

# International Law and the Use of Force against Terrorism



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“You do not fight terrorism with a preventive war; you fight terrorism by creating more justice in the world.”

—Tommaso Palladini

“Terrorism sparks strife, but cooperation to combat it should be compatible.”

—Alshdaifat, S. A.



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## PREFACE

As of late, many books and articles have been addressing the topic of terrorism. They all appear to discuss it either from one side's perspective or look into the terrorism phenomenon with regard to one single issue, but not daring to dive too deeply into specific issues related to terrorism. I have directed myself sharply to lead and encourage the reader to approach the topic from a different perspective. This I hope to accomplish, in part, by introducing the topic of international law and the use of force against terrorism. The proposals I am presenting in my book focus not only on the law, UN resolutions, and thoughts of public figures about terrorism, for such a narrow scope could lead to faulty conclusions. I suggest that the law, resolutions, and the political side will be a major impact of my book. We move now to an overview of the material we will cover in the following general introduction and seven chapters that comprise the body of this book. The general introduction sets forth an extraordinarily brief but I trust sufficient look at terrorism in general and a brief about the chapters in this book. Chapter 1 discusses the historical background of terrorism, I discuss the definition of terrorism and terrorism in depth through history, the tactics practiced by terrorists in carrying their acts out then the definition of a terrorist and the influences on them such as the social, economical, cultural and psychological impacts they have received. Chapter 2 addresses International and State terrorism, the definition of both and their background and development. A further discussion in the chapter considers the development and changes in the international community, such as the occupations of Afghanistan and Iraq, terrorism and violence in Iraq, the torture scandals, Israeli aggression against Lebanon, the assassinations of Lebanese figures and international terrorism, the rise of terrorism and violence worldwide, and resistance in international law. Chapter 3 reviews International and Regional Intergovernmental Organizations' Resolutions in the field of Terrorism, and further presents the views of several international and regional bodies with regard to terrorism. Starting with United Nations General Assembly and Security Council resolutions, the chapter then reviews the Counter-Terrorism Committee (CTC) and its major contribution to international peace and security. Also, this chapter shows the most important measures taken by the UN to eliminate terrorism. Chapter 3 continues its effort to

clarify the Arab League's encouragement and plans to eliminate terrorism. The U.S., through the "Patriot Act" has done just as much as the Arab League with regard to the elimination of terrorism. The Europeans have accomplished more than any group of States or unions throughout the globe, and their efforts can be seen through the work of EUROPOL and EUROJUST. The chapter will wrap up with the collective efforts of the international community to eliminate terrorism. Chapter 4 lays down a detailed analysis with regard to the use of force against terrorism. The analysis starts with the legal justifications to use force, these justifications can be derived from Intervention by Invitation, Chapter VII of the UN Charter, humanitarian intervention, self-defense, pre-emptive action, and consent. The chapter also analyzes the armed action against Afghanistan's Taliban regime as case number one, and then the legitimacy of war against Iraq as case number two. The chapter ends with a comparative analysis and different perspectives on the use of force against terrorism. By arguing the legal justifications and how these justifications relate to politics and international relations, Chapter 4 paves the way for Chapter 5, where the discussion turns to the use of force in international relations. Even though this issue seems political, I suggest that the UN and its various bodies lie at the heart of the 'use of force' debate. The chapter sets forth an examination of international law and the recognition of the unilateral intervention, the United Nations Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, collective and individual intervention, the marginalization of the United Nations and international law and the use of force against terrorism, the abuse of the right of using force to combat terrorism, the forced alteration of regimes and the breach of State sovereignty through the use of force. Then, the chapter offers political and diplomatic solutions to avoid the use of force against terrorism through negotiations, mediation, investigation, international arbitration and the efforts of regional organizations and agencies. Chapter 6 continues the discussion with a comparative analysis of the views on and conditions of terrorism, similarities and dissimilarities of views within terrorism and recommendations with respect to encountering terrorism at the national and international levels. The comparative analysis is an examination of the views between a school of thought that supports the use of force to combat terrorism, and the opposite school which opposes the use of force to combat terrorism. This is, of course, followed by a conclusion. Chapter 7 summarizes the main issues and concludes the book.



## GENERAL INTRODUCTION

In ancient times, someone within a declining Eastern Roman Empire referred to Attila the Hun,<sup>1</sup> as the “Scourge of God.” Over a millennium later, and in the eyes of many, the twenty first century has been witnessing its own peculiar kind of scourge, under the term, “Terrorism.” Led not by one, strong and fearsome Attila-like individual, modern terrorism is a vastly splintered movement having been established across the globe, and under numerous different leaders, many of whom seem to have their own agendas. The various forms of terrorism have become a seemingly integral part of our daily lives, forcing us to assess both its present and long range effects, as we struggle to ascertain its root causes, its various methodologies and the manner in which it might hinder efforts in attaining a global community.

