Denver Journal of International Law & Policy

Volume 9
Number 2 *Summer*

Article 2

January 1980

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Keywords

Terrorism, Maritime Law, Aircraft, International Law: History

ARTICLES

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I. INTRODUCTION

The United Nations took another significant step in its campaign against international terrorism when it adopted the International Convention Against the Taking of Hostages.[1] On December 17, 1979, the United Nations culminated a four-year effort when it adopted the Convention without objection and opened it for signature. As of October 20, 1980, twenty-nine states had signed the Convention and one had ratified.[2] There is every reason to expect the number of signatures to grow steadily and ratifications to follow in due course.

The basic thrust of the Hostages Convention is that those who take hostages will be subject to prosecution or extradition if they are apprehended within the jurisdiction of a state party to the Convention. Safe haven is to be denied by the application of the principle *aut dedere aut judicare,* which obligates states to prosecute or extradite an alleged offender.[3] States party to the Convention will also be obligated to cooperate in the prevention of acts of hostage taking by internal preventative mea-

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1. International Convention Against the Taking of Hostages, G.A. Res. 34/146, 34 U.N. GAOR, Supp. (No. 46) 245, U.N. Doc. A/34/46 (1979), *reprinted in* 18 INT'L LEGAL MAT. 1457 (1979) [hereinafter cited as Hostages Convention]. The text of the Convention is appended to this article.

2. States that have signed the Convention as of this writing are Bolivia, Belgium, Canada, Chile, Dominican Republic, El Salvador, Federal Republic of Germany, Gabon, Greece, Guatemala, Haiti, Honduras, Italy, Jamaica, Lesotho, Liberia, Luxembourg, Mauritius, Panama, Philippines, Portugal, Senegal, Surinam, Sweden, Switzerland, Togo, United Kingdom, United States, and Zaire. Of the 29 states that have signed, only the Philippines has ratified thus far.

3. For a study of effective measures to insure the trial of persons accused of terrorist acts, *see* Costell, *International Terrorism and the Development of the Principle Aut Dedere Aut Judicare,* 10 J. INT'L L. & ECON. 483 (1975).

sures and by exchanging information and coordinating measures to prevent such acts.

The Hostages Convention is patterned on the approach embodied in the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft,[4] the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation,[5] and the Convention on the Protection and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents.[6] The impressive numbers of states party to the Hague Convention (49), the Montreal Convention (48), and the more recent Protection of Diplomats Convention (50), gives reason for optimism that the Hostages Convention will also become rapidly and widely ratified.

While the Hostages Convention closely follows the earlier models which Mr. Wood correctly identifies as containing "the most widely acceptable solutions to the problems they deal with,"[7] there are several noteworthy departures and innovations in the Hostages Convention which will be examined in the discussion below.

That these conventions have played a significant role in crystallizing international opinion against the acts covered can be seen from a variety of sources. Perhaps the most timely, if poignant, example is the debate in the United Nations Security Council concerning the holding of American diplomats as hostages in Iran. A number of states specifically cited the Protection of Diplomats Convention and the then still Draft Hostages Convention as major elements in their conclusion as to the illegality and total unacceptability of the holding of the Americans in Tehran.[8]

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4. Convention for the Suppression of Unlawful Seizure of Aircraft, *done* at the Hague, Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192 [hereinafter cited as Hague Convention].

5. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, *done* at Montreal, Sept. 23, 1971, 24 U.S.T. 564, T.I.A.S. No. 7570 [hereinafter cited as Montreal Convention]. *See also* White, *The Hague Convention for the Suppression of Unlawful Seizure of Aircraft*, 6 REV. INT'L COMM'N JURISTS 38, 44 (1971).

6. Convention on the Protection and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, *opened for signature*, Dec. 14, 1973, G.A. Res. 3166, 28 U.N. GAOR, Supp. (No. 30) 146, U.N. Doc. A/9030 [hereinafter cited as Protection of Diplomats Convention]. *See also* Wood, *The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents*, 23 INT'L & COMP. L.Q. 791 (1974). Mr. Wood's article is an excellent analysis of the earlier convention. The references to it throughout this paper are based not only on its relevance but also on the writer's agreement with Mr. Wood's analysis. The Protection of Diplomats Convention was the model most closely followed in the elaboration of the Hostages Convention essentially because: (a) it was adopted by the same body, *i.e.*, the United Nations General Assembly, and a number of the negotiators were the same; and (b) it was the most recent model and in many ways covered the most analogous conduct.

7. Wood, *supra* note 6, at 792.

8. *See, e.g.*, the statements of Liberia, 34 U.N. SCOR, U.N. Doc. S/P.V. 2175 at 51 (1979); Egypt, 34 U.N. SCOR, U.N. Doc. S/P.V. 2176 at 16 (1979); Australia, *id.* at 22; the Netherlands, *id.* at 31; Yugoslavia, *id.* at 52; Singapore, 34 U.N. SCOR, S/P.V. 2182 at 27 (1979); Nigeria, 34 U.N. SCOR, S/P.V. 2183 at 39 (1979). No one took a contrary view and the illegality of the holding of the hostage was asserted by numerous speakers and contra-

The holding of the American hostages in Iran is one event that illustrates the divergence between law and practice, at least during present times. Why do those acts proscribed under the Protection of Diplomats and Hostages Conventions continue to occur? Although there has been a marked decrease in acts of violence against international civil aviation in recent years, the same cannot be said for attacks on diplomats or the taking of hostages. These conventions establish modes of international cooperation to deal with the particular problems involved. They assume a reasonable degree of local order and are designed to facilitate prosecution and punishment rather than to function directly as part of a state's criminal law. Domestic laws concerning disorderly conduct or disturbing the peace do not of themselves prevent riots and are in many cases virtually irrelevant once a riot has reached a certain proportion since such laws likewise presuppose a basically stable political order. International conventions are agreements among states and presuppose not only some measure of international order among states, but also the capacity of individual states party to maintain basic order and authority within their own territory.

The situation in Iran when the United States Embassy was seized was outside the framework of conditions requisite to the operation of international law as no responsible civil authority existed in the country at that time.[9] This is not to suggest that international law does not speak to the current situation in Iran or that the Hostages Convention's reaffirmation that "the taking of hostages is an offense of grave concern to the international community"[10] is not relevant. It might, however, explain why the sophisticated tools that enable states to cooperate in dealing with problems may be ineffective in situations involving the complete breakdown of law and order—the more so when the breakdown involves the effective collapse of the basic unit of the current international order—the nation-state.

