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Terrorism - The Definitional Problem

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TERRORISM – THE DEFINITIONAL PROBLEM[*]

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"Increasingly, questions are being raised about the problem of the definition of a terrorist. Let us be wise and focused about this: terrorism is terrorism. . . . What looks, smells and kills like terrorism is terrorism."
- *Sir Jeremy Greenstock, British Ambassador to the United Nations, in post September 11, 2001 speech*[1]

"It is not enough to declare war on what one deems terrorism without giving a precise and exact definition."
- *President Emile Lahoud, Lebanon (2004)*[2]

"An objective definition of terrorism is not only possible; it is also indispensable to any serious attempt to combat terrorism."
- *Boaz Ganor, Director of the International Policy Institute for Counter-Terrorism*[3]

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[1] John Collins, *Terrorism, in* COLLATERAL LANGUAGE: A USER'S GUIDE TO AMERICA'S NEW WAR 167-68 (John Collins & Ross Glover eds., 2002).

[2] *Beirut Wants 'Terrorism' Defined*, ALJAZEERA, Jan. 13, 2004, *available at* http://english.aljazeera.net/NR/exeres/854F5DE3-FC2D-4059-8907-7954937F4B6C.htm.

[3] Boaz Ganor, *Terrorism: No Prohibition Without Definition* (Oct. 7, 2001), *at* http://www.ict.org.il/articles/articledet.cfm?articleid=393. Ganor added, "[l]acking such a definition, no coordinated fight against international terrorism can ever really get anywhere." He defines "guerrilla warfare" as "the deliberate use of violence against military and security personnel in order to attain political, ideological and religious goals." He defines "Terrorism" as "the deliberate use of violence against civilians in order to attain political, ideological and religious aims." He distinguishes the two in that, "[t]he aims of terrorism and guerrilla warfare may well be identical; but they are distinguished from each other by the means used – or more precisely, by the targets of their operations. The guerrilla fighter's targets are military ones, while the terrorist deliberately targets civilians." *Id.*

I. Introduction

   "Terrorism" may well be the most important word in the political vocabulary these days. Hundreds of billions of dollars are spent worldwide to bring this particular form of violent political crime or illicit mode of waging conflict under control while people die every day from acts of terrorism. Nevertheless, some people do not seem to bother to define terrorism nor do they consider it worthwhile defining the concept. But surely, when governments ask young men and women to fight a "war on terrorism," the soldiers, policemen and other first line responders are entitled to a proper answer to the question of what exactly they are supposed to fight in the "Global War on Terrorism" (GWOT).[4] Is it a metaphorical war like the "war on drugs" or the "war on poverty" or is it a real war? Soldiers are trained to fight against another army or against guerrilla formations. Yet to fight against a phantom enemy like "Al Qaeda," "al Qaedaism" or a "jihadi international" movement is less concrete, although still more concrete than to fight an abstract generic evil like in the "war on terror." This is something that calls for explanation and definition.

   The United Nations High-Level Panel on Threats, Challenges and Change noted that "[l]ack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image."[5] Even seven years ago, Thomas J. Badley had observed—and it is still (partially[6]) true—"despite multiple

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   [4] Some experts have questioned the use a war model rather than a criminal justice model to deal with terrorism. One of them is Michael Howard, Professor of War at Oxford University and of Military and Naval History at Yale, who commented on the statement of Secretary of State Collin Powell that the United States was "at war" with terrorism: "To declare war on terrorists or, even more illiterately, on terrorism, is at once to accord terrorists a status and dignity that they seek and that they do not deserve. . . . To declare that one is at war is immediately to create a war psychosis that may be totally counterproductive for the objective being sought". Michael Howard, *What's In A Name?: How to Fight Terrorism*, 81 FOREIGN AFF. 8 (Jan./Feb. 2002). Another commentator, William G. O'Neill, a New York based lawyer specialized in international human rights, refugee and humanitarian law, noted: "If the 'war on terrorism' truly is a 'war,' then the laws of armed conflict apply, both to the states combating terror and to the terrorists themselves. These laws, commonly known as the Geneva Conventions and their Protocols, prohibit acts of terror." William G. O'Neill, *Terrorism and International Law: Why Conventions Matter*, THE DAILY STAR, Oct. 28, 2004.

   [5] *Report of the Secretary-General's High-Level Panel*, U.N. GOAR, 59th Sess., Agenda Item 55, at ¶ 159, U.N. Doc. A/59/565 (2004).

   [6] There is in fact a definition in the International Convention for the Suppression of the Financing of Terrorism, of which more than two thirds of all Member States (134 ratifications in mid-March 2005) have become parties, and there is also a draft definition for a comprehensive convention elaborated in the Ad Hoc Committee on Terrorism. Both of which are discussed later in this paper.

resolutions and international conventions, the UN has, for the moment, resigned itself to the fact that it is impossible to reach agreement on a common definition."[7] While some might see this as yet another "typical" United Nations problem, let me just remind that the Subcommittee on Terrorism of the United States House of Representatives Permanent Select Committee on Intelligence "found that practically every agency in the United States government with a counterterrorism mission uses a different definition of terrorism."[8]

To illustrate the point, here are four of the definitions utilized within the United States government:

Table 1: Definitions by four United States government agencies[9]

1. United States House of Representatives Permanent Select Committee on Intelligence (2002): "Terrorism is the illegitimate, premeditated violence or threat of violence by subnational groups against persons of property with the intent to coerce a government by installing fear amongst the populace."

2. State Department (1984): "Terrorism means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience."

3. FBI (1999): "Terrorism is defined as the unlawful use, or threatened use, of force or violence by a group or individual . . . committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."

4. DOD (2000): "Terrorism is the calculated use of violence or threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological."

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[7] Thomas J. Badley, *Defining International Terrorism: A Pragmatic Approach*, 10 TERRORISM AND POLITICAL VIOLENCE 90 (1998).

[8] Michael Saba, *Is 'Terrorism' Being Defined by the 'Terrorists?'*, ARAB NEWS, June 19,2004, *available at* http://www.arabnews.com/?page=7&section=0&article=47019&d =19&m=6&y=2004. The Committee added: "[w]ithout a standard definition, terrorism might be treated no differently than other crimes." *Id. See also* MUSLIM PUBLIC AFFAIRS COUNCIL, A REVIEW OF U.S. COUNTERTERRORISM POLICY: AMERICAN MUSLIM CRITIQUE AND RECOMMENDATIONS, at app. C (2003), *available at* www.mpac.org/bucket_downloads /ctpaper.pdf (listing ten different United States government definitions of terrorism).

[9] MUSLIM PUBLIC AFFAIRS COUNCIL, *supra* note 8, app. C.

Bruce Hoffman, an American expert on terrorism, has noted that "most people have a vague idea or impression of what terrorism is, but lack a more precise, concrete and truly explanatory definition."[10] Some of them turn to the Internet in search of guidance. They find a plethora of references:

Table 2: Google hits on definition of terrorism[11]

	October 4, 2004	January 27, 2005
1. "definition of terrorism"	6,070 hits	2,310,000 hits
2. "definitions of terrorism"	230,000 hits	856,000 hits
3. "definitions terrorism"	232,000 hits	867,000 hits
4. "definition of terrorism"	2,040,000 hits	82,400 hits
5. "terrorism definition"	2,050,000 hits	2,250 hits
6. "terrorism"	9,580,000 hits	21,200,000 hits

In this presentation, I will try to bring some order into this elusive and contested concept of terrorism. This is no easy task, for, as Walter Laqueur cautioned, 'terrorism is dangerous ground for simplificateurs and generalisateurs.[12] Before that, however, I shall make some remarks about the need for a definition and the state of the discussion about the problem of terrorism in the United Nations. While a definition of terrorism, like a definition of war is not solving the underlying problem, a lack of definition is perceived widely as one of the factors likely to encourage future terrorism. Dean and Yonah Alexander have placed the absence of a definition on the first place of a list of ten such factors (Table 3):

Table 3: Ten Factors and Conditions Likely to Encourage Future Terrorism[13]

1. The absence of a universal definition of terrorism
2. Disagreement as to the root causes of terrorism
3. Religionization of politics
4. Exploitation of the media

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[10] BRUCE HOFFMAN, INSIDE TERRORISM 13 (1998).

[11] Google searches performed on October 4, 2004 and January 27, 2005.

[12] WALTER LAQUEUR, THE AGE OF TERRORISM 9 (1987). Laquer also noted that "No definition of terrorism can possibly cover all the varieties of terrorism that have appeared throughout history." *Id.* at 11.

[13] DEAN C. ALEXANDER & YONAH ALEXANDER, TERRORISM AND BUSINESS. THE IMPACT OF SEPTEMBER 11, 2001, at 195 (2003).

5. Double standards of morality
6. Loss of resolve by governments to take effective action against terrorism
7. Weak punishment of terrorists
8. Violation of international law by, and promotion of, terrorism by some nations
9. Complexities of modern societies
10. High cost of security in democracies

The absence of a common definition also encourages the continuation of double standards – item five on the list. Anthony Quainton, the former Director of the Office for Combating Terrorism at the United States State Department, has said that "[t]his problem of definition has bedevilled the development of an effective counter-terrorist strategy at both the national and international level."[14]

There are, according to Boaz Ganor, the director of the International Policy Institute for Counter-Terrorism, no fewer than eight reasons why it is important to have a common international understanding as to what constitutes "terrorism":

Table 4: Why it is important to have a common understanding of what constitutes "terrorism"[15]

1. Developing an effective international strategy requires agreement on what it is we are dealing with, in other words, we need a definition of terrorism.
2. International mobilization against terrorism . . . cannot lead to operational results as long as the participants cannot agree on a definition.
3. Without a definition, it is impossible to formulate or enforce international agreements against terrorism.
4. Although many countries have signed bilateral and multilateral agreements concerning a variety of crimes, extradition for political offences is often explicitly excluded, and the background of terrorism is always political.
5. The definition of terrorism will be the basis and the operational tool for expanding the international community's ability to combat terrorism.

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[14] Anthony C. E. Quainton, *Moral and Ethical Considerations in Defining a Counter-Terrorist Policy*, *in* THE RATIONALIZATION OF TERRORISM 40 (David C. Rapoport & Yonah Alexander eds., 1982).

[15] Boaz Ganor, *Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?* (Aug. 1998), *at* http://www.ict.org.il/articles/define.htm.

6. It will enable legislation and specific punishments against those perpetrating, involved in, or supporting terrorism, and will allow the formulation of a codex of laws and international conventions against terrorism, terrorist organizations, states sponsoring terrorism, and economic firms trading with them.
7. At the same time, the definition of terrorism will hamper the attempts of terrorist organizations to obtain public legitimacy, and will erode support among those segments of the population willing to assist them (as opposed to guerrilla activities).
8. Finally, the operational use of the definition of terrorism could motivate terrorist organizations, due to moral and utilitarian considerations, to shift from terrorist activities to alternate courses (such as guerrilla warfare) in order to attain their aims, thus reducing the scope of international terrorism.

It is widely agreed that international terrorism can only be fought by international cooperation. In the field of mutual legal assistance, one of the basic principles for judicial cooperation in general and extradition in particular, is the principle of dual criminality – an act must be a crime in both countries involved. If states disagree about whether or not an act constitutes terrorism, chances of interstate cooperation are clearly diminished.

