THE STRUGGLE FOR INTERNATIONAL POLITICAL RECOGNITION FOR SO-CALLED BLACK TERRORISTS IN THE U.S.A. A/K/A NEW AFRIKAN BLACK FREEDOM FIGHTERS; TOWARDS IN-COURT APPLICATION OF POLITICAL DEFENSES

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PREFACE

The time has come for the captive Black Nation in the U.S. to analyze its struggle with respect to international law. Our struggle against U.S. imperialism confronts the dominant world power.

The imperialist agenda is reflected in the process of dehumanization of the Black Nation, acknowledging America as the mother ship of the wounded octopus which is now the new world order. Our mandate is to propagate and integrate the political and military objectives that represent the history of the Black Liberation Movement by comparing our struggle to those waged by ZANU, ANC, PAC, the Sandinistas, the IRA, and the Palestinians. This comparison illuminates two realities: (1) that our struggle has matured to a world perspective with specific objectives; and (2) that the worldwide struggle against oppression is directly tied to our liberation.

Historically the Black Liberation struggle has employed the use of many methods and tactics which have been very profound and remain to this day. There can be no denying the positive effects of the slogan of "Black Power" and

the positive impact of the Black Panther Party as well as the dynamic influence that Malcolm X has had on the world struggle for self-determination. In our pursuit of the application of international law to our struggle we must not mistake tactics for strategy. The rewards of our struggle derive from a proper analysis of the world and it will win for our struggle some allies, but it is the justness and determination of our people and freedom fighters that will win the victory. This responsibility lies on our backs and our backs alone.

As current events unfold in the world today, the geo-political landscape is undergoing a rapid and drastic metamorphosis as decade old political structures unravel, deeply entrenched ideological and economic systems explode, spewing out the froth of death, it becomes unmistakably clear that we are witnessing the herald of a new era.

The new era is demonstrated by the unification of Germany, the fall of Romania's communism, the razor edge of potential change in South Africa, as well as the political mutations in Nicaragua, Russia's Perestroika and ethnic upheavals within the Soviet Republics. In light of these tumultuous changes in the arena of global politics, it is necessary not only to stringently apply and

enforce existing international law, but to also reevaluate their relevancy and applicability to these world events.[1]

Because of these sweeping global political and economic changes, a new and more serious examination must be placed on the question of political dissidents, the right to self-determination and national liberation movements within the boundaries of all countries.

Contemporary events transpiring in the world today signal the immediate and urgent need for all nations to embrace the significance of the Geneva Accords, Protocol I and II, as well as various U.N. Resolutions governing belligerency, conflicts, internal strife in/or around sovereign borders.

These various international instruments, adhered to and recognized by the majority of the world community, provide a very important mechanism through which we may address the universal concern for the prevention of political, social and religious persecution.[2]

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[1] This paper was developed prior to the Gulf War. The conditions that now have emerged as a result of that war, in Iraq and Kuwait, as well as the recent turmoil in the Soviet Union, demonstrate the urgent need to address human rights protection and violations by international standards where there exists internal political conflict and belligerent military conflict.

[2] The many internal armed conflicts since 1949 have highlighted the deficiency in Common Article III and illustrated the need to develop new rules for regulating internal armed conflict. From 1974 to 1977, 124 states, 50 non-governmental organizations and 11 national liberation movements participated in one or more of the four diplomatic conferences that produced the two protocols added to the Geneva Convention of the 12 August 1949. Protocol I was intended to update the law of war regulating international armed conflict between states. Protocol II was adopted to regulate internal armed conflicts. Both Protocol I and II were accepted by the Executive Branch of the U.S. up until the Reagan Administration.

Especially in view of ongoing U.S. abuses of political power and the repression its citizens face, the United States cannot be excluded from examination within the context of the aforementioned geo-political situation. Therefore, any postulate that addresses religious, political or socially motivated conduct should examine the treatment of U.S. citizens and inhabitants within the context of current U.S. judicial procedures.

Thus, scrutinization of State and Federal court procedures and process are a prerequisite to assure basic human rights. Moreover, specifically to guard against the unwarranted criminalization of religious, political, and socially motivated conduct and to guarantee the necessary protection of these basic human rights.

U.S. DEMOCRACY AND ITS JUDICIAL SYSTEM

The United States has long been viewed as a beacon of democracy attracting nations towards its democratic style.

