



FACULTY OF LAW
University of Lund

Catarina Hästesko

Terrorism

Defining the Concept of Terrorism and
Examining Legislative and Coercive
Counter-Terrorism Responses

Master thesis
20 points

Supervisor
Göran Melander

International law

Autumn 2003

Contents

SUMMARY	1
PREFACE	2
ABBREVIATIONS	3
1 INTRODUCTION	4
1.1 Purpose and delimitation	4
1.2 Method and material	5
1.3 Disposition	6
2 HISTORY OF TERRORISM	8
2.1 The concept of terrorism develops	8
2.2 Terrorism in the 20 th century	8
3 THE CHALLENGE OF DEFINING TERRORISM	11
3.1 The UN attempts to define terrorism	11
3.1.1 What are the results and why are they so poor?	13
3.2 Difficulties in defining terrorism	14
3.3 Different components of a definition	16
3.3.1 International and domestic terrorism	16
3.3.2 The perpetrator	18
3.3.3 Targets of terrorist acts	20
3.3.4 Acts of terrorism	20
3.3.4.1 Violence	21
3.3.4.2 Threats of violence	22
3.3.4.3 Systematic violence	23
3.3.4.4 Political violence	23
3.3.5 Motive and purpose	24
3.3.5.1 Political crime or ordinary crime?	25
3.3.5.2 Terrorism as a method	26
3.3.5.3 Means and ends	30
3.4 A legal definition	32
3.4.1 A few considerations in relation to the definition	33
4 LEGAL RESPONSES TO TERRORISM	37
4.1 International law on terrorism	38
4.1.1 International anti-terrorist conventions and protocols	38
4.1.1.1 Suppressing hijacking	39
4.1.1.2 Safety of civil aviation and airport security	39
4.1.1.3 Protected persons	39
4.1.1.4 Taking of hostages	39
4.1.1.5 Safety of maritime navigation	40
4.1.1.6 Protection of nuclear material	40

4.1.1.7	Control of plastic explosives and suppression of terrorist bombings	40
4.1.1.8	Financing of terrorism	41
4.1.2	Application of International Humanitarian Law on terrorism	41
4.1.3	Problem of extradition in International law	42
4.1.4	Human Rights and terrorism	43
4.1.5	The insufficiency of International law	44
4.2	A regional perspective: Europe	45
4.2.1	The European Convention on the Suppression of Terrorism	46
4.2.2	Framework Decision on Combating Terrorism	47
4.3	A national perspective: Sweden	49
4.3.1	The Swedish terrorist law of 1973	49
4.3.2	Changes in Swedish terrorist regulations	49
4.3.3	Framework Decision from the EU	51
4.4	Comments on the EU's definition of terrorism	51

5 COERCIVE RESPONSE AND SUGGESTIONS FOR FUTURE RESPONSES TO TERRORISM 54

5.1	The right to use force and the obligations to restrain from using violence	54
5.1.1	To act in self-defence	55
5.2	The USA responds to terrorism	56
5.2.1	The US acts in self-defence?	56
5.2.2	Waging war against terrorism	58
5.3	Future responses to terrorism	59

6 FINAL REMARKS 62

BIBLIOGRAPHY 65

Summary

Terrorism is a widely discussed phenomenon, but still it remains an undefined term in international law. In media and every day language the term seems to include almost any kind of violence. This uncertainty surrounding the definition has led to a situation where the word terrorism is open to any interpretation. As a result terrorism is often viewed as 'violence of which we do not approve'.

There are numerous problems related to the definition of terrorism. Some of these are illuminated and discussed in this thesis. Following on these discussions, a definition is formulated and its pros and cons described.

Terrorism is a frightening phenomenon. It is not only a threat to the individual but also a threat to our societies and the world order. As many powerful states engage themselves in a war against terrorists we sense a loss of freedom and safety of our integrity. There is an increase of destabilisation in the world and heightened tension between states.

Counter-measures to terrorism can be of various kinds. This thesis examines legal instruments used at international, regional and national levels to regulate, prevent and control the phenomenon.

When submitted to an attack, states are often provoked to use violence in their response against terrorism. The states' right to use force in response to terrorism, and the United States' military actions in Afghanistan in the aftermath of September 11th in particular, are discussed in this thesis.

Furthermore, on a few lines I will discuss future legal responses to terrorism by the international community.

Preface

Growing up in the 80s and 90s meant getting used to frequent reports on terrorist attacks and making the acquaintance of groups like PLO, IRA and ETA. Through the media, terrorism affects us all.

Later, I came to accumulate new perspectives upon the phenomenon of terrorism as I took courses in Social Anthropology, Political Science, Law etc. One could say, to use an old metaphor, that my view of events went from black and white to grey.

However, the main reason and the triggering event for this thesis were the serious attacks performed on the United States on 11 September 2001.

These attacks did not only kill thousands of people but they also showed us how vulnerable a great power like the USA can be. When shock gives away, surprise and curiosity are there to replace it. First of all, questions like how and why it happened need to be answered. Secondly, when the US and the Security Council proceeded to take action, legal questions about the right to defend oneself against a terrorist attack caught my interest. This is when I set out to write this thesis.

Abbreviations*

AD	Action Direct: French extreme left group formed in 1976. The group faded out following the arrest of its main leaders in 1987.
BR	Brigata Rosso (Red Brigades): formed in 1969, it became the major Italian left-wing group aiming at overthrowing the Italian government.
CTC	Counter-Terrorism Committee of the UNSC
ECHR	The European Convention on Human Rights
ETA	Euzkadi Ta Askatasuna (Basque Fatherland and Liberty): it is aimed at establishing an independent Marxist Basque state.
EU	European Union
FLNC	Front de Libération Nationale de la Corse (Corsican National Liberation Front): the group emerged in 1976 and has conducted a campaign of terrorism against French authorities with the aim of securing autonomy for Corsica.
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICJ	International Court of Justice
IHL	International Humanitarian Law
IMO	International Maritime Organization
PLO	Palestinian Liberation Organisation: formed in 1964, it became recognised by Arab states as 'the sole legitimate representative of the Palestinian people'.
PIRA	Provisional Irish Republican Army: formed in 1969, the PIRA became the dominant Republican organisation and the most lethal group in Western Europe. They declared a ceasefire in 1997 and in 1998 Sinn Féin, its political wing, signed the Good Friday Agreement aimed at establishing a power-sharing government in Northern Ireland.
RAF	Rote Armee Fraktion (Red Army Fraction): formed in the late 1960s this group became one of the leading Fighting Communist Organisations in Europe. It lost its momentum following the suicides of its key leaders in gaol, and eventually disbanded in March 1998.
UN	United Nations
UNSC	United Nations Security Council
US/ USA	United States/ United States of America

* Information on terrorist groups taken from: Paul Wilkinson, Terrorism Versus Democracy, The Liberal State Response

1 Introduction

“A long dispute means that both parties are wrong.” -Voltaire

1.1 Purpose and delimitation

Say the word terrorism and people immediately associate it with images of attacks by suicide bombers, hijackings of civilian aeroplanes, or the twin towers of the World Trade Center disappearing in a cloud of dust and flames. This one-dimensional picture of terrorism is often given to us by the media. They tend to provide us with an approach describing terrorism in oversimplified terms and giving terrorism a disproportionate amount of attention. In our society terrorism is often described as indiscriminate killings performed on civilians by small groups or networks of fundamentalists. However, a closer look at the subject reveals a multitude of new dimensions. Even if it might seem clear, at first glance what terrorism is, one of the main problems is that we do not yet have general agreement on what we mean when we talk about terrorism. The word terrorism certainly has a negative connotation and most people agree that something must be done to stop it, but in order for us to fight terrorism and constitute laws on the subject there must first be mutual agreement or understanding of what we are fighting.

This thesis will concentrate on two major questions: 1) how to define terrorism and 2) how it is regulated in law. The first question of the two is by far the most difficult to answer. For years, great efforts have been put into the question of how to define terrorism. The problem has hardly been a lack of propositions, on the contrary, there has rather been too many. The aim is to find a definition that is as neutral and objective as possible, a definition that can get universal acceptance. This thesis will not include a list of all possible or existing definitions on terrorism. That would hardly give the reader any better understanding of the problems of defining terrorism. Instead, I have put great effort into finding and classifying the most important characteristics of the different definitions. My purpose is to give the reader a good understanding of the political and philosophical issues surrounding the definition of terrorism. Once the fundamentals of a definition are identified we can discuss them from new perspectives and search for an objective answer.

The second question, of how terrorism is regulated in law, gives us the opportunity to look at what is being done or could be done from a legal point of view to stop terrorism. The main objective is to examine the legal responses to the phenomenon of terrorism at three different legislative levels (state, regional and international level). The international level primarily includes the most relevant conventions concerning terrorism. A few other aspects of international law are mentioned, but other sources of law like UN

olutions etc. are not treated.¹ On a regional level the choice fell on Europe, as it has the most recent and, from my point of view, the most interesting international legal cooperation on terrorism. The focus lies on the new legislation on terrorism, but some attention is also given to the earlier convention. On the national level Swedish anti-terrorist legislation is presented in a chronological order. Emphasis is put on the major changes from 1973 until the implementation of the EU- legislation in 2003.

interest in terrorism, amongst states and especially scholars, seems to be particularly intensified in periods of frequent or spectacular terrorist attacks. After the terrorist attacks on 11 of September 2001 the discussion on terrorism has once again been intensified and many states feel threatened and are currently mobilising to combat terrorism. The United Nations has launched The Global Programme against Terrorism and the Security Council has passed a resolution that established The Counter-Terrorism Committee of the Security Council (CTC).²

However, in order to combat terrorism, a state might also feel urged to take steps to prevent or punish by other means than just constituting laws. Methods, like a coercive response including violence might be legal. It is discussed in what cases such a response might be acceptable and if the attack on Afghanistan in the aftermath of the events of 11 September 2001 was righteous. Before my final analysis and remarks are made, there is a proposal of what future responses to terrorism could be.

Lastly I would like to specify that however tempting it might be to discuss the question of why terrorism exists in the first place, there is no possibility of including that subject in my thesis. Being aware of how important such a study might be for the understanding of terrorism and its development, I believe that this is best left to other scholars and disciplines.

1.2 Method and material

The most challenging part of this thesis has been to work on the definition of terrorism. In order to write that chapter, numerous definitions had to be studied and compared. A comparative analysis between these gave me the most frequent components and elements of the different definitions of terrorism. Once I had these components I grouped and classified them into a certain structure. This structure was then used as a model to describe the composition of a definition on terrorism. For each component there is a discussion of the problems and considerations of its content. In relation to three of these components I have constructed models in order to clarify the relation between different arguments.


Other parts of the work, like the history of terrorism or the presentation of different international conventions and national law, mainly depend on a

¹ Unfortunately, treating all the UN resolutions on terrorism lies outside the scope of this thesis. However, I continuously refer to UN resolutions when it is considered necessary or of particular interest.

² <http://www.unodc.org/unodc/terrorism.html>


descriptive method. In addition, some comparative analyses are made to highlight specific differences.

It is important to note that even if my attempt is to find a definition as objective as possible there is an underlying assumption from the start that terrorism is a designation of an undesirable behaviour. From there I have tried to reach a fair solution of what could fall under such a designation. The mission of finding an objective definition does not prevent the fact that the analysis will to some extent be subjective. This being an inevitable fact since my legal training and cultural perspective is European and most of the authors that I have studied can be considered belonging to a Western tradition.

Most of my sources were academic writings, either from books on the topic or from articles in law journals. However, far from all of them were specialised in law. Those specialised in another subject naturally had a somewhat different angle and approach to terrorism. A philosopher for example tends to concentrate or focus his attention on the moral questions of a definition, while a legal scholar considers the meaning of words and the practical consequences of a definition. One problem is that many authors write on the subject of terrorism without defining the term. This leaves the reader with two options; either to read between the lines and try to find out what that author includes in his/her definition of terrorism, or just to assume that the author means the same thing as the reader when he talks about terrorism, the last option of course being a risk and an unacceptable solution. Some authors do define the term terrorism but avoid the question of why they define it in that particular way. All these factors contribute to the difficulty of giving a fair and balanced definition of terrorism.  difficulty of writing about an undefined phenomenon became especially evident while writing the chapter of “The history of terrorism”. It is almost impossible to describe the history of something that we have not yet defined. The final solution was to make the chapter very brief and to let the content be guided by books on terrorist history.

Most authors on the subject of terrorism seem to be male, but even if the female authors on the subject are scarce, it seems as if we could draw the conclusion that they do not approach the subject in a different way than male authors do. Neither have I myself applied any feminist theories on the subject.

1.3 Disposition

After this introduction the second chapter brings up the history of terrorism and presents the origin of the word and how terrorism has developed over time. The third chapter deals with one of the main questions of my thesis, namely how to define terrorism.  chapter starts by presenting the history of the work on defining terrorism and the efforts made by the UN on the subject. Then there is a short section where the problems of defining terrorism and the technical difficulties that arise from different political problems are discussed. In the most extensive section of the chapter I present and examine different components that could be a part of a

definition of terrorism. The chapter ends with a presentation of a definition on terrorism. In chapter four I set out to work with the second question of my thesis. The chapter deals with legal responses, laws and conventions that regulate the phenomenon of terrorism on three different levels. Firstly, international law and its advantages and disadvantages are discussed. Secondly, on a regional level Europe and its regulations are discussed. One of the most important things in this section is the new framework decision on combating terrorism. Thirdly Sweden is brought up as an example of national legislation. To round up the chapter there is a comment on the EU's definition on terrorism, its intention being to compare the definition to the legal definition proposed in chapter 3. The fifth chapter takes a closer look at the rules that control coercive responses to terrorism. The violence used against Afghanistan by the US in the aftermath of the events on the 11 of September 2001 is discussed in particular. And finally an effort is made to point out a direction of the work to come. A few suggestions and proposals are made for future responses to terrorism. The sixth and last chapter are my final remarks and conclusions of the work on terrorism that I present in my thesis.

2 History of Terrorism

2.1 The concept of terrorism develops

One of the earliest examples of terrorism, which is known to us, are the acts committed in Palestine in the beginning of the first century during the Zealot struggle where Jews fought the Roman Empire who occupied their region.³ The most fanatic group of the Zealots was the religious sect Sicarii. They were extremists and refused laws imposed by an earthly power. Only God could be accepted as their ruler. They attacked both their opponents and the more liberally minded of their own people, using unorthodox tactics such as attacking in daylight, preferably when big crowds were gathered to celebrate holidays.⁴

The term “terrorism” is of a much more recent date than the type of violence itself. During the French revolution the word “terror” was used to describe the activities of the Jacobin regime. They used the term in a positive sense when they talked about themselves.⁵ After the death of Robespierre the word terrorism referred to his “reign of terror” in a negative way. Terrorism “[...] acquired a wider meaning in the dictionaries as a system of terror. A terrorist was anyone who attempted to further his views by a system of coercive intimidation.”⁶ Ever since, the word has been associated with negative and criminal behaviour.

In the second half of the 19th century terrorism became a word that described a systematic policy of a group. At this time it was used by the anarchist movement and the nihilist doctrines that developed in Russia.⁷ In the same period other groups like the radical nationalists of Serbs and the Irish used the same methods in their fights for national liberation.⁸

2.2 Terrorism in the 20th century

In the beginning of the 20th century the methods of the anarchists were adopted by new organisations but the number of terrorist attacks declined. Thus the assassination of Archduke Franz Ferdinand in 1914 by a young

³ Björn Kumm, *Terrorismens historia*, pp. 36-38 [hereinafter Kumm]

⁴ Walter Laqueur, *A History of Terrorism*, pp. 7-8 [hereinafter Laqueur]

⁵ One of the revolutionary leaders, Maximilien Robespierre (ruler between September 1793- July 1794) had almost 40 000 people killed. His aim was to use collective fear to get rid of the enemies of the French people. The enemies were all those that in some way had supported the former regime. He said that: “La terreur n’est autre chose que la justice prompte, sévère, inflexible” [approximately: Terror isn’t anything but prompt, severe and inflexible justice.] Kumm pp. 28-29

⁶ Laqueur, p. 6

⁷ Peter Chalk, *West European Terrorism and Counter-Terrorism*, pp. 46-47 [hereinafter Chalk]

⁸ Laqueur, p. 11

Serbian student is worth mentioning since this particular terrorist attack triggered World War I.⁹

In the 1940s, 1950s and early/mid- 1960s the world saw a new wave of systematic and deliberate terrorist attacks, used to gain national liberation in the colonial struggles. During this period three important developments took place, each one of them being a factor that still affects terrorism today. First of all the legitimate target group was widened to the extent that almost any target was a legitimate target. Secondly, Jean-Paul Sartre and Frantz Fanon developed a philosophy that could be used as a justification for the use of terror. Thirdly, groups within the Palestinians, Algerians and Cypriots had gained sympathy for their cause by using terrorist methods. This had in return helped them to neutralize a big part of the colonial military powers, and inspired other groups to use the same methods.¹⁰

The fact that colonies gained their independence did not mean that terrorism was extinguished. In former colonies different ethnic groups have since decided to use guns and bombs in their fight for independence but they have been far less successful than their precursors in obtaining their goals.¹¹

In the 1960s and 1970s terrorist groups were affected by the Cold War and the ideological conflict between east and west. At the same time these groups became more mobile and built international networks and close relationships throughout the world. A good example is the PLO that in the late 1970s was the main provider of training camps that taught techniques of terrorism. They also received economic support from the Soviet Union.¹² During the Cold War years, terrorism had mainly two purposes, either national self-determination or the overthrowing of the capitalist and imperialist system by a proletarian revolution. Groups like ETA, IRA, PLO and FLNC were fighting for the first goal, RAF, AD and BR for the latter.¹³ As an example, the members of the RAF came from a privileged environment and often had university education. They were ideologically motivated and had developed their own kind of rationality within the group. They were also strongly influenced by Sartre and other philosophers' ideas. In a way terrorism itself became a part of their ideology and lifestyle.¹⁴ In the late 1970s and early 1980s a change occurred and the militant Islamist movement became the major terrorist threat to Western countries. These radical Islamist groups used terrorist methods in their fight, which they in most cases believed to be a holy war. They also believed that becoming a martyr was God's will and plan for them.¹⁵

⁹ Kumm, pp. 68-69 (We could question whether it was a terrorist act or a political assassination, however at the time when it was committed it was regarded as a terrorist act.)

¹⁰ Chalk, pp. 49-51

¹¹ Paul Wilkinson, *Terrorism Versus Democracy, The Liberal State Response*, p. 26 [hereinafter Wilkinson]

¹² Wilkinson, pp. 28-29


¹³ Chalk, pp. 54-56

¹⁴ Wilkinson, p. 27

¹⁵ Wilkinson, pp. 34-36

During the Cold War era there was a considerable increase in international terrorist activity. This was due to many different factors, among them socio-economic, political and environmental factors. Wilkinson points out especially three main reasons; The Six Day War in 1967 that made the Palestinians aware of their desperate situation, the shift from rural guerrilla war to urban terrorism in Latin America and lastly the abhorrence small groups on the extreme left in industrialised countries felt against the capitalist system.¹⁶ When the pressure between the two main opposite ideological poles, communism and capitalism, was relieved after the Cold War, other tensions of economical, territorial, ethnic, religious and political character became the new issues on the agenda.¹⁷

Militant Islamic fundamentalism is one of the most serious threats today, especially since the 11th of September 2001, when we saw what they were capable of. However, we must not forget that there are other threats as well. For example, Germany was the tenth most affected nation in the world by terrorism between 1990-1993. During these years far-right and militant neo-nazi groups stood behind virtually all of these attacks.¹⁸

 We must also keep in mind that state terrorism, as it developed during the French revolution, still exists today. In the 20th century the world witnessed the efficient terror apparatuses of the Nazi and Soviet regimes and even with these terrible totalitarian regimes gone, there are still other states that depend on terror as an instrument of internal repression and control.¹⁹

The problem of terrorism has been addressed within the United Nations at several times and over the last forty years there has been an ongoing debate about how to define the word terrorism. The outcome of these discussions is encouraging and disappointing at the same time. Today some people question whether we will ever be able to agree upon a definition, or if we even need one. In the next chapter the problems of defining terrorism are examined and discussed.

