject of terrorism prevention.[16] Israel said, "[N]o cause could justify acts of terrorism or serve as a pretext for states to escape obligations under international law." International terrorism was aimed at destroying the rule of law.[17] Belgium, on behalf of the European Community, Spain and Portugal stated, "[T]he prevention and punishment of criminal acts should be ensured, and the taking of hostages and other crimes must no longer be treated as "acts whose political character protected their perpetrators from extradition or prosecution."[18] Sweden, on behalf of the Nordic countries, said, "[T]he legitimacy of a cause such as the struggle for self-determination and independence, did not in itself legitimize the use of certain forms of violence, especially violence against innocent

11. *Id.* at 100 (citing 28 U.N. GAOR Supp. (1973)).

12. Doudou Thiam, *Third Report on the Draft Code of Offenses Against the Peace and Security of Mankind*, U.N. Doc. A/CN.4/387, *reprinted in* [1985] 2 Y.B. Int'l L. Comm'n 82-83, U.N. Doc. A CN.4/SER.A/1985/Add. (Pt. 1); Sompong Sucharitkul, *Terrorism and Jurisdiction*, 14 SYRACUSE J. INT'L L. & COM. 141, 144 (1987).

13. *International Law Commission on the Work of Its 38th Session*, U.N. Doc. A/41/10, *reprinted in* [1986] Y.B. Int'l L. Comm'n 43 n.105; Sucharitkul, *supra* note 12, at 144.

14. Sucharitkul, *supra* note 12, at 145.

15. *United Nations Resolution on Terrorism*, G.A. Res. 40/61, U.N. GAOR, 40th Sess., Supp. No. 53, at 301, U.N. Doc. A/40/53 (1985).

16. DAPHNE DORAN LINCOFF, ANNUAL REVIEW OF UNITED NATIONS AFFAIRS 180 (1985).

17. *Id.* at 181.

18. *Id.* at 182.

persons. There must be no safe haven for terrorists."[19]

The resolution also asked "all states to take appropriate measures at the national level with a view to 'the speedy and final elimination' of the problem, such as the harmonization of domestic legislation with existing international obligations, and the prevention of the preparation and organization in their respective territories of acts directed against other states."[20] States were also encouraged to "refrain from organizing, instigating, assisting or participating in terrorist acts in other states, or acquiescing in activities within their territory directed towards the commission of such acts."[21] They were further urged to cooperate by exchanging relevant information in combatting terrorism.[22]

The world had officially accepted terrorism, not as an expression of political ideologies, but as a crime. Although the exact crimes which would be considered terrorist acts were not designated, due to previously accepted conventions some acts were known to be criminal without this newest U.N. Resolution. These conventions include: The Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo Convention);[23] Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention);[24] Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention);[25] International Convention Against the Taking of Hostages;[26] Vienna Convention on Diplomatic Relations;[27] Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents;[28] and the Final Act on the Conference on Security and Cooperation in Europe Done at Helsinki.[29] Regardless of these definitions, there is still confusion with respect to defining who is a terrorist and what terrorism is.

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19. *Id.* at 183.

20. *Id.* at 180.

21. *Id.*

22. *Id.*

23. Convention on Aviation: Offences and Certain Other Acts Committed on Board Aircraft, *done* Sept. 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 219 (entered into force Dec. 4, 1969).

24. Convention on Suppression of Unlawful Seizure of Aircraft (Hijacking), *done* Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105 (entered into force Oct. 14, 1971).

25. Convention on Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), *done* Sept. 23, 1971, 24 U.S.T. 565, 974 U.N.T.S. 177 (entered into force Jan. 26, 1973) [hereinafter Montreal Convention].

26. International Convention Against the Taking of Hostages, G.A. Res. 34/146, U.N. GAOR, 34th Sess., U.N. Doc. A/RES/34/146 (1980).

27. Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes, *done* Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 (entered into force for the United States Dec. 13, 1972).

28. Convention on Prevention and Punishment of Crime Against Internationally Protected Persons, including Diplomatic Agents, *done* Dec. 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167 (entered into force for the United States Feb. 20, 1977).

29. Final Act of the Conference on Security and Cooperation in Europe, *done* Aug. 1, 1975, 14 I.L.M. 1292 (1975).

B. *Domestic Statutes*

One of the United States' first attempts of the to define international terrorism was in the 1978 bill "Act to Combat International Terrorism."[30] The bill divided the definition into five components. The bill was never enacted, however, because Congress chose instead to enact the 1978 Foreign Intelligence Surveillance Act.

The first component defines "international terrorism" as any act which is designated as an offense under three existing international conventions: the Convention for the Suppression of Unlawful Seizure of Aircraft (which sets forth as an offense the unlawful seizure of aircraft); the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (which lists offenses as acts of violence on board aircraft in-flight, damage or sabotage to aircraft in service or air navigation facilities or the communication of false information likely to endanger the safety of aircraft in flight); and the Convention of the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (which lists offenses such as the murder, kidnap or attack of internationally protected persons, or violent attacks on their official premises, private accommodations or means for transportation).[31]

The second component added to the definition "any other unlawful act which results in the death, bodily harm, or forcible deprivation of liberty to any person, or in the violent destruction of property, or an attempt or credible threat to commit any such act."[32] The third component identified the locations which would be considered international for purposes of the act. For this, the bill provided four tests, one of which had to be satisfied. The location would be considered international if the act occurred:

> (1) outside the territory of a state of which the alleged offender is a national;
> (2) outside the territory of the state against which the act is directed;
> (3) within the territory of the state against which the act is directed and the alleged offender knows or has reason to know that a person against whom the act is directed is not a national of that state; or
> (4) within the territory of any state when found to have been supported by a foreign state, irrespective of the nationality of the alleged offender.[33]

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30. S. 2236, 95th Cong., 2d Sess. (1978).
31. *Id.* § 3.
32. *Id.*
33. *Id.*

The fourth component required that the act has as its motive or goal the intent or threat to damage the interests of a state or international organization, or the intent to obtain concessions from a state or international organization.[34] The fifth and final component excluded acts committed in the course of military or paramilitary operations directed essentially against military forces or targets of a state or organized armed group. This exclusion was due to the fact that these acts are encompassed in the body of international law relating to international armed conflict, which can be found in the Geneva Conventions of 1949 and the Protocol Additions to the Conventions completed in July 1977.[35]

In the same year, Congress passed the first statute defining international terrorism in the Foreign Intelligence Surveillance Act of 1978.[36] This Act provided that international terrorism means activities that:

> (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;
>
> (2) appear to be intended
>
> (A) to intimidate or coerce a civilian population;
>
> (B) to influence the policy of a government by intimidation or coercion; or
>
> (C) to affect the conduct of a government by assassination or kidnapping; and
>
> (3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.[37]

A number of other acts were subsequently introduced that further refined the definition. These include: the Report Prepared for the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary, State-Sponsored Terrorism[38] the "Anti-terrorism Act of 1985,"[39] the "International Terrorism Deterrence Act of 1985,"[40] the "Antiterrorism Act of 1986,"[41] and the "the Antiterrorism Act of 1986 [clean bill-redraft]."[42]

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34. *Id.*
35. *Id.*
36. Pub. L. No. 95-511, 92 Stat. 1783 (1978) (codified at 50 U.S.C. § 1801 (1982)).
37. *Id.* § 101(c).
38. STAFF OF SENATE COMMITTEE ON THE JUDICIARY, 99TH CONG., 2D SESS., REPORT ON STATE-SPONSORED TERRORISM (Comm. Print 1988).
39. S. 275, 99th Cong., 1st Sess. (1985).
40. S. 1941, 99th Cong., 1st Sess. (1985).
41. H.R. 4294, 99th Cong., 2d Sess. (1986).

Another statute enacted was Title 18, Chapter 204 — Rewards for Information Concerning Terrorist Acts, section 3077 — Definitions, which came to be known as the "Attorney General's terrorism reward authority."[43]

Yet another definition, codified in U.S.C. Title 18, section 2331, is nearly identical to the Federal Intelligence Surveillance Act. The only change in the definition is in section 1(C) of 2331, which reads "occur *primarily* outside the territorial. . . ." The United States has a number of definitions that are used when an official publication is produced. The wording differs, but they generally mean the same thing. However, the variety and scattered locations of terrorism provisions in the United States Code impedes the development and understanding of exactly who and what are terrorists.

