Selected Terroristic Claims Arising From The Arab-Israeli Context

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SELECTED TERRORISTIC CLAIMS ARISING FROM THE ARAB-ISRAELI CONTEXT

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THIS PAPER ADDRESSES ITSELF to a subject of great importance and complexity—terrorism in the Mid-East conflict. Recognizing the vastness of this complex subject matter, this presentation focuses upon and confines its scope to the content of relevant international law and the efforts by some of the participants in the Mid-East struggle to justify conduct or to seek approval of conduct through changes in the law. It should be understood that the attempt herein is to consider law as it is and law as it might develop—not to debate the propriety or impropriety of the Israeli or Arab cause or of specific instances of terroristic usage. Instead of imputing guilt or blame, we will consider the import of certain claims to the community, the policies which the community seeks to promote by international law and the effect of these on the basic quest for human dignity. More specifically the focus here is on international legal norms, general community policies which are at stake, generally shared expectations of the community which provide content to legal norms, and certain basic types of recurring claims by the participants in the Mid-East struggle which will affect those policies and expectations or which seek to change them. Hopefully such a focus will provide insight and avoid the rhetorical confusion and sterile polemics which one often finds in United Nations General Assembly debates on the matter.

Moreover, if some readers seek to justify the actual conduct of some of their proxy heroes, then it should even be useful for them to consider the types of claims being made by the participants and the content and changing nature of law. A more rational and realistic discussion of the permissibility or impermissibility of specific conduct in the Mid-East context should, it is alleged, involve at a minimum a thorough exploration of actual community consensus and the actual context of social interaction. For a thorough exploration of consensus, there should at least be some consideration of the developed legal norms which are relevant to the particular terroristic usage, the generally shared expectations of the community which provide a more particularized content to those norms and the actual perspectives of the participants in the terroristic process. Whether your interest lies primarily with legal inquiry or judgmental effort, this inquiry into community consensus and claim would seem a most appropriate beginning. Furthermore, if your interest is primarily one of law implementation or the protection of the victims of terroristic usage and the prevention of terroristic strategy, then a consideration of

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claims and normative content should be of some importance since cooperative effort to implement the law seems necessarily hinged upon a shared understanding of the content of the law and the types of divergent claims which exist.

Before we consider the relevant norms and certain basic claims of the participants in Mid-East terrorism, however, it would seem most useful to consider some shared understanding of what is meant by "terrorism" or a "terroristic strategy." It is not the purpose here to provide a detailed explanation of the definitional approach adopted. Rather it is merely intended to disclose a working definition to promote continued discussion on a shared footing avoiding the ambiguity and confusion which seems to have entered other legal discussions on this subject. For example, some have viewed terrorism as "violent acts of a criminal nature"; but that is not a very helpful beginning. Not only does such an approach contain a circuitous ambiguity with its reference to "criminal nature," but it is most unhelpful in distinguishing between types of violent acts.

Instead of this sort of simplistic and ambiguous approach, terrorism is viewed here as one of the forms of violent strategies that are themselves a species of coercion utilized to alter the freedom of choice of others. The terroristic process (terrorism) involves the purposive use of violence or the threat of violence by the precipitators against an instrumental target in order to communicate to a primary target a threat of future violence so as to coerce the primary target into behavior or attitudes through intense fear or anxiety in connection with a demanded power (political) outcome.¹ It should be noted that in a specific context the instrumental and primary targets could be the same person or group of persons. For example, an attack could be made on a military headquarters in order to instill terror or intense anxiety in the military elite of that headquarters. Additionally, the instrumental target need not be a person since attacks on targets such as power stations can produce a terror outcome in the civilian population of the community dependent upon the station for electricity. There must be a terroristic outcome or the process could hardly be labeled as terrorism (something which seems to have eluded some of the U.N. debaters). However, there are fine lines for juridical distinction to be made between fear and intense fear outcomes, although in many cases the type of strategy could well be prohibited under different normative provisions of the law. The point is that definitions which refer merely to "acts of violence," "repressive acts," "violent acts of a criminal nature" (full of circuitous ambiguity per se), or "a heinous act of barbarism," are strikingly incomplete. It should also

be observed that terrorism can be precipitated by governments, groups, or individuals so that any exclusion of one or more sets of precipitators from the definitional framework is highly unrealistic.

