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Essays

The Evolution of the United Nations Position on Terrorism: From Exempting National Liberation Movements to Criminalizing Terrorism Wherever and by Whomever Committed

MALVINA HALBERSTAM*

The United Nations position on terrorism has changed over the last three decades from one that, at least arguably, permitted terrorism in support of the struggle for self-determination, to one that unequivocally condemns terrorism as criminal and unjustifiable wherever and by whomever committed. When the U.N. Secretary General first suggested putting an item entitled Measures to Prevent International Terrorism on the General Assembly agenda in 1972, it met with considerable opposition.¹ It was finally put on the agenda, but the title of the agenda item was changed from “Measures to Prevent International Terrorism” to:

Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical

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1. See G.A. Res. 27/3034, U.N. GAOR, 27th Sess., Supp. No. 30, at 119, U.N. Doc. A/RES/27/3034 (1972). See also *infra* note 74.

changes.²

The General Assembly adopted a resolution establishing a thirty-five-member Ad Hoc Committee on International Terrorism ("Ad Hoc Committee").³ The resolution expressed "deep concern over increasing acts of violence which endanger or take innocent human lives or jeopardize fundamental freedoms,"⁴ and urged "States to devote their immediate attention to finding just and peaceful solutions to the underlying causes which give rise to such acts of violence."⁵ However, it did not condemn terrorism. Moreover, the third paragraph stated that the General Assembly "[r]eaffirms the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination and upholds the legitimacy of their struggle, in particular the struggle of national liberation movements."⁶ Why was a paragraph reaffirming the right to self-determination included in a resolution on terrorism? Was it intended to imply that terrorism may be used in the struggle for self-determination? Another paragraph urged states to take all appropriate measures at the national level with a view to the speedy and final elimination of the problem, *i.e.*, terrorism, "bearing in mind the provisions of paragraph 3."⁷ This specific reference to paragraph 3—the paragraph reaffirming the right to self-determination—in the paragraph urging states to take measures to eliminate terrorism⁸ might be viewed as further support for the position that the prohibition against terrorism did not apply to those fighting for self-determination. Similar resolutions expressing concern over acts of international terrorism, urging states to eliminate the underlying causes of terrorism, and reaffirming the right to self-determination, without explicitly condemning terrorism regardless of the cause, were adopted by the General Assembly in 1977,⁹ 1979,¹⁰ 1981,¹¹ and 1983.¹²

2. *Id.*

3. *Id.*

4. *Id.* para. 1.

5. *Id.* para. 2.

6. *Id.* para. 3.

7. *Id.* para. 6.

8. *Id.*

9. G.A. Res. 32/147, U.N. GAOR, 32d Sess., Supp. No. 45, at 212, U.N. Doc. A/RES/32/147 (1977).

10. G.A. Res. 34/145, U.N. GAOR, 34th Sess., Supp. No. 45, at 244, U.N. Doc. A/RES/34/145 (1979).

11. G.A. Res. 36/109, U.N. GAOR, 36th Sess., Supp. No. 51, at 241, U.N. Doc. A/RES/36/109 (1981).

It was only in 1985, thirteen years after the establishment of the Ad Hoc Committee and following the *Achille Lauro* seizure,¹³ that the General Assembly adopted a resolution stating that it “[u]nequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed.”¹⁴ Resolutions adopted in 1987,¹⁵ 1989,¹⁶ and 1991¹⁷ also included provisions unequivocally condemning terrorism “wherever and by whomever” committed. However, all of these resolutions still included a paragraph “reaffirming . . . the . . . right to self-determination . . . and upholding the legitimacy of [the] . . . struggle [for self-determination], in particular the struggle of national liberation movements. . . .”¹⁸

In 1993, in a resolution entitled Human Rights and Terrorism, the General Assembly stated that it “[u]nequivocally condemns all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomever committed.”¹⁹ Significantly, the resolution did not include a paragraph reaffirming the right to self-determination. In 1994, the General Assembly adopted the Declaration on Measures to Eliminate International Terrorism.²⁰ This Declaration provides that “[t]he States members of