Terrorism is a complex and multidimensional phenomenon and the term is used promiscuously for such a wide range of manifestations (e.g. narco-terrorism, cyberterrorism) that one wonders whether it is a unitary concept. Professor Louise Richardson of Harvard University has said that "[t]he term terrorism has become so widely used in many contexts as to become almost meaningless."[16]

In a recent issue of Terrorism and Political Violence – the leading journal in the field – Leonard Weinberg, Ami Pedahzur, and Sivan Hirsch-Hoefler analyzed 73 definitions of terrorism from four leading journals in the field of terrorism and came up with a consensus definition based on the lowest common denominator, which was only possible on a very high level of abstraction:

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[16] Louise Richardson, *Terrorists as Transnational Actors, in* THE FUTURE OF TERRORISM 209 (Max. Taylor & John Horgan eds., 2000).

Table 5: Academic Consensus Definition based on lowest common denominators of seventy-three academic journal definitions (between brackets: no. of elements)[17]

> "Terrorism is a [1] politically motivated [2] tactic involving the [3] threat or use of force or [4] violence in which the pursuit of [5] publicity plays a significant role."[18]

> One problem with such a very general definition is that it makes

> - no reference to perpetrators or victims,
> - no mention of fear or terror,
> - no mentioning of motive or goal (beyond "political")
> - no mentioning of non-combatant targets,
> - no mentioning of the criminal and immoral nature of the tactics (hostage-taking, kidnapping, focused or indiscriminate murder) utilized.

In other words, the price for consensus on terrorism has been a far-going reduction of complexity.

In the 1980s, I also tried to arrive at an academic consensus definition, based on responses to questionnaires sent to academic colleagues.[19] Instead of choosing a reductionist approach with consensus achieved on very few elements (properties and attributes), I opted for listing all those elements on which many (but not all) experts consulted could agree and thereby arrived at sixteen elements in total, eleven more than Weinberg and Pedahzur:

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[17] Leonard Weinberg et al., *The Challenges of Conceptualizing Terrorism*, 16 TERRORISM AND POLITICAL VIOLENCE 777 (2004).

[18] A short definition along these lines was already suggested by Edward S. Herman in 1986: "Terrorism may . . . be defined by the use of violence in conjunction with a search for media publicity." Edward S. Heyman, *Power and the Semantics of Terrorism, in* COVERT ACTION: THE ROOTS OF TERRORISM 44 (Ellen Ray & William H. Schaap eds., 2003).

[19] Twice I consulted prominent authors in the field of terrorism about their understanding of terrorism. On the basis of their replies to a questionnaire, I constructed an Academic Consensus Definition of Terrorism in 1984. This definition was later submitted to more than fifty academic experts for review. Eighty-one percent of the respondents found the proposed 1984 definition partially or fully acceptable. However, there were suggestions for improvement and these were incorporated in a new 1988 Academic Consensus Definition. In the second round, the experts had to decide on the inclusion or exclusion in a new consensus definition of key elements found in more than 100 definitions.

Table 6: Academic Consensus Definition (1988) – Sixteen Elements
(between brackets: no. of elements)[20]

> Terrorism is an [1] anxiety-inspiring method of repeated [2] violent
> action, employed by (semi-) [3] clandestine individual, group, or state
> actors, for [4] idiosyncratic, criminal, or political reasons, whereby – in
> contrast to assassination – the direct targets of violence are not the main
> targets. The [5] immediate human victims of violence are generally
> chosen [6] randomly (targets of opportunity) or [7] selectively
> (representative or symbolic targets) from a target population, and serve as
> message generators. [8] Threat- and violence-based [9] communication
> processes between terrorist (organization), (imperiled) victims, and main
> targets are used to [10] manipulate the main target (audience(s)), turning
> it into a [11] *target of terror*, a [12] *target of demands*, or a [13] *target of*
> *attention*, depending on whether [14] intimidation, [15] coercion, or [16]
> propaganda is primarily sought.

The emphasis in this definition is on a model of violence as
communication. Others have situated terrorism in a conflict model. Ariel
Merari, for instance, has made the following distinction between
conventional war, guerrilla warfare and terrorism:

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[20] ALEX P. SCHMID & ALBERT J. JONGMAN, POLITICAL TERRORISM: A NEW GUIDE TO
ACTORS, AUTHORS, CONCEPTS, DATA BASES, THEORIES AND LITERATURE 28 (2nd ed. 1988)
(emphasis added).

Table 7: Characteristics of Terrorism, Guerrilla, and Conventional War as Modes of Violent Struggle[21]

	Conventional war	Guerrilla	Terrorism
Unit size in battle	Large (armies, corps, division)	Medium (platoons, companies, battalions)	Small (usually less than 10 persons)
Weapons	Full range of military hardware (air force, armor, artillery, etc.)	Mostly infantry-type light weapons but sometimes artillery pieces as well	Hand guns, hand grenades, assault rifles, and specialized weapons, e.g., car bombs, remote-control bombs, barometric pressure bombs
Tactics	Usually joint operation involving several military branches	Commando-type tactics	Specialized tactics: kidnapping, assassinations, car-bombing, hijacking, barricade-hostage, etc.
Targets	Mostly military units, industrial and transportation infrastructure	Mostly military, police, and administration staff, as well as political opponents	State symbols, political opponents, and the public at large
Intended impact	Physical destruction	Mainly physical attrition of the enemy	Psychological coercion
Control of territory	Yes	Yes	No
Uniform	Wear uniform	Often wear uniform	Do not wear uniform

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[21] Ariel Merari, *Terrorism, in* 4 ENCYCLOPAEDIA OF HUMAN BEHAVIOUR 399, 401 (V.S. Ramachandran ed., 1994).

Recogni-tion of war zones	War limited to recognized geographical zones	War limited to the country in strife	No recognized war zones. Operations carried out world-wide
Interna-tional legality	Yes, if conducted by rules	Yes, if conducted by rules	No
Domestic legality	Yes	No	No

Terrorism can be viewed within a criminal justice model as a "very serious crime." It can also be viewed, as Merari and others do, within a war model as a special variant of "(guerrilla) warfare." Within the first framework, acts of terrorism often take the form of assassination or random murder. Within the second framework, it is a form of (psychological) (guerrilla) warfare that deliberately disregards the laws of war. In the words of Bin Laden: "We do not have to differentiate between military or civilian. As far as we are concerned, [Americans] are all targets."[22]

Even before Bin Laden started his campaign against "Jews and Crusaders," some of the characteristics of his mode of conflict waging have been caught in an article from 1989 which used the term "fourth generation warfare" to describe a situation where hostilities are "widely dispersed and largely undefined," where "the distinction between war and peace [is] blurred to the vanishing point," where there are "no definable battlefields or fronts" and where "the distinction between 'civilian' and 'military' may disappear" and actions occur concurrently "throughout all participants' depth, including their society as a cultural, not just physical, entity."[23]

II. Definition Power

Few will contest that it is desirable to have a common understanding of the problem we are facing – terrorism. Yet then the question arises: How can consensus on the meaning of terrorism be achieved? First of all, we have to realize that there is no intrinsic essence to the concept of terrorism – it is a man-made construct. Definitions generally tend to reflect the interests of those who do the defining. A successful definition sets the

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[22] NAT'L ARCHIVES & RECS., NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 2.1 (archived Sep. 20, 2004).

[23] William S. Lind et al., *The Changing Face of War: Into the Fourth Generation*, MARINE CORPS GAZETTE, Oct. 1989, at 22-26, *available at* http://www.d-n-i.net/fcs/4th_gen_war-Gazette.htm.

parameters for the public debate and can shape the agenda of the community.

In many conflicts, the government is the principal 'defining agency' and holds de facto 'definition power.'[24] Terms critical for the exercise of power and possessing legitimacy are therefore often contested.[25] In politics, terms are often not neutral but value-laden. Words and formulas—such as "Axis of Evil"—convey legitimacy or disapproval, appeal to emotions, and serve as mobilization tools. When groups or individuals have different interests in a situation, the labelling of one and the same situation has—given the (de-) legitimizing function of words—implications for the situation itself and its permanence. What a definition of violence includes and excludes determines the criminality of acts or provides impunity to some actors. A crucial question in the definition debate is: Who should have defining power? National parliaments, national executive governments, or the judiciary? Or should this task be left to academics, the victims, the media, or the United Nations?

III. The United Nations and the Definition Issue

Let me now talk about the United Nations and the definition issue. When the United Nations was established after the Second World War, it could have built on the work of the League of Nations, which in 1937 had tried to define "acts of terrorism" as 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."[26]

However, the League of Nations Convention for the Prevention and Punishment of Terrorism never received sufficient support to enter into force and was not revisited when the United Nations Charter was written in 1945. The United Nations started its debate on terrorism as late as 1972, when the terrorist attack at the Munich Olympic Games served as a wake-up call to the international community.

In 1972, the General Assembly passed a resolution with the unusually long title of "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardises fundamental freedoms, and

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[24] In the words of Peter Sederberg: "The definition of terms, like other human actions, reflects the interests of those doing the defining. Those who successfully define the terms of a political debate set the agenda for the community. . . Definition therefore involves the exercise of power." PETER SEDERBERG, TERRORIST MYTHS, ILLUSION, RHETORIC, AND REALITY 3 (1989).

[25] *See generally* ANDREAS MUSOLFF, KRIEG GEGEN DIE ÖFFENTLICHKEIT: TERRORISMUS UND POLITISCHER SPRACHGEBRAUCH (1997).

[26] Convention for the Prevention and Punishment of Terrorism, 19 LEAGUE OF NATIONS O.J. 23 (1938). The Convention, which never entered into force, was drafted in response to the assassination of King Alexander I of Yugoslavia in Marseilles in 1934.

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."[27]

An Ad Hoc Committee on International Terrorism was established, which in turn consisted of three sub-committees, with one sub-committee dealing with the problem of defining terrorism. While seven draft proposals were submitted by different groups of nations, no consensus could be reached. The Non-Aligned Group defined terrorism as acts of violence committed by a group of individuals which endanger human lives and jeopardise fundamental freedoms, the effects of which are not confined to one state. The proposal stressed that this definition would not affect the inalienable right to self-determination of people subjected to colonial and racist regimes. Other states made similar distinctions. Greece, for instance, distinguished terrorism from freedom fighting. France, on the other hand, described in its proposal, international terrorism as a heinous act of barbarism committed on foreign territory. As a result of such divisions, no resolution on the definition of terrorism could be adopted, and after six years the committee was phased out.

In the United Nations, the issue of defining terrorism remained shelved until the end of the Cold War.[28] In 1994, the General Assembly reached consensus on the criminal nature of terrorism, declaring it to be "criminal and unjustifiable" (table 8).

Table 8: United Nations Declaration on Measures to Eliminate International Terrorism (1994)[29]

> The State Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States.[30]

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[27] G.A. Res 3034, U.N. GAOR 6th Comm., 27th Sess., U.N. Doc. A/RES/3034 (XXVII) (1972). On December 8, 1972, the first Ad Hoc Committee on Terrorism was established (G.A. Res. 3034) by the United Nations General Assembly; a second Ad Hoc Committee on the issue was established on December 17, 1996 (G.A Res. 51/210). Ghislaine Doucet, *Terrorism: Search for a Definition or Liberticidal Drifting?*, *in* TERRORISM, VICTIMS, AND INTERNATIONAL CRIMINAL RESPONSIBILITY 280 n.12 (Ghislaine Doucet ed., 2003).

[28] *See* Kshitij Prabha, *Defining Terrorism*, 24 Strategic Analysis 125 (2000), *available at* http://www.ciaonet.org/olj/sa/sa_apr00prk01.html.

[29] *Declaration on Measures to Eliminate International Terrorism*, U.N. GAOR, 49th Sess., 84th plen. mtg., U.N. Doc. A/RES/49/60 (1994).