Equally unrealistic are definitional criteria which refer to “systematic” uses of violence, since terrorism can occur at an instant and by one act. Indeed, the law of war and other norms already make no sweeping distinctions between singular or systematic terroristic processes, governmental or nongovernmental precipitations, or governmental and nongovernmental targets. If distinctions in permissibility result, it is usually the result of a conscious policy choice and not a definitional exclusion in the fashion of an ostrich. Similarly unhelpful definitional criteria include: “unjust” activity, atrocious conduct, arbitrariness, irrationality, indiscriminate, selective and unexpected. Terror can be caused by an unintended act and terror can occur in connection with a demanded financial or other non-political outcome (motivation), but such events are not the purpose of this inquiry and do not seem to be those considered by the community.

With this definitional framework in mind, the next matter of inquiry concerns certain general principles of law applicable to terrorism of an international nature. Examples of the general categories of applicable international law include: (1) the United Nations Charter articles on human rights, self-determination and the use of force;\(^2\) (2) customary norms on human rights and the use of force; (3) basic human rights expectations; (4) the law of human rights in times of armed conflict, including the customary law of war and the 1949 Geneva Conventions, and (5) basic expectations concerning self-determination. Within the scope of this paper it would be impossible to explore each set of norms as they relate to the legal regulation of the terroristic process. Accordingly, an effort will be made to tie in certain examples of these with the types of claim recognized. The basic types of recurring claims made by Mid-East participants can be classified for convenience into three broad and necessarily interrelated types: (1) attempts to exclude entire contexts from legal regulation, (2) claims relating to targets, and (3) claims relating to contextual “necessity.” There are certainly other types of claims, but this categorization seems useful for our purposes.

I. ATTEMPTS TO EXCLUDE CONTEXTS FROM LEGAL REGULATION.

A. USE AGAINST “AGGRESSORS” OR DURING A “JUST” WAR.

It has long been expected in connection with the international law of war that the legal norms designed to limit combative violence and to protect noncombatants shall apply equally between aggressor and innocent alike. There have, however, been some intimations in the Mid-East

\(^2\) See, e.g., U.N. CHARTER, arts. 1, 2(4), 55(c), 56.
of law in a context which they view as a war against the "aggressor" context that certain Arab states might claim a freedom from the restraints Israel. There have been open statements by Arab leaders calling for the "Jihad" or "holy" war against the Zionist "aggressors," and these statements, if not themselves of a terroristic nature, have called for liquidations and massacres which might well involve terrorist strategies. It should be noted, however, that this sort of claim has not been explicitly made at the recent United Nations sessions on terrorism or the International Convention sessions of the Red Cross (ICRC) for the updating of the law of armed conflict. It has arisen in the U.N. debates on terrorism, but the only adherents are Czechoslovakia and two of the Soviet Republics. Closely related claims are those of Lebanon and the Syrian Arab Republic which refer to a situation where a people is fighting "to reconquer usurped territories, to drive out an invader," or to seek "the liquidation of foreign occupation." With this sort of claim coming to view we might not be able to state with accuracy the position that some Arab states seek an exclusion from regulation of the context of aggression. But at least it seems that a related claim to exclude the context of an effort to recapture occupied territory has been made.

B. SELF-DETERMINATION STRUGGLES.

A second type of claim which seeks to exclude a whole context from legal regulation has been posed in terms of a self-determination struggle or national liberation movement. It is difficult to judge at this time how many states adhere to this sort of claim. Some 14 states seem to take a similar stance, but upon close inspection many of the articulated positions seem merely to claim that a ban on international terrorism "should not affect" the inalienable right to self-determination and independence of all peoples or "the legitimacy of their struggle" (or words of similar effect).
Such a claim seems merely to affirm that an otherwise legitimate use of force or overall struggle for self-determination should not itself be considered as an impermissible terroristic process per se. With this the author must agree. But, then, it would seem, to the author's disagreement, that no claim is being made by even these states that during such a self-determination struggle *any* means of force (including terroristic strategies directed against civilians protected under the Geneva Civilian Convention) is to be permissible in that context. There are a few states which seem to have specifically claimed that *any* means utilized in such a self-determinative process (if not in an elitist attempt to control the ideological and political perspectives and events in a given social process—a form of dominance) should be legal, but their uncompromising and extreme viewpoints seem thus far to have convinced no one else.

Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yemen, Yugoslavia, Zaire and Zambia) expressed the view that the ban on terrorism "should not affect the inalienable right to self-determination and independence... and the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter..." (emphasis added). U.N. Doc. A/9028 *supra* note 4. Note that a struggle "in accordance with the purposes and principles of the Charter" would most certainly seek to ensure respect for human rights in times of armed conflict (plus general human rights). See U.N. CHARTER, preamble and arts. 1(2) and (3), 2(4), 55(c) and 56.

8 A claim that an otherwise permissible process of political change should not itself (as a whole) be banned because of its terror impact is far different than a claim that *any* means utilized during such a process should be legitimate when analyzed as separate strategies. It seems quite likely that most states which mention self-determination or national liberation movements wish to claim only that the overall process should not be impermissible because of some terror impact. The author notes that the mere accumulation of terror producing strategies that are separately impermissible into a movement should not result in a conclusion of permissibility. Thus, the author wishes to reserve judgment on self-determination processes with the remark that they should not be impermissible per se because of some terror impact. Each process would have to be examined in terms of all relevant goal values and the actual context. *Contra*, U.N. Sec'y Gen. Rep. A/C.6/418 *supra* note 4 at 7, stating: "The subject of international terrorism has... nothing to do with the question of when the use of force is legitimate..."

Moreover, because of the author's concept of authority and legitimate self-determination (by all participants in a freely determined process), see note 1 *supra*, the author finds the remarks of Czechoslovakia which condemn acts of "individual" terrorism "as a means to achieve revolutionary aims" quite compatible with his own views. See U.N. Doc. A/A.C.160/1/Add. 2 *supra* note 4 at 3. See also U.N. Doc. A/A.C.160/1 *supra* note 4 at 4 for the apt statement of Austria that "acts of individual violence should be condemned... since they, by their very nature, infringe upon the right of self-determination of those peoples whose Governments become the object and aim of such terroristic acts and jeopardize peaceful and constructive relations between States."

9 See U.N. Doc. A/A.C.160/1 and U.N. Doc. A/9028 *supra* note 4. Included are: Cyprus, Czechoslovakia, Lebanon, Nigeria, Syrian Arab Republic, Ukrainian Soviet Socialist Republic, U.S.S.R., Yemen Arab Republic, Yugoslavia. Note that the U.S.S.R. is included here while the Byelorussian Soviet Socialist Republic is not (surely an oddity). Specifically, for example, Yugoslavia refers to an exclusion of interference "in any way" with struggles and an approval of the carrying on of a struggle "with all means at their disposal."
C. THE OPPRESSORS AND THE OPPRESSED.

Interrelated with these types of claims which seek to exclude a whole context from legal regulation is a third and more general type which has found some expression in the literature, but as yet, no formal adherents in the U.N. sessions or usage in debate beyond a fleeting rhetorical reference. This type of claim is that in a struggle by the “oppressed” against the “oppressors,” there should be no international regulation of terroristic strategy. It is a curiously simple argument, and one that lends itself to the simple mind. Since we seek a more rational and realistic approach to the question, we should recall that a widely shared expectancy exists that not all strategies for violent coercion are permissible and that the “justness” of one’s political cause does not simplistically “justify the means” utilized. Indeed, the Secretary General has put it more directly in his report on international terrorism:

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http://ideaexchange.uakron.edu/akronlawreview/vol7/iss3/5
At all times in history, mankind has recognized the unavoidable necessity of repressing some forms of violence, which otherwise would threaten the very existence of society as well as that of man himself. There are some means of using force, as in every form of human conflict, which must not be used, even when the use of force is legally and morally justified, and regardless of the status of the perpetrator.12