12. G.A. Res. 38/130, U.N. GAOR, 38th Sess., Supp. No. 47, at 266, U.N. Doc. A/RES/38/130 (1983).

13. The *Achille Lauro*, an Italian flag ship, was seized by members of the PLO on October 7, 1985. Several hundred passengers were held hostage for two days and one, an American man in a wheel chair, was killed. See Malvina Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, 82 AM. J. INT'L. L. 269 (1988).

14. G.A. Res. 40/61, U.N. GAOR, 40th Sess., 108th plen. mtg., para. 1, U.N. Doc. A/RES/40/61 (1985). See also Statement by the President of the Security Council, Oct. 9, 1985, that the members of the Security Council “condemn terrorism in all its forms, wherever and by whomever committed.” *Statement by the President of the Security Council*, 40th Sess., 2618th mtg., U.N. Doc. S/17554 (1985).

15. G.A. Res. 42/159, U.N. GAOR, 42d Sess., Supp. No. 49, at 299, U.N. Doc. A/RES/42/159 (1987).

16. G.A. Res. 44/29, U.N. GAOR, 44th Sess., Supp. No. 49, at 301, U.N. Doc. A/RES/44/29 (1989).

17. G.A. Res. 46/51, U.N. GAOR, 46th Sess., Supp. No. 49, at 283, U.N. Doc. A/RES/46/51 (1991).

18. See, e.g., *id.* at 283, para. 15.

19. G.A. Res. 48/122, U.N. GAOR, 48th Sess., Supp. No. 49, at 241, U.N. Doc. A/RES/48/122 (1993). See also G.A. Res. 49/185, U.N. GAOR, 49th Sess., Supp. No. 49, at 203, U.N. Doc. A/RES/49/185 (1994).

20. G.A. Res. 49/60, U.N. GAOR, 49th Sess., Supp. No. 49, at 303, U.N. Doc. A/RES/49/60 (1994) (Dec. 9, 1994 Annex). A “Declaration” is a resolution of the General Assembly, which, technically, has the same legal force as any other resolution. However, the term is generally used with respect to resolutions of a fundamental character and particular importance. See, e.g., *Universal Declaration on Human Rights*, G.A. Res. 3/217, U.N.

the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed. . . .”²¹ It states that “[a]cts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations.”²² While the Declaration does not define terrorism, it refers to “[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes”²³ and provides that such acts are “in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.”²⁴ It then goes on to list what states should do or should refrain from doing, as well as actions to be taken by the United Nations, the specialized agencies, and the Secretary General, to combat terrorism. Resolutions adopted in 1995,²⁵ 1996,²⁶ 1997,²⁷ 1999,²⁸ and 2001²⁹ reaffirm the Declaration, repeat the language condemning terrorism quoted above and urge states to take various actions to combat terrorism.³⁰ These resolutions also call upon states to “refrain from financing, . . . providing training for or otherwise encouraging terrorist activities.”³¹ From 1991

GAOR, 3d Sess., U.N. Doc. A/RES/3/217 (1948); *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 25/2625, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/RES/25/2625 (1970).

21. G.A. Res. 49/60, U.N. GAOR, 49th Sess., Supp. No. 49, at 303, para. 1, U.N. Doc. A/RES/49/60 (1994).

22. *Id.* para. 2.

23. *Id.* para. 3.

