of the rules.

There are other inherent dangers in labeling inmates as "political prisoners". New England recently witnessed the unveiling of a comprehensive plan, which would have created one institution for all of New England's hard core and dangerous prisoners, thereby relieving the pressure for maximum security detention in the participating states. Since blacks are disproportionately incarcerated in the United States (when compared to their number in the general population), the plan was quickly shredded by public watchdog organizations, including the Law Enforcement Assistance Administration, because it was felt that the new institution would serve primarily as a place of incarceration for black (and some white) dissenters and similarly troublesome inmates.

Special Institutions for the Hard Core Offender

Finally, the state of California has recently issued a report on its two-year experience with an assortment of restrictive controls over prisoners, which included the segregation of militant and particularly troublesome prisoners into special units, as well as the almost complete shutdown of four of its major adult correctional institutions. Administrators concluded that these controls were wholly counterproductive and resulted in the use of more makeshift weapons, as well as a shift of violence from the general population to the special security units.

The California Experience

Summarizing the United States experience with segregation and isolation of inmates of bad reputation (which includes the characteristic of militancy), it may be said that it has proven to be futile, as well as needless.

Seminar participants recognized the Sisyphean proportions inherent in any attempts at formulating an appropriate correctional response to the political terrorist. A discussion of a system's options yielded the following:

Sanctioning Options

1. Criminalization, such as the imposition of harsh penalties up to and including a life sentence. (Unsually long sentences and life sentences present special problems to the correctional administrator because prisoners who have nothing to lose are notoriously difficult to manage).

2. Cost/benefit analysis, including the death penalty.

3. Post-penitentiary control (based on the admission that corrections may be unable to reform the terrorist).

4. Discharge of political terrorists after completion of their sentences, even though they may resume their destructive activities and hence present a grave risk to society.

The choice of any of these options should always be analyzed in terms of its conformity with our concepts of basic human rights.

The following questions remained unresolved by this session but were deemed important and worthwhile by the discussants for further study and analysis:

The problem of the dangerous and difficult prisoner.

The problem of the socially disadvantaged (or socially inadequate) offender.

Unresolved Questions

The problem of finding an appropriate correctional response to the "ideologically committed" offender who wants to achieve his aims at any price and by any means.

The correctional response to the politi l terrorist (or political prisoner) should be essential y the same as it is to any other offender. He or she should not be given special status, a special position, special privileges or special treatment. Such prisoners should not be put into special institutions designed solely for them but should be added to the general prison or jail population. There should be no a priori plans to segregate or to separate such prisoners. Any decision to isolate political terrorists (or political prisoners) should be made locally, individually, and on the basis of sound administrative practice. Such decisions should always be left to the discretion of the superintendent or warden in charge. Finally, programs and activities should be offered to the prisoners on a voluntary basis, as they should be offered to any other prisoner. However, program

participation should neither become a condition of incarceration, nor a reason for early release from incarceration.

Comments

The main issues in this session centred around whether or not to treat a convicted terrorist differently from other prisoners. National experiences tended to differ on the question of whether to isolate the terrorist from the general prison population. While there was some evidence that convicted terrorists tend to politicize previously uncommitted criminals, providing them with political justifications for their crimes, it was generally found that isolating convicted terrorists created different problems, described by participants as the creation of quasi-military or paramilitary groups, with their own internal hierarchical organization.

There was some discussion on treating convicted political terrorists as POW's, stemming from the fact that in France, convicted terrorists are given certain advantages under a special statute pertaining to political prisoners. However, there was general agreement that the POW analogy should not be applied to terrorists for many of the same reasons that Special Courts were

generally frowned upon. Some participants also pointed out that POW status could amount to an indeterminate sentence, in cases where the context in which terrorism occurs is a persistent one, e.g. the Irish situation.

While there was no general agreement on the question of isolation, most participants felt that any decision to isolate should not be based on a policy relating to a specific type of offence, but should be a local decision based on the behaviour of the individual offender. Thus, a policy of isolation should not be linked to terrorists per se, but should be implemented on an ad hoc basis, according to local needs and circumstances.

Concerning the three possible goals of institutionalization, it was generally agreed that incapacitation was the most applicable to the convicted political terrorist and that treatment was not applicable at all. In fact, it was the adamant refusal to try and "correct" convicted terrorists that led to a consideration of POW status. There was some disagreement on the "correction" or "rehabilitation" approach, ranging from no correction or treatment at all (likening such an approach to brainwashing) to attempts to convince the offender that his means were wrong, even though his goals were inviolate. Final agreement centred on making training programmes or education programmes available on a strictly voluntary, non-contingent basis.

In sum, the major thrust of this session was that the terrorist does pose some unique problems to corrections because of his political orientation, but that any special treatment is fraught with the same dangers recognized already, ranging from glorification of the terrorist to institutional violence bringing the criminal justice system down to the level of the terrorist himself.

S E S S I O N IV

THE ROLE OF LEGISLATION AND CRIMINAL LAW

Bart DE SCHUTTER
Chairman

Tom HADDEN
Rapporteur

Chairman's Remarks

The importance and volume of international terrorism (i.e. terrorism containing non-national elements or a multilateral character) is undeniable.

The ways of analyzing, combatting and solving the phenomenon at the international level are to be differentiated from the mere domestic issues: absence of adequate legislative bodies, no pure international criminal justice system, impact of the political components of the case, etc...

Figures such as those related to the Middle East show the very nature of the problems faced by the criminal justice system when the terrorist cases involve a highly political motivation:

> If in about 6 years time over 200 terrorists were captured in relation to crimes committed in the context of the Arab-Israeli conflict, a probably equal

> amount was never apprehended. Of those in the power of the mechanism which can administer justice, about 50% were freed without trial, 25% freed out of fear or terrorist blackmail and 25% dealt with through trial mechanisms. Most of the latter were released before the end of the sentence. Only a handful still serve prison sentences.

In facing this phenomenon of international terrorism or so-called terrorism, very few answers were found to be available, and these were only of limited effectiveness.

The main features of the response are:

1. negative ones: a) at the interstate level: exclusively concentrated upon the repression techniques; elaboration of conventions to make the behavior a crime under international law; absence of preventive action schemes or more elaborate programmes to eliminate the causes.

b) inability of the community of nations to find an acceptable definition of the act of international terrorism.

2. positive ones: a) elaboration of sectorial "treaties" (hijacking, civil aviation, diplomats ...)

These conventions, analyzed in a nutshell, provide for:

- an obligation to consider the specific act as a "grave breach", requiring serious legislative action from each contracting state (elimination of havens),

- either extradite or prosecute principle,

- the necessity to build a competence rule into the national jurisdiction to try, based on the universality principle,

- the need for collaboration in the administration of justice in these cases.

b) at the preventive level some threats of a non-governmental character, e.g. the airline pilots and the weapon of strikes or refusals to assure certain flights.

c) possibilities of retorsion or reprisal by governments against non-acting states (e.g. breaking diplomatic relations; airline boycott; etc...)

Against this background, a certain number of questions can be debated.

A. Is international normative action of a penal nature the only answer, an acceptable or efficient one in the fight against the crime of international terrorism?

- can international penal sanctions be effective? be credible?

- is harmonized penal law thinkable? universally or regionally?

- what about sanctions against non-compliant states?

- is bilateral action preferable over multilateral?

B. If we accept that law has a role to play, how do we solve the problems linked with the obligation "aut dedere aut judicare".

B.1 What determines the choice between prosecution and extradition?

- cost benefit approach?

- good administration of justice requirements?

- readaptation of the criminal?

- the political environment? (wartime situation, alliance, etc...)

- the perception of the situation by the deciding sovereign?

B.2 What value has the exception to extradition based on political crime or so-called political crime? Are terrorists an exception to the exception?

B.3 Do our national legislation have sufficient provisions to answer the requirement of universal jurisdiction?

C. In the preventive as well as in the repressive area, there is a need for interstate collaboration in the administration of justice. How far is it developed? What are the gaps in the police collaboration? in the transfer of information? in minor forms of criminal assistance?

D. To the extent that criminal sanctioning is part of the defense-setting and considering that crimes of international nature theoretically require an international answer, thoughts may be given to the optimal instrumental answers in the administration of justice.

- is an international criminal court feasible?
- are special (or specialized) courts necessary? dangerous?
- should there be forms of internationalization of the national courts?

To my mind, these are some of the more fundamental questions in this area which make it unique and which distinguish it from the domestic types of terrorist behavior.

Rapporteur's Statement

There was little disagreement with the view that terrorism with some international motive or implication posed different problems from terrorism with purely internal motives. The obvious example in the European context was the series of acts of terrorism arising out of the Middle East situation; in America the most frequent example was the hijacking of aircraft followed by a demand to be taken to Cuba or some other supposed haven.

There was a good deal of disagreement on whether the rules of international law, or even bilateral treaties, contributed much to dealing with the problem. There was general agreement that the hijacking of aircraft, particularly in America, had been dealt with primarily by preventive measures at airports and that these had been imposed on reluctant countries not by international diplomatic pressure but through the power of the American aviation industry. In the European context, de Schutter produced figures indicating that of the 65/66 cases of terrorism arising out of the Arab-Israeli conflict (involving some 200 persons) roughly one

half resulted in the freeing of the culprits without any punishment, roughly one quarter resulted in the freeing of the culprits after conviction, by further terrorist blackmail, leaving only one quarter to serve sentences after conviction; even of these, many were released long before the due expiration of their sentences. The reason for this pattern was the desire of the host countries to avoid becoming further involved and in particular to avoid the risk of being the target of further terrorist acts designed to free the original captured groups. It was also argued that the preventive measures adopted in the civil aviation industry had merely resulted in displacement of terrorist attacks to softer targets.

In these circumstances and in the absence of any prospect of agreement on the setting up of any international criminal courts, given the absolute refusal of the socialist block of countries to permit any infringement on their sovereignty, it was argued that the main focus of attention should be placed on strengthening the principle that states should agree either to extradite or to punish those terrorists who were captured or took refuge in their jurisdiction (aut dedere aut punire). The principal difficulty in this context was the political offence rule under which states were not bound to extradite offenders whose criminal acts had some political motive or connection. It was reported by the Italian and German delegates that negotiations were currently well advanced on the

preparation of a new European Extradition Convention through the Council of Europe which would oblige signatory states to restrict the political offence rule to non-terrorist political offences (defined broadly as those in which there was not a collective danger to human life or safety, a risk to innocent persons or resort to cruel or vicious means); this would impose an obligation on the host state either to extradite or institute criminal proceedings in their own jurisdiction, if necessary extending that jurisdiction for the purpose. It was reported that the British and Irish governments were currently adopting the latter solution of extending their mutual criminal jurisdictions to deal with the problem of fugitive IRA offenders who until now had been able to escape punishment for acts committed in Northern Ireland or Britain by fleeing to the Republic of Ireland. The French delegate raised some objections to the principle of universal jurisdiction and reported that the French government had introduced a measure extending French jurisdiction to cover attacks on French diplomats abroad; this was the limit of the proper extension of criminal jurisdiction.

The supremacy of political factors in relation to extradition, punishment or asylum can be seen as part of the more general dilemma which was recognised from time to time during the proceedings of the conference. There was some general support for the view that

terrorism was always to be condemned as a method of pursuing political objectives, but this did not detract from the fact that political attitudes differed widely on the correct attitude to take to particular outbreaks of terrorism. In the domestic field there was some support for the view that in some cases terrorist outrages were an indication that insufficient attention had been paid to real problems of minorities; in the international field there was a similar feeling that in certain cases international diplomatic effort would be better employed in trying to achieve a settlement of the causes of the terrorism than in trying merely to deal with the terrorist symptoms, as for instance in the Palestinian case. Similar views might have been expressed on the merits of terrorist acts in certain fascist or totalitarian socialist countries. There is also the problem that terrorists sometime win the ultimate battle, whether by growing military force or by the exhaustion of the opposing government. This makes it difficult to condemn all terrorism, since the right to resort to war in the pursuit of basic political objectives was not seriously questioned. This fact is recognized in the international law context by the specific recognition of combatant status and resulting POW status for those involved in disputes of an international character, and also in some cases of internal conflict where what may initially have been a terrorist uprising has developed into full scale civil war.

Some delegates appeared to accept the view that the ultimate supremacy of military force made it impossible to adopt any firm line on terrorism in international law or otherwise; this was linked to the socialist view of law as no more than a weapon in the wider political conflict, under which political offenders would be entitled to less rather than more favourable conditions. One possible resolution of the dilemma might lie in a strategy of openly asserting the values for which liberal democracies were prepared to assert their own power: these were variously described as tolerance, openness, flexibility and a willingness to accept social and political changes on a gradual basis by compromise rather than through the assertion of superior economic, political or military power. If this were accepted, then violence and terrorism would be rejected as an acceptable method of pursuing political objectives in the normal case, though some reservation would probably have to be entered as to the legitimacy of terrorism in cases where the controlling power itself rejected so many of the values of the liberal democratic world as to make it difficult to condemn violence out of hand.

On this view there might be something to be said for the use of international agreements and conventions as a convenient method of formulating and asserting these values. Given the basic difference in approach among socialist block countries it would be necessary to approach this on a regional basis, as has been

done within the Council of Europe. The actual impact of these agreements and conventions would lie in the implementation of the law and of preventive and control policies within the signatory states rather than through international agencies. But the assertion of the values and the acceptance of some degree of international supervision and accountability might serve to give some greater measure of strength to the values adopted, and also to the wider promotion of the liberal democratic ideal on which the control of terrorism is ultimately founded.

Comments

This session focussed on the problems of legislation pertaining to international aspects of terrorism. The main thrust of the session centred on the question of whether international conventions had any effect on the incidence of international terrorism.

There was general pessimism concerning the effectiveness of international conventions *per se*. As an example, the three conventions pertaining to skyjacking (Tokyo, The Hague and Montreal) were seen to be meaningless in terms of direct results, while, by contrast, the pressure of the Airline Pilots Associations was very effective in terms of instigating anti-skyjacking control measures.

One of the major topics discussed was the legislation concerning prosecution or extradition (*aut dedere aut punire*). As pertains to terrorism, the political offense rule whereby political acts were exempted from extradition, was seen as a particular problem, since this would apply to most terrorist

acts. One solution under consideration by the Council of Europe was described whereby the phrase "cruel and vicious means" was to be added to the political offense rule. This would serve as a basis for excluding all political offenses which fit this description. This would presumably include terrorist acts.

In general, it was agreed that international conventions were effective only insofar as they were embodied in national or regional legislation.

In sum, this session highlighted the difficulties surrounding international co-operation, particularly in the context of making any legislation or convention binding on individual states.

FINAL CONCLUSIONS AND SYNTHESIS

Jacob SUNDBERG
Moderator, Closing Session

Ronald CRELINSTEN
Seminar Co-ordinator

Final Conclusions

Looking back at the previous discussions we find that many different topics of varying importance were touched upon. In what follows I shall try to outline the most salient points which emerged from our deliberations. These could constitute the main elements upon which further reflections and investigations could be based. I shall limit my presentation to a mere enumeration of items, as a detailed analysis is far beyond the scope of these conclusions. I hope that this presentation will serve to stimulate further thinking on the subject.

1. Terrorism as a tactic

Terrorism is theatre. As such, it is dependent on the scene in which it occurs. The modern mass media technology sets up this scene.

2. Terrorism as a terrorist's problem

Murderous acts serve to show that you mean business, especially in the case of innocent victims. The terrorist's basic concern is a sense of justification. What sense? Social history provides the answers, whether it be Western doctrines (Christian or Nationalist) or Marxist doctrines (class interpretation of history).

The terrorist will find his means of justification. We must accept this and focus on methodology.

Europe being a pluralist society, the opportunities for moral support for terrorism become an important factor. (Pluralist means tolerant).

3. Terrorism as a police problem

a) Internationalization complicates police work. There is the problem of trust and mistrust in a segmented world. World pluralism and censure of foreign regimes creates the "sea in which the fish swim", (i.e. the reservoir of moral support for terrorists). This sets limits on police co-operation. For example, Swedish and British co-operation was hindered when Sweden found out that the British co-operated with South African police.

b) Target-hardening and crime displacement. Is the cure worse than

the disease? Have airplane hijackings merely been replaced by kidnapping of diplomats?

An analagous example: in Stockholm, drug traffic was restricted to certain streets. The police could have stamped it out, but chose not to because it would have spread all over. It's easier to control in one confined area.

Conclusion: skyjacking wasn't so dangerous in terms of human lives, but only in terms of "rerouting for reasons of weather".

c) The shoot-out as the short way out. (This clearly obviates the necessity of a trial and disposition of the offender).

4. Criminal justice or alien registration?

Shall we resort to trial or to instant explusion? Instant expulsion is also a short way out. It is an alternative due to internationalization; furthermore it solves the rehabilitation problem. Why rehabilitate a Japanese to Swedish society or an American to Turk society? It seems better to expel the offender to the society to which he belongs — in particular, if criminal justice in Sweden will eventually end in expulsion to Japan anyway. (This refers to the fact that many countries prefer to release convicted terrorists and expel them rather than keep them in their prisons and risk further terrorist action designed to secure the release of the prisoner.)

Is prevention possible? Yes, to a certain extent.

Preventing terrorist from acting — recidivism in the Irish situation wasn't more than 30%.

Preventing fellow travellers from becoming the sea in which the fish swim. (Deterrence can be effective for potential sympathizers — general deterrent effect).

Preventing the mass media from setting up the scene for the theatre — when you have seen the mass media turned into a leftist machine, you look differently at press freedom. Prevention in this sense is certainly possible. The problem is if the price is right!

Prevention in terms of international co-operation.

In general, the criminal justice approach is possible.

5. Trial

Ordinary courts or separate courts?

What is a separate court: "Sondergericht" or separate chambers (Star Chamber)?

Problems: a) staffing of the court

b) rules the court will follow

Staffing: i) accumulation of expertise

ii) build-up of anti-intimidation

Rules: secrecy and obscurity of terrorist operations necessitate a shift in the rules of evidence for effectiveness. It's easier to introduce in the case of alien regulation (burden of proof). Alien registration leads to relaxing of the rules of evidence. One can do more to aliens than to locals. This refers back to 4 above (on the alternative between criminal justice and alien registration).

Militarization solution — court martial. Agreement that this solution adds to the theatrical effect of the terrorist operation. As such, it merely aggravates the problem.

One should adapt to the situation. There is a difference between an early build-up of terrorist activity and terrorism in full swing. If apparatus is built up early enough (e.g. anti-intimidation), then one is prepared when the small problem becomes a big one. So, one must prepare for the impact!

Adding to the theatre is to play the terrorist game, so pretend to do nothing.

Conclusion: small shifts in staffing and evidence.

6. Sentencing

I accept the trichotomy of goals: prevention (punishment), incapacitation, correction (rehabilitation; treatment):

Death is the cheapest way out, and the most preventive. It is also most congenial to Nuremburg and Socialist thinking; in Budapest, it was argued that no death penalty was contrary to international law.

The shoot-out is perhaps a simpler solution than the death penalty and has the same effect. But the shoot-out has the problem of innocent victims.

Correction is a failure. Terrorists are non-reformable. BUT terrorists grow older and less aggressive.

Incapacitation seems to have a preventive effect. The figures on Irish recidivism are impressive (less than 30%).

There is nothing really to argue against a resort to detention for the period of the conflict or less. Exactly how long relates to the costs of detention or the administration of detention.

7. Penalty

Western Liberal analysis or Socialist analysis?

Socialist attitude toward political adversary is to break his self-respect — more degrading treatment. There are two expressions of the Western Liberal attitude:

a) Prisoner of war (POW) treatment

b) Custodia honesta.

Detention in POW camps — relates to incapacitation (see 6 above) and institutional regime (see 8 below).

Custodia honesta — relates to special regime (see 8 below), as in France.

- perhaps this glorifies the terrorist a bit (see 5 above)

Unitary penalty — this represents the least break with present tradition and is therefore the simplest and might be best.

8. Institutional regime

POW camps tend to become schools of indoctrination and protest. Para-military organizations develop. One can counteract this by breaking up the camps, but this throws the problem back into normal high security institutions.

Ostracism/isolation — but if this is the intended treatment expulsion is easier particularly for the international situation (back to 4 above). One compromise in a pluralist world is to resort to the language difficulty, e.g. prisoners, in Finland, (isolation by language barriers).

Special regime on the French model glorifies the terrorist and adds to the theatre.

Socialist model — more degrading treatment - may operate in the reverse.

The simplest regime is that of ordinary institutions where one offers the possible drop-outs from a terrorist organization an opportunity to do so.

9. Grand Conclusions

a. Expulsion as a solution. Internationalization makes it practical; foreigners can be expelled and should be expelled. The preventive effect is equivalent and there is no human rights problem. However, expulsion does not affect the fellow traveller (sympathizer problem).

b. POW solution seems dangerous.

c. The role of theatre and the danger of dramatization affect custodia honesta and the privileged regime.

In sum, there are long ways to a solution and short ways to a solution. We have seen some examples of short ways: in a murderous game, allow more shooting; in a deceitful game, allow lessening of strict evidence rules. We seem to agree that we should not resort to short-cuts.

Final Synthesis

What major conclusions can be drawn about the impact of terrorism and skyjacking on the operations of the criminal justice system?

The most consistent theme running through all the deliberations at the conference seemed to be that the criminal justice system must attempt to deal with terrorism in the way it deals with all other crime of similar import. This theme could be seen underlying the comments that terrorists were ordinary people, that their goals were understandable even though their means to achieve them were not. This theme was also clear from the correctional perspective, where it was concluded that convicted terrorists should not, *a priori*, according to pre-determined policy, be treated differently from other convicted offenders. Also, the principle of *aut dedere aut punire* seemed to be considered applicable to the terrorist as to any other offender in the international context.

The political nature of terrorism seemed, however, to

produce a kind of contradictory attitude toward the terrorist. While great concern was indeed expressed for respecting the ideological motivations of the political terrorist and refraining from any coercive rehabilitation, there was also expressed a concern for de-dramatizing the terrorist act and for de-glorifying the terrorist himself. These two aims are not necessarily mutually exclusive. For example, treating the convicted terrorist as any other convicted offender could achieve both aims if the current move away from coercive rehabilitation is indicative of how the "ordinary" convicted offender is dealt with nowadays. However, various problems tended to crop up when one or the other aim was dominant. For example, in France, the political terrorist is accorded special treatment under a special statute relating to political prisoners. This seems to counteract the de-glorification goal and some countries refuse even to recognize the term "political prisoner" in their legal statutes, e.g. the United States and the Federal Republic of Germany.

Another unique factor involved in the effect of terrorism on criminal justice operations relates to the atmosphere of threat surrounding terrorist acts, including skyjacking. Several national experiences, e.g. Great Britain and Italy, show that public attitudes toward terrorists, skyjackers or kidnappers is such that longer sentences are generally meted out to such offenders than are applied to other offenders. Here we have a clear example of a

direct influence of terrorism on criminal justice operations. The general pattern can be described as a patch-work, spontaneous response to an immediate situation rendered sensational by the public climate. The irony of the specific example relating to sentencing is that, after the public climate has altered, post-trial and sentencing practices such as amnesty or early release or parole are used to nullify or reduce the long sentences. Thus, we have the criminal justice system acting like the parent or teacher or government official who seemingly accedes to the vociferous demands of his children, students or elected representatives, only do go his own way later on when his charges are preoccupied with new and therefore more interesting problems. Perhaps this is an admirable type of temporal flexibility built into many kinds of social institutions concerned with power and authority.

It is often argued that the authority knows better than those not in power since, only when one is in power does one recognize and understand the problems involved. To an extent this is true and, throughout the conference, there was an implicit struggle to resist the temptation to over-react to terrorism and to maintain the status quo. In terms of the impact of terrorism and skyjacking, this element of threat which so quickly fans the flames of public outcry and media sensationalism seems to be the greatest source of external pressure on the operations of the criminal justice system.

To a great extent, the participants to this conference resisted the pressure to develop operations uniquely designed to combat terrorism, e.g. counter-terrorist squads, Special Courts, mandatory long sentences or capital punishment, isolated institutions for incarceration or special categories of offenders. However, the impact of such pressure was recognized and was clearly manifested in the discussion, resulting in some intense debate on "the best approach". It was here that comparisons of various national experiences were most valuable and it was generally recognized that the solutions or failures in one country were potential lessons for other countries. A good example of this was the failure of isolation of convicted terrorists in Northern Ireland and in California.

The fact that in two different countries, similar problems were encountered, highlights the problems involved. Furthermore, the fact that Italy has a high incidence of terrorist recruitment in its prisons makes it clear that no single solution is generalizable to all contexts and experiences.

In terms of the impact of terrorism and skyjacking on specific operations of the criminal justice system, the following general conclusions can be made. In the area of law enforcement and crime prevention, the main impact has been on target-hardening (cf. skyjacking), on the creation of special police units (e.g. SWAT teams or hostage-negotiation teams), on intelligence gathering,

and on involvement of the military (e.g. in Northern Ireland). Special problems arise out of the role of the mass media in exacerbating and prolonging the atmosphere of threat and terror invoked by terrorist acts and, in this context, the impact on law enforcement and prevention is amplified. The wider problem of police-media relations is highlighted in the terrorist context. Also, the relevance of public attitudes toward, and knowledge of, criminal justice operations is acute in terms of prevention and general deterrence.

As for judicial processing and sentencing, there is some impact on sentencing due to the atmosphere of threat and the resulting public attitudes and pressure. However, Great Britain, for example, recently refused to apply capital punishment to terrorist offenses. Also, eligibility for parole has been affected in some cases, e.g. in Great Britain. Certain unique problems concerning the political ideologies of convicted terrorists and their relation to the probability of committing further terrorist acts are relevant to the operation of parole granting and supervision of parolees. In general, most countries have resisted special courts, or special status for political terrorists, although France is an exception. Judicial processing seems to be resistent on the whole to the impact of terrorism and skyjacking.

The impact of terrorism and skyjacking in the correctional

field is consistent with the current changes in correctional philosophy, most notably the disenchantment with the rehabilitation model. However, one problem, probably exacerbated by this anti-rehabilitation trend, is the danger of politicization of non-political offenders in the prisons. The Italian experience highlights this problem. This remains an unresolved question - to isolate or not - and is perhaps an important area for research. Interestingly, it relates to the more general problems concerning maximum security institutions, their feasibility from a cost-benefit analysis point of view and also from a human rights perspective.

The general consensus of the conference was that, of the three correctional goals - punishment, incapacitation and rehabilitation - incapacitation was probably the most relevant to the political terrorist. One participant wryly but accurately pointed out that age is the best defense against the terrorist - most terrorists are young - and incapacitation conforms with this. It was generally agreed that the risks of other approaches such as POW status or preventive detention outweighed their advantages in the sense that the criminal justice system should resist any pressure to move away from the doctrines of equal justice and the impartiality of the law.

From the international perspective, terrorism and skyjacking present the greatest challenge. The impact of these forms of

criminality on the international scene is chiefly to highlight the inefficacy of international conventions and the great dearth of international co-operation. While extreme pessimism was expressed over the value of international treaties and conventions, it was ultimately agreed that they were valuable in setting the context in which more regional co-operation and national legislation could be achieved. The necessity of either prosecuting or extraditing political terrorists was emphasized and was singled out as a fruitful starting point for meeting the challenge of international terrorism.

In sum, the conference focussed on the major problems posed by political terrorism for national and international social institutions. The major consensus was that the challenge of terrorism must be faced without generating the erosion of liberal democratic ideals and that, although imperfect, the criminal justice system was the most appropriate means for dealing with the problem.

A P P E N D I C E S*

THE IMPACT OF TERRORISM AND SKYJACKING

SOME EXAMPLES OF NATIONAL EXPERIENCES

* Due to the very subtle distinctions and nuances characteristic of legal language, it was impossible to translate certain texts into English without risk of distorting their meaning. We regret the inconvenience for those who do not read French, but we believe that the course taken is preferable to the one which may have resulted in errors or distortions.

A P P E N D I X 1

THE BELGIAN EXPERIENCE

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A - BELGIAN EXPERIENCES

The experiences of Belgium in the area of terrorism are very limited, even close to the zero-level. There is practically no "practice", case-law or even much open concern.

Reasons for this situation can probably be found in the area of:

- relatively small role of Belgium on the international political scene (unlike the "hot spots" or the major powers like France or the U.S.)

- relative neutrality in its attitudes (unlike the Dutch positions in the Middle East situation)

- the effective and serious preventive policing (unlike the more liberal societies of the permissive type (e.g. the Netherlands - France - Denmark), where presence on the territory in preparation of actions is easier in the absence of repressive control - (compare the drug situation)) - this includes serious protection of embassies, premises of international organisations, airports, etc. ...)

- the absence of "political heritage" situations with tensions or conflict potential (e.g. the recent Dutch cases)

- standards of living issue: we all have something to lose.

Measures have been taken to cope with the phenomenon: instructions have been issued, a bluebook on anti-terrorist action exists under the responsibility of the Ministry of the Interior, as well as Sabena regulations for the protection of Belgian airports and aircrafts. These documents are of a fully-restricted nature and could not be obtained. Minimum information is included in the following pages.

No particular information will be given on research-oriented initiatives. Belgium participates actively in the Council of Europe action, which may lead to a convention on terrorism this year. No specific information as to the content was released to the author. A consensus seems possible in the next meeting of this special committee.

B - SABENA SECURITY MEASURES

Comparable to other air lines, Sabena possesses a full-scale security program against hijacking and sabotage of aircraft.

It includes,

1. pre-departure screening on scheduled passenger flights and charter flights:

- all passengers are electronically screened by hand scanner or walk through device (if not available: at least a consent search by a law enforcement officer is made) (including VIP)
- inspection of hand articles (x-ray or hand)
- even VIP or diplomatic luggage may be inspected

2. aircraft security for unattended planes as well as attended planes.

3. checked baggage: special measures on high-risk flights or threatened flight (x-ray - decompression chambers - etc.)

4. cargo and mail

In addition special measures are taken for high-risk flights. To be mentioned also the refusal of Sabena to have (armed) guards onboard planes. Priority goes to safety for all passengers, if necessary by accepting the terms of the hijackers.

Clear and precise instructions are equally given for cases of bomb threat.

The protection of the Airport in Zaventem is entrusted to the Belgian police authorities (Gendarmerie), with the help of Sabena Security Agents. The protection of the premises is in the hands of paratroopers, patrolling on a regular basis.

Belgian airports and airlines have been quite safe until now.

C - BELGIAN EXTRADITION PRACTICE

(Preliminary remark: few cases and limited information: extradition is a decision to be made by the executive, upon advisory opinion given by the Chambre des mises au accusation. This advice is not considered as a contradictory judicial decision and gives as such no right to an appeal in the Cour de Cassation. They are published exceptionally, while the access to the files of the Ministry is equally difficult, if not impossible).

1. Legislation and practice

- law of October 1, 1833 on extradition: contains the principle of non-extradition for political crimes and the non-discrimination between political refugees.

- starting with the French-Belgian treaty of November 22, 1834 all our extradition treaties include the non-extradition clause for political offenders. No definition was given. It included specific and mixed political crimes.

- law of March 22, 1856 containing the "Belgian clause", restricting the non-extradition principle and excluding violations against the physical integrity of the Head of State or his family. It was a law linked to exceptional circumstances. It is much disputed now.

