CRIMINALIZING INSURGENTS: THE UNITED STATES AND WESTERN EUROPE RESPONSE TO TERRORISM, 1968-1984

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ABSTRACT

The United States, Germany, and other Western industrialized countries began seeking multilateral anti-terrorism agreements in the 1970s. In that decade, transnationally operating terroristic actors tapped into the anti-imperialist, anti-colonial global discourse of the 1960s to justify themselves as national liberation fighters. This dissertation is a case study of Western state officials who interacted with one another and with recently independent states in response to the activity of such ostensible insurgents. The dissertation reveals how Western officials worked to define and deploy the terrorism label against these non-state actors.

U.S., German, and other Western officials generated international conventions that treated terrorists as ordinary criminals and ignored their political motivations. The resulting multilateral agreements stipulated that terrorism was an illegal and criminal act. These solutions undermined national liberation actors' claims to protected status as wartime combatants. This dissertation clarifies some of the mechanisms which permitted Western states to shape the norms about who is or is not a terrorist.

However, Western efforts to define and regulate terrorism also led to the institutionalization of terrorism as a global security threat without providing long-term solutions. These agreements did not prevent terrorist attacks. In addition, the Western multilateral conventions were deeply controversial. They triggered still unresolved debates amongst states worldwide about the conditions under which non-state actors had rights under international law to commit politically motivated violence.

To my parents
and to Dane

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CHAPTER 1

INTRODUCTION:

THE CONCEPT OF TERRORISM AND NEGOTIATIONS ON POLITICAL VIOLENCE

In the 1970s, Western states faced an increased volume of politically-motivated terroristic violence at home and abroad. The perpetrators were non-state actors who operated transnationally across state and regional boundaries. These non-state actors justified themselves as national liberation fighters, tapping into the anti-imperialist, anti-colonial discourse that gained global prominence during the 1960s.[1] A sizeable number of recently independent states, many of which celebrated their own recent national independence movements, supported them directly and indirectly. Targeted countries, such as the United States, the Federal Republic of Germany (FRG), and Italy, quickly realized that such terroristic actors crossed national boundaries with impunity. They were a security threat.

I am interested in how Western state officials interacted with one another, with recently independent states, and with non-state entities such as national liberation movements in order to respond to the activity of transnationally operating terrorists. Did the United States, European states, and their allies reach out to one another to address terrorism? If so, how and with what results? If not, how did they behave?

My dissertation analyzes multilateral anti-terrorism measures in recent history, focusing on those conducted by Western states such as the United States and its European allies. It highlights how state officials interpreted and reacted to non-state actors who crossed borders and seized political agency through terrorist violence. It identifies and assesses the challenges to multilateral strategies designed to combat transnational threats. The dissertation argues that Western anti-terrorism measures were contentious because they addressed not only terroristic violence, but also the agency of national liberation movements and other politically motivated

[1] For a succinct history of terroristic violence before 1968, see pp.20-24.

non-state actors. Such movements labeled themselves as proto-state organizations and sought the sovereignty associated with nation-state status – often through violent acts. However, the Western states' multilateral anti-terrorism measures denounced most acts of non-state politically-motivated violence as illegal and illegitimate. Instead, these anti-terrorism measures proclaimed that only established states had the authority to commit, regulate, or even negotiate about violence. Western states' anti-terrorism strategies thus undermined national liberation efforts to attain sovereignty. This factor made them highly contentious.

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There is already substantial scholarship on national terrorist groups and counterterrorism policies.[2] Another literature explores the cultural impact of terrorism around the world. I focus on an underdeveloped historical topic: how state officials utilized international diplomacy to shape worldwide policies and politics on terrorism over time. This dissertation follows the basic tenet of the developing field of critical terrorism studies. It assumes that terrorism is a changing, politically-charged term that many people have used across diverse contexts to describe a broad spectrum violent actors.[3] Relying on archival source research, my dissertation takes a historical approach which contributes to the field of international history.[4] I show why a range of Western countries and their allies pursued the same kinds of anti-terrorism agreements - and bound themselves to specific policies and interpretations concerning terrorism. In addition, I trace the political consequences of these policies and interpretations for the international system of the 1970s and for our modern world today. The 1970s were the decade in which the label terrorism entered

[2] A good overview of this scattered field can be found in Alex P. Schmid, ed., *The Routledge Handbook of Terrorism Research* (New York: Routledge, 2011).

[3] Richard Jackson, "Introduction: A Decade of Critical Terrorism Studies," in *The Routledge Handbook of Critical Terrorism Studies,* ed. Richard Jackson (New York: Routledge, 2016), 1-14, 3.

[4] Theoretical overviews addressing international history include Frank Costigliola and Michael J. Hogan, *Explaining the History of American Foreign Relations,* 3rd ed. (Cambridge, U.K.: Cambridge University Press, 2016); and Patrick Finney, *Palgrave Advances in International History* (New York: Palgrave MacMillan, 2005).

wide-spread usage. I argue that Western officials' actions were crucial in shaping how the international system of states envisioned terrorism and shaped respective policies.

Western states responded to transnational terroristic violence in the 1970s with multilateral agreements that treated terrorists as criminals and delegitimized their political motivations. Instead of engaging with the national liberation demands of Latin American or Palestinian groups, Western states created legal conventions and transgovernmental contacts that allowed any state to prosecute or extradite terrorists for committing common crimes. Within international organizations, officials established conventions to codify terrorism as an extraditable crime. These conventions did not prevent terrorism. However, their criminal law-based content undermined national liberation actors' claims to be revolutionary insurgents and weakened their influence in international relations because it denied them the protection of combatant status under of the laws of war. Meanwhile, Western security bureaucrats began exchanging information and experiences on terrorism. Formed behind a wall of security clearances, their closed transgovernmental networks excluded influence from the public and terrorists themselves. As a result, the Western policy-makers concerned with terrorism habitually focused on preventing the mechanism of terrorism and rejected and ignored its political dimensions and motivations.

When viewed in context with the development of national liberation movements and recently decolonized states during the 1970s, Western states' responses to terrorism have broad-ranging implications. Multilateral negotiations about terrorism during the 1970s were about far more than just terrorism. These negotiations addressed questions about what sort of political violence was legitimate (by which I mean legal) in international relations, and what sort of violence was illegitimate (illegal).[5] As sociologist Mikkel Thorup has pointed out, both state and non-state actors in the 1970s "let the definitional struggle on legal and illegal violence center on the concept

[5] This issue is discussed by Ondrej Ditrych, *Tracing the Discourses of Terrorism: Identity, Genealogy, and State,* (Basingstoke, UK: Palgrave MacMillan, 2014); Bernhard Blumenau, "The Other Battleground of the Cold War: The UN and the Struggle Against International Terrorism in the 1970s," *Journal of Cold War Studies* 16, 1 (Winter 2014): 61–84; and Mikkel Thorup, *An Intellectual History of Terror: War, Violence, and the State* (London: Routledge, 2012).

of terror."[6] Multilateral negotiations about terrorism in the 1970s thus revealed fundamental conflicts among Western and developing states concerning who should have the authority to practice violence.

At first glance, these negotiations reveal the agency of developing nations and national liberation movements, as well as an accompanying fragility of Western authority, in international relations during the 1970s. Non-state groups and recently independent countries demonstrated an increasing ability to assert their own interests.[7] Within international organizations, developing states argued that national liberation insurgencies should have the right to participate in international relations, even if that meant engaging in some (not all) forms of politically-motivated violence. Since most experienced national liberation struggles in their recent past, developing states refused to accept Western assertions that non-state actors' political violence was illegitimate. They agreed only to anti-terrorism conventions ambiguous enough to create legal loopholes for the actions of politically-motivated national liberation insurgencies.

Western states were also not able to compromise among themselves about how far to delegitimize political violence. The security aims of the states involved varied too much. States that faced significant transnational terroristic violence, such as West Germany and the United Kingdom, wanted practical anti-terrorism solutions that branded terrorists as criminals and made it easy to prosecute them. States that did not face significant transnational terroristic violence, such as the United States and France, wanted broad multilateral agreements that would extend their geopolitical influence and protect other foreign policy interests. These differences undermined the unified front that European and transatlantic states sought to present to the rest of the world. In the 1970s, Western states struggled to adapt to an international environment which increasingly restricted their control over security issues and questions about legitimate uses of violence.

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[6] Thorup, *An Intellectual History of Terror,* 122.

[7] See pp. 15-16.

However, the multilateral efforts against terrorism in the 1970s also highlight how Western states successfully adapted to these challenges. In international organizations, the United States and its allies utilized ambiguous language to their advantage. The legal conventions that they negotiated contained loopholes which protected politically-motivated violent actors, such as insurgents or political dissidents, from being prosecuted as terrorists. Only states had the right to determine whether an offender was politically motivated, though. In addition, Western states emphasized the spirit of the conventions over the precise formulations. When arrested, terrorists thus had to rely on state officials to determine their insurgent or dissident status. Few Western officials made that call. Moreover, the conventions referred to criminal law – never the laws of warfare relating to combatants. These legal conventions ensured that Western state officials were able to define, to a large extent, who had the right to commit violence – at least with regard to international law and relations.

The multilateral anti-terrorism agreements of the 1970s allowed Western states to codify insurgents, armed resistance groups, and national liberation organizations as illegal terrorists. These agreements did not solve the problem of terrorism. Due to the highly politicized questions they raised about violence, they were difficult to negotiate and almost impossible to enforce. However, they permitted Western states to deny non-state or proto-state actors a voice in international relations. Even if such actors conducted successful terroristic attacks or drew public attention to their political grievances, they would not receive their desired seat at the table in state-to-state relations because they carried the label of illegitimate terrorists.

Additionally, Western states had significantly more resources at their disposal than developing states or non-state actors to create corresponding anti-terrorism policies and structures. Examples include the United States' unilateral aviation security measures, the European domestic security collaboration network TREVI, and an increasing network of special

forces units dedicated not to counter-insurgency but counter-terrorism.[8] By the late 1970s, Western states had imposed their interpretation of terrorism and political violence on international relations.

This dissertation builds a bridge between the era of political protest and national liberation movements in the 1960s and the rise of state-sponsored and religious terrorism in the 1980s. Over time, the Western states' strategy was a crucial factor undermining national liberation actors' attempts to engage in international politics. Some increased the brutality of their attacks in response, allowing state officials to further delegitimize them as criminals and thugs. Others turned to new sources of political legitimacy, such as the rise of political Islam after 1979. Meanwhile, states such as the United States utilized their interpretation of terrorism and political violence to achieve new political aims. A Cold War worldview pervaded the rising conservative movement of the late 1970s.[9] When Ronald Reagan was elected president in 1980, his administration criticized the Soviet Union for allegedly sponsoring non-state terrorists who had no legal right to commit violence. Because Western states successfully undermined national liberation groups as international actors, the global debate about terrorism and the right to commit political violence shifted in the 1980s to focus on Cold War paradigms and religiously motivated attacks.

This dissertation explains why modern academia, states, and media lack a consensus definition of the term terrorism. Terrorism was not a commonly used term before the 1970s.[10] Many historical events we describe as terrorism today carried different labels in their time, such

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[8] The origins of the TREVI name are contested. Most researchers assume that it is a French abbreviation of the network's targets: *terrorisme, radicalisme, extrémisme, violence international* (terrorism, radicalism, extremism, international violence).

[9] See Laura Kalman, *Right Star Rising: A New Politics, 1974-1980* (New York: WW Norton & Co, 2010); David R. Farber, *The Rise and Fall of Modern American Conservatism: A Short History* (Princeton: Princeton University Press, 2010); and Kim Phillips-Fein, *Invisible Hands: The Making of the Conservative Movement from the New Deal to Reagan* (New York: Norton, 2009).

[10] Lisa Stampnitzky, *Disciplining Terror: How Experts Invented "Terrorism"* (Cambridge, U.K.: Cambridge University Press, 2013), 26, 74-75.

as “anarchism.”[11] My dissertation analyzes the controversies that erupted around the terrorism label as it spread. It illuminates the reasons why a consensus is and was elusive by tracing key actors – state officials - and a key forum for these debates - the field of international law and multilateral collaboration.

Nevertheless, state institutions still retain significant power to label actors as terrorists (or not). Following the fields of international history and critical terrorism studies, this dissertation assumes that the term terrorism is a construct which has changed over time - shaped by its historical context and the power configurations of all actors involved. It is a case study of how one set of actors, officials in Western states, worked to define and deploy the label terrorism in response to a specific challenge from transnationally operating non-state violent actors. This dissertation therefore clarifies some of the mechanisms which still allow Western states to shape our modern conversation about who is or is not a terrorist. It enables a deeper understanding of the rhetoric, laws, and policies that define who we think of as terrorist.

To operationalize my terminology, here is how I use key terms. I do not adopt a definition of “terrorism.” As terrorism researchers have pointed out, over 300 such definitions exist today.[12] Instead, I highlight how contemporary actors understood and worked with this term to achieve specific political goals. Since actors and goals varied, I trace the differing and evolving definitions of terrorism that resulted. The main point of contention, I argue, was between actors who argued that terrorism was always a common “criminal” act, and those who insisted that some acts of terrorism could be “insurgent.” A criminal act is an act which has been regulated by law. It is illegal.[13] This dissertation focuses on serious offenses which fall under the purview of criminal law. As I will argue, some of these acts can be politically motivated.

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[11] Thorup, *An Intellectual History of Terror,* 118-122.

[12] See Joseph J. Easson and Alex P. Schmid, “Appendix 2.1: 250-plus Academic, Governmental, and Intergovernmental Definitions of Terrorism,” in *The Routledge Handbook of Terrorism Studies,* ed. Alex P. Schmidt (New York: Routledge, 2011), 99-157.

[13] See Lindsay Farmer, "Crime, definitions of", in *The New Oxford Companion to Law*, ed. Peter Cane and Joanne Conoghan (New York: Oxford University Press, 2008), 263.

In contrast, an insurgent act is a violent act committed by a person or group engaged in an uprising against a particular state or empire. Insurgents' actions are always politically motivated. Since the goal of the uprising is to fundamentally change state policies or even replace that state, insurgent actors claim the state's sovereign rights for themselves.[14] In particular, insurgents allege that they hold combatant status and that their actions fall under the warfare situations regulated by the laws of war. However, an insurgency has generally not been recognized by other states as a belligerent, state-like power protected by the laws of war. Convincing states to give them this status is a key requirement for the success of any insurgency.

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I have organized the chapters of this dissertation chronologically, although some chapters overlap to cover synchronous negotiations and processes. Chapter two analyzes how U.S. officials and their allies began conceptualizing transnational terroristic violence as illegal and illegitimate even before they associated such violence with the term terrorism. U.S. State Department legal experts negotiated three international conventions to protect airplanes and diplomats from terroristic attacks between 1968 and 1971. These conventions required attackers to be prosecuted or extradited as ordinary criminals. They avoided the issue of whether such offenses were political insurgent acts by being deliberately ambiguous. U.S. negotiators convinced developing states to accept these conventions by arguing that they strengthened state sovereignty and control over violence. These conventions created a legal and ideological framework for subsequent U.S. and European multilateral efforts against terrorism.

Chapter three traces how the U.S. State Department attempted to apply the labels of illegal and illegitimate from chapter two on the newly spreading term "terrorism." Specifically, the State Department pursued a United Nations extradition convention against terrorism after the 1972 Munich Olympic Games attack. The attack caused journalists, state officials, and the public

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[14] Steven Metz and Raymond Millen, "Insurgency and Counterinsurgency in the 21st Century: Reconceptualizing Threat and Response," *Strategic Studies Institute, U.S. Army War College,* November 2004, accessed March 8, 2018, http://ssi.armywarcollege.edu/pdffiles/pub586.pdf, 2-3.

around the world to adopt the term terrorism for broad usage for the first time. What terrorism meant, however, was not clear. U.S. officials codified terrorism as a new global security threat, including vague “serious offenses” as well as a wide number of terroristic actions such as hijackings, hostage takings, and bombings. However, they failed to brand this threat as a politically illegitimate, extraditable crime. Recently independent states refused to accept the vague term terrorism as a universally apolitical criminal offense. They instead supported national liberation movements, their claims to be operating under the laws of warfare, and their legal right to commit politically motivated violence. This chapter traces the first UN debate about terrorism in 1972, and emphasizes that from the outset, negotiations about terrorism were really about the legitimacy of non-state actors’ politically-motivated violence.

Chapter four highlights how European states responded to the U.S. failure to delegitimize terrorism in the UN; Led by the Federal Republic of Germany (FRG), European officials created two classified collaborative networks amongst themselves (where developing states had little influence) which addressed the mechanisms of how to commit terrorism without touching upon its political dimensions. The Eibiuropean Community’s states set up an informal domestic security collaboration network named TREVI. Officials used TREVI to share resources on terrorism as well as all serious violent crimes. By conflating these two issues, they removed the need to consider whether a terroristic act was a separate political offense. Meanwhile, Western states developed special forces units that were dedicated to counterterrorism instead of counterinsurgency. Prominent units, such as the British Special Air Services and the FRG’s *Grenzschutzgruppe 9* (Border Security Group 9) shared experiences and training with other groups, creating a network that disseminated military counterinsurgent anti-terrorism skills. European security institutions focused increasingly on these units and their high-impact media successes to prevent terrorism, and thus prioritized tactical over political anti-terrorism solutions. As the term terrorism spread in the 1970s, European security officials thus grew to habitually concentrate on the mechanisms of terrorism, but not its political scope.

Chapter five demonstrates that European officials strengthened both the Western conceptualization of terrorism and the contestation around regulating political violence when they expanded from classified venues to new extradition regulation efforts in publicly accessible European international organizations. The FRG, plagued with domestic and international terrorist attacks during the mid-1970s, sought to prevent terrorists with FRG citizenship from seeking refuge abroad. FRG officials pursued a regional European convention, based on the earlier U.S.-backed conventions identified in chapters two and three, to permit the extradition of terrorists as common criminals. They marketed such a convention as a step toward European integration and successfully approved it in the Council of Europe. However, France, Ireland, and the Netherlands questioned its stipulations that delegitimized political violence, prioritized other national interests, and exploited various loopholes to ignore its requirements. European states were the first to ratify a convention that branded terrorism as a common crime; simultaneously, their disagreements over how to regulate political violence strengthened the international contestation around the term terrorism.

Chapter six analyzes how the ascendant Western narrative around terrorism and continuous contestation of it generated increasingly diverging concepts of terrorism and political violence in the 1980s. By the late 1970s, Western states had solidified their definition of terrorism as an illegal crime in international politics through two additional multilateral agreements in the UN and the Group of 7. In this moment, Western conservatives seized the issue to advance their own political aims. They accused the Soviet Union of clandestinely and illegally supporting terrorists as allied combatants. Their simplified Cold War lens dismissed the political aims of the actors themselves. Creating an imagined ideological convergence between communism and terrorism, Western conservatives argued that anti-terrorist solutions needed to be integrated into military anti-communist efforts. Meanwhile, terrorists with new religious motivation realized that the Western conceptualization of terrorism hindered their political goals. They rejected the definitions and terminology of terrorism set up in international law. Recognizing that they could not resolve the multilateral contestation around political violence in their favor, U.S. counterterrorism officials

and terrorists prioritized their own unilateral and increasingly ideological conceptualizations of terrorism.

For the purpose of assembling this narrative and supporting my interpretations and arguments, I relied on sources from government archives in the United States and Germany. Officials from these two states took the lead in negotiating the agreements and collaboration which shaped Western positions on terrorism and political violence. The basis of the dissertation are the records of the U.S. State Department, Department of Transportation, and Federal Aviation Administration at the National Archives – College Park and records from the Central White House Files at the Nixon, Ford, and Carter Presidential Libraries. Also of importance are the FRG Foreign Office's archive and the records of the FRG Interior Ministry, Justice Ministry, and Chancellery at the German Federal Archives. Because U.S. and FRG officials had frequent contact with foreign counterparts, these documents shed light on other European and Latin American states' positions. They also highlight in-depth negotiations in various international organizations, as well as informal multilateral meetings. These documents are in English, German, and French. I intend in the future to augment these sources with the records of the British Home Office and French ministries of Foreign Affairs, the Interior, and Justice.

To include transnational perspectives, I also conducted research in the records of non-state actors, including the FRG terrorist group Red Army Faction, the pilot union Air Line Pilots Association, and conservative political activists such as Ray S. Cline. However, because U.S. and FRG state officials responsible for anti-terrorism usually worked with classified security clearances that impeded non-state actors' access to negotiations, the dissertation is based primarily on government documents.

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This dissertation sits at the intersection of several recent historiographical interventions. The first is in the literature on terrorism and counterterrorism. Within the past ten years, scholars have begun to study how descriptions of and responses to terrorism change over time. Since these scholars started researching terrorism in the 1970s, most studies on terrorism and

counterterrorism have hailed from the field of political science. These works tend to be descriptive and proscriptive.[15] Many are not interested in how terrorism and counterterrorism evolved over time, and those that are do not overly rely on archival materials.[16] The field of terrorism studies ballooned as a response to the September 11, 2001 attacks. Reacting to this descriptive body of work, the interdisciplinary field of critical terrorism studies developed in the late 2000s. It questions how the concept of terrorism and resulting counter-measures change in response to time and context.[17] Pathbreaking works include sociologist Mikkel Thorup's *An Intellectual History of Terror* and International Relations theorist Ondrey Ditrych's *Tracing the Discourses of Terrorism*.[18] Both highlight the discursive and ideological shifts in historical actors' use of the label terrorism. Meanwhile, Lisa Stampnitzky's *Disciplining Terror* analyzes the development of the field of terrorism studies, showcasing how academics have conceptualized terrorism.[19] This dissertation joins this conversation by focusing on change over time.

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[15] A small representative sampling for recent years includes, for terrorism research, Marc Sageman, *Misunderstanding Terrorism* (Philadelphia: University of Pennsylvania Press, 2016); Anthony Richards, *Conceptualizing Terrorism* (Oxford, U.K.: Oxford University Press, 2015); Ioannis Tellidis and Harmonie Toros, eds. *Researching Terrorism, Peace and Conflict Studies: Interaction, Synthesis, and Opposition* (New York: Routledge, 2015); and Martin A. Miller, *The Foundations of Modern Terrorism: State, Society, and the Dynamics of Political Violence* (Cambridge, U.K.: Cambridge University Press, 2013). For counterterrorism, see Martha Crenshaw, ed. *The Consequences of Counterterrorism* (New York: Russell Sage Foundation, 2010); Peter Romaniuk, *Multilateral Counter-Terrorism: The Global Politics of Cooperation and Contestation* (London: Routledge, 2010); and Franz Eder and Martin Senn, eds., *Europe and Transnational Terrorism: Assessing Threats and Countermeasures* (Baden-Baden, Germany: Nomos, 2009).

[16] Notable examples which include change over time are Bruce Hoffman, *Inside Terrorism,* 2nd ed. (New York: Columbia University Press, 2006); David C. Rapoport, ed., *Terrorism: Critical Concepts in Political Science,* 4 vols. (London, New York: Routledge, 2006); Gerard Chaliant and Arnaud Blin, eds., *The History of Terrorism: From Antiquity to Al Quaeda* (Berkeley, CA: University of California Press, 2007); and Walter Laqueur, *A History of Terrorism,* rev. ed. (New Brunswick, NJ: Transaction Publishers, 2001).

[17] See Jackson, ed., *The Routledge Handbook of Critical Terrorism Studies*. The field's main journal *Critical Studies in Terrorism* was founded in 2007.

[18] Ditrych, *Tracing the Discourses of Terrorism*; and Thorup, *An Intellectual History of Terror*.

[19] Stampnitzky, *Disciplining Terror*.

So far, historians have conducted little research on terrorism and counterterrorism. Sources for these fields are often classified or difficult to find. In part for this reason, most historical writing on terrorism focuses on specific perpetrators or its cultural impact.[20] Significant research exists on the Palestinian national liberation movement and its radical fedayeen offshoots, for example.[21] Another well-studied terrorist group is the German Red Army Faction.[22]

Moreover, few historians study the historical development of counterterrorism policies either. Most of their studies remain national in scope. Recent European publications have focused on the FRG, France, and Italy, for example.[23] In contrast, historical studies on U.S. counterterrorism are practically nonexistent.[24] For a regional setting, most works on the Arab/Israeli conflict

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[20] See Beverly Gage, "Terrorism and the American Experience: A State of the Field," *Journal of American History* 98, 1 (June 2011): 73-94, 76-77, 89-90. For the cultural impact of terrorism, see Michael Burleigh, *Blood and Rage: A Cultural History of Terrorism* (New York, Harper Perennial, 2009); and Annette Vowinckel, *Flugzeugentführungen: Eine Kulturgeschichte* [Hijackings: A Cultural History] (Goettingen, Wallstein Verlag, 2011).

[21] See Paul Thomas Chamberlin, *The Global Offensive: The United States, the Palestine Liberation Organization, and the Making of the Post-Cold War Order* (New York: Oxford University Press, 2012); and Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood* (Boston: Beacon Press, 2006).

[22] See Patricia Melzer, *Death in the Shape of a Young Girl: Women's Political Violence in the Red Army Faction* (New York: NYU Press, 2015); Leith Passmore, "The Art of Hunger: Self-Starvation in the Red Army Faction," *German History* 27, no. 1 (January 2009): 32–59; and Wolfgang Kraushaar, ed., *Die RAF und der linke Terrorismus* [The RAF and Leftist Terrorism], 2 vols. (Hamburg, Germany: Hamburger Editionen, 2006).

[23] Examples include Markus Lammert, *Der Neue Terrorismus: Terrorismusbekämpfung in Frankreich in den 1980er Jahren* [The New Terrorism: Counterterrorism in France in the 1980s] (Oldenbourg: De Gruyter, 2017); Eva Oberloskamp, "Das Olympia-Attentat 1972: Politische Lernprozesse im Umgang mit dem transnationalen Terrorismus," ["The Olympics Attack 1972: Political Learning Processing in Handling Transnational Terrorism"], *Vierteljahrshefte für Zeitgeschichte* 60, no. 3 (July 2012): 321-352, doi: 10.1524/vfzg.2012.0018; Tobias Hof, *Staat und Terrorismus in Italien 1969-1982* [State and Terrorism in Italy 1969-1982] (Oldenbourg: De Gruyter, 2011); and Matthias Dahlke, "'Nur eingeschränkte Krisenbereitschaft': Die staatliche Reaktion auf die Entführung des CDU-Politikers Peter Lorenz 1975," ["'Only Limited Crisis Preparation': The State Reaction to the Kidnapping of the CDU-Politician Peter Lorenz in 1975"], *Vierteljahrshefte für Zeitgeschichte* 55, no. 4 (October 2007): 641-678.

[24] Exceptions include the older Timothy J. Naftali, *Blind Spot: The Secret History of American Counterterrorism* (New York: Basic Books, 2005); and David C. Wills, *The First War on Terrorism: Counter-Terrorism Policy during the Reagan Administration* (Lanham, MD: Rowman and Littlefield, 2003).

discuss Palestinian terrorism and Israeli counterinsurgent and counterterrorist measures.[25] This dissertation contributes to the field of counterterrorism within the discipline of history.

Terrorism became an increasingly transnational issue in the early 1970s, yet international measures to address or resolve this threat have not received much attention from historians. This dissertation thus adds to an underdeveloped focus within the already small history of counterterrorism. Historians only recently began to investigate multilateral anti-terrorism efforts. Most studies are produced by the German Institute for Contemporary History's research group "Democratic State and terroristic Challenge: The Anti-Terrorism Politics of the 1970s and 1980s in Western Europe." Since 2011, some of this group's monographs and collected works have taken a comparative approach. They contrast (mostly European) states' anti-terror legislation, policies, and discourses.[26] However, the most current studies go beyond a comparative methodology, and use an international history approach to trace the aims and machinations of the FRG, France, the U.K., the Netherlands, and other European states within their multilateral negotiations.[27] This dissertation emulates these studies but extends its focus beyond European

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[25] See Craig Daigle, *The Limits of Detente: The United States, the Soviet Union, and the Arab-Israeli Conflict* (New Haven: Yale University Press, 2012); Alan Dowty, *Israel/Palestine,* 3rd ed. (Cambridge, UK, Malden, MA: Polity, 2012); and Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999* (New York: Knopf, 1999).

[26] See Johannes Hürter, ed., *Terrorismusbekämpfung in Westeuropa: Demokratie und Sicherheit in den 1970er und 1980er Jahren* [Counterterrorism in Western Europe: Democracy and Security in the 1970s and 1980s] (Oldenbourg: De Gruyter, 2015); Bernhard Blumenau, *The United Nations and Terrorism: Germany, Multilateralism, and Antiterrorism Efforts in the 1970s* (Basingstoke, U.K.: Palgrave MacMillan, 2014); Blumenau, "The Other Battleground of the Cold War"; Jussi Hanhimäki and Bernhard Blumenau, eds., *An International History of Terrorism: Western and Non-Western Experiences* (London: Routledge, 2013); and Matthias Dahlke, *Demokratischer Staat und Transnationaler Terrorismus: Drei Wege zur Unnachgiebigkeit in Westeuropa 1972-1975* [Democratic State and Transnational Terrorism: Three Ways to Immovability in Western Europe 1972-1975] (Munich: Oldenbourg, 2011).

[27] See Eva Oberloskamp, *Codename TREVI: Terrorismusbekämpfung und die Anfänge einer europäischen Innenpolitik in den 1970er Jahren* [Codename TREVI: Counterterrorism and the Origins of European Interior Politics in the 1970s] (Oldenbourg, Germany: De Gruyter, 2017); Bernhard Blumenau, "Taming the Beast: West Germany, the Political Offence Exception and the Council of Europe Convention on the Suppression of Terrorism," *Terrorism and Political Violence* 27, no. 2 (March 2015): 310–30; and Bernhard Blumenau, "The European Communities' Pyrrhic Victory: European Integration, Terrorism, and the Dublin Agreement of 1979," *Studies in Conflict & Terrorism* 37, no. 5 (February 2014): 405–421.

states to include, in particular, the United States. It regards both U.S. and European multilateral anti-terrorism efforts as part of an interrelated process.

This dissertation is indebted to the rapidly increasing body of historical research on how state officials interacted with non-state actors who claimed agency in the international sphere in the 1960s. These works highlight how state actors attempted to exclude non-state actors from state-to-state relations to undercut their political agency. In recent years, a significant historiography has developed on transnational movements and mutual support networks set up by civil rights advocates, student protesters, and many other activists during the postwar period.[28] Closely related, historians have traced similar networks between various insurgent and national liberation groups inspired by the Algerian and Cuban revolutions.[29] Together, these historical studies have uncovered a vibrant net of global political connections that operated below and beyond formal state-to-state relations. Oftentimes, these historians analyze how state institutions interacted with these transnational movements to affirm, coopt, or undermine them.[30] This dissertation is not a transnational history – it focuses on state actors more than on non-state ones. Drawing from these studies, however, it highlights how U.S., FRG, and other officials sought to protect their interests against encroaching actions of non-state actors such as national liberation groups. It emphasizes that Western officials sought to silence non-state actors by seeking solutions purely within the domain of state-to-state relations.

Western officials underestimated developing states' support for national liberation movements, however. This dissertation contributes to the growing historiography on newly-

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[28] Examples include Brenda Gayle Plummer, *In Search of Power: African Americans in the Era of Decolonization, 1956-1974* (Cambridge, U.K.: Cambridge University Press, 2013); Martin Klimke, *The Other Alliance: Student Protest in West Germany and the United States in the Global Sixties* (Princeton: Princeton University Press, 2011); and Jeremi Suri, *Power and Protest: Global Revolution and the Rise of Détente* (Cambridge, MA: Harvard University Press, 2005).

[29] See Chamberlin, *The Global Offensive*; and Lien-Hang T. Nguyen, *Hanoi's War: An International History of the War for Peace in Vietnam* (Chapel Hill: University of North Carolina Press, 2012).

[30] See Chamberlin, *The Global Offensive;* and Nguyen, *Hanoi's War.*

independent states' foreign relations, especially their influence in international organizations. Historical studies have focused on these states' policies and diplomacy, tracing how they cemented their claims to national sovereignty and pursued their own interests in international politics.[31] International organizations and multilateral networks were key sites for them to develop alliances and shape anti-imperialist policies. The UN was a useful forum for emergent states because its General Assembly gave each one a seat. African, Arab, and Southeast Asian delegations aggregated their numbers and challenged more developed states' policies on topics such as trade, human rights, and insurgent warfare.[32] In the same vein, this dissertation reveals how UN discussions on "international terrorism" transformed into a key site of contestation. It also traces how developed states began to adapt to less developed ones' increasing influence at the UN by cloaking their own initiatives in specifically ambiguous language.[33]

Moving from international organizations to European politics, this dissertation contributes to the substantial historiography on European integration after World War II. Early works in this historiography emphasize the increasing economic, cultural, and political interconnections among European states.[34] In contrast, other historians focus on the limits of European integration,

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[31] Case studies include Jeffrey James Byrne, *Mecca of Revolution: Algeria, Decolonization, and the Third World Order* (Oxford, U.K.: Oxford University Press, 2016); Piero Gleijeses, *Visions of Freedom: Havana, Washington, Pretoria, and the Struggle for Southern Africa, 1976–1991* (Chapel Hill: University of North Carolina Press, 2013); Nguyen, *Hanoi's War*; and Matthew Connelly, *A Diplomatic Revolution: Algeria's Fight for Independence and the Origins of the Post-Cold War Era* (Oxford, U.K.: Oxford University Press, 2003).

[32] Examples include Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge, U.K.: Cambridge University Press, 2016); Bernhard Blumenau, "The Other Battleground of the Cold War"; Plummer, *In Search of Power*; and Chamberlin, *The Global Offensive*.

[33] Other works with this focus include Giovanni Mantilla, "The Political Origins of the Geneva Conventions of 1949 and the Additional Protocols of 1977," in *Do the Geneva Conventions Matter?* ed. Matthew Evangelista and Nina Tannenwald (New York: Oxford University Press, 2017), 35-68; and, once again, Chamberlin, *The Global Offensive.*

[34] These works are usually older. Recent examples are N. Piers Ludlow, "More Than Just a Single Market: European Integration, Peace and Security in the 1980s," *The British Journal of Politics and International Relations* 19, no.1 (February 2017): 48-62; and Wilfried Loth, *Building Europe: A History of European Unification* (Berlin, Germany: De Gruyter Oldenbourg, 2015).

highlighting that many states utilized international and supranational organizations to strengthen their existing national structures.[35] Recent work on European unification usually combine these two lines of inquiry, especially for the decade of the 1970s. Historians stress contemporary actors' dedication to European integration while identifying the restraints on this process caused by economic and foreign policy tensions.[36]

While researchers have analyzed aspects of European integration such as economic regulations, cultural interaction, and joint foreign policy endeavors, the field of domestic security has received insufficient attention. During the 1970s, European states began to cooperate in legal and law enforcement matters, hoping to increase their own domestic security by collaborating with their neighboring states.[37] This dissertation underscores the opportunities and limitations for European bureaucrats who sought regional anti-terrorism measures.

By tracing European domestic security developments, this dissertation situates the history of FRG "internal security" reforms within an international context. A large body of existing literature focuses on West German domestic security reforms, labeled "internal security," during the 1970s. These works trace the FRG's national measures against terrorism and political violence, most notably policies, legislation, and technological advances.[38] They also analyze how West German officials, its public, and terroristic actors debated these reforms, highlighting that the FRG's Nazi past made its citizens particularly concerned about infringing on civil liberties, protecting

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[35] The most regularly cited case study is still Alan Milward, *The European Rescue of the Nation State* (London: Routledge, 2000). A recent example is Ivan Krastev, *After Europe* (Philadelphia: University of Pennsylvania Press, 2017).

[36] Recent examples include Benjamin Grob-Fitzgibbon, *Continental Drift: Britain and Europe from the End of Empire to the Rise of Euroscepticism* (Cambridge, U.K.: Cambridge University Press, 2016); and *Daniel Mockli, European Foreign Policy During the Cold War: Heath, Brandt, Pompidou and the Dream of Political Unity* (London: I.B.Tauris, 2008).

[37] The main work on this development is Oberloskamp, *Codename TREVI*.

[38] See Karrin Hanshew, *Terror and Democracy in West Germany* (New York: Cambridge University Press, 2012); and Stephan Scheiper, *Innere Sicherheit: Politische Anti-Terror-Konzepte in der Bundesrepublik Deutschland während der 1970er Jahre* [Internal Security: Political Anti-Terrorism-Concepts in the Federal Republic of Germany] (Paderborn, Germany: Verlag Ferdinand Schönign, 2010).

democratic institutions, and avoiding contact between the military and law enforcement.[39] So far, only Eva Oberloskamp in *Codename TREVI* has identified the international influence of West German reforms. FRG officials became the driving force for formal and informal collaboration that laid the groundwork for the European Union's domestic security structures in the 1990s.[40] This dissertation extends Oberloskamp's research.

This dissertation, consequently, contributes to the research on the political science concepts of "transgovernmentalism" and "securitization." It traces the beginning of transgovernmental networks among anti-terrorist state officials. Political scientists Robert Keohane and Joseph Nye coined the term of "transgovernmental" connections in the 1970s. Within transgovernmental networks, mid-level officials with comparable capacities in two or more separate states cooperate to coordinate policy with one another. They often do so without the input of their superiors.[41] Studies have discussed how such transgovernmental networks can accomplish a variety of tasks: They can strengthen treaty negotiations and enforcement, circumvent or support international organizations, and exclude non-state-actors from policy-making considerations.[42] This dissertation chronicles the early development of anti-terrorism transgovernmental networks.

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[39] See Hanshew, *Terror and Democracy in West Germany;* Passmore, "The Art of Hunger"; and Leith Passmore, "International Law as an Extralegal Defense Strategy in West Germany's Stammheim Terror Trial," *Law, Culture and the Humanities* 9, no. 2 (June 2011): 375-394. For general works on the FRG's process of coming to terms with its past, see Konrad Jarausch, *After Hitler: Recivilizing Germans, 1945-1995* (Oxford, New York: Oxford University Press, 2006); and Robert G. Moeller, *War Stories: The Search for a Usable Past in the Federal Republic of Germany* (Berkeley, CA: University of California Press, 2001).

[40] See Oberloskamp, *Codename TREVI.*

[41] See Robert O. Keohane and Joseph S. Nye, **"**Transgovernmental Relations and International Organizations," *World Politics* 27, no. 1 (October 1974): 39-62.

[42] See Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004); and Kal Raustiala, "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law," *Virginia Journal of International Law* 43, no. 1 (Fall 2002): 1-92.

These networks helped state officials disregard public and terrorist arguments when creating anti-terrorism policies in the 1970s.[43]

In this connection, this dissertation contributes to the literature on "securitization." Securitization is a performative discourse which political elites utilize to brand an issue as a particularly grave security threat to their respective publics. This threat assessment permits elites to justify extraordinary countermeasures that would not be possible under other circumstances.[44] Historians have used the concept to describe processes of state-building in the early modern era, as well as political elites' attempts to expand their own power and competencies in recent history.[45] Securitization lends itself to the study of terrorism and counterterrorism, since both terrorists and state officials vie for control over the public discourse through performative acts aimed at the media.[46] In particular, this dissertation emphasizes how U.S. and FRG officials securitized the label of terrorism to protect their own political interests.

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[43] A recent study discussing transgovernmental networks and anti-terrorism is Eva Oberloskamp, *Codename TREVI.*

[44] The term originated in Barry Buzan, Ole Waever, and Jaap de Wilde, *Security: A New Framework for Analysis* (London: Lynne Rienner Publishers, 1998). See also Thierry Balzacq, ed., *Securitization Theory: How Security Problems Emerge and Dissolve* (New York: Routledge, 2010); and Thierry Balzacq, "The Three Faces of Securitization: Political Agency, Audience, and Context," in *European Journal of International Relations* 11, no. 2 (June 2005): 171-201.

[45] See Christopher Daase, "Die Historisierung der Sicherheit: Anmerkungen zur historischen Sicherheitsforschung aus politikwissenschaftlicher Sicht," ["The Historicization of Security: Comments on Historical Security Research from a Political Science Perspective"], *Geschichte und Gesellschaft* 38, no. 3 (January 2013): 387-405; and Eckart Conze, "Securitisation: Gegenwartsdiagnose oder historischer Analyseansatz?" ["Securitization: Modern Diagnosis or Historical Analysis Approach?"] in *Geschichte und Gesellschaft* 38, no. 3 (January 2013): 453-467.

[46] See Beatrice de Graaf, "Terrorismus als performativer Akt: Die Bundesrepublik, Italien und die Niederlande im Vergleich," ["Terrorism as Performative Act: Comparing the Federal Republic of Germany, Italy and the Netherlands"], in Hürter, *Terrorismusbekämpfung in Westeuropa,* 93-116; Gabriele Metzler, „Erzählen, Aufführen, Widerstehen: Westliche Terrorismusbekämpfung in Politik, Gesellschaft und Kultur der 1970er Jahre," ["Storytelling, Performance, Resistance: Western Counterterrorism in the Politics, Society, and Culture of the 1970s"], in Hürter, *Terrorismusbekämpfung in Westeuropa,* 117-136; Markus Lammert, "Ein neues Analysemodell für die historische Terrorismusforschung? Securitization-Prozesse in Frankreich und Deutschland in den 1970er und 1980er Jahren," ["A New Analysis Model for Historical Terrorism Studies? Securitization-Processes in France and Germany in the 1970s and 1980s"], in Hürter, *Terrorismusbekämpfung in Westeuropa*, 201-215; and Peter Waldmann,

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This dissertation begins its analysis of the controversies surrounding terrorism and political violence in the late 1960s. At that moment in time, the word terrorism was not widespread. However, a range of historical actors had used it in different eras and places to describe certain forms of violence. Transnational terroristic actors similar to ones in the 1970s had also operated before, but authorities had classified them under other labels. Before delving into state officials' views on terrorism in the 1960s, it is therefore helpful to contextualize how earlier generations experienced, understood, and responded to terroristic violence.

This history does not aim to be comprehensive. Like the term terrorism itself, writers vigorously disagree about what to include in such a narrative.[47] The history of terrorism changes depending on how an author defines it. For example, should racial violence be considered terrorism, such as the systematic suppression of African Americans in the U.S. South during and after Reconstruction?[48] The history I present reflects the consensus amongst researchers. It traces those developments present in most histories of terrorism and counterterrorism for the period before 1968.

The term "terrorism" first emerged as a nuanced concept during the French Revolution. Previously, historical actors used the term "terroristic violence" literally. It described attacks such as targeted assassinations which were tailored to generate sensations of horror and terror, often to offset an asymmetric balance of power.[49] Groups that practiced such attacks included the

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Terrorismus: Provokation der Macht [Terrorism: Provocation of Power], 2nd ed. (Hamburg, Germany: Murmann Verlag, 2005).

[47] The content of all histories of terrorism varies to a degree, and is strongly influenced by publication date. Laqueur, *A History of Terrorism,* focuses on non-state actors. Chaliant and Blin, eds., *The History of Terrorism,* dedicates substantial sections to various religiously motivated groups. The recent Miller, *The Foundations of Modern Terrorism*, includes more state-driven and racially motivated violence than earlier works.

[48] Recent works often include it, such as Miller, *The Foundations of Modern Terrorism*, 137-162.

[49] Thorup, *An Intellectual History of Terror,* 77-87.

Sicarii, members of the Zealot Jewish religious sect operating against Roman rule in Judea before 73 A.D., and the Assassins, a Shi'a Islamic sect in Persia around 1100.[50] From 1793 to 1794, French Jacobins re-conceptualized the term "terrorism" more abstractly to describe their acts of destruction (such as mass executions) to strengthen their new state as virtuous. They named this period "The Great Terror."[51] After the downfall of the Jacobin regime during the Thermidorian Reaction in 1794, "terrorism" lost its virtuous connotations, however, and became associated with criminal, unvirtuous and illegitimate behavior.[52]

The next group to adopt the label "terrorism" were members of the Russian revolutionary movement in the 1870s and 1880s. Groups such as Narodnaya Volna (The People's Will) assumed terrorism as an identity and a mechanism to overthrow the Russian monarchy. They used the term to emphasize the political motivation behind their violence, which included assassinations and bombings.[53] Their greatest success was the assassination of Tsar Alexander II. The Russian state responded with brutal repressive measures. Despite this suppression, revolutionaries continued to perpetrate terrorism until the Russian Revolution in 1917.[54]

At the same time, violent actors called "anarchists" operated increasingly throughout Europe and North America and became the antecedents of modern transnational terrorists. The anarchist

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[50] Gerard Chaliand and Arnaud Blin, "Zealots and Assassins," in *The History of Terrorism: From Antiquity to Al Quaeda,* eds. Gerard Chaliand and Arnaud Blin (Berkeley, CA: University of California Press, 2007), 55-78. See also Mark Andrew Brighton, *The Sicarii in Josephus' Judean War: Rhetorical Analysis and Historical Observations* (Atlanta, GA: Society of Biblical Literature, 2009); and Meriem Pagès, *From Martyr to Murderer: Representations of the Assassins in Twelfth- and Thirteenth-Century Europe* (Syracuse, NY: Syracuse University Press, 2014).

[51] Thorup, *An Intellectual History of Terror,* 88-101.

[52] See Verena Erlenbusch, "Terrorism and Revolutionary Violence: The Emergence of Terrorism in the French Revolution," *Critical Studies on Terrorism* 8, no. 2 (June 2015): 193–210.

[53] Mary S. Barton, "The Global War on Anarchism: The United States and International Anarchist Terrorism, 1898–1904," *Diplomatic History* 39, no. 2 (April 2015): 303-330, 4.

[54] See Claudia Verhoeven, *The Odd Man Karakozov: Imperial Russia, Modernity, and the Birth of Terrorism* (Ithaca, NY: Cornell University Press, 2009); and Anna Geifman, *Thou Shalt Kill: Revolutionary Terrorism in Russia, 1894-1917* (Princeton: Princeton University Press, 1993).

movement originated in Italy and France during the 1860s in reaction to the upheaval of processes of industrialization, urbanization, and modernization. Anarchists used what they called "propaganda by deed" (bombings and political assassinations) to undermine their modernizing societies. Due to the invention of the steam engine and the spread of railroads, they could travel easily between states and evolved into a transnational security threat.[55] Examples of anarchist attacks included the assassinations of French President Sadi Carnot in 1894, Austrian Empress Elisabeth in 1898, and U.S. President William McKinley in 1904.

State reactions to anarchists varied. Acting unilaterally, U.S. authorities responded by strengthening immigration regulations, especially through the Immigration Act of 1903 (Anarchist Exclusion Act).[56] In contrast, European states chose multilateral collaboration in international law and law enforcement.[57] They met in 1898 at the "International Conference of Rome for the Social Defense Against Anarchists," passing a protocol which required all signatory states to strengthen their criminal laws on anarchism. This protocol also called for an international system of information exchange amongst national police agencies, laying the groundwork for police collaboration in the twentieth century.[58] A further conference met in St. Petersburg in 1904, resulting in a "Secret Protocol for the International War on Anarchism" through which various

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[55] See Richard Bach Jensen, "The Evolution of Anarchist Terrorism in Europe and the United States from the Nineteenth Century to World War I," in *Terror: From Tyrannicide to Terrorism*, eds. Brett Bowden and Michael T. Davis (Queensland, Australia: University of Queensland Press, 2008), 134–60.

[56] See Barton, "The Global War on Anarchism"; and Richard Bach Jensen, "The United States, International Policing and the War against Anarchist Terrorism, 1900-1914," in *Terrorism: Critical Concepts in Political Science*, ed. David C. Rapoport, vol. 1, The First or Anarchist Wave (London, New York: Routledge, 2006), 369–400.

[57] See Barton, "The Global War on Anarchism;" Mathieu Deflem, *Policing World Society: Historical Foundations of International Police Cooperation* (New York: Oxford University Press, 2002); and Mathieu Deflem,"'Wild Beasts Without Nationality': The Uncertain Origins of Interpol, 1898-1910," in *The Handbook of Transnational Crime and Justice*, ed. Philip Reichel (Thousand Oaks, CA: Sage Publications, 2005), 275-285.

[58] See His-Huey Liang, *The Rise of the Modern Police and the European State System from Metternich to the Second World War* (New York: Cambridge University Press, 1992); and Richard Bach Jensen, "The International Anti-Anarchist Conference of 1898 and the Origins of Interpol," *Journal of Contemporary History* 16, no. 2 (April 1981): 323-347.

European states again pledged their police agencies' collaboration. These conferences were the first multilateral efforts against terroristic violence. Overall, criminal law reforms, immigration restrictions, and multilateral information-sharing methods were effective. By 1914, anarchists ceased to be a powerful transnational security threat. However, they inspired subsequent terroristic violence.[59]

From World War I to World War II, the labels "anarchism" and "terrorism" were interchangeable and applied to nationalist, leftist, and colonial resistance movements. In Ireland, nationalist resistance organizations against British rule developed in 1858, causing the British government to institute the first police unit specifically to prevent terrorism, the Special Irish Branch of the Metropolitan Police.[60] Irish nationalist violence escalated into guerilla war in the 1916 Easter Rebellion and the 1919-1921 Irish War of Independence.[61] This development inspired anti-colonial and nationalist movements around the world, with colonial powers responding with both reforms and repression. An exemplar is India.[62] The most infamous ethnic nationalist terrorists were from the Balkans region, however. The Serbian Black Hand group triggered World War I through its assassination of Austro-Hungarian Archduke Franz Ferdinand.[63] In 1934, Croatian nationalists assassinated King Alexander I of Yugoslavia. An international crisis ensued as states worldwide realized that terrorists were still an active transnational threat.

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[59] A good case study is Lisa McGirr, "The Passion of Sacco and Vanzetti: A Global History," *Journal of American History* 93, no. 4 (March 2007): 1085-1115.

[60] See Richard English, *Irish Freedom: The History of Nationalism in Ireland* (Basingstoke, U.K.: Pan Macmillan, 2007); and Ray Wilson and Ian Adams, *Special Branch: A History: 1883-2006* (London: Biteback Publishing, 2015).

[61] Recent studies include Marie Coleman, *The Irish Revolution, 1916–1923* (Abingdon, U.K.: Routledge, 2014); and Joseph McKenna, *Guerrilla Warfare in the Irish War of Independence, 1919-1921* (Jefferson, NC and London: McFarland & Company, 2011).

[62] See Mary S. Barton, "The British Empire and International Terrorism: India's Separate Path at the League of Nations, 1934-1937," *Journal of British Studies* 56, no. 2 (April 2017): 351-373.

[63] See Dragan Bakić, "Apis's Men: The Black Hand Conspirators after the Great War," *Balcanica* 46 (2015): 219-239, doi: 10.2298/balc1546219b.

In response, the League of Nations created the first multilateral convention against terrorism, the 1937 "Convention for the Prevention and Punishment of Terrorism."[64] This convention foreshadowed many aspects of later conventions adopted in the 1970s and after, including the legal principle that states had to "extradite or prosecute" (*aut dedere aut judicare*) terrorists, the requirement that states pass national laws against terrorism, and an emphasis that terrorism was a transnational threat.[65] The convention was never ratified, however, and faded into obscurity alongside the League of Nations in World War II. Few records indicate that U.S. officials in the 1960s and 1970s drew upon it; the convention's similarities to later multilateral agreements may be a case of correlation, but not causation. The legal principle of "extradite or prosecute" hails from Dutch legal scholar Hugo Grotius (1583-1645) and appears frequently in international agreements.[66] Its historical development is severely understudied, however, and future research may shed further light on its influence on international law over time.[67]

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[64] League of Nations, "Convention for the Prevention and Punishment of Terrorism," *World Digital Library,* accessed March 5, 2018, https://www.wdl.org/en/item/11579/.

[65] See Ditrych, *Tracing the Discourses of Terrorism,* 39-54; and Ben Saul, "The Legal Response of the League of Nations to Terrorism," *Journal of International Criminal Justice* 4 (2006): 78-102, doi:10.1093/jicj/mqiO96.

[66] See Dan E. Stigall, "Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law," *Notre Dame Journal of International & Comparative Law* 3, no. 1 (Spring 2013): 1-50, 19-21; and Michael J. Kelly, "Cheating Justice by Cheating Death: The Doctrinal Collision for Prosecuting Foreign Terrorists - Passage of Aut Dedere Aut Judicare into Customary Law and Refusal to Extradite Based on the Death Penalty," *Arizona Journal of International and Comparative Law* 20, no. 3 (Fall 2003): 491-532, 496-501.

[67] The UN research guide on *Aut Dedere Aut Judicare* includes no studies on historical development. See United Nations, "Legal Research Guide 6. Obligation to extradite or prosecute = Obligation d'extrader ou de poursuivre (aut dedere aut judicare): Bibliography (articles / books)," *United Nations Library and Archives at Geneva,* accessed March 9, 2018, http://libraryresources.unog.ch/Legal/legal/ILC. The history of extradition is also in its infancy. See, for example, Katherine Unterman, *Uncle Sam's Policemen: The Pursuit of Fugitives across Borders* (Cambridge, MA: Harvard University Press, 2015). Christopher H. Pyle, *Extradition, Politics, and Human Rights* (Philadelphia: Temple University Press, 2001) is a biased history of U.S. extradition policies. An older work is Christopher L. Blakesley, "The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History," *Boston College International and Comparative Law Review* 4, no. 1 (Spring 1981): 39-60.

Two major global developments, decolonization and the Cold War, shaped terrorism from the end of World War II to 1968. Multiple national liberation movements practiced terroristic violence such as sabotage, bombings, and assassinations against colonial and other foreign regimes. Well-known examples include Jewish Zionists in Mandate Palestine (before 1948), the Front de Libération Nationale and the opposing Organisation Armée Secrete in Algeria, Palestinian fedayeen in Israel (after 1948), the African National Congress in South Africa, and the South Vietnamese National Liberation Front. Except for the Jewish Zionists, these groups were inspired by and emulated one another.[68] Contemporaries mainly relied on the military terminology of insurgency and guerilla warfare to describe the actions of these groups. They only infrequently applied the label terrorism.[69] In this period, information about Stalin's purges in the Soviet Union in the 1930s also spread.[70] As a result, contemporary actors used the term terrorism in an anti-communist context to describe the state repression within the Soviet Union.[71] These insurgent and anti-communist understandings of terrorism were prevalent in 1968.

As terroristic perpetrators, victims, and locations became increasingly transnational, however, U.S., European, and Western state officials adapted their notions of terrorism. This dissertation analyzes their new conceptualization of terrorism and its political ramifications.

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[68] See Byrne, *Mecca of Revolution*; Nguyen, *Hanoi's War*; Chamberlin, *The Global Offensive*; and Matthew Connelly, *A Diplomatic Revolution.* For Jewish terrorists in Mandate Palestine, see Arie Perliger and Leonard Weinberg, "Jewish Self-Defence and Terrorist Groups Prior to the Establishment of the State of Israel: Roots and Traditions," *Totalitarian Movements and Political Religions* 4, no. 3 (September 2003): 91–118, doi:10.1080/14690760412331326250.

[69] Stampnitzky, *Disciplining Terror,* 51-61.

[70] See Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* (New York: Basic Books, 2010).

[71] Stampnitzky, *Disciplining Terror,* 54.

CHAPTER 2

CRIMES AGAINST CIVIL AVIATION AND DIPLOMATS: U.S. MULTILATERAL EFFORTS TO DELEGITIMIZE TERRORISTIC VIOLENCE, 1968-71

Patterns of transnational political engagement changed in the 1960s, due to expanding communications and transportation infrastructure. In Southeast Asia, the Middle East, Africa, and Latin America, national liberation movements exploited new contacts to spread media propaganda, coordinate with similar groups, and share resources. The most radical national liberation actors claimed insurgent combatant status and a voice in state-to-state relations. Transnational connections helped them to project their demands and violent acts beyond the regional boundaries of their respective insurgent struggles.

The United States led early multilateral efforts against non-state actors who crossed national boundaries to commit politically motivated terroristic violence in the late 1960s. Alongside conservative Latin American allies, such as Brazil and Argentina, U.S. diplomats generated multilateral conventions in the International Civil Aviation Organization (ICAO) and Organization of American States (OAS) which codified hijackers and people who attacked diplomats as common criminals. U.S. diplomats ignored offenders' demands to be identified as insurgents or combatants - legitimate actors in state-to-state relations. Instead, they dismissed such actors' political grievances and insisted that their actions were not politically relevant. What is more, these conventions were not enforceable because they contained significant loopholes to protect the civil rights of political dissidents. The overarching narrative was nonetheless powerful. Mid-level U.S. bureaucrats created an enduring international law framework which treated specific terroristic actors as ordinary criminals, shaping how global publics and many governments understood the broader category of "terrorism" over subsequent decades.

This chapter traces the origins of contemporary Western anti-terrorism practices in the international sphere and shows that these early policies did not evolve as straightforward responses to the threat of terrorism. In negotiations for multilateral conventions against hijackings

and attacks on diplomats, U.S. policymakers developed and promoted an understanding of these specific terroristic acts as crimes. Many of the U.S. experts involved in the negotiations were legal specialists, which shaped their focus and priorities. They argued that non-state terroristic actors had no right to a voice in state-to-state or international relations because they were “mere” criminals. This understanding formed the basic framework for all subsequent multilateral anti-terrorism efforts.

The chapter also emphasizes that the development of this understanding was not teleological or necessarily driven by the motivation to stop terrorism. In 1968, terrorism was a rarely used term commonly associated with guerilla warfare. In negotiations about hijackings and attacks on diplomats, the negotiators did not recognize these acts as part of a comprehensive category of terrorism in the way we do today – as illegal, illegitimate, and diverse forms of violence carried out by non-state actors. U.S. officials instead sought solutions for very specific violent threats to their citizens and interests. U.S. diplomats created ways of thinking about and addressing terroristic violence (as an illegitimate crime) before terrorism itself became a global security threat. Other states accepted these solutions when they regulated very specific violent acts, but contested them once U.S. officials subsequently attempted to apply them to a compound category of terrorism. Negotiations about terrorism in the 1970s were therefore always about far larger questions concerning who had the legal right to practice politically motivated violence.

The U.S. multilateral efforts against terroristic violence were led by the State Department’s Office of the Legal Advisor (OLA), which was mainly concerned with geopolitical interests in Latin America and less with counterterrorism as an independent security issue. The lawyers thought that they were addressing narrowly focused issues. One was how to pressure the Cuban government into returning U.S. hijackers who had fled to Havana, a frequent destination for them in the 1960s. The OLA wanted such hijackers back in U.S. custody, so that they could be prosecuted for their crimes and deter other hijackers. Another issue concerned leftist insurgents in Guatemala, Brazil, and Argentina, who increasingly kidnapped U.S.,

European, and Japanese diplomats to trade for imprisoned colleagues. The OLA wanted new ways to require Latin American states to increase the security of diplomats on their territory.

This chapter follows the Office of the Legal Advisor as it generated three international law conventions which targeted specific transnational terroristic acts – two against airplane hijackings, and one against attacks on diplomats. Since they discussed narrow regulations with counterpart officials in similar institutional roles, the OLA bureaucrats, lawyers by training, hoped that they could treat these acts of political violence as apolitical, criminal deeds. They worked in specialized and regional international organizations, where there was no representation for national liberation movements. A series of somewhat successful negotiations made U.S. officials anticipate that their strategy could be continued in the future. They aimed to create worldwide agreements that further criminalized (and politically delegitimized) hijackings and attacks on diplomats.

The conventions had global implications because they rejected the legitimacy of politically motivated violence. The three conventions required all signatory states to either begin domestic criminal proceedings against perpetrators of such acts, or extradite the offenders elsewhere for prosecution. Therefore, these treaties deprived terrorists of the combatant status they claimed as insurgents and undermined the political legitimacy which these actors drew from such status.

The other offices in the State Department, such as the Bureau of Near Eastern Affairs (NEA), paid little attention to the potential implications of these conventions, especially concerning the Arab-Israeli conflict and the Palestinian fedayeen. So did other agencies of the U.S. federal government. The conventions included loopholes. These gave states leeway to make decisions about whether a terroristic act was a legitimate expression of political violence after all, while retaining the overarching interpretation that such acts were generally criminal. However, the conventions' narrative that terrorism was apolitical had far-reaching ramifications. This denial of terroristic actors' political agendas played a significant role in the formation of our modern understanding of "terrorists" as illegitimate political actors.

National Liberation Hijackings: From Insurgency to Crime

In the early 1960s, the Algerian and Cuban revolutions inspired political activists and insurgents around the world as vivid examples that the violent overthrow of a state was possible.[1] While contemporaries assumed that North Vietnam (the Democratic Republic of Vietnam) controlled the South Vietnamese National Liberation Front (the NLF, pejoratively labeled the "Viet Cong" by the US), recent archival studies have shown that the NLF acted with substantial material and tactical independence.[2] In Latin America, sharp economic inequality generated radical insurgent groups, such as Uruguay's Movimiento de Liberación Nacional-Tupamaros, that were inspired by local political conditions as well as national liberation ideology.[3] Inspired by Carlos Marighella's *Minimanual of the Urban Guerilla,* these groups sought to pressure states into taking repressive countermeasures that, the insurgents believed, would diminish their legitimacy in the eyes of the broad population.[4] In the Middle East, various Palestinian guerrilla groups joined together to create the Palestine Liberation Organization (PLO) in 1964. Broadly labeling themselves "Fedayeen," or "those who sacrifice themselves," the PLO's members sought to destroy the state of Israel in order to establish a Palestinian homeland. The most well-known of

[1] See Jeffrey James Byrne, *Mecca of Revolution: Algeria, Decolonization, and the Third World Order* (Oxford, U.K.: Oxford University Press, 2016); Matthew Connelly, *A Diplomatic Revolution: Algeria's Fight for Independence and the Origins of the Post-Cold War Era* (Oxford, U.K.: Oxford University Press 2003); and Teishan A. Latner, "Take Me to Havana! Airline Hijacking, U.S.-Cuban Relations, and Political Protest in Late Sixties' America," *Diplomatic History* 39, 1 (January 2015): 16–44.