Wherever it occurs, and however it is defined, or whatever its root causes: fear, racial, ethnic and religious intolerance, along with sectarianism, or political or ideological differences, terrorism produces the same results of death, destruction, mayhem, and widespread fear among the populace. One thing that seems to be common across the spectrum is that those who stand against terrorism almost universally choose to combat its effects through what would be considered legitimate means against an enemy that blends in well with the rest of society, though military methods become a very difficult strategy with which to succeed.

Not all terrorists are combatants or should be treated on this basis. According to the German philosopher, Habermas, the use of unlawful violence, will continue until the people of the East try to limit their ignorance and backwardness and be open and free to discuss the problems creating terrorism; such problems being, for many people, the lack of a decent happy life coupled with justice. At the same time, progress is

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<sup>1</sup> “As Attila sat around the evening campfire with his principal chieftains, all of them exhausted from a busy day of marauding across the countryside, telling stories of how to become better leaders in the pillaging of villages that lay ahead.” Ginzl, David. “Proceed On”: Conquering the Unknown with Lewis & Clark. 20 Com. Lending Rev. 48 (2005).

difficult to achieve while constant combat is being waged, and war has been waged in certain areas of the East for centuries.

History seems clear enough; the so-called “Cradle of Civilization,” has also been an incubator of military strife, Attila, Genghis and Kublai Khan, to name but a few of the more well-known protagonists in this theater of war that has, for centuries, stretched across three continents. Mohammed Habib confirmed:

“Imperialistic armies of Assyrians, Persians and Romanians, circa four-hundred B.C., wreaked devastation and havoc upon the land and people during their ten thousand mile foray through what is now known as Kurdistan, a region that has seen waves of terror outside invasions and inner conflicts among tribes, vying for better economic conditions, and searching for water and greener pastures. Furthermore, there has been proselytization at the expense of the traditional Zoroastrianism, as Christians and Muslims entered the region.”<sup>2</sup>

As shown in the case of Attila the Hun,<sup>3</sup> and his thirst for power, property, and possibly personal prestige, since ancient times, nation States of the world, particularly in Asia and Europe, have not been immune from invasion by other nation States, bands of looters from beyond their borders, all causing destruction, rape and general malaise.

At one stage of its history, the East had to contend with not only the militaristic and terroristic actions of the Ayyubid Empire, but also the series of Christian Crusades of the eleventh and twelfth centuries.<sup>4</sup> Although the cross, utilized by European kings and nobility, was the symbol of the military campaigns into the “Holy Land,” almost nothing can be said to be holy about these military excursions, many of which were launched from Europe. History shows that under the shadows of hundreds of crosses carried into battle, was the colonial desire to seize and control the resources of a region laid siege to.

Therefore, these colonialist ventures demonstrate the integration of religion and politics in greatly pronounced forms, whose negative impact and consequences are still felt after a thousand years. In addition,

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<sup>2</sup> Habib, Mohammed. *The Zoroastrianism Religion, History, Heritage and language* Publications, Iraq, P. 6 (2009).

<sup>3</sup> *Supra* note 1.

<sup>4</sup> Bahtia, Umej. *The Crusades in Modern Muslim Memory*, RSIS Monograph, No. 12, Nanyang Technological University, P. 31 (2008).



Ayyubid<sup>5</sup> has addressed evils of another kind: Assassins, one Shiite faction that assassinated heads of State to achieve their political goals.

Throughout the seven-century struggle between the Ottoman Empire and the Safavid Dynasty, for influence over the inhabitants of the regions, both the Ottomans and the Safavids<sup>6</sup> maintained the spirit and practice of oriental despotism,<sup>7</sup> coupled with cruelty and the same degree of oppression. The dangerous part of the rules remained in the states established on the ruins of the Ottoman Empire (including Turkey, Iraq and Syria, in addition of course, to Iran), and so the people continued to suffer from terrorism for more than six centuries, in all forms known to the international community and organizations of the United Nations.

More often, states have acted in terroristic manners due to their own plans and agendas, and have sometimes done so through types of bilateral and trilateral agreements, which might be called a type of regional terrorism. The West, represented by European nations and the United States of America, inflict terror on other peoples of the world by excluding them from various rights and the freedoms of self-determination.

Various international conventions and treaties, such as Sykes Picot<sup>8</sup> and Lausanne<sup>9</sup> mandated the dismembering, and re-establishment of dozens of

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<sup>5</sup> Ayyubid ruled Egypt, Syria, Al-Hejaz, Iraq, and Yemen in the twelfth and thirteenth centuries. The most famous leader of Ayyubid was Saladin, who was known for his wars with the crusaders.

<sup>6</sup> Savory, Roger. *Iran under the Safavid*, Cambridge, Cambridge University Press, P. 16 (2007).

<sup>7</sup> "This anarchistic movement, whose majority was formed by the Turcoman tribes coming from eastern Anatolia, was transformed into a politico-religious force which the Safavid made an instrument of their policy, at the origin of their spectacular rise, their defeats and their victories, up to the apogee of their political and religious organization, the crowning in 1501 of the young Shah Ismail (1487-1524), the restoration of the unity of modern Persia, and the imposition of Twelver Shiism as a state religion." Doja, Albert. *A Political History of Bektashim from Ottoman Anatolia to Contemporary Turkey*, 48 J. Church & St. 432 (2006).