Many of the world's nations perceive the U.S. justice system as a force encompassing the relevant attributes and tenets of international law; a justice system that provides protection to dissidents within its borders - a cause which the U.S. government nominally lauds and champions in the most vociferous terms when it suits its purpose. Signatories and endorsers of international covenants and resolutions regarding the protection and enforcement of human, political, and civil rights, especially permanent members of the United Nations Security Council, are perceived to provide the necessary legal mechanism under which conduct in pursuit of political, social and religious objectives may be properly adjudicated. Unfortunately this is not the case.

The perspective presented in this paper attempts to deal with and examine the flaws in the U.S. legal system. Moreover, the denial of the existence of political dissidents within its territorial confines, negates and denies basic human rights and protections to people and groups involved in various forms of struggle.

Most U.S. laws used to prosecute religious, political and socially

motivated conduct against State and Federal power, because of its inherent nature, has systematically denied political dissidents the right to a full defense by prohibiting the introduction of relevant evidence.[3] Albeit the indictments are clearly politically motivated, the government's consistent contention that its aim is not "political" further circumvents introduction of pertinence mens rea evidence of the defendant's religious, political or social reasoning for their alleged violations of law.

If we examine the gambit of jury trials in these cases, one will note that the opening and closing remarks by the prosecutors clearly indicate that they are in fact trying a political, social or religiously motivated case. The prosecutors convey language that portends terrorism, destruction, mayhem or the self-motivated intentions of the defendants.

Yet, when the defendants approach certain key areas during the trial which would permit responsible discussion about germane factors with regard to the relevant application of the Geneva Accords, Protocols I and II and Common Article 3 respectively, as well as procedural, legal political defenses, the government diverts the attention of the court and jurors by solely focusing on

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[3] See sections on political defenses and cases cited therein.

the criminal aspects of the law; thus, obfuscating issues of fact and law to suit its own political needs for a conviction.

Moreover, let us piece together the mosaic of Executive Law regarding politically motivated conduct in the United States to further illustrate the ill-intention and mordant behavior cast upon this conduct by the Executive Branch.

The U.S. Constitution as interpreted by the executive branch of government customarily prohibits the judiciary branch from analyzing under international law the political, social, or religious motive in the context of trial procedures. This prohibition denies dissidents the right to a proper defense. The denial of the right to a proper defense is a violation of the protections provided for under basic international and domestic law. However, a closer look at the process may give rise to some form of procedural strategy.

DOES U.S. CRIMINAL LAW AND PROCEDURE NEED TO DISTINGUISH BETWEEN POLITICAL, SOCIAL, RELIGIOUS AND CRIMINAL CONDUCT?

Historically, the U.S. government has viewed all turmoil and discontent displayed by its citizens or inhabitants, as totally a matter of internal domestic affairs outside the purview of international standards, U.N. resolutions and other international instruments.

However, this postulate is without merit. The numerous human rights bills outlining the protection of political, social, religious and civil rights will be instructive.

The United Nations has defined basic human rights in an International Bill of Rights under which all members are pledged to protect specific fundamental rights, including the right of all people to self-determination.[4] Four separate instruments comprise this bill: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. Numerous other

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[4] The question of self-determination will be discussed below. Research demonstrates that the particular issue of self-determination is a primary factor for most political contention within the U.S. albeit not the exclusive one.

declarations and conventions on human rights have also been promulgated through the United Nations.

In addition, there are other instruments of international agreement, such as the Nuremberg defense, the necessity defense to civil disobedience and the political offense exception to political extradition, which evaluate the political nature of acts.

INTERNATIONAL LAW AND THE MISAPPLICATION OF AMERICAN JURISPRUDENCE TO FREEDOM FIGHTERS, POLITICAL, SOCIAL & RELIGIOUS DISSIDENTS

In the field of international politics we often see a deliberate distortion of language, a cacophony of deceptive inflection, a modern day version of the "tower of Babel," wherein clear and accepted standards are misapplied, taken out of context, or outright ignored. The nuances on the ideological battlefield determine the degree of integrity and emphasis that nations show towards recognized international standards.

In the United States we see a very clear, flagrant example of how language is systematically distorted, of how certain segments of international law are only selectively applied. A process of de-emphasis and total denial is applied to segments of the populace not ideologically aligned, or sympathetic to, the political agenda of the ruling elite, vis a vis the U.S. government.

The U.S. government still continues to deny that there are political prisoners, numerous political prisoners, scattered throughout prisons across America. The truth about the existence of political prisoners in America is something the U.S. government has worked very hard to distort, suppress, and deny. There is a perpetual propaganda campaign encompassing the judicial,

legislative and executive branches of government, to systematically manipulate and create false images.