[2] See especially Lien-Hang Nguyen, *Hanoi's War: An International History of the War for Peace in Vietnam* (Chapel Hill, NC: University of North Carolina Press, 2012).

[3] An excellent study of the Tupamaros and their transnational connections is Lindsey Churchill, *Becoming the Tupamaros: Solidarity and Transnational Revolutionaries in Uruguay and the United States* (Nashville: Vanderbilt University Pres, 2014).

[4] Gerard Chaliant and Arnaud Blin, "From 1968 to Radical Islam," in *The History of Terrorism: From Antiquity to Al Quaeda,* ed. Gerard Chaliant and Arnaud Blin (Berkeley: University of California Press, 2007), 208-220.

these groups was Fatah, led by charismatic engineer Yasser Arafat.[5] These groups increased their domestic and global influence in the late 1960s.

In these cases, state officials often referred to the insurgents as "terrorists," which in the context of the 1960s associated them with guerilla or insurgent actors. Academics and government officials who wrote about "terrorism" during the 1950s and early 1960s in the United States and its allied countries most often described terrorism as an act of warfare, committed when the perpetrator faced strong and asymmetric force structures.[6] In addition, they utilized the term "state terror" for the practices by which totalitarian and communist governments repressed their own populations, such as the incarceration of political dissidents. Their claims targeted the Soviet Union and fit into contemporary anti-communist and totalitarianism theories and vocabularies.[7] By the late 1960s, states affected by insurgent violence justified their harsh responses by claiming that these insurgents served communist states' goals. Examples included Uruguay, whose government condemned the Movimiento de Liberación Nacional-Tupamaros, and South Africa, which created a series of "anti-terrorist" policies and legislation targeting the South West African People's Organization as well as black dissidents.[8] This tactic built upon preexisting anti-communist fears to undermine popular support for the insurgents.[9]

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[5] Detailed studies of the PLO's tactics and aims include Paul Thomas Chamberlin, *The Global Offensive: The United States, the Palestine Liberation Organization, and the Making of the Post-Cold War Order* (New York: Oxford University Press, 2012); and David Hirst, *The Gun and the Olive Branch: The Roots of Violence in the Middle East*. 3rd ed. (London: Nation Books, 2003).

[6] Gerard Chaliant and Arnaud Blin, "Terrorism in Time of War: From World War II to the Wars of National Liberation," in Chaliand and Blin, *The History of Terrorism*, 221-254, 230-234.

[7] See, for example, Hannah Arendt, "Ideology and Terror: A Novel Form of Government," *The Review of Politics* 15, no. 3 (July 1953): 303-327.

[8] Embassy Pretoria to Department of State, Airgram A-34, July 29, 1967, National Archives and Records Administration (NARA), Record Group 59: Records of the Department of State (RG 59), Central Foreign Policy Files (CFPF) 1967-1969, POL 23-8 S AFR 1/1/67.

[9] Ray S. Cline (Bureau of Intelligence and Research), Intelligence Brief "Latin America: The Growing Specter of Diplomatic Kidnappings," March 25, 1970, NARA, RG 59, CFPF 1970-73, POL 23-8 LA 1/1/1970.

States whose interests were threatened by national liberation insurgents often responded with repressive tactics. Israel and the United States reacted to insurgents in the Middle East and South Vietnam, respectively, with the use of asymmetric military force. In Latin America, U.S. policymakers sent counterinsurgency teams to train local law enforcement.[10] States such as Guatemala, Uruguay, South Vietnam, and South Africa frequently ignored the rule of law, incarcerating their citizens without trial and torturing prisoners. These offenses continued past the 1960s into the 1970s and 1980s. Moreover, as insurgents began committing acts of violence across state borders and jurisdictions from 1968 onward, some affected states decided to venture beyond domestic counterinsurgency tactics to further strip such insurgents' rights. Ironically, the United States paved the way for these measures by pursuing its own geopolitical interests.

The Office of the Legal Advisor in the U.S. State Department spearheaded a multilateral strategy to address specific acts of terroristic violence by changing international legal standards. The goal was to redefine these transnational terroristic acts as criminal offenses that were, therefore, politically irrelevant. Instead of preventing insurgent violence, the OLA attempted to delegitimize it. This campaign began around the issue of airline hijacking.

Hijacking first spread in the 1950s and 1960s as political dissidents used the growing availability of commercial flights to escape oppressive regimes and garner public attention. Most frequently affected were the United States and Cuba. In the early 1960s, various Cubans fleeing the Cuban revolution used the tactic to reach the United States. Throughout the 1960s, that trend reversed as American citizens began hijacking domestic flights to reach the revolutionary haven of Havana.[11] Many U.S. hijackers were criminals demanding ransom or evading the law. Others saw themselves as political dissidents who needed to escape persecution. William Lee Brent, for

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[10] Deputy Under Secretary of State for Administration William B. Macomber to Senator J. William Fulbright, Letter, October 31, 1967, NARA, RG 59, CFPF 1967-69, POL 23-8 LA, 1/1/1967.

[11] Even small aircrafts with little fuel capacity were capable of making this trip. See Latner, "Take Me to Havana!" 16, 24.

example, was expelled from the Black Panther Party in 1969 after shooting a police officer. When released on bail, he hijacked a TWA flight to Cuba.

In the United States, neither the federal government nor the public considered these hijackings a serious enough danger to warrant an active response. The Lyndon B. Johnson administration thought anti-hijacking policies too much of an expenditure of political capital to pursue. FBI agents received no specific training for hijacking situations. Airlines had few formal protocols about hijacking.[12] The U.S. mainstream media ignored hijackings to Cuba until due to the domestic political unrest, the number of occurrences skyrocketed from seven between 1961 and 1967 to ninety-one in 1968-1972[13] Journalists then began to portray the hijackings to Cuba as a tropical adventure.

The U.S. government's main priority concerning hijacking was to gain physical custody of hijackers and demonstrate that Cuba was not a refuge from U.S. laws. In the State Department, Frank Loy, Deputy Assistant Secretary for Transportation and Telecommunications, was responsible for managing the problem. By 1968, the State Department had set up an informal contact with the Cuban government through the Swiss embassy in Havana which allowed hijacked aircraft and passengers to depart quickly. Cuban authorities refused to hand over any hijackers to the FBI or State Department, however, and sentenced most to lengthy prison sentences as criminals.[14] This system maintained the U.S. diplomatic boycott of Cuba but did not facilitate extraditions. Loy again and again sought to convince the Cuban government to extradite

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[12] Air Line Pilots Association (ALPA) President Charles H. Ruby to Senator Philip A. Hart, Letter, August 22, 1968, Wayne State University, Walter P. Reuther Library, Archive of Urban and Labor Affairs, ALPA Collection, ALPA President's Department Records Part II, 10-2 Hijacking Correspondence 1968-69.

[13] National Security Advisor Henry Kissinger to President Richard Nixon, Memorandum, Washington, D.C., February 7, 1969, *Foreign Relations of the United States* (*FRUS)*, 1969-76, Volume E-1: Documents on Global Issues, 1969-72, Document 122, accessed September 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d122; and Robert T. Holden, "The Contagiouness of Aircraft Hijacking," *American Journal of Sociology* 91, no. 4 (January 1968): 874-904, 879.

[14] See Latner, "Take Me to Havana!" 27.

hijackers, often coordinating with aviation trade organizations such as the International Air Transport Association or unions such as the Air Line Pilots Association He had little success.[15]

While Loy considered hijacking in light of U.S.-Cuban relations, certain Fedayeen groups began using it in 1968 as an insurgent tactic, and in the process extended the physical locations where many hijackings occurred from the Caribbean to anywhere in the world. This expansion of hijackings occurred after the Fedayeen propaganda victory against Israeli Defense Forces (IDF) at al Karameh in 1968. When the Israeli Defense Forces entered the Palestinian refugee camp of al Karameh to destroy PLO installations there, PLO members fought them to a standstill, with both sides incurring heavy losses. The PLO celebrated its newly demonstrated ability to prevent the Israeli Defense Forces from operating at will. The most radical PLO members wanted to further pressure the Israeli state by targeting Israeli citizens and civilian institutions beyond the territorial boundaries of the Arab-Israeli conflict.

Led by former doctor George Habash, head of the group Popular Front for the Liberation of Palestine (PFLP), these Fedayeen began targeting civilian airplanes and airports connected to Israel. At first, the group hit the Israeli airline El Al, but within months it branched out to any airline registered in Israeli ally states. On July 23, 1968, four PFLP members hijacked El Al flight 426 on its way from London to Tel Aviv. Landing in Algeria, the hijackers successfully negotiated for the release of sixteen Israeli prisoners of Palestinian origin. Emboldened by this success, two PFLP members attacked El Al flight 253 in Athens that December, killing one passenger before being overwhelmed by Greek police. The following February 1969, four PFLP members tried to hijack El Al flight 432 at the Zurich airport but were stopped by an armed undercover Israeli agent on board. On August 29, 1969, two PFLP members hijacked TWA flight 840 to Damascus, Syria, for the first time targeting a U.S. airline instead of the Israeli El Al. Both hijackers were released by Syrian authorities. One, Leila Khaled, became a revolutionary icon due to her gender. Dozens of countries had citizens caught in these attacks, and the hijackers violated many states' national

[15] Kissinger to Nixon, Memorandum, February 7, 1969, *FRUS,* 1969-76, Volume E-1, Document 122.

laws concerning kidnapping and weapons possession. Though the PLO considered Israel its key enemy, more and more other states were drawn into the attacks.

At first, Habash's hijacking tactic appeared to succeed in influencing state-to-state relations. Israel responded with a military attack on Beirut airport, which Arab states condemned before the UN Security Council. Not even the U.S. UN ambassador was able to justify the Israeli attack.[16] Meanwhile, Israel could not publicly apply military force or counterinsurgent tactics in distant states where attacks happened or hijacked planes landed.

During the presidency of Lyndon B. Johnson, federal agencies affected by Palestinian hijackers were ill-equipped to address this new security threat. Most had no institutional experience in counterinsurgency or anti-hijacking efforts. The U.S. armed forces, which directed counterinsurgency efforts, did not become involved in civil aviation security. The State Department's Office of the Legal Advisor had never conducted direct hijacking negotiations. State's Bureau of Near Eastern and South Asian Affairs (NEA), responsible for Palestinian issues, did not participate in day-to-day anti-hijacking efforts. The FBI did not have the manpower or authority to pursue hijackings abroad. Meanwhile, the FAA, which was responsible for setting safety and security standards for U.S. air travel, also had scant institutional experience with hijacking.[17] U.S. airline companies had not developed anti-hijacking procedures, since they usually relied on paying ransom.

Hijacking, as a consequence, became a method through which Palestinian Fedayeen could force not only the Israeli government but also powerful Israeli allies such as the United States to take their political aims seriously. Hijackers such as Khaled became (in)famous symbols of insurgent resistance to Western power. Through the seizure of aircraft and the taking of hostages, PFLP members extended their insurgency to new spaces, both literally and figuratively.

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[16] See Chamberlin, *The Global Offensive,* 73-74.

[17] See Timothy J. Naftali, *Blind Spot: The Secret History of American Counterterrorism* (New York: Basic Books, 2005), 21-22.

However, the costs of this tactic were high. Hijacking increasingly blurred the lines that distinguished revolutionary insurgent fighters from thugs without political motivations. The international locations and victims of the PFLP called into question whether hijacking was a legitimate revolutionary act of political violence, thereby threatening the PLO's self-proclaimed insurgent combatant status. PLO Chairman Arafat opposed Habash's strategy, arguing that hijacking undermined the Fedayeen's image of national liberation revolutionaries. By targeting civilians unassociated with the Israeli state, the PLO risked forfeiting any claim to be a proto-state organization bound by norms of state-to-state relations. Yet Arafat could not prevent Habash's actions.[18]

While Israel conducted military operations against the PLO, the U.S. federal government continued to rely on Loy, who identified hijacking as a U.S.-Cuban issue, to address the problem. By retaining the same personnel, the State Department signaled that it did not acknowledge the PFLP's hijackings as a legitimate combatant act, or even as an insurgent aspect of the Arab/Israeli conflict. Loy operated with little high-level intervention. In early 1969, the recently appointed National Security Advisor, Henry Kissinger, was worried that President Richard Nixon would suffer in the polls during hijacking crises if he could not distance himself from these jurisdictional nightmares. Kissinger and Secretary of State William Rogers hindered Nixon from making public statements or initiating anti-hijacking policies.[19] As a result, the task of addressing hijackings fell to mid-level bureaucrats. Loy was the exemplar.

As he pursued his duties, Loy continued to be more concerned by hijackings to Cuba, an established socialist state, than he was about the PFLP, a group seeking statehood and sovereignty. Palestinians usually fell under the purview of the NEA at the State Department, and Loy's main goal was to utilize the climate of fear that the PFLP had generated to place pressure on Cuba.

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[18] See Chamberlin, *The Global Offensive*, 70-73.

[19] See Naftali, *Blind Spot*, 39.

For help, Loy turned to the State Department's OLA. The priority for Mark Feldman, Assistant Legal Advisor for Intra-American Affairs, was to create a legal framework that would resolve U.S.-Cuban extradition issues. Feldman brought with him Knute (Gene) Malmborg, the Assistant Legal Advisor for Security and Consular Affairs, responsible for securing U.S. citizens' access to diplomatic posts abroad. Also included in planning and discussions was Richard Frank, Assistant Legal Advisor for Economic, Business and Communications, whose primary concern was the toll of hijackings on the U.S. aviation industry. Consequently, U.S. anti-hijacking policy was pursued by legal experts who focused on U.S.-Cuban relations. They drew technical support from the Department of Transportation and Federal Aviation Administration (FAA).

Loy had few resources or policy options. Nixon, Kissinger, and Rogers did not openly acknowledge, engage with, or support his efforts. Because Loy was ostensibly dealing with a small U.S.-Cuban issue, he had little contact with the departments or access to the resources dedicated to the Arab-Israeli conflict. Similarly, Loy lacked connections to the institutions in the U.S. federal government with prior counterinsurgency experience, or to the FBI. Counterinsurgency tactics were not an option. Using military units to rescue a hijacked aircraft outside of U.S. territory would draw public attention to the high-level officials who had authorized this show of force. In addition, such actions would earn the ire of other states, including Cuba, Syria, and other Soviet allies. It increased the risk of casualties and the danger of drawing the United States into an armed conflict.

Loy's most determined ally was Knut Hammarskjöld, director of the International Air Trade Association (IATA). IATA represented the interests of airline companies worldwide. Ironically given his mission, Hammarskjöld was the nephew of Dag Hammarskjöld, the former UN Secretary General who in 1961 had died in a plane crash in Africa under mysterious circumstances. Hammarskjöld was deeply concerned about hijackers' potential to endanger and disrupt orderly airline travel. He and Loy had a good working relationship, and the IATA director had previously assisted Loy as a contact to Cuban authorities. After the El Al hijacking on June 23, 1968, Hammarskjöld pushed Loy to seek a multilateral solution to the problem of hijacking.

The Fedayeen's actions had transformed hijacking into a global threat that could hit the citizens of any state. During 1967, most hijacked aircraft had been U.S. domestic flights, but the 1968 Palestinian hijackings affected a variety of long-distance flights between the United States, Europe, and the Middle East. Loy and Hammarskjöld agreed that their own attempts to seek anti-hijacking resolutions had a greater chance of success if they could persuade a sufficient number of states to become invested in the issue.

To arrange a multilateral solution, Hammarskjöld turned to a highly specialized international organization, the International Civil Aviation Organization (ICAO). Founded in Chicago in 1944, the ICAO quickly joined the UN agency system. Its mission was to regulate civil aviation worldwide.[20] Membership and adherence to its standards were voluntary. In its first decades, the organization was dominated by the United States and United Kingdom (U.K.), the countries that cornered the greatest share of the civil aviation market.[21] However, new members joined in several waves during the 1950s and 1960s. These new states, many of which hailed from the Global South, pushed their own agendas, thereby undermining British and U.S. influence. Nevertheless, the organization was the logical choice for any multilateral civil aviation agreement. ICAO focused exclusively on civil aviation and therefore could be cordoned off from the U.S.'s policies elsewhere, such as the Middle East. In addition, Hammarskjöld knew that his position as director of IATA carried weight in the ICAO. When the ICAO's General Assembly met in September 1968, Hammarskjöld, with robust U.S. backing, asked the ICAO to take up the issue of hijacking. The Assembly agreed, adopting a resolution to study acts of "unlawful interference with aircraft."[22]

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[20] See David MacKenzie, *ICAO: A History of the International Civil Aviation Organization* (Toronto: University of Toronto Press, 2010), 51-56.

[21] See Jeffrey Engel, *Cold War at 30,000 Feet: The Anglo-American Fight for Aviation Supremacy* (Cambridge, MA: Harvard University Press, 2007).

[22] Donald J. Agger, "Report of the United States Delegation to the Sixteenth Session of the Assembly of International Civil Aviation Organization, Buenos Aires, Argentina, September 3-26, 1968," October 29, 1968, NARA, RG 59, CFPF 1967-69, AV3 ICAO 10/1/68, 23.

With this resolution, the ICAO picked up an issue which previously ranked low on its list of priorities, and which its members had never discussed in connection to insurgency or political violence. When the ICAO had previously worked on civil aviation security, it had been only to regulate jurisdiction over the very specific issue of crimes on board aircraft in flight. After the Cuban revolution in 1961, a few Cubans hijacked airplanes to the United States. The ICAO began drafting a multilateral convention against crime on board aircraft. In 1963, the organization adopted the "Convention on Offences [sic] and Certain Other Acts Committed on Board Aircraft," widely known as the "Tokyo Convention."

The Tokyo Convention provided a solution for how to proceed against transnational offenders. Since aircraft passed over many national territories, the question of who would have jurisdiction and the right to prosecute a crime was crucial. The Tokyo convention decreed that the country under which the airplane in question was registered had the legal responsibility to prosecute a crime. In addition, any country whose citizens or national security were threatened could demand jurisdiction, even if the offense had occurred beyond that state's territorial boundaries or airspace.[23] In legal terms, this idea is called universal jurisdiction.[24] It allows any state to conduct criminal proceedings against a person who committed a crime onboard a civilian aircraft.

The convention had serious shortcomings, however, which prevented it from being an effective anti-hijacking tool. To begin with, ICAO members only slowly ratified the Tokyo Convention. It had not entered into effect when the PFLP began hijacking airplanes.[25] More

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[23] International Civil Aviation Organization, "Convention on Offences and Certain Other Acts Committed on Board Aircraft, Signed at Tokyo, on 14 September 1963 (Tokyo Convention)," *United Nations*, accessed June 2, 2017, https://treaties.un.org/doc/db/Terrorism/Conv1-english.pdf, Article 3, Paragraph 1; and Article 4.

[24] See Luc Reydams, *Universal Jurisdiction*: *International and Municipal Legal Perspectives* (Oxford, U.K.: Oxford University Press, 2003).

[25] The convention held a very low priority for many governments, who subsequently invested no political effort into the ratification process. It entered into effect when the United States became the tenth state to ratify it in September 1969.

substantively, the convention ignored attacks on airports or grounded airplanes, and it contained no mechanisms which would require states to enforce it and prevent, stop, or penalize hijackings.[26] Most fundamentally, it offered no mechanism to forestall transnationally operating, self-proclaimed insurgent hijackers. Still, the convention's very existence set a precedent, making Loy and Hammarskjöld optimistic that they could generate future ICAO anti-hijacking agreements.

Loy hoped that a follow-up agreement to the Tokyo Convention could reinforce the idea that hijackers were criminals, not insurgents, and generate pressure on Cuban authorities to extradite them.[27] Previously, Cuban authorities had refused extraditions, either trying hijackers in Cuba or granting them refugee status as dissidents escaping U.S. political prosecution.[28] Loy's goal was to codify hijacking as a criminal threat. To do so, he turned to the civil aviation security specialists in the ICAO, and asked them to develop a response to the hijacking crimes that were undermining every state's interests. By negotiating with a wide range of states, Loy and U.S. ICAO Representative Robert Boyle hoped they could integrate newly-independent states into U.S. plans. Any agreement reached would be the creation of the ICAO, which allowed Nixon and his advisors to maintain their distance. Loy hoped that this approach would create a multilateral solution which criminalized the specific act of hijacking, ignored all references to political violence, and pressured Cuba to deliver hijackers back to U.S. soil.

"To Extradite or to Prosecute"

Despite the U.S. representatives' efforts to excise politics from the ICAO negotiations, the other ICAO delegations' experiences with insurgent and counterinsurgent violence shaped discussions from the outset. The ICAO's Legal Committee formed a new subcommittee to draft

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[26] Mackenzie, *ICAO*, 253-254.

[27] Memorandum of Conversation between Robert P. Boyle, Richard A. Frank, et al., November 26, 1968, NARA, RG 59, CFPF 1967-69, AV3 ICAO 11/1/68.

[28] Embassy Buenos Aires to Department of State, Airgram A-1110, September 26, 1968, NARA, RG 59, CFPF 1967-69, AV3 ICAO 9/1/68.

an agreement against hijackers in December 1968. By this time, Israel had begun counterinsurgency attacks against the PFLP which violated neighboring states' sovereignty. On December 28, 1968, the IDF raided Beirut airport, responding to the hijacking of El Al flight 253 in Athens two days earlier. Targeting the Lebanese government for permitting the PLO to operate within its borders, the IDF destroyed fourteen aircraft belonging to various Arab-owned airlines. Infuriated, Arab states protested in the UN Security Council and sought to exclude Israel from the ICAO. The ICAO anti-hijacking subcommittee met for the first time in February 1969. The Arab delegates' attempt to exclude Israel failed, but tensions remained high; Arab/Israeli politics were on all delegations' minds.[29]

In contrast, the State Department's goals for the ICAO negotiations were shaped by U.S.-Cuban relations and focused on a multilateral solution that contained no political or military aspects.[30] The State Department had no diplomatic relations with Cuba or formal means of requesting an extradition of hijackers for kidnapping and weapons possession charges. Fidel Castro's regime did not want to deal with the large number of arriving hijacked flights.[31] However, Cuban authorities also utilized the hijackings as a propaganda tool. They accused the United States of persecuting political dissidents until such actors had no other option but to escape via airplane to Cuba.[32] Loy's main goal was to fashion an anti-hijacking agreement with Cuba that would provide extradition mechanisms.[33] Cuba was a founding ICAO member, and Loy's group speculated that a multilateral ICAO agreement could pressure Cuba when unilateral U.S. efforts

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[29] Department of State to Embassies Beirut and Tel Aviv, Telegram CA-740, February 4, 1969, NARA, RG 59, CFPF 1967-69, AV3 ICAO 2/1/69.

[30] Department of State to Consulate Montreal, Telegram 8296, January 16, 1969, *FRUS*, 1969-76, Volume E-1, Document 3, accessed September 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d3.

[31] Latner, "Take Me to Havana!" 26.

[32] Airgram A-1110, September 26, 1968, NARA, RG 59, CFPF 1967-69, AV3 ICAO 9/1/68.

[33] Kissinger to Nixon, Memorandum, February 7, 1969, *FRUS*, 1969-76, Volume E-1, Document 122.

could not. The U.S. delegation's objective at the February 1969 ICAO subcommittee meeting was therefore to secure an agreement that required states to extradite hijackers to the country with the jurisdiction to prosecute them.

However, a key challenge was the so-called political offense exemption, a standard clause in extradition agreements that protected political dissidents. If offenders could demonstrate that their actions were politically motivated, or that a state wanted their extradition to persecute them politically, any country could refuse that extradition. Many American hijackers in Cuba claimed a political motivation. These men habitually used national liberation terminology to portray the United States as an imperialist state, from which Cuba was their only refuge. The U.S. delegation would have to convince the other ICAO delegates that the act of hijacking was never politically motivated and should always be considered a common crime.[34]

Most other delegates on the subcommittee rejected the U.S. position, though. The committee members agreed that hijacking was a violent act and that extradition requirements were a plausible method to deter offenders. However, most committee members wanted simply to add hijacking to existing extradition treaties, without touching the political offense exemption. They saw hijacking as a specific legal problem but also recognized that their actions could address broader questions about political violence. In addition, the Tunisian and Algerian delegates were particularly sensitive about any agreement forcing them to extradite everyone, especially Palestinian revolutionaries. Doing so would undermine their sovereign control of their legal systems.[35] They argued that states should be able to refuse extradition if they were persuaded that the hijackers were politically motivated. Furthermore, they demanded that an extradition agreement could not violate any national laws. Other subcommittee delegations,

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[34] Knute Malmborg, "Report of the United States Delegation to the Subcommittee on Unlawful Seizure of Aircraft, International Civil Aviation Organization, Montreal, Canada, February 10 through 21, 1969," June 16, 1969, NARA, RG 59, CFPF 1967-69, AV3 ICAO 6/1/69, 4.

[35] Legal Committee, International Civil Aviation Organization, "Report of the Subcommittee on Unlawful Seizure of Aircraft, 10-21 February 1969," February 21, 1969, NARA, RG 59, CFPF 1967-69, AV3 ICAO 6/1/69, 5.

including France and the U.K., approved. The ICAO meeting report stated that "The majority considered that the state should have a discretion whether to prosecute or not[.]"[36] Arguing that the American proposals impinged on states' sovereignty, inhibited compromise, and would end negotiations before they even began, the United States' closest allies were not willing to support the U.S. proposals.[37]

The subcommittee therefore focused on penalizing the act of hijacking without forcing any state to extradite. The most prudent course of action, the delegates agreed, was to add hijacking to existing bilateral and multilateral extradition treaties. Loy and his coworkers introduced a compromise. They proposed requiring a state to prosecute a hijacker locally if that state's officials refused to extradite him or her. In legal terminology, this principle was *Aut Dedere aut Judicare* ("to extradite or to prosecute"). This concept could not compel extradition, but it did force states to create domestic criminal laws against the crime of hijacking and to apply those laws uniformly and consistently. For Loy, the compromise at least ensured that ICAO members would arrest and try hijackers. The United States could also leverage this principle politically and criticize states that did not adhere to it. From February 1969 onward, Loy and his coworkers' goal was to secure an "extradite or prosecute" agreement and narrow the permitted political offense exemptions within it as much as possible.

The U.S. delegation's chief allies were non-state groups that represented frequent victims of hijacking, including aviation trade organizations and worker unions. These groups lobbied ICAO delegates in favor of stringent anti-hijacking measures that excluded political offense

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[36] Legal Committee, "Report of the Subcommittee on Unlawful Seizure of Aircraft, 10-21 February 1969," February 21, 1969, NARA, RG 59, CFPF 1967-69, AV3 ICAO 6/1/69, 4.

[37] Malmborg, "Report of the United States Delegation to the Subcommittee on Unlawful Seizure of Aircraft," June 16, 1969, NARA, RG 59, CFPF 1967-69, AV3 ICAO 6/1/69, 13.

exemptions. Their influence was limited, however. The ICAO delegates focused on state actors, and generally did not consider the input of non-state actors.[38]

At the ICAO, Loy, Malmborg, Feldman, and Frank sought to gain custody of U.S. citizens in Cuba, but their efforts held far larger implications. The principle of "extradite or prosecute" mandated that all hijackings be tried as criminal cases, either in the courts of the arresting state or a state that had filed for the hijackers' extradition. As a result, the subcommittee's draft agreement on a specific legal issue broadly devalued the actions of the PLFP. Transnational insurgents such as the PFLP, who hijacked aircraft outside of the approximate borders of their contested territory, were now to be tried as criminals just like U.S. hijackers in Cuba. Hijackings were not to be treated as legitimate acts of political violence, or even as political at all.[39]

Meanwhile, a high-profile case highlighted that Arab states had a vested interest in labeling Fedayeen hijackings as politically motivated, legitimate insurgent acts. On August 29, 1969, PFLP members Leila Khaled and Salim Issawi hijacked TWA flight 840 to Damascus, Syria.[40] Syrian authorities imprisoned the hijackers and released all hostages except for two male Israeli citizens.[41] Syria's vice secretary of defense stated that the two Israeli passengers would only be released through a formal prisoner of war exchange for two Syrian air force pilots, who had been arrested by Israeli authorities as enemy combatants after an emergency landing in

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[38] Robert Boyle (U.S. ICAO Representative) to John Meadows (Director, Office of Aviation, Department of State), Letter, May 14, 1969, NARA, RG 59, CFPF 1967-69, AV3 ICAO 5/1/69.

[39] The State Department's Bureau of Near Eastern Affairs and Henry Kissinger's National Security Council staff were not involved in the ICAO negotiations.

[40] Embassy Rome to Department of State, Telegram 5480, August 29, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 8/1/69; Telegram 13069 from Embassy Paris to Department of State, Telegram 13069, August 29, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 8/1/69; Department of State to Embassy Tel Aviv, Action Telegram 146780, August 29, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 8/1/69.

[41] Executive Secretary of the Department of State Theodore Eliot to National Security Advisor Henry Kissinger, Memorandum, September 19, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 9/16/69, Secret.

Israel.[42] The Syrians insisted that their pilots had been on a non-hostile training mission, and that Israeli authorities had acted aggressively first by arresting them. No evidence supported this claim.[43]

Israel and the State Department were furious that the Syrian government was treating the situation as a negotiation under the laws of war. TWA was registered in the United States, and the Tokyo Convention specified that the U.S. government was responsible for the situation.[44] The Syrian pilots were military personnel, and the Israeli government refused to trade them for civilians.[45] For six weeks, the State Department lobbied the Syrian government through the Italian embassy in Damascus, TWA representatives on the ground, the UN, and the ICAO, before conceding that there was nothing else it could do. In December, the International Committee of the Red Cross conducted the exchange desired by the Syrians during a simultaneous Egyptian-Israeli prisoner of war swap. Syrian officials had utilized their interpretation of the TWA hijacking as an insurgent act to pressure Israel to release two Syrian military personnel.

Due to the TWA 840 hijacking, Loy and the OLA lawyers gained additional support at Foggy Bottom to create an ICAO convention that criminalized and politically delegitimized hijackers. The State Department lawyers once again petitioned the ICAO delegates, as legal specialists, to address the specific *criminal* problem of hijacking. Loy specifically avoided any wording that would portray hijacking as an act of insurgency or warfare. He wanted to ensure that

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[42] Embassy Rome to Department of State, Telegram 5496, August 30, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 8/1/69; Department of State to Embassy Rome, Telegram 147491, August 30, 1969, *FRUS*, 1969-76, Volume E-1, Document 8, accessed November 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d8.

[43] Memorandum of Conversation between Charles Tillingham, TWA Chairman of the Board, Tom Huntington, TWA Vice President, and Frank Loy, Subject: TWA Hijacking, September 3, 1969, *FRUS*, 1969-76, Volume E-1, Document 16, accessed February 2, 2018, https://history.state.gov/historicaldocuments/frus1969-76ve01/d16.

[44] Department of State to Embassy Tel Aviv, Telegram 147454, August 30, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 8/1/69; Telegram 147394 from Department of State to Embassy Rome, August 30, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 8/1/69.

[45] State to Tel Aviv, Telegram 147454, August 30, 1969, NARA, RG 59, CFPF 1967-69, AV 12 US, 8/1/69.

he hijackers were not granted formal standing in state-to-state relations. In September 1969, Loy and his team saw their chance. The ICAO anti-hijacking subcommittee met to draft an “extradite or prosecute” agreement, based on U.S. suggestions. Gene Malmborg, referencing the TWA 840 case, argued again for abolishing the political offense exemption. He also demanded, for the first time, that the ICAO institute sanctions against countries that did not return the plane and passengers.

Once again, the delegates on the subcommittee considered the broad political implications and drew the same conclusions. They were unwilling to infringe on states’ control over whom to prosecute or extradite. The subcommittee adopted the “extradite or prosecute” principle, requiring states to act against hijackers. However, delegates agreed only to ask a state to submit the case to the responsible authorities for the purpose of prosecution. They could not force national judicial authorities to go to trial. The committee also rejected the idea of mandatory extradition, regardless of political motivations. This outcome was acceptable to Arab and African delegations, who were adamantly opposed to regulations that might restrict their national sovereignty through mandatory extradition requirements. The delegates refused to consider sanctions. Membership in the ICAO was voluntary, and the delegates feared that the introduction of sanctions could derail the organization’s entire purpose. As a result, the draft convention was significantly weaker than Malmborg had hoped.[46]

With insufficient ICAO support, Loy sought to circumvent the ICAO negotiations and Arab delegations. He hoped to negotiate with counterparts in similar bureaucratic positions in states with large aviation capacities, building what political scientists Robert Keohane and Joseph Nye have termed ‘transgovernmental’ connections outside of the ICAO. Mid-level officials in two or more separate states can use their same-level connections to coordinate policy with one another, without requiring or even desiring the input of their superiors. With such transgovernmental

[46] Report by Knute Malmborg, “Report of the United States Delegation to the Subcommittee on Unlawful Seizure of Aircraft, International Civil Aviation Organization, Montreal, Canada, September 23 through October 3, 1969,” December 4, 1969, NARA, RG 59, CFPF 1967-69, AV3 ICAO 10/1/69, 8.

networks, mid-level officials can influence state policies without the influence of high-level officials or the public.[47]

In September 1969, Loy invited representatives of fifteen major aviation countries, mostly U.S. allies, to a December meeting in Washington, D.C. Loy's goal was to convince his counterparts to support harsher anti-hijacking regulations. Driven by their recent experiences in Syria, Loy, Malmborg, and new U.S. ICAO representative Charles Butler were especially interested in introducing sanctions against states that refused to extradite hijackers or to return hijacked craft and passengers.[48] These sanctions could be used to punish any state that treated hijackers as political actors. Loy was unable to gain support for the idea of sanctions, however. At least five delegations rejected the idea outright. All delegations worried that mandatory sanctions would undermine their own national sovereignty by forcing them to extradite someone or abrogate preexisting bilateral extradition agreements.[49] The meeting ended with the delegates' insistence on supporting the existing ICAO negotiations, which focused on extradition regulations while minding the potential broader political implications.

For Loy and the OLA, one positive outcome of the ICAO and Washington, D.C. meetings was that Cuba took a public position on anti-hijacking agreements, which was a vital development that they had sought. On September 19, 1969, only four days before the ICAO anti-hijacking subcommittee met, the Cuban government published an anti-hijacking law, no. 1226. The law allowed for the extradition of hijackers from Cuba, but solely in cases where Cuba had bilateral

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[47] See Robert O. Keohane and Joseph S. Nye, **"**Transgovernmental Relations and International Organizations," *World Politics* 27, no. 1 (October 1974): 39-62. Anne-Marie Slaughter and Kal Raustiala build on their work by demonstrating how transgovernmental networks can help to coordinate regulations and strengthen treaty negotiations and enforcement. See Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004); and Kal Raustiala, "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law," *Virginia Journal of International Law* 42, no. 1 (Fall 2002): 1-92.

[48] Assistant Legal Advisor for Transportation and Telecommunication Frank Loy to IATA Director Knut Hammarskjöld, Letter, November 25, 1969, NARA, RG59, CFPF 1967-69, AV 12 US, 11/1/69.

[49] See Mackenzie, *ICAO,* 260.

extradition agreements. It specifically rejected multilateral agreements such as the ICAO draft.[50] Yet the OLA and the FAA agreed that the Cubans were responding to U.S. ICAO efforts, and that the Cuban response was an opening for the United States to begin negotiations.[51] As an overture to Cuba, Loy and Mark Feldman sent a note to the Swiss ambassador to Cuba on November 28, 1969. As the American intended, the Swiss ambassador delivered it to Cuban Foreign Minister Raul Roa Garcia.[52] The Cuban response was ambiguous, but Secretary of State William Rogers ordered the OLA to draft a bilateral agreement and send follow-up messages to keep the ball rolling.[53]

Meanwhile, the number of hijackings around the world skyrocketed, underscoring that hijacking was a persistent new global security threat to international civil aviation. Many of these hijackers were inspired by the PFLP and used national liberation terminology to justify their behavior. On December 11, 1969, a North Korean citizen hijacked Korean Airlines Flight Y-11 from Seoul to North Korea. The North Korean government refused to return the crew and seven

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[50] Viron P. Vaky (National Security Council Staff) to National Security Advisor Henry Kissinger, Memorandum "Cuba's New Anti-Hijacking Law—A Significant Development," September 23, 1969, *FRUS*, 1969-76, Volume E-1, Document 123, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d123.

[51] Secretary of Transportation John Volpe to Secretary of State William Rogers, Letter, October 21, 1969, *FRUS*, 1969-76, Volume E-1, Document 124, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d124; Secretary of State William Rogers to President Richard Nixon, Memorandum "Cuban Hijacking Decree," October 31, 1969, *FRUS*, 1969-76, Volume E-1, Document 125, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d125; and Secretary of State William Rogers to Secretary of Transportation John Volpe, Letter, November 17, 1969, *FRUS*, 1969-76, Volume E-1, Document 127, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d127.

[52] Department of State to Embassy Bern, Telegram 199293, November 28, 1969, *FRUS*, 1969-76, Volume E-1, Document 128, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d128.

[53] National Security Advisor Henry Kissinger to President Richard Nixon, Memorandum "Note to Cuban Government on Hijacking," May 28, 1970, *FRUS*, 1969-76, Volume E-1, Document 130, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d130.

of the forty-six passengers.[54] On January 9, 1970, French citizen Christian Belon hijacked TWA flight 802 from Paris to Beirut, Lebanon. On March 31, 1970, nine members of the newly-formed Japanese Red Army Faction, an armed resistance group, seized Japanese Airlines flight 351 from Tokyo to Fukuoka. Taking 120 passengers and 9 crew members hostage, the hijackers redirected the aircraft to Pyongyang, where they hoped to secure transport to Havana. The North Korean state granted them asylum but refused to let them leave the country. They were forced to settle in North Korea.[55] This hijacking, the first on Japanese territory, gained global media attention.

Palestinian extremists also engaged in new forms of violence. On February 21, 1970, a bomb exploded in the hold of SwissAir flight SR330 from Zurich to Hong Kong. The aircraft crashed, killing all on board. That same day a bomb exploded in the cargo area of an Austrian Airlines flight from Frankfurt to Vienna, although in this case the pilot managed a safe landing. Assuming that the two attacks were related, Swiss prosecutors quickly linked them to a splinter organization of the PFLP, the PFLP – General Command, founded in 1968 by Ahmed Jibril. For Jibril, Habash was spending too much time with ideological justification. Jibril advocated more insurgent acts and less propaganda efforts.[56] No persons were ever prosecuted for the attack, though. In response, Western European states petitioned the ICAO for speedy relief against non-state attackers who endangered civilian passengers around the world.

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[54] Embassy Seoul to Department of State, Telegram A-256 with Enclosure “The KAL Incident,” May 27, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO 5/19/70.

[55] The group had faced serious setbacks five months early, when many members had been arrested in a remote training camp. The hijackers sought to mimic U.S. hijackers by flying to Cuba, where they wanted to train in guerilla methods. See Patricia G. Steinhoff, “Kidnapped Japanese in North Korea: The New Left Connection,” *The Journal of Japanese Studies* 30, no. 1 (Winter 2004): 123-142,127.

[56] Though the PFLP- General Command originally claimed credit for the Zurich attack, it later rescinded its claim. See “Arabs Reviewing Airliner Attack,” *New York Times*, February 25, 1970, 1, 10; and “Swiss Suspect Link in 2 Air Explosions,” *New York Times*, February 28, 1970, 33.

As the ICAO came increasingly under pressure to act, Malmborg and the U.S. ICAO delegation decided that the existing "extradite or prosecute" compromise draft had the highest chance of approval. Its attractiveness came from the fact that it retained each state's sovereignty to determine if the terrorist act, regardless of its nature, warranted the political offense exemption. Therefore, it covered both the technical specificities of extradition, as well as the broader political ramifications. In February 1970, the ICAO Legal Committee met to review the convention draft. Though the draft left the political offense exemption untouched and did not contain sanctions, Malmborg decided to support it as the best option the US could achieve.[57]

The draft declared that all hijackings should be tried as common crimes. It maintained each member state's sovereign control over whom to extradite (or not) for crimes of hijacking, and whom to prosecute according to local legal traditions. The convention draft codified hijackings as criminal but avoided the question of whether hijackings were legitimate political acts (of national liberation) by letting each member state make that call for itself. The Legal Committee scheduled a full diplomatic conference of all ICAO members in December 1970 to adopt the draft. Prompted by Western European states, the ICAO also decided to hold a previously unplanned General Assembly in July 1970 to discuss further security measures.

Meanwhile, Malmborg's colleague Mark Feldman, responsible for Intra-American Affairs in the OLA, was confronting a similar problem. A slew of attacks by Latin American leftist insurgents on diplomats of industrialized countries also straddled issues of national liberation, transnational violence, and extradition regulations. The UN's 1961 Vienna Convention on Diplomatic Relations specified that each sovereign state had the obligation to protect diplomats on its territory.[58] In 1969, many Latin American insurgent groups realized that targeting diplomats was an attractive means to achieve political goals.

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[57] Department of State to All Diplomatic Posts except Africa, Action Telegram 017617, February 5, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO 2/1/70.

[58] United Nations, "Vienna Convention on Diplomatic Relations, Done at Vienna on 18 April 1961," *United Nations*, accessed February 2, 2017, http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf, Article 29.

Insurgents' attacks on diplomats generated a severe security deficit for diplomats in Latin America and had the potential to degrade state-to-state relations in and beyond the region. In September 1969, the Revolutionary Movement 8th October kidnapped U.S. Ambassador to Brazil Charles Elbrick and exchanged him for fifteen political prisoners, inspiring a wave of other kidnappings. On March 16, 1970, Japanese Consul General Nobuo Okuchi was kidnapped in Sao Paulo, and ransomed for five political prisoners. On March 31, 1970, West German Ambassador to Guatemala Karl von Spreti was kidnapped by the insurgent Fuerzas Armadas Rebeldes; he was found dead on April 5. The Federal Republic of Germany (FRG) broke off diplomatic ties to Guatemala, blaming its government for failing to secure von Spreti's safe release. This murder sparked a crisis among diplomats stationed in Latin America.

In this situation, the Argentinian government reached out to other states on the American continent to find a solution for what it labeled "terrorism." To reiterate, the term "terrorism" was mainly associated with insurgencies in 1970. Dismissive of civil rights, the Argentine government under Juan Carlos Organia countered leftist insurgents by instituting repressive domestic policies that would culminate in the "dirty war" against dissidents waged from 1974 to 1983.[59] To supplement domestic efforts with international ones, in April 1970 Argentine Foreign Minister Nicanor Méndez announced that he would open bilateral talks with neighboring states concerning leftist "terrorists."[60] These insurgents targeted not only diplomats but also public luminaries and police officials. The attacks had become a significant internal security threat in Argentina.

The Argentine initiative to discuss "terrorism" in April 1970 was a resounding success. Within days, Méndez discovered that many other Latin American governments with similar repressive inclinations, such as Brazil, Uruguay, and Guatemala, were interested in multilateral,

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[59] A recent study of this development is Federico Finchelstein, *The Ideological Origins of the Dirty War: Fascism, Populism, and Dictatorship in Twentieth Century Argentina* (Oxford, U.K., New York: Oxford University Press, 2014). For U.S. foreign policy on the dirty war, see William Michael Schmidli, *The Fate of Freedom Elsewhere: Human Rights and U.S. Cold War Policy Toward Argentina* (Ithaca, NY: Cornell University Press, 2013).

[60] Department of State to Embassy Buenos Aires, Telegram 053134, April 10, 1970, NARA, RG59, CFPF 1970-73, POL 23-8 LA 1/1/70.

not just bilateral, agreements against "terrorism." Méndez brought his ideas to the Organization of American States (OAS). Founded in 1948, the OAS was an international organization designed to foster hemispheric cooperation in the Americas. In 1970 it was undergoing extensive bureaucratic reorganization to become a more powerful regional political forum. Feldman agreed with Méndez that the OAS was an appropriate organization to pursue a multilateral effort against terroristic violence. On April 13, Méndez formally requested that the OAS act on the matter of diplomats' kidnappings by "terrorists."[61] A week later, the OAS' judicial committee took up the matter, and decided to create a multilateral convention against "terrorism."[62]

Once again, the various national delegations had different opinions about how to address the political aspects of the violence that they were regulating. Méndez wanted an agreement that broadly covered "terrorism." His goal was to use the convention to delegitimize all insurgents in the region- labeling their deeds as criminal, not combatant or political. Such branding would ease states' criminal prosecution and conviction of insurgents. Feldman, who drafted the State Department's position, was more pragmatic. He wanted to include only crimes committed against diplomats, since such a convention would be easier to achieve. Diplomats were already protected persons under international law. In addition, Feldman was not interested in ending armed resistance in Latin America – he intended his efforts to solve the concrete problem of protecting locally stationed U.S. diplomats.[63] In addition, Feldman speculated that a protection-of-diplomats convention could motivate Soviet and Cuban officials to restrain leftist extremists. Since armed

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[61] Department of State to Embassy Buenos Aires, Telegram 0545589, April 14, 1970, NARA, RG59, CFPF 1970-73, POL 23-8 LA 1/1/70.

[62] Department of State to All Latin American Posts, Telegram 059835, April 22, 1970, NARA, RG59, CFPF 1970-73, POL 23-8 LA 1/1/70; and Department of State to All Latin American Posts, Priority Telegram 096478, June 18, 1970, NARA, RG59, CFPF 1970-73, POL 23-8 LA 6/1/70.

[63] Department of State, "Issues Paper: OAS Policy and Action on Terrorism and Kidnapping (Agenda Item 13)," Enclosure to Executive Secretary of the Department of State Theodore Eliot to National Security Advisor Henry Kissinger, Memorandum "OAS General Assembly Agenda Item on Terrorism and Kidnapping," June 24, 1970, *FRUS*, 1969-76, Volume E-1, Document 41, accessed September 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d41.

resistance groups sought proto-state status, socialist states did not want such leftist groups to be accused of violating a sovereign state's obligation to protect foreign diplomats.[64] For months, negotiations went back and forth between the Argentine OAS delegates and Feldman about whether to create a "broad" terrorism or a "narrow" protection-of-diplomats convention.

In all other respects the OAS negotiations were remarkably similar to the ICAO ones, especially since Feldman used the "extradite or prosecute" concept to frame his position.[65] The OAS judicial committee intended to label certain violent, terroristic acts as common crimes, and not as politically-motivated offenses. Feldman introduced the "extradite or prosecute" formulations from the ICAO negotiations, which had proven widely acceptable to a large number of states. The delegates decided that they would require states to create domestic criminal laws against attackers, would strengthen extradition clauses, and would ensure that perpetrators who attacked diplomats were not allowed to use the political offense exemption to avoid extradition.[66] When the OAS General Assembly met in June and July of 1970, it instructed its legal arm, the Inter-American Judicial Conference (IAJC), to complete a final agreement. By September, the IAJC had a working draft, and was negotiating details. Neither public nor insurgents influenced these negotiations.

Concurrently, ICAO members sought to improve security in aviation facilities, not just on aircraft in flight. After the SwissAir bombing in February 1970, Western European states had requested an extraordinary ICAO General Assembly to further regulate aviation security. During the two-week meeting in June 1970, the U.S. delegation again could not convince others to

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[64] Deputy Under Secretary of State for Administration William B. Macomber to Under Secretary of State for Political Affairs U. Alexis Johnson, Action Memorandum "Political Program Designed to Inhibit Kidnapping," April 3, 1970, *FRUS*, 1969-76, Volume E-1, Document 39, accessed September 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d39.

[65] Macomber to Johnson, Action Memorandum "Political Program Designed to Inhibit Kidnapping," *FRUS*, 1969-76, Volume E-1, Document 39.

[66] Assistant Legal Advisor for Inter-American Affairs Mark Feldman to Charles Meyer, Memorandum "IAJC Draft Convention on Terrorism," November 27, 1970, NARA, RG59, CFPF 1970-73, POL 23-8 LA 6/1/70.

support sanctions against non-cooperative states. However, the ICAO General Assembly agreed to create another multilateral convention against specific offenses, with the same loopholes that allowed states to acknowledge the perpetrator's political motivations. Based on the "extradite or prosecute" concept, this second convention would criminalize not only hijackers but also anyone who endangered civil aviation on the ground. It would require states to create national criminal laws to protect civil aviation and to apply those laws against offenders - or to extradite them elsewhere. All countries could bring charges, as the agreement granted universal jurisdiction to any states whose interests (broadly defined) were damaged by an attack. The second ICAO agreement would depoliticize all violence against civil aviation, defining attacks as common crimes instead of insurgent warfare.

While most ICAO delegates focused on the threat of Palestinian attackers during negotiations, the OLA had not given up on its efforts to influence Cuba. The State Department waited for contact from Foreign Minister Roa as the ICAO negotiations progressed. The Cuban government sent notes to the State Department via the Swiss embassy in April and September of 1970, declaring a vague willingness to discuss hijacking. However, Roa rejected a U.S. draft for a bilateral anti-hijacking agreement, claiming that it ignored Cuban law and failed to meet standards of reciprocity between states.[67] Further contact stalled.

Although the results of their outreach to Cuba fell short of their goals, by using the more advanced ICAO negotiations to inspire the wording and goals of the OAS draft, Feldman and his coworkers laid the foundation for a distinct American foreign policy on "terroristic" political violence. That policy addressed narrow U.S. interests in Cuba and Latin America but had far-reaching global implications. The State Department bureaucrats worked within specialized international organizations to exclude non-state actors from influencing policymaking. Both

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[67] Memorandum from Arnold Nachmanoff (National Security Council Staff) to National Security Advisor Henry Kissinger, "Clearance of Cable Containing Note to the Cuban Government on Hijacking Negotiations," December 22, 1970, *FRUS*, 1969-76, Volume E-1, Document 133, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d133. Latner, "Take Me to Havana!" 38-40 discusses Roa's insistence on reciprocity in the context of U.S. colonialism.

organizations' convention drafts transformed acts committed by insurgents into common crimes. They strengthened the ability of states to extradite offenders. Feldman, in conjunction with Loy and Malmborg, formulated the OAS draft so that any interested state could claim jurisdiction over an attack. This universal jurisdiction was a key element of Malmborg's ICAO draft as well. In addition, Feldman introduced the ICAO's "extradite or prosecute" wording into the OAS draft. The ICAO and the OAS were not powerful institutions in international politics. Nevertheless, their technical and specialized nature created an unanticipated space for the OLA to draft policies negating terroristic actors' rights as political dissidents or combatants.

Adopting the Conventions

The Dawson's Field hijacking in September 1970 pushed the Nixon administration finally to address the threat of Palestinian hijackers, because various U.S. agencies working on the Arab/Israeli conflict failed to develop viable geostrategic methods to end this crisis. President Nixon reacted with unilateral U.S. aviation security measures. He also supported the State Department's ICAO efforts. In September 1970, a civil war broke out between the Jordanian army and the PLO, which controlled quasi-state structures in most Palestinian refugee camps in Jordan.[68] To demonstrate that the PLO held sovereign rights in Jordan, PFLP leader Habash planned to hijack multiple planes. His premise was that by doing so he would leave Israel and other affected states with no choice but to enter what the PFLP considered wartime state-to-state prisoner of war exchanges. On September 6, 1970, PFLP members hijacked two American and a Swiss aircraft.[69] They seized another British plane three days later; all flew to Dawson's Field, a

[68] Chamberlin, *The Global Offensive*, 114-124.

[69] Embassy Bonn to Department of State, Telegram 10203, September 6, 1970, in *FRUS*, 1969-76, Volume E-1, Document 45, accessed November 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d45.

PFLP-controlled airstrip in Jordan.[70] In total, the PFLP held over three hundred hostages. Half were U.S. citizens, while the rest hailed from Israel, the U.K., the FRG, and Switzerland.[71] The PFLP demanded that each of these four governments release incarcerated Palestinians.[72]

Habash wanted to demonstrate that the PFLP was a proto-state organization, sovereign, governed by the laws of war, and a legitimate actor in international politics. For this purpose, he was willing to accept a significant risk. He paid a steep price. To protect the PLO from Jordanian reprisal, Arafat expelled Habash and the PFLP.[73] The Jordanian army destroyed Palestinian refugee camps and PLO structures in Jordan mercilessly.

Habash did achieve some success. The Nixon administration was vulnerable because no unilateral U.S. options were available. The United States held no imprisoned Fedayeen with which to bargain. To secure its citizens, the State Department asked the U.K., the FRG, and Switzerland to trade collectively for all hostages at once.[74] These multilateral negotiations stalled. Following the Jordanian army's military victories over the PLO, the PFLP gradually released the

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[70] Department of State to Embassy Beirut, Telegram 146343, September 6, 1970, NARA, RG 59, CFPF 1970-73, AV 12 US, 9/1/70; Department of State to Embassy Amman, Telegram 146342, September 6, 1970, NARA, RG 59, CFPF 1970-73, AV 12 US, 9/1/70.

[71] National Security Advisor Henry Kissinger to President Richard Nixon, Memorandum "Hijacking Status," September 9, 1970, *FRUS*, 1969-76, Volume E-1, Document 54, accessed November 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d54.

[72] Deputy National Security Advisor Alexander Haig to President Richard Nixon, Memorandum "Middle East Hijacking Status Report," September 7, 1970, *FRUS*, 1969-76, Volume E-1, Document 47, accessed November 21, https://history.state.gov/historicaldocuments/frus1969-76ve01/d47; Embassy Amman to Department of State, Telegram 4367, September 7, 1970, NARA, RG 59, CFPF 1970-73, AV 12 US, 9/7/70; and National Security Advisor Henry Kissinger to President Richard Nixon, Memorandum "Mid-Day Report on the Hijacking Situation," September 10, 1970, *FRUS*, 1969-76, Volume E-1, Document 59, accessed November 21, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d59.

[73] Chamberlin, *The Global Offensive*, 117.

[74] Kissinger to Nixon, Memorandum "Hijacking Status," September 9, 1970, *FRUS*, 1969-76, Volume E-1, Document 54; Memorandum from Haig to Nixon, "Middle East Hijacking Status Report," September 7, 1970, *FRUS*, 1969-76, Volume E-1, Document 47.

hostages, completing the process on September 30, 1970.[75] For several weeks, the PFLP had asserted itself as a political actor in state-to-state negotiations, despite the efforts of the highest-ranking men in the Nixon administration.

Frustrated, Nixon utilized his executive authority to avoid future situations in which a national liberation organization held leverage over the U.S. government. Six days after the hijacking, the United States became the second country in the world, after Israel, to protect its civilian aircraft with armed personnel. Nixon and National Security Advisor Henry Kissinger acted unilaterally and placed so-called sky marshals on all flights operated by U.S. air carriers.[76] In addition, Nixon concluded that the United States needed to ramp up its multilateral efforts. He instructed the Departments of State and Transportation to increase their ICAO lobbying to undermine national liberation groups' claims to combatant status or statehood.[77]

Under pressure from Nixon to deliver results, the State Department also bolstered its transgovernmental connections outside the ICAO. In late September 1970, a U.S. delegation consisting of Deputy Legal Advisor John Rhinelander, Robert Boyle (now at the FAA), and Assistant Legal Advisor for Economic Affairs Richard Frank met in Paris with their counterparts from eight allied North Atlantic states, including Canada, the U.K., and the FRG. These officials approved of the "extradite or prosecute" concept as a solution to handle the technical and yet highly political issue of aviation security. However, the Americans also pushed their allies to support sanctions for states that harbored criminals to draft a second, broader civil aviation security convention in the upcoming ICAO negotiations.

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[75] Department of State to Interests Section Cairo, Telegram 161366, NARA, RG 59, CFPF 1970-73, AV 12 US, 9/15/70.

[76] "Memorandum For the President," September 10, 1970, *FRUS*, 1969-76, Volume E-1, Document 56, accessed June 2, 2016, https://history.state.gov/historicaldocuments/frus1969-76ve01/d56; and Department of State to All Diplomatic Posts, Circular Telegram 149917, September 12, 1970, NARA, RG 59, CFPF 1970-73, AV 12 US, 9/12/70.

[77] MacKenzie, *ICAO*, 264.

The allies responded by accusing the United States of exploiting the specialized ICAO to achieve geopolitical aims in the Middle East. Their concern was that the U.S. delegation was insisting on the removal of all language from the convention which might be used to establish the political context of insurgent acts.[78] As before, the other representatives worried that the United States was politicizing the negotiations by insisting that questions about political violence were irrelevant.

These worries were well-founded. In October 1970, the ICAO's Legal Committee met to create the second convention on aviation security, broadly defined. The work seemed simple. Committee members copied the "extradite or prosecute" language of the existing convention draft on hijacking and declared the second draft complete. However, U.S. representative Charles Butler persuaded the ICAO Council to adopt a resolution requiring countries to act in hijacking cases. The resolution stated that non-compliant states might face sanctions (though the ICAO had no way to enforce such sanctions).[79] Butler once again attempted to use the resolution to include sanctions in the second convention draft. However, the legal committee delegates did not take up the Council's resolution. They were unwilling to abridge each state's sovereign right to decide whether an offense was political or criminal or both. A requirement to sanction non-extraditing states would have cut into this sovereignty. The additional negotiations exhausted the delegates and further alienated them from the United States.[80]

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[78] Department of State to Embassies Buenos Aires, Canberra, et al., Action Telegram 158846, September 25, 19770, NARA, RG59, CFPF 1970-73, AV3 ICAO 9/23/70; Embassy Paris to Department of State, Telegram 12815, September 22, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO 9/1/70; and Embassy Paris to Department of State, Telegram 12669, September 19, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO 9/1/70.

[79] Assistant Legal Advisor for Transportation and Telecommunication Franklin Willis to Deputy Legal Advisor John Rheinlander et al., Memorandum "Legal Subcommittee on Sanctions: Canadian-United States Consultations on April 1-2," March 30, 1971, NARA, RG59, CFPF 1970-73, AV3 ICAO 3/10/71.

[80] Embassy London to Department of State, Telegram 8466, October 14, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO 10/9/70.

Weary of the political landmines surrounding aviation security, the ICAO delegates met on December 16, 1970, eager to adopt and be done with the first convention draft against hijackers, which became the "Convention for the Suppression of Unlawful Seizure of Aircraft," also known as the "Hague Convention." In progress since 1969, this convention codified the "extradite or prosecute" principle as ICAO policy. It branded hijackers as criminals and required states to pass national anti-hijacking laws, but was ambiguous about compliance. The convention gave universal jurisdiction to prosecute hijackings, allowing every state to build a case against or extradite a perpetrator. This convention did not force Cuba to extradite hijackers, but it was a step in the right direction for the OLA. The Castro regime's claim that U.S. hijackers were political refugees was now less tenable. As an additional bonus, non-state actors had few opportunities to influence or challenge the convention, since it was a product of experts' negotiations in a highly specialized international organization.

Because the ICAO's Hague Convention upheld each state's sovereignty and independent judgement about whether hijackings were acts of political violence, it was acceptable enough for many states to adopt. It did not undermine the political offense exemption. Every state retained the sovereign right to treat a hijacking act as a political offense. In such cases, the convention protected political offenders from extradition, requiring only that their cases be handed to judicial authorities. There were no further stipulations – hijackers could be released afterwards without violating the convention. [81] This ambiguous wording was acceptable to most Arab states. Cuban practices of trying U.S. hijackers domestically were compliant with the convention as well. Finally, the convention contained no enforcement or supervision mechanisms. These weaknesses undermined the OLA's aims. However, Butler and Malmborg accepted the convention. They decided that a convention that delegitimized hijacking, even if it left loopholes, was preferable to

[81] International Civil Aviation Organization, "Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at The Hague on 16 December 1970," *United Nations*, accessed February 2, 2017, https://treaties.un.org/doc/db/Terrorism/Conv2-english.pdf, Article 7.

no convention at all. In addition, they retained the hope that they could abolish the political offense exemption and include sanctions in a future ICAO agreement.

Indeed, the ICAO's Hague Convention set a significant precedent even though it was voluntary, originated in a small technical international organization, could not be enforced, contained significant loopholes, and gained relatively little publicity. The convention required state officials to respond to hijackings with domestic criminal law and extradition. This approach stripped away some legitimacy that hijackers claimed as insurgent combatants, since states would no longer treat them under the laws of war. Questions about hijacking in conjunction with political violence were delegated to criminal courts.

The ICAO Hague Convention's broadly accepted wording became the foundation for similar agreements against other acts of terroristic violence. Feldman had speculated that its ambiguous formulations were useful for the OAS negotiations.[82] The State Department could protect its diplomats by demanding that Latin American states prosecute or extradite any person who attacked them. This prosecution would act as a deterrent to other potential aggressors. Simultaneously, the United States could deny any negative publicity claiming that it was cooperating with repressive Latin American states on measures against political dissidents or insurgents. The State Department emphasized that it was cooperating only on protective measures for its own diplomats.

