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An Analysis of the Achille Lauro Affair: Towards an Effective and Legal Method of Bringing International Terrorists to Justice

Andrew L. Liput*

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An Analysis of the Achille Lauro Affair: Towards an Effective and Legal Method of Bringing International Terrorists to Justice

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Abstract

This Note will propose five steps towards establishing an effective method of bringing terrorists to justice. Part I of this Note will detail the facts surrounding the Achille Lauro incident. Part II will discuss the laws governing extradition, including the obligations of Egypt and the United States arising under the United States-Egypt Extradition Treaty, the Convention Against the Taking of Hostages, and the doctrine of *mala captus bene delentus*. Part III will also discuss the international community's historical inability to define terrorism. Part III will examine the legal precedent for acts of abduction. Part IV details the criticism of the use of abduction as an alternative to extradition, and examines the threat abduction poses to the international legal system, which depends upon voluntary compliance to be effective.

AN ANALYSIS OF THE *ACHILLE LAURO* AFFAIR:
TOWARDS AN EFFECTIVE AND LEGAL
METHOD OF BRINGING
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INTRODUCTION

On October 10, 1985 United States Navy fighter planes intercepted an Egyptian commercial aircraft¹ and forced it to land at a North Atlantic Treaty Organization² (NATO) airfield in Sigonella, Italy. The mid-air interception was part of a plan by the United States to abduct members of the Palestine Liber-

1. Gwertzman, *U.S. Intercepts Jet Carrying Hijackers: Fighters Divert It To NATO Base In Italy; Gunmen Face Trial In Slaying Of Hostage*, N.Y. Times, Oct. 11, 1985, at A1, col. 6. The legality of the diversion of aircraft is governed by international treaty, which prohibits diverting a commercial airliner over the high seas except as a last resort. See Convention On International Civil Aviation, Dec. 7, 1944, § 3.8, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295 [hereinafter cited as Chicago Convention].

One authority has stated that the Egyptian aircraft in this instance "was not a civilian airliner . . . for hire . . . it was a state aircraft used as a getaway vehicle." Thus, presumably, the Chicago Convention would not apply to this incident. Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 1, col. 3. *But see Egyptian Pilot Reports a U.S. Threat To Shoot*, N.Y. Times, Oct. 17, 1985, at A13, col. 3 (claim by Egypt that diversion violated international aviation law).

The diversion by the United States had precedent. For example, in August, 1973, Israeli fighter aircraft diverted a Middle East Airlines flight which was traveling from Beirut to Iraq. The commercial aircraft was forced to land in Israel and the plane was searched in hopes of finding Dr. George Habash, leader of the Popular Front for the Liberation of Palestine, on board. He was not, and the aircraft was released. Friedman, *Israelis Intercept A Libyan Civil Jet And Then Let It Go*, N.Y. Times, Feb. 5, 1986, at A8, col. 5.

On February 4, 1986, Israeli jets intercepted a Libyan executive aircraft over the Mediterranean and forced it to land in Israel. It was thought that Palestine Liberation Organization member Abu Nidal was on board. After a search revealed that the only passengers were Syrian politicians and militia officials, the plane was released. *Id.* at A1, col. 1.

2. The North Atlantic Treaty, Aug. 24, 1949, 63 Stat. 2241, T.I.A.S. No. 1964 [hereinafter cited as NATO Treaty]. The parties to the treaty in order of the date of ratification are: Canada (1949), United Kingdom (1949), Belgium (1949), Luxembourg (1949), Norway (1949), United States (1949), Iceland (1949), Netherlands (1949), Denmark (1949), France (1949), Italy (1949), Portugal (1949), Greece (1952), Turkey (1952), Federal Republic of Germany (1955), Spain (1982). In 1966, the Government of France withdrew French personnel from NATO headquarters, terminated the assignment of French forces to the NATO international commands, and asked NATO to remove its international headquarters from French territory. France intended to withdraw from NATO in order to maintain an independent military presence in Europe. Although it no longer plays an active role, France remains a

ation Front³ and bring them back to the United States to stand trial for their hijacking of the Italian cruise ship *Achille Lauro*

Member Country of NATO. See NATO INFORMATION SERVICE, NATO FACTS AND FIGURES 57 (1976).

The NATO Treaty establishes "a collective defense arrangement for the North Atlantic area within the framework of the United Nations Charter and based upon the inherent right of individual or collective self-defense recognized by article 51 of the Charter." Report of the Senate Committee on Foreign Relations, S. Exec. Rep. No. 8, 81st Cong., 1st Sess., Pt II (1949). The NATO Treaty's objective is "to assist in achieving the primary purpose of the United Nations—the maintenance of peace and security." *Id.* Pt. I.

The NATO Treaty's relevant provisions are as follows:

Article 2

The Parties will contribute toward the further development of peaceful and friendly international relations . . . and will encourage economic collaboration between any or all of them.

Article 3

[T]he Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.

Article 5

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all

Article 9

The Parties hereby establish a council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty The council shall set up such subsidiary bodies as may be necessary; in particular . . . a defense committee.

Article 10

The Parties may, by unanimous agreement, invite any other European state . . . to accede to this Treaty.

63 Stat. 2241, 2242-46, T.I.A.S. No. 1964 (1949).

3. Although the Palestinians committed the act of kidnapping on a ship, for the purposes of this Note they will be referred to as hijackers. The hijackers professed to be members of the Palestine Liberation Front, a radical faction of the Palestine Liberation Organization (PLO). The PLO is comprised of eight separate political groups dedicated to establishing a Palestinian homeland in Israel. The PLO is governed by a 400 member Palestinian National Council. Yasir Arafat, who controls the largest political group under the PLO banner, Fatah, has been the PLO Chairman since 1969. *Is There An Alternative?*, *The Economist*, Dec. 21-Jan. 3, 1986, at 26; Bergen, *Even With A Name It's Hard To Know Who The Hijackers Are*, *N.Y. Times*, Oct. 9, 1985, at A9, col. 2. The Palestine Liberation Front (PLF) is thought to be one of the original umbrella groups of the PLO, which broke away from the main body in 1982 after the Israeli invasion of Lebanon. The PLF is reportedly led by Abu Nidal. *Id.* "Abu Nidal may be the deadliest terrorist alive Over the past twelve years [he] has molded his organization . . . into a fanatical, amorphously structured terrorist band with between 200 and 500 adherents. They have been blamed for more than 100 terrorist attacks." *Master of Mystery and Murder*, *Time*, Jan. 13, 1986, at 31; *cf.* Suro, *4 Killed As Bomb Rips T.W.A. Plane on Way To Athens*, *N.Y. Times*, Apr. 3, 1986, at A1, col. 6 (latest terrorist act allegedly masterminded by Abu Nidal).

and murder of a United States citizen.⁴

Abduction is the seizure of a person by the agents of one state from another, non-cooperative state.⁵ Abduction is technically violative of international laws governing sovereignty⁶

4. See *infra* notes 140-50 and accompanying text. See generally Tagliabue, *Ship Carrying 400 Is Seized; Hijackers Demand Release of 50 Palestinians In Israel*, N.Y. Times, Oct. 8, 1985, A1, at col. 6; Apple, Jr., *Change In Course, This Time Reagan Let Actions Do His Talking*, N.Y. Times, Oct. 13, 1985, § 4, at 1, col. 1; see also *Getting Even*, Newsweek, Oct. 21, 1985, at 21-32. The ship had been carrying 680 passengers, including sixty-two United States citizens, but before the hijacking many left the ship at Alexandria for sightseeing. Three hundred and fifty crew and some 100 passengers remained on board the *Achille Lauro* for the sail to Port Said. N.Y. Times, Oct. 8, 1985, at A1, col. 6. Upon landing, the diverted EgyptAir Boeing 737 was surrounded by a United States military unit, which itself was surrounded by Italian police. After a brief confrontation, the hijackers were taken into custody by the Italians. See Gwertzman, *U.S. Intercepts Jet Carrying Hijackers; Fighters Divert It To NATO Base In Italy; Gunmen Face Trial In Slaying Of Hostage*, N.Y. Times, Oct. 11, 1985, at A1, col. 6; see also *Getting Even*, Newsweek, Oct. 21, 1985, at 25; Apple, Jr., *Change In Course, This Time Reagan Let His Actions Do His Talking*, N.Y. Times, Oct. 13, 1985, § 4, at 1, col. 2 (explanation and analysis of confrontation).

5. 6 M.C. BASSIOUNI, INTERNATIONAL EXTRADITION, UNITED STATES LAW AND PRACTICE V § 1-1 (Feb. 1983); see also I.A. SHEARER, EXTRADITION IN INTERNATIONAL LAW 72-76 (1971); Note, *Unraveling the Gordian Knot: The United States Law of International Extradition and the Political Offender Exception*, 3 FORDHAM INT'L L.F. 141, 160-63 (the FORDHAM INT'L L.F. has been succeeded by the FORDHAM INT'L L.J.) (general background on abduction). Extralegal alternatives to extradition fall into two categories, abduction and unlawful seizure. 6 M.C. BASSIOUNI, *supra*, at V § 1-1. Both involve one state removing a person or persons to another state against their will:

- (1) *abduction* of a person by the agents of a state other than the one in which he is present without the knowledge or consent of the state of refuge; and,
- (2) the [*unlawful*] *seizure* of a person by the agents or [sic] one state and his informal surrender to the agents of another state without formal or legal process.

Id. (emphasis added).

6. 6 M.C. BASSIOUNI, *supra* note 5, at V § 5-3. Sovereignty is defined as the right of states to "be their own ultimate authority in determining their behavior." W. LEVI, CONTEMPORARY INTERNATIONAL LAW: A CONCISE INTRODUCTION 16 (1979).

Sovereignty is a right recognized by numerous international agreements. See, e.g., U.N. CHARTER art. 2, para. 4; Declaration on Principles Of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, 25 UNGAOR, Annexes (Agenda Item 85), U.N. Doc. A/8082 (1970) [hereinafter cited as Declaration on Principles].

International courts have historically enforced the concept of sovereignty. See *Island of Palmas Case* (U.S. v. Neth.), 2 U.N. Rep. Int'l Arb. Awards 829 (1928); *Western Sahara*, 1975 I.C.J. 12 (advisory opinion) (both involve judicial support for state sovereignty); see also L. HENKIN, R.C. PUGH, O. SCHACHTER & H. SMIT, INTERNATIONAL LAW 43, 99-103 (1980) [hereinafter cited as L. HENKIN] (analysis of *Island of Palmas* and *Western Sahara* decisions). Sovereignty and territorial integrity are related concepts. Territorial integrity dictates that one state "may not exercise its

and legal process.⁷ Yet, states have historically pursued acts of abduction when they have determined that legitimate efforts to secure the extradition, arrest, and prosecution of a fugitive had failed or would not be likely to succeed.⁸

power in any form in the territory of another state." L. HENKIN, *supra*, at 46; *see also* 6 M.C. BASSIOUNI, *supra* note 5, at V § 5-3 (territoriality and state sovereignty).

7. 6 M.C. BASSIOUNI, *supra* note 5, at V § 1-2 and § 5-3; *see also* The Universal Declaration of Human Rights, 3 U.N.GAOR, Annexes (Agenda Item 58), U.N. Doc. A/3/217, arts. 9, 10 (1948); International Covenant on Civil and Political Rights, 21 U.N.GAOR, Annexes (Agenda Item 62), U.N. Doc. A/6546, art. 9 (1966) (international agreements which support legal process rights).

8. *See* Ker v. Illinois, 119 U.S. 436 (1886) (warrant for arrest could not be properly served); *Ex Parte Soblen*, [1963] 2 Q.B. 243, *reprinted in* 8 BRIT. INT'L L. CASES 477 (1971) (plaintiff indicted for espionage in United States but fled to Israel where offense not extraditable); The Attorney General of the Government of Israel v. Adolf Eichmann, 36 I.L.R. 5 (Israel, Dist. Ct. of Jerusalem, 1961) (previous requests for extradition denied for political reasons by Government of Argentina). In the *Achille Lauro* incident Egypt was obligated to either prosecute the hijackers or extradite them to the United States under the Convention Against the Taking of Hostages, 34 U.N. GAOR, Annexes (Agenda Item 113), U.N. Doc. A/34/819 (1979) [hereinafter cited as Hostage Convention]. The Hostage Convention provides in relevant part:

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

(d). *The state of which the hostage is a national or if he is a stateless person, in the territory of which he has his habitual residence.*

Article 8

1. *The State Party 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, through proceedings in accordance with the laws of that State.*

Those authorities shall take their decision in the same manner as in the case of any ordinary offense of a grave nature under the law of that State.

Id. arts. 6, 8 (emphasis added). Under the United States-Egypt Extradition Treaty, April 22, 1875, United States-Ottoman Empire, 19 Stat. 572; T.S. 270, 10 Bevans 642 [hereinafter cited as United States-Egypt Extradition Treaty], both states agree that "persons convicted of or charged with the crimes [specified herein], and being fugitives from justice, should . . . be reciprocally delivered up." *Id.* preamble. The procedure for extradition is contained in articles 1 and 5 as follows:

Article 1

1. [This Treaty is only applicable if there exists] such evidence of criminality as, according to the laws of the place where the fugitive or person so

This Note will propose five steps towards establishing an effective method of bringing terrorists to justice. The first step involves creating a legal framework for the identification of terrorist acts, analogous to the laws of war embodied in the Geneva Conventions of 1949 (Geneva Conventions).⁹ The second step would be the formulation of a concrete, universal definition of terrorism based upon acts committed outside of the

charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

Article 5

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties . . . The President of the United States . . . may then issue a warrant for the apprehension of the fugitive [to accompany the requisition]. If it should then be decided that, according to law and evidence, the extradition, is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

Id. arts. 1 and 5; *cf.* Crimes and Criminal Procedure, 18 U.S.C. § 3187 (1982) (provisional arrest and detention within extraterritorial jurisdiction).

In the *Achille Lauro* affair, it appears that the United States did not have enough time to make a formal request for extradition of the Palestinian hijackers. Egypt thus had the obligation under the Hostage Convention to either prosecute them, or to detain them for a time adequate to provide the United States with an opportunity to institute formal extradition procedures. Egypt did neither, and the United States attempted to abduct the hijackers. Gwertzman, *U.S. Intercepts Jet Carrying Hijackers: Fighters Divert It To NATO Base In Italy; Gunman Face Trial In Slaying Of Hostage*, N.Y. Times, Oct. 11, 1985, at A1, col. 6.

President Reagan . . . ordered the dramatic military action after hearing that Egypt had turned down repeated American pleas to prosecute the four gunmen and was flying them to freedom.

Id. (quoting White House spokesman Larry Speakes).

