Defining Terror

by Jonathan Weinberger

INTRODUCTION

In this new age of callous terror and so-called *jihad*, the citizens of the United States have once again earned the titular designation of our nation. The events of September 11th have touched each and every American in a substantial emotional, spiritual, and intellectual manner. Republicans, Democrats, Blacks, White, Jews, Christians, and Muslims have all united for a common cause: the eradication of unscrupulous a-religious 'zealot' fanatics whose goal it is to exterminate the Western infidels, their way of life and the capitalist economic and political model that has helped create what many regard as the greatest nation in the history of the world.[1] However, even as most agree upon our mission, many don't agree on what to call it. Is this truly a *war* on terrorism? In order for the United States and its allies to combat the scourge of terrorism and terrorists, a universally accepted definition of those terms is essential. Many have an understandable knee-jerk emotional reaction when hearing or referring to terrorists or terrorist acts. Loosely, terrorists are known as violent, anti-social activists that kill, maim and destroy civilians for political or religious motives.

While this definition of terrorism may limply relay the defining aspects of terrorism, it remains too simplistic with many dire and unintended circumstances. In fact, many federal agencies and international organizations have differing definitions of terrorism. To many, one person's terrorist is another's freedom fighter. How does one draw this important distinction? How does one fight this enigmatic entity without proper definition and purpose? Most importantly, how does the United States proceed in its *war* on terrorism without an acceptable agreement on definitions? Additionally, without this definitional consensus, how can the United States create military tribunals and use other para-military or 'para-war' paradigms when executing the necessary actions against those who maintain vitriolic hatred towards the West, the Jews, Christians, and Americans as a whole and will use force to push their agenda of exceedingly misplaced knowledge and twisted interpretations of religion and antediluvian ideologies of selfish hatred? The answers are not simple, and will take quite some time to work out. This article will provide light on an important and severely unsolved issue in international law, in order to start a broader and more constructive debate on such a timely and sensitive issue.

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This is Not a New Struggle

The attempt to define and contain terrorism is an ancient struggle and even a biblical debate. "During the ancient Judean zealots' struggle against Roman occupation of Palestine (around 67-73 C.E.), a movement known as the *sicarii* began an indiscriminate war against its enemies."[2] In this massive revolt against Rome, the *sicarii* and zealots, both known as terrorist elements to each other, and their followers "would assassinate their less zealous co-religionists with short swords (*sicarii*) during the religious holidays."[3] After destroying the house of the High Priest, and burning the palaces of the Herodian dynasty, and torching the public archives and granaries, as well as poisoning the wells in Jerusalem,[4] the conflict ended in a spectacular mass suicide at Masada, as recorded by Josephus, a moderate Jewish commander who became a Roman supporter.[5] Josephus' prolific and sometimes questionable narrative remains the most useful primary source of any terrorist campaign prior to the nineteenth century.[6]

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Thomas De Quincy, an English Romantic and widely regarded as the first student of terrorist movements, suggests that the *Sicarii*'s organized and created ability to produce panic or paralyzing fear, citing Josephus' vivid account of how the *Sicarii* first became known, is the first recorded instance of terrorism.[7] The *Sicarii* were murderers who carried short daggers under their clothing and stabbed their enemies when the latter least expected it. After many murders and clever tactics leaving them virtually anonymous, most *Sicarri* expected an untimely death.[8]

Later came varying forms of terrorists and new forms of terror. "In the eleventh century, a sect of the Ismaili Moslems, the Assassins (named for their dependence on hashish as a stimulant for indiscriminate violence), attacked several leaders of the Crusades, including Conrad, the Christian King of Jerusalem."[9] Many of the Ismaili Moslems would have considered themselves political prisoners of a sort, fighting for an ultimate freedom. "Ecumenical in their murderous zeal, they also struck twice (and missed) Saladin, the Moslem hero in the era of the Crusades."[10] Like Al Qaida, Abu Sayaf, and others, the Assassins always operated in complete secrecy. The terrorist fighters, otherwise known as Fidaiin, were disguised as strangers or even Christians.[11] Like the *Sicarii*, the Assassins used the dagger, never poisons or missiles, in part because the dagger was considered a safe weapon, but primarily because murder was a sacramental act.[12] Similar to Al Qaida and Hamas, the Assassins courted death and martyrdom. Others that may add their names to the list of the founding fathers of terrorism include the Thugee of India, who strangled their victims with silk scarves, the Boxers of China, and the Ku Klux Klaners of the United States.[13]

However, the term of *terrorist* arguably did not arise until 1798, when the supplement of the Dictionnaire of the Academie Francaise attempted to include the term simply as "systeme, regime de la terreur."[14] According to a French dictionary published in 1796, the Jacobins had on occasion used the term when speaking and writing about themselves in a positive sense; after the 9th of Thermidor, "terrorist became a term of abuse with political implications."[15] The term spread to Britain where Burke wrote about the French as terrorists during the period of the French Revolution, thus branding them with a new term of art.[16]

However, it wasn't until almost a hundred years later when systematic terrorism again began to emerge. In the second half of the nineteenth century, Russian revolutionaries fought an autocratic government in 1878-1881 and again in the early years of the twentieth century.[17] Later, more groups followed suit. "Radical nationalist groups such as the Irish, Macedonians, Serbs or Armenians used terror methods in their struggle for autonomy or national independence."[18]

Further, there was the anarchist *propaganda by the deed*, mainly during the 1890s in France, Italy, Spain, and the United States.[19] Hence, the inevitable question of how terrorism differs from anarchy arises. As many different forms of terrorism propagated in various countries, the origins were all connected to the rise of democracy and nationalism.[20] Although many of the grievances of the minorities, the under-represented, and outcasts existed before the ideas of *terrorism*, the spreading of enlightenment and the increasingly powerful notions of nationalism seem to have provided the conditions for more terrorism.