In January 1971, the OAS met in Washington, D.C., to adopt its convention against terrorism. The Argentinian and Brazilian delegates again pushed for a broad convention to criminalize all insurgent "terrorist" actions. Their goal was to gain the authority to apply criminal law more widely against domestic and regional political dissidents and insurgents. The U.S. delegation, supported by Mexico and Venezuela, aimed to criminalize only attacks against diplomats, without discussing the repression of political dissidents.[83] In this case, Feldman sought

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[82] Department of State to All Latin American Posts, Telegram 008163, January 16, 1971, NARA, RG59, CFPF 1970-73, POL 23-8 LA 1/1/71.

[83] Charles Meyer to Secretary of State William Rogers, Action Memorandum "Request for Authority to Negotiate and Conclude an Inter-American Convention on Kidnapping and

a specialized convention, knowing that it would be easier to pass, implement, and sell to the public. After a week of contentious negotiations, six delegations that favored a broad terrorism convention walked out of the meeting.[84] The remaining thirteen delegations passed a narrowly focused convention in accordance with U.S. goals, reaching the required majority by a single vote.

The resulting OAS "Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance" never gained popular support among governments in the Americas. But it bore striking similarities to and strengthened the influence of the ICAO's Hague Convention. Feldman had copied the ICAO's "extradite or prosecute" language verbatim.[85] Offenders who attacked diplomats were labeled as criminals and denied political legitimacy.[86] The convention still contained the political offense exemption loophole, however. Once again, a multilateral convention undermined insurgents' political agency and would, the OLA hoped, deter future attacks on diplomats.

The OAS convention was the first multilateral agreement since the 1930s to associate the term "terrorism" with criminal actors, avoid the language of warfare, and span multiple national jurisdictions.[87] In previous decades, U.S. policymakers and academics had used "terrorism" to

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Terrorism," Including Position Paper "Inter-American Cooperation in Suppressing Terrorism and Kidnapping," January 23, 1971, NARA, RG59, CFPF 1970-73, POL 23-8 LA 1/1/71, position paper 1.

[84] The six delegations were from Brazil, Argentina, Paraguay, Guatemala, Ecuador, and Haiti.

[85] Department of State to All Latin American Posts, Telegram 008163, January 16, 1971, NARA, RG59, CFPF 1970-73, POL 23-8 LA 1/1/71.

[86] Organization of American States, "Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That are of International Significance, Signed at the Third Special Session of the General Assembly, in Washington, D.C., February 2, 1971," *Organization of American States*, accessed February 2, 2017, http://www.oas.org/juridico/english/treaties/a-49.html.

[87] An analysis of the label "terrorism" in the 1930s can be found in Ondrej Ditrych, *Tracing the Discourses of Terrorism: Identity, Genealogy and the State* (Basingstoke, U.K.: Palgrave MacMillan, 2014), 39-54.

describe insurgent-driven violence. “Terrorism” became a wide-spread term in subsequent years, but in 1971 few people were discussing it.[88] The OAS Convention laid the groundwork for these later discussions because it connected the term “terrorism” to crimes committed by non-state actors and did not consider the political dimensions of these acts legitimate.

The OAS convention provided some security that Feldman and his coworkers sought for U.S. diplomats in Latin America. Then, in early 1971, the group refocused its efforts on the issue of hijacking by recruiting the Canadian government as an ally. In October 1970, Canada had experienced a dramatic hostage crisis when the Front de Libération du Québec, a separatist paramilitary group, kidnapped a Canadian and a British politician. The kidnapping led Canadian Prime Minister Pierre Trudeau to suspend civil liberties. To resolve the situation, the hostage takers were granted safe passage to Cuba. In the aftermath of the crisis, the Canadian government approached Cuban Foreign Minister Roa to discuss options for a bilateral anti-hijacking agreement.

Of broader significance, the Canadian government was now willing to support the U.S. idea of sanctions against any state which violated anti-hijacking conventions.[89] Together, a U.S.-Canadian working group produced a paper which introduced sanctions into the second ICAO convention to protect civil aviation. The ICAO’s Legal Committee met in April 1971 to finalize the second convention draft and read the working paper. Once again significant resistance arose against sanctions or any infringement on states’ right to recognize the political motivation of hijackers. French and Soviet delegates insisted that the ICAO was a technical organization;

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[88] See Lisa Stampnitzky, *Disciplining Terror: How Experts Invented “Terrorism”* (Cambridge, U.K.: Cambridge University Press, 2013) for a detailed discussion of the spread of the term “terrorism” in the 1970s.

[89] Assistant Legal Advisor for Transportation and Telecommunication Franklin Willis to John Stewart, Pat Boyle, Charles Butler, Knute Malmborg, et al., Memorandum “Summary of Results at ICAO Legal Committee and Next Steps,” May 14, 1971, NARA, RG59, CFPF 1970-73, AV3 ICAO 5/1/71.

sanctions should best be left to the United Nations.[90] Their refusal undermined the U.S.-Canadian efforts.

The draft text for the second ICAO convention thus contained no enforcement mechanisms (such as sanctions), but it did list many types of violent attacks against civil aviation that were to be treated in criminal courts, not under the laws of war. In September 1971, the ICAO General Assembly adopted the "Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation," or "Montreal Convention." Mirroring the ICAO's Hague convention, it declared attacks against civil aviation to be crimes, gave all states the option of seeking jurisdiction over those crimes, and contained the principle of "extradite or prosecute." It criminalized attacks on board aircraft and against a flying or grounded airplane. It also identified sabotage of airplane or aviation facilities as a criminal offense. The Montreal Convention thus removed a larger number of violent acts surrounding civil aviation from recognition as acts of war by transnationally operating insurgents.

Notwithstanding such progress, the OLA did not achieve its original goal of convincing Cuba to extradite U.S. hijackers. Subsequent developments were driven by a Cuban reaction to, not a recognition of, the ICAO conventions. Roa refused to be pressured into extradition through a multilateral agreement. Cuba did not sign the conventions in 1970 or 1971. In fact, it only ratified them in October 2001 after the September 11 attacks. After a period of no contact, negotiations between the State Department and Roa resumed in late 1972, prompted by a particularly brutal hijacking to Havana and possibly by the media reports of Palestinian extremists' attack on the Israeli Olympic team in Munich.[91] Secretary of State Rogers signed a bilateral

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[90] Thomas Ainsworth to Murray Jackson, Memorandum "Proposed United States Delegation to the Legal Subcommittee on Sanctions, International Civil Aviation Organization (ICAO), Montreal, April 14-27, 1971," April 12, 1971, NARA, RG59, CFPF 1970-73, AV3 ICAO 4/1/71.

[91] Memorandum of Conversation between Secretary of State William Rogers and Swiss Ambassador Schnyder, "Hijacking," November 16, 1972, *FRUS*, 1969-76, Volume E-1, Document 135, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d135.

memorandum of understanding with Cuba on February 15, 1973. This anti-hijacking agreement was not a treaty between nation-states and retained U.S. practices not to acknowledge Cuban statehood. Acceding to Cuba's request, the memorandum excluded any multilateral extradition agreements and did not apply retroactively.[92] The U.S.-Cuban hijacking agreement was not generated by the ICAO agreements.

Conclusion

The OAS, Hague, and Montreal Conventions transformed hijackings and attacks on diplomats from transnational insurgent acts into crimes that needed to be adjudicated by each state's criminal law system. Signatory states agreed to institute domestic criminal laws against the offenses covered by the conventions, to arrest perpetrators inside their national borders, and to submit such cases to local prosecutors or extradite the offenders elsewhere. By regulating these acts of violence as common crimes, the three conventions helped to erase the political and military background of such attacks. Their wording left loopholes for each state to accept an offender's political motivation, and this ambiguity made the convention widely acceptable to most states. However, the conventions' criminal focus led leaders around the world to conceptualize hijackings and attacks on diplomats primarily within the framework of criminal law.

The conventions allowed states to reassert sovereignty which insurgents had seized for themselves – and uphold obligations available only to states, not to non-state actors. One such obligation was hosting and protecting diplomats. Another was to conduct prisoner exchanges only with other states – never with proto-state or non-state agents. A third was retaining a monopoly on violence by arresting criminal non-state offenders. The conventions linked state sovereignty to the treatment of terroristic actors as criminals.

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[92] Serban Vallimarescu (National Security Council Staff) to Deputy National Security Advisor Brent Scowcroft, Memorandum "Hijacking Agreement with Cuba," February 13, 1973, *FRUS*, 1969-76, Volume E-1, Document 142, accessed September 26, 2017, https://history.state.gov/historicaldocuments/frus1969-76ve01/d142.

Meanwhile, because the ICAO and the OAS were international institutions with specialized mandates, insurgent actors had few means of influencing the discussions other than by carrying out further attacks. In the ICAO, Arab and Global South states did defend the right of the PFLP and others to pursue national liberation struggles. However, the U.S. specialists in the OLA were not interested in hearing or engaging with insurgents' political claims. When questions about the legitimacy of political violence did arise, the U.S. officials regulated who had the right to address such content. Since the negotiations occurred within international organizations, insurgents, national liberation groups, and terrorists (who were often the same) had no direct contact with delegates, and could not represent their own ideas to the contrary.

These three conventions laid a foundation for how state officials thought about "terrorism" in the 1970s. Rather than limit "terrorism" to insurgencies, terrorists according to the conventions were now defined as non-state actors who committed politically-irrelevant criminal offenses. Consequently, Western politicians and their publics began focusing on the criminal aspects of terrorism instead of the grievances, self-proclaimed combatant status, and political agency of terroristic actors. This apolitical view of terrorism solidified as further spectacular terrorist attacks occurred throughout the 1970s, decisively shaping Western anti-terrorism responses to come.

CHAPTER 3

THE 1972 “INTERNATIONAL TERRORISM” DEBATE AT THE UNITED NATIONS

In mid-October 1972, U.S. Representative to the United Nations George H.W. Bush had enough of Israeli Representative to the United Nations Yosef Tekoah. Writing to the State Department’s Bureau for Near Eastern and South Asian Affairs, Bush asked Assistant Secretary Joseph Sisco for permission to give Tekoah a piece his mind. Sisco agreed.[1] The tensions leading to this request reveal deep contradictions between the U.S. and Israeli aims at the United Nations (UN) on the subject of terrorism. Tekoah wanted to condemn terroristic violence as an act of war against the state of Israel, and thus tacitly supported African and Arab states’ claims that terrorism was tool to promote national liberation. In Bush sought to label terroristic violence as apolitical and criminal. This U.S. policy originated in the 1969-1971 negotiations in the International Civil Aviation Organization (ICAO) and Organization of American States (OAS).

The United States and its Latin American and European allies decided to criminalize, and thus politically delegitimize, all acts of “international terrorism” after a series of deadly terroristic attacks in 1972. Their aim was to create a UN convention that required states to apply criminal law against terrorists and sanction all states that abetted terroristic actors. For inspiration, the State Department drew upon the three conventions it had negotiated within the ICAO and OAS. The State Department hoped that it could exclude non-state actors from negotiations and convince other states to reinforce their sovereignty by delegitimizing non-state actors’ political violence. This U.S.-led UN effort failed. Developing nations resisted the Western aggregation of violent terroristic acts into a single threat of “international terrorism” and refused to support any agreement that would undermine political violence in pursuit of national liberation so broadly.

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[1] Department of State to Mission United Nations, Telegram 185544, October 11, 1972, National Archives and Records Administration (NARA), Record Group 59: Records of the Department of State (RG59), Central Foreign Policy Files (CFPF) 1970-73, POL 23-8, 10-6-72.

This chapter highlights how U.S. State Department officials, and their counterparts worldwide, began to view acts of terroristic violence such as hijackings, bombings, or attacks on diplomats as an interconnected security issue that needed to be resolved. Previously treated as distinct, though serious, incidents, this spectrum of attacks now comprised a comprehensive threat to the security of (mainly industrialized) states and their citizens. Officials labeled this issue "international terrorism," in reference to the transnational offenders and multitudinous locations involved. The notion of "international terrorism" was useful for Western officials because it let them conceptualize of the recent transnational terroristic actors and attacks as one interrelated problem to be solved.

This chapter likewise highlights the limits of U.S. influence in international organizations on the issue of security and political violence. It traces how U.S. officials attempted to address "international terrorism" through the same type of multilateral convention that they had used to politically delegitimize non-state actors and codify states' behavior on hijackings and on attacks on diplomats. African and Arab states argued that the concept of terrorism was a Western political idea that, unlike specific acts such as hijacking, was too ambiguous to criminalize. The U.S. multilateral response - to create criminal conventions against this perceived danger - threatened to delegitimize all violence carried out by non-state national liberation actors. It denied any claim that such actors deserved agency in state-to-state relations or to protections under the laws of war. This broad devaluation made the U.S.-led efforts against "international terrorism" unacceptable to many states around the world, including not only Arab and African countries but also the Soviet bloc and unaligned states. Even as it helped Western officials and publics conceptualize terrorism as one specific problem, the wide label "international terrorism" frustrated the State Department's efforts to resolve this problem in the UN. The resistance at the UN pushed both the United States and its European allies to develop unilateral or regional anti-terrorism measures, and transgovernmental networks, which they could quarantine against Arab and African influence.

The chapter is divided into four segments. The first traces how the State Department's Office of the Legal Advisor (OLA) transferred the effort to criminalize certain acts of terroristic violence from the OAS and ICAO into the UN. In 1971, the OLA leveraged its transgovernmental contacts to European and Latin American states to begin low-key negotiations for a 'protection of diplomats' convention in the UN. The second segment demonstrates how the Munich Olympic Games attack in 1972 prompted Western officials to seek solutions to all transnational terroristic violence, not just specific acts such as attacks on diplomats. They began classifying diverse acts of terroristic violence that involved transnational aspects as one common threat, which they named "international terrorism." The third section analyzes how U.S. diplomats sought to discredit "international terrorism" in the UN by labeling all acts of terroristic violence as criminal offenses, utilizing the existing "extradite or prosecute" conventions as a model. Arab and African states successfully prevented this association, however, and instead shaped UN policy to support national liberation insurgents. Finally, the fourth section highlights how Western states responded by assuming unilateral measures (the United States) or shifting multilateral discussions about terrorism to secluded transgovernmental networks and regional forums where developing states were powerless (European states).

Increasing U.S. Efforts to Protect Diplomats

A U.S. foreign policy against terroristic violence developed from 1968 to 1971, when the State Department's Office of the Legal Advisor successfully negotiated the Montreal, Hague, and OAS Conventions. These conventions covered attacks on airplanes and diplomats, which often spanned a multitude of national jurisdictions. They stipulated that signatory states had to create domestic criminal laws against these specific terroristic attacks, and then either extradite or prosecute the offenders (a judicial concept: *aut Dedere aut Judicare*, "extradite or prosecute"). The conventions thus specified that transnational terroristic actors were criminals, not national liberation agents. U.S. officials used the "extradite or prosecute" conventions to politically delegitimize hijackings and attacks on diplomats.

These conventions contained significant loopholes, however, which undermined their intended effect of depoliticizing terroristic violence. The conventions did not require taking a perpetrator to trial – they just specified that the case had to be passed on to responsible authorities who could technically institute trial proceedings. A signatory state could refuse to take an offender to trial or hand out only very light sentences. The conventions also allowed states to publicly acknowledge terrorists' political motivation in another way. A state could decline an extradition request for a terroristic actor through the political offense exemption. The conventions allowed signatory states to release members of national liberation movements such as the Palestinian Liberation Organization (PLO) or the more radical Popular Front for the Liberation of Palestine (PFLP) as political actors.

The conventions also contained no enforcement mechanisms against states which ignored even these requirements. The State Department's OLA futilely sought to institute sanctions against states that did not prosecute or extradite hijackers, especially in the ICAO. When the OLA attempted to create a transgovernmental network on civil aviation security to foster the idea of sanctions outside the ICAO, their counterparts rejected the idea of mandatory sanctions as well.

Despite these conventions' weaknesses, the State Department continued to advocate within international organizations and transgovernmental networks for further multilateral agreements to undermine non-state terroristic actors. After the passage of the OAS convention, President Richard Nixon and his advisors instructed the State Department to seek another multilateral agreement to protect diplomats, mainly to resolve an embarrassing and potentially expensive domestic situation. In the spring of 1970, the Jewish Defense League, an extremist Zionist organization founded by Rabbi Meir Kahane, began small-scale attacks on the Soviet UN delegation in New York City. Over the following months the group committed increasingly escalating violent attacks against Soviet representatives to protest the lack of emigration options

for Soviet Jews.[2] In April 1971, when a Soviet trade agency in New York was bombed, authorities attributed the attack to the Jewish Defense League.[3] In turn, the Soviet Ambassador to the U.S. Anatoly Dobrynin vehemently complained about the United States' lack of security for the Soviet UN delegation even as the Nixon administration pursued its policy of détente.

Nixon, his White House Counsels Charles (Chuck) Colson and John Dean, and State Department Legal Advisor John Stevenson had no interest in high-level U.S. actions that would draw significant international attention to the Soviets' grievances concerning New York City. Nixon also did not want to drain the federal budget of the millions of dollars necessary to hire more policemen or security forces in New York City.[4] The administration's solution was to seek additional, low-profile multilateral conventions that required states to protect diplomats. Such agreements would be less expensive than subsidizing New York City security and also generate less publicity for the Soviets' condemnation of America's failure to protect diplomats on U.S. soil.

Mark Feldman, responsible for legal matters in U.S.-Latin American relations, once again led the team of mid-level State Department officials responsible for the negotiations. Building on past successes, his goal was to create more multilateral conventions that required states to protect diplomats - based on the OAS Convention. Feldman was especially interested in collaborating with the United States' European allies. From past experience with the OAS Convention negotiations, however, Feldman knew that few states outside of Latin America were interested in such a convention.

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[2] Assistant Legal Advisor for Europe Charles Brewer, "Memorandum for the Under Secretary: Talking Points for Ambassador Bush's Meeting with the Attorney General, May 11," May 10, 1971, NARA, RG59, CFPF 1970-73, POL 17, 1-1-71.

[3] Martin Arnold, "Bomb Explodes in Midtown Soviet Trade Office," *New York Times*, April 23, 1971, 41.

[4] Assistant Secretary of State for Administration Joseph Donelan to Office of Management and Budget International Programs Division Chief James Frey, Memorandum, February 12, 1973, *Foreign Relations of the United States (FRUS)*, 1969–1976, Volume E-3: Documents on Global Issues, 1973-1976, Document 205, accessed June 25, 2018, https://history.state.gov/historicaldocuments/frus1969-76ve03/d205.

Since 1970, Feldman's efforts to engage European states in transgovernmental networks to protect diplomats had floundered. Viewing the protection of diplomats as a global issue, Feldman's European colleagues were not interested in working toward a regional convention as a potential solution. After the spectacular kidnapping and assassination of West German Ambassador to Guatemala Karl von Spreti in the spring of 1970, European states broached the protection-of-diplomats issue at the UN. In mid-April 1970, the Dutch government asked its European and transatlantic allies if they would co-sponsor a UN Security Council initiative for the protection of diplomats. Many European states agreed.[5] But the Nixon administration resisted providing the Soviet Union with a forum to criticize the attacks in New York City. The Dutch ambassador was told that the United States wanted to focus on the OAS and regional politics. Nixon's UN Ambassador David Yost argued that a UN convention would have more potential for adoption if a regional OAS Convention succeeded first.[6] The Dutch withdrew their initiative, and European states seemed to lose interest in promoting measures to protect diplomats.

Feldman still attempted to interest Europeans in passing a regional convention, or at least persuade them to support his OAS convention negotiations in the fall of 1970. Throughout that year the OAS member states were deeply split on whether to create a broadly scoped convention that would condemn all acts of "terrorism" (favored by Brazil and Argentina) or a more narrowly delineated convention that focused only on attacks on diplomats (favored by the United States).[7] Feldman had hoped that European support would strengthen his negotiating position.[8]

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[5] Mission United Nations to Department of State, Telegram 731, April 21, 1970, NARA, RG59, CFPF 1970-73, POL 17, 1-1-70.

[6] Department of State to Mission United Nations, Telegram 061555, April 24, 1970, NARA, RG59, CFPF 1970-73, POL 17, 1-1-70.

[7] Department of State to All Latin American Diplomatic Posts, Telegram 181908, November 5, 1970, NARA, RG59, CFPF 1970-73, POL 23-8 LA, 6-1-70; Department of State to All Latin American Diplomatic Posts, Telegram 181909, November 5, 1970, NARA, RG59, CFPF 1970-73, POL 23-8 LA, 6-1-70.

[8] Department of State to Embassy Bonn et al., Telegram 187138, November 14, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70; Department of State to Mission NATO, Telegram 164674, October 6, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70.

To attract this support, he cultivated an ally in an Italian counterpart, Marco Fortini, the Director for Latin American Political Affairs at Italy's Ministry of Foreign Affairs and International Cooperation. Since 1969, the Italian government was facing escalating leftist student and labor protests which had already generated several acts of domestic violence.[9] U.S. Ambassador to Italy Graham Martin speculated that Fortini was especially worried about the potential of attacks in Rome, a major transportation hub between East, West, and Global South, and was observing the OAS negotiations as a potential solution for safeguarding diplomats in Italy.[10] In August 1970, Fortini and Feldman began cooperating to lobby the other European states.[11]

Fortini and Feldman failed to create a regional protection-of-diplomats convention in Europe, nevertheless, or foster European interest in the OAS convention. Fortini was able to participate in European international organizations, where Feldman had only limited access, such as the Western European Union (WEU), a collective security organization, and the Council of Europe, an organization dedicated to the rule of law in Europe.[12] However, his advocacy of a protection-of-diplomats agreement in the fall of 1970 produced no substantial results. Intense French opposition prevented further developments. Assessing existing treaties, especially the

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[9] On Italian domestic terrorism, see Tobias Hof, *Staat und Terrorismus in Italien 1969-1982* [State and Terrorism in Italy 1969-1982] (Munich: Oldenbourg, 2011).

[10] Embassy Rome to Department of State, Telegram 5991, August 12, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70.

[11] Rome to State, Telegram 5991, August 12, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70; Embassy Rome to Department of State, Embassy Bonn, et al., Telegram 4589, August 21, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70; Embassy Rome to Department of State, Telegram 4942, September 9, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70.

[12] For the WEU, see Embassy Rome to Department of State, Telegram 5097, September 16, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70; G. Wyn Rees, *The Western European Union at the Crossroads: Between Trans-Atlantic Solidarity and European Integration* (Boulder, CO: Westview Press, 1998); and Alfred Cahen, *The Western European Union and NATO: Building a European Defense Identity within the Context of Atlantic Solidarity* (London: Brassey's U.K., 1989). For the Council of Europe, see Council of Europe, Draft Resolution "Protection of Members of Diplomatic Missions and Consular Posts," November 2, 1970, addendum to Consulate Strasbourg to Department of State, Airgram A-173, November 17, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70; Stefanie Schmahl and Marten Breuer, eds. *The Council of Europe: Its Law and Policies* (New York: Oxford University Press, 2017); and Aline Royer, *Der Europarat* [The Council of Europe] (Strasbourg: Council of Europe Publishing, 2010).

1961 Vienna Convention on Diplomatic Relations, as sufficient to regulate the protection of diplomats, French diplomats did not want a regional convention.[13] European officials were also alienated from the OAS Convention by the tumultuous final negotiations in January 1971, which ended in a walk-out from six delegations and a convention with minimal support.[14] No Latin American country showed interest in European participation, either.[15]

Fortini established a few transgovernmental connections to officials from Switzerland and the Baltic States who were willing to keep discussing a protection-of-diplomats convention outside of the WEU or Council of Europe.[16] These connections provided valuable support for Feldman and Fortini in subsequent years, especially in the UN. However, in early 1971 these contacts were not yet willing to act, hesitating due to French opposition. By the spring of 1971, Feldman thus knew that any regional collaboration to protect diplomats had little chance of success among European states. His superiors would not accept a UN Security Council solution either, which Europeans had favored.

Feldman's next step was to gain approval for a new convention in the UN General Assembly, more acceptable to Europeans as a global, in contrast to a regional, forum; This venue posed significant political risks, however. Its large membership of recently independent states

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[13] Embassy Brussels to Department of State, Telegram 632, February 24, 1971, NARA, RG59, CFPF 1970-73, POL 17, 1-1-71; Embassy London to Department of State, Telegram 2711, March 26, 1971, NARA, RG59, CFPF 1970-73, POL 17, 1-1-71; Assistant Legal Advisor for Intra-American Affairs Mark Feldman, "Memorandum for the Files: Protection of Diplomats – Council of Europe," April 5, 1971, NARA, RG59, CFPF 1970-73, POL 17, 1-1-71; Assistant Legal Advisor for Intra-American Affairs Mark Feldman to John W. Ford (U.S. OAS Delegation), "Memorandum: Protection of Diplomats – Council of Europe," March 11, 1971, NARA, RG59, CFPF 1970-73, POL 17, 1-1-71.

[14] Embassy Bonn to Department of State, Telegram 10010, September 1, 1970, NARA, RG59, CFPF 1970-73, OAS 3, 7-1-70; Embassy Bonn to Department of State, Telegram 10462, September 11, 1970, NARA, RG59, CFPF 1970-73, OAS 3, 7-1-70.

[15] Department of State to Embassy Rome, Telegram 1274, January 5, 1971, NARA, RG59, CFPF 1970-73, POL 17, 1-1-70; Embassy Rome to Department of State, Telegram 7448, December 30, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70.

[16] Embassy Rome to Department of State, Telegram 6736, November 20, 1970, NARA, RG59, CFPF 1970-73, POL 17, 6-1-70; Embassy Paris to Department of State, Telegram 3281, March 3, 1971, NARA, RG59, CFPF 1970-73, POL 17, 1-1-71.

would affirm national liberations movements' right to commit political violence. During the 1969-1971 negotiations for the ICAO and OAS conventions, African and Arab states had openly accused the United States of seeking geopolitical gains in the Middle East by undermining Palestinian national liberation efforts.[17] These states had more influence in the UN than in the technical ICAO or regional OAS. If Arab and African states continued their earlier accusations in the UN, they could prevent a new convention. Feldman's effort could also disrupt other U.S. UN initiatives, especially those concerning the Arab-Israeli conflict. Such initiatives had the day-to-day support of high-level U.S. policymakers, while Feldman did not. To have any chance of success, Feldman would have to avoid ruffling any feathers - both at the UN and in the higher echelons of the State Department.

To avoid Arab and African critiques that he was simply pursuing U.S. geopolitics via new paths, Feldman worked to ensure that any protection-of-diplomats initiative at the UN went through appropriate legal channels and institutions with as much multilateral support as possible. Vital to this effort was the contribution of Feldman's colleague Richard Kearney in State's OLA. Kearney was the U.S. Representative to the International Law Commission (ILC), a body of twenty-five legal experts from around the world elected by the UN General Assembly to codify and develop international law. The ILC reported to and took its orders from the General Assembly's Sixth Committee, which handled legal matters and in which all UN members were represented. In April 1971, Kearney proposed to the ILC that it add the issue of diplomats' protection to its agenda. The other ILC representatives did not accept the proposal, but their annual report asked the General Assembly if they should consider the issue the following year.[18]

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[17] Department of State to Embassies Buenos Aires, Canberra, et al., Action Telegram 158846, September 25, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO, 9/23/70; Embassy Paris to Department of State, Telegram 12815, September 22, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO, 9/1/70; and Embassy Paris to Department of State, Telegram 12669, September 19, 1970, NARA, RG59, CFPF 1970-73, AV3 ICAO, 9/1/70.

[18] Executive Secretary to the State Department Theodore Eliot to National Security Advisor Henry Kissinger, Memorandum "International Law Commission's Work on Draft Articles Concerning Crimes Against Persons Entitled to Special Protection Under International Law," March 31, 1972, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 11-12-71.

This setup allowed Feldman and Kearney to lobby other states to approve a future ILC effort to protect diplomats – and avoided recriminations that they were pushing through unilateral U.S. interests.

In the fall of 1971, Kearney and Feldman worked hard behind the scenes to sell others on the ILC initiative, and their lobbying, with the aid of Fortini's contacts, won over most Latin American and European states. The Latin American officials who had signed and supported the OAS convention were eager to introduce a comparable convention at the UN.[19] The Uruguayan delegation even circulated a potential ILC convention draft based on the OAS convention.[20] Meanwhile, the Italians engaged many Baltic and Middle European states, who now favored UN action.[21] Feldman successfully lobbied London that the issue was "urgent," gaining British support which the ICAO and OAS conventions had lacked.[22] Only France remained a holdout, maintaining the position that new international conventions were unnecessary for the safe operation of diplomatic relations.[23]

With wide European and Latin American backing, Kearney and Feldman were able to stress the multilateral scope of the ILC effort to Arab and African states. In early November 1971, the U.S. and Italian UN delegations approached Asian, African, and nonaligned delegates in

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[19] Mission United Nations to Department of State, Telegram 4092, November 8, 1971, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 8-9-71.

[20] Mission United Nations to Department of State, Airgram A-1551, October 19, 1971, NARA, RG59, CFPF 1970-73, POL 17, 8-17-71.

[21] Embassy Rome to Department of State, Telegram 6233, October 1, 1971, NARA, RG59, CFPF 1970-73, POL 17, 8-17-71.

[22] Mission United Nations to Department of State, Telegram 3756, October 22, 1971, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 8-9-71; Embassy London to Department of State, Telegram 9862, October 27,1971, NARA, RG59, CFPF 1970-73, POL 23-8, 1970-1971; Department of State to Embassy London, Telegram 194206, October 22, 1971, NARA, RG59, CFPF 1970-73, POL 23-8, 1970-1971; Embassy London to Department of State, Telegram 9862, October 27, 1971, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 8-9-71.

[23] Department of State to Mission United Nations, Telegram 186160, October 9, 1971, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 8-9-71; Embassy Paris to Department of State, Telegram 18020, October 26, 1971, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 8-9-71.

informal corridor negotiations. Avoiding any mention of national liberation organizations or political violence, the U.S. delegation stressed that an ILC-drafted UN convention could help states protect diplomats and retain monopoly on violence throughout their territory – strengthening their sovereignty.[24] This effort paid off. On November 8, 1971, the General Assembly voted to have the ILC work on a protection-of-diplomats convention in 1972. The goal was to condemn all violent acts against diplomats worldwide as crimes, thereby removing them from the list of legitimate warfare actions a national liberation organization might pursue.

"International Terrorism" and the Munich Olympic Games Tragedy

While legal conventions provided a multilateral avenue to address specific acts of transnational terroristic violence, an ever-increasing number of incidents pushed Feldman and other state officials worldwide to think more broadly about the scope of the problem that they faced. From 1970 to 1972, new armed resistance groups that employed terroristic violence emerged in industrialized countries, and terroristic attacks increased dramatically, especially in Western Europe. Incidents such as the Lod Airport massacre pointed to increased transnational collaboration between terroristic groups. After the Munich Olympic Games attack in 1972, Western officials started viewing various types of border-crossing terroristic attacks – hijacking, attacks on diplomats, and attacks on airports – as an interconnected issue, "international terrorism," instead of as separate problems. They reconceptualized the label terrorism as a new transnational security threat, and in the process they undercut its prior insurgency and warfare connotations.

In the early 1970s, several new armed resistance groups formed in industrialized countries and emulated established national liberation organizations in the Middle East, Africa, and Latin America. National liberation activists' writings on insurgent violence circled freely in the leftist transnational network of the late 1960s. Especially influential was Carlos Marighella's

[24] United Nations to State, Telegram 4092, November 8, 1971, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 8-9-71.

Minimanual of the Urban Guerilla, which advocated the use of political violence to push the state to delegitimize itself with repressive countermeasures. Marighella was a Brazilian whose group, Ação Libertadora Nacional, kidnapped U.S. Ambassador Charles Elbrick in 1969. Widely disseminated, the manual influenced an eclectic range of new groups that adopted policies of armed resistance in the aftermath of the 1968 global protest movements. Italy entered a decade known as the "years of lead" for its domestic terroristic violence, and in 1970 the paramilitary "Red Brigades" were founded to overthrow the Italian state.[25] Andreas Baader and Ulrike Meinhof created the "Red Army Faction" in the Federal Republic of Germany (FRG).[26] Similarly, former Students for a Democratic Society members like Bernardine Dohrn and Bill Ayers formed the Weather Underground in the United States.[27] In Japan, radical leftists organized an armed resistance organization also named the "Red Army Faction."[28]

In addition, ethnic minority groups that used terroristic violence garnered more state and public attention in industrialized countries. Croatian independence groups seeking to undermine the Tito regime carried out attacks against Yugoslav embassies and institutions in the United States, U.K., FRG, and elsewhere. So did Cuban exiles, protesting against Castro's regime. In Canada, the Front de Libération du Québec maintained violent resistance against institutions of the federal government. In the Netherlands, members of the Moluccan diaspora agitated for an

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[25] See Hof, *Staat und Terrorismus in Italien,* and Johannes Hürter and Gian Enrico Rusconi, *Die bleiernen Jahre: Staat und Terrorismus in der Bundesrepublik Deutschland und Italien, 1962-1982* [The Years of Lead: State and Terrorism in the Federal Republic of Germany and Italy, 1962-1982] (Munich: R. Oldenbourg Verlag, 2010).

[26] The defining work on the RAF was Stefan Aust, *Der Baader-Meinhof Komplex* [The Baader-Meinhof Complex] (Hamburg: Hoffmann und Kampe, 1985). A substantial newer study is Wolfgang Kraushaar, ed., *Die RAF: Entmythologisierung einer terroristischen Organisation* [The RAF: Demythologisation of a Terroristic Organization] (Bonn, Germany: Bundeszentrale für Politische Bildung, 2008).

[27] For a comparison of the Weather Underground and the West German Red Army Faction, see Jeremy Varon, *Bringing the War Home: The Weather Underground, the Red Army Faction, and Revolutionary Violence in the Sixties and Seventies* (Berkeley: University of California Press, 2004).

[28] See Patricia G. Steinhoff, "Kidnapped Japanese in North Korea: The New Left Connection," *The Journal of Japanese Studies* 30, no.1 (December 2004): 123-142.

independent state. In Northern Ireland, a period of social unrest and violence also began. In 1969, the Irish nationalist organization Irish Republican Army split. One of the two resulting groups, the Provisional Irish Republican Army, committed itself to armed resistance against British authority in Northern Ireland. In short, the number of total groups that utilized terroristic violence against Western industrial states skyrocketed.

Most of these groups justified their violence as acts of insurgency against an illegitimate state. They claimed to be practicing their right of national self-determination by engaging in asymmetrical insurgent warfare. These groups argued that the label of insurgent gave them combatant status and placed them under the protection of the laws of warfare. In contrast, state officials used a range of terms to describe the actions of these groups, including insurgency, terrorism, crimes, thuggery, sabotage, and anarchism.

As protesters in industrial countries radicalized and transformed into new armed resistance groups, they sometimes adopted not just the ideology but also the cause of other national liberation groups. These transnational connections stemmed from patterns of transnational activist interactions. The Vietnamese National Liberation Front, Latin American groups, and the Palestine Liberation Organization (PLO) had fostered relations with students and other activists in the late 1960s. The Palestinian connections, in particular, intensified. For example, in the summer of 1970, the core members of the new West German Red Army Faction traveled to a Palestinian refugee camp in Jordan to train with Arafat's Al Fatah.[29] For example, the West German Red Army Faction committed a string of bombings at U.S. military installations in May 1972 and justified their actions as insurgent warfare on behalf of the Vietnamese National Liberation Front and the PLO.[30]

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[29] The West Germans were quickly asked to return home, due to their drinking and the women's European bathing attire. See Tobias Wunschik, "Baader-Meinhof international?" *Bundeszentrale für Politische Bildung*, last modified August 31, 2007, http://www.bpb.de/geschichte/deutsche-geschichte/geschichte-der-raf/49226/baader-meinhof-international?p=all.

[30] See Rote Armee Fraktion, "Anschlag auf das Hauptquartier der US-Army in Frankfurt/Main," May 14, 1972, in *Rote Armee Fraktion: Texte und Materialien zur Geschichte der RAF* [Red Army Faction: Texts and Materials on the History of the RAF] (Berlin: ID Verlag, 1997),

In Europe and North America, the governments of affected states responded with a variety of legislative, law enforcement, and martial strategies to recreate their state monopoly on violence. They did not adopt the broad repressive measures of Latin American countries such as Argentina or Uruguay. Several states increased the capacities of federal law enforcement agencies. The U.S. Federal Bureau of Investigation intensively pursued the Weather Underground.[31] In the FRG, the federal investigative service, the *Bundeskriminalamt*, tripled its size and introduced computer-based investigative tactics to specifically target the Red Army Faction.[32] In other cases, military force came into play. Israel practiced counterinsurgency strategies against Palestinians and supportive neighboring states. When the Front de Libération du Québec kidnapped Quebec Minister of Labor Pierre Laporte and British diplomat James Cross, Canadian Prime Minister Pierre Trudeau declared martial law until the kidnappers, who had murdered Laporte, released Cross and found sanctuary in Cuba. Nixon placed armed guards, so-called federal sky marshals, on select U.S. flights to prevent hijackings. Many of the initial sky marshals were military personnel.[33]

Against domestic terroristic actors, these measures were often successful. In Quebec, the Front de Libération du Québec lost significant support. By May 1972, Baader and the core Red Army Faction in the FRG had been arrested. By 1976, most Weather Underground members had surrendered, been arrested, or left their underground lives. Nevertheless, nationally framed anti-terrorism measures proved unsuccessful at preventing or resolving transnational acts of terror.

145; and Rote Armee Fraktion, “Die Rote Armee Aufbauen: Erklärung zur Befreiung Andreas Baaders vom 5. Juni 1970,” June 5, 1970, in *Rote Armee Fraktion: Texte und Materialien*, 24-26.

[31] A good summative work is Bryan Burrough, *Days of Rage: America’s Radical Underground, the FBI, and the Forgotten Age of Revolutionary Violence* (New York: Penguin, 2015).

[32] An excellent study on the FRG’s domestic response to the RAF is Karrin Hanshew, *Terror and Democracy in West Germany* (Cambridge: Cambridge University Press, 2012).

[33] See chapter 2.

A shocking example of transnational terroristic cooperation, as well as national policies' inability to resolve such situations, occurred in the state with the most advanced domestic anti-terrorism programs - Israel. On behalf of the Popular Front for the Liberation of Palestine – External Operations, three members of the Japanese Red Army Faction smuggled assault rifles into Tel Aviv's Lod airport on May 30, 1972 and opened fire on civilians. The attack was planned by Wadi Haddad, a doctor and founding member of the PFLP. After the PFLP was banned from the PLO in 1970, Haddad founded an "External Operations" splinter group to carry out further terroristic violence outside of the PLO or PFLP's supervision. The three Japanese Red Army Faction members, Kozo Okamoto, Tsuyoshi Okudaira, and Yasuyuki Yasuda, had trained with the PFLP in a Palestinian refugee camp in Lebanon for the attack.[34] The three attackers killed twenty-six people, including a candidate in the upcoming Israeli presidential elections and seventeen U.S. Christian pilgrims from Puerto Rico. Only Okamoto survived. He received a lifetime prison sentence in Israel.

The Lod airport massacre shocked the international community and significantly influenced the way that state officials and private citizens understood the term "terrorism." The contemporary definition of terrorism was already changing, and the Lod massacre accelerated this change. Initially applied to insurgent actors and to communist states' violent suppression of their own citizens, the label "terrorist" began to cover the actions of violent thugs, not those of insurgents or communists. The 1971 OAS Convention text avoided references to insurgency or state-building. Rather, it categorized terrorists as criminal non-state actors whose political aspirations did not justify their violent acts.

The media coverage and diplomatic debates about the Lod airport massacre also rejected the political agency and state-building aspirations claimed by non-state terroristic actors. Journalists across the globe dove into the political origins of the massacre, namely the Arab-Israeli conflict and the Fedayeen national liberation struggle. However, most also wrote that such

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[34] See Patricia G. Steinhoff, "Portrait of a Terrorist: An Interview with Kozo Okamoto," *Asian Survey* 16, no. 9 (September 1976): 830-845.

a terroristic attack should not advance the political goals of its non-state perpetrators.[35] Diplomats and bureaucrats used the term "terrorist" to condemn the Lod airport attack and its perpetrators as well, reinforcing the idea that a "terrorist" was a politically illegitimate non-state actor. U.S. UN Ambassador George H.W. Bush noted that even the UN delegation from the People's Republic of China, usually ardent supporters of national liberation groups, commented "that [the] Lod attack was 'sheer terrorism which was not real battle and accomplished nothing.'"[36]

Despite all claims to the contrary, the attackers could still influence state-to-state relations. The day after the attack, Israel and Lebanon circulated separate letters in the UN. Both states sought to strengthen their position in the Middle East peace process by accusing the other of illegally supporting or inciting terroristic violence in their region.[37] Meanwhile, the State Department considered proposing a Security Council resolution condemning terrorism, but rejected the idea when the Deputy Chief of Mission in Moscow, Boris Klosson, warned that the Soviet Union would make any Security Council resolution about the broader Arab-Israeli conflict, not just non-state Palestinian terroristic actors.[38] UN delegates reacted to the Lod airport massacre by protecting their own political stake in the Arab-Israeli conflict.

In September 1972, a brazen terroristic attack at the Munich Olympic Games convinced politicians and global audiences that transnational terrorism was a comprehensive global security threat. Building on recent developments in their understanding of terrorism, officials and journalists coined the label "international terrorism" to describe this danger posed by non-state

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[35] Good examples include "Lebanese, Israelis Take Precautions at Airports," *Washington Post*, June 2, 1972, A16; and "L'Avertissement de Jérusalem sommant les dirigeants de Beyrouth de neutraliser les terroristes accroit l'inquiétude des Libanais," *Le Monde*, June 3, 1972.

[36] Mission United Nations to Department of State, Telegram 2029, June 1, 1972, NARA, RG59, CFPF 1970-73, AV14 ISR, 6-1-72.

[37] United Nations to State, Telegram 2029, June 1, 1972, NARA, RG59, CFPF 1970-73, AV14 ISR, 6-1-72.

[38] Embassy Beirut to Department of State, Telegram 6066, June 5, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 1-1-72; Embassy Moscow to Department of State, Telegram 5405, June 7, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 1-1-72.

actors. After the 1970 “Black September,” when the PLO was driven out of Jordan by the Jordanian military with significant civilian casualties, fedayeen dissidents from Fatah, the PFLP, and other groups formed the Black September Organization (BSO). Like the PFLP, it was dedicated to continuing the Palestinian insurgency and spreading armed violence outside of the territorial boundaries of the Arab-Israeli conflict. In the early morning of September 5, eight members of the BSO stealthily entered the athletes’ housing at the 1972 Munich summer Olympic Games. They entered the Israeli team’s apartments, killed one trainer, and seized nine athletes and trainers in a hostage situation. The BSO attackers demanded the release of 234 prisoners from Israel and Baader and Meinhof from the FRG, but Israeli Prime Minister Gold Meir refused to negotiate. When the attackers attempted to leave the country with their hostages, the local Bavarian government ambushed them at the NATO airfield of Fürstenfeldbruck. The hostages died in the crossfire between the attackers and rescuers.[39] The attack shocked people worldwide.

Media reports discussed the political origins of the attack, but regional discrepancies about the political implications of terrorism quickly became apparent. All accounts in the immediate aftermath of the Munich attack focused on Palestinian fedayeen as the main perpetrators of international terrorism. Many mainstream publications speculated that Europe was becoming the main stage of such Palestinian extremists, who were enabled by other armed resistance groups based in Europe or Latin America.[40] Within the Arab world and many African states, the media drew manifold references to the Palestinian national liberation insurgency

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[39] A good comprehensive summary of the attack can be found in Eva Oberloskamp, “Das Olympia-Attentat 1972: Politische Lernprozesse im Umgang mit dem transnationalen Terrorismus,” [“The Olympics Attack 1972: Political Learning Processes in Handling Transnational Terrorism”], *Vierteljahrshefte für Zeitgeschichte* 60, no. 3 (July 2012): 321-352, doi: 10.1524/vfzg.2012.0018.

[40] See, for example, James Yuenger, “The Tentacles of Terror,” *Chicago Tribune*, September 10, 1972, A1; and Walter Laqueur, “The Terrorist Attacks: An Exercise in Futility: Arab Terror: More to Come,” *Washington Post*, September 10, 1972, B1, B5.

against Israel, and made a point of emphasizing that international terrorists were legitimate combatants.[41]

In Western Europe and North and Latin America, however, the mainstream media rejected this interpretation. Publications emphasized that civilian targets far beyond the Middle East were not directly related to the Arab-Israeli struggle. They branded international terrorism as a criminal act that was antithetical to any definition of political legitimacy. The locale of the attack added to the shock. The Olympic Games were symbolic of peaceful state-based international competition, and athletes represented this ideal.[42] Compounding this global shock was the sheer audacity of the attackers, and their capability to procure and use deadly weapons in a foreign country. In addition, the inability of West German and local Bavarian authorities to prevent the attack highlighted states' vulnerability to this tactic.[43] These accounts of the Munich attach created a comprehensive notion of "international terrorism" as an apolitical, transnational danger. For much of the global public, "terrorism" emerged as an existential threat: a menace to every individual's body, home, and state.

Leaders worldwide were as shocked as their publics. Key affected states instituted new anti-terrorism policies. Israel continued applying military pressure against its neighboring states to undermine their support for Palestinian fedayeen.[44] The Israeli intelligence service, Mossad, began a program to assassinate the planners of the Munich attack. The program caused a public relations debacle when Israeli agents killed an innocent man in Norway. Other states took less

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[41] A good media overview can be found in Embassy Tripolis to Department of State, Telegram 9178, September 10, 1972, NARA, RG59, CFPF 1970-73, POL 23-8 9-6-72.

[42] See for example Manuel Lucbert, "La police avait l'ordre d'empêcher le départ des terroristes," *Le Monde*, September 7, 1972, http://www.lemonde.fr/archives/article/1972/09/07/la-police-avait-l-ordre-d-empecher-le-depart-des-terroristes_2389991_1819218.html?xtmc=munich&xtcr=59; and Rudolf Augstein, "Terror und kein Ende," *Der Spiegel*, September 11, 1972, 20.

[43] See Eva Oberloskamp, "Das Olympia-Attentat 1972," 333-334.

[44] See Timothy J. Naftali, *Blind Spot: The Secret History of American Counterterrorism* (New York: Basic Books, 2005), 57.

drastic, but still highly visible steps. FRG Chancellor Willy Brandt, for example, instituted new visa requirements and screening policies for all Arab nationals, making it considerably more difficult for any citizen of an Arab state to enter the FRG.[45] Brandt's cabinet also decided to create a new special forces unit aimed specifically against international terrorists. The unit's chief officer, Ulrich Wegener, trained with Israeli special forces in November 1972.[46] Brandt also instructed his ministers to develop European transgovernmental anti-terrorism networks along the lines that Italy's Fortini had been advocating since 1970.[47]

The Nixon administration likewise instituted new anti-terrorism initiatives. The U.S. president had previously been restrained from engaging with the issue of terrorism by his advisors, who feared the potential political fallout of a major terrorist attack.[48] Now, he became more active. On the one hand, Nixon wanted to placate Israel and the Jewish voter population within the United States, who demanded U.S. action in the aftermath of the Munich attack. On the other hand, he was genuinely fearful that the United States would become the next site of a major "international terrorism" attack.[49]

As before, most of these U.S. anti-terrorism initiatives were carried out at middling bureaucratic ranks, so that the president's advisors could still disassociate him and themselves in case of dramatic failures.[50] The CIA began compiling a weekly summary on the threat of

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[45] Oberloskamp "Das Olympia-Attentat 1972," 330-331.

[46] Leading Police Director Ulrich Wegener to FRG Interior Minister Hans-Dietrich Genscher, Experience Report "Sonderlehrgang bei den israelischen Verteidigungsstreitkräften (MAHAL) vom 30.10. – 12. 11.1972," ["Special training course with the Israeli Defense Force (MAHAL) from 10.30.-11.12.1972"], November 28, 1972, Federal Archives Germany (BArch), Federal Republic of Germany (B) Records of the Ministry of the Interior (106)-115427, folder 1.

[47] For an analysis of European regional anti-terrorism, see chapters 4 and 5.

[48] See Naftali, *Blind Spot*, 39.

[49] See Naftali, *Blind Spot*, 55-60.

[50] U.S. Representative on the ILC Richard Kearney to National Security Advisor Henry Kissinger, Memorandum "Action to Combat Terrorism," September 23, 1972, Gerald Ford Presidential Library (FPL), White House Central Files (WHCF), Special Files 355: Cabinet Committee to Combat Terrorism; National Security Advisor Henry Kissinger and White House Domestic Affairs Advisor John Ehrlichman to President Richard Nixon, Memorandum "Action to

international terrorism. On September 18, the Nixon administration began "Operation Boulder," a surveillance program to screen the citizens of Arab states who wanted to enter the United States. On September 25, Nixon founded the Cabinet Committee to Combat Terrorism (CCCT), a mainly symbolic committee which brought together most of his cabinet members as well as representatives from the Central Intelligence Agency (CIA), the FBI, the FAA, and other interested bureaucracies. The CCCT only met once, but it formed an interagency working group to develop new anti-terrorist measures, monitor current events, and coordinate policy.[51] The CCCT Working Group, chaired by former foreign service officer Armin Meyer, became a central hub for U.S. antiterrorism initiatives. It permitted representatives of State Department, the Department of Transportation, and the FBI to coordinate with the Department of Defense, Central Intelligence Agency, and other intelligence agencies.

Nixon also ordered Secretary of State William Rogers to pursue a multilateral convention against "international terrorism" in the UN, building on the State Department's previous initiatives in the UN, ICAO, and OAS. Rogers had reservations about the assignment, since prior negotiations had been time-consuming and yielded at most ambiguous results. However, resentful that the State Department had cut out of the decision-making process for major decisions on the Soviet Union, China, and more recently, the Middle East, he saw an opportunity to exercise leadership over a key foreign policy initiative.[52] As before, Rogers hoped to apply the principle of "extradite or prosecute" to strip away "international terrorists'" self-proclaimed insurgent combatant status.

Combat Terrorism," undated, FPL, WHCF, Special Files 355: Cabinet Committee to Combat Terrorism.

[51] President Richard Nixon to Heads of Departments and Agencies, Memorandum "Action to Combat Terrorism," September 25, 1972, *FRUS,* 1969–1976, Volume E-1: Documents on Global Issues, 1969-1972, Document 109, accessed June 25, 2018, https://history.state.gov/historicaldocuments/frus1969-76ve01/d109.

[52] Department of State to Embassy U.K. and Other Posts, Circular Telegram 164986, September 9, 1972, *FRUS,* 1969–1976, Volume E-1, Document 99, accessed June 25, 2018, https://history.state.gov/historicaldocuments/frus1969-76ve01/d99.

Since Rogers was more engaged in this multilateral effort than in prior cases, he allocated high-level bureaucrats to coordinate this U.S. anti-terrorism policy. He assigned control of the UN negotiations to the Bureau for International Organization Affairs, directed Assistant Secretary of State Samuel De Palma. The OLA, represented by John Stevenson, shifted from a coordinating to a supporting role. Rogers found a key ally in UN General Secretary Kurt Waldheim. Waldheim had expressed concern about the threat of terroristic violence to civilians around the world after the Lod airport massacre. Now, Waldheim used the Munich attack to pursue a more active anti-terrorism policy. Two days after the attack, he asked the UN General assembly to place the issue of terrorism on its agenda.

Working within the UN carried risks, since its industrialized and developing member states already disagreed on how to deal with non-state terroristic actors and their political grievances. The Arab, African, and nonaligned blocs at the UN regularly discussed such issues of hijacking or protection-of-diplomats as direct extensions of the Arab-Israeli conflict. Even if they denounced the brutality or victim count of terroristic attacks, they still linked insurgent warfare, terroristic violence, and the political agency of national liberation groups. Meanwhile, the United States and many of its European and Latin American allies denounced acts of non-state terroristic violence and avoided references to terrorists' political grievances or origins. The U.S. goal was to keep the issue of terrorism distinct from issues of national liberation, insurgency, or imperialism, and Waldheim shared this focus. When placing terrorism on the General Assembly agenda, he placed his status as Secretary General behind the concept that terrorism should be a separate item from the Middle East conflict. This move, and the U.S. initiative, had no guarantee of success.

The Issue of "International Terrorism" at the UN

On September 11, 1972, Rogers initiated a worldwide State Department campaign to create an UN convention which regulated terrorism through criminal law and "extradite or

prosecute" requirements.[53] By doing so he put before the UN an issue which was, at its heart, deeply embedded in decolonization politics. Though the concept of "international terrorism" had spread in the five days following the Munich attack, no consensus existed in the public sphere about which violent acts or actors the term should cover. Rogers risked having the Arab states at the UN turn the debate into a discussion of the Arab-Israeli conflict, or of the social origins and combatant status of national liberation movements. The United States sought to avoid this link by branding terrorists as common criminals.[54]

UN Secretary Waldheim laid the initial groundwork for the U.S. anti-terrorism campaign within the UN by orchestrating the setting for negotiations. The two possible settings could provide specific advantages and disadvantages. One option was for Waldheim to submit the item to the General Assembly's Sixth Committee, which handled legal matters. Discussing terrorism in the Sixth Committee would place the focus of the negotiations very firmly on legalistic regulations. This narrow scope could prevent the Arab bloc from linking the issue of terrorism to the UN discussions on the Arab-Israeli conflict.

An alternative was to send the item to the General Assembly plenary. This option would allow for a less specialized, more comprehensive political discussion, increasing the chance that sanctions might be introduced. However, it could allow Arab and African states to dominate the discussion. In a worst-case scenario, these blocs could twist the debate and condemn Israel for its "state terror" counterinsurgency practices.[55] The Security Council was not an option for the

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[53] Telegrams from embassies around the world, detailing their discussion of terrorism, can be found in NARA, RG59, CFPF 1970-73, POL 23-8, 9-6-72; and NARA, RG59, CFPF 1970-73, POL 23-8, 9-11-72.

[54] Department of State to All Diplomatic Posts, Circular Telegram 167609, September 13, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-13-72.

[55] Mission United Nations to Department of State, Telegram 3256, September 14, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-13-72.

United States, as the U.S. embassy in Moscow warned that the Soviet Union was likely to favor the Arab bloc and vote against U.S. interests there.[56]

Waldheim entered a series of grueling negotiations about the venue in mid-September 1972, which foreshadowed how contentious the issue of terrorism would remain. U.S. Ambassador to the UN George H.W. Bush emphasized that the United States could work within any setting that made Waldheim's task easier.[57] Arab and African delegations opposed any terrorism initiative, fearing that the United States would use it to support Israel's policies in the Middle East. [58] After two weeks, the Arab delegations reluctantly agreed to discuss the issue within the Sixth Committee. Bush speculated that they wanted to bury the terrorism item by focusing on legal technicalities, such as a precise definition of terrorism.[59] These fears were reinforced when the African bloc managed to delay the General Assembly vote to introduce the terrorism item in the Sixth Committee until September 23.[60] Algerian and Saudi delegates postponed the negotiations further by placing terrorism among the last items on the Sixth Committee's agenda, creating the risk that the committee might not even get to the issue at all.[61]

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[56] See Embassy Moscow to Department of State, Telegram 9300, September 14, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-13-72.

[57] Mission United Nations to Department of State, Telegram 3256, September 14, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-13-72; Department of State to Mission United Nations, Telegram 167911, September 14, 1972, NARA, RG59, FPF 1970-73, POL 23-8, 9-13-72; and Mission United Nations to Department of State, Telegram 3289, September 15, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-13-72.

[58] Mission United Nations to Department of State, Telegram 3289, September 15, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-13-72.

[59] Mission United Nations to Department of State, Telegram 3356, September 20, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-16-72; Mission United Nations to Department of State, Telegram 3340, September 19, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-16-72.

[60] Mission United Nations to Department of State, Telegram 3412, September 22, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-21-72; Mission United Nations to Department of State, Telegram 3452, September 25, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-22-72.

[61] Mission United Nations to Department of State, Telegram 3486, September 26, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-25-72; Mission United Nations to Department of State, Telegram 3467, September 26, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-25-72; Mission United Nations to Department of State, Telegram 3527, September 28, 1972, NARA,

Even the negotiation schedule on "international terrorism" raised sharp controversies between the United States and the African and Arab blocs.

Despite the inauspicious start, the State Department worked hard to set and control the terms of the anti-terrorism debate. On September 25, 1972, Rogers' speech during the General Assembly's opening session emphasized the UN's duty to prevent acts of "international terrorism" such as hijackings, attacks on diplomats, hostage taking, letter bombs, bombs placed aboard aircrafts. The secretary of state underscored the urgent need to act by specifically referring to the Munich and Lod attacks.[62] The next day, the State Department circulated a working paper on terrorism, drafted by the OLA, to form the basis of negotiations. The OLA based the working paper on the ICAO and OAS conventions. It mandated that states pass criminal laws and "extradite or prosecute" terrorists. The attacks had to cross national borders either physically or jurisdictionally, and the draft did not apply to military ventures enacted under the laws of war.[63]

However, the U.S. working paper was problematic because it did not list every act that could fall under the broad category of "international terrorism." Previous conventions had included lists of specific crimes that they covered. The U.S. working paper, however, contained only a vague description of what constituted "terrorism," namely "any person who unlawfully kills, causes serious bodily harm or kidnaps another person," as well as attempts or complicity thereof.[64] As U.S. officials moved to criminalize a wide range of terroristic acts, the working paper was ambiguous about what sorts of violence it would regulate. This ambiguity would cause headaches at State during the negotiations.

RG59, CFPF 1970-73, POL 23-8, 9-27-72; Mission United Nations to Department of State, Telegram 3486, September 26, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-25-72.

[62] Robert Alden, "Rogers Asks U.N. to Set '73 Parley on World Terror," *New York Times*, September 26, 1972, 1.

[63] Department of State to All Diplomatic Posts, Circular Telegram 175954, September 26, 1972, NARA, RG59, CFPF 1970-73, POL 17, 7-10-72.

[64] United Nations General Assembly Sixth Committee, Agenda Item 92 "United States of America: Working Paper," September 25, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 9-25-72.

Meanwhile, De Palma and Bush had to be careful that the African and Arab blocs did not seize control the ILC's protection-of-diplomats initiative. A completed ILC convention draft of this initiative was slated to be discussed by the Sixth Committee in early October, in advance of the terrorism item. The draft convention called for all signatory states to pass laws that made all attacks on diplomats criminal offenses, required states to extradite offenders or submit their cases for prosecution, and gave broad jurisdiction to any state that wanted it. Similar to the ICAO and OAS conventions as well as the U.S. terrorism working paper, the draft faced the same political obstacles. Arab and African states wanted to link it to debates on the terrorism initiative, the Arab-Israeli conflict, and to discussions of insurgency and the right of national liberation movements to engage in warfare. Even internal State Department memoranda considered the terrorism and protection-of-diplomats initiatives as intrinsically interconnected. Nevertheless, De Palma hoped to avert any such linkages by other states, and also avoid results unfavorable to U.S. interests, such as a condemnatory resolution against Israel.

Despite U.S. efforts, both the Israeli delegation and the Arab and African blocs immediately linked the protection-of-diplomats debate to the Arab-Israeli conflict. All sought to label attackers as insurgents, not as criminals. The Sixth Committee discussed the protection-of-diplomats item from October 7 to October 18, 1972. African and Arab delegations on the committee were uniformly hostile to the idea that attackers of diplomats were ordinary criminals. The Nigerian, Tanzanian, Zambian, Pakistani, and Chinese delegates expressed their opposition to discussing this item separately from the Arab/Israeli conflict and the terrorism agenda item, to disregarding the political motivations of attackers, and to failing to stipulate protection mechanisms for national liberation movements.[65] The Israeli Ambassador to the UN, Yosef Tekoah, responded that all attacks on diplomats were insurgent acts of warfare and demanded that the UN accept Israeli military counterinsurgency tactics. This linkage was exactly what the

[65] Mission United Nations to Department of State, Telegram 3745, October 7, 1972, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 11-12-71; Mission United Nations to Department of State, Telegram 3777, October 9, 1972, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 11-12-71.

United States had wanted to avoid.[66] Two days later, Bush received authorization from Legal Advisor John Stevenson to (diplomatically) tell Tekoah to cut it out.[67]

Realizing that others were drawing the links between terrorism, insurgency, and attacks on diplomats, Bush and De Palma tried to avoid further challenges to the ILC draft by rushing its adoption as is. They called for an urgent diplomatic conference of specialists to sign the convention. The U.S. representative on the Sixth Committee, veteran foreign service officer W. Tapley Bennett, gained support for this diplomatic conference from many U.S. allies recruited by Kearney and Feldman in 1971, including the U.K., Canada, Denmark, Austria, New Zealand, and Australia.[68] However, delegates from Kenya, Madagascar, Mauretania, and Pakistan wanted the draft to be approved by the next full General Assembly meeting in the spring of 1973, which would give them more opportunities to link the diplomats draft to the terrorism issue, the politics of the Arab-Israeli conflict, and to national liberation and insurgent warfare.[69]

The Arab and African delegates gained unexpected backing from several Latin American states, including Mexico and Chile. These states had been disappointed that the OAS Convention covered only attacks on diplomats and not acts of terrorism generally. In contrast to Arab and African delegates, these Latin American delegates hoped that the UN General Assembly could introduce additional content so that the protection-of-diplomats convention turned into a more general condemnation of terrorism. Bennett successfully prevented this linkage. But he could not

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[66] Mission United Nations to Department of State, Telegram 3881, October 13, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 10-6-72; Mission United Nations to Department of State, Telegram 3777, October 9, 1972, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 11-12-71.