Egypt apparently negotiated an agreement with the PLO, that allowed PLO members to remove the hijackers. *See Getting Even*, Newsweek, Oct. 21, 1985, at 26-28 (Egypt then provided the hijackers with safe passage out of Egypt to Tunisia, headquarters of the PLO. Egypt apparently acted in an effort to establish political leverage in the Arab world, particularly to aid Egypt's position as a mediator in the Middle East peace process. *See id.*; *see also Picking Up The Pace*, Time, Nov. 4, 1985 at 34; *The Teflon Palestinian*, The Economist, Dec. 21-Jan. 3, 1986, at 25. *But see Getting Even*, Newsweek, Oct. 21, 1985, at 31 (Egypt may have supplied Washington with covert intelligence about the precise location of the EgyptAir flight carrying the *Achille Lauro* hijackers).

9. Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, T.I.A.S. No. 3364, 75 U.N.T.S. 135 [hereinafter cited as Geneva Convention Relative to Prisoners of War]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, T.I.A.S. No. 3365, 75 U.N.T.S. 287 [hereinafter cited as Geneva Convention Relative to Civilians]; *see infra* notes 213-20 and accompanying text (support for the laws of war as a framework to fight international terrorism).

framework created in step one.¹⁰ Step three involves constructing an international agreement by which acts of terrorism, as defined in step two, would be added to existing extradition treaties as an offense for which extradition is legally warranted.¹¹ Step four calls for the creation of a permanent international tribunal with mandatory jurisdiction over terrorist crimes when states cannot or will not prosecute terrorists in national courts.¹² The fifth step would add terrorism to the list of international "crimes against humanity" with concurrent universal jurisdiction over the offense.¹³ Rather than trading one ineffective legal process for another, this proposal aims to depoliticize international extradition procedures, and thus, work towards the elimination of terrorism.

Part I of this Note will detail the facts surrounding the *Achille Lauro* incident.¹⁴ Part II will discuss the laws governing extradition, including the obligations of Egypt and the United States arising under the United States-Egypt Extradition Treaty,¹⁵ the Convention Against the Taking of Hostages¹⁶ (Hostage Convention), and the doctrine of *mala captus bene delentus*.¹⁷ Part III will also discuss the international commu-

10. See *infra* notes 233-34 and accompanying text.

11. See *infra* note 235 and accompanying text.

12. See *infra* notes 236-41 and accompanying text.

13. See *infra* notes 242-43 and accompanying text.

14. See *infra* notes 21-40 and accompanying text.

15. United States-Egypt Extradition Treaty, *supra* note 8; see *supra* note 8 and accompanying text (obligations of the United States and Egypt under the treaty).

16. Hostage Convention, *supra* note 8; see *supra* note 8 and accompanying text (obligations of Egypt and the United States under the Convention).

17. The roman law maxim *mala captus bene detentus* translates to "improperly captured, properly detained." In the United States this maxim is known as the *Ker-Frisbie* doctrine, and under it United States courts will not inquire as to how the presence of a fugitive was secured before the Bench. 6 M.C. BASSIOUNI, *supra* note 5, at V § 1-2; see also Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 3, col. 2; RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 432, reporter's note 2 (Tent. Draft No. 6, 1985) (support and analysis of maxim). The *Ker-Frisbie* doctrine is derived from two landmark United States Supreme Court cases which have upheld the validity of in personam jurisdiction when secured by extralegal methods, most notably abduction. See *Ker v. Illinois*, 119 U.S. 436 (1886); *Frisbie v. Collins*, 342 U.S. 519 (1952); see also *United States v. Cadena*, 585 F.2d 1252 (5th Cir. 1978); *United States v. Yanagita*, 552 F.2d 940 (2d Cir. 1977); *Glasgow v. State*, 469 P.2d 682 (Alaska 1970) (supporting *Ker-Frisbie*); Green, *The Eichmann Case*, 23 MOD. L. REV. 507, 509 (1963) (citing English case law supporting *mala captus bene detentus*).

In *Ker*, plaintiff was indicted in Cook County, Illinois, for larceny and embezzlement. He was subsequently convicted of larceny. At the time of trial he was living in

nity's historical inability to define terrorism. Part III will examine the legal precedent for acts of abduction, including the abduction of Adolf Eichmann by Israeli agents in 1960.¹⁸ Part III will also discuss the national interests which compel states to ignore international agreements for political exigencies.¹⁹ Part IV details the criticism of the use of abduction as an alternative to extradition, and examines the threat abduction poses to the international legal system, which depends upon voluntary compliance to be effective.²⁰

I. *THE ACHILLE LAURO AFFAIR: THE FACTS*

On Monday, October 7, 1985 members of the Palestine Liberation Front,²¹ a splinter group of the Palestine Liberation Organization (PLO) seized the Italian cruise ship *Achille Lauro*, which had been sailing in Egyptian territorial waters between the Egyptian cities of Alexandria and Port Said.²² Among the

Peru. The President of the United States, at the request of the Governor of Illinois, issued a warrant for plaintiff's arrest pursuant to the existing treaty of extradition between the United States and Peru, and a law enforcement agent was authorized to take plaintiff into custody. The warrant was never issued, and plaintiff was instead forcibly abducted and brought back to the United States. 119 U.S. at 437-38.

Presumably, the warrant could not be served because at the time of the agent's arrival in Lima, Chilean troops were occupying the capital. Chile was at that time at war with Peru. 6 M.C. BASSIOUNI, *supra* note 5, at V § 4-1. The Supreme Court held that plaintiff was not denied due process rights, which, the Court held, guaranteed only that an accused be indicted and tried "according to the forms and modes prescribed for such trials" and the method of securing plaintiff's appearance before a court, no matter how irregular, "[does not entitle the accused] to say that he should not be tried at all for the crime with which he is charged in a regular indictment." 119 U.S. at 440.

In *Frisbie*, the Supreme Court, relying on the decision in *Ker*, held that a Michigan state prisoner who claimed he had been "forcibly seized, handcuffed, blackjacked," and brought before court on a charge of murder was not denied his due process rights. 342 U.S. at 520. The Court held that, "the power of a court to try a person for a crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'." *Id.* at 522.

18. See *infra* notes 159-77 and accompanying text; see also *The Attorney General of the Government of Israel v. Adolf Eichmann*, 36 I.L.R. 5 (Israel, Dist. Ct. of Jerusalem, 1961).

19. See *infra* notes 212-14 and accompanying text (support for the notion that states place national interests over those of the international community).

20. See *infra* notes 191, 212 and accompanying text (support for the notion that extralegal acts threaten the stability of the international community).

21. See *supra* note 3 and accompanying text (identification of the hijackers as members of the Palestine Liberation Front, the history of the group, and its leader Abu Nidal).

22. Tagliabue, *Ship Carrying 400 Is Seized: Hijackers Demand Release Of 50 Palestini-*

passengers were eighteen United States citizens.²³ The PLO hijackers, who had slipped aboard the vessel posing as mere passengers, threatened to blow up the ship at anchor in Port Said, unless the Government of Israel agreed to release fifty Palestinians held prisoner in Israel.²⁴

On Wednesday, October 9, when it appeared the Israeli Government would not negotiate with the hijackers,²⁵ Egypt permitted the PLO to "remove"²⁶ the terrorists from the ship.²⁷ United States Government officials then learned that the hijackers had killed a sixty-nine year old United States citizen, an invalid who had been partially paralyzed and confined to a wheelchair.²⁸ On October 10, 1985 the Egyptian Govern-

ans In Israel, N.Y. Times, Oct. 8, 1985, at A1, col. 6. The hijacking, hostage-taking and murder of a United States citizen occurred while the *Achille Lauro* was sailing between the Egyptian cities of Alexandria and Port Said. *Id.*; see also *supra* note 4 and accompanying text (planned route of the cruise ship); cf. Third United Nations Conference on the Law of the Sea, 37 U.N.GAOR Annexes (Agenda Item 28), U.N. Doc. A/conf.62/122 (1982) (declarations and reservations of Egypt concerning the contiguous zone). Under United Nations Treaty, Egypt's contiguous zone is recognized as extending twenty-four nautical miles from its shores, and thus Egypt may validly assert jurisdiction over that area as an extension of its territory. *Id.*

23. Cf. *supra* note 4 and accompanying text (43 United States citizens left the ship to travel to Port Said).

24. Tagliabue, *Ship Carrying 400 Is Seized: Hijackers Demand Release of 50 Palestinians in Israel*, N.Y. Times, Oct. 8, 1985, at A1, col. 6. The Palestinian prisoners had been captured by Israel during the course of various raids on PLO guerilla camps in Lebanon. Friedman, *Jailed Palestinians: Hundreds Held*, N.Y. Times, Oct. 8, 1985, at A10, col. 1.

25. The Israeli Government's official position was that no deal would be made in which the 50 prisoners would be released in exchange for the release of the *Achille Lauro* hijackers. Prial, *Israel Firm on Terror Policy, But Seems Willing to Help*, N.Y. Times, Oct. 9, 1985, at A8, col. 1.

26. Egypt did not arrest the hijackers, but rather allowed a PLO intermediary, Mohammad Abul Abbas, to remove the Palestinians and accompany them off of the ship. See Gwertzman, *State Department Angry At Speedy Accord With Gunmen*, N.Y. Times, Oct. 10, 1985, at A1, col. 3. Abbas is himself a much-wanted terrorist guerilla leader. *Id.*; see also *Getting Even*, Newsweek, Oct. 21, 1985, at 26. But see *You Can Feel The Damage*, Time, Oct. 28, 1985, at 26 (statement by Egypt's President that he had no idea of Abul Abbas' past).

27. See *supra* note 26 and accompanying text (Egypt allowed hijackers to be removed from ship without arrest); Schumacher, *Arafat Asks That Gunmen Be Turned Over To PLO*, N.Y. Times, Oct. 10, 1985, at A11, col. 2.

28. Miller, *Hijackers Surrender To Egyptians; Passenger Slain, 400 Are Safe; U.S. Assails Deal With Captors*, N.Y. Times, Oct. 10, 1985, at A1, col. 6. The individual slain by the hijackers was Mr. Leon Klinghoffer of New York, New York. He was the only casualty of the incident. His murder, which was apparently unplanned and unprovoked, was a demonstration that the hijackers "meant business." See, e.g., "We Are Losing Patience", N.Y. Times, Oct. 9, 1985, at A9, col. 5 (transcript of hijackers' radio communica-

ment reported that it did not know where the Palestinians had gone,²⁹ but United States intelligence sources learned³⁰ that the hijackers had boarded an Egyptian commercial aircraft enroute to Tunisia. It is alleged that the Egyptian Government sent the hijackers to Tunisia to stand trial before the chairman and National Ruling Council of the PLO,³¹ even though the PLO has no authority to assert jurisdiction because it is not a state.³²

While the aircraft was in flight above the Mediterranean, the Government of Tunisia denied the Egyptian aircraft the right to land.³³ United States fighter planes then forced the

tions); cf. H.R. Res. 294, 99th Cong., 1st Sess. (1985) (resolution commending the President for acting against the terrorists who killed United States citizen Leon Klinghoffer); *Leon Klinghoffer's Legacy*, Wall St. J., Oct. 17, 1985, at 28, col. 1 (the effect of the death of Leon Klinghoffer on the Middle East peace process). "Mr. Klinghoffer's legacy will be to shatter [the] decades-old illusion of a Middle East 'peace process' and thus establish a more realistic basis for peace itself." *Id.*

29. *Getting Even*, Newsweek, Oct. 21, 1985, at 22. Egypt claimed that in allowing the hijackers to return to the PLO for trial, it was giving Yasir Arafat the opportunity to prove his recent denunciation of indiscriminate violence in the Middle East and his claimed desire to settle Middle East political issues through negotiation. "If Arafat didn't punish them, then he would be responsible before the whole world." Kifner, *Mubarak, Furious at U.S., Demands a Public Apology*, N.Y. Times, Oct. 15, 1985, at A10, col. 1 (quoting Egyptian President Hosni Mubarak); see also *You Can Feel The Damage*, Time, Oct. 28, 1985, at 26 (interview with President Mubarak regarding his decision to free hijackers).

30. *Getting Even*, Newsweek, Oct. 21, 1985, at 20, 22-23. One [intelligence] source produced convincing evidence that . . . the terrorists were still in Egypt and that they probably would try to leave by air. . . . Intelligence sources [then] located the plane the terrorists planned to use for their getaway. . . . There were signs that the terrorists meant to fly to Tunis. *Id.* But see *supra* note 8 and accompanying text (Egypt may have told the United States where to locate the EgyptAir 737 that was carrying the hijackers).

31. See *supra* note 8 and accompanying text (safe passage of hijackers out of Egypt to Tunisia).

32. See L. OPPENHEIM, *INTERNATIONAL LAW* 263 (H. Lauterpacht 8th ed., 1955); C. EAGLETON, *INTERNATIONAL GOVERNMENT* 87-88 (3d ed. 1957). The most important right, and duty, of a state is jurisdiction. *Id.* Although the PLO is not a state, it has been granted observer status at the United Nations, as well as the right to participate in a number of international conferences on the Middle East. D.W. BOWETT, *THE LAW OF INTERNATIONAL INSTITUTIONS* 397-98 (4th ed. 1982).

33. *Getting Even*, Newsweek, Oct. 21, 1985, at 24. There is evidence that Tunisia acted under pressure from the United States. President Reagan attempted to insure that the terrorists had no where to hide, and thus communicated to the Tunisian president that "the United States had reason to believe . . . that the hijackers were on board an EgyptAir plane headed for Tunis . . . [and] believed the terrorists should not be allowed to land." *Id.* But cf. *The Teflon Palestinian*, *The Economist*, Dec. 21-Jan.

Egyptian Boeing 737 to land at the NATO³⁴ airfield at Sigonella, Italy.³⁵ On the landing strip there, United States Navy commandos attempted to take the Palestinians into custody for trial in the United States.³⁶ Italian police intervened, taking the hijackers into custody.³⁷ Although the United States subsequently asked the Italian Government to extradite the hijackers, Italy asserted jurisdiction over them.³⁸ Egypt, incensed at the diversion of their aircraft, awarded the crew of

3, 1986, at 25 (article asserts that Tunisia was a strange place for PLO headquarters because Tunisia's pro-western government has been an uneasy host to the PLO).

34. See *supra* note 2 and accompanying text (background on NATO Treaty).

35. Gwertzman, *U.S. Intercepts Jet Carrying Hijackers; Fighters Divert It To NATO Base In Italy; Gunmen Face Trial In Slaying Of Hostage*, N.Y. Times, Oct. 11, 1985, at A1, col. 6.; Apple, Jr., *Change In Course; This Time Reagan Let Action Do His Talking*, N.Y. Times, Oct. 13, 1985, § 4, at 1, col. 1; cf. *supra* note 1 and accompanying text (legality of diverting commercial airliner).

