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Proceedings of the Regional Conference of the American Society of International Law

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PROCEEDINGS OF THE REGIONAL CONFERENCE OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

On April 28, 1973, the Regional Conference of the American Society of International Law was held in Denver, Colorado. Two topics were presented for discussion: Transnational Control of Narcotics, and The Prevention and Control of International Terrorism.

The conference convened at 9:00 a.m. in the auditorium of the Law Center of the University of Denver. A welcome was extended by Co-Chairmen Professor Ved P. Nanda of the University of Denver and student representative Michael L. Corrigan.

I. TRANSNATIONAL CONTROL OF NARCOTICS

The morning session was chaired by John A. Moore. Chairman Moore introduced the speaker, Gerhard O.W. Mueller of New York University School of Law, and the panelists for the morning session: Mr. James Burke, Deputy Regional Director, Bureau of Narcotics and Dangerous Drugs; His Excellency Mothusi Mashologu, Ambassador to the United States from Lesotho; Mr. Luis Kutner, Chairman, World Habeas Corpus; Mr. John DeGara, Visiting Professor, University of Denver, Graduate School of International Studies; and Ms. Cathy Lewis, a student at the University of Denver College of Law.

Summary of Mr. Mueller's Remarks

There are four primary types of drugs in the world today: opiates, cocaine, marijuana, and psycho-tropical substances. The following discussion will be restricted to opiates and cocaine for these two types of drugs create the greatest problem since they affect the life style of the users through their addictive properties. Marijuana and the psycho-tropical drugs are relatively inexpensive and do not necessarily dominate the life style of their users.

Today there are an estimated 100,000 to 600,000 hard drug addicts in the United States. Of this number, 50 percent are believed to be in New York City.

The social costs associated with opiate addiction are very high. Three persons die every day from drug related causes in New York City. The average addict has a 50 dollar per day habit. Most male addicts steal to support their habit. Nationwide, the addict must steal four to five times the value of his habit in order to acquire the money necessary to purchase his drugs. Therefore, the cost per addict will range between 150 and 250 dollars worth of goods stolen each day.

Using estimates for New York City, the total annual cost to society from property offenses due to opiate addiction appears to be 9.125 billion dollars per year. The budget for all police forces in the United States is 3 billion dollars per year. However, this estimate is

probably high for two reasons. First, many female addicts support their habit through prostitution. Second, many addicts are also pushers and sell hard drugs to support their habits.

The problem of drug addiction is an international one. In the past, many countries of the world considered addiction only a problem for the United States. However, these countries are now recognizing that they also have a drug problem. In 1971, Prime Minister Pompidou realized that France had an addict problem. In the past, Marseilles was only a processing place for drugs; now it also harbors addicts. In Italy, one of every four persons has tried either hashish, L.S.D. or methedrine. In Hamburg, Germany, 25 percent of the high school students are either using or have experimented with marijuana. Even the Iron Curtain countries recognize the international scope of the addiction problem. Traditionally, alcohol was the drug used by the workers of Eastern Europe. However, the fact that these countries have agreed to participate in an international conference on narcotics indicates that drugs are now finding their way behind the Iron Curtain too.

Historically, the drug problem begins in a country as a soft drug problem. Without any causal link implications, the hard drugs tend to follow the soft drugs. Many countries are currently experiencing a soft drug problem now and are fearful of a hard drug problem in the future.

The majority of the opiates come from poppy gum, but some are produced from the stem of the plant. The largest grower today is India, which has an estimated 100,000 acres of opium poppy under cultivation. The second largest area is the "Golden Triangle," an area composed of Burma, Thailand, and Laos, with an estimated 100,000 acres under cultivation. Turkey has an estimated 35,000 acres under production. Iran dropped out of opium production for several years, but now has an estimated 50,000 acres under cultivation.

Growing opium is profitable for the farmers in these regions. For this reason, it is difficult to control the supply of opiates. The average farmer is very poor. Opium brings the highest price of all the crops he can grow. The farmer earns approximately 100 dollars more per acre annually by growing opium poppies than by growing other crops.

The total amount of opium produced in the world is 2,500 tons per year. Of this amount, 1,000 tons is illegally produced. Of the illicit production, 100 tons is produced in India. This is largely consumed locally. The largest illicit production is in the Golden Triangle, which produces 700 tons annually. Until recently, 70 percent of this was consumed locally. There is now a growing concern that increasing amounts of this production will find their way into other parts of the world. Turkey produces approximately eight percent of the illicit world supply, or 35 to 80 tons per year. Almost all of this is exported to the United States.