[67] State to United Nations, Telegram 185544, October 11, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 10-6-72.

[68] Mission United Nations to Department of State, Telegram 3663, October 4, 1972, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 11-12-71.

[69] Mission United Nations to Department of State, Telegram 3745, October 7, 1972, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 11-12-71.

deter the combined Arab, African, and Latin American pressure from transferring the draft to the General Assembly, thereby delaying its passage for a year.[70]

In the aftermath of this transfer, several new terrorist attacks strained the already tense relations between key states involved in the Sixth Committee debates, including the United States, Israel, and Algeria. On October 29, BSO members hijacked a mid-sized Lufthansa aircraft, flight 615, on the route from Damascus to Frankfurt and demanded that the West German government release the three surviving BSO Munich attackers. FRG Chancellor Willy Brandt complied, damaging at least in the short term FRG relations with both Israel and the United States. Meanwhile, on October 24 Dutch authorities arrested Ribhi Khalum, who held an Algerian diplomatic passport, with a suitcase full of explosive materials. Khalum was released the next day, but then Israeli authorities identified him as a Palestinian Al Fatah member.[71] The U.S. embassy in Beirut pressed the Algerian Ambassador to Lebanon, Muhammad Yazid, to stop issuing diplomatic passports to Palestinians, who could easily be international terrorists. Yazid resisted U.S. pressure. He stated openly that the government of Algeria was only concerned with the fact that Khalum had been arrested, not with the fact that he had used the passport for terrorist activities.[72] The incident further soured U.S.-Algerian relations.

Facing these setbacks, the State Department decided that its best strategy for the upcoming Sixth Committee terrorism negotiations was to undercut the collaboration between the African and Arab blocs. On November 9, the debate on an anti-terrorism convention that Rogers

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[70] Mission United Nations to Department of State, Telegram 3906, October 20, 1972, NARA, RG59, CFPF 1970-73, POL 5-2 IA, 10-06-72.

[71] Embassy Rome to Department of State, Telegram 6524, October 31, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 10-13-72; Department of State to Embassy Tel Aviv, Embassy Amman, et al., Telegram 197114, October 30, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 10-13-72; and Embassy Tel Aviv to Department of State, Telegram 7015, October 26, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 10-13-72.

[72] Embassy Beirut to Department of State, Telegram 12044, November 6, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; Department of State to Embassy Tel Aviv, Embassy Amman, et al., Telegram 197114, October 30, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 10-13-72.

and Waldheim had advocated for since September was finally scheduled to begin. The U.S. officials focused on winning over the African delegations. They voiced strong concerns that the United States was planning to create a new policy tool against anti-imperialist freedom fighters in South Africa, Rhodesia, and elsewhere on the continent. These delegates were particularly unsettled by the vague definition of terrorism in the U.S. working paper, and strongly supported the Arab position that terroristic violence needed to be interpreted in the context of national liberation struggles. State Department officials offered to amend the U.S. working paper to address these concerns. On November 8, 1972, Assistant Secretary of State for African Affairs David Newsom traveled to New York and personally met with African delegates on the Sixth Committee to pitch the latest changes to the U.S. working paper.

Newsom proposed to create two separate working groups on "causes" of terrorism and "measures" to counter it. He maintained that the former would give Arab and African delegates a forum to discuss national liberation. In addition, Newsom confirmed the right of national liberation movements to exist but denied them the right to use violence.[73] He failed to persuade the African delegates. In their response, they pointed out that the United States was pursuing its own interests by relegating national liberation politics to a separate "causes" forum; this separation ensured that the United States could focus on its punitive goals in the "measures" working group. They added that the Americans' ambiguous definition of terrorism could let states such as South Africa or Israel label any kind of dissident, insurgent or revolutionary act as a "terrorist" serious offense, and thus make it politically illegitimate.[74]

Indeed, competing definitions of terrorism immediately surfaced as the central point of contention when the negotiations on "international terrorism" started in the Sixth Committee on

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[73] Department of State to Mission United Nations, Telegram 201467, November 4, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; Department of State to Embassy Buenos Aires et al., Circular Telegram 201469, November 4, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; and Department of State to Mission United Nations, Telegram 198884, November 1, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

[74] Mission United Nations to Department of State, Telegram 4511, November 10, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72

November 9, 1972. The central issue of debate was whether terrorism was an act of insurgency or a crime. Led by Saudi UN Ambassador Jamil Murad Baroody, the Arab and African blocs again argued that terrorism was a dimension of struggles for national liberation. They insisted that political motivations were crucial, that "international terrorism" should not be viewed separately from wartime acts of terror, and that affluent countries also engaged in state-sponsored terrorism through their intelligence agencies. Supported by the Swedish delegate, the United States countered that terrorism was a crime that demanded multilateral countermeasures.[75]

Meanwhile, a domestic U.S. hijacking on the second day of negotiations undermined the State Department because it prompted Nixon to shift his anti-terrorism priorities from multilateral conventions to unilateral measures. On November 10, 1972, three fugitives hijacked Southern Airways flight 49, taking the airplane on a four-thousand-mile journey that ended in Havana. The hijackers threatened to crash the airplane into a nuclear reactor at Tennessee's Oak Ridge National Laboratory. Nixon demanded new aviation security measures from the Department of Transportation, FAA, and CCCT. On January 6, 1973, the FAA put into effect Regulation 107.4, which required screening 100 percent of passengers at all airports within the United States, and on all flights operated by U.S. air carriers.[76] Congress appropriated funds for the FAA to purchase previously-tested magnetometer scanners and other security equipment.[77] To cut management and maintenance costs, the FAA passed ownership of the equipment to U.S.-registered airlines.[78]

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[75] Mission United Nations to Department of State, Telegram 4510, November 10, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

[76] FAA Administrator John H. Shaffer to All Regional Directors (Except EU and Centers), Memorandum, January 4, 1973, NARA, Records of the Federal Aviation Administration (RG237), Office of the Administrator: Subject and Correspondence Files, 1959-82 (A1 14), 8040-A Hijacking 1973, Jan-June.

[77] FAA Administrator John H. Shaffer to Eastern Air Lines President S.L. Higginbottom, Letter, January 3, 1973, NARA, RG237, A1 14, 8040-A Hijacking 1973, Jan-June.

[78] FAA Administrator Alexander Butterfield to All Regional Directors (Except AEU and Centers), Memorandum, October 8, 1973, NARA, RG237, A1 14, 8040-A Hijacking 1973, July-Dec.

By mid-1973, U.S. air carriers operated security detection equipment by themselves in U.S. and in foreign airports.

Nixon also placed significant pressure on the State Department to achieve an enforceable multilateral convention against terrorism. Nixon was especially interested in receiving authority to sanction states that did not prosecute terrorists as criminals. Secretary Rogers directed the State Department to once again lobby for sanctions in the UN and the ICAO.[79] This demand made the U.S. position in the UN less tenable. The Arab, African, and nonaligned blocs, as well as countries with less of a vested interest in the debate, resisted the idea of mandatory sanctions against states which did not prosecute terrorists. They accurately stated that such sanctions were an intrusion into a country's sovereign control of its criminal justice system.

Even as internal pressure mounted on the State Department to achieve an enforceable multilateral convention, it encountered obstacle after obstacle in the Sixth Committee. Saudi Arabian delegate Baroody repeatedly re-stated that taking into account the social origins of terrorism was crucial, and that imperial states had provoked violence in the name of national liberation through their oppressive behavior. Delegates from Senegal, Cameroon, Uganda, and Chad shared his opinion that the current negotiations discriminated against national liberation movements. The Cuban delegate supported his African and Arab colleagues and used this platform to criticize the United States' imperialist actions. Yugoslavia and many other non-aligned states agreed that preventative measures against terrorism were needed, but vacillated between supporting and denouncing the idea that acts of terror were an aspect of national liberation struggles.[80] After a week of discussions, the divide between the U.S. and Arab/African position was wider than ever.

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[79] Secretary of State William Rogers to President Richard Nixon, Memorandum "Action Against International Terrorism," January 8, 1973, NARA, RG59, CFPF 1970-73, POL 23-8, 1-1-73.

[80] Mission United Nations to Department of State, Telegram 4645, November 14, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; Mission United Nations to Department of State, Telegram 4697, November 16, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

In addition, Tapley Bennett experienced significant trouble with U.S. allies who were uncomfortable with and even sabotaged the American position. Israeli UN Ambassador Tekoah feared that the United States might appease African delegates. He opined that any language in the draft that seemed sympathetic to the aspirations of self-determination played right into Arab and Palestinian rhetoric about the validity of the Fedayeen's insurgency.[81] On November 17, Tekoah delivered a long speech in front of the Sixth Committee which singled out Arabs as the most prolific terrorists, compared their actions to Nazi war crimes against Jews, and called for immediate and substantial enforcement of anti-terrorism measures. He threatened that Israel would take unilateral military measures against terrorism if the UN was unwilling to act. Iraq condemned the speech, followed by other Arab and African states and the Soviet Union.[82] Meanwhile, French UN delegate Lacharriere was obstructing U.S. efforts to keep the discussions on causes of and measures against terrorism separate.[83] Bush speculated that the French were unwilling to jeopardize their diplomatic relations to Arab countries for the sake of any anti-terrorism negotiations.

With both sides firmly entrenched and no compromise in sight, each raced to draft a resolution which would cement the outcome of the Sixth Committee negotiations. Consequently, when the debate ended on November 27, three resolutions were submitted for the Sixth Committee to consider.

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[81] Mission United Nations to Department of State, Telegram 4545, November 10, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; Embassy Tel Aviv to Department of State, Telegram 7441, November 13, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; Department of State to Mission United Nations and Embassy Tel Aviv, Telegram 206114, November 12, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

[82] Mission United Nations to Department of State, Telegram 4817, November 18, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; Mission United Nations to Department of State, Telegram 4759, November 17, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

[83] Embassy Paris to Department of State, Telegram 21734, November 13, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72; Mission United Nations to Department of State, Telegram 4697, November 16, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

Acting as a surrogate for the United States, Italian Ambassador to the UN Piero Vinci spearheaded the drafting of a Western resolution with other European and British commonwealth countries.[84] Formally, the initial U.S. working paper was still in play, but because it had no backing, Bush supported the Italian draft.[85] It called for the approval of a convention in the next UN General Assembly term (in late 1973) against terrorism in "countries not party to [the terrorists'] conflict."[86] It also called for a separate committee to discuss the origins of terrorism. Bush and De Palma hoped that Vinci's efforts would increase the draft's chances of approval by disassociating the United States from it.[87]

In contrast to the initial U.S. working paper and the Italian resolution, the third resolution, prepared by non-aligned states, favored national liberation movements.[88] For this purpose the nonaligned states cooperated with African and Arab ones. Their draft called for the establishment of an ad hoc committee to further discuss the insurgent origins of terrorism, specifically mentioned the right of national liberation movements to exist and pursue their goals, and solicited more state opinions on terrorism.[89] This resolution was exactly what Bush and De Palma did not want.

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[84] The sponsors of the Italian draft were Australia, Belgium, Canada, Costa Rica, Italy, Japan, New Zealand, the U.K, and Iran.

[85] Department of State to Mission United Nations, Telegram 222138, December 7, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 12-1-72; Mission United Nations to Department of State, Telegram 5461, December 9, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 12-1-72; and Department of State to Embassy Buenos Aires, Embassy Gaberones, et al., Telegram 223323, December 9, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 12-1-72.

[86] Department of State to Embassy The Hague, Mission United Nations, Telegram 214763, November 27, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72. 7

[87] Mission United Nations to Department of State, Telegram 4855, November 21, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

[88] The sponsors of the non-aligned draft were Afghanistan, Algeria, Guyana, India, Kenya, Yugoslavia, and Zambia.

[89] Mission United Nations to Department of State, Telegram 5086, November 28, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 11-2-72.

In the subsequent tussle, the nonaligned resolution won out over the U.S. and Italian ones, setting priorities for the UN's handling of terrorism that subverted U.S. goals. The Sixth Committee adopted the nonaligned draft resolution on December 11, 1972 and undercut the U.S. initiative in favor of the Arab and African policy goals. The UN would focus on national liberation movements and the political legitimacy of terrorism instead of criminalizing anti-terrorism measures. The General Assembly adopted the nonaligned resolution on December 18, with the United States voting against, as Resolution 3034 (XXVII) "On Measures to Prevent International Terrorism."

In a telegram dated December 11, 1972, Bush vented and blamed Israel and France for the failure to win UN support for the anti-terrorism convention the United States preferred.[90] However, he quickly shifted to damage control. On December 16, De Palma recommended that Bush participate in the ad hoc terrorism committee set up by the nonaligned resolution, even though "we are not sanguine that there is substantial possibility that committee will produce meaningful report or even that we will be able to have appreciable influence on its content."[91] The goal was to prevent Arab or African delegates from passing resolutions through the committee that might damage U.S. interests, such as a declaration of support for the PLO. The United States failed to create a UN "extradite or prosecute" convention against terrorism following the 1972 Munich attack.

From Multilateralism to Unilateralism

Throughout the winter of 1972/1973, as the salience of the Munich tragedy receded, the State Department avoided further anti-terrorism efforts, wary of playing into Arab or African

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[90] Mission United Nations to Department of State, Telegram 5582, December 15, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 12-1-72.

[91] Department of State to Embassy Rome, Embassy London, Embassy Paris, and Mission United Nations, Telegram 227601, December 16, 1972, NARA, RG59, CFPF 1970-73, POL 23-8, 12-1-72.

hands. But two new violent incidents in the spring of 1973 provided sufficient incentive for the State Department to seek a multilateral convention one more time.

The first violent incident was caused by Israeli defense forces, not by non-state actors; Arab and African states used it to justify their claims that national liberation movements were politically legitimate revolutionary organizations because imperialist countries practiced state terrorism against (quasi-)colonial subjects. On February 21, 1973, Israeli fighter planes shot down Libyan Arab Airlines Flight 114 because the civilian aircraft strayed into airspace over the Israeli-controlled Sinai Peninsula. The Lebanese ICAO delegation responded with a petition to have Israel's ICAO membership revoked, signaling that the politics of the Arab/Israeli conflict might become an issue within the technically specialized ICAO.[92] The ICAO Council convened an extraordinary assembly and diplomatic conference to discuss aviation security in Rome, Italy, from August 20 to September 21, 1973.[93]

Ironically, the Israeli attack presented an opportunity for the State Department again to demand sanctions against the (mainly Arab) states harboring hijackers. The OLA's Feldman and his colleagues hoped that Lebanon's call for the punishment of Israel through the ICAO might open the doors for another convention that punished states. The U.S. officials wanted such a convention to require that ICAO members impose sanctions on states that harbored hijackers. Although none of America's allies favored sanctions, they all seemed more eager to collaborate in the ICAO than in the UN. French, Swiss, and British officials even collaborated amongst themselves to create a new aviation security convention draft. [94] Feldman therefore hoped that

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[92] Department of State to Embassy Tokyo, Telegram 171985, August 29, 1973, NARA, RG59, CFPF 1973-79, Electronic Telegrams 1973 (/Electronic Telegrams), 1973STATE171985, accessed April 25, 2015.

[93] Consulate Montreal to Department of State, Telegram 0479, March 9, 1973, NARA, RG59, CFPF 1973-79/Electronic Telegrams, 1973MONTRE00479, accessed April 25, 2015.

[94] Consulate Montreal to Department of State, Telegram 1052, May 23, 1973, NARA, RG59, CFPF 1973-79/Electronic Telegrams, 1973MONTRE01052, accessed April 25, 2015.

the August ICAO conference would provide a window of opportunity to persuade the other ICAO members to consider sanctions.

The second violent incident was an attack on U.S. diplomats in Sudan. On March 1, 1973, eight BSO members charged into a reception at the Saudi embassy in Khartoum and took ten diplomats hostage, including the American ambassador, Cleo Noel, Jr., and the deputy chief of mission, George Curtis Moore. They demanded the release of multiple prisoners around the world, including Palestinians imprisoned in Israel, Red Army Faction members incarcerated in the FRG, and in the United States, Sirhan Sirhan, Robert Kennedy's assassin. On March 2, Nixon publicly stated that the United States would not give in to any demands. That same day, the terrorists shot Noel, Moore and Belgian charge d'affaires Guy Eid. While worldwide condemnation followed the attack, most Arab leaders used their condolences to again justify terrorism as a political act in the national liberation struggle caused by the suppression of the Palestinian population.

Just like after the 1970 Dawson's Field hijackings, the Nixon administration had little leverage over the attackers or the Sudanese government. The Khartoum attack infuriated Nixon, but virtually all the US options risked undermining its Middle East geopolitical interests. The government of Sudan cooperated with the United States, but rather than extradite the offenders, it chose to exercise its sovereign right to place the attackers on trial at home. To avoid alienating Arab states by retaliating taking military or economic action, Nixon and Rogers began a large-scale security update of U.S. embassies and revived its effort to enact a UN protection-of-diplomats convention.[95] They hoped to use the convention to pressure Sudan and ensure that the trial fulfilled American expectations.[96] To prevent other UN delegates from drawing connections

[95] Secretary of State William Rogers to President Richard Nixon, Memorandum "Protection for Foreign Diplomats Here, and Ours Abroad," March 29, 1973, NARA, RG59, CFPF 1970-73, POL 17, 1-3-73; William Rogers to Richard Nixon, Memorandum "Combating Terrorism," June 17, 1973, *FRUS,* 1969–1976, Volume E-3, Document 210, accessed June 25, 2018, https://history.state.gov/historicaldocuments/frus1969-76ve03/d210.

[96] Press Secretary Ronald Ziegler, Memorandum "Department of State Luncheon with Secretary William P. Rogers and State Department Officials, Tuesday, March 6, 1973 at 12:50 p.m.," March 6, 1973, *FRUS,* 1969–1976, Volume E-3, Document 207, accessed June 25, 2018,

between the Arab/Israeli dispute, the Khartoum attack, and the convention draft, they downgraded the control of the UN process and returned it to Mark Feldman in the OLA, aided by the CCCT's chairman Armin Meyer and (later) Meyer's successor Lewis Hoffacker.[97]

Still, negotiations in the UN and ICAO during the summer of 1973 revealed that the deep divide between most Western industrialized states and the Arab, African, and nonaligned states remained. The UN ad hoc committee on terrorism met from July 16 to August 10, 1973 and achieved no substantial results. Most of the committee's focus was on state violence in Israel, South Africa, and Rhodesia.[98] The committee met for several more years, and always focused on national liberation. The ICAO met in Rome for its extraordinary assembly and diplomatic conference from August 20 to September 21, 1973. The American delegation decided not to advocate for sanctions after all, judging it too risky that Arab states could gain a tool to use against Israel in cases such as the February Libyan Airlines shooting.[99] No results emerged.

By fall 1973, little enthusiasm remained in the State Department for multilateral approaches, and anti-terrorism efforts increasingly shifted toward unilateral measures that the United States could control and implement. The State Department requested millions of dollars for security procedures for U.S. diplomats and businessmen abroad.[100] In the ICAO, Butler

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https://history.state.gov/historicaldocuments/frus1969-76ve03/d207. In 1974, Sudan found the attackers guilty, but handed their custody to the PLO. The U.S. and European states were outraged, and Nixon took actions that he had avoided in 1973. He halted economic assistance and recalled the U.S. ambassador to Sudan.

[97] Department of State to Mission United Nations, Telegram 053467, March 23, 1973, NARA, RG59, CFPF 1970-73, POL 23-8, 3-1-73; Department of State to Mission United Nations and Embassy Brussels, Telegram 070919, March 28, 1973, NARA, RG59, CFPF 1970-73, POL 23-8, 4-2-73.

[98] Mission United Nations to Department of State, Airgram A-1135, August 24, 1973, NARA, RG59, CFPF 1970-73, POL 23-8, 5-1-73.

[99] Embassy Rome to Department of State, Telegram 9280, September 7, 1973, NARA, RG59, CFPF 1973-79/Electronic Telegrams, 1973ROME09280, accessed April 25, 2015; Department of State to Embassy Rome, Telegram 172929, August 30, 1973, NARA, RG59, CFPF 1973-79/Electronic Telegrams, 1973STATE172929, accessed April 25, 2015.

[100] Chairman of the CCCT's Working Group Lewis Hoffacker to Secretary of State William Rogers, Briefing Memorandum "Major Problems in Combating Terrorism," October 4, 1973, *FRUS,* 1969–1976, Volume E-3, Document 211, accessed June 25, 2018,

pushed to have U.S. security regulations adopted and standardized.[101] Subjected to aggressive U.S. lobbying, the ICAO passed Annex 17 of the ICAO Charter in 1974, which strengthened the ICAO's overall security requirements and created standards by which countries could assess the quality of one another's civil aviation security.[102] The FAA began a training course for domestic and foreign civil aviation security officers in its Transportation Safety Institute in Oklahoma City.[103]

Nixon also asked Congress to increase his executive authority against terrorists and their supporters by adopting Public Law 93-366, which it did on August 5, 1974. Its first section, the "Anti-Hijacking Act of 1974," permitted the president to take punitive actions against any country that either supported acts of hijacking or maintained lax security standards.[104] Though it was never used, it gave the U.S. president the option of unilaterally sanctioning noncompliant states. The second section, the "Air Transportation Security Act of 1974," introduced more stringent requirements for security procedures. All air carriers operating to and from the United States were required to screen all passengers and their baggage.[105] The law thus required foreign airlines and foreign airports to uphold FAA security standards if an airline wanted to fly to the United States.

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https://history.state.gov/historicaldocuments/frus1969-76ve03/d211; Department of State to All Diplomatic and Consular Posts, Airgram A-8515, October 11, 1973, NARA, RG59, CFPF 1970-73, POL 23-8, 5-1-73.

[101] Department of State to Consulate Montreal, Telegram 226496, November 16, 1973, NARA, RG59, CFPF 1973-79/Electronic Telegrams, 1973STATE226496, accessed April 25, 2015; Department of State to Consulate Montreal, Telegram 233628, November 28, 1973, NARA, RG59, CFPF 1973-79/Electronic Telegrams, 1973STATE233628, accessed April 25, 2015; and Mackenzie, *ICAO,* 262.

[102] See International Civil Aviation Organization, "The Convention on International Civil Aviation: Annexes 1 to 18," International Civil Aviation Organization, accessed June 2, 2016, http://www.icao.int/safety/airnavigation/nationalitymarks/annexes_booklet_en.pdf, Annex 17; and Mackenzie, *ICAO,* 262.

[103] The FAA offered the first aviation security course in January 1973. See Department of State to Embassy Kuwait, Telegram 228111, September 22, 1977, NARA, RG59, CFPF 1973-79/Electronic Telegrams, 1977STATE228111, accessed March 20, 2015.

[104] U.S. House of Representatives, "Public Law 93-366," August 5, 1974, Office of the Law Revision Counsel, U.S. Code, accessed April 24, 2015, http://uscode.house.gov/statutes/pl/93/366.pdf, 413-414.

[105] "Public Law 93-366," August 5, 1974, 418.

Overall, Public Law 93-366 allowed the U.S. federal government to pursue unilateral anti-terrorism measures.

The final outcome of the U.S. multilateral anti-terrorism efforts in the UN was the protection-of-diplomats convention. In the fall of 1973, Feldman and the U.S. UN delegation again maintained a low profile but supported European and Latin American allies' efforts to have the ILC convention draft accepted without revisions. Supporters of the convention draft used the Khartoum attack to illustrate that every country could become a target. Feldman claimed that states had to protect their own sovereignty by safeguarding all diplomats.[106] The Soviet delegate backed this argument, referring explicitly to the U.S. failure to protect Moscow's New York consulate.[107] This phrasing was tailored to appeal to all UN member states, including recently decolonized countries who were eager to foster their own sovereignty.

Arab and African states accepted that the convention would help protect their own sovereignty, but nevertheless nearly derailed negotiations by attempting to insert protections for national liberation groups into the draft. They insisted that the convention not cover any violent acts committed by populations engaged in self-determination or anti-imperialist struggles. This linkage to national liberation groups made the convention draft unacceptable to the United States, its European allies, and most Latin American states, who refused to accept the idea that violence against diplomats could be a politically legitimate act. Neither side backed down. Yet, after three weeks of negotiations the sides finessed the impasse by outsourcing the self-determination language to a resolution. This resolution would accompany the convention and promised that the convention would not impede upon any efforts to engage in self-determination.[108] Arab and

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[106] Embassy Mexico City to Department of State, Telegram 4674, June 28, 1973, NARA, RG59, CFPF 1970-73, POL 5-2 ILC, 10-20-72.

[107] Chairman of the CCCT's Working Group Lewis Hoffacker and Carlyle E. Maw (Office of the Legal Advisor) to Secretary of State William Rogers, Action Memorandum "Terrorism: Soviet Proposal for Bilateral," December 29, 1973, NARA, RG59, CFPF 1970-73, POL 23-8, 5-1-73.

[108] United Nations, " Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents: General Assembly Resolution 3166 (XXVIII) of 14 December 1973," December 14, 1973, *International Law Commission,*

African delegates were pleased that their ideas had gained traction. The United States and its allies were relieved that the convention itself would not contain this content.[109]

On December 14, the UN General Assembly voted to adopt the "Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents" (Diplomats Convention). The convention, like the OAS Convention before it, listed a number of serious crimes against diplomats that would be covered, gave universal jurisdiction over who could indict offenders, and included the principle of extradite or prosecute. Though the convention did not require signatory states to draft new criminal laws, it did stipulate that the signatories "shall make these crimes punishable by appropriate penalties which take into account their grave nature."[110] At the least, states had to submit such cases for criminal prosecution. They had to enforce criminal repercussions against offenders who attacked diplomats.

Because the Arab and African-sponsored resolution kept the issue of national liberation movements tied to the issue of diplomats' security, Feldman's achievement produced few immediate results. What is more, by late 1973 the Nixon administration was embroiled in the Watergate scandal. As a result, neither Nixon nor Rogers was inclined to let the State Department expend more effort on multilateral anti-terrorism. Turning inwards, the administration no longer pursued the strategy of criminalizing terrorists, leaving it to be picked up by other

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accessed June 2, 2016, http://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973_resolution.pdf.

[109] First Councilor K. Hoffmann (Legal Department), Memorandum "Konvention zur Verhinderung und Bestrafung von Verbrechen gegen international geschützte Personen einschliesslich diplomatischer Vertreter (Diplomatenschutzkonvention): Verlauf und Ergebnis der Verhandlungen im 6. Ausschuss der VN waehrend der XXVIII. Vollversammlung," ["Convention to Prevent and Punish Crimes against Internationally Protected Persons including Diplomatic Agents (Protection of Diplomats Convention): Process and Result of the Negotiations in the 6th Committee of the GA during the XXVIII. Full Meeting"], December 28, 1973, Political Archive of the Foreign Office, Federal Republic of Germany (B)83, Vol. 1225.

[110] United Nations, "Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents."

countries in the future.[111] Arab and African delegations controlled debates in the UN on terrorism for several subsequent years, and focused on the political rights of national liberation movements.[112]

Conclusion

The failure of the UN terrorism strategy pushed the United States to take increasingly unilateral measures. After 1973, the Nixon and subsequent Ford administration did not pursue multilateral "extradite or prosecute" conventions against terrorism. Instead, U.S. officials focused on the enforcement of existing conventions, and on unilateral security practices which they could control.

The idea of treating terrorists as criminals, however, did not fade with the American withdrawal behind its own national borders. At the UN, the United States, together with its Italian allies, had assembled a wide coalition of western industrialized countries in support of multilateral "extradite or prosecute" conventions. After the United States' failure to secure an anti-terrorism convention at the UN, these allies instituted new anti-terrorism measures within European transgovernmental networks and international organizations where Arab and African states did not have a direct voice. Treating terrorism as an apolitical criminal tactic became a key segment of multilateral European domestic security policies during the mid- to late 1970s.

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[111] See chapter 4.

[112] See chapter 6.

CHAPTER 4

EUROPEAN MULTILATERAL COLLABORATION AGAINST THE CRIME OF TERRORISM

By 1972, terroristic violence was an escalating security threat for most countries on the European continent. Many states - including the Federal Republic of Germany (FRG), Italy, the United Kingdom (U.K.), and the Netherlands - faced domestic terrorist groups and foreign extremists who utilized violence for varying political goals. Moreover, these terrorists at times interacted with and supported one another. National anti-terrorism measures were not enough to address terrorists who sought targets, allies, and resources indiscriminately across state boundaries. Most dramatically, the 1972 Black September Organization attack on the Israeli team at the Munich Olympic Games demonstrated that domestic border security controls, law enforcement procedures, and weapons possessions laws were insufficient to prevent brutal acts of transnational terroristic violence.

European states, led by the FRG, sought to protect themselves through multilateral cooperation in the field of domestic security. Focusing on law enforcement or counterinsurgency responses, most security officials treated terrorism as a black box – something to be prevented, not studied. Instead, they addressed the strategies used by terrorists, as well as counter-strategies. Their apolitical interpretation shaped subsequent multilateral policies against terrorism by emphasizing security mechanisms over political solutions. Since European officials negotiated domestic security in the 1970s in a restricted environment with only counterparts, their apolitical views of terrorism were amplified with little room for dissent.

Law enforcement and domestic security are a key part of a state's sovereign control over its territory, and traditionally, politicians are averse to undermining their sovereignty by collaborating with other states. In the 1950s and 1960s, political scientists strictly distinguished between "domestic" and "national" security, with one encompassing criminal threats within a state and the

other military, statist, and foreign threats to a state.[1] However, transnationally active terrorists blurred these boundaries. In turn, FRG and other European state officials used bilateral and multilateral collaboration to improve their domestic security. Terrorism was enough of a security threat that officials began this collaboration.

State officials build transgovernmental connections to foreign counterparts with similar competencies, regulating law enforcement and special forces capacities to more efficiently track and prevent terrorist attacks. Oftentimes, the public has no influence on such policy-making, nor do high-level officials.[2] By maintaining high levels of secrecy, these officials created new nodes of cooperation and security structures divorced from and not accountable to the public discourse on terrorism. These officials justified their work by ”securitizing” terrorism. Securitization is a performative discourse which political elites utilize to brand an issue as a particularly serious security threat in order to justify extraordinary countermeasures.[3] This cooperation, and the “securitization” of terrorism, motivated European policymakers to adopt perceptions of terrorism in line with earlier U.S. interpretations. Among themselves, European officials regulated terrorism as a law enforcement and crime issue, without addressing its social or political dimensions.

This chapter shifts the dissertation’s focus away from the United States to analyze developments in Europe. Earlier chapters traced the U.S. State Department’s foreign policy

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[1] Christopher Daase, “Die Historisierung der Sicherheit. Anmerkungen zur historischen Sicherheitsforschung aus politikwissenschaftlicher Sicht,” [“The Historicization of Security: Comments on Historical Security Research from a Political Science Perspective“], *Geschichte und Gesellschaft* 38, no. 3 (July 2012): 387-405, 388.

[2] See Robert O. Keohane and Joseph S. Nye, “Transgovernmental Relations and International Organizations,” World Politics 27, no. 1 (October 1974): 39-62.

[3] See Barry Buzan, Ole Waever, and Jaap de Wilde, *Security: A New Framework for Analysis* (London: Lynne Rinner Publishers, 1998); Thierry Balzacq, “The Three Faces of Securitization: Political Agency, Audience, and Context,” in *European Journal of International Relations* 11, no. 2 (June 2005): 171-201; and Markus Lammert, “Ein neues Analysemodell für die historische Terrorismusforschung? Securitization-Prozesse in Frankreich und Deutschland in den 1970er und 1980er Jahren,“ [“A New Analysis Model for Historical Terrorism Studies? Securitization-Processes in France and Germany in the 1970s and 1980s“], in *Terrorismusbekämpfung in Westeuropa: Demokratie und Sicherheit in den 1970er und 1980er Jahren* [Counterterrorism in Western Europe: Democracy and Security in the 1970s and 1980s], ed. Johannes Hürter (Oldenbourg: De Gruyter, 2015), 201-215.

toward Latin America, and the resulting multilateral extradition conventions which criminalized specific acts of terroristic violence. After the State Department failed to criminalize terrorism in the UN, however, European officials stopped relying on the United States to generate anti-terrorism measures effective across national boundaries. European law enforcement, intelligence, interior ministry, and justice ministry officials formed transgovernmental networks to informally cooperate in the field of domestic security. Their perception of terrorism as a black box, hiding its political dynamics, matched the U.S. State Department's perceptions of terrorism as a crime. Subsequently, European bureaucrats supported further multilateral efforts to criminalize terrorism. As we will see in the following chapter (5), European states generated an extradition convention for terrorists, which the U.S. State Department had been unable to achieve in the UN. In conjunction with the U.S., further multilateral conventions followed in the late 1970s, as did efforts to improve law enforcement counterterrorism mechanisms by infusing more militarized responses. Chapter six covers these processes.

To prevent terrorism and improve domestic security, European officials were willing to sacrifice a sliver of their sovereignty and informally collaborate with others on issues related to law enforcement and intelligence structures at home. This chapter analyzes two distinct avenues of collaboration. Both focused on the execution of terrorism whilst ignoring its social and political origins.

First, FRG Interior Ministry officials established multilateral connections with counterparts in other European states after the 1972 Munich Olympic Games attack. They were determined to promote domestic security throughout the region and prevent further attacks. The result was an informal structure of working groups known as TREVI, founded in 1976. TREVI delegates shared intelligence, cooperated in police training, discussed innovative criminological technologies, and crafted border patrol regulations. TREVI provided early avenues of European collaboration in domestic security and would later lead to more formal structures of European integration in this field.

A second avenue was the development of special forces units dedicated specifically to anti-terrorism among European states and their global allies. After the 1972 Munich attack, the FRG created an anti-terrorism special forces unit, the *Grenzschutzgruppe 9* (Border Security Group 9, or GSG 9), based on British and Israeli counterinsurgency teams. When Israel and the FRG achieved successful special forces operations against terrorists at Entebbe (Uganda) and Mogadishu (Somalia) that dazzled the media, other states hastened to establish similar units. British and FRG officers became the center of a training, equipment, and intelligence sharing network. Technically, these units' operations abroad were foreign interventions, creating military and foreign relations problems for the states that deployed them. However, FRG leaders in particular were quite successful at reorienting the public conversation. Instead of addressing international relations, they emphasized that they were only upholding their rule of law and domestic security against criminal terrorists.

More than any earlier efforts, the TREVI and special forces networks solidified state officials' views and practices concerning terrorism. They created a divergence between officials' treatment of terrorism as an apolitical mechanism, and a public view of terrorism as a politicized issue.

Setting the Scene: The FRG's Response to the 1972 Munich Olympic Games Attack

FRG officials provided the main impetus for European collaboration against terrorism. Shocked by the 1972 Munich Olympic Games attack, the FRG Interior Ministry tapped into previously established bilateral and multilateral connections, especially those produced during the processes of European integration, to ensure that its neighboring states were just as meticulous as the FRG about preventing transnational terrorism.

In the early 1970s, Western Europe became a hotbed for terroristic attacks. Fringe remnants of the 1968 protest movement increasingly radicalized while the spreading aviation industry facilitated easier access to the region for outside violent actors. Terroristic actors' motivation varied from leftist extremists, such as Italy's Red Brigades and the FRG's Red Army Faction (RAF), to separatist nationalists, such as the Irish Republican Army in the U.K. and the Euskadi

Ta Askatasuna (ETA) in Spain. Meanwhile, Palestinian fedayeen such as the Popular Front for the Liberation of Palestine began to commit terroristic attacks in most Western European states. On February 21, 1970, for example, the Popular Front for the Liberation of Palestine – External Operations placed two bombs aboard airplanes at Frankfurt and Zurich airports. The airplane from Zurich crashed, killing all on board.[4] Most terroristic actors labeled themselves armed resistance or national liberation insurgents. They claimed the right to violently resist the established European states.[5]

Since 1968, the U.S. State Department identified cross-border terroristic attacks, especially hijackings and attacks on diplomats, as a threat to its geopolitical interests, and had sought multilateral conventions to label such actors as criminal. Outside of Europe, oppressive regimes such as South Africa and Uruguay often appropriated the terroristic actors' insurgent claims to justify repressive overlapping military, law enforcement, and intelligence measures.

In contrast, European leaders historically focused on terroristic violence as a domestic security threat, even if the perpetrators, locations, or victims were foreign.[6] The term terrorism was still heavily associated with insurgent, combatant, and warfare status. Europeans labeled such terroristic actors as dissidents, anarchists, criminals, gang members, or saboteurs more often than as terrorists.[7]

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[4] "Swiss Suspect Link in 2 Air Explosions," *New York Times*, February 28, 1970, 33.

[5] See Ulrike Meinhof, "Das Konzept Stadtguerilla," [The Concept of City Guerilla] in *Social History Portal*, accessed December 7, 2017, https://socialhistoryportal.org/raf/5314. Palestinian fedayeen referred to "The Palestinian National Charter: Resolutions of the Palestine National Council July 1-17, 1968," in *The Avalon Project: Documents in Law, History, and Diplomacy,* accessed December 7, 2017, http://avalon.law.yale.edu/20th_century/plocov.asp.

[6] See, for example, European states' anti-anarchist efforts in Mathieu Deflem,"'Wild Beasts Without Nationality': The Uncertain Origins of Interpol, 1898-1910," in *The Handbook of Transnational Crime and Justice*, ed. Philip Reichel (Thousand Oaks, CA: Sage Publications, 2005), 275-285.

[7] See Introduction, pp. 20-24.

In turn, European governments pursued distinctly national responses to terrorism which varied as much as the labels they placed on terroristic actors.[8] These domestic security measures were heavily shaped by national context and legal tradition. For example, British Prime Minister Edward Heath instituted counterinsurgency measures to protect domestic security from the Provisional Irish Republican Army. These measures included internment without trial and the suspension of the Northern Irish Parliament in favor of direct rule from London. A contrasting example was the FRG.

As successors to Nazi Germany, FRG leaders sought to avoid any impression that they were undermining the rule of law. To prevent an erosion of FRG democratic institutions, law enforcement, intelligence services, and the military held strictly separate institutional competencies.[9] FRG chancellor Willy Brandt sought to prevent violent incidents at home through new legislation and law enforcement updates. FRG leaders argued that they were instituting these reforms to improve "internal security," a catchphrase comparable to the U.S. "law and order."[10] The reforms targeted the RAF, which the press generally described as "anarchists" or "gang." The FRG parliament, the *Bundestag,* passed a series of laws making extremist political beliefs of any kind prosecutable as a threat to the state.[11] In addition, the FRG's federal investigative service, the *Bundeskriminalamt*, dramatically expanded, and introduced new

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[8] David A. Charters, ed., *The Deadly Sin of Terrorism: Its Effect on Democracy and Civil Liberty in Six Countries* (Westport, CT: Greenwood Press, 1994) provides a dated, but still useful overview of domestic efforts and institutions in Israel, the U.S., Italy, the FRG, France, and the U.K.

[9] See Eva Oberloskamp, *Codename TREVI: Terrorismusbekämpfung und die Anfänge einer europäischen Innenpolitik in den 1970er Jahren* [Codename TREVI: Counterterrorism and the Origins of European Interior Politics in the 1970s] (Oldenbourg: De Gruyter, 2017), 198-199.

[10] A good analysis of the political ideology behind the terms "law and order" and "internal security" in the FRG is Achim Saupe, "'Innere Sicherheit" und „law and order': Die politische Semantik von Ordnung, Sicherheit und Freiheit in der bundesdeutschen Innenpolitik," ["'Internal Security' and 'Law and Order': The Political Semantics of Order, Security, and Freedom in West German Domestic Politics"], in Hürter, *Terrorismusbekämpfung in Westeuropa,* 171-200.

[11] Johannes Hürter, "Regieren gegen Terrorismus: Die Beispiele Westminster, Bonn und Rom in den 1970er Jahren," ["Governing against Terrorism: The Examples Westminster, Bonn, and Rome in the 1970s"], in Hürter, *Terrorismusbekämpfung in Westeuropa*, 63-80.

investigative techniques, such as the use of computerized data mining.[12] Due to Germany's history, Brandt was careful to argue that these reforms would protect FRG citizens from the RAF and be tailored to safeguard democratic institutions and civil liberties.

Viewing terroristic violence as a domestic issue decreased European officials' willingness to collaborate against it. A fundamental aspect of exercising sovereignty for any state is to control its domestic security and maintain a monopoly of violence in its territory.[13] To protect their sovereignty, states rarely discuss or negotiate domestic security with other states. Even if they do, most multilateral collaboration in the field of internal security has historically been ad hoc, non-binding, and informal.[14] A close contemporary example was the Club de Berne, an intelligence-sharing network founded by Western European security officials in 1969 - in some cases (Switzerland) without the approval or even the knowledge of their respective ministers.[15] As a result, most European leaders did not see anti-terrorism as a potential field of cooperation, even as they collaborated extensively in formal international organizations such as the European Community (EC) to coordinate economic, cultural, and social issues in an ongoing process of European integration.

As an aside, the EC states (France, FRG, Italy, Benelux states, U.K., Ireland, and Denmark) did to a limited degree collaborate on foreign policy. This collaboration consisted ad hoc meetings between relevant officials, remained without formal structures, and was named the European

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[12] See Karrin Hanshew, *Terror and Democracy in West Germany* (New York: Cambridge, 2012).

[13] A recent study on this sovereignty is Charles Maier, *Once Within Borders: Territories of Wealth, Power, and Belonging since 1500* (Cambridge, MA: Belknap Press of Harvard University Press, 2016).

[14] See Oberloskamp, *Codename TREVI,* 254-255; Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (New York: Oxford University Press, 2008), 59-87; and Mathieu Deflem, *Policing World Society: Historical Foundations of International Police Cooperation* (New York: Oxford University Press, 2004), 45-77.

[15] See Aviva Guttmann, "Combatting Terror in Europe: Euro-Israeli Counterterrorism Intelligence Cooperation in the Club de Berne (1971–1972)," *Intelligence and National Security* 33, no. 2 (Summer 2017): 158-175, doi: 10.1080/02684527.2017.1324591.

Political Cooperation (EPC).[16] It provided a template for the FRG's domestic security collaboration plans in 1973.

Like publics worldwide, Europeans saw the Black September Organization's (BSO) attack against the Israeli Olympic team as a landmark event that highlighted the scope and capacities of Palestinian transnational terroristic actors. To review, in the early morning of September 5, 1972, eight members of the radical Palestinian extremist organization BSO forced their way into the Israeli team's apartments in the Olympic Village in Munich. When the attackers tried to leave the country with their hostages at the NATO Fürstenfeldbruck airfield, local Munich police forces mounted a rescue. The rescuers were untrained and unprepared for the situation; The hostages and all but three attackers died in the ensuing crossfire.[17] Three weeks later, BSO members hijacked a Lufthansa flight, and the FRG government under Chancellor Willi Brandt grudgingly released the three surviving attackers. The Munich attack generated an enormous worldwide media spectacle. It demonstrated that terrorists operated across national borders, acted brutally, and were not stopped by national anti-terrorism measures.

Around the world, bureaucrats and politicians were forced to acknowledge that their domestic legislation, law enforcement, and border security might be insufficient against transnationally organized terroristic actors. Western Journalists and state officials branded such non-state actors with the label "international terrorism." They rejected the insurgent and warfare aspects previously associated with the term terrorism, arguing that the brutality and foreign location of the Munich attack delegitimized the perpetrators' self-proclaimed insurgent status.[18] This label specifically

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[16] See European Political Co-operation (EPC) Press and Information Office "Introduction to EPC (European Political Cooperation)," Federal Republic of Germany, 5th ed. 1988, accessed October 20, 2016, http://aei.pitt.edu/1895/1/EPC_intro.pdf.

[17] A comprehensive summary of the attack can be found in Eva Oberloskamp, "Das Olympia-Attentat 1972: Politische Lernprozesse im Umgang mit dem transnationalen Terrorismus," ["The Olympics Attack 1972: Political Learning Processes in Handling Transnational Terrorism"], *Vierteljahrshefte für Zeitgeschichte* 60, no. 3 (July 2012): 321-352, doi: 10.1524/vfzg.2012.0018.

[18] See Walter Laqueur, "The Terrorist Attacks: An Exercise in Futility: Arab Terror: More to Come," *Washington Post,* September 10, 1972, B1, B5; and „Ich werde heute noch für Palästina sterben," ["I will die for Palestine today"], *Der Spiegel* no. 38, September 11, 1972, 21-

focused on Palestinian fedayeen, but did not exclude other terroristic actors. European leaders joined other heads of state in condemning the Munich attack, and ordered their law enforcement and intelligence agencies to be more vigilant against international terrorism. The political leadership of the FRG was especially shocked. The FRG state's monopoly on violence on its own territory had been dramatically breached.[19]

To ensure domestic security and reinforce FRG sovereignty, Brandt and his cabinet securitized the issue of international terrorism. The Brandt cabinet pursued a range of novel regulations and legislation, directed against both political violence in general and Palestinian terrorists in particular. FRG policy changed to treat Palestinian-caused violence as a domestic security issue, when previously the FRG had prioritized Palestinians as a foreign policy part of the Arab/Israeli conflict. On the day after the attack, Brandt increased visa requirements and border vetting for citizens of certain Arab states, physically restricting their movement into the FRG.[20] Three weeks later, Interior Minister Hans-Dietrich Genscher created a special forces unit, GSG 9, based on British and Israel military counterinsurgency teams. These trained specialists would deploy specifically to resolve ongoing terrorist attacks. The GSG 9 became a pioneering special forces unit whose members helped train counterpart teams abroad by the late 1970s.

Brandt, Genscher, and Foreign Minister Walter Scheel also decided to collaborate with neighboring states in the sovereign-laden field of domestic security. FRG leaders remained aware that overly restrictive steps might cause West German citizens, foreign governments, and publics abroad to question if the FRG was reverting to its past authoritarian policies. Multilateral cooperation could offset this impression. The Brandt Cabinet promoted the idea that

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31. Meanwhile, the BSO and other radical Palestinian groups celebrated their new political relevancy in international affairs, though moderate fedayeen managed to curtail their violence in the aftermath of the attack. See Paul Thomas Chamberlin, *The Global Offensive: The United States, the Palestine Liberation Organization, and the Making of the Post-Cold War Order* (New York: Oxford University Press, 2012), 172-173.

[19] See Oberloskamp, "Das Olympia-Attentat 1972," 333-334.

[20] See Oberloskamp, "Das Olympia-Attentat 1972," 330-331.

domestic/internal security should become a segment of European integration, and were willing to surrender a measure of sovereignty in pursuit of law enforcement and intelligence collaboration with their neighbors. FRG sovereignty had already been limited since the state's foundation in 1949. An additional advantage to this regional approach was that Arab and African states, who opposed anti-terrorism efforts generally, would have little chance to advocate in exclusively European forums. This collaboration, FRG leaders hoped, would increase security throughout the region.

The TREVI Network: Multilateral Negotiations to Securitize Terrorism

Reacting to the Munich attack, the FRG Interior Ministry sought to address the issue of terrorism with multilateral collaboration and turn internal security into a facet of European integration. These efforts were unprecedented. In general, independent states did not collaborate in matters of domestic security, since such collaboration allowed other states to shape how a state regulated its monopoly on and use of violence on its territory. Even multilateral agreements against anarchists in 1898 and 1904 allowed for only tiny dimensions of collaboration, such as the exchange of information on known offenders.[21] In contrast, FRG officials envisioned anti-terrorism regulations that spanned national borders and were recognized within all EC states. The resulting transgovernmental network, named TREVI, produced few concrete results. However, TREVI laid the groundwork for a range of bilateral "internal security" treaties and served as an information-sharing venue for the EC states. The network reinforced among participating European officials a specific view of terrorism as non-political. It also marked the beginning of long-term domestic security integration within Europe.

FRG leaders wasted no time in reaching out to neighboring states after their Munich shock. The following week, FRG Foreign Minister Walter Scheel brought up international terrorism at an EPC meeting with other EC foreign ministers in Frascati, Italy. The EPC was an informal

[21] Deflem,"'Wild Beasts Without Nationality'."

mechanism in which EC heads of state, foreign ministers, and ad hoc groups convened as needed to coordinate a shared, European foreign policy. In this informal setting, Scheel recommended a range of measures to increase domestic security across national borders. He suggested more cooperation between EC states' national border patrols, law enforcement, and intelligence agencies to deter terrorists. He advocated for exchanging information on anti-terrorism measures, sharing warrants and notable persons to observe at borders, and comparing national criminal laws to find and resolve any loopholes that terrorists could use, especially in extradition.[22] These ideas all cut into states' independent control of their law enforcement apparatus. Utilizing the earlier ICAO and OAS conventions, Scheel also recommended that the EPC should develop a multilateral convention that defined terrorism and required states to extradite or prosecute terrorists, regardless of political context.[23] Scheel's recommendations undermined European states' sovereignty in law enforcement and judicial affairs.

The FRG initiative wound up being a big idea with little execution. The foreign ministers agreed to form working groups to discuss Scheel's suggestions. It quickly became clear, though, that the other EC states were not eager to embrace the FRG suggestions. The groups dawdled and achieved no notable results. Similar unwillingness to create multilateral, legal anti-terrorism measures occurred at the UN and International Criminal Police Organization (Interpol). Many European states had relied on the U.S. UN anti-terrorism venture to address the issue of international terrorism in a global context. By December 1972, developing states controlled the UN terrorism negotiations and utilized them to affirm insurgents' right to commit politically-

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[22] Offices 200, 502, 230 (FRG Foreign Ministry), Current Position Paper "Gemeinsame Europäische Massnahmen gegen Terrorismus (Empfehlungen Nr. 674 und 684 der Beratenden Versammlung)," ["Common European Measures against Terrorism (Recommendations 674 and 684 of the Council of Europe)"], December 11, 1972, Political Archive of the Foreign Office (hereafter: PA AA) Federal Republic of Germany (herafter: B)83 Vol. 980.

[23] Undersecretary Paul-Günter Pötz (B II 5) to Federal Minister of Justice Hans-Jochen Vogel, Memorandum "Vorbereitung des EG-Justizministerrats vom 26.11.1974," ["Preparation of the EC Justice Ministers Council on 11.26.1974"], 25 November 1974, Federal Archives Germany (BArch), Federal Republic of Germany (B) Records of the Ministry of Justice (141)/65262, pages 46-48.

motivated violence.[24] This development left European states baffled. Meanwhile, Interpol announced that terrorism was a politically-motivated act. As such, Interpol claimed that it did not have the jurisdiction to investigate terroristic acts. It would adhere to that position for the next decade.[25]

Genscher remained invested in domestic security collaboration, nevertheless, and instructed his Interior Ministry to develop alternative multilateral proposals. In January 1973, the FRG Interior Ministry decided to approach domestic security bureaucrats in other EC states directly. These officials envisioned a multilateral conference attended by all EC ministries tasked with terrorism prevention. The conference would be unburdened by the politics of existing international organizations. It would cover "internal security," and focus specifically on practical measures for the arrest and prosecution of terrorists.[26] The Interior Ministry took steps to encourage participation. Ironically, it successfully lobbied the Council of Europe, a small international organization dedicated to strengthening the rule of law in Europe, to recommend such a conference.[27]

The FRG Interior Ministry's first step on the road to its envisioned conference was to negotiate bilaterally with France. By exploiting the tradition of Franco-West German cooperation in European integration, it hoped to undermine French opposition to multilateral anti-terrorism measures. In August 1973, the Interior Ministry invited all other FRG federal agencies affiliated with terrorism to a planning session, including the foreign, justice, and transportation ministries,

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[24] See chapter 3.

[25] Oberloskamp, *Codename TREVI*, 220-223.

[26] Undersecretary Merk (Public Security Office, Division 2, FRG Interior Ministry) to FRG Interior Minister Hans-Dietrich Genscher, Memorandum "Vorbereitung einer Europäischen Konferenz über Innere Sicherheit," ["Preparation for a European Conference on Internal Security"], August 10, 1973, PA AA, B83 Vol. 825.

[27] Merk to Genscher, Memorandum "Vorbereitung einer Europäischen Konferenz über Innere Sicherheit," August 10, 1973, PA AA, B83 Vol. 825; Consultative Assembly of the Council of Europe, "Recommendation 703 (1973) on International Terrorism," 16 May 1973, PA AA, B83 Vol. 981.

the intelligence services, and the *Bundeskriminalamt* federal police. The session concluded that the FRG needed to get the French government on board to maximize chances of success. Its precedent was the Franco-West German collaboration that had established the foundation for international and supranational European structures such as the EC.[28] In addition, the biggest obstacle to FRG plans would be France's known hostility to multilateral anti-terrorism efforts. French officials had not supported the U.S. effort to create an anti-terrorism convention at the UN or approved of a protection-of-diplomats convention.[29] The FRG Interior Ministry decided to persuade its French counterpart first. Then, it could present the multilateral internal security conference as a Franco-West German bilateral project to the other EC states.[30]

Though the FRG Interior Ministry was worried about French hostility, French officials proved to be genuinely interested in bilateral collaboration. In October 1973, Genscher wrote French Interior Minister Raymond Marcellin, emphasizing that he considered internal security important enough to discuss at the ministerial level.[31] However, mid-level career bureaucrats primarily defined the shape, scope and progress of the negotiations, led on the FRG side by the head of the Public Security Office in the Interior Ministry, Werner Smoydin. On February 5, 1974, Smoydin and French Interior Ministry officials agreed to pursue (yet undefined) internal security policies as a bilateral project. Two days later, Genscher and Marcellin met personally and confirmed their subordinates' recommendation.[32]

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[28] Oberloskamp, *Codename TREVI,* 57-58.

[29] See chapter 3.

[30] Gerhard von Löwenich (Public Security Office, FRG Interior Ministry) to FRG Interior Minister Hans-Dietrich Genscher, Memorandum "Vorbereitung einer Europäischen Konferenz für Innere Sicherheit," ["Preparation of a European Conference for Internal Security"], September 4, 1973, PA AA, B82 Vol. 1032.

[31] FRG Interior Minister Hans-Dietrich Genscher to French Interior Minister Raymond Marcellin, Letter, October 23, 1973, PA AA, B82 Vol. 1032.

[32] FRG Embassy Paris to Foreign Office, Telegram 162, January 15, 1974, PA AA, B83 Vol. 980.

Yet FRG and French officials began negotiations with different policy aims and priorities. The FRG Interior Ministry's primary goal was to create binding multilateral regulations that demonstrated the FRG's adherence to the rule of law. Such cross-border regulations would make it easier to find, arrest, and prosecute transnationally active violent actors. To achieve this goal, FRG officials were willing to sacrifice a sliver of the sovereignty inherent in their undisputed control over domestic security. This willingness probably stemmed from the fact that the FRG's sovereignty was limited, in general, by postwar agreements with the allied states, as well as its own federal state structure which weakened central authority.[33] Smoydin sought to regulate as many issues as possible, including illegal weapons and explosives smuggling, drug use, white collar crime, improving border controls at the exterior borders of the EC, gradually abolishing border controls in the EC, immigration and alien registration laws, and civil aviation security.[34] Many of the issues from this list were already being covered in other forums, such as the International Civil Aviation Organization.

In contrast, the French Interior Ministry wanted to improve only specialized anti-terrorism capacities, without delving into broad internal security coverage, multilateral collaboration, or binding regulations. Due to the influence of a strong centralized government and the French principle that sovereignty belonged to the citizenry, not the state, French officials were less willing to sacrifice any of their sovereignty than their FRG counterparts.[35] French negotiators also feared the political fallout from public awareness of the negotiations.[36] The French Foreign Ministry was not willing to risk its relatively good foreign relations with most Arab states, especially after the 1973 oil crisis. It feared that these states would think that France was targeting Palestinian

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[33] Oberloskamp, *Codename TREVI,* 215-216.

[34] First Secretary Dr. Birmelin to FRG Embassy Paris, Telegram 2740, January 29, 1974, PA AA, B82 Vol. 1032.

[35] Oberloskamp lays out these fears well in *Codename TREVI,* 214-215.

[36] Oberloskamp, *Codename TREVI,* 58, 141.

national liberation fighters.[37] France's strong leftist movement also protested any overt anti-terrorism measure.[38] The West Germans realized that French officials were only interested in secret, bilateral cooperation to share technological innovations in law enforcement as well as intelligence on terrorist suspects.[39]

The two sides reached a compromise. The officials started bilateral negotiations yet did not exclude future multilateral expansion. Two working groups would discuss civil aviation security and mutual assistance in catastrophes, both narrow and specialized issues. A third group covered general internal security problems, a far broader topic, which included such issues as combating crime, intelligence services and terrorism, and anti-terrorism and border patrols.[40] In the following months, several changes in government occurred in both countries. These shakeups did not affect the negotiations, however, as the mid-level bureaucrats on each side continued their work. The new leaders continued their predecessors' support of the negotiations, including new heads of state, FRG Chancellor Helmut Schmidt and French President Valèry Giscard d'Estaing, and new Interior Ministers Werner Maihofer and Michel Poniatowski. The three bilateral working groups on civil aviation security, internal security, and mutual assistance in catastrophes began meeting in the summer and fall of 1974. They excluded the issue of

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[37] Bernhard Blumenau, "Taming the Beast: West Germany, the Political Offence Exception and the Council of Europe Convention on the Suppression of Terrorism," *Terrorism and Political Violence* 27, no. 2 (March 2015): 310–30, 321.

[38] Markus Lammert, *Der Neue Terrorismus: Terrorismusbekämpfung in Frankreich in den 1980er Jahren* [The New Terrorism: Counterterrorism in France in the 1980s] (Oldenbourg: De Gruyter, 2017), 43-44.

[39] FRG Justice Minister Gerhard Jahn to FRG Interior Minister Hans-Dietrich Genscher, Memorandum "Vorbereitung einer Europäischen Konferenz über Innere Sicherheit," ["Preparation of a European Conference about Internal Security"], December 21, 1973, PA AA, B83 Vol. 980; Birmelin to Paris, Telegram 2740, January 29, 1974, PA AA, B82 Vol. 1032.

[40] FRG Interior Minister Werner Maihofer to Foreign Office, Memorandum "Europäische Konferenz über Innere Sicherheit: Bildung einer deutsch-französischen Arbeitsgruppe für Allgemeine Fragen der Inneren Sicherheit," ["European Conference about Internal Security: Creation of an FRG-French Working Group for General Questions of Internal Security"], August 2, 1974, PA AA, Intermediate Archive (ZA) Vol. 109198.

extradition, leaving it to the two states' justice ministries that jealously defended their jurisdiction over this issue.[41]

The Franco-West German negotiations focused on specific issues, as favored by the French, instead of the broad coverage hoped for by the West Germans. The broadly defined internal security group proved to be too large for it to be efficient. It was therefore split into three subgroups on combating crime, terrorism and intelligence, and border patrols.[42] The specialists who staffed all groups rarely discussed their work with experts from other groups, even though the various groups and subgroups' competencies often overlapped. They preferred to perform or even repeat the same work side by side instead of overlapping into broader collaboration.[43]

A subsequent series of terrorist attacks by West Germans drew FRG officials' focus from Palestinian to home-grown terrorists. In November 1974, members of the June 2 Movement, a FRG domestic terrorist organization closely affiliated with the RAF, assassinated judge Günther von Drenkmann, chief justice of the highest city court in West Berlin. In February 1975, the June 2 Movement kidnapped Peter Lorenz, a candidate in West Berlin's mayoral race, and successfully blackmailed the Schmidt cabinet into trading him for the freedom of several FRG terrorists incarcerated in West Berlin. The group disappeared into South Yemen. Several members reappeared within the next years to commit terrorist acts in Austria and Uganda. Less than two months later, RAF members took over the FRG embassy in Stockholm, Sweden. They killed an FRG diplomat before being apprehended. In May 1975, the trial against leading RAF terrorists Andreas Baader, Ulrike Meinhof, and two others began, and the terrorists as well as their supporters at home and abroad used the event to accuse the FRG of being a fascist, undemocratic state. These events reinforced the FRG's leadership's desire for cross-border

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[41] See chapter 5 for the justice ministries' effort to draft a European extradition treaty, based on earlier anti-terrorism conventions.

[42] Maihofer to Foreign Office, Memorandum "Europäische Konferenz über Innere Sicherheit," August 2, 1974, PA AA, ZA Vol. 109198.

[43] Oberloskamp, *Codename TREVI,* 61.

cooperation to demonstrate the FRG rule of law, hinder Palestinian terrorists, and gain custody of FRG terrorists.

The three Franco-West German working groups generated a series of formal bilateral treaties and informal agreements over a period of three years. In August 1975, Maihofer and Poniatowski approved an informal civil aviation agreement. FRG and French officials promised to generally share experiences, coordinate with one another during crisis situations, and begin to harmonize security measures at airports.[44] In practice, information sharing rarely took place, however. The working group on catastrophes and the internal security subgroup on combating crimes finished bilateral treaties which were both signed on February 3, 1977. These treaties required law enforcement and border patrol to collaborate during natural disasters and when seeking criminals in Franco-German border regions.[45] Meanwhile, the internal security subgroup on border patrols completed an informal agreement against illegal immigration, which included collaborative border control practices and the exchange of personal data about foreign nationals. The internal security subgroup on terrorism and intelligence generated an agreement that police officials would be able to briefly pursue a terrorist into the other state's territory, and designated one contact person in each state's intelligence services who would be responsible for sharing terrorism-related information.[46] Due to these Franco-FRG achievements, by August 1975 Poniatowski was willing to support an internal security conference among the other EC members.[47]

Ironically, it was a new EC member, the U.K., that introduced the concept of multilateral internal security collaboration in the EC, not the well-prepared FRG and France. FRG officials were surprised when the U.K., which had joined the EC only in 1973, seized the lead on the

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[44] Memorandum, Attachment 3 to FRG Interior Minister Werner Maihofer to Head of the Chancellery Manfred Schüler, Letter, August 28, 1975, BArch, B Records of the Chancellery (136)-25202, pp. 20-27.