The fact is that there are countless people inside the U.S., and its prisons who are part of active political, social, and religious movements, with delineated ideological structures. Their imprisonment by the U.S. government for their clear political, social or religious beliefs or conduct stemming from the pursuit of their goals, is a clear contravention of international instruments to which this nation is a signatory.

The people and organizations who have been engaged in political activities inside the U.S. have been the victims of the most vituperative and insidious form of propaganda, through the distortion of the "word" - terrorist. The "word" represents the power to shape, distort, or destroy. The U.S. government has criminalized political dissidents, by the usage of special criminal statutes and the political power triggered by the use of the "terrorism" label.

Terrorism

> The following definitions establish the minimum criteria used by the FBI to determine if criminal acts should be labeled as acts of terrorism.
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> Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the

civilian population, or any segment thereof, in furtherance of political or social objectives.

The FBI defines two categories of terrorism in the United States: international terrorism which involves terrorist activity committed by groups or individuals who are foreign-based and/or are directed by countries or groups outside the United States or whose activities transcend national boundaries; and domestic terrorism which involves groups or individuals who are based and operate entirely within the United States and are directed at elements of our Government or population without foreign direction.

Terrorist Incident

A terrorist incident is a violent act or an act dangerous to human life in violation of the criminal laws of the United States or of any state to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. (Emphasis supplied).

Terrorism in the United States 1987, Terrorist Research and Analytical Center, U.S. Dept. of Justice.

Most Frequently Used Federal Statutes

The Terrorist Research and Analytical Center of the Department of Justice has listed the available statutes under the federal penal law that can be used to accomplish the political objectives of its misnomed "counter-terrorism activities":

The FBI has the lead Federal agency authority to investigate acts of terrorism in the United States. Because there is no all-encompassing Federal law concerning this issue, the FBI bases its

investigative and prosecutive efforts on several different Federal statutes. Among these are the following:

TITLE 18, UNITED STATES CODE

Chapter 7 - Assault	
Section 112	Protection of foreign officials, official guests, and internationally protected persons.
Chapter 14 - Civil Rights	
Section 241	Conspiracy against rights of citizens
Section 242	Deprivation of rights under color of law
Section 245	Federally protected activities
Chapter 19 - Conspiracy	
Section 371	Conspiracy to commit offense or defraud United States
Section 373	Solicitation to commit a crime of violence
Chapter 25 - Counterfeiting and Forgery	
Section 472	Uttering counterfeit obligations or securities
Section 473	Dealing in counterfeit obligations or securities
Chapter 40 - Importation, Manufacture, Distribution and Storage of Explosive Materials	
Section 842	Unlawful acts
Section 844	Penalties

Chapter 41 - Extortion and Threat

Section 873	Extortion by officers or employees of the United States
Section 875	Interstate communications
Section 876	Mailing threatening communications

Chapter 44 - Firearms

Section 922	Unlawful acts
Section 924	Penalties

Chapter 47 - Fraud and False Statements

Section 1001	Statements or entries generally
Section 1028	Fraud and related activity in connection with identification documents

Chapter 49 - Fugitives from Justice

Section 1071	Concealing person from arrest
Section 1073	Flight to avoid prosecution or giving testimony
Section 1074	Flight to avoid prosecution for damaging or destroying any building or other real or personal property

Chapter 51 - Homicide

Section 1114	Protection of officers and employees of the United States

Chapter 55 - Kidnapping

Section 1203	Hostage-taking

Chapter 95 - Racketeering

Section 1951	Interference with commerce by threats of violence
Section 1952	Interstate and foreign travel or transportation in aid of racketeering activity
Section 1952b	Violent crime in aid of racketeering activity

Chapter 96 - Racketeer Influenced and Corrupt Organizations

Section 1961	Definitions
Section 1962	Prohibited activities

Chapter 103 - Robbery and Burglary

Section 2113	Bank robbery and incidental crimes

Appendix II - Unlawful Possession or Receipt of Firearms

Section 1202	Receipt, possession, or transportation of firearms

Chapter 113 - Stolen Property

Section 2314	Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting
Section 2315	Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps.