24. *Id.*

25. G.A. Res. 50/53, U.N. GAOR, 50th Sess., Supp. No. 49, at 319, U.N. Doc. A/RES/50/53 (1995).

26. G.A. Res. 51/210, U.N. GAOR, 51st Sess., Supp. No. 49, at 346, U.N. Doc. A/RES/51/210 (1996).

27. G.A. Res. 52/165, U.N. GAOR, 52d Sess., Supp. No. 49, at 394, U.N. Doc. A/RES/52/165 (1997).

28. G.A. Res. 53/108, U.N. GAOR, 53rd Sess., Supp. No. 49, at 364, U.N. Doc. A/RES/53/108 (1999).

29. G.A. Res. 55/158, U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/RES/55/158 (2001).

30. *See also* G.A. Res. 50/186, U.N. GAOR, 50th Sess., Supp. No. 49, at 24, U.N. Doc. A/RES/50/186 (1995); G.A. Res. 52/133, U.N. GAOR, 52d Sess., Supp. No. 49, at 286, Addendum 2, U.N. Doc. A/RES/52/133 (1997); G.A. Res. 54/164, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/164 (2000).

31. *See, e.g.*, G.A. Res. 53/108, U.N. GAOR, 53d Sess., U.N. Doc. A/RES/53/108 (1999).

onwards, the title of the agenda item became, simply, “Measures to Eliminate International Terrorism.”

Neither the Declaration on Measures to Eliminate International Terrorism nor any of the subsequent resolutions include language reaffirming the right to self-determination. Thus, if inclusion of a reference to self-determination in the earlier resolutions suggested that resort to terrorism may be justified in the struggle for self-determination, the omission of any such reference in the later resolutions and the broad language condemning terrorism “wherever and by whomever” committed are a clear rejection of that position.

The Security Council has also adopted a number of resolutions condemning terrorism in general, in addition to its condemnation of specific instances of terrorism.³² Security Council Resolution 1269, adopted in 1999, begins by both noting the General Assembly resolutions, including the Declaration on Measures to Eliminate International Terrorism, and “[c]ondemning all acts of terrorism, irrespective of motive, wherever and by whomever committed.”³³ Within the body of the resolution, the Security Council “*unequivocally condemns* all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, . . .”³⁴ and “[c]alls upon all States to take . . . appropriate steps to . . . deny those who plan, finance or commit terrorist acts safe havens. . . .”³⁵ Security Council Resolution 1373,³⁶ adopted on September 28, 2001, following the attacks on the World Trade Center and the Pentagon, “reaffirm[s] . . . that . . . acts . . . of international terrorism constitute a threat to international peace and security” and requires all states to:

32. See S.C. Res. 1373, U.N. SCOR, 4385th mtg., U.N. Doc. S/RES/1373 (2001); S.C. Res. 1368, U.N. SCOR, 4370th mtg., U.N. Doc. S/RES/1368 (2001); S.C. Res. 1363, U.N. SCOR, 4352d mtg., U.N. Doc. S/RES/1363 (2001); S.C. Res. 1333, U.N. SCOR, 4251st mtg., U.N. Doc. S/RES/1333 (2000); S.C. Res. 1269, U.N. SCOR, 4053d mtg., U.N. Doc. S/RES/1269 (1999); S.C. Res. 1267, U.N. SCOR, 4051st mtg., U.N. Doc. S/RES/1267 (1999); S.C. Res. 1214, U.N. SCOR, 3952d mtg., U.N. Doc. S/RES/1214 (1998); S.C. Res. 1189, U.N. SCOR, 3915th mtg., U.N. Doc. S/RES/1189 (1998); S.C. Res. 1054, U.N. SCOR, 3660th mtg., U.N. Doc. S/RES/1054 (1996); S.C. Res. 1044, U.N. SCOR, 3627th mtg., U.N. Doc. S/RES/1044 (1996); S.C. Res. 748, U.N. SCOR, 3063d mtg., U.N. Doc. S/RES/748 (1992); S.C. Res. 731, U.N. SCOR, 3033d mtg., U.N. Doc. S/RES/731 (1992); S.C. Res. 687, U.N. SCOR, 2981st mtg., U.N. Doc. S/RES/687 (1991); S.C. Res. 635, U.N. SCOR, 2869th mtg., U.N. Doc. S/RES/635 (1989); S.C. Res. 579, U.N. SCOR, 2637th mtg., U.N. Doc. S/RES/579 (1985).