C. *Challenges to the Official Definitions*

Because an act that one state considers terrorism, another may consider as a valid exercise of resistance, it is difficult to prepare effective legal principles to deter terrorism.[44] Demonstrating the problem is the notion that "one man's terrorist is another man's freedom fighter."[45] As suggested by one author, the difference between terrorists and freedom fighters is that terrorists kill innocent civilians, while freedom fighters save lives and fight at the risk of their own lives "until liberty wins the day."[46] The main difficulty lies in the fact that each time an incident occurs, the international community cannot consistently interpret whether the act was a terrorist attack or a legitimate act of a freedom fighter.[47] The United Nations has not alleviated the definitional problems involved. In fact, the U.N. has granted a limited amount of legitimacy to groups who are responsible for acts that have been labeled "terrorism."

In December 1973, the U.N. passed Resolution 3103 which granted legitimacy to conflicts involving the struggle of people against colonial and racist regimes by labeling them as "armed conflicts."[48] One year later, the U.N. adopted a Definition of Aggression, which justified terrorist activities when terrorism is waged on behalf of self-determination movements or di-

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42. H.R. 4786, 99th Cong., 2d Sess. (1986).

43. 18 U.S.C. § 3077 (West 1984).

44. Elizabeth R.P. Bowen, Note, *Jurisdiction Over Terrorists Who Take Hostages: Efforts to Stop Terror-Violence Against U.S. Citizens*, 2 AM. U. J. INT'L L. & POL'Y 153, 159 (1987).

45. *Id.* at 159 (citing Begin, *Freedom Fighters and Terrorists*, in INTERNATIONAL TERRORISM: CHALLENGE AND RESPONSE 39-46 (B. Netanyahu ed., 1979)).

46. *Id.* at 159 n.26.

47. *Id.* at 160 n.28.

48. *Basic Principles of the Legal Status of Combatants Struggling Against Colonial and Alien Domination and Racist Regimes*, G.A. Res. 3103, U.N. GAOR, Supp. No. 30, at 142, U.N. Doc. A/9030 (1973).

rected against colonial and racist regimes.[49] Many groups have tried to fall into the U.N. definitions by claiming that their actions are legal expressions of their rights. According to political philosopher Frantz Fanon, "national liberation, national renaissance, the restoration of nationhood to the people . . . is always a violent phenomenon."[50] Additionally political scientist Rupert Emerson claims "self-determination when self-exercised involves revolution."[51] Due to this uncertainty, many groups are waging destruction upon sovereign nations and claiming, and thereby receiving impunity, that they are engaged in a legitimate and legal war and that they are only fighting for their freedom.

The variety of classifications used, resolutions adopted, and laws enacted only increase the difficulty in differentiating between a terrorist act and a legal and legitimate act of a freedom fighter. With the old order crumbling and the superpowers reshuffled, the U.N. is taking on a renewed role and has broken free from the shackles of Cold War politics.[52] The time is long overdue for the world body to invalidate the definitions of terrorism it has espoused in the past and provide one certain and final definition that can be held up as a model to the world. The definition should be clear, yet flexible enough to provide for any unforeseeable changes in tactics by terrorist groups. The definition should list all of the known types of acts which are unquestionably terroristic. This new definition would allow countries, new and old, to take measures to prevent and punish terrorism in such a way that all countries will agree that the acts committed were terroristic and the people responsible for them should be held accountable in a court of law.

II. EFFORTS TO CONTROL AND PUNISH TERRORISTS

A. *International and Regional Conventions and Resolutions*

For many decades the world has been trying to develop laws to prevent and punish terrorist acts. As discussed, the original problem was to devise a single definition that would appeal to all nations. Obviously this remains unlikely, if not impossible. The next obstacle was to make new laws respecting both the old and new forms of terrorist attacks. Contemporary statutes began to enter the world scene in 1963.

As a result of recent attempts to hijack aircraft, a number of states

49. *Definition of Aggression*, G.A. Res. 3314, 28 U.N. GAOR, Supp. No. 30A, at 142, U.N. Doc. A/9030/Add.1 (1974).

50. Robert A. Friedlander, *Terrorism and National Liberation Movements: Can Rights Derive From Wrongs?*, 13 CASE W. RES. J. INT'L L. 281 n.2 (1981).

51. *Id.* at 287; *see* RUPERT EMERSON, FROM EMPIRE TO NATION: THE RISE TO SELF-ASSERTION OF ASIAN AND AFRICAN PEOPLES 389 (1969).

52. Richard Z. Chesnoff, *The U.N.— A Force at Last*, U.S. NEWS & WORLD REP., Feb. 10, 1992, at 12.

gathered to draft and adopt responsive legislation. The Convention on Offenses and Certain Other Acts Committed on Board Aircraft, also known as the 1963 Tokyo Convention, penalizes acts that may jeopardize the safety of aircraft in flight or of persons or of property thereon.[53] The acts must occur aboard an aircraft registered in a signatory state while that aircraft is either in flight,[54] on the surface of the high seas, or in any other stateless territory.[55] The purpose of this convention is to enable at least one country to assert jurisdiction over the hijacker(s), regardless of the nature of the crime. This is to be accomplished by requiring member states to extend their national jurisdictions over the crimes within their confines.[56]

Due to the increasing number of incidents of hijacking and the ineffectiveness of the earlier legislation, another convention was held which tried to supplement the earlier declarations. The Hague Convention of 1970, unlike the Tokyo Convention, establishes and defines the international crime of hijacking a civilian aircraft.[57] Article 7 of that Convention gives a member state the choice of extraditing the offender or, should it be unwilling or unable to do so because of internal legal constraints, referring the case for prosecution.[58] One of the primary purposes of the Hague Convention is "to establish a form of near-universal jurisdiction over each hijacking incident."[59] It further dictates that the crime of hijacking should be subject to "severe penalties" under the national law of each of the convention's signatories.[60] Up to this point, hijacking was singled out as the crime which could not and would not go unpunished.

Later in 1970, the U.N. passed the United Nations General Assembly's Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.[61] This resolution held that "[E]very state has the duty to refrain from organizing, instigating, assisting, or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed toward the commission of such acts when the acts . . . involve a threat or use of force."[62] The problem re-

53. Convention on Offenses and Certain Acts Committed on Board Aircraft, *done* Sept. 14, 1963, art. 1.1(b), 20 U.S.T. 2941, 704 U.N.T.S. 219 [hereinafter Tokyo Convention]; Terry Richard Kane, *Prosecuting International Terrorists in the United States Courts: Gaining the Jurisdictional Threshold*, 12 YALE J. INT'L L. 294, 300 (1987).

54. Tokyo Convention, *supra* note 53, art. 1.2; Kane, *supra* note 53, at 300 n.44.

55. Kane, *supra* note 53, at 300 n.45.

56. Tokyo Convention, *supra* note 53, art. 3.3.

57. Convention on the Suppression of Unlawful Seizures of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105 [hereinafter Hague Convention]; Kane, *supra* note 53, at 301.

58. Kane, *supra* note 53, at 302.

59. *Id.*

60. Hague Convention, *supra* note 57, 22 U.S.T. at 1644.

61. G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8028 (1970).

62. *Id.*; *see also* Geoffrey Levitt, *The International Legal Response to Terrorism: A Reevaluation*,

mained, however, as to what each state considered a "terrorist" act. This failure essentially took the bite out of this, and many other, conventions.

The Montreal Convention of 1971, broadened the scope of what is to be considered an international criminal act that endangers the safety of an aircraft in flight or rendering an aircraft incapable of flight.[63] The Convention requires that all contracting states "endeavor to take all practicable measures" to prevent the offenses listed in this Convention.[64] The Convention gives the state one of two choices once it obtains custody of the offender(s). It may simply extradite an alleged offender. If a custodial state declines to extradite an alleged offender, it is required "without exception whatsoever and whether or not the offense was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution."[65]

The 1971 Organization of American States' Convention to Prevent and Punish the Acts of Terrorism Taking the Forms of Crimes Against Persons and Related Extortion That Are of International Significance, developed a class of crimes known as "common crimes of international significance" which encompass: kidnapping, murder, or other assaults against the life or personal integrity of, or extortion related to such crimes against, "those persons to whom the state has the duty to give special protection according to international law."[66] If the state refuses to extradite the offender, the convention requires that the state prosecute domestically "as if the act had been committed in its territory."[67] This convention tried to remove political ideologies from the definition of terrorism, by reclassifying the offenses as "common crimes of international significance."