In addition another relevant trend in expectation has excluded the offense of terrorism from “political” crimes in connection with norms of extradition.13 Further, relevant human rights instruments allow no exception to human rights protections on the basis of a postulated political purpose in cases of conduct which would amount to acts or threats of terrorism.14
It cannot be overemphasized that this recognition of legal restraints on violent coercion and the unacceptability of "just" excuses per se is a key to the efficacy of norms proscribing terroristic strategies, for without a shared acceptance of these two basic premises law can have little effect on the participants in the power process. Consequently, they will increasingly defer to raw, violent power as the force and "just" measure of social change. Not only is there insufficient guidance in the errant meaning of the word "just," as with the words "oppressed" and "oppressors," but necessarily the "oppressed" who use coercive violence are going to become the "oppressors" of someone else or some other thought. Accordingly, the "guidance" leaves us in a circular confusion and leaves mankind in a ridiculous spiral pursuit of self-destructive terror and counter-terror.\textsuperscript{15} To add simplistically that terrorism is "necessary" so that the "will of the people" can be expressed is similarly unattractive and incredulous as a generality. An intentionally created terror necessarily suppresses a free expression of all viewpoints and a free and full participation of all persons in the political process.

Interconnected with these problems are those relating to exclusions of legal coverage on the basis of "aggressor" status of one or more of the parties to a particular armed conflict; and, as stated, the general expectation is that no exception of such a nature should be made. Underlying this expectation is a recognition that it is often difficult to determine which party is an aggressor, that without an authoritative determination on such a matter each party to the conflict might refuse to apply human rights principles and the law of war to the other parties to the conflict in the context of conflicting assertions and escalating inhumanity. Moreover, it is observed that the law of human rights in times of armed conflict is designed to assure protection to all noncombatants regardless of race, colour, religion, faith, sex, birth, wealth, political opinion or similar criteria and is a law built upon the expectancy of an obligation owed to all of mankind rather than to the mere number of participants actually involved in the fray.\textsuperscript{16} Furthermore, the goal values covered in that law are deemed too important to give way to such a claim and most norms are of a peremptory nature allowing no derogation on the basis of state status, political or ideological


pretex, military necessity or state or group interest, unless specifically stated for a particular prescription.

D. GUERRILLA WARFARE.

The last type of claim which seeks to exclude an entire context from legal regulation involves guerrilla warfare. This claim has not yet arisen in the general U.N. debate on terrorism. Rather, it has arisen in the context of efforts to revitalize certain provisions of the law of war as a claim that the means employed by insurgent-guerrillas in a guerrilla war or armed conflict, including the terrorization of noncombatants, should be permissible. Some have even advocated that in a guerrilla warfare context all participants should be allowed to escape the regulation of the law. Both of these claims are minority viewpoints and both run counter


For a related claim by the Soviet Union see Contemporary International Law 6 and 13 (Tunkin, ed. 1969). For recent evidence of insurgent practice along these lines see N.Y. Times, May 28, 1973, at 3, col. 6. It is not difficult to realize why the Soviets are prone to accept "Neo-Machiavellian" theories that the ends (political) justify (legally) the means when it is known that part of the Leninist ideological tradition has been that morality is entirely subordinated to the interests of the proletarian class struggle—that its principles "are to be derived from the requirements and objectives of this struggle." H. Marcuse, Soviet Marxism—A Critical Analysis 199, 201 (1961). At least here Marcuse seemed highly critical of this approach, stating that "the means prejudice the end" and that the "end recedes, the means become everything; and the sum total of means is 'the movement' itself. It absorbs and adorns itself with the values of the goal, whose realization 'the movement' itself delays." Id. at xiv, 225. See also M. Oppenheimer, The Urban Guerrilla 50, 57, 59-60, 63-64, 66, 69, 161 (1969). See also A. Camus, The Rebel 208 passim (1956), emphasizing that one of Marx's phrases "forever withholds from his triumphant disciples the greatness and the humanity which once were his: 'An end that requires unjust means is not a just end.' "
SYMPOSIUM: TERRORISM IN THE MIDDLE EAST

II. CLAIMS RELATING TO TARGETS

A. COMBATANTS.

A discoverable claim relating to targets has arisen in the Mid-East context and elsewhere that terroristic attacks upon combatants during an armed conflict is permissible. Apparently the claim is generally acceptable and it does seem that no complete ban on terrorism presently exists where the terroristic outcome relates to military personnel. There are, of course, general bans on “unnecessary suffering,” the use of poison, assassination, refusals of quarter, the “treacherous” killing or wounding of individuals, etc., regardless of the combatant or noncombatant character of the intended target. These types of restrictions will regulate terrorism on the battlefield to a certain extent in the sense that some terroristic acts will be prohibited and others will not. Yet, no ban on the use of a strategy of terrorism against combatants specifically appears in the proscriptions as it does under customary law in connection with noncombatant targets and under the Geneva Conventions in connection with noncombatants or captured military personnel (prior combatants that become noncombatants due to capture and control).