33. S.C. Res. 1269, U.N. SCOR, 4053d mtg., U.N. Doc. S/RES/1269 (1999).

34. *Id.*

35. *Id.*

36. S.C. Res. 1373, U.N. SCOR, 4385th mtg., U.N. Doc. S/RES/1373 (2001).

[E]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and [to] ensure that . . . such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.³⁷

The resolution states that the Security Council is acting under Chapter VII, which makes the resolution mandatory and obligates states to implement it.³⁸

In addition to the General Assembly and Security Council resolutions, there are a number of treaties on specific aspects of terrorism, such as the hijacking³⁹ and sabotage of airplanes,⁴⁰ attacks on internationally protected persons,⁴¹ the taking of hostages,⁴² maritime terrorism,⁴³ terrorist bombings,⁴⁴ and the financing of terrorism.⁴⁵ Each of these treaties requires a state party to make it an

37. *Id.* para. 2(e). Security Council Resolution 1373 also provides for the establishment of a Counter-Terrorism Committee ("CTC"). Sir Jeremy Greenstock, Chair of the Counter Terrorism Committee said:

The CTC would encourage, monitor and advise States on their implementation of resolution 1373. It would assess States' implementation in so far as it would identify problem areas and examine whether there was scope for assistance to Member States to help them improve their implementation. It would not cut across the General Assembly's work on Conventions or in defining terrorism. The Security Council, not the CTC, would tackle any political questions on the implementation of resolution 1373.

See Counter-Terrorism Committee of the Security Council, *Briefing of Interested Member States, UN Headquarters*, at <http://www.un.org/Docs/sc/committees/1373/8octsum.htm>.

38. See S.C. Res. 1373, U.N. SCOR, 4385th mtg., pmb., U.N. Doc. S/RES/1373 (2001). Resolutions of the General Assembly are recommendations. The U.N. Charter does not give the General Assembly authority to adopt binding resolutions. Resolution of the Security Council may be hortatory or obligatory. Those adopted under the Security Council's Chapter VII powers are obligatory.

39. Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. 7192.

40. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 564, T.I.A.S. 7570.

41. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1975, T.I.A.S. 8532.

42. International Convention Against the Taking of Hostages, Dec. 17, 1979, T.I.A.S. 11081.

43. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 27 I.L.M. 672 (1988).

44. International Convention for the Suppression of Terrorist Bombings, 37 I.L.M. 249 (1998).

45. International Convention for the Suppression of the Financing of Terrorism, G.A.

offense to engage in the conduct specified and to either prosecute or extradite to other states an alleged offender found in its jurisdiction, regardless of where the offense was committed.⁴⁶ Some of these conventions have been ratified by large numbers of states. For example, the hijacking and sabotage conventions have been ratified by 175 states.⁴⁷ Each of the earlier conventions was drafted in response to a specific act or series of acts. They were very narrowly drawn and carefully avoided the word “terrorism.” By contrast, the last two conventions adopted—on terrorist bombings and the financing of terrorism—include the word terrorism in the very title of the convention.⁴⁸

In 1996, the General Assembly adopted a resolution calling for a comprehensive convention on terrorism and established an Ad Hoc Committee to draft such a convention.⁴⁹ The Ad Hoc Committee has met six times; the most recent session of the Committee was held from January 28, 2002 to February 1, 2002.⁵⁰ The report adopted at that meeting includes the Draft Comprehensive Convention on Terrorism (“Draft Convention”). The Draft Convention would make it an offense for any person to cause death or serious bodily injury, or serious damage to public or private property, “when the purpose . . . is to intimidate a population; or to compel a [g]overnment or an international organization to do or abstain from doing any act.”⁵¹ It

Res. 54/109, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/109 (1999).