A paradox has evolved from world reaction to the diversion of commercial aircraft. Successful efforts at capturing fugitives have been applauded, while failed attempts have been condemned for their illegality. See, e.g., Friedman, *Israelis Intercept A Libyan Jet And Then Let It Go*, N.Y. Times, Feb. 5, 1986, at A8, col. 5 (failed attempt at abduction). In a statement made following Israel's diversion of a Libyan commercial aircraft on February 4, 1986, Abba Eban, Chairman of the Foreign Affairs and Defense Committee in the Israeli Knesset, said:

There is nothing that stands in more contradiction to the law than terrorism. But terrorism hides behind the wings of the law. What determines the international reaction is the success or lack of success.

If that person [Abu Nidal] were on the plane, the free world would hail our action. Since the effort failed, I assume there will be criticism on the grounds of the need to respect the law. It is easier for me to describe that paradox than to solve it.

Id.

36. See *supra* note 4 and accompanying text (account of confrontation between armed forces of the United States and Italian police).

37. *Id.*

38. See Briefing By National Security Advisor Robert McFarlane On The Apprehension Of The Achille Lauro Hijackers, Oct. 11, 1985, cited in 24 I.L.M. 1516, 1517 (1985); Gwertzman, *U.S. Intercepts Jet Carrying Hijackers; Fighters Divert It To NATO Base in Italy; Gunmen Face Trial In Slaying Of Hostage*, N.Y. Times, Oct. 11, 1985, at A10, col. 3; *infra* notes 59-63 and accompanying text (theories supporting the assertion of jurisdiction over a fugitive); see also 7 M.C. BASSIOUNI, *supra* note 5, at VI § 1-1.

Extradition . . . is premised on the assumption that the interests of a given state have been affected by the conduct of a given individual who is not within that state's jurisdiction but within the jurisdiction of another state.

The issue of jurisdiction is, therefore, of utmost significance for extradition.

Yet, few, if any, treaties refer to theories of jurisdiction

Id.; cf. 24 I.L.M. 1554-57 (1985) (warrant and complaint issued by the United States against the hijackers).

For a history of the development of extradition as an international legal process, see generally Schultz, *The Principles of the Traditional Law of Extradition* in LEGAL AS-

the intercepted airliner with Egypt's highest military decoration for bravery.³⁹ At this writing, the hijackers are awaiting trial in a maximum security prison at Spoleto, Italy.⁴⁰

II. INTERNATIONAL LAW REGARDING EXTRADITION

A. *The Legal Elements of Extradition*

Extradition is defined in international law as "the rendition of fugitives from justice from one state to another."⁴¹ Extradition is premised on two conditions. First, an extradition treaty must exist between the states involved.⁴² While a government might voluntarily surrender a fugitive, the legal right to demand extradition exists only when created by treaty.⁴³ Second, the requesting state must have a valid jurisdictional claim to the fugitive.⁴⁴

1. First Element: The Extradition Treaty

Egypt is bound by an extradition treaty with the United States that was signed in 1874.⁴⁵ This treaty was recognized by both Egypt and the United States at the time of the *Achille Lauro* affair. Pursuant to treaty provisions, both states are obligated to "deliver up persons who, having been convicted of or charged with crimes . . . committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other."⁴⁶

The treaty provides⁴⁷ that offenses for which extradition is

PECTS OF EXTRADITION AMONG EUROPEAN STATES 9 (European Committee On Crime Of The Council Of Europe 1970); Note, *supra* note 5, at 143-44.

39. See, e.g., N.Y. Times, Oct. 17, 1985, at A13, col. 3; Russell, *The Price of Success*, Time, Oct. 28, 1985, at 22-23 (photographs of crew being decorated by Egypt's President).

40. See Tagliabue, *Italians Identify 16 in Hijacking of Ship*, N.Y. Times, Nov. 20, 1985, at A3, col. 4; *Hijacker To Be Tried As Minor*, N.Y. Times, Nov. 21, 1985, at A10, col. 3 (recent status of legal proceedings in Italy against hijackers).

41. 2 J. MOORE, EXTRADITION 819 (1891).

42. W. FRIEDMANN, O. LISSITZYN & R.C. PUGH, CASES AND MATERIALS ON INTERNATIONAL LAW 491 (1969); Schultz, *supra* note 38, at 21-22; Note, *supra* note 5, at 140.

43. W. FRIEDMANN, O. LISSITZYN & R.C. PUGH, *supra* note 42, at 491.

44. 7 M.C. BASSIOUNI, *supra* note 5, at VI § 1-1; cf. *supra* note 38 and accompanying text (little reference to jurisdictional theories in most extradition treaties).

45. United States-Egypt Extradition Treaty, *supra* note 8; see *supra* note 8 and accompanying text (relevant provisions of treaty).

46. United States-Egypt Extradition Treaty, *supra* note 8, art. 1.

47. *Id.*

requested must be punishable under the criminal law of the requested state.⁴⁸ Neither state is obligated to extradite what their legal system would consider an innocent person.⁴⁹ The treaty further provides that murder and attempted murder are always grounds for requesting extradition,⁵⁰ although the United States does not recognize the right to request extradition for the murder of its citizens abroad⁵¹ other than senior public officials.⁵² Ratification of the Hostage Convention⁵³ by the United States in January, 1984⁵⁴ following ratification by the Government of Egypt in 1981,⁵⁵ means that both states will extradite for the crime of hostage taking.⁵⁶

There are no previous instances of Egypt avoiding its extradition treaty obligations with the United States.⁵⁷ Yet in the *Achille Lauro* incident, despite repeated requests by the United States, Egypt neither prosecuted nor extradited the hijackers.⁵⁸

2. Second Element: Jurisdictional Bases

International law recognizes five theories that could justify a state's assertion of jurisdiction over a fugitive, and enable

48. *Id.*

49. See Schultz, *supra* note 38, at 12.

50. United States-Egypt Extradition Treaty, *supra* note 8, art. 2, §§ 1 and 2.

51. See Fugitives From Foreign Country To United States, 18 U.S.C. § 3184 (1982); Restatement (Revised) of the Foreign Relations Law of the United States § 402 (Tent. Draft No. 2, 1981); Lowenfeld & Glynn, *Analyzing The Applicable Laws In The Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 3, col. 1.

52. Congressional, Cabinet, and Supreme Court Assassination, Kidnapping and Assault; Penalties, 18 U.S.C. § 351(i) (1982); RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 402, comment e (Tent. Draft No. 2, 1981).

53. Hostage Convention, *supra* note 8; see *supra* note 149 and accompanying text (background on the Hostage Convention).

54. See Pub. L. No. 98-473, 98 Stat. 1873, 1976 (1984). The United States ratified the Hostage Convention as part of the Comprehensive Crime Control Act of 1984. See *id.*

55. Egypt ratified the Hostage Convention, *supra* note 8, on October 2, 1981. Multilateral Treaties Deposited With The Secretary-General 562, U.N. Doc. ST/LEG/SER.E/3 (1985).

56. Hostage Convention, *supra* note 8, arts. 6, 8.

57. Neither official public documents, nor United States or international cases indicate that Egypt has ever failed to meet the provisions of the United States-Egypt Extradition Treaty. Cf. United States-Egypt Extradition Treaty, *supra* note 8.

58. See *supra* notes 21-40 and accompanying text (facts surrounding the hijacking of the *Achille Lauro*).

that state to validly request extradition: territorial,⁵⁹ passive personality,⁶⁰ active personality or nationality,⁶¹ protective⁶² and universality.⁶³ These theories enjoy varying degrees of recognition.⁶⁴ While each state might not recognize all theo-

59. The territorial theory of jurisdiction enjoys nearly universal recognition, and has been developed out of the international law principles of territorial sovereignty and the equality of states. See I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 293 (2d ed. 1973). The territorial theory asserts that the courts of the place where a crime is committed may exercise jurisdiction over a fugitive wanted for that crime. *Id.*; 7 M.C. BASSIOUNI, *supra* note 5, at VI § 2-1; Sarkar, *The Proper Law of Crime In International Law*, 11 *INT'L & COMP. L.Q.* 446, 447 (1962); see also *Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812) (decision emphasizing the relationship of sovereignty and the territorial theory of jurisdiction).

60. Under the passive personality theory of jurisdiction, a state may assert jurisdiction over any fugitive who harms or threatens the welfare of its nationals abroad. The passive personality theory is the least accepted and least justifiable theory of jurisdiction. See I. BROWNLIE, *supra* note 59, at 296; 7 M.C. BASSIOUNI, *supra* note 5, at VI § 4-1; see also *The Lotus Case (Fr. v. Turkey)*, 1927 P.C.I.J., ser. A, No. 10 (Judgment of Sept. 27); *The Cutting Case*, reported in 2 J.B. MOORE, *DIGEST OF INTERNATIONAL LAW* 228-42 (1908) (applying passive personality theory). A case applying the passive personality theory without specifically mentioning it arose in 1866 when John H. Surratt, a United States citizen who was wanted in connection with the assassination of President Abraham Lincoln, was arrested in Egypt and sent to the United States. See 2 J.B. MOORE, *supra*, at 259; 7 M.C. BASSIOUNI, *supra* note 5, at VI § 4-2; see also Green, *supra* note 17, at 513 (citing the unmentioned application of passive personality in the Eichmann case).

61. The nationality, or active personality theory of jurisdiction provides that states may act to protect nationals even when they are outside of the state's territorial boundaries. See I. BROWNLIE, *supra* note 59, at 296. This theory is generally recognized as a basis for asserting jurisdiction over extraterritorial acts. *Id.*; 7 M.C. BASSIOUNI, *supra* note 5, at VI § 3-1; see also *Skiriotes v. Florida*, 313 U.S. 69 (1941); *Joyce v. Director of Public Prosecution*, [1946] A.C. 347, reported in 3 *BRIT. INT'L L. CASES* 51 (1965); *In re Roquain*, 26 *I.L.R.* 209 (Belgium, Ct. of Cassation 1958); *Re Gutierrez*, 24 *I.L.R.* 265 (Mexico, S. Ct. 1957) (case law supporting nationality theory of jurisdiction).

62. The protective theory of jurisdiction is a broad theory which extends a state's sphere of protection to any of its interests endangered or harmed abroad. See I. BROWNLIE, *supra* note 59, at 296-97. Nearly all states assert jurisdiction over fugitives for crimes abroad which harm or threaten a state's security. *Id.*; 7 M.C. BASSIOUNI, *supra* note 5, at VI § 5-1; see also *Re van der Plas*, 22 *I.L.R.* 205 (France, Ct. of Cassation 1955); *Public Prosecutor v. L.*, 18 *I.L.R.* 206 (Holland, S. Ct. 1951); *Nusselein v. Belgian State*, 17 *I.L.R.* 136 (Belgium, Ct. of Cassation 1950) (case law supporting protective theory of jurisdiction).

63. The universality theory of jurisdiction allows states to assert jurisdiction over fugitives when the nature of their crimes justifies their repression as a matter of international policy. See I. BROWNLIE, *supra* note 59, at 297; 7 M.C. BASSIOUNI, *supra* note 5, at VI § 6-1; see also *U.S. v. Dominguez*, 604 F.2d 304 (4th Cir. 1979), cert. denied, 444 U.S. 1014 (1980); *Universal Jurisdiction (Austria) Case*, 28 *I.L.R.* 341 (Austria, S. Ct. 1958); *Rex v. Martin*, 20 *I.L.R.* 167 (Norway, S. Ct. 1953) (case law supporting universality theory of jurisdiction).

64. 7 M.C. BASSIOUNI, *supra* note 5, at VI § 1-4. For example, while France, Italy

ries,⁶⁵ those theories that a state does recognize are typically codified within its statutes. In the United States, for example the theories forming the jurisdictional basis for extradition can be found in both the United States Code and the Revised Restatement of Foreign Relations Law of the United States.⁶⁶

A territorial jurisdictional basis arises in the state where the offense has been committed,⁶⁷ or, according to the Law of the Flag theory, on extensions of a state's territory such as ships and aircraft.⁶⁸ Many states,⁶⁹ including the United States, Egypt, and Italy,⁷⁰ recognize this basis for jurisdiction.

Under the active personality or nationality theory of jurisdiction, a state may assert an interest in extradition based upon the nationality of the accused.⁷¹ This theory has been more widely accepted when the crime committed by the fugitive has also been committed against the requesting state or its citizens.⁷²

Under the passive personality theory of jurisdiction, states may assert jurisdiction based upon the nationality of the vic-

and Israel support the passive personality theory, the United States has only recently considered adopting it. See Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 3, col. 1; see also *Antiterrorism Bill Passed*, N.Y. Times, Feb. 21, 1986, at A8, col. 2 (report that the United States Congress passed a bill recognizing the passive personality theory).

65. For example, the United States recognizes the nationality, protective and universality theories of jurisdiction. See *supra* notes 61-63 and accompanying text. However, it does not adhere to the passive personality theory of jurisdiction. See *supra* note 64 and accompanying text (United State law regarding theory).

66. See generally *Fugitives From Foreign Country To United States*, 18 U.S.C. § 3184 (1982) (transfer of offenders to or from foreign countries); RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 402 (Tent. Draft No. 2, 1981) (jurisdiction to prescribe).

67. 7 M.C. BASSIOUNI, *supra* note 5, at VI § 1-4. A state's territory is "the physical sphere of exercise of [the] power to prescribe and enforce [state] laws." *Id.* § 2-2; see *supra* note 59 and accompanying text (territorial theory of jurisdiction).

68. See, e.g., *Cunard S.S. Co. v. Mellon*, 262 U.S. 100 (1923); *Chung Chi Cheung v. The King*, [1939] A.C. 160 (1939) (early case law supporting the law of the flag theory); see 7 M.C. BASSIOUNI, *supra* note 5, at VI § 2-22, 23. In modern common law the law of the flag theory has been applied to aircraft as well as vessels. *Id.* VI § 2-26. This theory still enjoys scholarly support. See, e.g., Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., at 3, col. 1.

69. 7 M.C. BASSIOUNI, *supra* note 5, at VI 2-26.

70. Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 3, col. 1.

71. See *supra* note 61 and accompanying text (nationality, or active personality theory).

72. *Id.*

tim.⁷³ The United States, unlike Italy, Israel, France, and other states,⁷⁴ does not recognize this theory.⁷⁵ Thus, with one exception,⁷⁶ the murder of a United States citizen in a foreign country does not form the basis for the right to request extradition.⁷⁷

The protected interest theory of jurisdiction is a "long-arm" theory⁷⁸ that allows a state to assert jurisdiction whenever its interests are threatened or harmed abroad. Some United States legal theorists recognize this theory in the Revised Restatement of Foreign Relations Law only when acts committed by aliens "pose either an actual or potential harm to any vital interest of that state."⁷⁹ Despite its potentially broad application, there is no general rule of international law prohibiting a state from asserting jurisdiction under this theory.⁸⁰

While the preceding four theories all require a link⁸¹ be-

73. See *supra* note 60 and accompanying text (passive personality theory).

74. Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 3, col. 1.