Moreover, what is authoritatively interpreted as “treacherous” or “unnecessary” will vary with circumstances and the policies to be served. Sometimes the label “treacherous” will coincide with the use of a terroristic strategy and thus result in a legal decision of impermissibility. However, where there is a necessary, and not otherwise treacherous, terrifying attack on counter-military groups (combatants) the conduct may well be permissible in most cases. Notably lacking are proscriptions governing terror- or even fear-inducing combat tactics utilized against combatants. The 1949 Geneva Convention dealing with prisoners of war does not

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19 See, e.g., Hague Convention IV, supra note 10 at art. 23; Field Manual 27-10, ¶ 28-34, 41; Paust, 57 MIL. L. REV. supra note 10, passim.

20 See, e.g., Geneva Convention, supra note 14 at arts. 3, 13, 16, 31, 33; J. PICTET, IV COMMENTARY, supra note 11 at 31, 40, 220, 225-26, 594.

21 See, e.g., G.P.W., art. 17 (prohibiting physical and mental torture or “any other form of coercion,” etc.).
attach until the relevant person has "fallen into the power of the enemy" (Article 4) in the case of an international armed conflict, or is a person "taking no active part in the hostilities," in the case of an armed conflict not of an international character (common Article 3).

B. NONCOMBATANTS.

As previously mentioned, terroristic attacks against noncombatants, whether they are in the control of the precipitators or not, are forbidden under the international law of war. Customary law of war has developed principles prohibiting attack (by any means) upon noncombatants per se along with significant development of specific prohibitions of terroristic attacks upon populations and noncombatant individuals or groups.22 Unfortunately, the intervening practice of aerial warfare has left a gap in the developed norms in the context of a total war and claims of imperative necessity,23 However, since the era of the total war, much of the prior expectation has been recaptured and efforts are underway to specify this prohibition in greater detail in the new Geneva Protocols being formulated. It would seem that the community cannot be too repetitive in articulating its perspectives on this matter if it wants to guarantee an expectation that no noncombatants can ever be the intended object of a terroristic attack.

Presently, during an international armed conflict, Article 4 of the Geneva Civilian Convention generally excludes from the coverage of Article 33 (which prohibits all forms of terrorism) those persons who are not "in the hands of" a capturing power.24 Articles 13 and 16, however, are much wider in coverage since they apply to the entire populations of the parties to the conflict. For a terroristic strategy to be specifically prohibited, it would seem to require the types of participants enumerated (as either instrumental or primary targets): (1) those "exposed to grave danger," (2) wounded, (3) sick, (4) infirm, (5) expectant mothers, (6) shipwrecked, (7) children under the age of 15 who are orphans or who have been separated from their families as a result of the war, and (8) members of a hospital staff protected under Article 20 or medical units.25

In the case of a conflict not of an international character, common Article 3 of the Geneva law undoubtedly prohibits any terroristic attacks upon any noncombatants (captured or not),26 but even here a specific

22 See, e.g., supra note 10; Paust, Terrorism and the International Law of War, supra note 1, at nn. 17-21, passim.
26 See J. PICTET, IV COMMENTARY supra note 11 at 31, 40.
prohibition such as the one contained in a new ICRC Draft Protocol would seem helpful.27 Included in a 1972 ICRC Draft were prohibitions of “terrorization attacks” and “acts of terrorism, as well as reprisals against persons.”28 In fact, at a subsequent session Egypt made clear its position that acts of “terrorism, as well as reprisals against persons and objects necessary to their survival, are prohibited,” and that this prohibition “shall apply to armed conflicts which arise from the struggle of people under alien domination for liberation and self-determination.”29

As a result of that session, however, a dangerous qualification of this prohibition crept into the adopted draft in connection with conflicts not of an international character and seems to have tainted provisions relating to international conflicts as well. Included in an early 1973 Draft were changes such as: “acts and measures that spread terror,” “attacks that spread terror among the civilian population and are launched without distinction against civilians and military objectives,” and “violent acts of terrorism perpetrated without distinction against civilians who do not take a direct part in hostilities.”30 It is doubtful that this haphazard draftsman-ship contains an intended permissibility of discriminate attacks on noncombatants. If properly framed, the new prohibitions of terrorism in the Geneva Protocols will be important because they might help to implement customary and current expectations prohibiting attacks on the civilian population as such, whereas the present Conventions primarily protect persons already in control of the military force or in occupied territory along with the wounded, infirm, women, children or “other persons” who are “exposed to grave danger.”31