[45] See Oberloskamp, *Codename TREVI,* 120-121.

[46] Oberloskamp, *Codename TREVI,* 61, 63, 65-67.

[47] Memorandum, Attachment 3 to Maihofer to Schüler, Letter, August 28, 1975, BArch, B136-25202, pp. 20-27.

delicate, sovereign-laden issue of internal security. Lord John Harris, the British Minister of State for Home Affairs, began discussing the idea of a domestic security conference in the summer of 1975. Though the U.K. had significant problems with Northern Irish nationalist terrorists, Harris's main goal was to demonstrate British commitment to European integration.[48] His involvement undermined the Franco-FRG preparations, since Harris planned to discuss only a possible collaboration process at the conference. In contrast, Maihofer wanted to jump straight into content discussions based on the Franco-FRG bilateral groups' results. His goal was for the EC ministers to pass anti-terrorism regulations and policies at the conference.[49] In December 1975, U.K. Prime Minister Harold Wilson suggested to the other EC heads of state that an internal security conference be convened in 1976, leaving process and content vaguely open. The others agreed.[50]

Only days later, a terrorist seizure and hostage takeover in the Organization of Petroleum Exporting Countries (OPEC) headquarters in Vienna shook European leaders and motivated them to support multilateral internal security collaboration. The terrorists hailed from a range of states, including the FRG, and reminded Europeans again of how transnational contemporary terrorism was – not limited to one set of offenders (such as Palestinians) or one state.

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[48] Oberloskamp, *Codename TREVI,* 82-83.

[49] FRG Interior Minister Werner Maihofer to French Interior Minister Michel Poniatowski, Letter, September 18, 1975, BArch, B, Records of the Interior Ministry (106)-78829; Mr. Streicher (Public Security Office, Division 1, Interior Ministry) to FRG Interior Minister Werner Maihofer, Memorandum "Europäische Konferenz für Innere Sicherheit: Einladung des Herrn Ministers zu einem Besuch in London," ["European Conference for Internal Security: Invitation of the Minister to a Visit in London"], September 1975, BArch, B106-78829, folder 1; British Embassy Bonn to State Secretary Siegfried Fröhlich (FRG Interior Ministry), Diplomatic Note with attachment memorandum "European Political Cooperation: Proposal for a Meeting of Ministers of the Interior of the Nine," October 22, 1975, BArch, B106-78829, folder 1.

[50] FRG Interior Minister Werner Maihofer to FRG Mission Brussels, Memorandum "Vorbereitung einer Europäischen Konferenz für Innere Sicherheit," ["Preparation of a European Conference for Internal Security"], December 30, 1975, PA AA, B83 Vol. 980; Dr. Feit (Office for France, Andorra, Monaco, Belgium, Netherlands, Luxembourg (202), Foreign Office), Memorandum of Conversation "Deutsch-französische Direktorenkonsultationen am 12.1.76 in Paris, Terrorismusbekämpfung," ["FRG-Franco Directors' Consultations on 01.12.76 in Paris, Combatting Terrorism"], January 23, 1976, PA AA, B83 Vol. 980.

Despite Harris' surprising steps, FRG officials were optimistic. The preparations for an internal security conference were underway, and they still hoped to shape its content. Additionally, this progress could potentially strengthen other FRG anti-terrorism initiatives. By January 1976, the FRG Foreign Office started preparations for a protection-of-hostages convention in the United Nations, and the Justice Ministry turned to the Council of Europe to pass a "prosecute or extradite" convention against terrorism.[51] Interior Ministry officials hoped that they could point to the internal security conference as a successful model of anti-terrorism collaboration, and convince other states to support the UN and Council of Europe initiatives.[52]

In the first half of 1976, mid-level domestic security officials from all EC states met several times to hash out details for the conference.[53] They quickly settled on procedure, again choosing secret, informal collaboration over formal, binding mechanisms. The French delegation easily convinced the other representatives that discussions should remain as secret as possible. This secrecy would prevent terrorists from learning about their efforts, but also allowed the delegates to avoid public reactions to their work. Such secrecy had been a French priority since initial Franco-FRG discussions in 1974. To retain confidentiality, only EC states would be invited to participate. Any cooperation would be informal, comparable to the EPC with its ad hoc working group meetings.[54]

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[51] See chapters 5 and 6 for these endeavors.

[52] Mr. Streicher (Public Security Office, Division 1, Interior Ministry) to FRG Interior Minister Werner Maihofer, Memorandum "Vorbereitung einer Europäischen Konferenz für Innere Sicherheit: Pakt gegen den Terrorismus," ["Preparation for a European Conference for Internal Security: Pact against Terrorism"], January 30, 1976, BArch, B106-78829, folder 2.

[53] Rome Coreu to Bonn Coreu, EC-Internal Coreu Telegram 3019, December 31, 1975, BArch, B106-78829, folder 1.

[54] Mr. Henatsch (Office for European Integration et al. (200), Foreign Office), Note for the Record "Vorbereitung der Konferenz der Innenminister der Neun über Fragen der Inneren Sicherheit: Beamtentreffen der Neun in Luxemburg am 20.02.76," ["Preparation of the Conference of the Nine EC States' Interior Ministers about Questions of Internal Security: Bureaucrats' Meeting from all Nine EC States in Luxembourg on 02.20.76"], February 24, 1976, PA AA, B83 Vol. 980.

Meanwhile, the well-prepared FRG officials dominated the content-based discussions. FRG officials preferred formal, binding treaties, and were unhappy that the meetings would generate informal non-binding agreements at best.[55] Nevertheless, Smoydin, again heading the FRG delegation, submitted a working paper which the other experts largely adopted. The paper listed a range of detailed categories and sub-categories to discuss. FRG proposals included that officials would build terrorism information-dissemination networks (both among law enforcement and intelligence agencies), share national anti-terrorism policies and experiences, conduct police exchanges, integrate police training practices, secure civil aviation, protect nuclear facilities, cooperate in cases of natural or man-made catastrophes, and aid one another in concrete terrorist cases.[56] The French delegation attempted to remove the last point, fearing that such aid would make the collaboration public. The FRG delegation successfully thwarted the effort, however.[57]

The EC ministers tasked with domestic security finally met for the conference on June 29, 1976. Based on the FRG's suggestions, the delegates agreed to institute a new system of multilateral cooperation, comparable to the EPC. Regular working groups would meet on a range of internal security issues, staffed by mid-level experts. The officials quickly began referring to their new internal security forum as TREVI.[58] The origins of this name are not entirely clear –

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[55] Mr. H.P. Bochmann (Public Security Office, Division 9, FRG Interior Ministry), Memorandum for the Record "Vorbereitung einer Europäischen Konferenz für Innere Sicherheit: Vorbereitung der Sitzung der Hohen Beamten am 29.04.1976," ["Preparation of a European Conference for Internal Security: Preparation of the Meeting of High Officials on 04.29.1976"], April 27, 1976, BArch, B106-106774, folder 1.

[56] Coreu Luxembourg to All Other Coreu States, EC Internal Coreu Telegram 629, February 25, 1976, BArch, B106-78829, folder 3.

[57] Undersecretary Merk (Public Security Office, Division 1, FRG Interior Ministry) to FRG Interior Minister Werner Maihofer, Memorandum "Europäische Konferenz für Innere Sicherheit: Vorbereitende Sitzung der zuständigen hohen Beamten (Abteilungsleiter bzw. Generaldirektoren) am 25. Mai 1976," ["European Conference for Internal Security: Preparatory Meeting of the Responsible High Officials (Office Heads or General Directors) on May 25, 1976"], May 26, 1976, BArch, B106-106774, folder 1.

[58] TREVI Office Netherlands to All Other TREVI Offices, Telegram 31624, October 4, 1976, BArch, B106-106774, folder 2.

some sources state that the name refers to the Trevi fountain in Rome, where Wilson suggested the conference in December 1975. Others state that it was a French-language abbreviation for the network's targets: *terrorisme, radicalisme, extrémisme, violence international* (terrorism, radicalism, extremism, international violence).[59]

The working groups divided the broad field of anti-terrorism measures and internal security policies into specialized groups. As preferred by France, such groups would cover only narrowly-defined topics. The main groups were dedicated to combating terrorism (group 1) and police technology and training (group 2). They organized further subgroups to parcel out competencies. Group 1's subgroup addressed border cooperation. Group 2 had a range of subgroups, mainly dedicated to technological innovations: telecommunications, computer systems, law enforcement technology, equipment, weapons and explosives trade, and finally, training and professional development. Smaller groups lasting only one or two years covered additional issues, namely civil aviation security (group 3), nuclear security (group 4), protection from catastrophes (group 5) and fire protection (group 6). High-level bureaucrats and ministers met as needed to acknowledge the working groups' results.

Group I, on combating terrorism, generated formal and informal intelligence-sharing practices. The group met twice a year until 1980. The experts in group 1 were mainly law enforcement and intelligence officers. They agreed to institute so-called "connection offices," situated in each state's intelligence services, to facilitate sharing information on terrorist activity with one another.[60] Though the connection offices had time-lag issues when passing on information to other domestic agencies, this network of offices frequently became active in terrorism crises such as the 1978 kidnapping and assassination of Aldo Moro in Italy.[61] As a

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[59] Oberloskamp, *Codename TREVI,* 3-4.

[60] Oberloskamp, *Codename TREVI,* 135-140.

[61] Public Security Office, Division 9, Interior Ministry to FRG Interior Minister Werner Maihofer, Memorandum "Entführung Aldo Moro," ["Aldo Moro Kidnapping"], March 17, 1978, BArch, B106-107064, folder 1.

regular and predictable meeting location, TREVI group 1 also became a crucial spot for intelligence officers to share information face-to-face.[62] Finally, group 1 invited officials who had handled specific terrorism crises, such as the RAF's Stockholm embassy takeover in April 1975 or the IRA Balcome Street siege in December 1975, to conduct seminars in which they walked the delegates through their decision-making process.[63]

Besides intelligence, group 1 officials discussed national policies and practices related to terrorism. Vast discrepancies existed, and delegates were keenly interested in their counterparts' approaches. Although these discussions led to no concrete results, the FRG officials in particular valued them, as they highlighted areas of mutual compatibility where bilateral agreements might be possible. Issues discussed included border control practices and cooperation, police observers in foreign law enforcement agencies, and protection mechanisms for visiting dignitaries. In 1978, group one took over civil aviation and nuclear security when groups three and four were shut down. Later, delegates broached issues such as media relations and terrorists' use of non-EC diplomatic passports. By 1982, the delegates considered their discussions on terrorism comprehensively exhausted, and stopped meeting.

Meanwhile, delegates in group 2 (on internal security in general) focused on technological innovation. The highly specialized technical experts in this group (and its subgroups) shared acquisition and usage information on telecommunications, computer systems, law enforcement technology, and equipment.[64] This collaboration continued throughout the 1980s.

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[62] Federal Office for the Protection of the Constitution to FRG Interior Minister Werner Maihofer, Memorandum "Zusammensetzung der deutschen Delegation bei den Sitzungen der TREVI-Arbeitsgruppe I," ["Composition of the FRG Delegation in the TREVI-Working Group I Meetings"], February 21, 1978, BArch, B106-106775, folder 2.

[63] Mr. H. P. Bochmann (Public Security Office Division 9, Interior Ministry) to President of the Bundeskriminalamt Horst Herold et al., Memorandum "Europäische Zusammenarbeit Innere Sicherheit: EG-Arbeitsgruppe 'Terrorismus,'" ["European Collaboration Internal Security: EC-Working Group 'Terrorism'"], November 15, 1976, BArch, B106-106774, folder 3.

[64] Anonymous undated Memorandum "Protokoll über die Sitzung der "Hohen Beamten" der EWG-Mitgliedsstaaten, die am 30. Mai 1980 gehalten worden ist," ["Protocoll of the Meeting of the "High Officials" of the EC-States, held on May 30, 1980"], attachment to Italian Interior Ministry to FRG Interior Ministry, Letter, July 24, 1980, BArch, B106-106811, folder 1.

Notably, group 2 accelerated the adoption of computer systems by European states for domestic security investigations. The FRG's *Bundeskriminalamt* was a pathbreaking leader in computer-based investigative methods, such as data mining, in the 1970s. FRG officials pushed the other TREVI delegations to develop their computer capacities. In addition, the TREVI states began sharing electronic data on terrorist suspects, notwithstanding the national privacy laws which limited this transfer.[65]

The TREVI groups' main achievement was that they brought together internal security bureaucrats, creating new transgovernmental networks that helped disseminate internal security and anti-terrorism information among the EC states. Most delegates in the working groups and their subgroups were highly qualified specialists in their specific fields.[66] Institutional and national boundaries barred them from one another. In TREVI, these bureaucrats had opportunities to exchange information with their counterparts. The TREVI ministers and high-level had little further influence on the network.[67] TREVI became an informal institution in which mid-level bureaucrats discussed national and regional internal security.

The transgovernmental networks distinctly shaped EC states' anti-terrorism policies because they were echo chambers which amplified officials' focus on the mechanisms of terroristic violence. The national representatives in TREVI were security, justice, intelligence, and law enforcement officials. In group 1, which was dedicated to combatting terrorism, law enforcement

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[65] Oberloskamp, *Codename TREVI,* 142-150.

[66] FRG interior officials were displeased that not enough officials with the capacity to think broadly across issues were present. Public Security Division, Office 1, Interior Ministry, to Offices 2,6,8,9, and Central Administration, Memorandum "Europäische Zusammenarbeit 'Innere Sicherheit': Besprechung am 25. Oktober 1976 bei Herrn SV/Abteilungsleiter ÖS," ["European Collaboration ‚Internal Security': Conversation with Misters SV/Office Head Public Security on October 25, 1976"], November 9, 1976, BArch, B106-106774, folder 3.

[67] Division P, FRG Interior Ministry, to FRG Interior Minister Gerhard Baum, Memorandum "Europäische Zusammenarbeit bei der Terrorismusbekämpfung (TREVI): Randverfügungen Herrn Ministers auf der Ergebnisniederschrift über die Sitzung des Ausschusses der Hohen Beamten am 4./5. Dezember in Luxemburg," ["European Collaboration in Combatting Terrorism (TREVI): Side Notes from the Interior Minister on the Result Protocoll about the Meeting of High Officials on December 4./5. In Luxembourg"], December 18, 1980, BArch, B106-106812, folder 1.

and intelligence officers dominated the delegate lists. Four delegations were composed only of such officials (Ireland, Luxembourg, Italy, Denmark), and in six out of nine cases (including France and the Netherlands), these officials also led their respective national delegations.[68] Law enforcement and intelligence agents were tasked with preventing terrorist attacks, and with arresting terrorists after any attack. They discussed measures to efficiently facilitate their duties.

Reinforcing this tendency was the fact that the TREVI groups operated with a high-level security restriction – their work was classified "secret."[69] Little information got in or out. National legislators and the media generally did not hear about or question TREVI. The sparse information that did become public highlighted that there was internal security collaboration without going into details or content.[70] The mainstream media debate on international terrorism dove into the social and political origins of terrorism, and one of the terrorists' main goals was to draw attention to their political grievances. However, in TREVI, no officials were interested in broaching this media debate or giving a platform to terrorists. The result was that TREVI security officials discussed only security measures against the mechanism of terrorism – and therefore solidified the EC government's policies and practices concerning terrorism. A clear government narrative developed amongst EC states: Terrorism was an apolitical threat and a crime, not a politically motivated act.

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[68] See, for example, "Liste des Participants," Attachment to Undersecretary Merk to FRG Interior Minister Werner Maihofer, Memorandum "Europäische Zusammenarbeit Innere Sicherheit: Sitzung der 'hohen Beamten' am 26. September 1976 in den Haag," ["European Collaboration Internal Security: Meeting of the 'High Officials' on September 26, 1976 in the Hague"], September 28, 1976, BArch, B106-106774, folder 2; and "Liste des Participants," Attachment to Mr. H.P. Bochmann (Public Security Office Division 9, FRG Interior Ministry) to FRG Interior Minister Werner Maihofer, Memorandum "Europäische Zusammenarbeit Innere Sicherheit: 1. Sitzung der EG-Arbeitsgruppe 'Terrorismus'," ["European Collaboration Internal Security: 1. Meeting of the EC-Working Group 'Terrorism'"], October 20, 1976, BArch, B106-106774, folder 3.

[69] Memorandum from Public Security Division, Office 1, FRG Interior Ministry, to Office 8 et al., "Europäische Zusammenarbeit 'Innere Sicherheit': Einstufung des unter dem Codewort 'TREVI' laufenden Schriftverkehrs," ["European Collaboration 'Internal Security': Classification of the Correspondence under the Code Name 'TREVI'"], January 13, 1977, BArch, B106-106774, folder 3.

[70] See Oberloskamp, *Codename TREVI,* 243-254.

The TREVI network generated the foundations for bilateral anti-terrorism efforts in Europe. The TREVI working groups did not enact any multilateral agreements or create the binding EC-wide regulations desired by the FRG. Nevertheless, state officials used the ideas, practices, and policies discussed in this multilateral forum to draft and approve bilateral internal security agreements. The Franco-West German working group generated two 1977 bilateral treaties, and a number of informal agreements.[71] Similar relations developed between the FRG and Italy in 1976. The two states agreed to institute regular working groups to collaborate on internal security, and later passed two informal agreements to share information on terrorist suspects and civil aviation security practices.[72]

In addition, the TREVI network began a multilateral European dialogue on internal security that became more formal over time. After 1980, TREVI delegates reached the judgment that they had covered the issue of terrorism exhaustively. The EC states reorganized the TREVI groups, and emphasized new issues, including organized crime and the illegal drug trade. Adapting to states' interests, the TREVI network continued sharing information, practices, and experiences related to internal security until the foundation of the European Union with the treaty of Maastrich in 1992. Internal security collaboration became a formal component of the European Union's judicial institutions, with permanently dedicated officials and resources. Internal security collaboration undermined a state's sovereignty, but the threat of international terrorism was a motor which drove EC state officials to gradually collaborate.

The Proliferation of Special Forces Units during the 1970s

A rising network of special forces units during the 1970s also reinforced state officials' tendencies to handle terrorism without considering its political dimensions. As the number of "international terrorism" attacks grew steadily in the 1970s, more and more states began

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[71] See Oberloskamp, *Codename TREVI,* 61, 120-121.

[72] See Oberloskamp, *Codename TREVI,* 120-122.

developing special forces units as a tool specifically to resolve terrorist crises. Successful special forces missions, such as at Entebbe and Mogadishu, convinced the public and state officials of the efficacy of such teams. State officials justified their reliance on such special forces units with the claim that terrorism was a domestic security threat which needed to be securitized. Utilizing special forces was one means to do so. States frequently relied on officers from foreign special forces units to learn about training, gear, and tactics. The network of special forces officers cared about preventing the execution of terrorist attacks. They focused on addressing the mechanisms used by terrorists to commit violence. These officers ignored aspects of terrorist incidents that their units could not resolve, including the political context and the grievances and aims of terrorists.

The proliferation of special forces units created a network of law enforcement and military officers who blended their respective competencies, experiences, and training. The resulting set of anti-terrorism skills strengthened militarized counterinsurgency practices in domestic security institutions. Officers frequently traveled to visit other units to learn how they functioned. Allies such as the United States, the U.K., and the FRG sent trainers to one another's units, and made space for foreign officers in domestic security seminars. Law enforcement and military officials entered into more frequent dialogue. Some skills, including hostage negotiation, were taught mainly by law enforcement agencies such as the U.S. Federal Bureau of Investigation (FBI). Most, however, originated in the armed forces, such as bomb defusing or how to storm a hijacked aircraft. Due to this exchange, law enforcement and military personnel developed a shared set of terminology, practices, and tactics related to terroristic violence.

The special forces units of the 1970s had their origins in earlier counterinsurgency special forces teams. During World War II, units such as the British Special Air Services (SAS) regiment developed to conduct secret missions in German-controlled areas.[73] Later, such units served in

[73] See James D. Ladd, *SAS Operations* (London: Robert Hale, 1986); and Robin Neillands, *In the Combat Zone: Special Forces Since 1975* (New York: New York University Press, 1998).

decolonizing conflicts in the 1950s and 1960s, including in those of Algeria, Malaysia, and Vietnam.[74] Meanwhile, the fledgling Israeli state created the widest range of special forces units within its armed forces and intelligence services to operate against Palestinian guerillas and hostile Arab states.[75] Counterinsurgency skills practiced by such units included weapons and explosives expertise, operating in small teams, and deployment from air- and seaborne vehicles.

By the late 1960s, British and Israeli special forces units handled domestic terroristic violence within Northern Ireland and Israel as well as foreign interventions. In 1972, the FRG created a comparable special forces unit specifically to counter terrorist attacks in the FRG. Local Bavarian law enforcement authorities were unprepared at the time of the 1972 Munich Olympic Games attack. They made numerous errors, of which the most egregious were giving the media almost unrestricted access and engaging in an ill-planned last-minute rescue effort which led to the death of the Israeli hostages.[76] After the tragic end of the crisis, the Brandt cabinet decided that it needed a specially trained team, situated at the federal level, which could be deployed to handle such situations. On September 26, 1972, Interior Minister Hans-Dietrich Genscher announced the creation of this special forces unit within the Border Security Police. This agency had authority to operate throughout the FRG. Additionally, it held combatant status, and would be able to utilize military tactics and equipment. Genscher envisioned that GSG 9 would include highly trained specialists, including "snipers, weapons and explosives experts, chemical and electric technicians, as well as communications and other technical specialists."[77] Since police and armed forces were strictly separate by FRG law, this team bridged institutional capacities between the

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[74] Ladd, *SAS Operations*; and David Tucker and Christopher J. Lamb, *United States Special Operations Forces* (New York: Columbia University Press: 2007).

[75] See Thomas H. Henriksen, "The Israeli Approach to irregular Warfare and the Implications for the United States" (Joint Special Operations University Report 07-3, Hurlburl Field, FL, 2007), 3-6.

[76] Kay Schiller and Christopher Young, *The 1972 Munich Olympic Games and the Making of Modern Germany* (Berkeley: University of California Press, 2010), 197-201.

[77] Ortex Telegram 99, November 4, 1972, PA AA, B82 Vol. 1031.

two in novel ways. Unlike earlier special forces units that served principally in foreign or colonial asymmetric warfare, the GSG9 was tailored to protect domestic security in non-warfare situations.

To develop the necessary skills, the FRG GSG 9 relied on Israeli trainers from the outset. FRG armed forces had no counterinsurgency experience. Genscher requested and received permission to send the future commander of the GSG 9, Lieutenant Colonel Ulrich Wegener, to participate in an Israeli armed forces training course titled "Combatting Arab Terrorists Through Special Forces Units." The course, which ran from October 30 to November 12, 1972, covered a broad range of terrorism-related skills, including information on Palestinian fedayeen organizations' hierarchy, training, and actions, the deployment of special forces against terrorist bases and in hijacking scenarios, the protection of key persons and potential target locations, conducting manhunts, and the safe handling of explosive materials.[78] The FRG had strict regulations concerning the division of competencies between its law enforcement, intelligence, and armed forces institutions. In contrast, the Israeli training blended areas delegated to all three, such as manhunts (law enforcement), intelligence-gathering (intelligence services), and commando deployment (armed forces). From its outset, the GSG 9 combined tactics and skills usually distinct within the FRG security institutions.

Other states began to follow the FRG's example. From 1974 onward, Italy created small anti-terrorism units in the national police and the carabineri, a gendarmerie police branch of the armed forces, but quickly re-integrated the members of these units into regular police structures.[79] In 1974, the French national gendarmerie, an armed forces police branch responsible for security in

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[78] Leading Police Director Ulrich Wegener to FRG Interior Minister Hans-Dietrich Genscher, Experience Report "Sonderlehrgang bei den israelischen Verteidigungsstreitkräften (MAHAL) vom 30.10. – 12. 11.1972," ["Special training course with the Israeli Defense Force (MAHAL) from 10.30.-11.12.1972"], November 28, 1972, BArch, B106-115427, folder 1.

[79] Tobias Hof, "Anti-Terrorismus-Gesetze und Sicherheitskräfte in der Bundesrepublik Deutschland, Großbritannien und Italien in den 1970er und 1980er Jahren," ["Anti-Terrorism-Laws and Security Forces in the Federal Republic of Germany, Great Britain, and Italy in the 1970s and 1980s"], in Hürter, *Terrorismusbekämpfung in Westeuropa,* 7-34, 17.

rural areas, founded its own special forces unit, the *Groupe d'intervention de la Gendarmerie nationale*.[80]

The GSG 9 collaborated with such units to disseminate the necessary skills. So did the U.K. armed forces. Having lost most of the British colonial holdings, in the 1970s British counterinsurgency efforts focused inward on Northern Irish insurgents and domestic security.[81] In May 1975, Wegener participated in the "Second International Conference on Methods and Resources of Terrorist Organizations," hosted by the Royal Army and the British secret service, alongside military and law enforcement personnel from the U.K., FRG, the United States, Canada, Barbados, Italy, the Netherlands, Norway, Sweden, Denmark, and Switzerland. He also worked with states that did not form units but did introduce anti-terrorist tactics to existing law enforcement agencies. The GSG 9 sent officers to the Netherlands in November 1975 and December 1975. They helped the Royal Netherlands Marechaussee, a Dutch armed forces gendarmerie with both military and civil police duties, to resolve two hostage situations.[82] Both sides benefited from the other's experience.

In 1976 and 1977, many more states became aware of the existence and utility of such anti-terrorist special forces units. During the Entebbe and Mogadishu hijacking crises, the Israeli and FRG units garnered spectacular media attention by showcasing their skill sets as well as their effectiveness.

The Entebbe rescue became the first special forces success. On June 27, 1976, a group of four terrorists – two Palestinians and two West Germans - hijacked Air France flight 139 from Tel Aviv to Paris, taking 260 hostages. The attack was planned by Wadi Haddad, head of the Popular Front for the Liberation of Palestine – External Operations. Haddad was a member of George

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[80] Groupe d'Intervention de la Gendarmerie Nationale, "Historique," [History], *Gendarmerie Nationale,* accessed March 1, 2018, https://www.gendarmerie.interieur.gouv.fr/gign/Historique/Historique.

[81] Ladd, *SAS Operations,* 166.

[82] Oberloskamp, *Codename TREVI,* 122.

Habash's Popular Front for the Liberation of Palestine (PFLP), and supported Habash's campaign to export the Palestinian national liberation insurgency by hijacking civilian aircraft associated with the state of Israel worldwide. Haddad began operating independently of Habash in the 1970s, after the PFLP became more publicly moderate after the 1972 Olympic Games attack. The hijackers flew the plane to Entebbe, Uganda, where Ugandan President Idi Amin gave them support. On July 4, 1976, the Israeli special forces unit Sayeret Makhal stormed the Entebbe airport building, rescuing the hostages in the airport. The operation brought global media attention to anti-terrorist special forces units. Despite Amin's protest that Israel had violated Ugandan sovereign territory in an act of war, most leaders and the mainstream media celebrated the Israeli raid as a unique rescue operation that other states would not be able to repeat.[83]

Besides drawing global attention to anti-terrorist special forces units, the Entebbe operation strengthened the collaboration between British and FRG special forces officers. The two West German hijackers at Entebbe caused the Schmidt cabinet to suffer worldwide accusations that FRG citizens were anti-Semitic fascists. As a result, the cabinet committed itself (privately) to a tough, no negotiations position in future terrorist crises.[84] To prepare for such eventualities, Schmidt and Interior Minister Maihofer supported the GSG 9's efforts to increase its skills and connections. Most notably, ties to the British armed forces increased. GSG 9 commander Wegener had joined British special forces officers in at an officer's club near Entebbe airport to

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[83] See, for example, "Israelis Lose Commando, 3 Hostages, Kill All Hijackers," *Washington Post,* July 5, 1976, A1; and Dietrich Strothmann, "Im Teufelskreis des Terrors," ["In the Devil's Circle of Terror"], *Die Zeit,* July 9, 1976, accessed March 1, 2018, http://www.zeit.de/1976/29/im-teufelskreis-des-terrors.

[84] See Markus Eikel, "Keine Atempause: Das Krisenmanagement der Bundesregierung und die Flugzeugentführung von Entebbe 1976," ["No Pause for Breath: The Crisis Management of the Federal Government and the Entebbe Hijacking 1976"], *Vierteljahrshefte für Zeitgeschichte* 61, no. 2 (April 2013): 239-261; and Matthias Dahlke, "'Nur eingeschränkte Krisenbereitschaft': Die staatliche Reaktion auf die Entführung des CDU-Politikers Peter Lorenz 1975," ["'Only Limited Crisis Preparation': The State Reaction to the Kidnapping of the CDU-Politician Peter Lorenz in 1975"], *Vierteljahrshefte für Zeitgeschichte* 55, no. 4 (October 2007): 641-678.

observe the situation.[85] In the following year, the number of exchanges between British and FRG special forces institutions increased, with at least three visits between SAS, GSG9, and officials in the FRG Interior Ministry and the UK Home Office. The officials exchanged information on training, tactics, equipment, and strategies, covering the entire scope of special forces activities.[86]

The Schmidt cabinet's support paid off when the GSG 9 successfully ended a hijacking in Mogadishu in October 1977. From spring to fall of 1977, the RAF and associated groups conducted a wave of terrorist attacks throughout the FRG in an attempt to coerce the release of imprisoned RAF leaders, generating such fear for the stability of FRG state institutions that contemporaries called the period the "German Autumn." Palestinian hijackers supported the RAF by targeting Lufthansa, the FRG's national airline. On October 13, 1977, four Palestinian fedayeen hijacked Lufthansa flight 181 from Mallorca to Frankfurt, taking its ninety-one crew members and passengers hostage. The hijackers flew the aircraft around the Mediterranean and Middle East before landing in Mogadishu, Somalia. A plane carrying a GSG 9 team and two SAS observers trailed them clandestinely.[87] Unlike Entebbe, the West Germans made sure to negotiate permission to operate from Somali President Siad Barre.[88] Led by Wegener, the GSG 9

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[85] Tim Geiger, "Westliche Anti-Terrorismus-Diplomatie im Nahen Osten," ["Western Anti-Terrorism Diplomacy in the Middle East"], in Hürter, *Terrorismusbekämpfung in Westeuropa*, 259-288, 271-272.

[86] Mr. Strecker (Border Patrol II, Interior Ministry) to Foreign Office, Memorandum "Deutsch-Britische Zusammenarbeit auf dem Polizeisektor: Besuch der GSG9 durch 2 Beamte des Special Air Service in der Zeit vom 9.-12. November 1976," ["Anglo-West German Police Cooperation: A Visit to the GSG9 of two Special Air Service Officers in the Period from November 9-12, 1976"], October 21, 1976, BArch, B106-371631, folder 2; Mr. Krassmann (Border Patrol II) to Border Patrol Command West, Letter, February 25, 1977, BArch, B106-371631, folder 2; and Dr. Reuter (Border Patrol II, Interior Ministry) to Border Patrol Command West, Border Patrol Administration West, Memorandum "Anordnung einer Dienstreise," ["Command for a Business Trip"], April 29, 1977, BArch, B106-371631, folder 2.

[87] FRG Consulate Jeddah to Foreign Office, Telegram 550, October 17, 1977, BArch, B106-106684, folder 1.

[88] Foreign Office to FRG Embassy Mogadishu, Telegram 7648, November 3, 1977, PA AA, B150 Vol. 379; Memorandum of Conversation between State Minister Hans-Jürgen Wischnewski and Somali Ambassador to the FRG Bokah, November 11, 1977, November 14, 1977, PA AA, B150 Vol. 379.

team seized the plane on October 18, 1977, killing three of four hijackers without further casualties.[89] Hearing of the operation, the incarcerated RAF leaders committed suicide and ended the "German Autumn."

The GSG 9 unit succeeded not only in ending the hijacking, but also in strengthening the state narrative that terrorism was primarily a mechanism to commit violence - without relevant political dimensions. Media reports focused on play-by-play narratives and unit tactics, and barely explored terrorists' political motivations or grievances. Media outlets around the world celebrated the GSG 9, as well as the FRG government. Reports emphasized that the FRG had defended its rule of law, restored its citizens from violence, and refused to cater to illegitimate political actors' demands.[90] Similar congratulations reached FRG diplomats in the United Nations and in the Conference for Security and Cooperation in Europe.[91] Since the FRG had negotiated with Barre first, the operation was far less controversial than at Entebbe. Overall, the FRG elites' securitization of terrorism seemed to be working.

The Mogadishu operation generated great interest around the world in the GSG 9, and the FRG Interior Ministry was happy to pass on limited details to other governments. The Interior Ministry wanted to keep terrorists unaware of its capacities and tactics.[92] However, it had no

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[89] Leading Police Director Ulrich Wegener to Klaus-Herbert Becker (Bundeskriminalamt), Memorandum "Teilbericht Einsatz 'Landshut' der GSG 9 am 18.10.1977: Darstellung des Sachverhalts des Kampfes in der Maschine," ["Partial Report of the 'Landshut' Mission of the GSG 9 on October 18, 1977: Account of the Circumstances of the Fight in the Machine"], February 14, 1978, BArch, B106-106684, folder 2.

[90] Examples include "Deutsche können stark und menschlich sein," ["Germans Can Be Strong and Humane"], *Der Spiegel,* October 24, 1977, 4-9; and Henry Tanner, "German Troops Free Hostages on Hijacked Plane in Somalia; Four Terrorist Killed in Raid," *New York Times,* October 18, 1977, 77.

[91] FRG Embassy Belgrade to Foreign Office, Telegram 675, October 18, 1977, PA AA, B83 Vol. 1004; FRG Mission Geneva to Foreign Office, Telegram 1625, October 19, 1977, PA AA, B83 Vol. 1004. See also Bernhard Blumenau, *The United Nations and Terrorism: Germany, Multilateralism, and Antiterrorism Efforts in the 1970s* (New York: Palgrave MacMillan, 2014); and chapter 6.

[92] See, for example, FRG Interior Minister Werner Maihofer to Director of the ARD News Network Hans Bausch and to the Director of the ZDF News Network, Letter, October 18, 1977, BArch, B106-106684, folder 1.

compunction about sharing information especially with allied states. In the weeks after October 18, many of the allied officials who had been in prior contact with the GSG 9 visited to hear about the tactics and equipment used in the operation. On November 4, 1977, a UK delegation of special forces experts met a GSG9 representative at the FRG Interior Ministry, followed by a Dutch delegation in late November.[93] An American delegation visited Schmidt's chancellery to hear from Wegener on December 8, which included William Odom, military assistant to National Security Advisor Zbigniew Brzezinski, a range of armed forces representatives, and public intellectuals such as conservative William F. Buckley.[94] By January 1978, further notices had arrived at the Interior Ministry from many recently independent and other countries. They asked for assistance to create their own anti-terrorist groups and requested to be able to collaborate with the GSG 9.[95] Governments around the world became interested in the anti-terrorist option of a special forces unit.

In 1978, the network of special forces contacts skyrocketed. States across the globe sought to emulate the anti-terrorist special forces unit model, and they requested aid from established units to gather know-how and skills. The FRG records on GSG 9's collaboration with other states provides a window onto the network of developing special forces units around the world. They

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[93] British Embassy Bonn to Dr. Kliesow (Chancellor's Office, Chancellery), Letter, 31 October 1977, BArch, B136-16493; Anonymous Memorandum for the Record, "Deutsch-Britishes Expertengespräch zum Erfahrungsaustausch über das 'crisis management' im Falle Schleyer/Mogadischu," ["Anglo-German Experts' Conversation to share the experience of the 'crisis management' in the Schlyer/Mogadishu Case"], November 2, 1977, Barch, B136-16493; Office 213, FRG Chancellery, Memorandum "Informationsgespräch mit Vertretern der niederländischen Botschaft über Entführung der Lufthansa-Maschine 'Landshut'," ["Informational Conversation with Representatives of the Dutch Embassy about the Hijacking of the Lufthansa-Aircraft 'Landshut'"], November 23, 1977, BArch, B136-16493.

[94] George A. Carver (U.S. Embassy Bonn) to Border Patrol Inspector General Kurt Schneider, Letter, November 18, 1977, BArch, B106-371685, folder 1; Adam F. Henritzy (U.S. Army Europe Liaison Officer Bonn) to Border Patrol Inspector General Kurt Schneider, Letter, December 6, 1977, BArch, B106-371685, folder 1; and Anonymous, Program "The GSG 9, Its Mission, Organization and Training: Description of Operation 'Landshut'," December 8, 1977, BArch, B106-371685, folder 1.

[95] Office 300 (Argentina, Uruguay, Paraguay, Brazil, and Caribbean), FRG Foreign Office, Memorandum for the Record, January 11, 1978, PA AA, ZA Vol. 111188.

show a slew of informational requests hailing from other European states to countries throughout North and Latin America, Africa, and Asia. These were more than the GSG 9, with a total of circa 400 in personnel, could handle. Instead, the Interior Ministry sorted requests into four categories. The first included close allies whose collaboration requests were heeded. In the second category, collaboration with friendly states was welcome but limited due to personnel restraints. For the not-closely-allied states in the third category, the Interior Ministry decided that cooperation was to be an option in the future. However, the FRG Interior Ministry was not interested in collaboration requests from the fourth category, which contained states with problematic civil liberties or international relations records.[96] FRG collaboration largely occurred along the lines of this sorting system.

The GSG 9's close ties to UK security forces, especially the SAS, deepened. Officers from each unit increased the frequency of their visits.[97] Gradually, the collaboration became more about training and tactical cooperation than simple exchanges of information. In the spring of

[96] Mr. Meyer-Landrut (Office 300 (Argentina, Uruguay, Paraguay, Brazil, and Caribbean), FRG Foreign Office) to FRG Foreign Minister Hans-Dietrich Genscher, Memorandum "Internationaler Terrorismus: Unterstützung von ausländischen Sicherheitskräften zur Terrorismusbekämpfung durch deutsche Experten," ["International Terrorism: Support of foreign security officials in Combatting Terrorism through German Experts"], with attachment, June 8, 1978, PA AA, ZA Vol. 111188.

[97] See, for examples, Border Patrol Inspector General Kurt Schneider to Border Patrol Command West, Border Patrol Administration West, Memorandum "Anordnung einer Auslandsdienstreise," ["Command for a Business Trip Abroad"], June 15, 1978, BArch, B106-371631, folder 2; Leading Police Director Ulrich Wegener to Interior Ministry, Memorandum "Erfahrungsaustausch mit ausländischen Sicherheitsbehörden: Schweiz, GB, USA," ["Experience Exchange with Foreign Security Agencies: Switzerland, Great Britain, USA"], August 16, 1978, BArch, B106-371685, folder 1; Leading Police Director Friedrich Zimmermann (Division P III 1, FRG Interior Ministry) to Leading Police Director Ulrich Wegener, Memorandum "Zusammenarbeit mit Grossbritannien bei der Terrorismusbekämpfung," ["Collaboration with Great Britain in Combatting Terrorism"], January 15, 1979, BArch, B106-371631, folder 2; Mr. Strecker (Division P III 1, Interior Ministry) to Border Patrol Command West, Border Patrol Administration West, Memorandum "Besuch bei britischen Spezialeinheiten in Hereford/Grossbritannien: Weisung Direktor i. BGS Wegener vom 1. Febr. 1980," ["Visit to British Special Forces in Hereford/Great Britain: Orders from Director in the Border Patrol Wegener from February 1, 1980"], February 1, 1980, BArch, B106-371631, folder 2.

1979, GSG 9 and SAS began conducting joint training exercises.[98] By 1980, the exchange of trainers was common. GSG 9 sent officers to learn about bomb defusing from the British army.[99] Scotland Yard officials took sniper and munitions courses from GSG 9.[100] In May 1981, GSG 9 sent officers to train SAS on how to storm a Boeing 747 – the largest commercial passenger aircraft available.[101] Overall, this collaboration led to a diffusion of counterinsurgency skills between the British army, police, and GSG 9 – skills that were specifically labeled "anti-terrorist."

U.S. law enforcement and military agencies became crucial as well. Strong relations developed between U.S. and FRG specialists, generating a collaborative network between the U.S. army, the FBI and regional police agencies, and the GSG 9. These relations started with information exchanges after the Mogadishu operation. Wegener received invitations to speak on Mogadishu from the U.S. Army War College as well as the FBI, and he traveled to the FBI training site in Quantico in April 1978.[102] As previously stated, a detachment of U.S. officials also visited the GSG 9 in December 1977.[103]

Contacts quickly deepened, and soon U.S. and FRG officers exchanged skills. U.S. Colonel Charles Beckwith, Commandant of the U.S. Army Special Warfare School in Fort Bragg, North

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[98] Division P III 1, FRG Interior Ministry, to GSG 9, Memorandum "Übungsvorhaben der GSG 9 in Lydd/Grossbritannien vom 1-12.4.79," ["GSG 9 Training Exercise in Lydd/Great Britain from April 1-12, 1979"], March 27, 1979, BArch, B106-371631, folder 2.

[99] Army School of Ammunition, Temple Herdewyke, Warwickshire, "Joining Instructions (Part 2)," August 1980, BArch, B106-371631, folder 2.

[100] Officer Dee (GSG 9) to FRG Interior Ministry, Memorandum "Ausbildungshilfe für Scotland Yard," ["Training Aid for Scotland Yard"], August 5, 1980, BArch, B106-371631, folder 2.

[101] Mr. Grützner (Division SV P III 1, Interior Ministry) to State Secretary F, Memorandum "Zusammenarbeit bei der Bekämpfung des internationalen Terrorismus: Zusammenarbeit mit Grossbritannien," ["Collaboration in Combatting International Terrorism: Collaboration with Great Britain"], April 30, 1980, BArch, B106-371631, folder 1; and GSG 9 to FRG Interior Ministry, Telegram 856, May 6, 1981, BArch, B106-371631.

[102] U.S. Army War College Commandant Robert C. Yerks to Admiral Kurt Seizinger, Letter, October 28, 1977, BArch, B106-371685, folder 1; and FBI Director William H. Webster to FRG Interior Minister Werner Maihofer, Letter, April 12, 1978, BArch, B106-371685, folder 1.

[103] See note 94.

Carolina, had been working to create a special forces unit based on SAS. He founded the 1st Special Forces Operational Detachment-Delta, often abbreviated as Delta Force, on November 17, 1977. Since Beckwith wanted Delta Force to be capable of resolving hostage situations, the U.S. army sought aid from the GSG 9. Wegener spent several weeks in Fort Bragg in July 1978 and November 1979, engaging in what his reports label "training activities."[104] In addition, GSG 9 sent shooting and explosives experts, as well as technical specialists, to Fort Bragg, and hosted Delta Force members at their FRG headquarters.[105] Ties also developed to U.S. law enforcement. The FBI extended frequent invitations for GSG 9 officers to participate in workshops at Quantico. GSG 9 members partook in a counterterrorism course in 1979, and a hostage negotiations course in 1981.[106] The GSG 9 members also had contact with U.S. state and city

[104] Border Patrol Inspector General Kurt Schneider to Border Patrol Command West, Border Patrol Administration West, Memorandum "Anordnung von Auslandsdienstreisen," ["Orders for Foreign Business Travels"], June 13, 1978, BArch, B106-371685, folder 1; and Mr. Baumann (Division P III 1, FRG Interior Ministry) to Border Patrol Command West, Border Patrol Administration West, Memorandum "Teilnahme an einer Ausbildungsveranstaltung in Fort Bragg, USA: Anordnung einer Auslandsdienstreise für Kommandeur GSG 9, LtdPD i. BGS Wegener," ["Attendance at a Training Exerciese in Fort Bragg, USA: Order for a Foreign Business Travel for Commander GSG 9, Leading Police Director in the Border Patrol Wegener"], October 29, 1979, BArch, B106-371685, folder 1.

[105] Wegener to FRG Interior Ministry, Memorandum "Erfahrungsaustausch mit ausländischen Sicherheitsbehörden," August 16, 1978, BArch, B106-371685, folder 1; GSG 9 to Police Director Strecker (FRG Interior Ministry), Memorandum "Ausbildung und Unterstützung ausländischer Sicherheitsorgane," ["Training and Support of Foreign Security Agencies"], October 13, 1978, BArch, B106-371685, folder 1; Leading Police Director Krassmann (Division P III 1, FRG Interior Ministry) to State Secretary Dr. Hiele (FRG Ministry of Defense), Letter, October 16, 1978, BArch, B106-371685, folder 1; and Leading Police Director Krassmann (Division P III 1, FRG Interior Ministry) to Border Patrol Command West, Border Patrol Administration West, Memorandum "Teilnahme an einem Spezialsymposium in Fort Bragg, USA: Technischer Erfahrungsaustausch," ["Attendance at a Special Symposium in Fort Bragg, USA: Technical Exchange"], November 1, 1979, BArch, B106-371685, folder 1.

[106] Leading Police Director Friedrich Zimmermann (Division P III 1, FRG Interior Ministry) to State Secretary F (FRG Interior Ministry), Memorandum "Internationaler Lehrgang für Angehörige von Spezialeinheiten zur Terrorismusbekämpfung an der FBI-Akademie in Quantico, USA," ["International Training Course for Members of Special Forces Units for Combatting Terrorism at the FBI-Academy in Quantico, USA"], December 15, 1978, BArch, B106-371685, folder 1; and Officer Grützner (Division SV P III 1, FRG Interior Ministry) to Head of Division P, FRG Interior Ministry, Memorandum "Hostage Training Course beim [at] FBI, Quantico, vom [from] 11. Bis [to] 23. January 1981," December 8, 1980, BArch, B106-371685, folder 1.

police agencies such as the Port Authority of New York.[107] By 1979, FRG-U.S. collaboration had evolved to the point where Wegener was able to meet and discuss counterterrorism strategies with Central Intelligence Agency Director Stansfield Turner, Deputy Director of the Defense Intelligence Agency Harold Aaron, Director of the State Department's Office for Counterterrorism Anthony Quainton, and FBI Director William Webster.[108] In December 1979, GSG 9 participated in joint special forces training exercises with the U.S. Army in the FRG.[109] Further invitations and joint training exercises followed, focusing on both "counterguerrilla" and "counterterrorism" scenarios.[110] By the early 1980s, the GSG 9 thus had deep links to not only SAS, but also the U.S. law enforcement, intelligence, and military communities.

Units from allied states quickly adopted these counterinsurgent "anti-terrorism" practices. In December 1977 Switzerland, whose police forces were organized by canton, decided to institute a national anti-terrorism police unit. GSG 9 had worked with the canton-level police, and the FRG

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[107] Superintendent of Police Walter R. Lee (Port Authority of New York and New Jersey) to Vice Consul Manfred R. Haedelt (FRG Consulate New York), Letter March 21, 1978, BArch, B106-371631, folder 2; Leading Police Director Kressmann (Border Patrol II, FRG Interior Ministry) to Foreign Office, Telex, May 1978, BArch, B106-371631, folder 2; Leading Police Director Ulrich Wegener to FRG Interior Ministry, Telegram 5956, September 29, 1978, BArch, B106-371685, folder 1; Border Patrol Command West to FRG Interior Ministry, Telegram 5142, April 28, 1980, BArch, B106-371685, folder 1; and Associate Professor Wolfred K. White (College of Law Enforcement, Eastern Kentucky University) to FRG Interior Minister Gerhart Baum, Letter, March 19, 1980, BArch, B106-371685, folder 1.

[108] U.S. Defense Attache Jack G. Callaway (Embassy Bonn) to Border Patrol Inspector General Kurt Schneider, Letter December 27, 1978, BArch, B106-371685, folder 1; and Mr. Schrecker (Division P III 1, FRG Interior Ministry), Memorandum for the Record "Dienstreise LPD Wegener in die USA," ["Business Travel Leading Police Director Wegener to the USA"], January 22, 1979, BArch, B106-371685, folder 1.

[109] Letter from Leading Police Director Kressmann (Division P III 1, FRG Interior Ministry) to U.S. Defense Attache Jack G. Callaway (Embassy Bonn), Letter, November 26, 1979, BArch, B106-371685, folder 1.

[110] Director for Special Operations, Federal Border Patrol, to Rear Admiral Samuel H. Packer (Director, Operations Directorate, U.S. European Command), Letter, January 20, 1981, BArch, B106-371685, folder 1; Commander, Support Operations Task Force, Europe, to U.S. Defense Attache Office, Embassy Bonn, Telegram, April 7, 1981, BArch, B106-371685, folder 2; and Memorandum from Mr. Siegele (Division P I 2, FRG Interior Ministry) to FRG Interior Minister Friedrich Zimmermann, "Amerikanisch-Deutsche Terrorismusübung 'Ellipse Bravo '82'," ["American-German Terrorism Exercise 'Ellipse Bravo '82'"], November 25, 1982, BArch, B106-371685, folder 2.

Interior Ministry promised to continue the collaboration.[111] On January 1, 1978, the Austrian Interior Ministry elevated a previously existing border security police unit into a federal anti-terrorism special forces unit, the *Gendarmerieeinsatzkommando*. It maintained working contacts to the GSG 9. This unit quickly garnered the nickname "Cobra," from a popular tv crime series.[112] After the kidnapping and murder of Aldo Moro in the spring of 1978, the Italian government founded two special forces units. The *Nucleo Operativo Centrale di Sicurrezza* was located in the national police, while the *Gruppo d'Intervento Speciale* was housed in the carabineri, an armed forces branch tasked with police duties. Both units were successfully deployed in domestic Italian terrorist crises in the early 1980s.[113] After 1977, a range of new contacts developed between special forces units from North America, the EC states, and the German-speaking Austria and Switzerland. This network transferred special forces skills and accelerated the usage of militarized anti-terrorism practices.

The FRG Interior Ministry also used the GSG 9 to strengthen contacts with friendly, but not necessarily closely allied states in Europe and around the world. In January 1978, Singapore offered the FRG a "special collaboration" against international terrorism. The details of this proposal are not yet accessible, but it was generous enough to convince the FRG Interior Ministry to open communication lines.[114] In September 1978, the FRG struck a deal with Saudi Arabia, strengthening its relations to the major petroleum exporter. Five GSG 9 officers traveled to Saudi Arabia and trained thirty Saudi police officers in special forces skills. These Saudi officers could in

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[111] Dr. Bochmann (Public Security Division, Office 9, FRG Interior Ministry) to German Parliament Member Hermann Biechele, Letter, January 14, 1978, BArch, B106-106930, folder 1.

[112] It still carries this name. Jim Weiss and Mickey Davis, "Cobra: Austria's Special Police Commandos," *Law and Order*, July 2009, 48-52.

[113] Hof, "Anti-Terrorismus-Gesetze und Sicherheitskräfte," 17-18.

[114] Mr. Meyer-Landrut (Office 300 (Argentina, Uruguay, Paraguay, Brazil, and Caribbean), FRG Foreign Office) to FRG Foreign Minister Hans-Dietrich Genscher, Memorandum "Internationaler Terrorismus: Unterstützung von ausländischen Sicherheitskräften zur Terrorismusbekämpfung durch deutsche Experten" ["International Terrorism: Support of Foreign Security Officials in Combatting Terrorism through German Experts"], with attachment, June 8, 1978, PA AA, ZA Vol. 111188.

turn teach these skills within the Saudi security agencies.[115] In Europe, the EC states in the late 1970s gradually improved their relations to Spain and Portugal, who had been perceived as pariahs since World War II. As part of this process, the FRG Interior Ministry agreed to share information regarding GSG 9 strategies and new computer technologies with Spain. The Spanish government, meanwhile, created a specific counter-terrorism unit dedicated to freeing hostages, the *Unidad Especial de Intervención*, within the Civil Guard, an armed forces gendarmerie, on June 3, 1978.[116] Similar exchanges occurred between the FRG and Portugal in early 1979.[117] In 1982, Portugal completed the organization of a police special forces unit, the *Grupo de Operações Especiais*. The special forces network thus stretched beyond its U.S. and EC core.

Since the FRG Interior Ministry considered terrorism an apolitical threat, it was even (briefly) willing to cooperate with Cold War rivals, including the Soviet Union and Romania, to share a limited range of information on the "anti-terrorist" tactics of the GSG 9. In May 1979, newly instated FRG Interior Minister Gerhard Baum traveled to the Soviet Union to discuss security measures for the 1980 Moscow Olympic Games. Soviet Minister of Internal Affairs Nikolai Shchelokov asked about the GSG 9 and especially its equipment.[118] After heated discussions between Interior Ministry bureaucrats, *Bundeskriminalamt* officials, and the GSG 9 officers

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[115] Office 300 (Argentina, Uruguay, Paraguay, Brazil, and Caribbean), FRG Foreign Office, to FRG Embassy Jeddah, Memorandum "Terrorismusbekämpfung: Zusammenarbeit mit Saudi Arabien," ["Combatting Terrorism: Collaboration with Saudi Arabia"], with attachment Aide-Memoire of October 25, 1978, October 26, 1978, BArch, B106-115427, folder 3.

[116] Division P I 1, FRG Foreign Office, Memorandum of Conversation "Deutsch-Spanische Zusammenarbeit auf dem Gebiet der Inneren Sicherheit: Besuch des Spanischen Innenministers beim Bundesminister des Innern am 3./4. Juli 1978," ["German-Spanish Collaboration in the Field of Internal Security: Visit of the Spanish Interior Minister to the FRG Interior Minister on July 3.-4., 1978"], July 7, 1978, BArch, B136-15685, folder 2.

[117] FRG Embassy Lissabon to FRG Foreign Office, Memorandum "Bekämpfung des Internationalen Terrorismus in Portugal: Aufbau einer Anti-Terror-Spezialgruppe," ["Combatting International Terrorism in Portugal: Building an Anti-Terrorism Special Group"], March 28, 1979, PA AA, B83 Vol. 1385.

[118] Anonymous, Report "Bericht über den Besuch des Bundesministers des Innern in Moskau und Leningrad vom 23. bis 27. Mai 1979," ["Report of the Visit of the Interior Minister in Moscow and Leningrad from May 23. To 27., 1979"], undated, BArch, B106-106940, folder 1.

themselves, the Interior Ministry decided to pass on non-detailed training guidelines, a schematic of the GSG 9's setup, clothing details, and manufacturing contacts. Soviet officials asked about a laser gun used by GSG 9, but since this weapon was a U.S. model, such information was not transmitted.[119] That same month, a Romanian delegation visited the FRG Interior Ministry and *Bundeskriminalamt* to discuss potential anti-terrorism collaboration. The Romanian officials were disappointed by the paltry information they learned GSG 9, and few further contacts ensued.[120] However, the European (and U.S.) special forces' branding of terrorism as an apolitical crime had allowed security officers from the FRG, Soviet Union, and Romania to briefly set aside Cold War differences to discuss a common apolitical threat – international terrorism.

Since the FRG Interior Ministry justified the GSG 9's existence by emphasizing that it was a tool to uphold the rule of law, it was wary of undermining this justification by collaborating with states that had especially poor civil and human rights records. It frequently turned down requests for special forces training or information from states that violated their citizens' civil liberties, or ones where the Interior Ministry feared that the special forces training would be applied in foreign interventions contrary to FRG interests. Collaboration requests turned down by the FRG Interior Ministry included from states such as Zambia, Cameroon, Egypt, Lebanon, Pakistan, Afghanistan, Thailand, Columbia, and Uruguay.[121]

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[119] Dr. Bochmann (Division P I 2, FRG Interior Ministry) to Dr. Wieck (FRG Embassy Moscow), Memorandum "Zusammenarbeit mit der Sowjetunion bei der Terrorismusbekämpfung: Erledigung noch offenstehender Wünsche der sowjetischen Seite aus den Gesprächen anlässlich des Besuchs von Bundesminister Baum in Moskau Ende Mai 1979," ["Collaboration with the Soviet Union in Combatting Terrorism: Completion of still Open Wishes of the Soviet Side from the Discussions on the Occasion of Minister Baum's Visit to Moscow at the End of May 1979"], July 6, 1970, BArch, B106-106940, folder 2.

[120] Leading Police Director Friedrich Zimmermann (Division P III 1) to Division P I 2, FRG Foreign Office, Memorandum "Deutsch-rumänische Zusammenarbeit: Besuch einer rumänischen Delegation im BMI am 4.5.1979," ["German-Romanian Collaboration: Visit of a Romanian Delegation in the FRG Interior Ministry on May 4, 1979"], June 29, 1979, BArch, B106-106930, folder 2.

[121] Meyer-Landrut to Genscher, Memorandum "Internationaler Terrorismus: Unterstützung von ausländischen Sicherheitskräften," with attachment, June 8, 1978, PA AA, ZA Vol. 111188.

The network of special forces officers developed during the late 1970s circulated a mixture of law enforcement and counterinsurgency skills. But they concentrated on the latter as the best means to resolve terrorist crises. A wide range of states instituted special forces units specifically to protect domestic security and counter terrorist attacks. These units ignored the political dimensions of terrorism. Instead, they focused on it as a mechanism to commit violence - to be prevented through counterinsurgent martial skills.

The creation of such units was marked by international collaboration from the outset. Representatives from these units frequently observed one another's setup, training, and equipment, seeking information on how to organize and improve their own group. Relations between security institutions in key allies, such as the UK, United States, and FRG, became strong enough that these states exchanged trainers, and invited foreign officials to participate in domestic training seminars. For example, the GSG 9 trained over one hundred foreign officers in 1979 and 1980.[122]

The special forces network with its counterinsurgent tactics shaped the counterterrorism policies of the United States, the UK, and the FRG, among others, for the next decades. These government held such units in high regard and continued their interaction.[123] By the 1980s, special forces units that served domestic security efforts were integrated into military planning in the UK, the United States, and the FRG. Such units conducted joint exercises both with one another and with the other's military. In North American, European, and other states, governments increasingly prioritized this blend of law enforcement and military skills in all terrorism-related situations.

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[122] Office II 2, FRG Federal Authority for Audit Matters, to Division P II 2, FRG Interior Ministry, Memorandum, July 28, 1981, BArch, B106-371685, folder 2.

[123] Division P III 1, FRG Interior Ministry, to Office 300 (Argentina, Uruguay, Paraguay, Brazil, and Caribbean), FRG Foreign Office, Memorandum "Internationaler Wettkampf für Spezialeinheiten bei der GSG 9," ["International Competition for Special Forces Units Hosted by the GSG 9"], March 5, 1985, PA AA, ZA Vol. 135331.

Conclusion

After 1972, new transgovernmental networks among European states shaped anti-terrorism policies in the region and advanced the FRG's securitization of terrorism. The Black September attack at the 1972 Munich Olympic Games forced especially the FRG to confront the threat of "international terrorism," highlighting that domestic means were insufficient to address transnationally active terrorists. The FRG Interior Ministry became a principal advocate for multilateral anti-terrorism collaboration. To address this threat, the interior, justice, law enforcement, and military institutions in the EC, Western Europe, and the United States developed new transgovernmental networks of security experts. These new actors focused on terrorism as a domestic security—not foreign relations--issue. However, ministry bureaucrats and special forces officers realized that they could improve their own domestic security by collaborating with other states and sharing law enforcement and counterinsurgency practices. Once again, high-level politicians often initiated collaborative processes, and signed off on results, while mid-level officials dominated the actual policymaking. The result was two transgovernmental networks, formed around TREVI and the special forces units, which developed shared policies, tactics, and skillsets to undermine terrorist activity.

These transgovernmental networks led to a diffusion of law enforcement and military skills amongst European states. In the TREVI network, interior and justice ministry, law enforcement, and intelligence officials from the EC states set up a communications network that allowed them to exchange information on terrorists and terrorist attacks quickly. They also traded specialized knowledge on forensic technology and computer services, and discussed how to potentially cooperate along their national borders. These discussions resulted in several bilateral security agreements and treaties and paved the way for more formal European integration in the field of "internal security." Meanwhile, the special forces units network led to an exchange of law enforcement and counterinsurgency skills among participating units. Interior ministries, police and military agencies quickly accepted such units, and their blended civilian and military skill sets, as efficient resolvers of terrorist crises. The special forces units militarized the issue of terrorism.

By labeling terrorism as an internal security issue and collaborating secretly, EC states fostered policies that treated terrorism as an apolitical security threat. Since they were working in the field of internal security, the officials in the TREVI and special forces networks operated under a more stringent cloak of secrecy than diplomats at the United Nations or in other international organizations. Officials thus found themselves discussing anti-terrorism measures with like-minded experts, behind the walls of security clearances. They did not have to consider the public discourse on terrorism, which often included the political, national liberation motivations of terrorists. Their communication became an echo chamber in which specialists' focus on expertise and mechanisms against terrorism were amplified. The origins or political ramifications of terrorism were less important than preventing it. Since these officials mainly formulated and recommended anti-terrorism policies in the EC and North America, states adopted this apolitical treatment of terrorism throughout the mid-to late 1970s.