- anarchists have been extradited (1883: Cyvocat, anarchist extradited to France) or not (1909 to 1923: several refusals concerning Russian anarchists) -(Italian political crimes labelled as being anarchist): since the beginning of the 20th century, the notion of political crime has been interpreted very broadly (1928 - refusal to France of Bartholomei's extradition) (1936: Bassatini-Italy). However, it is worthwhile to note that in many cases the judiciary gave a positive answer to the request. The final decision of the Government takes much more into account the circumstances of political trouble and the risk with a political conflict situation.

- a less liberal period occurred during the Franco-Algerian conflict when many disguised extraditions took place, through arrests on Belgian territory and release at the French-Belgian border. This was possible because expulsion is an administrative measure, without intervention of the judiciary. Upon the intervention of the Minister of Justice, an end was put to this practice (e.g. refusals of extradition to Switzerland of Abarca (1965) - FLN-Algerians in 1960).

- the latest practice seems to confirm that the extradition area remains the schizophrenic area of international criminal law: all depends on value judgments (e.g. 1972): Italy receives the extradition of three terrorists - 1968 refusal to extradite three terrorists to Portugal . There is no obligation to extradite cases of clear violation of basic humanitarian rules.

2. Legislative measures

- Belgium ratified the Hague convention of 1970 and signed the 1971 Montreal Convention, as well as the Convention on the protection of diplomatic agents of 1973.

- Implementing penal legislation on the civil aviation issue and a new law concerning the taking of hostages are the only specific legislative activities in direct relation with terrorism.

There is no special provision under Belgian law dealing with terrorism as such. The penal code contains, of course, a number of articles that may be invoked in the repressive answer (homicide - violations against physical integrity - destruction of property - etc. ...).

a) the law of August 6, 1973: modifying the legislation on civil aviation and on extradition (Moniteur belge, August 15, 1973 - p. 9309). Its aim is triple:

1) harshen the penalties for acts of sabotage against planes
2) a new crime: the illicit capture of an aircraft
3) complete the extradition law by including acts of sabotage of aircraft as extraditable offence.

Penalties for the simple act lie between 5 and 10 years of deprivation of liberty; 10 to 20 years in case of inflicting permanent incapacity, permanent illness or resulting in the destruction of the aircraft; lifetime sentence in cases where death occurred. The law also provides for the right of search of passengers and baggage.[1]

b) the law of July 2, 1975 concerning hold-ups and the taking of hostages (Monit. belge, July 24, 1975) creating a title VIbis in the penal code on the taking of hostages. The penalty provided for is lifetime imprisonment. It can be reduced to 15 to 20 years in cases of freely decided release of the hostage within five days. The death penalty can be awarded in cases of inflicting death, permanent illness or incapacity or use of physical torture.[2]

c) letter bombs fall under a royal decree of September 23, 1958 (art. 70) on explosives, which prohibits the use of mailing devices for explosive materials. Penalties are 15 days up to two years of imprisonment and fines ranging between 4000 B.F. up to 40,000 F. Equally applicable is a law of May 28, 1958 on explosives, when used to commit crimes against persons or property (5 to 10 years - 4000 F up to 160,000 B.F.); or misdemeanors (1 month to 3 years - 400 to 80,000 Frs).

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[1] See Annexe A

[2] See Annexe B

3. Cases including Belgian elements

- September 8, 1969: attack on EL-AL office Brussels - three persons - two escape - one arrested and handed over by Libyan Embassy

- May 8, 1972: Lod: hijack in flight of Sabena plane - landing in Lod - all released - four PLO members (two killed by security guards - two serving life sentences in Israel)

- March 1, 1973: Khartoum (Sudan) murder of American Ambassador and Belgian chargé d'affaires - eight PLO arrested - sentenced to life imprisonment - commuted to seven years - handed over to PLO; held in Egypt - liberated after BEA hijack of November '74 from Dubai to Tunis (cfr. also Scheveningen incidents)

- early 1975: kidnapping and hostage-taking of children (Bonnet-case Knokke) (authors of Italian nationality - extradition received from Italy - court action pending)

- October 1975: Belgian consulate Tripoli: hostage-case - non political character - no victims - arrest by local authorities

- A limited number of bomb - or hijack threats were received by Belgian authorities - no serious cases grew out of it.

4. Information concerning state security action

As in many other countries (e.g. Netherlands) a bluebook on terrorism has been established under the responsibility of the Ministry of the Interior.

Considering the restricted character of the topic, I received no fundamental information and had no access to a copy of the document.

The center of responsibility lies in the Interior Department, with help of the Ministry of Justice, the Defence Department and the Prime Minister's Cabinet. If necessary (international cases Foreign Affairs will participate, as well as the Communications Department (cases of hijacking, e.g.). A special trained unit of the police forces (gendarmerie) is on permanent standby.

The instructions provide for a crisis-center, receiving full powers to act. The system could be under operation for cases in Brussels within the hour.

Permanent measures include police protection of embassies and patrolling of sites of special interest (e.g. EL-AL airline sales offices, hotels in cases of VIP visits). Full contact with the National Bureau of Interpol is provided for.

Cases of a non-political nature are turned over to the normal authorities and regulations in cases falling under the penal code.

A N N E X E A

6 AOUT 1973 - Loi modifiant la loi du 27 juin 1937, portant revision de la loi du 16 novembre 1919 relative à la réglementation de la navigation aérienne, et la loi du 15 mars 1874 sur les extraditions.

BAUDOUIN, Roi des Belges, *

A tous, présents et à venir, Salut

Les Chambres ont adopté et Nous sanctionnons ce qui suit:

Article 1er. L'article 30 de la loi du 27 juin 1937 portant revision de la loi du 16 novembre 1919 relative à la réglementation de la navigation aérienne, modifiée par la loi du 7 juin 1963, est remplacé par la disposition suivante:

"Art. 30. § 1er. Sera puni de la réclusion:

"1° Celui qui aura méchamment compromis la navigabilité ou la sécurité de vol d'un aéronef privé ou d'Etat;

"2° Celui qui, sans droit, par violences ou menaces ou par tout autre moyen que ce soit s'empare d'un aéronef privé ou d'Etat, en exerce le contrôle, le détourne de sa route ou tente de commettre l'un de ces faits.

"§ 2. La peine sera des travaux forcés de dix à vingt ans:

"1° Si l'infraction a causé une lésion corporelle, soit une maladie paraissant incurable, soit une incapacité permanente de travail personnel, soit la perte de l'usage absolu d'un organe;

"2° Si l'infraction a eu pour conséquence la destruction de l'aéronef;

"3° Si l'infraction prévue au § 1er, 2°, a été accompagnée ou suivie de la détention illégale ou de la prise en otage d'une ou de plusieurs personnes se trouvant à bord de l'aéronef.

* Due to a combination of time and financial limitations, this and the following annex could not be translated. However, in the interests of completeness, the original French legislation was included.

"§ 3. La peine sera des travaux forcés à perpétuité si l'infraction a causé la mort."

Article 2. L'article 34, alinéa ler, de la même loi est remplacé par la dispositon suivante:

"Art. 34. Toutes les dispositions du Livre ler du Code pénal, sans exception du chapitre VII et de l'article 85, sont applicables aux infractions prévues par la présente loi et par les arrêtés pris pour l'exécution de celle-ci."

Article 3. A l'article 36, alinéa ler, de la même loi les mots "privé ou d'Etat", sont ajoutés aux mots "à bord d'un aéronef belge en vol".

Article 4. A l'article 40, alinéa 2, de la même loi, les mots "juges de paix", sont remplacés par les mots "juges au tribunal de police".

Article 5. Un article 40bis, rédigé comme suit, est inséré dans la même loi:

"Les inspecteurs en chef et inspecteurs de la police aéronautique, de même que tous autres officiers de police judiciaire peuvent procéder ou faire procéder sous leur contrôle et leur responsabilité à la fouille de toute personne qui est sur le point d'embarquer dans un aéronef ainsi que de ses bagages.

"Les officiers de police judiciaire visés ci-dessus doivent procéder à la fouille chaque fois qu'ils en sont requis par le commandant de l'aéronef dans lequel la personne à fouiller est sur le point d'embarquer.

"Ils interdisent l'accès à bord de toute personne qui, sans motif légitime, s'oppose ou se refuse à la fouille.

Article 6. L'article 41, alinéa 2, de la même loi est remplacé par la disposition suivante:

"Ces procès-verbaux seront transmis sans délai au procureur du Roi."

Article 7. L'article ler, alinéa ler, de la loi du 15 mars 1874 sur les extraditions est complété comme suit:

"35° . Pour les infractions visées à l'article 30 de la loi du 27 juin 1937 portant révision de la loi du 15 novembre 1919 relative à la navigation aérienne."

"Promulguons la présente loi, ordonnons qu'elle soit revêtue du sceau de l'Etat et publiée par le Moniteur belge.

A N N E X E B

2 JUILLET 1975 - Loi modifiant certaines dispositions du Code pénal en vue de la répression des agressions à main armée et des prises d'otages

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BAUDOUIN, Roi des Belges,

A tous, présents et à venir, Salut

Les Chambres ont adopté et Nous sanctionnons ce qui suit:

Article ler. Il est inséré dans le Code pénal, après l'article 347, un Titre VIbis, intitulé: "Des crimes relatifs à la prise d'otages" et comprenant un seul article, l'article 347bis, rédigé comme suit:

"Article 347bis. La prise d'otages sera punie des travaux forcés à perpétuité.

"Constituent une prise d'otages, l'arrestation, la détention ou l'enlèvement de personnes pour répondre de l'exécution d'un ordre ou d'une condition, tel que préparer ou faciliter l'exécution d'un crime ou d'un délit, favoriser la fuite, l'évasion, obtenir la libération ou assurer l'impunité des auteurs ou des complices d'un crime ou d'un délit.

"La peine sera les travaux-forcés de quinze ans à vingt ans si dans les cinq jours de l'arrestation, de la détention ou de l'enlèvement, la personne prise comme otage a été libérée volontairement sans que l'ordre ou la condition ait été exécuté.

"La peine sera la peine de mort si l'arrestation, la détention ou l'enlèvement de la personne prise comme otage a causé soit une maladie paraissant incurable, soit une incapacité permanente physique ou psychique, soit la perte complète de l'usage d'un organe, soit une mutilation grave, soit la mort.

"La même peine sera appliquée si les malfaiteurs ont soumis la personne prise comme otage à des tortures corporelles."

A - ACADEMIC RESEARCH

The problem of international terrorism has received only limited attention in Belgian academic spheres.

The main manifestations and publications concentrate around the same research units (Centre de droit international - Université Libre de Bruxelles and International Criminal Law Center - Vrije Universiteit Brussel). Important dates were:

a) March 19 and 20, 1973: conference on Réflexions sur la définition et la répression du terrorisme (Centre de droit international) with contributions on:

- the undefinable act of terrorism (P. Mertens)
- New forms of revolutionary combat (the guerrilla problem) (Mme Pierson-Mathy)
- International terrorism (E. David)
- The U.N. action (W. De Pauw - E. Suy)
- Extradition issues (Mme R. Cochard)
- Comparative notions on terrorism (P. Legros)
- Prospective study of mechanisms to repress terrorism (B. De Schutter)

b) May 20 and 21, 1974: colloquium "Belgium and international criminal law" (Centrum voor Internationaal Strafrecht), which included a session on Terrorism (A. Beirlaen)

c) May 15, 1976: The Flemish Bar Association will, at its bi-annual conference, have a full-day session on international terrorism and Belgian legislation (B. De Schutter and R. D'Haenens)

Individual contributions of Belgian scholars to international meetings or conferences have not been listed. They apparently concentrate around the same names (Salmon - Mertens - Beirlaen - De Schutter). Student papers and more vulgarizing conferences are not taken into account.

1. Personal Concern

The main emphasis of my personal interest has been on problems of repressive machineries and issues of jurisdiction. Existence of substantive norms is one thing, effective implementation another. Considering that we are facing an anti-social behavior of an universal nature - a hostis humani generi - repression should not be limited to national mechanisms.

1. Even though the item of the creation of an international criminal court may be picked up again in the UN context, after the agreement reached on the definition of aggression, the feasibility of such a court is still not a short term one. Nevertheless, it is our belief that combined efforts should take place to revive this interest, using a different approach, i.e. from the mini-crimes on to (eventually) the maxi's; from the individual cases of universal concern (e.g. terrorism) to the (all too hypothetical) state crimes. The crime of aggression would be the end of the line, not the start. Attention should be paid to other possible functions attributable to such an institution besides that of the jurisdiction of trial. Analysis should be made of:

a) the inquiry system, in the light of a fact-finding mechanism to be used in the frame of out-of-court settlement (cfr. the European Commission on Human Rights)

b) the possibility of including a law-finding function, where the international court gives a binding interpretation ruling on an issue

of interpretation of an international norm (cfr. the EEC-Court in Luxemburg and the prejudicial questions)

2. Compliance through national courts is the main possibility for the time being. Many countries have sufficient domestic legislation and a minimum set of international rules exists. New forms should receive a quick international response. Model legislations or attempts for harmonization should not be excluded.

More important is the issue on jurisdiction to prosecute. No theoretical obstacles can be found under international criminal law. Nevertheless, in reality, many countries do not include - or do not yet include - the universality principle in their rules on extraterritorial jurisdiction. The argument is that the inclusion of this principle on a more general basis gives more flexibility dedere aut punire.

In the absence of jurisdiction asylum means no punishment; the only way to avoid this is extradition and that may not be in conformity with our notions of non-extradition of political offenders.

Attention has also been paid to prospective changes in this pattern, called the process of internationalization of national jurisdiction.

Pleas were made for:

a) special domestic courts (or special chambers) with specialized judges on international crimes.

b) the international governmental legal observers in international cases in domestic courts (system of Permanent Court of Arbitration): the watchdog of international criminal law, minimum standard rules of human rights, nature, etc... .

c) mixed tribunals: domestic courts completed with "international" judges (close to a specific international criminal court)

In further studies these elements may be worked out in greater detail.

A P P E N D I X 2

NATIONAL EXPERIENCES OF THE FEDERAL REPUBLIC OF GERMANY

Erich CORVES

Deputy Minister
Federal Ministry of Justice

NATIONAL EXPERIENCES OF THE FEDERAL REPUBLIC OF GERMANY

In the Federal Republic of Germany it has been realized for a long time that terrorism and air piracy include phenomena of very different types which also stem from quite different roots.

A substantial number of these crimes - which, however, according to my observations, is decreasing in our country - must be counted among the classic crimes against property: armed bank robberies and planned or even spontaneous taking of hostages, kidnapping for the purpose of extorting financial payments from private persons or from the public authorities, and similar crimes. What is new in this connection is perhaps the unscrupulous application of novel means of violence and of new technical possibilities, for example the extortionate threat with raids on public utility installations such as railway installations, water works or power plants, up to atomic power plants.

As long as these dangerous crimes of violence are lacking a specific political motivation we are, no doubt, in a sphere where crime control is the task of classic crime policy and which could be coped with by that policy's methods and possibilities. It is quite certain in this connection that the increased technical possibilities available to the criminals must be countered by the application of appropriate technical facilities in defence thereof.

But in addition to this there has been to an increasing extent the politically motivated terrorism whose activities are well in the foreground nowadays. The question whether, and if so to what extent, this phenomenon can be dealt with by the traditional arsenal of our police organization and tactics, the provisions of our criminal law and of the law of criminal procedure, and by the traditional forms of the law of penal execution will still have to be examined. The tactics of operations and the reaction will have to be different, depending on the political conditions in the individual countries, the social and economic circumstances, the strength of terrorist groups and the degree of support they may possibly find among portions of the population. This consideration alone, if nothing else, will show that there can be no panacea, neither one that is internationally applicable nor one meant for a specific individual country. Any strategy of defence must, therefore, necessarily be a flexible one if it is to counter terrorism with any prospect of success.

In the Federal Republic of Germany it has been attempted to improve the prerequisites on all levels which come into consideration for an effective suppression of terrorist activities. Let me start with that field in which I participated directly.

1. Substantive Criminal Law

In Germany the provisions of substantive criminal law on murder, bodily injury, crimes with explosives, other crimes dangerous to the community, robbery, demanding with threats and extortion have generally been considered sufficient to enable the courts to punish terrorist acts of violence severely. In spite of that, recently a number of new definitions of offences or more severe punishment have been provided for in order to fill any imaginable gaps in the protection afforded by criminal law, and possibly also to obtain a stronger general-preventive effect (in the sphere of crimes which are not politically motivated). For example, from recent times, the Eleventh and Twelfth Criminal Law Reform Acts, both dated December 16, 1971, should be mentioned by which provisions of the German Criminal Code, namely Section 239a and 239b on extortionate kidnapping and taking of hostages, were newly inserted or amended, and high minimum penalties were provided for such offences.

Still in the legislative process at present are proposals in a Fourteenth Criminal Law Reform Act with rephrased criminal provisions on disturbance of the public peace by threatening with crime, on the advocation of, and incitement to, crimes, and on faking criminal offences, in particular by raising false alarm before alleged bomb attacks or other attacks, which have turned out to be a severe disturbance to the activities of the police organs. The final version of these provisions cannot be foreseen at this stage. Similar considerations apply to a further bill which, in addition to the present crime of founding a criminal organization, is to provide for a new Section 129a on the "founding of terrorist organizations" with increased penalties.

Once these provisions have been enacted, it may safely be assumed that not only all acts of violence but also any behaviour detrimental to society, which may contribute to the development of terrorism, will effectively be covered by criminal law.

2. Law of Criminal Procedure

In this field many difficulties arose in particular in connection with the big trials of terrorists, because in this very field the necessary guarantees granted in a State governed by the rule of law to all accused persons were abused excessively, in particular by the participation of such lawyers who made themselves accomplices of their clients.

In view of the differences in the systems of procedural law, I think it would be of little avail if I discussed this field in detail. Nevertheless it should be mentioned briefly that by an Act of December 20, 1974 new provisions on the exclusion of attorney from the defence and on the continuance of the trial in cases where the accused's unfitness to stand trial was brought about through his own fault (for example by a hunger strike) were created. It is disputed in how far, beyond this, further statutory provisions, for example on the supervision of contacts between defence counsel and client and on the enlarged police powers of the court during the trial, are necessary. As to this point Parliament has before it different drafts; their final fate cannot be foreseen at present.

In connection with the law of criminal procedure I should like to mention some rules which - partly belonging to substantive law, partly to procedural law - are to make it possible to ignore the otherwise strictly applicable principle of legality and to promise members of the terrorist group, who are willing to give evidence, to mitigate their punishment or to exempt them from punishment. This is important because in the Federal Republic of Germany the Prosecution is under a statutory obligation to take action in respect of all criminal offences.

Already the above mentioned Sections 239a and 239b of the German Criminal Code provide for possibilities of mitigating punishment if the offender releases the victim and relin uishes the desired ransom. Similar considerations apply to the attack on aviation under Section 316c of the German Criminal Code and to some comparable crimes. It is a real concern of crime policy to create in this respect a psychological stimulation for the offender to give up his plan. For this reason similar possibilities have also been provided for in the new criminal provision on terrorist organizations.

It is still disputed in our country in how far, beyond the above, a rule is required providing for a kind of crown witness similar to that under Anglo-American law. Some people expect from such a provision a possibility of breaking into terrorist groups to a higher degree than was possible before. I myself harbour doubts in this respect. It should be recalled that even under current law it was possible in several cases to have the offender's guilt proved by accomplices who were willing to give evidence. Some extension of these possibilities is certainly desirable.

3. Police Action

This field, I think, is the most important for an effective suppression of terrorism. The success achieved so far in the Federal Republic of Germany, which will have to be dealt with in greater detail, is, to my mind, due to a number of essential measures.

a) A considerable increase of police personnel in this field, in particular the establishment of special task forces with thorough special training (psychological training, training in marksmanship, karate and other subjects).

b) Highly improved technical equipment, both of the special task forces and of other police forces, which guarantee speedy and effective action.

c) Better coordination of all measures, between the police forces of the Federal Laender and the staff of the Federal Criminal Investigation Office who have developed specific methods and means of investigation which have essentially contributed to making the operations of recent years successful.

d) The extension of preventive measures, in particular the observation of that scene from which, as experience has shown, the support for the violent criminals comes, in that they are provided with flats, garages, vehicles, money, identity papers and the like. In this connection one must, of course, pay attention to the difficult problem of bringing an effective protection of society into harmony with the protection of the individual rights to freedom; in the Federal Republic of Germany people are particularly sensitive to a restriction of such rights.

It is the very field of operation tactics and technical cooperation that, I am sure, is among those in which an international exchange of experience appears to promise special success.

4. Evaluation of Experience

Of course, an effective combat of terrorism presupposes that all the experience made so far will be evaluated carefully and exchanged in order to employ all the given facilities most effectively according to the circumstances of the actual individual case.

This is done, first of all, within the scope of the training of the police and other organs engaged in the combat of terrorism. A systematic evaluation will make it easier in future to find the proper reaction. For example, the events of the "Munich Bank Robbery" with the taking of hostages on August 4, 1971 have been described in a documentation. Above all, it was already in 1972 that a seminar lasting several days was held at the police academy at Hiltrup; on that occasion numerous persons who had themselves been directly engaged in the operation could exchange their experience regarding police tactics in the case of kidnapping, taking of hostages, and extortions. A report on these results was also published in the periodical "Kriminalistik".

Of special interest is, I think, a work completed last year by Mr. Salewsk and entitled "Luftpiraterie (Verlauf, Verhalten, Hintergründe)" [Air Piracy (Course of Events, Behaviour, Background)]. Relying on thorough interviews with Lufthansa pilots, co-pilots and other crew members who had been victims when hostages were taken, Salewski has attempted to study regularities in the course of events and the psychological situation of the hijackers as well as the possibilities of a proper reaction. As a result, it turned out that also the hijackers are subject to normal psychological conditions, even as far as stress and attrition are concerned. Mr. Salewski has arrived at the result that there is a so-called affect graph, average times of psychological attribution, this being after 6 to 12 hours in the case of individual offenders, after roughly 4 to 6 days in the case of groups of 5 to 6 offenders. According to the study, where hostages are taken, it is during the first two hours that the risk of uncontrolled acts of violence by the kidnappers is greatest. Mr. Salewski makes the following recommendations:

- During the initial stages of the hijacking, not to undertake anything against the terrorists, but not to ingratiate oneself with them either.

- In the further course to deepen the contacts by personal talks and talks on technical matters.

- To have the contacts between the ground and the hijackers run mainly through the aircraft commander.

- Any tricks and tactics of delay must be disguised.

- The terrorists must be given the feeling that they will achieve their target, or at least in part.

- Where specific demands are refused, to shift responsibility into force majeure.

- In the case of groups, to bring disorder into the leadership structure.

- Activities from outside only where the aircraft is grounded and the terrorists are psychologically worn down.

- To gain time.

We may safely assume that some of these findings can well be applied to other cases where hostages are taken in buildings or trains.

Studies of this or a similar kind should be included in an international exchange of experience. It seems to me in this connection that just such studies, which may be important for tactics and strategy of suppression, are even more important than the exchange of technical experience regarding the securing of clues, the evaluation of clues and similar knowledge.

5. International Cooperation

The politically motivated acts of violence distinguish themselves to an increasing extent by the fact that these criminals can avail themselves of ever closer contacts on an international level, which are particularly facilitated in Europe by the immense masses of tourists and the fact that the frontier controls have accordingly been reduced.

The reasons for these increased contacts of terrorists to foreign countries are manifold: there is first the military training in, for example, camps of Al Fatah or at other places; there should be mentioned further the winning over of countries prepared to accept hostages or terrorists, the procurement of weapons and explosives, the establishment of strongholds and contact agencies. This international bond has become closer and closer in particular since 1972; the majority of the crimes which aroused international interest were of a transfrontier nature or were committed by participation of foreign offenders. Last but not least I must mention in this connection also the campaign of sympathy for politically motivated criminals which is frequently organized on an international level.

This international cooperation on the part of the terrorists and their assistants requires an equivalent cooperation in the fight against them. Such cooperation may be effected by:

a) enlarging the system of agreements and treaties (extradition treaties, obligations to punish certain crimes, aut dedere aut punire, definition of the term "political offences", etc.)

b) contacts between the prosecution authorities and the exchange of scientific and technological experience and knowledge.

As to (a) above:

In this group it will hardly be necessary to go into greater detail regarding the relevant multilateral conventions. I may take for granted that you all know the Tokyo Convention of September 14, 1963 on Offences and Certain Other Acts Committed on Board Aircraft, the Hague Convention of December 16, 1970 and the Montreal Convention of September 23, 1971 for the Suppression of Unlawful Acts Against the Security of Civil Aviation. We should endeavour to urge as world-wide a ratification of these Conventions as possible. In this connection I must also refer to the United Nations Convention for the Protection of Diplomatic Agents of December 14, 1973.

In connection with this point I should like to go into some detail regarding the endeavours made to achieve cooperation within the Council of Europe. Here I must refer to Resolution (74) 3 of the Committee of Ministers on international terrorism, in which endeavours are made to exhaust the possibilities of extraditing such criminals, and to require the application of the principle aut dedere aut punire. An ad-hoc committee of the European Committee on Crime Problems is dealing thoroughly with these problems and has not only prepared a detailed questionnaire on each country's national legislation and court practice regarding terrorism, the replies to which are expected to make a considerable contribution to the exchange of experience, but it has also prepared the draft of a Convention of the Council of Europe which will serve to realize the aforementioned aims.

It is true, we should not close our eyes to the fact that any endeavours in this geographical region will mean only a limited contribution as long as certain countries, in particular of the Middle East, readily grant asylum to political assassins. It may be that in this respect the pressure of public opinion all over the world will gradually have some effect.

As to (b) above:

I have repeatedly mentioned the cooperation between the prosecution authorities in connection with the problems under items 3 and 4 above. It will have to stand the test in various fields,

to start with the cooperation within INTERPOL, in the application of the exchange of scientific and technological experience and knowledge. This should include not only personal contacts between the officials and agencies directly engaged in the combat and the persons making relevant scientific and in particular criminological studies, but also the ready supply of material as evidence, expert opinions and the like for the purpose of criminal prosecution in other countries.

6. Success and Failure in the Federal Republic of Germany

I wish to mention first some figures regarding the victims of terrorist acts in my country. So far twelve persons have been killed, a hundred have been victims of attempted murder, and eighty-seven persons have been injured in bomb attacks and shoot-outs.

Until now 75 of the offenders and their assistants have been convicted with final and binding effect, another 49 have not yet been convicted with final and binding effect. 88 persons are in custody on remand awaiting trial, and 32 are wanted on the strength of warrants of arrest issued by judges. Investigation proceedings are pending against some 250 persons. These figures show that some substantial success has already been achieved in the combat of terrorism, but they also show that there is no reason to assume that this phenomenon is already a matter of the past in our country.

7. Possible Further Measures

a) An analysis of the experience made so far shows, in my opinion, that an essential handicap for the prosecution authorities lies in the following facts: in all cases of politically motivated terrorism the State has to face, as a rule, a fanatic minority who has started to destroy or conquer a society which they fight with all means, on which they have practically declared war, a war in which they themselves are not prepared to obey any rules. This "war" is brought by the terrorists in the modern industrial nations into a highly technical, highly specialized and thus extremely vulnerable organism. A State which is governed by the rule of law must, however, unless it wishes to give itself up, defend itself against this with strictly legal means.

In this connection the idea suggests itself that such a "quasi war" should be countered with means of power similar to those that are available to militants at war. But I think an express warning in this respect should be given, because thereby the terrorists would achieve the very object they are striving for, namely to be recognized not as criminals but as "militants". I do not want to express my view as to how this problem should be viewed in those countries in which terrorism has practically brought about conditions in the nature of civil war. I am sure that under such circumstances further considerations would have to be made.

However, as far as the conditions in our country are concerned, we must ask ourselves the question whether really anything could be gained by proclaiming a kind of "emergency". What means of power should seriously be employed? Should, for example, the principle of relativity no longer be applicable? How and when could we find out in each case whether terrorist activities are undertaken by "ordinary" criminals or by politically motivated offenders? Who should be authorized to proclaim such an "emergency" or "quasi war"? What legal limitation of the prerequisites would be possible and practicable at all? I think these questions clearly indicate that in this way there are hardly any possibilities of solving this problem.

However, in one point it seems to me to be important to obtain clarity regarding the powers of those who are engaged in the fight against terrorists, in particular against persons taking hostages. In a war the leader of a task force will know exactly what statutory rules he has to obey. If, however, the leader of a task force which is supposed to free hostages orders that a well-aimed lethal shot be fired, he frequently does not know whether or not he will later have to answer a charge of manslaughter before a court.

This should not be misunderstood to mean that I consider the lethal shot to be the proper reaction in each case; what is proper can only be the result of carefully weighing the psychological situation, the risks, the possibilities of sham or real yielding, and so on. The responsible persons cannot, after all, be relieved of their responsibility for the decisions which may have serious results and which will frequently have to be taken quickly. This should, however, be confined to the moral and political responsibilities. I think, however, that the State is obliged to supply these persons, who have direct responsibility, with unambiguous statutory rules so that a measure ordered in the course of operations by that

person to his best knowledge and belief cannot lead to the fact that the responsible person is brought before a criminal court.

However, such a clarification must be made within the scope of the police law applicable in the respective country, unambiguously and in accordance with the requirements of a State governed by the rule of law.

b) To my mind, the lethal shot can only be the ultima ratio where tactics of protraction and delay, psychological influence for surrender, sham or partial fulfilment of demands are of no avail. This is the point where technology comes into play, where it must search for and develop means which will, like a flash of lightning, put the offender out of action without endangering the hostages. What I have in mind is, for example, "chemical mace", Laser and the like. In this respect cooperation should take place both in the sphere of development and in the exchange of experience in order to make it bear fruit everywhere as soon as possible.

c) In spite of all necessity for flexible reaction it should not be left out of consideration that, on principle, a tendency not to yield to extortionate demands is more suitable to prevent future acts than a decision exclusively meant to save human lives in the individual case. What may at first appear to be success in the individual case may have some disastrous effect in the long run. In this connection we must bear in mind also any effects reaching into the sphere of "ordinary" crime. It will not be seldom, therefore, that the danger to potential future victims may carry more weight than a quick salvage of persons in the hands of criminals presumably involving no risk.

A P P E N D I X 3

THE FINNISH NATIONAL EXPERIENCE

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A - FINLAND, A COUNTRY WITH NO TERRORISM OR SKYJACKING

The advance information given to the participants of the "Impact of Terrorism" seminar mentions that they are to give a written account of the experiences their country has had of terrorism and skyjacking. In this respect, I am in a difficult position: I come from a country that has not seen a single skyjack or even a skyjack attempt, and all we know of terrorist acts comes to us through the horror stories sent by television and the press from abroad.

Thus I can't say anything of how the control system has actually functioned in such cases, and there is also very little to relate of public discussions and proposals. I believe that I can approach the matter in only two ways:

- first, I can present some conjectures on why Finland has so far been spared from terrorist acts, in the hope that the views I present can possibly simultaneously shed some light on the question of why these events take place in other countries,

- and the other way would be to outline Finnish legislation governing these offences.

1. Why have there been no terrorist acts in Finland?

The views I shall present in this connection are, of course, totally based on speculation. The relative importance of the factors I shall present is something that I cannot verify at all. I shall give a list of these factors in the hope that it will give rise to a discussion.

a) Finland's geopolitical position

Finland is a small country in an isolated position. On the east and the south it borders on the Soviet Union, on the west, behind a gulf lies Sweden, and on the north it borders on Norway, Sweden and the Soviet Union.