The problem still remains with defining such acts as *terrorism* in order to prosecute certain heinous crimes.

The problem still remains with defining such acts as *terrorism* in order to prosecute certain heinous crimes. "Whether terrorism should be treated primarily as an international crime or should be viewed mainly as a political problem [which may have international criminal elements] has been debated by the international legal community for years."[21] One may ask about domestic crimes such as the Oklahoma City bombing, or the bombing of the U.S.S Cole. Are these crimes terrorism? While most would agree that these are terrorist acts, the definition remains elusive. Some "have argued that terrorism can be objectively defined through the utilization of the currently developed standards in the arena of international human rights, belligerency, extradition, and other related legal arenas."[22] Many problems lay in the formation of a standard definition as "those in power see any attempt to change the status quo by military means as a terrorist manifestation."[23] Note that many would insinuate the use of military force as a legitimate use of power, whereas any sort of non-military use of force or violence can be considered a form of terrorism. On the other hand, "many newly independent states and radical political movements remain concerned that the label of terrorism will be used to discredit legitimate national liberation movements, as well as social and

economic revolutions."[24]   The origins of force in such instances further confuse the defining and categorization and prosecution of terrorism.

AN ATTEMPT TO DEFINE THE UN-DEFINABLE

The necessity to define terrorism has never been as evident as it is now. The United States and its coalition partners must have a common understanding in order to wage a proper *war*. Also, the rules governing a war on terrorism will highly depend on what *terrorism* means. The definition that will ultimately be agreed upon will affect military tribunals, operations in countries other than Afghanistan and international and domestic relations. Yet, "terrorism clearly resists universal definition."[25]   Cultural, political and religious biases strongly affect any suggested definition. One commentator suggests, "[t]he question of definition of a term like terrorism cannot be detached from the question of who is the defining agency."[26] Terror and the acts of terror can easily been seen as positive (and hence not terrorism) or negative (and hence terrorism), depending on the perspective. Because of the subjective nature of the concept, "any definition of terror and terrorism is, of necessity, an arbitrary one, the primary purpose of which is to establish a point of reference or departure for further discussion."[27]   It is with this admonition that a myriad of definitions have been suggested by world governing bodies.

After 1795 the French first defined terrorism as:

> *"…The systematic use of terror or unpredictable violence against governments, publics, or individuals to attain a political objective. Terrorism has been used by political organizations with both rightist and leftist objectives, by nationalistic and ethnic groups, by revolutionaries, and by the armies and secret police of governments themselves.[28]*

In 1938, the League of Nations attempted to give terrorism a more globally accepted definition. In this Convention for the Prevention and Punishment of Terrorism, the definition agreed upon was "all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public."[29]   Although seemingly simple and comprehensive, there may be many more interpretations of fear related to widespread terror. Further, that definition ignores acts against civilians and not the state per se.

The Tokyo Convention of 1963 first addressed the issue of a specific crime that may constitute terrorism. That crime is seizure and interference with aircraft, or in other words, hijacking. Later, the Hague Convention of 1970 officially made it an offence for any person on board an aircraft in flight that uses force or the threat of force or intimidation, or attempts to seize or gain control of the aircraft, or is an accomplice in such an act.[30]

In 1972, the United States submitted to the United Nations General Assembly a Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism. "To supplement the value-laden term *terrorism*, this draft

used a neutral but vague term: 'an offense of international significance.'"[31] Definitions throughout history are abound with vagaries in order to both encompass and exclude certain convenient violations which would brand the very drafters or drafting countries as terrorists themselves.

Terror and the acts of terror can easily been seen as positive or negative, depending on the perspective.

In response to this 1972 definition, the UN established an Ad Hoc Sub-Committee to devise an operative definition of *terrorism*.[32] In order to incorporate all possible interpretations of terrorism, the UN Subcommittee tried to include as many acts as possible that could be established under this definition. Some of the types of acts include acts of violence by those in power against populations struggling for political liberation, which arguably permits militant groups such as Hizbollah and the Spanish ETA to claim that state countermeasures used against them constitute terrorism. Another act included by the Subcommittee is state assistance to terrorist activity directed against sovereign states.[33] The problem with this addition is the use of the phrase *terrorist activity*, since *terrorist* is the very word being defined. Other acts include violence endangering or taking innocent lives or jeopardizing fundamental freedoms, and acts of violence committed for private gain, the effects of which extend to other states.[34]

Since this attempt in 1972, there have been many more attempts to coin an accepted definition. In 1976, the European Convention on the Suppression of Terrorism drafted a series of articles attempting to define terrorism.[35] In 1979, the United Nations passed the International Convention Against the Taking of Hostages, which symbolized yet another example of the need to redefine crime and terror in a modern age when fear is used as a powerful weapon. In 1984, two statutes were created domestically, which seemed to supplement the international anti-hijacking and hostage taking agreements. The Hostage Taking Act and the Aircraft Piracy Act were aimed at combating the rise of terrorism and facilitating law enforcement and U.S. jurisdictional reach against extraterritorial violence. The Destruction of Aircraft Act was also passed to supplement the Hostage Act and the Piracy Act.[36] Further, the United States passed the Anti-terrorism Act in 1990, to expand extraterritorial jurisdiction yet further.[37] The attempt to create certain crimes internationally and domestically has long been a vehicle for the enforcement of so-called terrorist acts.