In turn, terrorists had no opportunities to influence these secret discussions. They intended their attacks to influence the mainstream media, but few experts in TREVI or the special forces relied on such media to form their opinion on anti-terrorist measures. In international organizations, Arab and African states, along with nonaligned and socialist countries, were willing to debate and defend the rights of national liberation groups. No such representatives were present in TREVI or the special forces.

Overall, the internal security networks were successful in branding terrorism as an apolitical mechanism and laid the groundwork for similar multilateral anti-terrorism efforts. By the mid-1970s, the FRG Justice Ministry and Foreign Office pursued new conventions to extradite terrorists as criminals in the Council of Europe and the United Nations, respectively. The three FRG ministries hoped that completed agreements and negotiation advances from one of them could serve as a model and help the other anti-terrorism initiatives succeed as well. However, neither the Justice Ministry nor the Foreign Office had the luxury of operating in the secrecy enjoyed by the Interior Ministry officials. They undertook their multilateral efforts in the public eye, which raised old-trodden public and state-to-state controversies about whether to account for

terrorists' political motivations – once again pitting the FRG, alongside the United States and the U.K., against France, the Soviet Union, and especially the Arab world.

CHAPTER 5

TERRORISM AND EXTRADITION WITHIN THE CONTEXT OF EUROPEAN INTEGRATION

The government of the Federal Republic of Germany (FRG) became a driver of European anti-terrorism efforts after the 1972 Munich Olympic Games attack. The FRG Interior Ministry created transgovernmental connections among the European Community's (EC) member states, fostering bilateral agreements and a multilateral network, TREVI, against terrorism. Other FRG state institutions, the Foreign Office and the Justice Ministry, built on the Interior Ministry's successes by pursuing their own distinct multilateral anti-terrorism projects.

From 1974 to 1980, the FRG Justice Ministry worked to create a legal convention against terrorism, based on earlier U.S.-introduced conventions and the 1972 U.S. anti-terrorism campaign in the United Nations (UN). This convention required states to either extradite or prosecute terrorists as criminals, denying them political status. The FRG was able to pass its preferred convention. The European states involved pursued their own security priorities, nevertheless, and consequently undermined the convention's reach. Though European states fostered economic and political integration in the 1970s, anti-terrorism negotiations highlighted that individual states increasingly contested multilateral governance. Once again, the involved states could not agree on how far to condemn politically motivated violence. While states facing significant terroristic violence claimed that terrorism was an apolitical criminal act, states with low levels of terrorism focused on the danger to political dissidents' civil rights. The FRG's campaign to criminalize terrorism caused the regulation of crime to become politically divisive in Western Europe.

This chapter traces how the idea of regulating terrorism as an apolitical criminal problem through multilateral conventions reached its widest dissemination in the mid- to late 1970s. The United States had fostered the conventions used as precedents - the International Civil Aviation Organization (ICAO)'s Hague Convention, the ICAO's Montreal Convention, and the UN's Diplomats Convention. The FRG succeeded in passing a multilateral convention that labeled

terroristic acts as criminal offenses, the "European Convention on the Suppression of Terrorism" (European Convention).[1] Western European states cemented an anti-terrorism policy in international law with the European Convention which depoliticized and criminalized terrorism itself – not just individual terroristic acts. This policy became standard for many industrialized states.

However, the FRG's multilateral anti-terrorism efforts institutionalized terrorism as a problem in a way that kept the problem intact and unresolved. Prior disputes had been mainly between former imperial and emerging and newly-independent states. The negotiations over the European Convention revealed that European states could not form a homogenous position on terrorism and political violence even among themselves. By criminalizing the political act of terrorism, European states politicized their regulation of crime. Since these discussions occurred within regional international organizations, the European Community and Council of Europe, officials had to consider public reactions in ways that the TREVI transgovernmental networks did not. Despite their public pursuit of European integration and global interdependence, European leaders challenged mechanisms of international governance when these did not align with national interests.

In negotiations, Justice Ministry officials addressed fundamental questions about who had the right to commit politically motivated violence. When faced with questions about who to declare a terrorist, who to declare a criminal, and what types of politically motivated violence to outlaw, European states operated according to their own interests instead of reaching a common position. In addition, Western Europeans officials were exhausted by the long negotiations surrounding the convention, the process of acquiring a sufficient number of signatures, and its ultimate ratification. Their exhaustion, shared by U.S. officials, would increase Western bureaucrats' disposition toward alternative interpretations of terrorism, such as the idea that

[1] Council of Europe, "European Convention on the Suppression of Terrorism," *Council of Europe*, accessed December 7, 2017, https://rm.coe.int/16800771b2.

terrorists were Soviet geopolitical puppets.[2] These negotiations eventually achieved the consensus understanding that "international terrorism" was too broad a term for states to condemn as apolitical and criminal in public, even if officials used such calculations to create policy behind closed doors.

The FRG Justice Ministry's Efforts to Create an Anti-Terrorism Convention

After the 1972 Munich Olympic Games attack, the FRG leadership sought to collaborate with its European neighbors to create new anti-terrorism capacities that crossed national boundaries. This effort was spearheaded by Interior Minister Hans-Dietrich Genscher. During the attack, Palestinian fedayeen took eleven Israeli team members hostage. All hostages and most terrorists died in a feeble attempt to stop the terrorists at a local air base. Without experience or training, FRG and local leaders had been at a loss as to how to handle the situation. In addition to domestic measures, the Brandt Cabinet decided to reach out to neighboring allied states. To prevent further Palestinian attacks, Genscher advocated increasing informal collaboration between European states on border patrols, law enforcement, and intelligence.[3]

Meanwhile, practical considerations drove the FRG Foreign Office to recommend a multilateral regional convention, passed by an international organization, as an anti-terrorism vehicle. A major interest for the Foreign Office was to define terrorism as quickly as possible, in order to be able to regulate and enforce efforts against it. In internal meetings immediately following the Munich attack, Foreign Office diplomats agreed that the best way to define terrorism would be within a multilateral convention. Other such conventions had previously defined offenses such as piracy or human trafficking.

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[2] See chapter 6.

[3] Undersecretary Paul-Günter Pötz (B II 5) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Vorbereitung des EG-Justizministerrats vom 26.11.1974," ["Preparation of the EC Justice Ministers' Council on 11.26.1974"], November 25, 1974, Federal Archives Germany (BArch), Federal Republic of Germany (B) Records of the Ministry of Justice (141)-65262, pp. 46-48.

In addition, an anti-terrorism convention could build on the language already used in the widely accepted ICAO Hague Convention and ICAO Montreal Conventions.[4] The FRG leadership addressed fedayeen violence principally as a domestic security issue as opposed to a foreign policy one. It thus left global efforts against Palestinian fedayeen to the U.S. State Department. The FRG lacked UN membership and could not significantly contribute to the United States' anti-terrorism initiative there regardless. Instead, FRG leaders focused on a convention close to home. FRG Foreign Minister Walter Scheel began initial inquiries about Genscher's envisioned security collaboration and a regional multilateral convention on terrorism among the other EC states just days after the Munich attack in September 1972.

Genscher and Scheel hoped that they could introduce domestic security and anti-terrorism efforts as a new avenue of European integration. Since 1954, European international organizations such as the European Community strengthened economic, social, and cultural links between Western European states.[5] By the 1970s, European leaders actively sought new ways to integrate. In 1970, EC heads of state agreed to coordinate their foreign policy and develop "European" policy stances vis-à-vis the superpowers, nonaligned states, and developing world.[6] Their coordination, named the European Political Cooperation (EPC), involved regular ad hoc

[4] Councilor Dr. Fleischhauer to Director of the Political Office of the Foreign Office Berndt von Staden, Memorandum "Bekämpfung des Terrorismus: Hausbesprechung vom 15. Sept. 1972," ["Combatting Terrorism: In-House Discussion of September 15, 1972"], September 19, 1972, Political Archive of the Foreign Office (hereafter: PA AA) Federal Republic of Germany (herafter: B)83 Vol. 980; Legal Department V4 (Foreign Office) to Legal Department V1 (Foreign Office), Memorandum "Bekämpfung des Terrorismus: Dortige Zuschrift – nachrichtlich – vom 19.9.1972," ["Combatting Terrorism: Your Writing from 09.19.1972"], September 26, 1972, PA AA, B82 Vol. 1031.

[5] For a good overview, see Alan S. Milward, *The European Rescue of the Nation-State*, 2nd ed. (London; New York: Routledge, 2000).

[6] During the period of this chapter, the EC included France, the Federal Republic of Germany (FRG), Italy, the United Kingdom, Ireland, Denmark, the Netherlands, Belgium, and Luxemburg.

meetings between relevant officials.[7] Human rights was another upcoming integrative field. The Conference for Security and Co-Operation in Europe, as well as its successor, the Organization for Security and Co-Operation in Europe, dealt with foreign policy and human rights issues.[8] Another international organization that flourished was the Council of Europe. Founded in 1949 by ten Western European states to harmonize rule of law and human rights issues amongst themselves, the Council of Europe had grown to eighteen members by the end of the 1970s, adding Scandinavian and Southern European countries. Signaling its ambition, it had even broached the problem of terroristic violence. When the Italian Foreign Ministry official Marco Fortini attempted to sway other European states to protect diplomats against terroristic violence in 1970, he pursued discussions in the Council of Europe, amongst other places.[9] These discussions did not produce substantial results, however, and terrorism remained peripheral for the Council.

Most Western European leaders did not see anti-terrorism as a potential field of cooperation in their ongoing process of European integration. They addressed terroristic violence as a domestic security threat with various national policies based on local contexts and legal traditions. Meanwhile, European collaboration on other domestic security issues remained rare, informal, and ad hoc. The Groupe de Berne was an example.[10] The Pompidou Group was another exception that proved the rule. Founded in 1971 amongst the FRG, France, Italy, the U.K. and the Benelux states, its mission was to share experiences in preventing drug trade and abuse.[11]

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[7] See European Political Co-operation (EPC) Press and Information Office "Introduction to EPC (European Political Cooperation)," 5th ed. 1988, accessed October 20, 2016, http://aei.pitt.edu/1895/1/EPC_intro.pdf.

[8] See Sarah Snyder, *Human Rights Activism and the End of the Cold War: A Transnational History of the Helsinki Network* (Cambridge: Cambridge University Press, 2011).

[9] See chapter 3 of this dissertation.

[10] See chapter 3, note 15.

[11] Pompidou Group, "History," *Council of Europe,* accessed March 5, 2018, https://www.coe.int/en/web/pompidou/about/history.

However, such collaboration was limited because the involved states did not want any foreign interference in their domestic security forces and sovereign control over violence at home. In addition, European leaders may have remembered, perhaps more so than U.S. ones, that the one previous multilateral measure against terrorism - a 1937 League of Nations convention with the stipulation to either "extradite or prosecute" terrorists as criminals - had failed a vote of ratification.[12] As a domestic security issue, terrorism was not an attractive subject for multilateral collaboration.

As a result, the FRG's first efforts to create both Genscher's domestic security collaboration and the Foreign Office's multilateral convention stalled in the EC. Following the Munich attack, the EC foreign ministers agreed to create working groups to discuss an anti-terrorism convention and informal collaboration.[13] However, these working groups produced no sustained results, and they stopped meeting in early 1973.

While the Interior Ministry turned to alternative informal forms of multilateral collaboration, the Foreign Office continued its efforts within the Council of Europe. It was supported by the Justice Ministry, which handled extradition regulations for the FRG. In 1957, the Council of Europe members had adopted the "European Convention on Extradition." The convention regulated "the extradition between Parties of persons wanted for criminal proceedings or for the carrying out of a sentence." [14] Though the convention did not apply to "political or military offenses," the FRG Foreign Office thought that a new convention could expand this pre-existing agreement to cover international terrorism - if officials could manage to precisely define this terrorism as a criminal

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[12] League of Nations, "Convention for the Prevention and Punishment of Terrorism," *World Digital Library,* accessed March 5, 2018, https://www.wdl.org/en/item/11579/.

[13] Undersecretary Paul-Günter Pötz (B II 5) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Vorbereitung des EG-Justizministerrats vom 26.11.1974," ["Preparation of the EC Justice Ministers' Council on 11.26.1974"], November 25, 1974, BArch, B141-65262, pages 46-48.

[14] Council of Europe, "European Convention on Extradition," *Council of Europe*, accessed October 20, 2016, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680064587.

offense without touching upon broader political contexts.[15] The Council of Europe had discussed a comparable (narrower) protection-of-diplomats convention in 1970, though without results.[16] From 1972 to 1974, FRG lobbying for anti-terrorism measures in the Council of Europe dragged on as well.

The Council of Europe discussions on terrorism quickly mirrored earlier and ongoing debates in the UN, ICAO, and Organization of American States (OAS). Delegates attempted to define terrorism and to decide whether to consider it a politically motivated offense.[17] After lengthy discussions, the Council of Europe passed Recommendation 703 in May 1973. This recommendation called for member states to establish regulations and enforcement mechanisms specifically against "international terrorism."[18] Resolution (74) 3 on International Terrorism, which the Council of Europe passed in January 1974, called on member states to adopt an "extradite or prosecute" convention.[19] Such conventions required states to pass criminal laws against certain offenders, apply those laws uniformly, and either submit cases for trial at home or extradite offenders. Such a convention forced states to treat offenders as criminals, and cut off other options (such as giving them combatant rights).

However, the Council of Europe faced the same problems encountered by other international organizations and the EPC, namely that it was far easier to recommend action than to actually perform the work: to define terrorism, distinguish it from political offenses, and push states to agree on these matters. Progress lagged. Most European states knew from their experiences in

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[15] Fleischhauer to von Staden, Memorandum "Bekämpfung des Terrorismus: Hausbesprechung vom 15. Sept. 1972," September 19, 1972, PA AA, B83 Vol. 980.

[16] See chapter 3.

[17] Council of Europe, "Recommendation 684 (1972): International Terrorism," *Council of Europe*, accessed December 7, 2017, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=14718&lang=en, article 7a.

[18] Consultative Assembly of the Council of Europe, "Recommendation 703 (1973) on International Terrorism," May 16, 1973, PA AA, B83 Vol. 981.

[19] Council of Europe Minister's Committee, "Resolution 74(3) on International Terrorism," Unofficial German Translation, Undated, BArch, B141-65262, pp. 235-236.

the ICAO and UN negotiations that an “extradite or prosecute” convention required substantial effort and the expenditure of political capital to negotiate. Since there had been no further terroristic violence on the scale of the Munich attack in Europe, most European leaders were unwilling to make that investment.[20]

Meanwhile, in 1973 the FRG Interior Ministry decided to pursue its own anti-terrorism initiative outside of formal international structures. This initiative was prompted by the lack of progress in the Council of Europe and the EC, as well as the U.S. failure to draft a UN convention to extradite or prosecute terrorists. The FRG Interior Ministry chose to forego formal international organizations and created a transgovernmental network to discuss domestic security collaboration with counterpart officials in other states. Its goal was to establish an independent venue where security officials from the EC states could plan and implement anti-terrorism measures - such as police cooperation in border areas, sharing intelligence and the newest criminal investigation technology, and sending law enforcement officials to observe and train abroad. By early 1974, the FRG Interior Ministry had opened negotiations with the FRG’s closest ally in the process of European integration, France. The two states’ Interior Ministry officials discussed how to collaborate in matters of domestic security. These negotiations would, over the course of several years, expand into a new transgovernmental network among all EC states codenamed TREVI.[21]

As the FRG Interior Ministry prepared for negotiations with France in the fall of 1973, it clashed with the FRG Justice Ministry. The Interior Ministry was attempting to include both extradition and requests for mutual assistance in criminal matters in its transgovernmental negotiations. By precedent, the Justice Ministry had institutional jurisdiction over both. Justice

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[20] Undersecretary Paul-Günter Pötz (B II 5, Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum “Treffen der Justizminister des Europarates am 22. Mai 1975 in Obernai b. Strassburg: Fragen der internationalen Zusammenarbeit bei der Bekämpfung des Terrorismus,“ [“Meeting of the Council of Europe Justice Ministers in Obernai near Strassbourg on May 22, 1975: Questions of International Collaboration in Combatting Terrorism“], May 16, 1975, BArch, B141-65262, pp. 226-234.

[21] See chapter 4.

officials rightly felt that the Interior Ministry was intruding on their territory. While the Interior Ministry dropped its focus on extradition, it continued to discuss mutual assistance in criminal matters with France, and later other countries.[22]

To safeguard its institutional monopoly over extradition, in January 1974 the FRG Justice Ministry decided to pursue a European regional convention on the extradition of terrorists.[23] Responsible for day-to-day policy was Paul-Günter Pötz, the head of the Ministry's "International Criminal Law" division, and Erich Corves, head of the more specialized "International Fight against Terrorism" office. Pötz and Corves decided to continue working within the Council of Europe; this international organization had already called upon its members to draft an anti-terrorism convention.

Like the Interior Ministry, the Justice Ministry's main goal was a quick and decisive result to deter further attacks such as at Munich in 1972. The FRG's ministries sought agreements that were easy to negotiate and to implement. Officials were interested in practical results, such as being able to gain custody of and prosecute terrorists more expeditiously. However, the Justice Ministry faced additional pressure because its operations were transparent. The Interior Ministry's efforts were carried out behind closed doors (its officials all possessed security clearances). The pressure to act quickly and retain a positive public image led Justice Ministry officials to favor the format of an "extradite or prosecute" convention. Other states had generally accepted the earlier conventions, and agreed that such agreements fostered the rule of law. However, the earlier anti-hijacking and protection-of-diplomats conventions had regulated specific types of terroristic violence. The FRG Justice Ministry was now attempting what the U.S. State Department had failed to achieve: the establishment of an "extradite or prosecute" convention against the broad category of "terrorism.".

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[22] Oberloskamp, *Codename TREVI,* 54-56.

[23] Pötz to Vogel, Memorandum "Treffen der Justizminister des Europarates am 22. Mai 1975 in Obernai," May 16, 1975, BArch, B141-65262, pp. 226-234.

To pass a Council of Europe convention against terrorism, Pötz knew that the FRG would require French support. Along with the FRG France was the largest power involved in process of European integration. In addition, French opposition to any regulations on terroristic violence had stalled earlier Italian and U.S. anti-terrorism efforts within Europe and the UN. Future resistance was to be expected. In early 1974, the FRG Interior Ministry approached the French Interior Ministry to discuss collaboration on internal security issues.[24] FRG Justice Ministry officials piggybacked on this opportunity. They used the occasion of the visit to reach out to the French Justice Ministry.[25] The FRG officials' plan was to get the French Justice Ministry on board first, undermining future French resistance. Then, they could create a West German-French lobbying campaign in the Council of Europe which would be more forceful than a sole FRG effort. German officials arranged a meeting between Jahn and French Justice Minister Jean Taittinger to discuss a Council of Europe convention in early 1974.

Taittinger showed interest in the FRG project, but other French governmental ministries emphasized that it could undermine French interests. While the FRG Interior Ministry broached collaboration with France in secret, the Justice Ministry's effort would be known to the public. The French Ministry of Foreign Affairs voiced substantial opposition. It worried that a convention against terrorism would undermine French economic and diplomatic relations with Arab states in the wake of the 1973 oil crisis.[26] The French Foreign Ministry's policy was to protect access to Middle Eastern oil in the years after 1973, and make French territory and institutions a less attractive target for radical terrorist Palestinian groups such as the Black September Organization or the Popular Front for the Liberation of Palestine – External Operations. Meanwhile, French officials across the board warned that domestic support for a multilateral anti-terrorism convention

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[24] See chapter 4.

[25] Pötz to Vogel, Memorandum "Treffen der Justizminister des Europarates am 22. Mai 1975 in Obernai," May 16, 1975, BArch, B141-65262, pp. 226-234.

[26] See Bernhard Blumenau, "Taming the Beast: West Germany, the Political Offence Exception and the Council of Europe Convention on the Suppression of Terrorism," *Terrorism and Political Violence* 27, no. 2 (March 2015): 310–30, 321.

would be weak. A strong leftist scene in France supported the political motivations, if not always the actions, of left-leaning terrorists throughout Europe. Leftists had the power to oppose and disrupt the domestic ratification of any anti-terrorism convention in France. The French Justice Ministry thus faced significant domestic opposition to a potential Council of Europe convention.

However, the FRG Justice Ministry's initiative also played to broader French interests. The Gaullist political movement in France sought to create a strong, integrated Europe, inspired by France, that was independent of the United States and the Soviet Union in defense, security, and economic respects. After World War II, French President Charles de Gaulle had endeavored to offset U.S. and Soviet power in Europe by creating separate French defense capacities and strengthening European economic integration. French President Georges Pompidou and his successor Valery Giscard d'Estaing were leading Gaullists or Gaullist allies, respectively.[27] They, along with Taittinger, thought that the FRG Justice Ministry's proposed Council of Europe effort might be a vehicle to support European unification and increase French influence in Europe. They would have to ensure that a multilateral anti-terrorism convention covered a wide range of anti-terrorist and anti-criminal mechanisms as possible. If they could pass an anti-terrorism agreement that was broad enough to be an anti-crime agreement, it might not specifically offend Arab states or French leftists. The French Justice Ministry tentatively agreed to collaborate with the West Germans.

From the outset, French and FRG security interests thus diverged. The FRG Justice Ministry sought to improve its domestic security by creating multilateral European agreement to extradite terrorists. Jahn and Pötz were interested in practical, easy to implement, democratically legitimate measures. Meanwhile, the French Justice Ministry was interested in advancing the process of European integration - and the French influence within it. French officials cared less about the mechanisms of any agreement, and more about its potential geopolitical impact.

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[27] See Frédéric Bozo, *French Foreign Policy since 1945: An Introduction* (New York: Berghahn Books, 2016).

However, the Franco-German divergence of interests did not impede their initial discussions about creating a convention against international terrorism in the Council of Europe. From the spring of 1974 to the spring of 1975, FRG and French officials held discussions to align their policy positions, and Pötz convinced his French counterparts to support the "extradite or prosecute" convention which Council of Europe Resolution 74 (3) had called for. Jahn and Taittinger passed their jobs on to successors, Hans-Jochen Vogel and Jean Lecanuet, who supported the discussions, as did the new FRG chancellor Helmut Schmidt.[28]

In this period, several attacks forced the FRG government to acknowledge that West German terrorists were also acting transnationally, increasing the importance of being able to extradite them. In February 1975, members of the June 2 Movement, an FRG terrorist group aligned with the RAF, kidnapped Peter Lorenz, a candidate in the West Berlin mayoral race. Schmidt's Cabinet agreed to exchange Lorenz for several RAF members incarcerated in West Berlin. The terrorists boarded a flight to South Yemen and vanished. On April 24, 1975, RAF members occupied the FRG embassy in Stockholm, Sweden, killing one FRG diplomat. Swedish police stormed and regained the embassy. Together, these incidents marked a turning point, as Schmidt privately decided not to publicly concede to terrorists' demands in the future.[29] His government was concerned that the released West German terrorists would commit further violence abroad. They prioritized the creation of extradition capacities that would allow them to regain custody of these terrorists.

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[28] Brandt resigned in 1974 when a close aide was exposed as an East German spy.

[29] For an analysis of the Lorenz kidnapping, see Matthias Dahlke, "'Nur eingeschränkte Krisenbereitschaft': Die staatliche Reaktion auf die Entführung des CDU-Politikers Peter Lorenz 1975," ["'Only Limited Crisis Preparation': The State Reaction to the Kidnapping of the CDU-Politician Peter Lorenz in 1975"], *Vierteljahrshefte für Zeitgeschichte* 55, no. 4 (October 2007): 641-678. On the political repercussions of releasing FRG terrorists during the Lorenz kidnapping, see Markus Eikel, "Keine Atempause: Das Krisenmanagement der Bundesregierung und die Flugzeugentführung von Entebbe 1976," ["No Pause for Breath: The Crisis Management of the Federal Government and the Entebbe Hijacking 1976"], *Vierteljahrshefte für Zeitgeschichte* 61, no. 2 (April 2013): 239-261.

Following these incidents, Vogel and Lecanuet introduced the idea of a new anti-terrorism extradition convention in the Council of Europe. On May 22, 1975, Vogel mentioned extradition regulations for terrorists at a meeting of the Council of Europe's justice ministers in Obernai, France. In a series of informal talks, he and Lecanuet convinced the other attendees to dedicate resources toward a new anti-terrorist extradition agreement.

By speaking informally and secretly to their colleagues, Vogel and Lecanuet launched another attempt to weaken the political offense exemption. This standard inclusion in extradition treaties protected politically motivated actors from extradition. The U.S. State Department had attempted to delete it from agreements concerning terroristic violence since 1968, but had failed because neither U.S. allies nor developing states had been willing to support the idea. The U.K. and France had voiced general worries about damaging all political dissidents' civil rights, especially under authoritarian regimes. Meanwhile, Arab and African states had accused the United States of imperial geopolitical goals and seeking to discredit the political agency of national liberation organizations. The regional scope of the Council of Europe allowed Vogel and Lecanuet to broach an issue that the State Department had not been able to touch in the regional OAS, the technical ICAO, or the global UN.

Vogel and Lecanuet's efforts were largely successful. The Council of Europe justice ministers decided that their expert bureaucrats should collaborate and negotiate about how to define a "politically motivated act" so that acts of terrorism did not qualify. This formulation did not provide any hints toward a substantive solution. Nevertheless, the ministers agreed that an anti-terrorist extradition agreement should be ready to sign quickly, by their next meeting in June of 1976.[30] Until then, officials would have to figure out how to handle the political offense exemption in a manner that eighteen European states with differing legal traditions could agree on.

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[30] Undersecretary Paul-Günter Pötz (B II 5, Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Internationale Massnahmen zur Bekämpfung des Terrorismus, hier: Dem BMJ nachrichtlich zugegangenes Schreiben des Chefs des Bundeskanzleramtes an den BMI," ["International Measures to Combat Terrorism: Letter that the Justice Ministry was copied on from the Head of the Chancellery to the Interior Ministry"], June 13,1975, BArch, B141-65263, pp. 7-14.

The Council of Europe Negotiations and German-French Divisions

Overall, the justice ministers had agreed to fill a tall order. Lower-ranking Justice Ministry bureaucrats now had to draft an "extradite or prosecute" convention which would redefine the political offense exemption so narrowly that terroristic violence did not qualify – a task that committees in the UN, ICAO, and OAS had failed to achieve. After their informal discussions, the justice ministers passed control of the negotiations to the Council of Europe's Committee on Crime Problems, where nationally delegated expert specialists could negotiate details within a secluded venue. These specialists included representatives from national law enforcement agencies, academics, and Justice Ministry officials from all Council of Europe member states.[31] This committee instituted the "Ad Hoc Committee to examine certain new forms of concerted acts of violence" to work out details in October 1975. Delegations were usually led by the heads of the particular Justice Ministry unit tasked with international anti-terrorism measures. The larger EC states also sent supporting personnel from the anti-terrorism units within their foreign and interior ministries.

The issue of extradition was at the heart of negotiations. The eighteen Council of Europe members held a wide variety of legalistic traditions and had enacted differing domestic laws against terrorism. German and French justice officials knew that they would have to build some kind of bridge between these varying regulations. French officials began to recommend integrating and harmonizing all collaboration in the realm of criminal law – not just extradition, but also mutual assistance in criminal matters. This suggestion was a long-term process which would be very complex. As an alternative, FRG officials championed the "extradite or prosecute" approach. FRG delegates asked the other Council of Europe states to pass national criminal laws

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[31] Undersecretary Paul-Günter Pötz (B II 5, Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Europarat – XXIV. Vollsitzung des Europäischen Ausschusses für Strafrechtsfragen vom 26. bis 30, Mai 1975 in Strassburg, hier: TOP I 11 – Konferenz über die Kriminalpolitik (März 1975) und Arbeitsprogramm für die künftige Tätigkeit des CEPC," ["Council of Europe – XXIV. Full Meeting of the Committee for Criminal Matters from May 26-30 1975 in Strassbourg: Topic I 11 – Conference on Crime Politics (March 1975) and Agenda for future Work of the CEPC"], June 1975, PA AA, B83 Vol. 981.

against terrorism and apply them uniformly. Like U.S. State Department officials in earlier negotiations, FRG delegates recommended that states should be required to prosecute any terroristic actor found on their territory according to national criminal law, or, alternatively, required to extradite them to another state for prosecution.[32] This approach undercut international terrorism because terrorists could now expect to be placed on trial for their crimes anywhere and everywhere, even if they fled abroad. They could not claim combatant status, and had to rely on state officials if they wanted an exemption from extradition due to political motivation. The other delegations agreed to the "extradite or prosecute" concept.

To regulate terrorists' extradition, the ad hoc committee had to solve two closely related challenges: It had to define what exactly constituted an act of "terrorism" and it had to delineate how far the political offense exemption could be scaled back so that it would not apply to such terroristic acts. The greatest controversy in the working group was over the question of whether terroristic attacks were extraditable crimes at all. The 1957 European Extradition Convention's political offense exemption stated that perpetrators with political motivations could not be extradited. For example, a bombing was not an extraditable offense if it was performed by Palestinian extremists who claimed political motivation as part of a national liberation insurgency against Israel. The West German delegates wanted to abolish this political offense exemption and make all terroristic acts extraditable as ordinary, apolitical crimes. Many other delegations were hesitant to cut too deeply into the exemption. It provided a legal safety net for political dissidents and protected them from being returned to a state that might violate their civil liberties.[33]

The delegates began by considering approaches to narrow the political offense exemption. They met from December 6-7, 1975, under the leadership of Belgian delegation head Suzanne

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[32] Council of Europe, European Committee on Crime Problems, "Committee to Examine the Problems Raised by Certain New Forms of Concerted Acts of Violence: Preliminary Draft Convention: Prepared by the Drafting Group at its Meeting in Brussels on 4 and 5 December 1975," December 8, 1975, PA AA, B83 Vol. 981.

[33] European Committee on Crime Problems, "Committee: Preliminary Draft Convention," December 8, 1975, PA AA, B83 Vol. 981.

Oschinsky, a managing director in the Belgian Justice Ministry, and created a list of options. The first option eliminated the political offense exemption altogether. Another solution allowed states to ignore an offender's political motivations when considering whether to extradite. A third choice permitted offenders to be extradited if their attack occurred in a state unconnected to their political motivation. One other option listed categories of crimes which should never fall under the label of politically motivated offenses, including acts that threatened many lives, acts that threatened innocent lives, or acts that displayed unusual cruelty in their execution.[34] This was the only option that attempted to define terrorism.

Two weeks later, a hostage takeover at the Organization of Petroleum Exporting Countries (OPEC) headquarters in Vienna highlighted that "international terrorism" was not just Palestinian. Multitudinous actors and cross-border contacts from various states were involved. The OPEC attack in December 1975 was led by Venezuelan terrorist "Carlos the Jackal," and the Schmidt cabinet was embarrassed because two FRG citizens were part of his group. One, Gabrielle Kröcher-Tiedemann, had been released as part of the Lorenz exchange. The attackers seized the OPEC headquarters, killed three people, and forced the Austrian government to let them escape to Algeria with forty-two hostages, including several OPEC states' petroleum ministers. The terrorists demanded that the OPEC states recognize and support Palestinian fedayeen. They demonstrated that transnational collaboration between terrorists of various nationalities was an ongoing threat and that terrorists operated freely within the Council of Europe's member states. The attack affirmed how crucial the issue of extradition would be to stop "international terrorists" from traveling and seeking refuge abroad.

Acting with haste, the ad hoc committee chose the solution to the question of the political offense exemption that they believed would be easiest to implement. In its second meeting from February 2-6, 1976, the group agreed to list offenses which, in the future, would not qualify for the

[34] European Committee on Crime Problems, "Committee: Preliminary Draft Convention," December 8, 1975, PA AA, B83 Vol. 981.

political motivation exemption. This list also formally laid out what types of attacks European states would consider acts of terrorism.

The delegates took a two-pronged approach, listing both clear and vague definitions of terrorism. Article one of the convention draft prohibited the political exemption of crimes covered under the ICAO Hague Convention, the ICAO Montreal Convention, the UN Diplomats convention, and all other attacks on diplomats, hostage-takings, and bombings. These acts were explicitly defined as terrorism. The approach of listing crimes had functioned well before and had facilitated the adoption of the three conventions listed above. In contrast, article two extended the definition of terrorism to include all "serious offenses against the life, physical integrity, or liberty of a person."[35] This was a vague definition of terrorism. This approach left significant leeway for individual states to choose whether an act was a "serious offense." Arab and African states had successfully prevented such a definition, however vague, in the UN. These often recently independent states worried that a vague definition of terrorism gave established states too much power to label anyone and everyone a terrorist. However, these countries were not represented in the Council of Europe. From another point of view, this formulation also gave states the right to deny that a terroristic attack merited the "serious offense" label. It would make the draft amenable to countries worried about cutting into dissidents' civil rights.

The ad hoc committee's delegates agreed that their two-pronged definition of terrorism was the fastest, best solution feasible under the circumstances. It would not abolish the political offense exemption. No state would be compelled to extradite anyone, but all had the option to do so if they wanted it. [36] This solution placed all the power to determine who was a terrorist or what was a terroristic act in the hands of state officials. It ignored any input from non-state actors such

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[35] Council of Europe, European Committee on Crime Problems, "Committee to Examine the Problems Raised by Certain New Forms of Concerted Acts of Violence: Preliminary Draft European Convention on the Suppression of Terrorism: Adopted by the Committee at its Meeting in Strasbourg from 2 to 6 February 1976," February 10, 1976, PA AA, B83 Vol. 981.

[36] European Committee on Crime Problems, "Committee: Preliminary Draft European Convention on the Suppression of Terrorism," February 10, 1976, PA AA, B83 Vol. 981, p. 2.

as civil rights activists or terrorists themselves. FRG officials, in particular, were delighted that the convention draft seemed to fit most of their needs and allowed them to seek extradition for a wide range of violent acts - even if it included loopholes through the "serious offenses" formulation.

West German officials hoped that the resulting convention could serve as a model for future anti-terrorist agreements.[37] Knowing that previous ICAO, OAS, and UN negotiations had been difficult, in January 1976 FRG Foreign Office, Interior Ministry, and Justice Ministry officials decided that they would continue to pursue separate anti-terrorism initiatives.[38] New Interior Minister Werner Maihofer convinced other EC states to share intelligence and coordinate law enforcement cooperation in what would become the TREVI network.[39] Meanwhile, Hans-Dietrich Genscher, now Foreign Minister, saw an opportunity to introduce an "extradite or prosecute" convention against hostage-taking in the United Nations.[40] He began lobbying for such a convention in the summer of 1976.[41] In splitting their efforts, FRG officials emphasized that if one of these initiative failed, the others might succeed. This segregated approach could, FRG officials hoped, permit them to undermine the African and Arab and even allied resistance which prior U.S. efforts had faced.[42] Vogel, Maihofer, and Genscher were counting on the fact that a successful initiative could become a model to support the others, however. In January 1976, the Justice Ministry's extradition convention in the Council of Europe was the first FRG initiative

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[37] See Bernhard Blumenau, *The United Nations and Terrorism: Germany, Multilateralism, and Antiterrorism Efforts in the 1970s* (Houndmills, Basingstoke: Palgrave MacMillan, 2014).

[38] Undersecretary Streicher (ÖS1, FRG Interior Ministry) to FRG Interior Werner Maihofer, Memorandum "Vorbereitung einer europäischen Konferenz für Innere Sicherheit: ‚Pakt gegen den Terrorismus,'" ["Preparation of a European Conference on Internal Security: 'Pact against Terrorism'"], January 30, 1976, BArch, B Records of the Ministry of the Interior (106)-78829.

[39] See chapter 4.

[40] See chapter 6.

[41] See Bernhard Blumenau, *The United Nations and Terrorism*; and chapter 6.

[42] Streicher to Maihofer, "Vorbereitung einer europäischen Konferenz für Innere Sicherheit: ‚Pakt gegen den Terrorismus,'" January 30, 1976, BArch, B106-78829.

which publicly approached completion. Genscher and Maihofer hoped that the adoption of this convention could serve as a successful model, bolstering the FRG policy positions for their respective public UN lobbying efforts and secret TREVI cooperation.[43]

As the working group completed its convention draft, however, the collaboration between French and German delegates broke down. Neither state was willing to give up the security interests that had driven them into the negotiations. When the Council of Europe attempted to have the convention draft signed on June 25, 1976, the French delegation refused, halting all adoption proceedings.

French officials justified their refusal by emphasizing the ways in which the convention draft did not address French interests. When prompted, French Interior Minister Michel Poniatowski told Maihofer that the convention was too imprecise.[44] French objections centered on the "serious offenses" article. On the one hand, it allowed states to label any particularly serious offense, even if committed for political purposes, as an extraditable ordinary crime. French leftists would refuse to accept this powerful tool to define terrorism. In addition, the French Foreign Ministry worried that an endorsement of this blanket authority to criminalize any terrorist might harm French diplomatic relations with Arab states that supported Palestinian national liberation efforts.

On the other hand, however, the convention also did not clarify what a "serious offense" was. States could still use the political offense exemption to refuse an extradition request. Therefore, French Gaullist leaders could not claim they had negotiated a tough convention that undoubtedly increased domestic security in Europe.[45] They could not present the convention as a prestigious European integration project. While German justice officials were anxious to pass the convention, French officials could not accept it.

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[43] First Councilor Otto von der Gablenz (Political Division 2, Foreign Office) to FRG Foreign Minister Hans-Dietrich Genscher, Memorandum "Haltung der Bundesregierung zur Anti-Terrorismus-Konvention des Europarats (EuR)," ["Position of the FRG Federal Government to the Council of Europe's Anti-Terrorism Convention"], July 9, 1976, PA AA, B83 Vol. 982.

[44] Blumenau, "Taming the Beast," 317.

[45] Blumenau, "Taming the Beast," 317.

Worse still from the FRG perspective, the French government used the Bonn's desperation to pass the existing convention draft as leverage to achieve French aims, particularly to begin negotiations for a broader anti-terrorism convention. In his discussion with Maihofer, Poniatowski requested that the negotiations for terrorist extraditions move from the Council of Europe to the smaller EPC, a set of ad hoc working groups in which EC states coordinated foreign policy. Poniatowski argued that the nine EC members that made up the EPC would cooperate more efficiently and create a more politically relevant agreement.[46] With less involved states and an informal setting, France would hold more influence in new negotiations.

French demands to move to the EPC were bolstered after the Entebbe hijacking. Shortly after the failed Council of Europe signing ceremony, on June 27, 1976, members of the extremist Palestinian group Popular Front for the Liberation of Palestine – External Operations, as well as two FRG terrorists associated with the RAF, hijacked an Air France aircraft to Entebbe, Uganda. They held over one hundred passengers hostage in the local airport terminal. Israeli special forces resolved the hijacking and rescued the hostages in a clandestine raid on July 4, 1976.[47] The EPC's most senior ad hoc group, the European Council (made up of placeholders for the EC's heads of state) reacted with a resolution on July 13, 1976. It requested that its members develop an EPC "extradite or prosecute" agreement against hostage-taking.[48] French officials leveraged this resolution to argue that discussions about the extradition of terrorists should move into the EPC.

Subsequent political wrangling revealed that neither the FRG nor France was willing to compromise on its national interests, which undermined the reach and utility of the future Council

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[46] Blumenau, "Taming the Beast," 317.

[47] For further discussion of the consequences of the Entebbe raid on the development of special forces units in France, the FRG, and elsewhere, see chapter 4.

[48] First Councilor Otto von der Gablenz (Political Division 2, Foreign Office) to Division 011, Foreign Office, Memorandum "Sachstand: Zusammenarbeit der Neun Innen- oder Justizminister im Bereich der Inneren Sicherheit," ["State of Affairs: Collaboration of the Nine Interior- or Justice Ministers in the Field of Internal Security"], July 22, 1976, PA AA, B83 Vol. 982.

of Europe convention. French aims to create a prestigious convention among the nine EC members clashed with the FRG's goal to regulate extradition quickly and get as many of the eighteen Council of Europe members as possible on board. Helmut Schmidt's cabinet placed significant pressure on the French government to sign the Council of Europe convention. Schmidt ordered all three ministries involved in international anti-terrorism efforts - the Foreign Office and Ministries of Justice and Interior - to undercut French objections to the convention draft. The ministries emphasized that the convention was a completed draft which could be signed immediately.[49] In subsequent weeks, the FRG Foreign Office sent its Paris ambassador, Axel Herbst, and the head of its France division, Günther van Well, to pressure French officials in Paris, the Council of Europe, and the EPC. The two stressed that the Council of Europe convention had an immediate effect because it would cut off safe havens for terrorists throughout northern, western, and southern Europe, even if it did include loopholes.[50] Van Well also tried to shape the European Council's July 13 proclamation to his benefit, arguing that France should sign the Council of Europe convention because further French interests would be met in the future through a new EPC convention.[51] Though these arguments met little receptivity in the French government, FRG officials pressed on.

In September 1976, the FRG Foreign Office persuaded the French to sign the convention by adding yet another loophole – the option of issuing a reservation. When van Well met with FRG specialists in the French Ministry of Foreign Affairs, he negotiated that France would withdraw its veto. In return, the FRG Justice Ministry would ensure that the convention text allowed countries

[49] Von der Gablenz to Division 011, Memorandum "Zusammenarbeit der Neun Innen- oder Justizminister im Bereich der Inneren Sicherheit," July 22, 1976, PA AA, B83 Vol. 982.

[50] First Councilor Otto von der Gablenz (Political Division 2, Foreign Office) to Division 011, Foreign Office, Memorandum "Sachstand: Anti-Terrorismus-Konvention des Europarats," ["State of Affairs: The Council of Europe's Anti-Terrorism Convention"], July 22, 1976, PA AA, B83 Vol. 982.

[51] First Councilor Otto von der Gablenz (Political Division 2, Foreign Office) to FRG Embassy Paris, Telegram 2726, July 14, 1976, BArch, B141-77289, pp. 6-8.

to formally file reservations to the convention.[52] A reservation allows a state to become party to an international agreement even if said agreement has clauses that are unacceptable to that state. The reservation is a unilateral declaration; it declares that all content of the agreement applies to a state, except for the clause about which the state has issued the reservation.[53] Such a reservation allowed the administration of French President Valery Giscard d'Estaing to ignore certain sections of the convention, placating the Ministry of Foreign Affairs and French leftists. Ironically, this compromise created further loopholes, which was one of the concerns that Poniatowski had expressed in the first place. The West German Justice Ministry worried about the reservations' potential to weaken the convention, since any country could declare that it was not bound to segments of the convention. However, FRG officials decided that a French signature would be preferable to a continued veto, and that a compromised convention was better than none at all. The head of the Legal Division at the Council of Europe, FRG justice official Heribert Golsong, quickly moved the convention through the various bureaucratic stages of adoption.[54]

Meanwhile, the FRG Justice Ministry also thwarted separate Irish efforts to strengthen the political offense exemption in the convention draft. On June 25, 1976, the Irish delegation had abstained from the first vote on the convention draft, stating that its government did not want to sign a treaty that it perceived as emphasizing extradition over prosecution. Though the Irish delegates did not say so specifically, in all likelihood the political violence in Northern Ireland prompted them to ensure that only Irish courts tried Irish citizens. Pötz ignored the Irish

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[52] Director of the Legal Division (Foreign Office) to Division 511 (Foreign Office), "Anti-Terrorismus-Konvention des Europarats," ["The Council of Europe's Anti-Terrorism Convention"], September 23, 1976, PA AA, B83 Vol. 982.

[53] United Nations, "Vienna Convention on the Law of Treaties (with Annex)," 23 May 1969, *United Nations*, accessed December 11, 2017, https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf, article 2d; and article 19.

[54] Von der Gablenz to Division 011, "Anti-Terrorismus-Konvention des Europarats," July 22, 1976, PA AA, B83 Vol. 982; FRG Embassy Paris to Foreign Office, Telegram 2511, September 7, 1976, PA AA, B83 Vol. 982.

objections, and the other ad hoc delegates followed suit.[55] Ireland did not sign the subsequent convention, but the FRG Justice Ministry did not consider this lack a material problem.

Ultimately, all Council of Europe states (except for Ireland) signed the "European Convention on the Suppression of Terrorism" (European Convention) on January 1, 1977.[56] It was the first European anti-terrorism agreement in the post-World War II period. The European Convention went significantly beyond the conventions of the early 1970s. It enabled states to delineate who was a terrorist and extradite them. The last-minute reservation compromise between the FRG and France created a loophole by allowing states to cherry-pick which sections to adhere to. Overall, however, this convention codified terroristic acts as criminal, and not as politically-motivated acts of. It politically terrorists more than any prior U.S. State Department effort. Vogel and his fellow FRG ministers were delighted. The convention would ease extradition requests, especially for FRG citizens hiding in neighboring countries. In addition, it symbolized a unified European stance against "international terrorism," and highlighted European (and FRG) adherence to the rule of law.

The French reservation to the European convention undermined its utility from the outset, nevertheless. FRG enthusiasm was dampened when former French Justice Minister Jean Taittinger tabled the French reservation to the convention. The reservation stated that France would only ratify and adhere to the European Convention after the EPC had passed a broader anti-terrorist extradition agreement as well.[57] Taittinger astonished the other delegates. The European Convention required only a minority of three ratifications to enter into effect and was

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[55] First Councilor Otto von der Gablenz (Political Division 2, Foreign Office) to FRG Foreign Minister Hans-Dietrich Genscher, Memorandum "Europäische Konvention zur Bekämpfung des Terrorismus," ["European Convention to Combat Terrorism"], October 13, 1976, PA AA, B83 Vol. 982.

[56] Council of Europe, "European Convention on the Suppression of Terrorism," January 1, 1977, accessed 28 August 2017, https://rm.coe.int/16800771b2.

[57] FRG Mission Council of Europe to Foreign Office, Memorandum "Unterzeichnung der Konvention zur Bekämpfung des Terrorismus," ["Signing the Convention to Combat Terrorism"], February 3, 1977, PA AA, B83 Vol. 982.

not dependent on French ratification. Both the practical and the symbolic downsides of France's refusal were not lost on any delegation present, however. This formal reservation allowed France to avoid criticism from its Arab trading partners and domestic leftists. It also made the convention practically useless, if a powerful European country such as France was unwilling to adhere to it.

The EPC Negotiations and a Two Agreement Compromise

For the next three years, Vogel and the FRG Justice Ministry tried to persuade the French Justice Ministry to commit to the terms of the European Convention, while new French Justice Minister Alain Peyrefitte attempted to reshape the entire anti-terrorism process to support French interests. Peyrefitte wanted the EC states to develop a new convention to integrate all mechanisms of mutual assistance in criminal matters, including but not limited to extradition. He aimed to create a common European legal space where all EC states could utilize the same processes and structures when they had bilateral or multilateral legal interactions. Such a multilateral legal space would require individual states to adapt their national laws, legal structures, and legal traditions. Approving it would increase provide further evidence of French leadership in the process of Europeanization. It would also be an anti-crime convention, not necessarily an anti-terrorist one. As rapidly became apparent, the other EC justice ministers did not embrace this idea. It would intrude on domestic legal traditions and national sovereignty much more significantly than a narrow "extradite or prosecute" convention against terrorism (with readily recognizable loopholes). Though Peyrefitte presented this endeavor as a key step toward European integration, the other justice ministers were far more interested in strengthening the European Convention.

As demanded by France, negotiations moved into the EPC, a more closely-knit forum representing the FRG, France, the U.K., the Benelux states, Denmark, Italy, and Ireland. The European Council's Resolution of July 13, 1976 acted as the foundation for negotiations. It called for the nine EC members to prepare a convention against hostage-takers based on the principle of "extradite or prosecute." The EPC expert working group was nearly identical to the ad hoc

group which had drafted the European Convention in the Council of Europe. Suzanne Oschinsky again represented Belgium. C.H. Prior, head of crime policy planning at the Home Office, headed the U.K. delegation. The FRG was represented by Corves or Pötz, supported by members of the FRG Foreign Office's legal division. The French delegation was led by Christian le Gunehec, the Director of Criminal Affairs at the Justice Ministry. Except for le Gunehec, the experts were invested in the ratification of the European Convention that they had drafted.

The first major question that the EPC group faced was what, precisely, the EPC negotiations aimed to achieve. The first meeting in The Hague on November 17, 1976 highlighted the discrepancies between the French position and those of the other EC states. Several days before the meeting, le Gunehec circulated a convention draft which barely mentioned terrorism, focused on integrating the EC states' mutual assistance in criminal matters processes, and completely abolished the political offense exemption.[58] Emerging as defenders of the European Convention, Corves, Prior, and Oschinsky questioned whether a separate EPC convention against terrorism was necessary or practical. To undercut the French convention draft, U.K. delegates distributed a second draft during the meeting which closely resembled the European Convention. It was meant, above all, to highlight the advantages of the European Convention. The U.K. draft generated a lot of enthusiasm among delegates. Without reaching a solution, the delegates discussed whether a separate EPC convention was even necessary, whether it had to solely address hostage-takings, and whether such a convention should be limited in membership to EC states.[59]

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[58] Senior Government Official Walter (B II 5, Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Initiative des Europäischen Rats vom 13. Juli 1976 für eine Konvention gegen Geiselnahmen, hier: Vorbereitung der Sitzung eines Expertenkommittees am 17. November 1976 in Den Haag," ["Initiative of the European Council of July 13, 1976 for a Convention against Hostage-Taking: Preparation for an Expert Committee Meeting on November 17, 1976 in The Hague"], November 16, 1976, BArch, B141-77290, pp. 1-4.

[59] First Councilor Otto von der Galblenz (Political Division 2, Foreign Office) to Division 02, Foreign Office, Memorandum "Sachstand: Ausführung der Erklärung des Europäischen Rats vom 13.07.1976 zum Internationalen Terrorismus," ["State of Affairs: Carrying Out the Resolution of the European Council of 07.13.1976 on International Terrorism"], January 6, 1977, BArch, B141-77291, pp. 1-3.

Facing an increase in terroristic violence due to the Northern Ireland conflict, the U.K. delegation became the FRG's staunchest ally in the EPC negotiations. Both delegations pursued the same policy goal: quickly increasing their extradition options. They worked to ensure that the European Convention entered into effect. During early 1977, a slew of exchanges through the EC's official telegram network, Coreu, revealed deep anxieties about the European Convention in both the FRG Justice Ministry and U.K. Home Office. Both agencies worried that Peyrefitte was trying to replace the European Convention. Though the FRG Justice Ministry liked the idea of an "integrated European legal space" in theory, officials worried that such a convention would take too long to negotiate and ratify. [60] It could also impinge on the jurisdiction of the European Convention, undermining its use. The U.K. Home Office generally agreed, stating that any EPC convention "should build upon and improve what has already been achieved and should not in any way cut across or weaken existing agreements."[61] The British telegram also pointed out that the French convention draft abolished the political offense exemption. Every previous effort to remove the political offense exemption had failed.

In fact, discussions about the political offense exemption were already causing tensions among the EC justice ministries. The Irish EPC delegation worried about a potential repeal of the political offense exemption. Irish officials accused France, the FRG, and especially the U.K. of seeking to gain custody of terroristic actors in direct violation of Irish sovereign control over its legal system.[62] They refused to sign an EPC agreement, just like they had not signed the European Convention. FRG and French delegates had ignored Irish claims in the Council of Europe. The EPC's smaller membership and requirement that decisions be unanimous nevertheless amplified Irish demands.

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[60] Von der Galblenz to Division 02, "Ausführung der Erklärung des Europäischen Rats vom 13.07.1976," January 6, 1977, BArch, B141-77291, pp. 1-3.

[61] Coreu London to Coreu Bonn, Coreu Telegram 823, March 2, 1977, PA AA, B83 Vol. 982.

[62] Von der Galblenz to Division 02, "Ausführung der Erklärung des Europäischen Rats vom 13.07.1976," January 6, 1977, BArch, B141-77291, pp. 1-3.

By the time that the experts met for the second time on March 14, 1977, diverging fronts were clearly delineated between the delegates representing states that faced significant transnational terroristic violence on their territory, and states that were more inclined to protect political dissidents' civil liberties and/or held other aims for the new EPC convention. Delegates representing the U.K., the FRG, Belgium, and the Netherlands, all of whom had faced severe acts of terroristic violence at home from foreign actors, demanded that any new convention build upon and improve the European Convention. In contrast, the Irish delegation requested that any new convention unequivocally respect the political rights of terroristic actors.

The French Justice Ministry also emphasized the civil rights of political dissidents and Palestinian national liberation actors. It had almost no domestic support for a narrow terrorism extradition convention. The French Ministry of Foreign Affairs was adamantly resisting any endorsement of the European Convention, worried that this step would undermine France's relations to Arab states.[63] By early 1977, the FRG Council of Europe delegation speculated that French officials also sought to placate Palestinian fedayeen - and make France less of a target for international terrorism. Unlike their counterparts in Italy, the U.K., or the FRG, French legislators had passed no specific domestic anti-terrorism laws and did not have a history of arresting or convicting Palestinian fedayeen. In fact, French authorities undermined FRG efforts to get custody of Abu Daoud, the main planner of the 1972 Munich attack, who entered France on January 7, 1977. On January 8, 1977, the FRG Justice Ministry informed French authorities that it had an outstanding arrest warrant for Daoud and was preparing an extradition request. French law enforcement officials arrested Dauod, but the d'Estaing administration quickly deported him to Algeria instead of turning him over to the West Germans.[64] This move bewildered the West Germans, yet highlighted that French goals were not about extraditing terrorists.

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[63] FRG Justice Minister Hans-Jochen Vogel, Memorandum "Europäische Zusammenarbeit bei der Bekämpfung des Terrorismus," ["European Collaboration in Combatting Terrorism"], June 24, 1978, PA AA, B83 Vol. 1234.

[64] FRG Mission Council of Europe to Foreign Office, Memorandum "Unterzeichnung der Konvention zur Bekämpfung des Terrorismus," ["Signature of the Convention to Combat Terrorism"], February 3, 1977, PA AA, B83 Vol. 982. See also Thomas E. Carbonneau, "The

Indeed, French aims were geopolitical and much more expansive in scope than those of the FRG or U.K. They focused on broad anti-crime regulations. The French draft stipulated that all states would use the same extradition and mutual assistance requests, with the possibility of further integration of actual criminal laws down the road.[65] This suggestion was radical in its scope. Le Gunehec criticized the European Convention for allowing each country to maintain its own legal tradition and decide in part what constituted an extraditable political offense. He claimed that this ambiguity would lead to a range of contradictory practices and interpretations. As a solution, the French draft contained general regulations for any sort of multilateral interaction or processes concerning all "serious crimes," not just terrorist acts. It also required each EC member to abandon national practices concerning the political offense exemption. French delegates knew their draft would require substantial time to negotiate, and that states might need to revise existing law or even their constitutions to comply. They emphasized that its long-term utility was greater than the European Convention and the U.K. draft, though, and would offset the short-term delay.[66] This stance diverged strongly from the policy aims of the other EC delegates in the working group.

To address both West German/British and French goals, the working group took a pragmatic approach and decided that it would create two new multilateral agreements – one for each side. These agreements would keep all parties invested in the negotiations. The first agreement catered to the FRG and U.K.'s interest in preserving and fortifying the European Convention. It was conceptualized as an addendum to the European Convention. The addendum required EC

Provisional Arrest and and Subsequent Release of Abu Daoud by French Authorities," *Virginia Journal of International Law* 17, no. 3 (Spring 1977): 495-513.

[65] Coreu Paris to Coreu Copenhagen, Coreu Telegram 1099, April 11, 1978, BArch, B141-77295, pp. 37-40.

[66] Undersecretary Paul-Günter Pötz (B II 5, FRG Justice Ministry) to Justice Minister Hans-Jochen Vogel, Memorandum "Initiative des Europäischen Rats vom 13.07.1976 für eine Konvention gegen den Terrorismus, hier: 2. Sitzung der Expertengruppe am 14. März 1977 in London," ["Initiative of the European Council of 07.13.1976 on a Convention against Terrorism: 2nd Meeting of the Expert Group on March 14 1977 in London"], May 20, 1977, BArch, B141-77291,pp. 60-63.

states to adhere to the statutes and practices set up within the European Convention, even if the state in question had not signed or ratified the convention. It would bind France to the requirements of the European Convention - without requiring French ratification of that convention. Meanwhile, the group would also pursue a second, separate EPC convention which met French demands and kept Peyrefitte and le Gunehec invested in the working group. This second convention would harmonize European extradition and mutual assistance procedures.[67] It would create a common European legal space.

Meanwhile, events in the FRG signaled the need for regional extradition mechanisms for terrorists. From April to October 1977, the Red Army Faction hit the FRG with a series of assassinations, kidnappings, and in tandem with Palestinian extremists, the hijacking of a Lufthansa flight. This period became known as the "German autumn" for the way in which terroristic actors seemed to undermine both the rule of law and democratic institutions in the FRG. These terrorists hid in the Netherlands, France, and other states bordering the FRG. The violence of their actions motivated the FRG's neighboring governments to attempt to arrest and extradite the terrorists back to the FRG. Even French authorities joined in. In a spectacular media case, French officials extradited notorious RAF lawyer Klaus Croissant back to the FRG in November 1977, where he was wanted for conspiracy to commit terrorism alongside his clients. Croissant had fled to Paris in the summer of 1977 to avoid collusion charges, and enjoyed significant leftist support when he pled unsuccessfully for political asylum in Paris.[68]

The working group quickly drafted the addendum to the European Convention. In early October 1977, it agreed that the addendum draft would cover all segments the entire European

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[67] Undersecretary Paul-Günter Pötz (B II 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Initiative des Europäischen Rats vom 13.07.1976 für eine Konvention gegen den Terrorismus, hier: Stand der Angelegenheiten," ["Initiative of the European Council of 07.13.1976 on a Convention against Terrorism: State of Affairs"], September 27, 1977, BArch, B141-77292, pp. 21-24.

[68] A detailed, though partisan, narrative of events can be found in Pieter Bakker Schut, *Stammheim: Der Prozess gegen die Rote Armee Fraktion* [Stammheim: The Trial Against the Red Army Faction] (Kiel: Neuer Malik Verlag, 1986), 223ff.

Convention. By December, the working group had outmaneuvered Le Gunehec, and decided that the addendum should force all EC states to adhere to the European Convention, even if a state had not ratified the European Convention, or if that state had ratified the convention with reservations.[69] Unlike the Council of Europe, in the EPC decisions and votes had to be unanimous. If passed, the addendum would force France to adhere to the premises of the European Convention. The working group finished the addendum draft in April 1978.[70]

The French delegation in the meantime threatened to withdraw from the negotiations if its own convention draft was not addressed – which would render the addendum moot. The other EC states thus had to emphasize their willingness to work with French officials in order to keep them engaged in the working group and actually pass the addendum. Throughout early 1978, the heads of state and justice ministers of the other eight EC states assured French President Giscard d'Estaing and Justice Minister Peyrefitte that they would support French political aims in the EPC if France would only agree to the addendum. In February, Le Gunehec re-submitted the French convention draft. It proposed that the EC states standardize their multilateral legal interaction on extradition, mutual assistance in criminal matters, the transfer of criminal

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[69] Undersecretary Paul-Günter Pötz (B II 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Initiative des Europäischen Rats vom 13.07.1976 für eine Konvention gegen Geiselnahmen, hier: Behandlung der Angelegenheit auf der nächsten Sitzung des Europäischen Rats am 5. und 6. 12. 1977; Stand der Angelegenheit," ["Initiative of the European Council of 07.13.1976 on a Convention against Hostage-Taking: Treatment of the Matter in the next Meeting of the European Council on 12.5-6.1977; State of Affairs"], November 29, 1977, BArch, B141-77292, pp. 76-80; and Undersecretary Paul-Günter Pötz (B II 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Initiative des Europäischen Rats vom 13.07.1976 für eine Konvention gegen Geiselnahmen, hier: Bericht über die 5. Sitzung der Arbeitsgruppe leitender Beamter," ["Initiative of the European Council of 07.13.1976 on a Convention against Hostage-Taking: Report of the Fifth Meeting of the Working Group of High Officials"], December 13 1977, BArch, B141-77293, pp. 31-36.

[70] Senior Government Official Behrens (II B 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Arbeiten im Rahmen der Mitgliedsstaaten der EG zur Bekämpfung des Terrorismus, hier: Bericht der deutschen Präsidentschaft über die 8. Sitzung der aufgrund der Initative des Europäischen Rats vom 13.7.1976 eingesetzten Arbeitsgruppe leitender Beamter in der Zeit vom 24.-26.7.1978 in Bonn," ["Work in the Frame of the EC Member States to Combat Terrorism and Create a Unified European Legal Space: Report about the 8th Meeting in Bonn during the Time of 07.24-27.1978 of the Working Group of High Officials instituted due to the Initiative of the European Council on 07.13.1976"], August 2, 1978, BArch, B141-77298, pp. 4-16.

prosecution, recognition and enforcement of foreign criminal judgments, and the transfer of convicts.[71] The other delegates agreed to negotiate in order to move the adoption of the addendum forward.[72] In mid-March 1978, former Italian President Aldo Moro was kidnapped and assassinated by the Italian Red Brigades. The attack motivated the EC heads of state to support whatever multilateral progress they could, even if it was in the form of the French-proposed common legal space.[73]

Peyrefitte continued to link progress on the addendum to progress on the French proposal. He informed Vogel that continuous EPC support for the French convention draft was crucial. Otherwise, Peyrefitte could not overcome significant opposition to the addendum from the French Ministry of Foreign Affairs.[74] In the summer of 1978, another series of French demarches to the FRG Justice Ministry claimed that Peyrefitte was losing French domestic support for the

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[71] Undersecretary Paul-Günter Pötz (B II 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Initiative des Europäischen Rats vom 13.07.1976 für eine Konvention gegen Geiselnahmen, hier: Bericht über die 6. Sitzung der Arbeitsgruppe leitender Beamter in Kopenhagen (1./2.2.1978)," ["Initiative of the European Council of 07.13.1976 on a Convention against Hostage-Taking: Report of the 6th Meeting of the Working Group of High Officials in Copenhagen 902. 1-2.1978)"], February 3, 1978, BArch, B141-77294, pp. 89-94.