[30] *Id.* In the same declaration it is noted that "Criminal acts intended or calculated to provoke a state of terror in the general public . . . are in any circumstance unjustifiable,

The definition discussion was resumed in 1996 when an Ad Hoc Committee on Terrorism was established and charged with drafting a number of conventions against various aspects of terrorism, including a Comprehensive Convention which would supplement or replace the existing sectoral conventions.[31] The Ad Hoc Committee on Terrorism has been discussing two draft treaties – a draft Comprehensive Convention and one against Nuclear Terrorism – for more than seven years. While most articles of the drafts have been completed, finalization is held up by, inter alia, the question of definition. At the present stage, the following informal text exists with regard to the definition:

Table 9: United Nations Ad Hoc Committee on Terrorism: Informal Text of Art. 2 of the Draft Comprehensive Convention[32]

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

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whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them." *Id.*

[31] The official title of the committee is "Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996." G.A. Res. 51/210, U.N. GAOR, 51st Sess., U.N. Doc. A/RES/51/210 (1996). The understanding which its current chairman brings to terrorism can be gauged from the following statement: "the common element in all acts of terrorism is the toll extracted in terms of innocent human lives by the systematic use of tactics of shock, physical intimidation and terror." AMRITH ROHAN PERERA, INTERNATIONAL TERRORISM 1 (1997).

[32] *Measures to Eliminate International Terrorism: Report of the Working Group*, U.N. GAOR 6th Comm., 56th Sess., Agenda Item 166, at 16, U.N. Doc. A/C.6/56/L.9 (2001). It is understood that further consideration will be given to these texts in future discussions, including any outstanding issues.

an international organization to do or abstain from doing any act.[33]

In the wake of the September 11, 2001 terrorist attacks, in November 2001, the United Nations came very close to a definition from the Ad Hoc Committee on Terrorism's discussion on a Comprehensive Convention against International Terrorism. The spirit of compromise which could be found with many negotiators did, however, stumble in the light of resistance by the 56-member Organization of the Islamic Conference, which rejected an Australian compromise definition because it would not exempt national liberation movements fighting foreign occupation such as the Israeli occupation of Palestinian land.[34] (see Appendix II for a discussion on "Terrorists vs. Freedom Fighters")

Another issue that gave rise to discussion in the General Assembly and the Ad Hoc Committee on Terrorism was, regardless of whether or not the violent acts carried out by individuals, groups and organizations could be labelled terrorism, whether certain activities of states, executed by their governments, should also be covered by the term. It turned out that the majority of states which wanted to arrive at a common definition of terrorism, preferred to limit the application of the term to individuals and groups. However, a number of states and observers regard themselves as victims of state- or state-sponsored terrorism.[35] In order to bridge the gap, the language of the United Nations often uses the elastic formula "terrorism in all its forms and manifestations."[36]

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[33] *Id.* While this draft text correctly identifies intimidation of the public and bringing pressure to bear on state authorities to accede to political demands as key purposes of terrorism, it does not address a major objective of non-state terrorism, namely, to bring or keep a particular issue in the forefront of public consciousness by means of perpetrating acts of violence that the news media cannot ignore. The idea of "propaganda by the deed" is, in my view, central to terrorism. It is a view that has still not received the place it deserves. In a dissertation on Israel's Counter-Terrorism Policy, Boaz Ganor, Director of the International Policy Institute for Counter Terrorism, concluded that "the most flagrant failure of Israel's counter-terrorist warfare was that it did not perceive terrorism as a psychological war over national morale." Boaz Ganor, *Israel's Counter-Terrorism Policy: 1983-1999* (Sept. 15, 2002), *at* http://www.ict.org.il/articles/articledet.cfm?articleid=447.

[34] Edith M. Lederer, *Annan Hopes U.N. Will Approve Comprehensive Treaty Against Terrorism*, SAN BERNADINO SUN, Jan. 25,2002, *available at* http://63.147.65.31/socal/terrorist/0102/25/terror17.asp.

[35] Andreas Zumach, *Definitionsstreit bei der UN-Generalversammlung: Was ist eigentlich Terrorismus?* DIE PRESSE (VIENNA), Oct. 6, 2001, at 5.

[36] A typical statement for example is that Pakistan "condemns terrorism in all its forms and manifestations, including State terrorism, which is the most ignoble form of terrorism." *Report of the Secretary-General on the Measures to Eliminate International Terrorism*, U.N. GAOR, 55th Sess., Agenda Item 166, at ¶ 56, U.N. Doc. A/55/179 (2000).

Table 10: Controversial Issues regarding the Definition of Terrorism[37]

1. Whether or not the term "terrorism" should apply to the actions of Governments/States in the same way that it applies to the actions of non-State groups.
2. Whether or not one should differentiate between terrorism and the rights of peoples to self-determination and to combat foreign occupation.
3. Whether or not to include activities of national armed forces in the exercise of their official duties and during armed conflicts if these are "governed" by or "in conformity with" international law.[38]
4. Whether or not to include the activities of national armed forces related to their potential use of nuclear weapons (since atomic weapons are almost by definition terrifying).
5. The issue of the relationship of the comprehensive convention to existing and future counter-terrorism treaties.

These are the principal contentious issues within the United Nations which stand in the way of arriving at a universal definition of terrorism. The two main issues that obstruct progress are, however, "state terrorism" and the "struggle for national liberation" – both of them related to the Palestinian question and to the question of Kashmir.

In late 2004, the Ad Hoc Committee on Terrorism resumed its discussion on articles 2 (definition) and 18 (armed forces)[39] of the

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[37] *See generally* Hans Corell, International Instruments Against Terrorism: The Record so Far and Strengthening the Existing Regime, Remarks at the Symposium on Combating International Terrorism: The Contributions of the United Nations, Vienna International Centre (June 3, 2002), *available at*: http://www.un.org/law/counsel/english/remarks.pdf (speaking of the difficulties in reaching a compromise on the definition of terrorism).

[38] Some states, notably Islamic states favor a formulation of art. 18 of the draft Comprehensive Convention which reads: "The activities of the parties during an armed conflict, including in situations of foreign occupation, as those terms are understood under international law, which are governed by that law, are not governed by this Convention." Other States prefer a reading of the text that would exclude non-state parties: "The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention." Press Release, United Nations, Negotiations Continue at Headquarters on Two Anti-Terrorism Treaties, With Disagreement Reported on Key Provisions of Each, U.N. Doc. L/3073 (Jan. 7, 2004), *available at*: http://www.un.org/News/Press/docs/2004/l3073.doc.htm.

[39] Draft Art. 18.2 reads as follows: "The activities of armed forces during an armed conflict, as those terms are understood under international law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by

Comprehensive Convention on International Terrorism.[40] The problem of finding consensus on a universal definition is, at this stage, more a political than a legal or semantic problem. In a way, more than two thirds of all Member States of the United Nations have already implicitly accepted a common definition. The International Convention for the Suppression of the Financing of Terrorism from 1999 is in force and has been ratified by 134 out of 191 States (as of mid-March, 2005). It contains, in article 2, an implicit definition similar to the one discussed in the Ad Hoc Committee:

Table 11: Art. 2 of the International Convention for the Suppression of the Financing of Terrorism (1999)[41]

> Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully or wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
>
> (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

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other rules of international law, are not governed by this Convention." *Draft Comprehensive Convention on International Terrorism: Working Document Submitted by India*, U.N. GAOR 6th Comm., 55th Sess., Agenda Item 166, U.N. Doc. A/C.6/55/1 (2000).

[40] The situation was described in late October 2004 by a diplomat from a developing country, commenting on the work of the United Nations Hoc Committee on Terrorism, in these terms: "After six years of protracted negotiations, the final draft was ready for adoption by the U.N. Legal Committee last week. . . . But it hit a snag over definitions of terrorism and military exemptions." Thalif Deen, *U.N.: Muslim States want a Clearer Definition of Terrorism*. INTER PRESS SERVICE, Oct. 27, 2004. The author noted: "The United States is sticking by a contentious article in the draft treaty that says the activities of armed forces – in as much as they are subject to rules of international law – will not be governed by the proposed convention. Muslim countries are not only opposed to this military exemption, which they say will provide governments such as Israel with free passage to 'state terrorism,' but are also demanding a clearer distinction between a 'terrorist' and a 'freedom fighter.' These countries are also pushing for an international conference on terrorism in order to agree on a definition of the term." *Id.* Emine Gokcen Tugral of Turkey stated: "A universally accepted definition of terrorism must be agreed upon, so that terrorism is not confused with the struggle of peoples for self-determination." *Id.* "Speaking on behalf of the 56-member Organization of Islamic Conference (OIC), she told delegates last week that the OIC believed the proposed treaty should differentiate between terrorism and the struggle for self-determination against foreign occupation." *Id.*

[41] *International Convention for the Suppression of the Financing of Terrorism*, U.N. GAOR 6th Comm., 54th Sess., Agenda Item 160, U.N. Doc. A/RES/54/109 (2000).

> (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The reference in Article 2 to an annex refers to the eleven other international conventions and protocols which the United Nations or organizations belonging to the wider United Nations system have adopted since 1963, such as the International Civil Aviation Organization. These sectoral conventions and protocols outlaw a number of acts, namely (see Table 12):

Table 12: Criminal Acts Identified in United Nations Conventions and Protocols Against Terrorism[42]

1. Acts of hijacking;
2. Acts of aviation sabotage;
3. Unlawful acts of violence at airports;
4. Unlawful acts against the safety of maritime navigation;
5. Unlawful acts against the safety of fixed platforms located on the continental shelf;
6. Crimes against internationally protected persons (such as the kidnapping of diplomats);
7. Acts of unlawful taking and use of nuclear material;
8. Acts of hostage taking;
9. Acts of terrorist bombings;
10. Acts of support for front organizations serving as financial conduits for terrorist organizations.

Accordingly, until the Comprehensive Convention on International Terrorism is adopted, the question "what is international terrorism?" can be answered by reference to these international offenses: whatever is criminalized by the twelve existing universal conventions and protocols relating to the prevention and suppression of international terrorism, if taking place in peacetime, is terrorism under international criminal law.

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[42] For the text of the international and regional instruments against terrorism, see UNITED NATIONS, OFFICE OF LEGAL AFFAIRS, INTERNATIONAL INSTRUMENTS RELATED TO THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, U.N. Sales No. 01.V.3 (2001) [hereinafter INTERNATIONAL INSTRUMENTS].

Ten of these twelve international legal instruments contain, as it were, "operational" definitions of international terrorism.[43]   Since these instruments do not cover terrorism in all its forms and manifestations, a comprehensive convention is in the making that would close some of the gaps in the existing body of legal instruments.[44]

Until September 2001, one shortcoming of the provisions contained in the twelve international legal instruments was that there was no international body which would monitor the ratification and implementation of those conventions and protocols. There was no effective enforcement machinery to give these international legal instruments "teeth." However, this has changed with United Nations Security Counsel Resolution 1373, which the Security Council passed on September 28, 2001, under Chapter VII of the United Nations Charter. This resolution, one of the most forceful ever passed by the United Nations also "Calls upon all States to . . . become parties as soon as possible to the relevant international conventions and protocols relating to terrorism."[45]

This far-reaching resolution has strengthened the international regime against terrorism. Most of these conventions and protocols are based on the premise that perpetrators of terrorist acts must either be brought to trial by their national governments or be extradited to a country that is willing to bring them to court. The principle of *'aut dedere, aut iudicare'* ("either to hand over, or to bring to trial"), which is meant to make the world inhospitable to terrorists and to deny them safe havens, is tremendously important. However, to make it work, all States have to apply it.

In the past, implementation of these international conventions had been uneven across all regions mainly because of the absence of a supervisory organ.   Systematic monitoring has not been fulfilled; implementation machinery has not been established to evaluate national measures that would turn the conventions into effective laws in each contracting party. In fact, only

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[43] One of the activities criminalized is "hijacking." However, not every hijacking crime is necessarily an act of terrorism. The commandeering of an aircraft to escape a dictatorial regime with gross human rights violations is viewed differently from a hijacking which serves to coerce a third party, e.g. a government, to engage in certain actions (e.g. prisoner release).

