

State Terrorism as a Mechanism for Acts of Violence against Individuals: Case Studies of Kim Jong-Nam, Skripal and Khashoggi Assassinations

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Recent incidents of state terrorism, including the assassination of Kim Jong-Nam, the murder (and attempted murder) of persons with strong ties to Russia, and the Jamal Khashoggi assassination, demonstrate cruelty while implying the involvement of the state, unlike other acts of terrorism since the Second World War. This trend denies the efforts of the international community, which has suppressed physical punishment including the death penalty in modern times and has achieved advances in human rights and humanitarianism under contemporary international law. Accordingly, this paper utilizes Michel Foucault's indications regarding prison to reconsider recent cases of state terrorism from a broader perspective while taking into consideration the historical background of conventional terrorism and the development of international terrorism-related treaties.

Keywords

State Terrorism, Transborder Violence, Cooperation among States, Kim Jong-Nam, Skripal, Khashoggi

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I. Introduction

International law has developed for centuries based on the mutual respect of sovereignty in the international community. This basic mechanism, however, has been challenged by recent events, such as Russia's annexation of the Crimean Peninsula and China's assertion of expanding its territorial waters through the construction of artificial islands in the South China Sea.¹² Although the international community is trying to prevent such activities through economic sanctions and displays of military force, frequent outbursts from a certain set of nations pose a threat to ongoing imposition of these acts of restraint.

More recently, certain forms of state terrorism might be found in such outbursts; for example, the murder of Kim Jong-Nam in Malaysia in 2017, the attempted assassination of Sergei and Yulia Skripal in Britain and the murder of Jamal Khashoggi in Turkey in 2018. These actions conflict significantly with the basic principle of human rights and humanitarianism under international law. While international law has outlawed terrorism,³ it is silent when the perpetrator of crimes like the ones described above is a sovereign state.

The primary purpose of this research is to examine the transformation of the state terrorism. This paper is composed of six parts including this Introduction and a Conclusion. Part two will review the history of transformation of terrorism and Part three will examine conceptual basis for international law to prevent terrorism. Part four will look into recent instances of state terrorism. Part five will discuss irrelevance and illegitimacy of state terrorism.

II. The Transformation of Terrorism: A History

A. From Traditional Terrorism to New Terrorism

'Terrorism' may be defined variously; no common understanding is yet established.

¹ A. Nardelli, J. Rankin & G. Arnett, *Vladimir Putin's approval rating at record levels: Almost nine out of 10 Russians approve of their president, according to survey that also highlights support for Ukraine strategy*, GUARDIAN, July 23, 2015, <https://www.theguardian.com/world/datablog/2015/jul/23/vladimir-putins-approval-rating-at-record-levels>.

² Szu-chien Hsu & Hsiao-Chi Hsu, *Domestic Motivation and the Case of the East China Sea ADIZ: Diversion or Mobilization?*, 41(3) ASIAN PERSPECTIVE 455-80 (2017).

³ Ministerial declaration on global effort to combat terrorism, S.C.Res.1377, U.N. Doc. S/RES/1377 (Nov. 12, 2001).

Based on various, well-known definitions,⁴ the author may define ‘terrorism’ as “any action that attempts to change the will or the behavior of its target via threats perpetrated by a state or its collaborators, transcending national borders with violent means that are unlawful in all countries.” State terrorism may be further defined as “the violent actions committed by states against relevant parties.” Terrorism is considered to have existed from an early stage in human history. Some experts believe that the origins of terrorism can be traced back to the Greco-Roman Period.⁵ Since majority of ancient terrorism was manipulated to strengthen the impression that participants in religious conflicts and ethnic liberation struggles were outlaws, however, it is difficult to make a strict judgment on this point.

Modern terrorism can be traced back to the “Reign of Terror” instituted by Loevis Pierre and other Jacobins in 1789 during the French Revolution, when they assassinated, tortured and executed royalists attempting to restore the rule of the monarch in order to implement the revolutionary program of the Republicans.⁶ Their acts can be considered to be a classical example of terrorism conducted by a government authority.

Previously, however, the method of implementing the death penalty in France had been even more brutal and spectacular. Michel Foucault pointed out that western countries such as France in the mid-18th century imposed physical pain as a means of punishing criminals for the purpose of providing a form of psychological correction.⁷

Up until the 19th century, terrorism was largely employed as a weapon of government authority. Terrorism was then employed as a means of consolidating organizations; preventing dissenters from leaving organizations; assassinating political opponents; monitoring individuals and the general public; and maintaining control of colonies and slave populations.⁸

Entering the twentieth century, the Nazi-German model was internationally recognized as a form of government based on fear. The national secret police under the Nazi regime, known as the “Gestapo,” is a classic example of an organization that supported the Nazis’ “reign of terror.” The Gestapo was established in 1933,

⁴ A. CASSESE et al., INTERNATIONAL CRIMINAL LAW 149-50 (3d ed. 2013); R. Blakeley, *State terrorism in the social sciences: theories, methods and concepts*, in CONTEMPORARY STATE TERRORISM: THEORY AND PRACTICE 15 (R. Jackson, E. Murphy & S. Poynting eds, 2009).

⁵ THE TERRORISM READER: A HISTORICAL ANTHOLOGY 2 (W. Laqueur & Y. Alexander eds., 1987).

⁶ G. Shapiro & J. Markoff, *The Incidence of Terror: Some Lessons for Quantitative History*, 9(2) J. Soc. Hist. 193 (1975).

⁷ M. FOUCAULT, *SURVEILLER ET PUNIR: NAISSANCE DE LA PRISON* (1975). <A. Sheridan trans. into English titled, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (1977).>

⁸ B. HOFFMAN, *INSIDE TERRORISM* 3-5 (3d ed. 2017).

when the Nazi Party seized power, and expanded throughout Germany from 1934. The organization used both information and direct coercion in order to tyrannize the opponents of the Nazi regime. It played a significant role in committing the genocide of the German Jews and Marxists. Together with the system of concentration camps, the Gestapo was a central element in supporting and performing the violence of the Nazi regime.⁹ Throughout World War II, the Gestapo was responsible for oppressing Jews, members of resistance organizations, and political prisoners in Germany and its occupied territories.

