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# The Definition of Terrorism

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## Introduction

Terrorism, just like the crime of aggression, is a recognized crime which the international community has been very slow to formulate or assign a single, all-encompassing or universally agreed upon and legally binding criminal law definition. In some quarters, the difficulty in defining terrorism is in agreeing on the basis for determining when the use of violence (directed at whom, by whom, for what ends) is legitimate. Thus, the difficulty lies in the fundamental values at stake in the acceptance or rejection of terror-inspiring violence as means of accomplishing a given goal (Bassiouni 1988, xv–xvi). Interestingly, terrorism is a global phenomenon which is easy to recognize, but yet difficult to define (Prabha 2013). At the World Summit on terrorism in New York on September 14, 2005, terrorism, “in all its forms and manifestations, committed by whomever, wherever and for whatever purpose,” was condemned. Historically, the dispute over the meaning of terrorism arose when the laws of war were first codified in 1899 (Pustogarov 1996, 300–314). As such, different legal systems, scholars, international organizations, and government agencies use different definitions of terrorism, sometimes based on their socioeconomic and political conditions (Hoffman 1998, 32). No wonder then, that there are over 130 definitions of terrorism that have been coined or formulated by various scholars and entities.

The situation is also complicated by the failure to draw a line between actual terrorists and those persons that try to justify their actions by claiming to be freedom fighters. Technically, freedom fighters struggling for the right to self-determination would not be categorized as terrorists, although, in many cases the groups have carried out atrocities akin to those committed by terrorists. Moreover, it has long been stated that one man’s terrorist is another man’s freedom fighter. In some instances there is also a religious aspect to it as well. In the Arab and Islamic world, some have considered and praised certain factions of extremists as martyrs and not as terrorists for the atrocities carried

out by their militant wings. It is worth noting that terrorism is a pejorative term. It is an ambiguous word with intrinsically negative connotations that is generally applied to one's enemies and opponents or to those with whom one disagrees and would otherwise prefer to ignore. Defining terrorism has emerged as a central focus of power politics and propaganda (Acharya 2009, 653). Hence the decision to label someone or an organization 'terrorist' becomes almost unavoidably subjective, depending largely on whether one sympathizes with or opposes the person/group/cause concerned.

The violence that uses terrorism as a tactic includes not only state-sponsored regimes of fear, but also a religious ideology-based terrorism, which calls for securing and protecting sacred lands and sacred religious and cultural practices (Maan 1998, 13). The fatwa declared by the 1998 World Islamic Council, of which Bin Laden was a co-author, can be considered an ideology-based statement of terrorism translated into action on September 11, 2001 (Bodansky 2001, 226–27). This fatwa calls for "kill[ing] Americans and their allies—civilians and military...in order to liberate the Al-Aqsa [Jerusalem] Mosque and the Holy Mosque [Mecca] from their grip, and in order for their armies to move out all of the lands of Islam...and plunder their money wherever and whenever...and launch the raid in Satan's U.S. troops and Devil's supporters allying with them..." (Bodansky 2001, 226–27; see also Freamon 2003). The 9/11 event, a recent example of ideology-based terrorism, established state and nonstate terrorist activities and forced the world to ponder once again the nature, meaning, and understanding of terrorism. With 9/11 came fluctuations in the political agenda of powerful nations and oppressed groups,<sup>1</sup> artificially manufactured, ideologically motivated or naturally evolving to address internal or external political situations (Acharya 2009, 654–55).

This article critically analyzes some definitions of terrorism with a view to pointing out the weaknesses and pertinent missing components. A comparison of some of the definitions formulated by scholars, governments, or agencies will be done to assist in creating what the author believes to be a list of the crucial ingredients or elements of the offense of terrorism. In particular, the paper will also discuss the question of whether pirates on the high seas could be considered terrorists, since they use firearms in their attacks, which at times results in severe injuries and death, as well as political actions taken against them by the affected governments.

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1. Suppressed groups have been identified with devaluation and ideology, poverty, relative deprivation, sense of injustice, difficult life conditions, repressive societies, and us-them differentiation. These suppressed groups are a potential root cause of nonstate terrorism. See Staub 2002, 207, 209–12.

## The Need for a Definition of Terrorism

I shall start by posing a question: Why should further scholarly effort be engaged towards coming up with another definition which may create more uncertainty or confusion to an already unclear situation?

It is imperative to first underscore the importance of having a definite and concise definition of terrorism. The constitutions (supreme law) of many countries<sup>2</sup> provide, and indeed it is a universal cardinal rule, that no person should be charged and punished with an offense that is not clearly defined in a given piece of legislation and the corresponding punishment thereof clearly prescribed. Acts tantamount to criminal conduct should be spelled out and codified well before the fact, since criminal law does not operate retroactively. It therefore follows that without a good definition encompassing all the elements of the offense, the perpetrators will fall through the loopholes and escape punishment. The authorities would only be able to stand firm on a good piece of legislation to initiate prosecutions and enforce law and order to contain terrorism.