[44] The gaps of the existing twelve anti-terrorist conventions include, in the words of Michael Scharf: "assassinations of businessmen, engineers, journalists and educators are not covered, while similar attacks against diplomats and public officials are prohibited. Attacks or acts of sabotage by means of other than explosives against a passenger train or bus, or a water supply or electric power plant, are not covered; while similar attacks against an aeroplane or an ocean liner would be. And most forms of cyber-terrorism are not covered by the anti-terrorism conventions." MICHAEL SCHARF, *Defining Terrorism by Reference to the Laws of War: Problems and Prospects, in* INTERNATIONAL SCIENTIFIC AND PROFESSIONAL ADVISORY COUNCIL: COUNTERING TERRORISM THROUGH INTERNATIONAL COOPERATION 135 (2001).

[45] S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1373 (2001).

two states (the United Kingdom and Botswana) had ratified all twelve conventions and protocols by September 11, 2001. Now the Counter Terrorism Committee of the Security Council (which has recently been 'revitalized' and equipped with a Counter Terrorism Executive Directorate) has become the de facto supervisory organ for these conventions and protocols. Most states have ratified a number of conventions and protocols but there remain gaps: little more than sixty states have ratified all twelve international legal instruments against terrorism, and ratification is only the first step. What follows then is capacity-building for implementation. However, bringing Member States to full compliance often requires assistance from regional organizations and from the United Nations Secretariat. It is here that the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime plays a crucial role by providing legislative assistance to countries that request it.

While the twelve anti-terrorist conventions and protocols are useful and necessary legal instruments, there is still a need for a United Nations consensus definition. Because the Ad Hoc Committee on Terrorism of the General Assembly could not reach agreement, the Security Council, building on the work of the Ad Hoc Committee, has made a further attempt to solve the definition issue with Resolution 1566. In this resolution of October 8, 2004, acting under chapter VII of the United Nations Charter (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression), the Security Council:

> Recalls that 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 abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, racial, ethnic, religious or other similar nature.[46]

More recently, in early December 2004, the United Nations High-level Panel on Threats, Challenges and Change has also tried to cut through the Gordian knot of defining terrorism and proposed a description of terrorism as:

> [A]ny action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious

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[46] S.C. Res. 1566, U.N. SCOR, 59th Sess., 5053d mtg., U.N. Doc. S/RES/1566 (2004).

bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.[47]

By emphasizing that "[a]ttacks that specifically target innocent civilians and non-combatants must be condemned clearly and unequivocally by all," the High-level Panel set the bottom line, making clear "that terrorism is never an acceptable tactic, even for the most defensible of causes."[48] This view was reiterated in a keynote address, delivered by the Secretary General of the United Nations on March 10, 2005 in Madrid on the occasion of an International Summit on Democracy, Terrorism and Security:

> The Panel calls for a definition of terrorism which would make it clear that any action constitutes terrorism if it is 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. I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it, with a view to adopting the comprehensive convention as soon as possible.[49]

The outcome of this summit was the Madrid Agenda of the Club of Madrid, a non-governmental organization comprising more than fifty former presidents and prime ministers of democratic countries. The Madrid Agenda supported the Global Strategy for Fighting Terrorism announced by the Secretary General of the United Nations at the Madrid Summit and urgently called for "the adoption of the definition proposed by the United Nations High-Level Panel on Threats, Challenges and Change in December 2004"and "the speedy conclusion of the Comprehensive Convention on International Terrorism."[50]

The search for an international legal definition of terrorism continues. Whether the international community of states can find a solution that is acceptable that is not imposed on its members by the Security Council or proposed by a group of sixteen "wise men" or more than fifty former

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[47] *Report of the Secretary-General's High-Level Panel, supra* note 5, ¶ 164(d).

[48] *Id.* at ¶¶ 161 & 157.

[49] Kofi Annan, Keynote Address to the Closing Panel of the International Summit on Democracy, Terrorism and Security (Mar. 10, 2005), *available at* http://english.safe-democracy.org/keynotes/a-global-strategy-for-fighting-terrorism.html.

[50] CLUB DE MADRID, THE MADRID AGENDA: INTERNATIONAL SUMMIT ON DEMOCRACY, TERRORISM AND SECURITY 3 (2005).

presidents and prime ministers of democratic countries remains to be seen. A legal definition, desirable as it is, is one thing; a scientific definition of the phenomenon of terrorism is another. Let me turn to social science again.

IV. On Definition

Is it possible to find an objective and watertight definition that satisfies both legal and scientific criteria? So far, this goal has been elusive. Walter Laqueur has written recently: "After thirty years of hard labor there is still no generally agreed definition of terrorism."[51] There are more than a dozen reasons why "terrorism" is difficult to define (see Appendix I for full list). I will discuss only four here:

Table 13: Why "Terrorism" is difficult to define

1. Because terrorism is a "contested concept" and political, legal, social science and popular notions of it are often diverging;
2. Because the definition question is linked to (de-)legitimisation and criminalisation;
3. Because there are many types of " terrorism", with different forms and manifestations;
4. Because the term has undergone changes of meaning in the more than 200 years of its existence.

Some of the other reasons are linked to the clandestine nature of terrorism, to our relationship with those labelled that way, others to the normative framework we uphold and still others have to do with the difficulty differentiating terrorism as a coercive and communicative tactics from other forms of political violence (communal violence or banditry) and armed conflict (e.g. guerrilla ambushes, hit-and-run operations, or paramilitary vigilantism). Let me briefly comment on the first four items of this list.

To illustrate the first point—that terrorism is a contested concept—I will present you with the views of four experts: (Table 14):

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[51] WALTER LAQUEUR, NO END TO WAR: TERRORISM IN THE TWENTY-FIRST CENTURY 232 (2004).

Table 14: Four Expert Views on the Problem of the Definition of Terrorism[52]

> (i) Brian Jenkins of the RAND Corporation, and one of the first researchers in the field of terrorism, has called the definition problem, the "Bermuda Triangle of terrorism."
>
> (ii) The late J. Bowyer Bell of M.I.T. at Cambridge has said the "very word [terrorism] becomes a litmus test for dearly held beliefs, so that a brief conversation on terrorist matter with almost anyone reveals a special world view, an interpretation of the nature of man, and a glimpse into a desired future."
>
> (iii) Philip Schlesinger a British sociologist at Stirling University even argued, "no commonly agreed definition can in principle be reached, because the very process of definition is in itself part of a wider contestation over ideologies or political objectives."
>
> (iv) Walter Laqueur, *Chairman of the International Research Council at the Center for Strategic and International Studies*, has said "[i]t can be predicted with confidence that the disputes about a detailed, comprehensive definition of terrorism will continue for a long time, that they will not result in a consensus, and that they will make no noticeable contribution towards the understanding of terrorism."

Brian Jenkins (RAND Corporation), one of the first researchers in the field of terrorism, has called the definition problem the "Bermuda Triangle of terrorism." The late Bowyer Bell (MIT), in turn, held "tell me what you think about terrorism, and I tell you who you are."[53] Philip Schlesinger, a British sociologist, even argued "....that no commonly agreed definition can in principle be reached, because the very process of definition is in itself part of a wider contestation over ideologies or political objectives."[54]

Used as a label for certain acts of political violence, the term terrorist reflects, if it "sticks," negatively on a political opponent, de-legitimising and/or criminalising his conduct. In its pejorative dimension, the fate of the term "terrorist" is comparable to the use and abuse of other terms in political vocabulary – terms like "racist", "fascist" or "imperialist." As one author, Philip Herbst, put it:

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[52] ALEX P. SCHMID, POLITICAL TERRORISM: A RESEARCH GUIDE TO CONCEPTS, THEORIES, DATA BASES AND LITERATURE 5-9 (1983); LAQUEUR, *supra* note 12, at 79.

[53] Alex P. Schmid, Lecture on the Introduction to Terrorism at the AEGEE /COMT Conference Towards a European Response to Terrorism: National Experiences and Lessons for the Europe of 1992 (Mar. 16, 1989).

[54] SCHMID, *supra* note 52, at 7.

Carrying enormous emotional freight, *terrorism* is often used to define reality in order to place one's own group on a high moral plane, condemn the enemy, rally members around a cause, silence or shape policy debate, and achieve a wide variety of agendas. . . . *Terrorist* became the mantra of our time, carrying a similar negative charge as *communist* once did. Like that word, it tends to divide the world simplistically into those who are assigned the stigma and those who believe themselves above it. Conveying criminality, illegitimacy, and even madness, the application of *terrorist* shuts the door to discussion *about* the stigmatized group or *with* them, while reinforcing the righteousness of the labelers, justifying their agendas and mobilizing their responses.[55]

Used as a rhetorical device, the term "terrorism" threatens to become a mere invective in political debates where charges and counter-charges compete for the moral indignation or approval of relevant audiences. The strongest indication that terrorism is a contested concept comes from the saying: "one man's terrorist is the other man's freedom fighter." (Table 16) While such a statement undoubtedly reflects widespread political praxis, its moral relativism is highly unsatisfactory from an ethical and intellectual point of view. It would open the doors wide for double standards.

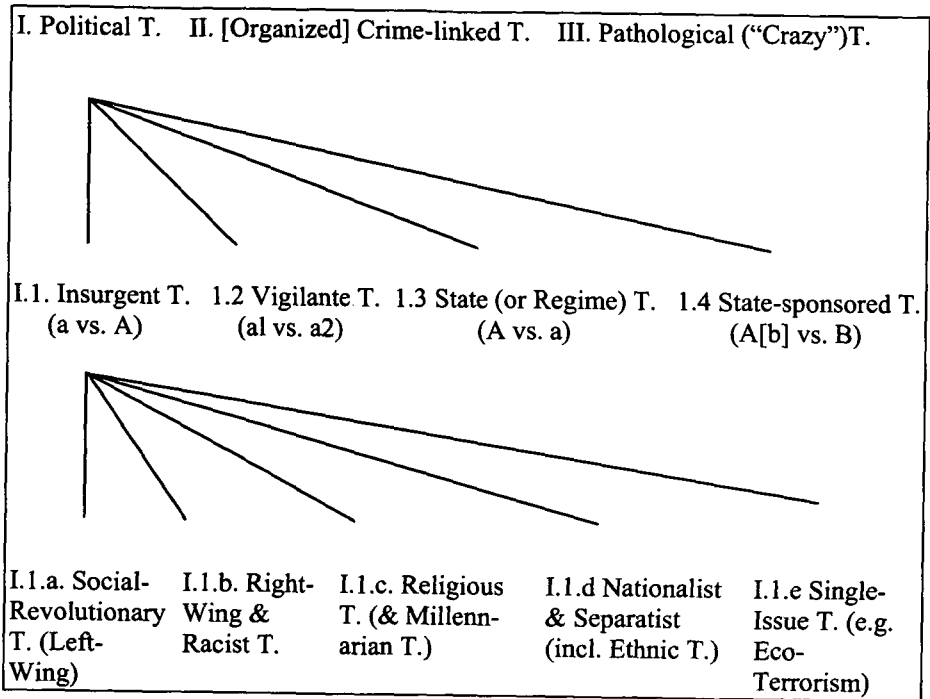Table 15: One man's terrorist the other man's freedom fighter?[56]

1. "A definition of terrorism is hopeless . . . terrorism is just violence that you don't like." (R.E. Rubinstein)
2. "Perhaps the only honest and globally workable definition of terrorism is an explicitly subjective one – violence I don't support." (J. V. Witbeck)
3. "Terrorism is what bad guys do." (B.M. Jenkins)

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[55] PHILIP HERBST, TALKING TERRORISM: A DICTIONARY OF THE LOADED LANGUAGE OF POLITICAL VIOLENCE 163-64 (2003) (emphasis in original).