The traditional location for processing of opium has been France, and in particular, Marseilles. West Germany has become a major processor. Immense profits involved in the processing and sale of opium have resulted in the increased traffic. The initial buyer pays the farmer 22 dollars per kilo for the raw opium. After processing and transportation, the same kilo sells on the street for 88,000 dollars. This immense profit margin makes it very difficult to eliminate the problem.

The problem of controlling narcotics requires an international approach. In 1961, a relatively effective convention on narcotic drugs was held. Out of this convention came several recommendations. First, voluntary restraints on the production of drugs was urged. Second, it was proposed that the United Nations International Control Board be the supervisory agency. Finally, an International Commission on Drugs was to be formed. The United States applied pressure to have some action taken. However, the other countries were less concerned with the overall problem and, instead, urged the United States to take some action against their major pharmaceutical houses.

A major step forward was taken with the United Nations Protocol of 1972. The Protocol gave the International Narcotics Control Board (INCB) greater inspection and supervisory powers and some enforcement capability. In addition, money was pledged for local control. The INCB was authorized to send international teams to study individual countries, extradition provisions were increased, and greater promotion, education, study and treatment programs were proposed.

The 1972 Protocol is a very strong international convention and strong control and enforcement provisions were included. More importantly, the increased scope of the INCB will provide a much stronger data base on international narcotics control. This data can be used to place increasing leverage on international organizations and individual states to more effectively control the flow of narcotics.

There are other sources of international enforcement of narcotics control. The United Nations Commission on Narcotic Drugs set limits on the production of narcotics and arbitration procedures. At the present time, however, the Commission is probably not powerful enough to be effective. The 1971 Fund for International Drug Research and Education provides funds to help in the control effort. The World Health Organization, NATO, and UNESCO are all involved in the international control effort to some extent.

To a large extent, the problem of international narcotics control enforcement is one of knowledge. Therefore, the first step which must be taken is the marshalling of world opinion. Publicizing who the "bad guys" are and what they are doing will be necessary. However,

this should not be done too forcefully to avoid polarizing the different states.

The second step should be the education of the world's states, coupled with the propagation of a standard of enforcement. This will create leverage at the international level and help achieve world cooperation. It is at this level that the work of WHO, UNESCO and other regional and international organizations is so important. They can help provide the education, or propaganda, necessary to scare countries into compliance.

There must also be periodic reporting of information on the international narcotics problem, and the data reported must be sufficiently specific to get the compliance of obdurate states. Such data is also a check on other states and should be published to show the degree of world compliance.

Ultimately, a new world jurisdiction may have to be created. This would be the ideal. The jurisdiction could be either international or regional in scope. The 1953 International Criminal Court draft resolution should be revived and the court made an important part of the international narcotics control mechanism.

The entire world is threatened by the scope of the international narcotics problem. Control of the sources of natural narcotics is only the first step. We must continue to move forward if we are to stop production; if we simply control the opiates, new international problems involving chemical narcotics, like methadone, will arise. Without production controls, we will not have solved the problem, but only substituted one problem for another.

DISCUSSION

Mr. Burke discussed the expansion of the Bureau of Narcotics and Dangerous Drugs in the last few years. The Bureau has consolidated U.S. efforts in international control and has begun working closely with the police forces of other countries. The Bureau's activities have resulted in an increasing awareness within the government of the importance of international cooperation for narcotics control. The Bureau was instrumental in the U.S. encouragement and support of Turkey's decision to reduce or eliminate opium growing through subsidization of farmers who agree to grow other crops. Although this subsidy program costs the United States 40 million dollars annually, it has significantly decreased the supply of heroin flowing into the United States.

Ambassador Mashologu noted that ten years ago the African countries felt that hard narcotics trafficking was a U.S. problem. More recently, however, these countries have become actively concerned. They fear that as more pressure is placed on the traditional narcotics growing countries to curb large scale trafficking, the prob-

lem will be exported to other countries. This would compound the general spread of narcotics traffic which is already affecting most countries of the world. Lesotho is one example; since 1967 there has been a disturbing increase in production of marijuana.