75. See *supra* note 64 and accompanying text (non-recognition of passive personality theory by United States).

76. See Congressional, Cabinet, and Supreme Court Assassination, Kidnapping and Assault; Penalties, 18 U.S.C. § 351 (1982). The only instance in which the murder of a United States citizen forms the basis for jurisdiction solely on the victim's nationality is when a senior public official is killed while in a foreign state. *Id.*

77. The murder of Mr. Leon Klinghoffer, see *supra* note 28, did not form a basis for jurisdiction. See Briefing By National Security Advisor Robert McFarlane On The Apprehension Of The Achille Lauro Hijackers, Oct. 11, 1985, cited in 24 I.L.M. 1516, 1517 (1985).

78. See *supra* note 62 and accompanying text (protective theory); see also RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 441, comment b (Tent. Draft No. 2, 1981).

79. RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 402 (Tent. Draft No. 2, 1981) (jurisdiction to prescribe).

80. *Id.*

81. See LORD RUSSELL, THE RECORD: THE TRIAL OF ADOLF EICHMANN FOR HIS CRIMES AGAINST THE JEWISH PEOPLE AND AGAINST HUMANITY 307 (1963). Lord Russell comments

Penal jurisdiction is not a matter for everyone to exercise. There must be a linking point, a legal connection that links the punisher with the punished. The State may . . . punish only persons and acts which concern it more than they concern other States.

Id. (emphasis in original); see also 7 M.C. BASSIOUNI, *supra* note 5, at VI § 6-1.

All theories [other than Universality] can be applied to a given situation only if there exists some link between the state desiring to assert jurisdiction over the offense itself, and the offender or the victim. This link can be: (1) the *situs* of the offense, whether that location is the territory of the state or an

tween the state requesting extradition and the fugitive being sought, the fifth and final jurisdictional theory, the universality principle⁸² is based upon crimes which affect the interests of all states simply by the nature of the crime; i.e., crimes which may be characterized as "crimes against humanity."⁸³ An example of the application of this international crime would include the charges of genocide entered against the defendants at Nuremburg⁸⁴ and later in Israel in the trial of Adolf Eichmann.⁸⁵ The United States has recognized this theory in regard to acts of piracy, slave trade, attacks on or hijacking of

extension thereof . . . ; (2) the nationality of either the perpetrator or the victim of the offense . . . ; or (3) the effects of a given conduct outside the state by affecting some interest that state desires to protect

Id. In the *Achille Lauro* incident, the "link" that gave the United States the right to assert jurisdiction was the act of taking 18 United States citizens hostage. *See supra* notes 65, 76-77 and accompanying text.

82. *See supra* note 63 and accompanying text (universality theory); *see also* 7 M.C. BASSIOUNI, *supra* note 5, at VI § 6-7, 6-8.

Individuals . . . have been made subject to certain duties under international law, such as the duty to refrain from committing piracy. The breach of such duties will make the individual subject to prosecution and punishment under international law Since there is [no] . . . world body to prosecute and administer punishment . . . each state must act individually to enforce the universality theory.

Id.

83. Roughly defined, a crime against humanity is an offense whose character is such that it violates the common law governing all states. It is a crime that shocks the collective conscience of the international community. *See supra* note 63 and accompanying text (universality theory).

84. *See generally* 1-8 OFFICE OF UNITED STATES CHIEF COUNSEL FOR PROSECUTION OF AXIS CRIMINALITY, NAZI CONSPIRACY AND AGGRESSION (1946); B.F. SMITH, *REACHING JUDGMENT AT NUREMBURG* (1977); Lasok, *The Eichmann Trial*, 11 INT'L & COMP. L. Q. 355 (1962) (history and analysis of the trials of Nazi war criminals conducted by the victorious Allies after World War II).

85. The Attorney General of the Government of Israel v. Adolf Eichmann, 36 I.L.R. 5 (Israel, Dist. Ct. Jerusalem, 1961). Eichmann was indicted on twelve counts, four of "crimes against the Jewish people," one of "war crimes," and seven of "crimes against humanity." *See* LORD RUSSELL, *supra* note 81, at 5-7; Lasok, *supra* note 84, at 356-57. *But cf.* Comer, *The Eichmann Trial: Historic Justice?*, 23 GA. B.J. 491, 504 (1960).

Nuremburg was based on the proposition that atrocities against Jews and non-Jews are equally crimes against world law. To define a crime in terms of religion or nationality of the victim, instead of the nature of the criminal act is wholly out of keeping with the needs of the times and the trend of modern law

Id. (quoting Telford Taylor, Chief Prosecutor at Nuremburg). This statement criticized Israel's application of the "crimes against humanity" charge in the Eichmann trial as too powerful a legal tool in the hands of a sovereign state, and more appropriate for use by international tribunals such as Nuremburg. *Id.*

aircraft, genocide and war crimes.⁸⁶ In addition, the Revised Restatement of Foreign Relations Law of the United States provides that although many states have condemned terrorism, and terrorism is an offense subject to universal jurisdiction as a matter of customary law, "it remains to be determined whether universal jurisdiction over [terrorism] has become customary law for states not a party to [an international agreement]."⁸⁷

3. Competing Claims to Jurisdiction

Applying these five theories to the facts of the *Achille Lauro* affair, it is clear that Egypt was obligated either to prosecute the PLO hijackers itself under the Hostage Convention,⁸⁸ or extradite them under the United States-Egypt Extradition Treaty so that they could stand trial in the United States.⁸⁹ Egypt's failure in both respects induced the United States to resort to abduction.

Egypt could have tried the hijackers in Egyptian courts because custody of the Palestinians gave Egypt both de facto and de jure jurisdiction over them. These rights arose under the United States-Egypt Extradition Treaty,⁹⁰ the Hostage Convention,⁹¹ and the territorial theory of jurisdiction.⁹² While Egypt did have a strong basis for asserting jurisdiction,⁹³ its national interests prevented Egypt from trying the Palestini-

86. RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 404 (Tent. Draft No. 2, 1981) (universal jurisdiction to define and punish selective offenses).

87. *Id.* comment a.

88. Hostage Convention, *supra* note 8; *see also supra* notes 149, 8 and accompanying text (relevant provisions of Hostage Convention).

89. United States-Egypt Extradition Treaty, *supra* note 8; *see also supra* note 8 and accompanying text (relevant treaty provisions).

90. *Id.*

91. Hostage Convention, *supra* note 8; *see also supra* text accompanying note 8 (relevant provisions of Hostage Convention).

92. *See supra* note 59 and accompanying text (territorial theory of jurisdiction).

93. Egypt had the right to assert jurisdiction over the hijackers because the hijacking took place in Egyptian territorial waters, and the hijackers surrendered on Egyptian territory. *See supra* note 22 and accompanying text (Egypt's contiguous zone); *supra* note 59 and accompanying text (territorial theory of jurisdiction). In general, when two or more states have competing jurisdictional claims, the state with the greater interest in prosecuting a fugitive will have the greater right to assert jurisdiction. *See* 7 M.C. BASSIOUNI, *supra* note 5, at VI § 9-3; LORD RUSSELL, *supra* note 81, at 307.

ans.⁹⁴ The United States' right to assert jurisdiction was not as strong as Egypt's,⁹⁵ but the United States interest in trying the hijackers was superior to Egypt's.⁹⁶

The United States' only claim to jurisdiction over the hijackers arose under the Hostage Convention.⁹⁷ The United States does not adhere to the passive personality theory and thus had no right to assert jurisdiction based upon the murder abroad of one of its citizens.⁹⁸ However, the Hostage Convention,⁹⁹ which became effective for the United States in January 1985 as part of the Comprehensive Crime Control Act of 1984,¹⁰⁰ authorizes states to assert jurisdiction based upon the nationality of hostages.¹⁰¹ In the *Achille Lauro* incident, eighteen hostages were United States citizens.¹⁰² Because Egypt

94. Egypt's position as a leader of the Arab world, and its sympathies for the Palestinian cause, were clear factors in its deal to grant the *Achille Lauro* hijackers safe passage to Tunis;

According to one Senate source, it's easy to understand why [Egyptian President Hosni] Mubarak acted as he did; he clearly understood the risk to Egypt's relations with the United States, Egypt is second only to Israel in the amount of U.S. foreign aid it receives. But he was also aware of the danger [Egypt] faced from . . . Arab radicals. The Egyptians remember all too well what happened to the late Anwar Sadat. Now, however [after the *Achille Lauro* incident] Mubarak can claim he never gave in to American pressure . . .

Getting Even, Newsweek, Oct. 21, 1985, at 31. Former Egyptian President Anwar Sadat was assassinated by Arab radicals in October, 1981, as he reviewed a military parade in Cairo. Farrell, *Sadat Assassinated At Army Parade As Men Amid Ranks Fire Into Stands; Vice President Affirms 'All Treaties'*, N.Y. Times, Oct. 7, 1981, at A1, col. 6. *But see supra* note 29 and accompanying text (claim that Egypt was offering Yasir Arafat an opportunity to gain greater credibility).

95. The United States' only claim to jurisdiction over the hijackers arose under the Hostage Convention, *supra* note 8, because the United States does not adhere to the passive personality theory of jurisdiction. *See supra* notes 60, 76-77 and accompanying text (passive personality theory).

96. *See infra* notes 180-82 and accompanying text (United States motivated by desire to deter terrorist violence).

97. *See supra* note 8 and accompanying text (Hostage Convention); *supra* notes 60, 76-77 and accompanying text (passive personality theory).

98. *See supra* notes 60, 76-77 and accompanying text (passive personality theory).

99. Hostage Convention, *supra* note 8; *see supra* note 8 and accompanying text (relevant provisions of Hostage Convention).

100. Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1873, 1976 (1984).

101. Hostage Convention, *supra* note 8.

102. Tagliabue, *Ship Carrying 400 Is Seized; Hijackers Demand Release of 50 Palestinians In Israel*, N.Y. Times, Oct. 8, 1985, at A1, col. 6; *see also supra* notes 22-40 (background on *Achille Lauro* hijacking).

had previously ratified the Hostage Convention,¹⁰³ ratification by the United States Congress was tantamount to an automatic amendment of the United States-Egypt Extradition Treaty, specifying hostage-taking as a crime for which either state may validly request extradition.¹⁰⁴ Egypt and the United States thus had competing jurisdictional claims over the hijackers.¹⁰⁵ Either state could have prosecuted them for hijacking the *Achille Lauro*,¹⁰⁶ and only Egypt could have prosecuted them for murder.¹⁰⁷ While there are no universal guidelines for resolving concurrent jurisdictional claims,¹⁰⁸ at least one expert on extradition suggests ranking the conflicting states' interests, giving priority to the most significantly affected state interest.¹⁰⁹ Because Egypt neither tried the terrorists nor detained them for extradition, but rather provided them with a "get-away vehicle,"¹¹⁰ allowing the hijackers safe passage to PLO headquarters in Tunisia,¹¹¹ this issue was never confronted.

B. *Why States Resort to Abduction*

The development and acceptance of abduction as an extralegal alternative to extradition has been influenced by two major factors. The first is the absence, misinterpretation or abandonment of an extradition treaty.¹¹² The second factor is

103. Egypt ratified the Hostage Convention, *supra* note 8, on October 2, 1981. Multilateral Treaties Deposited With The Secretary-General 562, U.N. Doc. ST/LEG/SER.E/3 (1985).

104. Hostage Convention, *supra* note 8.

105. See *supra* note 93 (when more than one state can assert jurisdiction over a fugitive, the state with the greater interest must prevail); 7 M.C. BASSIOUNI, *supra* note 5, at VI § 9-3; LORD RUSSELL, *supra* note 81, at 307.

106. See *supra* notes 59-63, 88-91 and accompanying text; Hostage Convention, *supra* note 8, at arts. 6 & 8 (legal rights and duties of United States and Egypt under international agreement and theories of jurisdiction).

107. See *supra* notes 60, 76-77 (passive personality theory).

108. 7 M.C. BASSIOUNI, *supra* note 5, at VI § 9-1.

109. *Id.* at VI § 9-3.

110. Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 1, col. 3; cf. *supra* note 1 and accompanying text (applicability of Chicago Convention to the diversion of the Egyptian airliner).

111. Tunisia was "safe" in the sense that it is home to the headquarters of the PLO. See *supra* notes 3, 8, 29 and accompanying text (background of PLO, location of PLO headquarters in Tunisia and why Egypt sent hijackers there). *But cf.* *The Teflon Palestinian*, *The Economist*, Dec. 21-Jan. 3, 1986, at 25 (assertion that pro-Western Tunisia was a strange place for PLO headquarters).

112. See 6 M.C. BASSIOUNI, *supra* note 5, at V § 5-4; cf. Schultz, *supra* note 38, at 9; Note, *supra* note 5, at 143-44 (history and development of extradition).

the willingness of national courts to overlook the means by which the state secures a fugitive's presence for trial.¹¹³ In the *Achille Lauro* incident, the lack of a universally-recognized definition of "terrorism" was an additional factor influencing the act of attempted abduction by the United States.¹¹⁴

1. Treaty Problems

Extralegal alternatives to extradition are likely to arise in four situations. The first might occur when two or more states involved in securing a fugitive have no extradition treaty.¹¹⁵ With no legal processes governing the transfer of a fugitive, a state may be induced to attempt an act of abduction in order to bring a fugitive to trial.¹¹⁶

A second situation in which a state might be induced to pursue abduction could arise when, as in the *Achille Lauro* incident, one of the parties will not honor an extradition treaty.¹¹⁷ Egypt signaled its intent not to honor the United States-Egypt Extradition Treaty by sending the Palestinian hijackers to Tunisia,¹¹⁸ and the United States interpreted this act as making abduction a viable alternative to extradition.¹¹⁹

The third instance in which abduction might become a viable alternative to extradition arises when two parties disagree on the interpretation of one or more terms of an extradition treaty.¹²⁰ The possibility exists when any extradition treaty includes a political crimes exception clause,¹²¹ mainly because a

113. See *supra* note 17 and accompanying text (*mala captus bene detentus* and background of *Ker-Frisbie* doctrine).

114. See *infra* notes 140-50 and accompanying text (no universally recognized definition of "terrorism").

115. 6 M.C. BASSIOUNI, *supra* note 5, at V § 5-4.

116. *Id.*

117. *Id.*; see also *supra* note 8 (Egypt's treaty and convention obligations); *supra* notes 22-40 and accompanying text (background of *Achille Lauro* hijacking).

118. See *supra* notes 29-33 and accompanying text (discussion of why Egypt sent hijackers to Tunisia).

119. See *supra* note 8 and accompanying text (factors which induced attempted abduction by the United States).

120. 6 M.C. BASSIOUNI, *supra* note 5, at V § 5-4.