[56] Arthur M. Loureiro, *Can Terrorism be Politically (Ethically) Justified?: A Philosophical Approach*, available at http://ontology.buffalo.edu/smith//courses01/rrtw/Loureiro.htm (quoting Professor Richard E. Rubinstein of the Center for Conflict Analysis and Resolution at the George Mason University); John V. Witbeck, *'Terrorism': The Word Itself Is Dangerous*, INTERNATIONAL HERALD TRIBUNE, Feb 18, 2004; JAMES BOVARD, TERRORISM AND TYRANNY 7 (2004) (quoting Brian M. Jenkins).

Table 16: Typology of terrorism[57]
(Key: A signifies State Actor; a,a1,a2 signifies Non-State Actors)

I. Political T.   II. [Organized] Crime-linked T.   III. Pathological ("Crazy")T.

I.1. Insurgent T. 1.2 Vigilante T. 1.3 State (or Regime) T. 1.4 State-sponsored T.
     (a vs. A)   (a1 vs. a2)   (A vs. a)   (A[b] vs. B)

I.1.a. Social-Revolutionary T. (Left-Wing)	I.1.b. Right-Wing & Racist T.	I.1.c. Religious T. (& Millenn-arian T.)	I.1.d Nationalist & Separatist (incl. Ethnic T.)	I.1.e Single-Issue T. (e.g. Eco-Terrorism)

A third reason why it is difficult to define terrorism is that there are many forms and manifestations of terrorism. The above typology makes this clear.

While the main focus has shifted to Islamist Jihadist terrorism since 9/11, there are many other forms of *political* terrorism, leaving for the moment beyond consideration purely criminal and psychopathic forms of intimidation that produce terror in selected target audiences.[58] The larger problem of "terrorism from above" by dictatorial regimes has diminished in recent decades but has by no means gone away. "Ethnic cleansing," for instance, is usually triggered by acts of terrorism and massacres that make people flee in panic. Depending on where you live, different forms of terrorism are the dominant ones – a fact that tends to shape one's perception of *all* other forms of terrorism, given the selectivity of our perceptions.

The fourth reason why terrorism is difficult to define has to do with the fact that there is a more than two hundred year old history of the term

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[57] SCHMID & JONGMAN, *supra* note 20, at 48.

[58] Frederick J. Hacker distinguished between three types of perpetrators: criminals, crazies and crusaders. FREDERICK J. HACKER, CRUSADERS, CRIMINALS, CRAZIES: TERROR AND TERRORISM IN OUR TIME 8-9 (1976).

terrorism that makes any definition, fixed in time, problematical. The term terrorism has changed its semantic focus several times, shifting from the original "reign of terror" or "government by intimidation" in the period 1793-1794[59] to the contemporary "intimidation of government." The term "terrorist" was not used in an anti-government sense until 1866 (regarding Ireland) and 1883 (regarding Russia).

Table 17: The Historical Trajectory of the Term "Terrorism"

1. First it was applied to the "regime de la terreur" of Maximilien Robespierre in the French revolution;
2. Then to the anarchist and social-revolutionary bombers in the late 19th century who engaged in individual terror;
3. Then the world witnessed the massive "Red Terror" of Communist regimes and the Terror of the Nazi and Fascist regimes;
4. This was followed by certain tactics and excesses used in decolonisation struggles;
5. In the 1960s certain manifestations of the Palestinian struggle and Latin American and European "urban guerrilla" attacks were labelled terrorism and
6. In the 1990s the term was increasingly used for religious fundamentalists.

If we wish to avoid doubletalk, if we favour precision over vagueness, it is desirable to sort out things and reach consensus on a definition based on intellectual honesty. This requires avoiding moral confusion by using the same standards for all who use certain forms of violence to acquire or

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[59] The *Courier de l' Égalité* of August 30, 1793 wrote approvingly: "It is necessary that the terror caused by the guillotine spreads in all of France and brings to justice all the traitors. There is no other means to inspire the necessary terror which will consolidate the Revolution." SCHMID, *supra* note 52, at 66. When Robespierre carried things too far – at least 300,000 were arrested and 17,000 officially executed – those who had supported him began to fear for their own lives. Since his party, the Jacobins, had legalized "terreur" they could not accuse him on this ground. Therefore, they accused him of "terrorisme" which had an illegal and repulsive flavor, indicating that he had gone too far. The Latin word "terror" (from terrere, to frighten) entered modern Western vocabularies through the French language in the 14th century; the first English usage has been recorded in 1528. Robespierre himself had given a rather peculiar definition of "terror": "Terror is nothing other than justice, prompt, severe, inflexible; it is therefore an emanation of virtue; it is not so much a special principle as it is a consequence of the general principle of democracy applied to our country's most urgent needs." Modern History Sourcebook, Maximilien Robespierre: Justification of the Use of Terror, *at* http://www.fordham.edu/halsall/mod/robespierre-teror.html.

maintain political power and not being influenced by shifting geopolitical preferences and political opportunism.

Terrorism is, as demonstrated, an "essentially *contested* concept."[60] We all know what a contest is, but what is a concept? A concept is a "unit of observation; it represents an idea that covers a class of objects, phenomena, or processes." Concepts are the "thought side" of "terms" and represent an attempt to restrict the use of a term to a fixed meaning set and therefore delimit and specify its references to the external world of events and actions. A "term," in turn, is a word which has meanings and references to events (concepts can also be terms but not all terms are concepts).[61] In this sense a concept is a "thought unit" formed from a sum of objects by searching for common properties of these objects through a process of "abstraction."[62] Yet abstraction always involves a process of reduction.[63] The higher the level of abstraction, the less specific properties and attributes a definition contains – as we saw with the minimalist definition developed by Weinberg and Pedahzu.

TABLE 18: Conceptualizing Terrorism
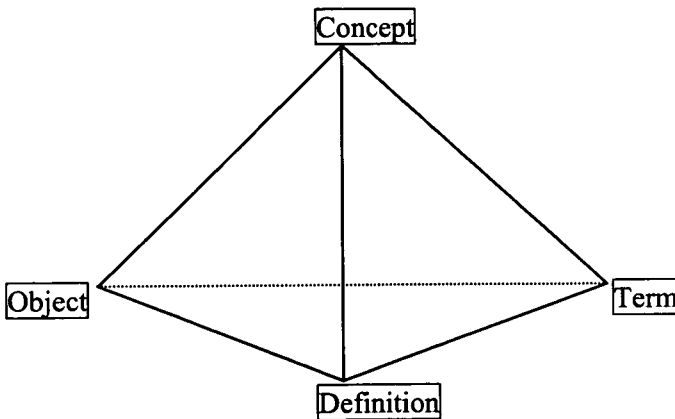
[60] WILLIAM E. CONNOLLY, THE TERMS OF POLITICAL DISCOURSE 10 (3d ed. 1993) (quoting W.B. Gallie, *Essentially Contested Concepts*, 56 Proc. Aristotelian Soc. 123 (1955-56)).

[61] Communication by Professor Howard Adelman.

[62] Norm DIN 2342 Teil 1, 2.11.1 (Oktober 1992); Georg Loeckinger, *Terminologie der Terrorismusbekaempfung, Eine Terminologiearbeit in den Sprachen Englisch und Deutsch*, GEISTES- UND KULTURWISSENSCHAFTLICHE FAKULTAET DER UNIVERSITAET WIEN 17-18 (Aug. 2004). "Objects" here refer to any given sector of an observable or imaginary world. Norm DIN 2342, *supra*, at 1.1.

[63] Heribert Picht, *Erarbeitung und Anwendung begrifflicher Strukturierungen*, 18 HERMES – JOURNAL OF LINGUISITICS 33 (1997); Loeckinger, *supra* note 63, at 18.

The relationship between an object, a term and a concept can be seen as triangular: With the help of a thought process, an object is made abstract and becomes a "concept." The "concept," in turn, is made "communicable" through a "term." With the help of the "term," the relationship to the specific object under consideration can be established. If we now expand this so-called "semiotic triangle" with a fourth dimension that turns the triangle into a three-sided pyramid, the fourth corner of the pyramid can be visualized as the "definition." The making of a "definition" involves a process of determination of the content and meaning of a concept by means of language."[64]

If successful, a definition differentiates one concept clearly from others.[65] A definition is basically an equation: a new, unknown or ill-understood term (the definiendum) is described (defined) by a combination of at least two well-known, understandable terms (the definiens). If there is only one element on each side of the equation, we are talking about a synonym or about a translation of a term, not a definition.

An example of such a definition with two elements would be the original British definition of terrorism from 1974: "terrorism is violence for political ends."[66] It allowed the defining agency a wide discretion in attribution. In fact, it was so wide that war in the Clausewitzean sense—war as a continuation of politics by other means—would also fall under it.[67]

Since there are also other forms of political violence, terrorism—the definiendum—is a "subset of actions within the much larger category of political violence."[68] Already such a simple definition as the old United Kingdom definition raises questions such as "what is 'political'?" and "what is 'violence'?" Usually, "political" apparently refers to "motive,"

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[64] Norm DIN 2342 Teil 1 (Oktober 1992); Begriffe der Terminologielehre: Grundbegriffe, in EVA-MARIA BAXMANN-KRAFFT & GOTTFRIED HERZOG, NORMEN FUER UEBERSETZER UND TECHNISCHE AUTOREN (DIN Deutsches Institut fuer Normierung ed. 1999); Loeckinger, supra note 63, at 19.

[65] Loeckinger, supra note 63, at 19.

[66] The United Kingdom's 1974 definition of "terrorism" in its entirety was "the use of violence for political ends [which] includes any use of violence for the purpose of putting the public or any section of the public in fear." Prevention of Terrorism (Temporary Provisions) Act of 1974, in EDWARD F. MICKOLUS, THE LITERATURE OF TERRORISM: A SELECTIVELY ANNOTATED BIBLIOGRAPHY 295 (1980).

[67] Those referring to terrorism as political violence have rarely taken the trouble to define "political" beyond stating that the purpose was not criminal, in the sense of oriented towards illegal, non-collective gains. Politics is, inter alia, about rules and procedures governing the process of determining who gets what, when and how in conflicts of interests between competing groups in a society which are trying to control the state and other institutions (like the media) which (re-) allocate resources by taxation, authoritative regulations and agenda-setting.

[68] Collins, supra note 1, at 165.

and "violence" refers to a tactic. Yet nothing is said about the range of possible perpetrators. Some limit the use of the term to non-state perpetrators only and use, if at all, a different word when the perpetrator is a government, e.g. "terror" when referring to certain manifestations of state violence. Some simply state that "terrorism" is what "terrorists" do.[69] However, that is a tautology since the same term (or a derivative of it) cannot logically stand on both sides of the definitional equation. In real life, "terrorists" might engage not only in terrorism but also in sabotage, guerrilla warfare or even peaceful demonstrations or political party work.[70] If some members of a larger political movement engage at one period in its decade-long struggle in indiscriminate bombings against an inhumane regime, should the whole movement be labelled "terrorist?" This question posed itself in the 1980s and part of the 1990s with regard to the African National Congress and its military arm "Spear of the Nation."

Definitions of terrorism can be either narrow or broad. Both types of definitions bring problems with themselves. As Mockaitis and Reich noted: "[u]nfortunately, terrorism has become such a diverse phenomenon that either it disappears under a host of precise definitions or it is covered by too broad an umbrella." The old British definition of terrorism mentioned above was too broad ("the use of violence for political ends," and includes "any use of violence for the purpose of putting the public or any section of the public in fear").[71]

When groups or individuals have different value systems and interests in a situation, the definition of one and the same situation has – given the legitimizing function of words – implications for the situation itself and its permanence. The question of defining a term like terrorism can therefore not be detached from the question of who is the defining agency.[72] Ideally, both sides of a conflict in which terrorism has been used should be able to

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[69] *Id.* at 169.