<sup>8</sup> Andromidas, Dean. *When America Fought the British Empire and Its Treacherous Sykes-Picot Treaty*, *The Executive Intelligence Review* (2009).

"1916 witnessed the signing of their Sykes-Picot agreement in virtue of which Great Britain, France and Russia sought, without consulting King Hussein (as he styled himself), to modify the promises made to the Arab in the McMahon correspondence." Philby, H. *The Arabs and the Future of Palestine*, 16 *Foreign Aff.* 158 (1937-1938).

Arab States and entities.<sup>10</sup> Moreover, the West continued to colonize the peoples of the East, and supported regimes and governments of dictatorship and chauvinism throughout half a century, and continued to provide arms and economic support to said dictators, who often harmed their subjects through revenge, for all manner of reasons, treachery and local acts of terrorism.

Modern terrorism, that occurring since World War II, has prevailed in various states around the globe. It has been led using military and national ideologies as the major weapons of repression and persecution against democratic movements and national liberation. If it is true that war is an “expression of politics,” what should be done to effect a change in the “policy of death against all” held by terrorists so that this policy can be replaced by one of building and reconciliation, tolerance, harmony, coexistence, dialogue and cooperation?

The death and destruction that terrorism causes will not end unless the international community understands that terrorists are moving non-stop, from the London Underground bombings, to the near daily bombings taking place in Iraq. These events occur because terrorists are attempting to spread fear throughout the international community. Terrorism should be considered an abnormal behavior that is contrary to the spirit of human rights. It is a clash of the interests and differences between all races and beliefs. It has multiple images, which relate to the various stages of history and social class.

Considering human social and political development from the age of slavery and feudalism to organized, modern societies, it should be clear that terrorism has had tragic consequences, from which humanity has suffered tremendously. Moreover, every single race and ethnic group has been afflicted by the scourge of terrorism. Scores of people have paid a heavy price, not to mention the tens of millions of victims of wars throughout recorded history.

Regional and global conflicts have nearly always resulted in disasters that violated human rights. Checking through the annals of history, a bloody

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<sup>9</sup> The Lausanne settlement “On August 10, 1920, was confirmed by Greece and the Principal Allied Powers in a protocol signed at Lausanne on July 24, 1923.” Turlington, Edger. *The Settlement of Lausanne*, 18 Am. J. Int’l L. 700 (1924).

<sup>10</sup> The re-establishment of a dozen of Arab countries and entities between Great Britain, France and others countries in 1916.

and blackened record is found, and most of these pages contain memories that cannot be easily erased, or glossed over, and shall remain as witnesses of the barbaric and senseless abuses of human dignity.

Past events demonstrate the tragic and humanitarian disasters from the Hulagu era,<sup>11</sup> to the Ottoman era,<sup>12</sup> as well as the genocide of the Kurds, Armenians, the uprooting of the Palestinian people, and the killings by attackers, such as Europeans, who came from outside the region, to exploit its resources and set up boundaries and barriers between colonized and subjugated peoples.

Terrorism stemming from political ideologies or religious beliefs falls under the mantle of fundamentalism.<sup>13</sup> At many points in history, it has been difficult to distinguish between the many religious beliefs and ideologies because of the overlap between national and religious ideas. From the end of World War II, and onwards throughout the Cold War between the East and the West, Western imperialists exercised types of terrorism against the socialist camp, national liberation movements, and aided several organizations and terrorist groups such as the Islamic fundamentalist group, Al Qaeda.<sup>14</sup>

Former U.S. Secretary of State, Condoleezza Rice, in a lecture at the American University in Cairo, stated that her country had made mistakes in the last sixty years with its policies toward the people of the world thanks its relations with authoritarian regimes.<sup>15</sup>

At the beginning of this twenty-first century, as forces attempt to set in place a new world order, we see other forces realigning themselves and redefining how to handle the fight against terrorism. The control of terrorism and other global conflicts is being tackled by the United Nations, human rights organizations, and civil society. In addition, national

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<sup>11</sup> El-Amrani, Issander. *Entries in Baghdad Hulagu does Baghdad* (2010).

<sup>12</sup> "By late 1918, the Ottoman empire had lost 75 percent of the territory and 85 percent of the population it had in 1878." Akcam, Taner. *From Empire to Republic: Turkish Nationalism and the Armenian Genocide*, Zed Books, London, P. 22 (2004).

<sup>13</sup> Armstrong, Karen. *Think Again God*, *Foreign Policy Magazine* (2009).

<sup>14</sup> "Al Qaeda is a global operation with a well-oiled propaganda machine based in Pakistan, a secondary but independent base in Iraq, and an expanding reach in Europe." Riedel, Bruce. *Al Qaeda Strikes Back*, 86 *Foreign AFF*. 32 (2007).