121. For example, political crimes exception clauses are subject to abuse by states which expand the definition of political crimes to suit their national interests. Statement of Abraham D. Sofaer, Legal Advisor to the Department of State, before the Senate Foreign Relations Committee, Aug. 1, 1985, reprinted in Bureau of Public Affairs, United States Department of State, Current Policy Report 3 (No. 762, Aug. 1985). Political crimes exception clauses, typically called "political offense excep-

universally accepted definition of terrorism does not exist.¹²² Without such a definition, a state may deny extradition on the grounds that the fugitive sought by the requesting state has committed a political crime and is worthy of protection.¹²³

In the *Achille Lauro* incident, Egypt should not have viewed the hijackers' crime as falling into a political crimes exception because the Hostage Convention requires extradition for the crime of hostage taking.¹²⁴ It is likely that Egypt viewed the hijacking in a different political light than did the United States.¹²⁵ This may have been the result of the absence of a universally recognized definition of terrorism,¹²⁶ or conflicting national interests. The United States' political concerns were to take a strong stand against international terrorism, and also to deter terrorists from using United States citizens as primary targets for violence.¹²⁷ In contrast Egypt's desire to play the role of leader of the Arab world caused it to view the *Achille Lauro* incident differently.¹²⁸ Egypt's desire to maintain influence over the Palestinian cause, its fear of Arab radicals, and its longstanding commitment to mediating a negotiated peace in the Middle East, were reported factors in Egypt's negotiations with the PLO regarding the release of the hijackers.¹²⁹

The fourth and final situation in which a state might be induced to pursue abduction is when one state perceives a situation as requiring an urgent response to protect its national interests.¹³⁰ In response to national political, economic, or social exigencies, a state may interpret the circumstances as sub-

tions," are based upon the notion that "individuals have the right to engage in revolutionary political activity in pursuit of liberty." *Id.* at 2.

122. See *infra* notes 140-50 and accompanying text (no universal definition of terrorism).

123. See Schultz, *supra* note 38, at 9; see also Note, *supra* note 5, at 143-44.

124. Hostage Convention, *supra* note 8.

125. See *supra* notes 29-33, 95 and accompanying text (Egypt's probable motivation in releasing hijackers); *infra* note 181 and accompanying text (United States desire to deter international terrorism).

126. See *infra* notes 140-50 and accompanying text (no universally accepted definition of "terrorism").

127. See *infra* notes 180-82 and accompanying text (United States desire to deter international terrorism).

128. See *supra* notes 29-33, 95 and accompanying text (Egypt's probable motivation in releasing hijackers).

129. *Id.*; see also *supra* note 29 and accompanying text (background on "deal" between Egypt and the PLO).

130. 6 M.C. BASSIOUNI, *supra* note 5, at V § 5-4.

stantially changing its obligations under a treaty. The defense *rebus sic stantibus* or "at this point of affairs,"¹³¹ is recognized in section 153 of the Revised Restatement.¹³² In the wake of the conflict between the United States and Egypt, the United States was induced to pursue an act of abduction.¹³³

2. *Mala Captus Bene Detentus*¹³⁴

Unless a state's courts were to recognize or ignore the extralegal act of abduction,¹³⁵ the act would be meaningless.¹³⁶ Under the almost universally recognized maxim *mala captus bene detentus*, or "improperly captured, properly detained,"¹³⁷ courts will assert in personam jurisdiction¹³⁸ without inquiring into the means by which the accused was brought before the court. In the United States, this principle is known as the *Ker-Frisbie* doctrine.¹³⁹

3. The Related Problem of Defining Terrorism

In the *Achille Lauro* incident the murder of a United States citizen could properly be called an act of "terrorism," if such a term were easily defined and accepted. However, there is no

131. *Id.*

132. See also W. FRIEDMANN, O. LISSITZYN & R. PUGH, *supra* note 42, at 417. If a state wants to invoke this maxim it must attempt to have its right recognized by 1) other parties, or 2) some international authority. *Id.* at 420.

133. See *supra* note 8 and accompanying text (reasons why United States was induced to act).

134. *Mala captus bene detentus* translates to "improperly captured, properly detained."

135. See *supra* note 17 and accompanying text (discussing *mala captus bene detentus* and *Ker-Frisbie* doctrine).

136. If a court refused to recognize jurisdiction over an abducted fugitive, the abducting state's efforts to bring the fugitive to justice would be fruitless.

137. See 6 M.C. BASSIOUNI, *supra* note 5, at V § 1-2; see also Lowenfeld & Glynn, *Analyzing the Applicable Laws in the Achille Lauro Aftermath*, N.Y.L.J., Nov. 1, 1985, at 3, col. 2; RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 432, reporter's note 2 (Tent. Draft No. 3, 1982) (support for doctrine of *mala captus bene detentus*).

138. See BLACK'S LAW DICTIONARY 711 (5th ed. 1979). An in personam action is one "seeking judgment against a person involving his personal rights and based on jurisdiction of his person, as distinguished from a judgment against property (i.e. in rem)." *Id.*

139. See *Ker v. Illinois*, 119 U.S. 436 (1886); *Frisbie v. Collins*, 342 U.S. 519 (1952); see also *supra* note 17 and accompanying text (background on *Ker-Frisbie* doctrine).

singular, universally accepted definition of terrorism.¹⁴⁰ This absence of an internationally recognized and accepted definition of terrorism resulted in both the United States and Egypt interpreting the *Achille Lauro* hijacking differently.¹⁴¹ Without a consensus on the nature of the Palestinians' act, the United States could not utilize existing legal processes¹⁴² to bring the hijackers to trial.

As early as 1934,¹⁴³ the international community con-

140. For the purposes of this Note, "terrorism" will be defined as acts of planned or indiscriminate violence directed against internationally protected public officials (such as Ambassadors), innocent civilians, and privileged institutions (such as schools, hospitals, the International Red Cross and the U.N. Peacekeeping forces). "Terrorists" will be defined as any individual of any group, recognized or unrecognized, engaging in acts of "terrorism." The type of activity included in thei definition would encompass acts with political motives as well as those designed to create fear and achieve violent results as ends in themselves. These actions do not further any cause but merely disrupt personal freedoms and violate fundamental human rights, mainly for the sake of publicity. See I L. GROSS, *ESSAYS ON INTERNATIONAL LAW AND ORGANIZATION* 361 (1984).

141. See *supra* notes 125-29 and accompanying text.

142. See *supra* note 8 and accompanying text.

143. In 1934, the League of Nations, following the assassination of King Alexander I of Yugoslavia and French Prime Minister Louis Barthou, debated the need to control and eliminated "political crimes." *Id.* In the League of Nations Council Debate on International Terrorism (Nov.-Dec. 1934), cited in 1 R. FRIEDLANDER, *TERRORISM: DOCUMENTS OF INTERNATIONAL AND LOCAL CONTROL* 217-51 (1979). M. La-val (Representative of France) stated:

This debate would not be complete if we confined our discussion to the past; we have a very important and delicate task to accomplish for the future It is not a question of restricting the asylum which a State may think fit to accord to political refugees A whole new set of international regulations must be drawn up. Political crimes must be suppressed effectively by international measures

Crime cannot be an instrument of policy.

Id. at 218. M. Litvinoff (Representative of the Soviet Union) stated further that:

We cannot but be grateful to the Yugoslav Government for having drawn the attention of the Council to terrorism, as one of the most disgusting and most dangerous phenomena of international life. . .

We must do justice to [some] terrorists . . . [those] inspired by the love of freedom and the most progressive ideas . . . [w]e cannot ignore the fact the [others are] inspired in most cases, if not in all those known to us, by the most reactionary ideas . . . which consider it as their particular merit to struggle against Marxism, against that very Marxism which . . . has always been and still is the repudication and negation of terrorism.

Id. at 220-21 (emphasis added). In the resolution passed following the debate, the League of Nations declared "that it is the duty of every state neither to encourage nor tolerate on its territory and terrorist activity with a political purpose." *Id.* at 250. It appears that in condemning "terrorist activity," the member-states had in mind state-supported acts of political violence carried out on foreign territory, directed

demned terrorist activity, but that and every subsequent effort has met the same obstacle, i.e., states cannot agree on what constitutes a terrorist act, largely because states strive to fit any such definition within their particular political philosophy.

Between 1934 and 1937, a committee of experts named by the League of Nations, attempted to draft a convention on prevention and punishment of terrorist activity.¹⁴⁴ Following the Second World War, the United Nations attempted to formulate principles governing terrorism based upon the international crime theories of law advanced at the Nuremberg War Crimes Trials.¹⁴⁵ After the failure of a draft code on "offenses

against foreign heads of state as an instrument of foreign polic. *See id.* at 220-21, 225, 228-29 (statements made during Council debate). Yet, the term "terrorist activity" is nowhere defined in the resolutions on the matter. *See id.*, at 249-51.

144. *See* Convention for the Prevention and Punishment of Terrorism, Nov. 16, 1937 [hereinafter cited as Punishment Convention], reprinted in 1 L. GROSS, *supra* note 140, at 361. The text of the Punishment Convention defined "acts of terrorism" as "criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public." Punishment Convention, art. 1, § 2, cited in 1 R. FRIEDLANDER, *supra* note 143, at 253 (1979) (emphasis added). It appears that the League considered terrorism to be acts of state-supported violence directed against other states as a manifestation of policy. More specifically, the Punishment Convention provided that terrorist acts were to include:

(1) Any wilful act causing death or grievous bodily harm or loss of liberty to:

(a) Heads of State, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.

(2) Wilful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.

(3) Any wilful act calculated to endanger the lives of members of the public.

(4) Any attempt to commit an offence falling within the foregoing provisions of the present article.

(5) The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article.

Id. at 254. Primarily because the participants could not agree on a definition of terrorism, only one state, India, ratified the Punishment Convention, and it never went into effect. *See* 1 L. GROSS, *supra* note 140, at 361.

145. 1 L. GROSS, *supra* note 140 at 361-62. The result was a Draft Code of Offenses Against the Peace and Security of Mankind. 9 UNGAOR, Supp. No. 9, U.N. Doc. A/2693 (1954) [hereinafter cited as Draft Code]. This Draft Code met the same fate as its League of Nations predecessor, it was not entered into force due to the

against the peace and security of mankind,"¹⁴⁶ the United Nations efforts in the area of international terrorism consisted of piecemeal responses to specific events. Thus, during the period from 1963 through 1971, the General Assembly adopted, and the United Nations ratified, three conventions condemning the hijacking of commercial aircraft.¹⁴⁷ Further attempts to prevent and define terrorism were undertaken in 1972 by the

failure of sufficient numbers of Member-States to ratify it. 1 L. Gross, *supra* note 140, at 362.

146. See Draft Code, *supra* note 145.

147. The first convention was the Tokyo Convention On Offences And Certain Other Acts Committed On Board Aircraft, Sept. 14, 1963, art. 1, § b, which condemned "acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board." 20 U.S.T. 2941, T.I.A.S. No. 6768, 204 U.N.T.S. 219 [hereinafter cited as Tokyo Convention]. The Tokyo Convention was followed in 1970 by the Hague Convention For The Suppression Of Unlawful Seizure Of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192 [hereinafter cited as Hague Convention]. The Hague Convention calls for the punishment of:

Any person who on board an aircraft in flight:

- (a) unlawfully, by force, or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any act, or
- (b) is an accomplice of a person who performs or attempts to perform any such act
commits an offense.

Id. art. 1.

Finally, the most recent United Nations agreement defining and outlawing hijacking is contained in the Montreal Sabotage 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. No. 7570 [hereinafter cited as Montreal Convention], which provides the following:

Article 1

1. Any person commits an offence if he unlawfully and intentionally:
 - (a) performs an act of violence against person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
 - (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

Id. art. 1.

United Nations.¹⁴⁸ In 1976, the United Nations engaged in its

148. In 1972, the United Nations General Assembly, created an *Ad Hoc* Special Committee in the Sixth (Legal) Committee, to prepare a study on 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 Changes, 27 U.N.GAOR, Annexes (Agenda Item 92), U.N. Doc. A/8791 (1972). The key phrase in this lengthy title is "study of the underlying causes." From its inception, the Special Committee was plagued by the inability of its members to establish any definition of terrorism, or any proposal for the control, the punishment, and elimination of terrorist activity without first agreeing on terrorism's underlying causes. For example,

In the opinion of the *Hungarian Representative*: The fundamental issues involve . . . [the] elimination of the underlying causes [of terrorism].

The *Japanese Representative* added: [All] terrorist acts which endang[er] or take innocent human lives . . . should be condemned . . . regardless of political or other motives

The *Representative of the Ukrainian SSR* stated: [We remain] firmly opposed to any attempt to use a campaign against international terrorism as a pretext for suppressing such national liberation movements.

The *Representative of the United States* said: [We can] not agree that work on measures to prevent terrorism must await identification and elimination of the causes of terrorism.

Report of the *Ad Hoc* Committee on International Terrorism, 32 U.N.GAOR (Supp. No. 37), U.N. Doc. A/32/37 (1977) (debates concerning the definition, punishment and prevention of terrorist activity), cited in I R. FRIEDLANDER, *supra* note 143, at 541-48 (1979).

Also in 1972, an *Ad Hoc* Special Committee was established in the Sixth (Legal) Committee to draft a Resolution On The Question Of Defining Aggression. See 27 U.N.GAOR, Annexes (Agenda Item 88), U.N. Doc. A/8929 (1972). During debate in 1972 on this draft resolution most of the representatives spoke of the importance of defining aggression, as it would "enhance the effectiveness of the United Nations as an instrument for the maintenance of peace, [and] provide . . . guidance and make the existence of acts of aggression easier to determine . . . eliminating the elements of indecision and subjectivity. . ." *Id.* at 3. However, some Member States undertook the traditional challenge by questioning "the feasibility of defining in a legal and abstract manner something which was constantly changing from the political viewpoint." *Id.* at 3-4.

The Report of the Special Committee on the Question of Defining Aggression, 29 U.N.GAOR, Annexes (Agenda Item 86) 2, U.N. Doc. A/9890 (1974), as introduced in 1974 in the General Assembly, contained the following definition:

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2 qualify as an act of aggression:

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State

Id. art. 3. Ostensibly, with its adoption of that provision, the United Nations defined and outlawed state-supported terrorism. Yet in statements made after the adoption

most recent attempt to come to an agreement on a definition of terrorism which would be effective in identifying and controlling terrorist crime.¹⁴⁹

of the resolution, many Member States made it clear that the United Nations had not agreed on a definition of terrorism:

Mr. Sanders (Guyana):

[I]t was impossible to produce a definition which would satisfy 138 States completely . . . the draft resolution . . . [is] extremely fragile. Almost every word [is] of significance and the result of really tough negotiations.

29 U.N.GAOR 6th Comm. (1471st Mtg.) at 42.

Mr. Kolesnik (U.S.S.R.):

In connexion with Article 3, [my] delegation [wishes] to emphasize that subparagraph (g) [can] not under any circumstances be interpreted as casting doubt on the legitimacy of struggles for national liberation or resistance movements.