However, the Nazi-German model of terrorism is different from the contemporary politics of fear because today's propaganda is employed in a more sophisticated manner.¹⁰ Under these mechanisms, police and other agencies apply pressure to those who resist the regime not merely through terror, but by mass media to ensure a united attitude among people for the regime and its policies. Without criticism of the government's policies, psychological pressure engendered by fear is greatly reduced, while, by contrast, public support for the existing political system will thrive.¹¹

"Reigns of terror" were also implemented in former socialist nations. Stalin carried out his "Great Purge" using state agencies against the Communist Party members, intellectuals, and the general populace in the latter half of the 1930s in the Soviet Union. It is claimed that millions were allegedly killed in the purge.¹² The 17th Congress of the All-Union Communist Party, held in 1934, was in fact termed the "Congress of Victors," and proclaimed the victory of socialist constructivism and the surrender of opposition factions within the party. Among the 1,966 attendees at the Congress, however, more than half were later arrested, most of whom were executed by firing squads. Numerous party members from various regions of Russia were also executed or detained without trial. Through the terrorism, Stalin exercised his power over the former leaders of the Russian Revolution and reinforced his power base through fear.¹³

Leon Trotsky, who was second in charge to V. I. Lenin, played a major role in the Russian Revolution but was expelled from the Communist Party following a conflict with the majority faction in the Politburo regarding policy in the 1920s. Looking at the Soviet Union from overseas, Trotsky continued to criticize the ongoing deification

⁹ K. Mallmann, *Social Penetration and Police Action: Collaboration Structures in the Repertory of Gestapo Activities*, 42(1) INT'L REV. SOC. HIST. 25-43 (1997).

¹⁰ A. PRATKANIS & E. ARONSON, *AGE OF PROPAGANDA-THE EVERYDAY USE AND ABUSE OF PERSUASION* (1992).

¹¹ NAZI PROPAGANDA: THE POWER AND LIMITATIONS (D. Welch ed., 1983).

¹² R. HINGLEY, *RUSSIA-A CONCISE HISTORY 180-1*(2003). See also *supra* note 8, at 16.

¹³ See generally W. CHASE, *ENEMIES WITHIN THE GATES?: THE COMINTERN AND THE STALINIST REPRESSION 1934-1939* (2001).

of Stalin, the “Great Purge” conducted in a search for “foreign enemies” and the rise of extreme nationalism. However, Trotsky was assassinated by the Soviet regime in 1940 in Mexico.¹⁴ This can be considered an example of the prehistory of the internationalization of state terrorism. Stalin sought to dominate the nation by fear, but attempts to keep citizens in line through fear of the state has today become less obvious in developed nations, with the increased awareness of human rights and national sovereignty since the end of the Second World War.

Since the ratification of the “Second Optional Protocol to the International Covenant on Civil and Political Rights” 1989 which stipulated the abolition of the death penalty internationally, meanwhile, there have been frequent resolutions regarding a “Moratorium on the Use of the Death Penalty” in the UN General Assembly.¹⁵ Based on generally accepted principles of human rights in the contemporary international community, it is extremely difficult to respond to any crime with the fear of physical punishment or the death penalty.¹⁶

The Rainbow Warrior incident might also be considered as an act of state terrorism in the postwar period. On July 10, 1985, the Rainbow Warrior, the flagship of a fleet assembled by the Greenpeace, was moored in New Zealand’s Auckland Harbour, preparing to set out for a protest at the French nuclear test site Mururoa Atoll, located east of French Polynesia. The ship was, however, sunk there by two explosions organized by divers employed by France’s Direction Generale de la Securite Exterieur (DGSE).¹⁷ One Greenpeace cameraman was killed in this incident, but many other crew members evacuated following the first explosion. The incident had the character of a political warning expressed through violence.

Another example of violent actions were those committed by North Korea. A noticeable incident is the “Rangoon bombing,” carried out in October 1983. A bombing that targeted the entourage of South Korea’s President Chun Doo-Hwan, who at the time was visiting the Aung San Mausoleum in Burma. It killed 17 members of the South Korean delegation and injured 47 others.¹⁸ The Burmese government revealed

¹⁴ See generally R. SERVICE, *TROTSKY: A BIOGRAPHY* (2009).

¹⁵ Moratorium on the Use of the Death Penalty, G.A. Res. 62/149, U.N. Doc. A/C.3/62/L.29, <https://undocs.org/A/c.3/62/L.29>.

¹⁶ D. Chiriță, *The Observance of Fundamental Human Rights. The Death Penalty and Corporal Punishments. The Prohibition of Torture and Inhuman or Degrading Punishment*, 12 CHALLENGES OF THE KNOWLEDGE SOCIETY 48-55 (2018).

¹⁷ S. Sawyer, *Rainbow Warrior: Nuclear War in the Pacific*, 8(4) THIRD WORLD Q. 1325-36 (1986).

¹⁸ CIA Directorate of Intelligence, *Rangoon bombing Incident - The Case against the North Koreans* (Oct. 19, 1983) (Sanitized Copy Approved for Release Aug. 10, 2010), <https://www.cia.gov/library/readingroom/docs/CIA-RDP85T00287R000402270001-8.pdf>.

that the bombing was carried out by North Korean agents.

B. People-led Terrorism

In the 20th century, people using force as a means of resistance was becoming prevalent. Populaces chose terrorism to demonstrate their self-determination. Commencing with the assassination of the Romanov Emperor Alexander II of Russia in 1881 by Ignacy Hryniewiecki, a member of Narodnaya Volya (People's Will), a more radical segment of the Narodnik (Populist) movement, which complained of dissatisfaction among the peasants and sought to overthrow the tyranny of the government, the assassination of key figures holding power came to be regarded as the most expedient method of realizing social and political change in the cause of revolution or the liberation of people.¹⁹

As violent acts with political aims spread widely for opposition groups, resistance movements against colonial domination regarded terrorist acts as a manifestation of a nobility of spirit. "Terrorism" in the pre-WW I era can be summed up as the assassination of politicians. A typical example is the assassination of Austro-Hungarian Archduke Franz Ferdinand and his wife in Sarajevo, the capital of Bosnia, by the young Serbian Gavrilo Princip in 1914,²⁰ which was the key to culminating in the First World War.

In Asia, the assassination of Hirobumi Ito by An Chung-gun in Harbin, China in 1909 is a classic example of an act of political violence conducted by a populace yearning for self-determination. These incidents demonstrate that the definition of "terrorism" differs from country to country. In Japan, Hirobumi Ito is regarded as a hero. His image graced Japanese banknotes from 1963 to 1984, known as one of the drafters of the Meiji Constitution. His assassination is frequently regarded as an act of terrorism in Japan.²¹ However, in Korea, An Chung-gun is revered as a national hero who opposed the imposition of Japanese rule, with his image featured on a 200-won stamp, and a dedicated film adaptation of his life story being released in 1972.