<sup>15</sup> Sharp, Jeremy. *U.S. Democracy Promotion Policy in the Middle East: The Islamist Dilemma*, Washington, DC: Congressional Research, P. 11 (2006).

liberation movements and political forces are working to challenge, if not totally eradicate, terrorism by any means necessary, such as political, cultural, social, educational and even military means.

As a word, ‘terrorism’ has been in the news a lot in recent years, and it has come to terrify every individual who hears it. For many people the million dollar question is how to stop it? It is a nightmare coming to life as it threatens to transform light into darkness, and hope into despair. It is an old crime with a new face; a lethal weapon pointed at the collective soul of humanity. But what is terrorism, really? Who is a terrorist? What is a terrorist? What causes terrorism? How might well-meaning people extract it by its roots? What is the position of the international community in regard to the terrorism that occurs at the domestic or international levels? These questions and others will be addressed in this book.

There is no doubt that the definition of the term terrorism has become a rich source of debate among nations and people who define it according to their own policies, which makes it even more difficult for the United Nations to settle upon a generally acceptable definition of the term. Nonetheless, one could generally argue that the basic idea of terrorism is grounded on the principle of using violence to sabotage, and to create widespread fear.

Arguably, the League of Nations was the first international organization to prepare a draft on the topic, which was the Convention for the Prevention and Punishment of Terrorism.<sup>16</sup> However, the convention did not enter into force, but Article 1 of that convention expressed that “acts of terrorism includes criminal acts directed against a State and intended or calculated to create a situation of panic in the minds of particular persons or group of persons or public opinion.”<sup>17</sup>

Article 2 of the convention enumerated acts comprising international terrorism, which are as follows:

“1. Any deliberate act that may cause death or serious harm to some people such as Heads of State or their deputies or successors, or any official who is on a mission.

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<sup>16</sup> Convention for the Prevention and Punishment of Terrorism by the League of Nations.

<sup>17</sup> Article 1 of the Convention for the Prevention and Punishment of Terrorism by The League of Nations.

2. Acts of sabotage that causes harm to the public domain.
3. Any act that would jeopardize the functioning of human life and put it at risk.
4. Manufacturing, or acquiring weapons, equipment, explosives or materials that would assist the previous acts.”<sup>18</sup>

In 1977, European member states signed the European Convention for the Suppression of Terrorism<sup>19</sup> in Strasbourg.<sup>20</sup> This Convention was designed and aimed at suppressing terrorism while taking effective measures to ensure that a perpetrator’s terrorist acts are subject to prosecution. To ensure punishment, the Convention avoided a specific definition of terrorist crimes, but listed acts that constitute crimes of terrorism in Article 1 of the Convention, as follows:

“Crimes of hijacking, the unlawful seizure and the crimes against the Safety of Civil Aviation, serious acts that undermine the right to life or body integrity or liberty of persons who enjoy international protection, including diplomatic envoys. Kidnappings and hostage-taking and illegal detention of individuals. Acts involving the use of explosives and firearms, which threaten the lives of individuals.”<sup>21</sup>

On the other hand, on December 29, 1985, the General Assembly of the United Nations condemned all forms of terrorism,<sup>22</sup> but unfortunately did not include a definition of terrorism, nor did the Protocols of the Geneva Convention of 1949 and 1977.<sup>23</sup> The Geneva Protocols include crimes of terrorism mentioned in many international conventions’ texts, such as the Convention on Offences and Acts Committed on board Aircraft established in

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<sup>18</sup> Article 2 of the Convention for the Prevention and Punishment of Terrorism by The League of Nations.

<sup>19</sup> The European Convention for the Suppression of Terrorism.

<sup>20</sup> “The Committee of Ministers of the Council of Europe adopted the Convention on November 10, 1976.” Council of Europe: European Convention on the Suppression of Terrorism, 15 I. L. M. 1272 (1976).

<sup>21</sup> Article One of the European Conventions for the Suppression of Terrorism.

<sup>22</sup> Beresovski, Catherine. A Proposal to Deny Foreign Sovereign Immunity to Nations Sponsoring Terrorism, 6 Am. U.J. Int’l L. & Pol’y. 78 (1990).

<sup>23</sup> “The Protocols represent an attempt to codify the existing treaty and customary international law relating to the rules of warfare and add new law to govern the conduct of hostilities.” Griffiths, Paul, Gwilliam, Helen. Comment on Australia’s Ratification of the 1977 Additional Protocols to the Geneva Conventions of 1949, 11 U. Tas. L. Rev. 104 (1992).