¹⁶ Wilkinson, pp. 28-30

¹⁷ Chalk, p. 65

¹⁸ Chalk, p. 81 [These figures are calculated and based on the definition of terrorism that Chalk uses.]

¹⁹ Wilkinson, pp. 41-43

3 The challenge of defining terrorism

Already in 1937 the League of Nations, the predecessor of the UN, held a conference on the issue of terrorism. Two conventions were drafted, one that described the crime of terrorism and another that set up an International Criminal Court with jurisdiction over terrorist crimes. However, the innovative and radical measures taken in the two conventions never had the chance to be put into practice. The conventions had only been ratified by 13 states at the outbreak of the Second World War and they never entered into force.²⁰

In the early 1970's when the world saw an increase of terrorist actions the UN decided to make an attempt to find a solution to the problem of terrorism. Certain states and scholars became aware that the problem of terrorism would not disappear by itself, rather it would gradually grow worse. The discussions in the UN ended up in a political argument between two blocks of its members, north versus south. Most of the arguing dealt with whether a certain motive or purpose behind an act of violence could excuse or justify the crime.

These difficulties encountered by the UN and the efforts that have been made to find a common definition on terrorism will be presented in the first part of this chapter. Thereafter a few of the problems relating to the defining of terrorism are described. The pros and cons of these problems are then discussed in the section on the different components of a definition. The chapter is rounded up by a proposal of a definition of terrorism.

3.1 The UN attempts to define terrorism

In 1972, after 11 Israeli athletes were killed at the Munich Olympics, the Secretary-General of the United Nations, Kurt Waldheim, asked the General Assembly to consider terrorism as an issue for the 27th session. Protests by developing states led to modifications of the Secretary-Generals proposal so that it would not only include the prevention of terrorism but also focus on the underlying causes to it. Finally the title of the request read:

“Measures to prevent International Terrorism which Endangers or Takes Innocent Human Lives or Jeopardize Fundamental Freedoms, and study of the Underlying Causes of those Forms of Terrorism and Acts of Terrorism 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”.²¹

The issue was added to the agenda but a gulf between the Western states and the developing states, supported to various degrees by Eastern-bloc states,

²⁰ Wilkinson, pp. 188-189 and William Bourdon, *La Cour pénal internationale- Le statut de Rome*, p. 16 [hereinafter Bourdon]

²¹ Wilkinson, p. 190

was evident and it came to play an important role in the 1970's. On one hand stood the Western states that wanted international legislation to consider certain acts of violence unlawful regardless of the motivation behind them. The Developing states on the other hand made clear that acts committed to obtain national liberation or self-determination must be excused and not considered terrorism.²²

At the 27th session the United States put forward a convention to prevent and punish acts of terrorism.²³ However, the convention was not adopted, but Instead Resolution 3034 was adopted.²⁴ This resolution professed the right to self-determination and national liberation and focused on the underlying causes of terrorism. Furthermore, it condemned repressive terrorist acts committed by racist, colonial and alien regimes that did not accept this right to self-determination.²⁵

In the summer of 1973 an Ad Hoc Committee on International Terrorism was set up. It consisted of 35 states divided into three groups, where each group discussed one of the following issues; the definition of terrorism, the underlying causes to terrorism and how to prevent terrorism.²⁶ Several problems arose in these discussions. First of all it was questioned whether or not it was necessary to define terrorism at all and thereafter what such a definition should include. Some states argued that it would be easier and quicker to put forward a non-exhaustive list over crimes that would constitute terrorism. The most fundamental difference lay, as earlier, in the disparity of opinion about national liberation and whether or not the motive of national liberation could excuse any crime or act of violence.²⁷ The final result of the Ad Hoc Committee was discouraging, as it did no more than report the different opinions that had been revealed during its meetings.

The question of terrorism was put aside for a few years but in 1976 the General Assembly passed a resolution²⁸ asking the Terrorist Committee to go back to work with the same mandate as earlier. The resolution expressed concern over the increase of terrorist acts. However, the second Terrorism Committee was not more successful than the first one.²⁹

A turning point came when the Terrorism Committee was invited for the third time in Resolution 32/147.³⁰ This time the mandate was slightly

²² Joseph J Lambert, *Terrorism and Hostages in International law*, pp. 30-35 [hereinafter Lambert]

²³ Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, for details of content see John Norton Moore, *The Need for an International Convention*

²⁴ GA Res 3034 (XXVII) of 18 December 1972, UN GAOR, 27th Sess.

²⁵ Lambert, pp. 36-37

²⁶ Wilkinson, p. 190

²⁷ Lambert, p. 37

²⁸ GA Res 31/102 of 15 December 1976, UN GAOR, 31st Sess.

²⁹ Lambert, p. 40

³⁰ GA Res 32/147 of 16 December 1977, UN GAOR, 32nd Sess

modified. The study of the underlying causes to terrorism would come first and thereafter recommendations on practical measures of how to deal with terrorism would be discussed.³¹

For the first time the Terrorist Committee reached an agreement and recommended a number of cooperative measures for eliminating terrorism to the General Assembly. These were adopted by the General Assembly in Resolution 34/145 in 1979.³² In this resolution we find the first condemnation of political acts of terrorism. It condemns “[...] all acts of international terrorism which endanger or take human lives or jeopardize fundamental freedoms.”³³ In 1981 the General Assembly was able to adopt a resolution condemning terrorism without at the same time condemning terrorism by regimes that deny peoples the right to self-determination.³⁴

After the *Achille Lauro* incident, in 1985, when an Italian cruise ship was hijacked by the PLF in international waters, another breakthrough was made within the United Nations. A resolution was adopted that condemns terrorism in stronger and reinforced terms compared to those before, even though it does mention the exception of national liberation and self-determination fighters. Moreover it continues by urging member states “[...] to take measures for the “speedy and final elimination of the problem of international terrorism”, such as: the harmonization of domestic legislation with existing anti-terrorism conventions [...]” and “[...] the apprehension and prosecution or extradition of terrorists [...]”.³⁵ In 1987, yet another resolution was adopted which fortified the results obtained in the resolutions in 1985 and 1979. Both in the actual text and in the preamble it is more extensive in its strong condemnations of terrorism.³⁶ A slow change in attitude amongst the UN member states appeared in the late 1980’ and early 1990’s, towards a consensus of condemning all acts of terrorism³⁷.

3.1.1 What are the results and why are they so poor?

Today both the General Assembly and the Security Council present resolutions strongly condemning terrorist acts committed “[...] wherever and by whomever [...]”.³⁸ Still, doubt remains. Sometimes these resolutions contain loopholes, leaving the possibility to argue that people have the right to self-determination and the right to use force. In my opinion, these loopholes are not even necessary since terrorism is still left undefined and anybody could argue that their use of violence is not at all terrorism.

³¹ Lambert, p. 40

³² GA Res 34/145 of 17 December 1979, UN GAOR, 34th Sess, Lambert, p. 41

³³ Lambert, p. 42

³⁴ GA Res 36/109 of December 1981, UN GAOR, 36th Sess, Lambert, p. 42

³⁵ GA Res 40/61 of December 1985, UN GAOR, 40th Sess, Lambert, p. 42,

³⁶ GA Res 42/159 of 7 December 1987, UN GAOR, Lambert, p. 43

³⁷ Lambert, p. 44

³⁸ See for example GA Res 49/60, Declaration on Measures to Eliminate International Terrorism, p. 4 and S/ Res/ 1456 (2003)

Additionally there is proof of this ambivalence in the United Nations 'Declaration on Principles of International Law', where the right to self-determination is at the same level in the hierarchy as the obligation to refrain from the threat or use of force. It further says that states have a duty to promote the realisation of peoples' liberation and that people has the right to seek and receive support to obtain its national liberation. They are of course both two very important principles but the current order creates uncertainty and leaves enough space for states to argue that the fight for national liberation excuses terrorism.³⁹

An organisation like the United Nations, consisting of a large number of member states and built on the principle that every one of these states is sovereign and has equal rights, naturally contains various different opinions. If the cultural, economical and political differences are added to the difficulty created by the sheer number of member states, it is evident that agreeing and finding universal consensus on terrorism is a difficult task. Paradoxically, it seems like the more terrorist attacks we undergo the more willing all the states seem to agree upon condemning terrorism. If you are threatened, you are likely to take measures to protect yourself. On the other hand, Wilkinson points out that states are unwilling to cooperate because they are afraid of getting involved and becoming a target of retaliation.⁴⁰ The, to some extent, discouraging result is that there still is no universal definition of terrorism but there are several resolutions condemning terrorism. Since 1963 the international community has elaborated 12 multilateral conventions that treat different crimes associated with international terrorism.⁴¹ The issue of defining terrorism and elaborating a universal convention is still on the UN agenda. Since 1996 an Ad Hoc Committee, open to all State Members of the UN, has been working on different drafts.⁴² Today there seems to be agreement upon the definition in large terms. However, disagreement prevails in the issue whether the convention should or should not explicitly mention that situations of foreign occupation are not governed by the convention on international terrorism.⁴³

3.2 Difficulties in defining terrorism

There is today a wide range of definitions to be observed. Many authors have come up with different solutions and almost every state has their own definition but it is also an inevitable fact that there is no definition that has found universal acceptance. Defining terrorism is a task that includes

³⁹ Wilkinson, p. 189

⁴⁰ Wilkinson, p. 200

⁴¹ See under 4.1.1 for more detailed information on these conventions.

⁴² The first three years the working group of the Sixth Committee mainly focused on the suppression of the financing of terrorism and the suppression of acts of nuclear terrorism. A/C.6/52/L.3, 10 October 1997, A/C.6/53/L.4, 22 October 1998, A/C.6/54/L.2, 26 October 1999.

⁴³ The text that explicitly excludes foreign occupation is proposed by the Member States of the Organization of the Islamic Conference. A/C.6/57/L.9, 16 October 2002 (especially pp. 7-9), A/C.6/56/L.9, 29 October 2001.

numerous difficulties. Many of these can be traced back to the fact that the subject of terrorism is emotionally highly charged. There is also a multitude of actors, with cultural and political differences, trying to make their particular definition recognised. Both domestic and international politics play an important role and contribute to the fact that no solution has yet been found.

When we define the word terrorism we actually want to find two or more words that can replace and explain to us what terrorism is. Alex Schmid puts it this way:

“A definition is basically an equation: an [sic!] new unknown or ill-understood term (the definiendum) is described (defined) by a combination of at least two old known, understandable terms (the definiens) [...]. If the right side of the equation contains less than two terms the equation is not a definition but a synonym, a translation or a tautology. A definition says what a word is meant to mean.”⁴⁴

First we must agree upon what we want to define. We must agree on what kind of acts fall within the concept of terrorism and then try to put that in print. Once we have a definition it becomes possible to compare our concept of terrorism to those of others. But we are still far from that point. Even if we agreed upon which acts should be considered terrorism we might disagree on what people could commit them. And even if we came to an agreement on both these points we might not be able to agree upon when to apply the rules. We could question whether it might be justifiable or at least understandable to use this kind of violence in certain situations.

It is important that the definition does not become too extensive, including all kind of acts committed by anybody. On the other hand a definition too narrow would perhaps fail to include certain acts of terrorism. Of course a sort of manipulation could be done intentionally if you for some reason want to narrow down your definition. For example, if you for some reason want methods that are used by people fighting for national liberation to be differentiated from terrorism, you must also create a definition that prevents such acts from falling within your definition of terrorism.

Another way of twisting the definition is by accepting an existing one as it stands but also accepting certain exceptions to it. For example, if a government sympathises with a certain group's political opinions or goals in a neighbour state, they may choose to call that group's illegal actions political crimes instead of labelling them ordinary or terrorist crimes. The political aspect of the issue is well illustrated by the devise “one man's terrorist, another man's freedom fighter”.⁴⁵ What for some might symbolise the most horrible actions performed on innocent civilians may for some symbolise heroic actions made in the fight for a just cause.

In the same way governments that engage in terrorist activities themselves may refuse to acknowledge that these actions are actually terrorism. This is


⁴⁴ Alex P. Schmid, *Political terrorism: a research guide to concepts, theories, databases and literature*, p. 5 [hereinafter Schmid 1984]

⁴⁵ This is a common expression that exists in different forms, but with only small variations.

why the question of who defines terrorism is so important. With the power of defining terrorism, we also implicitly have the power to legitimise the violence that we use ourselves, against our opponents. Our opponents become the terrorists and all our own actions become legitimate because we are acting in self-defence. The term becomes a weapon in a symbolic struggle, where one side is automatically seen as illegitimate while the other enjoys a broad support.

The meaning of the term itself could be considered the most fundamental, but far from the only aspect of terrorism that contains differences in opinion. Other controversial aspects: why does terrorism exist in the first place, which is the best way to prevent it, and how should we punish those engaged in terrorist activities.

3.3 Different components of a definition

There are many different ways to approach the task of defining the term terrorism. In an effort to come closer to the solution of this task I have grouped  most interesting and common defining components into five different categories. Each category is presented in a separate section containing a discussion about whether its components can construct a definition of terrorism or constitute a part of a definition. The five categories are presented in the following order:

- International and domestic terrorism

- The perpetrator, i.e. who commits acts of terrorism

- Targets, i.e. against whom are the acts of terrorism committed

- Acts of terrorism, i.e. what type of acts can be considered terrorism

- Motive and purpose behind the acts

The first three categories are not at all uncontroversial but to a large extent less ambiguous to discuss than the last two categories that are more intricate and in my opinion also more interesting. This is also the reason why the last two are given a more extensive treatment than the other three.

3.3.1 International and domestic terrorism

In this first category a distinction is made between domestic and international terrorism. At least from a legal point of view, such a distinction may have a certain value since international law, in most cases only would be applied to international terrorism.

Domestic terrorism, also called interstate or internal terrorism, can be characterized as terrorism restricted to a single state or region where the terrorist acts are either directed against the state by its own citizens or committed by the state against its own population.⁴⁶


International terrorism has, as the name implies, an international element. When such an international element is at hand is subject to some

⁴⁶ Lambert, p. 22 and Wilkinson, p. 13

controversy. Wilkinson writes that international terrorism is “[...] an attack carried out across international frontiers or against foreign targets in the terrorists ‘state of origin’.” He also adds that most terrorism could be considered international since most groups tend to get support, weapons and safe havens abroad.⁴⁷ Lambert comes to the conclusion that a terrorist act would be considered as international whenever the citizens, territory or entity of a second state are involved.⁴⁸ Bassiouni adds that an act of terrorist violence could also be considered international if it violates an international norm.⁴⁹

Another author, Thackrah, writes that the term international terrorism is not implying the existence of a terrorist group that coordinates its acts of violence in different countries.⁵⁰ Instead he refers to the definition given by the Central Intelligence Agency (US), which states that international terrorism is terrorism carried out by groups or individuals that are controlled by a sovereign state.⁵¹

The conclusion of this is that international terrorism always requires an international element but that there is no agreement as to what constitutes such an element. For legal purposes such a definition would be valuable, but for social sciences being only of little or no value. Furthermore, many states, and also scholars, see the international element as indispensable in order to even consider acts of violence as terrorism.⁵² This view is probably due to the fact of state sovereignty. Acts of violence that we could call domestic terrorism are regarded as internal affairs of a state and therefore inevitably not regulated in international law.⁵³

 opinion is that there is no reason to exclude domestic terrorism from a general definition of terrorism. Whether the acts are committed entirely within one state or whether there has been some kind of international element involved does not change the fact that these acts constitute terrorism. Put in another way, I do not see how an international element would make a difference between two identical acts of violence in a way that would classify one of them as terrorism and the other, for example, as ordinary crime. Furthermore, since most domestic terrorism, in fact, has some kind of international connection the problems of delimitation between the two (international and domestic terrorism) would probably be just another source of difficulty.

⁴⁷ Wilkinson, p. 13

⁴⁸ Lambert, pp. 22-23

⁴⁹ M. Cherif Bassiouni, *A Policy-Oriented Inquiry into the Different Forms and Manifestations of ‘International Terrorism’*, p. xxiii [hereinafter Bassiouni]

⁵⁰ R Thackrah, *Terrorism: A Definitional Problem*, p. 33 [hereinafter Thackrah]

⁵¹ Thackrah, p. 27 and p. 33

⁵² For examples see: French definition of terrorism, Farhad Malekian, *International Criminal law* p. 79 [hereinafter Malekian] and a definition agreed upon by an International Conference held in 1973, *International Terrorism and Political Crimes*, Ed by Bassiouni & Charles C Thomas, p. xiv


⁵³ With the exception of certain laws that could be applied on domestic terrorism depending of its character, like laws concerning genocide, torture, armed conflicts etc.

3.3.2 The perpetrator

It is obvious that those who commit acts of terrorism are considered terrorists.⁵⁴ But who are these potential terrorists? Are there specific characteristics that identify perpetrators of terrorism or could anybody be characterized as a terrorist?

Generally most authors distinguish between two different kinds of perpetrators, namely between those who act on behalf of a state and those who act personally or with the support of a group. This lays the ground for a distinction between individual and state terrorism.

Individual terrorism (fractional terror/ sub state terror) includes acts committed by individuals in small as well as in large groups.⁵⁵ It is difficult to generalise about these groups but they usually act from below and are often anti-state.⁵⁶

State terrorism (terror/ state terror) is when a state's nt or organ conducts threats or uses violence; either on its own population as a whole, as a segment thereof (like a minority or political opposition), or on the population of an occupied country.⁵⁷

There is also a subcategory of terrorism: **state-sponsored terrorism**. This is when a government supplies a group with intelligence, money, weapons, false identities etc. This could be conducted in different forms and to various extents and is mostly done with the purpose of changing politics of another state or promoting your own in the same.⁵⁸ Sometimes there is a distinction made even within this group, between *state-sponsored terrorism* and *state-supported terrorism*, where the difference is that the state is more actively involved in the first type. The state could even be in charge of the decision-making and actually control the group that carry out the attacks, while state-supported terrorism consists of just helping already existing groups.⁵⁹

This division of individuals and states into two different categories has not in itself been very controversial, but the disagreement on these two categories as perpetrators of terrorism is extensive. States have often been reluctant to see state violence as terrorism and to a large extent omitted state terrorism from their definitions of terrorism. On the other hand, most scholars have argued that certain acts of violence, committed by states, are state terrorism and that it must be included in the notion of terrorism.