In 1991, the United Nations General Assembly issued *Measures to Eliminate International Terrorism*,[38] which served merely to call attention to the consequences of international terrorism. There was no law or treaty suggested or created. In 1996, the Inter-American Declaration to Prevent, Combat and Eliminate Terrorism also drafted a document recognizing the threats and declaring their willingness to combat such behavior. Again, there was no definition, laws or treaties created or even suggested. In 1996, a Plan of Action on Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism was drafted to bind signatories to the combating

of terrorism, but still left the actual definition of what they all agreed to combat as vague as ever. In 1997, the Convention on the Suppression of Acts of Nuclear Terrorism had signatories condemn all criminal acts involving nuclear means. A definition of nuclear terrorism was also suggested and signatories were to cooperate to develop reliable measures to prevent future terrorist acts. Also in 1997, the International Convention for the Suppression of Terrorist Bombings addresses yet other specific criminal acts and their gravity and potential consequences on governmental order. [39]

Terrorism is condemned, but not defined.

In 1999 the United Nations perhaps made its most valiant attempt to codify terrorism as an international crime. In a UN resolution, the participant nations would "strongly condemn all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed."[40] Again, terrorism is condemned, but not defined. The resolution

> [R]eiterates that 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 circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.[41]

What if a criminal act is done for the sake of being criminal and furthering an agenda and not necessarily attempting to create widespread fear per se? The UN resolution provides no answer. It does not describe what it condemns.

So to What do We Turn?

Even the governmental institutions of the United States are not sure how to define terrorism. According to the State Department's report on world terrorism in 2000, "no one definition of terrorism has gained universal acceptance."[42] So the State Department uses Title 22 of the U.S. Code, which defines terrorism as "Premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience."[43] What about religiously motivated violence? What exactly is a sub-national group or clandestine agent? Could that be a Freemason? To what does audience refer? Does audience mean only the ones who witness the particular act of violence? U.S. Law 104 302 from 1996, states "a federal crime of terrorism is a crime calculated to influence or affect the conduct of government by intimidation, or coercion or to retaliate against government conduct."[44] This arbitrary language leaves some of the same interpretational questions as the previous definition accepted by the State Department. In order to clear some of the uncertainty U.S. Law 100 204 was passed in 1997. This law indicated that, "the term terrorist activity means the organizing and participation in a wanton or indiscriminate act of violence with

extreme indifference to the risk of causing death or serious harm to individuals not taking part in the hostilities."[45] This raises the question whether the United States and other major western nations are themselves terrorist nations as they dropped bombs on civilians killing tens of thousands of innocent civilians in World War II and other wars.

The League of Arab States added their contribution to the definitional debate at the Arab Convention for the Suppression of Terrorism. There, terrorism was defined as

> *[a]ny act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or places their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resource.[46]*

This definition is seemingly much more comprehensive, but is inconsistent with other suggested definitions. Article 2(a) was added to include that "all cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence."[47] This addition seems a bit disingenuous, since it is an overt attempt to prevent the Palestinian struggle against so-called Israeli occupation being defined as terrorism. Yet under this language, any violent rising up by any ethnic group in the United States or other similarly situated peoples is legally justified.

The United Kingdom attempted to create its own version of the definition in the United Kingdom Terrorism Act of 2000: "The use or threat of use of action designed to influence the government or to intimidate the public or a section of the public for the purpose of advancing a political, religious or ideological cause."[48] The European Union later added a proposed definition that a "deliberate attack by an individual or group against a country, its institutions or its people with the aim of intimidating them and damaging or destroying their political, economic or social structures."[49] Former Israeli Prime Minister Benjamin Netanyahu also has added his own definition to the literature. He claims "terrorism is the deliberate fear and systematic assault on civilians to inspire fear for political ends."[50] This definition would, for example, exclude the bombing of the U.S.S Cole, as the bombing was aimed against a military target. However, while many of these definitions may seem air tight, the question remains, why even within the United States can we not agree upon one definition in particular?

