

**STATE RESPONSES TO INTERNATIONAL TERRORISM:**

**A CASE STUDY OF THE US AND THE WAR AGAINST TERROR (2001 – 2004)**

**BY**

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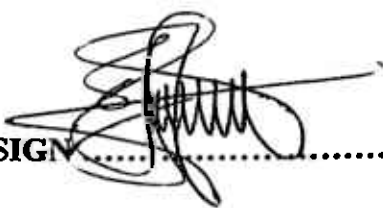


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## DECLARATION

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**MR. CHRIS ABONG'O**

**If an unjust and rapacious conqueror subdues a nation and forces her to accept hard, ignominious and insupportable conditions, necessity obliges her to submit: but this apparent tranquility is not a peace; it is an oppression which she endures only so long as she wants the means of shaking it off, and against which men of spirit arise on the first favorable opportunity.**

**-Emmerich De Vattel – The Law of Nations.**

*DEDICATION*

*A TRIBUTE TO THE INNOCENT VICTIMS OF  
VIOLENCE ALL OVER THE WORLD, AND THOSE  
WHO HAVE DEDICATED THEIR LIVES TO A JUST AND PEACEFUL  
WORLD.*

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God bless you all.

Love, Tom.

## ABSTRACT

During the Cold War, containment of communism provided the *raison d'être* in all US foreign policy initiatives. Yet, with the collapse of the Soviet bloc, the US now finds itself faced with new and even greater challenges of global leadership as the sole superpower in this “unipolar” system. Indeed, the end of the Cold War not only produced profound changes within Europe, but also had major implications on the international system as the earlier existing loose bipolar structure gave way to a multi-polar fragmented system. The US, in particular, has re-orientated the objective and course of its foreign policy to reflect the goals and aspirations envisaged by *Pax-Americana*, the epitome of American civilization, order and values. In this unique world leadership role, the US has been made to walk a diplomatic tightrope while attempting to balance her national interests with those of other actors within the international system.

It is against this background of conflicting interests and values pursued by different actors that disagreements have often emerged, sometimes manifesting themselves in acts of terror. In recent times, international terrorism has received greater prominence in policy and intelligence circles as a major threat to international peace and security. Acts of terror, especially those aimed at US interests and allies have emerged as a testimony of the skepticism with which certain actors have come to regard American globalism and dominance. Indeed, since September 11<sup>th</sup> 2001, the US has assumed a leading role in the war against terror. As a superpower it has a moral obligation to safeguard world peace and order. Furthermore, as a leading power, it has interests that span the globe thus providing more potential targets for terrorists than any other country the world over. This study evaluates state responses to the threat of international terrorism against the backdrop of US hegemony and the implications that this could have on coalition building in the war against terror.

## LIST OF ABBREVIATIONS

AD	Action Directe
AJIL	American Journal of International Law
ANC	African National Congress
APEC	Asia Pacific Economic Cooperation
APIS	Advanced Passenger Information System
APP	Advanced Passenger Processing
ASIL	American Society of International Law
ATC	Authority To Carry
BPO	Balance of Power
BSO	Black September Organization
CIA	Central Intelligence Agency
CICTE	Inter-American Committee Against Terrorism
CNN	Cable News Network
EO	Executive Order
ETA	Euskadi ta Askatasuna (Freedom for the Basque Homeland)
EU	European Union
FARC	Revolutionary Armed Forces of Colombia
FBI	Federal Bureau of Investigations
FSLN	Sandinista National Liberation Front
FTO s	Foreign Terrorist Organizations
GIA	Algerian Armed Islamic Group
HSC	Homeland Security Council
ICJ	International Court of Justice
IRA	Irish Republican Army
JIL	Journal of International Law
KGB	<i>Komitet Gosudarstvennoi Bezopasnosti</i> (Committee for State Security)
LN	The League of Nations
LND0C	League of Nations Documents
NATO	North Atlantic Treaty Organization
NSC	National Security Council
OAS	Organization of American States
OAU	Organization of African Unity
OHS	Office of Homeland Security
OSCE	Organization for Security and Cooperation in Europe
PFLP	Popular Front for the Liberation of Palestine
PKK	Kurdish Workers Party
PLF	Palestinian Liberation Front
PLO	Palestinian Liberation Organization
POE	Port of Entry
RB	Red Brigades
SAARC	South Asian Association for Regional Cooperation
STAR	Secure Trade in APEC Region
TTIC	Terrorist Threat Integration Center
UK	United Kingdom
UN	United Nations Organization
UNITA	Union for Total National Independence of Angola
UNTS	United Nations Treaty Series
US	United States of America
USA PATRIOT	Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
USSR	Union of Soviet Socialist Republics
WMD	Weapons of Mass Destruction



## **DEFINITION OF CONCEPTS**

<b>International Terrorism</b>	Violence perpetrated by state or non state parties against non combatants in order to advance political ends and whose impact transcends national borders.
<b>Islamic Fundamentalism</b>	Reversion to the basics of Islam as a guide to social, political, economic and legal order.
<b>State Responses</b>	All actions and decisions emanating from within the state that are aimed at preventing, containing or eliminating terrorism.
<b>Terrorist</b>	Person involved in acts of violence against non-combatants in order to advance political ends.
<b>Terrorist Group</b>	A group which practices or which has significant sub-groups, which practice terrorism.
<b>Non-combatants</b>	Refer to civilians including Military Personnel who at the time of the terrorist attack are unarmed or not on duty.
<b>Vulnerability</b>	Is the degree of susceptibility to the danger of terrorism.

