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INTERNATIONAL TERRORISM

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International Terrorism

Introduction

Terrorism is not a novel phenomenon of the 1960s and 1970s. It has its semantic origins in the policies of 'terrorism' used in the Reign of Terror by the French Revolutionary Government of 1793-94. Currently in Europe terrorism has come to mean the use and threat of violence, generally by non-governmental groups or individuals representing a 'cause', on victims who are taken to represent a class of people or indeed a whole nation who are thereby threatened with violence. Its goals are often to bring about the overthrow of a government or a change in its policies, by seriously reducing the security of its subjects or its servants.

What is novel to the terrorism of the last twenty years is the extent and variety of international terrorist activities, where people of one nationality use terror to threaten groups of other nationalities. As Smith has written 'the extent and variety of contemporary terrorist activities ... represent an unprecedented challenge to the traditional manner of conducting international relations'.¹ One should add perhaps that terrorism also represents a challenge to the traditional manner of conducting political activity within a democratic state.

Why terrorism?

No analysis has yet fully explained the causes of international terrorist activity, and this brief paper will not attempt to do so either. But possible reasons for terrorism need to be examined, before any analysis of measures to be taken to reduce its incidence is made. The terrorist events of the past years give a first insight into the causes.

In the European Community only three states have been free of politically motivated acts of terrorism in the past few years - Belgium, Denmark and Luxembourg. The Netherlands has had two serious incidents in which South Moluccans resident in the country have taken hostages and pursued grievances that mainly concern the Indonesian Government.

France has seen a number of incidents connected with political events in the Middle East, while the Federal Republic of Germany has had a number of incidents some in support of the Palestinians, and others in support

¹ W H Smith "International Terrorism: a political analysis"
Yearbook of World Affairs 1977

of violent revolutionary change orchestrated by members of what was known as the Baader-Meinhof gang.

The United Kingdom has suffered violence in Northern Ireland for nearly eight years and has had terrorist acts committed in support of various causes in Northern Ireland, while the Republic of Ireland has been affected also by violent acts. Italy has seen political violence, acts of terrorism, kidnapping and murder occurring frequently - in many cases for political purposes.

While it is often difficult to disentangle reasons for many so-called political acts of violence, some are directly linked to political causes (injuries or murders of political opponents), some are made to raise funds for political causes (bank robbings, kidnapping and hi-jacking), some are committed to provide publicity for political causes (almost all such actions).

Perhaps the most infamous terrorist cause is the pro Palestinian one. Many incidents since the late 1960s have been aimed at the State of Israel to press for the establishment of a Palestinian state in the Middle East. These incidents have most often happened in western democracies, particularly in Europe. The targets have included aircraft, airline passengers, western diplomats, politicians, businessmen and nationals of the State of Israel.

These actions have not only been directed at the government of the State of Israel to force a change in policy and indeed to replace it. They have also been aimed at Israeli, Arab, and indeed world opinion to influence attitudes towards Israel.

But why terrorism, rather than the acceptable processes of political debate and negotiations? The participants in these acts often describe the situation in victim states as unchangeable through the usual processes of political activity. The violence is carried out by a small minority of activists who appear to have isolated themselves from the mainstream of the political debate, and who are unwilling or unable to consider it an effective way to bring about change. Some political philosophers have argued that violence is a justified means of bringing about political change. Certain states today accept such a philosophy and provide exile

(and perhaps support) for those who commit violence to attain a certain political system. Some go further: Frantz Fanon has elevated violence into a mystique:

"Violence alone, violence committed by the people, violence organized and educated by its leaders, makes it possible for the masses to understand social truths and gives the key to them."¹

What he did not recognize was that violence encourages further acts of violence and that no social system can survive based on violence. For violence is indiscriminately crude and final.

Terrorism then has philosophical, psychological and psychotic motives as well as political ones. In response to troublesome and at times intransigent political problems it appears to be a destructive and negative action.

Yet it is often a politically motivated crime. And political crimes - if not politically motivated ones - have been traditionally distinguished from other crimes with similar effects. Measures to restrict "terrorism" may restrict political offences which have been accepted by some democracies as distinguishable and to be dealt with differently. Those who have committed such offences have been able to avoid extradition and exile. The principle of non-extradition for political offences is still widely accepted as a general principle of international law.

Terrorism has been seen as effective to some people; without effect it would not continue. But how has it been effective? First, those who have resorted to terrorism have, wittingly or not, exploited western democracies' value of individual human life. Threatening to take life (and often carrying out the threat) has been a persuasive strategy. But, second, terrorists have recognized perhaps the extreme difficulty democratic nations have in maintaining the balance between preserving freedom to dissent and denying freedom to ultimate opposition, and that nations differ in their interpretation of where the balance lies.