After World War II, as colonial rule was repudiated under international law, the

¹⁹ See generally D. HARDY, *THE ORIGINS OF RUSSIAN TERRORISM 1876-1879: CONTRIBUTIONS TO THE STUDY OF WORLD HISTORY* (1987).

²⁰ J. Subotic, *Terrorists are Other People: Contested Memory of the 1914 Sarajevo Assassination*, 63(3) *AUSTL. J. POL. & HIST.* 369-81 (2017).

²¹ On January 24, 2014, House of Representatives member Takako Suzuki asked in the House of Representatives, "Cabinet Secretary Suga referred to An Chung-gun as a terrorist. Is this the official position of the government?" On February 4, Prime Minister Shinzo Abe avoided use of the term terrorist and responded that An Chung-gun "murdered Prime Minister and Resident-General of Korea Hirobumi Ito and was sentenced to death." See Cabinet House of Representatives, Vol.186, No.2 (Feb. 4, 2014, Answer No. 2).

former colonies regained their sovereignty and finally achieved their independence. Article 1, paragraph 2 of the United Nations Charter states that the United Nations aims “[T]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples[...].” Accordingly, the postwar international society takes the concept of national self-determination as a mandatory baseline expectation for all sovereign States. In addition, the Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 justified the realization of independence from colonial rule as a lawful action.²² Against this backdrop, it became increasingly important to view movements demanding liberation from colonial rule not as terrorist organizations, but as movements for the liberation of people and the manifestation of a nobility of spirit. Simultaneously, as a result of the recognition of the UN trust territories, in the latter half of the 20th century, struggles for liberation began to take on the aspect of open warfare, rather than simply involving the assassination of important figures or the bombing of facilities.²³

Following the fundamental changes of the postwar international community such as the ongoing division of nations and ethnic groups, terrorism came to be adopted by oppressed peoples as a means of achieving their self-determination. In the 1960s, when many colonies achieved their independence, terrorism had a strong international character, such as hijackings, hostage-takings, and the kidnapping of diplomats by radical leftist groups around the world. With the Cold War between the US and the Soviet Union entrenched, the ideological conflict intensified. The Soviet Union tried to overlook or tolerate terrorist acts and even indirectly support terrorism.²⁴ However, such terrorism was willing to announce political opinions of the groups and did not claim much human loss.

The 1970s was called as the “Terror Decade.”²⁵ Different from the terrorism of the pre-1960s which targeted specific individuals, after 1970s, any member of society viewed as an enemy became a target as well.²⁶ At that time, terrorism became highly organized and large-scaled by specifically those who carried out separatist movements. The cooperation between terrorist organizations in this period can be considered the precursor to contemporary terrorists who carry out extremist activities

²² Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A Res. 1514(XV), U.N. Doc. A/4684 (1960).

²³ D. CARROLL & A. CAMUS, *THE ALGERIAN: COLONIALISM, TERRORISM, JUSTICE* 5-6 (2007).

²⁴ C. STERLING, *THE TERROR NETWORK: THE SECRET WAR OF INTERNATIONAL TERRORISM* 20-1 (1981).

²⁵ A. Friedlander, *The Crime of Kidnapping of Diplomatic Personnel*, in *INTERNATIONAL CRIMINAL LAW* 486 (M. Bassiouni ed., 1986).

²⁶ W. LAQUEUR, *TERRORISM-IN THE TWENTY-FIRST CENTURY* 14 (2004).

under the loose collectivity offered under the auspices of the Al-Qaeda or ISIS.²⁷

Entering the 1980s, terrorism began to evolve in a different character with large-scale and indiscriminate bomb attacks in which sovereign States were both directly and indirectly involved. In particular, following the attack on the US embassy in Beirut, Lebanon, on April 18, 1983, a new type of terror attack practice involving vehicles packed with explosives began to spread throughout the world. Hezbollah, the organization responsible for this incident, later attacked the US and French headquarters of the Multinational Force in Lebanon in October 1983, bombed the US embassy annex in September 1984, and hijacked TWA Flight 847 in 1985. These terrorist acts were supported by Iran and Syria.²⁸ During this period, Libya also instigated terrorist acts.

The terrorist acts directly involved in or supported by those States do not show a clear admission of responsibility. Up until the 1970s, it was common for terrorists to declare political demands or assert their beliefs through hijackings or kidnappings. State terrorism, however, simply threatens the target country without revealing a clear claim in order to avoid criticism to indiscriminate murder. Individual terrorism gains sympathy internationally by delivering a political position, while State terrorism does not make any political assertions, but brutally kills people without much consideration of gaining support. In acts of State terrorism, the perpetrator is better funded and the target is seriously damaged with the use of highly sophisticated weapons. State terrorism is used to perpetrate fear in the general public and carries the risk of significantly decreasing international support to the acting State.²⁹

In the 1990s, following the end of the Cold War, the so-called “New Left” terrorism declined, but terrorism based on religious fundamentalists and radical ethnic groups increased in ferocity. In addition, terrorism linked to drug syndicates began to appear. Meanwhile, as a majority of leftist groups were losing their power, some terrorist groups began to cooperate with criminal organizations.³⁰

Contemporary terrorism may be described as “new terrorism.” This term began to be used in a research report published by the RAND Corporation in 1999.³¹ New terrorism differs from traditional terrorism in the following aspects: 1) Indiscriminateness of the targets of terrorist acts and the infliction of enormous

²⁷ T. Bacon, *Alliance Hubs: Focal Points in the International Terrorist Landscape*, 8(4) PERSPECTIVES ON TERRORISM (2014).

²⁸ US Department of State, *Country Reports on Terrorism 2019*, 261-2 (2020).

²⁹ *Supra* note 8, at 69-70.

³⁰ B. HOFFMAN, *INSIDE TERRORISM* 27 (1998).

³¹ *See generally* O. LESSER (ET AL.), *COUNTERING THE NEW TERRORISM* (1999).

damage; 2) Lack of clarity in the purpose of the terrorist act; 3) International character; and 4) Loose association of the organization committing the act.³²

III. International Legal Basis to Fight against Terrorism

A. Agreements related to Aircraft

In the early postwar world, aircrafts used to be targets by hijackers who had been able to easily board there. In the beginning, individual hijackers sought asylum or stated other political reasons. However, because the concerned domestic laws did not sufficiently define hijacking as containing a criminal character, in many cases, domestic courts were unable to effectively exercise their jurisdiction over such incidents. In particular, when an aircraft in flight is hijacked by those on the plane or if the hijacking occurred on a vessel on the high seas, it was difficult to decide which domestic courts had jurisdiction over the act.³³ As a result, it was extremely difficult to prosecute international hijackings without agreements related to terrorism committed on aircraft.