Along with the State Department definition, the Federal Emergency Management Agency's definition includes the use of illegal force or violence "for purposes of intimidation, coercion or ransom,' but does not require it to be politically motivated."[51] This adds a whole new realm of crime to the potential *terrorists* repertoire. Additionally, the FBI looks to the Code of Federal Regulations definition. The

language includes, "the unlawful use of force and 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."[52]   Again, there is no mention of religious objectives, and here there must be *both* force and violence in order to qualify as terrorism under the FBI definition.   The FBI has used this definition to label domestic groups such as the Earth Liberation Front as terrorists.   This group has taken responsibility for destroying millions of dollars worth of property that was violating their ideas, but the group claims to be nonviolent and avoids hurting people.[53]

With almost all of the proposed definitions, political motivation is a common thread.   Whether it is Netanyahu's definition or the European Union's, terrorism involves a political dimension.   This dimension has been a major obstacle in efforts to combat terrorism.   "Insofar as these efforts have been successful, they have downplayed the political elements of the problem by focusing on those aspects of terrorist acts that warrant their being treated as crimes." [54]   This refers to crimes such as hijacking, hostage taking, sabotage and other internationally accepted illegal activity.   When a state is involved in such a criminal act as a sponsor or supporter, the problem cannot be treated as a matter of criminal law, but is instead a matter of internal public law concerning the maintenance of international peace and security.[55] Further, there are many difficulties when states are involved, not to mention that the terms *state support* and *state sponsorship* are almost as difficult to define as terrorism itself.[56]

The Department of Defense has added yet another suggested definition to the already clouded and arbitrary attempts to define the seemingly un-definable.   The Pentagon suggests that terrorism is "the calculated use of violence or the threat of violence to inculcate fear…"[57] Yet the use of military force is also a calculated use of violence to inculcate fear and destruction.   Fear is a necessary element in military actions or even in the doctrine of anticipatory self-defense.   The Pentagon definition states that the fear must be "…intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological."[58] How does this differ from the use of legitimate military force legal under the law of war?   The answer is not entirely clear.   In fact, as one judge noted, "we have cause to regret that a legal concept of terrorism was ever inflicted upon us.   The term is imprecise, it is ambiguous and above all, it serves no operative legal purpose."[59] This confusion is quite evident when the government agency running the military aspect of the *war* on terrorism has different definition from other agencies, like the State Department and the FBI.

The Department of Defense's definition was undoubtedly carefully crafted and sculpted by legal wordsmiths.   The definition attempts to distinguish between terrorism and other kinds of violence. Also, the specific acts of terrorism are separate and distinct from the motivation behind the acts.[60]

According to the Terrorism Research Center, terrorist violence comes as a result of many causes and the tendency to generically label such acts that we do not

approve of, as terrorism is erroneous because terrorism is a specific kind of violence.[61] According to the Center, terrorist violence is a sort of psychological warfare. Motivation must be taken into consideration when labeling certain violent acts as terrorism. For example, "terrorism is common practice in insurgencies, but insurgents are not necessarily terrorists if they comply with the rules of war and do not engage in those forms of violence identified as terrorist acts."[62] Unfortunately, this definition is a tautological argument, defining terms with the very same terms attempting to be defined.

Can 'Terrorism' be Considered Just War?

As previously mentioned, while terror directed at civilian and non-military targets is largely condemned, some nations regard those same acts as the noble efforts of *freedom fighters.* Nations like the United States and its allies see certain acts as terrorism, whereas other nations would deem such acts as *just war.*[63] Violence is seen as a necessary means by the struggling *groups and self-proclaimed crusaders*, and is therefore "absolved from the customary restraints on the use of violence employed in their struggle."[64] This suggests an even deeper chasm between various suggested definitions of terrorism.

Nations like the United States and its allies see certain acts as terrorism, whereas other nations would deem such acts as *just war.*

Just war theory otherwise known as *jus bellum*, has much to say about terrorism. The father of international law, Hugo Grotius suggested, "*Just* causes were defense, recovery of property, and punishment."[65] Recovery of property, as in the Israeli-Palestinian conflict is certainly controversial, and punishment as a concept is no justification per se for war or retaliation. Grotius added, "Unjust causes included the 'desire for richer land,'" and the "desire to rule others against their will on the pretext that it is for their own good."[66] Like colonialism in the 19th century, this last thought would fly in the face of many democratic social programs that impart control over the destitute and infirm, supposedly for peoples own good.

Like many terrorists, religion was used to define the methods, intention and causes of a *just war*. Early notions of war in the context of international law are the result of Christian philosophy. Wars against infidel non-Christians were categorized as just.[67] Under a similar philosophy, Al Qaida and the Taliban have waged, what they regard as just and legitimate war against what they have defined as infidel non-Muslims. Christian theologians such as Franciscus de Victoria raised questions about just war worried about the rise and expansion of imperial powers.[68] "When a belligerent's cause was deemed to be *just*, God was on its side, and military action on its behalf became the instrument's of God's will and retribution."[69] Therefore, in the case of wars having to with the defense of Christianity, humanitarian laws of

war, or *jus in bello*, could be put aside. The progressive Franciscus de Victoria stated:

> *Sometimes it is lawful and expedient to kill all the guilty. The proof is that war is waged in order to get peace and security. But there are times when security cannot be got save by destroying all one's enemies: and this is especially the case against unbelievers, from whom it is useless ever to hope for a just peace on any terms. And as [sic] the only remedy is to destroy all of them who can bear arms against us, provided they have already been at fault.*[70]

Due to the inequality and lack of humanitarian standards of this type of warfare, the notion of just war was discarded after the Peace of Westphalia in 1648, where State practices gradually came to reflect Machiavelli's philosophy that all war is necessarily *just*.[71] "Consequently, the emphasis shifted from the justification for war to the means and its regulations."[72] This confuses the modern problem of discerning terrorism and war even greater.