Chapter 113A - Extraterritorial Jurisdiction Over Terrorist Acts Abroad Against United States Nationals

Section 2331	Terrorist acts abroad against United States nationals

Chapter 115 - Treason, Sedition, and Subversive Activities

Section 2384	Seditious conspiracy
Section 2385	Advocating overthrow of Government

TITLE 26, UNITED STATES CODE

Chapter 53 - Machine Guns, Destructive Devices, and Certain Other Firearms

Section 5861	Prohibited acts
Section 5871	Penalties

TITLE 42, UNITED STATES CODE

Chapter 7 - Social Security

Section 408	Penalties

Many political dissidents have been declared criminals. However, we can see a clear change in tactics as political, social and religious movements matured. Having learned many lessons from earlier waves of U.S. repression, these movements began to actively push to be properly recognized. They petitioned higher bodies of law, reached out to progressive third world nations to elicit support in international forums, as well as submission of Prisoner of War Motions to domestic courts.

With this newly acquired maturity, political dissidents and their movements became more astute, more able to dynamically emphasize the political nature of their conduct in the face of criminal charges. It was no longer possible for the U.S. government to simply portray them as criminals.

How did the United States government respond? They simply adopted a term that has long been used to distort organized groups and movements in the international arena, they resurrected the McCarthy era witch hunts for "communists," and brought home to the shores of America the "word," terrorism. A highly pejorative term. It conjures up cinematic images of bearded, unkempt, wild-eyed men wielding kalashnikovs and uzi assault weapons, intent on murder and mayhem, killing innocent people in an anarchic frenzy of random violence.

This is the image that has been systematically programmed into the minds of people, deep into their subconscious, so that when they hear the "word," terrorism, it automatically conjures up these images. It is this malicious, intentional and deliberate misrepresentation of political dissidents as "terrorists" that enables the U.S. government to evade treating political prisoners according to international law; thus, making a complete mockery of international laws and

standards, reducing them to a mere caricature of what the nations of the world intended them to be.[5]

[5] Source: Defining Terrorism by Christopher Pyle. Terrorist and Special Status, British Experience in Northern Ireland, Spilane, 9 Hastings International and Comparative Law Review at 481, 513.

ENFORCING INTERNATIONAL LAW

Enforcement of any basic tenet of international law or preexisting instrumentality, whether developed by the World Court or the United Nations, remains an immense and complex problem.

Sovereign nations quickly shuffle and invoke legislation that negate the integrity of internationally convened bodies so as to authorize and unauthorize treaties concerning territories, rights to the sea, terrestrial underdevelopment or overdevelopment, political decisions about emerging or established nations. Notwithstanding the fact that these sovereign nations are signatories to a myriad of established laws, enforcement mechanisms are ignored or in most cases nonexistent.[6]

If internationally assembled groupings cannot assure that specific laws are carried out, even after ratification, then, alternative measures should and must be sought to insure that nations that are signatories to these laws are held accountable to the international as well as national community.

Currently, it appears that the sole feasible enforcement method for

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[6] The precedent of the recent enforcement of the U.N. Resolution concerning Kuwait and Iraq resulting in allies participation in the Gulf War must be viewed in light of U.S. interest. For example, the U.S. did breach an international obligation and became responsible internationally as it did when Congress enacted the Bird Amendment, which pursuant to the "lasting times" rule requiring the President to violate U.S. sanctions against Rhodesia now Zimbabwe, and, yet not be answerable for such a breach in the U.S. court or the international community.

international decisions is through the use of the domestic courts of signatory nations. However, can approaching the problem from the domestic court have a significant impact on the enforcement of international decisions? The answer is a resounding no! Let us keep in mind that most if not all the abusers come from or are the signatory nations themselves.

A review of the sources from which customary international law is derived, clearly demonstrates that arbitrary detention is prohibited by customary international law. Even though the indeterminate detention of an excluded alien, cannot be said to violate the U.S. Constitution or statutory law, it is judicially a violation of international law.[7] Similarly, the recent Supreme Court decision regarding the use of coerced confessions conflicts with customary international law against torture.

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[7] Fernandez v. Wilkinson note that while the Court did not apply customary international law directly, it used it indirectly in determining the protection afforded by the U.S.

DOMESTIC COURT ENFORCEMENT OF INTERNATIONAL LAW

Using domestic courts to enforce international human rights law, whether directly or indirectly, is a new and challenging area of human rights advocacy. In addition to the substantive problems addressed in this section many procedural difficulties arise such as: standing, sovereign immunity, act of state, political question doctrine, political offense exception to extradition and the Nuremberg defenses confront those dissidents anxious to invoke international human rights law in the domestic court context. Defendants can argue that Amendments to the U.S. Constitution protect conduct of a political, social, and religious nature. While these are difficult times for the postulate of the political defense, we feel that it is an important step for the advancement of human rights protection.