Under international law, defining terrorism is important for the ability to condemn violations of human rights, to protect the state and deliberative politics, to differentiate public and private violence, and to ensure international peace and security (Saul 2008, 1). It would also help to protect community values and interests. Generally, criminal law has three purposes: to declare that a conduct is forbidden, to prevent it, and to express society's condemnation for the wrongful acts. The symbolic, normative role of criminalization is of particular importance in the case of terrorism. The criminalization of terrorist acts expresses society's repugnance at them, invokes social censure and shame, and stigmatizes those who commit them. Moreover, by creating and reaffirming value, criminalization may serve, in the long run, as a deterrent to terrorism, as those values are internalized (Diaz-Paniagua 2008, 41). Thus, as Diaz-Paniagua (2008, 41) observes, international criminal law treaties that seek to prevent, condemn, and punish terrorist activities, require precise definitions.<sup>3</sup> As a result of the world's failure to reach agreement on

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2. For instance, Art. 19 (4) of the Seychelles Constitution.

3. *Ibid.*, 46–47, “The definition of the offence in criminal law treaty plays several roles. First and foremost, it has the symbolic, normative role of expressing society's condemnation of the forbidden acts. Second, it facilitates agreement. Since states tend to be reluctant to undertake stringent obligations in matters related to the exercise of their domestic jurisdiction, a precise definition of the crime, which restricts the scope of those obligations, makes agreement less costly. Third, it provides an inter-subjective basis for the homogeneous application of the treaty's obligations on judicial and police cooperation. This function is of particular importance in extradition treaties because, to grant an extradition, most legal

the definition, countries cannot fully cooperate against terrorism without knowing the scope of the phenomenon against which they would be required to impose legal sanctions.

## Definition of Terrorism in Some Domestic Jurisdictions

Many countries have come up with Suppression of Terrorism Acts (SOTA) to fight against terrorism. Some definitions of terrorism by domestic jurisdictions are briefly examined below. In this regard, countries such as India, United States of America, United Kingdom, and Uganda will serve as examples, each with a definition that will suit their respective socioeconomic and political situations.

### India

In the context of India, Kshitij Prabha (2013) defined terrorism as:

[A]n act or threat of an act of tactical violence by a group of trained individuals, having international linkage, to achieve political objective. This group could be sponsored by non-state or state agencies.

According to Prabha, this definition precisely covers all the aspects of terrorism. Before arriving at this definition, he analyzed and critiqued a few definitions of terrorism, each of which he felt were missing some vital components. Adopting David Easton's system theory, Prabha stated that he adopted the theory not merely because the phenomenon of terrorism has a direct effect on the socioeconomic and political system, but also because it (terrorism) emanates from within the same system. Therefore, a definition devoid of the socioeconomic and political issues involved in terrorism holds only for academic purposes, not for practical implications. In order to arrive at a functional definition of terrorism, a pragmatic approach to the problem would be more relevant, in which context terrorism could be broadly defined from two perspectives: the political perspective (group action and international linkage),<sup>4</sup> and the means perspective (violence and training).<sup>5</sup>

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systems require that the crime be punishable both in the requesting state and the requested state. Fourth, it helps states to enact domestic legislation to criminalize and punish the wrongful acts defined in the treaty in conformity with their human rights' obligations. The principle of *nullum crimen sine lege* requires, in particular, that states define precisely which acts are prohibited before anyone can be prosecuted or punished for committing those same acts."

4. From the political perspective point of view, terrorism is defined as a political rather than a criminal or psychological phenomenon in the light of the fact that terrorists do not believe in personal gain or accumulation of wealth. Their sole objective is to acquire political power be it in the form of autonomy or creation of an independent state.

5. In the means perspective, terrorism is defined as a means in pursuit of realization of a political mission. While explaining the means, the model emphasizes the necessity of violence in terrorism. Violence employed by terrorists is of specific type i.e. tactical by nature.

However, this definition also excludes some vital components of the definition of terrorism—for example, an ‘intentional’ act or threat, which is very crucial in terrorism. Terrorist acts are not accidental but well-planned, directed, and therefore, intended. The definition also does not take note of the fact that these acts or attacks target civilians. Civilians are vulnerable and usually defenseless and therefore easy to attack. This, in turn, attracts the attention of the authorities (government). Terror tactics have always been used as means to an end (Crenshaw 1987, 13) and have been fairly effective in helping the terrorists to achieve their political objective. This definition does not explore other forms of terrorism like ‘state terrorism’ or ‘cyber terrorism’ being propagated by other authors. It works on the assumption that terrorism can only be perpetrated by nonstate entities. However, the Supreme Court of India adopted Alex P. Schmid’s definition of terrorism in a 2003 ruling (*Madan Singh v. State of Bihar*),<sup>6</sup> “defining acts of terrorism veritably as ‘peacetime equivalents of war crimes.’”