29 U.N.GAOR 6th Comm. (1472nd Mtg.) at 44.

149. At the request of the Federal Republic of Germany, the United Nations General Assembly established an *Ad Hoc* Special Committee of the Sixth (Legal) Committee to draft an international convention concerning the taking of hostages. See 31 U.N.GAOR, Annexes (Agenda Item 123), U.N. Doc. A/31/242 (1976). This Committee met in New York in 1977, and in Geneva in 1978 and 1979. In 1979, the committee submitted a proposed convention which was approved and opened for signature on December 18, 1979. See Convention Against The Taking Of Hostages, 34 U.N.GAOR, Annexes (Agenda Item 113), U.N. Doc. A/34/819 (1979); *supra* note 8. The Hostage Convention reads in part:

The States Parties to this Convention

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

Recognizing, in particular, that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage-taking shall be either prosecuted or extradited,

Being Convinced that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person . . . in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or group of persons, to do or abstain from doing any act

Legal and historical scholars and philosophers have likewise been unable to agree on a single definition of terrorism.¹⁵⁰ The questions concerning how to define terrorism are interwoven with political theories regarding liberty, equality and the right to rebellion against oppressive government. Because states adhere to a multitude of political philosophies of varying shades, the search for identification and definition has

as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

- (a) Attempts to commit an act of hostage-taking, or
- (b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

Id. (emphasis added). By January 1, 1985, forty-eight States had ratified the Hostage Convention, including the United States on Dec. 7, 1984, and Egypt on Oct. 2, 1981. See Multilateral Treaties Deposited With The Secretary-General 562, U.N. Doc. ST/LEG/SER.E/3 (1985). In sum, the international community, from the early League of Nations resolutions in the 1930's to the reports and conventions drawn up and debated in the United Nations Sixth (Legal) Committee throughout the 1970's, has been unable to adequately define terrorism. As one scholar has noted:

Despite an elaborate quarter-century debate, the only aggression which the world community has been able to agree upon is that of armed force. In its definition of December 14, 1974, the General Assembly condemnation of aggression dealt exclusively with state parties. But what of the actions and activities of private armies and armed bands such as that of the P.L.O. and its incursion into Lebanon? What of terror-violence as a means of irregular warfare and the use of terror as an instrument of national or international policy? It has become abundantly clear from many United Nations resolutions, debates, and declarations "that groups fighting against colonial or racist regimes are permitted, indeed encouraged, to commit unconventional acts . . . of terrorism." According to radical revolutionist Ernesto Che Guevara, the first stage of a war of liberation is that "in which a small hunted force bites the enemy . . ." The way that "bite" is taken is the central issue connected with revolutionary terrorism. To date, that issue has not been resolved.

1 R. FRIEDLANDER, *supra* note 143, at 136-37 (citations omitted).

150. To one scholar, "terrorism is a *barometer of revolutionary success* . . . a weapon of the weak." B. CROZIER, *A THEORY OF CONFLICT* 129 (1974) (emphasis in original). To another, it is "a use of force prohibited by law, directed to a change in the policies, personnel or system of government, and hence also directed to changes in the existence of individuals in the society and perhaps other societies." T. HONDERICH, *POLITICAL VIOLENCE* 9 (1976) (emphasis omitted). Philosopher Hannah Arendt, writing on the meaning of revolution, spoke of "revolution whose aim is freedom," as well as that comprised of "rage of naked misfortune," which throughout history has surfaced only to "[sweep] away rather than [achieve] in a few years the work of several centuries." H. ARENDT, *ON REVOLUTION* 21, 107 (1963) (quoting Condorcet and Robespierre).

been difficult and largely unsuccessful. In the face of disagreement between states, several important questions must be answered before a common, universally recognized, all-inclusive definition can be arrived at.¹⁵¹

The development and acceptance of abduction as an extralegal alternative to extradition has been influenced by extradition treaty disputes and judicial recognition of state action. In the *Achille Lauro* incident, the absence of a universally recognized definition of terrorism also influenced an act of attempted abduction. Despite obligations arising under the Hostage Convention and procedures outlined in the United States-Egypt Extradition Treaty, the Government of Egypt failed to aid in the prosecution of four terrorists.¹⁵² In response to this decision by the Government of Egypt, the United States attempted to abduct the hijackers and bring them to the United States to stand trial.¹⁵³ While the effort was not successful, the international community has met similar historical efforts which have succeeded with acquiescence.¹⁵⁴

151. These questions include:

Must terrorism always be associated with rebellion and revolutionary violence?,

Where does legitimate revolutionary action end and terrorism begin?,

When is rebellion legally and morally permissible?,

Under what conditions can revolution be legitimized?,

Can revolutionary violence ever be justified?,

What is acceptable in the eyes of the law, and what is not?

1 R. FRIEDLANDER, *supra* note 143, at 43-44 (citations omitted). The international community is faced with an unanswered challenge whose answer is in greater demand with each passing day.

Not only is the credibility of international law at stake in the . . . debate on terrorism, but also the type of world in which we and our children are going to live . . . [f]ailure . . . could only encourage increased resort to anarchy, violence, and terror. It is hard to believe that responsible governments will, in the end, decide to run that risk.

Address by U.S. Ambassador W. Tapley Bennet, before the Sixth (Legal) Committee of the United Nations General Assembly, *quoted in* 1 R. FRIEDLANDER, *supra* note 143, at 151.

152. *See supra* notes 8, 149 and accompanying text (relevant Hostage Convention and United States-Egypt Extradition Treaty provisions).

153. *See supra* notes 21-40 and accompanying text (background of *Achille Lauro* hijacking); *supra*, text accompanying note 8 (factors which induced attempted abduction by United States).

154. *See Ker v. Illinois*, 119 U.S. 436 (1886) (warrant for arrest could not be properly served); *Ex Parte Soblen*, [1963] 2 Q.B. 243, *reported in* 8 BRIT. INT'L L. CASES 477 (1971) (plaintiff indicted for espionage in United States but fled to Israel where offense was not extraditable); *The Attorney General of the Government of Israel v.*

III. THE INTERNATIONAL COMMUNITY'S HISTORICAL ACQUIESCENCE TO ABDUCTION: THE CASE OF ADOLF EICHMANN

Previous instances of abduction include the cases *Ex Parte Soblen* in England,¹⁵⁵ *In re Argoud* in France,¹⁵⁶ and *The Attorney General of the Government of Israel v. Adolf Eichmann* in Israel.¹⁵⁷ In each instance, agents of one state, acting under color of law,¹⁵⁸ unlawfully abducted a fugitive while he was seeking refuge in another state, without the refuge state's consent.¹⁵⁹

In the most famous of these abduction cases, Adolf Eichmann was wanted by the Government of Israel for his participation in the "Final Solution,"¹⁶⁰ the last phase of Hitler's plan

Adolf Eichmann, 36 I.L.R. 5 (Israel, Dist. Ct. of Jerusalem, 1961) (previous requests for extradition denied by the Government of Argentina for political reasons). These are all examples of successful acts of abduction without serious international repercussion.

155. *Ex Parte Soblen*, [1963] 2 Q.B. 243, reported in 8 BRIT. INT'L L. CASES 477 (1971). Dr. Soblen, a United States citizen, was convicted in the United States of espionage. While free on bail, Dr. Soblen fled to Israel, where his extradition was denied because the United States-Israel extradition treaty did not recognize Soblen's crime as an extraditable offense. *Id.* at 477-78. Under a faulty deportation order, Dr. Soblen was put on board an airliner and sent to the United States. *Id.*

156. *Re Argoud*, 38 *Juris Classeur Periodique* 13, 806 (1964). Argoud was the leader of a military revolt against President Charles De Gaulle of France. *Id.* Argoud was kidnapped from Munich, Germany, in February, 1963, and later sentenced to life imprisonment. *Id.*; see also 6 M.C. BASSIOUNI, *supra* note 5, at V § 2-3 n.2 (background of Argoud abduction).

157. *The Attorney General of the Government Israel v. Adolf Eichmann*, 36 I.L.R. 5 (Israel, Dist. Ct. of Jerusalem, 1961); see also *infra* notes 159-77 and accompanying text (background on Eichmann kidnapping, trial, and hanging).

158. See 6 M.C. BASSIOUNI, *supra* note 5, at V § 2-7, 8.

For the abduction to be unlawful under international law, the abductors must be public agents or other persons acting under color of law (not bona fide volunteers) of a state other than the one where the individual was present at the time of seizure and who acted without the consent of that state. The definition relies on the notion that international law is designed to . . . restrict impermissible state conduct.

Id. In the Achille Lauro affair, the attempted abduction was made by members of the United States armed forces, clearly agents of the state. See *supra* text accompanying note 4 (account of the attempt by United States armed forces to take the hijackers to the United States to stand trial).

159. See *supra* note 153 and accompanying text (accounts of celebrated international acts of abduction).

160. For background on Hitler's "Final Solution," see LORD RUSSELL, *supra* note 81, at 27-33. Eichmann and other Nazi leaders decided upon the "final solution of the Jewish problem" at the notorious Wannsee Conference in January 1942 in Berlin, Germany. See Lasok, *supra* note 84, at 358; LORD RUSSELL, *supra* note 81, at 27-31.

to exterminate the Jewish race. Expecting that Argentina would deny Israel's request to extradite Eichmann, Israeli agents successfully abducted him on the streets of Buenos Aires, Argentina, on May 11, 1960.¹⁶¹ Eichmann was spirited back to Jerusalem for interrogation and trial,¹⁶² which began on April 11, 1961.¹⁶³ On May 31, 1962 Israel hanged Eichmann for "war crimes," "crimes against the Jewish people," and "crimes against humanity."¹⁶⁴ The reaction within the international community to the successful abduction, trial, and execution was generally favorable.¹⁶⁵ Argentina filed a protest with the United Nations Security Council.¹⁶⁶ The Security Council passed a mild resolution condemning the abduction,¹⁶⁷ but there was little support at the United Nations for Argentina's claim that the abduction seriously disrupted international peace and security.¹⁶⁸ This mild response may be explained by the heinous nature of Eichmann's crimes, as well as Israel's motives for pursuing the extralegal act.

The decision was made there to pursue a systematic program to exterminate 11 million European Jews. *Id.*

161. See EICHMANN INTERROGATED: TRANSCRIPTS FROM THE ARCHIVES OF THE ISRAELI POLICE XIII (J. van Lang ed., 1983) (transcript of Eichmann's interrogation, edited in collaboration with Claus Sybill). The kidnapping of Eichmann was inspired when Nazi-hunter Simon Wisenthal and the Israeli Government failed to convince Argentina to extradite another Nazi war criminal, Dr. Josef Mengele. The Argentine Government denied the request on the grounds that: 1) Mengele's address was incorrect; 2) his crimes were of a political nature. LORD RUSSELL, *supra* note 81, at XXIV-XXV.

162. Eichmann "was found by Israeli security services and was bundled aboard the [plane] which had brought [Israeli] Cabinet Member Abba Eban to Argentina." J. Comer, *supra* note 85, at 491-92 (1960) (quoting Israeli Prime Minister David Ben Gurion). Ironically, Eichmann was disguised as an elderly Jewish man on a last visit to his homeland before his impending death. *Id.*

163. LORD RUSSELL, *supra* note 81, at XVI.

164. *Id.* at 5-6. *But cf.* Lasok, *supra* note 84, at 356-57 (1962) (criticism of application of "crimes against humanity" charge to Eichmann).

165. LORD RUSSELL, *supra* note 81, at XV. The main opposition was, not surprisingly, from the Arab states. *Id.* The United States also opposed the Israeli action. *Id.*

166. Letter from the Argentine Government to the United Nations Security Council, 15 SCOR, Supp. (Apr-Jun 1960), at 24, U.N. Doc. s/4334 (1960).

167. 15 SCOR, Supp. (Apr-Jun 1960), at 34, U.N. Doc. s/4349 (1960).

168. See LORD RUSSELL, *supra* note 81, at XIV-XV. The resolution, while noting that it should not be interpreted as condoning Eichmann's crimes, declared that such acts [abduction] that affected the sovereignty of a state "might, if repeated, endanger international peace and security." It further requested that Israel make appropriate reparations. *Id.* Argentina never specified the nature of the reparations, and eventually Argentina declared the Israeli ambassador to Argentina *persona non grata*, and asked him to leave the country. *Id.*

Apart from the historical rationale for abduction, that all legal methods of pursuing extradition through normal channels had failed,¹⁶⁹ Israel relied on the nature of Eichmann's crimes to justify its action.¹⁷⁰ Not to be confused with the universality theory of jurisdiction,¹⁷¹ which justifies a request for extradition when the fugitive has committed an international crime against humanity,¹⁷² Israel's defense in the *Eichmann* case relied on the international nature of Eichmann's crimes to justify the use of abduction.¹⁷³ The Israeli Prime Minister, in a statement released after Eichmann's abduction, stated that "very few people anywhere can fail to understand . . . [our] . . . feelings and appreciate the *supreme moral validity* of [our] act . . . [nor fail to] appreciate the . . . tremendous moral and emotional force [that] underl[ies] the determination to find the chief murderer and to bring him . . . to Israel."¹⁷⁴ Later, during United Nations consideration of the matter, Israel's Minister of Foreign Affairs stated that she hoped "this violation . . . would be seen in the light of the *exceptional and unique character of the crimes* attributed to Eichmann."¹⁷⁵

The discussion of legal arguments supporting acts of abduction in the *Eichmann* case is relevant to this analysis of the *Achille Lauro* incident because the abduction of Adolf Eichmann evolved out of many of the same circumstances which prompted the United States to attempt the abduction of the *Achille Lauro* hijackers. Extradition was not a viable means of bringing Eichmann to justice.¹⁷⁶ Israel had a jurisdictional claim based upon acts committed against its citizens.¹⁷⁷ Most

169. 6 M.C. BASSIOUNI, *supra* note 5, at V § 1-3.

170. See Letter From Israeli Prime Minister David Ben Gurion To Argentine President Frondizi (June 3, 1960), *quoted in* LORD RUSSELL, *supra* note 81, at XI.

171. See *supra* note 63 and accompanying text (universality theory of jurisdiction).

172. *Id.*

173. See LORD RUSSELL, *supra* note 81, at XI (letter from Israeli Government detailing motives behind kidnapping of Eichmann).

174. See *supra* note 170, at XI (emphasis added).

175. Statement of Israeli Foreign Minister Golda Meir before the United Nations General Assembly, *quoted in* LORD RUSSELL, *supra* note 81, at XII (emphasis added).

176. See *supra* text accompanying note 161 (Argentina's continuous refusal to extradite Josef Mengele led Israel to believe that the same result would occur regarding Eichmann).

177. See *supra* note 64 and accompanying text (Israel does recognize the passive

importantly, the nature of Eichmann's offenses created overriding moral considerations.¹⁷⁸ In the *Achille Lauro* affair, the United States' right to request extradition was not honored by Egypt.¹⁷⁹ The United States had the right to assert a jurisdictional claim based upon the act of hostage-taking against United States citizens.¹⁸⁰ Furthermore, the nature of the Palestinians act, hijacking an innocent cruise ship and killing a defenseless invalid, undoubtedly amounted to a crime of immoral proportions.

