

problems exist in this area of individual human rights and civil rights—the right of privacy.

#### DISCUSSION

DARYL A. LIBOW\* citing a 1978 summary report on terrorism, asked about advancements in international law to stop the proliferation of terrorism and whether agreements to share information and prevention techniques and to a more substantive, rules type of convention similar to that of the mercenary convention were being undertaken. He mentioned the possible difficulty with the latter in that one's mercenary was another's freedom fighter; one's terrorist was another's patriot. Noting conventions on hostages and hijacking, he wondered about the utility of a broad convention on terrorism. Professor MURPHY, noting some advancements and successes through conventions at the national or bilateral level, was pessimistic regarding a general convention outlawing terrorism. He mentioned successes in dealing with specific crimes, *e.g.* the Tokyo, Hague, and Montreal Conventions regarding hijacking and sabotage and the New York Convention on the safety of internationally protected persons. He further discussed the 1977 European convention to suppress terrorism, which listed crimes that would not be accepted under the political offense exception. The problem was one of inclusivity. There might be a problem of rigid rules leading to results counter to those intended.

TORSTEN STEIN\*\* addressed the problem of underlying motives of terrorists. His concern centered on the abuse of just cause and the political offense exception. He noted the success of the 1977 European convention delimiting the political offense exception. He posited that it was the only way to secure the protection of human rights and that it was not necessary to allow for the political offense exception or the introduction of just cause. Professor BERES responded by asking what was the status of international law when one denied the existence of just cause, especially in the face of racist regimes such as South Africa which violated fundamental human rights on a grand scale. By factoring out just cause, what happened to the legal concept of aggression? Insurgency was permissible in international law when groups were confronted by repressive regimes which did not respect the international norms of human rights. Yet insurgencies must respect the laws of war. The CHAIRMAN clarified the nature of the 1977 European convention delimiting applicability of the political offense exception. Rigid rules did not help remedy a difficult situation. The CHAIRMAN gave the hypothetical case of Lech Walesa, knowing that he would be assassinated, hijacking an airplane to the West. Thus, one had to identify with some degree of specificity the harmful conduct and then try to tailor certain measures against it in different contexts. Situations of war would require different rules or expectations from those actions which one labeled terror-violence.

SHARON A. WILLIAMS\*\*\* asked whether international criminal law could control state terror. Would the 1984 Convention on Torture act as a deterrent to abuse of human rights? Would it obligate state parties to prosecute state functionaries, thus bolstering respect for human rights in international law? Professor MURPHY responded that the overriding question was the effectiveness of international human rights conventions and procedures. There had been a notable failure to implement

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these protections. This was one cause, among many, for the rise in international terrorism. The CHAIRMAN noted that one problem with the torture convention was that if a state did not ratify it, or if torture was condoned in some way, then there was little hope in this instance.

WALDEMAR A. SOLF\* noted the laudable effort to abolish the political offense exception, if limited to the appropriate event. Of particular interest was the issue of noninternational armed conflict. Simply stated, there should be a political offense exception for those who fought and who followed the law of war, but there should be no political offense exception for those who fought and had not followed the law of war. National legislation and international law should take this into account.

A speaker from the floor stated that it only made sense to focus on the tension or the dichotomy regarding advances in combating terrorism and the protection of human rights. To do otherwise might be of some interest but would not be particularly illuminating, given the nature of the panel. He disagreed with Professor Murphy's statement, that no conflict existed between combating terrorism and protecting human rights. While admitting that in certain situations there might be no conflict, one should look at the inherent conflict of values in situations and the conflict in application of norms. In this vein he offered three paradigms. The first was the textbook exercise of torturing a terrorist to prevent an impending terrorist act. Second, what could be done in societies that violated human rights, where the only apparent way to combat state terror-violence was by using terror? Third, were there such things as "innocent civilians" in such a violative-regime-ruled country where the citizenry's acquiescence served to provide the regime with legitimacy? Professor MURPHY stated that his position was not that there was no inherent conflict but that a primary goal of combating terrorism was to preserve human rights. Regarding the first scenario, an argument could be made for torturing a terrorist to prevent a terrorist act, but he would not support it. Arguments could be made without any definitive conclusion. Terror against repressive regimes would fall under the ambit of revolution, and then the laws of war would apply. On the third scenario, under no circumstances could a case be made for using terror against civilians. Such an argument was pernicious and had been rejected by most observers. Moreover, terrorism applied in this manner had not been an effective technique for dealing with a repressive regime. Professor BERES remarked that Professor Murphy's comments were well taken. He emphasized the necessary distinction between lawful and unlawful insurgencies in international law. It was a necessary distinction because insurgencies were frequent occurrences in a decentralized international system, and it was incumbent upon insurgents to respect the status of noncombatants.