#### United States of America

The U.S. has several definitions of terrorism but the one that attempts to encompass all the components of terrorism is their definition of international terrorism, as codified in Title 22 of the United States Code. It contains a definition of terrorism and requires that annual reports on terrorism be submitted by the secretary of state to Congress. It reads:

Definition ... the term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents;<sup>7</sup>

Title 18 of the United States Code (regarding criminal acts and criminal procedure) defines international terrorism as follows:

[T]he term ‘international terrorism’ means activities that...involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; [and] appear to be intended...to intimidate or coerce a civilian population;...to influence the policy of a government by intimidation or coercion; or...to affect the conduct of a

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Violence conveying a message to government is terrorism. Killing and arson devoid of publicity do not fit into the definition of terrorism. Furthermore, the tools of violence terrorists use demands professional training. A layman cannot operate sophisticated weapons and missiles used by terrorists. This aspect also needs attention while defining terrorism.

6. *Madan Singh v. State of Biha*. 2003. CrI. Appeal No. 1297. Court of Appeal, India.

7. 22 U.S.C. § 2656f.

government by mass destruction, assassination, or kidnapping; and [which] occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.<sup>8</sup>

This definition appears to be all encompassing, but does not actually consider the aspect of state terrorism.

### The United Kingdom

The United Kingdom<sup>9</sup> defines terrorism to include an act “designed seriously to interfere with or seriously to disrupt an electronic system.” The drafters of this provision had in mind several crimes, including cybercrimes. But short as the definition may be, it seems to cover quite extensive ground. However, the definition fails to capture the crucial elements already listed above, like the purpose, the target group, other forms of terrorism, etc. For this definition, an act of violence is not even necessary.

### Uganda

The definition in the Uganda anti-terrorism legislation is worth looking at in detail. Article 7(2) states:

A person commits an act of terrorism who, for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out all or any of the following acts—

- (a) intentional and unlawful manufacture, delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss
- (b) direct involvement or complicity in the murder, kidnapping, maiming or attack, whether actual, attempted or threatened, on a person or groups of persons, in public or private institutions;
- (c) direct involvement or complicity in the murder, kidnapping,

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8. 18 U.S.C. § 2331(1) ([http://www.law.cornell.edu/uscode/18/usc\\_sec\\_18\\_00002331.000.html](http://www.law.cornell.edu/uscode/18/usc_sec_18_00002331.000.html)).

9. Terrorism Act, 2000.

abducting, maiming or attack, whether actual, attempted or threatened on the person, official premises, private accommodation, or means of transport or diplomatic agents or other internationally protected persons;

(d) intentional and unlawful provision or collection of funds, whether attempted or actual, with the intention or knowledge that any part of the funds may be used to carry out any of the terrorist activities under this Act;

(e) direct involvement or complicity in the seizure or detention of and threat to kill, injure or continue to detain a hostage, whether actual or attempted in order to compel a State, an international intergovernmental organization, a person or group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage;

(f) unlawful seizure of an aircraft or public transport or the hijacking of passengers or group of persons for ransom;

(g) serious interference with or disruption of an electronic system;

(h) unlawful importation, sale, making, manufacture or distribution of any firearms, explosive, ammunition or bomb;

(i) intentional development or production or use of, or complicity in the development or production or use of a biological weapon;

(j) unlawful possession of explosives, ammunition, bomb or any materials for making of any of the foregoing.<sup>10</sup>

This is a catchall definition (catering to not only the perpetrators, but also different aiders and abettors), which was drafted immediately after the 9/11 attacks, and given its imprecision, many human rights groups, NGOs, and political groups have criticized it. The criticism stems from the appearance that the government's intention was also to deal with its political opponents and stop them from demonstrating. It addresses the act of terrorism itself, against whom this act is directed, and the actions that will facilitate the act. It also makes provisions for more aggressive investigation techniques. Although the definition appears comprehensive in response to domestic terrorism, it may be wanting in response to international terrorism.

### Ghana

The Ghana anti-terrorism Act No. 762 came into force on the October 13, 2008. According to Estelle Appiah (2013, 3–4), it was enacted in furtherance of the United Nations Security Council Resolution (SCR) 1373,

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10. Anti-Terrorism Act, No. 14 of 2002, Uganda.

the Commonwealth Plan of Action on Terrorism, and the Organization for African Unity Convention. The act addresses terrorism, terrorist financing, and the issues contained in SCR 1373. It prohibits terrorist acts. In the act, an act is a terrorist act if it is “in furtherance of a political, ideological, religious, racial or ethnic cause, if it causes serious bodily harm, causes serious damage to property, endangers a person’s life, creates a serious risk to the health or safety of the public or involves the use of firearms.” Just like the definition in the Uganda terrorism law, this act does not include aspects of international terrorism.