As wars became more and more complicated and diverse in goal and method, the Geneva Convention of 1864 was passed to give guidelines in the treatment of wounded soldiers. Later, the First Hague Conference in 1899 added more international norms to help with the potential suffering of legitimate soldiers. Later, the Geneva Conventions of 1929 and 1949 also added new methods to sanctioned warfare. The last Geneva Convention "adopted an evenhanded approach to combatants."[73] *Jus in bello* took on a new form. In the Geneva Conventions, *jus in bello* was "based upon the principle that the law relating to the conduct of warfare and the protection of war victims [would] be neutral and that there [would] be an equality of treatment for the participants in a conflict."[74] The notions of just war were evolving along with the complexities of war and international politics.

When determining whether aggression can be defined as war or terrorism, the definitions of both must be solid and unwavering.

Later in the twentieth century, Article 2(4) of the United Nations Charter added yet another layer of war conduct, without taking into account acts of international terrorism. Article 2(4) suggested that member states undertake to "refrain in their international relations from the threat or use of force against territorial integrity or political independence of any State."[75] The use of force was not outlawed summarily, but carefully tailored to be lawful in certain circumstances. This put an end to the Machiavellian ideologies of war and "heralded a return to the Grotian distinction between just and unjust warfare."[76] Self-defense, while following the accepted guidelines of war, would remain the only vehicle of just war. Yet, how can we define self-defense in the context of terrorism and response?

When determining whether aggression can be defined as war or terrorism, the definitions of both must be solid and unwavering. "War can be classified in two

ways: (1) by the objectives sought in the war and (2) by the methods used."[77] The objectives and methods in question can easily blur the lines of terrorism used in many definitions. Warfare is based on immutable laws and principles that have been developed internationally throughout history.[78] "...[T]he methods of warfare vary according to the objectives sought, the means employed and the conditions that govern the era in which the war is being waged."[79] That has never been truer than in the post September 11th world. The costs of war and victory have significantly changed. Weapons, targets and methods have all changed. However,

> *The ultimate and sufficient requirement of military force is primarily defensive…it is not annihilative victories, superior technical or administrative means, more cohesive combat units, or physically superior combatants that secure victory in social warfare, but rather it is the ability to wear down the resolve of the populace of the targeted entity to continue the war.*[80]

This seems like one of the main objectives of the modern terrorist. It is the wearing down of the American resolve that the September 11th terrorists sought and continue to seek with their attacks on America and its allies.

Perhaps today, we have leapfrogged over the pre-conceived notions of *war* and *just war* and need to look at redefining war. It would not be easy to garner consensus on new definitions, affecting novel situations such as what to do with the *battlefield detainees* at Guantanamo Bay. Like terrorism, "the *just war*, or war of national liberation, is incapable of precise definition."[81] A cause is determined *just* only if two thirds of the United Nations agrees.[82]

Terms like *self-determination*, *alien occupation*, *colonialism* and *racism* are used by the UN to analyze *just war*. These terms are also difficult to define in the modern geopolitical landscape.

> *The right of self-determination can … mean different things in different contexts. It is all very well to speak of anti-colonialist struggles in Africa, but does a similar right of self-determination exist in the metropolitan territory of other countries? Was Biafra exercising a right to self-determination during the tragic Nigerian civil war? Was Bangladesh in its revolt against Pakistan asserting a right guaranteed it under the Charter? … It is quite clear that one man's war of national liberation is another man's war of national secession.*[83]

These questions can be expanded to Israel, Cyprus, Democratic Republic of Congo, Bosnia, Turkey and so on. In this age of uncertainty, will international law permit acts of terrorism that are directed at innocent civilian populations when committed by members of a *liberation movement*? Al Qaida, Hamas, Abu Sayaf and others consider themselves as liberation movements. Hizbollah has great admiration and support in Lebanon, whereas here they are considered one of the most dangerous terrorist groups.

While war is subject to rules of international law, terrorists generally recognize no such rules.[84] Whereas the law of war was set out in the Geneva and Hague Conventions, which in turn are based upon the basic principle that the deliberate

harming of soldiers during wartime is a necessary evil, and thus permissible, the deliberate targeting of civilians is strictly forbidden.[85] "This normative principle relating to a state of war between two countries can be extended without difficulty to a conflict between a non-governmental organization and a state."[86] This would include political and religious insurgencies such as guerilla warfare, which is arguably a second form of warfare separate from terrorism.

This extension of the aforementioned normative principle distinguishes between military and civilian targets in war and would designate guerilla warfare as the deliberate use of violence against military and security personnel in order to attain political, ideological, and religious goals.[87] Terrorism, on the other hand, would be defined as "the deliberate use of violence against civilians in order to attain political, ideological and religious aims."[88] This still leaves many entities such as the United States government vulnerable to the terrorist label for supporting foreign political movements while only distinguishing means and motive. On the other hand maybe the laws of war should be amended to include new types of warfare that yield new types of combatants and novel wartime situations.

There has been some discussion of altering the laws of war to include forms of terrorism as legitimate activities.

There has been some discussion of altering the laws of war to include forms of terrorism as legitimate activities. The United States Department of State's definition of terrorism addresses the use of violence against non-combatants, whether they are civilian or not.[89] "However, this definition will not work in practice, as it designates attacks on non-combatant military personnel as terrorism."[90] Further, it may be inevitable that terrorists and their organizations can justify their actions claiming that they cannot be expected to attack only military personnel who are armed and ready for battle.[91] This would be a certain downfall for terrorists who rely on the element of surprise. "By narrowing the definition of terrorism to include only deliberate attacks on civilians, we leave room for a *fair fight* between guerillas and state armies."[92] This thought begs the question whether guerilla elements are exempted from terrorist status as long as they do not solely concentrate on acts against civilians. Does that mean that the FARC and the ELN in Colombia, the Basque separatists in Spain, the IRA, the Abu Sayaf in the Philippines and many others are not terrorists? Many would strongly disagree.