The measures then that have been taken in Europe to reduce the incidence of terrorist actions have been of two forms, tactical and strategic.

¹ F. Fanon "The Wretched of the Earth".

In the first category are those measures which are designed to reduce the effectiveness of individual terrorist acts, that is by common discussion of and agreement on techniques to be followed once a terrorist action has begun.

In the second category are those measures which are designed to reduce the opportunities available to political terrorists to fulfil their threat. These take two forms - a legal one where for instance definition of political crime can more carefully circumscribed, to distinguish more clearly terrorism from 'acceptable' political action (as for instance the Council of Europe's Convention on the Suppression of Terrorism), and an administrative one, when the physical opportunities are more carefully restricted by increasing security measures in airports, by having greater surveillance of Embassies, and so on. The European Communities activities have been largely tactical and administrative, within the context of political cooperation.

Anti-terrorist initiatives in Europe

So far all measures taken against terrorism in western Europe have been agreed only after all parties to such measures are convinced that the fundamental liberties of their citizens will not be significantly changed by them.

They have been taken at many levels, by the Nine Member States of the European Community, by the 19 members of the Council of Europe by the 35 signatories in the Final Act of the CSCE and within the United Nations or its associated organizations.

1. E C initiatives

In the Rome meeting of the European Council on 1-2 December 1975, the U K proposed that the Member States cooperate to combat terrorism. Meetings of the Foreign Affairs ministers and Ministers for Internal Affairs followed in June 1976 and May 1977.

The Council of the EC agreed a declaration on international terrorism on 13 July 1976 (see Annex I) which formed the basis of the EC's stand in a debate in the U N General Assembly on the hi-jacking of aircraft to Entebbe by the PFLP. They had earlier approved a six-point programme (29 June 1976) including:

- (1) Exchange of information on terrorist acts committed in the past, which would provide useful indicators to actions in the future;
- (2) Organization of assistance and cooperation in future cases of terrorism;
- (3) Exchange of experience and technical information on technology, police equipment, etc.;
- (4) Promotion of the exchange of police personnel and exchange of information on the training of policemen;
- (5) Closer cooperation in other fields of general security, especially those of aviation security, nuclear security, and combatting of natural or accidental disasters;
- (6) The Ministers gave instructions that detailed provisions be drawn up for the implementation of the programme.

The Ministers stressed that the programme was aimed at protecting citizens from the effects of terrorism. It was not a "struggle against terrorism".

In May 1977 the programme was reviewed and the problems of security of nuclear installations and supplies from terrorist action were examined.

For its part the European Parliament has recently passed two resolutions on terrorism. In July 1976, the European Parliament while stressing international cooperation also pressed for "suitable mutual judicial assistance agreements with Third countries", and coordination of Member States' views in the UN and its organizations. In January 1977 the European Parliament called the governments and Parliaments of the Member States to ratify immediately the European Convention on the Suppression of Terrorism (see below).

2. The Council of Europe

The Convention on the Suppression of Terrorism (see Annex II) adopted by the Committee of Foreign Ministers of the Council of Europe on 10 November 1976 and subsequently signed by 17 Member States in February 1977 restricts the definition of political crime for the purpose of extradition by excluding:

- (a) hi-jacking a civil aircraft;
- (b) threats to the safety of a civil aircraft;
- (c) kidnapping or taking hostage;
- (d) serious offences involving threats to life, of injury or to liberty of diplomats;
- (e) an anti-personnel offence involving the use of a bomb, grenade, rocket, automatic firearm, or letter or parcel bomb;
- (f) attempt to commit any of these, or acting as an accomplice,

where the offender moves from one state to others after committing his offence (Arts. 1 and 2).

All extradition treaties and arrangements are thus modified to the extent that they are incompatible with the Convention. The Convention promotes cooperation between states on the criminal acts described, but recognizes that an obligation is not imposed on a state to extradite a possible offender or to provide mutual assistance, 'if the requested state has substantial grounds for believing that the request ... has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that the person's position may be prejudiced for any of these reasons' (Arts. 5 and 8).

The present legal remedies, and extradition treaties are applicable, as amended by the Convention. The Council of Europe's European Committee on Crime Problems will be kept informed of the application of the convention and will intercede if difficulties should arise out of the Convention's execution (Article 9). An arbitration tribunal is set up to resolve disputes between states on the interpretation of the Convention (Article 10). The effectiveness of such a convention was starkly put in question, before states had signed it, by the arrest and release of Abu Daoud, suspected of complicity in the murder of 11 Israeli athletes by a Palestinian organization during the 1972 Munich Olympic Games, despite extradition proceedings being started by another Member State.