## Definition of Terrorism by Regional and International Organizations

### European Union

The European Union defines terrorism for legal/official purposes as follows:

[T]errorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which: given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.<sup>11</sup>

Although this definition is more detailed compared to all those above, it does not also have the aspect of state terrorism.

### United Nations

For over forty years, the United Nations (UN) has been struggling with acts of terrorism. Since the member states have no agreed upon definition of terrorism, this continues to be a major obstacle to meaningful international countermeasures. Of course, a terminology consensus would be necessary for a single comprehensive convention on terrorism, which some countries favor, in place of the present twelve piecemeal conventions and protocols. It is worth noting that the UN General Assembly Report of the Ad Hoc Committee on International Terrorism was an important document in the history of terrorism<sup>12</sup> as it triggered a lot of debate in this direction.

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11. In Art. 1 of the Framework Decision on Combating Terrorism (2002).

12. UN General Assembly Report of the Ad Hoc Committee on International Terrorism, twenty-eighth session, A/9028, 1973; Prabha 2013, stating that after recalling the 1972

So, in order to create an effective legal regime to prevent and punish international terrorism, rather than only working on a single, all-encompassing, comprehensive definition of terrorism, the international community has also adopted a 'sectoral' approach, aimed at identifying offenses seen as belonging to the activities of terrorists and working out treaties in order to deal with specific categories thereof (Gioia 2006, 4). The UN approach has therefore been that the treaties focus on the wrongful nature of terrorist activities, rather than on their intent, where specific offenses are considered *in themselves* as offenses of international concern, irrespective of any 'terrorist' intent or purpose (ibid.). The advocates of this approach contend that it helps in avoiding problems of defining 'terrorism' or 'terrorist acts.' The conventions so far adopted include:<sup>13</sup>

- The 1963 Convention on Offenses and Certain Other Acts Committed On Board Aircraft
- The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft
- The 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation
- The 1979 Convention on the Physical Protection of Nuclear Material

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resolution entitled "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair, and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes," the Ad Hoc Committee established three subcommittees to examine definition, causes, and prevention of terrorism. Seven draft proposals were submitted by different nations to the subcommittee on the definition of terrorism. Apparently the house was divided. Therefore no resolution on the definition of terrorism could be adopted. The matter remained suspended until 1987 when the Secretary General convened an international conference to define terrorism and differentiate it from freedom fighting. This conference was successful in the sense that members agreed to identify terrorism with crime and accordingly a future plan of action was proposed. Taking note of the Secretary General's report of the conference, the UN General Assembly condemned all acts of terrorism except those fighting for the right to self-determination against foreign and racist regimes as 'criminal' (Resolution adopted on the reports of the Sixth Committee, General Assembly, 94th Meeting, Dated December 7, 1987, Report: A/42/832). An overwhelming majority adopted this resolution. However, remarkably the U.S. and Israel voted against the resolution while Honduras abstained. Thus after fifteen years of deliberations and counter-deliberations, finally the UN came to the conclusion that all acts of terrorism are criminal.

13. Following this approach, the international community has adopted these sectoral counter-terrorism conventions, which are open to the ratification of all states.

- The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
- The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
- The 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf
- The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Identification
- The 1997 International Convention for the Suppression of Terrorist Bombings
- The 1999 International Convention for the Suppression of the Financing of Terrorism
- The 2005 International Convention for the Suppression of Acts of Nuclear Terrorism

Certain aspects are inescapable when one looks at these treaties. They all adopted an 'operational definition' of a specific type of terrorist act; one that was defined without reference to the underlying political or ideological purpose<sup>14</sup> or motivation of the perpetrator of the act. This reflected a consensus that there were some acts that were such a serious threat to the interests of all that they could not be justified by reference to such motives. They all focused on actions by nonstate individuals and organizations and the state was seen as an active ally in the struggle against terrorism. The question of the state itself as terrorist actor was left largely to one side; and finally, they all adopted a criminal law enforcement model to address the problem, under which states would cooperate in the apprehension and prosecution of those alleged to have committed these crimes.

Again here, depending on the individual state interests, one cannot be sure whether fugitives in foreign countries could be prosecuted or extradited for terrorism charges if there is an unwillingness or lack of commitment on the part of the relevant state. Before going too far, it should be pointed out that it is problematic for the UN to rely entirely on states as allies in their definition of terrorism and totally ignore state terrorism or state-sponsored terrorism, which involves acts of terrorism conducted by governments or terrorism carried out directly by, or encouraged and funded by, an established government of a state (country) or terrorism practiced by a government against its own people or in support of international terrorism.