A turning point was the conclusion of the Convention on Offences and Certain Other Acts Committed on Board Aircraft (hereinafter Tokyo Convention) on September 14, 1963, which deals with issues related to the international passage of aircraft. Following the Tokyo Convention, new hijacking treaties were adopted by the international community.

1. The Hague Hijacking Convention

The Convention for the Suppression of Unlawful Seizure of Aircraft (hereinafter The Hague Hijacking Convention) was adopted on December 16, 1970 to effectively prevent aircraft hijacking.³⁴ According to Article 7 of The Hague Hijacking Convention, irrespective of whether the crime was committed in its territory, if a contracting state does not extradite a suspected perpetrator of a hijacking discovered in its territory, it must without exception “submit the case to its competent authorities” and prosecute. This article follows the principle of *aut dedere aut judicare* (either extradite

³² *Id.* at 39-45. See also W. LAQUEUR, *THE NEW TERRORISM* (1999).

³³ R. Boyle & R. Pulsifer, *The Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft*, 30(4) J. AIR L. & COM. 306 (1964).

³⁴ Convention for the Suppression of Unlawful Seizure of Aircraft, 10 I.L.M. 133 (1971) (The Hague Hijacking Convention).

or prosecute), which would later be inherited by subsequent conventions related to international terrorism.³⁵ If a suspect of hijacking is discovered within the territory of a signatory state and the state does not extradite that suspect, irrespective of whether the crime was committed in its territory, that State then must “submit the case to its competent authorities,” and the decision in such case must be treated in the same manner as in the case of any serious offense under the law of that State.³⁶

Article 7 obliges the contacting State to prosecute the suspect “without exception.” There is, however, a serious limitation from the perspective of prosecution and subsequent punishment. Under the provisions, no sanctions shall be imposed on the State when the suspect is neither extradited nor prosecuted. In principle, a contracting State can either extradite or prosecute hijackers under domestic law.

2. The Montreal Convention

The Tokyo Convention relates to specific crimes committed on aircrafts in flight, while The Hague Hijacking Convention deals with the hijacking of aircraft in flight. However, neither convention contains provisions regarding the damage to aircraft while in service, the crimes against crew members in flight, or the destruction of airport facilities on the ground. Finally, the ICAO adopted the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (hereinafter Montreal Convention).³⁷

The Montreal Convention was due to a serious terrorist attack against a civil aircraft in flight. On December 21, 1988, a plastic explosive on Pan Am Flight 103 traveling from Frankfurt to New York via London exploded as the plane was flying over the village of Lockerbie in Scotland, killing a total of 259 passengers and crew members, in addition to 11 residents of Lockerbie. This was a terrorist attack committed by members of Libya’s intelligence agency in retaliation for the bombing of the home of Libya’s leader Muammar Gaddafi in Tripoli and Libya’s air force bases by the US cooperating with the UK, 10 days after a bombing that occurred at a disco in West Berlin on April 5, 1986.³⁸

In the process of negotiations, the US and the UK demanded Libya extradite the perpetrators, but Libya refused, following Article 7 of the Montreal Convention under the principle of *aut dedere aut judicare*, allowing the perpetrators to be tried in

³⁵ R. JENNINGS & A. WATTS (EDS.), 1 OPPENHEIM’S INTERNATIONAL LAW 953-71 (9th ed. 1992).

³⁶ The Hague Hijacking Convention, art. 7.

³⁷ Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 974 U.N.T.S. 177 (1971).

³⁸ *Supra* note 8, at 275-6.

their own country.³⁹ Under the Montreal Convention, it was not assumed that the country required to extradite a perpetrator might be a supporter of terrorism. Since the bombing was strongly believed to be committed by Libya, a fair trial could not be expected if the suspects were extradited to the US or the UK. After long negotiations under the auspices of the UN Security Council, the case was finally tried by an international court in The Netherlands⁴⁰ under the Scottish criminal law. Therefore, the Montreal Convention was unable to sufficiently prevent terrorist acts committed on aircrafts by individuals or organizations.

B. Conventions related to Hostage-taking

1. The Protection of Diplomats Convention

In the 1970s, as terrorism targeting diplomats increased significantly, the UN adopted the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (hereinafter Protection of Diplomats Convention) on December 14, 1973.⁴¹ This Convention mainly aims to regulate mutual cooperation and the exchange of information between States, and provide guidelines for treating the suspects of crimes against internationally protected persons.⁴²

Article 8 of the Protection of Diplomats Convention stipulates: “States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.”⁴³ This requirement can be interpreted as the conclusion of a type of multilateral extradition treaty, insofar as the extradition of the perpetrators in question is concerned. Article 2 stipulates that acts of terrorism against internationally protected persons are crimes, which should be followed by appropriate punishment. It is noticeable that the Convention does not regard international terrorism itself as a crime.

2. The Hostages Convention

In the 1970s, taking of hostages occurred frequently. The UN adopted the International Convention against the Taking of Hostages (hereinafter Hostages Convention) on

³⁹ M. Scharf, *Terrorism On Trial: The Lockerbie Criminal Proceedings*, 6 ILSA J. INT'L & COMP. L. 356 (2000).

⁴⁰ Scottish High Court of Judiciary at Camp Zeist (The Netherlands): Her Majesty's Advocate v. Al Megrahi, 40 I.L.M. 582-613 (2001).

⁴¹ Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, 1035 U.N.T.S. 167, 13 I.L.M. 41 (1974) (Protection of Diplomats Convention).

⁴² *Id.* arts. 5-8.

⁴³ *Id.* art. 3(8).

December 17, 1979.⁴⁴ The Hostages Convention grants terrorists their human rights and legal status. Article 9, Paragraph 1 states that a request for the extradition of a suspected terrorist hostage-taker is not permitted if the nation from which the extradition was requested has sufficient grounds to believe either of the following two matters: first, the request for extradition in relation to the hostage-taking specified in Article 1 has been made for the purpose of prosecuting or punishing the person on the grounds of “race, religion, nationality, ethnic origin, or political opinion”; and second, the suspect’s position may be prejudiced for any of the reasons mentioned in the previous paragraph, or “for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.” Human rights of terrorists have been protected by subsequent treaties related to the prevention of international terrorism.

C. Anti-terrorism Conventions

As today’s terrorist acts are conducted through various ways, the conventional treaty framework cannot prevent terrorism effectively. Regulating weapons of mass destructions will be necessary to prevent large-scale damage resulting from terrorist acts.