JENNIE HATFIELD LYON\*\* asked what legitimate initiatives were being considered in the United States to increase and firm up extradition of terrorists into U.S. jurisdiction. Her concerns had been raised by intimations of U.S. involvement in international kidnapping of persons suspected of terrorist acts and bringing them into the United States. She noted that such means greatly disturbed those interested in protecting human rights and international law. The CHAIRMAN responded that the administration had been trying to exclude certain acts from the political offense exception as a way to firm up extradition treaties, but no serious headway had been made. In *Toscanino v. United States*, the second circuit had maintained that acts

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abroad by U.S. agents in egregious violation of U.S. constitutional guarantees would not be found legitimate in U.S. courts. The CHAIRMAN spoke of the deterrent effect, in terms of public relations, of such loose talk about kidnapping suspected terrorists.

LOUIS FIELD, JR.\* reiterated the Chairman's response regarding U.S. courts and their role. The courts, determining the nature of persons' entry into U.S. jurisdiction, would be empowered to release or hold over for trial. He stated that no international law or U.S. national laws allowed violent means of obtaining jurisdiction. Indeed, the U.S. court system offered adequate protection for those who entered U.S. jurisdiction. This offered a sound deterrent for kidnapping to obtain U.S. jurisdiction. A more lawful means might be disguised extradition, e.g. denaturalization or deportation in response to immigration laws.

JACOB W.F. SUNDBERG\*\* commented that there were three avenues for dealing with terrorism. The first was at the high level. This approach discussed terrorism in vaguely defined terms such as human rights and state terrorism. At this level it was difficult to arrive at a definition of terrorism that could be used in a court of law. It was especially problematic in the United States where observers were carried away with notions, such as the one of the ideal state of government or with the consent of the governed. Here, the concept of state terror-violence was very problematic. The intermediate approach was very legalistic; it dealt mainly with bilateral and multilateral treaties and problems of extradition. The third level was more practical. It accepted that terrorism was a tactic of certain practical utility. Thus, discussion of terrorism as a matter of surrogate warfare must be included in this real, strategic dimension. Therefore, one could not deal with terrorism in the rather simplistic terms of terrorism versus human rights.

A speaker from the floor stated that terrorism was here to stay. There was a discernible linkage between media coverage and terrorism. Noting the lack of terrorism in Eastern Europe and the concomitant lack of a free press, it would appear that terrorism was a small price to pay for the uncensored media. The CHAIRMAN answered this comment by stating that terrorism did exist in Eastern European countries. State terror resulted in massive violations of human rights. If a free press existed and information could be disseminated widely, then pressure could be brought to bear on those totalitarian regimes. Therefore, the relationship between a free press and terrorism was neither negative per se nor positive. It certainly could not be considered to be that strongly linked. Parameters had to be set up to balance the need for a free press and the dissemination of tactical and nontactical information, however. The urgency of the public to know was not always greater than safety of hostages, for example.

Professor BERES reiterated the need to distinguish between terrorists and lawful insurgents, the latter being those combating a repressive regime while respecting the law of armed conflict. Although just cause was problematic, it would be more dangerous if the concept were disposed of. Lastly, a narrowly jurisprudential approach to the problem of terrorism would not be likely to succeed. One needed to attack the underlying realpolitik dynamic of world politics. Professor MURPHY noted that terrorism, while a form of international violence, was the least important form. One could debate the causes of terrorism, but no major cause had had more effect than the

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