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14. [http://en.wikipedia.org/wiki/Motive\\_\(law\)](http://en.wikipedia.org/wiki/Motive_(law))

Be that as it may, the UN still feels the need for having a comprehensive, agreed upon, and workable general definition, and since 2000, a comprehensive convention on international terrorism is ongoing. The definition of terrorism therein, which has been on the negotiating table since 2002 reads thus:

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

- (a) Death or serious bodily injury to any person; or
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.<sup>15</sup>

This definition, too, has attracted some controversy and opposition, as Deen (2005) states “what distinguishes a ‘terrorist organization’ from a ‘liberation movement’? And do you exclude activities of national armed forces, even if they are perceived to commit acts of terrorism? If not, how much of this constitutes ‘state terrorism’?” The debate continues. Various resolutions on and definitions of terrorism have been formulated and adopted or used by different UN instruments and agencies such as: the UN General Assembly Resolution 49/60,<sup>16</sup> the UN Security Council Resolution 1566 (2004),<sup>17</sup> and a UN panel, on March 17, 2005.<sup>18</sup>

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15. United Nations General Assembly, Report of the Ad Hoc Committee, sixth session, (January 28–February 1, 2002), Annex II, art. 2.1.

16. Adopted on December 9, 1994, titled “Measures to Eliminate International Terrorism,” contains a provision describing terrorism: Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.

17. Gives a definition: criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.

18. Described terrorism as any act “intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.”

Some of the treaties define their offenses by including special intent requirements, but those fall short of requiring a political or other motive. For instance, the 1999 Terrorist Financing Convention prohibits the financing of certain acts where the purpose “is to intimidate a population or to compel a government...to do or abstain from doing any act.”<sup>19</sup> While this definition partly signals a focus on repressing public-oriented violence—by targeting acts directed at the community or a government—it still does not accurately capture terrorism.<sup>20</sup> For it is still possible to intimidate a population or compel a government for a host of private, nonpolitical reasons, including simple extortion.

As a result of their failure to include motive elements, many of the existing anti-terrorism treaties reach considerably beyond the common understanding of terrorism, since violence for public and private motives alike is equally criminalized. Thus hostage taking or hijacking for profit or to obtain custody of a child in a family dispute is treated no differently than identical acts committed in pursuit of a political cause. The lack of differentiation arguably fails to distinguish between other violent acts and terrorism, which is not inherent in a physical act of violence alone (Lambert 1990, 49). As Levitt writes:

Not all hijackings, sabotages, attacks on diplomats, or even hostage-takings are ‘terrorist;’ such acts may be done for personal or pecuniary reasons or simply out of insanity. The international instruments that address these acts are thus ‘overbroad’...(Levitt 1986, 115; see also Saul 2008)

## Can Pirates Be Categorized as Terrorists?

It is well beyond dispute that pirates use violence to capture ships, merchandise, and crew, which they hold for ransom. On the other hand, terrorists are not necessarily criminals.<sup>21</sup> Criminals have no political aim, yet politics is the main consideration for terrorism. In the case of *Rep. v. Mohamed Dahir and Others*,<sup>22</sup> it was argued by the attorney general that the pirates had used firearms to shoot at the coast guard, who were executing lawful orders by policing the Seychelles territory. Further, that by firing at them, the pirates

19. 1999 Terrorist Financing Convention, art 2(1) (b).

20. Human Rights and Equal Opportunity Commission (Australia), Supplementary Submission to the Security Legislation Review Committee (2006), 8.

21. The link between crime and terrorism could be established, but to identify the two as one would be misleading. Criminals do not have political purpose unless they are converted to terrorism. Normally their aim is to acquire wealth. They are more concerned about the economy of the state and the individuals rather than the political situation; whereas politics is the main consideration of terrorists.

22. Supreme Court of Seychelles, Cr. No. 51 of 2009.

intended to interfere with the surveillance and sabotage the economy of the government of Seychelles, knowing very well that the main activities of fishing and tourism could not continue in such circumstances. The Supreme Court held that not every firing of a rifle is terrorism; for it to be terrorism, it was crucial to establish that the perpetrators had a political aim.<sup>23</sup> Perhaps if the attorney general's position was argued in the European Union, following the above definition, it could have succeeded, since the Seychelles government was unduly compelled by the pirates to abstain from continuing with the patrolling of its territorial waters. The Uganda definition (above) is the only one that directly includes piracy, as it appears that the drafters were looking to categorize all types of violence as terrorism.