46. See, e.g., Convention for the Suppression of Unlawful Seizure of Aircraft, *supra* note 39, art. 7 (“The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.”).

47. U.S. DEPT. OF STATE, TREATIES IN FORCE 347-49 (2000).

48. See International Convention for the Suppression of Terrorist Bombings, *supra* note 44; International Convention for the Suppression of the Financing of Terrorism, *supra* note 45.

49. G.A. Res. 51/210, U.N. GAOR, 51st Sess., Supp. No. 49, at 346, U.N. Doc. A/RES/51/210 (1996). See also G.A. Res. 55/158, U.N. GAOR, 55th Sess., Supp. No. 49, at 515, para. 13, U.N. Doc. A/RES/55/158 (2001).

50. See *Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December 1996*, U.N. GAOR, 6th Sess., 26th mtg., at 1, U.N. Doc. A/57/37 (2002) [hereinafter *Ad Hoc Comm. Rep. 1996*].

51. *Id.* art. 2(1).

Article 2, paragraph 1 states:

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and unintentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an

includes provisions dealing with accomplices, attempts, those who organize or direct others to commit an offense, and those who contribute to the commission of an offense.⁵² Significantly, the Draft Convention provides that “criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature.”⁵³ It also includes the “extradite or prosecute” provision of the earlier conventions⁵⁴ and further provides:

None of the offences referred to in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence

infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss,

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

Id.

52. *Id.* arts. 2(2), 2(3), and 2(4).

Article 2, paragraphs 2, 3, and 4 state:

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of this article; or

(c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2, or 3 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Id.

53. *See Ad Hoc Comm. Rep. 1996, supra* note 50, art. 5, at 8.

54. *See Convention for the Suppression of Unlawful Seizure of Aircraft, supra* note 46.

inspired by political motives.⁵⁵

Furthermore, the proposed draft requires state parties to ensure that “refugee status is not granted to any person [where] there are serious reasons for considering that he or she has committed an offense referred to in Article 2.”⁵⁶

In sum, the Draft Convention prohibits a broad range of conduct; it provides that such conduct constitutes a criminal offense regardless of the “political, philosophical, ideological, racial, ethnic, [or] religious [considerations]” that motivated the conduct,⁵⁷ and it explicitly rejects application of the political offense exception to extradition for such conduct.⁵⁸ This marks a significant change from the early U.N. resolutions that condemned acts of terrorism in one paragraph and reaffirmed the right to self-determination in another, leaving room for the argument that the prohibition against terrorism did not apply to national liberation movements.⁵⁹ However, a proposal by the member states of the Organization of the Islamic Conference (“OIC”) may make the Convention far narrower, indeed return it to the resolutions of the 1970s and the early 1980s.

The proposal by the OIC, a new article 18 to replace the current draft of article 18,⁶⁰ provides, in pertinent part: “[t]he activities of the parties during an armed conflict, including in situations of foreign occupation, . . . are not governed by this Convention.”⁶¹ There are few, if any, terrorist acts that are not, arguably at least, related to an armed conflict. One need only look at

55. See *Ad Hoc Comm. Rep. 1996*, *supra* note 50, art. 14.

56. *Id.* art. 7.

57. *Id.* art. 5.

58. *Id.* art. 14.

59. See *supra* text accompanying notes 6–12.

60. The current draft of article 18 provides in pertinent part, “the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.” See *Ad Hoc Comm. Rep. 1996*, *supra* note 50, Annex IV, ¶ 2, at 17 (text circulated by the coordinator for discussion).