There are many obstacles that the government and Justice Department use to confuse counsel and defendants. However, these obstacles can be overcome with imaginative ideas, through research, sound judgment, skilled advocacy and political commitment to this area of struggle.[8] Moreover, it should be

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[8] U.S. Courts have held repeatedly that human rights clauses of the U.N. Charter are non self-executing and hence, vest no enforceable rights to individuals. While the legal impact of such a declaration is deplorable, human rights lawyers and those attorneys who support and defend New Afrikan/Black Freedom Fighters and their allies should use U.S. courts to enforce to the fullest, the rights guaranteed in the international instruments; they should help mobilize public and congressional support against the self-defeating declarations presented by the courts.

recognized that only through international bodies can you expose the domestic violations of international law. One could only approach structures such as the OAS and the World Court if they have exhausted domestic remedies. [Hurst Hannum, pg. 115].

DEFINING IN COURT POLITICAL LEGAL APPROACHES

The right to self-determination, i.e., colonial situations and conflicts can no longer be considered a domestic question. The right to self-determination is an international question over which the United Nations can exercise jurisdiction.

As one commentary observes about human rights violation after Helsinki Accord Review in Madrid in 1981, "there was nothing new about human rights violations, but what was new was that governments no longer can claim that mistreatment of its own was its own business." The Charter of the United Nations enshrined two great principles: one is the principle of respect for human rights and self-determination of people; the other is that of non-intervention, suppression and aggression against other nations.

The struggle for self-determination by New Afrikan/Black Freedom Fighters has been the primary basis for politically motivated offenses as presented in U.S. courts, politically, religiously and economically as a direct result to the response of repression in America.

In Findings presented after a Tribunal concerning political prisoners in America held at Hunter College [DATE], a distinguished group of international jurists stated:

> "The fact that self-determination for African Americans in the U.S. has not been recognized by international bodies was not determinative of the situation."

A review and study of these cases will help provide instructions for properly directing the struggle in domestic courts with the use of international law. International law is "part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination." [Hastings Law Journal, vol. 40, p.420].

Under the dualist approach to international law, which a certain segment within the power structure promotes, in order to gain more latitude in the application of international law, or to circumvent it altogether, federal laws will prevail domestically over both conventional and customary international law when a conflict arises. Thus, the U.S. may breach an international obligation and become responsible internationally as it did when congress enacted the Byrd amendment. Pursuant to the "last in time" rule, the enactment of the Bryd Amendment required the President to violate United Nations sanctions against Rhodesia, presently Zimbabwe, and yet not be answerable for such a breach in U.S. courts; this must, and should, be taken issue with if nations are not to be

permitted the license of only respecting and applying international law where it suits their own interests.

NUREMBERG DEFENSE/CITIZENS POLITICAL DEFENSES/DIPLOMATIC DEFENSES

Under the formulation of the Nuremberg defense, the defendant cites the Nuremberg Principles as creating a "citizen's duty" under both international and domestic law to take action to prevent international crimes, when a citizen's duty to obey domestic laws would otherwise prohibit such conduct, such as those prohibiting trespass or destruction of private property. [Nuremberg Principles a defense for political protestors, Frank Lawrence, Hastings Law Journal].

Certain premises should be regarded as basic:

A. The Nuremberg defense requires that its principles as part of international law predominate over domestic law when a conflict exists.

B. The supremacy clause of the United States Constitution requires that the Nuremberg Principles take precedence over state law.

C. Common sense indicates that the prevention of international crime is more important than avoiding misdemeanors such as trespass and disorderly conduct.

The Nuremberg principles and the Nuremberg defenses should be applicable to other violations concerning racial discrimination, genocide, etc., in

the formation of courtroom strategy.

The Nuremberg Principles do not exclude the targeted victim from the protections of international law defenses while they are involved in activities which are designed to prevent the act of genocide. The Nuremberg Principles are generally perceived as a principle of conscientious for the non-victim highlighting their responsibility. These principles are not exclusive to the non-victim. The victim obviously has the right to invoke the Principles in order to prevent the genocide of his/her group.

HOW HAVE DOMESTIC COURTS HANDLED THE MODERN NUREMBERG DEFENSES?

U.S. courts have rejected the Nuremberg defense based on the doctrine of political question and standing. These doctrines prevent the political defendant from presenting any evidence of the Nuremberg defense to the jury.

Upon closer scrutiny, however, these doctrines do not provide an adequate justification for the courts' rejection of the Nuremberg defense.