3. Conference for Security and Cooperation in Europe

Certain commentators consider that terrorist activities are funded by states of different political persuasions. Indeed the Libyan President Gaddafi has all but admitted his support of terrorist groups. An attempt to reduce the risk of this was made in the Final Act of the Helsinki Conference on Security and Cooperation in Europe. The Sixth Principle Guiding Relations between Participating States, on "Non-intervention in internal affairs" states:

"The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations.

They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State.

They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

Accordingly, they will, inter alia, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the régime of another participating State."

In order to maintain the fine balance between the respect of human rights and fundamental freedoms and the restrictions on violent political activity care was taken to include the Seventh Principle on just that.

4. Other international measures

A number of international agreements have been made since 1960 in particular to protect diplomats and international civil aviation. The Vienna Convention of 1961 codifies the duty of States to protect international diplomacy. What it did not do was ensure that the attackers were brought to justice. In December 1973 the United Nations General Assembly adopted a resolution supporting a Convention on the provision of punishment of crimes against internationally protected persons, including diplomatic agents. Article 7 of the Convention required States either to extradite or to submit an alleged offender to prosecution "without exception whatsoever" and without undue delay" - the legal principle of aut dedere aut judicare. Article 12, however, stated that existing treaties on asylum were not affected by the Convention.

The Tokyo Convention of 1963 (effective 1969), the Hague Convention of 1970 (effective 1971) and the Montreal Convention of 1971 (effective 1972) followed the spread of aircraft hi-jacking in the 1960s. These Conventions facilitated cooperation among States rather than imposing any major new obligations. But a number of countries have persistently refused to subscribe to these Conventions. As Smith says "Where such Conventions promise to be most effective is in dealing with hi-jackers acting from purely personal motives".

The extent of hi-jacking has, however, declined and this is most likely to be due to the administrative measures designed to forestall hi-jackers, for instance security measures at airports, checking baggage, etc.

The European Community has also been instrumental in the introduction at the United Nations of a measure against terrorism, but the effect of this measure has been largely vitiated by the opposition of certain countries, such as Libya, who believe in the acceptable use of violence to promote political change.

The various legal measures that have been taken to reduce terrorism are insufficient in the face of the unwillingness of States to enforce these measures, or in their unwillingness to consider such measures as relevant to terrorist activities "for international terrorism originates in political disputes which are notoriously resistant to legal regulation." (1)

What more can be done?

It would appear that there is now some evidence to suggest that violent actions for political causes, if successful, tend to be followed by violent actions from other political groups who have seen the effectiveness of violence for the achievement of political goals. There would not appear to be a simple solution. There may always be one individual, group or State who for short-term reasons accepts the resort to violence as justifiable. But in order to reduce the likelihood of this it is important to continue the international cooperation and exchange of information on methods to protect against terrorism, while at the same time ensuring the highest respect for human rights and fundamental freedoms. Parliamentarians the world over have a critical role to play in this, so as to demonstrate that normal political activity can be effective - without the resort to violence.

Several courses of action also seem worth examining:

1. An international study group should be set up to examine and report on legal principles of "political offences" within the context of international covenants respecting human rights. The study should also concern itself with the principle of extradition, and with the numerous extradition treaties that have been made between states;
2. Further security measures and control procedures, on the movement of airline passengers, international agreement on such procedures, and harmonisation of administrative practices, should be considered;
3. A particular problem concerns the security of nuclear materials; as more countries of the world turn to nuclear energy to provide for their future energy needs, it is vital to ensure security of the necessary nuclear materials against loss and misuse. The Nuclear Non-proliferation treaty has not appeared sufficient so far, and other measures should be urgently examined and agreed. Yet in the first instance all countries who envisage the use of nuclear materials in their country should sign and ratify the treaty.

(1) W.H. Smith, "International Terrorism: a Political Analysis".
The Year Book of World Affairs 1977, p.152.

4. International cooperation and goodwill in the United Nations and its organisations will increase only with intercontinental cooperation on such issues, and with the closer observance of the terms of the Universal Declaration on Human Rights and the International Covenants on Civil and Political, Economic and Social Rights. By these means the United Nations will become more effective, and will begin to fulfil some of the hopes of the founders, and of its present members.

