

## Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism

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### Recommended Citation

Zeidan, Sami (2003) "Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism," *Cornell International Law Journal*: Vol. 36: Iss. 3, Article 5.  
Available at: <http://scholarship.law.cornell.edu/cilj/vol36/iss3/5>

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# Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism

Sami Zeidan†

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## Introduction

It is said that one man's terrorist is another man's freedom fighter. In the wake of the horrendous events of September 11, 2001 and the ensuing hunt for Osama bin Laden, as well as the ongoing Israeli-Palestinian conflict and the U.S.-led war on Iraq, one can hardly dismiss the importance of an international agreement on just what is meant by "terrorism."

This essay examines the current status quo of terrorism and the various interpretations (and misinterpretations) thereof in Part I, the legal measures that are currently in place to combat terrorism in Part II, and the need to forge a definition that clearly includes all forms of terrorism, including state terrorism in Part III.

## I. Defining Terrorism: Political, Legal, Interpretations, Misinterpretations

There is no general consensus on the definition of terrorism. The difficulty of defining terrorism lies in the risk it entails of taking positions. The political value of the term currently prevails over its legal one. Left to

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its political meaning, terrorism easily falls prey to change that suits the interests of particular states at particular times. The Taliban and Osama bin Laden were once called freedom fighters (mujahideen) and backed by the CIA when they were resisting the Soviet occupation of Afghanistan. Now they are on top of the international terrorist lists. Today, the United Nations views Palestinians as freedom fighters, struggling against the unlawful occupation of their land by Israel, and engaged in a long-established legitimate resistance, yet Israel regards them as terrorists. Israel<sup>1</sup> also brands the Hizbullah of Lebanon as a terrorist group, whereas most of the international community regards it as a legitimate resistance group, fighting Israel's occupation of Southern Lebanon. In fact, the successful ousting of Israeli forces from most of the South by the Hizbollah in 2000 made Lebanon the only Arab country to actually defeat the Israeli army.

The repercussion of the current preponderance of the political over the legal value of terrorism is costly, leaving the war against terrorism selective, incomplete and ineffective.<sup>2</sup> But the need to forge a universally agreed definition of terrorism is more than just a desirable political endeavor. It is also a legal undertaking prescribed by U.N. General Assembly Resolution 42/159 of December 7, 1987, which recognizes that "the effectiveness of the struggle against terrorism could be enhanced by the establishment of a generally agreed definition of international terrorism." In fact only a legal, internationally agreed upon definition of terrorism can be afforded consistent application because its legal character gives it permanence, universality and comprehensiveness.

Above all there is the need to provide evidentiary proof of the actual (not alleged) terrorist activity of a group in order to avoid politically motivated abuse of the term to justify state terrorism under the excuse of "fighting terrorism." A definition of terrorism should be comprehensive in order to avoid double standards, and it should encompass all forms of the act, irrespective of the perpetrator, actor, target, place or time. It should also distinguish between terrorism and the legitimate right to resist occupation.<sup>3</sup> Many of the organizations deemed terrorists today may use terrorist methods but their motives may well be legitimate. The confusion between terrorism and resistance is caused by a skewed definition of terrorism that

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1. Since June 2003, three states, namely Canada, the United States, and Australia also view the Hizbollah as a terrorist group.

2. Terrorism comes in two forms. In its instrumental form, hostage-taking, the value of the hostage is maximized and used as a tool to reach clear objectives. In its expressive form, terrorism is conducted by actors who may simply be venting off hate, anger or desire for revenge, rather than to realize clearly defined premeditated ends. The interest of the distinction lies in that negotiation is only possible in the former case, whereas in the latter the objective of the terrorists is reached and there is no intention to negotiate.