International traffic through Finland takes place principally from Sweden to the Soviet Union and back. It is obvious that in comparison with, for example, Germany or Italy a much smaller amount of non-Scandinavians travel in Finland on business and pleasure trips, in practice, without even being asked for proof of identity. Non-Scandinavians, of course, must present their passports on entering and leaving a country. The free travel zone does not extend into the Soviet Union, where passport control is very strict.

b) There are hardly any so-called migrant workers in Finland

In this respect Finland differs from almost every other industrialized country of Western Europe. It is difficult for a foreigner to get a work permit, and there is little flexibility in the formal procedure one goes through to obtain them. Naturally, the Ministry of the Interior may deport undesirable aliens, and the Ministry uses this right.

c) The major language of Finland, Finnish, is the language of a very small area

It is not understood in any other country. The languages most like it differ so much that even knowledge of these languages does not directly enable one to understand Finnish. This means that in practice it is very difficult for a foreigner to come to Finland and for example find a job unless he first goes to the trouble of learning the language of the country. It is also impossible for a foreigner to hide the fact that he is not a Finn.

d) There are no political prisoners at all in Finland, in the proper sense of the word

According to the police statistics, not one single case of treason has been reported at least during the five years from 1970 to 1974. Also, at least during the post-war period, there has not been a single assassination or political murder.

e) Due to the racial homogeneity of Finland, there is no racial conflict

It is true that there are a few thousand gypsies, and the courts have dealt with a couple of cases where a merchant has been accused on the basis of the 1970 law of discriminating against gypsies, but all in all this problem has little significance in the country.

f) Religion

Finland is also homogenous in connection with religion. Over 90% of the population is evangelical lutheran.

g) A small country such as Finland has little political influence

It does not seem very sensible to think that for example political minorities in some far-off country would think that they could benefit by kidnapping a Finnish politician or in general by demanding that the Finnish government undertakes certain measures. Also, if the act is only intended to attract attention, it would understandably be more attractive to have the act occur in a politically more important spot.

The result of these surmises is that terrorist acts, including skyjacks, should take place principally in countries where:

- the country is centrally located, there are many foreigners there, and it is on important communications routes
- a commonly used language is spoken in the country
- the country harbors political conflict or its position in international politics is especially important.

On the basis of the seminar discussions it may be seen whether any of these factors are valid.

2. The Application of General Crime Control Principles in Combatting Terrorism

As terrorism is a form of deviant behaviour, one could attempt to analyze how the principles of crime control can be applied in this offence category.

Measures of crime control can be divided in, for example, the following manner:

- changing the definition of offences
- affecting the motivation of offenders or potential offenders

- decreasing the opportunity for crime.

Of the categories mentioned, only the second, affecting motivation, belongs to "traditional" crime control proper. In the new mode of thought, however, there are no reasons to concentrate solely on measures belonging to this group.

a) Changing the definitions of offences

Changing the definitions of offences starts from the point of view that it is the law that establishes offences. Therefore, one can have a determining effect on the level of criminality if new forms of behaviour are criminalized or old ones are decriminalized.

In connection with terrorism, this procedure doesn't in principle enter the question; the general danger of these offences sets insurmountable barriers.

However, in this connection there is reason to mention that under certain conditions terrorism may approach the point of civil war, where in practice the acts perpetrated by the winning side are actually decriminalized or depenalized.

Thus the majority of the area's population or the part of the population which has gained power through these means has in a way "accepted" terrorism and, sociologically speaking, has "redefined" the offence involved.

b) Affecting the motivation of offenders or potential offenders

Affecting the motivation of offenders or potential offenders in connection with terrorism as with all criminality occurs in principle either through special prevention or general deterrence.

Lately, the effectiveness of special preventive measures has been generally doubted in criminal policy, as long as one is speaking of "treatment" which could be accomplished through penal sanctions. However, special deterrence measures also include the warning effect as well as the effect of rendering the offender harmless.

It is clear that terrorists are especially poorly receptive to the possible (generally small) curative effect of punishment. In the same way it is to be supposed that the conditions in modern prisons do not serve to give the warning needed to prevent a terrorist, who has served his term, from perpetrating further acts of violence. We are left only with the possibility of rendering the offender harmless. This can in principle take place by interning the offender in question in a closed institution for life or at least until he has clearly passed the age that terrorists represent. Naturally, in those countries where it is legally possible to use capital punishment, this is one way of rendering the offender harmless.

Can one think of measures that would have a general deterrent effect on potential terrorists? The old way, using as severe sanctions as possible, does not seem to be effective, due naturally to the fact that the certainty of becoming the goal of control measures or of having to fully serve a sentence is not very large as regards terrorist offences. There can be no doubt that terrorism is a branch of criminality where the significance of the size of the risk of being caught and the risk of having to serve a sentence is decisive.

In this field international cooperation is absolutely necessary. Those terrorist acts that are or can be disguised as being political are essentially linked to the possibility that the offenders in question have of seeking sanctuary in a state that is prepared to give a safe place to terrorists. Only good cooperation based on international agreements can bring about improvement in this respect.

One idea that has often been presented is the establishment of an international court to deal with, among others, these offences. For example the Swedish professor Sundberg has dealt with this idea in several articles. In my opinion, serious thought should be given to the possibilities of realizing this proposal.

Thus, in the traditional criminal policy way of thinking, only two possibilities remain:

- increase the sanctions that render the offender harmless, in other words capital punishment and life (long-term) incarceration

- increase the risk of being caught and the certainty of being punished, through international cooperation.

All over the world, terrorist acts are interesting material for the mass media. However, it is very probable that publication of such cases, especially emphasis of the dramatic sides of the story that are often to be found can be more of a hindrance than a help. In the offences perpetrated by political minorities one of the apparently essential purposes is the arousing of public attention; there have been cases where the only apparent motive seems to be to get as much publicity as possible. Even in connection with "ordinary" skyjacks for private gain, and not for political reasons, the limelight of publicity may lead to new attempts. All in all, then, publicity should be lessened and the dramatic aspects should be played down. One should also make sure that if the case has been publicized, the general public is also informed of the capture of the offenders and their sentencing. Realization of this principle should only be effected through voluntary measures carried out by the media. Even though this would encounter difficulties in practice, acceptance of it even as a general principle could possibly have some effect on opinions.

c) Reduction of the opportunity for crime

Reduction of the opportunity for crime, a measure that previously was often considered as being outside of the scope of criminal policy, has been the attention of increasing attention over the past few years. It has been noted that it may be much simpler and, all in all, much cheaper to direct resources to the decrease of the opportunity for crime, instead of limiting oneself to the old criminal policy way of thinking. It is much easier to prevent offences than repair the damages they have caused, and it is easier to, for example, change the behaviour of the potential victim than it is to change the behaviour of the potential offender.

In regard to terrorism this is especially true. Of course, decreasing the opportunities is not as simple in all situations. It is almost impossible to prevent someone from setting a bomb in a public place; on the other hand, it may be possible to use efficient technical equipment to prevent an airplane passenger from carrying a bomb or weapon onboard. The airlines of the world can undoubtably tell us quite a bit of measures along these lines.

Naturally, technical safeguards demand quite a bit of care and costs, and some safeguards demand so much that they are impossible to use in practice at least in connection with air traffic that is supposed to operate swiftly. Also, precautionary measures may easily give the impression of having gone too far. An example of this can be taken from the time the European Security Conference was held in Helsinki. When the thousand or so delegates to the Conference had been invited to a garden party at a restaurant on the seaside, quite a number of precautionary measures had been taken - for example, there were so many policemen on the streets that is was difficult even for governmental cars to find a way through the barriers. The coast guard was especially worried about the situation fronting the beach. And they had reason to be - while Gerald Ford, Leonid Brezhnev, Pierre Trudeau, Harold Wilson and Olof Palme were wandering about on the lawn and sampling strawberries in the twilight, the coast guard saw that a boat was approaching without the required lights. When the boat did not react to light signals from the coast guard, they opened fire and two drunken men on the boat drowned. Under normal circumstances, of course, this would not have happened, as the coast guard would not have fired at the boat. At this time, they were especially worried about the supposed dangerous situation. Thus, when one is estimating the costs, one factor that must be included is the cost of excessive precaution.

A N N E X A

FINNISH LEGISLATION ON TERRORISM

Penal Code
Chapter 34

1. Offences Causing General Danger

14 a § (November 26, 1971)

Whosoever in an aircraft by force or the use of threats forces the captain or a member of the crew to undertake or refrain from a measure connected with the control of the aircraft or in said manner otherwise takes over control of the aircraft or interferes with the control or motion of the aircraft shall be sentenced for aircraft piracy to imprisonment for at least two and at the most twelve years.

If the piracy is not instrumental in causing grave danger to the passengers or the crew of the aircraft or if the offence in other respects, taking into consideration the entirety of the circumstances leading to and manifested in the offence, is to be regarded as slighter than the offence referred to in article 1, the offender shall be sentenced for illegal assumption of control of an aircraft to imprisonment.

Attempt of the offences mentioned in this paragraph shall be punished.

14 b § (June 21, 1973)

Whosoever

1) assaults a member of the crew of an aircraft or a passenger or a person otherwise onboard, in a manner that is instrumental in endangering the security of the aircraft;

2) illegally destroys an aircraft in use, renders it inoperable in flight or damages it in a way that is instrumental in endangering its flight security,

3) places in or sends on aircraft in use a device or substance that is instrumental in destroying the aircraft, rendering it inoperable in flight or endangering its flight security,

4) destroys or damages a flight safety device or interferes with the function of same in a manner that is instrumental in endangering the safety of aircraft in flight, or

5) endangers the safety of an aircraft in flight by giving information he knows to be false, shall be sentenced, unless article 1 of paragraph 14(a)shall be applied, for sabotage of air traffic to imprisonment for at least two and at the most twelve years.

If the offence has not been instrumental in the endangering of another's life or health or in the causing of noticeable damage to property or if the offence in other respects, taking into consideration the entirety of the circumstances leading to and manifested in the offence, is to be regarded as slighter than the offence referred to in article 1, the offender shall be sentenced for disturbing air traffic to imprisonment for at the most two years or to a fine.

Attempt of the offences mentioned above in articles 1 and 2 shall be punished.

Whosoever purposefully contrary to his better knowledge falsely gives notice that explosives or other substances or devices endangering the security of the aircraft have been placed in an aircraft, or gives other such information he knows to be false, and thus causes a disturbance to air traffic, shall be sentenced, if proviso 5 of article 1 shall not be applied, for disturbing air traffic as stated in article 2.

In applying this paragraph an aircraft shall be regarded as being in flight from the moment that all the external doors have been closed, and in use from the moment that the ground personnel or the crew begin preparing it for a certain flight, until the moment that

twenty-four hours have elapsed since the end of the flight. If the aircraft has made an emergency landing, it shall be regarded as being in flight and in use until the respective authority takes over responsibility for the aircraft and the persons and property in the aircraft.

2. Law on the Extradition of Persons Guilty of Piracy of Civilian Aircraft in Some Cases. (May 23, 1975)

1 § - A person suspected of piracy or illegal assumption of control of a civilian aircraft can be extradited from Finland to the state where the aircraft is registered, in accordance with this law, when an agreement has been reached between Finland and the state of registration on the application of the extradition procedure to such persons.

2 § - If, due to piracy, an aircraft registered in another state which is a party to the agreement has landed in Finland, immediate steps shall be taken on the request of the former to return the person suspected of the piracy offence to the state of registration. Said request is to be made within the time stated in the agreement.

3 § - The person suspected of the piracy offence shall be returned only if evidence has been presented of his probable guilt in said offence.

4 § - A Finnish citizen suspected of a piracy offence shall not be extradited, instead, the raising of charges and sanction measures against him shall be undertaken in Finland.

5 § - Unless otherwise agreed with the state of registration, in exceptional cases when special reasons so demand instead of extradition the raising of charges and sanction measures that shall be applied for a serious offence can be undertaken in Finland against

a person not a citizen of the state of aircraft registration and who is suspected of a piracy offence.

6 § - If the person whose extradition has been requested is suspected of another offence perpetrated in Finland which is by nature more serious than the offence which is intended in the extradition request, and said offence has caused damage to a juridical person or citizen of Finland or of a foreign state other than the state of aircraft registration, and the person suspected for the piracy is charged with said offence in Finland, his extradition can be deferred until the latter matter has been concluded, the sentence carried out or he has been pardoned.

If the deferment of the extradition would prevent the raising of charges for the piracy offence due to the term of limitation for the raising of charges expiring or if this would hinder the raising of charges against the person whose extradition is requested, on the request of the state of aircraft registration he can be extradited temporarily for the raising of charges. The state of aircraft registration must return him to Finland within three months of the temporary extradition.

7 § - In the procedure intended for the extradition of the person suspected of a piracy offence the decrees of paragraphs 13 - 25 and paragraph 34 of the law on extradition due to an offence and paragraph 20 of the law on extradition between Finland and the other Nordic countries due to an offence shall be followed when applicable.

If the matter concerning extradition has been sent to the Supreme Court for a hearing, the Supreme Court shall examine whether the extradition request can be granted in accordance with the decrees of paragraphs 3 and 4 of this law.

If the Ministry of Justice decides that instead of extradition the raising of charges and sanction measures shall be undertaken, it shall send the matter to the respective prosecutor for the raising of charges.

8 § - On the initiative of the respective authority the Ministry of Justice shall present a request for the extradition of a suspect of a piracy offence to Finland.

9 § - The suspect of a piracy offence can be temporarily detained, even though this has not been requested and an imprisonment order concerning the suspect has not been given.

If the request concerning extradition is not presented within the time mentioned in paragraph 2, however, at the latest within two months of the time the state of registration has been notified of the piracy, the suspect may no longer be detained on the basis of this law. The court to which the examination of the matter concerning the detention has been referred shall also decide before the time mentioned on the release of the suspect, unless within a shorter period set by the court evidence has been presented of his probable guilt in the piracy offence.

Otherwise the decrees of the law on extradition due to an offence shall be followed where applicable in the detention.

10 § - In acquiescing to the extradition request the condition stated in paragraph 12, clause 1, proviso 1 of the law on extradition due to an offence shall be set. The Ministry of Justice may give permission to deviate from the condition through the application of the grounds and procedure decreed in paragraph 32 of said law.

11 § - The documents concerning the identity of the person to be extradited, weapons, personal belongings and luggage may be seized and returned to the state of aircraft registration.

12 § - More precise decrees on the enforcement and application of this law shall be given by statute when needed.

13 § - This law enters into force on July 1, 1975.

3. Law on Extradition Due to an Offence (July 7, 1970)

1 § - According to this law a person suspected, charged or sentenced in another state for an act there criminalized may be extradited from Finland to that state and the extradition to Finland of a person suspected, charged or sentenced in Finland for an offence may be requested.

Extradition between Finland and the other Scandinavian countries due to an offence has been decreed separately.

4. Extradition from Finland

2 § - A citizen of Finland may not be extradited.

6 § - Extradition is not possible for a political offence. If the political offence simultaneously contains or is connected with an offence which is not political by nature, and the act as an entirety cannot be considered principally a political offence by nature, extradition however is possible.

Intentional homicide or its attempt which has not taken place in open battle shall not under any circumstances be considered a political offence.

7 § - The extradition request shall not be granted if it is to be feared that the person whose extradition has been requested will in this way, because of his race, nationality, religion, political views or participation in a society group or because of political circumstances, become the target of persecution threatening his life or liberty or of other persecution.

A P P E N D I X 4

THE NATIONAL EXPERIENCE OF FRANCE

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THE FRENCH EXPERIENCES

I. Forms of Terrorism Presently in France

A distinction has to be made between the domestic terrorism, through the use of bombs, explosion, fires, etc. and foreign terrorism in France or within French Embassies abroad, involving primarily hostages and bombs.

a) Domestic Terrorism

In 1974, the French police encountered 173 cases of bomb explosions for political, social or economical motivations. Among these, 136 have been related, according to police, to independence movements: 21 in Britanny, 114 in Corsica and 1 in the Roussillon, 20 to foreign international terrorist movements and 17 to other organizations or individuals. The total of the same sort of cases was 139 in 1973. Statistics dealing with domestic terrorism in 1975 have not yet been published. There seems to have been a strong increase. In Corsica, in Aleria, during a severe riot in August, hostages were taken and two "gendarmes" and at least one civilian were killed. A private wine enterprise, owned by a former French Algerian, was destroyed by fire. During the same month, many other fires and bombing of buildings took place. In Britanny, the main T.V. antenna was destroyed by an explosion and part of the province was deprived of T.V.. The Palais de Justice of St. Brieuc was partly destroyed. Further destruction occurred also.

Since 1969 (starting point of the present statistics), there has been one single domestic terrorist skyjacking. (On October 18, 1973, Mrs. Craven was killed by police while attempting by skyjacking to compel French authorities to intervene in the Israeli-Arabic conflict). There has also been one case of an hostage being taken by terrorists. On March 8, 1972, leftists captured Mr. Nogrette of the Renault Company.

The absence of political hostage-taking has to be noted as a contrast with non-political criminality, where kidnappings and adult-nappings were rather frequent.

b) Foreign Terrorism

Foreign international terrorist groups elected France or French embassies as one field of their activities in the following cases.

Hostages for political motivations. French Police have not issued detailed statistics about hostages being taken for political motivations. There is no doubt that, between 1970 and 1975, two cases, taking place in French Embassies abroad, were purely terrorist: capture of the French Ambassador in Cuba (October 17, 1973), capture of the French Ambassador in the Hague (September 13, 1974); there was also the French Ambassador in Somalia (March 1975). On the 4th of February 1976, 31 children, aged from 5 to 13 were kidnapped in Djibouti , most of them being children of French soldiers. They were in a bus bringing them to school. A French specialist, Mr. Montreuil writes in La Revue de la Police Nationale, 1974, p. 22, that the figures of hostage-taking of an undoubtedly political nature, were the following:

	1970:	2
	1971:	5
	1972:	2
(first half)	1973:	2

He does not make a distinction between domestic and international terrorism.

Skyjacking. At Orly Airport, in 1971, a Frenchman attempted to skyjack a foreign plane with the prospect of compelling French authorities to send medical support to Bangladesh. Mr. Montreuil adds two cases to the statistics for 1973 (we have given details about one case, in particular).

There were no cases in 1974. In 1975, a terrorist group attempted to destroy an Israeli airplane with a bazooka. When French police reacted, the group took hostages inside the rest rooms of Orly Airport. One week later, there was a second attempt.

Bomb explosions for terrorist purposes have been officially recorded in 1974 only. During that year, 20 bomb explosions were recorded. In 1975, terrorist members of the independent Basque Movement in Spain (E.T.A.) engaged in bombing activities in France.

Murders. Some murders were committed against members of foreign secret services or terrorist organizations. In 1974, one military attaché from the Uruguay Embassy was killed; in 1975, one from the Spanish Embassy. French policemen were killed in Paris in 1975 while trying to capture the famous terrorist "Carlos".

Let us also mention the fact that some French citizens were taken as hostages abroad by dissident foreign groups (e.g. Mme Claustre in Tchad). There is no French legal competence in such cases.

II. Forms of Political but Non-Terrorist Delinquency in France

There have been no important forms of pure political delinquency (plots, riots, etc...), during the last six years. Some offenders who committed robberies or other forms of theft have argued that their motivation was political. They claimed either that they were in need of subsidies for their organizations or that they were compelled to commit offenses by the capitalist structures of the country. Forms of vandalism, linked to the same order of motivations, occurred as well.

Recently, the attempt to create soldiers' trade-unions within the Army has led to the arrest of some persons, charged under Article 84 of the Penal Code.

Art. 84. Sera puni de la détention criminelle à temps de cinq à dix ans quiconque, en temps de paix, aura participé en connaissance de cause à une entreprise de démoralisation de l'armée ayant pour objet de nuire à la défense nationale.

III. The Positive Relating to Terrorism

a) The following articles, 86 to 100, of the French Penal Code, as modified by the ordinance of June 4, 1960, deal with the whole of major political delinquency. Articles 93 and following apply sanctions to the wider and most suppressed forms of terrorism and subversion.

SECTION III

Des attentats, complots et autres infractions contre l'autorité de l'Etat et l'intégrité du territoire national

Art. 86. L'attentat dont le but aura été soit de détruire ou de changer le régime constitutionnel, soit d'exciter les citoyens ou habitants à s'armer contre l'autorité de l'Etat ou à s'armer les uns contre les autres, soit à porter atteinte à l'intégrité du territoire national sera puni de la détention criminelle à perpétuité.
L'exécution ou la tentative constitueront seules l'attentat.

Art. 87. Le complot ayant pour but les crimes mentionnés à l'article 86, s'il a été suivi d'un acte commis ou commencé pour en préparer l'exécution, sera puni de la détention criminelle à temps de dix à vingt ans.

Si le complot n'a pas été suivi d'un acte commis ou commencé pour en préparer l'exécution, la peine sera celle de la détention criminelle à temps de cinq à dix ans.
Il y a complot dès que la résolution d'agir est concertée et arrêtée entre deux ou plusieurs personnes.
S'il y a eu proposition faite et non agréée de former un complot pour arriver aux crimes mentionnés à l'article 86, celui qui aura fait une telle proposition sera puni d'un emprisonnement de un an à dix ans et d'une amende de 3,000 F à 70,000 F. Le coupable pourra de plus être interdit, en tout ou partie, des droits mentionnés à l'article 42.

Art. 88. Quiconque, hors les cas prévus aux articles 86 et 87, aura entrepris, par quelque moyen que ce soit, de porter atteinte à l'intégrité du territoire national ou de soustraire à l'autorité de la France une partie des territoires sur lesquels cette autorité s'exerce sera puni d'un emprisonnement de un à dix ans et d'une amende de 3,000 F à 70,000 F. Il pourra en outre être privé des droits visés à l'article 42.

Art. 89. Ceux qui auront levé ou fait lever des troupes armées, engagé ou enrôlé, fait engager ou enrôler des soldats ou leur auront fourni des armes ou munitions, sans ordre ou autorisation du pouvoir légitime, seront punis de la détention criminelle à perpétuité.

Art. 90. Ceux qui, sans droit ou motif légitime, auront pris un commandement militaire quelconque,
Ceux qui, contre l'ordre du Gouvernement, auront retenu un tel commandement,
Les commandants qui auront tenu leur armée ou troupe rassemblée, après que le licenciement ou la séparation en auront été ordonnés,
Seront punis de la détention criminelle à perpétuité.

Art. 91. Lorsque l'une des infractions prévues aux articles 86,88, 89 et 90 aura été exécutée ou simplement tentée avec usage d'armes, la peine sera la mort.

Art. 92. Toute personne qui, pouvant disposer de la force publique, en aura requis ou ordonné, fait requérir ou ordonner l'action ou l'emploi pour empêcher l'exécution des lois sur le recrutement militaire ou sur la mobilisation sera punie de la détention criminelle à temps de dix à vingt ans.
Si cette réquisition ou cet ordre ont été suivis de leur effet, le coupable sera puni de la détention criminelle à perpétuité.

SECTION IV

Des crimes tendant à troubler l'Etat par le massacre ou la dévastation

Art. 93. Ceux qui auront commis un attentat dont le but aura été de porter le massacre ou la dévastation dans une ou plusieurs communes, seront punis de mort.
L'exécution ou la tentative constitueront seules l'attentat.

Art. 94. Le complot ayant pour but le crime prévu à l'article 93, s'il a été suivi d'un acte commis ou commencé pour en préparer l'exécution sera puni de la détention criminelle à perpétuité.
Si le complot n'a pas été suivi d'un acte commis ou commencé pour en préparer l'exécution, la peine sera celle de la détention criminelle à temps de dix à vingt ans.
Il y a complot dès que la résolution d'agir est concertée et arrêtée entre deux ou plusieurs personnes.
S'il y a eu proposition faite et non agréée de former un complot pour arriver aux crimes mentionnés à l'article 93, celui qui aura fait une telle proposition sera puni de la détention criminelle à temps de cinq à dix ans.

Art. 95. Sera puni de mort quiconque, en vue de troubler l'Etat par l'un des crimes prévus aux articles 86 et 93 ou par l'envahissement, le pillage ou le partage des propriétés publiques ou privées ou encore en faisant attaque ou résistance envers la force publique agissant contre les auteurs de ces crimes, se sera mis à la tête de bandes armées ou y aura exercé une fonction ou un commandement quelconque.
La même peine sera appliquée à ceux qui auront dirigé l'association, levé ou fait lever, organisé ou fait organiser des bandes ou leur auront, sciemment et volontairement, fourni ou procuré des subsides, des armes, munitions et instruments de crime ou envoyé des subsistances ou qui auront de toute autre manière pratiqué des intelligences avec les directeurs ou commandants des bandes.

Art. 96. Les individus faisant partie de bandes, sans y exercer aucun commandement ni emploi, seront punis de la détention criminelle à temps de dix à vingt ans.

SECTION V

Des crimes commis par la participation à un mouvement insurrectionnel

Art. 97. Seront punis de la détention criminelle à temps de dix à vingt ans, les individus qui, dans un mouvement insurrectionnel:

1. Auront fait ou aidé à faire des barricades, des retranchements, ou tous autres travaux ayant pour objet d'entraver ou d'arrêter l'exercice de la force publique;

2. Auront empêché, à l'aide de violences ou de menaces, la convocation ou la réunion de la force publique, ou qui auront provoqué ou facilité le rassemblement des insurgés, soit par la distribution d'ordres ou de proclamations, soit par le port de drapeaux ou autre signes de ralliement, soit par tout autre moyen d'appel;

3. Auront, pour faire attaque ou résistance envers la force publique, envahi ou occupé des édifices, postes et autres établissements publics, des maisons habitées ou non habitées. La peine sera la même à l'égard du propriétaire ou du locataire qui, connaissant le but des insurgés, leur aura procuré sans contrainte l'entrée desdites maisons.

Art. 98. Seront punis de la détention criminelle à temps de dix à vingt ans, les individus qui, dans un mouvement insurrectionnel:

1. Se seront emparés d'armes, munitions ou matériels de toutes espèces, soit à l'aide de violences ou de menaces, soit par le pillage de boutiques ou de postes, magasins, arsenaux ou autres établissements publics, soit par le désarmement des agents de la force publique;

2. Auront porté soit des armes apparentes ou cachées, ou des munitions, soit un uniforme ou costume ou autres insignes civils ou militaires.

Si les individus porteurs d'armes apparentes ou cachées, ou de munitions, étaient revêtus d'un uniforme, d'un costume ou d'autres insignes civils ou militaires, ils seront punis de la détention criminelle à perpétuité.
Les individus qui auront fait usage de leurs armes seront punis de mort.

Art. 99. Seront punis de mort ceux qui auront dirigé ou organisé un mouvement insurrectionnel ou qui lui auront sciemment et volontairement fourni ou procuré des armes, munitions et instruments de crime, ou envoyé des subsistances ou qui auront, de toute manière, pratiqué des intelligences avec les directeurs ou commandants de mouvement.

b) The use of bombs is punishable under Article 435 of the Penal Code.

Art. 435. La peine sera la même, d'après les distinctions faites en l'article précédent, contre ceux qui auront détruit volontairement en tout ou en partie ou tenté de détruire par l'effet d'une mine ou de toute substance explosible les édifices, habitations, digues, chaussées, navires, bateaux, véhicules de toutes sortes, magasins ou chantiers, ou leurs dépendances, ponts, voies publiques ou privées et généralement tous objets mobiliers ou immobiliers de quelque nature qu'ils soient.

Le dépôt, dans une intention criminelle, sur une voie publique ou privée, d'un engin explosif sera assimilé à la tentative du meurtre prémédité.
Les personnes coupables des crimes mentionnés dans le présent article seront exemptes de peine, si, avant la consommation de ces crimes et avant toutes poursuites, elles en ont donné connaissance et révélé les auteurs aux autorités constituées, ou si, même après les poursuites commencées, elles ont procuré l'arrestation des autres coupables.

c) Violent group action against persons and properties have been more severely punished in 1970, through the new article 314 of the Penal Code.

Art. 314. Lorsque, du fait d'une action concertée, menée à force ouverte par un groupe, des violences ou voies de fait auront été commises contre les personnes ou que des destructions ou dégradations auront été causées aux biens, les instigateurs et les organisateurs de cette action, ainsi que ceux qui y auront participé volontairement, seront punis, sans préjudice de l'application des peines plus fortes prévues par la loi, d'un emprisonnement de un à cinq ans.
Lorsque, du fait d'un rassemblement illicite ou légalement interdit par l'autorité administrative, des violences, voies de fait, destructions

ou dégradations qualifiées crimes ou délits auront été commises, seront punis:

1. Les instigateurs et les organisateurs de ce rassemblement qui n'auront pas donné l'ordre de dislocation dès qu'ils auront eu connaissance de ces violences, voies de fait, destructions ou dégradations, d'un emprisonnement de six mois à trois ans;

2. Ceux qui auront continué de participer activement à ce rassemblement, après le commencement et en connaissance des violences, voies de fait, destructions ou dégradations, d'un emprisonnement de trois mois à deux ans.

Seront punis d'un emprisonnement de un à cinq ans ceux qui se seront introduits dans un rassemblement, même licite, en vue d'y commettre ou de faire commettre par les autres participants des violences, voies de fait, destructions ou dégradations. Lorsqu'une condamnation est prononcée en application de cette disposition, le juge peut décider que la provocation ainsi sanctionnée vaut excuse absolutoire pour les instigateurs, organisateurs et participants du rassemblement. Les personnes reconnues coupables des délits définis au présent article sont responsables des dommages corporels ou matériels. Toutefois, le juge pourra limiter la réparation à une partie seulement de ces dommages et fixer la part imputable à chaque condamné, qu'il pourra dispenser de la solidarité prévue à l'article 55 du Code pénal. Cette limitation de responsabilité est sans effet sur l'action en réparation ouverte à la victime en application des articles 116 à 122 du Code de l'administration communale.

d) Taking of hostages is punishable under articles 341 through 344 of the Penal Code. Article 343 has created a special new offense.

Art. 341. Ceux qui, sans ordre des autorités constituées et hors les cas où la loi ordonne de saisir des prévenus, auront arrêté, détenu ou séquestré des personnes quelconques, seront punis:

1. De la réclusion criminelle à perpétuité, si la détention ou séquestration a duré plus d'un mois;

2. De la réclusion criminelle à temps de dix à vingt ans, si la détention ou séquestration n'a pas duré plus d'un mois;

3. D'un emprisonnement de deux à cinq ans, s'ils ont rendu la liberté à la personne arrêtée, séquestrée ou détenue, avant le cinquième jour accompli depuis celui de l'arrestation, détention ou séquestration.

Art. 342. Quiconque aura prêté un lieu pour exécuter la détention ou séquestration sera passible des mêmes peines que l'auteur de cette détention ou séquestration.

Art. 343. Si la personne arrêtée, détenue ou séquestrée l'a été comme otage soit pour préparer ou faciliter la commission d'un crime ou d'un délit, soit pour favoriser la fuite ou assurer l'impunité des auteurs ou complices d'un crime ou d'un délit, soit, en un lieu tenu secret, pour répondre de l'exécution d'un ordre ou d'une condition, les coupables seront punis de la réclusion criminelle à perpétuité.
Toutefois, la peine sera celle de la réclusion criminelle de dix à vingt ans si la personne arrêtée, détenue ou séquestrée comme otage pour répondre de l'exécution d'un ordre ou d'une condition, est libérée volontairement avant le cinquième jour accompli depuis celui de l'arrestation, détention ou séquestration sans que l'ordre ou la condition ait été exécuté.