### Definition of Terrorism by the International Criminal Tribunals/Courts: The United Nations Special Tribunal for Lebanon (STL)

This is a special tribunal<sup>24</sup> that was set up specifically to deal with the crime of terrorism which arose as a result of the bombing that killed former

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23. Ibid, pp. 19–20, paras 40, 41 and 43, per Judge Gaswaga: [40] “Whereas it is true that by firing at the “*Topaz*” there was a possibility of it getting damaged and preventing the crew or the Government of Seychelles from patrolling its EEZ, I am unable to agree with the prosecution that this was the objective of the accused.” [42] “Like I have already stated intention can be inferred from the facts and surrounding circumstances. However, I see no pertinent concrete facts to base such requisite logical and irresistible inference here. This decision is fortified by the evidence on record. Both parties accept that pirates hijack ships for a financial ransom. On the fateful day they were on the high seas waiting to chance on any ship that came by and not in particular the “*Topaz*”. No evidence on record tends to suggest that “*Topaz*” or the government of Seychelles was being targeted. “*Topaz*” was not even expected in that area at the time of the incident, it had been called upon and directed there by the maritime aircraft. The Captain of “*Topaz*”, Major Simon Laurencin’s testimony is pertinent in strengthening this position. He stated that unless one is close and well informed about ships, it’s difficult to tell at night whether “*Topaz*” is a war ship or passenger ship especially when the lights are on. According to him, had the accused known that “*Topaz*” was a war ship they would not have attacked it.” [43] “It cannot therefore be strongly argued that the intention of the whole attack was to compel the Government of Seychelles to limit or to stop patrolling and monitoring its EEZ. Although one could attempt to say that the presence of the accused in a piracy infested area combined with their subsequent attacks on “*Topaz*” in a way impacted on the business of the Seychelles Government in its EEZ, it should be noted that this is too remote to hold the offenders criminally liable for. And even if it were so, it does not tantamount to terrorism. Not every use or firing of rifles is taken as terrorism. It is true that the Government of Seychelles may have suffered as a result in many aspects i.e. security, transport, fishing, tourism, and maritime business generally, but all this cannot be stretched and heaped on the accused in criminal charges of terrorism as it was never their intention.”

24. Having been established by an agreement between the United Nations and the Lebanese Republic pursuant to Security Council resolution 1664 (2006) of March 29, 2006, which responded to the request of the government of Lebanon to establish a tribunal of an international character to try all those who are found responsible for the terrorist crime which killed the former Lebanese Prime Minister Rafiq Hariri and others.

Prime Minister Rafiq Hariri, as well as other related offenses. The failure by the international community to agree on a legal definition for such a long time was somehow brought to an end<sup>25</sup> by Judge Cassese's definition of a customary international crime of transnational terrorism in 2011.<sup>26</sup> In spite of all the criticism that followed, it is imperative to acknowledge that these were indeed steps taken in the right direction, towards establishing a definition of terrorism in international law, one which mainly consisted of the three elements listed below:

- (i) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act;
- (ii) the intent to spread fear among the population (which would generally entail the creation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it;
- (iii) when the act involves a transnational element.<sup>27</sup>

Ben Saul has observed that the requirement of a transnational element<sup>28</sup> rules out purely domestic terrorism. That while the tribunal recognized only peace-time terrorism as a crime, it indicated that "a broader norm that would outlaw terrorist acts *during times of armed conflict* may also be emerging."<sup>29</sup> Further, that state practice does not, however, support the conclusion reached by the tribunal. Instead, a close analysis of relevant treaties, United Nations resolutions, national laws, and national judicial decisions<sup>30</sup> confirms the near-universal scholarly consensus that there does not yet exist a customary law dealing with terrorism as defined by the tribunal (Saul 2012).

## Potential Areas for Consideration

The definition of terrorism should be forward-looking as well, considering areas which are new and unclear, yet very vital in the arena of terrorism.

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25. By recognizing a definition of terrorism in customary law, the Special Tribunal neatly sidestepped almost a century of legal deadlocks in (ongoing) treaty negotiations and debates in bodies such as the UN General Assembly and Security Council.

26. UN Special Tribunal for Lebanon (Appeals Chamber), *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01 /I, February 16, 2011.

27. *Ibid.*, para. 85.

28. *Ibid.*, para. 90.

29. *Ibid.*, para. 107–9.

30. Including regional anti-terrorism treaties, General Assembly resolutions, UN Security Council resolution 1566 (2004), the UN Draft Comprehensive Anti-Terrorism Convention, the Terrorist Financing Convention 1999, thirty-seven national laws, and nine national judicial decisions.

Some of these situations pose potential terrorism issues, which are emerging with the rapid development in technology, and one cannot afford to ignore them. The above definitions have not considered these offenses, which are most likely to come up in the future, such as cyberterrorism, poisoning of water sources or other natural resources on which a given population of the pertinent territory depends for survival, threatening, instilling fear, or scaring people with anthrax in envelopes and parcels, etc.