Recently, the government has also begun using motions in limine to prevent the defendant's use of the Nuremberg Defenses in this context, such motions raise serious constitutional issues that the courts have not yet addressed.

The court took pains to note that the doctrine is one of political question, not political cases; "The courts cannot reject as 'no law suit' a bona fide controversy involving a claim that some action denominated 'political' exceeds constitutional authority."[9] The court listed six factors to consider in determining whether a case presents a political question.[10] Last 6 Factor End.

None of the Baker[11] factors, however, justifies prohibiting a defendant

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[9] Hastings Law Journal, vol. 40, p.420.

[10] Hastings Law Journal, vol. 40, p.420.

[11] Baker vs. Carr, 369 U.S. 186 (1962) in which the Supreme Court corrected the misconception that all questions involving foreign policies are political questions.

from presenting the Nuremberg Defense. Initial policy decisions are not a prerequisite to allowing the defense because courts have well-developed standards governing the admissibility of evidence. No disrespect is shown coordinate branches because the defense does not require adjudication of the legality of the underlying governmental policy. No unusual need exists for unquestioning adherence to a political decision, as it is not the political branches which have barred the defense. Finally, the defense does not create a risk of multiple pronouncements because no judicial pronouncement of foreign policy need result from a trial in which the defense was allowed.

POLITICAL DEFENSES

BY DEFENSE OF INTERNATIONAL LAW

Various political defenses have been utilized in U.S. courthouses, some have been acknowledged and relief realized by acquittal in jury trials. Others, the prosecution opposed vehemently even though the defendants were indicted and charged for obvious political acts.

SOVEREIGN IMMUNITY DEFENSES

As it refers to in this document, Sovereign Immunity relates to a 1968 sovereign convention of the Republica of New Afrika. New Afrikan fighting for independent nation. Thereby establishing a government and a governmental structure. In the pursuit of the goals of the sovereign nation the officials of the Republica of New Afrika at the point of prosecution and pre-trial application have filed sovereign immunity and protection stating that officials of another foreign government must receive immunity for local prosecution. Legal efforts in this area to this time have been unsuccessful. See case law for further information.

Imari Obadele & RNA (11)
United States vs. James, 528 F.2d 999 at 1005, 5th Cir. 1976

Chokwe Lumumba, 741 F.2d 1214 (2d Cir. 1984)

RNA (3) (State of Mich. - Cite not available)

R.A.M. Herman Ferguson, Criminal Anarchy - New York State Case

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NUREMBERG DEFENSES

United States v. Montgomery, 722 F.2d 733
United States v. Lowe, 654 F.2d 562
United States v. May, 622 F.2d 1000
Switkev v. Lared, 316 F.Supp. 358
United States v. Valentine, 288 F.Supp. 957
United States v. Berrigan, 283 F.Sup. 336
Vermont v. McCann, No. 2857-786, D.Vt. Jan. 26, 1987, Reprinted in 44 Guild Practice 101, 1987
United States v. Susan Rosenberg & Tim Blunk

OTHER CASE CITES UNAVAILABLE AT THIS TIME

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CONSTITUTIONAL PROTECTED POLITICAL DEFENSES, I.E., RIGHT TO BEAR ARMS; RELIGIOUS PROTECTIONS

RNA (3) and RNA (11)	Right to Bear Arms/ Self-Defense
United States v. Dickens, 695 F.2d 765	
NEW WORLD OF ISLAM	Religious Persecution
BLACK ISRAELITES	Religious Persecution
United States v. Warren Brown, et al., Nos.: 86-3065 through 3069	
EL RUKINS	Religious Persecution
NATION OF ISLAM TEMPLES 7 & 27	Religious Persecution
MOVE	Right to Bear Arms & Cultural Persecution

Commonwealth v. Africa, CP No. 78-08??

Hanici Muslim Case, Washington, DC 1976
U.S.A. vs. Abdul Muzikir
a/k/a Marquette Hall
Criminal # 20633-77

POLITICAL OFFENSE EXCEPTION DEFENSE

There are two types of political offense exceptions, the pure political offense that involves acts directed solely against the state, such as treason, espionage, and sedition, and the relative political offense, in which the act is "a common crime so connected with a political act that the entire offense is regarded as political."[12] In Re Macklin,[13] 80 Cr. Mis.1, slip op. (S.D.N.Y., Aug. 13, 1989) [available on Lexis]. See also Quinn v. Robinson, 783 F.2d 776, 793-94 (9th Cr. 1986). The concept of the political offense in American Law has been taken from English extradition law. In Re Castioni, 1 Q.B. 149. [Taken from U.S.A. v. Shakur, SSS 82 Cr. 312 (CSH) and U.S.A. v. Buck, 84 Cr. 220]. E.R. v. Wilkes, 641 F.2d 504, 514.