[70] Leonard Weinberg & Ami Pedahzur write: "it is important to stress that terrorism is not an ideology but an activity. Presumably then it is an activity that a variety of political groups and organizations may engage in either on a full-time basis or sporadically. . . . In some instances, the group may employ terrorism in conjunction with other forms of political activity. The latter may ranger from making non-violent propaganda to more intense types of violence, as in civil war." LEONARD WEINBERG & AMI PEDAHZUR, POLITICAL PARTIES AND TERRORIST GROUPS 4-5 (2004).

[71] MICKOLUS, *supra* note 67, at 295. Later the British government proposed a more narrow definition: "the use of serious violence against persons or property, or he threat to use such violence, to intimidate or coerce a government, the public, or any section of the public for political, religious or ideological ends." SECRETARY OF STATE FOR THE HOME DEPARTMENT AND THE SECRETARY OF STATE FOR NORTHERN IRELAND, LEGISLATION AGAINST TERRORISM, ¶ 3.17, *available at* http://www.official-documents.co.uk/document/cm41/4178/chap-03.htm.

[72] *See* SCHMID & JONGMAN, *supra* note 20, at 5-7.

agree what "terrorism" means. Interestingly, the Mitchell report on the Israel-Palestinian conflict contained a definition which was not contested by either side:

Table 19: United States Senator Mitchell's Definition of Terrorism[73]

> Terrorism involves the deliberate killing of randomly selected noncombatants for political ends. It seeks to promote a political outcome by spreading terror and demoralization throughout a population.

V. *Counting the Elements in Definitions*

Acts of terrorism have a number of characteristic elements. Let me present you with a short list.[74] Many of the following ten elements are present in most incidents termed "terrorist" and have found their way into both academic and government definitions.

Table 20: Key Characteristic Elements of Terrorism

> 1. The demonstrative use of violence against human beings;
> 2. The (conditional) threat of (more) violence;

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[73] Michael J. Jordan, *Terrorism's Slippery Definition Eludes UN Diplomats*, CHRISTIAN SCIENCE MONITOR, February 4, 2002, at 7.

[74] An alternative list has been developed by Martha Crenshaw of Wesleyan University. Prof. Crenshaw, one of the most respected researchers in the field, identified thirteen elements of the concept of terrorism:

> 1. A specialized form of political violence; 2. Conspiratorial and deceptive; 3. Requires few numbers and few resources; 4. Symbolic targets, most often civilian and undefended; 5. Performed for psychological effect on key audiences, including those who identify with the victims and those who identify with the perpetrators; 6. Key element of surprise and shock, as well as fear in targeted audiences; 7. Does not directly engage the armed forces of the enemy; 8. Primarily seeks publicity and recognition for a cause; 9. Usually performed in an urban environment; bombings preferred method; 10. Strategy can serve different ideologies and goals (e.g. revolutionary, nationalist, reactionary or vigilante, single-issue); 11.Can become an end in itself although rarely successful in the long term if not combined with other methods; 12. Usually associated with non-state organizations but can be used by state or state bureaucracies as a clandestine tool of foreign policy or against dissidents living abroad; 13. A 'contested' concept because of its pejorative connotations and use as a political label to condemn or delegitimize an opponent. *See* Martha Crenshaw, Characteristics of Terrorism. (Oct. 13, 2002) (unpublished paper presented at the North and West Africa Counter-Terrorism Topical Seminar).

3. The deliberate production of terror/fear in a target group;
4. The targeting of civilians, non-combatants and innocents;
5. The purpose of intimidation, coercion and/or propaganda;
6. The fact that it is a method, tactic or strategy of conflict waging;
7. The importance of communicating the act(s) of violence to larger audiences[75];
8. The illegal, criminal and immoral nature of the act(s) of violence;
9. The predominantly political character of the act;
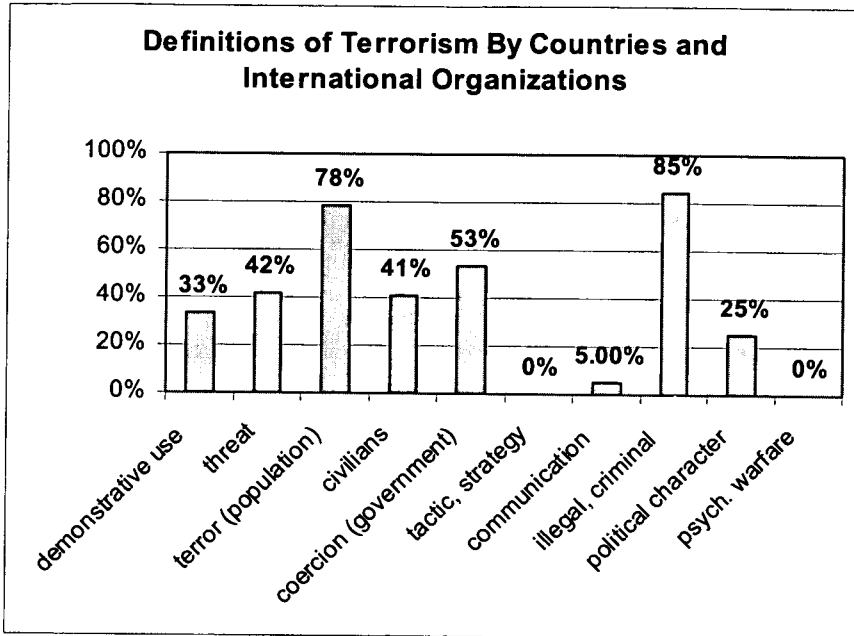10. Its use as a tool of psychological warfare to mobilize or immobilize sectors of the public.

Some of these elements might not be present in all acts of violence we call "terrorist." One incident might have five of the ten component elements, another might have more or less and a third might show yet another combination of elements. Theoretically, it is possible that the various component elements of two incidents will not be overlapping at all. Yet, within the universe of a larger sample of violent incidents that seem to qualify as terroristic, there should be frequent overlap. Even when there is no common core, they resemble each other like members of a family, as a number of characteristics can be found in different combinations so that one can talk about a "family resemblance" between them.[76]

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[75] Terrorists attempt to influence several audiences simultaneously: The adversary/-ies of the terrorist organization (usually one or several governments), the constituency/ society of the adversary/-ies, the targeted direct victims and their families and friends, others who have reason to fear that they might be the next targets, "Neutral" distant publics, the supporting constituency of the terrorist organization, potential sympathetic sectors of domestic and foreign publics, other terrorist groups rivalling for prominence, the terrorist and his organization, and last but not least: the media. *See* Robin P.J.M. Gerrits, *Terrorists' Perspectives: Memoirs*, *in* TERRORISM AND THE MEDIA 29-33 (David L. Paletz & Alex P. Schmid eds., 1992).

[76] The concept of "family resemblances" is from Ludwig Wittgenstein, Philosophische Untersuchungen. Ludwig Wittgenstein, 1 Schriften 279-544 (1980). Its use for finding a solution to the definition problem of terrorism has been suggested by Christopher Daase. Christopher Daase, *Terrorismus – Begriffe, Theorien und Gegenstrategien, Ergebnisse und Prozesse sozialwissenschaftlicher Forschung*, 76 DIE FRIENDENS-WARTE 55, 66 (2001). I used a similar approach in my book "Political Terrorism" (except that I was not going so far as to assume that two specific cases belonging to a family need to share no common characteristic elements). Christopher Daase, following Wittgenstein, rights that two cases of Terrorism can therefore have a family resemblance (and rightfully carry the same term), if they share no common characteristic at all, but can be connected with each other via a developmental line of related cases. Daase, *supra*, at 66. Daase argues that the use of the concept of family similarity allows the creation of rules for concept utilization where there is no strict demarcation of concepts. *Id.*

The following table includes ten elements which were found in 88 definitions from national government sources (like the penal laws) and from international organizations:

Table 21: Definitions of Terrorism by Countries (in National Law) and by International Organizations (in Conventions and International Law)[77] – According to Ten Selected Categories (n = 75 (countries) + 13 (international organizations) = 88 in total)

The chart titled "Definitions of Terrorism By Countries and International Organizations" shows: demonstrative use 33%, threat 42%, terror (population) 78%, civilians 41%, coercion (government) 53%, tactic, strategy 0%, communication 5.00%, illegal, criminal 85%, political character 25%, psych. warfare 0%.

Since international organizations are set up by countries, their definitional elements tend not to stray too far off national definitional elements.

Three elements clearly stand out: the element of terror,[78] the element of opprobrium (illegal, criminal) and the element of coercion.[79] What is

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[77] With thanks to K. Trompeter and K. Hecht, two interns of the TPB, who coded the data on the basis of a set of definitions provided by the author.

[78] The literature on terrorism has, strangely enough, not focused on an analysis of "terror" as a state of mind. With the exception of the literature on hostages, the experience of being terrorized has largely escaped attention. This strange absence can be explained perhaps by the fact that terrorism does not only produce terror; in fact, terror is perhaps not even the main result for the majority of the audience of an act or campaign of terror when they watch the terror from the safety of the television chair. Terrorists play on our fear of sudden violent death and try to maximize uncertainty and hence anxiety to manipulate actual and prospective victims, and those who have reason to identify with them. When, following a

notable is that there are no references to psychological warfare[80] or tactics[81] and strategy in these (inter-)governmental definitions, while this set of definitions hardly utilizes the category of communication.[82]

If we now look at a sample of academic and some other non-governmental definitions – a sample twice as large as the one of countries and international organizations – the following distribution of definitional elements emerges:

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terrorist atrocity, the question 'will I be next?' looms large in target audiences; the desired psychological impact is reached. Depending on the setting, prospective victims can be shocked by numbing fear (as in a hostage situation when the deadline for an ultimatum approaches) or they can panic and flee, having witnessed one atrocity and being anxious to avoid becoming a victim of the next. Chronic anxiety of being victimized at random and without warning can be caused by natural as well as human action. To live under the shadow of a volcano, on the fault of an earthquake zone, behind a fragile dam against the sea, can also cause a pervasive atmosphere of anxiety bordering on terror in the minds of those exposed to such danger.

[79] In the case of Al Qaeda, this element was stressed after the Madrid bombings of March 11, 2004, when Al Qaeda sent this message: "Stop targeting us, release our prisoners and leave our land, we will stop attacking you. The people of US allied countries have to put pressure on their governments to immediately end their alliance with the US in the war on terror (Islam). If you persist we will continue." Mike Whitney, *War or Shabby PR Ploy?: Rejecting the Language of Terrorism* (Mar. 29, 2004), *available at* http://www.citizensint.org/article/ploy.htm.

[80] The psychological warfare dimension of terrorism has been neglected by many governments while some of the most knowledgeable analysts see it as central. The Israeli expert Boas Ganor, for instance, holds that "terrorism is a form of psychological warfare against the public morale, whereby terrorist organizations, through indiscriminate attacks, attempt to change the political agenda of the targeted population. . . . By convincing the target population that terrorist attacks can be stopped only by appeasement of the terrorist organizations, the terrorists hope to win concessions to their demands. The greatest danger presented by terrorism is thus not necessarily the direct physical damage that it inflicts, but the impact on the way policymakers feel, think, and respond." Ganor, *supra* note 33.