There is also the aspect of ‘nonpolitical violence,’ which may require the critical eye of researchers or investigators when dealing with this subject, so as to be able to categorize them. This includes operations of piracy, mafia groups, hate crimes, bomb threats, and transborder terrorism by narcotics gangs, all of which have elements similar to or in one way or the other related to terrorism. The most visible link is the funding of terrorist groups which have a political agenda. Since it is said that a country will legislate based on its problems and aspirations, so it is imperative that a definition of such an evolving crime looks at other potential areas, giving rise to related crimes to avoid legislating for each and every eventuality in future.

## General Discussion and Observations on the Definition of Terrorism

Generally, of the many definitions commonly cited by authors, the following usually appear in authoritative publications.<sup>31</sup> Yonah Alexander (1976, XIV) defines terrorism as: “the use of violence against random civilian targets in order to intimidate or to create generalized pervasive fear for the purpose of achieving political goals.” After studying a number of definitions by various authors, Alex P. Schmid compiled the following elements which he contends adequately define terrorism:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by clandestine individual groups or state actors, for idiosyncratic, criminal or political reasons, whereby—in contrast to assassination—the direct targets of violence are not the main targets. The immediate human targets of violence are generally chosen randomly or selectively from a target population, and serve as message generators. Threat and violence based communication processes between terrorists’ victims, and main targets are used to manipulate the main target, turning it into a targeting of terror, a target of demands, or

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31. Authors such as Prabha 2013.

a target of attention, depending on whether intimidation, coercion or propaganda is primarily sought. (Schmid and Jongman 1988, 28)

An examination of Alexander's definition would reveal that it is precise and is often quoted by scholars, but lacks an important aspect of terrorism, i.e., international linkage. Terrorists cannot inflict terror without the funding and infrastructure facilities that they receive from international connections. For instance, the Kashmiri militants received military and financial assistance from mujahideens from Pakistan and Afghanistan, while the U.K. based IRA had operational units in the U.S. (Corrado 1979, 198). They also received funds from Libyan mercenaries. (Carlton and Shaerif 1974, 38). The international connections also help with training, especially in operating the sophisticated gadgets used in terrorism. Besides, eighty years ago, the League of Nations had already considered terrorism as a transnational legal problem (Saul 2006, 78). As for Alex Schmid, his definition goes into detail of the phenomenon of terrorism, but remains more focused on targets and objectives than its basic nature.

Another author, Brian Jenkins (1978, 115–23), writes that the threat of violence, individual acts of violence, or a campaign of violence designed primarily to instill fear is terrorism. This definition of terrorism is close to the concept of terrorism, but ignores two significant aspects, e.g., training and international support. The definitions offered by Christopher Dobson and Martha Crenshaw tend to stress the aspects of training and international support. Dobson stated that “[to] use explosive devices of any but the simplest kind needs a good deal of training” (Dobson and Payne 1979, 67), while Martha Crenshaw (1987, 13) stressed the need for international assistance in her definition of terrorism, opining that terrorism is a means to accomplish certain political objectives with international support. As for Michael Walzer (1980, 201–3), who defines terrorism in historical perspective, he believes that “random terror for political achievement emerged as strategy of revolutionary struggle after the World War II.”

Perhaps I should mention at this point that state terrorism, which is not mentioned as much by scholars in most of the definitions, is as controversial a concept as that of terrorism itself. Terrorism is often, though not always, defined in terms of four characteristics: (1) the threat or use of violence; (2) a political objective; the desire to change the status quo; (3) the intention to spread fear by committing spectacular public acts; and (4) the intentional targeting of civilians. This last element—targeting innocent civilians—is problematic when one tries to distinguish state terrorism from other forms of

state violence. Moreover, it is not uncommon to hear that democratic regimes may foster state terrorism of populations outside their borders; but they do not terrorize their own populations because a regime that is truly based on the violent suppression of most citizens (not simply some) would cease to be democratic. Dictatorships terrorize their own populations; democracies do not, but they can engage in state-sponsored terrorism in other countries. Likewise, some scholars define terrorism in the light of violence and coercion by state agencies. Walter Laquer (1987), for instance, defines acts of violence and repression carried out by the government against their own people as terrorism. In the same vein, Neil Livingston (1982, 11) says that the state is the main perpetrator of terrorism today.

This scenario has given rise to a number of questions: whether terrorism should be defined as the peacetime equivalent of war crimes;<sup>32</sup> whether, in a situation where illegal or unlawful orders have been obeyed, terrorism could be used as a legitimate defense; whether purely terrorist acts committed by extremists ‘in the name of God’ could be permissible and excused on religious grounds, with the perpetrators categorized as martyrs; and whether there should be an exception for fighting against a repressive regime.