28 See, e.g., ICRC, I. BASIC TEXTS, Protocol I, art. 45, Protocol II, art. 5 (Jan. 1972) (proposed draft Protocols to the Conventions, Conference of Governmental Experts, Geneva May-June 1972), concerning specific prohibitions of “terrorization attacks” and “acts of terrorism.” These prohibitions appear in articles designed to protect the general population and individual non-combatants against the dangers of armed conflict in both Article 2 and 3 types of conflict (international and noninternational).
29 II REPORT OF THE WORK OF THE CONFERENCE OF GOVERNMENTAL EXPERTS 34, 36-37 (ICRC July 1972) (positions of Egypt re: Draft arts. 1 and 5 of Protocol II, and joint Egypt-Norway position re: minimal standards for international and non-international conflicts). This is apparently contrary to positions of Lebanon, the Syrian Arab Republic, the Yemen Arab Republic, and some of her other allies.
30 For evidence of this careless draftsman-ship see II REPORT OF THE WORK OF THE CONFERENCE OF GOVERNMENTAL EXPERTS 74-75, 149 (ICRC July 1972) (re: Protocol II, draft art. 5[b], Protocol I). See also the view of France: “attacks the sole purpose of which is to spread terror” or “whose sole purpose was toterrorize civilians” supra note 31 at 74; the view of Australia: “solely to terrorize the civilian population” at 81. At least the views of Australia and France would not allow “discriminate” attacks on civilians, but one wonders if they cover “indiscriminate” attacks upon both combatants and noncombatants, and seem to ignore attacks with both a terroristic purpose and some other purpose (“sole” and “solely”).
31 It should be noted that most of those protected by the Geneva Convention, art. 4, are those in force control (“protected persons”); however, article 4 also refers to Part II of the Convention and to a broader group of persons protected by articles 13 and 16 (i.e., “persons protected”). See J. PICTET, IV COMMENTARY supra note 11.
C. CLAIMS RELATING TO PROPERTY AND MILITARY TARGETS.

Attacks upon property can be designed to induce terror outcomes in a primary target. The question of permissibility versus impermissibility would seem to hinge upon two types of questions: (1) whether property is an otherwise legitimate military target, and (2) whether the primary target of the terroristic process is a combatant or noncombatant group. Of course, the rational and realistic choice will involve additional questions of policy and context, but these inquiries pose important general approaches to the matter. Moreover, if property is not a legitimate military target or if the intended primary target is a noncombatant group, it seems that our question has been answered—the conduct remains prohibited under other norms.

A recent example in the Mid-East context would seem to be the October 18th seizure of a branch of the Bank of America in Beirut, Lebanon, by what may have been a splinter group of the Palestinian guerrillas in Lebanon. The holding of some 39 hostages, even assuming Lebanon to be a war zone, would violate norms protecting human rights in times of armed conflict. Therefore, it would not matter whether the hostages were primary targets or merely instrumental targets. If only the bank was involved as the instrumental target, however, and this took place in a war zone, a question of permissibility is raised in connection with a claim that the Bank of America is a proper military target and a claim that it is proper to induce terror in noncombatants who control or work in banking. This incident involves issues far more complex, however, since there are counter-claims of some acceptability that Lebanon is a neutral country and that this is a matter involving the "export" of terror from the arena of armed conflict. Moreover, even if the attack on the bank were permissible as such, an attack on the bank in order to induce terror in noncombatant groups seems to run counter to the policies behind distinctions made in the law of war concerning combatant and noncombatant targets. A question of fact that would have to be explored in greater detail for the acceptance of a claim of permissibility would be whether the bank management (international and local) was directly involved in the hostilities and whether bank employees at the local branch or the actual hostages were so involved. Similarly, a detailed analysis of terror outcome and longer term effects should be made as well as a comparison of the actual tactics employed, participants involved, their perspectives, resources at their disposal, and the arenas of interaction. This can be related to legal policies at stake and other relevant community expectation for a more rational and realistic decision.

at 50-51, 118-37; Paust, Legal Aspects of the My Lai Incident: A Response to Professor Rubin, supra note 27.