1. The Convention on the Physical Protection of Nuclear Material

When nuclear weapons first came into use in 1945, radioactive materials were a highly secretive matter handled by military forces. As these materials have been generally used in scientific studies for civilian purposes, however, the materials could be stolen by terrorists. The IAEA finally adopted the Convention on the Physical Protection of Nuclear Material on March 3, 1980⁴⁵ in order to: (1) promote international cooperation in the peaceful use of nuclear energy; (2) prevent danger posed by the illegal acquisition and use of nuclear material; and (3) ensure the prevention, detection and punishment of crimes related to nuclear material.⁴⁶

The Convention on the Physical Protection of Nuclear Material follows the provisions of prior treaties regulating international terrorism and concerning extradition of perpetrators, bringing criminal charges and imposing punishment, and mutual assistance in the application of criminal justice. The Convention also

⁴⁴ International Convention against the Taking of Hostages (Hostages Convention), 1316 U.N.T.S. 205, 18 I.L.M. 1456 (1979), U.N. Doc. A/RES/34/146.

⁴⁵ Convention on the Physical Protection of Nuclear Material 1456 U.N.T.S. 246, 18 I.L.M. 1419 (1980).

⁴⁶ *Id.* p.mbl. & art. 5.

guarantees the international transportation of nuclear material for the purpose of preventing the potential risk of the acquisition and use of nuclear material by terrorist organizations and other groups committing illegal acts, and further peaceful international transport of nuclear material through national territories.⁴⁷ Articles 4 and 5 of the Convention stipulates that unidentified nuclear material is not permitted to be imported or exported or allowed passage through national territories, and that possession of unauthorized nuclear material and the theft or unlawful acquisition of nuclear material generated after disposal are regarded as crimes.

2. The Terrorist Bombings Convention

As the diversity in the types of terrorist bombings were dramatically increasing to include plastic explosives such as those employed in the Lockerbie bombing, the UN adopted the International Convention for the Suppression of Terrorist Bombings (hereinafter Terrorist Bombings Convention: TBC) on December 15, 1997.⁴⁸ This Convention aims to prevent the terrorist attacks using explosives and other devices that cause fatal injuries, and prosecute and punish the perpetrators involved.⁴⁹

Article 11 of the Terrorist Bombings Convention states that: “[a] request for extradition or for mutual legal assistance [...] may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.” However, Article 12 states:

[...] if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person’s position for any of these reasons, ...

Following Article 12, it is possible to refuse demands for extradition or mutual legal assistance. It further clarifies that terrorist crimes are, in principle, not regarded as political crimes while emphasizing the protection of human rights.

Considering that Article 2 of the Terrorist Bombings Convention set a wide scope in relation to “the intent to cause death or serious bodily injury” or “the intent to cause extensive destruction of such a place, facility or system,” and made “An explosive or

⁴⁷ *Id.* art. 3.

⁴⁸ International Convention for the Suppression of Terrorist Bombings, 2149 U.N.T.S. 256, ATS 17, U.N. Doc. A/RES/52/164 (Terrorist Bombings Convention).

⁴⁹ *Id.* pmb. & art. 4.

incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage.”⁵⁰ Article 1, paragraph 3 (a) expands the scope of the TBC to encompass terrorism using chemical and biological weapons.

3. The Nuclear Terrorism Convention

Despite numerous international treaties against terrorist acts, terrorism continued to occur on a global scale, even using radioactive weapons. Following the end of the Cold War and subsequent global instability, terrorist organizations were able to acquire requisite knowledge on nuclear weapons on their own. The UN thus adopted the International Convention for the Suppression of Acts of Nuclear Terrorism (hereinafter Nuclear Terrorism Convention) on April 13, 2005.⁵¹

This Convention focuses rather on the actual use of nuclear weapons or materials than on the potential acquisition by terrorists during transportation. It has a wide range of applications including the use of small and simple nuclear weapons for terrorist attacks such as dirty bombs.⁵² The Nuclear Terrorism Convention deals with rather specific and highly dangerous acts. Article 2 stipulates that just possession of nuclear weapons by individuals is “illegal.”

In particular, Article 4 classifies military actions and terrorism. The Convention affects neither the rights and obligations of the State or the individual under international law, nor military actions regulated by international humanitarian law.⁵³ This is largely based on the respect for the already established treaty system and a strict understanding of the scope of terrorism which has been widely recognized.

D. Development of International Law against Terrorism

Since the 1970s, international law has been progressing to prevent international terrorism with special references to international human rights law.⁵⁴ It is desirable even though all the treaties have not been fully adopted. Recently, however, States have instigated and supported terrorist acts in the background or directly played a major role in terrorism at the very forefront. This is mainly because express provisions

⁵⁰ *Id.* arts. 1 & 3(a).

⁵¹ International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention), 2245 U.N.T.S. 89, U.N. Doc A/RES/59/290 (2005).

⁵² *Id.* arts. 1 & 4

⁵³ *Id.* art. 4(1) & (2).

⁵⁴ See generally M. KAMMINGA & M. SCHEININ (EDS.), *THE IMPACT OF HUMAN RIGHTS LAW ON GENERAL INTERNATIONAL LAW* (2009).

on state terrorism and state-sponsored terrorism have not been established. Effective control on terrorism continues to be a point at issue.

IV. Recent Instances of State Terrorism

A. Assassination of Kim Jong-nam

Kim Jong-nam, the half-brother of Kim Jong-un, chairman of the North Korean Workers' Party, was assassinated at Kuala Lumpur International Airport in Malaysia on February 13, 2017. Kim Jong-nam was initially seen as the successor to Kim Jong-il, but was politically excluded from candidacy.⁵⁵ There is a strong view that he was regarded as an enemy by Kim Jong-un, who succeeded his father, and others within the North Korean government.⁵⁶

Kim Jong-nam disseminated information through interviews on the inner politics of the Kim Jong-il regime in various parts of Asia. He was believed to be assassinated mainly because of the execution of his uncle, Jang Song-taek who defended Kim Jong-nam in North Korea with a strong connection with China's leadership which finally resulted in a shortage of funds.

Kim Jong-nam traveled around the world, but his movements were not reported for some time.⁵⁷ When Kim Jong-nam entered the Kuala Lumpur International Airport terminal to check-in for a flight from Malaysia to Macau on February 13, 2017 two women pressed their wet hands against his face. After complaining about eye pain to an airport clerk, he soon lost consciousness and died in-transit to the hospital. The two women who carried out the assassination respectively had Vietnamese and Indonesian nationality and each testified that they had been scouted by an acquaintance and asked to cooperate with the recording of a prank television program.⁵⁸ Although the two women directly assassinated Kim, they reappeared at the airport two days later without recognizing the seriousness of the crime. The

⁵⁵ *Kim Jong-nam Resurfaces in Beijing*, CHOSUN ILBO DAILY, Jan. 16, 2012, http://english.chosun.com/site/data/html_dir/2012/01/16/2012011601009.html.