Art. 344 Dans chacun des deux cas suivants:

1. Si l'arrestation a été exécutée avec le faux costume, sous un faux nom, ou sur un faux ordre de l'autorité publique;

2. Si l'individu arrêté, détenu ou séquestré, a été menacé de la mort,

Les coupables seront punis de la réclusion criminelle à perpétuité. Mais la peine sera celle de la mort, si les personnes arrêtées, détenues ou séquestrées ont été soumises à des tortures corporelles.

Article 343 can be used in case of terrorist action as well as in cases of non-terrorist and non-political motivation. But the Court in charge of judging the case will be the Cour de Sûreté de l'Etat in the first case (see, further, IV)

e) Skyjacking. Article 462 has created a new offense.

SECTION VI

Détournement d'aéronef

Art. 462. Toute personne se trouvant à bord d'un aéronef en vol qui, par violence ou menace de violence, s'empare de cet aéronef ou en exerce le contrôle sera punie de la réclusion criminelle à temps de cinq à dix ans.
S'il est résulté de ces faits des blessures ou maladie, la peine sera celle de la réclusion criminelle à temps de dix à vingt ans.
S'il en est résulté la mort d'une ou de plusieurs personnes, la peine sera celle de la réclusion criminelle à perpétuité, sans préjudice, s'il y a lieu, de l'application des articles 302, 303 et 304 du Code pénal.

After the attempt of skyjacking of 1971, formerly reported in I a , where the attempt took place before the taking off of the plane, an addition was made to article 462, in order to include such attempts as well, under the particular crime of skyjacking .

"Un aéronef est considéré comme en vol depuis le moment où, l'embarquement étant terminé, toutes ses portes extérieures ont été fermées jusqu'au moment où l'une de ces portes est ouverte en vue du débarquement. En cas d'atterrissage forcé, le vol est censé se poursuivre jusqu'à ce que l'autorité compétente prenne en charge l'aéronef ainsi que les personnes et biens à bord."

The law no. 75-624 of July 11th, 1975 was added, due to the fact that some cases occurred of false reports about skyjacking.

"Art. 462-1.

Toute personne qui, en communiquant une information qu'elle savait être fausse, aura compromis la sécurité d'un aéronef en vol au sens du dernier alinéa de l'article précédent, sera punie d'un emprisonnement de un à cinq ans et d'une amende de 2,000 F à 40,000 F.

"La tentative du délit prévu au présent article sera punie comme le délit lui-même".

f) Separatist action is punished by Article 88 of the Penal Code already quoted under a). Separatist movements can be charged under this text.

4. Criminal Proceedings

In former times, French military courts had competence for the judgment of soldiers and even civilians charged with an attempt against external security of the State (atteinte à la Sûreté extérieure de l'Etat). The Algerian conflict, having led to the Evian Agreements in 1962, showed how difficult it was to submit to military courts highly politically motivated offenses. After the unsuccessful attempt to create high Military Courts, a new Cour de Sûreté de l'Etat was created in 1963, specialized in the judgment of, on one side, purely political offenses and on the other, ordinary offenses, with special political motivation, as appear in article 698 of the Code de Procédure Pénale.

TITRE XI

Des crimes et délits contre la sûreté de l'Etat

Art. 697. En temps de guerre, les crimes et délits contre la sûreté de l'Etat sont instruits et jugés par les juridictions des forces armées. Ils sont poursuivis par les autorités des forces armées investies des pouvoirs judiciaires.
Toutefois le procureur de la République a qualité pour accomplir ou faire accomplir les actes nécessités par l'urgence et requérir à cet effet le juge d'instruction de son siège.
Il doit se déssaisir ou requérir le dessaisissement du juge d'instruction dès que l'urgence a cessé.

Art. 698. En temps de paix, les crimes et délits contre la sûreté de l'Etat sont déférés à une Cour de sûreté de l'Etat, dont le ressort s'étend sur tout le territoire de la République, et dont une loi fixe la composition, les règles de fonctionnement et la procédure.
La Cour a également compétence pour connaître:

a) Des crimes et délits connexes à ceux prévus au premier alinéa;

b) Des délits prévus et réprimés par la loi du 10 janvier 1936 sur les groupes de combat et les milices privées, ainsi que des délits connexes;

c) Des crimes et délits énumérés ci-après, ainsi que des faits de complicité et des infractions connexes, lorsque ces crimes et délits sont en relation avec une entreprise individuelle ou collective consistant ou tendant à substituer une autorité illégale à l'autorité de l'Etat:

1. Crimes et délits contre la discipline des armées;

2. Rébellion avec armes;

CONTINUED

2 OF 3

International Centre for
Comparative Criminology

Université de Montréal

Institute of Criminal
Justice and Criminology

University of Maryland

Final Report on

Basic Issue Seminar

THE IMPACT OF TERRORISM AND SKYJACKING ON THE OPERATIONS OF THE CRIMINAL JUSTICE SYSTEM

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Historically, all crimes were "political", the separation of the legislative, executive and judicial powers being a major achievement of modern statehood. One can say that 19th and 20th century social evolution resulted in the "depoliticization" of the judicial system. This is perhaps a reflection of the growing consensus, within the liberal democratic state, concerning the essential fairness of the political machinery and the relative independence from it of the judicial order. Social democratic ideals stressing the right for a more effective equality spread through the body politic without altering, however, the basic incentives to the exercise of individual responsibilities. The responsiveness of the holders of political power to the aspirations of the general public for material well-being and civil liberties tended to rule out violent means as a viable method for challenging the established rules of the social order.

Terrorism challenges the political system and, in so doing, represents a basic "regression" in the psycho-analytical sense.

Why this regression? Why did we enter, around the mid-sixties, a period of turmoil which recalls the turbulent periods of pre-revolutionary Russia, late Renaissance Italy or the mid-nineteenth century's revolutionary years, culminating in the Paris Commune? It seems to me that we are witnessing every 20-30 years or so, an exacerbation of the latent opposition of world views,"weltanschauungen". The latest manifestations of this are the Vietnam war-induced moral crisis in the United States, the awakening of a revolutionary spirit in Paris in the spring of 1968, the generational confrontation in Germany during the mid-sixties. All these events had in common the weakening of the value system which ultimately justifies the rule of the law. The very notion of the Res Publica lost its compelling characteristics, the nature of which in the past allowed the smooth functioning of conflicting class, social, age and sexual interest groups. The coherence of the system will be significantly reduced, given the growing influence of radically opposed contra-values and the militancy of those adhering to them within the same system.

We are now entering a phase of social evolution which produces a type of society in our Western democracies which is close to the non-integrated ideal type; opposing conducts, each having their own moral justification, are pitted against each other within the confines of a single society. Several counter-cultures are vying for the loyalties of the membership of a given society and, as a consequence, the sense of the "civic virtues"

as well as the "public interest" is rapidly vanishing. And, therefore, social conflicts will exhibit tendencies to degenerate into civil wars. As Clausewitz used to say: "war is the continuation of diplomacy via other means". The same can be suggested for the use of violent means in the solving of economic and social conflicts of interest.

The contemporary criminal justice system was designed and has evolved to deal more and more with persons and less and less with acts. The problems arising from this evolution are reflected in the present crisis in "corrections": the treatment – oriented sanction related to the person does not seem to have been very effective. The terrorist as an offender looks to be the least eligible candidate for rehabilitation. This gives rise to the renaissance of the "preventive" model close to the classical school of penal law. Is this a particular development related to the "political crime" or is it a general tendency engulfing the whole criminal justice system?

Just let us recall briefly the three models of crime control. The first is based on the deterrent effect of the sentence. The penal threat predominates, the severity of punishment being the central piece of this strategey. The correctional model implies a basic trust in the ability of man to rehabilitate himself, to proceed toward a re-adaptation of this behaviour to

commonly accepted goals. This re-adaptation is effected by the purposeful manipulation of legal, psychological and environmental variables. The preventive model stresses the consequences of an increased incapacitation of the potential offenders by reducing significantly the opportunities and capabilities to commit proscribed acts.

There seems to be an increasing public resignation to the inconveniences or the price to be paid for the very expensive means required by the preventive model. The control of subways, airports, maybe even railway stations, high-rise buildings and banks, indicates this tendency. Of course, there is, in practice, a large overlap in the effects of these three models. The deterrence model still remains rather effective for the large mass of the "silent majority"; the medical and correctional model is surely helpful with offenders demonstrating psycho- and socio-pathological characteristics; the preventive model may play a significant role for the so-called "normal" or "professional" criminal.

To maintain a sense of proportion in talking about terrorism, however, we should not forget the tremendous amount of violence and terror resulting from the shortcomings of the criminal justice system and its operations within our so-called "civilized" societies, not to mention wars etc... Just thinking of the sixteen, or so, victims of the Lod airport shooting, compared to the thousands of victims of the recent Lebanese civil war, we could ask ourselves

why the former made a deeper impact on world opinion than did the latter. I do not offer any ready explanation.

The frequency of terrorist acts in the recent past allows us to evaluate an increasing body of data pertaining to the effectiveness of the philosophies, strategies and technologies used and tested by various agencies. One of the tasks of comparative criminology is to find out about particular achievements and generate a critical reflection bearing on theories and practices of crime prevention and control.

What do we want to achieve? We hope to summarize and critically evaluate the present knowledge on the subject and submit it to the international scholarly community as well as to the general public for their attention. We want to convey our concern, as criminologists or specialists in criminal policy, to have the international community look at the contemporary forms and aspects of the oldest of crimes: the contest of the exercise of power by violent individuals or minorities. This to a large extent marks the end of a narrow, parochial concept of corrections and law enforcement, and places them in the more appropriate and broader perspective of the political sciences.

One more word about our general approach to the problem. We want to scrutinize the ways in which every country is facing the contemporary threat of "terrorism". I understand that there is

no agreement in the analysis of the cases, as well as the best method to deal with those acts and persons. I do not anticipate that such an agreement can easily be achieved; I am not even sure that it is a desirable objective to seek such an agreement. What we are up to, is to try to understand the phenomenon in the light of varying experiences in different countries. Even though these introductory remarks convey a rather philosophical tone, the analysis of this challenging problem requires one to take into account the more practical, concrete issues involved. I hope that the following report serves as a valuable contribution towards a better understanding of terrorism.

THE IMPACT OF TERRORISM AND SKYJACKING ON THE OPERATIONS OF THE CRIMINAL JUSTICE SYSTEM

A PRELIMINARY ANALYSIS

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Introduction

This paper has a dual focus. First, it looks at a problem which is prevalent in today's world and which can be considered to be a criminal problem which has direct relevance to the criminal justice system. This is the problem of terrorism in all its manifest forms, including the uniquely modern one of sky-jacking.

Secondly, the paper looks at the criminal justice system itself. The purpose of this is to determine to what extent the criminal justice system has dealt or could effectively deal with the particular criminal problem under study. In doing so, the ultimate aim is to gain some perspective on the more general question of how appropriate and effective the criminal justice system is in dealing with any current criminal problem, particularly one with an international dimension such as is the case with terrorism.

Thus, the specific problem of terrorism is being used as a context within which to attack the broader issues. It provides the framework upon which practical questions and realistic proposals can be based.

The title of this paper reflects this dual focus. When one considers the impact of a certain criminal problem on the operations of the criminal justice system, one must ask two sorts of questions: a) what effect has the problem had upon the system and b) what effect has the system had upon the problem. Both questions complement each other, since the answers to each one provide clues to the answers to the other.

This working paper is intended to provide the philosophical and methodological framework for approaching the problem embodied in the title. It is not meant to be a review of current literature or a summary of current knowledge. The paper will delineate certain broad areas where fruitful questions may emerge and be pursued. It is also meant to specify those areas where fruitful questions are <u>not</u> likely to emerge, either because they are sterile and unproductive areas or simply because they extend beyond the intended scope of the paper.

Terrorism and Problems of Definition

As is well known from the recent Vth UN Congress on Crime Prevention and Treatment of the Offender, which focussed on, among other things, the problem of terrorism, terrorism is one of

those words which seems easy to recognize but difficult to define - at least so that consensus about the definition can be reached. A brief glance at some of the appendices in Bassiouni (1975) provides a clue to the problems of definition. One major problem boils down to the question: who is terrorizing whom?

If one reads the text of the US Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism (Appendix R or S of Bassiouni, 1975), one gets the clear impression that terrorism relates to any act by an individual or group of individuals designed to undermine the authority of a legitimate government or state. If one reads the Draft Proposal Submitted by the Non-Aligned Group[1] of the Ad Hoc Committee on International Terrorism concerning the definition of international terrorism (see Appendix S in Bassiouni, 1975), one gets the equally clear impression that terrorism is related to the suppression of personal liberties of individuals by a ruling authority or military regime. Jenkins (1974) elaborates further on this point.

So, we get two opposing views of terrorism depending on the political context of the country providing the definition. To generalize rather loosely, well-established, developed, Western democracies are concerned with disruption of societal functioning by individuals engaged in terrorist activity against the state,

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[1] Algeria, Congo, Democratic Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yeman, Yugoslavia, Zaire and Zambia.

while relatively new "underdeveloped" countries, often founded on the basis of revolution or protracted guerrilla activity, are concerned with oppression of indigenous populations and suppression or restriction of the freedom of dissent by repressive governments.[2]

How does one reconcile these two views? Such an attempt is certainly an important issue, even though it is beyond the scope of this paper.[3] Despite the fact that such a reconciliation is not our task, it is imperative that both perspectives be kept in mind.

For the purposes of this paper, terrorism will be viewed mainly from the first perspective, i.e. individuals or groups of individuals acting against the interests of the state or the status quo of modern society. The latter perspective, involving suppression of individual liberties by governments will be viewed as one of the dangers or "social costs", to use Minor's term, (see Minor, 1975) which must be seriously considered as an integral part of the problem of combatting terrorism. This will be considered in more detail later in this working paper.

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[2] Note that two countries, France and the United States, have undergone revolution, but have since become established to the point where they belong in the former group.

[3] A research project on the parallels between the development of individuals from adolescent, innovative, exploratory radicals to adult, traditional, habitual conservatives and the evolution of new, revolutionary, developing nations into old, history-bound, bureaucratic nations might be of value but only on a very long-term basis. Are these opposing views of terrorism a reflection of a "generation gap" between nations?

Another problem concerning the definition of terrorism is that of the relationship between terrorism and warfare. Jenkins (1975) makes the intriguing point that terrorism may be evolving into a type of surrogate warfare.[4] This raises another definitional question which has direct implications for the second focus of this paper concerning the criminal justice system itself. If terrorism is viewed as a type of "surrogate warfare" as Jenkins suggests, then there may be profound implications for the role of the criminal justice system in dealing with the problem. There is a whole body of international law related to warfare, certain criminal acts are no longer treated as such during warfare (at least, until recently, by the side to which the perpetrator of the act belongs), "acts of war" are dealt with by defense departments and armed forces, not criminal justice systems and police forces.

If terrorist activity is considered to be an act of war, the criminal justice system may be the inappropriate social institution to deal with it except insofar as it has precedent in dealing with certain aspects of warfare. The relevance of this issue to the main concerns of this paper is directly proportional to the

[4] New disclosures since the recent OPEC kidnapping in Vienna suggest that this is already beginning to occur. It is believed that the OPEC incident was planned by the government of three nations (Algeria, Iraq and Libya) and that the action was directed against the government of Saudi Arabia. Thus, governments are using actions often considered as terrorist actions to affect other governments. Whether the actual kidnapping should be considered an act of terrorism or simply a type of international extortion is an interesting question.

degree to which one feels that the criminal justice system should get involved in combatting "surrogate warfare". While in many countries the armed forces and the police forces tend to be synonymous, this is not the accepted tradition in most Western democracies. In terms of the impact of terrorism on the operations of the criminal justice system, it might be of interest to ask to what extent the problem of terrorism is causing the criminal justice system to make financial and personnel committments to a "surrogate warfare" definition of the terrorist problem. While Clutterbuck (1975) describes the use of spy networks to monitor clandestine terrorist planning, Minor's "prevention model" for skyjacking control, whereby one focusses on diminishing opportunities to commit acts in the first place, demonstrates another trend which is not necessarily consistent with this "militarizing trend".

While a detailed examination of this question is probably beyond the scope of this paper, it is a question which should linger in the back of one's mind, especially when considering the social cost of combatting terrorism <u>via</u> the criminal justice system. If police departments become armies, who will carry on traditional police functions? Of course, the current trend in law enforcement is toward "special units" for special criminal problems. As one pursues the issue, one gets the feeling of being drawn along potentially fruitless tangents.

Related to the question of terrorism as warfare is the question of the international aspect of terrorism. As

mentioned at the outset of this working paper, terrorism can be viewed as a criminal activity. As such, it can be carried on within a nation or between nations. We get into the problem of when to define a terrorist act as an internal (intranational) problem and when to define it as an international problem. It is interesting that Green (1974) excludes the following from the scope of international legal control of (international) terrorism:

a) the IRA problem in Northern Ireland, since it remains within the domestic jurisdiction of the state affected,

b) governmental acts of terror, e.g. 'the knock on the door in the night',

c) ordinary behavior of the revolutionary or the activist political dissident,

d) acts of private violence intended to serve purely private ends, e.g. kidnapping. (See Green, 1974, p. 10)

Depending on how one defines international terrorism, one can apply different laws and fall within the jurisdiction of different legal institutions. Clearly, political problems enter here as has already been seen when discussing who is terrorizing whom. Jenkins discusses this point in some detail (see Jenkins 1974). The question is relevant to the topic under consideration to the degree that the "internationalization" of terrorism has an effect on criminal justice attempts to deal with the terrorist problem. Given the difficulties of international co-operation, it is perhaps

outside the scope of the topic to address oneself to such issues as the establishment of an International World Court (see Bassiouni 1975, Part II, section 6) which depend on this co-operation. On the other hand, such an issue as the effect of the international aspect of terrorism on criminal justice operations with an international focus, such as extradition, might be more relevant.

A final aspect of the definition problem concerns the historical context. Terrorism is nothing new. It has been around for a long time. Yet there is a tendency to speak of a "new wave" of terrorism or the "modernization" of terrorism. This is in fact quite apt. The LEAA Task Force on Disorder and Terrorism pinpoints two principal dimensions of this modernization: technological advance and internationalization.

> "The key words in describing these new configurations (of terrorism) are <u>technological advance</u> and <u>internationalization</u>. As for the first, a whole complex of <u>technological advances</u> have created opportunities for terrorism which it never had before:
>
> <u>Air Transport</u> —A single individual can take control of a large airplane with 200-300 passengers, divert it wherever he wishes, and blow it up when he gets there, with or without its passengers aboard. Little wonder that the airplane has figured in so many terrorist acts of the last 15 years.

Communications — Modern communications (radio and television) enable a terrorist to achieve an almost instantaneous, horrified, attention-riveted audience for his action. Since public attention to his cause is usually his key objective, communications advances have been critically valuable to the terrorist.

Weapons — New types of weapons are constantly adding to terrorists' capabilities. A leading example — the Soviet SA-7 heat-seeking rocket, equivalent of our Red Eye, easily portable by one man. Two of these were found in the hands of Arab terrorists at the end of the runway in Rome in 1973. Fortunately they were found in time. At Orly Airport last January (1975) the terrorists used sophisticated bazookas. Another key weapon — plastic explosives.

Targets — Finally, our modern, complex and interdependent societies present a plethora of juicy targets for terrorists. Large aircraft are one such target. But there are also supertankers, submarine cables and gaslines, urban water systems, nuclear power plants, and others. Modern terrorists can threaten damage far beyond anything possible in earlier, simpler ages.

The second key characteristic of present-day terrorism is internationalization.

The Russian anarchists operated only in Russia, against the Czars and the ruling classes. It probably never occurred

to them to kidnap the French ambassador to Moscow as a hostage to compel the Russian government to release anarchist comrades in jail. Or to kill the Czar's ambassador in Vienna as a pressure tactic. Or to shoot up an international gathering in Paris to horrify a world audience. Or to collaborate with funds and cross-training with other terrorist groups in other countries. But these are the hallmarks and characteristics of modern terrorism. The threat is international."

(from an unpublished, undated working paper on terrorism by the LEAA Task Force on Disorder and Terrorism, pp. 3-4)

Jenkins (1974, 1975) also makes some of these points. The problem of internationalization has already been discussed above. Technological advance is quite applicable to the warfare problem of definition, for obvious reasons.

Skyjacking is the clearest reflection of this element of technological advance in terrorism, at least with regard to targets. The word "skyjacking" itself is new, but it derives from an older, well-known word, "hijacking". Thus, the nature of the crime is old but the specific context is new. Because of its unique role as a "new form of criminality", skyjacking has lent itself quite nicely to "paradigmatic treatment", where it has been used as a case study for criminal justice attempts to control

terrorism. Minor (1975) deals with skyjacking in this way and Robert Hamblin and Jerry Miller have also used skyjacking as a phenomenon which lends itself well to certain theoretical treatment concerning fluctuations in social phenomena (Hamblin & Miller, unpublished).

It is for its unique role as a recent, discrete and well-studied phenomenon that skyjacking has been singled out as being highly relevant to the topic under consideration. Hamblin and Miller show that, during the past decades, skyjacking has occurred in discrete "epidemics" and that social reaction, represented by deterrence and policy attempts[5], has exhibited a similar pattern with a degree of lag.

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[5] Hamblin and Miller define "deterrence attempts" as "any publicized actions by passengers, airline personnel, or authorities which, if successful, might increase potential hijackers' expectations of failure and punishment. For example, . . . publication of incidents where hijackers are subdued and arrested, where they are talked into surrendering, where they are shot . . ., . . . detected before entering the airplane, . . . tried and sentenced, extradition agreements for hijacking and the implementation of search and detection procedures." "Policy attempts" are defined as "a publicized action by a person or group who . . . tries to influence policy about the response to hijacking or the treatment of hijackers. A policy attempt, as a publicized action, usually involves a suggestion, an evaluation, or a pressure directed ordinarily toward the airlines or the national and international agencies which have the official responsibility for controlling hijacking. The following are examples . . .: a letter to the editor suggesting hand luggage be fluoroscoped, an editorial calling for a bilateral extradition treaty with Cuba, an editorial disapproving shootouts with hijackers, an anti-hijacking bill passed by the legislature, a threatened or actual boycott by a pilots' association to protest the lack of effective anti-hijacking procedures by governments and airlines, an announcement of a plan to reduce prevalence of security guards, and reported negotiations of international anti-hijacking accords."

(Hamblin & Miller, unpublished, pp. 3-5)

Juxtaposing this picture with Minor's contention that attempts to control skyjacking have forced the criminal justice system to shift its crime control model from one of deterrence and/or rehabilitation (offender-oriented) to one of prevention (act-oriented or target-oriented) (see Minor, 1975) one gets a clear picture of how, when and where the phenomenon of skyjacking affected the criminal justice system - and how, in turn, the criminal justice system affected skyjacking. In terms of the dual focus of this paper, one could not ask for a better "case study".

The Impact of Terrorism and Skyjacking on Models of Crime Control: The Problem of Theory vs. Practice

If one wanted to state the goals of the criminal justice system in the widest possible terms it would likely be in terms reminiscent of the title of the Vth UN Congress - Prevention of Crime and Treatment of the Offender. Everyone would probably agree that crime should be prevented (although one could argue about what constitutes a crime) and that offenders (the modern word for criminal) should be treated (although one might argue about what constitutes treatment, let alone an offender). The question is HOW? In the world of theory (ideas) anything is possible and in the world of practice (actions) anything is not possible (for the sake of optimism and at the expense of cynical symmetry, let's not say nothing is possible). For this reason, academics and practitioners

seldom communicate in a productive manner with each other; researchers and policy-makers frequently come into conflict with each other.

In a forum where academics, practitioners and policy-makers meet under the same roof to discuss common problems, one can very quickly come face-to-face with this polarization of perspectives. However, the dual focus inherent in the topic under consideration should obviate the necessity for a sterile confrontation since the nature of the topic is such that both perspectives should complement each other. Theoretical issues usually derive from practical experiences while practical strategies usually derive from theoretical notions. This is clear in the case of skyjacking. Consider the following scenario.

A new criminal problem appears on the scene. For political reasons, it is not viewed as criminal. (See Green, 1974, for a discussion of how the criminal element of early skyjackings in Eastern Europe was ignored in the light of the political context. This was clear in judicial rulings on extradition.) The phenomenon spreads and mushrooms - Hamblin and Miller even use the term "epidemic". The criminal justice system responds in various ways. There is public outcry; international conventions are held (Tokyo, 1963; The Hague, 1970; Montreal, 1971). Psychological profiles are developed for screening procedures. Sky marshalls are used in the U.S. Finally, after a peak event (Munich, 1972) mandatory luggage

inspection with technologically sophisticated equipment is instituted in the U.S. The incidence of skyjacking falls dramatically to zero.

The story is a remarkable one and reflects an evolution in the criminal justice system response to skyjacking which moved through several distinct phases. Herein lies the marriage between theory and practice. The skyjacking case shows how the prevalent "models" of deterrence and rehabilitation were found to be ineffective and inapplicable respectively. The criminal justice system was forced to adopt a new model - the prevention model which focusses on the environment in which a criminal act occurs rather than on the perpetrator of the act or even on the act itself. Design an environment in which specific criminal acts cannot occur in the first place and one has literally "prevented crime". Furthermore, there is no offender to treat!

The key point in all this is that the response to skyjacking was not necessarily the direct application of a conscious change in a working model or theory. It evolved that way simply because earlier efforts failed and the problem continued to get worse. In fact, Hamblin and Miller (unpublished) suggest that a vicarious learning process occurred on both sides whereby skyjackers on the one hand and those who combat them on the other each learned to be more effective from the pattern of success and failure exhibited

by their predecessors. This suggests that two parallel processes were going on in concert - the evolution of more sophisticated and dramatic forms of skyjacking and the evolution of more effective ways of combatting skyjacking.

The implications of this double process are relevant to both theoretician and practitioner for they provide insights into the nature of crime control and the role of the criminal justice system in this process. For the theoretician, the case of skyjacking shows how the criminal justice system's response to a burgeoning problem could be systematized into different control models. In terms of the impact of skyjacking on the operations of the criminal justice system, one could argue that the "epidemics" of skyjacking forced the criminal justice system to find a method of crime control which was different from the prevailing ones. For the practitioner, the skyjacking case provides a successful strategy of crime control which can now be tried out on other problems.

As for the implications of the double learning process, the lesson seems to be that attempts to control certain criminal phenomena should take into account the temporal aspect of these phenomena. They are not static and neither can the process of control remain static - at least until effective control has been achieved. For the practitioner, this means that he should be

aware that skyjackers learn their mistakes just as he learns from his. In this case, effective control is achieved when the skyjacker does not even get the chance to make a mistake, let alone succeed.

While Hamblin and Miller (unpublished) do not consider the possibility of skyjackers and their opponents learning from each other's successes and failures, the possibility of such a learning mechanism is intriguing. In fact, the successes on one side should tend to coincide with the failures on the other, although this is not necessarily so. Both sides can fail or a strategy which succeeds at one time can fail the next time because the other side learned something and changed its strategy accordingly.

If, however, such a feedback mechanism exists between those who act and those who combat the action, this has direct implications for the control strategy. For example, the theoretician can ask what factors facilitate or retard this feedback mechanism (e.g. press reports may facilitate the process, as may "do-it-yourself" books on bombs, etc.). The practitioner, once he is aware that such a process exists or may exist, can take into account the "information effect" of his practical applications. Interestingly, the deterrence strategy is suddenly cast in a new light by the possibility of this two-way learning process. While one may, for example, publicize a Sky Marshall Plan primarily for a deterrent effect, the message may not be taken that way by the

"other side". In fact, terrorist strategies may be modified to accomodate the contingency of armed personnel on airplanes, even if, in actuality, such personnel do not exist or exist in very small numbers! Thus, with the knowledge that a two-way learning process may exist, one can then evaluate one's strategies and policies from the double perspective of intended goal (by the criminal justice system) and perceived goal (by the terrorist).

It should by now be clear that academics, practitioners and policy-makers can all gain something from considering one specific problem from different perspectives and that they can all clearly benefit one another in doing so. This paper is designed to facilitate this process. It is also clear that terrorism has had an impact on criminal justice strategies of crime control and that this shift in strategy has direct implications for both theory and practice.

Implications of the Prevention Model

As outlined above and detailed in Minor (1975), the case of skyjacking provides an example where the prevention of a particular criminal activity was achieved by what is often called "target-hardening". This idea is predicated on the notion that certain criminal acts are more easily prevented by acting on the target for such acts than on the potential actor himself. A parallel in

the realm of auto accidents and resulting deaths and injuries is the case where, instead of deterrents aimed at speeding and drunken driving, one focusses one's efforts on collapsible lamp-posts and elimination of concrete median strips. Oscar Newman's book on "defensible space" (Newman, 1973) applies the concept to city design and crime prevention whereby communities are designed to eliminate those environmental factors which are known to be conducive to criminal activity, e.g. secluded streets, shaded areas, etc. A recent crime prevention workshop in Toronto devoted one out of five discussion groups to the question of environmental design and modification[6] (MacFarlane, 1975).

One of the most obvious implications for a model of crime control which focusses on the environment and attempts to prevent crime from happening in the first place is that, theoretically at least, the number of offenders would decrease drastically. If the concept of "target-hardening" and environmental design are coupled with the current emphasis on community involvement in preventing crime at its source and with the legal concept of "decriminalization", then one gets the picture of a crime prevention programme concentrated on the extreme left of the classic criminal justice system organogramme. The focus shifts from the offender and "after-the-fact" models, such as rehabilitation

[6] The other four topics were medical intervention, community involvement, police involvement and law reform.

or treatment, to the act and "before-the-fact" models, such as prevention or deterrence. In the case of deterrence, the inefficacy of this model for certain types of offenses, including most acts of violence; as opposed to its efficacy for offenses such as traffic violations or shoplifting, suggests that the impact of terrorism would be consistent with this leftward shift and the swing away from offender-oriented models. Furthermore, it seems obvious that the rehabilitation model would likely be inapplicable to a convicted terrorist whose offense is motivated by a desire to overthrow the public authority of which the criminal justice system is a part - that is unless one wants to include "brainwashing" in a rehabilitation model, which is a moot point.

The proven effectiveness of the prevention model in the case of skyjacking may have some effect on the current debate within the criminal justice system over the future of the rehabilitation and treatment models. If more effective crime control can be achieved by preventive strategies, it may be unnecessary to pour financial and personnel resources into new correctional institutions or programmes. Such a shift in policy would also be consistent with the current "diversion" trend from the criminal justice system toward the community. However, as pointed out in the Toronto workshop, "in many cases the community appears to be more retributive (punitive) than the criminal justice system" (MacFarlane, 1975, p. 139). The implication is that the criminal

justice system, with its concepts of "due process" and "equality before the law", is better equipped than any community system to deal with crime control. The opposing view was also made at the Workshop:

> Others noted, however, that this (the more punitive attitude of many communities) is perhaps because the community generally has so little experience in dealing directly with the problems of crime under our current system . . . Supporters of this view expressed the belief that with practice and experience in taking responsibility for dealing directly with many of their own crime problems, communities would adopt less punitive, more humane, and more functional solutions to crime problems.
>
> (MacFarlane, 1975, p. 139)

Interestingly, Clutterbuck (1975) makes the point that much of the responsibility for controlling terrorism can be assumed by the public-at-large, or at least more than is generally imagined. He suggests various things which the average citizen could look out for, e.g. suspicious packages or strangers loitering in residential areas. By being aware of the problems which a terrorist faces to commit his acts, the average citizen can maintain some degree of vigilance for certain tell-tale signs which could implicate preparations for a terrorist action. Clutterbuck also suggests that various individuals who are likely targets for kidnapping attempts can make things harder for the potential terrorist, simply by changing his routines constantly. Thus, it is clear that community involvement in crime prevention and control is also relevant to the question

of combatting terrorism.