Cases that fall within the ambit of this defense: William Morales, Puerto Rican P.O.W.; Luis Colon Puerto Rican Freedom Fighter; Roger Holder, New Afrikan Freedom Fighter, and countless others.

We take particular interest in this defense because it provides exclusive critical criteria for separating and distinguishing political acts and goals from criminal. Further, it is an internationally recognized standard even enforceable

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[12] See Anglo-American test, French test and Swiss test for further understanding of the criteria. P.O.W.- propaganda

[13] The Joanne Chesimard, Clarksquire their act to avoid capture is considered political offense.

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in U.S. courts. See In Re Doherty, 599 F.Supp. 270 (S.D.N.Y. 1984) (Trial Judge Sprizzo in his opinion when considering Doherty's defense chose to juxtapose and distinguish the Black Liberation Army (BLA) situation.)

We raise the POE defense mainly as an analogy where the political content of charged criminal acts has determined the nature of those acts. Up to now, this analysis, developed in the extradition context has been confined to that area. In the case of Silvia Baraldini, an Italian national, convicted at the first Brinks federal trial, the POE principles were important in the Italian government's request to transfer her to Italy. In Italy, Silvia is recognized as a political prisoner, convicted and sentenced to 40 years for her political support of the liberation of Assata Shakur from the Clinton, New Jersey prison. The U.S. Department of Justice refused to approve the transfer. Comments

SEDITIOUS CONSPIRACY

Sedition Act, sometimes called the "Alien and Sedition Act," making it a crime to advocate the overthrow of the Federal Government. Cases that relate: The Puerto Rican Chicago Conspiracy, U.S. vs. Torres, Cortez & Rodriquez ___ _____; the Ohio 7 Sedition Conspiracy Trial, U.S.A. vs. LeVasseur, ___ _____; Arian Nation Sedition Conspiracy Trial, Robert Edward Mills, 87-2008-01-4 (USDC WDArk, Ft. Smith Div.)

We view sedition conspiracy as a genetic political charge within the context of U.S. law, that allows the defendants to argue the political elements of the indictments and most importantly, the jury is then charged to review the relevant facts to the law.

When we take a critical look at language used in the indictments in most political trials, the variations are profound. For review, the resistance conspiracy case (the Capital bombing CITE). The charge language in the indictment:

> "To influence, change and protest policies and practices of the U.S. government concerning various international and domestic matters through the use of violence and illegal means."

This case, in contrast is: what is the distinction the government makes when charging for example, the defendants in the conspiracy case with basic conspiracy and other cases with RICO to the aforementioned sedition charged cases? The resistance to foreign policies when the acts concerning both types of indictments are similar. The prosecution is now clearly depending upon the Justice Department's overall strategy and tactics of how cointelpro and foreign policy can be served as opposed to the political objectives of the defendants charged, so it is clear from our point of view that the government's charges cannot be the basis of determining political elements of the cases at bar.

PRISONER OF WAR DEFENSES

This is a very pertinent area since many defendants have asserted and attempted to file P.O.W. motions addressing their political motivations. Defendants have met resistance from their attorneys, U.S. prosecutors, and trial judges. Defendants have come from every walk of life and in particular the New Afrikan Independence Movement and the Puerto Rican Independence Movement. Although many of the present defenses are unrecorded in case law, the defendants eloquently articulated their defenses pertaining specifically to their initial thrust for independence of their people. And although these defenses have been rejected by the domestic United States courts, the international impact of this position cannot be underestimated even when that impact may unfold years later. The POW stance taken by Guilielman Morales helped in the decision reached by Mexico leading to his current political asylum in Cuba.