⁵⁴ See for an example Bassiouni p. xv

⁵⁵ This group is in some cases divided into two separate groups; that of individuals, acting entirely on their own and those acting collectively in groups. Malekian p. 79

⁵⁶ Lambert, pp. 14-17

⁵⁷ Lambert, p. 16

⁵⁸ Wilkinson, p. 66

⁵⁹ Encyclopedia of Terrorism, Ed by Cindy Combs & Martin Slam p 198. Another author, Cassese, takes it a step further when he distinguishes six different levels of help given by a state to terrorist groups. Antonio Cassese, The International Community's "Legal" Response to Terrorism, p. 82 [hereinafter Cassese 1989]

Wilkinson points out that state terror has been “[...] vastly more lethal and has often been an antecedent to, and a contributory cause of, factional terrorism.”⁶⁰ Another author, Malekian, takes this thought even further when he states that individual terrorism is “in most instances, the consequence of state terrorism.”⁶¹ He sees state terrorism as the most dangerous type of terrorism. Not only because it has killed a greater number of people but because he sees their actions as a danger to the international legal order, the international community of nations as a whole while individual terrorism (only) endangers innocent persons.⁶² He even hints that the *real terrorists* are the states.⁶³

In Resolution 1269 the UN Security Council condemns all acts of terrorism, “[...] by whomever committed”.⁶⁴ Such a statement certainly has a symbolic value but unfortunately does not give us an answer to the question of which acts are actually condemned. Since terrorism is not defined it is unclear whether this condemnation would include for an example domestic state terrorism. However, it seems justifiable to assume that state-sponsored terrorism is included when the document goes on and affirms “[...] that the suppression of acts of international terrorism, including those in which States are involved, is an essential contribution to the maintenance of international peace and security”.⁶⁵

Another issue is whether one could be classified as a terrorist on the mere fact that he/she belongs to a specific group or holds specific beliefs. The Swedish terrorist law used to make this kind of generalisation at a time when membership in an organisation that could be suspected of committing political violence in Sweden was sufficient to become classified as a terrorist.⁶⁶ Yet another question would be whether all violence committed by a person that we consider a terrorist, because they have committed acts of terrorism (or belongs to a terrorist group), should automatically be considered terrorism. The most logical answer would, in my opinion, be that every act and every person must be examined individually to give the most accurate answer to the question whether an act of terrorism has occurred or not. The single criteria of supporting or belonging to an organisation cannot in itself answer the question whether someone is a terrorist and if his/her acts can be classified as terrorism.

The categorisation of perpetrators does not tell us much about in which cases a certain actor should be classified as a terrorist, but in some cases, which should not. The perpetrator category could be used to exclude different groups, for example soldiers, from falling within the definition of terrorism. The European Union, for example, excludes armed forces from their definition of terrorism, if the soldiers are taking an active part in an

⁶⁰ Wilkinson, p. 13

⁶¹ Malekian, p. 70

⁶² Malekian, pp. 76,77 and 89

⁶³ Malekian, p. 87

⁶⁴ S/ RES/ 1269 (1999), Preamble

⁶⁵ S/ RES/ 1269 (1999), Preamble

⁶⁶ SFS 1973:162, see further under 4.3.1 Swedish Terrorist law of 1973

armed conflict.⁶⁷ Another kind of exclusion is often done for groups that fight for their self-determination and national liberation etc. Malekian writes “It is doubtful if violent acts perpetrated by nationals for their self-determination or freedom can be described as terrorism.”⁶⁸

It seems clear that both individuals and states can be guilty of committing acts of terror and terrorism. At least there is nothing at this stage that could justify an exclusion of states as perpetrators of terrorism merely from the fact that they are states. The law must apply equally to all, both states and individuals. We should not let state terrorism become legalized terrorism. Individuals and states could both be perpetrators of terrorism, and in the case of state-sponsored terrorism, both the state and the group given support might be considered perpetrators.

3.3.3 Targets of terrorist acts

Most scholars agree that a main component of terrorism is to create a climate of fear or to spread terror amongst a much larger group than the group of actual victims. This larger group is often named the ‘target of terror’. The actual victim, either picked randomly or selectively chosen because he/she is symbolic or representative of a group, can therefore in most cases not guide us to what terrorism is, in the meaning that the characteristics of the victim cannot answer the question of what should constitute terrorism. Most likely, nor could the much larger group, the target of terror, be used to identify terrorism since such a group in itself is hard to define.

In other cases, when the victim is also the actual target, a reference to these could likely be used to identify a terrorist act. For example, we could give a potential target a special status, from which it would be considered a ‘protected target’. If every diplomat, or every head of state, were considered protected targets, then every assassination of such a person, or even all acts of violence committed against them, would be considered an act of terrorism. In such a case, a definition with reference to the protected target would be possible. A definition like this of course has its limitations, as it is very specific and narrows down the concept of terrorism to only a fragment of it. In the United Nation’s work on terrorism, protected targets have played an important role but they have not been used as an element in a definition on terrorism.⁶⁹


3.3.4 Acts of terrorism

What kind of acts are acts of terrorism? Acts of terrorism could be of various kinds e.g. deliberate killings, hostage taking, sabotage, bombings,

⁶⁷ OJ L 164, 22.6.2002, p. 4

⁶⁸ Malekian, p. 112

⁶⁹ Rosalyn Higgins, *The general international law of terrorism*, p. 17 [hereinafter Higgins]. See also under 4.1.1.3 New York convention, providing special protection for certain persons.

etc. Taking state terror and state sponsored terrorism into account would add acts like mass arrests, torture, supplying weapons and cash. Almost all these acts imply the use of some kind of ence. Violence or the threat of violence is considered as the main component of an act of terrorism. Put in another way: “[...] terrorism is fundamentally a violent act.”⁷⁰ In the following passage there will be no attempt to make an enumeration of which kind of acts could constitute terrorism, instead the concept of violence and how it is used in acts of terrorism will be examined.


3.3.4.1 Violence

The word violence is found in most definitions of terrorism and it seems reasonable to conclude that terrorism in most cases includes some kind of violence. On the other hand, all types of violence do not necessarily constitute terrorism.

So what is violence? Since the spectrum of different definitions on violence is very broad it is difficult to establish the meaning of violence. It has been defined as being physical as well as psychological. Some might just include bodily injury when others include brainwashing, threats and indoctrination of various kinds.⁷¹ Different factors such as who is defining and within what context is the reason for these differences. The purpose of the definition naturally also plays an important role.

Schmid sees the diversity of definitions as a result of many different actors acting at different levels of discourse. He discerns three levels:

1. The common parlance discourse, expressed in lexical definitions of violence,
2. The political discourse, where the use of the term violence has often a labelling, guilt-attributing (or glory-claiming) function, expressed in legal language and media terminology, and
3. Social sciences discourse where operational definitions are sought for hypothesis testing and theory-construction.⁷²

Schmid means that there is an interaction and exchange between these three levels, which makes it more difficult to distinguish clear definitions of violence. He gives as an example that the third level can be dependent of funds from the erning to carry out research and that this dependence might form the way you choose to define violence.

Schmid also points out that especially scientists with legal training tend to use or to create definitions that refers back to the political level as a criterion of what should be considered violence. For example, if someone defines violence in terms of unlawful force, they are at the same time using the law that has been set up by the political establishment as a yardstick for what acts and when these acts should be considered violence.⁷³ A common phenomenon is that authorities usually tend to have a more restrictive way of defining violence while the opposition strive for a broader and more

⁷⁰ Encyclopedia of Terrorism, Ed by Cindy Combs & Martin Slam, p. 209

⁷¹ Schmid 1984, pp. 11-13

⁷² Schmid 1984, p. 14

⁷³ Schmid 1984, p. 14

encompassing definition, definition where for example violations or deprivations of declared human rights could be characterised as violence. But should a change of power occur it is common for the new authority to change from the broader point of view to a more restrictive definition of violence.⁷⁴

It would be wise to fix a minimum criteria for a definition of violence, namely that it can stand on its own, so that violence is defined in the same way irrespectively of who is in power. A definition that makes reference to the law risks being manipulated by the political authorities.

3.3.4.2 Threats of violence

If violence were defined as something that includes bodily injury as well as threats and psychological harassment then logically any definition of terrorism, built on the word violence, would regard threats as terrorism. Such a definition of terrorism would fail to differentiate between the fact that someone was actually hurt/killed or only threatened to be killed. It could be regarded as terrorism in both cases. However numerous definitions of terrorism explicitly declare that *the use of or the threat to use violence* is considered terrorism. This formulation implies that the authors do not include threat in the definition of violence. In the section below threats of violence are examined together with the question whether a threat of violence is enough to constitute an act of terrorism or not.

In one definition of terrorism the following is written about violence. “The violence need not be fully perpetrated, that is, the bomb need not be detonated or all of the passengers aboard an airliner killed, in order for it to be considered a terrorist act. But the capacity and the willingness to commit a violent act *must* be present.”⁷⁵

This implies that the threat to detonate a bomb on board an aeroplane would be enough to constitute violence (in a terrorist act), as long as the capacity and the willingness to commit the violent act were present.

Another author, Bauhn, considers the matter in a different way. He argues that we have to distinguish between the violent act and the threat of a violent act. If we accept the implicit threat of violence as an act of terrorism we must also accept an act of non-violent self-defence as terrorism. He gives an example of a man, A, that hits another man, B, in the face. B raises a clenched fist (with the object of changing the behaviour of A) against A. At this stage A thinks that B is likely to carry out his threat. B has in this case not committed a violent act but at the same time as he performs an act of non-violent self-defence, he also threatens to commit a violent act. Bauhn argues that including the threats of violence would make a definition too wide and too many acts would fall within the concept of terrorism.⁷⁶

Both opinions are worth considering. Bauhn argues convincingly and I agree that there is a clear difference between the mere threat to commit a

⁷⁴ Schmid 1984, p. 16

⁷⁵ Encyclopedia of Terrorism, Ed by Cindy Combs & Martin Slam, p. 209

⁷⁶ Per Bauhn, Ethical Aspects of Political Terrorism, The Sacrificing of the Innocent, p. 16 [hereinafter Bauhn]

violent act and actually committing one. There could be a risk of including too many acts if a threat to commit violence would also be considered as terrorism. However if we return to the presumed hijacking situation mentioned above, the point made by Bauhn is likely to pose problems. In almost every hostage or hijacking situation the perpetrator threatens to use violence but if his or her demands are met, normally there should be no casualties. In that case there was an intention to use violence, and the outcome is in favour of the perpetrator, but no physical violence has been used. With a definition of terrorism that excludes threat, such a hijacking situation could not be considered as terrorism. However since hijacking is often labelled as terrorism, to many, an act of terrorism has been committed.

There are several different solutions. Either we return to the discussion of defining the word violence and regard the mere threat to use the weapon against the hostage as a violent act and thereby the situation could be judged as terrorism. (We could also add that the hostage probably is terrified and convinced that the perpetrator is going to use the weapon.) Or we could let the discussion turn around the definition of terrorism. If we want all hijacking situations to be regarded as terrorism, our definition must include threats of violence. On the other hand if we consider Bauhn right, we must regard threats of violence as insufficient to actually constitute an act of terrorism and we might have to accept that hijackings are not always acts of terrorism. In the last case there is always a possibility of installing the offence of “threatening to commit terrorism”. I am in favour of this last solution, which would allow us to make a clear difference between those that commit acts of physical violence (bodily injury) and those who do not. Hijackings of course should still be considered hijackings even if they are not considered as terrorism.

3.3.4.3 Systematic violence

Wilkinson writes, “Terrorism is the systematic use of coercive intimidation, usually to service political ends.”⁷⁷ But does the violence or coercive intimidation actually need to be systematic to constitute terrorism? Such a criteria in a definition is questionable. It might often be true that terrorists, engaged in a fight to reach an objective, are using violence systematically but it could also be that they only perform one or a few attacks. In my opinion, to add “systematic” as a criterion in a definition would exclude acts that could be labelled terrorism.⁷⁸ Thackrah also gives support for this opinion when he writes, “Terrorism can occur at an instant and by one act.”⁷⁹

3.3.4.4 Political violence

All violent acts could indeed constitute terrorism but can every shooting or assassination be characterized as terrorism? There are many examples of violent acts that are not generally considered as terrorism, like the killing of a soldier on the battlefield by another soldier or the shooting of an innocent

⁷⁷ Wilkinson, p. 12

⁷⁸ If an attack has a sufficiently large impact, one single attack could be enough for a group to obtain their goals.

⁷⁹ Thackrah, p. 34

civilian during a bank robbery. Violence is a key concept of terrorism but to be able to distinguish between violent acts in general and terrorism there are other factors that must be added to the definition.⁸⁰

The fact that an action is threatening to harm or actually harms people is hardly enough to constitute terrorism. One solution is to add the epithet political to the word violence. Terrorism could rightfully be described as political violence, but along with this solution new problems are likely to appear. Not least the question of how to define political violence.⁸¹

In the United Kingdom, terrorism has been defined as “[...] the use of violence for political ends, including any use of violence for the purpose of putting the public or a section thereof in fear [...]”.⁸² This is a wide definition of terrorism where the element of violence seems to play the main role. Violence is classified as terrorism if it is committed for the purpose of certain political ends or with the aim to put the public in fear. In my opinion, a definition like this is likely to include non-terrorist acts. At least violence for political ends could most certainly be found in situations that one does not normally consider as terrorism. Should a political demonstration or meeting that partially becomes violent really be considered as terrorism? How much violence is required? Would the ‘violence for political ends’ also apply to security forces that use force in their efforts to stop demonstrators? Their actions could just as well be classified as serving the political ends of the authorities.

A list over violent acts that constitute terrorism is by far the easiest way to go about when dealing with the problem of defining terrorism. No doubt this is also the reason why the international contemporary legislation on terrorism has not come further than just an enumeration of certain acts that constitute terrorist crimes. However, an enumeration does not *solve the problem* of how to distinguish terrorism from other types of violence. Evidently other tools are needed to make such a distinction. I will analyse elements further required to make an act, an act of terrorism in the next section.

3.3.5 Motive and purpose

A deliberate act naturally has a motive or purpose. In our concept of what should constitute terrorism there is vague feeling that there must be strong motives behind these acts that often are deliberate killings. It is in fact the motivation and purpose of the act that in most existing definitions differentiates it from ordinary crime.

But is there actually a need to make a distinction between crimes committed by politically motivated individuals from the ‘ordinary criminals’ or those that commit crime because they are mentally unbalanced? Whether there is or should be a difference between political crime and ordinary crime is

⁸⁰ Higgins, p. 15


⁸¹ Another problem is if terrorism is different from ordinary crime or not and if it is so should political criminals get special treatment? For further discussion see 3.3.5.1 Political crime or ordinary crime?

⁸² David Bonner, United Kingdom: The United Kingdom Response to Terrorism, p. 179

discussed below. This is followed by the presentation of a model that assumes that terrorism is a politically motivated crime. But political motivation is a dull tool and all politically motivated violence is not necessarily terrorism. The model of 'terrorism as a method' tries to distinguish terrorism from other political crimes.

Lastly, in the 'means and ends' section the motives and purposes of terrorism are discussed from a different angle, where the subject of whether terrorism could or could not be justified in some cases, is broached.

3.3.5.1 Political crime or ordinary crime?

One of the most interesting questions surrounding terrorism asks  whether terrorism is actually different from ordinary crimes. The answer definitely has consequences for our attempts to handle terrorism, especially from a legal point of view.

It could be argued that terrorist actions have completely different motives and underlying causes than ordinary criminal actions. Therefore terrorism is not an ordinary crime. On the other hand it could be said that whatever the underlying causes, all criminals should be treated equally. It should be irrelevant whether a "crook, crazy or crusader"⁸³ committed the act.

The law influences our society in different ways. One of its main purposes is to have a preventive effect on people. Another purpose could be to punish the guilty and revenging crime. One could argue that perpetrators with strong political motivations do not react in the same way to laws and regulations as ordinary criminals. Since these people are sometimes even prepared to die for their political or ideological convictions, no punishment could have preventive effect on the person with such strong beliefs. Further, if there is no preventive effect, then penalties could just as well be lowered or abolished. They do not affect the terrorist anyway. Another argument is that the terrorist's cause might be a rightful one and therefore, in such a case, the terrorist fighting for such cause should not be punished. From the opposite side one could argue that it is indispensable that terrorists be punished. Since terrorism threatens the very essence of our society and its basic fundamentals, like democracy, these perpetrators must not only be punished, but be punished more severely than other criminals. A severe punishment is a clear signal from the society that their acts are unacceptable and illegal. They must also be punished for the fear and anxiety that people feel because of their actions.

These arguments grouped into three schematic opinions would give us the simple model below where terrorism is either a political crime, an ordinary crime or an extraordinary crime.

Political crime	Ordinary crime	Extraordinary crime
Special treatment	Ordinary treatment	Special treatment
Excused for actions	Punishable for crimes	Punished more
Go unpunished	like other criminals	severely

⁸³ Expression taken from Edward Marks, Terrorism and political violence, p. 55

From the model above it looks like the two extremes' - to the left political crime and to the right extraordinary crime - supporters would stand very far apart in their opinions. Those supporting the political crime theory would say that terrorism is a statement or a way of expressing political opinions and that political criminals should get special treatment, while those on the other side would say that the only special treatment these criminals should get is to be punished even harder than those that commit ordinary crimes. However, the two extremes are sometimes intimately linked since the two opinions can occasionally be held at the same time. One might consider bomb attacks on innocent civilians as unacceptable in, for example, a democratic country while one at the same time considers similar actions by people who fight an apartheid regime excusable. Those that consider terrorism as an ordinary crime want to see a terrorist act as just another crime, no matter the motives or purpose behind it. Killing people is murder and should be punished like any other murder. Considering terrorism as an ordinary crime would also admit an escape from the discussion of separating the acts of terrorism from other kinds of violence. But terrorism does to a certain extent differ itself from other types of crimes in the choosing of the victims, the way of installing fear and using it together with publicity, and also in the objectives that the perpetrator of terrorism want to gain.

3.3.5.2 Terrorism as a method

Already in 1936 J.B.S. Hardman lanced the idea of terrorism as a method of combat.⁸⁴ This notion has later been modified into a method of action, method of communication etc. With this view terrorism is not just certain specified acts of violence but a method used to obtain certain goals. This method can be used on its own or as a strategy in larger conflicts like war, unconventional war, domestic or foreign policy etc. The aim is to bring about a political or ideological change. Among the most important tools is publicity, for their cause and for exposure of alleged abuses by their opponents, and the fear and terror that they can use to manipulate their opponents with.

These components could be viewed in different ways; one is to put them in relation to each other in a triangular relationship. This will be explained after some short comments on terror and publicity.

3.3.5.2.1 Fear and terror

What separates terrorism from ordinary crime is especially the element of wanting to install terror and fear in a society or a segment hereof. Schmid writes: "While violence is the key element with murder, it is the combination of the use of violence and the threat of more to come which initiates a terror process."⁸⁵ Frightened people behave differently from when they are in a normal state. A terror-struck individual isolates himself and seeks personal security. A state of terror can also lead to disorganized

⁸⁴ Alex P. Schmid, *Political Terrorism: a new guide to actors, authors, concepts, databases, theories and literature*, p. 13 [hereinafter Schmid 1988]

⁸⁵ Schmid 1988, p. 19

behaviour such as panic or hysteria. However, effects of constant fear are hard to produce, especially by non-state actors.⁸⁶

The most basic semantic analysis of the word terrorism tells us that the word terror must be its core. Schmid seems to have seized upon this while defining terrorism where the mechanism of causing terror within people is the major component.

“There is [...] a solid conceptual core to terrorism, differentiating it from ordinary violence. It consists in the calculated production of a state of extreme fear of injury and death and, secondarily, the exploitation of this emotional reaction to manipulate behavior.”⁸⁷

And,

“Terrorism is the calculated causing of extreme anxiety of becoming a victim of arbitrary violence and the exploitation of this emotional reaction for manipulative purposes”.⁸⁸

But how is it that people feel terrorised? Schmid explains why terrorism terrorises in this way:

“It does so because we are caught by surprise and are victimised arbitrarily and without provocation from our side. Suddenly, we are ‘struck by terror’. Terror, then, is a state of mind”.⁸⁹

Presuming then that people feel frightened because they did not expect an attack, that they were completely randomly chosen and furthermore had not provoked it to happen, why do people not feel the same way for car accidents as for terrorist attacks? Car accidents actually kill far more people annually than terrorism does.⁹⁰ If the mechanisms are compared they look much the same to me: innocent civilians, at the wrong place at the wrong time, which without provocation become victims. Both types of victim are probably hurt in the same way: they are dead or badly injured.