[81] While some see terrorism like fascism, imperialism or racism as an ideology, there is much to be said to see it as a tactic that is not linked to any specific ideology. Zbigniew Brzezinski, United States National Security Advisor under President J. Carter, said in 2003 that the "war on terrorism" was a poor and misleading formulation because of its abstraction. "Terrorism," he said," is a technique for killing people. That doesn't tell us who the enemy is. It's as if we said that World War II was not against the Nazis but against blitzkrieg [lightning war]." Zbigniew Brzezinski, Remarks at the New American Strategies for Securities and Peace Conference (Oct. 28, 2003), *available at* http://www.prospect.org/webfeatures/2003/10/brzezinki-z-10-31.html.

[82] Paradoxically, this communication element is one of the few common elements in academic definitions. *See* Weinberg, *supra* note 17 (stating that "[t]errorism is a politically motivated tactic involving the threat or use of force or violence in which the pursuit of publicity plays a significant role").

Table 22: Definitions of Terrorism by Academics (and other non-governmental – According to Ten Selected Categories (n = 165)[83]

Definitions of Terrorism by Academics (and Related)
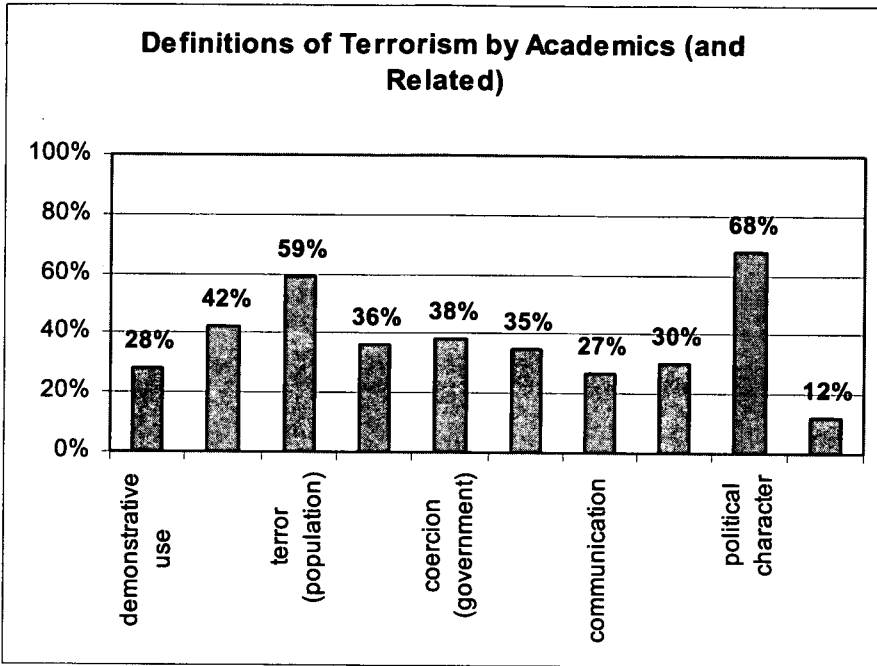
What emerges from this comparison is that the illegal, criminal character of terrorism, which scores high in (inter-)governmental definitions (85 percent), is scoring much lower in academic definitions (30 percent). On the other hand, the political character of terrorism, which is mentioned in 68 percent of the academic definitions, can be found in only 25 percent of governmental definitions and those of international organizations. The categories "psychological warfare," "communication" and "strategy or tactic" score 12 percent, 27 percent and 35 percent respectively in academic and NGO definitions, while being virtually absent in governmental definitions and those of international organizations. The element of "terror" and the element of "coercion," on the other hand, score much higher with governments than with academia (78 percent versus 59 percent and 53 percent versus 38 percent, respectively).

Disaggregating definitions of terrorism in such a way might be one approach to building greater consensus about what we want terrorism to mean. This method might be supplemented by another based on consensus

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[83] As coded by K. Trompeter and K. Hecht, two interns of the TPB on the basis of a set of definitions provided by the author.

building as to what one should exclude from a definition. Thomas H. Mitchell has, given the heterogeneous nature of the terrorist phenomenon, suggested that "a definition of terrorism must clearly establish what terrorism is not."[84] While this advice, taken literally, would lead to a very long and clumsy definition, the underlying idea is sound. In my view, such a list could contain the following elements which reflect situations that should not be labelled "terrorist":

Table 23: The Negative Approach: Defining What "Terrorism" Is Not

1. Excluding mere acts of property damage as well as acts of sabotage like interrupting the flow of an oil pipeline even when the saboteurs are engaging in acts of terrorism on other occasions.
2. Excluding attacks on military installations, aircraft, navy vessels, barracks which are guarded even when those who attack military installations or personnel are otherwise also engaging in acts of terrorism.
3. Excluding attacks on police stations and armed police on patrol in situations of armed conflict;
4. Excluding cases of collateral damage where the targeting of civilians was not deliberate (e.g. when an attack on a police station misfires and civilians are (also) victims.
5. Excluding cases of attacks on secular or religious symbols unless it is combined with the victimization of people (an attack on a knowingly empty church would not qualify, an attack on a full church would).
6. Excluding certain types of assassinations, e.g. when the direct victim is the only target, as opposed to de-individuated murder where the victim serves only as message generator to reach a wider audience.
7. Excluding acts of war which do not qualify as war crimes.
8. Excluding guerrilla warfare activities which are not war crimes.
9. Excluding acts of legal use of force by legitimate authorities to impose public order when acting within the boundaries of the rule of law.
10. Excluding acts of (collective) political violence which are spontaneous, as in riots, demonstrations, revolts.

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[84] Thomas H. Mitchell, *Defining the Problem, in* DEMOCRATIC RESPONSES TO INTERNATIONAL TERRORISM 14 (David Charters, ed., 1991); *see also* Jeffrey Jan Ross, *Defining Terrorism: An International Consensus, A Critical Issue After 9/11, in* ENCYCLOPEDIA OF WORLD TERRORISM: 1996-2002, at 12 (Frank Shanty & Raymond Piquet eds., 2003).

11. Some might call the making of such lists an "academic exercise." Yet, in emotionally charged discussions about terrorism such approaches can be of some help to clarify what we collectively wish to label "terrorism."

VI. Conclusion

Before concluding, I would like to shift to a different level of analysis, one that contextualizes terrorism and also says something about its relationship to democracy. The following table lists government and opposition politics as mirror images.

Table 24: The Spectrum of Political Action[85]

State of Peace	
State Actor	Non-state Actor
Conventional Politics	
I. Rule of Law (Routinized rule, legitimated by tradition, customs, constitutional procedures)	I. Opposition politics (Lobbying among power holders, formation of opposition press and parties, rallies, electoral contest, litigation [use of courts for political struggle])
Unconventional Politics	
II. Oppression (Manipulation of competitive electoral process, censorship, surveillance, harassment, discrimination, infiltration of opposition, misuse of emergency legislation)	II. Non-violent Action (Social protest for political persuasion of rulers and masses; demonstrations to show strength of public support; non-cooperation, civil disobedience, and other forms of non-violent action)
Violent Politics	
III. Violent Repression for control of state power III.1. (Political Justice. Political Imprisonment) III. 2. Assassination III. 3. State-terrorism (torture, death squads, disappearances, concentration camps) III. 4. Massacres III. 5. Internal War III. 6. Ethnocide/Politicide/ Genocide	III. Use of Violence for contestation challenging state power III. 1. Material destruction III. 2. Assassination. (Individuated political murder) III. 3. Terrorism (De-individuated political murder) III. 4. Massacres III. 5. Guerrilla Warfare III. 6. Insurgency, Revolution (if successful).
State of War	

The premise on which these tables are built is that the use of persuasion and coercion in the political process occurs on three levels which I have labeled "conventional politics," "unconventional politics," and "violent politics" respectively. Often the opposition is not in a position to "play in the same league" as those holding state power. The power asymmetry can "force" it to respond on a different level. Violence by a state actor can be

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[85] SCHMID & JONGMAN, *supra* note 20, at 58-59.

countered by non-violent campaigns for pragmatic reasons (no weapons are available), as well as for principal reasons (the desire to hold the moral high ground in a conflict in order to attract international support). On the other hand, there are situations where the state holds the moral high ground and where terrorists use provocations from the repertoire of violent politics to upset a democratic government. The fact that terrorism is more frequent in democracies than in non-democracies is a testimony to the wide use of this strategy. The table refers to domestic terrorism, and the situation is even more complicated in the case of international terrorism.

Yet the underlying logic is the same. In order to understand terrorism, we should not lose sight of the fact that acts of political terrorism occur next to a multitude of other political acts, some violent, some not, some conventional, some not, some by the terrorist themselves, some by like-minded but less violent people who share their goals without approval of their methods. These are all part of the general repertoire of persuasive political communications and coercive actions available to participants in the political process.

To isolate terrorist acts and terrorist organizations from this wider interplay of actors in political conflicts is not necessarily contributing to a better understanding of the phenomenon of terrorism. The high-level Policy Working Group on the United Nations and Terrorism recognized this in its report to the Secretary-General and the Security Council of August 2002 when it concluded:

> Without attempting a comprehensive definition of terrorism, it would be useful to delineate some broad characteristics of the phenomenon. Terrorism is, in most cases, essentially a political act. It is meant to inflict dramatic and deadly injury on civilians and to create an atmosphere of fear, generally for a political or ideological (whether secular or religious) purpose. Terrorism is a criminal act, but it is more than mere criminality. To overcome the problem of terrorism it is necessary to understand its political nature as well as its basic criminality and psychology. The United Nations needs to address both sides of this equation.[86]

While terrorism needs to be condemned in the strongest possible terms, mere condemnation will not lead to a better understanding of the phenomenon, which needs to be analysed in all its forms and manifestations. To try to understand terrorism – a form of action that often appears absurd when one looks only at the nature of the uninvolved and

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[86] *Measures to Eliminate International Terrorism: Report of the Policy Working Group on the United Nations and Terrorism,* U.N. GA/SCOR, 57th Sess., Annex, at para. 13, U.N. Doc. A/57/273-S/2002/875 (2002).

innocent victims and not at the intended target audiences – does not involve acceptance.

I would like to conclude with a quote from the Secretary-General of the United Nations who was expressing his impatience with the inability of the international community to reach a commonly agreed upon definition. He stated, "I understand and accept the need for legal precision. But let me say frankly that there is also a need for moral clarity."[87] He identified the bottom line in the debate on a definition of terrorism, namely, that "[t]here can be no acceptance of those who seek to justify the deliberate taking of innocent life, regardless of cause or grievance. If there is one universal principle that all people can agree on, surely it is this."[88]

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[87] *Secretary-General, Addressing Assembly on Terrorism, Calls for 'Immediate, Far-Reaching Changes' in UN Response to Terror, Press Release,* U.N. Doc. SG/SM/7977 GA/9920 (Oct. 1, 2001).

[88] *Id.*

Appendix I: Why "Terrorism" is difficult to define (B. Ganor)

1. Because terrorism is a "contested concept" and political, legal, social science and popular notions of it are often diverging;
2. Because the definition question is linked to (de-)legitimisation and criminalisation;
3. Because there are many " terrorisms" with different forms and manifestations;
4. Because the term has undergone changes of meaning in the more than 200 years of its existence;
5. Because terrorist organizations are (semi-)clandestine and the secrecy surrounding them makes objective analysis difficult;
6. Because the definition question is linked to whether or not terrorists work for or against one's own (national) interests, and, consequently double standards tend to be applied;
7. Because the boundaries with other forms of political violence (e.g. assassination, [guerrilla] warfare) are hazy or unclear;
8. Because the state, with its (claimed) monopoly of the use of force and its legal definition power, can exclude any of its own activities (e.g. indiscriminate repression) from the definition;
9. Because it is linked to a discussion of primary responsibility for initiating a downward spiral of action-reaction violence and a discussion of root causes;
10. Because some authors use two different vocabularies (force vs. violence; terror vs. terrorism) for state- and non-state actors;
11. Because the conceptual and normative frameworks of the users of the term differ (e.g. criminal justice model, war model);
12. Because the discussion on terrorism has been linked to issues regarding self-determination, armed resistance against foreign occupation and racist regimes;
13. Because those who engage in acts of terrorism often also engage in other, more legitimate, forms of armed conflict and/or engage in political party politics;
14. Because the violence perpetrated by the terrorists' opponent might be as indiscriminate, or worse, than the one of those that are deemed "terrorists."
15. Because the assessment of the terrorist act is intertwined with the discussion concerning the actor's goals and the status of the actor itself.