United States v. Shakur, 890 F.Supp. 1291 (S.D.N.Y. 1988)
United States v. Morales, 464 F.Supp. 325 (E.D.N.Y. 1979)
People v. Bottom, Inc. No. 5694-74, (N.Y.Co.) 1971 Sentencing Memorandum, May 12, 1975
United States v. General Manuel A. Noriega Case No. 88-79 CR Hoeveler
See also Ruchell Magee case in California
United States v. Sekou Odinga POW motion - 1st Brinks Case - 84 Cr. 312, also see

United States v. Ferguson, 758 F.2d 843, 846-47 n.1 (2d Cir.) cert. denied, 1065 Ct. 124 (1985)
United States v. Ferguson, 758 F.2d 843, 846 in Part I, 2nd Cir. 1983 (Brinks case)

On the Question of Political Defense

The P.O.W. motions have been used to raise the question of self-determination inside the U.S. judicial system. The comrades should not be barred from using, in conjunction, political defenses such as POEE analogy, Neuremberg defenses, necessity defense, to correctly place their actions in a proper political context. Allowing these defenses means recognizing that the jury, acting in its constitutional mandated role as the consciousness of the community, should decide in light of all relevant fact and law, whether the defendants are guilty of committing a crime. Thus, without actually finding a violation of international law, a jury could find the defendant's acts were lawful under a crime preventive privilege because they reasonably believed an ongoing violation of international law was occurring. This is precisely what happened in Vermont v. McCann. The McCann court did not find that the policy in question was illegal. Rather, it simply permitted the defendants to present the Nuremberg defenses to the jury, allowing the jury to find that the defendants had legal authority to trespass. The McCann court did, however, distinguish between choosing among competing lawful foreign policies [a political question], and finding a policy option illegal (a judicial question). It reasoned that the choice among legal options is a political decision in which the judiciary plays no

role. The McCann court, however, viewed the legality of a particular foreign policy as appropriate for judicial determination.

Standing - Political and Necessity Defenses:

The doctrine of standing stems from both constitutional and juris prudential considerations. The constitutional concern derives from the "case or controversy" requirement of Article III of the United States Constitution. As indicated in Allen v. Wright, the standing requirement has two components:

(1) the party must have suffered an actual or threatened injury; and

(2) the injury must be "fairly traceable" to the opposing party's conduct and "likely to be redressed" by a favorable decision.

See FOIA files of individual defendants and the scope of Cointelpro to satisfy the above requirements for the petitioners.

SUMMATION

The defendants in politically indicated cases, who are also charged with substantive acts as well as conspiracy, must carefully and creatively think out their standing and options to pursue various tactics in order to invoke those defenses which should correspond with the terre facts and proof and to determine what degree the jury will play a role in the determine of the law and facts. For example, in Quinn vs. Robinson, which allowed the defendant in this POEE case to invoke the defense without surrendering U.S. constitutional protection against self-incrimination.

Creative application and motions can be helpful in satisfying our goals of challenging criminalization and providing a clear political record for international bodies to evaluate as well as provide proof of the government's role and view of the defendants through the discovery process.

There are many cases not listed in this prospectus whose genesis nevertheless originates from out of the same political persecution. Any cases concerning the Black movement, Black struggle, anti-imperialism and the Black Liberation Army, whose prosecution was a direct result of cointelpro and low intensity operations who failed at trial to have proper political defense motions

should be interested in involving and analyzing said political and international law defenses.

Special Thanks to:

Loti Ocasio Reyes
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Helpful Reading Materials:

Military Law Review, vol. 122
Self-Determination of U.S. Support of Insurgents
A Policy Analysis Model
by: Captain P. Dean

New Protection for Victims of International Armed Conflicts
The Proposed Ramifications of Protocol II by the U.S.
by: Captain Daniel Smith

The Studies of Just World Order International Law,
A Contemporary Perspective, vol. II, Edited by Richard Falk
Fredrich Kratochwil
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International Law Governing Aid to Opposition
Groups in Civil War Resurrecting the Standards
of Belligerents
by: Robert W. Gomulkiewiez

Nuremberg Principles
The Defense for Political Protesters
by: Frank Lawrence,
Hastings Law Journal, vol. 40, January, 1989

Non-International Armed Conflicts
American University Law Review
vol. 31, pg. 897
Introduction by David H. Miller

Domestic or National Remedies, Domestic Courts
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The International Law of Human Rights in
Africa, Basic Documents and Annotated
Bibliography Compiled
by: M. Hamalengwa, C. Slinterman, E.V.O. Dankwa

The Dangerous Doctrine
National Security & U.S. Foreign Policy
by: Saul Landau

To Surrender Political Offenders: The Political Offense Exception to Extradition in United States Law
by: Christopher S. Pyle and Barbara Ann Banoff, 15 NYU & International Law Pol. 159 (1984)

The Rise and Decline of the CIA
by: John Ranelagh

This is a continuing study and any other documentation will enhance the study. It is intended to assist freedom fighters and their movement in establishing their status in the Domestic Courts and in the international tribunals.