61. *Id.* Annex IV, at 17, U.N. Doc. A/57/37. The Convention of the Organization of the Islamic Conference on Combating Terrorism is even more explicit. It provides, “Peoples’ struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.” Convention of the Organization of the Islamic Conference on Combating International Terrorism, July 1, 1999, art. 2(a), at <http://www.oic-un.org/26icfm/c.html>. This would appear to be in direct contradiction to Resolutions 1269 and 1373 of the Security Council, which “unequivocally condemns all . . . terrorism . . . wherever and by whomever committed” and “requires states to ensure that . . . such terrorist acts are established as serious criminal offenses in domestic law. . . .” See *supra* text accompanying notes 33–37.

recent events, such as the attacks in Bali⁶² and the Philippines⁶³ and the hostage taking in Moscow by Chechens.⁶⁴ It is at least arguable that the perpetrators of these terrorist acts were involved in an armed conflict of the kind described in the proposed article 18, thereby making the Convention inapplicable. Thus, the proposed article, if adopted, would eviscerate the Convention.⁶⁵ Such a limitation is also inconsistent with, and arguably a violation of, U.N. resolutions. As indicated above, resolutions of the Security Council and General Assembly in the last decade have repeatedly and unequivocally condemned “all acts, methods, and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed.”⁶⁶ Security Council Resolution 1373 requires states to ensure that terrorist acts are punished as serious criminal offenses under domestic law.⁶⁷ Since that resolution was adopted under the Security Council’s Chapter VII powers and does not exclude terrorist acts committed during an armed conflict, failing to criminalize such acts would be a violation of a state’s obligation to implement mandatory resolutions of the Security Council.

The Ad Hoc Committee discussed the OIC’s proposal in “informal consultations.”⁶⁸ In his summary of these discussions, the Coordinator (Vice-Chairman Richard Rowe) stated that “views were expressed by many delegations in support of various formulations, but there was no consensus on what the text should be.”⁶⁹ He concluded:

62. See Ellen Nakashima & Alan Sipress, *Bombing Kills at Least 180 in Indonesian Club*, WASH. POST, Oct. 13, 2002, at A1. A resolution of the Security Council:

Condemns in the strongest terms the bomb attacks in Bali, Indonesia, on 12 October 2002 in which so many lives were claimed and people injured, as well as other recent terrorist acts in various countries, and regards such acts, like any act of international terrorism, as a threat to international peace and security.

S.C. Res. 1438, 57th Sess., 4624th mtg., U.N. Doc. S/Res/1438 (2002).

63. See Seth Mydans, *Six Killed in Bombing*, N.Y. TIMES, Oct. 11, 2002, at A6.

64. See Peter Baker & Susan B. Glasser, *Rebels Hold Hundreds Hostage in Moscow; Chechen Gunmen Take Over Theater*, WASH. POST, Oct. 24, 2002, at A1. A resolution of the Security Council, “*Condemns* in the strongest terms the heinous act of taking hostages in Moscow, the Russian Federation, on 23 October 2002, as well as other recent terrorist acts in various countries, and regards such acts, like any act of international terrorism, as a threat to international peace and security.” S.C. Res. 1440, U.N. SCOR, 57th Sess., 4632nd mtg., U.N. Doc. S/Res/1440 (2002).

65. In contrast, the draft proposed by the Coordinator only excludes from this Convention acts that are already covered by other conventions. See *supra* text accompanying note 60.

66. See *supra* text accompanying notes 33–35.

67. See *supra* text accompanying note 37.

68. See *Ad Hoc Comm. Rep. 1996*, *supra* note 50, ch. II, paras. 9–10, at 1–2.

69. *Id.* Annex VI, para. 3, at 19.

The key issue in relation to the comprehensive convention is clearly to resolve the text of article 18. That has to be our priority. If we can do that, I believe, as many delegations have indicated, that the other outstanding matters will also be capable of resolution and we will be able to conclude the Convention on which so much progress has been made over the past four months.⁷⁰

The report by the Ad Hoc Committee recommended that a Working Group of the Sixth Committee of the General Assembly consider the matter.⁷¹ The Sixth Committee Working Group met on October 15–16, 2002.⁷² Although it held informal consultations on OIC's proposed article, the report of its meeting⁷³ does not indicate any resolution of the debate over article 18.⁷⁴

70. *Id.* Annex VI, para. 13, at 21.