So there must be something else that differentiates the two, something inherent in a terrorist attack that triggers much stronger emotions than car accidents do. Probably this something could be found in a number of different psychological factors but I believe that both media and the perpetrator’s motives play an important role. In the case of an accident there is nobody to be blamed, whereas in the case of terrorism there was a conscious intention to commit the act that led to the death of innocent people. Media probably also contribute to the fear of terrorism since such attacks proportionally get much more attention in the press than car accidents do and in the same way give us the impression that they are more numerous than they really are.

⁸⁶ Schmid 1988, p. 20

⁸⁷ Schmid 1988, p. 20-21

⁸⁸ Alex P. Schmid, *The Response Problem as a Definition Problem*, p. 11 [hereinafter Schmid 1993]

⁸⁹ Schmid 1993, p. 11

⁹⁰ Hoping that attacks of the same magnitude as we saw in NY 11 September 2001 will not become a common sight.

3.3.5.2.2 Publicity

To install fear or create a sense of insecurity terrorists need to spread the information about their acts and victims to a larger audience, the targets of fear. In many cases they rely on publicity in newspapers, radio, television and on the Internet. In other cases, like in the former Soviet Union where no free media existed, it was rumours and individual tales of terror that spread the news about state violence.⁹¹ Publicity draws attention to the cause and the fact that the terrorist is willing to die or to sacrifice himself for the cause. This goes for the negative publicity too. So even if the publicity is negative it at least gives the terrorist and his cause attention.⁹² In most cases the publicity does not generate any sympathy for the terrorist cause, but rather creates fear within the public.⁹³ In other cases the terrorist propaganda will find supporters and people who identify with the aggressor.⁹⁴ In this way the publicity does two things for the terrorist at the same time: it nurtures peoples' fears while at the same time it advertises for new recruits. Mass medias' constant competition to break the most sensational news and to do it ahead of every one else often provides the terrorist with an uncritical platform to communicate their cause. Sensational violence gets more attention in the media than less violent acts. A Palestinian has said, "We would throw roses if it would work."⁹⁵ This leads to the interesting issue whether the media make terrorists commit crimes or at least contribute to generate more violence. The issue will not be discussed in this thesis but I find it important that any restraint on the media must be done with great care and without endangering fundamental freedoms like those of expression and communication.⁹⁶

3.3.5.2.3 Terrorism-a triangular relationship

Schmid has created a model called "the Triangle of Insurgent Terrorism"⁹⁷. The model explains the relationship between different components of terrorism like violence, targets, fear, publicity, victims etc. (The model presented below is a simplified version.)

⁹¹ Schmid 1988, p. 21

⁹² Donna M. Schlaghech, *International terrorism an introduction to concepts and actors*, p. 3 [hereinafter Schlaghech]

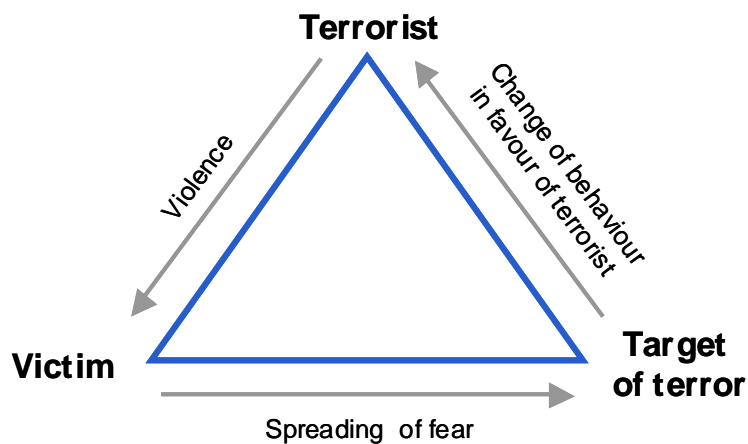
⁹³ Schlaghech, p. 4 and Franco Salomone, *Terrorism and the Mass Media*, p. 44

⁹⁴ Schlaghech, p. 4 and Schmid 1988, p. 24

⁹⁵ Schlaghech, p. 69

⁹⁶ See further 4.1.4 Human Rights and Terrorism

⁹⁷ Schmid 1993, p. 10



The terrorist, the ‘actual victim’ and the ‘target of terror’ represent the three corners of the triangle. The terrorist, which has a certain goal and/or motivation, threatens to commit or commits acts of violence. These acts are directed against either a symbolic or a random victim. The acts or threats are then communicated to the targets of terror i.e. the public or the state authorities. This creates a state of fear or terror within the group and might also change the behaviour of the target in a direction favoured by the terrorist.⁹⁸

This view of terrorism allows us, for example, to distinguish between a common political assassination and a terrorist assassination. In the former case it is important to get rid of a specific individual. The victim often knows his opponent and the threat posed to him. Once he is gone there will not be further actions taken. On the other hand, a terrorist assassination is often aimed at a person that is not directly involved in the conflict and the attack comes unexpectedly.⁹⁹

To see how the theory works we examine three fictive examples of assassinations.

Case 1: A man has his wife assassinated because he wants to inherit her assets and remarry. It clearly is not a terrorist assassination, neither is it a political one. It could be characterised as an ordinary crime where the man has gained personal profit from the death of his wife.

Case 2: In this case a man orders the assassination of his most dangerous opponent a month before the upcoming elections. The man would in this case profit immediately from his crime since he is most likely going to win the elections. He has no intention of committing any further crimes and neither are any needed. This is most likely characterised as a political assassination. The target and the victim are the same in this case.

Case 3: In this case a man orders his most devoted party members to help him assassinate some people in a rural area. The victims are chosen amongst villages where the support for his political opponent is strong. This way he hopes that other voters in the area will “get the message” and vote for him instead. In this case the triangular relationship is established between the

⁹⁸ Schmid 1993, pp. 10-11

⁹⁹ Schmid 1993, p. 11

victims - that has symbolic value - and the targets of fear- that he hopes to frighten to act in favour of his aims.

The triangular model does not automatically exclude state terrorism or state-sponsored terrorism, since these could be said to have the purpose of enforcing the authority and the power of the state over the target, the people, through the victims.


3.3.5.3 Means and ends

Most certainly one of the deepest and most long running rifts within the discussion of defining terrorism is whether the ends in any case could justify the use of any means. By separating the acts of terrorism from the motive behind it we could say that the means are separated from the ends. This opens up to the possibility to a certain evaluation of the ends and if they can in some cases justify the use of any possible means. It also allows us to distinguish between different types of terrorism on the basis of the objectives that the terrorist is aiming to achieve. Wilkinson for example classifies different “contemporary perpetrators of terrorism” on the basis of their different political motives and underlying causes.¹⁰⁰

From the actors’, the perpetrators’, point of view, the end always justifies the means, otherwise they would not commit these acts and often also be prepared to die for their goals. From another point of view, no end could be important enough to deliberately sacrifice innocent civilians.

Cases where violence is considered acceptable, or even as a legal right, is most often those where people are struggling for national liberation and the right to self-determination. One author writes, “[...] the use of violence to escape oppression or to defend oneself is a legitimate criminal defence”.¹⁰¹ Malekian supports this point of view: “One of the critical aspects of the term “international terrorism” is that the label has been used against individuals and groups who have employed violence to demonstrate their feelings”.¹⁰²

With this phrase he even seems to imply that in some cases violent acts should not be considered terrorism but rather as some kind of expression of feelings. This way of excluding acts on the basis of motive is strongly opposed by many Western states, especially Israel and the United States. Israel argues that such division would create a situation where we have legal terrorism and illegal terrorism.¹⁰³

 model below has the purpose of displaying the relationship between so-called legal terrorism and illegal terrorism.¹⁰⁴ Violence is divided into justifiable and non-justifiable violence. There are situations when violence to some extent is permitted, like at war. In the same way there are those that argue that terrorism must also be permitted in specific situation, like when people fight for example a non-democratic regime.

¹⁰⁰ Wilkinson, p. 19

¹⁰¹ Christopher Blakesley, *Terrorism, Drugs, International Law and the protection of Human Liberty*, p. 34

¹⁰² Malekian, p. 86

¹⁰³ Higgins, p. 17

¹⁰⁴ If there is such a thing as legal terrorism at all is discussed below.

Violence	Justifiable violence	War
		Legal terrorism?
	Non-justifiable violence	Murder, War crimes etc.
		Terrorism

Within the UN we can find an ambivalent stand taken on this issue. On one hand, they want to help people obtaining their rights of self-determination, and on the other protect individuals and states and prevent the use of violence in conflicts. Support can be found for both opinions sometimes even within the same document. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents is normally considered as an instrument that prevents acts of terrorism aimed at certain protected persons. On the other hand the convention also states that it is not applicable to acts committed for the purpose of self-determination or national liberation.¹⁰⁵ Because of this ambivalent structure a country like France has refused to sign and ratify the document. The French mean that an unjustified distinction is made between different acts of terrorism on basis of the perpetrator's motive.¹⁰⁶

The Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States is another document where we can find opposing principles concerning terrorism at the same level. It concludes that states are not to organise, assist or participate in acts of civil strife or terrorist acts in another state but at the same time all states have the duty to promote the realisation of self-determination of people that are deprived hereof.¹⁰⁷

Malekian comes to the conclusion that "An act which is committed for the purpose of struggling against a dictatorial regime or one with such a policy is neither a crime nor illegal".¹⁰⁸ Further that "[...] the right of self-determination is a consolidated principle which cannot be abolished by conventional rules, and acts for the purpose of liberation cannot be treated as acts of terrorism."¹⁰⁹ Other scholars have stressed other points and come to other conclusions. Schmid and Wilkinson interpret terrorism rather as the extreme means or the methods used, rather than focusing on the goals of these acts.¹¹⁰ Another author, Paul Johnson, even argues that the terrorists are using violence, not as inevitable or required means to reach their ends, but for its own sake. He argues that the moral justification of murder that developed during the 20th century with the help of philosophers, like Nietzsche and later by Sartre and Fanon, is one of the main reasons for the spread of terrorism and the thought of violence as a form of liberation in

¹⁰⁵ Malekian, p. 105

¹⁰⁶ Gilbert Guillaume, France and the Fight Against Terrorism, p. 133

¹⁰⁷ Wilkinson, p. 189 and Malekian, p. 105

¹⁰⁸ Malekian, pp. 104-105

¹⁰⁹ Malekian, p. 108

¹¹⁰ Schmid 1988, p. 14 and Paul Wilkinson, Pathways out of terrorism for Democratic Societies, pp. 456-457 [hereinafter Wilkinson 1987]

itself in the Third World. He writes, "The modern terrorist does not employ violence as a necessary evil but as a desirable form of action."¹¹¹

Inevitably there is violence in the world. However from my point of view there is no legal terrorism. In some cases violence can be permitted or the use of violence excused. In for example an International Armed Conflict, violence might be permitted. People fighting a racist regime or an alien occupation might also be given the right by International Humanitarian Law to use violence. However, this violence can only be directed against legitimate targets. In no case can we allow civilians alone to become a legitimate target. Those that do not qualify as engaged in an armed conflict can neither be permitted to use violence against military targets and especially not against civilians. They are bound to use other methods to obtain their goals. A point to be made here is that the objectives are seldom obtained by terrorism.¹¹² Historical evidence shows us that those who use terrorist methods become used to them. And society is often launched into a spiral of terror and counter-terror that becomes very hard to escape from.¹¹³

3.4 A legal definition

A normal procedure to control and prevent harmful behaviour in a democratic state is through legislation. It is important that the harmful behaviour is defined, so that the law clearly states for which conduct certain sanctions are to be applied. In the international arena it seems reasonable to proceed in the same way. Unfortunately there are small chances of finding an all-inclusive definition of terrorism that covers every aspect of terrorism and that satisfies every opinion at the same time. One possible solution could be to use separate definitions for different purposes. A sociologist doing a study on terrorism might want to emphasize other aspects in a definition than a judge faced with a suspect during a trial. However, it is important to give a legal definition to the crime terrorism if criminal sanctions are to be used against the perpetrators.

A definition that is going to serve a legal purpose should be descriptive, i.e. it should allow the development of a non-inclusive list of those acts that are considered prohibited. Such a list would facilitate the work of establishing the extension of the definition. However, as it has been pointed out earlier, terrorism cannot only be described with reference to certain unlawful acts. Therefore the definition cannot only consist of a list describing certain criminal acts. Crimes of terrorism are committed for a certain purpose, that differentiates them from other crimes. These crimes are politically motivated and the perpetrator does not react or take action in the same way as an ordinary criminal. All this must be reflected in the definition but the definition must also, as far as possible, avoid political subjectivity. A

¹¹¹ Paul Johnson, *The Seven Deadly Sins of Terrorism*, pp. 191-192

¹¹² Wilkinson 1987, p. 457 and Bassoundi, *The origins and fundamental causes of international terrorism*, p. 7

¹¹³ Wilkinson 1987, p. 457

definition must be able to distinguish terrorism from ordinary crime, at the same time as it should not allow criminal conduct such as the murder of innocent civilians on the premises that it was committed for a good cause.

The prior discussions and conclusions in this chapter has inspired me to formulate a definition containing the following features:

Terrorism is an ideologically or politically motivated strategy. Within this strategy violence is intentionally used in order to manipulate or create changes in favour of the perpetrator. The violence is directed against a certain segment of society and used in order to create a state of fear within that segment and change the behaviour of another (e.g. a government). The perpetrator might be acting on behalf of themselves, a group, or on behalf of a state.

3.4.1 A few considerations in relation to the definition

To a large extent the definition reflects the purpose of finding a definition with as little friction as possible. Unfortunately such a purpose seems to be counterproductive and an illusion. As soon as you satisfy one opinion, another is immediately unsatisfied. Trying to create a definition that is just and neutral inevitably leads to a point where it becomes unusable for practical and political reasons. For example I have chosen to see any perpetrator, **state or non-state actor** as a possible perpetrator of terrorism. The perpetrator category is all-inclusive and does not exclude any group like state-agents, soldiers, guerrilla groups, religious fanatics, ethnic minorities etc. With the important exception of such conflicts that fall under **International Humanitarian Law**. Acts committed during such conflicts and considered as the rightful use of violence, should not be considered as terrorism.¹¹⁴ This is a fair solution and would also include state-sponsored terrorism irrespective of whether it would be considered as a sub-category to individual terrorism or to state-terrorism. However I am afraid that the result has become too extensive for states to accept. For practical reasons it is also preferable if individuals are personally held accountable for their acts.

In the same spirit I argued that if we cannot agree upon the difference between **domestic and international terrorism**, we might as well consider all similar acts of violence as terrorism, no matter which nationalities were involved or which borders were crossed etc. It would not be until the next step had to be considered, of who has jurisdiction in the case that those aspects would have to be taken into account. I realise that such a definition would be difficult to install because, to some extent, it would regulate the domestic affairs of states. Further it would, in combination with the fact that states could commit terrorism in the above definition, give a result where a state might be held responsible for their acts against its own population. Not a bad thing in itself but totally unfamiliar to the culture and long held norms

¹¹⁴ Violence committed against civilians is to a large extent already forbidden under the laws of war. See under 4.1.2

by the international community, of non-intervention in the internal affairs of other states.

The definition is clearly inspired by **the triangular relationship**, where an act is committed against one party to influence another party to take or refrain from taking action. An act of terrorism is committed with a certain **purpose** or goal in mind and with the objective of obtaining that goal an act of violence is performed by the perpetrator. In order to consider an act as terrorism the perpetrator must be **politically or ideologically motivated**. In a law enforcement perspective it means that there must be proof of such motivation. This creates a problem of finding evidence and to a certain extent the definition has a subjective dimension. However, this seems to be the only solution to distinguish these crimes from ordinary crimes.¹¹⁵

No value is added to different kinds of political motivation. This means that people fighting for democracy using violent methods could be judged terrorists. Just like any government using the same violent methods, to fight their opponents, should be regarded as terrorists. Accepting some motives as rightful causes to use violence, will inevitable lead to the question of which causes are just enough. If we agree that fighting all non-democratic regimes is acceptable we would immediately be faced with several problems. We would have to answer the question of which regimes were non-democratic and therefore legitimate to fight. We must also answer whether any purpose would do when fighting an undemocratic regime. Would it be possible to use violence to obtain equal salaries for men and women or only for the purpose of obtaining democracy? Further we would have to discuss if any type of violence was permitted? The most interesting question (for democracies) is if it would be acceptable to use violence in a democracy in order to obtain even 'more or better democracy'.

In relation to the discussion above it is important to remember that it must be characterised as a typically "western" discussion. In our societies a separation between state and religion has become so evident that we no longer reflect over the fact that many people do not wish to separate the state from religion or religion from law. The idea of a sovereign and secularised state with a political system does not fit their idea of a state ruled by God. And if not ruled by God at least ruled by a certain religion and laws or rules imposed by God. Fighting such a state inevitably means fighting the religion. Democracy, so cherished in the west, might to many people seem as something artificial and empty. From my point of view these considerations are important for many reasons. First of all it cannot be more righteous to kill in the name of a political system than in the name of religion. Secondly it is important for us to be aware of why some people kill in the name of religion. For example, in many cases the Islamists (Militant Islamic fundamentalists) commit attacks on certain civilians in their conviction that the victims are not innocent. The victims (and our secularised societies) are actually in themselves obstacles to the Islamists' strive to obtain a state ruled by God.¹¹⁶

¹¹⁵ See discussion under 3.3.5 Motive and purpose

¹¹⁶ Magnus Norell, *Terror i Guds namn*, pp. 2-19

It is interesting to discuss the definition proposed here in relation to crimes normally considered as terrorism, in public opinion or by the UN. For example the UN convention that defines hijacking does not consider different purposes or objectives that the perpetrator might have, it is all the same considered hijacking. And hijacking is considered as terrorism. But with a definition like mine there could be a difference depending on what the demands of the hijacker are. In one case he might demand money to be transferred to his Swiss bank account. In another case he might only wish to leave the country where he is kept isolated from the rest of the world. In a third case he might want to negotiate the release of prisoners belonging to his group. In the first case there is no political motivation but private gain behind the purpose of the hijacking. It could not be considered terrorism. In the second case the hijacker might be politically motivated (opposing the regime of his country) but on the other hand there is a lack of target of terror. There might not be any triangular relationship. The pilot might have a gun to his head and stand before the choice of flying the plane in the wanted direction or dying. That would not be a case of terrorism but if the hijackers threatened to kill off the passengers one by one it might come closer to being a terrorist act (depending on whether the hijacker is using violence on passengers or not, in order to influence the pilot). In the third case however we find the textbook example of a terrorist hijacking. The hijackers are using violence (killing passengers) and threats of more violence to come if a third party, the government, does not release the prisoners.

The general definition of terrorism would then in one way be more narrow than today's concept of terrorism, e.g. the hijacking case, but it could also be more extensive. The spreading of a poison, bacteria or gas does not today fall under the concept of terrorism in any UN convention.¹¹⁷ The definition proposed here on the other hand would not fail to regard the spreading of for example Anthrax as a terrorist attack if all the other components were fulfilled. So while my general definition would fail to include certain acts of violence it would instead include others under its concept of terrorism.