3. Some conventions make that distinction, for example the Preamble and Article 12 of the International Convention Against the Taking of Hostages (17 December 1979). Similarly, Article 19 of the International Convention for the Suppression of Terrorist Bombings (15 December 1997) and Article 21 of the International Convention for the Suppression of the Financing of Terrorism (9 December 1999) refer to the UN principles, which include of course the principle of the right of peoples to self-determination.

emphasizes non-state actors and downplays state terrorism. Thus the then-newly appointed U.S. Deputy Assistant Secretary of State David Satterfield once labeled as a “terrorist” act the Intifada, which is the internationally recognized legitimate Palestinian popular resistance to the illegitimate Israeli occupation. As we shall see later, terrorism is not necessarily violence against a government, and is certainly not to be confused with guerrilla warfare and riots.

## II. The Existing Legal Protection

Despite the lack of a consensus on the meaning of the term, international law provides several means of legal protection against terrorism. There is clear condemnation of terrorism (and terrorist attacks) by the International Court of Justice. There are at least twelve United Nations conventions against terrorism. Often cited are Security Council Resolutions 1373 of September 2001 and 1269 of October 1999, which both denounce “all acts, methods and practices of terrorism as criminal and unjustified, regardless of their motivation.” The International Criminal Court Statute of 1998 in Article 7 describes crimes against humanity as acts “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” The nature of terrorist acts is such that they can be included in this category. In Article 8 the statute also describes war crimes as grave violations against persons and property protected by the terms of the Geneva conventions, which govern during occupation. The nature of terrorist acts committed during a military aggression puts them under this category.

Furthermore, the U.N. Charter Articles 1.2, 51 and 55 prohibits states from violating the right of peoples to self-determination for any reason, and it urges them to refrain from the threat or use of force against the territorial integrity or political independence of any state. In Article 103 it also notes the cancellation of any international agreement that breaches or does not implement this right. Hence, terrorism should not be equated with the legitimate, internationally protected right of peoples to self-determination. To resist occupation is to end the highest form of terrorism, namely, state terrorism. For example, Israel’s occupation and partial annexation of lands conquered in 1967 is a violation of international law, specifically Security Council Resolutions 242 and 338, which urge it to end its illegal occupation of Arab territories. Thus, the struggle of Palestinians is as legitimate as the American War of Independence and the French Revolution. The same applies to Israel’s illegal occupation of South Lebanon for more than two decades, and its continued occupation of the Lebanese Shebaa Farms. As long as the totality of Lebanese territory has not been liberated, the Lebanese resistance to the Israeli occupation will thus remain a legitimate right in accordance with international law.

The Final Document of the thirteenth (latest) Summit of the Non-Aligned Movement (of which Lebanon is a member) reiterated that “terrorism cannot be attributed to religion, nationality, or civilization.” It also

made a very important distinction. On the one hand, it reaffirmed that "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for whatever purposes, wherever and by whomever committed are, in any circumstance, unjustifiable, whatever the considerations or factors that may be invoked to justify them." On the other hand, it "rejected certain attempts to equate the legitimate struggle of peoples under colonial or alien domination and foreign occupation, for self-determination and national liberation with terrorism in order to prolong occupation and oppression." In one of its strongest articles, the document states its total rejection of the unilateral preparation by "a certain State" of a list that "accus[es] countries of allegedly supporting terrorism." It deemed such actions as constituting "a form of psychological and political terrorism."

The General Assembly has adopted at least three resolutions of relevance to the issue of terrorism.<sup>4</sup> Resolution 42/159 of December 7, 1987 condemns international terrorism but also reaffirms "the principle of the self-determination of peoples as enshrined in the charter of the United Nations," and it deems legitimate the movements of "peoples under colonial and racist regimes and other forms of alien domination." Furthermore, Resolution 39/159 of December 17, 1984, evokes the "inadmissibility of the policy of state terrorism and any actions by states aimed at undermining the socio-political system in other sovereign states" and reaffirms "the obligation of all states to refrain in their international relations from the threat or use of force against the sovereignty, territorial integrity and political independence of any State," and "resolutely condemns policies and practices of terrorism in relations between states as a method of dealing with other states and people." It demands that "all States take no actions aimed at military intervention and occupation, forcible change in or undermining of the socio-political system of States, destabilization and overthrow of their Governments, and, in particular, initiate no military action to that end under any pretext whatsoever and cease forthwith any such action already in progress." The same resolution also reaffirms the inalienable right of all peoples to self-determination, just as Resolution 44/29 of December 4, 1989 on "measures to prevent international terrorism" which in addition unequivocally condemns as "criminal and unjustifiable" all acts, methods and practices of terrorism, "wherever and by whomever committed." As such, no one is above the law, whether state or non-state actors, and this is even more important in combating terrorism.