Appendix II: "Terrorists vs. Freedom Fighters"

Some observations on the issue of "Terrorists" vs. "Freedom Fighters" are not out of place here. As long as this issue is not resolved, we are not likely to have a common definition of terrorism, and one man's terrorist will remain the other man's freedom fighter.[89]

In the discussions of the General Assembly following the September 11, 2001 attacks, one of the issues that surfaced again and again was how to distinguish the criminal attacks of "terrorists" from the "legitimate use of force" by "freedom fighters"? It was not the first time that this issue came to the fore.

In 1974, the PLO leader Yassir Arafat had stated in a speech before the United Nations: "He who fights for a just cause, he who fights for the liberation of his country, he who fights against invasion and exploitation or single-mindedly against colonialism, can never be defined a terrorist."[90]

Arafat thereby implied that terrorism should be defined not by the nature of the act but by its purpose. However, freedom fighters and terrorists are not mutually exclusive categories. Terrorists can also fight for national liberation, and freedom fighters can also carry out inhumane atrocities. While a cause to go to war might be just and be covered by the *jus ad bellum* (the law of [just] war), that is, in legal terms, there is no license to use any method of waging conflict. The *jus in bello* (the rules governing warfare) puts constraints on the way armed conflict can be fought.

The "ideal-type" (in the Weberian sense) freedom fighter fights those who deprive people (a term not defined in international law) of their freedoms. However, if the victims of their armed struggle are others than those who directly stand in the way of achieving freedom, the would-be freedom fighter risks being labeled differently. Such a fighter exercises a tyrannical kind of violence, depriving innocent third parties of not just freedom but the right to life. The goal of freedom for one group does not justify depriving another group from living in peace, so long as that that other group is not demonstrably contributing to the oppression of the first group.

When civilians are purposefully targeted by freedom fighters to achieve their political goal, they become terrorists. When terrorists, on the other hand, confine their targeting to legitimate targets – armed security

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[89] Although in a legal sense, someone who commits one or more of the offenses set forth in the twelve universal conventions and protocols related to the prevention and suppression of international terrorism (see Table 12) is, if these acts are "international," a criminal.

[90] LUIGI BONANATE, DIMENSIONI DEL TERRORISMO POLITICO 101 (Franco Angeli Milano ed., 1979) (translated from Italian by author, Alex Schmid).

personnel and installations – they could qualify as freedom fighters.[91] To achieve this, they would have to desist from attacking and terrorizing civilians, would have to be discriminate in their use of force and not engage in tactics such as hostage-taking or killing of prisoners.

Was Nelson Mandela a terrorist? The Ugandan president, Yoweri Museveni, asked this question on November 12, 2001, in the General Assembly debate on 9/11. His response to his own question was:

> Not at all. The difference lies in the fact that while a freedom fighter sometimes may be forced to use violence, he cannot use indiscriminate violence. The one who uses indiscriminate violence is a terrorist. A terrorist does not differentiate between combatants and noncombatants; between civilians and servicemen; between armed servicemen and unarmed servicemen.[92]

Since Nelson Mandela was in jail the entire time the ANC fight turned to violence – at times indiscriminate violence – the question was rhetorical as far as Mandela himself was concerned. However, the "Spear of the Nation" (Umkhonto We Sizwe), the armed wing of the African National Congress, engaged in a variety of tactics, including the indiscriminate bombing of a shopping center in Durban in December 1985, in which five people were killed.

With regard to the Palestine question, legal questions surrounding various types of wartime and postwar military occupation and the applicability of the 1899 and 1907 Hague Conventions and the 1949 Geneva Convention and its 1977 Protocol do not make for easy or clear answers.[93] Is a colonizing settler on occupied land a legitimate target for an armed attack only if he is armed or also if he is unarmed? One Palestinian journalist, Mohammad Yaghi, has recently suggested to his fellow Palestinians that "to avoid the 'terrorism' label, stop attacking inside Israel."[94] While that might not be enough, he is more right in stating that

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[91] *See* Ganor, *supra* note 15.

[92] William M. Reilly, *Leaders at UN Mull Definition of Terrorism*, UNITED PRESS INT'L, Nov. 12, 2001.

[93] *See* ADAM ROBERTS, OCCUPATION, RESISTANCE AND LAW: INTERNATIONAL LAW ON MILITARY OCCUPATIONS AND ON RESISTANCE (1980). A complicating factor is that the conventions, and especially the 1977 protocols, have not been ratified by some conflict parties. While some argue that these have in the meantime become part of customary law, others dispute that idea.

[94] Mohammad Yaghi, *To Avoid the 'Terrorism' Label, Stop Attacking Inside Israel*, THE DAILY STAR, Oct. 4, 2004, *available at* http://www.dailystar.com.lb/article.asp?edition_ID=10&article_ID=8956&categ_id=5.

"[j]ust causes demand just means in bringing them to a successful conclusion."[95] That alone, however, might not lead to success.

This ties in with the wider question: what conditions must a "freedom" or "resistance fighter" fulfill to be a "lawful belligerent" (or "combatant") according to international occupation law? According to Sir Adam Roberts, an authority in this field, at least four conditions must be fulfilled (Table 25).

Table 25: Requirements to Qualify as "lawful belligerent"/"combatant" under International Occupation Law[96]

1. The combatants must comply with the rules of international law applicable in armed conflicts;
2. They must carry arms openly during each engagement and also, though the terms are complicated, before it;
3. Combatants are obliged, wherever possible, to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack; and
4. Members of regular, uniformed armed units are of course expected to wear uniform.

Judged by this list, it would appear that a number of today's "freedom fighters" may not be defined as "lawful belligerents." While in some freedom fighters a future statesman might slumber,[97] others might degenerate to little more than bandits.

Adherence to international law is a prerequisite – a necessary but perhaps not sufficient – prerequisite – for legitimate freedom fighters. This is also recognized by various regional law instruments:

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[95] *Id.*

[96] ROBERTS, *supra* note 94, at 170.

[97] In this context, Josef Joffe writes: "Almost never is the new terrorist simply a freedom fighter inside whom a statesman slumbers. States created by terror do not tend to transform themselves into friendly members of the world community." Josef Joffe, *The Trap of Understanding – Western World deceives itself: Terrorism is not Weapon of the Weak*, DIE ZEIT (HAMBURG), Sept 9, 2004.

Table 26: Armed Struggle and the Right to Self-Determination: Positions of the Arab League (1998), the Islamic Conference (1999) and the Organization of the African Union (1999)[98]

- Arab League, Article 2(a): "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. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State."
- Organization of the Islamic Conference, Article 2(a): "Peoples struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination *in accordance with the principles of international law* shall not be considered a terrorist crime."
- Organization of the African Union, Article 3: "Notwithstanding the provisions of Article 1, the struggle waged by peoples *in accordance with the principles of international law* for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts."

Since the principles of international law do not allow acts of terrorism, and since such acts are contrary to the principles of the United Nations and constitute a threat to peace and security, the dispute about "terrorism" vs. "freedom fighting" is not really addressing a legal issue anymore, it is a political debate.

Appendix III: Selected Definitions of Terrorism

1. Anon: "Kill one, frighten ten thousand."[99]
2. Wu Chi: "One man willing to throw his life away is enough to terrorize thousands."[100]
3. Quainton (1982): Terrorism means "the threat or use of violence for political purposes when such action is intended to influence the attitudes and behavior of a group wider than its

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[98] INTERNATIONAL INSTRUMENTS, *supra* note 42, at 153-154, 189-190, 210 (emphasis added).

[99] Old Chinese saying.

[100] Wu Chí, Chinese military philosopher.

immediate victims; its ramifications transcend national boundaries."[101]

4. Ayatulla Taskhiri (1987): "Terrorism is an act carried out to achieve an inhuman and corrupt objective and involving threat to security of any kind, and in violation of the rights acknowledged by religion and mankind."[102]

5. Charles W. Freeman (1994): Terrorism means "the use of violence against non-combatants, civilians or other persons normally considered to be illegitimate targets of military action for the purpose of attracting attention to a political cause, forcing those aloof from the struggle to join in, or intimidating opponents into concessions."[103]

6. Reisman & Antoniou (1994): "Terrorism has come to mean the intentional use of violence against civilian and military targets generally outside of an acknowledged war zone by private groups or groups that appear to be private but have some measure of covert state sponsorship."[104]

7. Boaz Ganor (1999): "Terrorism is the intentional use of, or threat to use violence against civilians or against civilian targets, in order to attain political aims."[105]

8. United States Senator Michael J. Mitchell (2001): "Terrorism involved the deliberate killing of randomly selected noncombatants for political ends. It seeks to promote a political outcome by spreading terror and demoralization throughout a population."[106]

9. European Union (2002): "An intentional act which may seriously damage a country or an international organization, committed with the aim of seriously intimidating a population, unduly compelling a Government or an international organization to perform or abstain from performing any act, seriously destabilizing or destroying fundamental political,

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[101] Quainton, *supra* note 14, at 39.

[102] Ayatulla Taskhiri, Paper Delivered at a 1987 International Terrorism Conference Called by the Organization of the Islamic Conference.

[103] CHARLES W. FREEMAN, THE DIPLOMAT'S DICTIONARY 379 (1994); JAMAL R. NASSAR, GLOBALIZATION & TERRORISM: THE MIGRATION OF DREAMS AND NIGHTMARES 16 (2004).

[104] THE LAWS OF WAR: A COMPREHENSIVE COLLECTION OF PRIMARY DOCUMENTS ON INTERNATIONAL LAW GOVERNING ARMED CONFLICT 293 (W. Michael Reisman & Chris T. Antoniou eds., 1994).

[105] Ganor, *supra* note 15.

[106] Jordan, *supra* note 74. This definition, in Mitchell's report on the Palestinian-Israeli violence, was accepted by both sides.

constitutional, economic or social structures by means of attacks upon a person's life, attacks upon the physical integrity of a person, kidnapping, hostage-taking, seizure of aircraft or ships, or the manufacture, possession or transport of weapons or explosives."[107]

10. Combs & Slann (2003): Terrorism means "a synthesis of war and theater, a dramatization of the most proscribed kind of violence – that which is perpetrated on innocent victims – played before an audience in the hope of creating a mood of fear for political purposes."[108]

11. Kofi Annan (2005): Terrorism means "any action constitutes terrorism if it is 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."[109]

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[107] Ignacio Pelaez Marqués, *The Contribution of the European Union, in* UNITED NATIONS OFFICE FOR DRUG CONTROL AND CRIME PREVENTION, SYMPOSIUM: COMBATING INTERNATIONAL TERRORISM: THE CONTRIBUTION OF THE UNITED NATIONS 108 (2003).

[108] CINDY C. COMBS ET AL., ENCYCLOPEDIA OF TERRORISM 209 (2003).

[109] *Secretary-General Offers Global Strategy for Fighting Terrorism, in Address to Madrid Summit, Press Release*, U.N. Doc. SG/SM/9757 (Mar. 10, 2005) (based on the High-level Panel's definition).