But a distinction must be quickly made here to avoid confusion—declaring war and sending the military to fight other militaries is not terrorism, nor is the use of violence to punish criminals who have been convicted of violent crimes. However, many would still argue that democracies are also capable of terrorism, for example, Israel has for many years been characterized by critics (especially in the Arab world), by United Nations Resolutions, and by human rights organizations as perpetrating terrorism against the population of the territories it has occupied since 1967. Further criticism also accuses the United States of terrorism for backing not only the Israeli occupation, but other repressive regimes willing to terrorize their own citizens to maintain power. Palestinian militants call Israel terrorist, Kurdish militants call Turkey terrorist, Tamil militants call Indonesia terrorist; and, of course, the nation-states call the militants who oppose their regimes terrorists. As already pointed out herein above, like beauty, terrorism is in the eye of the beholder—one man’s freedom fighter is another man’s terrorist. Hence, the difficulty in coming up with a definition for terrorism which would be acceptable to all.

Therefore, the focus should be on the acts of terror and not on the actors, when defining terrorism. And if terrorism is thought to seriously violate human

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32. Scholars like Jay Mallin, 1977, “Terrorism as a Military Weapon,” *Air University Review* 28 (2): 54–64, define terrorism as a substitute for overt warfare.

rights, then this must be reflected in the definition, to prohibit serious violence that causes serious bodily injury to a person. The prohibition should also extend to attacks on public or private property where intended or likely to physically endanger people, including acts against essential utilities and public transport. The serious violence could remain as an open-ended catchall category to ensure that offenders do not evade liability by perpetrating violence by new or unanticipated methods (Saul 2008, 12). This open-ended clause could, however, be challenged for a lack of specificity. The definition should also aim to protect both the state and the broader population by requiring that the purpose of an act, “by its nature or context,” must be “to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,” just like the European Union definition.<sup>33</sup> Ben Saul (2008, 13–14) proposes a definition consisting of the following elements: (a) any serious, violent, criminal act intended to cause death or serious bodily injury, or to endanger life, including by acts against property; (b) committed for a political, ideological, religious or ethnic purpose; and (c) where intended to: (i) create extreme fear in [or seriously intimidate] a person, group, or the general public; or (ii) unduly compel a government or an international organization to do or to abstain from doing any act.

## Conclusion

One must note that generally, the difficulty in defining terrorism hinges on the fact that for some people, terrorism is an offense (Lazare 2002, 13), for others, it is an activity assigned by God. For some, it is a distinctive act of maintaining power, and for others, it is a justified action against oppression; for some, it is an attack on peace and security, and for others, it is a quest for identity. It is worth noting that the Organization for African Unity (OAU) convention excludes a legitimate struggle for national liberation from colonialism, aggression, and other forms of foreign domination from the meaning of terrorism.<sup>34</sup>

Whatever the case, this discourse, which examines a number of definitions of terrorism, is clear—coming up with a universally acceptable definition is not easy. That is why this article did not attempt to formulate a new definition

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33. 1999 Terrorist Financing Convention, art 2(1) (b); see also UNSC resolution 1566(2004); UN High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (2004); UN Secretary-General, *In larger freedom: towards development, security and human rights for all*, UNGA (59th Sess), 21 March 2005, UN Doc A/59/2005; UN Draft Comprehensive Convention, art 2(1).

34. Section 4 of the Convention.

of terrorism, but lists those elements which are proposed as crucial ingredients for the definition of terrorism. States operate in different circumstances, so their views on who should be considered a terrorist and who should be considered a freedom fighter or a martyr are poles apart. Moreover, their political and economic agendas may also be dissimilar or, if not, may be pursued in different ways. For each situation, the following considerations and elements are crucial when formulating a definition.

A group of people with organizational structure akin to that of a political party, rather than a criminal gang. They intentionally use violence, threats, and intimidation with political implications because both the nature and purpose of terrorism is political. Socioeconomic or psychological aspects are causal factors for the growth of terrorism, and not the basic nature of the phenomenon. The whole subject should also be discussed in light of the political and means perspective. Maintenance of uniformity of some sort of the terrorism laws, especially with regard to elements, standard of proof, and sentences, would be a good idea, so that the suspects don't run to other jurisdictions with lighter punishments or where they can easily escape trial. International linkages, mostly for financial and logistical support, like training and purchase of equipment is necessary. This support or sponsorship is usually by a state or nonstate entity. Also, terrorism is a phenomenon that very often affects multiple states, which are all compelled to cooperate to repress it. Publicity of their agenda to achieve a political aim or power is an important element; the target group is usually civilians. It is worth noting that the language of the conventions speaks of protected persons, which excludes other persons, say professors, business people, etc., yet everybody needs protection, and most importantly, the excluded persons could turn out to be the target group.

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