The State Department claims that with such a distinction "we set a clear moral standard that can be accepted not only by Western countries, but also by the Third World and even by some of the terrorist organizations themselves."[93] Do terrorist organizations agree on these moral standards? "When such a moral distinction is internationally applied, terrorist organizations will have yet another reason to renounce terrorism in favor of guerilla actions."[94] Yet it is difficult to see how the terrorist is concerned with weighing moral principles. "Due to its tremendous efficiency, terrorism is the natural tool for the very weak. It affords the absolute maximum

amount of power for the minimum expenditure of physical force."[95] Consequently, the physically weak turn to terrorist tactics to undermine the enemy. Cultural relativism will certainly play a role in the aforementioned issues as well as the complexities of international public law and the interpretation of the law of war with regard to terrorism.

"At the most abstract level then, terrorism meets the same basic criteria as war. It represents consciously selected force applied for a specific end."[96] The methods and intent must be measured to determine an internationally agreeable definition that will not encroach on the law of war. "Moreover, it employs kinetic, physical force to influence the enemy psychologically through the erosion of his will to continue to resist."[97] This modern terrorist tactic is a similar method in classical warfare. "As is war, this [physical force] is easily measured by the degree to which the cohesion of the targeted entity is affected."[98] Modern terrorists have proven they will go to any length for this psychological destruction. "In this way, terrorism represents a clash of wills between two contending parties."[99] This is a similar type of clash of will as in classical warfare. "If both parties employ force to resolve this clash of wills, and if both parties seek a political end through this conflict, then a state of war exists, and the terrorism used by either belligerent constitutes a form of war."[100] The confused notion of war and terror is precisely why the international community needs to look to redefine the confines of war and the appropriate behavior to conduct such a war and deal with its contemporary consequences.

OTHER LEGAL IMPLICATIONS OF TERRORISM

Due to the difficulty of the defining terrorism, international law and criminal law are easily misinterpreted or interpreted in a myriad of ways. "The dictates of humanity require that all forms of terrorism be subjected to international legal regulation, irrespective of whether terror emanates from a State or from a liberation movement."[101] That sounds logical, but as we now see, not very easy to facilitate. "Precise rules, with adequate machinery for enforcement, are the ultimate goal."[102] These rules and mechanisms are yet to be precisely defined and implemented in an internationally agreed upon manner. While Conventions on terror, such as the Geneva Conventions, are valid attempts to install mechanisms of enforcement, the actual definitions are still too arbitrary for any effective transnational enforcement. "This goal will not be furthered by a return to medieval doctrine of the *just war*, and the corollary that the *just* combatant is without restraint."[103] Again, the blurred lines between war and terrorism need to be furthered differentiated for the modern geopolitical agenda.

Another issue in enforcement is the distinction between a common crime and terrorism. "One factor is recognized in all acts commonly labeled *terrorism*."[104] Without a sound definition, the mechanisms of enforcement are arbitrary at best. Although this discussion may seem tautological at times, "[t]he act of terrorism constitutes a common crime under the municipal law of the territory (or of the flag

state of the aircraft or vessel) where it occurs."[105] But, terrorism is not defined as a specific crime per se. There is no violation of a common crime of terrorism. So, what distinguishes the common crimes of murder, larceny, kidnapping, assault and others from the identical crimes enacted and labeled terrorism? "Why are the bank robberies of the Symbionese Liberation Army called *terrorism* and the murders by the Manson family labeled as a 'crime?'"[106] Further, why is the attack against the U.S.S Cole terrorism and the racially motivated murders perpetrated in Chicago by the World Church of God considered a crime? Should it not be the other way around? "The distinguishing factor is the attempt by law enforcement officials to apply extraordinary procedures to the activities labeled, *terrorism*, while denying the need for extraordinary procedures in regard to the identical acts not labeled, *terrorism*."[107] The definition of terrorism and the distinction from a common law crime is due to the responses of criminal enforcement officials and not due to the nature of the specific crime.[108] "The definition was not determined by motive or direct effect, but by whether or not a political or general systemic significance perceived in an act by the law enforcement officials."[109] This leaves room for great subjectivity and therefore great disparity in enforcement and sentencing of such crimes.

This complexity leaves many to suggest that when defining terrorism, one must understand that it is not merely a set of acts by desperate groups. Acts of terrorism should require extraordinary measures in order to counterbalance such violence and intimidation. Some suggest that when putting a final definition on terrorism, "[l]aw enforcement officials are excluded, because as a group they have a less balanced view of the total interests of society, law enforcement being only one important interest of society."[110] There must also be other interests involved in the definitional process such as political, cultural and deterrence objectives.