Tokyo on September 13, 1963,<sup>24</sup> and the Convention for the Suppression of Unlawful Seizure of Aircraft established at The Hague on December 16, 1970,<sup>25</sup> as well as many other conventions which will be discussed in Chapter 3. This is with regard to the definition of terrorism, but when we discuss the reasons for the growing phenomenon of terrorism in recent times we shall find too great a number of them. Nonetheless we can still conclude that the main reasons are as follows:

## **1. The injustice of States towards other States and the abuse of rights guaranteed by the Charter of the United Nations that was signed in San Francisco in 1945<sup>26</sup>**

The injustice and aggression of some states toward others, the persecution of their people and the occupation of their territories, are among the reasons thought to have led to the emergence of terrorism; therefore the eradication of terrorism requires the elimination of said injustice and aggression, and a striving for equal justice for all, without exception, among all states and peoples, irrespective of different ideologies, languages, religions, and so on.

## **2. Scientific and technical development**

Scientific and technical development has contributed to the progress of humanity in many ways, some good, and some evil; unfortunately, terrorism has often inclined towards the evil side, or use, of those developments. For example, terrorists use resources such as the internet and social networking applications, cellular phones, and advanced electronics to help achieve their goals. The high confidentiality of such communications leads to a more wide-spread threat of terrorism, and a

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<sup>24</sup> “Convention on Offences and Acts Committed on Board Aircraft, signed in Tokyo in 1963.” Samuels, Alec. Crimes Committed on Board Aircraft: Tokyo Convention Act 1967, 42 Brit. Y.B. Int’l L. 271 (1967).

<sup>25</sup> “Reproduced from the Summary of the Work of the Legal Committee During Its Seventeenth Session, International Civil Aviation Organization Document 8865, LC/ 159 of March 16, 1970.” International Civil Aviation Organization: Draft Convention on the Unlawful Seizure of Aircraft, 9 I. L. M. 669 (1970).

<sup>26</sup> “The United Nations Charter is the constituting instrument of the Organization, setting out the rights and obligations of Member States, and establishing the United Nations organs and procedures. An international treaty, the Charter codifies the major principles of international relations, from sovereign equality of States to the prohibition of the use of force in international relations.”

greater likelihood of success. In addition, technology has enabled the manufacturing of explosives devices that are small, easy to carry, and harder to detect. No question, the contribution of technology to terrorism is very significant.

### **3. International terrorism as an alternative to conventional war**

In the past, conventional wars were mostly fought by armies, and the deciding factors in those wars were the losses in terms of personnel, money and gear, but now as a result of the evolution that has occurred, international terrorism has become a form of war. We find that some states support certain terrorist organizations in secret, thus allowing them no direct intervention in any conflict.

### **4. Unjust policies**

Another factor that has led to the growth of terrorism has been the policies pursued by many military governments to the point that freedom of speech is a crime, and citizens cannot express their opinions freely, without fear of reprisal against themselves, their loved ones, or their property. These factors have resulted in some individuals and communities committing violence and seeking revenge against their governments, as in the former Iraqi regime, and quite possibly in the current uprising in Egypt, Tunisia, Libya, Syria, Yemen and Bahrain which, at the time of this writing, has been steadily escalating.

### **5. The heterogeneity of communities in the state**

There is no doubt that the homogeneity of ethnic groups and religions is one of the key factors and is important for the stability of states. Therefore, the heterogeneity of communities in some states has led to the outbreak of violence and rivalry among members of ethnic or other such defined communities, creating problems that afflict certain states such as Iraq, and thus, such actions have led to the rekindling of terrorist acts and violence.

If we were to analyze the term “terrorism”, we would find that the party considered the terrorist, considers terrorism as a reasonable means to achieve what that party thinks is right, while the other party considers it terrorism. These conflicts among people have been going on since long before recorded history.

However, contemporary human civilization has been able to legalize the use of force through the development of controlled laws designed to reduce human victims, prevent bombings, and the prohibition of genocide. In addition, laws have been introduced to track down, arrest and prosecute war criminals.

These laws reduced the direct use of force; however, they pushed the powerful states to invent new ways to exercise their methods of indirect assertion through small wars, and employ other tricks such as the use of force through bribery. The circle of violence recently expanded in the scene of international events. Many terrorist activities that exceed their limits in one state and spread to others are considered crimes against the international system and the interests of the people's vitality, peace, security, and human rights.

Violence is a fact of our era, and at the same time is a component of the crime of international terrorism. Violence is the most important manifestation of the political offense at the international level, so terrorism has become an effective element in the process of political decision making. It has also become a method used by states to coerce their opponents to comply with imposed political conflict at the domestic level. It is considered by some as a justified and acceptable means of responding to the injustice of oppression.

However, human co-existence in one system and social necessity are inevitable, and this social coexistence, if it is to continue, must be subject to the social and political rules that come prior to the rule of law. This rule by characteristics and objectives renounces violence. The issue of terrorism in this context raises the struggle that the international community has been going through for a long time. However, terrorism in its modern connotation and definition is constantly evolving; it means more than just committing violence. In particular, the meaning of terrorism is broader and more comprehensive. With respect to social and political phenomena, terrorism is characterized by complex and interrelated elements.