In response to the massacre of Israeli athletes at the 1972 Munich Olympics, the United Nations called for legal suppression by its members of violent acts of terrorists by ratifying the Convention for the Prevention and Punishment of Certain Acts of International Terrorism.[68] However, many nations, primarily the United States and its allies, voted against this resolution due to its bias toward, and legitimizing of, violent national liberation movements.[69] The Arab and Soviet blocs, along with other allies, tried to shield radical movements, with which they sympathized and supported, from being classified as terrorist — thereby protecting them from interna-

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60 U. COLO. L. REV. 533, 536 (1989).

63. Montreal Convention, *supra* note 25, 24 U.S.T. at 565; Kane, *supra* note 53, at 303.

64. Montreal Convention, *supra* note 25, 24 U.S.T. at 571.

65. *Id.*

66. Organization of American States Convention on Terrorism, *done* Feb. 2, 1971, 27 U.S.T. 3949, O.A.S.T.S. 37 [hereinafter OAS Convention].

67. *Id.* art. 5.

68. U.N. Doc. A/C.6/L.850 (1972); Levitt, *supra* note 62, at 537.

69. Levitt, *supra* note 62, at 537.

tional condemnation and punishment. Once again, the world was unable to reach a consensus as to the most effective legal means of combatting terrorism.

Finally, in December 1979, real, substantive progress was made by the Sixth Committee (Legal) of the General Assembly recommending condemning terrorism *per se*.[70] Under the draft, "all acts of terrorism that endangered human lives or fundamental freedoms were unequivocally condemned," and an appeal was extended for all nations to become party to international conventions already in existence.[71] The resolution, in sum and substance, was later adopted by the United Nations.[72]

In 1985, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on Criminal Acts of a Terrorist Character.[73] The resolution provided an umbrella of illegitimate international violence, which categorized such criminal acts as aircraft hijacking and sabotage, attacks on internationally protected persons and hostage taking.[74] This resolution was later incorporated into the General Assembly Resolution 40/61 of December 1985, which "unequivocally condemned, as *criminal*, all acts, methods and practices of terrorism whenever and by whomever committed."[75]

After decades of terrorist violence that resulted in thousands of deaths and injuries, affecting territories of nations across the globe and international and sovereign airspace, the United Nations took a long overdue step in the fight against terrorism. Groups that once hid behind the shield of legitimacy while attacking innocents in restaurants, train stations, shopping plazas, ships and airplanes, lost their pretext. The acts which fell previously through the cracks of the multiple definitions, were not to be specified, but labeled criminal as a whole.

B. *Domestic Laws*

Presently, there are numerous sections in the United States Code that define, list, describe and provide punishments for various acts of terrorism. They are scattered throughout the code under a variety of titles. The following is a partial list and description of some of these provisions.

Under Title 18, Crimes and Criminal Procedure, section 1116 Murder or Manslaughter of Foreign Officials, Official Guests or Internationally Protected Persons, murders of such people are criminalized. Also in Title

70. U.N. Doc. A/34/786 (1979); Levitt, *supra* note 62, at 538.
71. Levitt, *supra* note 62, at 538.
72. G.A. Res. 34/145, 34 U.N. GAOR, Supp. No. 46, at 244 (1979).
73. U.N. Doc. A/CONF.121/L.12/Rev.1 (1985); Levitt, *supra* note 62, at 539.
74. Levitt, *supra* note 62, at 539.
75. G.A. Res. 40/61, U.N. GAOR, Supp. No. 53, at 301, U.N. Doc. A/40/53 (1985).

18, section 1201 Kidnapping, the code criminalizes the unlawful seizure, confinement, kidnap, abduction or carrying away and holding for ransom, reward or otherwise any person, who is a citizen of the United States, or foreign official or internationally protected person or official guest. It calls for the prosecution of the offender within the United States regardless of where the offense was committed or the nationality of the victim or offender. Additionally, Title 18, section 1203, Hostage Taking (Act for the Prevention and Punishment of the Crime of Hostage-Taking), provides for United States jurisdiction over terrorists who seize or detain a U.S. national in order to compel the United States government to do or abstain from doing any act. Further, Title 18, sections 3071-3076, which encompass the 1984 Act to Combat International Terrorism, authorize the disbursement of rewards for information regarding terrorist attacks and the protection of the person(s) who provided such information. The reward provision excludes government officials who furnish such information while in the course of their duties.

Title 22, Foreign Relations and Intercourse, section 2371, the International Security Assistance and Arms Export Control Act of 1976, calls for the withdrawal of U.S. assistance to countries that support terrorism. Title 49, Transportation, is spread throughout a variety of sections which encompass the Anti-Hijacking Act of 1974, and imposes criminal penalties for terrorists who hijack or attempt to hijack aircraft. Lastly, Title 50, War and National Defense, sections 1801-1811, (Foreign Intelligence Surveillance Act of 1978), authorizes increased surveillance of terrorist groups and their activities that "involve violent acts or acts dangerous to human life that are a violation of the criminal law of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state." One limitation however, is that under (c)(3), the acts are required to occur outside of the the territory of the United States.

One of the most recent and comprehensive acts of legislation to combat terrorism is the Omnibus Diplomatic Security and Antiterrorism Act of 1986.[76] The Act, comprised of thirteen titles, addresses a variety of issues. The goals of each are directed at fighting terrorism. These goals include: establishing the Bureau of Diplomatic Security (State Department), refining the State Department's role in combatting international terrorism, combatting international nuclear terrorism, and setting forth the justification of extraterritorial jurisdiction over terrorist acts abroad against United States nationals.[77] This Act permits the United States to exercise criminal jurisdiction to prosecute someone for an overseas offense directed against a U.S.

76. 18 U.S.C. § 2331 (West 1984).
77. *Id.*

citizen. Such offenses include homicide,[78] attempt or conspiracy with respect to homicide[79] and other conduct in which there is an intent to cause, or which results in, serious bodily injury.[80]

A limit on prosecution exists in this statute providing that the offense must have been intended to coerce, intimidate or retaliate against a government or civilian population.[81] If the crime does not fall within this qualification, the United States cannot assert criminal jurisdiction under this title. In other words, a terrorist must target an American because of nationality for the purpose of punishing or threatening the government or its citizenry. This single piece of legislation is more sweeping and forceful than any prior legislation with respect to terrorism in the United States. No longer can a terrorist shoot a U.S. national overseas, targeted because he was an American, and escape from U.S. law enforcement due to lack of jurisdiction. The justifications for this piece of legislation will be discussed in detail in the next section.

III. JUSTIFICATION FOR ASSERTING EXTRATERRITORIAL JURISDICTION

While reading this section, recall that unless the terrorist is abducted in international space while onboard an abducting state's vessel, the abducting state will likely violate another state's sovereignty. In this article, the terrorist is not in another state when apprehended. However, in order to give the reader an understanding of the implications of that scenario, a brief explanation will be offered. International law holds that territorial sovereignty means that a state has exclusive control over the persons and things within its territory. Therefore, other states have a duty not to interfere in its internal affairs or perform acts of sovereignty on its soil.[82] According to international law scholar Professor Derek Bowett, sending agents into a state's territory, specifically targeting an individual who, like a terrorist, is a criminal, does not violate the territorial integrity or political independence of the state.[83] Further, the actions of espionage or law enforcement agents within a nation's territory have never been considered a use of force under international law.[84]

Additionally, there are two justifications for using force when abducting

78. *Id.* § 2331(a).
79. *Id.* § 2331(b).
80. *Id.* § 2331(c).
81. *Id.* § 2331(e).
82. D. Cameron Findlay, *Abducting Terrorists Overseas for Trial in the United States: Issues of International and Domestic Law*, 23 TEX. INT'L L.J. 1, 16 (1988) (citing MICHAEL SORENSON, MANUAL OF PUBLIC INTERNATIONAL LAW 253-54 (1968)).
83. *Id.* at 25; *see also* DEREK BOWETT, SELF DEFENCE IN INTERNATIONAL LAW 55 (1958); IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 361 (1963).
84. Findlay, *supra* note 82, at 25.

terrorists in another state. Under the first justification, a state may seize a terrorist in another country in order to protect its nationals. The capture must be necessary to prevent future harm to its citizens and the mission's objectives must be strictly confined to that task.[85] The apprehension, prosecution, and punishment of terrorists would prevent future attacks by the particular terrorists involved and deter others from targeting that state or its citizens again.[86] Additionally, the use of force from such an operation would be far less proportionally than the past and threatened future harm.[87] Therefore, even if the terrorist has already struck, abducting him to prevent his future attack would trigger this justification.