In the Mid-East context there are numerous attacks upon property which may stand fruitful investigation. For example, consider the Israeli attacks upon Arab oil refineries, and Arab attacks upon Israeli transportation facilities, roads and communications. The important distinction for our purposes seems to hinge upon the subjectivities of the participants or upon the initial question of whether such attacks were designed merely to knock out traditional military targets of direct use to the enemy in its war effort; or still further, upon designs to instill a terror outcome in the population as a whole or the ruling elite of the relevant country. Note that a purpose to instill terror in the ruling elite, when analyzed in terms of all other contextual variables, policies and interrelated impacts of each, may well be considered permissible in some cases as in those involving terroristic attacks upon combatants. One interesting claim which is noted in passing is the recent Arab cut of oil to the United States in an apparent effort to coerce us into an inoffensive supportive role regarding Israel. Whether the Arabs were counting on a cold winter to produce a coercive thrust or even a terror outcome in our population or in the politicians who desire to stay in office, is a good question of fact.

III. CLAIMS RELATING TO CONTEXTUAL NECESSITY.

A. PROPAGANDA STRATEGIES.

Actually, all of the above claims relate to questions of necessity in the sense that a comprehensive analysis of permissibility should consider the principles of "unnecessary suffering" and "proportionality"—with the opposite conclusion of "necessity" weighing in the consideration of each claim. Propaganda strategies can also relate to other types of claims, but for convenience they are considered here. Also, we should recall that terrorism as a process involves a sort of "propaganda by deed" or the communication of the threat of future action to the primary target group so as to induce a state of terror. But here, it is appropriate to consider a recent claim by Palestinian groups and their supporters that it has become necessary for Palestinian groups to terrorize some people in order to have equal access to the marketplace of ideas. Perhaps this is rather difficult to understand at first blush; but the claim is that unless we blast the hell out of some of you, you won't pay attention to us or our needs. Such was expressly mentioned by a Jordanian attorney at the World Peace Through Law Conference in Africa last August. He recognized that "the proper way would have been political persuasion," but added in an apparent attempt at justification, "would anyone listen to them?" The
director of the Arab Information Center in Chicago has also added that Palestinian commandos commit terroristic acts against noncombatants and others "to earn an ear or two for their plight. They are the forgotten people, and the more the world forgets about them the more desperate their actions become."\textsuperscript{36}

The problem is that there is some truth to what each of these claimants say—there are Palestinian needs which demand the attention of the world community. However, developed international norms and expectations on human rights and laws of war are clear that no exception to certain prohibitions can be made on the basis of political or military necessity. A clearly peremptory norm in this regard is the prohibition of attacks upon noncombatants and the prohibition of terror directed against captured persons. If the Palestinians want to get an ear or two through terror attacks upon military combatants in the battle arena, however, that is a different sort of claim.

B. REPRISALS AND COUNTER-TERROR.

Also arising out of the Mid-East context are claims to use terroristic strategies as a necessary counter to the actions of one's adversary. The Israelis have made headlines and have experienced an uncomfortable series of U.N. condemnations from some of their reprisal raids. But while Arab actions have similarly arisen, there has been less condemnation in the U.N. of their conduct. To this point, a leading commentator has analyzed the question of Mid-East reprisals and U.N. condemnatory action.\textsuperscript{37} Here we should note that although reprisals against persons protected by the Geneva Conventions are strictly prohibited, and although the United Nations Security Council has condemned reprisal action in general as inconsistent with the principles and purpose of the United Nations Charter, Doctor Bowett offers convincing argument that in some contexts certain reprisal action should be, if it is not already, permissible. Among the factors which he and others would consider are: the motives of the precipitator, the targets and their substantial link to the original wrong, the timing and necessity of the response, the proportionality of the response, and the prior good faith efforts of the precipitator in an attempt to seek peaceful sanctions (including the efficacy of the United Nations in that regard and attempts to utilize the U.N. process).\textsuperscript{38} Interrelated with this sort of inquiry should be the noncombatant or combatant nature of the targets and an analysis of the types of policies involved, base values or resources available to the participants, the actual arenas of


\textsuperscript{37} See note 3 supra.

interaction and actual strategies utilized, outcomes of terror, and the longer term effects including impacts upon legal policy realization.