5. Contacts between the EC and Latin America should include regular and detailed discussions and exchanges of views on these matters, not only at the parliamentary level but also at the official level, for instance in the context of scientific, technological and juridical cooperation.

Terrorism is not the monopoly of extra-governmental groups striving for power. Its first appearance was, after all, in the methods of a government. And as parliamentarians we have the duty to ensure both that fundamental freedoms are respected by governments and that political violence against governments is reduced to a minimum.

Declaration of the European Council on International Terrorism

1. The Member States of the European Communities hereby declare that they regard the inhuman practice of taking hostages for the purpose of putting pressure on Governments, for whatever political or non-political ends and for whatever motives, as completely unacceptable.
2. It is in the interests of all Governments resolutely to oppose such methods. It is in the interests of all Governments to cooperate in combatting the evil of terrorism.
3. Recent events have shown once again that no country, no people and Government can hope to be spared acts of terrorism, kidnappings and hi-jackings directed against its citizens and interests unless all countries agree on effective measures.
4. In this connection the Member States of the European Communities declare that they are determined to cooperate with other countries in setting up effective world-wide measures to eradicate and prevent international terrorism, kidnappings and hi-jackings. Member States undertake to prosecute or extradite those who engage in the taking of hostages.
5. The Heads of Government take note of the decisions which the Ministers for Foreign Affairs and Justice of the Member States have already taken in this matter in response to the request made at the European Council held on 1 and 2 December 1975 in Rome, and asks these Ministers to continue their activities.
6. More particularly, the Heads of Government ask their Ministers for Justice to set up a convention under which the nine Member States undertake to prosecute or extradite those engaged in the taking of hostages. They shall ensure that as many countries as possible cooperate in this.

EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members ;

Aware of the growing concern caused by the increase in acts of terrorism ;

Wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment ;

Convinced that extradition is a particularly effective measure for achieving this result,

Have agreed as follows :

Article 1

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

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

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

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

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

e. an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons ;

f. an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 2

1. For the purposes of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.

2. The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.

3. The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 3

The provisions of all extradition treaties and arrangements applicable between Contracting States, including the European Convention on Extradition, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 4

For the purposes of this Convention and to the extent that any offence mentioned in Article 1 or 2 is not listed as an extraditable offence in any extradition convention or treaty existing between Contracting States, it shall be deemed to be included as such therein.

Article 5

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

Article 6

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over an offence mentioned in Article 1 in the case where the suspected offender is present in its territory and it does not extradite him after receiving a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State.
2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received a request for extradition under the conditions mentioned in Article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

Article 8

1. Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of the offences mentioned in Article 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
2. Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual assistance if the requested State has substantial grounds for believing that the request for mutual assistance in respect of an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.
3. The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 9

1. The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention.
2. It shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 10

1. Any dispute between Contracting States concerning the interpretation or application of this Convention, which has not been settled in the framework of Article 9, paragraph 2, shall, at the request of any Party to the dispute, be referred to arbitration. Each Party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any Party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other Party by the President of the European Court of Human Rights. If the latter should be a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court or, if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court not being a national of one of the Parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.
2. The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

Article 11

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 12

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect immediately or at such later date as may be specified in the notification.

Article 13

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including :

- a. that it created a collective danger to the life, physical integrity or liberty of persons; or
- b. that it affected persons foreign to the motives behind it ; or
- c. that cruel or vicious means have been used in the commission of the offence.

2. Any State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

3. A State which has made a reservation in accordance with paragraph 1 of this article may not claim the application of Article 1 by any other State ; it may, however, if its reservation is partial or conditional, claim the application of that article in so far as it has itself accepted it.

Article 14

Any Contracting State may denounce this Convention by means of a written notification addressed to the Secretary General of the Council of Europe. Any such denunciation shall take effect immediately or at such later date as may be specified in the notification.

Article 15

This Convention ceases to have effect in respect of any Contracting State which withdraws from or ceases to be a Member of the Council of Europe.

Article 16

The Secretary General of the Council of Europe shall notify the member States of the Council of :

- a. any signature ;
- b. any deposit of an instrument of ratification, acceptance or approval ;
- c. any date of entry into force of this Convention in accordance with Article 11 thereof ;
- d. any declaration or notification received in pursuance of the provisions of Article 12 ;
- e. any reservation made in pursuance of the provisions of Article 13, paragraph 1 ;
- f. the withdrawal of any reservation effected in pursuance of the provisions of Article 13, paragraph 2 ;
- g. any notification received in pursuance of Article 14 and the date on which denunciation takes effect ;
- h. any cessation of the effects of the Convention pursuant to Article 15.