The second justification would be an act of self-defense. Under a broad reading of this justification, the use of force to abduct terrorists would constitute a justifiable exercise of the customary right self-defense if: 1) it satisfies the requirements of necessity and proportionality, and 2) the abducting state can show complicity by the territorial state.[88] Necessity requires that the act is "instant, overwhelming, and leaving no choice of means and no moment for deliberation."[89] The proportionality element limits the measures to "these that do not exceed in manner or aim the action provoking them."[90] Therefore, a state may cross the border of another state in order to capture a terrorist, and this act will not necessarily be considered a violation of that state's sovereignty.

These two justifications explain the impact on the sovereignty of another state. Either of these justifications might have been utilized if a state (for example, Israel) tried to act on the following series of events. Recently, George Habash, head of the Popular Front for the Liberation of Palestine (a branch of the Palestine Liberation Organization) — which, among other acts of terrorism, sponsored the hijacking of an Air France jet to Entebbe, Uganda — was permitted to enter and seek medical treatment in France. Not to be outdone, Ahmed Jibril, head of the Popular Front for the Liberation of Palestine General Command, boasted that he, too, recently traveled for health reasons — twice to Switzerland and once to France.[91] "Knowledgeable sources suspect that one reason that the Mitterand government was so eager to hustle Habash out of France was their fear that if interrogated, he might have been angry enough to reveal details about secret dealings he

85. *Id.* at 29.
86. *Id.*
87. *Id.*
88. *Id.* at 36.
89. *Id.* at 30 n.208.
90. *Id.* at 30; *see also* Oscar Schachter, *The Rights of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1637 (1984).
91. *Washington Whispers*, U.S. NEWS & WORLD REP., Feb. 24, 1992, at 26.

has had with current and past French officials."[92]

If countries, such as France and Switzerland, do not follow the international conventions that provide the means to prosecute and/or extradite a terrorist, a state is left with little choice but to try and assert jurisdiction to avoid putting the harboring state in a position where it might be the target of retaliation. Three principles that support this proposition are: the protective principle,[93] the passive personality principle,[94] and the universal(ity) principle.[95]

A. *The Protective Principle*

The protective principle permits a state to punish a limited class of crimes (excluding such offenses as violating laws against political expression) committed outside its territory by persons who are not its nationals: offenses directed against the security of the state or other offenses threatening the integrity of governmental functions that are generally recognized as crimes by developed legal systems.[96] The legislative history of the Omnibus Diplomatic Security Act[97] reveals that the drafters borrowed from some of the language in the protective principle. Congress realized that one-half of the terrorist incidents in the previous seventeen years were aimed at U.S. interests and citizens. Congress stated that governmental functions were threatened, including: the protection of its citizens, the ability to maintain foreign policy, interstate and foreign commerce, and business travel and tourism.[98] This is an expansive reading of the principle which enables the United States and other nations to assert jurisdiction over essentially all attacks against its citizens and interests even though there is no effect occurring within the territory of the forum state. The focus of the protective principle is the *nature* of the interest that may be injured, rather than the *place* of the harm or conduct.[99] Therefore, the conduct need only be a *potential* threat to the asserting state's interests or citizens.[100]

B. *The Passive Personality Principle*

The passive personality principle permits a state to apply its laws to an

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92. *Id.*

93. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402(3) cmt. f (1987) [hereinafter FOREIGN RELATIONS RESTATEMENT].

94. *Id.* § 403 cmt. e.

95. *Id.* § 404.

96. *Id.* § 402 cmt. f.

97. 132 CONG. REC. S1382-88 (daily ed. Feb. 19, 1986).

98. *Id.* at S1387; *see* S. 1429, 99th Cong., 2d Sess. 1382-88, § 2331(c)-(e) (1986).

99. Christopher L. Blakesley, *Jurisdiction as Legal Protection Against Terrorism*, 19 CONN. L. REV. 895, 933 (1987).

100. *Id.*

act committed outside its territory by a person who is not its citizen, when the victim of the act was its national.[101] This principle has been increasingly accepted worldwide as it is applied to terrorist and other organized attacks on a state's nationals by reason of their nationality, or to assassination of a state's diplomatic representative or other officials.[102] For example, in the previous Restatement, the authors explicitly rejected a passive personality assertion of jurisdiction. "A state does not have jurisdiction to prescribe a rule of law attaching legal consequences to conduct of an alien outside its territory merely on the ground that the conduct affects one of its nationals."[103] One of the first cases utilizing the passive personality principle against a terrorist was *United States v. Benitez*.[104] In that case, the court held that the passive personality principle could be used to establish jurisdiction in a case against a terrorist, not a United States citizen, who had robbed, assaulted, and conspired to murder United States DEA agents in Columbia.[105] The change in the U.S.'s position was consistent with the emerging international consensus, validating the use of the passive personality principle in prosecuting terrorists.[106]

A variety of international conventions combatting terrorism have provided that the passive personality principle is a viable option for asserting jurisdiction. These conventions include, but are not limited to: Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,[107] the Hostage Taking Convention,[108] Protection of Diplomats Convention,[109] and the Hague Convention.[110] Many nations have recognized the threat posed by terrorism against its citizens and interests and have developed this principle as a customary law norm to allow for a criminal law response.[111]

C. *The Universality Principle*

The third and most broadly worded principle is the universality principle. This principle permits a state to define and prescribe punishment for certain offenses recognized by the community of nations as of universal

101. FOREIGN RELATIONS RESTATEMENT, *supra* note 93, § 402 cmt. g.
102. *Id.*
103. RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW § 30(2) (1965).
104. 741 F.2d 1312 (11th Cir. 1984), *cert. denied*, 471 U.S. 1137 (1985).
105. *Id.* at 1316.
106. Brandon S. Chabner, *The Omnibus Diplomatic Security and Antiterrorism Act of 1986: Prescribing and Enforcing United States Law Against Terrorist Violence Overseas*, 37 UCLA L. REV. 985, 996 (1990).
107. 27 I.L.M. 668, 676 (1988). Article 6(2) is particularly apposite.
108. *See supra* note 26 and accompanying text.
109. *See supra* note 28 and accompanying text.
110. *See supra* note 57 and accompanying text
111. *See* United States v. Benitez, 741 F.2d 1312, 1315 (11th Cir. 1984).

concern, such as piracy or hijackings, where there is no section 402 (*Restatement Third*) connection between the territory and the offense or of nationality with the persons involved.[112] Therefore, the location of the terrorist act is irrelevant as are the nationalities of both the offender and offended. The wording "such as . . . " in this section leaves open the possibility that a vast number of crimes not listed in section 404 can still be considered universal crimes subject to jurisdiction under this principle. The crimes encompassed by this principle are considered so brutal that any state within the community of nations may prosecute the accused.[113] The history of crimes, the treaties and conventions to combat terrorism, and domestic laws of all nations, "when considered as a whole, make it clear that terrorism — including hostage taking or kidnapping or wanton acts of violence against innocent civilians — is really a composite term including all of the separately universally condemned offenses, and thus triggers the universality theory of jurisdiction."[114] However, in the 1984 case *Tel-Oren v. Libyan Arab Republic*, the court ruled that terrorism did not constitute a violation of the law of nations.[115] Although the United States condemns all forms of terrorism, the highly political nature of acts of terrorism often permit them to be viewed as either a legitimate means of political protest or a criminal offense.[116] Thus, U.S. courts have not recognized universal jurisdiction as establishing the basis for prosecuting overseas terrorist crimes.

IV. JUSTIFICATION FOR ABDUCTION OF TERRORISTS IN INTERNATIONAL SPACE

Professor M. Cherif Bassiouni's assertion that international abductions violate international law by disrupting world order and infringing upon sovereignty and territorial integrity of other states is illustrative of customary international law.[117] Yet this is customary law, which is subject to change and modification by continued practice within the international community.[118] In fact, some countries have changed their posture with respect to this approach, and abductions have become recognized — if not accepted — under international law.[119]

To that end, American courts have developed what is known as the

112. FOREIGN RELATIONS RESTATEMENT, *supra* note 93, § 404.

113. Demjanjuk v. Petrovsky, 776 F.2d 571, 581-82 (6th Cir. 1985).

114. Blakesley, *supra* note 99, at 915.

128. *Id.* art. 89; High Seas Convention, *supra* note 126, art. 2.

129. Law of the Sea Convention, *supra* note 127, art. 87; High Seas Convention, *supra* note 126, art. 2; *see also* Findlay, *supra* note 82, at 18.

130. Findlay, *supra* note 82, at 18; *see* Law of the Sea Convention, *supra* note 127, art. 105; High Seas Convention, *supra* note 126, art. 19.