Despite the seriousness of these breakdowns, the significance of the entire international community banding together to elaborate means of cooperation to deal with aspects of the scourge of terrorism is of immense importance. That the international community has been prepared to undertake such commitments in a growing number of areas and over a time span from 1970 to 1979 is a more valid reflection of the views of states than the exceptional situations that have occurred, spectacular and horrifying as these situations are. The actions by the United Nations do not merely reflect the views of governments, they contribute to precipitating and reaffirming the conclusions of governments as to the unacceptability of the acts in question and to their readiness to cooperate internationally to deal with them.

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dicted by none.

9. At the time of this writing, the hostages were still being held in Iran.

10. Hostages Convention, *supra* note 1, preamble, para. 3. *See also* U.S. Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 Dec. 1979, [1979] I.C.J. 7.

It remains important, of course, for states in all cases to avoid rewarding the perpetrators of such acts as history teaches that nothing breeds imitation and sequels like success. Efforts to press host governments to accord the release of hostages in cases in which the host government is the target of the coercion are as counterproductive as they are undignified and unworthy of those who purport to be engaged in public service. When governmental representatives urge that priority be given to the well-being of diplomatic personnel over all other considerations, including the need to deny the hostage takers any benefit from their illegal activities, they do a profound disservice to world order. The courageous conduct of United States Ambassador Diego Ascencio in the Colombian crisis and the firm position of the United States Government in that case were exemplary as the kind of dignified and farsighted response demanded by the unfortunate circumstances in such situations.

The discussion below begins with the background and history of the Hostages Convention and then proceeds with a treatment, in seriatum, of the preamble and articles.[11]

II. BACKGROUND AND HISTORY

After the successful elaboration of the Protection of Diplomats Convention,[12] it was recognized by a number of governments that international action against aspects of international terrorism was possible if discrete target areas could be identified for such action.[13] The success of the international community with the physically discrete entity of aircraft and civil aviation and the legally discrete class of internationally protected persons including diplomatic agents formed the basis for this view. The problem was to find another area capable of identification as a specific and demarcated area which would not be so broad in its sweep as to suffer the fate of League of Nations and United Nations efforts to deal with all forms of terrorism in one fell swoop.[14] Some thought was given at the outset to the question of letter bombs since they were a physically discrete method and the international mails are an easily identifiable area. Happily, the discontinuation of letter bombs drained this area of sufficient international concern to make it the next appropriate step in the campaign against terrorism.

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11. The nature of the discussion of the articles requires that the reader give special attention to the text of the Convention, which is reprinted in the Appendix.

12. Note 6 *supra*.

13. *See* Nanda, *Progress Report on the United Nations' Attempt to Draft an International Convention Against the Taking of Hostages*, 6 OHIO N.U.L. REV. 89, 89 (1979).

14. For examples of unsuccessful efforts along these lines, *see* Reports of the *Ad Hoc* Committee on International Terrorism, 34 U.N. GAOR, Supp. (No. 37), U.N. Doc. A/34/37 (1979); 32 U.N. GAOR, Supp. (No. 37), U.N. Doc. A/32/37 (1977); 28 U.N. GAOR, Supp. (No. 28), U.N. Doc. A/9028 (1973) [hereinafter cited as 1973 International Terrorism Report]; and Convention for the Prevention and Punishment of Terrorism, Nov. 16, 1937, 19 LEAGUE OF NATIONS O.J., PART I 21. The 1973 International Terrorism Report, at 28, contains the text of the U.S. proposal for a relatively general convention dealing with terrorism. The U.S. effort did not fare well for a variety of reasons, including the breadth of its scope.

After a measure of casting about, the Federal Republic of Germany, presumably stimulated by the Munich atrocity of 1972 and subsequent kidnappings of German businessmen within and outside the Federal Republic of Germany, fixed on the idea of action against the taking of hostages. Some other advocates of action against aspects of terrorism wondered whether hostage-taking was sufficiently separable from any other acts of terrorism, lacking as it did the ease of physical or legal identification of aircraft and internationally protected persons. The Federal Republic of Germany wisely, as it turned out, refused to be dissuaded by such counsels of caution and, on September 28, 1976, submitted a request to include on the agenda of the United Nations General Assembly the topic of drafting an international convention against the taking of hostages.[15] The explanatory memorandum attached to this request addressed the heinous nature of the act of hostage-taking and the incompatibility of such an act with the dignity and fundamental rights of human beings to life, liberty, and security enshrined in the Universal Declaration of Human Rights[16] and the International Covenant on Civil and Political Rights,[17] and proposed that the General Assembly draft a convention against hostage-taking.[18]

The item was inscribed that year by the General Assembly on its agenda without undue difficulty. The path from inscription to final adoption slightly more than three years later was, however, bumpy and often tortuous. Most of the details of this path are best explained in terms of the negotiating history of each particular article and are thus contained below. Briefly put, the basic problems stemmed from the nervousness of some at any action which might adversely affect the struggle for what they view as self-determination, the distaste of others at the prospect of seeing the Federal Republic of Germany have a success, combined with an opportunistic inclination to support some of the more extreme Arab and African positions, and various particularistic, if understandable, problems of some Latin American and Arab states.

During the initial discussion of the item in the Legal Committee in 1976, some suggested that the effort should be directed at the taking of

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15. 31 U.N. GAOR, Annexes (Agenda Item 123) 1, U.N. Doc. A/31/242 (1976). It is worth noting that both the Protection of Diplomats Convention, note 6 *supra*, and the Hostages Convention, note 1 *supra*, in no small way owe their existence to the determination of certain gifted individuals. It is highly doubtful that there would be a Protection of Diplomats Convention had Ambassador Richard D. Kearney not raised the issue in the International Law Commission and pressed it through that body in record time, and hard to imagine a Hostages Convention without the energy, intellect, and determination of Dr. Karl Fleischauer. That individuals can still play so critical and positive a role in today's complex and bureaucratic world is itself an encouraging sign and an example as well.

16. Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A, U.N. Doc. A/810 (1948).

17. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966).