It is important that however good or just the cause might be, the killings of civilians should not be excused. One could narrow down the definition of terrorism so that the violence would only be considered terrorism in cases where the victims were civilians. As a result attacks on military and police might only be forbidden under domestic law (or international law if the attacker is another state). I feel that such exclusion might create more difficulties than we might lose.

I do in many cases feel that there are plenty of just causes to fight for. There might even be ends that from my point of view might justify the use of some violence. However, in the same way as we do not abolish or excuse the crime of theft because people are stealing out of hunger, neither should we abolish the crime of terrorism because the reasons for violent actions are due to certain causes. On the other hand, law will probably never be the final

¹¹⁷ With the possible exception of the convention that regulates the financing of terrorism, see further under 4.1.1.7

answer to abolishing terrorism just as terrorism probably will not be the answer to the perpetrators problems.

It is important for every society to provide its citizens with means of communicating their opinions and protests. In a democracy there are freedoms of expression, of assembly, joining unions etc. The definition of terrorism proposed here is not meant to reduce these freedoms. The protection of such rights is very important and should be provided for in separate legislation.¹¹⁸

It seems inevitable to end up with a compromise solution no matter what methods are being used to define terrorism - the final solution will never be neither totally neutral to political considerations nor will it satisfy every wish of which acts should be included in the concept of terrorism. There is no neutral solution to be found. As far as I can see the only way to go about the issue is by discussing it until a consensus is found or at least a majority agrees on a certain definition.

¹¹⁸ How such protection should be drawn up falls outside the scope of this thesis, but is nevertheless a very interesting question.

4 Legal responses to terrorism

Most people consider terrorism in terms of something negative, and all democratic states consider terrorism, in one form or another, as a threat to their free society. Most likely this threat is not going to diminish in the near future, rather the contrary -it will grow greater.¹¹⁹

If there is a threat, there is most likely some kind of defence put up to respond to that threat. History shows us that it has been difficult to find an adequate response to terrorism. Naturally a response must vary with the responder and also with the kind of threat it is responding to. Primarily three different responders to terrorism could be distinguished: the individual, the state and the international community.

Responses from an individual's perspective would naturally be much more limited than that of a state or the international community. In most cases the individual actually relies on an adequate response from the state respectively from the international community for protection against terrorism.

The international community could also be characterised as somewhat limited in its responses if compared to the sovereign state. The international community can only extend its cooperation against terrorism to the extent that the states agree to. A state is still the main actor when it comes to fighting and responding to individual terrorism or state-sponsored terrorism.

From a states point of view various methods could be used to respond to terrorism: anti-terrorist legislation, special military anti-terrorist assault teams, covert intelligence gathering, education of terrorists and potential terrorists, war, international cooperation, elimination of root causes etc. The responses could be divided into two groups: peaceful and coercive responses. However, it does not lie within the confines of this thesis to discuss all the possible methods to prevent terrorism. Its main focus lies on the relationship between law and terrorism and how law is used to prevent terrorism. This chapter will deal with that aspect while the next chapter briefly examines the possibilities for a state to use violence in the fight against terrorism and in which way international law permits respectively prohibits such violence.

Terrorism has to some extent been regulated in international law. In the first section of this chapter the most important parts of international law in relation to terrorism are examined. This section also contains a discussion on the shortcomings of these regulations. The second section examines a regional regulation of terrorism, namely that of Europe. As the European cooperation on external and internal security, within the European Union, becomes more intense, the laws also become more specific. The EU has the most advanced international cooperation between states in the area of terrorism. On the other hand, as we turn to our example of domestic regulations on terrorism, the example of Sweden, we find a country that up till today's date has managed with a scarce legislation for terrorism.

¹¹⁹ Chalk, p. 3

4.1 International law on terrorism

As a result of the prevailing disagreement between the states on how to define terrorism, no multilateral convention exists that defines terrorism nor does any convention give us a list, exhaustive or non exhaustive, to identify terrorist acts. However, the international community has come up with a pragmatic solution. Today there are twelve major multilateral conventions and protocols that regulate and codify international rules for prevention and punishment of acts widely considered as terrorism. The United Nations and the specialized agencies International Civil Aviation Organization (ICAO) and International Maritime Organization (IMO) have made these treaties possible by dealing with one type of act separately. In this way we have managed to adopt conventions and protocols that each deals with different segments of terrorism. The aim is that these acts of violence shall be suppressed and punished without regard to the motive behind the acts, for example without exceptions for national liberation fighters. Of course the problem is not completely solved and controversy still remains between people and organisations of different opinions but at least we have managed to make some progress and the Hague and Montreal conventions are approaching universal acceptance.¹²⁰ Other instruments may be relevant in certain circumstances, such as bilateral extradition treaties, the 1961 Vienna Convention on Diplomatic Relations, and the 1963 Vienna Convention on Consular Relations. In the case of armed conflicts, the International Humanitarian Law could regulate violence, characterised as terrorism, to some extent.

The twelve anti-terrorist conventions are briefly examined in the next section, followed by a few selected problems in relation to international law and terrorism, such as the application of International Humanitarian Law, the problems of extradition, the safeguard of Human Rights in relation to actions taken in the fight against terrorism, and finally a few words about the insufficiencies of international law.

4.1.1 International anti-terrorist conventions and protocols

The twelve anti-terrorist conventions and protocols were negotiated from 1963 to 1999. They have a common format and most are penal in nature.¹²¹ Each instrument defines a particular type of act that should be considered an offence under the convention. This is accompanied by the obligation to criminalize these acts in domestic law and to establish jurisdiction over such offences according to particular principals, like registration, nationality etc. Furthermore, the convention creates an obligation for the state that hosts a suspect to prosecute offenders in domestic courts or to extradite them to another country willing to prosecute.

¹²⁰ Lambert, pp. 48-49

¹²¹ The 1991 Convention on the Making of Plastic Explosives for the Purpose of Detection is regulatory in nature and contains no penal provision.

4.1.1.1 Suppressing hijacking

There are two conventions that were designed to suppress hijacking. These are the 1963 Tokyo convention¹²² and the 1970 Hague convention.¹²³ The Tokyo convention set up standards for state parties to establish jurisdiction over crimes committed on board civil aircrafts registered by them. In this work lay good intentions to suppress hijacking but it was not until the Hague convention that we got a definition of the offence of hijacking. This convention also deals more specifically with the issues of prosecution and extradition. Parties to the convention are required to make hijacking punishable by severe penalties. Furthermore attempts and participation also became offences to the convention.

4.1.1.2 Safety of civil aviation and airport security

In 1971 the Montreal convention¹²⁴ was adopted to introduce tighter security on civil aircrafts and to prevent other crimes than hijacking alone to endanger safety on board the planes. It applies to acts of aviation sabotage such as bombings aboard aircrafts in flight. Still there remain gaps in the legal issues since no sanctions or enforcement procedures are proscribed against uncooperative states. In 1988 the Montreal protocol¹²⁵ was adopted. It extends and supplements the Montreal convention so that certain offences are to be applicable to acts performed at airports serving international civil aviation.¹²⁶

4.1.1.3 Protected persons

In 1973 the General Assembly adopted the New York convention.¹²⁷ In Article 1 it lists the persons protected by the convention: heads of states or persons performing the functions of head of state, heads of governments and ministers for foreign affairs and family members who accompany them. The list of persons protected also includes officials or other agents of international organisations of intergovernmental character. The convention seeks to protect these persons from murder, kidnapping and violent attacks against their official premises, private accommodation and means of transport.¹²⁸

4.1.1.4 Taking of hostages

The Hostage convention was adopted in 1979.¹²⁹ The drafting lasted three years and took place at a time when the world saw a number of dramatic

¹²² Convention on Offences and Certain Other Acts Committed on Board Aircraft: Sept 14 1963, 20 UST 2941, TIAS No 6768, 704 UNTS 219

¹²³ Convention for the Suppression of Unlawful Seizure of Aircraft, Dec 16 1970, 22 UST 1641, TIAS No 7192, 860 UNTS 105

¹²⁴ Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept 23 1971, 24 UST 564, TIAS No 7570, 974 UNTS 177

¹²⁵ Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Feb 24 1988

¹²⁶ Lambert p 52

¹²⁷ Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec 14 1973, 28 UST 1975, TIAS No 8532, 1035 UNTS 167

¹²⁸ Lambert p. 50

¹²⁹ International Convention Against the Taking of Hostages, Dec 17 1979, UN GOAR, 34th Sess, Supp No 39 at 23, UN doc A/34/39 (1979)

hostage-takings.¹³⁰ It defines the crime of taking hostages in a neutral way, so that any act, politically motivated or not, would fall within it.¹³¹ A hostage-taking occurs when a person (the hostage) is detained by another person under a threat, in order to persuade a third party, like a government, an international intergovernmental organisation or the like, to do or to abstain from doing something as an explicit condition for the release of the hostage.¹³²

4.1.1.5 Safety of maritime navigation

At an International conference in Rome arranged by IMO in 1988 the Rome convention¹³³ and the Rome protocol¹³⁴ were adopted.

The Rome convention protects ships from anybody that unlawfully and intentionally would harm or destroy anything that could endanger the safe navigation of the ship. The offences in the protocol are almost identical to those in the convention, with the only difference that the protocol deals with fixed platforms on the continental shelf instead of ships.¹³⁵

4.1.1.6 Protection of nuclear material

In 1980 a convention that combats unlawful taking and use of nuclear material was adopted.¹³⁶ This convention criminalizes particular types of unlawful handling of nuclear material, such as the unlawful possession, use, transfer, theft etc of it. Furthermore, it states that it is an offence to threaten to use nuclear material to cause death or serious injury to any person or substantial property damage.

4.1.1.7 Control of plastic explosives and suppression of terrorist bombings

In the aftermath of the Pan Am 103 bombing over Lockerbie in 1988 a convention on the marking of plastic explosives was negotiated.¹³⁷ It facilitates the detection of plastic explosives by a chemical marking. The convention obliges every participating state to take effective steps to prevent the manufacture of unmarked plastic explosives. The state should also take necessary steps to ensure effective control over all unmarked plastic explosives within its borders. This means ensuring that all such explosives are marked, destroyed or used within three or fifteen years (depending on whether they are held by the military and the police or not) from the entry into force of the convention.¹³⁸

In 1997 a convention for the suppression of terrorist bombings was adopted.¹³⁹ The convention provides for a regime of universal jurisdiction over the unlawful and intentional use of explosives in various defined public

¹³⁰ Lambert, pp. 57-67

¹³¹ Lambert, p. 78

¹³² Article 1 of the Hostage Convention, Lambert p. 365

¹³³ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, March 10 1988

¹³⁴ Protocol for the Suppression of Unlawful Acts Against the Fixed Platforms Located on the Continental Shelf, 27 ILM 685 1988 Continental shelf

¹³⁵ Lambert, pp. 52-53

¹³⁶ Convention on the Physical Protection of Nuclear Material, 1980

¹³⁷ Convention on the Making of Plastic Explosives for the Purpose of Detection, 1991

¹³⁸ http://www.unodc.org/unodc/terrorism_conventions.html

¹³⁹ International Convention for the Suppression of Terrorist Bombings, 1997

places. The offence should be made with the intent either to kill or cause serious bodily injury, or with the intent to cause extensive destruction of the public place.¹⁴⁰

4.1.1.8 Financing of terrorism

The most recent anti-terrorist convention¹⁴¹ aims at suppressing the financial means to commit certain crimes. It does not define terrorism. It proscribes that directly or indirectly providing assets, to be used for committing certain listed crimes, should be punished. Listed crimes are included in nine UN terrorist conventions and protocols, in addition to such actions that kill or seriously harm people with the aim to seriously intimidate a population or to make a Government or international organisation perform a certain act. Article 6 proscribes that no crime should be excused by ideological, political, racial, ethnic or religious concerns. The convention entered into force on the 10th of April 2002.¹⁴²

4.1.2 Application of International Humanitarian Law on terrorism

International Humanitarian Law is codified in the Hague Convention no. IV of 1907, the Geneva Conventions of 1949 and the two additional protocols of 1977. These rules are also called the laws of war as they apply to armed conflicts. There are two different types of armed conflicts, those of an international character and those of a non- international character.¹⁴³ During war these special rules apply and in many cases permit the use of more violence against a wider range of targets than in peacetime.

So if a state of war allows the use of more violence, it follows by logic that the laws of war are often invoked to justify acts of terrorism. Terrorists claim that they find themselves in a position where the rules of peace are too restrictive to allow their legitimate fight to overthrow or change an existing political system.¹⁴⁴ The International Humanitarian Law mainly applies to international armed conflicts. Traditionally this would mean wars between states but according to Art. 1(4) of Protocol I such an armed conflict also includes national liberation wars, i.e. wars that are fought against colonial domination, a racist regime or an alien occupation for the right to self-determination.¹⁴⁵ To qualify as a combatant in a national liberation war is not as easy as it seems. First of all the “[...] activities must take place within the framework of organised hostilities of a certain intensity.”¹⁴⁶ Secondly it must be a people’s claim to self-determination that you are fighting for. In

¹⁴⁰ http://www.unodc.org/unodc/terrorism_conventions.html

¹⁴¹ International Convention for the Suppression of the Financing of Terrorism, 1999

¹⁴² Prop. 2001/02 :149 p. 20

¹⁴³ Marco Sassoli, International Humanitarian Law, p. 467 [hereinafter Sassoli]

¹⁴⁴ Cindy C. Combs, Terrorism in the twenty-first century, p. 152 [hereinafter Combs]

¹⁴⁵ Sassoli, p. 468

¹⁴⁶ Sassoli, p. 468

this case the term people is interpreted in a strict sense where the people could not consist of a minority or a political opposition within a nation.¹⁴⁷ To qualify as a legal combatant in an Armed International Conflict there are important rules to comply with. Among these we can mention that arms must be carried openly, that civilians are not legitimate targets and that they should be especially protected against all acts of violence, that it is forbidden to take hostages etc.¹⁴⁸ The armed forces are also to some extent protected from terrorist attacks during hostilities since, to the Parties, the choice “[...] of methods and means of warfare is not unlimited.”¹⁴⁹

In Non-international Armed Conflicts there are still rules to protect the civilians and those not taking an active part in the hostilities, but these rules are far less detailed than the ones proscribed for International Armed Conflicts. Nevertheless they prohibit both the state and the insurgent parties from committing acts of terrorism.¹⁵⁰

Terrorism is most commonly a problem outside armed conflicts but, as we have seen, the rules of International Humanitarian Law strictly prohibit acts of terrorism.

To conclude, all serious breaches of the Geneva Conventions and of Protocol I are war crimes.¹⁵¹ This means that certain acts are considered unacceptable even at times of war (when a certain kind of violence, normally forbidden, is permitted). Indiscriminate attacks on civilians and taking hostages during an armed conflict by a soldier are considered war crimes, but during peacetime such attacks do not have a common name or any common legislation and are often referred to as terrorism. Many authors propose that a minimum requirement should be that war crimes should not only be forbidden in times of war but also in times of peace. They suggest that terrorism is to be defined as the “Peacetime Equivalent of War Crimes”.¹⁵² This way we may at least have a definition, even if, as they admit, it is not an all-inclusive one. Schmid argues that it is better to have a narrow definition than none at all and he also points out that there exists a broad consensus of what constitutes war crimes and that this should be taken advantage of.¹⁵³

4.1.3 Problem of extradition in International law

The crimes that we consider as terrorism are in most cases already regulated in national law. For example, virtually all nation-states have laws that condemn the killing of innocent people. The problem in most cases is not the lack of laws and regulations, it is rather a problem of getting the perpetrators prosecuted. Some states are reluctant to prosecute those that

¹⁴⁷ Sassoli, p. 468

¹⁴⁸ Combs, pp. 152-156

¹⁴⁹ Sassoli, pp. 470-471

¹⁵⁰ Sassoli, p. 471

¹⁵¹ Art. 85 (5) of Protocol I

¹⁵² See discussions in Schmid 1993, especially pp. 11-13 and Sassoli p. 469

¹⁵³ Schmid 1993, pp. 11-12

have committed crimes that have served the state's own purpose or, in some cases, are even ordered by the state itself. But they are not only reluctant to prosecute themselves, they also refuse to extradite the suspect to another country that wishes to, and has the right to, prosecute the suspect. Extradition is not an obligation in international law but is widely agreed upon in both bilateral and multilateral conventions. In December 1990 the General Assembly adopted a model of an extradition-convention that could be used as inspiration for agreements between states.¹⁵⁴ All the UN's multilateral instruments apply the principle of *aut judicare aut dedere* and also gives participating states universal jurisdiction over the crimes listed in the treaties.¹⁵⁵ This means that any contracting state has the right to prosecute a suspect in their custody. Any state failing to do so should extradite the suspect to the requesting state. However, extradition continues to be complicated in relation to terrorism since there is a long tradition of refusing extradition for political crimes.¹⁵⁶ Even in cases where conventions with agreements about extradition exist, the extradition inquiries could easily be dismissed with the excuse that the criminal act was committed with political motives, i.e. that it was a political offence. Another problem is that the obligation to search for and arrest a suspect is not sufficiently regulated. This renders the obligation of prosecuting and extraditing ineffective.¹⁵⁷

If the crimes of terrorism are put in relation to war crimes, it is astonishing to see that the agreements for extradition in the Geneva conventions and Protocol I give firmer rules than agreements to extradite those who committed the same crimes during peacetime. A soldier committing crimes, maybe with the objective to save his country, has less protection against extradition than a terrorist.

4.1.4 Human Rights and terrorism

When Human Rights are discussed in relation to terrorism there are many different aspects to be considered. First of all, the act of terrorism itself, the violence aimed at other individuals, could be considered as a breach of Human Rights. Secondly, it can be questioned if states do not have an obligation through the Human Rights conventions to protect persons within their jurisdiction from such acts. Thirdly, as a reaction to these acts of violence a State might be tempted to use counter-terrorism methods that violate the human rights of individuals, including the terrorist suspects. So even if Human Rights are one of the reasons why we must take steps to prevent terrorism, Human Rights must also be a main consideration in our work to prevent terrorism. There is a balance between these important considerations that needs to be struck with great care.

¹⁵⁴ Resolution 45/116, 14 December 1990

¹⁵⁵ The principle proscribes the contracting parties to 'either prosecute or extradite' the suspect.

¹⁵⁶ Only a few conventions specify that terrorist acts should not be regarded as political offences. For an example see under 4.2.1 The European Convention on the Suppression of Terrorism.