Mr. Kutner said that while it was desirable to discuss the problem, there is little world consensus on how to extinguish the source. The problem is not really difficult. It is a simple matter of fundamental economic and social values. The system can only exist where there are corrupt government officials. It will not be possible to eliminate the "narco-agronomy" without a sense of honor, political responsibility, and concern for the individual. What is needed is a combined economic, psychological and sociological approach to the problem. Subsidizing the production of other crops as a substitute for opium is a constructive first step.

Mr. DeGara noted that while the narcotics problem is growing faster than the solutions, there are certain hopeful factors to be considered. First, an increasingly large amount of data is being collected. This is highly useful for international efforts of control. Secondly, there has been a beginning of international cooperation in the area, exemplified by the 1961 U.N. Convention on Narcotic Drugs and the 1972 U.N. Protocol. On the other hand, more financing is needed to implement effective programs. The U.N. Fund for Drug Abuse Control is simply inadequate. Across the board more money is needed both to promote crop substitution and to help integrate former drug users into society. Such a two-sided approach is necessary to solve the problem.

II. THE PREVENTION AND CONTROL OF INTERNATIONAL TERRORISM

The afternoon session of the Conference was opened by Chairman Ved P. Nanda. Putting the discussion in perspective, he noted the lack of world consensus on defining the nature of acts which constitute terrorism and thus the inability of the world community to effectively cooperate. There is, he observed, a spectrum of world opinion. At one extreme is the belief that terrorists should have no human rights and be treated as criminals. At the other is the position that terrorists must be treated in non-criminal ways. Dialogue, such as the Regional Conference, is, therefore, important to help bring divergent world views on terrorism closer together.

The Chairman then introduced the two principal speakers at the afternoon session, His Excellency Mothusi Mashologu and Mr. Luis Kutner, and panelists at the afternoon session: Captain Bard O'Neill of the United States Air Force Academy; Captain R. Lenihan of United Airlines; Gerhard Mueller; Charles Brower, Acting Legal Adviser for the Department of State; and Mr. Patrick Vandello, a student at the University of Denver College of Law.

Summary of Ambassador Mashologu's Remarks

International violence begets counterviolence; terrorism occurring anywhere is, therefore, a concern of the entire international community. While it is preferable to approach such a problem through a rule of law, the pace of legal action has been too slow. It is likely that other approaches will have to be used if we hope to control terrorism.

Although it is theoretically possible to achieve agreement among the majority of states on some measures to control international terrorism, no such agreement appears to be imminent. There are at least four major proposals and many amendments before the U.N. General Assembly to deal with international terrorism. As one of the most actively concerned, Lesotho has proposed several comprehensive amendments to draft resolutions on terrorism which have been introduced in the General Assembly. But, if any resolution is to achieve support of a majority of nations, there will have to be tough political bargaining coupled with political accommodation among the member states.

In general, the proposals currently before the United Nations are too restrictive to obtain majority support. To gain acceptance, all forms of terrorism, regardless of the parties, must be condemned. For example, state-sponsored terrorism in South Africa should be prohibited. Yet the restrictive proposals currently on the floor elevate this form of violence to a higher status and do not call it terrorism. Thus, any successful resolution will have to be more comprehensive in scope.

Additionally, several new elements should be included. First, any accord on terrorism must recognize elements of political change. This is aimed at colonial and neo-colonial governments who deny their people the right of self-determination. Second, the special status of liberation movements must be recognized by the world community. Usually, liberation movements are made up of people who have been terrorized themselves. Equity demands that terrorist agreements not be enforced against these people. Third, a U.N. sponsored terrorist resolution should come out against state sponsored or directed terrorism such as exists in South Africa. Finally, the question of extradition and asylum must be clarified in any agreement on terrorism, within the scope of what is to be considered terrorist acts.

The new states of the world today take a different view of terrorism than the older states. The new states see a value in some forms of terrorist-type activity as a means of achieving independence, even though they are against terrorism in other circumstances. Political realities must be taken into account. Terrorism is a last resort which arises when other channels of communication are closed. Therefore, the basic requirement in achieving any resolution on terrorism is to open up the channels of political communication among parties hitherto involved in incidents of international terrorism.