18. 31 U.N. GAOR, Annexes (Agenda Item 123) 1-2, U.N. Doc. A/31/242 (1976).

innocent hostages, thus suggesting there were some persons who in some sense deserved to be taken hostage. This notion met with widespread opposition and was not pressed.[19]

Once the item was inscribed on the agenda and the strength of support afforded some basis for hope of success in drafting a convention, attention turned to the question of how the international community could best organize itself to prepare a draft convention. Many urged that the brilliant and expeditious work of the International Law Commission (ILC) on the Protection of Diplomats draft[20] argued for submitting the question to the ILC. The Federal Republic of Germany wisely urged that the matter be sent instead to an Ad Hoc Committee of governmental representatives that would act as a subsidiary body of the General Assembly. One may presume that key decision-makers on the Federal Republic of Germany's team such as Dr. Fleischauer and Dr. Bracklo concluded that the technical legal problems had already been solved by the ILC when it elaborated the Protection of Diplomats draft and that what was needed was a body of governmental representatives whose work product would speak to the political commitment to take community action. The ILC finished the work on Protection of Diplomats in one session and the Ad Hoc Committee required three sessions—a comparison which does not commend the use of an ad hoc committee as a general approach. The relative ease with which the final product of the Ad Hoc Committee moved through the General Assembly, however, and the absence of any objection to its final adoption, appear to speak eloquently for the political wisdom of the ad hoc committee approach in this particular case.[21]

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19. Libya proposed inserting the word "innocent" before the word hostage. U.N. Doc. A/C.6/31/L.11. Subsequently, "the representative of the Libyan Arab Republic indicated that he would not press his amendments . . . to a vote." Report of the Sixth Committee, 31 U.N. GAOR, Annexes (Agenda Item 123) 3, U.N. Doc. A/31/430 (1976).

20. Report of the International Law Commission, 27 U.N. GAOR, Supp. (No. 10) 88-90, U.N. Doc. A/8710 (1972). *See also* Kearney, *The Twenty-Fourth Session of the International Law Commission*, 67 AM. J. INT'L L. 84 (1973); Przetocznik, *Prevention and Punishment of Crimes Against Internationally Protected Persons*, 13 INDIAN J. INT'L L. 65 (1973); Wood, *supra* note 6, at 792-93.

21. It may be noted that the method by which the 34th session of the General Assembly in 1979 examined the draft proposed by the Ad Hoc Committee was also exceptional. Instead of the tried and true method of an article by article examination followed by referral to a small drafting committee of fixed number and then adoption by the Legal Committee article by article, the Legal Committee held a brief general debate on the main issues followed by reference of the entire draft to a more or less open-ended group of state representatives which in no very clearly defined manner assumed the characteristics of, at various times, a contact or negotiating group, a drafting group, and a mix of the two. This group met from time to time throughout the 34th General Assembly. Neither the Legal Committee nor the Plenary of the Assembly changed the wording of any of the articles that came out of this group. See the Report of the Chairman of the Working Group on the Drafting of an International Convention Against the Taking of Hostages, 34 U.N. GAOR, U.N. Doc. A/C.6/34/SR. 53 (1979). The fact that this group remained relatively small was fortunate, as was the cooperative spirit of many of the delegations. The fact that its chairman, Klaus Zehentner of the Federal Republic of Germany, was able to press as hard as he did for rapid

III. THE TEXT

A. *The Preamble*

The preamble of the Convention contains substantially anodyne language of the kind one might reasonably expect to find setting the context for a convention seeking to deal with the problem of hostage-taking. The first two paragraphs of the preamble recognize the relevance of the Convention to the central United Nations purpose of maintaining international peace and security and the sanctity of life, liberty, and security of person.[22]

The third preambular paragraph—dealing with the United Nations Charter principle of equal rights and self-determination of peoples—is of interest both for what it says and what it does not say. There are four reasons why language on equal rights and self-determination was included in the preamble. The first and most important reason is that some governments, such as South Africa, cloak their most repressive laws under the title of antiterrorism and it is reasonable to ensure that actions of the international community are drafted in such a manner as not to permit them to be used, or more accurately, abused, as an instrument of repression rather than a tool for protecting such basic rights as life, liberty, and security of person. The second reason language of this nature appears is that many countries of the Third World regard self-determination as a principle which must be reiterated on every occasion irrespective of its relevance.

In light of what is still the recent past for many and the poignancy of current problems in areas of the Third World, there seems little justification for Western lawyers to refuse on grounds of relevance to make gestures toward this perceived need, rational or not, when the desire can be satisfied with language that is not only an accurate reflection of the language of the Charter but also a restatement of Jeffersonian and Wilsonian views and today, happily, a fundamental element of policy for all states in the Western World.

A third reason for including language of equal rights and self-determination of peoples is the perception that the legitimacy of the use of force in the cause of self-determination is strengthened by the inclusion of this language and would be weakened by its absence. The logic of this view is not apparent in light of the vast number of existing United Nations recommendations on the issue.

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progress, stopping just short of alienating delegates by exerting too much pressure, also contributed significantly to the success of the operation. Again, it would not necessarily be useful to conclude that the method chosen, successful as it was, should replace the more traditional pattern. A possible new approach has been opened up and it, along with the traditional approach, must be considered in the future in light of the particular situation then obtaining.

22. The language in the first two preambular paragraphs reflects that which advances the rationale for the elaboration of a convention as contained in the request for an additional agenda item submitted by the Federal Republic of Germany, note 15 *supra*.

The final and least convincing reason for including this language is the curious but surprisingly widely held view that elements of the operative portions of a text should be foreshadowed in the preamble and, since article 12 speaks of self-determination, it is argued there must be something in the preamble. Again, there seems little point in debating the theoretical merits of this questionable view beyond noting its doubtful character when there is agreement on the substance and text of the preambular language in question.

The important issue with regard to this paragraph is that it in no way suggests that pursuit of equal rights and self-determination can justify acts of terrorism such as hostage-taking anywhere any time. In addition to the language of the paragraph being clear on its face in this regard, the immediately following preambular paragraph recognizes that "the taking of hostages is an offense of grave concern to the international community" and states unequivocally that "any person committing an act of hostage-taking shall be either prosecuted or extradited." Construed in light of the fourth preambular paragraph, therefore, the third preambular paragraph neither suggests nor was intended to suggest a possible justification for acts of terrorism or hostage-taking.