131. Findlay, *supra* note 82, at 23; *see also* MICHAEL SORENSON, MANUAL OF PUBLIC INTERNATIONAL LAW 559 (1968).

Ker-Frisbie doctrine, which holds that a forcible abduction neither offends due process nor requires a court to free a suspect seized in violation of international law.[120] Therefore, a court need not divest itself of *in personam* jurisdiction over a defendant based on the method by which the defendant was arrested and brought before the court.[121] Note that while an arrest may be unlawful and unconstitutional, the exclusionary rule applies to evidence and not to people.[122] Later cases have held that a court would lose its jurisdiction only if the methods of abduction were "deliberate, unnecessary and [an] unreasonable invasion of the accused's constitutional rights."[123] Additionally, the courts have held that in order for a court to surrender its jurisdiction, the agents' conduct must be of a "most shocking and outrageous character," a classification limited to "torture, brutality and similar outrageous conduct."[124]

These cases illustrate the evolution of the treatment of international law in conjunction with U.S. domestic law by U.S. Courts. The thesis of this article, however, focuses on the seizure of terrorists in international air space and on the high seas. According to former U.S. Secretary of State George Shultz, "[I]t is impossible to argue that international law prohibits us from capturing terrorists in international waters or airspace, [or] from attacking them on the soil of other nations. . . . A nation attacked by terrorists is permitted to use force . . . to seize terrorists or rescue its citizens when no other means is available."[125]

Under the 1958 Convention on the High Seas[126] and the Law of the Sea Convention,[127] all states may freely use the high seas and the superadjacent airspace, and no nation may claim sovereignty over persons or things found there.[128] While ships and planes are usually guaranteed freedom of navigation and freedom of overflight,[129] a state may seize them under certain circumstances. For example, the United States could seize a ship or plane if it were characterized as a pirate vessel. Under the law of nations, pirates are considered *hostes humani generis* — enemies of

120. Findlay, *supra* note 82, at 47.

121. *Id.* at 46.

122. Andreas F. Lowenfeld, *U.S. Law Enforcement Abroad: The Constitution and International Law, Continued*, 84 AM. J. INT'L L. 444, 460 (1990).

123. United States v. Toscanino, 500 F.2d 267, 275 (2d Cir.), *reh'g denied*, 504 F.2d 1380 (1974).

124. United States ex rel. Julio Juventino v. Gengler, 510 F.2d 62, 65 (2d Cir.), *cert. denied*, 421 U.S. 1001 (1975).

125. Kane, *supra* note 53, at 339-40.

126. Convention on the High Seas, *done* Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 82 [hereinafter High Seas Convention]; *see also* Findlay, *supra* note 82, at 17.

127. Third U.N. Convention on the Law of the Sea, *done* Dec. 10, 1982, 21 I.L.M. 1261 (1982) [hereinafter Law of the Sea Convention].

128. *Id.* art. 89; High Seas Convention, *supra* note 126, art. 2.

129. Law of the Sea Convention, *supra* note 127, art. 87; High Seas Convention, *supra* note 126, art. 2; *see also* Findlay, *supra* note 82, at 18.

all mankind — and all states have universal jurisdiction to capture and punish them anywhere in the world.[130]

When the authorities of a state are aware of an intent to commit or instigate a crime, that state can be held responsible for such acts of its nationals that violate international law. This responsibility extends to acts that are planned to occur outside of the state's territory. Once a government has notice that its territory is being used for the preparation of hostile acts in or against another state, it must take effective steps to prevent those acts in order to satisfy its duty under international law.[131] The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations provides, in part, that a state has a duty to "refrain from organizing, instigating, assisting or participating in . . . terrorist acts in another state. . . ."[132] Therefore, if a plane from Country X is carrying terrorists who have committed, or organized and planned, an act of terrorism, then Country X is assisting such terrorists in escaping and evading detection, abduction and/or prosecution. Thus, as enemies of mankind, all nations, even those not victimized by the act of terrorism committed by those on board, may seize the craft and arrest its occupants.

Some states may argue that an interception of one of its aircraft is a use of force which violates its territorial integrity. However, intercepting an aircraft in international airspace will likely not rise to the level of a "threat or use of force against the territorial integrity or political independence of any state" within the meaning of article 2(4) of the United Nations Charter. Further, one leading commentator argues that actions specifically directed against individuals *within* the territory of a state do not violate the territorial integrity or political independence of that state.[133]

A state can also claim that the abduction (via interception) was a justifiable and legal act of self-defense. Article 51 of the U.N. Charter states that "nothing in this present Charter shall impair the inherent right of an individual or collective self-defence if an armed attack occurs against a Member of the United Nations." One school of thought, led by Professor Bowett, asserts that the customary right of self-defense allows a state to use force not only to defend against an armed attack by another state, but also to protect the lives or property of nationals or to ensure a state's political indepen-

130. Findlay, *supra* note 82, at 18; *see* Law of the Sea Convention, *supra* note 127, art. 105; High Seas Convention, *supra* note 126, art. 19.

131. Findlay, *supra* note 82, at 23; *see also* MICHAEL SORENSON, MANUAL OF PUBLIC INTERNATIONAL LAW 559 (1968).

132. G.A. Res. 2625, U.N. GAOR, Supp. No. 28, at 121, U.N. Doc. A/2028 (1970).

133. IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 56 (1963); Findlay, *supra* note 82, at 25.

dence against nonmilitary threats.[134] As stated, in order to justify the use of force to abduct terrorists as a measure of self-defense, two criteria must be met. The first is that the act is necessary and proportional. "The necessity of self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."[135] The proportional element requires that the act not exceed in manner or aim the action provoking it.[136] The second criterion is that the abducting state can show complicity by the territorial state.[137] Evidently when a nation permits an official government jet to ferry terrorists to a safe location, that nation is acting with, if not for, the terrorists.

The inability of the nations of the world to condemn terrorism, the impact of political considerations in the extradition process, and the various degrees of assistance and support nations provide to terrorist groups, make it virtually impossible to gain custody of terrorists using traditional methods.[138] Nations, victimized by terrorists, are sometimes left with no choice but to assert themselves forcefully to apprehend terrorists and bring them to the abducting state for prosecution. However, this method must be used sparingly. A nation that makes it a practice to apprehend terrorists in other countries without their consent will soon find itself with few allies. For example, Egyptian masses demonstrated in Cairo against the U.S. action in intercepting the Achille Lauro hijackers who were on board an Egyptian jet.[139] Egyptian President Hosni Mubarak further labeled the American interception an act of piracy.[140]

In order to avoid embarrassing a state or riding roughshod over its jurisdiction and ability to apprehend and prosecute a terrorist, a state that has been victimized by terrorists should act with great caution. All legal and political avenues should be exhausted before a state takes any form of self-help action, with few exceptions, as will be discussed below. Absent alternatives, a state should and does have a right to act swiftly and forcefully, with enough facts to justify its actions in order to minimize the inevitable negative reaction.

V. Case Studies of Abductions of Terrorists in International Space

In order to better understand the legal and practical ramifications of a

134. Findlay, *supra* note 82, at 30.
135. *Id.* at 30 n.208.
136. *Id.* at 30; *see also* Schachter, *supra* note 90, at 1637.
137. Findlay, *supra* note 82, at 30.
138. *Id.* at 50.
139. John Walcott et al., *Getting Even*, Newsweek, Oct. 21, 1985, at 20, 31-32.
140. *Id.*

sovereign state abducting terrorists, the following case studies of recent abductions of terrorists in international space should prove useful. The first two examples are operations carried out by the United States and the third by Israel. Such measures are rarely taken by nations. Thus, available examples are limited. Ironically, all three operations occurred within an eight-month period during the mid-1980s.