Recognizing terrorism as being a complex phenomenon of many social and political aspects, the law has attempted to remedy it through the usual legislative channels; however, the codification of this phenomenon has produced many obstacles, difficulties, contradictions and complexities. Most notably, terrorism should be viewed from different angles, positions



and interests, since there is no clear, transparent and accurate definition of terrorism.

If we posit that the definition of crime is decided by the law and it is a wrongful act, the definition of terrorism is not that simple and obvious. Therefore, the term “terrorism” is vague and lacks ethics, on its own; it is much easier to be expressed as a term than defined.

Scholars hold that the term terrorism was first used for the French *Terrorisme*<sup>27</sup> near the end of the seventeenth century during the French Revolution, and specifically the beginning of 1794, where the use of the term was purely political. The word *Terrorisme* derived originally from word *Terreur* which has been interpreted by the French Academy Dictionary as “fear.”<sup>28</sup>

Interestingly, *terrorism* and *terrorist* have no equivalents in the Arabic dictionaries, but the word fear is in one verse of the Quran and it has different meanings, such as the fear of God Almighty, and in other verses it means to prepare to fight God’s enemies or prepare for, and engage in self-defense.<sup>29</sup>

However, the problem of terrorism has been addressed as a legal term since the early twentieth century, seeking to limit terrorism through the international conferences held for the Unification of the Criminal Code,<sup>30</sup> as well as within the scope of bilateral agreements on extradition. These efforts culminated in a convention to outlaw terrorism, and censure it in the League of Nations on November 16, 1937 following the assassinations of the King of Yugoslavia, Alexander I and Louis Barthou the Prime Minister of France. At the end of World War II, several international conventions and treaties addressed issues of domestic and international terrorism. Among these conventions, taking place under the auspices of

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<sup>27</sup> Alesina, Alberto, Perotti, Roberto. *Defining Terrorism, Citizens and Governance in a Knowledge-Based Society*, P. 36 (2008).

<sup>28</sup> Nurjaanah, Abdullah. *The Definition of Transnational Crime in the Context of Terrorism*, Vol. 6, P. 64 (2004).

<sup>29</sup> From The Holy Book “Al-Quran” “And fight in the way of Allah with those who fight with you, and do not exceed the limits, surely Allah does not love those who exceed the limits.” (Surah Al-Baqarah, Verse 2:190).

<sup>30</sup> Shughart, Williams. *An Analytical History of Terrorism 1945-2000*, Department of Economics, The University of Mississippi, P. 38 (2006).

the United Nations on December 9, 1948,<sup>31</sup> was the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

All the differing circumstances, contradictions and multiple definitions, notwithstanding, the issue of terrorism was raised formally at the United Nations in September of 1972.<sup>32</sup> Although the U.N. member states were divided into two groups, they all embraced the idea that viable solutions had to be found by which terrorism could be confronted and its effects neutralized.

The Western states, led by the United States of America, emphasized the need to deter terrorism without waiting to find a comprehensive definition of the term, opposing another group, which mainly included member states of the developing world backed by the more advanced socialist states which had previously tried to find an objective definition. While the opposing group insisted on defining international terrorism objectively and comprehensively, differences in the attitudes and perspectives among nations arose, and the 1972 Convention, failed to agree upon a legal definition of international terrorism. It delegated the task of searching for an acceptable and satisfying definition to a special committee, which was the Sixth Committee of the General Assembly of the United Nations, known as the "Committee on International Terrorism." However, after strenuous efforts and numerous attempts to adopt a legal and objective definition of international terrorism, this committee<sup>33</sup> also failed. However, under the influence of powerful states such as the U.S. and owing to developments in the international community, in the late twentieth century, the United Nations was led to change its position in combating terrorism.

Moreover, the absence of remedies against states that commit international terrorism set the stage for the violation of the ancient rights of peoples to self-determination and the resistance of occupation by all available means. Not surprisingly, many states have taken advantage of the vague definition of terrorism as offered by the powerful states, whose interpretation of the term depends on their need to maintain or gain political control in times of

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<sup>31</sup> The United Nations Convention for the Prevention and Punishment of the Crime of Genocide, 1948.

<sup>32</sup> Conte, Alex. Terror Meets Tyranny? The Interface between Counter Terrorism and Human Rights, *Murdoch University Electronic Journal of Law*, 9:3 (2002).

<sup>33</sup> The Declaration on Measures to Eliminate International Terrorism, G.A. Res. 49/60., GAOR, 84th plenary mtg. (1994).

political violence or when they need to use force to stop opposition to their governments, or their policies. For example, the Tunisian legislature released in 1993 gave a definition of terrorism in Article 4 of the Terrorism Law. The law provides as follows:<sup>34</sup>

“Terrorism in each crime, whatever its motives, its relationship to an individual or group of people, to spread terror among the population in order to; influence the policy of the State and get it to do or to refrain from doing something, or disturb public order or peace or security, or the attack of persons or property, or damage the headquarters of diplomatic missions and consular missions or international organizations, or seriously damage the environment including endangering the lives of cohabitation, damage vital resources or infrastructure, means of transport, communications, or public facilities sees it considered a “Terrorist Crimes.”<sup>35</sup>