Another implication of the prevention model relates again to the shift of focus from the offender to the offense. This refers to legal regulation of acts of violence. Green (1974) points out that there often exists a double standard re violent acts of individuals. If one is in favour of the individual's political motivations, the perpetrator of the act is considered a patriot, a freedom fighter or, if apprehended and/or executed, a martyr. If one is not in favour of the individual's political motivations, he is considered a traitor, a bandit or a terrorist.

This double standard appears throughout history and is reflected in many of the popular legends which derive from historical fact. Robin Hood is one example of a folk-hero-to-some-but-a-bandit-to-others. Many sea pirates were admired by some and romanticized in popular ballads but feared and hated by others. Napoleon is depicted as a tyrant and dictator in English history books but as a hero and Emperor in French history books. Even Astérix, the French comic book character, is an example of this double standard. To the French readers (the historic descendants of Gaul) he is a hero and to the Romans, at least in the comic books, he is a renegade and "terrorist".

Green (1974) feels that, by focussing on the act and not the offender, this double standard can be avoided.

> . . . if acts of violence which extend beyond the immediate issue affecting the actor and the object of his antagonism are to be legally regulated or suppressed, we must be prepared to apply whatever law there may be equally to all, regardless of the alleged motive or our own ideological sympathies. Assassination remains assassination, just as kidnapping is still kidnapping, although the regulatory law may be applied more or less leniently depending on the prevailing circumstances.
>
> (Green, 1974, p. 4)

Thus, he makes the distinction between preserving the rule of law - action should be taken regardless of motives - and mitigating circumstances re punishment.

To quote Green again,

> Any attempt to cope with terrorism must be directed to the act rather than the actor, so that sympathy for those who commit the alleged terrorist act must not be allowed to invalidate condemnation of the act.
>
> (Green, 1974, p. 49)

This attitude is consistent with the implications of the prevention model which shifts focus from the actor to the act itself and the environment in which it can or cannot occur. The implication of this attitude for the criminal justice system is that the laws should be clear that all violent acts are to be dealt with on equal terms. In terms of disposition of the offender, discretion can then be applied. Some considerations might include the problem that an institutionalized terrorist could be the object of further terrorist activity, the question of feasibility of rehabilitation,

or the question of mitigating circumstances. There is also the question of defusing the "martyrability" of the convicted terrorist. While emphasis can be placed on "target-hardening", anyone who breaks the preventive screen, so to speak, will be treated similarly, as a "common criminal". From this perspective, it might be better to minimize legal sanctions for terrorism per se and simply use the more traditional offenses as the basis for disposition.

Another result of the proven effectiveness of the preventive model in the case of skyjacking may be to stimulate research on the applicability of "target-hardening" to other pressing criminal problems. Within the realm of other terrorist acts, it is an open question whether similar successes can be achieved in controlling, for example, letter bombs and other types of bombing or kidnapping. One type of approach, especially in view of the "technological advance" of modern terrorism, might be reducing the availability of certain weapons - a strategy which reflects the prevention model of focussing on the act and the environment in which it occurs. It is ironic that, at least in the United States, there is still a sterile controversy raging over a similar and long-recognized preventive strategy for armed assault and armed robbery - the registering (at least) or restriction of availability of all handguns. Perhaps in the light of the success of the skyjacking case, more attention will be paid by policy-makers to the implementation of such strategies. Jenkins' comment about terrorists' "Saturday Night

Specials" in the section on surrogate warfare (Jenkins, 1974) is not irrelevant or flippant.

As already mentioned, the skyjacking case is pretty. One is tempted to say "we've done it!" The prevention model works. One of the potentially most fruitful areas of research, especially on an international, comparative level, would be to compare different experiences with this prevention model to see if its applicability is indeed general.

There is, however, one problem which should be kept in mind and which was raised by Minor (1975) and is also mentioned in the Toronto workshop proceedings, at least in the section on law reform (MacFarlane, 1975). This is the problem of crime displacement. When one's control efforts reduce the incidence of a particular criminal activity to zero, has one really "prevented" crime or has one merely displaced crime into a new dimension? In the case of skyjacking, Minor (1975) raises the point that the incidence of helicopter and private plane hijackings has increased since full airport screening went into effect. Also, one can point to the recent hijacking of a train in Holland as a "new form" of the same game.

This question of crime prevention or crime displacement is intimately related to policy planning in terms of committment of resources - financial and personnel. If one is merely displacing

crime, is it worth investing money and personnel into the "crime prevention"? This question will be integrated into a more global perspective later in this paper. At this point, it is enough to raise the issue as a balancing factor to over-enthusiastic application of the "target-hardening" approach and to suggest that this question may be a fruitful area for research.

The Social Cost of Combatting Terrorism

One of the stated aims of terrorism by modern revolutionary philosophers (cf. Clutterbuck, 1975, p. 22, re Marighela) is to make everyday life so unbearable and uncertain for the average citizen that the existing public authority will be undermined and the average citizen will at best welcome and support or at least tolerate and sympathize with guerrilla forces. This would ultimately lead to the collapse of the existing authority and a restructuring of society. As pointed out by Clutterbuck, the most common outcome of terrorist activity is not as stated above. In fact, what usually happens is the establishment of a strict, authoritarian regime, involving routine suppression of individual liberties which, ironically, is fully accepted by the average citizen as the price one must pay for day-to-day security and stability.

A fairly recent example of this was the Canadian government's invocation of the War Measures Act during the October Crisis

of 1970 when the FLQ kidnapped Pierre Laporte and James Cross. Although the War Measures Act gave the police wide-ranging powers including authority to enter private homes and detain people indefinitely without laying specific charges, few citizens complained and most supported the action, though protest began to mount later on.

The great challenge for modern, Western democracies is to combat terrorism without recourse to the suppression of individual liberties which is so prevalent in many countries with a long history of violent political protest. It is interesting that Dror (unpublished) suggests that this is a false hope in the face of constant terrorist threat. In fact, in several countries, including the United States (California), legislation has been drafted prohibiting the payment of ransom by relatives of hostages or by private groups when the kidnapping has political motives. This reflects a change in attitude consistent with the current Israeli position, which takes a very hard line which is only beginning to be considered in European countries, particularly those with a strong humanistic tradition, such as Holland.

Here is another concrete example where the dual focus mentioned at the outset can be applied. Holland has had a number of terrorist incidents recently. How have these events and success or failure of attempts to deal with them affected the Dutch criminal justice system and its attitudes to crime control and treatment of

the offender? Are the lessons being learned in one country applicable to other countries? Thus, in studying various aspects of criminal justice handling of terrorism and skyjacking, one should consider the implications of various tactics and strategies for the social order itself. From the perspective of a democracy, the cure may ultimately be worse than the disease - and this is the intent of the terrorist.

Impact of Terrorism on Internal Co-ordination of the Criminal Justice System

The word "system" in the phrase "criminal justice system" implies that there is a high degree of co-operation and well-meshed co-ordination among the various subsystems which comprise the entire system, i.e. police, courts, corrections and judiciary. This, however, is not true. As Hulsman (1974) points out, "within the system there is a lack of cohesion, there are no common aims, there is considerable role diffusion, there is no co-ordination between the different sybsystems, and there are often differing opinions about roles."

As a reflection of this lack of cohesion in the system, calls for reform within the system are most often addressed to one particular subsystem, with a total disregard for all other connected subsystems. There seems to be an implicit faith that changes in one subsystem will affect just what ailment is being remedied without having any "side-effects" on the partner subsystems. Thus, for

example, "law-and-order" advocates push for increased effectiveness of law enforcement; governmental funds pour into training and updating police departments and law enforcement agencies. One result, of course, is increased surveillance and increases in numbers of arrests and convictions. This is the intended result.

A perhaps unexpected result, at least to the narrow vision of reformists focussed on one subsystem instead of the whole system, is an increase in court traffic, backlogs and the resultant "reform" of plea bargaining, and ultimately, more people in correctional institutions. Thus, more overcrowding, less manageable populations, increased discontent. Also, if at the law enforcement link, increased effectiveness in apprehension and conviction is limited to certain racial or ethnic or economic groups, inequities in the distribution of inmate populations are exacerbated.

Another example: an attempt to decrease the influx of offenders into prisons is effected by increased use of probation. Law enforcement officers begin to encounter offenders on the street a short time after they arrested them (if the court backlog is not too great) and so a feeling of frustration at the law enforcement level is felt. The result tends to be, to quote Austin MacCormick, that

> A fully co-ordinated, all-out approach to what is often called America's Number One Problem is handicapped by the failure to recognize that law enforcement agencies - police, prosecutors and courts - and the correctional agencies - probation, institutions and parole - are in the same business; the

> protection of society against delinquency and crime.
>
> (in Morris, 1972, p. 26)

Only when the criminal justice system and all its components are viewed as a co-ordinated system with common goals can effective methods of crime control be implemented. Thus, in considering the impact of a particular criminal problem, e.g. terrorism, on the operations of the criminal justice system one must keep in mind not only the more obvious, direct effects of the problem on any one aspect of the system, e.g. law enforcement, but also the indirect effects on all aspects of the system.

> . . . many citizens as well as law enforcement personnel believe that the aims and activities of correctional institutions and services for adults are antithetical to those of law enforcement agencies: that the police catch the offenders, the courts sentence them, the prisons and other correctional institutions then proceed to pamper them, and the parole boards turn them loose on the streets as soon as possible.
>
> (MacCormick, in Morris, 1972, p. 26)

This statement reflects the lack of internal cohesion and uniformity of goals within the criminal justice system in discussing how the criminal justice system can best cope with the problem of terrorism and skyjacking, one should keep this problem of lack of uniformity of goals in mind.

A specific example might make this clear. The criminal justice system response to skyjacking is a good example of the relatively new concept of "target-hardening" or, as Minor (1975) calls it, the crime prevention model (as opposed to deterrence or

rehabilitation models). From the perspective of preventing the specific criminal activity, the plan is very effective - the incidence of skyjacking incidents in the United States fell to zero upon implementation. Yet there is the problem of "crime displacement", as mentioned before - terrorists shift their attention to "softer targets". One can ask whether crime prevention has truly succeeded. Furthermore, one must consider the effects of this new strategy on other aspects of the criminal justice system. For example, there is the legal problem of the right to screen passengers. Although new laws can be written or old ones modified to accomodate this new and effective procedure, there is the problem of legal precedent and/or application of the new law to situations for which it was not originally intended. If drugs are found during a search for weapons, can charges for drug traffic be laid?

These examples highlight one of the key problems which should be kept in mind whenever one thinks about the impact of a criminal problem on the criminal justice system. In any system composed of relatively autonomous sub-components, it is too easy to overlook the interaction effects within the system. If an external pressure - a particular criminal problem such as terrorism - acts primarily on one component of the total system, e.g. law enforcement (crime prevention), one too often fails to foresee the effects of this externally-induced effect on the internal functioning of the entire system.

The Impact of Terrorism on Other Criminal Justice System Goals

Robert Hamblin and Jerry Miller (unpublished) suggest that skyjacking activity has occured in discrete waves or "epidemics" over the past decades and that deterrent strategies and policy decisions echoed these waves with synchronous waves of their own. Is it conceivable that the current concern with "combatting terrorism" is simply the reflection of this fluctuating intensity in a particular social phenomenon? Oppenheimer once said that the best way to prevent the rapidly accelerating slide of our global village toward a man-induced Hell was to "let it happen". Could it be that the best approach to combatting terrorism is "letting it happen"? What might this actually mean?

Let us assume it does not mean ceasing the type of preventive strategy typified by the skyjacking case. Once the technological and financial commitments were made, the number of incidents of skyjacking diminished precipitously. It only needed the impetus of an "epidemic" of skyjacking to stimulate an appropriate and commensurate response.

Now, here is the crucial point. In terms of optimal use of societal resources (the criminal justice system and its various elements being part of these resources), it would be foolish, even detrimental, to divert too much energy into combatting a fluctuating phenomenon. The commitment of resources to this end (i.e. combatting

terrorism) must itself be flexible enough to allow for the fluctuations in the incidence of the phenomenon to be combatted. An example of flexibility was exhibited when the Sky Marshall Plan was dropped after screening procedures began (see Minor 1975), despite the commitment of time, money and personnel. While a full-scale commitment to combatting terrorism may be beneficial on a short-term basis, it may not be beneficial on a long-term basis. This is because a commitment to one goal necessarily reduces the availability of certain resources (namely those related to the criminal justice system) for other pressing social (and criminal) problems. Consider, for example, the case of law enforcement strategies. One can develop a large spy network to monitor underground preparations for potential terrorist acts (cf. Clutterbuck, 1975). This involves trained personnel. This personnel will be useful as long as there are numerous underground preparations going on. If not, however, it is a waste of personnel. Furthermore, the training of such personnel may result in their use for other purposes than those originally planned.

While some purposes may be considered acceptable and admirable, e.g. monitoring organized crime networks, other purposes may be questionable in a democratic society, e.g. monitoring of private lives in the name of internal security. Thus, a commitment of resources can result in unnecessary use of these resources at a time when they are no longer necessary, or a misuse of these

resources - both situations being the result of attempts to justify continued commitment to the resources.

It is well known that many problems which the criminal justice system faces today stem from previous attempts at reform. This is particularly true in the case of certain current sentencing practices, e.g. plea bargaining, and current correctional practices, e.g. rehabilitation and even parole or probation. The entire juvenile system, originally a high-minded reform, is another good example. Keeping this in mind, one can raise the question, to what degree do certain current or proposed strategies directed toward combatting terrorism provide a potential source for future problems or problematic "side effects"? Every commitment toward one goal affects every other actual or potential commitment of that system. Herein lies an intriguing and valuable area for research.

Laws which are specifically tailored to deal with terrorism today can become obsolete or be applied in different contexts tomorrow. An example might be the potential resolution of the legal question surrounding airport screening procedures.

Sentences mandated for specific terrorist acts can be applied according to how terrorist acts are defined. Perhaps terrorism cannot be narrowly enough defined to facilitate sentencing procedures uniquely adapted to terrorists and their disposition.

Military hardware and electronic equipment purchased (and even created) to deal with, say target-hardening or detection, can divert limited financial resources from other problems. Highly specialized personnel are less able to adapt their job effectiveness to fluctuating needs of the system in which they operate.

In the light of the question posed above, one can consider the problem of terrorism as it is today. There are many active terrorist groups in the world today and the effects of their activity are felt over a wide international area. Their influence on world events is exacerbated by the way in which we gather and report news, the way we keep ourselves informed - by the "media", as well as by public expectations, pre-occupations and morbid curiosity.

It seems clear that something should be done about it. Things <u>are</u> being done. Laws are being passed. Preventive strategies are being implemented. Policies are being modified. Yet the terrorism goes on. Perhaps this is unavoidable. As Clutterbuck says, one must learn how to live with it.

To what extent does "combatting terrorism" mean preventing or stopping terrorist activity and to what extent does it mean "living with terrorism and dealing with it as it arises"? The implications of each attitude are different. For example, the first interpretation might lead to a policy of deterrence whereby

convicted terrorists are severely punished. The second might, on the other hand, lead to a policy whereby terrorists are treated as are all individuals convicted of criminal activities of similar import. This might function, among other things, to decrease the "martyrability" of a convicted terrorist, but the goal would not be a deterrent one necessarily, but simply one of "normal" disposition of a convicted offender.

In conclusion, when considering ways to combat terrorism, one must keep in mind other goals of the criminal justice system, as well as the perhaps at times invisible inter-dependency of the various subsystems and the inter-dependency between the criminal justice system as a whole and other institutions within society. When considering the impact of terrorism on the operations of the criminal justice system, one should always maintain this "systems" perspective - systems within systems within systems, all delicately balanced and subject to alterations not only by external impact, but also by the internal impact of any response to that external impact.

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S E S S I O N I

ORGANIZATIONAL STRATEGIES AND TACTICS

of

LAW ENFORCEMENT AND CRIME PREVENTION

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Chairman

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Rapporteur

Chairman's Remarks

Terrorism is not new. There are only new aspects of terrorism. Skyjacking is one; kidnapping is another. These new aspects are linked with new technologies. Let me tell you how I see the problem — just as a challenge.

First, there is the question of security. Prevention requires a security system: airport security, airplane security, security for officials, i.e. police preventive action. This in turn requires national action and international co-operation. All this, I maintain, is not the main issue and I shall not consider this aspect per se. We should not devote much time to "police action", nor to international agreements to combat terrorism. Rather, I shall limit myself to three remarks which I consider more important.

1. Effective prevention requires action oriented toward the motivation underlying acts of terrorism and skyjacking. To achieve this, a two-sided analysis of this motivation is needed.

One goal (motive) is to compel, to oblige, to defeat someone. There are some aspects of war (civil or foreign) here. Hence, innocents are sacrificed; renewal of hostage-taking takes place. Linked with this first aspect of the motivation underlying terrorism and skyjacking, is the consideration of mens rea. Terrorists have a political ideal. Their motivation concerns political science as well as criminology. The conflict between individual free will and individual determinism is not the usual one to be found in classical criminology. This difference has to be considered where the goals of punishment and institutionalization are concerned: a refusal to resort to brainwashing, to my mind, leads to the exclusion of rehabilitative goals.

The second aspect of the motivation, in a large group of cases, is to communicate, through threat or blackmail. The terrorist act is a message from one group to another. One has to consider here the triangle that makes this different from classical victimology. There is a duplication of victims which is created by acting on the innocents to achieve a goal directed at another victim, either to give publicity to a message or to reach conclusion of a contract, e.g. the promise to release former terrorist prisoners.

2. We cannot debate here whether the claims of the terrorist are legitimate or not. Unavoidably, from the perspective of law enforcement, we have to see whether legal action can be a

deterrent against terrorism. I express my very strong doubts about this possibility. Prevention by law would mean the effectiveness of intimidation, but the character of most political terrorists is one of desperados fighting a war. They have made the sacrifice of their life and, therefore, are not likely to be stopped by the threat of punishment. Therefore, legal sanctions are useless and the main role of criminal law and law enforcement is repressive, not deterrent.

3. If a prevention model cannot be used, another could be accepted, that of a WAR and COMMUNICATION, STRATEGY and TACTICS model. From society's point of view, terrorism has to be considered not only as a battle, but also as a problem of lack of communication and possibilities of expression for some minorities in the democratic system. New possibilities for expression by minorities could be studied within democratic societies.

The problem of legitimate defense of society might be seen in a different light when society faces domestic terrorism as compared to when it faces international or foreign terrorism. If the meeting deems it worthwhile, the difference between domestic terrorism and international terrorism can be considered.

Rapporteur's Statement

Looking through my notes I can confirm my immediate impression that apart from the opening remarks of our distinguished chairman we did not really get down to a precise and coherent discussion of our opening topic on organizational strategies and tactics of law enforcement and crime prevention but, as is the fate of all opening sessions of conferences, we spent a subtantial part of the time discussing what we should discuss! We explored a number of highways and byways and opened up existing new vistas which could bring us away from our subject and which the chairman firmly and wisely ruled as outside our terms of reference! — But that ruling, of course, did not inhibit some of us!!

We had a fairly lengthy exploration of what we meant by terrorism. On the basis of the admirable working paper by Ronald Crelinsten we were able to consider many aspects of the problems of concepts and definitions. In the end we came to the somewhat unoriginal conclusion that terrorism was the process of putting people into a high degree of fear, that amounted to terror, through

threats or acts of physical violence. That indeed seemed to be, initially at least, terra firma, as reference to any decent dictionary can quickly confirm!

The first area for discussion was the wider context in which the discussion on terrorism and skyjacking took place. Criminological studies are not politically and socially neutral but develop on the basis of certain cultural values and beliefs. The selected participants share a great deal of these in common — therefore dialogue on specific criminological issues was possible on the basis of certain undiscussed assumptions; although some of these assumptions kept popping up in the discussion.

A) The issues of terrorism and skyjacking are of greater importance today than the past because, through the development of technology — namely the technology of travel and of communication — the world has been made a much smaller place. We have to live more and more as citizens of the world yet we are bound within our national state political ideologies, which have a local reference and are often in conflict with each other. The smallness of the world makes us aware and demands our concern for economic, social and political differences and inequalities - the differences between the "haves" and the "have nots", the need for universal justice and a world social order. Yet our basic methods of social order are embodied in the form of a national state, based on rather parochial

systems of criminal justice, with some international collaboration among some nations. Part of the problem of international terrorism is related to advanced technology and the fact that political organizations have not yet attained full maturity. Related to this is the growing vulnerability of technological society to being seriously disrupted by the actions of a few. Skyjacking is just one example of this vulnerability. We have learnt how to cope and live with skyjacking, but other points of vulnerability through technology may be more difficult to deal with if they become the targets of international terrorism. We enumerated some of these but we did not face up to discussing them in detail. Technological aspects of terrorists' tactics were also briefly referred to in this context but not developed.

B) The national criminal justice basis for maintaining social order lead us to consider political terrorism as if it were a kind of war, a kind of civil war or an urban guerrilla war, but it was generally recognized that the analogy of war could not be pushed very far and it could have misleading, if not indeed dangerous, implications by over-dramatizing or distorting the reality of the phenomenon of political terrorism. There was general agreement that political terrorism was different from individual conflict-based crime and economic political crime for personal gain (referred to by some participants as ordinary crime). But, because we looked at this behavior from a national criminal justice

basis of social order, we got no further than distinguishing it from other crime in terms of a vaguely defined ideological component.

C) The analysis of political terrorism in terms of communication, power and accountability lead to a discussion about political democracy and the liberal tradition. A valuable distinction was made from our own cultural perspective about the commitment to non-violent methods of bringing about political, legal, economic, and social change.

The first important impression I have from our discussion is that there was a recognition that terrorism means different things to different people and that these variations occur according to the context in which the subject is discussed. There is a need to be precise about the different kinds of terrorism that occur if any progress is to be made in criminological theory or preventive practice. To talk about terrorism as if it were some homogeneous phenomenon is merely to recognize a problem area and nothing more. A distinction was made between (a) domestic terrorism within a country, relating to issues within that country and (b) foreign or international terrorism, where the issue giving rise to the terrorism relates to conflict situations (political, social, economic) in other countries. A distinction was also made between actual victims (or hostages) and target victims; the triangle between the terrorist, the victims and the target victim was seen as a way of

communication (when other methods have failed) or a way of obtaining power.

In any classificatory system, one needs to consider the act, the actor, the victim, the target, the spectator and the ideological context as well as the modus operandi and the specificity of the target. Classification also needs to take into account the way different people become terrorists: the committed ideologue, the violent offender disposed to find an ideology, the committed criminal who finds a rationalization or justification by politicizing his criminal activity. Political terrorism was seen as only a part of terrorism. Other kinds of terrorism could involve economic gain, personal conflict or institutional terrorism by the state. There is a need for a typology of political terrorism to enhance theory and to facilitate effective prevention. We started in that direction, but the problem still requires further detailed consideration.

Following are some of the issues relating to prevention, which arose during the discussion:

a) target-hardening/protection of targets

b) making the general population or specific groups aware of the issues and dangers so as to take self-protective and preventive measures. Herein lies a potentially constructive role for the mass media.

c) identifying and defusing those situations which could deteriorate to such a point that terrorism would be seen as the only recourse. This involves communication, bargaining, sharing of power, awareness of developing grievances by those in power (e.g. Scottish national aspirations).

d) little was said about crime prevention resources or organizations. Issues include the role of the civil police, the development of special units to combat terrorism, the involvement of the army or military at certain stages, and the need for cooperation between the civil police, the army, internal security agencies, and foreign service security personnel. The role of the private security services in dealing with aspects of political terrorism was also touched upon and their growing involvement in these matters within a mixed political economy based upon private capital was referred to but not discussed.

It was agreed that greater cooperation between these agencies was needed in terms of information or intelligence. Little however was said about the implication of the need for secrecy and confidentiality as a tactic by such agencies and the conflicting needs of political accountability to maintain a democratic way of life.

Concerning the enforcement situation against political terrorism there was general agreement on the need for a low profile, to de-dramatize the situations of terrorism. In this context, the

role of the mass media was discussed in both positive and negative terms. Some examples were given of fruitful co-operation between the police and mass media agencies in de-escalating tricky situations.

e) The need for greater police awareness of the complexities of situations was referred to as an important component in prevention of terrorism.

1) An understanding of the tactics of the terrorist act,

2) The psychology of terrorists and their behavior in the acts of terrorism,

3) The psychology of stress in relation to hostages and to their relatives. There is a need to deal with the whole area of victimology of terrorism.

The input from this into the training of police clearly needs to be further explored in connection with other programmes.

The role of punishment as a mechanism of deterrence for terrorism was briefly discussed under the heading of prevention. There was a general skepticism as to whether it had any impact other than maintaining the confidence of the public. Some discussion took place on the possibility of deterring those who give support or make acts of terrorism possible but it has to be more fully recognized that penological studies have dealt mainly with the evaluation of the effectiveness of reformative penal measures and there has been little research input into examining the question of

deterrence.

Finally in connection with the strategies and tactics of law enforcement and crime prevention against terrorism I would like to refer to the question of mass media and terrorism. The freedom of mass media is vital in terms of the liberal democratic values that we discussed but it was also seen that the media could in some circumstances be put into the role of accomplice to the political terrorist through over-dramatization or intensive news coverage of the event, leading to the amplification of suspense as to the possible outcome. How to make the press and mass media more aware of this responsibility was referred to.

Press and mass media also have an educational role, making people more aware of the realities of the problem of terrorism - strategic prevention/tactical prevention – putting into perspective the nature of terrorist acts, the personality of terrorists and society's demands regarding punishment.

Accountability of those with powers for maintaining law and order and preventing terrorism was also discussed.

Comments

The first session was a wide-ranging exploration of the broader dimensions of terrorism and as such, did not really focus explicitly on strategies and tactics of law enforcement and crime prevention. Considerable time was spent on finding a common ground upon which to base further discussion. Thus, definitional distinctions came into the forefront of discussion.

Some of these distinctions were:
Political vs. non-political terrorism; political vs. pseudo-political terrorism; domestic (internal) vs. international (external) terrorism; spontaneous (e.g. to escape from ongoing criminal activity) vs. planned terrorism and terrorism designed to maintain the status quo vs. terrorism designed to disrupt the status quo. Three types of terrorists were generally recognized: ideologically motivated individuals, violent persons inclined to become ideologues as an expression of their violent inclination, and professional criminals seeking justification for their criminal careers through ideological groups.

It was generally agreed to restrict discussion to political terrorism, especially in the light of the international nature of the seminar.

There was some discussion on the broad sociopolitical dimension of terrorism. It was recognized that, given the political focus of the discussion, terrorism is closely related to the problem of communication between those in power and those not in power and the resorting to violence by the latter in the face of communication barriers which seem impenetrable by any other means. In terms of long-term prevention tactics, this was seen as an important area for further study. The role of the mass media was seen to be particularly relevant here.

The deterrence approach to prevention was generally seen as ineffective for the ideologically motivated terrorist, but there was general agreement that it may be effective for potential supporters of terrorist action. This latter point seems to be related to the point, emphasized by several of the participants, that terrorists are not some alien creature, but are just like us. In fact, several participants pointed out that terrorists of yesterday are heroes of today, and may again be terrorists of tomorrow, when the balance of power shifts drastically to the so-called Third World. The distinction between actual terrorist and terrorist sympathizer can be a fine one indeed, particularly from a political

point of view, and, in terms of prevention, the issues of communication and the differential effectiveness of deterrence for terrorist and sympathizer seem to be very relevant.

In terms of law enforcement strategies and tactics, there was some discussion on the analogy of war and the use of counter-terrorism to combat active terrorists. Also relevant to this, from the point of view of what to do with convicted terrorists, was the discussion surrounding the term "political prisoner". While no one denied the potential effectiveness of counter-terrorist tactics, it was generally agreed that upholding the rule of law and safe-guarding the integrity of the criminal justice system were of the upmost importance or else "we would be no better than the terrorists". In fact, one participant expressed the view that the criminal justice system itself was as great, if not a greater, source of violence than the terrorists which it tried to combat. Another participant considered the general concern for the sanctity of the law as mere hypocrisy, since counter-terrorism would be exercised "under the table" in any case. The chairman finally ruled the rapidly developing debate out of order and, although some participants still felt the broad sociopolitical issues were highly relevant, time limitations prevented the issue from being pursued further.

With regard to the convicted terrorist as political prisoner, it was recognized that this label might tend to

dramatize and glorify the criminal acts involved and it was generally agreed that the convicted terrorist should be treated as an ordinary criminal. This issue was pursued further in the third session.

In sum, while strategies and tactics of law enforcement and crime prevention were not discussed per se, this opening session brought into the open the major issues surrounding the sociopolitical roots of terrorism and some of the problems faced in trying to deal with terrorist violence. From a long-term preventive point of view, the best approach was seen to be an opening of lines of communication between diverse elements of society, which would involve the mass media and would use public feeling about terrorism to involve the general public in the operations of the criminal justice system. From a short-term preventive point of view, emphasis was placed on de-dramatizing terrorist acts and treating the politically motivated terrorist acts as ordinary criminal acts. As such, however, deterrent strategies were seen as relatively ineffective except in the indirect sense of affecting potential sympathizers. This effect, of course, is consistent with the emphasis on deglorification. From a law enforcement point of view, no real consensus was reached except that the tactics and strategies used should neither dramatize the terrorist or his actions nor resort to terroristic counter-measures which could threaten the legitimacy or public support of the criminal justice system itself.

S E S S I O N II

PROBLEMS OF
JUDICIAL PROCESSING AND SENTENCING

Louk HULSMAN
Chairman

Guiseppe di GENNARO
Rapporteur

Chairman's Remarks

In view of the organizers' suggestions, concerning the seminar's functioning, that we should not feel compelled to strictly follow the programme as outlined if this impedes or restricts the flow of discussion, I would like to suggest that we take this into account and carry on with some of the issues which arose this morning. This will allow us to tie up loose ends left over from our previous session and then we can move on to consider the main topic of this session, judicial processing and sentencing.

It seems that we all agree that our main focus should be political terrorism and I suggest that we continue with this approach. As for the social and political reasons for terrorism, I agree that it is not useful to go into detail on this matter. However, when talking about specific experiences, we can't leave out such considerations completely.

Let's start the discussion with a look at two concepts which arose this morning and let's confront them with specific experiences.

1. There is the concept of terrorism being the result of a lack of communication and a challenge to open up or widen channels of communication. Is such a concept useful as an answer to the problem or is it not?

2. Then there is the question of isolation. To what extent is isolation a means of coping with the problem? Under what conditions would it aggravate the problem?

"Part Two"*

In discussing judicial procedures and sentencing with respect to forms of violence in the political context, i.e. those forms of violence not legitimized by the State, let us begin with a general approach to the problem and then different participants can come in with specific aspects which they think are important.

I would now like to present my view of the problem, linking it up with aspects of our previous discussions from this morning and the first part of this afternoon.