A. *Fawaz Yunis*

On June 11, 1985, Fawaz Yunis and four other terrorists boarded Royal Jordanian Airlines Flight 402 armed with hand grenades and automatic weapons. While the plane was on the ground in Beirut, Lebanon,[141] the appellant (Yunis) took control of the cockpit and forced the pilot to take off immediately.[142] The others tied up Jordanian air marshalls and held the passengers hostage. The hostages included two American citizens.[143] After refueling in Cyprus, the plane was turned away from landing in Tunis when Tunisian authorities blocked the runway.[144] The plane then went to Sicily to refuel and made a second unsuccessful attempt to land in Tunis.[145] Finally, the plane went back to Beirut where more terrorists boarded the plane. The plane then departed for Syria where, once again, it was refused landing rights.[146] Again the plane landed in Beirut and the passengers were released. A press conference was held in which the hijackers demanded that Palestinians leave Lebanon, after which the hijackers blew up the plane.[147]

After an American investigation led to Yunis, "Operation Goldenrod" was put into effect.[148] Undercover FBI agents lured Yunis on to a yacht in the eastern Mediterranean Sea with promises of a drug deal.[149] He was arrested and transferred to a U.S. Navy ship where he was interrogated for several days.[150] After arriving in Washington, D.C., Yunis was arraigned on charges of conspiracy, hostage taking and aircraft damage.[151] A grand jury added additional aircraft damage counts and a charge of air piracy.[152]

Under the Hostage Taking Act,[153] since two of the passengers were

141. United States v. Yunis, 924 F.2d 1086, 1089 (D.C. Cir. 1991).
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. 18 U.S.C. § 1203 (West 1984).

U.S. citizens, the United States was able to assert jurisdiction as "the offender or the person seized or detained [was] a national of the United States."[154] The court permitted the United States to assert jurisdiction by relying on the universal[155] and passive personality[156] principles of international law jurisdiction.[157] Yunis was involved in the hijacking of an aircraft, which is recognized by the community of nations as a universal concern. Further, the U.S. may punish non-nationals for crimes committed against its nationals outside of its territory, as per passive personality jurisdiction. Additionally, the court cited *Committee of U.S. Citizens Living in Nicaragua v. Reagan*,[158] in which it was held that statutes inconsistent with the principles of customary international law may lead to international law violations. However, within the domestic legal realm, the inconsistent statute simply modifies or supersedes customary international law to the extent of the inconsistency.[159] The *Yunis* court stated "our duty is to enforce the Constitution, laws and treaties of the United States, not to conform the law of the land to norms of customary international law."[160] Yunis was charged by the grand jury for violating the Antihijacking Act of 1974,[161] which enacted the Convention for the Suppression of Unlawful Seizure of Aircraft. This requires that a nation punish offenders "present in" its territory.[162] Since Yunis was arrested and indicted on other charges, he was properly indicted for hijacking while he was "present in" the U.S.[163]

Lastly, in response to Yunis' charge that the government violated *Toscanino*,[164] the court held that while the government's conduct was neither "picture perfect" nor "a model for law enforcement behavior," the "discomfort and surprise" to which appellant was subjected did not render his waiver of his Fifth and Sixth Amendment rights invalid.[165] Although he was tricked into boarding a yacht to discuss an illicit narcotics transaction by law enforcement agents of the United States, the court found that none of Yunis' constitutional rights were violated.

154. *Id.* § 1203(b)(1)(A).
155. *See supra* note 112 and accompanying text.
156. *See supra* note 101 and accompanying text.
157. *Yunis*, 924 F.2d at 1091.
158. 850 F.2d 929 (D.C. Cir. 1988).
159. *Id.* at 938.
160. *Yunis*, 924 F.2d at 1091.
161. 49 U.S.C. § 1472(n) (repealed July 5, 1994).
162. *Yunis*, 924 F.2d at 1091.
163. *Id.*
164. United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974).
165. United States v. Yunis, 859 F.2d 953, 969 (D.C. Cir. 1988).

B. *The Achille Lauro Affair*

On October 7, 1985, Palestinian terrorists hijacked the Italian Cruise Ship Achille Lauro while it was sailing the Mediterranean Sea with more than 400 people on board.[166] The hijackers demanded the release of 50 Palestinian prisoners held by Israel.[167] It was announced the following day that the terrorists were members of the Palestine Liberation Front who commandeered the ship after it left Alexandria, Egypt. The hijacking lasted two days, during which time a disabled American was murdered and thrown overboard.[168] The hijackers surrendered to a representative of the Palestine Liberation Organization and were guaranteed safe conduct out of Egypt to an undisclosed location.[169] The guarantee was premised on the ship's captain's statement that no passengers had been harmed.[170] It was later learned that the captain had a machine gun trained on him throughout the hijacking, even as he made the above statement.[171] It was not until seven hours later, during an inspection of the ship, that the U.S. Ambassador to Egypt informed the embassy in Cairo that an American had been murdered.[172] At the time of this incident, American law and jurisdiction could be extended overseas only for crimes involving the killing of a U.S. diplomat, air hijacking, or an American traveling on a U.S. flag ship.[173] Egypt had turned down repeated American requests to prosecute the terrorists.[174]

Egypt, in fact, deceived the American government into believing that the hijackers had already left Egypt and were in the custody of the PLO.[175] President Mubarak later claimed that "when this murder emerged, we had already sent the hijackers out of the country."[176] According to former White House Spokesman Larry Speaks, the U.S. Administration was certain that Egypt still had custody of the four terrorists.[177] Therefore, when the terrorists were being flown out of Egypt in an Egyptian airliner

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166. John Tagliabue, *Ship Carrying 400 Seized*, N.Y. TIMES, Oct. 9, 1985, at A1.

167. *Id;* Judith Miller, *Hijackers Yield Ship in Egypt*, N.Y. TIMES, Oct. 10, 1985, at A1.

168. Miller, *supra* note 167, at A1.

169. *Id.*

170. Joseph Berger, *Ship's Hijackers Shuffled Passports of Captives to Decide on Killing*, N.Y. TIMES, Oct. 13, 1985, at A1, A23.

171. Jill Smolowe, *Piecing Together the Drama*, TIME, Oct. 28, 1985, at 31.

172. William E. Smith, *The Voyage of the Achille Lauro*, TIME, Oct. 21, 1985, at 30, 33.

173. N.Y. TIMES, Oct. 13, at A11, col.6.

174. Bernard Gwertzman, 4 *in Custody in Sicily — Washington Says It Wants Extradition*, N.Y. Times, Oct. 11, 1985, at A1.

175. Judith Miller, *Egypt Says It Gave Gunmen to P.L.O.*, N.Y. TIMES, Oct. 11, 1985, at A11.

176. George Russell, *The U.S. Sends a Message*, TIME, Oct. 21, 1985, at 22, 25.

177. Ross Laver, *Striking Back*, MACLEAN'S, Oct. 21, 1985, at 32, 35. *See generally* Larry A. McCollough, *International and Domestic Criminal Law Issues in the Achille Lauro Incident: A Functional Analysis*, 36 NAVAL L. REV. 53 (1986).

with Egyptian security men aboard (the day *after* Mubarak made his statement), American naval forces intercepted the plane and forced it to land in Italy at a joint Italian-NATO airbase.[178] Initial reports claimed that the plane was originally headed for Tunis and then Athens, but that the respective governments had denied landing rights.[179]

When the plane landed in Italy, it was immediately surrounded by American commandos. The commandos, in turn, were surrounded by Italian soldiers.[180] After a tense standoff between U.S. and Italian forces, the Italians seized the hijackers along with Abbas and took them into custody pursuant to an agreement reached by the American and Italian governments.[181] The Italians brought criminal charges against the terrorists but refused, due to lack of evidence, American requests to hold Abbas for an investigation.[182] The day *after* American arrest warrants were issued for Abbas and the four hijackers, Abbas was allowed to leave Italy aboard a Yugoslavian jet.[183] After landing in Yugoslavia, a car from the PLO diplomatic mission in Belgrade arrived to pick up Abbas and transport him to an unknown location. The Yugoslavian government denied American requests for extradition.[184] Abbas traveled to Iraq, via South Yemen, and Iraq also denied American requests for extradition.[185] Two weeks after Abbas left Italy, an Italian magistrate charged Abbas with murder, kidnapping, hijacking and transportation of arms and explosives.[186] The following July, the hijackers were convicted of various offenses relating to the Achille Lauro incident, and Abbas was tried in absentia, convicted, and given a life sentence for masterminding the hijacking.[187]

The Egyptian actions of harboring and then transporting the hijackers may have violated the International Convention Against Taking of Hostages.[188] This provides that "any state in whose territory an alleged offender is found shall take him or her into custody to enable criminal or extradition proceedings to be instituted."[189] The Convention further provides for extradition to states which have jurisdiction over the offense based on location of the offense, the registration of the vessel abducted, the nationality of the