Some of the co-mingled policies to be served here include: the human rights of the precipitators, the impact upon general norms of intervention and the use of force in international relations, and the right of self-determination (for both the precipitator group and the target groups). A more specific reference should be made here to a widely recognized proscription with customary background which declares that: “Every 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...”

A similar proscription prohibits related attempts to “organize, assist, foment, finance, incite or tolerate subversive, terrorist or other armed activities.” Further, the United Nations Secretariat has stated that a punishable act should include the incitement, encouragement or toleration of activities designed to spread terror among the population of another state. The above proscriptions are also supported by a long history of expectation usually categorized in terms of aggression or intervention.

It is exactly the denial of the fulfillment of these sorts of community expectations which has driven Israel to claim the right of reprisal against

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40 U.N.G.A. Res. 2625, supra note 41. This prescriptive elaboration is listed under a section on U.N. CHARTER, art. 2(7).

41 See U.N. Sec’y Gen. Rep. A/C.6/418 supra note 4 at 26. This would include individual criminal sanctioning and such individual responsibility can be found in numerous examples of current expectation or traced to customary law. See III F. Wharton, Digest of the International Law of the United States 326-29 (1886).

terroristic elites, units or base camps in other countries. Perhaps the Israeli conduct has precipitated counter-claims by the Palestinian guerrillas of a similar nature. Thus, we begin to see one of the dangers inherent in this sort of approach—spiraling violence—which must be considered by community decision-makers in view of the escalating dangers to the legal policies to be served.

C. EXPORTATION OF TERRORISM.

The last type of claim considered here refers to the “exporting” of terrorism to countries or arenas which are not directly involved in the Mid-East conflict as combatants or arms suppliers. Specifically, the Munich tragedy, the Athens airport incidents, the coercion of the Austrian government over Jewish transit and other incidents come to mind. Claims are involved which relate to efforts to stop the flow of Jewish immigrants which will feed the state of Israel, efforts to publicize the plight of the Palestinian people, efforts to end foreign support of the state of Israel, and efforts to assassinate counter-military and espionage groups (this apparently by both Palestinian related groups and Israeli or Jewish groups). The claims are related for focus here because of the impact of terror across state boundaries and in countries which are generally classifiable as neutral.

Important policies are at stake here which not only relate to the principles of neutrality, intervention, the containment of armed violence, and human rights, but also to the principles of self-determination. For surely the threats to the governmental elite of Austria have jeopardized the full and free determination of Austrian national policy. Depending upon the types of targets involved, exported terrorism can also interfere with policies designed to assure a freer flow of information across state borders and the protection of diplomats. Thus the community benefits derived from the diplomatic process, transportation services and interrelated human rights to travel and emigration, and policies designed to assure a more integrated and cooperative world polity are significantly affected. At least this is one area of concern which states, with their usual self-protective stance, will most likely face and seek to regulate in the coming months. In fact, many of the present efforts are designed to impose territorial restrictions upon both the potential terrorists (who seek


to "export") and the community (which may seek to regulate matters claimed to be "internal" affairs). There seems to be a natural impetus for states to protect themselves. Nevertheless, what may be lacking is a real concern for the human rights of ordinary victims of terrorism in both the "internal" situation and the "export" of violence situation.

CONCLUSION

It is desired here to leave the reader with one basic thought: analyze each type of claim with reference to the types of policies at stake and a comprehensive consideration of its context. The decision of permissibility or impermissibility is merely a choice, and to be rational and realistic it should reflect a decisional effort to locate each claim in the context of actual participants, perspectives, base values and resources available, situations of interaction (arenas), strategies utilized (types of terror tactics), actual outcomes, the international community and the realization of shared policies that are to be served. Moreover, to simplistically exclude whole areas of context from legal regulation seems extremely unwise and contrary to general trends and expectations which relate to the development of a more inclusive referent to authority, a more interdependent and cooperative world community, and the quest for human dignity and a minimizing of armed violence. Mankind simply cannot afford to leave whole areas of the most violent of human confrontations outside of the regulation of law and the broad demand for human dignity.