Many international agreement and municipal laws have been passed in order to regulate and prosecute terrorist acts. However, due to various interpretations of international agreements and irrelevant municipal law, along with cultural opposition, makes these international attempts at a single definition even more difficult to accomplish. Due to all of the legal wrangling and different sources and perspectives of law, international agreement on terrorism is still not as close as one would like:

> *There seems little chance of terrorism being controlled on anything like a universal basis so long as international organizations or individual states are prepared to apply a double standard whereby they confer legality and respectability upon acts of violence that are committed by those with whom they sympathize, especially when they can be presented in the new language of the new international order that places self-determination and independence above any other principle or obligation.[111]*

The questions abound and multiply as the face of organized terrorism modernizes and morphs. The international community may be at a crucial point in the history of terrorism legislation, but even in the post September 11th era, there is still little chance of universality. "Nor can one expect the public to condemn such acts, when

the media describe them as heroic activities full of glamour, rendered yet more respectable by abandoning the term *murder* in favor of the legal term *execution*."[112] All one has to do is watch a Palestinian newscast, or even an American one from the perspective of the alleged terrorists to see why the hope for a single accepted definition may never be realized.

This complexity leaves many to suggest that when defining terrorism, one must understand that it is not merely a set of acts by desperate groups.

OTHER CONCLUDING THOUGHTS

As one can now understand, the chances of agreeing on an internationally recognized definition of terrorism are remote. Yet the consequences of such international schisms can be catastrophic to foreign affairs and the world order. The United States and its allies have a common goal of secure boarders, but not always a common interpretation of terrorism, its consequences and the results of such a struggle. The world is witnessing such a struggle in America's campaign against terrorism and our treatment and classification of what to do with, or even call, the prisoners at Guantanamo Bay. The United States and its allies cannot agree on a definition, and neither can the United Nations, nor can the governmental agencies within the United States itself.

The task of outlawing terrorism has been relatively easier than reaching an international agreement about the criteria in defining terrorism, a term referring to a wide range of politically related acts of indiscriminate violence carried out against innocent parties, or "soft targets," outside the arenas of the conflict.[113] The arenas of conflict apparently have to be altered as well. The community of international states has attempted to outlaw many forms of terrorism, such as hijacking, and harm to diplomatic personnel among many others, over the years. In fact, "[I]n its continuing war against terrorism, the community of nations has chosen not so much to concentrate on clarification of this ill-defined phenomena as in outlawing specific examples of terroristic conduct."[114] This has led to much confusion and international tension in the wake of September 11th. Due to this lack of agreement, "…the world community has demonstrated a remarkable readiness to condemn and punish as terroristic specified classes of politically related offenses…."[115] The problem remains that the punishments seem somewhat arbitrary due to the vast discrepancies in the interpretation of terrorism, its sources, how terrorism differs from common law and local statutory crimes, and whether a *terrorist* is really a legitimate freedom fighter. Some of the offences that the international community fundamentally agrees upon are those that are disruptive of essential international institutions, such as offenses against aircraft, or endanger international agents or other internationally protected persons, such as diplomats and United Nations personnel.[116] "The

designation of these selected classes of political criminality as being internationally proscribed imposes a duty on all cooperating nations…."[117] The level at which such nations will cooperate is also debatable depending on the particular interpretations of the definition of terrorism with regard to the laws of war. But, those ideologically cooperating nations should not only apprehend those charged with such conduct but also subject them to extradition or prosecution.[118]

Only time will determine whether the international community can agree upon a fair and all encompassing definition that will not only enforce and prosecute terrorism, but deter it as well. Let us hope that another horrific act does not have to happen before terrorism can be defined as a crime in and of itself and appropriate actions may be taken in this new world order which teeters on the prickly edge of peace, terror and war.

Notes

[1] Jonathan R. Weinberger, "Operation Ivory Tower," *The American Jurist*, vol. 18, no. 3, (November 2002): 12.

[2] Nicholas Kittrie, *International Crimes and Punishment*, (Submitted for Publishing) Part A, section IV, 34.

[3] Ibid.

[4] Ibid.

[5] David C. Rapoport and Yonah Alexander, *The Morality of Terrorism, Religious and Secular Justifications*, (New York; Pergamon Press, 1982), 13.

[6] Ibid., 14.

[7] Rappaport, *The Morality of Terrorism*, Religious and secular Justifications, 14.

[8] Ibid.

[9] Kittrie, *International Crimes and Punishment*, 34.

[10] Id.

[11] Walter Laqueur, *A History of Terrorism,* (New Brunswick: Transaction, 2001), 8.

[12] Ibid., 9.

[13] Ibid.

[14] Dictionnaire Supplement (Paris, an VII [1798]), 775.

[15] Le Neologiste Francais, quoted Aulard, Paris pendant la reaction thermidorienne et sous le Directoire (Paris, 1902), V, 490. See also
 F. Brunot, Histoire de al langue francaise des origins a 1900 (Paris, 1937), IX, 871.

[16] Ibid.

[17] Laqueur, *A History of Terrorism*, 11.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Rosalyn Higgins, *The General International Law of Terrorism, Terrorism and International Law*, eds. Rosalyn Higgins and Maurice Flory, (London: Routledge, 1997), 21.

[22] Kittrie, *International Crimes and Punishment*, 35.

[23] Ibid.

[24] Ibid.

[25] Ibid., 36.

[26] J. Bowyer Bell, *Transnational Terror* (Washington, American Enterprise Institute for Public Research, 1975), 10.