1. I think that one of the important questions in this respect is that of heavy sentencing or not, i.e. the degree of seriousness of the punishment. We talked about this in the morning session and seemed to agree that the degree of punishment of certain acts was not important with respect to certain aspects of terrorism.

* As suggested by the chairman and agreed to by the assembly, this session was divided into two parts.

2. Another aspect which was brought up this morning was the question of "normal" acts vs. "terrorist" acts. Is there a reason to define the violence used in the terrorist context in any special political way or should we use the normal criminal definitions (e.g. hold-up, manslaughter, etc.)? Should we use specific definitions? Should we have specific procedures or normal procedures? This is another question which I feel is relevant to the topic at hand.

3. Another question which enters under this heading is that of the degree to which judicial procedures permit bargaining and to what extent bargaining can or cannot play a role in overcoming the phenomenon of terrorism in the way we defined it. When we are talking about judicial procedures in this way, to what extent is there only one solution — one is right and one is wrong — or is there a possibility to mediate between the two?

In my opinion, it is not a question of a <u>legal</u> approach vs. a <u>non-legal</u> approach, but a question of a criminal justice approach vs. perhaps <u>other</u> legal approaches. When you look at the legal system of, for example, civil or private law, the civil law approach has many more bargaining possibilities than does the criminal law system. So, when we are talking about judicial procedures in this sense, I think that we should also take into account not only the actual judicial procedures currently in practice, but we should also think about the possibility of <u>different</u> judicial procedures which could bring in more of that bargaining aspect.

4. Finally, there is the question to what extent judicial procedures should be or should not be a platform for the "terrorist" point of view on the problem. In a certain way, you could ask to what extent there can or cannot be a possibility for the defendant to bring up, in such a judicial procedure, his view of the context of his actions. And in that way, this aspect is immediately linked up with the question of communication as we talked about it previously. Insofar as we say yes to that question, it is clear that you can choose to use the judicial procedure either in an isolating way or in a way more conducive to opening up lines of communication.

These are some aspects which I thought about as entries to the subject of judicial processing and sentencing.

Rapporteur's Statement

In the excellent working paper prepared by Ronald D. Crelinsten as an introduction to this seminar, two specific questions relate to the issue of judicial processing and sentencing in the administration of criminal justice as far as terrorism is concerned, namely: a) what effect has the problem had upon the system, and b) what effect has the system had upon the problem?

This was an invitation to consider, in the light of national experiences, the reciprocal feed-back impacts between facts and system responses.

Using the freedom allowed to the sovereignty of the assembly, we have only partially accepted the invitation, choosing our own approach.

Let me comment that in so doing we have lost a valuable occasion to systematically bring into the discussion the lessons derived from the experience and the value of the accumulation of empirical data.

Judicial processing and sentencing are activities governed by the rule of law and by the rule of practice.

The criminal justice system is in itself a formal societal defensive reaction to intolerable behaviour. From the beginning, it was conceived as a tool designed to protect an established order of values coherent with the political organization of the community.

The fact that there is a common consensus among all the countries on the need to prosecute and punish some types of misbehaviour (like murder, robbery, kidnapping etc.) doesn't impinge upon the political nature of the system. This only means that every political structure is unwilling to renounce the protection of certain basic individual or community interests.

But the political character of the criminal justice system becomes more intense and visible when it deals with acts internationally directed to vitiate the efficiency and the maintenance of the overall organization of the public functions of the State.

In this regard we speak of political crimes stricto sensu. What makes a crime political in nature is not so much the kind of danger or harm provoked, as it is the motives behind it, and in close connection with these, the expected result.

One must not forget that the category of political crimes has an ambiguous history due to the opposing circumstances that

have inspired its creation. On the one hand, it was deemed advisable to attach a sort of moral justification to the political motivation and therefore a more lenient punishment of the author and, on the other hand, there was a request for harsher treatment in view of the basic interest of the Establishment to preserve itself.

An example of the first conception can be seen in the international conventions on extradition where, usually, political criminals are exempted.

A demonstration of the second concept can be found in the very severe reactions of the police and judicial apparatus of totalitarian closed societies.

Terrorism, with its usual connotations of disruption and violence, has raised special problems that - as far as national terrorism is concerned - tend to make the approach of totalitarian and democratic open countries similar. This is a dangerous temptation that deserves special attention.

When the setting up of "special courts" is proposed, it appears to me that this is a wrong answer to the first question posed by Mr. Crelinsten.

What does a "special court" mean?

A discriminatory approach in terms of the personal orientation and attitude of the judges, and maybe in terms of

substantive penal law and criminal procedure.

It is not a coincidence to be overlooked that there are similar provisions in the German and Italian constitutions about the prohibition against the creation of special courts. They can be explained by making reference to the unlucky history of the two aforementioned countries which have experienced the totalitarian spirit of nazism and fascism. Then, in a more or less masked fashion, we had political courts operated by biased officials serving the totalitarian ideology. I do not consider them judges because they did not act on the basis of impartiality. They were manipulators of the justice used as a tool to give the impression that they were protecting the community when, in substance, they were serving an autocratic ideology.

Democracy and an honest recognition of undeniable human rights make the need to resort to a differential judicial apparatus unnecessary. It should be added that terrorists like to appear the victims of their targets because this reinforces the cohesion of their organizations and puts them in a favourable light.

If their acts are to be defined as intolerable to the point of having to be stigmatized as criminal offenses, it follows that they have to be dealt with as other individuals breaking the rules of the penal law.

In order to improve the effectiveness of the ordinary criminal justice system so that it can respond to the need to combat terrorism, the procedures of its interventions must become quicker and more prompt.

The effectiveness of the criminal justice system is largely dependent on the speediness of its procedures. Nevertheless it is not admissible to sacrifice the principle of a fair trial on the altar of haste. I refer particularly to the rules of evidence. The difficulty of collecting reliable evidence must not result in a sentence based on presumptions.

This affirmation invokes another aspect of the effect of terrorism upon the criminal justice system. Police investigations cannot follow the same patterns that are used in the traditional approach to ordinary criminal cases. Special training and capabilities are required in order to face the often highly sophisticated and well-planned terrorist acts.

While a differential criminology has a few things or nothing to offer towards an understanding of the etiology and personality problems in the specific field, on the other hand, a differential criminalistic police approach seems to be indispensable. It would be a mistake to rely on the witnessing of private citizens because it cannot be expected that the quiet ordinary individual should become a hero, exposing himself and his relatives to the

intimidation and revenge of terrorists. The system and its representatives must show courage and decision and must improve their capability in detecting terroristic cases, even without resorting to the aid of witnesses. If the system does not react by means of its ordinary procedures, it is legitimate to think that it has fallen into the trap prepared by its enemies, counteracting deviance in a deviant way.

Another aspect of the reaction of the system in the face of the phenomenon under examination is that of the aggravation of the sanctions. Some countries have already had such an experience, and even though it is always difficult to evaluate levels of punishment and levels of deterrence, it doesn't seem that the effects have been satisfactory. The question of the deterrent effect of sanctions, in my view, has peculiar connotations in this field. The terrorist, unlike the great majority of common criminals, introduces into his calculation of the risk he takes, the probability of being arrested and sentenced. In order to avoid this, he is prepared to fight the police, not being afraid, like the common criminal, of having to sacrifice his life. His psychology is similar to that of strongly motivated young war volunteers of the Kamikaze type.

In this regard, I remember a young terrorist taking part in a show organized by a group of prisoners in an Italian penal institution. He read with a lot of emotional involvement a

poem "Kamikaze" written by himself.

It is my opinion that, in order to identify the proper sanctions, one has to take into account the need to keep the terrorist under control for a length of time proportioned both to the seriousness of the crime and to the actual social dangerousness of the subject.

The death penalty is something that I will never agree to, first of all for philosophical reasons but also because there are no convincing demonstrations of its social utility.

Someone during the discussion has criticized the attitude of the judiciary or related decision-makers when considering sentenced terrorists for parole, observing that there is a certain reluctance in granting parole. I wonder if there is any real ground for speaking of a discriminatory attitude. Discrimination is an arbitrary differentiation in the treatment of equals, and in this sense, is an offense to justice. Parole is a means to make the sanction conform to the real needs of social defence, so that imprisonment, originally imposed as a response to the nature and seriousness of a crime, can be individualized during its execution in view of the changes that have occurred in the personality of the prisoner.

It should be unjust, in principle, to exclude the granting

of parole to those responsible for terrorist acts or to give him fewer opportunities. However, I do not see any objection if, in practice, terrorists, as compared with ordinary prisoners, are less privileged: in fact, it may well be that their social dangerousness is more persistent.

The above considerations concern the reactions within the criminal justice system.

But there are possible reactions outside the system and alternatives to it.

I would raise the point of the not completely negative position that could be taken on the question of the legal or moral legitimacy of possible intervention beyond the pure necessity ancillary to a fair trial. Intentionally killing a person, whoever he is, out of strict defensive necessity, cannot be admitted in a civil context - in any case - and especially when this is defined unlawful in theory but hypocritically tolerated - if not desired - in practice.

Action of this kind, instead of deterring, provokes strong reactions supported by the feeling that justice is not on the side of organized society.

In conclusion, I believe that democracy has to prove itself on every occasion. Democracy and firmness are not opposite

terms. Firmness must be shown, using the ordinary tools envisaged for protecting society against criminal assaults at the highest level of effectiveness.

Up to this moment we do not have research findings that can show what effect the system has had upon the problem: therefore any forecast on the possible effects of changes is premature.

The divergent opinions expressed on the causality links between permissive or repressive systems and terrorism do not go beyond personal intuitions and beliefs. It would be nonscientific and hazardous to try to draw conclusions. What has been said in this regard however, appears to be a very stimulating reserach hypothesis.

It is my conviction, probably shared by all of you, that the work we have accomplished during these days represents a considerable advancement in the way of defining research areas and research topics.

Comments

The second session was divided into two parts. The first part pursued the issue of communication raised in the opening session. In effect, the participants qualified their consensus that communication barriers were the main cause, from a broad sociopolitical perspective, of terrorism. It was recognized that this was only true where specific groups, e.g. inmates in a prison, native groups or migrant workers, lack means of expression and are not able to reach or influence those who can change the system. In cases where a classic power struggle is involved, it was agreed that communication is not the issue. In cases where the goals are agreed upon, but the means are not, a dialogue is possible. However, when conflicting goals are involved, there cannot be dialogue.

An interesting example, however, was the Irish situation. When the IRA started, the government decided that the ordinary process of law was not sufficient. The army was brought in, a terrorist list was made and large number of persons were arrested.

Common law controls such as reasonable suspicion were bypassed. The general idea was to "stamp out terrorism". Instead, recruitment increased. The conclusion drawn from this example was that the criminal justice system, although not perfect, was the best means to deal with terrorism. Otherwise, problems of accountability and institutional violence become too great and tend to over-ride the original problem of terrorism.

In sum, no new conclusions were reached, but the previous conclusions were refined somewhat.

The second part of the discussion focussed more specifically on judicial processing and sentencing. Some of the problems relating specifically to terrorism were: whether or not to use Special Courts, the climate of threat affecting the testimony of witnesses and its effect on rules of evidence and on the integrity of judges, the effect of public attitudes on sentencing (demands for long sentences), possible distinctions between types of offender (e.g. "hard-core" terrorists vs. young, naive individuals "seduced" into terrorist activity).

There was a lengthy discussion on the use of Special Courts. It was generally agreed that Special Courts should not be used as this tends to give a special distinction to the convicted terrorist and might contribute to a glorification of the terrorist. It was pointed out that some countries (e.g. the Federal Republic

of Germany and Italy) prohibit the use of special courts for special offences in their constitutions. The main points raised against Special Courts revolved around staffing problems, politicization of judges, the problem of developing criteria for who goes to such courts and glorification of terrorism.

The problem of sentencing was seen to be related to the problem of public attitudes toward terrorism (as influenced by the mass media) in that stiff sentences tended to be demanded, e.g. in Great Britain. In fact, the Italian delegate cited a study of sentencing in kidnapping cases in Sardinia, which showed that all the sentences tended to be long. However, it was noted that such practices as pardons, amnesties, early release on parole tended to minimize the impact of the sentence. Some participants emphasized the need to consider changing the judicial procedures before being forced to do so by the usually hysterical public climate which attends most terrorist cases.

In sum, the major emphasis of the session on judicial processing and sentencing was how to realize the same amount of fair justice under different contexts and under different pressures upon the court system. The general consensus of the group was to avoid any type of unique approach, whether it be extra-long sentences, Special Courts or ineligibility for parole for convicted terrorists.

S E S S I O N III

INSTITUTIONALIZATION AS A MEANS

OF COPING WITH POLITICAL TERRORISTS *

* As suggested by the chairman and agreed to by the assembly, the term "political prisoners" has been changed to "political terrorists".

Peter LEJINS
Chairman

Edith FLYNN
Rapporteur

Chairman's Remarks

In discussing the plans for this meeting with the overall Chairman, Dr. Szabo, both of us agreed that the discussions in the course of the first day of the Seminar have sufficiently explored the general views on terrorism, its causes, and the ways of dealing with it. Each participant has had the opportunity to state his opinions. Therefore this meeting should indulge no further in general discussion, but the speakers are requested to adhere to the topic as specifically identified in the agenda.

In view of the theme of this Seminar and the conclusions reached in yesterday's discussions, it seems to me that the wording appearing in the agenda, "Institutionalization as a Means of Coping with Political Prisoners" should be changed to "...Coping with Political Terrorists", since the Seminar deals not with political offenders in general but only with terrorists, and at that only with political terrorists rather than offenders committing acts of terrorism for financial gain, or mentally deranged individuals committing such acts. There are, of course, some mixed cases.

It is somewhat unfortunate that the agenda has resorted to the term "institutionalization" rather than making use of some more general term referring to the control of terrorism. In the last few years, institutionalization, or imprisonment, has been subjected to severe criticism. The attitudes toward it vary considerably. This makes the discussion of imprisonment as a measure against terrorists very complicated, since both the pros and cons with reference to imprisonment in general and the pros and cons regarding the use of imprisonment of terrorists become confused.

I would like to suggest that the only way to assure some clarity in pursuing this discussion is to recognize that institutionalization does not represent a homogeneous measure but performs three functions, sometimes performing all three to a varying degree, and sometimes performing just two or one of them. The three functions are:

1. Serving as a punitive sanction by taking away the offender's freedom.

   Additional forms of suffering can be added, and in the past have often been. At least in the United States it is considered that imprisonment is a punishment in itself and does not imply any additional modes of punishment: incarceration <u>as</u> punishment and not <u>for</u> punishment.

2. Incapacitating the offender in the sense of making it physically impossible for him to attack any further victims while locked up.
3. Performing a treatment function in the sense that, while incarcerated, the offender is subjected to various measures and programs which have as their purpose the removal of the causes of criminal behavior, or the reasons or motives for it. This treatment or medical model usually implies a diagnostic process and then, ideally, a treatment program based on such diagnosis.

I would like to hypothesize that the main reason for the popularity of imprisonment as the basic control measure for crime, which rapidly replaced corporal punishment and the death penalty in the 19th century, was this threefold capacity of the prison to implement all three of the above basic methods of dealing with offenders. What was perhaps especially important was the fact that in societies which were very ambivalent, and still are for that matter, as to what to do with the criminal offender, i.e. whether to correct, to punish, or to incapacitate him, the prison offered a wonderful solution by making a categoric decision unnecessary. Commitment to a prison did not mean a firm decision as to what would be done to the offender, but depended on the program of the institution. Prison even offered the opportunity to be interpreted

differently for different segments of the society holding different views on what should be done with the offenders. A skillful warden is always able to present his institution as a strictly punitive program not tolerating any frills to a group of tough law and order representatives, and the next day when visited by a group of progressive treatment-oriented citizens, emphasize for them the treatment aspects.

The above-mentioned recent severe criticism of imprisonment denies the effectiveness of prisons as a treatment facility and, on the contrary, views it as a place where criminal patterns of behavior are reinforced and further developed. Community-based treatment, as everybody knows, is being recommended instead.

In discussing the use of institutionalization for controlling political terrorists, it has to be kept in mind that two current positions toward prisons as correctional facilities should be differentiated. One consists in general skepticism about the applicability of the medical or treatment model to criminal offenders. This position leads to skepticism not only with regard to imprisonment but with regard to all correctional measures, including community-based treatment. The other position still believes in cause-removing or the treatment of offenders but is skeptical about the effectiveness of prisons in this respect.

In summing up, I thus strongly suggest that when we discuss

here the effectiveness of institutionalization as a control measure for political terrorists, we remain strictly aware of what we mean by institutionalization. Do we have in mind institutionalization as a punitive measure, do we have in mind institutionalization as incapacitation of the terrorists for the protection of society, or do we mean that we will try to "correct" the terrorist while he is incarcerated. In each instance the exact methodology of producing the above three effects should be identified. If a mixture of two or of all three of the potential purposes is envisaged, it should be clear to what extent each of these will be pursued while the terrorist is incarcerated, and again, specifically, what will be done in order to accomplish each purpose. It is my firm belief that this clarity of concepts and terminology used is a necessary precondition for our seminar to claim any scientific contribution and to make plans for any research in this area.

Rapporteur's Statement

The concept of terrorism describes a wide variety of human behavior, which ranges from irrational acts committed by mentally deranged persons to such crimes as armed robbery perpetrated to obtain the funds for the financing of revolutionary causes. To facilitate the discussion, it was decided to limit the focus of this session to political terrorism and to exclude consideration of such concepts as prisoners of war or political prisoners. (West Germany and the United States, for example, do not recognize the concept of political prisoners).

Definition

Any discussion of institutionalization of political terrorists or political prisoners today, must recognize that the entire concept of incarceration has recently come under sharp criticism. Prisons are deemed destructive, and the medical model with its inherent concept of rehabilitation has been found wanting largely because of its inability to significantly reduce recidivism.

System Response

Analysing the responses of the correctional system to the convicted political terrorist, we find three principal options: punitive sanctions, incapacitation, and corrections. Institutionalization lends itself to all three purposes and its inherent ambivalence has made it a popular mode of disposition.

The discussion revealed some new trends in various countries concerning the use of institutionalization. Finland has relinquished the rehabilitation model and adopted a new hard line in corrections. Its policy today is to incarcerate those few offenders who are truly dangerous. Political terrorists (if Finland had any) would be included in this consideration. General prevention is the purpose of incarceration and punitive sanctions constitute the system's response to the individual offender. The United States is also experiencing a reversion to a more punitive and conservative approach, as far as the treatment of offenders is concerned. Italy recognizes the weaknesses of the medical model but suggests that the failures of corrections are not necessarily attributable to the failure of the treatment programs per se, but rather because of the faulty ways in which they had been administered. Obliged by statute to execute sentences within the framework of human dignity and reeducation, treatment programs will continue to be provided for offenders who wish to avail themselves of them. Compared with other nations, France treats its political

New Trends

prisoners (and terrorists) differently from its ordinary criminals, since it recognizes a difference in motives. Even though France tries political prisoners as it does ordinary offenders, it treats such prisoners with respect which is expressed in terms of more lenient living conditions, the wearing of civilian clothes, and increased privileges.

There was general agreement in the group that treatment programs should not be compulsory. Neither should they be a condition of incarceration, nor a condition for early release.

Voluntary Program Participation

The voluntary participation in programs does not constitute brainwashing, which would be an illegitimate way to change peoples' minds. But societies do have a right to seek changes in the attitudes and behavior of offenders, as long as such attempts do not involve coercion.

There was disagreement among the seminar participants as to whether political prisoners and terrorists should be maintained separate from the general prison population. West Germany and Italy reported unfavorable experiences from mixing prisoners. Such inmates tended to politicize their fellow prisoners,

Isolation Versus Integration

thereby rendering any rehabilitative efforts and programs for naught. An added consideration is the fact that high security needs for some of the terrorists would needlessly restrict the freedom and privileges for the majority of prisoners, were the former mixed in with the general population.

Great Britain, Ireland and the United States offered a different view. Britain, having created special provisions for dealing with political prisoners and Irish terrorists, granted such persons a quasi-prisoner of war status. These provisions in turn generated their own special problems. Inmates, congregating in special compounds and special units, would organize along military lines and quickly make special demands in terms of treatment. Harsher treatment ensued. Troublesome inmates tended to be detained longer than others. Withdrawal of dissenting individuals from such camps became most difficult in view of peer pressure and fear of intimidation. Hence, the special category status of prisoner of war proved counterproductive. As a result, the trend today is toward treating political prisoners in exactly the same fashion as other prisoners are being treated. Program participation is facilitated for all prisoners and includes an array of academic education and vocational training.

Experience with the institutionalization of dissenters and political terrorists in the United States also indicated that the singling out of such prisoners for special treatment, such as assigning them to isolation units, has generally proven counterproductive. The tendency of some administrators to label certain inmates as "political prisoners", has brought on more harm than good. While the concept of "political crime"

has no meaning in American criminal law, behaviorally troublesome minority prisoners and some of their white supporters in prison have been occasionally labeled as "political and dangerous" inmates by some correctional officials. There is unquestionably a tendency to overreact to the issue of political prisoners, as can be seen from the following examples.

Black Muslims

A striking illustration of undesired consequences following the concentration of inmate "troublemakers" in a single unit, and the dramatic relief of this situation by separating these inmates was reported by Daniel Glaser at the Terre Haute Federal Penitentiary in the 1960's. Black Muslims had been consistently tagged by staff as militant troublemakers. They tended to be isolated in terms of housing and work assignments until a critical and volatile concentration of inmates had been reached. The situation was saved by the advent of a new warden. He scattered the Muslims through the general population, abolished special waiting periods during which inmates were required to have perfect behavior records before they could be admitted to more constructive work and educational assignments and stopped the practice of singling Muslims out for special strict surveillance or overly rigid interpretation

CONTINUED

1 OF 3

3. Provocation ou participation à un attroupement;

4. Association de malfaiteurs et faits d'aide ou de recel prévus aux articles 61, alinéa premier, et 265 à 267 du Code pénal;

5. Attentats prévus aux articles 16 et 17 de la loi du 15 juillet 1845 sur la police des chemins de fer;

6. Entraves à la circulation routière;

7. Crimes et délits de commerce, de fabrication, de détention de matériel de guerre, d'armes ou de munitions, d'explosifs, de port d'armes prohibées, de transport, d'importation ou d'exportation d'armes et de munitions;

8. Violences prévues aux articles 231, 232 et 233 du Code pénal;

9. Meurtres et homicides volontaires, empoisonnements, coups et blessures volontaires;

10. Menaces prévues aux articles 305 à 307 du Code pénal, chantage;

11. Arrestations illégales et séquestrations de personnes;

12. Incendies volontaires, destructions et menaces prévues aux articles 434 à 437 du Code pénal;

13. Pillages et dégâts prévus à l'article 440 du Code pénal;

14. Crimes et délits prévus aux articles L. 66, L. 67 et L. 68 du Code des postes et télécommunications;

15. Vols, escroqueries, abus de confiance, extorsions et recels;

16. Délits prévus et réprimés par le décret-loi du 21 avril 1939 tendant à réprimer les propagandes étrangères et le décret-loi du 24 juin 1939 concernant la répression de la distribution et de la circulation des tracts de provenance étrangère;

17. Délits prévus et réprimés au titre IV de la loi du 1er juillet 1901 modifiée relative au contrat d'association.
Les incriminations prévues aux 3e et 6e ne peuvent être retenues qu'au cas où se trouvent remplies les circonstances aggravantes des articles 106 (alinéa 1er) ou 107 (alinéa 2) du Code pénal.
L'action publique est mise en mouvement par le ministère public près la Cour de sûreté de l'Etat sur l'ordre écrit du ministre de la justice.
Lorsqu'une juridiction d'instruction ou de jugement autre que la Cour de sûreté de l'Etat est saisie de l'une des infractions ci-dessus visées, elle en est dessaisie de plein droit par décision du ministère public près la Cour de sûreté de l'Etat prise sur l'ordre écrit du ministre de la justice. Cette décision reçoit effet immédiat dès la notification faite au ministère public de la juridiction saisie par le ministère public près la Cour de sûreté de l'Etat.
Les actes de poursuite et d'instruction ainsi que les formalités et décisions intervenues antérieurement à la date du dessaisissement demeurent valables et n'ont pas à être renouvelés.

Point c) of article 698 is of special interest here because it shows how political motivation withdraws competence from ordinary courts and gives it to the Cour de sûreté de l'Etat.

The law no. 75-624 of July 11, 1975 extends French competence to offenses committed abroad, against personnel of French embassies and consulates, and against French diplomatic and consulary buildings abroad.

Art. 694. Tout étranger qui, hors du territoire de la République, s'est rendu coupable, soit comme auteur, soit comme complice, d'un crime ou d'un délit attentatoire à la sûreté de l'Etat, ou de contrefaçon du sceau de l'Etat, de monnaies nationales ayant cours ou de crime contre des agents ou des locaux diplomatiques ou consulaires français est jugé d'après les dispositions des lois françaises s'il est arrêté en France ou si le Gouvernement obtient

son extradition. Les poursuites peuvent être engagées à ces fins.

"Lorsqu'un citoyen français s'est rendu coupable, hors du territoire de la République, soit comme auteur, soit comme complice, d'un infraction visée ci-dessus, cette infraction est punissable comme l'infraction commise sur ce territoire.

"Quiconque s'est rendu coupable comme complice, sur le territoire de la République, d'une infraction visée à l'alinéa 1er commise à l'étranger est punissable comme le complice visé à l'alinéa 1er".

A P P E N D I X 5

THE NATIONAL EXPERIENCE OF NORTHERN IRELAND

"THE FACTS OF INTERNMENT" *

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* Extract from a four-page supplement first published in the November 29th (1974) issue of Fortnight. Reproduced with permission of Tom Hadden.

THE FACTS ON INTERNMENT

SUMMARY AND RECOMMENDATIONS

1. Summary of Findings

The main findings of this survey of the operation of the Northern Ireland (Emergency Provisions) Act 1973 may be summarised as follows.

First there is evidence that the procedure for arrest and questioning and for extra-judicial detention has been abused. The security authorities have in some areas mounted a "dredging" operation based on widespread screening. This has resulted, in our view, in large numbers of wholly innocent persons being arrested and large numbers whose involvement in terrorist activities is relatively unimportant being detained. We are also concerned about the way in which the Army has made use of the powers provided in sections 12 and 16 of the Act, which in our view does not correspond with the intentions of the Diplock Committee . We are also concerned about the continuing high level of releases ordered in Commissioners' hearings, which in our view is an indication of the weakness of the grounds on which many suspects are being held, often for periods of up to six months. The fact that a "military security" approach to terrorism, in which the main emphasis is on putting suspected terrorists behind bars, has been operated principally in

Catholic and Republican areas, while a "police prosecution" approach, in which the main emphasis is on the proof of specific criminal charges against suspects, is generally applied in Protestant and Loyalist areas is a further cause for concern. This difference in approach, in our view, has resulted in the relative imbalance in the number of Republican and Loyalist suspects dealt with in the court and by extra-judicial detention.

Secondly there is evidence that the system of Diplock trials has worked well. The suspension of jury trials appears to have removed a major source of differentiation between Protestant and Catholic defendants, though there is some danger on the evidence of our survey of an increasing readiness on the part of judges to accept prosecution evidence. The provisions on the shifting of the burden of proof in possession of firearms cases have worked well in the sense that the judges have been free to decide on the evidence as to the guilt or innocence of the accused, untrammelled by legal technicalities. We are less happy about the operation of the provisions permitting the admission in evidence of certain confessions which have not been voluntarily given in accordance with ordinary common law rules. In respect of the selection of charges we are satisfied that the prosecuting authorities have acted fairly in relation to both Protestant and Catholic defendants. In respect of sentencing, while there has been widespread variation, this has in our view been due to the different circumstances of particular cases rather than to any form of sectarian bias. The only cause for concern intthis respect, in our view, is the apparent difference in judicial perception of the IRA and of Protestant paramilitary associations and the related difference in approach to their habitual weapons, rifles and handguns respectively.

Thirdly, there is evidence from our small survey of public attitudes that the assumptions on which the Diplock Committee based its recommendation of a two-pronged system of criminal trials and extra-judicial detention are incorrect. In the first place there was widespread dissatisfaction, expressed by half the Protestant and almost all the Catholic respondents, with the system of extra-judicial detention as such. There was also evidence of more general lack of confidence in the judicial system as a whole stemming from this dissatisfaction, and of a commitment among members of both majority and minority communities to the values embodied in the common law conception of trial by due process of law.

2. The Alternative to Detention

The conclusion which we draw from these findings is that the maintenance of a system of extra-judicial detention is unacceptable, in terms both of the risk of abuse and of the serious effect on public confidence in the judicial system and in the maintenance of law and order in general. The only way of avoiding both individual injustice and the use of the system of emergency powers as a whole, in our view, is to rely on the safeguards which have been developed in the common law tradition for precisely that purpose.

Accordingly we recommend the extended use of the system of Diplock trials in combination with what we have called the "police prosecution" approach under which suspects are arrested and questioned and eventually charged and tried only in respect of specific offences. To make this alternative fully effective in the present emergency conditions, however, we recommend a number of further changes in that part of the Emergency Provisions Act which deals with the trial of scheduled offences.

In the first place we consider that section 5 of the Act should be amended to permit the admission in evidence of signed statements made to a senior police officer where by reason of fear or intimidation the person making the statement is unwilling to appear in court. Such a limitation on the right of cross-examination, which the Diplock Committee held to be an essential element in a criminal trial, is in our view an acceptable price to pay for giving added efficacy to the courts in conditions of fear and intimidation. The requirement that the statement be taken before a senior police officer should prove sufficient protection against the poor quality and reliability of many informers' statements currently being admitted at Commissioners' hearings. A derogation from Article 6 of the European Convention on Human Rights and Fundamental Freedoms in this respect is, in our view, infinitely preferable to the maintenance of a "purer" form of criminal trial in conjunction with a system of extra-judicial detention.

Secondly we recommend that it should be made a criminal offence to "be concerned in the commission or attempted commission of any act of terrorism, or in the direction, organisation or training of others for that purpose". This formulation has been taken directly from the Diplock Committee and the Emergency Provisions Act.

We have considered whether the more widespread use of charges of membership in an illegal organisation, which our survey showed to have been used as independent grounds for criminal prosecution in only a handful of cases, would fulfil the same purpose, but are satisfied that the difficulty of satisfactorily proving membership and of ensuring that the correct organisations are rendered illegal, particularly on the Loyalist side, makes the Diplock formulation preferable. It is also preferable, in our view, to an attempt to make use of more general conspiracy charges. We have no doubt that there would be general agreement that the kind of conduct covered by the formulation we have suggested is worthy of criminal prohibition, and are satisfied that the criminal courts can deal adequately with charges of such an offence in the light of the evidence put before them.

Thirdly, with a view to increasing and maintaining public confidence in the decisions of Diplock courts we recommend that a panel of lay assessors be appointed to sit with the judges dealing with scheduled offences. In view of the pressure on the judiciary as a whole and of the desirability of maintaining some measure of public involvement in the working of the courts we would prefer a system of trial by a single judge and assessors to the alternative of trial by a bench of judges. The jurisdiction of assessors should not extend to sentencing.

Our remaining recommendations follow directly from the view that the "police prosecution" approach to terrorist offences should be adopted, and that the ordinary procedural safeguards of the common law are the only effective protection against the risk of injustice or abuse.