Since it is clear from the text alone that neither the pursuit of equal rights nor of self-determination provides an exception to the prohibition against hostage-taking, there is no justification for an examination of the legislative history or resort to teleological analysis.[23] In fact, the various proposals over the years that contained a suggestion of an exception were rejected because they contained such a suggestion, as is clear from the records of debate. Therefore, the legislative history, were it relevant, would not surprisingly support the plain meaning of the language.

The final preambular paragraph restates the reasons initially given for undertaking the effort and recognizes that the elaboration of a convention dealing with the taking of hostages is part of the larger effort to elaborate ways and means of dealing with the scourge of terrorism.

B. *The Articles*

Article 1

The initial problem that needed to be addressed when the exercise was launched was that of identifying the concept of hostage-taking as a discrete act. In substance the problem was solved by the initial German proposal which, simply stated, made the holding of *A* to obtain concessions from *B* the core of the definition.[24] That basic approach was never

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23. Vienna Convention on the Law of Treaties, arts. 31-32, *done* May 23, 1969, U.N. Doc. A/Conf. 39/27 (1969), *reprinted in* 8 INT'L LEGAL MAT. 679 (1969) [hereinafter cited as Vienna Convention].

24. Working paper submitted by the Federal Republic of Germany, U.N. Doc. A/AC.188/L.3, in Report of the *Ad Hoc* Committee on the Drafting of an International Convention Against the Taking of Hostages, 32 U.N. GAOR, Supp. (No. 39) 106-10, U.N. Doc. A/32/39 (1977) [hereinafter cited as West German Draft; the *Ad Hoc* Committee Report hereinafter cited as 1977 *Ad Hoc* Committee Report]. The West German Draft contains the

seriously questioned and, although there were various drafting refinements, the final text of the article followed the initial approach. As in the case of the Protection of Diplomats Convention, threats, attempts to commit the act, and participation as an accomplice are made offenses within the meaning of the Convention.

It was proposed at an early stage of the work by the Libyan Arab Jamahiriya that the scope of article 1 be expanded to include "the seizure or detention, not only of a person or persons, but also masses under colonial, racist or foreign domination . . . ."[25] This proposal was strongly opposed by some delegations on various grounds, including the view that it raised questions extraneous to the task at hand and was unsuitable for inclusion in a convention of the type contemplated. The proposal was not energetically pressed and did not figure in the final negotiations.

A more troublesome problem was created by various proposals the net effect of which would have been to exculpate hostage-takers who acted in the cause of self-determination.[26] As the delegation of Syria put it: "[A]cts perpetrated by criminals under ordinary law could not be placed on equal footing with the struggle of the national liberation movements which, by their very nature and objectives, were entirely different."[27]

The typical response to this line of argument ran along the following lines: The issue is not whether force may be used in certain cases but whether, even if the use of force is permissible, the taking of hostages is an acceptable means of force. Some means of the use of force, it was urged, are so heinous that they may not be countenanced in any circumstances. In this connection, it was noted, even states exercising their right to self-defense are barred from engaging in certain acts including poison gas, exploding bullets, physical attacks on diplomats, and the taking of hostages. It was urged that making cause or motive relevant to the permissibility of a particular action would revive the idea of just and unjust wars and set international law back to the nineteenth century.[28]

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concept of seizing or detaining a person "in order to compel a third person." *See* Comment, *The United Nations Effort to Draft a Convention on the Taking of Hostages*, 27 AM. U.L. REV. 433 (1978), which provides a thorough analysis of the West German Draft.

25. Working paper submitted by the Libyan Arab Jamhiriya, U.N. Doc. A/AC.188/L.9, in 1977 *Ad Hoc* Committee Report, *supra* note 24, at 112.

26. Proposals of this nature were submitted in writing by Libya, U.N. Doc. A/AC.188/L.4, *id.* at 110, and Lesotho and Tanzania, later joined by Algeria, Egypt, Guinea, Libya, and Nigeria. U.N. Doc. A/AC.188/L.5, *id.* at 111.

27. U.N. Doc. A/AC.188/SR.8, *id.* at 36. Similar interventions were made by other Arab and African representatives and some measure of support for the view was expressed by the U.S.S.R. *Id.* at 32.

28. Arguments along these general lines were made *inter alia* by Canada, U.N. Doc. A/AC.188/SR.11, *id.* at 51; by the United States, *id.* at 55; by France, U.N. Doc. A/AC.188/SR.27, in Report of the *Ad Hoc* Committee on the Drafting of an International Convention Against the Taking of Hostages, 33 U.N. GAOR, Supp. (No. 39) 63, U.N. Doc. A/33/39 (1978) [hereinafter cited as 1978 *Ad Hoc* Committee Report]; and by Italy, U.N. Doc. A/AC.188/SR.28, *id.* at 68.

The representative of Mexico noted that the taking of hostages by liberation movements had in effect been prohibited by Protocol I of the Geneva Conventions on Human Rights in Armed Conflict.[29] He suggested that perhaps one could exclude from the coverage of the convention acts already covered by the rules of law applicable to armed conflict.[30]

Although it was decided not to include a notion along these lines in article 1 of the Convention, a sophisticated variation on this helpful suggestion which avoided the risk of any loopholes was incorporated in article 12 of the Convention and is discussed below in that context.

Article 2

Under this article, states party are required to make the offenses set forth in article 1 punishable under domestic law. Article 2 follows the established pattern of the Hague, Montreal, and Protection of Diplomats Conventions.[31] It was contained in the initial draft of the Federal Republic of Germany[32] and was at no time controversial in the negotiations.[33]

Article 3

Article 3 places an affirmative duty on states party in the territory of which the hostage is held to take measures to ease the situation of the hostage. In particular, such measures are to be aimed toward gaining the release of the hostage and to facilitate, when relevant, his departure thereafter. States party also undertake to return any object that comes into their possession which the offender has obtained as a result of the taking of hostages.

This article appeared in substantially the same form in the initial

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29. The Geneva Conventions for the Protection of War Victims are:

(a) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31 *(entered into force* Oct. 21, 1950);

(b) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85 (*entered into force* Oct. 21, 1950);

(c) Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S 135 (*entered into force* Oct. 21, 1950);

(d) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287 (*entered into force* Oct. 21, 1950).