[72] Behrens to Vogel, Memorandum "Bericht der deutschen Präsidentschaft über die 8. Sitzung der Arbeitsgruppe leitender Beamter," August 2, 1978, BArch, B141-77298, pp. 4-16.

[73] Undersecretary Paul-Günter Pötz (B II 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Initiative des Europäischen Rats vom 13.07.1976 für eine Konvention gegen Geiselnahme, hier: Deutsch-französische Expertengespräche in der Zeit vom 29.-31. März in Paris," ["Initative of the European Council of July 13, 1976 for a Convention Against the Taking of Hostages, here: German-French Expert Discussions in the Time from March 29-31 in Paris"], April 11, 1978, BArch, B141-77295, pp. 67-74; and Senior Government Official Walter (II B 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, "Arbeiten im Rahmen der Neun zur Bekämpfung des Terrorismus," ["Work in the Context of the Nine in Combating Terrorism"], June 2, 1978, PA AA, B83 Vol. 1234.

[74] FRG Justice Minister Hans-Jochen Vogel, Memorandum "Europäische Zusammenarbeit bei der Bekämpfung des Terrorismus," ["European Collaboration in Combatting Terrorism"], June 24, 1978, PA AA, B83 Vol. 1234; and Undersecretary Paul-Günter Pötz (B II 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Arbeiten im Rahmen der Neun zur Bekämpfung des Terrorismus, hier: Bericht über die 9. Sitzung der Arbeitsgruppe leitender Beamter vom 18.-20.4.1978 in Kopenhagen," ["Work in the Frame of the Nine to Combat Terrorism: Report of the 9th Meeting of the Working Group of High Officials from 4.18-20.1978 in Copenhagen"], April 25, 1978, BArch, B141-77296, pp. 10-21.

addendum because the French convention draft was not being honored by the other delegations as a prestigious European integration project.[75]

The FRG Justice Ministry became more conciliatory after the European Convention was safely ratified. Vogel waited to respond to French demarches until after the European Convention entered into force on August 4, 1978, with its ratification by the FRG, Austria, and Sweden. Only then did he write to Peyrefitte, offering to help support the ”European legal space” concept at an upcoming meeting of EC justice ministers.[76] Pötz adopted a more conciliatory tone as well, and promised to treat the French convention draft with the appropriate gravitas.[77] Meanwhile, the U.K. Home Office and the FRG Justice Ministry continued lobbying the other Council of Europe members to ratify the European Convention.

By the fall of 1978, the EPC working group had reached a stalemate in which the French and FRG/British sides paid lip service to the other’s goals to protect their own draft agreement. This stalemate slowed any overall progress to a crawl. In October 1978, the working group discussed the contours of the French “common legal space” agreement, despite the fact that most delegates had no significant interest in it. The delegates postponed major decisions about the content of the draft. These included defining what a “serious offense” was, whether to add the option of “extradite or prosecute,” or how to deal with the political offense exemption.[78] In the meantime,

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[75] French Justice Minister Alain Peyrefitte to FRG Justice Minister Hans-Jochen Vogel, Letter, 1 August 1978, BArch, B141-77298, pp. 33-34; Division 202, Foreign Office, Memorandum for the Record “Weitere Behandlung des französischen Projekts einer “espace judiciare“, hier: Demarche des französischen Gesandten M. Henry bei Herrn Dg 20 am 3.8.1978,“ [“Further Treatment of the French Project of a “legal space”: Demarche of the French emissary M. Henry with Mr. Dg 20 on 8.3.1978”], August 9, 1978, BArch, B141-77298, pp. 39-40.

[76] FRG Justice Minister Hans-Jochen Vogel to French Justice Minister Alain Peyrefitte, Letter, August 29, 1978, BArch, B141-77298, pp. 63-65.

[77] Under-Division-Head IV B to FRG Justice Minister Hans-Jochen Vogel, Memorandum “3. EG-Justizministertagung, hier: Schreiben des französischen Justizministers vom 1. August 1978,“ [“3rd EC-Justice Ministers Conference: Letter of the French Interior Minister from August 1, 1978”], August 10, 1978, BArch, B141-77298, pp. 41-45.

[78] Erich Corves (II B 5, FRG Justice Ministry) to Division 200, Foreign Office, Memorandum “Arbeiten im Rahmen der Mitgliedsstaaten der Europäischen Gemeinschaften zur Bekämpfung des Terrorismus und zur Schaffung eines einheitlichen europäischen Rechtraums, hier: Bericht der deutschen Präsidentschaft über die 9. Sitzung der aufgrund der Initative des

the EC justice ministers accepted the addendum draft on October 10, leaving only the formal translations and signing ceremony to be completed.

However, little further progress occurred, and the stalemate held. Working group meetings in January and March 1979 passed without any agreement about the sorts of offenses or mechanisms that should be covered by the "European legal space" convention. A French proposal to extend the convention even further, to cover civil law as well as criminal law, met with instant rejection. Prior announced that the U.K. would not be able to ratify even the current "European legal space" convention without an extensive reform of British extradition laws.[79] Meanwhile, the French Justice Ministry, which held the EPC presidency from January to June 1979 and thus controlled meeting agendas, delayed work on the addendum to keep the other delegations focused on the "European legal space" convention. Le Gunehec demanded that the translations of the addendum into the seven official EC languages match perfectly. The translation and verification process was lengthy, and took up the entire French EPC presidency.[80] In April, the working group sought high-level guidance, and asked the EC justice ministers to decide what offenses and mechanisms should be covered in the French convention.[81] The

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Europäischen Rats vom 13.7.1976 eingesetzten Arbeitsgruppe leitender Beamter in der Zeit vom 7. bis 10. November 1978 in Bonn," ["Work in the Frame of the EC Member States to Combat Terrorism and Create a Unified European Legal Space: Report about the 9th Meeting in Bonn during the Time of November 7-10 1978 of the Working Group of High Officials instituted due to the Initiative of the European Council on 07.13.1976"], November 17, 1978, BArch, B141-77299. A further meeting in the following month served only to reaffirm the definition of a "serious offense" as one with at least one year's sentence.

[79] Division 200, Foreign Office, Memorandum "Espace Judiciare," ["Legal Space"], March 29, 1979, BArch, B141-77303, pp. 82-85; Division 200 (Foreign Office), "EPZ – Zusammenarbeit der neun EG-Staaten zur Bekämpfung des Terrorismus und zur Schaffung eines europäischen Rechtsraumes," ["EPC – Collaboration of the nine EC-States to Combat Terrorism and Create a European Legal Space"], January 28, 1980, PA AA, B83 Vol. 1238.

[80] Division 200, Memorandum "Espace Judiciare," 29 March 1979, BArch, B141-77303, pp. 82-85.

[81] Senior Government Official Walter (II B 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Zweite EG-Justizministerkonferenz im Rahmen der Europäischen Politischen Zusammenarbeit (EPZ) am 23.4.1979 in Paris, hier: Vorbereitung der Sitzung," ["Second EC-Justice Ministers' Conference in the European Political Cooperation (EPC)

ministers did not reach agreement on any of the issues either, though, and neither did subsequent working group meetings in June and September 1979. Anti-terrorism was not important enough to carry the initiative to harmonize mutual assistance in criminal matters processes throughout the EC.

After two years with few results, tempers in the EPC working group began to fray. The seven delegations supporting the addendum (all but France and Ireland) became more aggressive about passing it. Ironically, it was under Irish supervision, during a September 1979 working group meeting, that translations of the addendum were complete. However, the French delegation announced scheduling difficulties with a potential October adoption date. Belgian EC diplomats sharply accused their French counterparts of delay tactics. They pointed out that the "European legal space" concept was unpopular in the EPC working group and in the ruling Belgian Socialist party, and that Belgium as well as other EC states had fulfilled their part of the compromise by working on both agreements. One Belgian diplomat threatened that his government would not support the "European legal space" convention if France did not sign the addendum.[82] The signing was delayed again. The other delegates placed substantial pressure on the French delegates, and finally convinced them that the "European legal space" convention would fail if they stalled further on the addendum.[83] On December 4, 1979, all nine EC member states finally signed the addendum to the European Convention, sending it to the individual states

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on 4.23.1979 in Paris: Preparation of the Meeting"], April 12, 1979, BArch, B141-77304, pp. 78-82.

[82] Division 200, Foreign Office, Memorandum "Espace Judiciare, hier: Europäisches Terrorismusabkommen," ["Legal Space: European Terrorism Agreement"], October 16, 1979, BArch, B141-77309, pp. 68-69.

[83] Senior Government Official Walter (II B 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Arbeiten im Rahmen der Mitgliedsstaaten der EG zur Bekämpfung des Terrorismus und zur Schaffung eines einheitlichen europäischen Rechtraums, hier: Bericht über die 16. Sitzung der aufgrund der Initative des Europäischen Rats vom 13.7.1976 eingesetzten Arbeitsgruppe leitender Beamter in der Zeit vom 5.-7.11.1979 in Dublin," [„Work in the Frame of the EC Member States to Combat Terrorism and Create a Unified European Legal Space: Report about the 16. Meeting in Dublin during the Time of 11.5-7,1979 of the Working Group of High Officials instituted due to the Initiative of the European Council on 07.13.1976"], November 12 1979, BArch, B141-77310, pp. 1-9.

to be ratified. However, the FRG Foreign Office notified the Justice Ministry that significant domestic opposition to all anti-terrorism treaties still existed in France, and that the compromise negotiated since 1976 was unlikely to hold up.[84]

The delegates also lost patience with the "European legal space" convention. After years of slow progress, most delegates still (and again) questioned whether such an agreement was even possible. In a late February 1980 working group meeting, delegates from all states except for France informally conducted intense discussions about the future of the negotiations in hallway settings and over coffee breaks. They decided that if the "European legal space" agreement was to be completed at all, it should be quickly finished, ideally by the end of Italy's EPC presidency in June.[85] In addition, no new anti-terrorism initiatives should be introduced until the European Convention and the addendum had been ratified.

In its twentieth meeting in May 1980, the EPC working group agreed on hasty and legally sloppy compromises and declared the "European legal space" convention draft complete. To avoid more discussions about whether to include the political offense exemption, the working group decreed that states could object to individual clauses in the convention - such as the one which abolished the political offense exemption.[86] There was no right to introduce a general

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[84] Division 200, Foreign Office, Memorandum "EPZ – Zusammenarbeit der neun EG-Staaten zur Bekämpfung des Terrorismus und zur Schaffung eines europäischen Rechtsraumes," ["EPC – Collaboration of the nine EC-States to Combat Terrorism and Create a European Legal Space"], January 28, 1980, PA AA, B83 Vol. 1238.

[85] Senior Government Official Walter (II B 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Arbeiten im Rahmen der Mitgliedsstaaten der EG zur Bekämpfung des Terrorismus und zur Schaffung eines einheitlichen europäischen Rechtraums, hier: Bericht über die 18. Sitzung der aufgrund der Initative des Europäischen Rats vom 13.7.1976 eingesetzten Arbeitsgruppe leitender Beamter in der Zeit vom 26. bis 29. Februar 1980 in Rom," ["Work in the Frame of the EC Member States to Combat Terrorism and Create a Unified European Legal Space: Report about the 18. Meeting in Rome during the Time of February 26 to 29, 1980 of the Working Group of High Officials instituted due to the Initiative of the European Council on 07.13.1976"], March 4, 1980, BArch, B141-77315, pp. 54-66.

[86] Senior Government Official Walter (II B 5, FRG Justice Ministry) to FRG Justice Minister Hans-Jochen Vogel, Memorandum "Arbeiten im Rahmen der Mitgliedsstaaten der EG zur Bekämpfung des Terrorismus und zur Schaffung eines einheitlichen europäischen Rechtraums, hier: Bericht über die 20. Sitzung der aufgrund der Initative des Europäischen Rats vom 13.7.1976 eingesetzten Arbeitsgruppe leitender Beamter in der Zeit vom 6. bis 12. Mai 1980 in Rom," ["Work in the Frame of the EC Member States to Combat Terrorism and Create a

reservation about more than a single convention clause, however, and no mechanism for leaving the agreement. This hasty compromise proved to be a mistake.

For the first time during the EPC negotiations, the smaller EC states challenged France's goal to extend French influence in this body, claiming that this goal came at the cost of their own national sovereignty. After the "European legal space" convention draft was complete, the smaller EC states labeled it as unacceptable. Previously, Dutch, Belgian, and Danish delegates had supported the negotiations in hopes of improving European integration. Now all were wary because the draft abolished the political offense exemption, yet contained no mechanisms for a country wishing to leave, amend the treaty, or voice a general reservation about more than one article.[87] In circular telegrams to the other delegations, these states claimed that the draft locked them into an agreement tailored to benefit larger EC members, especially France.[88] Dutch Minister of Justice Job de Ruither led the opposition. De Ruither speculated that that France was attempting to use the informal EPC working groups to bypass formal EC structures meant to protect the smaller EC members' sovereignty in order to create an agreement that served French goals.[89]

Dutch resistance destroyed the compromise that France would accept the addendum to the European Convention, if only the other delegations cooperated on the "European legal space" convention. In early June 1980, the Dutch cabinet declared that it would not sign the "European

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Unified European Legal Space: Report about the 20. Meeting in Rome during the Time of May 6 to 12 1980 of the Working Group of High Officials instituted due to the Initiative of the European Council on 07.13.1976"], May 16, 1980, BArch, B141-77319, pp. 53-60.

[87] FRG Embassy The Hague to Foreign Office Bonn, Telegram 255, June 16, 1980, BArch, B141-77321, p. 30.

[88] Coreu Rome to Foreign Office, Coreu Telegram 2214, June 13, 1980, BArch, B141-77320, pp. 47-48; and Coreu Rome to Foreign Office, Coreu Telegram 2237, June 16, 1980, BArch, B141-77320, p. 48.

[89] Stabreit (Division 200, Foreign Office), Memorandum "Espace Judiciare," ["Legal Space"], Undated (after September 4, 1980), BArch, B141-77321, pp. 142-143.

legal space" agreement.[90] EPC agreements were unanimous, and the Dutch rejection set off last minute scrambling to save the convention, as well as the addendum (which would not be ratified by France otherwise). In a radical step, Italian Minister of Justice Tommaso Morlino, current EPC President and head of negotiations, asked the other EC states if they would agree to break EPC protocol and have the agreement go into effect with as few as five signatures and corresponding ratifications. The others refused, and the "European legal space" convention was never introduced for signature.[91] On June 19, 1980 French Under-Secretary of Justice Jean-Paul Mourot announced that France would not ratify the addendum to the European Convention.[92] After four years of work, the EPC negotiations achieved nothing.

In 1980, most expert delegates who had worked in the Council of Europe and the EPC on anti-terrorism conventions were tired of the negotiations. The cost-benefit ratio was too asymmetric. The sheer effort and number of meetings that had gone into the European Convention and the EPC negotiations were not proportional to the utility which the convention offered. By 1980, the EC justice ministries agreed with the U.S. State Department's 1973 decision that "extradite or prosecute" agreements against terrorists were too much work for too little political payoff.

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[90] The Hague to Foreign Office, Telegram 255, June 16, 1980, BArch, B141-77321, p. 30.

[91] Division 200, Foreign Office, Memorandum "Europäischer Rechtsraum, Justizministertreffen am 19. 06.1980 in Rom, hier: Zeichnung des sog. allgemeinen Auslieferungsabkommens," [„European Legal Space, Justice Ministers' Meeting on 06.19.1980 in Rome: Signature of the so-called General Extradition Agreement"], June 2, 1980, PA AA, B83 Vol. 1240.

[92] FRG Justice Minister Hans-Jochen Vogel, Memorandum "Espace judiciare civile, hier: Ergebnisse der EG-Justizministerkonferenz in Rom am 19. Juni 1980," ["Civil Legal Space: Results of the EC Justice Ministers" Conference in Rome on June 19, 1980"], June 20, 1980, PA AA, B83 Vol. 1240; and FRG Embassy Rome to Foreign Office, Telegram 650, June 23, 1980, PA AA, B83 Vol. 1240.

Conclusion

During the mid- to late 1970s, negotiations about the legitimacy of political violence – through the vehicle of anti-terrorist extradition regulations - became part of the process of European integration. Wide-reaching efforts to shape these anti-terrorism agreements into a new facet of European integration failed, however, despite the general increase of European unification throughout the 1970s. Its loopholes and lack of enforcement mechanisms meant that, ironically, the European Convention solidified terrorism as a problem and yet offered insufficient means to address or resolve that problem. Once again, the patterns established in the ICAO, the OAS, and UN repeated themselves. Anti-terrorism conventions passed when addressing specific offenses – ideally in a list format. They were politically burdensome, though, cost substantial effort to implement, and did not generate immediate payoffs. For these reasons, they did not lend themselves to larger political initiatives such as French Gaullist EC policy. In addition, states contested this integration because it infringed on national interests in ways that officials were not prepared to accept. Multilateral negotiations about terrorism and political violence were too politically divisive to create straightforward outcomes.

The European institutionalized terrorism as a security threat in European politics, however, and solidified what kinds of violent attacks would fall under the label “terrorism.” The European Convention’s list of “serious offenses” helped delineate a broad number of violent acts as “terrorism,” and managed for the first time to label “terrorism” a criminal offense. The European Convention thus defined terrorism as a crime, a feat which the U.S. State Department had not been able to achieve within the UN. It also narrowed terroristic actors’ capacities to claim political motivation for their crimes by giving state officials the power to define “serious offenses” that should never be considered politically motivated. The negotiations around the European Convention significantly normalized the idea that terrorists were criminals, not insurgents or combatants or politically motivated dissidents. The negotiations thus strengthened the Western trend of criminalizing terrorists which had been developing since 1969. Once bureaucrats treated terrorism as an apolitical crime, however, networks of conservatives in the United States, Europe,

and Israel would seize this interpretation of terrorists as illegitimate actors and deploy it to reach their own political ends.

CHAPTER 6

AN IDEOLOGY OF THEIR OWN: THE REAGAN ADMINISTRATION'S "TERROR NETWORK" THEORY AND ISOLATED VIEWPOINT ON TERRORISM

On January 28, 1981, newly confirmed Secretary of State Alexander Haig held his first official press conference. Haig chose to focus on terrorism, surprising many journalists. While terrorism had been an issue on the official U.S. foreign policy agenda since the Munich Olympic Games attack in 1972, policy-makers always discussed it as a minor issue. Haig not only placed terrorism in the center of his speech, but he also linked terrorists to the Soviet Union and to American anti-communist efforts. A baffled columnist for the *Washington Post* a day later wrote that "In one of a series of remarks charging the Soviet Union with stirring trouble abroad, Haig went out of his way to accuse the Russians of pursuing a conscious policy of "training, funding, and equipping" terrorist activities."[1] Without any evidence to support their claims, Haig, other members of the Reagan administration, and conservatives worldwide fit terrorism into their hawkish anti-communist foreign policy initiatives. Western officials' prior conceptualization of terrorists as illegitimate criminals remained to influence subsequent counterterrorism policies. However, the target, ideological justification, and mechanisms of counterterrorism shifted to address new political developments of the 1980s.

High-ranking U.S. officials pursued a new highly ideological conceptualization of terrorism from the late 1970s onward. In turn, terrorists and counterterrorist actors around the world occupied increasingly separate political realities. In the late 1970s, the Western industrialized states had created a conceptual model that terrorists were illegitimate criminal actors. By 1979, the United States, the Federal Republic of Germany (FRG), and their European allies passed six corresponding multilateral conventions and two informal agreements. This conceptualization continued to form the basis of Western officials' counterterrorist measures. As détente policies fell

[1] Don Oberdorfer, "Haig Calls Terrorism Top Priority," *Washington Post*, January 29, 1981, A1, A4.

out of favor, however, U.S. officials in the Reagan administration again advanced Cold War viewpoints instead of prioritizing issues of multilateral collaboration and complex interdependence. During the early 1980s, Western conservatives accused the Soviet government of supporting terrorism (a criminal activity) as a means of warfare against the United States and its allies. The Reagan administration employed military rhetoric and later advocated aggressive measures to address this ostensible communist threat. Meanwhile, the contestation around the term terrorism remained and even increased as U.S. and other actors prioritized their own highly ideological conceptualizations.

U.S. officials began pursuing unilateral counterterrorist policies just as the Western states solidified their own model of terrorism in international law. Western states firmly established the concept of terrorism as an illegitimate criminal act within international relations in the late 1970s by ignoring the controversy about how to handle political violence. They used the strategies officials had accumulated throughout the 1970s to get around opposition from recently independent states, political activists, and terrorists. In international organizations, Western officials no longer attempted to regulate the undefined term of terrorism. Instead, they returned to regulating only specific, easily delineable acts of terroristic violence as criminal and illegitimate. In the United Nations (UN), the FRG convinced other states to adopt a convention against hostage-taking, the 1979 “International Convention Against the Taking of Hostages.” Furthermore, Western states discussed controversial issues such as how to enforce measures against terrorism only amongst themselves. The Group of 7 states adopted the 1978 “Statement on Air-Hijacking,” which threatened sanctions against states that harbored hijackers. Such forums ignored developing states’ and terrorists’ voices. Overall, Western states successfully developed strategies that codified the act of terrorism within international law in the way that they perceived it (as illegitimate and criminal).

These trends allowed U.S. state officials to prioritize their own ideological model of terrorism without catering to other states’ or non-state actors’ interests. In particular, from 1979 on increasingly hawkish conservatives appropriated the established Western discourse on terrorism

for their own political aims by claiming that the Soviet Union sponsored criminal terrorists as proxy combatants. That year, Israeli leaders convinced conservative politicians, officials, and activists from the United States and other Western states to view terrorism as a Cold War facet of Soviet geopolitical power. Through a transnational network of policymakers, politicians, and political pundits, conservatives claimed that the Soviet Union supported terrorists as allied combatants - in direct violation of established international law. This support was ostensible proof of the "evil" emanating from the Soviet Union. They advocated the implementation of the counterinsurgent military options against terrorists that the Israelis had favored all along. Based on unsound and distorted facts, this perception was in no way related to the realities of international terrorism.[2] As U.S. conservatives took power through the Reagan administration in 1981, nevertheless, they disseminated this idea of a Soviet-controlled "terror network." U.S. counterterrorism efforts became militaristic and ideologically driven. Yet the new U.S. foreign policy still relied on the previously established Western notion that terrorists were common criminals, not insurgents or combatants, to explain why Soviet support was both illegal and morally repugnant.

U.S. and Western strategies to conceptualize terrorism solidified the global contestation around the right to use political violence. Overall, counterterrorism experts and terrorists themselves focused less on common ideas from the field of international law and more on their disparate conceptualizations. The Iranian Revolution generated new impetuses for radical behavior. Religiously motivated terrorists placed less immediate value on international recognition. In turn, Western state officials found it increasingly easy to reduce these actors' terroristic attacks to criminal, morally incomprehensible deeds. Actors involved in terrorism and counterterrorism justified their own conceptualization less and less. In the 1980s, both terroristic

[2] See Lisa Stampnitzky, *Disciplining Terror: How Experts Invented "Terrorism"* (Cambridge, U.K.: Cambridge University Press, 2013), 119-120; and Adrian Hänni, "Global Terror Networks: Die Diskursive Konstruktion der Terroristischen Bedrohung in den USA, 1886-1986" ["Global Terror Networks: The Discursive Construction of the Terrorist Threat in the USA, 1886-1986"] (Dissertation, Forschungsstelle für Sozial- und Wirtschaftsgeschichte, University of Zurich, 2013), 63-64.

actors and counterterrorism experts subsequently found it easier to pursue their own interpretations of terrorism without sharing international law terminology and concepts.

The international controversy about political violence never reached a resolution. Officials, academics, politicians, journalists, activists, and terrorists increasingly and habitually ignored other actors' perceptions. Doing so made it easier for them to prioritize their own (disparate) worldviews, interpretations, and policy aims in any discourse on terrorism.

Western Conceptualizations of Terrorism in International Law

In the 1970s, the United States, the FRG, and their allies in North America and Europe solidified their conceptualization of terrorism as illegal as well as illegitimate within international law. They cemented this concept in two ways. First, they collaborated in international organizations with other states to enact multilateral conventions against specific terroristic offenses. These conventions contained enough loopholes to undermine Arab and African states' resistance. Second, Western states cooperated amongst themselves to pass more controversial agreements (against terrorism itself, and to enforce earlier conventions). Even though they did not resolve the ongoing controversies about political violence, the Western industrialized states began treating their conceptualization of terrorism as the norm within international relations by the late 1970s.

Previous chapters revealed how U.S. and European officials introduced and then expanded their multilateral anti-terrorism efforts. The U.S. State Department championed three early extradition conventions against hijacking and attacks on diplomats in 1970 and 1971.[3] The next year, the State Department tried to negotiate a UN convention on the extradition of terrorists after

[3] These conventions were the International Civil Aviation Organization (ICAO) 1970 "Convention for the Suppression of Unlawful Seizure of Aircraft" (Hague Convention), the Organization of American States (OAS) 1971 "Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance" (OAS Convention), and the ICAO 1971 "Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation" (Montreal Convention). See chapters 2 and 3.

the Munich Olympic Games attack. Arab and African states used the negotiations to support the political agency of national liberation movements instead. After this perceived setback, the U.S. Departments of State and Transportation focused on unilateral aviation security regulations instead. New FAA regulations required any airline flying to a U.S. destination to comply with U.S. security standards. This compliance included metal detector screening for all passengers and a full check of every piece of carry-on baggage.

In the meantime, Europeans drove multilateral anti-terrorism collaboration after 1972.[4] They pursued both extradition conventions and regional security agreements. European UN delegates finalized the 1973 UN "Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents" (Diplomats Convention). In 1976, the FRG Interior Ministry convinced the other European Community states to institute an informal set of working groups on domestic security named the TREVI network (terrorism, radicalism, extremism, violence international). TREVI resulted in an informational exchange network on terrorism among European states as well as several bilateral treaties to improve domestic security against terroristic actors. Additional contacts emerged between British and FRG special forces units as both targeted terrorists. In the meantime, the FRG Justice Ministry, excluded from TREVI negotiations, sought a European regional convention that would criminalize terrorism by branding it as an ordinary and extraditable crime. The 1977 "European Convention on the Suppression of Terrorism" (European Convention) criminalized terrorism itself, not just specific terroristic acts. Further negotiations in the European Community to increase the European Convention's influence failed, however. By 1977, European states had adopted multilateral conventions and regional agreements against terrorism while ignoring outside actors such as national liberation movements, terrorists, or Arab and African states.

The five multilateral conventions that were in effect in 1977 defined terroristic violence as a politically illegitimate act. Terroristic attacks, which included hijackings, the kidnapping or

[4] See chapters 4 and 5.

assassination of diplomats, and bombings, were already illegal according to individual states' criminal laws. The conventions specified how states were to handle such acts both domestically and within international relations. The conventions stipulated that terroristic violence should always be treated as an extraditable ordinary criminal act, thereby requiring signatory states to apply criminal law against terroristic offenders as opposed to the laws of war. They made explicit that terroristic offenders were neither combatants nor national liberation insurgents. Thus, such actors had no right to participation in international relations. The conventions all had loopholes. The most prominent was the "political offense exemption," which allowed a state to recognize an offender's political motivation and refuse extradition. However, the conventions vested the authority to label and prosecute terrorism in the hands of state officials. They stripped agency and sovereignty from proto-state or non-state actors. The TREVI and special forces networks reinforced the conventions by focusing on mechanisms against terrorism while disregarding terrorists' political motivations. Western states thus branded terroristic acts as ordinary criminal violations of a state's sovereign control of violence.

After 1976, the FRG sought another multilateral convention in the UN. This effort highlighted that such conventions had become the key avenue to create globally applicable regulations against terrorism. FRG Foreign Minister Hans-Dietrich Genscher precipitated this new initiative. As FRG Interior Minister, Genscher had driven the initial efforts to create the TREVI network. After becoming Foreign Minister in 1974, he retained his interest in multilateral anti-terrorism projects.[5] Following the 1975 Organization of Petroleum Exporting Countries (OPEC) attack, Genscher began planning to create a new convention against the common terrorist act of taking hostages. FRG UN Ambassador Rüdiger von Wechmar announced the initiative after the 1976 Entebbe hijacking.[6] The FRG Foreign Office's plan was to draft an "extradite or prosecute"

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[5] Bernhard Blumenau, *The United Nations and Terrorism: Germany, Multilateralism, and Anti-Terrorism Efforts in the 1970s* (New York: Palgrave MacMillan, 2014), 118-119.

[6] FRG Mission United Nations to Foreign Office, Telegram 1585, August 3, 1976, Political Archive of the Foreign Office (hereafter: PA AA) Federal Republic of Germany (hereafter: B)83 Vol. 984.

convention, just like the Montreal, Hague, Diplomats, and almost completed European Convention.[7] Such conventions combined an overall general requirement to criminalize terroristic acts with enough loopholes to be broadly acceptable to most states.

Genscher and von Wechmar faced the exact same problems that had plagued then-U.S. Secretary of State William Rogers and UN Ambassador George H.W. Bush in their 1972 UN initiative against terrorism. The UN General Assembly agreed to have its Sixth Committee, responsible for legal issues, draft a convention against hostage-taking on December 15, 1976.[8] Like Rogers and Bush, the FRG Foreign Office sought extradition and criminal law regulations. It specifically wanted to avoid any references to warfare, the laws of war, or military anti-terrorism measures.[9] Since 1973, African and Arab delegates used the UN Ad Hoc Committee on International Terrorism to claim that national liberation movements and the term terrorism both needed be considered under the laws of war. They now attempted to link the hostage-taking convention to the laws of war and the issue of terrorism by moving negotiations into the terrorism committee.[10]

Israeli and French diplomats also created the same headaches for von Wechmar that they had caused Bush in 1972. The Israeli Foreign Minister Yigal Allon undermined the FRG position by supporting military counterterrorism efforts. He suggested that a hostage-taking convention could be applicable in situations such as the Entebbe crisis.[11] Most Arab states, the Soviet Union,

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[7] First Councilor Dr. Gorenflos (Office 230: United Nations, Foreign Office) to FRG Foreign Minister Hans-Dietrich Genscher, Memorandum "Vorbereitung unserer VN-Initiative zur Bekämpfung der Geiselnahme," ["Preparation of our UN-Initiative to Combat Hostage-Taking"], August 13, 1976, PA AA, B83 Vol. 984. See also Blumenau, *The United Nations and Terrorism,* 142.

[8] FRG Mission United Nations to Foreign Office, Telegram 3597, December 12, 1976, PA AA, B83 Vol. 984.

[9] Office 502:Diplomatic and Consular Law, International Travel Law, Foreign Office, to Office 230:United Nations, "Unsere Geiselnahme-Initiative," ["Our Hostage-Taking Initiative"], October 19, 1976, PA AA, B83 Vol. 984.

[10] Blumenau, *The United Nations and Terrorism,* 146-147, 170-171.

[11] FRG Mission United Nations to Foreign Office, Telegram 2465, October 8, 1976, PA AA, B83 Vol. 984; and FRG UN Ambassador Rüdiger von Wechmar to Egyptian Representative

and the Eastern European bloc considered the Israeli operation at Entebbe an armed foreign intervention. The French Ministry of Foreign Affairs again preferred not to negotiate a new convention at all. French diplomats argued that a new convention would undermine existing laws of war by superseding rules against hostage-taking in the Geneva Conventions.[12] The 1972 U.S. UN initiative to draft a convention against terrorism had failed due to the same set of overall problems.

The FRG initiative had the advantage that it addressed a specific and already heavily regulated problem, hostage-taking. The UN General Assembly had adopted the similar 1973 Protection of Diplomats Convention in part because diplomats were already protected persons under international law. Its supporters argued that the Diplomats Convention merely reinforced earlier requirements.[13] Similarly, hostage-taking was prohibited under the 1949 Geneva Conventions.[14] The 1977 Additional Protocols to the Geneva Conventions reaffirmed this ban. The FRG Foreign Office argued that the Geneva Convention covered only wartime acts. Genscher and von Wechmar emphasized that they were simply filling in a gap in coverage by prohibiting hostage-taking in non-warfare and civilian settings.[15] This focus on a specific terroristic act which accorded with prior international law regulations allowed the FRG to avoid the controversy over definition and scope which had choked the 1972 U.S. initiative against the far broader and more contentious issue of terrorism.

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to the UN Ahmed Esmat Abdel Meguid, Letter, October 8, 1976, PA AA, B83 Vol. 984. In July 1976, Israeli special forces stormed Entebbe airport in Uganda to free over one hundred hostages that were being held by Palestinian and West German hijackers with support from Ugandan President Idi Amin.

[12] Blumenau, *The United Nations and Terrorism,* 181-182, 185-187. This stance was in line with prior French positions on anti-terrorism conventions, whether in the ICAO, UN, or Council of Europe.

[13] See chapter 3.

[14] International Committee of the Red Cross, “Practice Relating to Rule 96. Hostage-Taking,” *International Humanitarian Law Database: Customary International Humanitarian Law,* accessed April 5, 2018, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule96.

[15] Blumenau, *The United Nations and Terrorism,* 123-125.

In addition, the FRG UN delegation developed strategies to successfully address the difficulties caused by the Arab, Israeli, and French delegations. Genscher personally endorsed and at times participated in the negotiations. Richard Nixon, Henry Kissinger, and William Rogers had avoided such political risk to themselves in the early 1970s.[16] After the 1977 Mogadishu operation, even African and Arab states acknowledged that the FRG leadership had respected Somali sovereignty by waiting for permission from President Siad Barre to deploy the special forces unit *Grenzschutzgruppe 9* [Border Security Group 9].[17] Genscher's personal influence increased commensurately.

Another FRG strategy was to support the yearly renewal of the UN Ad Hoc Committee on International Terrorism. Genscher and von Wechmar wanted this committee to serve as a venue for Arab and African states to discuss terrorism and national liberation movements divorced from the hostage-taking negotiations.[18] In the meantime, from 1978 onward the West Germans channeled the hostage-taking negotiations into small and off-the-record working groups at the UN Office at Geneva. This format gave all involved parties the opportunity to make concessions without losing public face. The Israelis removed a potential point of contention by agreeing not to participate. The FRG negotiator Carl-August Fleischhauer, head of the legal department of the Foreign Office, wound up collaborating with the U.S., Algerian, and Nigerian delegates. The nonaligned Yugoslavian delegate acted as a crucial mediator.[19] The FRG Foreign Office thus undermined massive potential resistance to its convention draft.

In early 1979, the small working groups achieved a breakthrough. They agreed on a convention draft which applied the principle of "extradite or prosecute" to hostage-taking. The draft required states to pass and apply domestic criminal laws against hostage-taking. The

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[16] Blumenau, *The United Nations and Terrorism,* 123-125, 158, 173.

[17] FRG Mission United Nations to Foreign Office, Telegram 2555, October 19, 1977, PA AA, B83 Vol. 989.

[18] Blumenau, *The United Nations and Terrorism,* 178-179.

[19] Blumenau, *The United Nations and Terrorism,* 179-181.

political offense exemption once again gave states the option to acknowledge the criminals' political motivation. Yet the basic principle that the perpetrators were ordinary criminals remained. The French delegation accepted the draft due to an article that placed wartime or martial situations under the sole jurisdiction of the Geneva Conventions.[20] That same article placated Arab and African delegates who supported national liberation movements. They hoped that national liberation actors' behavior would fall under the Geneva Conventions and laws of war, not this convention which focused on criminal law and civilian situations.[21] Thus, this convention draft served Western states' interest in criminalizing and politically delegitimizing the taking of civilians as hostages. Yet it retained loopholes for actors claiming to operate under the Geneva Conventions. The UN General Assembly adopted the "International Convention against the Taking of Hostages" on December 17, 1979. Facing long odds, the FRG Foreign Office had successfully negotiated another multilateral convention against a specific instance of terroristic violence. Throughout the 1970s, such conventions were the only avenue to successfully introduce global regulations concerning terroristic violence.

In the meantime, the FRG also collaborated with other powerful and closely allied states to enforce the existing multilateral conventions on terroristic violence. Adhering to these conventions was voluntary and they contained loopholes but not enforcement mechanisms. Previous efforts to create enforcement mechanisms had been unsuccessful. The U.S. State Department had attempted to introduce punitive clauses into the Montreal, Hague, OAS, and Diplomats Conventions. Specifically, the State Department wanted to include the option to place political and economic sanctions on states that harbored terroristic actors. Most other states rejected the U.S. efforts as unfeasible and unwise. The U.S. Congress responded with legislation, the 1974

[20] Blumenau, *The United Nations and Terrorism,* 185-186.

[21] Foreign Office to FRG Mission Geneva, Telegram 2726, February 9, 1979, PA AA, B83 Vol. 1243.

Antihijacking Act, which gave the U.S. president the right to unilaterally sanction any state harboring hijackers.[22] No president used that law in the 1970s, however.

On the European side, the FRG Interior Ministry hoped that the TREVI network would improve the enforcement of national, bilateral, and multilateral anti-terrorism regulations. FRG officials particularly wanted their neighboring states to collaborate in police training and border patrols. But European states remained wary of domestic security collaboration and used TREVI mainly as an informal information-sharing network. Until 1978, no anti-terrorism conventions contained a multilateral enforcement mechanism.

In mid-1978, U.S. and Japanese interests generated a new opportunity to enforce the International Civil Aviation Organization (ICAO)'s Hague and Montreal Conventions against hijacking. In 1977, the Japanese government faced diplomatic pressure from its allies, including the FRG and United States, to strengthen its posture against hijackers. On September 28, 1977, members of the terrorist Japanese Red Army Faction, a group with well-documented connections to radical Palestinians, hijacked Japan Airlines Flight 472. The Japanese government traded six imprisoned Japanese Red Army Faction members and paid a ransom of six million dollars for the safe return of the 151 hostages.[23] Particularly after the FRG operation in Mogadishu several weeks later, other industrialized states vigorously and publicly criticized Japan for acceding to the terrorists' demands. The Japanese government in turn sought easy, politically expedient means to demonstrate its commitment to combat terroristic violence worldwide.[24]

Meanwhile, the U.S. federal government revived its idea to sanction states that harbored hijackers. The new Carter administration reorganized the Washington's anti-terrorism structures.

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[22] U.S. House of Representatives, "Public Law 93-366," August 5, 1974, Office of the Law Revision Counsel, U.S. Code, accessed May 1, 2018, http://uscode.house.gov/statutes/pl/93/366.pdf.

[23] "Japanese Hijackers Free Hostages, Surrender in Algiers," *Washington Post,* October 4, 1977, A19.

[24] See Bernhard Blumenau, "The Group of 7 and International Terrorism: The Snowball Effect That Never Materialized," *Journal of Contemporary History* 51, no. 2 (April 2016): 316-334, 321.

It abolished the interagency Working Group of the Cabinet Committee to Combat Terrorism, which had previously coordinated anti-terrorism planning and policies, in favor of the similar National Security Council/Special Coordinating Committee Working Group on Terrorism.[25] This new working group had the same membership as its predecessor and included representatives from a vast array of federal agencies.[26] While the old group operated without formal oversight, the new working group reported to National Security Adviser Zbigniew Brzezinski's military assistant, General William Odom. Brzezinski and Odom ignored the political aims of terrorists and instead focused on the gear and mechanisms through which terrorists committed their attacks. The two were more interested in military countermeasures than the Nixon or Ford administrations.[27] For example, they supported the creation of the U.S. Delta Force under the Joint Special Operations Command. Odom personally met with West German GSG9 members in December 1977 to learn more about that unit.[28] The NSC SCC Working Group on Terrorism discussed new and old measures to prevent terrorism – including sanctions.[29]

In July 1978 Japanese and U.S. officials met in Bonn at the G7, an economic forum and unlikely place to discuss terrorism or political violence. In the wake of the 1973 oil crisis, the seven most influential Western states held a series of summit meetings which they named the G7

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[25] National Security Advisor Zbigniew Brzezinski to Vice President Walter Mondale, Secretary of State Cyrus Vance, and Secretary of Defense Harold Brown, Memorandum "Terrorism," September 21, 1977, Jimmy Carter Presidential Library (CPL), National Security Advisor's Files, General William Odom's Files, Box 55, Terrorism SCC Working Group, 9/77 – 12/78.

[26] See Timothy J. Naftali, *Blind Spot: The Secret History of American Counterterrorism* (New York: Basic Books, 2005), 101.

[27] Naftali, *Blind Spot,* 101.

[28] "Agenda for Bonn," Undated, CPL, National Security Advisor's Files, General William Odom's Files, Box 52, Terrorism Bonn Trip 10/77 – 2/78, p. 26.

[29] Memorandum "The NSC/SCC Working Group on Terrorism: Goals and Objectives," attachment to Anthony Quainton (Director, State Department Office for Combatting Terrorism) to Members of the NSC/SCC Working Group to Combat Terrorism, Memorandum "Summary Minutes of the NSC/SCC Working Group to Combat Terrorism, August 30, 1978," August 31, 1978, CPL, National Security Advisor's Files, General William Odom's Files, Box 55, Terrorism SCC Working Group, 9/77 – 12/78.

to coordinate economic policies.[30] During the G7 summit from July 16 to 17, Japanese Prime Minister Takeo Fukuda proposed that the G7 heads of state publish a joint statement against hijacking. FRG Chancellor Helmut Schmidt quickly embraced the idea, as did Canadian Prime Minister Pierre Trudeau and U.S. President Jimmy Carter.[31] The G7 heads of state adopted the U.S. idea of multilateral sanctions. On the summit's last day, they released the "Bonn Declaration" affirming their joint determination to sanction states that harbored hijackers.[32] It allowed Japan to participate in a largely symbolic statement against terrorism.

Since 1969, the U.S. State Department had sought but failed to introduce multilateral sanctions to enforce the ICAO's Hague and Montreal Conventions. The G7 Bonn Declaration changed that. The G7 countries promised to sanction any state that refused to either prosecute or extradite hijackers as ordinary criminals. Specifically, the G7 heads of state declared that they would cut off their states' civil aviation service to and from the offending country. Airlines registered in a G7 country would no longer be permitted to land in that country, and the offender's national airlines would not receive landing rights in any G7 state. The G7 states' airports and airlines handled about seventy percent of the civil aviation industry outside of the Soviet bloc. These states wielded the economic power to make their sanctions a credible threat to others.[33] The G7 heads of state also intended the Bonn Declaration to serve as a recruiting tool. They

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[30] An excellent bibliography on the G7 can be found at G7 Information Centre, "G7/G8 Bibliography: Scholarly Publications," *University of Toronto,* accessed April 2, 2018, http://www.g8.utoronto.ca/bibliography/biblio1.htm.

[31] See Blumenau, "The Group of 7 and International Terrorism," 321-322; and Edward Mickolus, "Multilateral Legal Efforts to Combat Terrorism: Diagnosis and Prognosis," *Ohio Northern University Law Review* 6 (1979): 13–51, 25.

[32] U.S. Embassy Bonn to Department of State, Telegram 13070, July 17, 1978, JCL, Counsel's Office, Robert Lipshultz's Subject Files, Box 45, Terrorism, 7-78 [CF, O-A 714].

[33] Secretary of Transportation Brock Adams to President Jimmy Carter, Memorandum "Bonn Summit Agreement on Hijacking," July 21, 1978, JCL, White House Central Files, Special Files – Foreign Affairs (FO), Box 44, Foreign Affairs 6-5 1/20/77 – 1/20/81.

hoped that their statement would generate a snowball effect – motivating other states to publicly commit to similar sanctions.[34]

The Bonn Declaration highlighted that the major Western aviation countries were taking a cohesive position against terroristic violence. The FRG Foreign Office adopted the declaration as another multilateral project. Fleischhauer invited counterpart G7 bureaucrats for a follow-up meeting on implementation strategies in August 1978. The officials decided to send worldwide demarches inviting other states to adopt the same anti-hijacking sanctions.[35] In addition, the G7 states continued to emphasize their commitment to the Bonn Declaration at subsequent summit meetings in Tokyo (1979), Venice (1980), and Ottawa (1981). Relatedly, the G7 UN ambassadors supported the FRG Foreign Office and lobbied through the fall of 1979 to ensure that the FRG's Hostages Convention was adopted without snares in December.[36] The G7 states thus collaborated collectively to undermine terroristic violence.

Nevertheless, the Bonn Declaration did not significantly enforce the ICAO Hague and Montreal Conventions. Few states committed to it.[37] Furthermore, the Bonn Declaration became a Cold War instrument. Despite a lack of concrete evidence, the G7 states in 1981 accused the Soviet-backed regime in Afghanistan of granting asylum to hijackers of Pakistani International Airlines flight 326. The hijackers had killed a Pakistani diplomat and secured the release of fifty Pakistani prisoners in March 1981. The G7 states withdrew landing rights from Ariana Airlines, the airline of the Soviet-backed regime in Afghanistan.[38] The Bonn Declaration subsequently faded into obscurity. Nevertheless, during the late 1970s the G7 states adhered to a common

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[34] Blumenau, "The Group of 7 and International Terrorism," 324.

[35] Blumenau, "The Group of 7 and International Terrorism," 324-326; and Memorandum from National Security Council Military Adviser William Odom to White House Counsel Robert Lipshutz "Bonn Statement on Terrorism," July 22, 1978, CPL, Counsel's Office, Robert Lipshultz's Subject Files, Box 45, Terrorism, 7-78 [CF, O-A 714].

[36] Blumenau, *The United Nations and International Terrorism,* 187.

[37] Blumenau, "The Group of 7 and International Terrorism," 328-331.

[38] Blumenau, "The Group of 7 and International Terrorism," 331-332.

narrative about terrorists being extraditable criminals and attempted to enforce its underlying multilateral conventions.

By 1979, Western industrial states solidified their conceptualization of terrorism in a way that kept the contestation around the term unresolved. The Hostages Convention, like its predecessors, branded specific terroristic acts as criminal instead of combatant yet contained manifold loopholes. Meanwhile, the G7 Bonn Declaration highlighted that Western industrialized states were willing to enforce anti-terrorism conventions only amongst themselves. As a result, the Western industrialized states branded terrorists as criminal, politically illegitimate actors without specifically addressing any non-state or other actors' claims to the contrary.

Conservatives, Cold War Biases, and the Jerusalem Conference

By 1979, new political movements utilized the concept that terrorists were illegitimate, criminal actors in international relations for their own ends. The spreading conservative movement used this model of terrorism to promote Cold War anticommunist policies, especially in the United States. Subsequent U.S. counterterrorism efforts relied on the core conceptualization of terrorism formed during the 1970s yet militarized to serve the Reagan administration's Cold War prerogatives.

In the 1970s, conservatives became a formidable grassroots political movement within the United States. Economic conservatives who favored unregulated markets and little government intervention struggled after New Deal policies garnered a wide coalition of support in the 1930s.[39] After World War II, economic conservatives as well as social progressives adopted anticommunist policies. Galvanized by Barry Goldwater's landslide defeat in the 1964 U.S. election, conservatives increasingly accused their Democrat counterparts of being soft on communism. Meanwhile, the Civil Rights movement and subsequent rise of identity politics mobilized social conservatives who felt threatened by policy initiatives such as the Equal Rights

[39] See Kim Phillips-Fein, *Invisible Hands: The Businessmen's Crusade Against the New Deal* (New York: W. W. Norton, 2009).

Amendment or affirmative action initiatives.[40] By the 1970s, conservatives such as Ronald Reagan and Phyllis Schlafly successfully united economic and social conservatives to produce a political movement, the "Moral Majority." Economic recession after the 1973 oil crisis and deindustrialization increasingly motivated white working class American citizens to support this movement.[41] Arguing that individuals had the right to shape their own economic and social communities, conservative leaders and grassroots members supported fewer government regulations, a free capitalist market, anticommunism, and religious and breadwinner-family oriented values even as they opposed détente, the civil rights movement, and large government programs. By the late 1970s, conservatives had emerged as a powerful political group in U.S. local, state, and national politics.[42]

U.S. conservatives strongly argued for a foreign policy dedicated principally to anti-communism.[43] Echoing earlier bipartisan statements, these conservatives held a zero-sum view of international relations. They preferred simple, bipolar foreign policy structures over complex multilateral diplomatic systems. Conservatives warned of a decline in U.S. hard power due to détente. In the United States, the Committee on the Present Danger (CPD) was the most aggressive conservative foreign policy interest group. CPD members argued that the United States needed to pursue all means to counter the rising influence of the Soviet Union, even if that

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[40] Case studies include Lisa McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton: Princeton University Press, 2001, 2015); Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton: Princeton University Press, 2006); and Kevin M. Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton: Princeton University Press, 2005).

[41] See Thomas Borstelmann, *The 1970s: A New Global History from Civil Rights to Economic Inequality* (Princeton: Princeton University Press, 2012).

[42] See David Farber, *The Rise and Fall of Modern American Conservatism: A Short History* (Princeton: Princeton University Press, 2010).

[43] See Laura Kalman, *Right Star Rising: A New Politics, 1974-1980* (New York: WW Norton & Co, 2010), and Farber, *The Rise and Fall of Modern American Conservatism*.

meant taking morally dubious actions such as supporting right-wing dictators.[44] CPD members called for a strong American military build-up as soon as possible to offset what they perceived to be Soviet geopolitical and nuclear weaponry gains which created a "window of vulnerability" that placed not only allies but the continental United States at risk of attack.[45] Later, the CPD published anti-Soviet screeds like the "Team B" report, charging the Central Intelligence Agency (CIA) for recklessly underestimating the Soviet Union's military build-up and its expansionist intentions.[46]

Conservatives also increasingly communicated in transnational networks across state boundaries. While historians have studied the history of leftist transnational collaboration, few works exist on comparable conservative networks. Many conservative politicians in the United States, Western Europe, Southeast Asia, and Latin America shared a deep fear of communism and collaborated on anti-communist foreign policy platforms which called for military responses to counter the ostensibly rising Soviet influence throughout the Global South.[47] Since many Arab states had working relationships with the Soviet Union, Israeli leaders and American conservatives, including both evangelical Christians and Zionist Jews and an emerging neoconservative coalition that crossed party lines, agreed that it would be in both countries' best

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[44] Jeanne Kirkpatrick, "Dictatorship and Double Standards," *Commentary* 68, no. 5 (November 1979), 34-45.

[45] See Brian J. Auten, *Carter's Conversion: The Hardening of American Defense Policy* (Columbia, MO: University of Missouri Press, 2010); Scott Kaufman, *Plans Unraveled: The Foreign Policy of the Carter Administration* (DeKalb: Northern Illinois University Press, 2008); and Robert H. Johnson, "Periods of Peril: The Window of Vulnerability and Other Myths," *Foreign Affairs* 61, no. 4 (Spring 1983): 950-970.

[46] See Richard Pipes, "Team B: The Reality Behind the Myth," *Commentary* 82, no. 4 (October 1986): 25-40.

[47] See Auten, *Carter's Conversion*; and Betty Glad, *An Outsider in the White House: Jimmy Carter, His Advisors, and the Making of American Foreign Policy* (Ithaca: Cornell University Press, 2009).

interests to foster an American foreign policy friendly toward Israel as a U.S. regional ally in the Middle East.[48]

Less well known and outside of formal politics or diplomacy, radical conservative activists increasingly funded, supported, and engaged in violent guerilla-tactic activity against leftist states such as Cuba or Nicaragua.[49] Though their violent acts mirrored those of leftist insurgents, U.S. and right-wing Latin American politicians almost never applied the terrorism label which they had used to criminalize and depoliticize leftists. By the late 1970s, conservatives were thus cooperating across borders in myriad ways to advance anti-communist foreign policy agendas.

Conservative activists, politicians, and opinion leaders began to consider the fields of terrorism and counterterrorism in relation to U.S. foreign policy due to an Israeli initiative. In July 1979, a new Israeli think tank named the Jonathan Institute held a large conference in Jerusalem which shaped how Western conservatives conceptualized the term terrorism. Benjamin Netanyahu, a young Israeli conservative and the current Israeli Prime Minister, founded and ran the institute in honor of his brother (Yonatan in Hebrew) – who commanded the special forces at Entebbe and was the lone fatality Israel suffered during the operation.

The Jonathan Institute's main purpose was to support and disseminate the Israeli government's practices regarding terrorism. The institute was a mouthpiece for the Israeli government. Its administrative committee was full of high-ranking current and former Israeli officials, including President Ephraim Katzir, Prime Minister Menachem Begin, Foreign Minister Moshe Dayan, Defense Minister Ezer Weizman, and former Prime Ministers Golda Meir and Yitzhak Rabin.[50] Unlike the U.S. and Western European states, the Israeli government treated

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[48] See Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood*, 1st (Boston: Beacon Press, 2006); Alan Dowty, *Israel/Palestine,* 3rd ed. (Cambridge, UK, Malden, MA: Polity, 2012); and Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999*, 1st (New York: Knopf, 1999).

[49] See Kyle Burke, *Revolutionaries for the Right: Anticommunist Internationalism and Paramilitary Warfare in the Cold War* (Chapel Hill: University of North Carolina Press, 2018).

[50] Stampnitzky, *Disciplining Terror*, 112.

Palestinian fedayeen as enemy combatants supported by surrounding Arab states. Israeli anti-terrorism measures included counterinsurgency tactics against the terrorists themselves, such as the use of special forces teams and the exercise of military control of majority-Palestinian areas, as well as armed campaigns against targets in neighboring Arab states. In contrast, American and West German officials sought to remove any link between terrorism and warfare during the 1970s. Israeli military activity subverted U.S. and FRG efforts to regulate terroristic acts through criminal law in the UN and ICAO. An inference drawn by several scholars is that the Israeli government used the Jonathan Institute and its 1979 conference to spread the notion that Palestinian terrorists were combatants in the service of the Soviet Union.[51] In the eyes of (U.S.) conservatives, such a concept could legitimize military counter-terrorist policies. The Israeli organizers of the 1979 "Jerusalem Conference on International Terrorism" did openly state that they planned for the conference to be an intervention to change the discourse on terrorism in their favor.[52]

Records on the preparation of the Jerusalem Conference are currently unavailable, but the Jonathan Institute published most of the papers and transcripts of the discussions. These documents offer valuable insights into the Jerusalem Conference's conceptualization of terrorism.[53] Overall, Israelis shaped the framework of the conference. Israeli presenters included Israeli Prime Minister Menachem Begin, former Defense Minister Shimon Peres, as well as Major Generals Aharon Yariv (former Israeli Chief of Intelligence) and Shlomo Gazit (head of Israel's

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[51] Stampnitzky, *Disciplining Terror*, 112-113; and Hänni, "Global Terror Networks," 67.

[52] Benjamin Netanyahu, "Foreword," in *International Terrorism: Challenge and Response; Proceedings of the Jerusalem Conference on International Terrorism*, ed. Benjamin Netanyahu (Jerusalem: The Jonathan Institute [u.a.], 1981), xi–ii, xi-xii; Stampnitzky, *Disciplining Terror*, 112-113.

[53] Conference reports include Benjamin Netanyahu, ed., *International Terrorism: Challenge and Response*; Benjamin Netanyahu, *International Terrorism: The Soviet Connection* (Jerusalem: Jonathan Institute, 1979); and Benjamin Netanyahu and Paul Johnson, *The Jerusalem Conference on International Terrorism* (Jerusalem: Jonathan Institute, 1979).

Military Intelligence).[54] Senior Israeli diplomats chaired most panels; in one case the chair was Meir Shamgar, a Justice of the Supreme Court of Israel.[55] Israeli President Yitzak Navon was also in attendance.[56]

The Israeli organizers of the conference turned to conservatives from North America and Western Europe for their intervention into the global discourse on terrorism. They invited over four hundred journalists to report on the Jerusalem Conference from July 2 to 5, 1979.[57] Conference presenters included prominent conservative politicians, policy-makers, journalists, pundits, and academics. Among the speakers were former heads of state, former cabinet members, and active members of parliament from the Western European states and Canada.[58] However, American anti-communists comprised the largest delegation at the conference. Notable foreign policy hawk Senator Henry M. “Scoop” Jackson (Dem, WA) attended, as did George H.W. Bush, who served as Richard Nixon’s Ambassador to the United Nations and, as Gerald Ford’s CIA Director, approved the Team A/B exercise. At least ten members of the Committee on the Present Danger (CPD) presented papers, including Congressman Jack Kemp (Rep, NY) and conservative intellectuals such as the historian Richard Pipes, who chaired Team B, and Norman Podhoretz, the editor of *Commentary* Magazine and leading Jewish neoconservative.[59] Other committee members in attendance included Richard Allen, who Reagan would appoint his first national

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[54] Netanyahu, ed., *International Terrorism: Challenge and Response,* vii, 73, 343.

[55] Netanyahu, ed., *International Terrorism: Challenge and Response,* 49, 111, 162, 265.

[56] Hänni, “Global Terror Networks,“ 60.

[57] Edward S. Herman and Gerry O'Sullivan, *The "Terrorism" Industry: The Experts and Institutions That Shape Our View of Terror* (New York: Pantheon Books, 1989), 105.

[58] Examples were Lord Alan Chalfont (a former British cabinet member), Hugh Fraser (a British Member of Parliament), Jacques Soustelle (a member of the French National Assembly and ironically a previous leader of the terroristic Organisation de l’armée secrete), Manlio Brosio (former Secretary General of NATO), Joop den Uyl (former Prime Minister of the Netherlands), Frank Cluskey (head of Ireland’s Labour Party), and David Barrett (former Premier of British Columbia). See Netanyahu, ed., *International Terrorism: Challenge and Response,* 23, 79, 122, 165, 180, 250, 313.

[59] Netanyahu, ed., *International Terrorism: Challenge and Response,* 201.

security advisor, and Henry Jackson aide Richard Perle.[60] Many of these actors would gain positions in the Reagan administration. Other prominent attendees were conservative journalist George Will and Soviet dissident Vladimir Bukovsky. Some of the most ardent anti-communist pundits of the day were also present, including Brian Crozier, Robert Moss, and Michael Ledeen.[61]

The conservative anti-communist majority at the conference shaped the discussions. Few non-Israeli participants had experience with anti-terrorism policies. Exceptions included Bush and Hans-Josef Horchem, head of the FRG intelligence service Office for the Protection of the Constitution in Hamburg, West Germany.[62] Other state anti-terrorism officials were invited but could not attend, such as Hans-Jürgen Wischnewski, the state secretary who had supervised the FRG special forces operation at Mogadishu.[63] Also not present were a number of academics who had gained prominence in the 1970s as anti-terrorism experts but did not share specifically conservative and anti-communist political outlooks, such as the RAND Corporation's Brian Jenkins.[64] The Jerusalem Conference catered to conservative and anti-communist activists – not to anti-terrorism officials or experts.

The Jerusalem Conference panelists advocated for (Israeli-style) militarized counterterrorism measures. To advance this viewpoint, conference panelists discussed several interrelated claims. The first claim was that terrorists committed their attacks because they despised the societies

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[60] Hänni, "Global Terror Networks," 61.

[61] Herman and O'Sullivan, *The "Terrorism" Industry,* 108, 167-173. Brian Crozier was director of the Institute for the Study of Conflict, a London-based conservative think tank. Netanyahu, ed., *International Terrorism: Challenge and Response,* 64. Robert Moss was a British-based journalist and editor of *Foreign Report*, the private intelligence bulletin of *The Economist*. Netanyahu, ed., *International Terrorism: Challenge and Response,* 128. Michael Ledeen was an independent journalist.

[62] Netanyahu, ed., *International Terrorism: Challenge and Response,* 172, 307, 350.

[63] State Secretary Hans-Jürgen Wischnewski (FRG Chancellery) to Shimon Peres, Letter, January 16, 1979, Federal Archives, Germany (BArch), Federal Republic of Germany (B) Records of the Chancellery (136)/15685.

[64] See Stampnitzky, *Disciplining Terror,* 114.

and the freedom of democratic states. Second, the Soviet Union ostensibly used terrorists to wage clandestine warfare against the United States and its allies, despite the fact that all multilateral conventions labeled terrorists as criminals. The third claim was that U.S. and European efforts to criminalize and politically delegitimize terrorism were insufficient in the face of terrorists' Soviet support. Finally, conference participants argued that Western states needed to introduce military counterterrorism measures to prevent these criminals from advancing Soviet geopolitical goals. The conference's main aim was to integrate counterterrorism and military anticommunism efforts. This set of claims allowed Israeli leaders to argue that allied states needed to treat terrorists as Soviet proxy combatants - even if they did not consider such terrorists to be combatants, insurgents, or any other type of legitimate political actor under the laws of war.