Fourthly, we recommend that suspected terrorists should be arrestable only on reasonable suspicion of having been involved in specific terrorist incidents.

Fifthly, we recommend that while the interrogation of those reasonably suspected of terrorist offences should be permitted, formal administrative rules should be published stating the conditions under which such interrogation is permitted, and that a panel of law visitors should have access at all times to interrogation centres.

Sixthly, we recommend the regular publication of figures on the operation of all aspects of the Emergency Provisions Act, in particular those concerning the arrest and questioning of suspects.

A P P E N D I X 6

THE SWEDISH NATIONAL EXPERIENCE

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THE ANTI-TERRORIST LEGISLATION IN SWEDEN

1. The Socialist Country

Sweden is often referred to as a neutral and non-Socialist state. These descriptions do not convey much understanding, neither of actual facts, nor why the anti-terrorist legislation of the 1970's caused such a political turmoil in Sweden.

First of all, the Social Democrats have been in power in Sweden almost uninterruptedly for about half a century, most of the time without any serious challenge. As a result, the bureaucracy and business at large have grown accustomed to this seemingly permanent power structure and have become more or less integrated with the ruling party. As a one-party state in this sense, Sweden shares much of the attitudes of the other Socialist states to the south and the east since the basic, more or less Marxist-oriented analysis of life, society and power is essentially the same. Indeed, the Swedish Government, already in the 1950's, openly proclaimed that it was pursuing the same goals as the Socialistic regimes in what later came to be known as the Socialist Camp.[1]

It is a curious twist to the development that the ruling regime in Sweden domestically refers to itself as Socialist, propagating Socialism and Socialistic solutions, while abroad, in

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[1] See further J. Sundberg, Recent Changes in Swedish Family Law, 23 Am. J. Comp. L 34, at 42 and note 28 (1975).

particular in the United Nations context, the "Socialist" label has been usurped by the Socialist Camp states to designate their ideology and solutions. Internationally, thus, Sweden is a "non-Socialist" state, but domestically it is a Socialist one. The basic difference between the Socialist regimes in the Socialist Camp and the Socialist regime in Sweden boils down to the one that society's advance into the pre-determined stage of "socialism" and eventually "communism", is theoretically reversible in Sweden - due to the acceptance of the possibility that the people in democratic elections may legitimately decide against it - while in the Socialist Camp the same advance is axiomatically irreversible. Failing any serious challenge to the rule of the Socialists, the difference has no practical effect.

The advent of the new states to the United Nations in the early 1960's brought forth a number of UN resolutions against colonialism. The Swedish Government found in these resolutions ground for financially assisting various liberation movements, particularly those active on Portuguese territory. A reorientation of Swedish foreign policy took place so that a policy of confrontation gradually succeeded the neutral and more prudent policy of the 1950's. The Greek coup of August 21, 1967, particularly incensed leading Socialist circles and released a new wave of confrontation. It was attempted to cultivate the birth of a Greek resistance movement partially directed by the dethroned Greek politican Professor Andreas Papandreou. He was invited to direct his fight against the Greek regime from Sweden. He cooperated with Mr. Brillakis, head of the Greek Communist party, to establish terrorist activity in Greece.

The Swedish attitude towards political refugees developed parallel to this evolution. In the early post-war period it became accepted in Sweden as in other West European countries that it was the totalitarian society itself in the Socialist Camp that made the escape therefrom a political act.[2] These refugees "generally ... had not been politically active in their home countries" but had rather more resented and rejected the totalitarian politicization of life that follows from the implementation of Socialist dogmas.[3] The escape thus being accepted as a political offence that prevented extradition to the home state, the practice developed in Sweden,

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[2]See further J. Sundberg, Piracy: Air and Sea, (Ch. IX, Sec. 1 in Bassiouni & Nanda, A Treatise on International Criminal Law, vol. 1 Crimes and Punishment, Springfield III. 1973) p. 478 f.

[3]Melander, Flyktingar och asyl, (thesis) Stockholm 1972, p. 49, cf 47 f.

parallel to the simultaneous West European development, to give almost automatically political refugee status to refugees from Eastern Germany and Poland.[4]

The new confrontation policy made the Swedish Government abandon its previous demands that refugees who had been given asylum in Sweden should refrain from political activity in that country.[5] Instead, it was insisted upon that foreigners should enjoy the same freedom as the Swedes to engage in political activity in Sweden.[6] Since they were not allowed to participate in the Swedish elections, the formula mainly operated to allow the Papandreou type of political activity. The change in attitude - hereinafter the Papandreou Line - of course, did not much affect the new arrivals resisting the totalitarian politicization in the Socialist Camp. What it did, however, was to attract refugees from outside of that Camp. According to the Commission that was charged with revising the legislation on aliens, a person was considered entitled to political refugee privileges if "he has left out of political reasons ... and it may be assumed that due thereto he will be hit harder".[7] The illegal leaving of a country under dictatorship but without totalitarian features, previously, was not as such a political act. This confrontation policy however gave Sweden the reputation as a haven for those elements of political disloyalty that would attract a more severe sentence in the home country of the refugee, if prosecuted there after extradition. Consequently, Sweden turned into a haven for an ever-increasing flow of people who by pursuing various Socialist policies had attracted the repression of some local dictatorship.

In the 1960's, too, a changing of guards occurred in the Swedish Socialist leadership. Two new personalities took the lead. One was the new Prime Minister, Mr. Olof Palme. Named after an uncle who was killed by the Communists in 1918 in the Finnish civil war in which he had volunteered on the side of the Whites, with a mother of German-Balt nobility who used to bring her boy for vacation to the remainders of the family's country estates in Latvia stemming from Imperial Russian times, and married to a Swedish Baroness, he must

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[4]Statens Offentliga Utredningar 1972:85 p. 19 f.; Melander, supra note 3, p. 43

[5]Melander, supra note 3, p. 70

[6]Kungl. Proposition (1971) No. 109, p. 4

[7]Statens Offentliga Utredningar 1972:84, p. 141

lean over backwards to impress himself on his Socialist following. He was assisted by Mr. Carl Lidbom who for a long time served as Minister without portfolio and exercised considerable influence in the Cabinet. Under the new leadership Sweden entered into an era of virulently anti-American policy - paradoxically, largely an American import - which dominated the subsequent period and reached such peaks that the American Ambassador at times was withdrawn. Part of this policy was an intense support for the Socialist regime that took over in Chile in 1970 under President Allende. In the increasingly polarized Chilean society that developed after the take-over, the Swedish Government sympathized rather more with the supporters of the regime seeking to destroy the managerial and middle class and to establish a dictatorship of the revolutionary left, than with the opponents of the same regime. So did too, the Cuban regime which concentrated on Chile after 1970, moving its headquarters for revolutionary activity from the Paris Embassy to the new Cuban Embassy in Santiago.[8] After the Pinochet coup of September 11, 1973 a Swedish propaganda offensive was mounted against it, involving not the least the Swedish International Development Aid organization.[9] Pressured by the leftist forces on which the position of the new Swedish leadership depended, the Government allowed the wholesale importation to Sweden of Chilean refugees and other Latin American revolutionaries, stranded by the Pinochet coup, providing language training, jobs, homes and funds. By early 1974, Sweden with a population of 8 million had received some 400 Chilean refugees, while countries like the almost three times bigger DDR in the Socialist Camp and revolution-exporting Cuba had limited their intake to 70 and 100 respectively for fear that the exiles could be a source of domestic unrest.[10] Certainly the very extremist character of many of these refugees tended to make them disrupt things in any country that offered them a place to go. The license to practice foreign politics inherent in the Papandreou Line came to confer upon Sweden the character of something of a base area for staging a counter-coup in Chile. The increasingly hostile Swedish attitude towards Chile was accompanied by an increasingly friendly attitude towards Cuba. After the official Klackenberg visit to Cuba in 1971 annual aid had started at a level of Sw.Cr 2.5 million. By 1975 that aid had risen to annually Sw Cr 60 million in spite of the surprising

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[8]Annual of Power and Conflict 1973-74 (Institute for the Study of Conflict, London), p. 8.

[9]This governmental agency went to the extent of printing anti-coup posters for local distribution in Sweden.

[10]See Shaw, International Herald Tribune, Jan. 8, 1974, p. 3.

Cuban re-exportation of aid to mostly African and some Asian countries.[11]

2. The Personnel Control Ordinance, 1969

Sweden was spared the visitation of the second world war. The coming of that war brought vigilance however. In the late 1930's, the Swedish agency of interior security started to register Communists and Nazis. In a move to please the victorious Soviet neighbour such registration of Communists ceased in 1945 but was reinstated in 1948 in the wake of the successful operations of the Activist Committees in Prague. On June 19, 1963, disaster struck the inner security organization of Sweden in the form of the prosecution of Colonel Wennerström. This, the greatest spy scandal ever to affect Sweden, exposed numerous and serious shortcomings in the security system. A Parliamentary Committee was set up to study the guidelines for processing security questions. One result was the adoption of the Act of April 9, 1965 on Police Registers with guidelines for all kinds of such registers, even those of the inner security people. Another was the publication in 1967 of a broad report on how to strengthen inner security.[12]

The Soviet decision after the Six-Day War of all-out support for the Arabs, however, brought confusion.[13] Combining with the anti-American policy that was the hallmark of the new Socialist leadership in Sweden, there followed a polarization with increasing leftist and increasingly leftist forces on the one side, and the U.S. and Israel and their increasingly demoralized sympathizers on the other side. The leftists on which the new leadership depended, made a show of force and the suggestions of the Parliamentary Commitee were inexplicably set aside.

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[11]For years, reportedly some 2,000 Cubans have been working on aid in primarily African countries but also in Southern Yemen and Vietnam. See International Herald Tribune, Jan. 24-25, 1976, p. 2, cf issue 2, Jan. 1976, p. 1. The size of the Cuban military expeditionary force to Angola had by the end of 1975 risen to some 7,500 men: official confirmation of the intervention was given by Premier Fidel Castro, Dec. 18, 1975, see International Herald Tribune Dec. 20-21, 1975, p. 1.

[12]"Handläggningen av säkerhetsfrågor", Statens Offentliga Utredningar 1968:4.

[13]For a scholarly report on the matter, see Moshe Ma'oz, Soviet and Chinese Relations with the Palestinian Guerilla Organizations, Jerusalem Papers on Peace Problems 4 (March 1974).

The Personnel Control Ordinance that was issued on June 13, 1969 to supplement the Police Register Act contained, contrary to what the Committee had proposed, strict guidelines for what could be entered into the police registers and a dramatic innovation was inserted in Art. 2 by the following:

> "No annotation in such a register may be made on the mere basis that somebody has expressed a political opinion by belonging to an organization or in some other way."

This Ordinance was followed by guidelines adopted by the National Police Board on December 17, 1970 which read in part:

> "It is however a well-known fact that certain political extremist movements represent views that purport to subvert democratic society by violent means. The risk is evident that a member of or sympathizer with such an organization is prepared to take part in anti-societal activity. Evidently it may happen that a person is member of or sympathizer with such an organization without being prepared to take part in anti-societal activity. If this is clear he shall not be registered.[14]

The set-back for the idea of strengthening inner security was considerable, in particular in the field of fellow-travelers, a category that Münzenberg had employed so masterfully in the service of Soviet policy during the Spanish Civil War. All existing registration of membership in the Communist party was destroyed by the police unless the entry could be supported by supplementing information.[15] Even the military security service destroyed what duplicates it might have.[16] The Justitie Ombudsman who is not necessarily a very realistic dignitary, went as far as to criticize as "offensive" the fact that military security people attended and took notes at a major servicemen's meeting where the conscripts aired their

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[14]Quote as per the official Ombudsman Report (hereinafter quoted as JO only) 1973 p. 52 f. Translation mine.

[15]JO 1973 p. 87

[16]JO 1973 p. 72; JO 1975/76 p. 160 f.

political hostility to the armed forces. The Ombudsman based his criticism, it would seem, exclusively on the fact that the politicking servicemen had voiced indignation over being supervised, but he also added, naïvely that the supervision "must have appeared ridiculous to citizens of sound judgment";[17] - a view that left completely out of sight the rapidly deteriorating military situation of Sweden and the consequential general demoralization of the armed forces. Military preparedness, however, was no responsibility of the Ombudsman.

In May 1973, a new blow was dealt to the Swedish security. On Cabinet level, as part of a more general movement shifting responsibilities from the civil and military service to the labour union bureaucracy, the decision had been taken to set up outside of the civil and military service a separate intelligence outfit called IB (for "Informations Byran") and this outfit had succeeded to disguise itself so well that even among high military men in intelligence work its existence was not known. However, it had some contacts with Israeli intelligence. The leftist machine, associated with Palestinian militants through a group called "Action Group Palestinian Front" and headed by Mrs. Marina Stagh, set out to destroy it. On May 3, 1973, was published an issue of a paper of the extreme left called "Folket i Bild/Kulturfront" with a ten page report on the Swedish intelligence service. This report had been authored by the husband of Mrs. Stagh, Jan Guillou, a French citizen. After great confusion in Government circles, Mr. Guillou and his helpers were finally arrested on October 10, 1973 on the charge of espionage. Eventually, a 10-month jail sentence was affirmed (cert. denied Sep. 1974). The matter came before the Ombudsman who this time said, among other things, relating to the fact that an IB agent had joined, for reconnaissance purposes, a militant leftist organization: "An infiltration - because after all that is what is here at issue - into political and other associations that are not illegal, always appears as a violation of the freedom of association that is guaranteed to Swedish citizens."[18]

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[17] JO 1973 p. 90

[18] JO 1975/76 p. 167.

3. The Yugoslavs

Inner security however was also threatened by imported quarrels. The great immigration from Yugoslavia that had taken place during the 1960's brought Croat separatism with it. The political activity of the Croat separatists in Sweden, long overlooked by the Swedish police but perfectly permissible under the new Papandreou Line, was sufficiently uncontrolled to make the Communist Government in Yugoslavia nervous. Sending in political agents to counteract the Croat activity it exposed itself to murder and trial in Sweden. Most attention was attracted by the Asanov trial in 1970. Yugoslav security agents reportedly succeeded to make their Croat adversaries occupy in February 1971 the Yugoslav consulate in Gothenburg with a view to extorting the release of one Miljenko Hrkac sentenced to death in Yugoslavia as a Croat terrorist but in reality, it appears, a Yugoslav security agent.[19] Eventually the Croats assassinated the Yugoslav Ambassador to Sweden, a former General believed to have a bloodstained past in Yugoslav security service.

This problem also went into the lap of the Swedish security service. Said the Ombudsman in a review of the task of supervising extremist organizations among certain immigrant groups:

> "The operations of these organizations is often not directly aimed against our country and its institutions, but against other members of the immigrant group or against the institutions of other countries in this realm. What has happened, and it is not necessary to review them, has shown that it is necessary to supervise such organizations. By itself, this should be a task for the general police. ... Several circumstances, among others the secret nature of these extremist organizations and their conspiracy ways of operating, however, making it difficult for the open police to find out about the activity of these organizations. Nor should it be overlooked, that some of these foreign extremist organizations have

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[19] In connection with the removal of Yugoslav Minister of the Interior, Radovan Stijacic, his resort to provocative tactics came to light. The Belgrade Periodical "Nin", attempting muckraking, in 1973, reportedly disclosed materials suggesting that Hrkac had had status of agent provocateur: see report by Wattrang in the Stockholm daily "Expressen", Oct. 14, 1973, p. 13.

connections with certain domestic extremist movements. The security service with its special work methods is in this respect a better instrument although it too, seems to have considerable difficulties. ... A special problem is whether members of foreign extremist movements should be noted in the register of the security department."[20]

4. The Hijacking Incident

On September 15, 1972, an SAS airliner was hijacked by a Croat patrol and the Swedish Government gave in to the demands that they release out of prison seven Croat prisoners serving sentences for a number of political crimes, the most famous one being the murder of Ambassador Rolovic already referred to.

That event made the Swedish Government set up, on September 22, 1972, a Commission under the Chairmanship of Minister Lidbom for drafting a statutory legislation aiming at preventing acts of political violence in Sweden having an international background.

5. Revision of the Personnel Control Ordinance

The immediate result of the hijacking event was the revision of the 1969 Personnel Control Ordinance. On September 22, 1972, the famous innovation of 1969 about the non-registration of "political opinion" was supplemented by the addition: "More precise regulations relative to the application of this rule will be issued by the King in Council". The addition thus conferred upon the Government the authority to issue further directives as to the practical application of the rules for registration.

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[20] JO 1973 p. 48.

The Government used the occasion to state in a Royal Letter to the National Police Board that there were organizations and groups that pursue political activity entailing that violence, threats or constraint may be used as measures to achieve political goals. Certain organizations, the Letter continues, have adopted programs stating that the organization shall be active to change society by violent means. A great number of the members of such organizations may, however, be believed never to contribute to the implementation of the program by violent means. By this is meant - explains the Letter - such Swedish political organizations that openly manifest a revolutionary goal. The mere membership in such an organization shall not be grounds for registration. So far, the Royal Letter had merely restated the situation as it was, both in general and in relation to fellow-travellers. It was then added:

> Furthermore there are organizations that one may fear to operate, in this realm or in other states, a political subversive activity that includes the resort to violent means or threats or constraint. Information about a member of or a sympathizer with such an organization or group shall be entered into the police register of the security department."[21]

In an interview the same day, the Minister of Justice, Dr. Geijer, confirmed that "current membership of sympathies" should be registered.

The leftist machine which at that time already controlled all newspapers of National distribution except one,[22] immediately reacted noting the potential of censure in relation to aggressions overseas by "liberation" movements. In the said "Conservative" daily, Svenska Dagbladet - about as "Conservative" as Mr. Anthony Lewis, its permanent and almost exclusive commentator on American politics - the interview with Dr. Geijer was accompanied by the observation that the new directive meant a threat to sympathizers.

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[21]As per report by Sune Olsson in Svenska Dagbladet, Sept. 23, 1972.

[22]The last independent daily - Göteborgs Handels - och Sjöfartstidning - closed on Sept. 8, 1973. Its Editor-in-Chief, Dr. Björn Ahlander, attracted general attention by an unsuccessful attempt to control his Leftist "cultural" editor who expanded into general politics. Dr. Ahlander's demise was speeded by the attacks against him that were administered by the future, supposedly "Conservative" Editor-in-Chief of Svenska Dagbladet.

with foreign liberation movements.[23]

6. The Lidbom Report

The Lidbom Commission delivered its report on December 8, 1972.[24]

In broad lines, the report proposed the enactment of a law that tried to develop, in harmony with the 1971 Montreal Convention although this was not mentioned and the Convention at that time was not ratified by Sweden and not in force[25], cooperation between the different national police forces so that the Swedish police could act upon information received from foreign police forces. The overriding principle throughout the proposed law was that it should not deal with penal law issues, but only with the administration of aliens, thereby - as a windfall - avoiding any collision with the European Convention on Human Rights.[26] The foreigner who was suspected due to foreign police tips, could be expelled from Sweden, or his entry into Sweden could be refused. Essentially, the proposed legislation attempted to make clear the conditions for

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[23]See Article by Sune Olsson, supra note 21. The leftist infiltration of the paper, crowned by a poster set up on the door to the foreign editor's office reading "USA Out of Vietnam", took place between 1968 and 1972. It was made possible principally by means of a new administrative director edging out the old guard and recruiting young leftists from the journalist school ("Journalisthögskolan") that had been taken over by the leftists right after its creation, and converted into a school of Socialist indoctrination. The reorientation first showed in headlines and picture texts, and later crept into the very texts of articles and notes. The Editor's page was the last to go.

[24]Ds Ju 1972:35, reprinted in Kungl. Proposition 1973:37 pp. 20-110.

[25]ICAO Doc 8966. It did not enter into force until Jan. 26, 1973; the Swedish instruments of ratification were deposited on July 10, 1973, see Sveriges Överenskommelser med främmande makter 1973 No. 48.

[26]Sveriges Överenskommelser med främmande makter (hereinafter SÖ) 1952 No. 26.

taking measures against a foreigner who belonged to or was active for an organization or a group that one could fear would resort to violence in Sweden for political purposes. Such a foreigner should be susceptible to being returned upon arrival or being expelled from the country. It was proposed that the National Police Board should be empowered to make a list of foreigners to be expelled or returned pursuant to this rule - hereinafter the terrorist list - but directives how to draw the list were to be issued by the King in Council. One condition for the working of the scheme was that the foreigner was not a political refugee. If he could not be expelled from Sweden because of political refugee status, it should be possible to issue for him special directives with limitations or conditions for his future presence in Sweden, in short to deprive him of the license to practice politics in Sweden that followed from the Papandreou Line. Furthermore, it should be possible to use measures of constraint against him. The application of the Law was to be safeguarded by rules allowing Parliament special insight into its operation and control over it. The law was to be enacted for one year only with the faculty of renewal.

7. The Discussion

The Lidbom Report caused an uproar in leftist quarters who saw their privileges obtained during the period of Palme Government being eroded. They mounted a counter-offensive.

The proposed drafting of a terrorist list and the basis for making entries therein was the major bone of contention. Evidently, the terrorist list was another form of a police register that seemed to follow other principles than those developed in the recent past for police registers. More specifically, the 1969 addition on "opinion-registration" was missing. In popular belief, fostered by the Leftist press, there existed a legal prohibition against this so-called opinion-registration although in fact it was not quite true. The Ombudsman later reminded "that the rules that exist in this respect - those put in the Personnel Control Ordinance - in form only apply to the registers of the security police".[27] The language of the Bill was that anti-terrorist measures could be taken against a foreigner and he could be entered into the terrorist list, if there

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[27] JO 1975/76 p. 168

was "a well-founded reason to believe that he belongs to or is active for a political organization or group that one may fear will in this realm resort to violent means, threats or constraint."

In the Parliamentary debate on December 11, 1972, the discussion concerned the "opinion-registration" of members of Swedish organizations. Mr. Lidbom then suggested for entry into the police registers members of such organizations as "the Communist Confederation Marxists-Leninists, or Clarté, or the Federation of Anarchists in Sweden, or the Neo-Swedish movement or the Nordic Realm-Party or some other extremist group to the Left or to the Right that has resort to violence in its program." When the Bill was tabled, Mr. Lidbom defended the terrorist list idea further. Firstly, the legislation only aimed at "such groups as have already in action demonstrated that they systematically resort to violence in any country whatsoever to achieve their ends". Secondly, "it will almost exclusively be a list of persons who have never been in Sweden. We will receive the information from, among others, Interpol, and the police of foreign countries. We will check the information as far as possible." However, he admitted, "it cannot be excluded that foreigners are refused entry at our borders although they neither are active for, nor belong to any terrorist organization. But the alternative is that we do nothing at all."[28]

Incidentally, Yugoslavia is a member of Interpol.

Dr. Elwin, a Marxist penologist with seemingly free access to the pages of the big daily "Dagens Nyheter", pointed out that "a statutory regulation that was officially motivated by acts performed by criminal rightist organizations came to be used as a pretext for the Security Police's control of members in leftist organizations and liberation movements."[29]

More specifically, however, Dr. Elwin challenged the notion that "revolutionary program" and "violent means" could be equated. Every Marxist could tell - said Dr. Elwin - that such equation should

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[28]Expressen, February 13, 1973.

[29]The "double-think" of Dr. Elwin is, of course, not accidental. In allegiance to the Marxist faith in pre-determined progression he sees everything "rightist" as "criminal" and everything "leftist" as legitimate.

not take place, and he suggested that Mr. Lidbom attempt to learn something from his colleague, Dr. Geijer, the Minister of Justice, who was believed to be, said Dr. Elwin, "one of the Cabinet's two schooled Marxists".[30]

The vague language of the Bill came under attack. Mr. C.G. Lidberg criticised formulas such as "a well-founded reason to believe" and "a group that one may fear". He felt that if the legislation only aimed at the groups described by Mr. Lidbom, it could not be difficult to formalize the statutory language accordingly.[31] Judge Gehlin showed his talent for absorbing guilt: "I ask myself what we are to say about such foreign authoritarian regimes that by resort to formulas such as "well-founded reason to believe", "important for finding out", "threatening public order and security" create legal opportunities to take measures against the politically obnoxious. What are we going to say when they point to our new law and say: How about you yourselves".[32]

The fellow-traveler problem was brought up. The proposed formula on membership or collective association might well hit, said Mr. Lidberg, "many persons who may be said to 'belong' to such an organization without ever thinking, for such reason, of participating themselves in violent acts; they may, incidentally be completely unable to participate actively due to age or infirmity."[33] Judge Gehlin picked the same point. It deviated from the principles of the Code of Procedure. Pursuant to 23:3 of the Code "the prosecutor shall take over ... as soon as somebody reasonably can be suspected of the offense." But, said judge Gehlin, you may be put on the terrorist list and measures of constraint of the type regulated by the Code may be used against you, according to the proposed legislation, without your being associated with any specific offense. "There is no need for any suspicion that he himself is prepared to resort to violent means, threats or constraint."[34] - So lawyers Lidberg and Gehlin wanted a return to the individualizing approach of the Code of Procedure. So did too, the Chief State Prosecutor in his official comments on the Bill. He felt that the examples given in the Report

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[30]Dagens Nyheter, February 3, 1973

[31]Expressen, February 19, 1973

[32]Expressen, February 24, 1973

[33]Expressen, February 19, 1973

[34]Expressen, February 24, 1973

of when measures of constraint for reconnaissance purposes were permissible, were so extreme that they came very close to what was required in the Code for opening a real police inquiry.

This calls for an observation. The Report typified a kind of draftsmanship that had become commonplace during the Socialist era of government, the point being to trick the lay Members of Parliament - incidentally now 96 percent of the membership - into adopting the Bill.[35] But this time the technique back-fired.

Mr. Lidberg said, suspiciously: "The fact that, in the travaux préparatoires one introduces formidable reservations and clarifications is a fragile guarantee, if such declarations do not also harmonize with the language of the statute."[36] Dr. Elwin said: "Such a rubber legislation provides unexpected opportunities for those who are to apply the legislation. In practice, it entails that the power to define "the presumed terrorists" is given to the police charged with registration of political opinion."[37] - The conclusion of the Chief State Prosecutory went the other way. It was that the examples, accepted at face value, merely showed that one could well adhere to the requirements spelled out in the Code of Procedure.

Eventually, the authors of the Bill tried to fend off the opposition by stating that the legislation only required neutrality since it was directed only against foreigners who used violence on Swedish soil.[38] Mr. Lidbom arrived at promising that the legislation would not be used without prior Cabinet permission except against two specified movements: the Ustasja and Black September. A terrorist movement acting on foreign soil to change political conditions anywhere other than Sweden reamined privileged.

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[35]Cf Beckman, Scandinavian Studies in Law 1963 p. 16 f.

[36]Expressen, February 19, 1973

[37]Dagens Nyheter, February 3, 1973

[38]See further J. Sundberg, Thinking the unthinkable or the Case of Dr. Tsironis (Ch. V, sec. 4 in Bassiouni (ed.), International Terrorism and Political Crimes, Springfield 1975) p. 448, at 458.

The Act was passed on April 13, 1973. It was renewed on April 26, 1974 (SFS 1974 No. 178) and June 5, 1975 (SFS 1975 No. 355). It expired December 30, 1975, and was replaced by a slightly different structure integrated into the Aliens Act partly, and partly reenacted as a separate Act (see SFS 1975 Nos 1358 and 1360 respectively).

8. The Application of the Act

a) The Terrorist List

The terrorist list was drawn up by the National Police Board pursuant to directives issued by the King in Council April 13, 1973 which named two organizations using the following language:

> "those organizations or groups that may be referred to as the so-called Ustasja movement"

- an all-inclusive description that seems to cover everything from the purely cultural organization HOP to more militant groups such as HNO-Drina and down to HRB, the Croatian Revolutionary Fraternity, an outright fighting corps with military manuals and the like. Furthermore,

> "that or those groups within the Palestinian liberation movement that may be assumed to be attached to 'Black September'"

- also a very broad description that certainly threatened parts of the pro-Palestinian movement cleverly built up in leftist circles after the Six-Day War. On September 28, 1973, new directives added to the list,

> "organization or group that may be referred to as the Japanese Red Army"

- also an all-inclusive formula that may have meant, although this seems by no means clear, the Red Army faction or Rengo Sekigunha, in contradistinction to the Chukakuha, a middle-core faction, and the Kahumaruha, a revolutionary Marxist faction. Why the Japanese Red Army was singled out for entry at that time remains somewhat obscure. Early assertions of a Cuban-based international terrorist conspiracy[39]

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[39] See further J. Sundberg (supra note 38) p. 451 and note 11.

had been dramatically corroborated by the Lydda (Lod) Massacre May 30, 1972, performed by a Red Army patrol for the benefit of the PFLP. Indeed, it turned out that the Red Army contacted the PFLP already in 1968 "to forge ideological links". However, as put by a PFLP spokesman denying that Beirut was the home-base of the Red Army: "Certainly, they were here until 1972, but after that it became very difficult for them to stay here."[40] The following winter, the Red Army faction staged several joint operations with the Arabs, most noted the one "when two Japanese and a Palestinian blew up an oil refinery in Singapore".[41]

After the attack on the Stockholm Embassy of the Federal Republic of Germany in late April 1975 in which Lt. Col. Baron von Mirbach was shot, the Baader Meinhof group was added to the list. By this, presumably, was meant the organization known as the Red Army Faction in Germany.

Thus, the list was limited to four organizations. The principle for selecting organizations has been discussed. Dr. Melander suggests: it "appears that it is a condition for being considered as a dangerous organization in the sense of the Anti-Terrorist Act, that the organization - on the basis of its prior activity - has performed an act of political violence outside the country against which it is active. It then does not matter whether the terrorist act took place in Sweden or abroad."[42] However, it seems that it is the presence of some member of or collaborator with the organization in Sweden that makes it eligible for entry into the list. Tomislav Rebrina who commanded the patrol hijacking SAS flight 130 belonged to HNO Drina which thus was associated with a violent operation in Sweden. No such operation could be ascribed to Black September or the Japanese Red Army but at the time of their insertion, group members were believed to be in Sweden.

However that may be, one will find the list of organizations highly selective and not a very significant contribution to the international fight against terrorism. All liberation movements can be accused of resort to politically inspired violence outside the country

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[40]Evans, The Daily Star (Beirut) , Sep. 23, 1974

[41]Butterfield, Japanese Terrorist Group Moves Around, International Herald Tribune, September 16, 1974

[42]Melander Terroristlagen - ett onödigt ont, Stockholm 1975, p. 34.

they have picked for an adversary, simply because it is part of the tactic to operate from a neighbouring country, and there discipline is maintained and contributions collected and supporters recruited under pressure that certainly involved threat of violence or outright constraint. Even if Sweden has not taken note of such disciplinary murders as those in which Algerian FLN engaged and which surfaced in the famous Ktir Case,[43] recruitment for the Palestinian cause and the extortion of contributions under threats of violence occasionally do come to light in the Swedish university context and sometimes even are brought to the attention of the police.

It may be suggested that the list of organizations in reality only has a limiting function. Nobody can be entered into the list as a presumed terrorist without his attachment to one of the listed organizations first being established.