⁵⁶ YOJI GOMI, MY FATHER, KIM JONG-IL, AND I [五味洋治『父・金正日と私・金正男独占告白』文藝春秋 2012] (Bunshun e-Books 2017).

⁵⁷ W. Strobel, *North Korean Leader's Slain Half Brother Was a CIA Source*, WALL ST. J., June 10, 2019, <https://www.wsj.com/articles/north-korean-leaders-slain-half-brother-was-said-to-have-been-a-cia-informant-11560203662>.

⁵⁸ B. Otto & A. Rachman, *Suspect in Kim Jong Nam Killing Says Oil 'Prank' Earned Her \$90: Siti Aisyah sticks to claim that she was playing a prank as part of a reality show*, WALL ST. J., Feb. 25, 2017, <https://www.wsj.com/articles/suspect-in-kim-jong-nam-killing-says-oil-prank-earned-her-90-1488018262>.

Malaysian police, which took the lead in the investigation, announced at a press conference held on February 19, 2017 that they were seeking four suspects who were diplomatic personnel and agents of North Korea, but these persons had already departed from Malaysia on February 13.⁵⁹

It was believed that for this incident, the adopted method was to employ perpetrators, who would be subject to arrest, without inside knowledge of the act or its consequences, while the key persons would immediately return to North Korea. In addition, the second secretary of the North Korean Embassy in Malaysia and Air Koryo personnel were later added as suspects. But these persons remained in the embassy where diplomatic immunity was guaranteed. Based on these facts and circumstances, it is highly likely that there was indeed direct involvement in the North Korean government.⁶⁰

On February 24, the Malaysia police announced that VX, an extremely toxic chemical weapon, was detected in Kim Jong-nam's body.⁶¹ Although the target was only Kim Jong-nam, the use of a chemical weapon in an international airport with many people in the vicinity posed a risk of harm to other civilians, such as airport workers, medical staff, and others. Therefore, the incident was not simply regarded as an assassination, but an act of terrorism. In addition, North Korean agents instructed the two women who committed the crime to wash their hands in a restroom after committing the act. As the site of the crime was some distant from the restrooms, this was extremely dangerous. The Malaysian government initially demanded that the North Korean ambassador to Malaysia leave the country as a *persona non grata* and suspended visa-free travel for North Koreans. Responding to these measures, North Korea also adopted a hardline stance to bar Malaysians in North Korea from leaving. The Malaysian government finally decided to send the four suspects who were hiding in the North Korean Embassy as well as the body of Kim Jong-nam to North Korea.⁶²

Malaysia and North Korea did not seek to settle the dispute through international law, but elected a political manner. While international terrorism-related treaties do not consider State terrorism, there might in fact be a method for prosecuting the

⁵⁹ *Id.*

⁶⁰ O. Holmes, *Kim Jong-nam death: police seek North Korean airline employee*, GUARDIAN, Mar. 3, 2017, <https://www.theguardian.com/world/2017/mar/03/kim-jong-nam-killing-police-seek-north-korean-airline-employee>.

⁶¹ J. Watts, Y. Ngui & J. Cheng, *Role of VX Nerve Agent in Kim Jong Nam's Death Raises Global Alarm: VX listed globally as weapon of mass destruction*, WALL ST. J., Feb. 24, 2017, <https://www.wsj.com/articles/kim-jong-nam-killed-with-vx-nerve-agent-malaysia-says-1487897540>.

⁶² Kazi Fahmida Farzana & Md. Zahurul Haq, *Malaysia's Political Orientation in Diplomatic Neutrality*, 27 INTELL. DISCOURSE, SUPPL. SPECIAL ISSUE: RELIGION, CULTURE 783-98 (2019).

individuals involved. One relevant treaty is the Terrorist Bombings Convention. Article 1, paragraph 3(b) defines “explosive or other lethal devices,” as “[A] weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.” VX definitely falls under this definition.

Malaysia acceded to the Terrorist Bombings Convention on September 24, 2003, while North Korea is not a signatory. If a State is not a party to an international terrorism-related treaty, it is not required to enact domestic laws. With respect to VX, there is a criminal liability under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. Nonetheless, North Korea is a non-signatory to this Convention, either. Certainly, the conclusion of nuclear and chemical-related treaties by today’s North Korea will be a major progress. In case of weapons of mass destruction such as chemical weapons, it should be especially promoted by the international community.

B. Poisoning of Sergei and Yulia Skripal

On March 4, 2018, Sergei Viktorovich Skripal, who had been an officer of the former Main Intelligence Directorate of the General Staff of Russia and was a double agent, and his daughter Yulia exhibited symptoms caused by the Novichok nerve agent, which was developed by the former Soviet Union. They temporarily lost consciousness while sitting on a bench in the city of Salisbury in the UK.⁶³

Following a meeting of the National Security Council on March 12, former Prime Minister Theresa May announced in the House of Commons that a military-grade nerve agent developed in Russia had been used. PM May pointed out: “The use of a military-grade nerve agent on British soil is not simply an attack against the Skripals, ... This is an indiscriminate and reckless attack against the United Kingdom that placed the lives of citizens at risk.”⁶⁴ She further stated that the poisoning was either a “direct act of the Russian state against our country” or an indication that the Russian government had lost control over its nerve agent and allowed it to get into the hands of others.⁶⁵ The UK demanded an explanation from Russia by midnight on March 13,

⁶³ T. Franca et al., *Novichoks: The Dangerous Fourth Generation of Chemical Weapons*, 20(5) INT’L J. MOLECULAR SCI. (2019).

⁶⁴ E. Barry & R. Pérez-Peña, *Britain Blames Russia for Nerve Agent Attack on Former Spy*, N.Y. TIMES, Mar. 12, 2018, <https://www.nytimes.com/2018/03/12/world/europe/uk-russia-spy-poisoning.html>.

⁶⁵ *Id.*

but Russia refused, and on March 14, the UK expelled 23 Russian diplomats.⁶⁶

PM May stated that the persons believed to be the suspects had entered the UK two days before the incident occurred and claimed to have visited a tourist spot the following day, but their whereabouts could not be confirmed by security cameras or other surveillance equipment.⁶⁷ They returned to Russia on the day of the incident. Responding to statements by PM May, subsequently, on September 4, President Putin of Russia stated: “The two individuals are Russian civilians, and there are no elements of their involvement in the crime.”⁶⁸ The following day, the Russian state-operated television service (RTR) broadcasted an interview with the two named suspects who claimed in the interview that they were businessmen but recorded by the security cameras.⁶⁹

The Skripal incident could be addressed under the Terrorist Bombings Convention which was ratified by the UK on March 7, 2001 and Russia on May 8, 2001, respectively. Under Article 7, paragraph 2, Russia should prosecute the terrorist suspects or extradite them. However, Russia would likely claim the suspects were innocent.