[27] Donald J. Hanle, *Terrorism: The Newest face of Warfare* (Washington: Pergamon-Brassey's International Defense Publishers, Inc., 1989), 104.

[28] Dictionnaire Supplement, p.775.   See also www.terrorsimfiles.org.

[29] 19 League of Nations O.J. 23 (1938) (never entered into force)

[30] Ibid., 776.

[31] Kittrie, *International Crimes and Punishment*, 36.   See also UN GAOR 6th Comm., 27th Sess., Agenda item 92, art. 1 para.1, UN Doc. A/C.6/L.850 91972); See also Douglas Kash, 'Abductions of Terrorists in International Airspace and on the High Seas,' 8 Fla. J.Int'l L. (1993): 65-67.

[32] Kittrie, *International Crimes and Punishment*, 36.

[33] UN GAOR Ad Hoc Committee on International Terrorism, annex, at 5, UN Doc. A/AC.160/L.3/ Add.1 (1973); See also Kash supra note 32, at 67.

[34] Ibid.

[35] Ibid., 38.

[36] Carter and Trimble, International Law 3rd Edition, 773.

[37] Ibid., 765.

[38] Ibid. See note 36, at 41.

[39] Ibid., 51.

[40] UN GAOR 51/210 Measures to Eliminate International Terrorism (1999).

[41] Ibid.

[42] "Patterns of Global Terrorism," United States Department of State, (April 2001): P.vi.

[43] Title 22 of U.S. Code.

[44] U.S. Law 104 302 (1996).

[45] U.S. Law 100 204 (1997).

[46] League of Arab States: Arab Convention for the Suppression of Terrorism, Art. I(2) (29 May 2000).

[47] Ibid. Art. 2 (A).

[48] United Kingdom Terrorism Act of 2000.

[49] (Proposed) European Union Definition (2000).

[50] Benjamin Netanyahu, *Fighting Terrorism*, (New York: Farrar Straus Giroux, 1995), 81.

[51] http://abcnews.go.com/sections/us/DailyNews/strike_011011definingterror.html

[52] Id.

[53] Ibid., 2.

[54] John F. Murphy, *State Support of International Terrorism; Legal Political and Economic Dimension*s (London: Westview Press, 1989), 113.

[55] Ibid.

[56] Ibid.

[57] http://www.terrorism.com.terrorism/bpart1.html

[58] Ibid.

[59] http://www.ihro.org.pk/peaceandterrorism2.htm

[60]http://www.terrorism.com.terrorism/bpart1.html

[61] Ibid.

[62] Ibid.

[63] Rapoport and Alexander, *The Morality of Terrorism, Religious and Secular Justifications*, 77.

[64] Ibid.

[65] Ibid., 78.

[66] Ibid.

[67] Ibid.

[68] Ibid.

[69] Ibid.

[70] Ibid. See also de Victoria, De Jure Belli 48, id. at 1xvi.

71 Ibid. at 79. See also, Niccolo Machiavelli, *The Prince*, (London: Alexander Moring, trans. Edward Dacres, 1929), 117.

72 Ibid.

73 Ibid.

74 Ibid. See also, Baxter, *The Geneva Conventions of 1949 and Wars of National Liberation*, 57 Rivista di Diritto Internazionale (1974), 193, 199.

75 Ibid.

76 Ibid.

77 Hanle, *Terrorism: The Newest Face of Warfare*, 57.

78 Ibid., 97.

79 Ibid.

80 Ibid., 98.

81 Rapoport and Alexander, *The Morality of Terrorism, Religious and Secular Justifications*, 89.

82 Ibid., 90. See also, Graham, 'The 1974 Diplomatic Conference on the Law of War: A Victory for Political Causes and a Return to the "Just War" Concept of the Eleventh Century,' 32 Washington and Lee L. Rev. 25 (1975).

83 Ibid. See also, supra note 80, at 195. See also, Baxter, 'Humanitarian Law or Humanitarian Politics? The 1974 Diplomatic Conference on Humanitarian Law,' 16 Harv. Int'l L.J. 1 (Wint. 1975).

84 http://www.terrorism.com.terrorism/bpart1.html

85 http://www.ict.org.il/articles/article.cfm?articleid=393

86 Ibid.

87 Ibid.

88 Ibid.

89 Ibid., 3.

90 Ibid.

91 Ibid.

92 Ibid.

93 Ibid.

94 Ibid.

95 Hanle, *Terrorism: The Newest face of Warfare*, 118.

96 Ibid.

97 Ibid.

98 Ibid.

99 Ibid.

100 Ibid.

101 Rapoport and Alexander, *The Morality of Terrorism, Religious and Secular Justification*s, 92.

102 Ibid.

103 Ibid.

104 Yonah Alexander and Maxwell Finger, *Terrorism: Interdisciplinary Perspectives*, (New York: The John Jay Press, 1977), 122.

105 Ibid.

106 Ibid.

107 Ibid.

108 Ibid.

109 Ibid.

110 Ibid.

111 Yonah Alexander, David Carlton, and Paul Wilkinson, *Terrorism: Theory and Practice*, (Boulder: Westview Press, 1979), 194.

112 Ibid., 195.

113 Ibid.

[114] Nicholas Kittrie, *The War Against Authority*, (Baltimore: The Johns Hopkins University Press, 1995), 214.

[115] Ibid.

[116] Ibid.

[117] Ibid.

[118] Ibid.