After a rash of terrorist attacks all over the world between 1979 and 1985,¹⁸¹ many against United States citizens,¹⁸² the United States Government had announced a policy of direct response to terrorism.¹⁸³ Thus, it is logical to conclude that the United States acted to deter terrorism and bring terrorists,

personality theory); cf. *supra* note 60 and accompanying text (passive personality theory of jurisdiction).

178. See *supra* notes 170, 173-74 (statements by Israeli officials regarding the abduction of Eichmann).

179. See *supra* note 8, 149 and accompanying text (Egypt's obligations under the United States-Egypt Extradition Treaty and the Hostage Convention).

180. See *supra* notes 8, 149 and accompanying text (general provisions of the Hostage Convention).

181. Between 1979 and 1985, the most notable terrorist acts have been: 1) the seizure of the United States Embassy in Tehran where Iranians held Embassy personnel for 444 days in 1979 and 1980; 2) the burning of the United States Embassy in Pakistan in 1981; 3) the bombing of the United States Marine compound and several attacks against the Multinational Peace-Keeping Force in Beirut in 1984; and 4) the hijacking of TWA Flight 874 on June 14, 1985. See Congressional Research Service, Issue Brief on International Terrorism at 1 (Dec. 13, 1985) [hereinafter cited as CRS Issue Brief] (on file at the offices of the *Fordham International Law Journal*).

182. According to a 1981 study by the United States Central Intelligence Agency:

U.S. businessmen and diplomats have been the primary targets [of international terrorists] with at least 38% of all events involving U.S. citizens. In 1980, 112 terrorist attacks were directed against U.S. diplomats . . . [o]ver 30% of terrorist incidents took place in Europe with 20% in Latin America and 20% in the Middle East.

CRS Issue Brief, *supra* note 181, at 4. By 1985, the number of terrorist attacks against United States citizens had increased dramatically. *Id.*

183. At a new conference on June 18, 1985 following the hijacking of TWA Flight 847, United States President Ronald Reagan announced:

[T]he United States is tonight a prisoner . . . [I] am directing that the following steps be taken:

I have directed the Secretary of transportation, in cooperation with the Secretary of State, to explore immediately an expansion of our armed sky

who might otherwise have escaped to justice.¹⁸⁴

A major difficulty in deterring terrorism and bringing terrorists to justice lies in making the distinction between actions in the furtherance of legitimate national liberation movements and individual and group acts aimed merely at indiscriminate killing and violence.¹⁸⁵ States have acknowledged, and the United Nations has recognized, that some forms of violence must be accepted so that oppressed peoples can make progres-

marshal program aboard international flights of U.S. air carriers for better protection of passengers.

I have directed the Secretary of State to issue an immediate travel advisory . . .

I've asked for a full explanation of the events surrounding the takeover of the aircraft . . .

I'm calling upon all allied and friendly governments to redouble their efforts to improve airport security and take other measures to prevent the hijacking of aircraft . . .

America will never make concessions to terrorists. To do so would only invite more terrorism.

Nor will we ask nor pressure any other government to do so. Once we head down that path, there'll be no end to it. No end to the suffering of innocent people; no end to the bloody ransom all civilized nations must pay.

President's News Conference on Foreign and Domestic Policy, N.Y. Times, Jun. 19, 1985, at A18, col. 1 (emphasis added); see also H.R. Res. 294, 99th Cong., 1st Sess. (1985) (urging Reagan Administration to take every appropriate measure to combat terrorism); CRS Issue Brief, *supra* note 181, at 2 (Reagan Administration policy goals regarding international terrorism); cf. *A Shadow War Against Terror*, N.Y. Times, Nov. 26, 1985, at A1, col. 1 (detailed history of terrorist attacks against United States citizens in 1985); Merry, *Report Urges Boost in U.S. Measures Against Terrorism*, Wall St. J., Mar. 7, 1986, at 46, col. 2 (details of government purposes for anti-terrorism program).

184. See *supra* note 183 and accompanying text (United States policy regarding terrorism).

185. See *supra* text accompanying note 4 (historical debate regarding terrorism and the need to protect legitimate national liberation movements); CRS Issue Brief, *supra* note 181, at 4-8. "There is disagreement . . . about . . . the dividing line between support for terrorism and support for 'national liberation movements.'" *Id.* at 4-5; cf. Jenkins, *The U.S. Response to Terrorism: A Policy Dilemma*, Armed Forces Journal International, April 1985, at 28-31 (discussion of state-supported terrorism); Friedman, *Armed and Dangerous; A Mideast Consumed by the Politics of Revenge*, N.Y. Times, Jan. 5, 1986, § 4, at 1, col. 1.

[A]n always-present nihilistic strand in Palestinian politics is coming to the fore, personified by the terrorist leader Abu Nidal . . . Abu Nidal is different. He has no illusions about liberating Palestine . . . his is the politics of revenge . . . [he] has been little more than a Mafia-style "hit man" for Arab regimes and Palestinian extremists . . . violence is an end in itself. Abu Nidal has no known ideology or plan of action towards a realizable goal for the Palestinian people . . . Abu Nidal and his followers believe the rules and limits of civilization do not apply to them.

Id.

sive changes in their government.¹⁸⁶ No state has publicly endorsed indiscriminate violence,¹⁸⁷ and nearly every state has agreed that the elimination of terrorism is in the best interest of the world community.¹⁸⁸ In the *Achille Lauro* incident, involving the kidnapping of 400 innocent passengers and the unprovoked murder of an invalid,¹⁸⁹ it can be argued that the attempted act of abduction by the United States was justified.

The argument that abduction is an acceptable action in extraordinary situations has critics.¹⁹⁰ After reviewing the motivations involved in the pursuit of extralegal alternatives to extradition, one scholar has asked whether abduction is always the solution when extradition fails.¹⁹¹ Another solution does exist, i.e., making the laws of extradition more efficient rather than allowing the abandonment of voluntary observance of international legal processes. Frustration at the failure to achieve extradition through normal channels, and a desire to bring perpetrators of heinous international crimes to justice at any cost, is a morally legitimate notion. However unwarranted future violations may arise if states are placed in a position to benefit from the use abduction.¹⁹²

IV. CRITICISM OF ABDUCTION AS AN EXTRALEGAL ALTERNATIVE TO EXTRADITION

Abduction technically violates international sovereignty,¹⁹³ territorial integrity,¹⁹⁴ and internationally protected

186. See *supra* note 149 and accompanying text (historical debate regarding terrorism).

187. *Id.*

188. *Id.*

189. See *supra* notes 21-40 and accompanying text (background of *Achille Lauro* incident).

190. See, e.g., Lasok, *supra* note 84, at 372-74; Green, *supra* note 17, at 507-11; Comer, *supra* note 85, at 509-11 (contemporary articles critical of Eichmann abduction); see also 6 M.C. BASSIOUNI, *supra* note 5, at V § 2-9 (list of major scholarly works opposed to abduction and the principle of *mala captus bene detentus*).

191. 6 M.C. BASSIOUNI, *supra* note 5, at V § 1-3.

192. Unwarranted violations would include situations when states engaged in acts of abduction based on false or dubious legal or factual grounds, knowing that such acts will go unpunished. See, e.g., Comer, *supra* note 85, at 509 (historical hypotheticals); *supra* text accompanying note 1 (failed attempts of abduction by Israel in 1973 and 1986).

193. See *supra* note 6 and accompanying text (right of sovereignty).

194. *Id.* (relationship between sovereignty and territorial integrity).

due process rights.¹⁹⁵ Acts of abduction also violate international legal process.¹⁹⁶ Relations among states become destabilized when states resort to acts outside of treaties, conventions, and those legal rules merely respected as time-honored precepts.¹⁹⁷ But more than that, because adherence to international laws and processes is voluntary,¹⁹⁸ any encouragement of action outside of formalized legal channels threatens the very idea of organized international relations.¹⁹⁹

Several destabilizing world events stemmed from the *Achille Lauro* hijacking.²⁰⁰ Egypt's President called the diversion by United States fighters an act of "piracy,"²⁰¹ and thousands of Egyptians demonstrated in the streets, shouting slogans critical of the United States.²⁰² Other Arab states²⁰³ and the PLO considered the attempted act of abduction detrimental to Middle East peace efforts.²⁰⁴ The Italian Government fell, and United States relations with Italy, Egypt and Yugoslavia were strained a short time later when those countries permitted the mastermind of the hijacking to escape.²⁰⁵

Abduction not only presages further international conflict, but it also violates the basic framework for international rela-

195. See *supra* note 7 and accompanying text (international right of legal process).

196. See *supra* note 190 (criticism of abduction).

197. *Id.*

198. W. LEVI, *supra* note 6, at 16-17.

199. *Id.* "International law . . . commands support from states to the extent that they perceive it at least not to be against their welfare." *Id.*

200. See *infra* notes 202-05 and accompanying text (destabilizing world events following the *Achille Lauro* affair).

201. *Getting Even*, Newsweek, Oct. 21, 1985, at 31.

202. *Id.* at 32.

203. Jordan and Syria publicly condemned the hijacking. See *Picking Up the Pace*, Time, Nov. 4, 1985, at 34-35; *Arafat's Ship of Fools*, The Economist, Oct. 19-25, 1985, at 43.

204. See *Picking Up the Pace*, Newsweek, Nov. 4, 1985, at 34; *The Price of Success*, Time, Oct. 28, 1985, at 28-29.

205. See Dionne, *Italian Coalition Falls Apart Over The Achille Lauro Affair*, N.Y. Times, Oct. 17, 1985, at A1, col. 5 (Italian Government falls over mishandling of Abbas); *Getting Even*, Newsweek, Oct. 21, 1985, at 31 (rift between United States, Italy, and Yugoslavia over Abbas). After the EgyptAir Boeing 737 landed at Sigonella, Italy, and United States and Italian forces boarded the plane, they were surprised to find Abul Abbas on board. Abbas, a member of the PLO Executive Committee, had been in constant communication with the hijackers immediately after the seizure of the *Achille Lauro*. See *Getting Even*, Newsweek, Oct. 21, 1985, at 25. Abbas later "escaped" to Yugoslavia disguised in an EgyptAir uniform. *Id.* at 26.

tions as embodied in a number of important United Nations agreements: 1) the U.N. Charter,²⁰⁶ 2) the Statute of the International Court of Justice²⁰⁷ (ICJ), 3) the Universal Declaration of Human Rights,²⁰⁸ and, 4) the Declaration of International Law Concerning Friendly Relations and Co-Operation Among States.²⁰⁹ The principles regarding international cooperation embodied in these documents, arrived at through international consensus, are intended to guide just and successful international relations.²¹⁰

The rules embodied in these agreements provide the general framework for all international relations.²¹¹ While states

206. U.N. CHARTER.

207. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE.

208. 3 U.N.GAOR, Annexes (Agenda Item 58), U.N. Doc. A/3/217 (1948) [hereinafter cited as Universal Declaration of Human Rights].

209. Declaration on Principles, *supra* note 6.

210. See J.L. BRIERLY, *THE LAW OF NATIONS* 56 (1963). One of the sources of modern international law is "[i]nternational conventions, whether general or particular, establishing rules expressly recognized by the contesting states." *Id.* (quoting article 38 of the STATUTE OF THE INTERNATIONAL COURT OF JUSTICE); U.N. CHARTER art. 14. "[T]he General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations." *Id.*

211. U.N. CHARTER preamble. The preamble of the Charter of the United Nations states that the principal aims of that body are to "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. . . ." *Id.* Countries involved in disputes over treaty and convention obligations are encouraged to seek first a solution by adopting methods of negotiation, inquiry, mediation, conciliation, arbitration, or judicial settlement. *Id.*

The Statute of the International Court of Justice similarly embodies the notion that all conflicts between states should be settled peacefully and according to rules of law. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 38. By agreeing to pursue all legal ends through traditional legal processes, states are deterred from resorting to extralegal actions except as a last, unfortunate resort. Further, by consenting to the prescribed international legal processes, states maintain the foundation of international law. See W. LEVI, *supra* note 6, at 16-17. The Permanent Court of International Justice, expressed the importance of state compliance with international legal processes in the *Lotus* case. The Court said:

The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims.

The *Lotus* Case (Fr. v. Turk.), 1927 P.C.I.J., ser. A, No. 10, at 18 (Judgment of Sept. 7), cited in 2 M.O. HUDSON, *WORLD COURT REPORTS 1927-1932*, at 35 (1935). This notion is similarly reflected in the roman law maxims, *nunquam decurritur ad extraordinarium sed ubi deficit ordinarium* or "never resort to the extraordinary until the

obey international laws and processes voluntarily, the international community requires predictable behavior by states in order to maintain peaceful coexistence and continued survival.²¹² Thus, it is crucial that states are not placed in a position, created out of the historical acquiescence to abduction, in which extralegal actions are encouraged. The political considerations which lead states to avoid convention and treaty obligations must be addressed. Rather than allowing extralegal acts of abduction to become the norm, extradition must be made less political, more defined and thus, more effective.

The goal of modern international law is to enable states to live together despite varying, and sometimes opposing, political views.²¹³ To be consistent with this goal, a plan to eliminate terrorism must be based upon universal norms that do not depend on any particular, narrowly based political ideology.²¹⁴

V. STRENGTHENING EXTRADITION LAWS

A. *The Proposal*

Historically, traditional legal processes have failed to con-

ordinary fails," and *ex injuria ius non oritur* or "violations of law should not ripen into lawful results." 6 M.C. BASSIOUNI, *supra* note 5, at V §§ 5-1, 5-2.

The Declaration On Principles, *supra* note 6, is essentially a consensus agreement among Member States of the United Nations that elaborates on the meaning of the principles of the United Nations Charter. *Id.* preamble. The Declaration on Principles proclaims that every state shall settle its international disputes with other states by peaceful means, in such a manner that international peace, security, and justice are not endangered. *Id.* art. I. Each state must respect the sovereignty and territorial integrity of every other. *Id.*

The Universal Declaration of Human Rights, *supra* note 208, provides that everyone is entitled to a fair public hearing by independent and impartial tribunals. *Id.* art. 10. The Universal Declaration of Human Rights, *supra* note 207, further provides that no person shall be subject to arbitrary arrest. *Id.* art. 9.

212. See W. LEVI, *supra* note 6, at 16-17.

213. See R. HIGGINS, *CONFLICTS OF INTERESTS, INTERNATIONAL LAW IN A DIVIDED WORLD* 101 (1965). The author states that:

[T]he very essence of modern international law is the ability of states to live together in spite of fundamental differences . . . [o]pposing political philosophies have resulted in . . . damaging tensions and if there is to be any generally accepted conduct of behaviour then international law must provide universal norms which do not depend for their existence on any particular, narrowly based, political ideology. The law of nations applies to both dictatorships and democracies, to communism and capitalism.