The jurisprudential debate of whether to consider terrorism a crime finds itself standing in two different schools of thought. The first, considers terrorism a crime itself, which has all the elements of physical damages just like any other crime, and should therefore be added to the list of other known crimes.<sup>36</sup> The second school opines that since the absence of jurisprudence is part of the issue, terrorism should be characterized as a crime unto itself, and should not be included with other crimes, particularly in terms of the definition and concept, the procedures of tracking the terrorist acts, the punishment and finally, the terms of extradition.<sup>37</sup>

The difference between the East and West with regard to terrorism on the one hand is that the East has finally awakened to its lack of advancement in some areas, specifically technology. There is, however, still a chance for the East to close that gap with the West, and adopt selected elements of Western civilization. But on the other hand, this does not mean that everything that belongs to the East is outdated, or is not applicable to the global community.

The East has enjoyed a centuries-long intellectual heritage, just think of algebra, art, architecture, and quite significantly, it is from the East that the world has received the three major religions of Judaism, Christianity, and

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<sup>34</sup> Mohamed, Ahmed, Tayar, Saleh. International Terrorism, The Arab Center for European-Arabic Studies, P. 8-9 (1998).

<sup>35</sup> The Tunisian Terrorism law in defining terrorism for the year of 1993.

<sup>36</sup> Maleki, Mohammad. Violence in International Relations, Unity Magazine Issue, Egypt, No. 67, P. 6 (1990).

<sup>37</sup> *Id, supra* note 36 at 6.

Islam. Reformed minded leaders in the East have been advancing the notion that based on such common ground; both East and West can combine their efforts to defeat many of the challenges of today and of the future.

Terrorism is not an ideology but a strategy that can be used by people of different political convictions. Contemporary terrorism is certainly not the brainchild of Marxism-Leninism or Muslim fundamentalism.<sup>38</sup> There was complete unanimity of opinion, but the majority opinion of the Greeks and Romans was that terrorism was justifiable in certain circumstances, and many human violations were carried out by tyrants that time.

Philosophers and theologians, however, were aware even in the Greek and Roman period that there lay a grave danger of abusing the principle of tyrannicide, or killing when there was no justifiable reason to kill (as was the case in the murder of King Henry IV of France),<sup>39</sup> when there were other ways in which to express protest and resistance. Nonetheless, certain individuals have engaged in assassinations as a means of spreading terror. One example is a small group known as the *Ismaili Muslims*,<sup>40</sup> who were engaged in systematic terrorism over a long period of time, and operated in the area that is now Iraq and Iran between the eighth and fourteenth centuries.

Among their victims was the ruler of Jerusalem, a Crusader. Another group, the junkies *Alhashashin*<sup>41</sup> pioneered the use of knives to kill their victims, even though the victim might have been well guarded. Since they had to get up close to kill, they usually had no chance to escape; thus they were called *Fediae*<sup>42</sup> a term used to this day. Terrorist activities continued through the Middle Ages to the modern era. The Thirty Years War 1618-

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<sup>38</sup> Laqueur, Walter. Reflections on Terrorism, 65 Foreign Aff. 90 (1986-1987).

<sup>39</sup> King Henry IV of France was assassinated in 1610 at the age of 57.

<sup>40</sup> "Before the Fatimid State, the Fatimid's and their Ismaili followers had become established in the Maghrib, but did not have the context of a large polity or state of capacity to make claims of leadership of the Muslim Community generally." Jamal, Arif. Principals in the Development of Ismaili Law, 7 Y.B. Islamic & Middle E. L. 116 (2000-2001).

<sup>41</sup>"The term "assassin" is derived from the Arabic word *Hashashin*. The term applied to persons who were under the influence of *Hashish* to gain courage before going out to kill their enemies." Bassiouni, Cherif. Assessing "Terrorism" into the New Millennium, 12 DePaul Bus. L. J. 1 (1999-2000).

<sup>42</sup> An Arabic word meanings a fighter for freedom who represents the people in their struggle to seek freedom.

1648,<sup>43</sup> and the Napoleonic Wars, 1799-1815<sup>44</sup> were traumatic events where millions died, on and off the battlefields, and the incidence of terrorism escaped large scale notice. The rise of terrorism suddenly became more noticeable in the late nineteenth century.

Among the better known groups were the Irish rebels, and the Russian Socialist Revolutionaries,<sup>45</sup> as well as a variety of anarchists all across Europe and North America. To achieve national liberation, secret societies<sup>46</sup> were also engaged in terrorist activities outside Europe; for example, Egypt, India and China. Some of their attacks had tragic consequences for people, while others were more successful in the long term, such as the Serbian terrorist acts of 1908.<sup>47</sup>

Terrorist violence in the nineteenth century was remarkable, there was the assassination of King Alexander,<sup>48</sup> as well as many ministers and senior nobles, army generals and the U.S. Presidents William McKinley in 1901,<sup>49</sup> and James Garfield in 1881,<sup>50</sup> the assassination of King Umberto

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<sup>43</sup> “The Thirty Years War, closing with the Peace of Westphalia (1648), seems to have put an end to all religious wars.” MacDonald, Arthur. *Suggestions of the Peace Treaty of Westphalia for the Peace Conference in France*, 88 Cent. L. J. 302 (1919).