### III. The Missing Link: State Terrorism

Examples of this practice include the Lockerbie incident, the support extended to Osama bin Laden by the Taliban regime, and the daily Israeli

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4. See also Resolutions 54/110 and 55/158. Similarly, one can find some elements of a "definition" of terrorism in resolutions 54/110, 55/158 and 57/567, which refer to the state of terror and the motivation behind terrorist acts deemed inexcusable.

assaults on the Palestinian and other Arab populations. International law does not (and should not) distinguish between state and non-state actors when it comes to terrorist acts. During the Cold War, both the U.S. and the U.S.S.R. gave secret support (directly or otherwise) to revolutionary movements seeking to overthrow regimes on their respective opposite sides. State terrorism is the unlawful use of violence or repression perpetrated or sponsored by a state against some or all of its citizens, based on political, social, racial, religious, or cultural discrimination, or against the citizens of a territory occupied or annexed by the said state, or those of neighboring or distant countries. States usually avoid the terrorist label for acts committed by invoking the excuse of "self defense" (equivalent terms include "security," "law and order" and, of course, the "fight against terrorism"). They tend to brand their political opponents as terrorists in order to avoid political dialogue and as justification to crush any dissent. Hence the importance of avoiding politically motivated abuse of the term to justify state terrorism under the excuse of "fighting terrorism," by focusing on the nature of the act itself.

In order to protect the sovereignty of states, international law has practically (but not theoretically) disregarded terrorism practiced by states. Any follower of current events agrees that it is individuals and sub-national groups that are the ones usually branded as terrorists. States are rarely identified and condemned as terrorist states. They may harbor, encourage or turn a blind-eye to terrorists on their soil, but rarely do we hear of a state itself being condemned as terrorist. It is as if terrorism has become only that which is used against the state, to the exclusion of that used by the state.

And yet, as General Assembly Resolution 39/159 and 44/29 indicates, international law openly and strongly condemns state terrorism. Among "all acts, methods and practices of terrorism" that Resolution 44/29 condemns is state terrorism, and its highest form, occupation. Occupation is a form of terrorism because it involves political violence against innocent people. No international legal document distinguishes between state terrorism and other types of terrorism. This is to avoid selective endorsement and implementation of texts that condemn terrorism. And yet, on December 7, 1987, it was exactly this that took place, when only two states, the U.S. and Israel, rejected General Assembly Resolution 42/159 which condemns occupation and upholds the right of peoples to self-determination and the legitimacy of national liberation movements.

We are also witnessing a shift in international law, with the increasing prevalence (theoretically) of international humanitarian law over state sovereignty. Hitherto immune to the jurisdiction of international law, states and heads of state are seeing their immunity increasingly limited, as illustrated by the trials of Slobodan Milosevic and Augusto Pinochet, as well as the probable trial of Israeli Prime Minister Ariel Sharon for his responsibility in the massacre of Palestinian civilians in the Sabra and Shatila refugee camps in Lebanon.

Clearly, it is when the state commits terrorist acts that the term "terrorism" can become unclear, making it an easy political accusation, not a firm legal term. State terrorism is dangerous because it breeds more violence, often making revolutionary terrorism inevitable, as state authorities use terror to deny basic human rights to its own citizens or those under its occupation, including their right to self-determination.

Combating terrorism does not take place with weapons alone, as long as the anger among the oppressed persists. General Assembly Resolution 42/159 acknowledges that the cause of terrorism often lies in the "misery, frustration, grievance and despair" that leads people to seek radical change. The resolution identifies the root causes of terrorism as occupation, colonialism and racism. A definition of terrorism should thus be comprehensive, in order to avoid double standards. It should encompass all forms of the act, irrespective of the perpetrator, actor, target, place and time. It should include state terrorism.