[Hereinafter cited as 1949 Geneva Conventions.] Protocols to the 1949 Geneva Conventions are contained in Final Act, June 10, 1977, in 32 U.N. GAOR, I Annexes (Item 115 of the provisional agenda), U.N. Doc. A/32/144 (1977), *reprinted in* 72 AM. J. INT'L L. 457 (1978). *See* Nanda, *supra* note 13, at 92-93, for a concise discussion of the prohibition against hostage-taking under the 1949 Geneva Conventions and Additional Protocols.

30. 32 U.N. GAOR, U.N. Doc. A/AC.188/SR.11 (1977).

31. Notes 4-6 *supra*.

32. West German Draft, art. 4, *supra* note 24, at 107.

33. For a discussion of this clause in the Protection of Diplomats Convention, see Wood, *supra* note 6, at 805-06.

German draft and, except as discussed below, remains unchanged. No express language to this effect appears in the Hague, Montreal, and Protection of Diplomats Conventions. The obligations of the Tokyo Convention on Offenses Committed on Board Aircraft[34] and existing international law concerning diplomatic agents may be presumed to have caused the drafters of the previous conventions to regard an express provision along these lines as unnecessary. The express inclusion of this language in the Hostages Convention was noncontroversial and a useful, if not strictly essential, explicit addition.

The only change of any note in what is now paragraph 2 of the article was from "return . . . to the person entitled to possession" to the current text, which provides that return should be made to the hostage or the third party, as defined in article 1, or to the authorities of the third party. The reason for this change was to avoid arguments about title which could complicate the return to the status quo ante.[35]

Article 4

Under this article, states party undertake to prevent their territories from being used for preparations for the commission of offenses proscribed under the Convention by "taking all practicable measures . . . including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, or engage in the perpetration . . ." of hostage-taking. Under paragraph (b), an additional provision relating to the prevention effort, states party agree to exchange information and coordinate the taking of administrative and other measures.

This article substantially follows the pattern of the earlier conventions. The phrase "measures to prohibit . . . illegal activities of persons, groups and organizations . . ."[36] is the tautological result of the desire of some states to ban activity not to their liking and the impossibility or at least unwillingness for Western and some other states to limit freedom of expression and assembly. No one raised any substantive problem with prohibiting illegal activity since the denomination as illegal establishes the prohibited nature of the activity and the text cannot be read as even suggesting the utility of making licit acts illicit.

Article 5

Article 5 lists the offenses over which each state party is obligated to establish jurisdiction. States are to take measures to establish jurisdiction over hostage-taking (1) in their territory and on board their registered ships and aircraft; (2) by a national or, if the state considers it appropri-

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34. Convention on Offenses and Certain Other Acts Committed on Board Aircraft, *done* Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219 (*entered into force* Dec. 4, 1969).

35. The change was suggested for precisely these reasons by Canada. U.N. Doc. A/AC.188/SR.14, in 1977 *Ad Hoc* Committee Report, *supra* note 24, at 74.

36. Hostages Convention, *supra* note 1, art. 4(a).

ate, by stateless persons who have their residence in that state; (3) when the state is the object of the compulsion attempt; and (4) when the hostage is a national of the state, if that state considers it appropriate. States party also agree to take measures to establish jurisdiction over hostage-taking where the alleged offender is present in its territory and that state does not extradite him to any other state having jurisdiction over the offense.

This article also substantially follows the basic pattern of the earlier conventions. One change is the addition of stateless persons, but establishing jurisdiction over offenses committed by such persons is made optional by the phrase "if that State considers it appropriate."[37] The inclusion of stateless persons seems reasonable in light of the role such persons from certain areas may play.

Another change from the Protection of Diplomats Convention is to make the application of the passive personality principle, subparagraph 1(d), optional by the addition of the same phrase as used with regard to stateless persons. It was thought by a number of delegations, including the United States and the United Kingdom, that although the problems unique to the protection of diplomats justified departure from opposition to the passive personality principle in the case of the Protection of Diplomats Convention, a comparable rationale did not exist with regard to nationals generally. Civil law states, however, insisted on retaining the ability under their law of applying the principle, and subparagraph 1(d) was the resultant compromise.

Article 6[38]

Although this article follows the basic pattern of the earlier conventions, it goes beyond them in several interesting ways. Paragraph 4 provides that the communications rights conferred under paragraph 3 be exercised in conformity with the laws and regulations of the state in whose territory the alleged offender is present, subject to the proviso that those laws and regulations enable full effect to be given the purposes for which the rights accorded under paragraph 3 are intended. Although not express in earlier conventions, the principle embodied in paragraph 4 is a statement of existing law codified in the Vienna Convention on Consular Relations.[39]

The fifth paragraph is a useful addition from a number of points of view. It provides that the provisions relating to communications rights of paragraphs 3 and 4 shall be without prejudice to the right of any state party having a claim to jurisdiction under the Convention to invite the International Committee of the Red Cross to communicate with and visit

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37. *Id.* art. 5(1)(b).

38. Since art. 6 is rather lengthy, the writer will not attempt to summarize its entire content in the text and would direct the reader's attention to the Appendix.

39. Vienna Convention on Consular Relations, art. 36, ¶ 2, *done* April 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820, 596 U.N.T.S. 261.

the alleged offender. First and most importantly, paragraph 5 reflects commendable concern with the right to communicate with accused persons and a creative approach to facilitating communication in precisely the circumstances in which it may be most necessary, that is, when relations between the states involved are such that no diplomatic or consular communication exists. Second, the paragraph diminishes the potential scope of article 9, paragraph 1, subparagraph (a)(ii),[40] by broadening the possible means of communication.

Article 7

Under article 7, where an offender is prosecuted, states party are to communicate the final outcome of the proceedings to the United Nations Secretary-General, who in turn is charged with transmitting the information to the states and international organizations concerned. The text of article 7 is a verbatim copy of the comparable article in the Protection of Diplomats Convention.

Article 8

The central mechanism of the Convention is embodied in this key provision. States party must extradite the alleged offender or submit the case to its competent authorities. Article 8 is a verbatim copy of the comparable article in the Protection of Diplomats Convention. Although there is nothing to add to Mr. Wood's commentary on the Protection of Diplomats Convention,[41] it is worth stressing the importance of the phrase "without exception whatsoever."