C. Assassination of Jamal Khashoggi

Another noticeable example of State terrorism that takes the form of abduction and murder of individual is the assassination of Jamal Khashoggi, a long-standing liberal journalist of Saudi Arabia who fled to the US in 2017. In order to marry a Turkish woman, he visited the Saudi consulate in Istanbul on September 28, 2018 to obtain a certificate of divorce from his former wife. He made an appointment for an interview on October 2 in order to obtain documents and entered the consulate while his fiancée waited outside. But he never came out of the consulate and his subsequent whereabouts became unknown. The Saudi government initially claimed that “after Mr. Khashoggi obtained the necessary documents, he promptly left the consulate.”⁷⁰ However, his fiancée was unable to confirm this and Khashoggi’s exit

⁶⁶ H. Stewart, P. Walker & J. Borger, *Russia threatens retaliation after Britain expels 23 diplomats*, GUARDIAN, Mar. 14, 2018, <https://www.theguardian.com/uk-news/2018/mar/14/may-expels-23-russian-diplomats-response-spy-poisoning>.

⁶⁷ L. Dearden, *Salisbury nerve agent attack: Timeline of movements by Russian 'spies' charged with attempted assassination of Sergei Skripal*, INDEPENDENT, Sept. 5, 2018, <https://www.independent.co.uk/news/uk/crime/salisbury-amesbury-nerve-agent-attack-novichock-timeline-russian-spies-poisoning-a8524381.html>.

⁶⁸ J. Marson, *Russians Accused of Poisoning Ex-Spy in England Claim to Be Tourists: Men tell Kremlin-backed TV station they were in the U.K. to visit Salisbury's famous cathedral*, WALL ST. J., Sept. 13, 2018, <https://www.wsj.com/articles/russians-accused-of-poisoning-ex-spy-in-england-claim-to-be-tourists-1536839196>.

⁶⁹ *Id.*

⁷⁰ M. Chulov, *Saudi journalist 'killed inside consulate'-Turkish sources*, GUARDIAN, Oct. 6, 2018, <https://www.theguardian.com>.

from the consulate building was not recorded by surveillance cameras. The Turkish government also confirmed that 15 persons associated with the assassination entered Turkey from Saudi Arabia in two private jets, stayed in the consulate on October 2, the day of Khashoggi's second visit to the consulate, left the consulate several hours after Khashoggi entered, and departed from Turkey on the same day.⁷¹ On October 20, the Saudi government admitted that Khashoggi had been killed when he visited the consulate.⁷²

Article 31 of the Vienna Convention on Consular Relations provides the basis of the inviolability of consular premises. However, Article 55, Paragraph 1 of the Convention provides: "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of the State." Paragraph 2 further provides: "The consular premises shall not be used in any manner incompatible with the exercise of consular functions." Thus, the inviolability of consular premises does not provide a basis for committing murder in the receiving State.

Furthermore, G7 Foreign Ministers' Statement on Disappearance of Jamal Khashoggi of October 17 expressed the responsibility of Saudi Arabia, stating: "Those bearing responsibility for his disappearance must be held to account."⁷³ The necessity of observing the principle of "respect[ing] the laws and regulations of the receiving State" is clearly set forth in Article 55 of the Vienna Convention on Consular Relations.

In December 2019, a criminal court in Riyadh, the capital of Saudi Arabia, sentenced five persons to death and three to imprisonment in relation to this case. In May 2020, however, Khashoggi's son announced that the family had forgiven the criminals, paving the way for commutation under Islamic law.⁷⁴ On September 7, 2020, the five death sentences were overturned, and the eight defendants were

com/world/2018/oct/06/saudi-journalist-killed-inside-consulate-turkish-sources.

⁷¹ D. Gauthier-Villars & S. Said, *Turkey Adopts 'Drip-Drip' Tactic in Saudi Murder Case*, WALL ST. J., Oct. 22, 2018, https://www.wsj.com/articles/turkey-adopts-drip-drip-tactic-in-saudi-murder-case-1540253465?mod=article_inline.

⁷² M. Stancati & S. Said, *Saudi Arabia Says Evidence Points to Premeditated Killing of Khashoggi: Official statement from attorney general shows the kingdom backing away from its earlier assertion that journalist's death followed a brawl*, WALL ST. J., Oct. 25, 2018, https://www.wsj.com/articles/saudi-attorney-general-says-evidence-points-to-premeditated-killing-of-khashoggi-1540466602?mod=searchresults_pos1&page=12.

⁷³ G7 Foreign Ministers' statement on disappearance of Jamal Khashoggi, issued by the Government of the United Kingdom, Press Release (Oct. 17, 2018), <https://www.gov.uk/government/news/g7-foreign-ministers-statement-on-disappearance-of-jamal-khashoggi>.

⁷⁴ S. Kalin & S. Said, *Khashoggi's Family Forgives Killers, Paving Way for Official Pardon: Critics of the Saudi government say the family statement was made under duress*, WALL ST. J., May 23, 2020, https://www.wsj.com/articles/khashoggis-family-forgives-killers-paving-way-for-official-pardon-11590138585?mod=article_inline.

sentenced to 7 to 20 years in prison. The decision was deemed a “final judgment.” However, the names and titles of the defendants and the legal basis for the decision were not disclosed.⁷⁵

V. State Terrorism: Irrelevance and Illegitimacy

A common element of the three examples of state terrorism discussed in this paper is that the States that committed the killings or attempted killings did not try to conceal the fact. Thanks to modern technology, it is not difficult to pretend murders are natural deaths. They were conducted in a manner open to public. In the Kim Jong-nam case, surveillance cameras were installed in various places at the international airport; in the Skripal case, the agent used was Novichok, which could be easily traced as being produced in Russia; and in the Khashoggi case, his fiancée was waiting for him in front of the consulate. In other words, it is clear that those States sponsored or supported the assassinations.

As can be seen from the Hostages Convention and the Terrorist Bombings Convention, it is the shared understanding of the international community that asylum-seekers and those at risk of political persecution are to be protected. Yet for these three States, the victims were the subjects of hatred. Because these victims lived in foreign countries and could not be punished domestically, the three States chose “death as a spectacle.”⁷⁶

The three states fully anticipated subsequent criticism, but were confident that they would not be held to account. This is clear, for instance, from Russia’s response to the 2006 Litvinenko incident. In November 2006, Alexander Litvinenko, a former Russian intelligence officer who was living in London, suddenly became ill after drinking polonium-210, a radioactive substance that had been mixed into his tea, and died three weeks later.