<sup>44</sup> “If the Napoleonic war dragged on its weary length for a whole decade, the cause was very largely, the fact that for the first five years Britain limited her efforts to the sea, and refused to put forth her strength on land.” Hearnshaw, F. J. *Vienna and Versailles, 1815 and 1919*, 1 J. Comp. Legis. & Int’l L. 3d Ser. 91 (1919).

<sup>45</sup> Laqueur, *supra* note 38, at 90.

<sup>46</sup> “Secret societies constitute one of the important culture patterns both of primitive and of modern civilizations.” Gist, Noel. *Structure and Process in Secret Societies*, 16 Soc. F. 349 (1937-1938).

<sup>47</sup> “It is indeed hardly fanciful to say that Franz Ferdinand was assassinated by the Serbs of Bosnia-Herzegovina who made the revolution of 1875 against the Turks.” Temperely, Harold. *The Coming of the War*, 9 Foreign Aff. 323 (1930-1931).

<sup>48</sup> “The Croatian and Macedonian terrorists who thought that by removing King Alexander they could break up the Yugoslav State and give “freedom” to Croatia and Macedonia like their patrons in neighboring countries.” Armstrong, Hamilton. *After the Assassination of King Alexander*, 13 Foreign Aff. 204 (1934-1935).

<sup>49</sup> “Upon his election as Vice-President in 1900, Theodore Roosevelt said he was going to Washington “not to be praised, but to be buried.” Within a year, the assassination of President McKinley showed how wrong Roosevelt was.” Kury, Franklin. *The Crisis in the Law of Presidential Succession*, 36 Pa. B. Ass’n Q. 304 (1964-1965).

of Italy,<sup>51</sup> of the French President Sadi Carnot,<sup>52</sup> and Antonio Canovas, the Prime Minister of Spain.<sup>53</sup> Most notably, of course, World War I began as a result of the assassination of Archduke Franz Ferdinand<sup>54</sup> heir to the Austrian throne, in Sarajevo in 1914.

Writers in that era *i.e.*, Fyodor Dostoevsky, Henry James and Joseph Conrad agreed on one major thing, that terrorism was a threat to mankind.

As once noted by the Russian Bolshevik revolutionary Leon Trotsky, when a Russian Minister was assassinated, many people were ready to take his place. Terrorism appeared again after World War I in several states. A figure such as Hitler or Stalin killed more people in one year than all terrorists throughout recorded history.<sup>55</sup> With only a few occasional exceptions, such as the assassination of the Italian Socialist leader Giacomo Matteotti, the Fascists and Communists believed in mass violence rather than individual terrorist acts before they took the reins of power.

There were few acts of terrorism during World War II and during the two decades thereafter. Perhaps that explains why the terrorist operations in the 1970s emerged and created such a following. The emergence of Islamist fundamentalists has been interpreted by many people as if terrorism were something entirely new and unprecedented.

<sup>50</sup> “President James A. Garfield was bedridden for eighty days in 1881 before his death from an assassin’s bullet, and was able to sign but one document. Garfield’s condition fluctuated between recovery and deterioration.” Kury, Franklin. *The Crisis in the Law of Presidential Succession*, 36 Pa. B. Ass’n Q. 302 (1964-1965).

<sup>51</sup> “Bresci burst from the crowd brandishing a revolver and fired four times. The king died seconds later having been hit three times in the chest, with one shot going wide of its target. Bresci was quickly tackled by police agents and arrested.” Aspden, Alex. 1900: *The assassination of King Umberto I of Italy* (2007).

<sup>52</sup> “Sadi Carnot was stabbed by an Italian anarchist named Santé Geronimo Caserio and died shortly after midnight on 25<sup>th</sup> June. The stabbing aroused widespread horror and grief, and the President was honored with an elaborate funeral ceremony in the Panthéon.” Sadi Nicolas Leonard Carnot. *School of Mathematics and Statistics*, University of St. Andrews, Scotland, JOC/EFR, October 1998.

<sup>53</sup> *The New York Times Article in Archives*, Published August 9, 1897. “Canovas Murdered; Prime Minister of Spain Assassinated by an Anarchist at Santa Agueda. “Three shots fired at him, wounded man lingers two hours in great agony.”

<sup>54</sup> “Political assassins are often members of a political organization and those who killed the Archduke Franz Ferdinand at Sarajevo on June 28, 1914 were members of a Serbian secret society called the Union of Death or Black Hand.” Power, D. J. *Assassination*, 61 *Police J.* 175 (1988).

<sup>55</sup> Laqueur, *supra* note 38, at 89.