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A PAPER SUBMITTED BY THE

ULSTER UNIONIST PARTY

**TERRORISM AND THE RULE OF LAW
THE INTERNATIONAL DIMENSIONS**

Modern terrorism is increasingly international in scale and co-operation between nations is an essential prerequisite in its defeat. This paper examines in particular the problem relating to Libya, which has been involved both in the sabotage of aircraft and support of the IRA. It further discusses the United Nations' action and Libya's response. It ends with proposals of further appropriate action.

10 September 1992

TERRORISM AND THE RULE OF LAW

THE INTERNATIONAL DIMENSIONS

A paper prepared by the Ulster Unionist Party's
Strand II Committee Team

Submitted as background material for Strands II & III

Introduction:

In the Baker Report in 1984 Sir George Baker commented:-

'The primary civil right basic to every individual is the right to life. If that is denied no other right is of any use. It is recognised and protected by Article 2(1) of the European Convention:

'Everyone's right to life shall be protected by law'

This is a corollary to the sixth commandment 'Thou shall not kill'. In the context of this report I would expand and define this right to life as:

'A right to life and to live free from the fear of terrorist violence, coercion ... and threats, and from injury, loss or damage by their criminal activities'.

It is the duty of the Government to govern, and it is fundamental to that duty that it should do everything within its power and the law to protect the right to life of every citizen including members of the security forces'

In former times the control of crime within the borders of a state would have been considered entirely an exclusively an internal matter for the state concerned. However, increasingly the control of crime and the particular variety of crime known generally as 'terrorism' is being seen as an international problem. This is in particular shown by the International Conventions on hi-jacking, the Council of Europe

Review of the operation of the Northern Ireland
(Emergency Provisions) Act 1978 Cmnd 9222 paras 48
and 49

Convention on the Suppression of Terrorism, the United Nations Reports on terrorism and the taking of hostages, the United Kingdom/Ireland Report of the Law Enforcement Commission² and Recommendation number R(82) (1) of the Committee of Ministers to member states concerning international co-operation in the prosecution and punishment of acts of terrorism.

While it may be the case that there is no uniform state practice such as to constitute 'ius cogens' in relation to the treatment of terrorism it is submitted that international law has reached the position that no state can now maintain that the question of control of terrorism in all its aspects is exclusively a matter of internal jurisdiction.

International concern has been highlighted in regard to the apparent involvement of Libya in the destruction of flight PAN AM 103 over Lockerbie Scotland on 21 December 1988 which resulted in the deaths of 270 people: 259 passengers and crew, and 11 residents of the town of Lockerbie, and the destruction of flight UTA 772 on 19 September 1989 which resulted in 171 deaths.

But Libya's involvement in Irish terrorism is also well documented, in particular in regard to the importation into Ireland of guns and explosives, and possibly in regard to the provision of training and other aid and facilities to the Provisional IRA and other republican terrorists groups. In

addition Libya has made provocative statements of support for Irish terrorism which threaten the safety and well being of the people of Northern Ireland and derogate from their right of self determination.

Accordingly, this paper examines the measures taken by the United Nations, the response of Libya, and suggests what action by way of reparation on the part of Libya should be further required by the Governments of the United Kingdom and the Republic of Ireland.

Measures of the United Nations:

In Resolution 731 (1992) of 21 January 1992 the Security Council of the United Nation recorded that it was:-

'Deeply disturbed by the world wide persistence of acts of international terrorism in all its forms, including those in which states are directly or indirectly involved, which endanger or take innocent lives, have a deleterious effect on international relations and jeopardise security of states'.

It reaffirmed its previous resolutions³ against aircraft hijacking and recalled its condemnation of the destruction of the PAN AM flight and its call on all states to assist in the apprehension and prosecution of those responsible for that criminal act. The preamble also states the deep concern of the Security Council over the results of investigations which implicate officials of the Libyan Government.

³ Resolution 286 (1970) and Resolution 635 (1989)

The resolution urged the Libyan Government immediately to provide a full and effective response to the requests for co-operation in establishing responsibility for the destruction of the PAN AM and UTA aircraft and requested the Secretary General to seek the co-operation of the Libyan Government to provide a full and effective response to the requests. All states were urged individually and collectively to encourage the Libyan Government to respond fully and effectively to those requests, and the Security Council decided to remain seized of the matter.

Pursuant to paragraph 4 of that resolution the Secretary General of the United Nations submitted a report to the Security Council on 3 March 1992 of the results of his communications with Libya concerning the requests of the permanent representatives of the United States, the United Kingdom and France as conveyed to the Secretary General on 17 February 1992. The three Governments had sought the full co-operation of the Libya in the handover of two persons suspected of involvement in the destruction of the PAN AM flight and sought assurances from Libya in regard to the question of compensation.

That nature of Libya's response was found to be inadequate, but it is considered in more detail in the next section.

By Resolution 748 (1992) of 31 March 1992 the Security Council of the United Nations acting under chapter VII of the Charter

of the United Nations imposed an air embargo on Libya, (save for humanitarian flights) banned the supply of arms to Libya, required the reduction of Libyan diplomatic representation in member states and the denial of entry or expulsion of any Libyan national suspected of involvement in terrorist activities.