¹⁵⁷ Cassese 1989, p. 79

The European Convention on Human Rights (ECHR) is one example of a Human Rights treaty that restrains state action when preventing terrorism and at the same time imposes some obligations on the State to take action to protect individuals from terrorism. Article 2 in the ECHR gives every person the right not to be killed. It obliges every state to make laws that prohibit unlawful killings but it does not oblige the state to prevent all killings within its jurisdiction.¹⁵⁸ The State has an obligation to take effective steps to secure not only an individual's right to life, but also their right to own property, freedom of expression etc. However, if a state failed to act, the European Court would probably be reluctant to question the way the states handle their domestic policing and security policy.¹⁵⁹ Article 3 in the ECHR gives every person the right not to be tortured or ill-treated. This applies to everybody and the state is, for example, thereby restrained from causing a suspect severe mental or physical pain or damage during an interrogation.¹⁶⁰ On the other hand, this does not mean that suspects cannot be kept in harsh conditions, like a hard bed, a limited diet and solitude, during detention. At the same time, the state must let the suspect communicate with his/her legal advisor (Art. 6 ECHR) and respect the suspect's right to a family life (Art. 8 ECHR).¹⁶¹ An individual that does not respect the Human Rights of others can have his/her rights restricted by the state. Such limitations must be proportionate to what it is the state is trying to prevent.¹⁶² Another essential element to any diminution of an individual's rights is that the state can show that they are effective in their intended purpose.¹⁶³ There are however absolute rights, like the right not to be tortured and the right to life, where terrorism cannot serve as a justification for a state to diminish these rights.¹⁶⁴ Individuals are not part of the treaty and cannot be held responsible for breaches against the same. But the European Court has found that an individual can act in violation of the Human Rights of another person.¹⁶⁵

4.1.5 The insufficiency of International law

In International law there is a clear lack of a governing body with legislative and executive powers. On top of that, the judicial system is very underdeveloped if compared to national judicial systems. The main problem is that the international community lacks a central authority. The UN is more of a forum for discussion and cooperation than a governing body. It is evident that even if we can agree that terrorism is undesirable, there is no consensus on how to make specific legislation on the matter. Instead the UN

¹⁵⁸ Colin Warbrick, *The European Convention on Human Rights and the Prevention of Terrorism*, pp. 101-102 [hereinafter Warbrick]

¹⁵⁹ Warbrick, p. 97

¹⁶⁰ Warbrick, pp. 104-106

¹⁶¹ Warbrick, pp. 106-107

¹⁶² Warbrick, p. 92

¹⁶³ Warbrick, p. 98

¹⁶⁴ Warbrick, p. 118


¹⁶⁵ Warbrick, p. 91

has created numerous resolutions with general policy directions. Such joint policy directions are easy to agree upon but more difficult to act in accordance with.

However, multilateral and bilateral treaties cover some important areas of terrorism. Unfortunately, these areas have a few problematic aspects. In order for these conventions to have any effect they mostly rely on the principle of *aut judicare aut dedere* and that universal jurisdiction is proscribed for the crime. With these efforts, made to get a suspect before a court, four major problems can be distinguished. Firstly, there are not enough states parties to the treaties. Especially states that have shown reluctance to cooperate in these matters have also chosen not to sign certain treaties. Secondly, there is no efficient way to enforce states to cooperate even if they have signed the treaties. The international community lacks sanctions to change the mind of a state unwilling to cooperate. The third problem is about turning a crime into a political offence and in that way avoiding the obligation of extradition. The final and fourth problem is that these treaties lack an obligation to search for, and arrest, suspects. If states allow suspects to hide within their borders the rule of *aut judicare aut dedere* becomes powerless.¹⁶⁶ It is also worth mentioning that none of the above conventions establishes an international criminal court as a forum in which alleged offenders could be tried.¹⁶⁷

We might question the use of international law dealing with terrorism but I think that it takes multilateral agreements to effectively combat the problems. Terrorism exists worldwide and to a large extent it is international in the way that it does not stop at borders. Terrorism is often only possible by the support of ideas, cash, weapons etc from abroad. Sassoli has pointed out that terrorism might also become a threat to the peaceful coexistence between states, with some states committing terrorist acts, others accusing their adversaries of supporting terrorism and the possibility of yet other states to break international law in their fight against terrorism or to violate human rights with the same purpose.¹⁶⁸ Not many states would have anything to gain from such an escalation of violence and degeneration of international law and the International community would obviously have a lot to lose.

4.2 A regional perspective: Europe

The European continent has not been spared from terrorism. To the contrary, it is one of the most severely afflicted areas in the world. ween 1968 and 1988 over 33 percent of international terrorist acts were

¹⁶⁶ Casses 1989, pp. 77-80

¹⁶⁷ John Murphy, *International Crimes*, p. 367

¹⁶⁸ Sassoli, p. 466 (member of the Legal Division of the International Committee of the Red Cross in Geneva)

committed in European countries.¹⁶⁹ Efforts have been made to suppress terrorism, but one would think that such a relatively homogeneous group as the European countries would have reached better results much sooner. Already in 1957 the Council of Europe signed the Convention on Extradition but it was not until 2002 that an agreement could be reached on how to define terrorism.¹⁷⁰ This is probably due to many factors, for example that European countries have been exposed to terrorism on different levels, which makes the need for regulations of terrorism vary. The European countries use different methods of counter-terrorism depending on their different experiences in the past. National interests can come in conflict with the need of regional cooperation even though they actually face the same problem.¹⁷¹ It is within the European Community that the biggest steps have been taken towards a joint cooperation against terrorism. The latest legislation on the subject, the Framework Decision, will be examined in section 4.2.2, but first we will have a look at the European Convention on the Suppression of Terrorism.

4.2.1 The European Convention on the Suppression of Terrorism

The European Convention on the Suppression of Terrorism was opened for signatures on the 27th of January 1977. The convention emphasises the principle of *aut judicare aut dedere*, i.e. that contracting parties should either prosecute or extradite. This principle is used as the guarantee for the punishment of perpetrators of terrorism. Articles 1 and 2 of the convention contain an enumeration of acts that are not to be considered as a political offence. Crimes that are included are, for example: The unlawful seizure of an aircraft, serious offences against internationally protected persons and diplomats, kidnapping and taking of hostages. Crimes where bombs or automatic guns are endangering people's lives are also included. So are the offences of attempt to commit, or participation and accomplice of a person that commits such offences.¹⁷²

Article 1 proscribes that none of the above offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.¹⁷³ However, there is a possibility for the contracting states to refuse extradition for the offences mentioned in Article 1 if the state considers them to be political crimes. According to Article 13 there is a possibility to make a reservation to the obligation to extradite, but in return the refusing state has the obligation to prosecute the suspect.¹⁷⁴ The convention also proscribes an obligation to help other

¹⁶⁹ If we would include domestic terrorism the numbers would be even higher, Chalk, p. 45 [These figures are presented by Chalk and probably calculated in accordance to his definition of terrorism.]

¹⁷⁰ The Framework Decision see under 4.2.2

¹⁷¹ Ronald D. Crelinsten & Alex P. Schmid, *Western Responses to Terrorism: A Twenty-Five Year Balance Sheet*, pp. 307-309

¹⁷² Art. 1 and Art. 2, The European Convention on the Suppression of Terrorism 1977

¹⁷³ Art. 1, The European Convention on the Suppression of Terrorism 1977

¹⁷⁴ Art. 7 *ibid*

contracting parties with the prosecution of persons that are suspected of terrorist acts.¹⁷⁵

The convention has been criticised for dealing with political crime and terrorism without giving a proper definition of terrorism. Instead the concept of political crime seems to be recognised as the description in Article 1: a political offence, offences related to political offences or an offence inspired by political motives. A state can also avoid extradition by the practice of expulsion, which has been used by France.¹⁷⁶

Today the convention has 45 signatures and 41 ratifications.¹⁷⁷ A much more extensive agreement on terrorism has recently been completed in Europe, but it is also more restrictive in the sense that only countries in the European Union participate.

4.2.2 Framework Decision on Combating Terrorism

As the European Community gradually developed its internal market with wide-open borders between member states, the need for a closer cooperation in the area of justice and home affairs became evident. This cooperation has become tighter with each new agreement. In 1999 the European Council held a meeting in Tampere, Finland, where they agreed on a list of measures that had to be adopted to develop the European Union's Area of Freedom, Security and Justice. These measures were to become high priority within the EU. The 19th of September 2001, two proposals for framework decisions were put forward by the Commission. One for defining and punishing terrorism and another for establishing a European arrest warrant.¹⁷⁸ The two measures were formally adopted in June 2002.¹⁷⁹

In the Framework Decision on combating terrorism, there is first a preamble. It presents a declaration of the foundation principles of the EU and goes on to state that terrorism is a threat to these. Furthermore, a number of decisions and steps taken to combat terrorism are enumerated. The preamble clearly states that nothing in the Framework Decision is intended to restrict or reduce fundamental rights or freedoms. There is also a restriction stating that armed forces are not governed by the Framework Decision during periods of armed conflict, which are covered by International Humanitarian Law, neither are the armed forces of a state covered by the Framework Decision when exercising such official duties that are covered by other rules in international law.

¹⁷⁵ SOU 1989:104, p. 108

¹⁷⁶ The removal of *personae non gratae* (an unwanted person) from a state's territory. M.P.M Zagari, *Combating Terrorism: Report to the Committee of Legal Affairs and Citizens' Rights of the European Parliament*, p. 291

¹⁷⁷ <http://www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>

¹⁷⁸ 19.9.2001 COM (2001) 521 final 2001/0217 (CNS) and published EGT C332 E, 27.11.2001, p. 305

¹⁷⁹ According to Article 13, the Council framework decision of 13 June 2002 on combating terrorism entered into force on the day of its publication. 22.6.2002

The Council Framework Decision on combating terrorism is the first international agreement with a definition of terrorism¹⁸⁰ In Article 1 a number of acts (a-n) are listed that shall be deemed to be terrorist offences. These are:

- a) attacks upon a person's life which may cause death;
- b) attacks upon the physical integrity of a person;
- c) kidnapping or hostage taking;
- d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- e) seizure of aircraft, ships or other means of public or goods transport;
- f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons as well as research into, and development of, biological and chemical weapons;
- g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- i) threatening to commit any of the acts listed in (a) to (h).

All the acts mentioned above are offences under national law in each member state. What separates terrorist crimes from ordinary crimes are the additional conditions in Article 1 (1). Firstly, these state that the act must be intentional. Secondly, there must be a possibility that the act may seriously damage a country or an international organisation. Thirdly, the act must be committed with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organisation to perform or abstain from performing any act, or
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

The definition has three parts that must be considered, the context of the act, the aim or ends of the act and the actual act committed.

Participating or directing a terrorist group is also an offence to the Framework Decision and is defined in Article 2. In Article 3 terrorist-linked offences are mentioned. These are acts that are committed with the purpose of preparing an act of terrorism such as theft, extortion or drawing up false administrative documents. Article 4 states that inciting, aiding or abetting, and attempting to commit terrorism should also be made punishable in each member state.

In Article 9 member states are encouraged to establish jurisdiction over crimes that are committed on its territory, on board an aircraft under its flag or registered in the country by one of its nationals, residents or by a legal person established on its territory, and even offences committed against its institutions or people.

¹⁸⁰ Prop 2001/02:135, p. 6

4.3 A national perspective: Sweden

The terrorist threat in Sweden has been relatively small during the 20th century and the threat of terrorism has largely come from abroad.¹⁸¹ In the 70's conflicts spread to Sweden from countries like Yugoslavia, Greece, Turkey and Germany. Naturally Sweden took precautionary actions after incidents like the killing at the Yugoslavian embassy in 1971 and the hijacking of a domestic flight with 90 passengers in 1972.¹⁸²

4.3.1 The Swedish terrorist law of 1973

The first Swedish efforts to fight terrorism by law were made in 1973.¹⁸³ They came as a result of the international wave of terrorist attacks that spread throughout the world at the time and eventually also reached Sweden. International cooperation was deemed insufficient and national regulation necessary.¹⁸⁴ The law did not define terrorism in itself but rather aimed at dealing with international terrorists that were in Sweden or tried to enter the country. It gave the Swedish police administration the assignment of establishing a list of foreigners that belonged to a group or organisation that could use violence or threat of force for their political purposes.¹⁸⁵ This list served as a guide to who did and who did not have the right to enter Sweden. The law was also designed to permit expulsion of foreigners that belonged to the listed organisations.¹⁸⁶ The list was only meant to include such terrorist groups and organisations that had systematically committed violent acts with a political purpose in other countries. It was implied that the law was not going to be used against groups that fought for liberation even if they occasionally had attacked foreign interests.¹⁸⁷ The law implied that only foreigners could commit terrorist acts. It also pointed out all the members of specific groups as terrorists. It was the membership that classified a person as terrorist rather than his or her personal actions.

4.3.2 Changes in Swedish terrorist regulations

In 1975 some changes were made to the Swedish terrorist regulations. One would strengthen the impression that only foreigners could be terrorists since the regulations on terrorism were integrated with the 'foreigner law' (Utlänningslagen). Another change was that the law from now on prescribed that membership in an organisation or terrorist group was not enough to

¹⁸¹ Remarkably, a Swede, Martin Ekeberg, fabricated the first mail bomb in 1904. Kumm, pp. 9 and 17

¹⁸² Ds Ju 1972:35, Åtgärder mot vissa våldsdåd med internationell bakgrund, pp. 5-6

¹⁸³ SFS 1973:162 Lag om särskild åtgärd till förebyggande av vissa våldsdåd med internationell bakgrund.

¹⁸⁴ Ds Ju 1972:35, pp. 2-7, 65-67

¹⁸⁵ SFS 1973:162, Art. 1

¹⁸⁶ SFS 1973:162, Art. 3

¹⁸⁷ Prop. 1973:37, p. 21

refuse entrance to, or expel people from Sweden.¹⁸⁸ The law prescribed that an individual examination should be made, to see whether the person was an actual threat or just a passive member of a terrorist group or organisation.

In 1980 the law that included the terrorist regulations went through changes but the terrorist regulations stayed much the same.¹⁸⁹ In 1982 some changes were made to the way of handling terrorist cases. The police could no longer refuse people entrance to Sweden. From now on it was the government that handled these cases. Most proceedings were held at Stockholms Tingsrätt. The list of terrorist groups and organisations disappeared and the government would from now on give further directions of which cases should be submitted to special proceedings.¹⁹⁰

In 1989 the terrorist regulations were again separated from the ‘foreigner law’ and placed in a law of their own.¹⁹¹ It was put forward that handling cases of a presumable terrorist was very different from other issues related to foreigners. These cases also needed to be handled in higher secrecy than other cases concerning foreigners’ right to visit or stay in Sweden. Furthermore, it was mentioned that the terrorist regulations had a negative impact on the other regulations of foreigners’ right to visit and stay in Sweden.¹⁹²

In 1988 and 1989 a committee was given the task of making a complete examination of the Swedish terrorist law. They examined two different conditions relating to presumable terrorists: that of membership in a terrorist organisation and that of the individual himself being a threat.¹⁹³ They found that the condition of membership posed numerous problems in the application on actual cases. A terrorist group or organisation is difficult to delimit since they often are in constant movement; they change their name, their leadership, their character etc. It was also said that certain persons could belong to a liberation movement recognised by Sweden but still be using methods that are alien to the organisation as a whole. Another criticism was that Swedish law did not have a clear stand on state terrorism. The committee proposed that no separate law should exist on refusing people to enter Sweden. Such a refusal could be made without referring to terrorism. Instead existing rules on refusing entry for foreigners that had committed crimes should be used in the future. In that way the condition of membership would be abolished. Regarding expulsion, extraordinary regulations were needed but such rules would in the future not include any condition of membership.¹⁹⁴ In 1991 these proposals became legislation.¹⁹⁵

¹⁸⁸ SFS 1975:1358, §20, §29

¹⁸⁹ SFS 1980:376

¹⁹⁰ SOU 1989:104, pp. 82-83

¹⁹¹ Lagen om åtgärder för att förebygga våldsdåd med internationell bakgrund 1989:530

¹⁹² Prop. 1988/89, p. 139

¹⁹³ In Swedish; ”organisationsrekvisitet” and ”personliga rekvisitet”.

¹⁹⁴ SOU 1989:104, pp. 10-15 and 21-22

¹⁹⁵ Lag om särskild utlänningskontroll, SFS 1991:572

4.3.3 Framework Decision from the EU

The member states of the EU were to take necessary measures to implement the Framework Decision by 31 December 2002. In Sweden a proposition of changes to be made was put forward to the parliament in March 2002.¹⁹⁶ In July 2003 new laws implementing the crimes of terrorism described in the Framework Decision entered into force.¹⁹⁷

To comply with the Framework Decision, Sweden had to make some changes of its criminal laws. Even if the terrorist crimes enumerated in Article 1 of the Framework Decision were already offences under Swedish law, there had never existed such a thing as a crime of terrorism. Article 5 also proscribed that penalties be more severe for terrorists with a special intent than those normally imposed under national law for the same crimes. It was explicitly stated in the proposition that the difference between ordinary crimes and terrorist crimes must be clear in legislation. Terrorism is described as a more serious offence since it could seriously endanger public safety and is a serious violation of the principles of democracy and the constitutional state. The seriousness of the threat shall be judged by regarding the perpetrator's purpose with his/her acts. Therefore, acts committed with the purpose of re-establishing democratic values, like those committed by the resistance during the Second World War, shall not be regarded as terrorist crimes.¹⁹⁸ Neither should those that exercise their fundamental rights or freedoms be considered terrorists even if they commit crimes while doing it. However, their actions should not be regarded as legal and they should not go unpunished.¹⁹⁹

In Article 6 of the Framework Decision there is an option for member states to introduce possibilities for reduced sentences if the suspect cooperates with administrative and judicial authorities. In the Swedish proposition it was suggested that Sweden should not introduce such possibilities since the country has no tradition of reducing penalties.²⁰⁰

4.4 Comments on the EU's definition of terrorism

The three-part definition of terrorism in the Framework Decision must be considered as a legal definition. Its purpose is to introduce a common criminal law on terrorism, in all member states.

If the EU definition is compared to my definition proposed in 3.7 it is evident that they have differences but also several similarities. For example, while my definition includes state terrorism it is not clearly stated in the EU definition whether states could be held responsible for terrorism or not. A

¹⁹⁶ Prop 2001/02:135 Sveriges antagande av rambeslut om bekämpande av terrorism

¹⁹⁷ SFS 2003:148 and 2003:154

¹⁹⁸ Prop 2002/03:38, p. 60

¹⁹⁹ Ibid. pp. 60-61 It was suggested that the Swedish law would in the text clearly state such exception from the terrorist crime, but in the final version it was excluded. p. 109

²⁰⁰ Prop 2001/02:135, p. 19

state could probably be considered a legal person, just as well as an international organisation could, under Article 7. As a punishment for legal persons Article 8 proscribes “[...] effective, proportionate and dissuasive penalties [...]”²⁰¹. Both definitions exclude violence that is already governed by the laws of war. For the EU definition this is expressed in the preamble as an exception excluding all actions taken by armed forces that are under the jurisdiction of International Humanitarian Law.²⁰²

It is interesting that the EU definition, in conformity with my definition, does not require an international element even though it is an international agreement. This is of course a result of the legislative form chosen by the member states, where every state has to implement the framework decision in their domestic laws. Nevertheless, it will have the effect of considering certain acts as terrorism, irrespectively of, for example, the perpetrators’ nationality.

As mentioned earlier, the EU definition has a construction where three parts must be fulfilled in order for us to consider an act as terrorism. This might give us an impression of a narrow definition but the contrary might actually be more true when it is compared to my definition. The actual act must be one of the listed crimes in the EU definition, it must be committed with an intention and have the possibility to cause damage and it must be committed with one of the three listed purposes in mind. The EU definition clearly states three different aims for action, where one of them has to be fulfilled to regard the action as terrorism. For example the EU definition requires either that a population is seriously intimidated *or* that the government is compelled to perform or abstain from performing an act, while my proposed definition demands that both those conditions be met (create a state of fear within a segment of society *and* change the behaviour of another).

Once it is proved that someone has committed an act of terrorism, the EU wants the sentences for terrorism to be heavier than for ordinary crimes. Longer imprisonment is motivated by the aims of the perpetrator. If the perpetrator aims at disturbing or even destroying a democratic society he/she threatens the very principles that the EU and its member states are founded on. Neither the Framework Decision nor the Swedish terrorist law mention any exceptions for political crimes. All acts falling within the definition of terrorism are to be considered as terrorism and it will, for example, no longer be possible to refuse extradition between member states for political crimes. This is supposed to facilitate the process of getting terrorists convicted. However, this has evoked criticism and a certain amount of concern that states might use the possibility of labelling unwanted organisations as terrorists and in a next step demanding their members to be extradited.