In 1988, Litvinenko joined the intelligence department of the Soviet-era KGB, and following the collapse of the Soviet Union, he worked for the Federal Security Service (FSB), the successor agency to the KGB. In 1998, Litvinenko and FSB colleagues held a

⁷⁵ S. Kalin, *Final Saudi Verdict Spares Khashoggi Killers from Execution: Killing of dissident journalist undermined the kingdom’s reputation among some of its important international partners*, WALL ST. J., Sept. 7, 2020, https://www.wsj.com/articles/final-saudi-verdict-spares-khashoggi-killers-from-execution-11599491628?mod=searchresults_pos5&page=1.

⁷⁶ *Supra* note 7, at 13-4.

press conference and accused the FSB of corruption, murder, extortion, and organized crime during turbulence in domestic circumstances. In response to this, Litvinenko was accused of transgression of duties by the authorities and was arrested. The head of the FSB at that time was Vladimir Putin, who later became President of Russia. Subsequently, Litvinenko was repeatedly imprisoned, and in 2000, he fled to Turkey with his family. He later worked as a journalist in the UK and adopted a critical stance towards President Putin, who took office in 2000.⁷⁷

There are many unclear aspects in the background to this incident. Certainly, however, radioactive material, which should be strictly controlled, was used for the murder and radiation was detected at those sites days after Litvinenko had visited them. Considering Litvinenko's negative influence not only on the restaurant, but also on aircraft, the risk of an expanded scope of possible harm was high.⁷⁸ With this incident, the international community reconfirmed the rigorous control of radioactive materials through external verification.

Also, Russia and the UK began to think of mutual cooperation against nuclear terrorism. Article 5, Paragraph 2 of the Convention on the Physical Protection of Nuclear Material provides: "States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests." In January 2007, the UK required Russia to extradite businessmen who were former KGB officials, but the Russian prosecutor general denied this request under its Constitution.⁷⁹ Instead, Russia demanded extradition of exiles in the UK on the grounds that they were involved in the incident, which was also denied by the UK. Consequently, both the UK and Russia recalled their diplomats, leading to a political dispute. As both countries are signatories to the Convention on the Physical Protection of Nuclear Material, this incident would constitute a criminal act (murder) specified in Article 7, which obliges both the UK and Russia to cooperate. Considering that Article 5, Paragraph 2 provides for maximum cooperation "in accordance with their national law," the path toward a strict control of nuclear material (or investigation of terroristic acts using nuclear material by a state), which fundamentally should be resolved, has been closed. It is true that nuclear development has been closely related to military

⁷⁷ See generally A. GOLDFARB & M. LITVINENKO, DEATH OF A DISSIDENT: THE POISONING OF ALEXANDER LITVINENKO AND THE RETURN OF THE KGB (2007); I. Cobain & D. Milmo, *Radioactive material found on BA planes: Moscow flights linked to inquiry into death of former Russian spy*, GUARDIAN, Nov. 30, 2006, <https://www.theguardian.com/business/2006/nov/30/theairlineindustry.britishairways1>.

⁷⁸ *Id.*

⁷⁹ C. Lowe, *Russia rejects UK's Litvinenko extradition request*, REUTERS, July 6, 2007, <https://www.reuters.com/article/russia-britain-litvinenko-idUSL0536765420070705>.

secrecy. When examining these incidents involving the two countries, however, it can be seen that there is a high risk that Article 5, which gives priority to domestic law over the Convention, will negate international cooperation.

For example, although Libya was clearly involved in the Lockerbie bombing, its endeavor to protect suspects makes extradition difficult. The international community imposed economic sanctions on Libya, but there were many obstacles to imposing economic sanctions on Russia for the Litvinenko incident. In general, it would be natural to try the suspects in the UK considering that: 1) the UK was protecting Litvinenko, who was in exile; 2) polonium-210 contamination was extended to various regions of the UK as well as aircrafts that departed from and arrived in the UK; and 3) various other pieces of evidence were present in the UK. Because there is no clear provision regarding State terrorism in international terrorism-related treaties, however, States are not able to address terrorism internationally.

Even in cases of terrorism using chemical weapons or abductions and murders, the State could escape to a safe zone. This is certainly a loophole in international terrorism-related treaties which would be abused by States.

VI. Conclusion

Currently, some states do not fully accept the fundamental principles of international law such as protection of fundamental human rights but support terrorism or terrorist acts to be carried out against individuals who oppose the political stance of their country of origin. State terrorism is a new phenomenon of the contemporary world. It should be prevented and controlled by the global community as a whole. The prior responsibility shall be assumed on the Security Council according to Article 25 of the UN Charter which provides: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Article 103 states: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." These provisions could be invoked together to protect individual human rights in a circumstance of State terrorism. As shown in the Litvinenko and the Skripal cases, however, if one or both parties are the permanent members of the Security Council, it would be difficult to adopt a resolution in the Security Council. A

new international treaty would thus be necessary to address State terrorism.⁸⁰

The international community should not overlook the prevalence of unlawful acts. In August 2020, anti-government activist Alexei Navalny lost consciousness while on board an aircraft in Russia. Then, a German charitable organization sent a medical aircraft to transport Navalny for treatment in Berlin. Subsequent testing conducted in Germany, France, and Sweden detected a Novichok-type nerve agent in Navalny's body. Russia denied these facts, but various nations criticized Russia when the Organization for the Prohibition of Chemical Weapons (OPCW) indicated that it had detected the presence of a chemical similar to Novichok.⁸¹

It is certainly difficult to adjudicate State terrorism under the current international terrorism-related treaties. Nonetheless, the international community should not tolerate the spread of ruthless international terrorism both domestically and internationally. Each state is required to use various legal regulations and organizations to protect the results that the international community has achieved to date. Further, the international community should adopt sophisticated international conventions against terrorism that operate seamlessly with digital technology.

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⁸⁰ R. Knox, *Civilizing interventions? Race, war and international law*, 26(1) CAMBRIDGE REV. INT'L AFF. 121-4 (2013).

⁸¹ OPCW, Note by the Technical Secretariat: Summary of the Report on Activities Carried Out in Support of a Request for Technical Assistance by Germany, S/1906/2020 (Oct. 6, 2020), <https://www.opcw.org/media-centre/news/2020/10/opcw-issues-report-technical-assistance-requested-germany>.