The Netherlands again raised the question of redrafting this article to provide that the obligation to prosecute arose only where there was a request for extradition which was rejected.[42] This suggestion did not obtain any more support in the context of hostage-taking than it did in the negotiation of the Protection of Diplomats Convention and the Netherlands did not press the matter. As Mr. Wood points out, this legislative history leaves no doubt that the obligation to submit to competent authorities is in no way dependent on a request for extradition.[43]

Article 9

Article 9 excepts from the requirement of extradition cases where the state party in receipt of the extradition request has substantial grounds for believing that extradition is sought for "the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion . . ." or that the alleged offender's position may be prejudiced for any of those reasons or "for the reason that communication with him by the appropriate authorities of the State entitled to exer-

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40. *See* discussion in text *infra*.

41. Wood, *supra* note 6, at 810-11.

42. Working paper submitted by the Netherlands, U.N. Doc. A/AC.188/L.14, in 1977 *Ad Hoc* Committee Report, *supra* note 24, at 114.

43. Wood, note 6 *supra*.

cise rights of protection cannot be effected."[44]

The express inclusion of the language of this article is a departure from the previous models. Although it is couched in binding language prohibiting extradition in certain cases and thus prohibits actions which were possible under the previous conventions, it is, in its final adopted form, not likely to mark much if any departure from existing practice under the previous conventions. The rationale for the insistence of most countries in the Hague, Montreal, and Protection of Diplomats Conventions on the option of prosecuting instead of extraditing was precisely because there were cases in which they did not wish to be obligated to extradite. Indeed numerous efforts by the Soviet Union to provide for extradition as the sole acceptable action for states who apprehend a suspect have been routinely rejected on precisely the kind of human rights grounds set forth in paragraph 1, subparagraphs (a) and (b). In that sense, although it might have been preferable to couch the article in terms that did not appear to restrict the freedom of state action in this sensitive and complex area, the article can nevertheless be hailed for its incorporation in conventions of this character of human rights concerns.

The inclusion of paragraph 1, subparagraph (b)(ii) deserves the same high praise in that the importance all states attach to the right of communication with their nationals who may fall afoul of authorities abroad is, for the most part, grounded on a desire to ensure knowledge that their rights are being protected and that they do not feel abandoned. The text, moreover, is carefully drafted so that it does not bar extradition to state *X* merely because the accused is a national of a state which does not enjoy diplomatic or consular relations with state *X*.

Rather, extradition is only barred when the requested state has "substantial grounds for believing . . . the person's position may be prejudiced . . . for the reason that communication with him . . . cannot be effected."[45] Where, therefore, the legal system of the requesting state is such as to give every reason to believe due process and a fair trial are assured, there would seem to be no reason for any bar to extradition. The wording of paragraph 1, subparagraph (b)(ii), moreover, requires not merely that there be no consular or diplomatic relations but that the state entitled to exercise rights of protection *cannot* effect the same, that is, that it is unable, as opposed to unwilling, to do so. Thus, an offer by the requesting state to allow visits by representatives of the entitled state would seem to remove any bar to extradition.[46] There is, moreover, the well-established practice of the appointment of protecting powers which

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44. Hostages Convention, *supra* note 1, art. 9(a)(b)(ii).

45. *Id.*

46. The following statement by the representative of Israel potentially is of particular interest in this case: "[I]n any appropriate case in which Israel might find it necessary to request extradition under the terms of the Convention, the rights of communication of the extradited person as envisaged in that clause would be respected." 34 U.N. GAOR, C.6 (14th mtg.) 3, U.N. Doc. A/C.6/34/SR.14 (1979).

should further narrow the potential scope of the article.

The express provision in article 6, paragraph 4, concerning the International Committee of the Red Cross, further diminishes the likelihood that paragraph 1, subparagraph (b)(ii) will prove a serious obstacle to extradition. Even in those cases in which this article proves a bar to extradition, the obligation of article 8 on the state in which the alleged hostage-taker is found to submit the case to its competent authorities for the purpose of prosecution will continue to apply in full force.

Under paragraph 2 of article 9, the provisions of all extradition treaties and arrangements between states party are modified as between those states to the extent they are incompatible with the Convention. Paragraph 2 marks a departure from the earlier conventions and is in some respects unusual. Since it is limited to the offenses covered by the Convention it amounts to nothing more than a statement of the rule of *lex posterior* as codified in the Vienna Convention on the Law of Treaties.[47]

Articles 10 and 11

These are near verbatim copies, *mutatis mutandis,* of the comparable provisions in the previous conventions.

Article 12

This article, which deals with the scope of the Convention, especially its application to liberation movements, together with article 9, proved to be the most difficult problem faced by the drafters.[48] As noted in the discussion on article 1,[49] the problem of actions by liberation movements engendered a great deal of discussion. The initial Mexican proposal to bridge the gaps read as follows:

> For the purposes of this Convention, the term "taking of hostages" shall not include any act or acts covered by the rules of international law applicable to armed conflicts, including conflicts in which peoples are fighting against colonial domination and foreign occupation and against racist regimes, in the exercise of the right of peoples to self-determination embodied in the Charter of the United Nations and Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[50]

As might be anticipated, neither side gave the above-quoted language of compromise a warm reception. Those who favored special provisions for liberation movements expressed concern that it did not go far enough and those who insisted that any and all hostage-taking be covered by the Convention took the position that no such provision was necessary.

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47. Vienna Convention, *supra* note 23, art. 30.

48. *See* Nanda, *supra* note 13, at 98.

49. *See* text accompanying notes 26-30 *supra.*

50. Working paper submitted by Mexico, U.N. Doc. A/AC.188/L.6, in 1977 *Ad Hoc* Committee Report, *supra* note 24, at 111.

At the second session of the *Ad Hoc* Committee in 1978, some movement of positions began. Some states, primarily African and Asian, indicated their willingness to accept the Mexican proposal and a "number of Members of the Working Group . . . regarded . . . [this move] as containing a constructive approach for negotiation."[51]

The problem that many continued to have with the Mexican proposal was that it simply excluded certain cases of hostage-taking from the Convention without any grounds for confidence that the hostage-taker in such circumstances would be prosecuted or extradited.[52] It was not clear under the Mexican proposal that all acts "covered by the rules of international law applicable to armed conflict" give rise to an obligation to prosecute or extradite. If the Mexican proposal had been adopted in precisely the same language quoted above, the Convention would not operate in cases of armed conflict. There would, in fact, have been no prohibition against hostage-taking unless the states involved in a particular incident were parties to the relevant conventions concerning armed conflicts.