Summary of Mr. Kutner's Remarks

Terrorism, in the form which we know today, began at the end of World War II with aircraft hijacking. Hijacking poses a serious threat to the international community. There is a need for international sanctions and for cooperation between states if we are to deal effectively with the problem. However, as of yet, there has been no concerted effort on the part of the states of the world to responsibly attack the problem.

Certain basic principles have been agreed upon by the community of nations. The Tokyo, Hague, and Montreal Conventions all contain some principles of hijack prevention. This agreement, even though largely tacit in nature, indicates a global awareness of the problem. However, the international community is as yet unwilling, for various economic and social reasons, to strongly attack the problem for fear of upsetting a delicate international politico-economic relationship.

The concern over the international aspects of hijacking has led to concern over other forms of terrorism. The individual has been recognized as a subject of international law since the London Agreement of August 1945. Also, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognized the rights of an individual solely because he is a member of the family of man and entitled to human dignity.

To complete these conventions, as an additional tool in the fight against international terrorism, the common law principle of "constructive notice" needs to be added. This principle presupposes information or knowledge of a fact by a person through imputation of law because the person could have discovered the fact by proper diligence. It is clear that individual heads of state are responsible for activities that take place within their territorial borders. This becomes clear when one includes the international legal principle of territoriality which accords to the state the responsibility for persons and activities which emanate from within the territorial jurisdiction of that state.

The concept of constructive notice, as tempered by a standard of reasonableness, will help the world to recognize individual criminal liability. Also, it will help to focus world opinion on those responsible for harboring the terrorists. Appropriately, where international laws have been violated both individual heads of state and the states themselves, as members of the world community by virtue of international agreement and the Charter of the United Nations, shall be subject to appropriate international sanctions.

DISCUSSION

Captain O'Neill discussed the political barriers in dealing with terrorism and national liberation movements. Terrorism is generally

only used by the weak. For this reason, the Soviet Union and the People's Republic of China will not support any general international prohibition on terrorism, because such an agreement would jeopardize their relationship with revolutionary groups and the governments harboring these groups. Also, international accord would probably not be effective at the present time since world opinion seems to be supporting retaliatory terrorism against the Arabs by Israel. Unless we distinguish between terrorism and other forms of violence, no international agreement can be effective.

Captain Lenihan was the pilot of a hijacked airplane and briefly described the incident. He expressed the belief that the only solution to hijacking is to boycott countries which will not prosecute hijackers and impose stiff penalties on those hijackers. However, the United States has perpetuated a double standard since it does not prosecute Cubans for hijacking planes to the United States, but is all too willing to condemn those who hijack U.S. planes to Cuba. The United States must pursue a more consistent policy.

Mr. Mueller argued that stiffer penalties are not the answer to the problem. Such penalties only create martyrs. In addition, most countries are ambivalent to terrorism because they owe their origin to it. In general, it might be more useful to use non-political methods. Also, the use of municipal criminal laws might be helpful. Any of the following proposals might be considered: first, terrorists could be tried by the country which holds them; second, terrorists could be extradited to a requesting country; or third, terrorists could be turned over to an international tribunal. Whichever method is chosen, there must be substantial agreement for it to work.

Mr. Brower took a pragmatic approach. It is not possible to get all forms of terrorism condemned since political realities will thwart any such attempt. The U.S. proposal is an attempt to take some action against terrorism which is broad enough to garner world support without being so broad as to prevent its acceptance. The article only applies to the exportation of terrorism, but its primary intent is to cover situations where innocent victims are the main target. This is an incrementalist approach; start with small steps and try not to do everything at once.

Responding to Captain Lenihan, Mr. Brower observed that boycotts against countries harboring terrorists may be a violation of U.S. domestic law. However, this action, as an alternative, does exist in the international sphere.

Mr. Vandello expressed the belief that international control was meaningless, since we are not able to track the origin of terrorism, and urged municipal control instead. He further noted that Mr. Kutner's principle of constructive notice could be a useful tool in these circumstances, as it would place a burden on national leaders to ferret out terrorists within their countries.

III. OTHER ACTIVITIES AT THE REGIONAL CONFERENCE

Between the morning and afternoon sessions, a luncheon was held at the Denver Hilton Hotel. The luncheon guests were greeted by Maurice B. Mitchell, Chancellor, University of Denver. Following the afternoon session, the Conference was closed with a reception and banquet at the Brown Palace Hotel in honor of the participants.