²⁰¹ Article 8, OJ L164, p. 6

²⁰² See 4.2.2 Framework Decision on combating terrorism and under (10) Preamble, OJ L164, p.4

It is however remarkable that there can be exceptions to this rule. In the preamble of the Framework Decision we find in (10) that “Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly [...]”²⁰³ etc. A Council statement further clarifies that those who have acted in the interest of preserving or restoring democratic values shall not be regarded as terrorists.²⁰⁴ It implies that violent acts that are committed against totalitarian, undemocratic states or an occupying or invading force should not be regarded as terrorism. Violence in favour of the “correct” political values is not terrorism. To what extent such violence can be justified is far from clear. In the preparatory work on implementing the Framework Decision in Sweden it was mentioned that such actions should not go unpunished even if they were not considered terrorism.²⁰⁵

While my proposed definition is neutral to the question of what political or religious motivation a perpetrator might have the EU definition holds one political system apart from others and does not consider actions committed in the purpose of installing or preserving this political system as terrorism. This would make it difficult to use the EU definition on another level than the European. It would be difficult to make a distinction between states that are to be considered as rightfully attackable and those who are not. Someone might also argue that if the ends are more democratic than the fundamentals or principles of a state, then it is justified to use violence to reach these ends.

²⁰³ OJ L164, 22.6.2002, p.4

²⁰⁴ Prop. 2002/03:38, pp. 60-61 (Council doc 14845/1/02, p. 15)

²⁰⁵ Prop. 2002/03:38, p. 61

5 Coercive Response and Suggestions for Future Responses to Terrorism

For many reasons peaceful responses to terrorism might seem insufficient to a state confronted with terrorism. In this case a state might decide to use coercive methods instead of, or as a complement to, peaceful ones. Coercive response could be defined as the use of force in another state's territory or the use of force in areas not subject to national sovereignty.²⁰⁶

5.1 The right to use force and the obligations to restrain from using violence

The use of force in international relations is in most cases prohibited. The UN Charter provides us with the principal rules in Art. 2 (3) and 2 (4). The first one proscribes that all disputes between member states should be solved with peaceful methods so that international peace is not endangered. And the second rule, known as the rule prohibiting the use of force, proscribes that "All member states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state [...]".²⁰⁷ In addition there is an obligation, under customary international law, of non-intervention in the affairs of other states.²⁰⁸ This obligation is explicitly expressed in three General Assembly resolutions.²⁰⁹ The three resolutions affirm that armed interventions against another state are condemned and that solutions by peaceful means should be sought to international disputes.²¹⁰ There is however two exceptions in the UN Charter, to the principal rule (prohibiting the use of force). One exception provides every state with the right to act in individual or collective self-defence if an armed attack is performed against them.²¹¹ The other exception gives the right to the use of force with the authorization of the Security Council.²¹²

²⁰⁶ Areas like the High Seas and International Airspace, Cassese 1989, p. 74

²⁰⁷ U.N. CHARTER Art. 2 para. 4

²⁰⁸ Sean D Murphy, Terrorism and the concept of "Armed Attack" in Article 51 of the U.N. Charter, p.43 [hereinafter Murphy S.]

²⁰⁹ 1) G.A. Res. 2131, U.N. GAOR, 20th Sess, Supp. No. 14, at 11, U.N. Doc. A/6014 (1966) 2) G.A. Res. 2625, U.N. GAOR, 25th Sess, Supp. No. 28, Annex, at 121, U.N. Doc. A/8028 (1971) 3) G.A. Res.3314, U.N. GAOR, 29th Sess, Supp. No. 31, Annex, at 142, U.N. Doc: A/9631 (1975)

²¹⁰ Murphy S. p. 43 and the Declaration adopted on the 24th of October 1970, annex to GA Res. 2625 (XXV)

²¹¹ U.N. CHARTER Art. 51,

²¹² U.N. CHARTER chapter VII

5.1.1 To act in self-defence

A state can exercise its right to act in self-defence if two conditions are met. First of all it must be made clear that an armed attack has occurred. Secondly there must be an absence of Security Council intervention.²¹³

Resolution 3314²¹⁴ that defines aggression and the Nicaragua case²¹⁵, gives guidelines for how to interpret an 'armed attack'.²¹⁶ It is clear that such an attack must be of a very serious kind. It can be directed against a state on its territory or against a state's agents or citizens either on another states territory or in international water and airspace.²¹⁷ In the Nicaragua case the International Court of Justice (ICJ) held that an armed attack occurs when regular armed forces crosses an international boarder or if a state sends out armed bands, groups, irregular or mercenaries to perform acts similar to those of armed forces against another state. These acts have to amount to the same gravity as if performed by regular armed forces. On the other hand the court held that supplying a rebel group with arms, logistic support or financial aid would normally not be sufficient to say that the supplying state participated in an armed attack.²¹⁸

It is clear from Article 51 in the UN Charter that only sovereign states can exercise the right of self-defence. But the article remains unclear on whether an armed attack can be committed by an 'independent' terrorist group and whether self-defence could be used only against states or not. Many authors agree that a terrorist group could perform an armed attack but that self-defence could only be exercised against a state.²¹⁹ Mégret makes an important point when he writes that any action taken in self-defence will always be directed against another state in one way or another, with the exception of the high seas and outer space.²²⁰

There are yet other requirements to be considered before a state acts in self-defence. The need to use force, according to the Webster's-formula, has to be "instant, overwhelming, leaving no choice of means, and no moment for deliberation".²²¹ Peaceful solutions must always be sought before the use of

²¹³ Frédéric Mégret, 'War'? Legal Semantics and the Move to Violence, p. 372 [hereinafter Mégret]

²¹⁴ GA Res. 3314 (XXIX) of 14 December 1974

²¹⁵ Military and Paramilitary Activities (Nicaragua v. US), ICJ Reports (1986) 4

²¹⁶ Olivier Corten & Francois Dubuisson, Operation « Liberté immuable » : Une extension abusive du concept de legitime defence, p. 62 [hereinafter Corten & Dubuisson]

²¹⁷ Cassese 1989, p. 80

²¹⁸ Murphy S, pp.44-45

²¹⁹ Res. 3314 read together with Art. 50 UN Charter, see for example: Mégret, p. 379, Corten & Dubuisson, p. 55 and Cassese 1989, pp. 80-84. (Cassese writes that for a terrorist attack to be considered as an armed attack "[...] international law requires that terrorist acts form part of a consistent pattern of violent terrorist action rather than just being isolated or sporadic attacks." Cassese 1989, p. 80

²²⁰ Mégret, p. 379 And even then, from my point of view, such attack would be directed against the nationals of another state and as a consequence, against the state itself.

²²¹ This was argued by the US Secretary of State, Webster, in 1842 in the Caroline case and has often been repeated since. Antonio Cassese, Terrorism is Also Disrupting Some Crucial Legal Categories of International Law, p.995 [hereinafter Cassese 2001]

force can become necessary.²²² The use of force is meant only for the purpose of driving back aggression and the force used must be proportional to this end and not to the armed attack that preceded the action of self-defence. The use of force must be “[...] reasonably immediate [...]” in the way that it actually stays as a necessary action of self-defence and does not become something more like reprisal.²²³ The Security Council must also be informed about the actions taken in self-defence.²²⁴ And all states acting in self-defence must comply with the fundamental principles of humanitarian law.²²⁵

5.2 The USA responds to terrorism

The terrorist attacks on September the 11th 2001 that killed three thousand people shocked the world and especially the Americans themselves. In the aftermath of the events, shock gave way to thoughts of revenge. According to a Gallup poll in September 2001, 90 per cent of the Americans supported “[...] some kind of retaliatory military action”.²²⁶ The US set out on a mission to wage war against terrorism –with the eventual goal of eliminating it altogether. President George Bush declared that “[...] (o)ur war on terror begins with Al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated”.²²⁷ The USA considers itself at war, but when it attacked Afghanistan it was done with claims of action in self-defence.²²⁸ Whether these claims were legitimate or not will be questioned in the following section, after which the concept of fighting a war against terrorism is examined.

5.2.1 The US acts in self-defence?

The first condition for the right to act in self-defence, that an armed attack has occurred, is in the case of the attacks of September 11 2001 probably fulfilled. Even if no arms were actually used, the hijacked aeroplanes were used as bombs on US territory.²²⁹ It is less evident whether the second condition, the absence of Security Council intervention, is fulfilled or not. In order for the state to have a right to act it must be clear that the Security Council has not taken any measures to restore international peace and security which were under threat from the armed attacks. If such action has already been taken there is no longer a need to act in self-defence.²³⁰

²²² Cassese 1989, p. 81

²²³ Mégret, p. 376

²²⁴ Art. 51 UN Charter

²²⁵ Cassese 2001, p. 995

²²⁶ Mégret, p. 371

²²⁷ Mégret, p. 384

²²⁸ Mégret, p. 371

²²⁹ Mégret, p. 372

²³⁰ Mégret, p. 373

The Security Council adopted Resolution 1368 already the following day, and two weeks later a second resolution (Resolution 1373). Could these resolutions be regarded as necessary measures to maintain international peace and security or not? Resolution 1368 is short and does not really urge states to take much action besides working together to bring those responsible for the attacks to justice and increasing the amount of international cooperation.²³¹ Resolution 1373 is much firmer, and the Security Council actually acts under Chapter VII of the UN Charter and obliges states to take action. Amongst other things states shall suppress the financing of terrorist activities by freezing assets and prohibiting the building of funds used for terrorist activities. States shall further refrain from giving any form of support, active or passive, to those engaged in terrorist activities etc.²³² Clearly, measures are taken by the Security Council even though they are not military “[...] but nothing in the Charter suggests that only *military* measures are adequate to deal with threats to international peace and security”.²³³ The question becomes even more blurred if we look at the fact that the Security Council actually recognizes, in both resolutions, the inherent right of individual or collective self-defence in accordance with the Charter. This has led to claims that the Security Council explicitly gives the US a right to act in self-defence. Mégret distinguishes two known ways that the Security Council could use in order to recognise in advance that a state has a right to act in self-defence in a particular case. Either the Security Council gives an explicit mandate or a weak version of self-defence recognition. Both options of recognition would require a statement of a state’s right to self-defence in a specific case. The recognitions of self-defence made in Resolutions 1368 and 1373 were made in very general terms and they are both placed in the preamble of the two resolutions. It is also notable that armed attack is never mentioned in the two resolutions “[...] which would presumably have pointed more directly to Article 51”.²³⁴ Mégret concludes that even if the measures taken by the Security Council were not enough to exclude the right to self-defence neither was there any explicit authorisation to act.²³⁵

Even if the US had sought peaceful solutions within a reasonable delay before using force, the most important question would still remain: did the US have the right to attack the state of Afghanistan even though the primary attacks had been performed by the terrorist organisation Al-Qaeda. In order for the US to exercise their right to use force against Afghanistan, Afghanistan must in some way be responsible for the armed attacks. As discussed above there are different degrees of support given to terrorist groups by states. It ranges from cases of state terrorism, where the attacks are performed by state officials, to individual terrorist groups that receive neither passive nor active help from any state. In between are different levels of state-sponsored and state-supported terrorist groups. In cases

²³¹ S/ RES/ 1368 (2001) Adopted 12 September 2001

²³² S/RES/ 1373 (2001) Adopted 28 September 2001

²³³ Mégret, p. 373

²³⁴ Mégret, pp. 374-375

²³⁵ Mégret, p. 375

where the terrorists are actually controlled by the state, there is a right to use force against that state.²³⁶ In cases where the state supplies the terrorist group with weapons, training facilities or only a safe haven on its territory, it becomes less clear whether there is a right to attack such a state or not. In the Nicaragua case the ICJ held the opinion that even if a state supplied a terrorist group with arms, logistic support or financial aid, this would normally not be sufficient to say that they participated in an armed attack. The ICJ did not in the Nicaragua case deal with the giving of sanctuary to a terrorist group, but Cassese argues that if the giving of arms and financial aid did not justify a military response then neither could the fact of merely providing a sanctuary justify a military response.²³⁷

In the case of Afghanistan and Al-Qaeda it is interesting to note that the US as late as in 1999 declared that Al-Qaeda was an organisation that operated on its own and that they did not have to depend on any state for material support.²³⁸ The US also primarily announced the Al-Qaeda's terrorist network as the target of the strikes against Afghanistan.²³⁹ And the US has always held Al-Qaeda responsible for the planning and performing these attacks while the Taliban regime in Afghanistan was held responsible for harbouring the terrorist organisation.

Unfortunately, the rules are not clear and there is room for the US to argue that they actually did act in self-defence. However, from my point of view, they have not presented much proof of in what way the state of Afghanistan was responsible for the attacks. In any case, it seems like the US is rather using the shortcomings of international law as a tool to justify their actions instead of letting international law guide these actions.

5.2.2 Waging war against terrorism

In the second half of the 20th century many states around the world joined the efforts to create an organisation, the UN, and a world order in which war was to be extinguished. As a consequence the UN Charter explicitly condemns aggression between states. War is traditionally, and in a strict legal sense, fought between states. However, the US has declared war on terror. Probably this declaration is most correctly interpreted as rhetoric. Mégret means that this 'war rhetoric' can be used not only to establish broad support for new laws restraining liberties within the US, but also be used "[...] to provide an escape route from the constraints of international law".²⁴⁰ The use of the term war could be a strategy to legitimise coercive responses that does not fall within the strict category of self-defence. Implicitly this would allow armed violence to go on till this 'war' is won. The restraints of self-defence rules, where the armed violence must come as an immediate response to an armed attack, are put aside. Waging war against terrorist

²³⁶ Cassese 1989, p. 82

²³⁷ Cassese 1989, p. 83, the same point is forcefully defended by Corten and Dubuisson, pp. 57-59, and also by Mégret, pp.383-384. (However even if this point of view has been a part of Security Councils practice, Israel for example consistently resents it.)

²³⁸ Corten and Dubuisson, p. 55

²³⁹ Mégret, p. 378

²⁴⁰ Mégret, p. 361

groups has become a convenient opportunity to menace states harbouring these groups.²⁴¹

Irrespective of the fact that the US has chosen unconventional and maybe also illegal methods to fight terrorism, the most important question should be: could we actually envisage defeating terrorism in such a war?

The US would probably agree on the fact that terrorists are criminals and not freedom fighters. Put in another way their war would actually be a war fought against a certain type of crime. My opinion is that their objective of defeating crime by waging war is not plausible. Different terrorists have different motives but it seems evident that as long as the root causes of terrorism remains, the result, terrorism itself, cannot be eliminated with violence.

5.3 Future responses to terrorism

Johan Galtung has developed theories on peace where he distinguishes between negative and positive peace. Positive peace is the absence of social injustice and structural violence while negative peace is just an absence of armed conflict.²⁴² In our efforts to eliminate terrorism and to provide us with a long-lasting solution to the problem of terrorism we must probably aim at achieving positive peace. The US waging war against terrorism with guns and violence can at best hope to achieve negative peace. But even so, it is difficult to anticipate this result since violence is often found to generate even more violence.²⁴³ Presuming that this assumption is correct, our war against terrorism must probably be fought by other means if we want to achieve positive peace. One solution, often brought forward in these discussions, is finding and eliminating the root causes of terrorism. The reasoning goes more or less that if we can identify the reasons for these acts of violence we can also proceed to action and eliminate these causes. This would give us a long-term solution to the problems. However, that mission lies far beyond the scope of this thesis. Instead, I am going to turn to a few aspects of law that could change future responses to terrorism.

If we seriously want to fight terrorism with law, a common definition on terrorism will inevitable become if not indispensable, at least very convenient. In one way even a narrow definition would be better than no definition at all. Phrases like: “The Security Council, [...] Condemning all acts of terrorism, irrespective of motive, wherever and by whomever committed”²⁴⁴ cannot be anything but ineffective if there is no clear understanding and no consensus of what the word terrorism includes or excludes.

Hopefully, the work in the UN to draft a universal Convention on International Terrorism, which would include a definition of terrorism, will

²⁴¹ Mégret, pp. 376-385

²⁴² Cassese 1989, p. 91

²⁴³ Cassese 1989, p. 90 and Wilkinson 1987, p. 457

²⁴⁴ Preamble of S/RES/1269 (1999), Adopted 19 October 1999

one day reach a result. A definition would not only provide everyone with clear guidelines on what acts should be regarded as terrorism but also bring new hope to the idea that terrorism might be added to the competence of the International Criminal Court in the future.

The establishing of an International Criminal Court by the 1998 Rome Conference was a tremendous step forward in strengthening the positions of International law. Unfortunately the process of ratification has been slow and certain states, like the US, have been reluctant to give the ICC jurisdiction over their nationals. The conflict originated in practical problems like the relation between the Security Council and the ICC.²⁴⁵ The US argued that the ICC should not investigate crimes committed in conflicts where the Security Council was already playing a peacekeeping role. Such a rule would exclude a great number of conflicts and allow the five permanent states, with a veto in the Security Council, to indirectly control which crimes the ICC would investigate.²⁴⁶ Since the independence of the ICC is crucial for its liability and credibility the conflicts were never fully resolved and the US now openly opposes the ICC.²⁴⁷ Still, the Statue of the ICC is full of compromises and security measures provided to the joining States. Amongst other things a state can always choose to prosecute a suspect themselves. The most important compromise in this context would be that it does not give the ICC explicit competence to deal with terrorism,²⁴⁸ although the ICC might be competent to deal with terrorism in some cases where the offence amounts to a crime of genocide or a crime against humanity.²⁴⁹

The ICC was negotiated with the hopes that it would allow the International Community, in a much more effective way, to hold individuals responsible for their crimes. Even though the crime of terrorism is currently not a part of the court's competence, the Statue of ICC actually anticipates a revision of the Statue 7 years after entering into force.²⁵⁰ Any agreement on a common definition reached between the member states in the work of a UN convention is most likely to facilitate the incorporation of terrorism under the competence of the ICC.

If no political solution is reached, and the project of defining terrorism is once again put aside, other measures might be taken to reinforce already existing legislation. More effort and political work has to be put into the

²⁴⁵ These problems of course originated in political considerations.

²⁴⁶ Wilkinson, pp. 43-45

²⁴⁷ After signing the treaty of ICC the US has declared that they now 'unsigned' it. They have also elaborated bilateral agreements, which forbids the signing state to extradite American citizens to the ICC. A total of 51 states had met this request by the 2 of July 2003, while 35 states had refused. Those refusing to sign risked losing their funds provided by the US. Hans-Henrik Rönnow, Dagens Nyheter, 3 July 2003, p. 13

²⁴⁸ Article 5, § 1 Statue of Rome states three types of crimes that are relevant to the competence of the Court: genocide, crimes against humanity, and war crimes. Later the crime of aggression will also be elaborated as a part of the competence of the court. Bourdon, pp. 36-39


²⁴⁹ It would have been interesting if the attacks of September the 11 2001 would be judged as such and the responsible would be tried by the ICC. However the court will not be able to try any events that took place prior to the 1 of July 2002.

²⁵⁰ Art. 123 Statue of ICC, Bourdon p. 295

task of getting all the UN member states to sign and ratify the twelve multilateral treaties. An appendix proscribing sanctions for states unwilling to comply with the *aut judicare aut dedere* principle could also supplement these treaties.

Changes of the rules for how to respond to terrorist attacks committed by non-state actors and the rules governing self-defence might also need revising. Any such changes must be preceded by proper discussions of how, and against what type of violence, a response might be used. These discussions would probably profit from a definition on terrorism as well.