By the end of 1975, the list included slightly less than 80 persons, all of them with whereabouts abroad. This list was, in all its versions, approved by the National Police Board in pleno and copies thereof were, successively, submitted to the King in Council.[44]

In subsequent comment, it has been asserted that the question of membership in terrorist organizations seldom acquires independent importance. This was ascribed to the fact that "it is a characteristic feature of the organizations and groups in question that they are of an extremely secret nature." "Experience has shown that it is here primarily other circumstances relating to the relationship of the person concerned to the organization and its activity that become decisive."[45] By this is meant, presumably, that information coming from foreign police is always directed at a certain individual and includes material evidencing his past activity in connection with acts for which a certain listed organization has taken credit, so that the membership cannot be said to have independent importance.

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[43]Arrêts du Tribunal Fédéral Suisse 87-I-134

[44]Proposition 1975/76:18 p. 151

[45]Ms Anna Greta Leijon in Proposition 1975/76:18 p. 207.

b) Other Issues

Returning of a presumed terrorist (§§ 1, 2, 5) has taken place only once. In late 1974, the National Police Board was informed that a presumed Croat terrorist was going to attempt to enter Sweden, even including when the attempt would be made. The terrorist was returned but the case, evidently, is exceptional.[46]

Expulsion of presumed terrorists (§ 3) has been in issue in 12 cases. Board requests for expulsion have been submitted to the King in Council and have been granted in about half the cases. In 1974, decisions to expel were taken in relation to 3 Yugoslavs and one Japanese (Mr. Akira Kitagawa). In 1975, the decision was taken to expel another Yugoslav as well as the five-member patrol of Germans that took the West German Embassy in order to extort the release of the Baader Meinhof defendants. In 6 of these cases, the requests were either turned down or withdrawn, the latter presumably because the presumed terrorist had left the country anyway.

Political refugee status. In none of the Yugoslav cases, could the decision to expel be executed, due to political refugee status. Instead, the presumed terrorists were subjected to directives with limitations and conditions for their continued presence in Sweden. (§ 9) These directives merely established limitations relating to residence and employment which could not be changed without prior permission. The presumed terrorist was also to register regularly with the police.[47]

According to § 8, when the execution of a decision to expel is stayed, e.g. due to political refugee status, the question of execution may later be reconsidered. In the case of Kitagawa, the execution of the decision to expel to Japan was stayed in view of political refugee status. However, for many reasons (language and distance not the least) the decision to stay execution did not have a very solid foundation. It was considered advisable to look into the matter of "political persecution" in Japan more closely. Eventually, after some on-the-spot research, it was concluded that people could be expelled to Japan without risking political persecution. Consequently, when the Shimada case was decided (see below) in favour of expulsion, the Kitagawa decision was reconsidered and the expulsion executed.

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[46]Proposition 1975/76:18 p. 151, 86; Proposition 1975:72 p. 11

[47]Proposition 1975/76:18 p. 151

c) The Shimada Case

Kyoichi Shimada was a Japanese student residing in Sweden with his wife. Occasionally, he was routinely interrogated by the police. The Japanese Embassy in Stockholm asserted that he was guilty of passport irregularities and asked the Swedish police to deprive him of the fake passport. Early February 1975, Mr. Haruyuki Mabuchi, Counselor at the Japanese Embassy in Stockholm, sent a circular letter to airlines, shipping lines and others, warning them about the presence in Sweden of Shimada, identifying him as a member of the Red Army faction.[48] Late March, the Swedish Embassy in Athens received a letter signed by the Red Army threatening an attempt to release two Japanese - Nishikawa and Tohira - recently sent home from Sweden (without resort to the Anti-Terrorist Act). On June 27, 1975 the Carlos affair started by the murder of two French DST agents in Paris and revealing, as it developed, the world-wide terrorist connections between the Japanese, the Latin American, the Palestinian and the Baader Meinhof people.[49] It followed the Japanese Red Army making a direct attack on the Swedish Embassy in Kuala Lumpur and taking Swedish chargé d'affaires Bergenstråhle hostage.[50] This gradual build-up seems to have made the Shimada situation mature. The National Police Board now requested his expulsion and the decision to expel was taken on September 2, 1975. The decision was executed. Back in Japan, however, it turned out that the case of the Japanese police against Shimada was weak, and he was detained in prison merely on charges of having obtained a false passport.

On the same occasion, Kitagawa was expelled and flown to Japan. There being no case against him, he reportedly was released.

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[48] The newspaper story was more dramatic. It claimed that in December 1974, the Japanese Government asked the Swedish security police to find and arrest Mr. Kyoichi Shimada, believed to be the mastermind behind the Lydda Massacre, who had taken refuge in Sweden after the wrecking of a plan to seize the Japanese Embassy in Oslo (Norway). When the Swedish service failed to find Shimada, the Japanese Government secured Swedish permission to send three Japanese security agents to Sweden for the search. Then Mr. Mabuchi sent his circular letter.

[49] See Cook, International Herald Tribune, Sep. 8, 1975 pp. 1, 5.

[50] Time Magazine, August 18, 1975, p. 18

The "Refugee Council" - a private group created in 1971 and chaired by a renowned leftist, Advocate Franck - set up a Working Group against the Anti-Terrorist Act with the support of e.g. the Chile Committee and the Africa Group, two similar outfits. This Working Group invited the representative of "The International Federation for Human Rights" that reportedly has NGO status, and possibly advisory functions with the UN. This representative, Jean Claude Luthi, arrived and said that the two Japanese had not had the opportunity to defend themselves in court.

9. Criticism

First of all, it has been discussed whether the Swedish Anti-Terrorist Act was compatible with the European Convention on Human Rights. It seems that generally Swedish commentators are satisfied that it is by being exclusively a regulation of aliens' right to be in Sweden.[51] The doubts that have been voiced have concentrated on the measures of constraint, because they seem to be invoked merely on the basis of the terrorist list and this in turn is said to be made up on the basis of political opinion, a discrimination incompatible with Art. 14 of the Convention.[52]

Inasmuch as there is a tendency to narrow the gap between regulating aliens' right to be in Sweden and the rules for police inquiry, it may be pertinent to point to one difficulty with the call for international police cooperation in Art. 12 of the Montreal Convention. The meaning of the term "offense" in an international criminal law context is seldom fully clear. If police forces are to cooperate, one cannot reasonably insist on interpreting "offense" in formulas such as "suspected of the offense" in 23:3 as referring only to a violation of the local police force's domestic criminal law, taking place within the domestic territory, because that will simply defeat the cooperation. "Offense" must be interpreted in an international spirit.

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[51] Melander (supra note 42) p. 102 f., cf 45.

[52] For a full discussion, see Melander (supra note 42) p.103, and Håkan Strömberg, Grundlag och medborgarrätt, Lund 1974, p. 65 Cf Castberg, The European Convention on Human Rights, Leiden 1974, p. 177.

The Swedish legislator has shied away from the fellow traveler problem and has been lucky inasmuch as nothing has happened that has focused attention on it. It must be recalled, however, that these are guerrilla operations which tactically always rely much on passive supporters and sympathizers. How much is contributed to the success of a terrorist operation by (1) a farmer in whose barn you find the explosives; (2) a fourteen year old girl on whose person is found a letter directing her to purchase medicine for the terrorists together with a sum of money; (3) a man who has on his person a ledger which clearly is a tax collection book for a political sector of the terrorist organization? None of these people is himself prepared to blow people up or otherwise resort to violence; still their services are essential to the terrorist operation. The fellow traveler's services are valuable, as a maildrop, a haven, a courrier, or a warner. Sometimes he or she may have the important function unknowingly, e.g. the British girls who smuggled bombs on board aircraft, planted in their luggage by terrorist friends themselves unknowingly. There may be special reasons why Sweden has restricted the application of the Anti-Terrorist Act, but they also leave the country unprepared for terrorism that consists of more than isolated instances, but rather resembles war on foreign battlefields.

The basic weakness in the Swedish approach has turned out to be political refugee status because that has prevented the execution of a decision to expel. The comment of the Chief Prosecutor in Stockholm seems pertinent:

> "Since it justifiably can be said that in most cases under the new Act, those foreigners to which it applies are such as may invoke political refugee status, the reflexion seems warranted that the Committee has attempted to make political activity at the one and same time a ground for returning and expulsion, on the one side, and a bar for such measures on the other."[53]

Political refugee status should be granted to the presumed terrorist, if he, in the country to which he was to be sent, risked "political persecution". What was meant by this extremely imprecise formula was very unclear; still it was pivotal in the matter. The heavily leftist Swedish mass media were almost able to freeze the application of the Act to the Baader Meinhof group by singling out the Federal Republic of Germany, in an attack that focused on the societal monopoly on violence and on attorneys' privileges in communicating with clients,

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[53] Överåklagaren i Stockholm dnr ÖA Ad I 493-72, comments of January 9, 1973 signed L. Hiort.

as a country that had lost the rule of law.[54] If that was synonymous with "political persecution", the murderous squad could look forward to some time in a Swedish jail (probably no longer than master-spy Col. Wennerström who eventually was pardoned by the Palme Government) and thereafter remain in Sweden on social welfare if not otherwise. So what was meant by "political persecution"?

The campaign against South Africa and the success of a more general human rights movement, on this point, had married into a most surprising formula. Dr. Melander has maintained that it would be political persecution if somebody risked search of premises, search of person, wire tapping etc. on the basis of his political opinion. "It is difficult to understand" says Dr. Melander, "why a violation of human rights cannot be considered to be persecution, of course on condition that this violation is founded on ... political opinion. To take the Swiss example relating to the former prohibition for women to take part in general elections, this certainly was a violation of the declaration of human rights, but it could not be considered persecution, since the prohibition was not based on race, nationality etc. but on sex, which is not mentioned by the Refugee Convention as a basis for persecution. And it seems right to consider there is persecution in the case of a coloured citizen of Rhodesia, who is excluded from the right to participate in general elections due to his race."[55]

With such definitions of "political persecution" it is hard to send a presumed terrorist anywhere. Mr. Moynihan, the US delegate to the UN, has reminded us that there are no more than two dozen genuine democracies remaining in the world. The rest are nations that have adopted or accepted autocratic forms of government, socialist or not. He was prepared to produce a list of 45 military governments and 35 other governments installed by military coups. Certainly, all of these would fail to meet the test suggested by Dr. Melander. On the other hand, the rule of law might conceivably be a lot better in some of these countries than in the genuine democracies because the rule of the majority is no guarantee that the

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[54] Right after the attack on the embassy, Dagens Nyheter in three consecutive articles published a major attack on the Federal Republic, written by Dr. Frank Hirschfeldt, which subsequently were made the basis of much anti-German comment in other leftist mass media. See the Dagens Nyheter, April 22, 23 and 27 1975.

[55] Melander (supra note 3) p. 65.

majority will stick to the laws it has created. Furthermore, a foreigner may well travel in a country without participating in its general elections without having any conceivable reason to complain of any "political persecution", the point being that he abstains from politics. When the Swedish Government reached the decision to send Mssrs. Shimada and Kitagawa back to Japan, it appears to have been a move in a sounder direction. It does not seem sound policy to make Sweden the haven for all revolutionaries in the world.

A N N E X A

Note: The following Act was abolished and its contents integrated into Foreigners Act by enactment SFS 1975 No. 1348.

An Act of April 13th, 1973 relating to special measures in preventing certain violent acts with an international background.

1 §. A foreigner, who arrives in the realm, shall be returned, if there is well-founded reason to believe that he belongs to, or is active for, a political organization or group that, on the basis of what is known about its activities, one may fear will, in the realm, resort to violent means, threats or constraint for political purposes.

The National Police Board will make a list of foreigners who are to be returned pursuant to the first paragraph, in accordance with directives given by the King in Council.

2 §. When a foreigner, who is entered into the list referred to in 1 § second paragraph, and who does not have a visa, a permission to be present or a permission to take residence, arrives in the realm, the police authority shall immediately make the decision to return him unless it follows differently from 5 §.

If the police authority is faced with a question of returning, pursuant to this act, some other foreigner than the one referred to in the first paragraph, the case shall be referred to the central authority for foreigners, which has to refer the matter to the King in Council with its own comments.

3 §. A foreigner, who is present in the realm, may be expelled, if such conditions are present as are mentioned in 1 §, first paragraph. The decision to expel is taken by the King in Council. In an expulsion case the comments of the central authority for foreigners shall be heard, unless it is barred because the matter is extremely urgent.

4 §. A decision to return shall be executed by the police authority. The execution of a decision to expel is a matter for the County Administration.

5 §. If, in a case relating to his return, or to the execution of a decision to return or expel him, a foreigner should claim that he would, in the country to which he is to be sent, risk being exposed to political persecution or that he is not safe there against being sent to a country in which he is exposed to such a risk, and if the assertion is not evidently inaccurate the case shall be referred to the central authority for foreigners, which authority will refer the matter to the King in Council with its own comments. What now has been said, however, shall not apply in a case for the execution of a decision in the course of which the assertion has already been taken into account.

6 §. If, pursuant to 5 §, a return-case shall be referred to the King in Council, the police authority shall detain the foreigner.

The police authority may detain a foreigner or put him under supervision, when, pursuant to 2 §, second paragraph, a case relating to his return shall be referred to the King in Council or when there is question about his expulsion pursuant to this act.

7 §. In a case relating to the return or expulsion pursuant to this act, or relating to the execution of such a measure, the provisions of §§ 32, 35-49, 51-57, 60-62 and 66-70 of the Foreigners Act will apply accordingly insofar as they relate to the question of returning or expelling pursuant to that act.

8 §. If the King in Council makes a decision to return or expel pursuant to this Act, but the decision cannot be executed due to the provisions of §§ 53-54 of the Foreigners Act, the decision shall contain a proviso staying the execution thereof for the time being. The question whether the obstacle to execution still remains shall be reconsidered when there is reason therefor.

9 §. If a foreigner has been returned or expelled pursuant to this Act, and if the decision to do so cannot be executed, §§ 10-13 will apply. The King in Council may issue directives stating limitations and conditions for the presence of such a foreigner in the realm.

If, pursuant to the Foreigners Act, a decision has been made for the return, the "refouler", the deportation or the expulsion, and if the decision cannot be executed, the King in Council may, if there are such circumstances present relating to the foreigner as are stated in § 1, first paragraph, provide that §§ 10-13 shall apply and issue such directives as are referred to in the first paragraph.

10 §. If it is found to be of importance in order to find out whether an organization or a group referred to in 1 §, first paragraph, is planning or preparing a measure that threatens public order and security, such a foreigner as is referred to in 9 §, may be subjected to search of premises, and to search or examination of his person. It is also permissible to take the fingerprints or a photo of such a foreigner.

A measure of the kind referred to in the first paragraph may be decided by the police authority. Relating to such a measure, the provisions of Chapter 28 Code of Procedure will apply accordingly.

11 §. For purposes that are referred to in 10 §, first paragraph, the Court may, in case of extraordinary cause, grant permission to the police authority to listen to telephone calls coming from or going to a telephone that is disposed by or otherwise may be believed to be used by a foreigner referred to in 9 §.

The Court may, for purposes that are referred to in 10 §, first paragraph in case of extraordinary cause, also grant permission to the police authority to investigate more closely, open or scrutinize a mail or a cable dispatch, a letter or other such closed document or package as is addressed to or sent by such a foreigner as is referred to in 9 §, and which is found in the course of search of premises or search or examination of person, or which is found in the mail, the telegraph, the railway or some other carrier.

In a permission of the kind referred to in the second paragraph, the Court may direct that a dispatch arriving to a carrier, shall be retained until it has been investigated more closely, opened and scrutinized. The directive shall inform that no information about the measure taken may be given to the consignor, the consignee or somebody else without the permission of the party having requested the measure.

12 §. A permission of the kind referred to in 11 § shall be given to run for a certain period of time not exceeding one month. The period will be reckoned, in case of wiretapping from the day the

permission was communicated with the chief of the telephone office, and in the other cases from the day the permission was given.

The question of permission shall be considered by the City Court of Stockholm at the request of the National Police Board. The final determination by the Court is made by final order. Such order will be executed immediately. In relation to the proceedings for the rest of the provisions of the Code or Procedure relating to the procedure when the Court considers a question, raised in the course of preliminary investigation in criminal cases, about a measure pursuant to chapter 27, section 16 of said Code shall apply accordingly.

13 §. A transcript made in the course of a wire-tap may not be read by anybody other than the Court, the National Police Board, the police authority or the Prosecutor. If the transcript contains something that has no relevance in relation to the purpose of the wire-tap, it shall immediately be destroyed in such part after reading.

A dispatch or some other document that is covered by permission given pursuant to 11 § may not be investigated more closely, opened or scrutinized by anybody other than the Court, the National Police Board, the police authority or the Prosecutor. Such a document shall be investigated as soon as possible. When the investigation is completed, the dispatch that was found by a carrier shall be sent to the party to whom it is addressed, and other documents shall be returned to him with whom the document was found, unless seizure takes place pursuant to the provisions in force relating thereto.

14 §. In a case that is referred to the King in Council pursuant to 2 §, second paragraph, 3 §, 5 § or 9 §, a hearing shall take place. Such a hearing shall be subject to the rules in Foreigners Act 39-43 §§ as far as applicable.

15 §. To imprisonment for a maximum of one year, or, if the circumstances are mitigating, to fines, shall be sentenced.

1. who helps to enter the realm any foreigner relating to which there are such circumstances as are referred to in 1 §, first paragraph.

2. a foreigner who attempts to prevent the execution of a decision for his return or expulsion pursuant to this Act

3. a foreigner who violates a directive given pursuant to 9 § with limitations or conditions for his presence in the realm.

A P P E N D I X 7

SOME PRELIMINARY THOUGHTS FOR THE SESSION ON INSTITUTIONALIZATION AS A MEANS OF COPING WITH POLITICAL TERRORISTS

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In the last decade, Americans have become increasingly aware of political crime and political criminals. The specter of the Chicago Seven trial, the painful Watergate affair, and the bizarre destruction surrounding the activities of the Symbionese Liberation Army have heightened the public's sensitivity to the entire issue of political crimes. Interestingly, the concept of political crime is an old and recurring one in the history of mankind. Yet, the topic of political crime, has been largely overlooked by criminologists. Their inattention to the problem is not easy to explain. Granted, street crimes violence, and property offenses far outweigh political crime in terms of frequency and amount of damage that is done. Even though political prisoners capture the headlines, the number of their depredations is small when compared with the sum of crimes recorded in the public annals.

Nevertheless, there are sufficient reasons to focus our attention on political crime in general and on acts of terrorism in particular. The use of terrorism as an instrument of political

protest and political action is an invasion of the state's monopoly on the use of force. No political authority can long hope to survive prolonged, broad scale, and successful terrorism without either giving way to conditions of anarchy or resorting to repressive measures characteristic of totalitarian regimes. The prospect of spreading terror and violence is sufficient reason for criminologists to study these phenomena. Only when they do so, can they hope to gain a better knowledge of the forces which generate political violence; of the characteristics of persons who engage in it; and begin the process of identifying measures for the prevention of terrorism. Minimally, one should be able to limit the physical and social harm inflicted on the population and assure the survival of our social institutions.

The purpose of this brief exposition is to focus on the use of institutionalization as a means of coping with political prisoners and terrorists. We will therefore refrain from discussing the many complex and larger issues of political crime and terrorism and limit ourselves to the following issues: (1) the prevalence of political prisoners in the American correctional system, (2) an analysis of the special problems related to the political prisoner's presence in the criminal justice system, and (3) offer some possible solutions to the problems of institutional management of political prisoners and political terrorists. Finally, the problem of the political prisoner in the United States appears to be sufficiently

different from the problems of political prisoners and terrorists in other countries, such as Chile, Brazil, Greece, Indonesia, Czechoslovakia and Third-World countries, to warrant a separate discussion.

1. On the Issue of Prevalence. There is no statistical information available as to the number of political prisoners that may be present on any one day in the vast American correctional apparatus, which includes federal, state, and local systems. This is because the term "political crime" has no meaning as such in American criminal law (with the exception of the special provisions governing the extradition of political prisoners).* There are, of course, a variety of crimes against the state, such as treason, espionage, rebellion, and sedition, which have political implications. None of these activities, however, are major problems in American society. The political crimes at issue here invariably involve the international violation of penal law. As such, the political criminal can be differentiated from the common criminal in that the former is presumed to be motivated by altruistic goals and believes that his or her violation of the penal law is justifiable or even required by some higher purpose. The common criminal, in contrast, is supposedly motivated by the pursuit of private and selfish goals. As a result of this differentiation, we can now distinguish between three types of criminal activity: (1) common crime, which is a

* American extradition law prohibits the extradition of persons charged with political offenses, with the term "political offenses" generally meaning a crime against a government.

violation of penal law for private gain or personal satisfaction (e.g. armed robbery, rape, etc.); (2) pure political crime, which is the violation of political penal law (e.g. treason, espionage, etc.); and (3) mixed political crime, which is the commission of a common crime in pursuit of political purpose (e.g. the bombing of a government building as an expression of political protest).

Even though exact information as to the prevalence of political prisoners in the American correctional system is not available, it is estimated that their number is very small. Nonetheless, administrators and scholars have come to recognize that their presence has had an impact on prison life and has contributed to the politicization of the American prison and jail. Since the racist conflicts endemic in American society continue unabated in the prison setting, the issue of politicization has become even more blurred. To be sure, recent instances of prison violence have taken on new nuances. See for example, the accounts of the riots at Attica, Lucasville, and Holmesburg (Pennsylvania), to name some of the recent major conflagrations. Any quick perusal of these accounts will reveal that as a concomitant to the political quality of prison conflict, the escalation of recent confrontations at these prisons has put the nature of violence into a context far different and exceedingly more dangerous than the simple predatory attacks on fellow prisoners and staff which used to characterize most prison violence in the past.

It is relatively easy to control the predatory activities of a small number of inmates who prey on, exploit, and intimidate fellow inmates. But it is quite another matter to deal with violence directed at staff and the institution itself, by a small group, whose existence or specific membership may be unknown until a violent outburst occurs. The situation becomes exacerbated when such a group can represent their cause as one which is carried out on behalf of all inmates, and which can claim the moral support of like-minded groups on the outside. There is considerable evidence to suggest that correctional management has not been particularly adept at controlling heretofore comparatively stable prison conditions. It is therefore easy to assume that prison management will be even less adequate for the control of guerrilla or urban warfare operations aimed at the disruption of prisons or at the destruction of the entire criminal justice system, should such developments come about at some future point.

2. Specific Problems related to the Presence of Political Prisoners in the Criminal Justice System. At the present time, there is considerable speculation among correctional administrators (but little concrete proof) that there may be a direct transfer of violence from the community into the prison and from the prison back into the community by groups who advocate violent solutions to social problems (Park, 1975). Given a considerable degree of social unrest, and the fact that prisons and jails constitute

microcosms (albeit unnatural ones) of society at large, such assumptions appear to have face validity. First, there is some evidence that at least part of the Symbionese Liberation Army had its origins in the prisons of California: Soledad, Folsom, San Quentin, and most importantly, at the California Medical Facility in Vacaville. It was at Vacaville that the Black Cultural Association was formed in 1968, from whence the SLA emerged from an unholy union of convicts and their young, white, middle-class visitors and admirers. Second, well organized ethnic groups have been recently identified as a major, serious source of prison violence in California (Bennett, 1975). A growing number of assaults on staff are believed to be undergirded by a revolutionary ethic. Also, the way violence is expressed in correctional institutions appears to have undergone change: collective violence has been replaced, to some degree, by the hit-and-run tactics of guerrilla warfare. Nonetheless, ideologically motivated violence must be considered as a minor source of institutional discord when compared to other known causes. Violence and disorder resulting from organized gangs, individual emotional disturbance, and the peculiar nature of the prison subculture combine to far outweigh any violence attributable to revolutionary or terrorist inspired ideology. For example, there is no evidence to support administrative contentions that the Attica tragedy was a consequence of a radical, political conspiracy. The same observation applies to any of the other prison riots of the recent past.

In the light of this discussion, the problem of the political prisoner in the correctional system in America is real but at this point of manageable proportion. It is unlikely therefore, that the American prison and jail system should be regarded as seriously threatened by imminent political upheaval. Nor should we expect the impending disintegration of the criminal justice system under the onslaught of radicals or revolutionary liberators. Nevertheless, it is important to recognize that correctional institutions can make rather useful targets for revolutionaries and may therefore become vulnerable, unless appropriate steps are taken to ward off such developments.

3. Institutional Management of Political Prisoners. A discussion of institutional management of political prisoners and particularly of solutions to the problem of violence such prisoners might cause, can be little more than an overview of recommendations that are well known and familiar to administrators and scholars alike. Most importantly they are measures applicable to any prison and jail setting and designed to reduce conflict and violence, regardless of their underlying motives.

a. Remedies for the basic causes of dissent. It is painful but necessary to examine the phenomenon of the political prisoner and terrorist in terms of the larger issues. For example, if we find a real discrepancy between the claims of social justice and the injustice inflicted by the criminal justice apparatus, then the revolutionary cause can place the system not only on a moral defensive

but can also enlist the sympathetic support of large elements of the public (Conrad, 1975). This is especially true when it can be shown that the criminal justice system in general and the prison system in particular, are instruments of racial injustice. If we find that the existing social order — supported by the criminal justice system — benefits one particular social group; while it discriminates against another social group, then it may be well advised to realign existing power and opportunity structures, particularly if we take seriously such historically celebrated values as equity, justice, and equal opportunity for all.

b. Creating a sound and humane prison. At present, there is a desp rate need to improve the quality of prison and jail life. Too many administrators are inept, too many correctional staff untrained, underpaid, undereducated, and frequently prejudiced. The potential for conspiracies under these conditions is great. Criminal and antisocial activities are r mpant in institutions now. It is easy to speculate what purposeful, intelligent and politically motivated prisoners could accomplish under existing prison and jail conditions, were they inclined to wreak havoc.

c. Introducing basic changes in the prison and jail subculture. The characteristics of the prison subculture need not be elaborated here. Suffice it to say, that everything possible will need to be done to destroy that subculture. The megaprison of 1000 to 3000 or

more inmates must go. It is a standing invitation to violence and anarchy. And it is totally destructive to the inmates and staff within. We need a much more selective application of the sanction of incarceration, not an increase of that sanction, as is presently so frequently proposed in the United States. Those who must be incarcerated for the protection of society should be accomodated in small, manageable institutions, broken down into self-sufficient modularized living units, featuring constructive work and education programs which have tangible value for the life outside. Correctional staff need to be reeducated and trained to overcome their traditional resistance to change, their characteristic insensitivity to the problems of minorities and their blatant prejudice. Staff will need to become racially representative of the inmate populations. Waiting for affirmative action programs or civil service to accomplish that change simply will not do the job. The current phenomenon of minority prisoners, being herded about by armed members of the majority group is administratively untenable and morally unsound.

d. Introduction of equity and justice into the correctional process. At present, corrections is replete with injustice. Prisoners should be entitled to due process when being dealt with for violations of institutional rules. Penalties should be humanely and reasonably administered. The inhumanity of most isolation units should give way to more productive dispositions. The problem of the indeterminate sentence and the arbitrariness of parole boards will

need to be dealt with. Prisoners should receive prevailing wages for work performed and not be forced to engage in slave labor as is presently the case.

e. Restraint in the use of security and control measures.

Given the general construction of most correctional institutions, complete control over inmates can only be achieved when inmates' activities are reduced to a bare minimum, a condition that is recognized by most administrators as inherently unstable and ultimately generative of violence. California reports on its two year experience with the application of various restrictive controls, including the almost complete shutdown of four of its major adult institutions. These controls were wholly counterproductive and resulted in the use of more makeshift weapons and a shift of violence from the general population to the security units (Park, 1975). From a behavioral perspective, this turn of events was predictable. But now that the evidence regarding the effects of repression and isolation is available, it should receive the widest possible dissemination so that other correctional systems can avoid such mistakes, which are so costly in economic and human terms.

In conclusion, the relatively small number of political prisoners — once identified by the system — would make their repression in the institution relatively easy. But oppressive controls can never be basic solutions. The understanding of the

phenomenon of political crime, the political prisoner and the political terrorist is not apt to come without an understanding of the remedies for the basic causes of political discontent. But there are few reasons to assume that the many recommendations outlined above will be followed. While a blueprint to correctional reform exists in the form of the Corrections Report of the National Advisory Commission on Criminal Justice Standards and Goals (1973), the prevailing winds spell regression and not reform for criminal justice and corrections in America. Minimum mandatory sentences, more incarceration of offenders, not less, and a general get tough policy, seem to be the order of the day. It is unlikely, therefore, that warnings against repression will be heeded and that the corrections process will for once become humanized.

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P R O G R A M M E

and

L I S T O F P A R T I C I P A N T S

P R O G R A M M E

Thursday - February 5, 1976

Opening Session

Denis Szabo (Canada)

9:00 - 9:30 — General Introduction - Scope and purpose of the Seminar

Plenary Session I

Organizational Strategies and Tactics of Law Enforcement and Crime Prevention

Chairman: J. Léauté (France)
Rapporteur: F. McClintock (U.K.)

9:30 - 9:45 — Chairman's Presentation of the Issues

9:45 - 10:45 — Discussion

10:45 - 11:00 — Coffee Break

11:00 - 12:30 — Discussion

12:30 - 2:00 — Lunch

Plenary Session II

Problems of Judicial Processing and Sentencing

Chairman: L.H.C. Hulsman (Holland)
Rapporteur: G. Di Gennaro (Italy)

2:00 - 2:15 — Chairman's presentation of the Issues

2:15 - 3:15 — Discussion

3:15 - 3:30	Coffee Break
3:30 - 5:00	Discussion
6:00 - 7:00	Cocktail
7:00 - 8:30	Dinner

Friday,- February 6, 1976

Plenary Session III

Institutionalization as a Means of Coping with Political Terrorists

Chairman: P. Lejins (U.S.A.)
Rapporteur: E. Flynn (U.S.A.)

9:00 - 9:15	Chairman's presentation of the Issues
9:15 - 10:15	Discussion
10:15 - 10:30	Coffee Break
10:30 - 12:00	Discussion
12:00 - 2:00	Lunch

Plenary Session IV

The Role of Legislation and Criminal Law

Chairman: B. De Schutter (Belgium)
Rapporteur: T. Hadden (N. Ireland)

2:00 - 2:15	Chairman's presentation of the Issues
2:15 - 3:15	Discussion
3:15 - 3:30	Coffee Break
3:30 - 5:00	Discussion

6:00 - 7:30	Dinner
7:30 - 9:00	Special meeting of rapporteurs and chairmen
9:00	Reception

Saturday - February 7, 1976

Plenary Session V

Conclusions and Proposals

Moderator: Jacob Sundberg (Sweden)

9:00 - 9:30	Report from Session I Frederick H. McClintock
9:30 - 10:00	Report from Session II Guiseppe di Gennaro
10:00 - 10:30	Report from Session III Edith Flynn
10:30 - 11:00	Report from Session IV Tom Hadden
11:00 - 11:45	Final Conclusions Jacob Sundberg
11:45 - 12:00	Closing Remarks Denis Szabo

PROCEDURAL NOTE

Concerning the working method of this seminar, several points should be emphasized:

1. The specific tities in the programme may give the impression that each session must address itself to a particular theme and that the four themes specified should be dealt with independently from one another. It should be realized that this division is simply an organizational procedure which was deemed necessary because of the broad scope of the material under consideration.

2. It should be understood, however, especially in light of the "systems approach" emphasized in the working paper, that such a division is an artificial one and should not restrict or impede the free-flowing generation of ideas.

3. If it is found that fruitful discussion would be curtailed by strict adherence to the programme as presented, it is up to the participants to restructure the proceedings accordingly.

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