The bulk of the 1979 session of the *Ad Hoc* Committee was devoted to finding language which eliminated the problems with the Mexican text. The final text of the article was agreed to at the 1979 session of the Committee. Although complex, the text of article 12 achieves the goal of ensuring that a state will be obligated to prosecute or extradite hostage-takers under the Hostages Convention unless it is equally bound to do so under the 1949 Geneva Conventions and Additional Protocols.[53] The changes from the original Mexican proposal that produced the result were: (a) instead of the vague reference to international law, the relevant conventions are expressly named; and (b) these conventions will take precedence over the Hostages Convention when and only when (1) the former prohibit the particular act and provide for an explicit obligation to prosecute or hand over the actor and (2) the state party to the Hostages Convention is legally bound to prosecute the actor or extradite him. In short, the obligation to prosecute or extradite applies in *all* cases. It therefore is of no legal consequence whether the hostage-taker is prosecuted or extradited under the Hostages Convention or the Geneva Conventions and Additional Protocol I, and of no significance so far as hostage-taking and its consequences what language is used to describe Protocol I situations. The language actually chosen is the language of article 1 of Additional Protocol I.

One of the incidental effects of the text of this article is to underline the application of the prohibition against the taking of hostages as to liberation movements. Since this important conclusion is clear on the face of article 12 once it is carefully analyzed, there is no need to examine the

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51. 1978 *Ad Hoc* Committee Report, note 28 *supra*.

52. *See* statements of France and Canada, U.N. Doc. A/AC.188/SR.27, in 1978 *Ad Hoc* Committee Report, *supra* note 28, at 63-65.

53. 1949 Geneva Conventions and Additional Protocols, note 29 *supra*.

legislative history. That history is, however, consistent with and supportive of this reading. The changes in the initial Mexican proposal make little sense if that was not their intent. The "any person" language in the fourth preambular paragraph and the "without exception whatsoever" phrase in article 8 would be inconsistent with any other view.

Finally, the statements made in the debate support this view. Both sides—states inclined to prefer some form of exemption or special treatment for liberation movement actions and those opposed to any exemption or special treatment for hostage-takers based on the motive or goal of the actor—indicated the same view as to the effect of article 12. The representative of Pakistan pointed out that "most of the movements struggling for self-determination were not recognized by the colonial or occupying States and were usually denied the rights established under Additional Protocol I of the Geneva Conventions."[54] It was his view that as currently drafted, article 12 "would allow those States to claim that, since the Geneva Conventions did not apply, all acts of hostage-taking, even if they were a reaction to the illegal activity of colonial or occupying Powers, would be covered by the proposed Convention and would thus be subject to extradition."[55] Since "[t]he existing text of draft article 12 did not clearly exempt the acts of liberation movements . . ." the representative urged that the Working Group should "draft a more comprehensive provision on that subject."[56] The representatives of France[57] and the United States[58] expressed similar views with respect to the effect of article 12, albeit from the perspective of states opposed to any exception for hostage-takers based on the motive or goal of the actor.

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54. 34 U.N. GAOR, C.6 (14th mtg.) 16, U.N. Doc. A/C.6/34/SR.14 (1979).

55. *Id.*

56. *Id.* The text referred to by the representative of Pakistan was not changed.

57. The representative of France recalled that

> during the previous session's debate on a draft convention against the taking of hostages, his delegation had stated that it could not participate in any consensus, or vote in favour of a draft convention, unless the entire text, including the preamble, was free of all lacunae, uncertainties and ambiguities. His delegation's view was that the taking of hostages for what ever motive must be prosecuted and condemned at any time, in any place, and in any circumstances . . . . His delegation would be able to support a consensus approving the text in its final form.

34 U.N. GAOR, C.6 (62nd mtg.) 7, U.N. Doc. A/C.6/34/SR.62 (1979).

58. In accord with France, the United States expressed a similar view as to the effect of art. 12. The representative agreed that:

> the main object of the draft Convention was to stipulate that there should be no safe haven for the hostage-taker. The taking of hostages was a matter of the gravest concern and any person committing such an offense should be handed over to the competent authorities for prosecution or extradited, pursuant to article 8 of the draft Convention or to the relevant provisions of the Geneva Conventions and the Additional Protocols thereto.

Id. at 4. *See also, e.g.*, Federal Republic of Germany, U.N. Doc. A/34/P.V.105 (1979) and Canada, 34 U.N. GAOR, C.6 (13th mtg.) 2, U.N. Doc. A/C.6/34/SR.13 (1979).

Article 13

Under article 13, the Convention does not apply to acts of hostage-taking where none of the elements of the offense extend beyond the territory and nationals of a single state if the alleged offender is found in the territory of that state. The text of this article did not create any problems. It is based on the assumption, common to all the conventions in this area, that there should be some direct third country involvement or concern internationalizing the matter to justify action by the international community. The article originally formed the second paragraph of article 12 and was made into a separate article for purely stylistic reasons.

Article 14

Article 14 proscribes the use of the Convention to justify violations of the territorial integrity or political independence of a state in contravention of the United Nations Charter. It was included as a result of the expressions of concern by some representatives that the Convention not serve as a pretext for the use of force. The initial formulation that was put forward by a group of states appeared, as drafted, to go beyond the confines of a convention against the taking of hostages and possibly to purport to lay down rules concerning the permissible and impermissible uses of force.[59] There were no objections to the inclusion of something along these lines though the need for redrafting the proposal was stressed.[60] The final text met the needs of those who feared the Hostages Convention by its very existence could be used to justify uses of force which would otherwise be prohibited and the views of those who asserted that the Hostages Convention was an unsuitable vehicle for contracting or expanding permissible uses of force. The resultant text consequently leaves the law concerning the use of force, including the use of force to rescue hostages, exactly where it was before the adoption of the Convention.[61]

Article 15

Under article 15, the Convention has no effect on the application of the Treaties on Asylum in force at the date of the adoption of the Convention as between states party to those treaties. This article reproduces the language found in article 12 of the Protection of Diplomats Convention[62] and applies only to states party to such a treaty as of the date the Hostages Convention was opened for signature. A very limited number of

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59. Algeria, Tanzania, Egypt, Guinea, Kenya, Lesotho, Libya, and Nigeria proposed the following: "States shall not resort to the threat or use of force against the sovereignty, territorial integrity or independence of other States as a means of rescuing hostages." U.N. Doc. A/AC.188/L.7, in 1977 *Ad Hoc* Committee Report, *supra* note 24, at 111.