Id.

214. *Id.*

trol terrorism because of the increasing politicization of international legal processes.²¹⁵ This politicization has allowed nations to manipulate international legal processes to suit national political exigencies.²¹⁶ As the debates at the United Nations Draft Convention Against the Taking of Hostages illustrates,²¹⁷ the political nature of terrorism, and the international community's inability to define terrorist activity, have prevented states from creating effective methods of controlling the crime.²¹⁸ More recently, the Yugoslavian Government reiterated the position of the Eastern European states that any response to terrorism must be preceded by a study of its causes.²¹⁹

These two examples support the conclusion that "states value the international [community's] welfare only in proportion to the contribution of that [community] to their own welfare."²²⁰ This conclusion, together with the fear by states sympathetic to the underlying causes of terrorism that fugitives

215. See *supra* note 213 and accompanying text.

216. See C. DE VISSCHER, *THEORY AND REALITY IN PUBLIC INTERNATIONAL LAW* 70-75 (1968). The author states that "[e]ntrenched in its formal positions, doctrine long evaded direct confrontation of international law with politics." *Id.* at 70. However, he states further:

The prime necessities of coexistence and reciprocity gradually introduced among States the practice of *modus vivendi* which, in the normal course of events, coordinate and reconcile their interests sufficiently for them to avoid taking political positions too frequently. These necessities create solidarities that are translated into common value judgments, develop a certain discipline, and promote the formation of legal rules. This legal integration, product of history, is governed by factors . . . [i]t is limited to goods or values which governments have been brought by the exigencies of their mutual relation to regard as objects of collaboration . . . [i]nterests that governments hold to be intimately connected with the preservation or development of state power must be classified as very generally refractory to legal integration. Treaties that touch these interests . . . spring from momentary converges of policy

Id. at 74.

217. See *supra* note 149 and accompanying text (text of debates on the Draft Hostage Convention).

218. See *supra* text accompanying notes 140-51 (brief history of international agreements relating to terrorism).

219. See *The Week*, National Review, Jan. 31, 1986, at 19-20. In response to the assertion of the Yugoslavian Government, United States Secretary of State George Schultz said, "[h]ijacking the Italian ship, murdering an American, torturing and holding a whole bunch of other Americans is not justified by any cause I know of." *Id.*

220. W. LEVI, *supra* note 6, at 16.

would be subject to a politically biased jurisdiction,²²¹ lead to two conclusions. The first is that any attempt to control terrorism based upon the traditional extradition approach would be fruitless. The existing international legal processes governing extradition are not geared to incidents involving a multitude of differing state interests.²²² When states' opposing interests have come into conflict, and it has appeared that a fugitive might escape from justice, states have pursued abduction as an extralegal alternative to extradition.²²³

The second conclusion is that successful international relations rely upon the philosophical and pragmatic notion that certain rules must exist and be respectfully obeyed.²²⁴ Despite the international community's willingness to allow extralegal acts in extraordinary situations,²²⁵ states must be able to pursue measures necessary to eliminate terrorism without casting aside legal rules and principles which are equally important to international peace and stability.

This Note proposes a five step plan towards eliminating the need for states to pursue abduction as an alternative to extradition. At the same time this proposal ensures states great flexibility in eliminating terrorist violence.

The first step involves applying by analogy international laws of war to the issue of international terrorism. This step would seek "to establish some minimal standards of conduct between . . . parties who have resorted to violence to settle their problems."²²⁶ Applying the international laws of war embodied in the Geneva Conventions of 1949²²⁷ to terrorists would allow states to prosecute, under international law rather than domestic law, terrorist acts that victimize certain catego-

221. See Tharp, Jr., *The Laws of War as a Potential Legal Regime for the Control of Terrorist Activities*, in *INTERNATIONAL TERRORISM* 81 (A. Buckley, D. Olson eds. 1980). States "[fear] that persons would not receive fair treatment in [a] foreign jurisdiction either because of nationalistic biases or judicial processes which were considered not to be of the same standard. . . ." *Id.* at 80.

222. See W. LEVI, *supra* note 6, at 16; see also *supra* notes 213-16 and accompanying text (interrelationship between law and politics).

223. See *supra* note 154 (historical instances of abduction).

224. See W. LEVI, *supra* note 6, at 16-17; see also *supra* note 189 and accompanying text (criticism of abduction).

225. See *supra* note 154 (historical cases of successful abduction).

226. Tharp, Jr., *supra* note 221, at 83.

227. Geneva Convention Relative to Prisoners of War, *supra* note 9; Geneva Convention Relative to Civilians, *supra* note 9.

ries of persons and institutions. This proposal would grant prisoner of war status to captured combatants.²²⁸ If found guilty of violating the laws, as would be most guerilla-terrorists,²²⁹ those captured would be turned over to an international judicial authority.²³⁰ Non-combatants and innocent institutions such as schools and hospitals would be accorded a privileged status.²³¹ Certain violent acts of particular cruelty and inhumanity would be banned.²³² Although the application of Geneva Convention rules to terrorist acts could be problematic,²³³ this step would provide the necessary framework for determining when and where terrorist acts have occurred.

In the second step, acts of violence that violate the protective feature of the laws of war would provide a clear definition of terrorism, separating rational acts committed in the pursuit of legitimate aims and against legitimate targets, from indiscriminate killing for the sake of publicizing a political cause. This Note proposes the following definitions of terrorism and terrorists, based upon an application of the laws of war of the Geneva Conventions: 1) *Terrorism* is any act of planned or indiscriminate violence directed against internationally protected public officials, such as ambassadors, innocent civilians and privileged institutions, schools, the International Red Cross, and United Nations Peacekeeping Forces; 2) *Terrorists* are any individuals, whether or not associated with any political or religious group, recognized or unrecognized, who engage

228. See Geneva Convention Relative to Prisoners of War, *supra* note 9, art. 4; see also Tharp, Jr., *supra* note 221, at 83 (support for application of Geneva Conventions to terrorists).

229. See Geneva Convention Relative to Prisoners of War, *supra* note 9, art. 5; see also Tharp, Jr., *supra* note 221, at 83 (support for guerilla-terrorist exception).

230. Geneva Convention Relative to Prisoners of War, *supra* note 9, at art. 5. The idea of an international judicial authority with jurisdiction over international crimes is not a new one. See *supra* notes 143-50 and accompanying text (League of Nations proposal for an international court, attempts by United Nations to outlaw terrorism); Draft Statute for an International Criminal Court, 9 UNGAOR (Supp. 12), U.N. Doc. A/2645, arts. 1-54 (1954); see also 7 M.C. BASSIOUNI, *supra* note 5, at VI § 6-8 (world criminal tribunal not a new idea); see generally B. FERENCZ, AN INTERNATIONAL CRIMINAL COURT: A STEP TOWARD WORLD PEACE (1980).

231. See Geneva Convention Relative to Civilians, *supra* note 9, art. 3; see also Tharp, Jr., *supra* note 221, at 83.

232. See Geneva Convention Relative to Civilians, *supra* note 9, art. 3(I); see also Tharp, Jr., *supra* note 221, at 84.

233. See Tharp, Jr., *supra* note 221, at 84.

in acts of terrorism.²³⁴

Applying the laws of war to terrorist activities will not only afford protection to legitimate groups that employ political violence, but also will minimize violence directed at "noncombatants" by terrorists whose only aim is to publicize their political cause through indiscriminate violence. Creating a universally recognized definition of terrorism and terrorists will clarify what activity is outlawed by international laws against terrorism, and at the same time, provide a loophole for states that are reluctant to identify terrorist groups for political reasons.²³⁵

The third step of this proposal would involve the construction of an international agreement in which acts of terrorism, as defined by step two of this proposal, would be added to existing extradition treaties as a crime for which extradition is always warranted.²³⁶ No state could fall back on the political crimes exception clause in an extradition treaty as an excuse for failing to extradite a fugitive for a terrorist crime.

The fourth step is the creation of a permanent international tribunal with mandatory jurisdiction over terrorist crimes. This tribunal would loosely parallel the tribunal at Nuremburg.²³⁷ Such a tribunal was proposed as early as 1937

234. See Geneva Convention Relative to Prisoners of War, *supra* note 9, arts. 3, 5; Geneva Convention Relative to Civilians, *supra* note 9, art. 3. Political violence has always existed. 1 R. FRIEDLANDER, *supra* note 143, at 6. For example, the assassination of Julius Caesar on the Ides of March in 44 B.C., the Jacobin Reign of Terror in 1789, and the assassination of Archduke Franz Ferdinand at Sarajevo in 1914, all could be considered examples of such violence. *Id.* at 6-7. Yet, in recent years the nature of terrorist activity has changed.

Violence, and with it terror, goes back beyond the dawn of history; contemporary violence stands on the shoulders of earlier fanatics. Terrorism, however, belongs to our modern, sophisticated technological age . . . modern technology has qualitatively changed the nature of terrorism . . . it has also enabled tiny groups to wield enormous powers of destruction.

INTERNATIONAL TERRORISM IN THE CONTEMPORARY WORLD 1 (M.H. Livingston ed., 1978) (emphasis in original). *But see* 1 R. FRIEDLANDER, *supra* note 143, at 38 (support for the notion that terrorism is a problem of identification and control); *cf.* Note, *Damn The Torpedoes!: International Standards Regarding the Use of Automatic Submarine Mines*, 8 FORDHAM INT'L L.J. 286, 287 (1985) (arguing that there is a problem in applying laws and rules to terrorist groups that are not officially recognized).

235. *Cf. supra* notes 8, 29-33, 95 and accompanying text (political considerations which forced Egypt to release the hijacker of the *Achille Lauro*).

236. *Cf. supra* note 121 and accompanying text (definition and explanation of political crimes exception clauses).

237. *Cf. supra* note 84 (Nuremburg War Crimes Trials).

in the League of Nations.²³⁸ The United Nations has also supported the creation of an international tribunal to deal with crimes "affecting a diversity of nations, men and interests," which "could not be dealt with by national courts defining the interests of one particular people or nation."²³⁹ No proposal has yet been adopted, despite the good intentions of many states, because sovereign states have been reluctant to relinquish this portion of their sovereignty.²⁴⁰ In light of the recent dangerous trend of international terrorist violence,²⁴¹ unlike that faced by the international community earlier in this century in both scope and affect,²⁴² the international community is faced with a pressing need to make individual political compromises for the benefit of all states.

The fifth and final step in this proposal would add the newly-defined crime of "terrorism" to the existing list of "offenses against humanity."²⁴³ Jurisdiction to try suspects accused of such crimes under international law would thus be universal.²⁴⁴ This concurrent jurisdiction would provide states with great flexibility in the pursuit of terrorists, as they are defined by international agreement, enforced by an objective international judicial body, and without attendant political problems.

B. *Applying The Proposal To The Achille Lauro Affair*

The facts of the *Achille Lauro* incident can serve to illustrate the operation of the five-step proposal. Under step one the hijacking would have been violative of the privileged status of non-combatants, and the act of murdering an invalid in unprovoked cruelty would have been considered the type of inhu-

238. See *supra* note 144 and accompanying text (1937 League of Nations proposal for an international criminal tribunal).

239. I L. Gross, *supra* note 140, at 363 (quoting former United Nations Secretary-General U Thant).

240. See *supra* note 221 and accompanying text (no state has yet adopted this proposal because it would infringe upon their sovereignty).

241. See *supra* note 181 and accompanying text (notable acts of terrorist violence for the period 1979-1985).

242. See *supra* note 234 and accompanying text (the changing face of terrorism throughout history).

243. 7 M.C. BASSIOUNI, *supra* note 5, at VI § 6-1.

244. See *supra* note 63 and accompanying text (universality theory of jurisdiction).

mane violence banned under the rules of war.²⁴⁵ Under step two, because the action by the hijackers violates the laws of war, and regardless of their membership in the PLO, the *Achille Lauro* hijackers would be termed terrorists. Under the third step of the proposal, the hijackers would have been subject to either extradition or prosecution in any state establishing jurisdiction over them. If Egypt could not or would not try the hijackers, it would have had the option of turning them over to an international judicial authority for prosecution under step four of the proposal. Finally, under step five, any state would have had the right and duty to assert jurisdiction over the hijackers, including Italy, Egypt, the United States or Yugoslavia. In effect, the hijackers could not escape the threat of an international warrant.

CONCLUSION

The failure of traditional legal processes to adequately stem the rising tide of international terrorism induced the United States to order the interception of an Egyptian airliner and attempt to abduct the hijackers of the *Achille Lauro*. Historically states have resorted to acts of abduction when conflicts involving national political interests have arisen.²⁴⁶ The national interests of two allies, the United States and Egypt, were at odds in the *Achille Lauro* incident, despite both countries' desire to fight international terrorism.²⁴⁷ To avoid future acts of abduction under similar circumstances, the international community must create a universal definition of terrorism, apply it fairly through an objective framework, and oversee its enforcement through an international judicial body. The threat of terrorist activity is evident, and the future threat imminent.²⁴⁸

245. See *supra* notes 21-40 and accompanying text (details of *Achille Lauro* incident).

246. See *supra* note 153 (historical instances of abduction).

247. See *supra* notes 8, 149 and accompanying text (international agreements outlawing or condemning terrorism to which both Egypt and the United States are signatories).

248. See *supra* note 181-82 and accompanying text (chronology of major terrorist incidents from 1979 to 1985); see also *Hostage-Holders Make New Threat*, N.Y. Times, Jan. 1, 1986, at A5, col. 6 (declaration by Islamic Holy War that 1986 will be a year of continued acts of sabotage, kidnapping, and attacks in the Middle East). Modern politicians and diplomats might benefit from a re-examination of the confrontation between the United States and Barbary Coast pirates in the late 18th and early 19th

The international community must now work together to protect the innocent peoples of the world and the existence of all civilized societies.

Andrew L. Liput

century period. After continual inaction and much payment of tribute on the part of the United States Congress to Moroccan pirates kidnapping United States vessels and seamen, Thomas Jefferson successfully persuaded the United States Government to take affirmative action and end the piratical reign of terror. On the shores of Tripoli, United States Marines and hired mercenaries together forced the reigning bashaw to stop terrorist actions against United States ships and seaman. See *Shades of 1805*, *The Economist*, Mar. 29-Apr. 4, 1986, at 26; Sorkin, *The Piratical Ensigns of Mahomet*, *National Review*, Mar. 28, 1986, at 50. While this Note does not advocate the use of force against modern terrorists, but suggests peaceful, legal means of bringing terrorists to trial, this author believes that the international community must pay heed to Thomas Jefferson's warning: "an insult unpunished is the parent of others." Sorkin, *The Piratical Ensigns of Mahomet*, *National Review*, Mar. 28, 1986, at 50 col. 2 (quoting Mr. Jefferson in 1784 after the first hijacking of a United States vessel by the Moroccan pirates).