178. 18 U.S.C. § 1203 (West 1984).
179. *Id.*
180. Smolowe, *supra* note 171, at 31.
181. Laver, *supra* note 177, at 36.
182. John Tagliabue, *Italians Attempt to Reassure U.S.*, N.Y. TIMES, Oct. 14, 1985, at A1.
183. Loren Jenkins, *PLO Leader Slips from U.S. Grasp in Italy*, WASH. POST, Oct. 13, 1985, at A1.
184. *Extradition Request Denied by Belgrade*, WASH. POST, Oct. 18, 1985, at A33.
185. Mark Whitaker et al., *Wanted!*, NEWSWEEK, Oct. 28, 1985, at 26, 27.
186. *Court in Italy Issues Warrant for Abul Abbas*, L.A. TIMES, Oct. 27, 1985, at 8.
187. Loren Jenkins, 11 *Hijackers Sentenced in Genoa Court*, WASH. POST, July 11, 1986, at A1.
188. U.N. GAOR, 34th Sess., Supp. No. 146, at 245, U.N. Doc. A/34/146(1979) [hereinafter Hostage Convention].
189. *Id.* at 246.

offender, the state or organization sought to be compelled to act by the offender, or the nationality of the hostages.[190] This gave the United States jurisdiction to prosecute the terrorists, due to the nationality of the hostages. If the detaining state chooses not to extradite it must "without exception whatsoever" prosecute the offender.[191] The PLO, not being a recognized state, cannot argue that Egypt was extraditing the hijackers; thus, Egypt was violating the Convention.[192]

According to Andreas Lowenfeld, an international law expert, "we did not violate anybody's air space, we didn't hurt anybody, and so I think we didn't violate international law."[193] While intercepting an Egyptian airliner might in itself be a violation of international law, the breach of international law by Egypt in not taking the terrorists into custody and either extraditing or prosecuting them, according to Lowenfeld, prompted America's justifiable response to a "worse breach" by Egypt.[194] Many of these same arguments can apply to Italy, Yugoslavia, South Yemen and Iraq for their assistance in helping Abbas avoid extradition and escape justice.

America, as well as Egypt, Italy, South Yemen and Iraq, had jurisdiction to prosecute the terrorists and organizers of the attack, simply by exercising their rights under the protective,[195] passive personality[196] or universal[197] principles of jurisdiction. Jurisdiction existed without reference to the various international conventions condemning terrorism, permitting nations to assert jurisdiction over terrorists in their territory, and providing for extradition if that state chooses not to prosecute. The fact that only America wanted to prosecute all of the terrorists, including Abbas, suggests that the other nations had motives other than seeking justice for all of the participants involved in the hijacking.

C. *Israel's Interception of a Libyan Jet*

On February 4, 1986, Israeli warplanes intercepted a Libyan executive jet over the Mediterranean Sea just east of Cyprus and 70 miles from the Israeli coast.[198] Israel had hoped to find on board Ahmed Jabril, leader of the Popular Front for the Liberation of Palestine — General Command; Dr.

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190. George M. Borkowski, *Recent Developments — Use of Force: Interception of Aircraft*, 27 HARV. INT'L L.J. 761, 766 (1986).

191. *Id.*

192. *Id.*

193. Stuart Taylor, Jr., *Capture of Hijackers: Plane Diversion Raises Legal Issues*, N.Y. TIMES, Oct. 11, 1985, at A11.

194. *Id.*

195. *See supra* note 93 and accompanying text.

196. *See supra* note 94 and accompanying text.

197. *See supra* note 95 and accompanying text.

198. Thomas L. Friedman, *Israelis Intercept a Libyan Civil Jet and then Let It Go*, N.Y. TIMES, Feb. 5, 1986, at A1.

George Habash, leader of the Popular Front for the Liberation of Palestine; Abu Nidal, leader of Fatah Revolutionary Council; as well as Nayef Hawatmeh (of the Democratic Front for the Liberation of Palestine) and Abu Musa, two leading Palestinian terrorist organizers.[199] Instead, after a seven hour search, Israel found only seven Syrian politicians and two pro-Syrian Lebanese militia leaders.[200] The plane was then permitted to continue on to Damascus.

This is the second time Israel had taken such action. In August of 1973, Israeli jets intercepted a Middle East airliner, en route from Beirut to Iraq, and forced it to land in Israel.[201] The Israelis were searching for Habash, and let the plane proceed after determining that Habash was not on board.[202]

Israel's position was summed up by Abba Eban, chairman of the Foreign Affairs and Defense Committees in the Israeli Parliament.

> There is nothing that stands more in contradiction to the law than terrorism. But terrorism hides behind the wings of the law. What determines the international reaction is the success or lack of success. If that person were on the plane, the free world would hail our action. Since the effort failed, I assume there will be criticism on the grounds of the need to respect the law.[203]

Under an amendment to the Israeli Penal Law (Offenses Committed Abroad), "the Courts in Israel are competent to try under Israeli law a person who has committed abroad an act which would be an offense if it had been committed in Israel and which harmed or was intended to harm the State of Israel, its security, property or economy or its transport or communications links with other countries."[204] This law embraces the protective principle of jurisdiction.

In response to the incident, Libya claimed it would intercept any Israeli civilian plane found within range over the Mediterranean and would force it to land in Libya.[205] Ahmed Jabril said that "Palestinians would not be responsible for the civilians who travel on these (American and Israeli)

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199. Henry Kamm, *Rabin Defends Air Interception: Vows More 'Unconventional' Acts*, N.Y. TIMES, Feb. 6, 1986, at A10.

200. Friedman, *supra* note 198, at A1.

201. *Id.* at A8.

202. *Id.*

203. *Id.*

204. Note, *Extraterritorial Jurisdiction and Jurisdiction Following Forcible Abduction: A New Israeli Precedent in International Law*, 72 MICH. L. REV. 1087, 1088 n.5 (1974).

205. Judith Miller, *Quaddafi Orders His Jets to Interrupt Israeli Airliners*, N.Y. TIMES, Feb. 8, 1986, at A3.

planes from now on."[206] The United States exercised its veto power on a U.N. Security Council resolution which condemned Israel for intercepting the Libyan plane calling the action an "act of aerial hijacking and piracy."[207] The United States stated that states should intercept civilian aircraft only with the strongest evidence that the terrorists are on board.[208] Further, these interceptions could be justified only in certain very narrow counter-terrorism cases.[209] Like the United States interception of the Egyptian airplane, Israel's action was neither piracy or hijacking. It was not piracy because the action was not carried out by a "private ship or aircraft" and it was not done for "private ends."[210] The action was also not a hijacking because the international conventions dealing with this offense pertain only to acts undertaken *on board* aircraft.[211]

In order for Israel to claim that the interception was an act of self-defense, it would require that possible future acts of the terrorists sought could be properly attributable to Libya.[212] Additionally, the peril created by further terrorism must be, not only grave, but imminent.[213] Although the plane was suspected of carrying Palestinians involved in planning terrorist acts[214] against Israel and did not carry them out, it can be fairly inferred that those who plan the attacks are equally guilty as those who actually carry out the assault. Since Israel has been in a constant state of war with its Arab neighbors — excluding Egypt — for forty five years, and since it is well documented how Libya finances and assists various international terrorist organizations, it can be justifiably stated that Libya represents a grave and imminent threat to Israel, and that acts carried out by Libya's proxies are attributable to Libya.

Further, an argument can be made that the Israeli (and American) action violated Article 2(3) of the United Nations Charter, which prohibits behavior that jeopardizes international peace and security. However, this Israeli action, like the American interception, can be categorized as a "surgical" operation where only the terrorists, not the civilians, are targeted. It seems that an explosion in a market, park, or school, which kills and injures many people would jeopardize international peace and security. However, the

206. *Id.*

207. *U.S. Vetoes Anti-Israeli Move,* N.Y. TIMES, Feb. 7, 1986, at A6.

208. *U.S. Declines Judgment on Plane Interception,* N.Y. TIMES, Feb. 5, 1986, at A9.

209. *Id.*

210. *See* Borkowski, *supra* note 190, at 765; *see also* High Seas Convention, *supra* note 126.

211. Borkowski, *supra* note 190, at 765; *see also* Tokyo Convention, *supra* note 53, 20 U.S.T. at 1644.

212. Borkowski, *supra* note 190, at 769, 770; *see Report of the International Law Commission on the Work of Its Thirty-first Session,* U.N. Doc. A/34/10/Corr.1 (1975), *reprinted in* [1979] 1 Y.B. Int'l L. Comm'n 87-136 [hereinafter Draft Articles].