We might also need to change the rules that govern the UN and its organisation. Since the creation of the UN many things have changed, while the organisation itself has almost stayed the same. With the ending of the Cold War a shift of power balance has occurred and the US stands more or less alone as the main actor. The UN would need to be adapted to these changes and with it most certainly also their executive organ, the Security Council. A reorganisation should hopefully create more balance between the developing and developed states. The reorganisation of the Security Council and the veto of each of the five permanent members is one issue that should be considered. The role of increasingly powerful non-state actors emerging on the international arena should also be considered. That would mean considering not only international terrorist organisations but also multinational enterprises. It is important that the UN does not become an oppressor or the tool of the already powerful. The peacekeeping role must always be kept as the major and most important task for the UN.

 Our 'war' against terrorism we must fill in the gaps of International law and strengthen the position of the UN. A lot of efforts have to be used to deal with the reasons for terrorism. We cannot rely mainly on the use of violence or force, neither can law alone eliminate terrorism. A main objective should be to strengthen social, economic and human rights for everybody. Our solutions, conventional or otherwise, should aim at being preventive instead of just being of a prohibiting character.

6 Final remarks

History tells us that terrorism is not a new phenomenon. It has existed for at least 2000 years and it is a reasonable assumption that terrorism is not going to end all by itself. Rather, there are indications that it might become even more lethal and more frequent in the future. With this in mind it seems urgent to take action.

I set out with the idea that if we could find a universal definition of terrorism we could also agree upon new laws and tighter cooperation between states to both prevent and punish terrorism. In order for us to reach an agreement about a definition on terrorism there also has to be mutual understanding on what types of behaviour that should be considered criminal. Disagreement prevails in this matter due to cultural, political and economic differences between states, but also because some people deliberately want the definition to exclude certain acts of violence, so that these acts can continue to go unpunished. From their point of view such acts could even be heroic. This might not cause a problem if everyone could agree about which motives were good and which ones were bad. A conflict requires two parties and normally both parties would consider his/her performed violent acts as the justified ones and therefore also excusable. My purpose was to examine different definitions in order to see if a definition neutral to political or ideological considerations could be worked out: a definition that is neutral to factors like who is acting and with what purpose. It soon stood clear that such a definition was very hard to construct since the factor that actually distinguishes terrorism from ordinary crime is motivation. It is the political or ideological goals of the perpetrator that motivates and directs his/her actions. If we would construct a definition without considering the motive and purpose of the perpetrator there would not be much to differentiate it from other types of violence. The definition that I propose is to some extent neutral. It does not make any distinction between whether you are using violence for the cause of democracy, religion or any other political or ideological motivation, yet every act must be politically or ideologically motivated to be considered terrorism.

When we are trying to solve the equation we inevitably find ourselves running around in circles as every answered question leads to two new unanswered ones. Should terrorism be defined in terms of its aims or its methods, or both, or neither? My final answer is that there is no ideal solution to the problem. It is rather a question of finding political consensus and pragmatic solutions, to make compromises and agreeing on that any solution must be considered better than no solution at all. In international law there still is no general category of offence called terrorism. There are only individual acts of violence that could be labelled terrorism. There are conventions that regulate areas rightfully considered as terrorism, however it seems as if international law and justice suffers from the lack of a proper definition. The current conventions that regulate these particular acts of

terrorism and proscribe the 'extradite or prosecute-rule', are evidently not enough.


Credit should be given to the European Union for agreeing upon a definition on terrorism. It is clearly a step in the right direction. Unfortunately it also has its shortcomings. Since it is built upon the assumption that a democratic state is the only proper cause to fight for and forbidden to fight against, this particular definition might have problems finding universal acceptance. The same assumption also leaves the question open whether it would be acceptable or not to apply terrorist methods if there are no democratic channels to make your voice heard. My answer would be that however good or just the cause, the killing of innocent civilians or the use of civilians as a means of pressure in conflicts should never be excused. There are other methods and other ways of making your voice heard. Even in a non-democratic state, methods like civil disobedience, peaceful resistance or large-scale economic or political actions could provide for powerful and effective results. These other methods must be further developed and be provided as an alternative to people in desperate situations. This is, amongst others, a future task and an important responsibility for the international community.

It is also my belief that a definition would serve the international community with a tool that would strengthen international law and create the possibility to draft one single convention on terrorism. This might also open up to the possibility of giving the International Criminal Court competence to deal with cases of international terrorism. Terrorism should be treated as a serious crime and be ranked equally with crimes like torture, genocide and crimes against humanity.

Law cannot treat the cause of the problem but rather lessening the symptoms of it. If we believe in the assumption that terrorists act out of different reasons than ordinary criminals then law can only be a way of seeing to that perpetrators do not go unpunished. The law might have some preventive effects and lessen the frequency of terrorist crimes, but the most important task must be to search for the root causes of terrorism. Discovering and preventing them from arising should be the most important task of the International community.

Lately, not only has violence escalated but also the use of rhetoric. I find it noteworthy that the US often uses the same rhetoric as terrorists usually do. They have repeatedly announced that states that did not join the US in their fight against terrorism would instead be regarded as supporters of terrorism. Perpetrators of terrorism often reason in the same way. From their perspective there are no innocent civilians. People trying to be neutral and passively stand on the side actually only promotes the opposite side of the conflict.²⁵¹ Both sides resort to rhetoric reminding of the saying: if you are not part of the solution you are part of the problem.

²⁵¹ Kumm, p. 28

What we do not need is lawlessness or states abusing their power, even if the intention is to eliminate terrorists. This will only lead to the world being launched into a spiral of violence with only more violence to come instead of solutions to our problems.  matter what our political or religious convictions are and no matter what type of goals or purposes they inspire within us, there should be mutual agreement that these ends should be won with peaceful methods. It may require a 'war' to fight terrorism, but such a war must be fought with other measures than just violence. Coercive responses might be necessary but peaceful ones must play the major part. Terrorism is not an ordinary crime and therefore it calls for extraordinary measures. Politics, economics but also law must be coordinated so that they work with the same objective: to prevent terrorism.

Bibliography

- Bauhn, Per** Ethical Aspects of Political Terrorism, The Sacrificing of the Innocent, Lund University Press, ISBN 91-7966-064-9, 1989 Lund
- Blakesley, Christopher** Terrorism, Drugs, International Law, and the protection of Human Liberty, Transnational Publishers Inc., ISBN 0-941320-62-6, 1992 Ardsley-on-Hudson NY
- Bourdon, William** La Cour pénale internationale- Le statut de Rome, Seuil, ISBN 2-02-037194-4, 2000 Paris
- Chalk, Peter** West European Terrorism and Counter-Terrorism, The evolving dynamic, Macmillan Press LTD, ISBN 0-333-65461-7, 1996 London
- Combs, Cindy C.** Terrorism in the twenty-first century, Prentice Hall, ISBN 0-13-490731-0, 1997 New Jersey
- Kumm, Björn** Terrorisms historia, Utökad och reviderad version, Historiska Media, ISBN 91-89442-51-2, 2002 Lund
- Lambert, Joseph J.** Terrorism and Hostages in International law, Grotius Publications, ISBN 0-949009-46-6, 1990 Cambridge
- Laqueur, Walter** A History of Terrorism, revised edition, Transaction Publishers, ISBN 0-7658-0799-8, 2001 New Jersey
- Malekian, Farhad** International Criminal law, Vol. II, ISBN 91-630-0246-9, 1991 Uppsala
- Melander, Göran** Terroristlagen- ett onödigt ont, Bokförlaget PAN/Nordstedts, ISBN 91-1-747771-9, 1975 Lund
- Schlaghech, Donna M.** International terrorism an introduction to concepts and actors, Lexington Books, 1988, Lexington
- Schmid, Alex P.** Political terrorism: a research guide to concepts, theories, databases and literature, North-Holland, 1984 Amsterdam
Political Terrorism: a new guide to actors, authors, concepts, databases, theories and literature, Alex P Schmid and Albert J Jongman in collaboration with others, North- Holland Publishing Company, ISBN 0-444-85659-5, 1988 Amsterdam
- Wilkinson, Paul** Terrorism Versus Democracy- The liberal State Response, Frank Cass Publisher, ISBN 0-7146-8165-2, 2002 London

Articles

Bassiouni M. Cherif, *The origins and fundamental causes of international Terrorism*, (part of a UN study) pp. 5-10, *International Terrorism and Political Crimes*, Ed. by M. Cherif Bassiouni, Charles C Thomas Publisher, ISBN 0-398-03257-2, 1975 Illinois

Bassiouni M. Cherif, *A Policy-Oriented Inquiry into the Different Forms and Manifestations of 'International Terrorism'*, pp. xv- liii, *Legal Responses to International Terrorism: US Procedural Aspects* Ed. by M. Cherif Bassiouni, Martinus Nijhoff Publishers, ISBN 0-89838-931-3, 1988 Dordrecht

Bonner David, *United Kingdom: The United Kingdom Response to Terrorism*, pp. 171-205, *Western Responses to Terrorism*, Ed. by Alex P. Schmid, and Ronald D. Crelinsten, Frank Cass & Co. Ltd, ISBN 0-7146-4090-5, 1993 London

Cassese Antonio, *The International Community's "Legal" Response to Terrorism*, pp. 73-92 (1989), *Terrorism*, Ed. by Conor Gearty, Dartmouth Publishing Company Ltd, ISBN 1-85521-548-9, 1996, Hants

Cassese Antonio, *Terrorism is Also Disrupting Some Crucial Legal Categories of International Law*, pp. 993-1001, *European Journal of International Law*, (2001) Vol. 12 No 5

Corten Olivier & Dubuisson Francois, *Operation « Liberte immuable » : Une extension abusive du concept de legitime defence*, pp. 51-77, *Revue général de droit international public*, 2002-1

Crelinsten Ronald D. & Schmid Alex P., *Western Resonses to Terrorism: A Twenty-Five Year Balance Sheet*, pp. 307-340, *Western Responses to Terrorism*, Ed. by Alex P. Schmid, and Ronald D. Crelinsten, Frank Cass & Co. Ltd, ISBN 0-7146-4090-5, 1993 London

Guillaume Gilbert, *France and the Fight Against Terrorism*, pp. 131-135, *Western Responses to Terrorism*, Ed. by Alex P. Schmid, and Ronald D. Crelinsten, Frank Cass & Co. Ltd, ISBN 0-7146-4090-5, 1993 London

Higgins Rosalyn, *The general international law of terrorism*, pp. 13-29, *Terrorism and International law*, Ed. by Rosalyn Higgins and Maurice Flory, Routledge, ISBN 0-415-11606-6, 1997, London

Johnson Paul, *The Seven Deadly Sins of Terrorism*, pp. 189-195, *Terrorism & Political Violence: Limits & Possibilities of Legal Control*, Ed. by Henry H. Han, Oceana Publications Inc., ISBN 0-379-00906-4, 1995 USA

Marks Edward, *Diplomacy and Terrorism: Conflicting Systems*, pp. 41-58, *Terrorism & Political Violence: Limits & Possibilities of Legal Control*, Ed.

by Henry H. Han, Oceana Publications Inc., ISBN 0-379-00906-4, 1995
USA

Mégret Frédéric, 'War'? Legal Semantics and the Move to Violence, p. 361-399, *European Journal of International Law*, April 2002, Vol. 13, nr 2.

Moore John Norton, *The Need for an International Convention*, pp. 437-444, *Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism*, pp.445-450, *Legal Responses to International Terrorism: US Procedural Aspects* Ed. by M. Cherif Bassiouni, Martinus Nijhoff Publishers, ISBN 0-89838-931-3, 1988 Dordrecht

Murphy John F, *International Crimes*, pp. 362-381, *The United Nations and International Law*, Ed. by Christopher C. Joyner, Press Syndicate of University of Cambridge, ISBN 0521586593, 1998 Georgetown

Murphy Sean D, *Terrorism and the Concept of "Armed Attack" in Article 51 of the U.N. Charter*, pp. 41-51, *Harvard International Law Journal*, Vol. 43

Norell Magnus, *Terror i Guds namn*, pp. 1-30, *Världspolitikens Dagsfrågor*, no. 12, 2002, Utrikespolitiska Institutet

Peers Steve, *EU responses to terrorism*, pp. 227-243, *International and Comparative Law Quarterly*, January 2003, Vol. 52

Rönnow Hans-Henrik, *USA drar in stöd till 35 länder*, p.13, *Dagens Nyheter*, 3 July 2003

Salomone Franco, *Terrorism and the Mass Media*, pp. 43-46, *International Terrorism and Political Crimes*, Ed. by M. Cherif Bassiouni, Charles C Thomas Publisher, ISBN 0-398-03257-2, 1975 Illinois

Sassoli M, *International Humanitarian Law and Terrorism*, pp. 466-474, *Contemporary research on terrorism*, Ed. by Paul Wilkinson and Alasdair M Stewart, Aberdeen University Press, ISBN 0-08-035068-2, 1987 Aberdeen

Schmid Alex P., *The Response Problem as a Definition Problem*, pp. 7-13, *Western Responses to Terrorism*, Ed. by Alex P. Schmid, and Ronald D. Crelinton, Frank Cass & Co. Ltd, ISBN 0-7146-4090-5, 1993 London

Thackrah R, *Terrorism: A Definitional Problem*, pp.24-41, *Contemporary research on terrorism*, Ed. by Paul Wilkinson and Alasdair M Stewart, Aberdeen University Press, ISBN 0-08-035068-2, 1987 Aberdeen

Warbrick Colin, *The European Convention on Human Rights and the Prevention of Terrorism*, pp. 82-119, *International and Comparative Law Quarterly*, January 1983, Vol. 32

Wilkinson Paul, *Pathways out of terrorism for Democratic Societies*, pp.453-465, Contemporary research on terrorism, Ed. by Paul Wilkinson and Alasdair M Stewart, Aberdeen University Press, ISBN 0-08-035068-2, 1987 Aberdeen

Zagari M.P.M, *Combating Terrorism: Report to the Committee of Legal Affairs and Citizens' Rights of the European Parliament*, pp. 288-300, Western Responses to Terrorism, Ed. by Alex P. Schmid, and Ronald D. Crelinsten, Frank Cass & Co. Ltd, ISBN 0-7146-4090-5, 1993 London

Encyclopedia of Terrorism, Cindy C. Combs and Martin Slam, Facts on File Inc., ISBN 0-8160-4455-4, 2002 New York

European Terrorism, Ed. by Edward Moxon-Browne, Dartmouth Publishing, ISBN 1-85521-500-4, 1993 Hants

How did this happen?, Ed. by James F. Hoge JR and Gideon Rose, Public Affairs Ltd, ISBN 1-903985-39-0, 2001 Oxford

International Terrorism, Ed. by Magnus D. Sandbu and Peter Nordbeck, Juristförlaget, ISBN 91-544-2041-5, 1989 Lund

UN Documents

UN Conventions and Protocols

--U.N. Charter

--Convention on Offences and Certain Other Acts Committed on Board Aircraft: Sept 14 1963, 20 UST 2941, TIAS No 6768, 704 UNTS 219

--Convention for the Suppression of Unlawful Seizure of Aircraft, Dec 16 1970, 22 UST 1641, TIAS No 7192, 860 UNTS 105

--Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept 23 1971, 24 UST 564, TIAS No 7570, 974 UNTS 177

--Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Feb 24 1988

--Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec 14 1973, 28 UST 1975, TIAS No 8532, 1035 UNTS 167

--International Convention Against the Taking of Hostages, Dec 17 1979, UN GOAR, 34th Sess, Supp No 39 at 23, UN doc A/34/39 (1979)

--Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, March 10 1988

--Protocol for the Suppression of Unlawful Acts Against the Fixed Platforms Located on the Continental Shelf, 27 ILM 685 1988 Continental shelf

--Convention on the Physical Protection of Nuclear Material, 1980

--Convention on the Making of Plastic Explosives for the Purpose of Detection, 1991

--International Convention for the Suppression of Terrorist Bombings, 15 December 1997

--International Convention for the Suppression of the Financing of Terrorism, 9 December 1999

--Rome Statue of the International Criminal Court, 17 July 1998

General Assembly Resolutions:

--G.A. Res. 2131, U.N. GAOR, 20th Sess, Supp. No. 14, at 11, U.N. Doc. A/6014 (1966)

--G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess, Supp. No. 28, Annex, at 121 adopted on the 24th of October 1970, U.N. Doc. A/8028 (1971)

--GA Res. 3314 (XXIX) of 14 December 1974 U.N. GAOR, 29th Sess, Supp. No. 31, Annex, at 142, U.N. Doc: A/9631 (1975)

--GA Res 3034 (XXVII) of 18 December 1972, UN GAOR, 27th Sess.

--GA Res 32/147 of 16 December 1977, UN GAOR,

--GA Res 31/102 of 15 December 1976, UN GAOR,

--GA Res 34/145 of 17 December 1979, UN GAOR,

--GA Res 36/109 of December 1981, UN GAOR,

--GA Res 40/61 of December 1985, UN GAOR,

--GA Res 42/159 of 7 December 1987, UN GAOR,

--GA Res 45/116, 14 December 1990

--GA Res 49/60, Declaration on Measures to Eliminate International Terrorism

Security Council Resolutions:

-- S/RES/1269 (1999), Adopted 19 October 1999

--S/ RES/ 1368 (2001) Adopted 12 September 2001

--S/RES/ 1373 (2001) Adopted 28 September 2001

--S/ Res/ 1456 (2003)

Reports of the working group of the Sixth Committee:

--A/C.6/52/L.3, 10 October 1997

--A/C.6/53/L.4, 22 October 1998

--A/C.6/54/L.2, 26 October 1999

--A/C.6/55/L.2, 19 October 2000

--A/C.6/56/L.9, 29 October 2001

--A/C.6/57/L.9, 16 October 2002

(<http://www.un.org/terrorism/infgt.htm>)

International Court of Justice:

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgement of 27 June 1986, ICJ Reports (1986)4

EU Documents

--Framework decision on combating terrorism, Official Journal EGT L 164, 22.6.2002 pp. 0003-0007, Celex no. 32002FO475

--Proposal for a Council Framework Decision on Combating Terrorism, 19.9.2001 COM/2001/0521 final, CNS 2001/0217, Official Journal EGT C 332 E, 27.11.2001, pp. 0300-0304, Celex no. 52001PC0521

Swedish laws and publications

SFS 1973:162 Lag om särskild åtgärd till förebyggande av vissa våldsdåd med internationell bakgrund.

SFS 1975:1358 Lag om ändring i utlänningslagen

SFS 1980:376 Utlänningslag

SFS 1989:530 Lagen om åtgärder för att förebygga våldsdåd med internationell bakgrund (terroristlag)

SFS 1991:572 Lag om särskild utlänningskontroll

SFS 2003:148 Lag om straff för terroristbrott

SFS 2003:154 Lag om särskild utlänningskontroll

Prop. 1973:37 Förslag till lagstiftning om åtgärder mot vissa våldsdåd med internationell bakgrund

Prop. 1988/89:86 Förslag till utlänningslag

Prop. 2001/02:135 Sveriges antagande av rambeslut om bekämpande av terrorism

Prop. 2001/02:149 Sveriges tillträde till Förenta Nationernas internationella konvention om bekämpande av finansiering av terrorism

Prop 2002/03:38 Straffansvar för terroristbrott

SOU 1989:104 Terroristlagstiftningen

Ds Ju 1972:35, Åtgärder mot vissa våldsdåd med internationell bakgrund

Sources on the Internet

<http://www.unodc.org/unodc/terrorism.html>

http://www.unodc.org/unodc/terrorism_conventions.html

<http://conventions.coe.int> The European Convention on the Suppression of Terrorism 27 January 1977, ETS no.90