In the recitals in the preamble to the resolution the Security Council declared that it was:-

'Convinced that the suppression of acts of international terrorism, including those in which states are directly or indirectly involved, is essential for the maintenance of international peace and security

Recalling that in the statement issued on 31 January 1992 on the occasion of the meeting of the Security Council at the level of Heads of State and Government the members of the Council expressed their deep concern over acts of international terrorism and emphasized the need for the international community to deal effectively with all such acts

Reaffirming that, in accordance with the principle in Article 2, paragraph 4, of the Charter of the United Nations, every state has a duty to refrain from organising, instigating, assisting or participating in terrorist acts in another state or acquiescing in organised activity within its territory directed towards the commission of such act, when such acts involve the threat or use of force

Determining in this context that the failure by the Libyan Government to demonstrate, by concrete actions, its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests in Resolution 731 (1992), constitute a threat to international peace and security

Determined to eliminate international terrorism'.

These statements are an important indication of the stand by the international community against terrorism.

Response by Libya:

A letter dated 27 February 1992 on behalf of Libya to the Secretary General of the United Nations contains the following statements with regard to the question of terrorism:-

'The Jamahiriya emphasizes its utter condemnation of terrorism in all its forms regardless of its origin and denies all allegations of its involvement in any terrorist acts. It is prepared, in this regard, to do the following:

1. While denying this allegation the Jamahiriya has no objection that the Secretary General, or a representative assigned by him, ascertain the facts within the Jamahiriya in order to establish the full suit or truthfulness of this allegation. The Jamahiriya commits itself to provide all facilities and information that the Secretary General or his representatives may deem necessary to establish the facts.
2. Libya is prepared to co-operate in every way possible to put an end to terrorist activities and severs its relations with all groups and organisations that target innocent civilians.
3. Libya will not allow its territory, citizens or organisations to be used in any way for carrying out any terrorist acts directly or indirectly. It is prepared to punish most severely anyone proven to be involved in such acts.
4. Libya commits itself to respect the national options of all states and to establish its relations on the basis of mutual respect and non interference in their internal affairs.

Proposals contained in this plan shall be binding on Libya if they are accepted by the other party.'

With regard to the question of compensation the Libyan letter provides as following:-

'Although it is premature to discuss the question of compensation which can only be consequent to a civil court decision which is based on a criminal court decision, Libya shall guarantee the payment of compensation awarded as a result of the responsibility of

its suspected citizens if they are unable to pay it themselves'.

On 14 May 1992 it was reported that a broadcast by the Libyan newsagency JANA quoted a statement of the Libyan authorities as follows:-

'The Great Jamahiriyah out of its belief in the need to bolster the United Nations' role in safeguarding international peace and security, has declared its acceptance of Security Council Resolution 731 and its readiness to implement its contents regarding the categorical renunciation of terrorism in all its forms and whatever its sources are.'

It said Libya was taking the following steps to counter terrorism:

Cutting all links with groups and organisations involved in international terrorism.

Confirming there are no camps to train terrorists or terrorist groups on Libyan territory and inviting any UN committee for verification.

Libya will not allow its territory, citizens and institutions be used for terrorist acts whether directly or indirectly. It is also ready to severely punish anyone convicted of terrorism.

Libya will build its relations with foreign countries on the basis of mutual respect and non-interference in the internal affairs of other countries.

It was reported that Libya had vowed to cut previous links with the IRA and had called for a meeting between Britain and Libya to discuss the issue that has strained their relations. The statement was said to contain a declaration that:-

'Libya pledges to expel from its territory any person proved to have been involved in terrorist acts'

This promise was said to be contained in a letter on 11 May 1992 from the Foreign Minister of Libya Ibrahim Mohamed Beshari to Boutros Boutros-Ghali, the Secretary General of the United Nations, following a meeting between Vladimir Petrovsky the envoy of the United Nations and Muammar Gaddafi in Tripoli on the same day.

Action to be taken:

Accordingly it is suggested that it would be appropriate to seek a commitment that the Governments of the United Kingdom and the Republic of Ireland should in accordance with the resolutions of the United Nations, and the response of Libya require the following:-

1. International investigation of Libya's involvement in Irish terrorism and the preparation of a full report thereon.
2. The co-operation of the Libyan authorities in identification of and production for trial of all

persons believed to have had involvement in such terrorism whether in Libya or elsewhere.

3. Verification by an international monitoring team that there are no camps to train terrorists or terrorists groups on Libyan territory in accordance with Libya's apparent invitation that a UN verification committee might be appointed for that purpose.
4. An apology by Libya and repudiation for its statements threatening the right of self determination and peaceful existence of the people of Northern Ireland.
5. A commitment by Libya to pay full compensation to all persons who have been injured or bereaved as a result of terrorists acts which Libya has supported or encouraged.
6. The establishment of an international claims commission to investigate claims for compensation, to make fair awards, and with power to enforce its awards.