71. *Id.* ch. III, para. 20, at 2.

72. *See Measures to Eliminate International Terrorism: Report of the Working Group*, U.N. GAOR, 6th Comm., 57th Sess., para. 3, at 2, U.N. Doc. A/C.6/57/L.9 (2002).

73. *Id.* at 2–4.

74. A similar debate occurred when the International Convention Against the Taking of Hostages, *supra* note 42, was considered. A number of Arab, African, and Communist Bloc states took the position that the Hostage Convention should not apply to acts by national liberation movements. *See Report of the Ad Hoc Committee on the Drafting of An International Convention Against the Taking of Hostages*, U.N. GAOR, 32d Sess., Supp. No. 39, U.N. Doc. A/32/39 (1977) [hereafter *Ad Hoc Comm. Rep. 1977*]. Several states proposed inclusion of articles to this effect. *See UNITED NATIONS, GENERAL ASSEMBLY, DRAFT CONVENTION AGAINST THE TAKING OF HOSTAGES; WORKING PAPER SUBMITTED BY LESOTHO AND THE UNITED REPUBLIC OF TANZANIA*, U.N. Doc. No. A/AC.188/L.5 (1977), reprinted in *Ad Hoc Comm. Rep. 1977, supra*, at 111; *UNITED NATIONS, GENERAL ASSEMBLY, DRAFT CONVENTION AGAINST THE TAKING OF HOSTAGES. WORKING PAPER PRESENTED BY THE SYRIAN ARAB REPUBLIC AMENDING THE WORKING PAPER PRESENTED BY ALGERIA, GUINEA, LESOTHO, LIBYAN ARAB JAMAHIRIYA, NIGERIA AND THE UNITED REPUBLIC OF TANZANIA*, U.N. Doc. No. A/AC.188/L.5 (1977), reprinted in *Ad Hoc Comm. Rep. 1977, supra*, at 112. Other states, such as the United States, Canada, the United Kingdom and Sweden, took the position that the ban on hostage taking should be absolute. The issue was very controversial. *See id.* at 23, 28, 30–36, 39–40, 57–58, 61–62, 69–70, 75–76, 79, 83, 94. The representative of the United Republic of Tanzania expressed concern at the objections to the exemption of the national liberation movements from the scope of the Convention and warned that “the whole exercise would come to naught if there was no accommodation of the special position of liberation movements. . . .” *See id.* at 62. The representative of Democratic Yemen was even more adamant. He said, “there were two alternatives: either there would be an internationally accepted convention against the taking of hostages which did not apply to acts carried out by recognized national liberation movements in the course of their struggle, or there would be no convention at all.” *Id.* at 83–84.

The Convention as finally adopted “left intact the principle that hostage-taking is prohibited without exception and that any person committing an act of hostage taking shall be either prosecuted or extradited.” International Convention Against the Taking of Hostages, *supra* note 42 (statement of the Federal Republic of Germany, the state that initiated the adoption of a convention against hostage taking and submitted the working paper on which

For a few years it seemed that a change had taken place, that faced with the horror and arbitrariness of terrorist acts, the nations of the world had resolved that *all* terrorism must be prohibited. The insistence by the OIC on a provision that would make the Comprehensive Convention inapplicable to many—perhaps most—terrorist acts challenges that resolve. To be meaningful, the Comprehensive Convention, like the General Assembly Declaration on Measures to Eliminate International Terrorism and Security Council Resolution 1269, must be applicable, regardless of motive, to all acts, methods, and practices of terrorism wherever and by whomever committed.

the Convention is based). However, it took three years to reach agreement and resulted in the conclusion of a provision—article 12—that is cumbersome, difficult to understand, and that makes specific reference to those fighting for self-determination. It was probably because of that, that statements such as the one by Germany quoted above, emphasizing that the prohibition on hostage taking applied to everyone, were deemed necessary.