60. *See, e.g.*, the statement of the representative of the United States, U.N. Doc. A/AC.188/SR.12, in 1977 *Ad Hoc* Committee Report, *supra* note 24, at 63.

61. The legal charcter of acts of force to liberate hostages such as the Israeli rescue mission at Entebbe have been the subject of debate in various fora and the Convention leaves this unresolved debate where it found it.

62. *See* Wood, *supra* note 6, at 813.

states in Latin America are so situated. It applies, moreover, only between such states and has no force or effect vis-a-vis states not party to those conventions. The article must, furthermore, be understood in light of the statement by the representative of Mexico to the effect that nothing in the norms relating to the right of asylum prevented the country granting asylum and declining to extradite from instituting proceedings against the individual.[63]

Further light is thrown on the extremely limited scope and effect of this article by the fourth preambular paragraph's statement that "any person committing an act of hostage-taking shall be either prosecuted or extradited" and the phrase "without exception whatsoever" in article 8 which embodies the obligation to extradite or prosecute.

Article 16

This article is identical to article 13 of the Protection of Diplomats Convention. It sets forth the procedures for resolving disputes concerning the interpretation or application of the Convention. The matter was not the subject of extensive discussion and what discussion there was followed the identical lines of the discussion in the Protection of Diplomats negotiation so there is nothing to add to the discussion by Mr. Wood.[64]

The writer cannot refrain from expressing regret that it once again proved impossible to obtain sufficiently broad agreement for simple acceptance of binding third party dispute settlement. The shift over the years from optional protocols which required an affirmative act to bind states to accept meaningful dispute settlement to a pattern which requires an affirmative act to avoid dispute settlement must be recognized as some progress. It will be necessary for states which support third party dispute settlement to continue to strive for its inclusion in treaties in all inclusive form. It is to be hoped that in time an increasing number of Third World states will recognize that such procedures are the best way they can hope to confront larger and more powerful states on a basis of equality. Once this happens, even the Soviet Union may begin to find its unwillingness to run any risk of having its actions judged in any sphere increasingly revealing and consequently sufficiently politically costly to stimulate the rethinking of its policy in this regard.

Articles 17 through 20: the Final Clauses

These provisions are of a standard character following existing models. The only controversial issue that was even raised in this context was the informal suggestion that liberation movements be permitted to be-

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63. 1977 *Ad Hoc* Committee Report, *supra* note 24, at 57. Views on the scope of the article were also exchanged during the 34th Session of the General Assembly. In light of their conflicting nature concerning, among other things, the conceptual problem of whether a grant of asylum comes before or after a decision to prosecute and the nature of the obligation to prosecute, it was decided to let the text speak for itself. *See* Report of the Chairman of the Working Group on the Drafting of an International Convention Against the Taking of Hostages, 34 U.N. GAOR, C.6 (53rd mtg.) 9, U.N. Doc. A/C.6/34/SR.53 (1979).

64. Wood, *supra* note 6, at 815.

come party. The idea was not pressed. It would obviously have created profound problems to have some entities, related in some unprecedented way to the treaty, assume obligations which they could not carry out.

So far as the question of reservations is concerned, the matter did not expressly arise in the negotiation of the Hostages Convention. It is reasonable to assume from the number of articles common to both the Hostages and Protection of Diplomats Conventions and the frequent references to the Protection of Diplomats Convention in the debate that the legislative history of the Protection of Diplomats Convention in this regard was widely known and accepted. It is reasonable to conclude that at least articles 1, 2, 3, 7, 9, and 11 of the Protection of Diplomats Convention are central to the object and purpose of that Convention and are not subject to reservation[65] and consequently that at least the comparable articles of the Hostages Convention (articles 1, 2, 5, 7, and 8) likewise are central to its object and purposes.

IV. CONCLUSION

The Convention will enter into force thirty days after the twenty-second ratification or accession.[66] The relatively rapid pace of signatures thus far[67] is grounds for hope that the Convention will come into force at an early date. From the inception of the idea of an international convention against the taking of hostages, through the *Ad Hoc* Committee, and to final adoption, the entire process reflects credit on the originator of the idea, the Federal Republic of Germany, and on the United Nations system.

Although the United Nations cannot be expected to produce results when a substantial number of its members are not willing to act, it does represent an organized institution capable of providing an excellent means by which governments can cooperate together to a positive end. Those who so often criticize the failure of the United Nations should not only take due note of its successes but also rethink some of the reasons for its so-called failures, not so much in terms of the weaknesses of the institution but rather in terms of the level of willingness of the member states to agree on what the problems are and to seek solutions which can reasonably be expected to be acceptable to rich and poor, free world and communist. At least in this one instance the requisite common will was, happily, present and the institution was thus permitted to demonstrate its considerable strengths. The challenge is to find other instances where similar opportunities exist and to capitalize on them with comparable energy, imagination, and dedication.

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65. *See* Wood, *id.* at 816. *See also* Vienna Convention, *supra* note 23, art. 19.
66. Hostages Convention, *supra* note 1, art. 18(1).
67. *See* note 2 *supra.*

APPENDIX

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

The States Parties to this Convention

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

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

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

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

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

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(*a*) attempts to commit an act of hostage-taking, or

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

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the

offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

(*a*) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(*b*) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(*a*) in its territory or on board a ship or aircraft registered in that State;

(*b*) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(*c*) in order to compel that State to do or abstain from doing any act; or

(*d*) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with the laws, take him into custody or take other measures

to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

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

(*a*) the State where the offense was committed;

(*b*) the State against which compulsion has been directed or attempted;

(*c*) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;

(*d*) the State of which the hostage is a national or in the territory of which he has his habitual residence;

(*e*) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;

(*f*) the international intergovernmental organization against which compulsion has been directed or attempted;

(*g*) all other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(*a*) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(*b*) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the

information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this convention, shall not be granted if the requested State Party has substantial grounds for believing;

(*a*) that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

(*b*) that the person's position may be prejudiced:

(i) for any of the reasons mentioned in subparagraph (a) of this paragraph, or

(ii) for the purpose that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between State Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the

existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occured but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims of the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a single State, the hostages and alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to

those treaties.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 18 December 1979.