The conference panelists began by alleging that terrorists despised the freedom inherent in democratic societies. This claim was only possible because U.S. and European officials had developed the habit of treating terrorists' motivations and political goals as inscrutable. Now, conservatives introduced their own interpretations of terrorists' political aims. The conference speakers conflated Western industrialized states with "the West," a set of countries with intrinsically democratic values and freedoms (not specifically defined). They then accused terrorists of fundamentally rejecting and striving to undermine such values.[65] Think tank staffer Ray S. Cline, who had worked as a CIA and State Department analyst in the 1960s and early 1970s, argued that "Terrorism is intended by those who finance it, arm it and ideologically inspire it, to weaken and ultimately dissolve the fabric of civilized behavior in open, pluralistic societies."[66] The conference attendants simplified terrorists' aims and bent them to fit their own ideological convictions.

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[65] Stampnitzky, *Disciplining Terror*, 113-114.

[66] Ray Cline, "The Strategic Framework," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 90–100, 91.

The conference attendees' main argument was that the Soviet Union heavily supported terrorists as allied combatants against the West. Having accused terrorists of hating the "freedoms" of the West, panelists discussed how such terrorist views aligned with Soviet ones. A series of presenters, especially Americans, postulated that the Soviet Union and its satellite states were actively training, fostering, and supporting terrorists. During the 1960s, most writing about terrorism had focused on leftist and Soviet-backed insurgents as well.[67] Some of the 1960s authors were present at the Jerusalem Conference, such as Brian Crozier and Ray Cline. Unlike in their earlier studies, however, they now followed the trend that U.S. and European officials had established over the course of the 1970s and completely disregarded terrorists' political aims.[68] Conservatives at the Jerusalem Conference dismissed the idea that terrorists were autonomous actors with goals (such as national liberation, the overthrow of the Israeli state, etc.) that were independent of the Soviet Union. Instead, they focused on the ostensible benefits that the Soviets were drawing from their sponsorship of terrorism. Senator Henry M. Jackson stated that the Soviet Union fostered terrorism as "a form of 'warfare by remote control' waged against free nations or against non-democratic but moderate states which dare to sympathize with freedom."[69] Brian Crozier claimed that Soviet leaders supported terrorists because "Terrorism contributes to

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[67] A popular media example is Brian Crozier, "Anatomy of Terrorism," *The Nation* 188 no. 12 (March 12, 1959): 250-252; an academic one is Thomas Thornton, "Terror as a Weapon of Political Agitation," in *Internal War: Problems and Approaches,* ed. Harry Eckstein (New York: The Free Press of Glencoe, 1964), 71-99; while a government example is Ray S. Cline (Bureau of Intelligence and Research), Intelligence Brief "Latin America: The Growing Specter of Diplomatic Kidnappings," March 25, 1970, National Archives and Record Administration, Record Group 59: Records of the Department of State, Central Foreign Policy Files 1970-73, POL 23-8 LA, 1/1/1970.

[68] Lisa Stampnitzky, "From Insurgents to Terrorists: Experts, Rational Knowledge, and Irrational Subjects," in *Disciplining Terror,* 49-82 provides a detailed analysis of publications on terrorism before 1968. She also emphasizes how U.S. government, academic, and media publications during the 1970s stopped focusing on terrorists' political aims.

[69] Henry M. Jackson, "Terrorism as a Weapon in International Politics," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 33–38, 35.

the enfeeblement and destabilization of non-Communist regimes."[70] Ray S. Cline postulated that terrorism was a form of low-intensity warfare, waged against the "open societies" of the world.[71] George Bush called terrorism "surrogate warfare."[72]

However, these claims were unverified. Most speakers speculated freely. Crozier and Cline, for example, listed supposed Soviet state organs that might coordinate such actions and conceivable sites where Soviet terrorist training camps might be located.[73] They offered no evidence to support their statements. Other speakers presented questionable proof. Journalist Robert Moss identified specific Soviet training institutions, such as "the military academy at Simferopol," as well as the terrorists being educated there – "mixed groups (usually numbering about 60 trainees at a time) including Fatah, Saiqa, the PFLP [Popular Front for the Liberation of Palestine] and the PLF [Palestine Liberation Front][.]"[74] Moss also made spectacular claims, including that Soviet-trained PLO members were acting as a new secret police in revolutionary Iran.[75] To support these statements, Moss referred to "a series of important intelligence defectors, including the Czech General [Jan] Sejna[.]"[76] Sejna defected to the United States in early 1968. Any of his statements were at least eleven years out of date.[77] Since the PFLP and other

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[70] Brian Crozier, "Soviet Support for International Terrorism," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 64–72, 65.

[71] Ray Cline, "The Strategic Framework," 90-91.

[72] George H. Bush, "The U.S. and the Fight Against International Terrorism," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 332–337, 335.

[73] Crozier, "Soviet Support for International Terrorism," 67-71; Cline, "The Strategic Framework," 94-95, "Questions and Answers: Fourth Session: Current Response of Democratic Societies," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 214–219, statement by Robert Moss, 216.

[74] Robert Moss, "The Terrorist State," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 128-134, 131.

[75] Moss, "The Terrorist State," 128.

[76] Moss, "The Terrorist State," 131.

[77] Leslie H. Gelb, "Role of Moscow in Terror Doubted," *New York Times,* October 18, 1981, 1001009.

extremist Palestinians did not begin hijacking large civil airplanes until the summer of 1968, after Sejna's defection, his knowledgeability on Soviet or Czech policies on international terrorism was highly questionable in the first place. It is also possible the CIA used Sejna to plant anti-communist propaganda – which Moss then fell for. Journalist Bob Woodward claimed in a 1987 book on the CIA that its analysts gave doctored statements from Sejna on the subject of terrorism to a right-wing Italian newspaper in 1979 to discredit the leftist Red Brigades terror organization.[78] In any case, Moss' evidence was problematic.

Most conference attendees accepted these speakers' statements without question, however. For example, historian Richard Pipes stated that "[c]oncrete examples of Soviet support of terrorist organizations have been given by others," utilizing presentations such as Moss, Crozier, and Cline's to justify his own analysis of contemporary Soviet policy.[79] Anyone who suggested that the Soviet Union was not giving substantial support to terrorists faced heavy criticism in the question and answer sessions. Ironically, conservatives derided these suggestions as "confused in his theory" or as "hopes or fears or delusions."[80] The consensus among the conference participants was that the Soviet Union utilized terrorist groups to destabilize Western liberal democracies. Therefore, terrorism had to be a vital and previously underrated aspect of the Cold War. If the Israeli organizers of the conference planned to explain their counterterrorism efforts as military anticommunism practices, then they succeeded brilliantly.[81]

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[78] Bob Woodward, *Veil: The Secret Wars of the CIA 1981 - 1987* (London: Simon Schuster, 1987), 131. Though pertinent CIA records are still classified, several recent studies have agreed that such propaganda efforts could have been possible. See Stampnitzky, *Disciplining Terror*, 119-120; and Hänni, "Global Terror Networks," 63-64.

[79] A good example is Richard Pipes, "The Roots of the Involvement," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 58–63, 62.

[80] "Questions and Answers: Third Session: The Threat Posed by Terrorism to Democratic Societies," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 155–158, 157; "Questions and Answers: Fourth Session," 217.

[81] Hänni, "Global Terror Networks," 67.

The conference attendees heavily criticized the United States and Western European countries for a general lack of effective anti-terrorism efforts. Panelists claimed that previous domestic and multilateral efforts in the United States, U.K., FRG, and elsewhere were not enough to stop an international network of terrorists backed by the Soviet Union. Presenters complained that the legislative restrictions placed on U.S. intelligence agencies in the 1970s prevented successful information gathering on terrorists.[82] A panel on "Terrorism and the Media" came to the conclusion that the media, when uncensored, aided terrorism by displaying "a dangerous lack of understanding of terrorism and its aims," by sensationalizing terrorist acts in progress, and by creating nuanced descriptions when reporting on terrorism.[83] This behavior ostensibly created an irresponsible moral ambivalence about terrorism. Finally, the prominent physicist Edward Teller, who had contributed to the hounding of Robert Oppenheimer in the 1950s, and others warned that Western industrialized states were currently unable to prevent terrorists from acquiring weapons-grade nuclear material, thereby posing an existential threat to the civilization itself.[84]

The final topic discussed at the conference was therefore how the United States, European countries, and their Cold War allies could act more effectively to combat terrorism in the future. Speakers emphasized that the Soviet Union's involvement changed the parameters of what was permissible. In international law, terrorists had no claims to political agency or combatant status; Yet the Soviet Union ostensibly used them to wage war against the Western states. Hence, terrorists were a military threat. Accordingly, conference participants contended, Western states

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[82] Hugh Fraser, "The Tyranny of Terrorism," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 23–32, 27; Cline, "The Strategic Framework," 99-100; and George Will, "Calculating the Public Interest," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 208–213, 208-209.

[83] Paul Johnson, "Preface: Fifth Session: The Role of the Media in the Struggle Against Terrorism," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 221–222, 221-222.

[84] Edward Teller, "The Spectre of Nuclear Terrorism," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 141–5,142-143; Thomas Schelling, "Can Nuclear Terrorism Be Neutralized?," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 146–154, 146-148; and Bush, "The U.S. and the Fight Against International Terrorism," 335-336.

should respond with military countermeasures.[85] Bush argued that multilateral conventions and criminal law were not enough.[86] Speakers advocated that Western intelligence agencies should have more capacities and less supervision.[87] They recommended that the media be required to censor itself in order to deprive terrorists of publicity and audiences.[88] Most importantly, panelists stressed the need for an "aware public" that was willing to support unequivocal policies against both terrorists and the Soviet Union.[89] In its closing statement, the conference members called for "An energetic and continuing effort to alert public opinion to the dangers of terrorism to civil liberties and to the rights of individuals in a free society and the need for effective measures to combat it."[90] Conference speakers thus discussed terrorism as a Soviet Cold War tactic, and advocated for military countermeasures in response.

Participants in the Jerusalem Conference on International Terrorism created their desired intervention into existing narratives about terrorism and counterterrorism. Led by Israeli officials and U.S. Cold War hardliners, they succeeded in formulating a new narrative about international

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[85] Stampnitzky, *Disciplining Terror*, 109-110.

[86] See especially Bush, "The U.S. and the Fight Against International Terrorism," 333-334.

[87] Shimon Peres, "The Threat and the Response," in *International Terrorism: Challenge and Response,* ed. Netanyahu, 8–11,10; Fraser, "The Tyranny of Terrorism," 27; Alan Chalfont, "Our Main Problem: The Climate of Appeasement," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 79–89, 81-82; and Cline, "The Strategic Framework," 100.

[88] Johnson, "Preface: Fifth Session," 221-222; Michael Elkins, "Caging the Beasts," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 230–234, 233-234; Norman Podhoretz, "The Subtle Collusion," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 235–241, 238-240; Jacques Soustelle, "Liberty or License?," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 250–252, 251-252; and "Questions and Answers: Fifth Session: The Role of the Media in the Struggle Against Terrorism," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 253–262, 253-262.

[89] Prominent examples from the conference include Benjamin Netanyahu, "Foreword," xi-xii; Henry M. Jackson, "Terrorism as a Weapon in International Politics," 35-37; Annie Kriegel, "Public Opinion, Intellectuals and Terrorism in Western Europe," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 172–179, 173-174; and Benjamin Netanyahu, "Conference Summary Statement," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 361–362, 362.

[90] Netanyahu, "Conference Summary Statement," 362.

terrorism. To them, the Soviet Union supported (even if it did not control) all terrorist groups worldwide. Soviet backing linked these groups in a collective effort to destabilize liberal democratic societies. The conference's closing statement postulated that "Whatever the ideological or nationalist aspirations of individual terrorist groups, they have a common interest, which they share with the Soviet Union, in destroying the fabric of democratic, lawful societies all over the world."[91] International terrorism was a (politically illegitimate) warfare measure utilized by the Soviet Union to gain a distinct advantage in the Cold War. Therefore, Western states needed to employ aggressive martial measures to combat terrorism. This conceptualization also neatly overlooked instances of right-wing terror. After the Jerusalem Conference, its organizers and participants intervened in prevailing discussions about terrorism in the United States and Europe to disseminate their new narrative.

The "Terror Network" Theory

To discredit earlier American and European policies and media interpretations of terrorism, conservatives sought to disseminate their own conceptualization as quickly as possible. During the Jerusalem Conference, British historian and presenter Paul Johnson published an article in the London *Evening Standard* warning readers that the Irish Republican Army was part of a vast network of terrorist groups.[92] Days later, Congressman Jack Kemp inserted the Conference's summary statement as well as his conference presentation into the U.S. Congressional Record.[93] Kemp's act provided publicity and an on-the-record source for the Jerusalem Conference's findings.[94] In the following months, conference attendees such as George Will, Robert Moss,

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[91] Netanyahu, "Conference Summary Statement," 361.

[92] Paul Johnson, "Spreading Fast: This World Conspiracy of Terror," *Evening Standard*, July 3, 1979.

[93] "The Jerusalem Conference on International Terrorism Identifies the Soviet Union as the Primary Sponsor of Terrorism," July 10, 1979, *Congressional Record*, Vol. 125, Part 14, 96th Congress, 1st Session, p. 17926-17929.

[94] Stampnitzky, *Disciplining Terror*, 116, Hänni, "Global Terror Networks," 78.

Brian Crozier, and Hans-Josef Horchem published articles in U.S. and European newspapers and journals to accuse the Soviet Union of abetting Palestinian and other terrorist organizations.[95] U.S. filmmaker Herbert Krosney produced a documentary which aired in September 1979. "The Russian Connection" explicitly stated that Palestinian terrorists were manipulated by the Soviet Union for the Soviets' own purposes.[96]

The participants at the Jerusalem Conference struggled to break into the mainstream media in the United States or Europe, though. A major problem was that conference participants lacked evidence to prove their allegations. Instead, they either referred to problematic intelligence sources, such as Moss, or cited one another.[97] Krosney included statements from Crozier, Cline, and Moss. *New York Times* television critic John O'Connor mocked "The Russian Connection" for being "more preoccupied with plucking emotions than with dispassionate analysis."[98] Journalists and academics picked up on this lack of a source base.

During the U.S. presidential election of 1980, however, the Committee on the Present Danger and other foreign policy conservatives cared more about disseminating their alarmist views than they did about providing evidence to support them. A good example of such conservatives' rhetoric is an article by Paul Nitze. Chairman of Policy Studies at the CPD, Nitze wrote about Soviet geopolitical ambition in the fall 1980 issue of *Foreign Affairs*.[99] Nitze's article explained

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[95] Hänni analyzes these articles in Hänni, "Global Terror Networks," 76-78. Examples include Robert Moss, "Moscow Backs Terror Inc.," *Daily Telegraph*, July 16, 1979; Brian Crozier, "The Soviets' Terror Tactics," *National Review*, August 3, 1979, 961; George F. Will, "Tracking Terror," *Washington Post,* August 9, 1979, A19; Hans-Josef Horchem, "Die Sowjetunion und der internationale Terrorismus: Eine Variante expansiver und erfolgreicher kommunistischer Politik," ["The Soviet Union and International Terrorism: An Aspect of Expansive and Successful Communist Policy"], *Frankfurter Allgemeine Zeitung,* October 20, 1979, 11; and Robert Moss, "What Russia Wants," *The New Republic,* January 19, 1980, 23-25.

[96] John J. O'Connor, "TV Weekend: Jones as a Gentle Bear of Detectives," *New York Times*, September 28, 1979, C25.

[97] Moss, "What Russia Wants," 23.

[98] O'Connor, "TV Weekend: Jones as a Gentle Bear of Detectives," C25.

[99] Paul Nitze, "Strategy in the Decade of the 1980s," *Foreign Affairs* 59, no. 1 (Fall 1980), 82-101.

why the Jerusalem Conference's terrorism conceptualization was so appealing to American foreign policy hawks. He claimed that the Soviet Union's goal was to maximize military capabilities and outreach to gradually eclipse U.S. power.[100] Nitze portrayed the support of international terrorism as one in a series of military measures undertaken by the Soviet Union to gain an advantage over the United States and its allies. He stated that the Soviet Union "focuses on the training, organization, and support of terrorist activities designed to break down the confidence of groups not under their control. The evidence (…) supports the view that the Soviet Union has been, and is, a principal supporter of terrorism, both with material aid and in its politics and propaganda."[101] However, Nitze did not provide evidence except for one citation to a Robert Moss article.[102] In this article, Moss repeated his claims from the Jerusalem Conference – especially the assertion that Soviet-trained PLO members were acting as a secret police for the revolutionary Iranian state.[103] The evidentiary foundation for Moss' claims was, as previously discussed, all but non-existent.[104] However, Nitze cited and referred to Moss' article without qualification.

The mutual cross-referencing continued. In November 1980, Moss wrote another, even more alarmist article about the Soviet Union's support of terrorism, which included his spectacular assertions about the PLO and Iran in far greater detail.[105] As evidence, he again referenced the problematic claims of Czech General Jan Sejna. The only other reference in the article was to a statement given at the Jerusalem Conference by Israeli Major General Shlomo Gazit, who

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[100] Nitze, "Strategy in the Decade of the 1980s," 90-91.

[101] Nitze, "Strategy in the Decade of the 1980s," 91.

[102] Nitze, "Strategy in the Decade of the 1980s," note 2.

[103] Moss, "What Russia Wants," 25.

[104] See Crozier, "Soviet Support for International Terrorism," 67-71; Cline, "The Strategic Framework," 94-95; Robert Moss, "The Terrorist State," 128, 131; "Questions and Answers: Fourth Session: Current Response of Democratic Societies," 214–219, statement by Robert Moss, 216.

[105] Robert Moss, "Terror: A Soviet Export," *New York Times*, November 2, 1979, SM11.

asserted that terrorists were training in forty different military schools in the Soviet Union.[106] Both Nitze and Moss thus relied on statements from the Jerusalem Conference and articles about the conference to make their case. Conservatives used the Jerusalem Conference's idea that Soviets sponsored terrorists as another argument in favor of a more militant American foreign policy, a turn away from détente, and increased American defense expenditures.

In 1981, president-elect and CPD member Ronald Reagan appointed many fellow CPD associates to senior posts in his new administration. Richard Allen became Reagan's National Security Advisor, while Richard Pipes was installed as Director of Soviet Affairs in the National Security Council. Later additions to the Reagan administration included Henry Jackson acolyte Richard Perle, union leader Lane Kirkland, nuclear scientist Edward Teller, and journalist Midge Decter, the wife of *Commentary* editor Norman Podhoretz.[107] All had been present at the Jerusalem Conference. The new administration members did not specifically reference the Jerusalem Conference. However, the Reagan administration did adopt the viewpoints on terrorism disseminated by the conference's participants.

The Reagan administration embraced the Jerusalem Conference's conceptualization of terrorism. Haig, who had not been at the conference but was especially concerned about terrorism because he had survived an assassination attempt two years earlier, stated in his first official press conference in January 1981 that the Soviet Union trained, funded, and equipped terrorists.[108] He announced that the United States would prioritize policies against terrorism in the future that permitted "'swift and effective retribution'" against Soviet-backed terrorists.[109] Haig's implication was that the United States would pursue military counterterrorism policies over

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[106] Moss, "Terror;" and Shlomo Gazit, "The Myth and the Reality of the PLO," in *International Terrorism: Challenge and Response*, ed. Netanyahu, 343-349, 348.

[107] See Charles Tyroler, *Alerting America: The Papers of the Committee on the Present Danger* (Washington: Pergamon-Brassey's, 1984), ix-xi.

[108] Oberdorfer, "Haig Calls Terrorism Top Priority," A1, A4. For Haig's views on terrorism more generally, see Naftali, *Blind Spot,* 117-118.

[109] Oberdorfer, "Haig Calls Terrorism Top Priority," A1.

multilateral collaboration. After all, such multilateral efforts - especially in the UN - required compromise with the Soviets as well as with recently independent states and other supporters of national liberation movements.[110] Haig and other administration members such as Pipes did not welcome such compromise.[111] However, Haig, Pipes, and other top administration officials faced immediate pushback to their assertions.

Haig's statements surprised officials with experience in anti-terrorism policies in the CIA, the State and Defense Departments, and other U.S. agencies. These officials saw little concrete evidence of the Soviet Union's involvement with terrorists. For example, a CIA research paper titled "International Terrorism in 1979" did not mention the Soviet Union. The paper even stated that the number of international terrorist attacks was on a downward trend that had been ongoing since 1978.[112]

Analysts at Langley and Foggy Bottom pushed back against the idea of treating terrorism as a form of Soviet warfare.[113] CIA Director William Casey was critical of his agency's intelligence-gathering capacities.[114] Immediately after taking office, Casey ordered a new study about the Soviet Union's involvement in international terrorism - in hopes of proving the Soviet Union's

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[110] Stampnitzky, *Disciplining Terror,* 109-110.

[111] Telegram 2324 from U.S. Embassy Moscow to State Department, February 17, 1981, *Foreign Relations of the United States* (*FRUS)*, 1981-88, Volume III: Soviet Union, January 1981-January 1983, Document 20, 2016, accessed April 26, 2018, https://history.state.gov/historicaldocuments/frus1981-88v03/d20; and Memorandum From Richard Pipes (Director of Soviet Affairs, National Security Council) to Richard Allen (National Security Advisor), "Weekly Report as of February 21," February 24, 1981, *FRUS*, 1981-88, Volume III, Document 21, 2016, accessed April 26, 2018, https://history.state.gov/historicaldocuments/frus1981-88v03/d21.

[112] Central Intelligence Agency (CIA), "'International Terrorism in 1979': National Foreign Assessment Center Non-Classified Paper PA 80-100724," April 1980, Digital National Security Archive, Terrorism and U.S. Policy, 1968-2002, TE00632, accessed December 14, 2013, http://gateway.proquest.com.libproxy.temple.edu/openurl?url_ver=Z39.88-2004&res_dat=xri:dnsa&rft_dat=xri:dnsa:article:CTE00632, iii.

[113] Stampnitzky, *Disciplining Terror*, 130-131.

[114] Richard Immerman, *The Hidden Hand: A Brief History of the CIA* (Chichester, U.K.: Wiley-Blackwell, 2014), 125-127.

complicity with all sorts of international terrorist organizations.[115] However, the CIA analysts working on this Special National Intelligence Estimate (SNIE) upheld their own analyses even when these did not sufficiently condemn the Soviet Union for Casey's taste; Likewise, the State Department's Bureau of Intelligence and Research rejected any analysis for the SNIE based solely on "policy preferences."[116]

Due to this bureaucratic resistance, the Reagan administration publicly supported the idea of a Soviet terror network but initially did not create policies based on this premise. Further statements in support of the Jerusalem Conference's findings followed. In February 1981, a *Washington Post* article on Richard Pipes' assessment of the Soviet Union reaffirmed his claims (from the Jerusalem Conference, but unattributed) that the Soviet Union "encourages and employs terrorism because terrorism is a handy and cheap weapon in their arsenal to destroy Western societies."[117] Ronald Reagan also publicly supported the Jerusalem Conference's findings. In an interview with Walter Cronkite about his policy towards El Salvador, Reagan stated on March 3 that "we have sent briefing teams to Europe, down to our Latin American neighbors with what we've learned of the actual involvement of the Soviet Union, of Cuba, of the PLO, of, even Qadhafi in Libya, and others in the Communist bloc nations to bring about this terrorism down there."[118] The president claimed that terroristic actors worldwide operated to advance Soviet goals in Latin America. Three days later, he replied to a question about El

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[115] Stampnitzky, *Disciplining Terror*, 120. Important CIA documents on the subject are still classified.

[116] "Minutes of the Principals of the Department of State Staff Meeting," March 24, 1981, page 90, *FRUS,* 1981-1988, Volume III, Document 34, accessed June 14, 2018, https://history.state.gov/historicaldocuments/frus1981-88v03/d34.

[117] Philip Geyelin, "The Reigning White House Soviet Scholar," *Washington Post*, February 12, 1981, A19. This quotation was a cropped but direct excerpt from Pipes' presentation at the Jerusalem Conference. See Pipes, "The Roots of the Involvement," 62.

[118] Ronald Reagan, "Excerpts From an Interview With Walter Cronkite of CBS News," March 3, 1981, *The American Presidency Project (APP),* ed. Gerhard Peters and John T. Woolley, accessed April 9, 2018, http://www.presidency.ucsb.edu/ws/?pid=43497, paragraphs 2-3.

Salvador at a press conference that the United States government was “trying to stop this destabilizing force of terrorism and guerilla warfare and revolution from being exported in here, backed by the Soviet Union and Cuba and those others that we've named.”[119] Reagan himself thus stated that the Soviet Union fostered an expanding network of terrorism. He remained silent about right-wing violence in El Salvador.

The Reagan administration worked closely with other Jerusalem Conference participants to propagate its concept of a Soviet-backed terror network. A key collaborator was journalist Claire Sterling. She was in the final stages of writing a book on the conference’s findings when the Reagan administration came into office. Sterling and the Reagan administration provided each other with substantial publicity. Sterling’s April 1981 book *The Terror Network* supported administration pronouncements and widely publicized the concept of a “terror network.” Sterling wrote that terror was “about destabilizing the West, by extending the classic Von Clausewitz definition of war as the continuation of politics by other means.”[120] She claimed that the Soviet Union supplied terrorists with support.[121] Sterling spoke of “guerilla training camps for tens of thousands of terrorists[,]” “colossal supplies of weapons[,]” as well as sanctuaries, intelligence information, and diplomatic cover for terrorists.[122] Besides newspaper articles, Sterling’s main source was (like Moss) General Jan Sejna.[123] Members of the Reagan administration loved Sterling’s work.[124] Casey claimed that Sterling’s book provided more information than all of the

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[119] Ronald Reagan, "The President's News Conference," March 6, 1981, *APP*, accessed April 9, 2018, http://www.presidency.ucsb.edu/ws/?pid=43505, El Salvador.

[120] Claire Sterling, *The Terror Network: The Secret War of International Terrorism* (New York: Holt, Rinehart, and Winston, 1981), 2.

[121] Sterling, *The Terror Network*, 292-293.

[122] Sterling, *The Terror Network*, 3-4.

[123] Sterling, *The Terror Network*, 14, 34, 221, 290-292.

[124] Stampnitzky, *Disciplining Terror*, 125.

analysts working under him at the CIA combined.[125] Haig and Casey passed out copies of *The Terror Network* within the federal government.[126] Meanwhile, Sterling endorsed her book with approving comments from administration members.[127] Sterling thus received considerable media attention because of her work's proximity to official statements.

The Reagan administration thus played a vital role in the Jerusalem Conference participants' propaganda efforts concerning international terrorism. For the first time, wide U.S. audiences heard about the theory of a Soviet-backed terror network. Reagan, Haig, and others ensured that reporters scrambling to cover the new American government also wrote about the concept of international terrorism. They continued these efforts in subsequent years. From June 24-26, 1984, the Jonathan Institute hosted the "Second Conference on International Terrorism," a follow-up to the Jerusalem Conference, in Washington, D.C. at the invitation of the Reagan administration. Many Jerusalem Conference attendees were again present, including Benjamin Netanyahu, Yitzhak Rabin, Congressman Kemp, Vladimir Bukovsky, and conservative writers George Will, Norman Podhoretz, and Midge Decter. However, the conference speakers also included a plethora of high-ranking Reagan administration members, such as Secretary of State George Shultz, Counselor to the President Edwin Meese III, U.S. UN Ambassador Jeane Kirkpatrick (author of "Dictatorships and Double Standards") and FBI Director William Webster.[128] These top officials brought the prestige of their offices in support of the Jonathan Institute's

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[125] Stampnitzky, *Disciplining Terror*, 120; and Woodward, *Veil,* 125-126.

[126] Stampnitzky, *Disciplining Terror*, 117, Woodward, *Veil,* 129; and Herman and O'Sullivan, *The "Terrorism" Industry,* 171.

[127] Daniel Schorr, "Tracing the Thread of Terrorism," *New York Times*, May 17, 1981, BR4.

[128] "Contents," in *Terrorism: How the West Can Win,* ed. Benjamin Netanyahu (New York: Farrar, Strauss, Giroux, 1986), xiii-xv.

claims.[129] The administration also sponsored further studies and academic symposia.[130] For example, the Department of Defense commissioned a study on state-sponsored terrorism from Ray Cline and his coworkers at the think tank Center for Strategic and International Studies (CSIS).[131]

Yet resistance to the terror network theory continued in Langley and Foggy Bottom. In particular, the study that Casey had commissioned, the May 1981 CIA Special National Intelligence Estimate (SNIE) on "Soviet Support for International Terrorism and Revolutionary Violence," hesitated to connect the Soviet Union and terrorist organizations. It did state that "Soviets are deeply involved in the support of revolutionary violence worldwide" and that "[t]here is conclusive evidence that the USSR directly or indirectly supports a large number of national insurgencies and some separatist-irredentist groups."[132] Nevertheless, the study emphasized that the Soviet Union differentiated between terrorist organizations and supported them based on their alignment with Soviet ideals. Secular national liberation movements received support, ethnic or religious separatists rarely, and "strictly terrorists" none.[133] The estimate denied that the Soviet

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[129] Suzanne Garment, "Terrorism Meeting Takes Temperature of the West," *Wall Street Journal,* June 29, 1984, 30.

[130] Stampnitzky, *Disciplining Terror,* 129-130.

[131] CSIS President Amos A. Jordan to Major Peter F. Herrly (Strategic Plans and Policy Division, Pentagon), Letter, June 4, 1984, Library of Congress (LoC), Ray S. Cline Papers (Cline), 1945-1994, Box 33, fol. 16 State-Sponsored Terrorism Study 1984-1985; and Ray S. Cline and Yonah Alexander (CSIS) to Thomas H. Bushnell (Contracting Officer, Defense Supply Service Washington, Pentagon), Letter, November 30, 1984, LoC, Cline, Box 33, fol. 16 State-Sponsored Terrorism Study 1984-1985.

[132] CIA, "'Soviet Support for International Terrorism and Revolutionary Violence [Includes Annexes]': Top Secret Special National Intelligence Estimate (Excised Copy) SNIE 11/2-81," Digital National Security Archive, Soviet Estimate, SE00544, accessed April 9, 2018, http://gateway.proquest.com.libproxy.temple.edu/openurl?url_ver=Z39.88-2004&res_dat=xri:dnsa&rft_dat=xri:dnsa:article:CSE00544, 1.

[133] CIA, "SNIE 11/2-81," 7-8.

Union controlled or fostered terrorist organizations to the degree that the Jerusalem Conference claimed. Casey could only include his own ideas as "alternative opinions" in the footnotes.[134]

The SNIE also discounted Sterling's *The Terror Network* as "uneven and the reliability of its sources varies widely. Significant portions are correct; others are incorrect or written without attending to important detail."[135] Moreover, Bob Woodward claims that CIA analysts realized in the course of preparing the SNIE that the ostensible Jan Sejna statements at the core of both Robert Moss and Claire Sterling's claims were CIA plants. The Jerusalem Conference had picked up CIA propaganda efforts and presented them as facts to both the public and (ironically) the CIA itself.[136] This revelation was an embarrassment for Casey.[137]

In the U.S. armed forces and the academic community of terrorism researchers, the Soviet terror network theory was also heavily controversial. In 1984, officers in the Pentagon's Strategic Plans and Policy Division heavily criticized Ray Cline and CSIS's study on state-sponsored terrorism. They condemned it as ideologically biased and not useful for creating strategies or tactics against terrorism.[138] Within the public sphere, meanwhile, most academics and experts who had begun writing about terrorism during the 1970s also rejected the Jerusalem Conference's narrative. All pointed out that this conceptualization had no substantial source backing and catered to strong ideological biases.[139] The discrepancy between top officials and mid-level bureaucrats in Langley, Foggy Bottom, and the Pentagon generated a cycle of

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[134] CIA, "SNIE 11/2-81," 2 nr. 5, 3 nr. 6, 6 nr. 8, 10 nr. 16.

[135] CIA, "SNIE 11/2-81," 6 nr. 7.

[136] Herman and O'Sullivan, *The "Terrorism" Industry,* 63; and Woodward, *Veil,* 131.

[137] Woodward, *Veil,* 131.

[138] Colonel Karl F. Robinson (Chief, Strategic Plans and Policy Division, Pentagon) to Yonah Alexander (CSIS), Memorandum "Study Advisory Group Comments," with seven attachments, LoC, Cline, Box 33, fol. 17 State-Sponsored Terrorism Study 1984-1985.

[139] Stampnitzky, *Disciplining Terror*, 120.

contention within the U.S. federal government about the definition of and appropriate responses to terrorism.

Nevertheless, the Soviet terror network theory increasingly influenced U.S. counterterrorism strategies and policies as the 1980s progressed. The Reagan administration did not engage in further multilateral efforts against terrorism. The only exception was the G7 states' civil aviation sanctions against Afghanistan, which aligned neatly with the administration's Cold War policies.[140] Instead, administration officials continued their public support of the Soviet terror network theory. In addition to hosting the second Jonathan Institute terrorism conference, Reagan justified the 1983 invasion of Grenada with the claim that the island was "being readied as a major military bastion to export terror and undermine democracy. (…) Not only has Moscow assisted and encouraged the violence in [Lebanon and Grenada], but it provides direct support through a network of surrogates and terrorists."[141] Gradually, the administration's public rhetoric changed the U.S. public discourse on terrorism. Academic experts and political pundits focused more and more on the (Cold War) morality of terroristic acts instead of on the definition of terrorism within international law. They increasingly condemned the wickedness of terrorists. Anyone who did not participate in this moral condemnation found him- or herself sidelined from U.S. anti-terrorism debates and perhaps even labeled a terrorist sympathizer.[142]

As the public discourse on terrorism changed, so did the Reagan administration's willingness to consider military responses to terroristic attacks. Many of the acts that the administration labeled terrorist in the early 1980s occurred in Lebanon. Initially, the administration followed the wishes of the CIA and Departments of Defense not to escalate military engagement there. In 1983, Lebanese religious extremists bombed the U.S. barracks in Beirut, causing 307 deaths.

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[140] See note 138.

[141] Ronald Reagan, "Address to the Nation on Events in Lebanon and Grenada," October 27, 1983, *APP*, accessed April 9, 2018, http://www.presidency.ucsb.edu/ws/?pid=40696, paragraphs 50, 54.

[142] Stampnitzky, *Disciplining Terror,* 110.

Reagan considered an air strike but chose to withdraw U.S. forces from Lebanon instead of risking further casualties.[143] In subsequent years, the extremist Lebanese group Hezbollah took several U.S. officials and citizens in Beirut hostage, including senior CIA agent William Buckley. Reagan and his advisors avoided military reprisals to keep these hostages safe (Buckley was nevertheless killed).[144] In addition, National Security Council officials laid the groundwork for what would become the Iran-Contra scandal. They sold weapons to the Iranian government, generating cash to support Latin American right-wing insurgents and curry goodwill with Iranian leaders who (the administration hoped) could influence Hezbollah to release its U.S. hostages.

However, the administration gradually increased its commitment to military counterterrorism measures. On April 3, 1984, Reagan adopted National Security Decision Directive 138, "Combatting Terrorism." This directive called for a long-term program to develop active (and not reactive) measures against terrorism especially through military and intelligence capacities.[145] In June 1985, two Hezbollah agents hijacked Trans World Airlines Flight 847 and killed a U.S. service member on board. Reagan and his advisors considered a special forces rescue operation but finally rejected it as too risky.[146] Instead, Reagan applied the 1974 Anti-Hijacking Act's sanctions option.[147] Unilaterally, he ordered U.S. airlines not to fly to Beirut airport, and embargoed all Lebanese airlines from flying into the United States.[148] In the aftermath of the attack, however, National Security Advisor Robert McFarlane advocated military reprisals against

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[143] See Naftali, *Blind Spot,* 131-135; and David C. Wills, *The First War on Terrorism: Counter-Terrorism Policy during the Reagan Administration* (Lanham, MD: Rowman and Littlefield, 2003), 77-82.

[144] Naftali, *Blind Spot,* 141-145.

[145] White House, "National Security Decision Directive 138: Combatting Terrorism," April 3, 1984, Intelligence Resource Program, *Federation of American Scientists,* April 4, 2018, accessed April 26, 2018, https://fas.org/irp/offdocs/nsdd/nsdd-138.pdf.

[146] Wills, *The First War on Terror,* 94-95, 101-103.

[147] See Chapter 3.

[148] Wills, *The First War on Terror,* 134.

the state of Libya. Arguing that Hezbollah, Iran, and Libya were collaborating as part of the terror network to undermine the United States, McFarlane convinced Reagan to clandestinely support insurgents in Libya against its ruling dictator, Muammar Gaddafi.[149] Reagan and McFarlane did not acknowledge the irony that in Libya (as in in Afghanistan, El Salvador, and Nicaragua), they were engaging in the same insurgent support for which they condemned the Soviet leaders.

After years of consideration, the Reagan administration employed military counterterrorism responses during the *Achille Lauro* crisis in October 1985. Four PFL members hijacked the cruise ship *Achille Lauro* and killed a U.S. citizen. Concealing this death to prevent a further escalation of violence, Egyptian authorities let the attackers and PFL leader Abu Abbas leave by air. This attack was one too many for Reagan. When the administration learned of the death of the American, it decided to act and demonstrated that the United States was not only capable of military response but also willing to employ force. U.S. fighters intercepted the attackers' plane and forced it to land in Italy, where it was surrounded by Joint Special Operations Command forces, including the Delta Force team trained in part by the West German GSG9. Though the Italian police then seized the hijackers and tried them in Italy, the Reagan administration was pleased that the United States had shown its threat to employ its military to be credible.[150] In April 1986, a U.S. soldier was killed in a bombing at the La Belle discotheque in West Berlin. The Reagan administration had enough intelligence to connect the perpetrators to Gaddafi. Reagan ordered an air raid on Libya, Operation El Dorado Canyon.[151] In subsequent years, the Iran-Contra scandal shook the Reagan administration, which carried out no further military engagements against terrorists and their sponsors. However, in 1985 and 1986, the Reagan administration made good on its earlier promises to engage terrorists and their alleged state

[149] Naftali, *Blind Spot,* 168.

[150] Naftali, *Blind Spot,* 171-174.

[151] Naftali, *Blind Spot,* 185.

sponsors militarily. It had demonstrated that the U.S. federal government would be capable in the future of responding to terrorist incidents with military counterterrorism.

The Reagan administration's perception of terrorism was heavily filtered through Cold War biases. Its top officials believed in a terror network that aimed to undermine American and other democratic societies with the backing of the Soviet Union (and other state sponsors such as Iran and Libya). Administration members did not dispute the Western principle of the 1970s that terrorism was an illegal criminal act. Yet multilateral collaboration was no longer a priority for the Reagan administration in foreign policy and in counterterrorism. Since they believed that terrorists were illegitimate Soviet proxies, Reagan and his cabinet considered military countermeasures appropriate. By supporting the terror network theory and gradually employing military counterterrorism measures, the Reagan administration adapted U.S. counterterrorism efforts to new political realities of the early 1980s.

Conclusion: The Ideological Schism Grows

The Reagan administration was not the only political actor to reject multilateral collaboration and international law in favor of different ideological notions about terrorism in the early 1980s. Various actors prioritized increasingly different conceptualizations of terrorism that best served their own interests. As a result, they held fewer common ideas from international law which they could use to communicate with one another.

The U.S. federal government treated transnationally active terrorists as a geopolitical challenge. In contrast, FRG officials perceived terroristic violence as a security threat perpetrated mainly by domestic offenders. Throughout the 1970s, FRG officials focused on transnational dimensions of terrorism, such as foreign terrorists' operations on their soil, support networks between various terrorist groups, and citizens who committed terrorism abroad, as one aspect of this domestic security threat. The FRG state instituted substantial domestic anti-terrorism

legislation as well as police and judicial reforms.[152] FRG officials pursued multilateral anti-terrorism efforts such as the TREVI network, the GSG9's contacts, the European Convention, and the Hostages Convention to supplement these domestic policies.

FRG domestic, bilateral, and multilateral efforts to address terrorist violence provided promising results by the early 1980s. The wave of attacks known as the 1977 "German Autumn" ended with numerous arrests and no political gains for the terrorists responsible. Subsequently, the number of terrorist attacks in the FRG declined, as did the number of attacks committed by FRG terrorists abroad. Though the FRG's most notorious terrorist organization, the Red Army Faction, continued with several attacks and assassinations throughout the 1980s, both the FRG government and public viewed terrorism as far less of an immediate and urgent threat.[153]

While the Reagan administration increased its focus on terrorism as a Cold War issue, the FRG government de-securitized terrorism. In political science, securitization describes a process through which elites brand an issue as a heightened threat to justify sharp countermeasures. In contrast, de-securitization occurs when political elites and other actors find it no longer expedient to maintain the political effort required to uphold the threat assessment and often controversial countermeasures.[154] In the FRG, political elites' non-partisan support of harsh anti-terrorism

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[152] These domestic initiatives are covered in Tobias Hof, "Anti-Terrorismus-Gesetze und Sicherheitskräfte in der Bundesrepublik Deutschland, Großbritannien und Italien in den 1970er und 1980er Jahren," ["Anti-Terrorism Laws and Security Forces in the Federal Republic of Germany, Great Britain, and Italy in the 1970s and 1980s"], in *Terrorismusbekämpfung in Westeuropa: Demokratie und Sicherheit in den 1970er und 1980er Jahren* [Counterterrorism in Western Europe: Democracy and Security in the 1970s and 1980s], ed. Johannes Hürter (Oldenbourg: De Gruyter, 2015), 7-34; and Gisela Diewald-Kerkmann, "Justiz gegen Terrorismus: Terroristenprozesse in der Bundesrepublik, Italien und Großbritannien," ["Judiciary against Terrorism: Terrorist Trials in the Federal Republic of Germany, Italy, and Great Britain"], in Hürter, *Terrorismusbekämpfung in Westeuropa,* 35-62.

[153] Karrin Hanshew, *Terror and Democracy in West Germany* (New York: Cambridge University Press, 2012), 252-259.

[154] Markus Lammert, "Ein neues Analysemodell für die historische Terrorismusforschung? Securitization-Prozesse in Frankreich und Deutschland in den 1970er und 1980er Jahren," ["A New Analysis Model for Historical Terrorism Studies? Securitization-Processes in France and Germany in the 1970s and 1980s"], in Hürter, *Terrorismusbekämpfung in Westeuropa,* 203.

initiatives yielded to more normative political debates and wrangling.[155] Genscher and his Foreign Office did not pursue further multilateral agreements against terroristic violence. Terrorism declined in relevance as a domestic security issue.

In contrast, the emergence of Islam as a major political force from 1979 onward generated new political actors as well as new perceptions of terrorism in the Middle East. The Iranian revolution propelled to power religious authorities who restructured politics, law, society, and culture in Iran based on Shia Islamic teachings.[156] The new Islamic Republic of Iran inspired other religious groups and organizations in the region to increase their political activity.

Due to the unstable political situation in the Middle East, some religious groups, such as the Mujahideen, Hezbollah, or Hamas, engaged in politically motivated terroristic violence. Religiously motivated groups became the key resisters of Soviet occupying forces in Afghanistan after 1980. Calling themselves *Mujahideen* (those engaged in divine war), they branded themselves as holy combatants in the service of Islam. A wave of Wahab Sunni radicals traveled to Afghanistan to support these Mujahideen groups.[157] In 1982, Israel invaded southern Lebanon to uproot the PLO leadership situated there. During the resultant Israeli occupation and subsequent Lebanese civil war, various factions waged low-intensity warfare to control the region. For example, Shia militias consolidated into the previously discussed militant group Hezbollah. Soon, Hezbollah committed violent acts within and outside of Lebanon, including the 1983 U.S.

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[155] Lammert, “Ein neues Analysemodell für die historische Terrorismusforschung?“ 280-209.

[156] See Michael A. Reynolds, “The Wars’ Entangled Roots: Regional Realities and Washington’s Vision,” in *Understanding the U.S. Wars in Iraq and Afghanistan,* ed. Beth Bailey and Richard H. Immerman (New York: New York University Press, 2015); and David Farber, *Taken Hostage: The Iran Hostage Crisis and America’s First Encounter with Radical Islam* (Princeton: Princeton University Press, 2005).

[157] See Reynolds, “The Wars’ Entangled Roots;” and Geoffrey Wawro, *Quicksand: America’s Pursuit of Power in the Middle East* (New York: Penguin Books, 2010), 374-397.

Beirut barracks bombing and the 1986 La Belle bombing.[158] Religious political activists gained influence as well among Palestinians in the territories occupied by Israel after 1967. The Palestinian Liberation Organization had focused mainly on Palestinians outside of Israel. Religious organizations provided networks to organize socially and politically in the occupied territories. By 1986, religious groups such as Palestinian Islamic Jihad and Hamas combined the aim to create a Palestinian national state with religious fundamentalism. During the first Intifada, an uprising against the Israeli occupation with broad grassroots participation, these groups began committing acts of terroristic violence against Israelis.[159]

These groups varied widely in size, composition, organization, and goals, but they all believed that they were waging a religiously inspired war against Israel and/or the Soviet Union. Like secular Palestinian national liberation groups, such as the PLO or the PFLP, they framed their efforts as insurgent warfare against a hostile, illegitimate regime. To offset their force disadvantages, they engaged in terroristic acts such as assassinations and bombings. Suicide bombings emerged as a form of attack driven primarily by religious motivation.[160] However, for these actors, morality and religion were important justifications for their violence. Such groups argued that their terroristic actions were legitimate acts of war within their religious system – irrespective of the tenets of international law.[161]

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[158] See Matthew Levitt, *Hezbollah: The Global Footprint of Lebanon's Party of God* (Washington, D.C.: Georgetown University Press, 2012); and Eitan Azani, *Hezbollah: The Story of the Party of God* (New York: Palgrave Macmillan, 2009).

[159] See Dowty, *Israel/Palestine,* 142-148; and Morris, *Righteous Victims*, 561-610.

[160] Phillipe Migaux, “The Roots of Islamic Radicalism,” in *The History of Terrorism: From Antiquity to Al Quaeda,* eds. Gerard Chaliand and Arnaud Blin (Berkeley: University of California Press, 2007), 255-313, 280.

[161] Hamas, “The Covenant of the Islamic Resistance Movement,” August 18, 1988, *The Avalon Project: Documents in Law, History, and Diplomacy*, Lillian Goldman Law Library, Yale University, accessed April 13, 2018, http://avalon.law.yale.edu/20th_century/hamas.asp; and ”An Open Letter: The Hizballah Program,” *Jerusalem Quarterly* 48 (Fall 1988), *ProCon.org,* accessed April 14, 2018, https://israelipalestinian.procon.org/files/hezbollah_program.pdf.

The Reagan administration and the new religiously motivated organizations readily branded each other as irrational and immoral because they held such differing views on political violence and terrorism. During the 1970s, the U.S. and FRG governments and Palestinian fedayeen had sought the legitimation or condemnation of terroristic activity at least in part through international organizations. International law provided shared terms and models. A decade later, however, both U.S. officials and religiously motivated groups prioritized their own ideological worldview. The new radical Islamist groups drew upon religion as well as secular legal and political concepts to justify their actions.[162] Meanwhile, the Reagan administration viewed terroristic violence through the morality of its Cold War biases. U.S. officials clandestinely supported the Mujahideen as proxy combatants against the Soviet Union.[163] However, they labeled groups such as Hezbollah and Hamas as immoral terrorists, illegitimate as combatants or as political actors, since these groups targeted Israel and the U.S. presence in the Middle East.[164] Reagan administration members condemned such groups as part of the ostensible overarching terror network which fostered Soviet geopolitical advances by attacking and undermining democratic Western societies. Both sides used their own ideological worldview to fit the other into preconceived immoral and irrational categories.

These examples highlight that the basic disagreement of the 1970s about the definition and scope of terrorism continued. In the 1980s, U.S. state officials interpreted terrorism as a Cold War foreign policy threat to democratic societies and disagreed about its relevance with West German

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[162] See Dowty, *Israel/Palestine*, 142-148; and Morris, *Righteous Victims*, 561-610.

[163] See Reynolds, “The Wars’ Entangled Roots;” and Wawro, *Quicksand,* 374-397.

[164] Examples are Ronald Reagan, “Radio Address to the Nation on the Death of Federal Diplomatic and Military Personnel in Beirut, Lebanon,” April 23, 1983, *APP,* accessed April 10, 2018, http://www.presidency.ucsb.edu/ws/index.php?pid=41228&st=terrorism&st1=lebanon, paragraph 4; Ronald Reagan, "Address to the Nation on Events in Lebanon and Grenada," October 27, 1983, *APP,* accessed April 9, 2018, http://www.presidency.ucsb.edu/ws/?pid=40696, paragraphs 31, 33; and William Clinton, “The President's News Conference With President Hosni Mubarak of Egypt,” April 6, 1993, *APP,* accessed April 10, 2018, http://www.presidency.ucsb.edu/ws/index.php?pid=46410&st=religion&st1=terrorism, paragraph 6.

bureaucrats, who handled it as a domestic security issue. Meanwhile, radical Islamist groups understood their own actions as holy combat, greatly differing from the views of Western state actors. Overall, state officials, pundits, and political activists throughout the world became less interested in the shared concepts and terminology of multilateralism and international organizations. In turn, their models and conceptualizations of terrorism drifted further apart. In particular, U.S. officials and religiously motivated terrorists found one another more and more incomprehensible. This lack of understanding facilitated evaluation and repulsion based on moral and subjective values. Mutual incomprehension and moral outrage at one another increased over time and reached a fever peak after the attacks on September 11, 2001.

CHAPTER 7

EPILOGUE

Terrorism is an ongoing transnational security threat; terrorist attacks with transnational dimensions and large casualties occur frequently. For example, in 2017 terrorists bombed the London subway and an Ariana Grande concert in Manchester, United Kingdom (U.K.).[1] In Iraq, a series of suicide bombings by the insurgent Islamic State of Iraq and the Levant (ISIL) killed at least 130 people that year alone.[2] A new type of terroristic attack is spreading rampantly as well: the act of driving a large car into a crowd to cause as many casualties as possible. The first attack of this type to be widely publicized in the media happened in Nice, France on July 14, 2016. Since then, attackers have driven cars into crowds in cities including Cincinnati, United States (November 2016), Berlin, Germany (December 2016), London, U.K. (March 2017), Stockholm, Sweden (April 2017), London, U.K. again (twice in June 2017), Paris, France (June 2017), Barcelona, Spain (August 2017), New York City, United States (October 2017), Münster, Germany (April 2018), and Toronto, Canada (April 2018).[3] Terroristic attacks have become an aspect of our daily lives.

In describing the above attacks I have focused on the terroristic actors' equipment, the mechanisms that they used to commit their acts, and the varied locations. In most Western industrialized states, public figures and the media generally use this approach to discuss

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[1] "London Bridge Attack: Timeline of British Terror Attacks," *BBC News*, June 19, 2017, accessed April 16, 2018, http://www.bbc.com/news/uk-40013040.

[2] Examples include "Suicide attacks kill 20 people in eastern Baghdad," *Reuters,* January 8, 2018, accessed April 16, 2018, https://www.reuters.com/article/us-mideast-crisis-iraq-bomb/suicide-attacks-kill-20-people-in-eastern-baghdad-idUSKBN14S04Z; "Iraq Conflict: Baghdad Ice Cream Parlour Hit by Suicide Attack," *BBC News,* May 31, 2017, accessed April 16, 2018, http://www.bbc.com/news/world-middle-east-40089402; and "Irak: Selbstmordattentäter töten 50 Menschen," ["Iraq: Suicide Bombers Kill 50 People"], *Der Spiegel,* September 14, 2017, accessed April 16, 2018, http://www.spiegel.de/politik/ausland/irak-attentaeter-toeten-bei-doppelanschlag-50-menschen-a-1167712.html.

[3] "Terrorist Attacks by Vehicle Fast Facts," *CNN Library,* March 1, 2018, accessed April 16, 2018, https://www.cnn.com/2017/05/03/world/terrorist-attacks-by-vehicle-fast-facts/index.html.

terrorism and counterterrorism. They gloss over the political dimensions of the attack and the terrorists' political grievances in favor of the tactics, gear involved, and of course casualties, particularly innocent civilian casualties. This focus originated in the 1970s debates over how to define and regulate terrorism in international law.

The 1970s conventions and multilateral agreements on terrorism fundamentally shaped how the media and public today think about and understand both terrorism and counterterrorism. Before the 1970s, terrorism was a largely undefined term. Though experts used it to describe violent acts designed to inspire terror over time, no systematic effort delineated what that meant precisely. Meanwhile, in the 1970s a multitude of recently independent states sent delegates to the United Nations (UN) and other international organizations to assert their sovereignty and participate in multilateral negotiations. One of the issues under debate was how and why political violence could be performed outside of a warfare situation. This debate was carried out through negotiations about terrorism. During the 1970s, the term terrorism was the lynchpin that state officials, proto-state (national liberation) organizations, political activists, and terrorists themselves used to debate what kind of non-state political violence was going to be permissible as an acceptable act within international relations.

This dissertation traced how Western officials developed their own conceptualization of terrorism. Their narrative was that terrorism was an illegal and criminal act that did not fall under the scope of warfare or the laws of war. As such, it was illegitimate within the context of international relations. Western officials argued that terrorists should not be able to use their actions to influence or gain power within state-to-state diplomatic relations. The six multilateral conventions on terroristic violence in the 1970s cemented this conceptualization in international law. However, Western officials passed the conventions only by finessing or ignoring other actors' conceptualizations of terrorism. From Western, Soviet bloc, Arab, African, and nonaligned state officials to non-state actors such as journalists, academics, political activists, and terrorists themselves, contemporaries in the 1970s continued to disagree about how to delineate terrorism.

Most historical studies on terrorism remain within national boundaries. Future histories of terrorism should build upon this dissertation to enrich national frameworks with an international perspective. Terroristic actors traveled frequently across borders. Western states collaborated with one another to create international law against such actors. Western officials, when creating national and international policies against terrorism, also had to consider diplomatic implications – how their actions affected multilateral projects with allies, and how their own anti-terrorism policies might alienate recently independent (oil-rich) states as well as national liberation and other political activists. Considering such international and transnational factors will allow national studies on terrorism to more significantly address larger processes, including decolonization, internationalism, and globalization.

This dissertation also provides an agenda for further research on how and why terrorists and counter-terrorist actors engage only with their own perceptions of terrorism. It shows that during the 1970s, historical actors at times used the same terminology of international law (such as the political offense exemption) to frame their conceptualizations about terrorism and political violence. Since then, however, ongoing disagreements about how to address terrorism have caused state officials and other actors to prioritize their own worldviews. A key strategy they have used to legitimize these views is to portray them as normative or natural. For example, in the 1980s, Western officials and terrorist actors stopped relying principally on international law to define terrorism. In the U.S., officials layered Cold War issues over their previous conceptualizations of terrorism. They labeled Palestinian, Middle Eastern, and Latin American terroristic actors as Soviet proxies. Meanwhile, new radical religious organizations that committed terroristic violence often justified their actions through their extremist religious worldview. Both sides claimed that their respective understanding of terrorism was universal.

Conceptualizations of terrorism need to be treated as a historical development. By situating any given conceptualization of terrorism into its historical and international context, researchers can more effectively highlight political aims, processes, and repercussions at play. This historical approach will be crucial as historians begin to study ideas and events surrounding terrorism in the

1990s. These developments have deep historical roots. Though Cold War paradigms disappeared after 1991, terrorists' focus on religion only increased, as did the U.S.'s use of military counterterrorism. During the 1990s, new extremist Islamic groups such as al Qaeda emerged out of earlier radical organizations.[4] Such groups continued and honed terroristic attacks with high casualty rates, especially suicide bombings.[5] At the same time, control over counterterrorist policies in the U.S. federal government moved increasingly away from the State Department and the Federal Bureau of Investigation. The Central Intelligence Agency and Department of Defense took over coordination of counterterrorist efforts.[6] U.S. counterterrorism further militarized. Future historical studies will need to trace these long-term developments. Another avenue of research is the historical development of European states' counterterrorism efforts. Both U.S. and European measures have been covered by political scientists, but the current declassification especially of West German Interior Ministry documents opens a new field of possibilities for historians.

A focus on change over time can also help researchers contextualize the concept of "New Terrorism" which U.S. counterterrorism experts generated in the 1990s.[7] Adherents of the "New Terrorism" model labeled earlier (secular) terrorists of the 1970s as rational actors whose political motives had been somewhat comprehensible. This rebranding allowed experts to describe contemporary (radical Islamic) terroristic actors as fundamentally irrational and

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[4] See Philippe Migaux, "Al Qaeda," in *The History of Terrorism: From Antiquity to Al Quaeda,* eds. Gerard Chaliand and Arnaud Blin (Berkeley: University of California Press, 2007), 314-348.

[5] See Lisa Stampnitzky, *Disciplining Terror: How Experts Invented "Terrorism"* (Cambridge, U.K.: Cambridge University Press, 2013), 144-145.

[6] See Timothy J. Naftali, *Blind Spot: The Secret History of American Counterterrorism* (New York: Basic Books, 2005), 227-285.

[7] Examples include the landmark Bruce Hoffman, *Inside Terrorism,* 1st ed. (New York: Columbia University Press, 1998); Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction* (New York: Oxford University Press, 1999); and Jessica Stern, *The Ultimate Terrorists* (Cambridge, MA: Harvard University Press, 2000).

incomprehensible.[8] "New Terrorism" counterterrorist experts focused increasingly on radical Islamic actors, as well as on their potential to procure nuclear weapons and other weapons of mass destruction. Seeing "New Terrorism" as a historical development allows researchers to question its normative presumptions about rationality. This approach highlights how counterterrorism experts misunderstood and reinterpreted earlier terrorists' political aims to fit into their own conceptualization of terrorism.

A historical approach also changes the way that researchers can consider the 9/11 attack and its aftermath. From 2001 onward, radical Islamic terrorists and U.S. counterterrorist experts branded one another as militant, illegitimate, and deeply repulsive. After the attacks on September 11, 2001, President George W. Bush declared a "Global War on Terror," announcing that the United States would use its military strength to operate against (radical Islamic) terrorist actors around the world.[9] Meanwhile, Al Qaeda's leaders announced that they would continue to attack U.S. and Western interests in a global holy war based on their fundamentalist Islamic worldviews.[10] Because U.S. officials had increasingly believed that terroristic actors were morally wrong, they now argued that to even consider the other side's political dimensions was repugnant and an affront to civilization.[11] This moral evaluation of terrorism spilled into the field of terrorism studies. Experts who attempted to emphasize terrorists' political motivations instantly generated a backlash from politicians, pundits, and others.[12] As a result, any U.S. public figure discussing

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[8] For a detailed analysis of the "new terrorism" model, see Stampnitzky, *Disciplining Terror*, 139-164.

[9] George W. Bush, "Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11," September 20, 2001, *The American Presidency Project,* ed. Gerhard Peters and John T. Woolley, accessed April 16, 2018, http://www.presidency.ucsb.edu/ws/?pid=64731.

[10] See "In Full: Al-Qaeda Statement," *BBC News,* October 10, 2001, accessed April 16, 2018, http://news.bbc.co.uk/2/hi/middle_east/1590350.stm.

[11] Stampnitzky, *Disciplining Terror,* 187-189.

[12] Stampnitzky, *Disciplining Terror*, 192-193.

terrorism in the 2000s was able to propagate his or her own (often ill-conceived or unstudied) conceptualization of terrorism so long as that conceptualization included a moral condemnation.

Placing the 9/11 attacks into its historical context forces the researcher to question this moral evaluation and reveals that it is a political construct - not a self-evident way of thinking about terrorism. Such moral repulsion is calculated to obstruct alternative viewpoints. Other views of terrorism may also be deeply problematic. However, not considering them has permitted contemporaries to discuss terrorism through the lens of their own ideological beliefs and political aims without being called upon to question these. Placing the 9/11 attacks into their historical context thus clarifies presumptions. Recognizing such conceptual barriers opens possibilities for new lines of questioning and for potential anti-terrorism solutions that might otherwise remain hidden.

This dissertation analyzed the 1970s controversy within international organizations and international law about terrorism and political violence. The current way we think (or do not think) about terrorism originated there. The resulting Western conceptualization - that terrorism was not a legitimate way to participate in international relations - made it easy for officials, academics and public figures to ignore and morally condemn terroristic actors. However, U.S. counterterrorism officials in particular have found no sustainable long-term solution to prevent terroristic violence. Based on historical precedents, militarized efforts against terroristic actors succeed only with harsh suppression of civil liberties.[13] In today's globalized world, no state has the jurisdiction or is capable of exerting such power. We need additional avenues to prevent transnational acts of terroristic violence. This requires re-thinking how we think about terrorism.

To create meaningful discussions surrounding the terrorism label, we may have to return to the beginning - and discuss when and how someone who uses political violence should be taken seriously as a political actor. We must consider why we label specific attacks as terrorist – and

[13] For examples, see Mary S. Barton, "The British Empire and International Terrorism: India's Separate Path at the League of Nations, 1934-1937," *Journal of British Studies* 56, no. 2 (April 2017): 351-373; and Anna Geifman, *Thou Shalt Kill: Revolutionary Terrorism in Russia, 1894-1917* (Princeton: Princeton University Press, 1993).

thus illegitimate and incomprehensible. Why are American officials quick to codify suicide bombings as terrorist, but not domestic mass shootings? What role do race, religion, and other factors play when we discuss terrorism? Is terrorism a wartime act? Should the laws of war apply? Terrorism is a politically contested and highly divisive term, but ignoring the political dimensions of a terroristic attack makes it easy to also ignore our own biases and political ideologies. Long-term solutions to terrorist violence require that we question the full political scope of the actors and context involved.

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