213. Borkowski, *supra* note 190, at 770; *see* Draft Articles, *supra* note 212, art. 34.

214. Friedman, *supra* note 198, at A8.

interception of a single plane, without a shot being fired, solely to search for terrorists would not have the same effect and would not require the same application of law. Additionally this act violated Article 2(4) of the Charter which prohibits the use of force or threat of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations. Yet with respect to the self-defense argument already presented, Article 51 of the Charter legitimizes the use of force for self-defense against an "armed attack." The "armed attack" phrase has been subjected to broad ranging interpretation.[215] The interception can be explained as not only an action to ensure justified punishment, but also to preempt future terrorist actions against Israeli citizens and property. It can be assumed that, because of the past history of these terrorist groups (for which Israel was targeting their leaders), they will strike again — and indeed, to date have already done so. If it takes such a "surgical" action to prevent an attack, it is perhaps logical that these types of interceptions can be considered an act of self-defense.

In an era of terrorism, waiting for the attack to occur is unrealistic.[216] The court in the classic *Corfu Channel* case held that a strong probability of an armed attack is sufficient to support self-defense.[217] A leading international law scholar writes that if an attack is imminent, the threatened state is not precluded from resorting by "preventive means . . . against . . . a threat of attack, or preparations or other conduct from which an intention to attack may be reasonably apprehended."[218] The threat which these Palestinian leaders and their groups represent is both constant and imminent. The public statements these men have made regarding future acts against Israel and their past histories of violence lead to the conclusion that Israel was correct in acting in self-defense in trying to apprehend them.

VI. CONCLUSION

The initial problem faced in effectively preventing and punishing acts of terrorism is providing a clear and concise definition of terrorism that would be acceptable to all nations. With the recent breakup of the Soviet Union and the Eastern Bloc, new nations have realized their independence and, therefore, new voices can be heard in the community of nations. These new nations, now free from Soviet influence, will hopefully exercise their own opinions when it comes to defining terrorism. Further, the Arab Bloc, which has traditionally supported and received support from the Soviet and

215. Michael J. Bazyler, *Capturing Terrorists in the 'Wild Blue Yonder': International Law and the Achille Lauro and Libyan Aircraft Incidents*, 8 WHITTIER L. REV. 685, 698 (1987).

216. HANS KELSEN, PRINCIPLES OF INTERNATIONAL LAW 72 (2d ed. 1966).

217. Corfu Channel Case (United Kingdom v. Albania), 1949 I.C.J. 4 (Apr. 9).

218. BROWNLIE, *supra* note 133, at 257.

Eastern Blocs has found itself turning westward for the assistance it once received from Moscow. A "new world order" is emerging, and with it, hopefully, there will be a new sense of unity in the fight against international crimes, particularly terrorism.

As already proposed, the first step must be to create an acceptable, functionally applicable, yet malleable definition of terrorism. I propose the following definition.

> Terrorism is:
> a) an act or threat of violence which
> b) targets civilians or property of a state (civilians include all those who at the time of the attack are not on active military status, or those on active status who pose no immediate threat or likely foreseeable future threat), which is
> c) intended to inject fear into the civilian population or government or serves as a retaliatory strike and has
> d) a political goal.

Using innocents as targets or as bargaining chips to achieve a political goal shifts the conduct of a "freedom fighter" into the crime of a terrorist. Any act or threat of violence, by anyone, on persons not engaged in an active military role, which tries to politically manipulate a population or government satisfies the definition. Therefore, the only targets for "freedom fighters" are other soldiers engaged in hostilities against them at that time, or against those who pose an immediate or foreseeable threat.

If an act of terrorism occurs, nations should be willing to act swiftly and in a unified manner in order to bring the offenders to justice. If one or more nations choose to assist a terrorist in any way, the remaining nations, especially those not directly affected by the original attack, must be willing to exercise self-help measures and assert jurisdiction over the terrorists or assist another nation in doing so. Further, "international law must confront the strong antiforce norms embodied in Article 2(4) and resolve how much infringement of states' sovereignty should be tolerated in the interest of punishing terrorism."[219] A minimal or limited violation of a state's territorial boundary is justifiable when the goal is to capture the person responsible for blowing up a plane in midair, or shooting passengers on a bus, or hijacking a ship and killing an invalid passenger, or other terrorists acts.

Jurisdiction can be asserted for a "given state depending on whether the terrorism occurred within or had an impact on its territory; whether it damaged or threatened to damage the state's national security or other governmental interest; or, whether the terrorism had an impact on one of the

219. Findlay, *supra* note 82, at 31.

state's nationals for the purpose of intimidation or achieving some military or political purpose."[220] This is the present state of international law. In order to assert jurisdiction over a terrorist and not violate a state's territorial integrity, a state's self-help methods must be creative. When possible, the ideal way to abduct a terrorist is in the abducting state's territory. If this is not possible, the most preferable alternative is to abduct a terrorist in international space. One way of possibly reducing terrorism is consistently searching for and abducting terrorists wherever and whenever possible, regardless of how long ago they acted. According to former Israeli Defense Minister Yitzhak Rabin, commenting on the interception of the Libyan jet, "one must show initiative. One must dare even if sometimes the entire goal is not achieved."[221] Terrorists will, as a result, be afraid to travel. By restricting their movements, their influence will be restricted as well. Not knowing where and when abductors will come for them will no doubt impede the terrorists' effectiveness.

According to former U.S. Ambassador to the U.N., Vernon Walters, "[W]e must be clear that terrorist violence — and not the response to terrorist violence — is the cause of the cycle of violence which tragically mars . . . the entire world."[222] There is no question that terrorist violence needs to be stopped. If it can not be stopped, those responsible should at least be held accountable and punished. Cultural ties and political or religious ideologies aside, an attack on civilians for political gain, in any form, is terrorism and therefore criminal.

With a firm definition of terrorism established, a realistic effort to prevent and punish terrorists can be undertaken. The protective, passive personality and universal principles of jurisdiction provide the framework. These principles must be applied more frequently and aggressively, and the world must act as one body in protecting itself from the destruction of terrorism. For without unity, the fight against terrorism will likely never be won.

Addendum: On April 15, 1992, the United Nations implemented sanctions against Libya which affected: all air transport, sale of arms, aircraft and spare parts, and closed all overseas offices of Libya's national airline.[223] Under the terms of the Security Council, the sanctions cannot be lifted until Libya takes "concrete actions" to show it has renounced terrorism, including handing to Britain or the United States the suspects in the Lockerbie Pan Am disaster, in which 270 people were killed; and beyond

220. Blakesley, *supra* note 99, at 943.

221. Kamm, *supra* note 199, at A10.

222. *U.S. Vetoes Anti-Israeli Move*, *supra* note 207, at A6.

223. Paul Lewis, *Sanctions on Libya Begin to Take Hold as Deadline Passes*, N.Y. TIMES, Apr. 15, 1992, at A1.

sending four other Libyans to France for questioning in connection with the downing of a French airliner over West Africa in 1989, with the loss of 177 lives.[224] These sanctions reflect the first time that any nation has been punitively isolated from the rest of the world due to its sponsorship of terrorism.[225] The sanctions "show again how the collapse of communism has given the Security Council the cohesion needed to enforce its orders . . . that was impossible in earlier crises. . . ."[226] Libya appealed to the World Court to declare the restrictions invalid, but the court ruled it was not competent to block compliance with Council resolutions.[227] Libya then offered a last minute compromise, saying it would be willing to hand over the two suspects in the Pan Am bombing to its ally Malta, but the United States and Britain rejected this offer. The U.S. State Department said "[I]t falls short. . . . [I]t does not meet the requirements of compliance."[228] The next day, Libyan radio attacked the sanctions by stating that they were "an attempt to force [it] (Libya) to submit to hegemony."[229] As of December 3, 1994, Libya still has not surrendered either of the suspects and it seems that, without further sanctions or other economic and/or military actions, it might be a long while before it does comply with the international calls for justice. The action taken by the U.N. may be the first step in the long awaited process of world unification in the fight against terrorism; in this case, state-sponsored terrorism. While the world lost its chance to apprehend the suspects outside of the territorial boundaries of Libya, it might not have lost its ability to prosecute them.[230]

224. *Id.* at A6.

225. *Id.* at A1.

226. Paul Lewis, *Isolation of Libya Grows as Its Links to World Are Cut*, N.Y. TIMES, Apr. 16, 1992, at A1.

227. Lewis, *supra* note 223, at A1.

228. *Id.* at A6.

229. Lewis, *supra* note 226, at A10.

230. For further information, see Douglas Kash, *Libyan Investments and Legal Obligations in Connection with the Bombing of Pan Am Flight 103*, STUDIES IN CONFLICT AND TERRORISM, Jan.-Mar. 1994, at 23.