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# CHAPTER ONE

## 1.00 INTRODUCTION

With the integration of world economies and the complex web of interdependence that has characterized the modern state system, major issues of common concern have arisen, ushering in new realities and challenges in international relations and geopolitical trends in general. As much as the disintegration of the former Soviet Union and the emergence of the US as the sole superpower gave rise to debates concerning international stability, the increased concern with issues that affect all states has signaled the evolution of a new world order in which traditional forms of sovereignty and attention to military security have become outmoded. This trend has seen world governments seek closer collaboration and partnership in order to effectively address issues of general interest. Technology confers extraordinary power on different kinds of actors throughout the world.<sup>1</sup> The result is a global system in which allies and adversaries are bound more closely together than ever before in history.<sup>2</sup> Joseph Nye, while playing down the classical notion of state sovereignty argues that technology has been diffusing power away from governments and empowering individuals and groups to play roles in world politics - including wrecking massive destruction - that were once reserved to governments.<sup>3</sup> Privatization has been the *leitmotif* in economic policy in recent years, but in politics, the privatization of war is terrorism.<sup>4</sup>

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<sup>1</sup> J. Stack, *Policy Choices*, (Guilford, Connecticut; Dushkin Publishers Group, 1983), p. 21.

<sup>2</sup> Ibid

<sup>3</sup> *Daily Nation*, Nairobi, 23<sup>rd</sup> March 2004, 'Shrinking World; American Power and the 2004 Campaign', p. 9

<sup>4</sup> Ibid

In modern times, no single phenomenon has galvanized the attention of policy makers, scholars and statesmen the world over as terrorism has. Shortly after the hostage standoff in a Moscow theatre in October 2002, President Putin vowed to fight terrorists "no matter where they might be"<sup>5</sup>. Adopting a similar tone, President Bush declared in the aftermath of the September 11<sup>th</sup> 2001 attacks on the US the beginning of a "sustained, comprehensive and relentless" campaign against terrorism.<sup>6</sup>

Terrorism is a particularly vexing global problem, since it can neither be attributed to a single source nor be solved by adopting one strategy. Terrorism not only poses a grave challenge to the legitimacy of the state in its claims to protect its citizens and property, but also brings to the fore questions about the efficacy of conventional methods in the war against terror. The enemy has chosen a form of warfare that makes it inaccessible to many current weapons and practice.<sup>7</sup> Acts of terror as such are not only a manifestation of the inability of the state to protect itself, but also a dysfunctional international system.

The use of terror as a means to achieve political ends is not a new phenomenon, but it has recently acquired a new intensity.<sup>8</sup> From the time of the Roman republic to the late eighteenth century, for example, the phrase that was most often used was *destructive war*.<sup>9</sup> The Romans themselves often used the phrase *punitive war*, although strictly speaking punitive expeditions and raids were only a part of the destructive war.<sup>10</sup> Terrorism emerged in ancient Palestine, but the term gained currency during the 1789 French Revolution. The period 1792-94

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<sup>5</sup> See *Newsweek*, December 2002-February 2003, p. 22.

<sup>6</sup> See *Time*, Oct 22<sup>nd</sup> 2001, p. 18.

<sup>7</sup> See generally Charles J. Dunlap, Jr., *Technology and the 21<sup>st</sup> C. Battlefield; Recomplicating Moral Life for the Statesman and the Soldier*, 1-19 (Strategic Studies Institute, 1999).

<sup>8</sup> M.N. Shaw *International Law*, 4<sup>th</sup> ed, (Cambridge; Cambridge University Press, 1997), p. 803.

<sup>9</sup> C. Carr, *The Lessons of Terror*, (New York; Random House, 2002), p. 17.

<sup>10</sup> *Ibid.*

was known as the 'Reign of Terror' where terror was the order of the day.<sup>11</sup> One, of the earliest known examples of a terrorist movement is the *Sicarii*, a highly organized religious sect consisting of men of lower orders active in the Zealot struggle in Palestine (AD 66-73).<sup>12</sup> Their favorite weapon was a short sword (*Sica*) hidden under their coats.<sup>13</sup> Likewise, from the days of Ivan the Terrible in the 15<sup>th</sup> century to the Soviet era *Komitet Gosudarstvennoi Bezopasnosti* (KGB), secret police agencies in Russia used terror. The only distinguishing feature of terrorism as it was earlier perceived and as it is manifested today is the organizational sophistication and the highly trained personnel associated with it. The bombings of the US embassies in Nairobi and Dar-es-Salaam, by virtue of the spontaneous nature of their execution, and the subsequent September 11<sup>th</sup> 2001 attacks on the US illustrate the advanced techniques currently employed by terrorists.

As much as the 20<sup>th</sup> Century witnessed an unprecedented upsurge of terrorist activities, the 21<sup>st</sup> century has inherited a more sophisticated face of terrorism that is not only more organized, but also better equipped. It has been argued in modern times that the Truman Doctrine<sup>14</sup> of '*containment of communism*', which defined the Cold War Political philosophy has been effectively replaced by the Bush Doctrine of '*containment of terrorism*'. Counterterrorism is therefore increasingly defining the current trends in inter-state relations as well as foreign Policy priorities of many states the world over.

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<sup>11</sup> D.M. Schlagheck, *International Terrorism*, (Lexington; Lexington Mass Books, 1988), p. 18.

<sup>12</sup> W. Laqueur, *The Age of Terrorism*, (Toronto; Little Brown, 1987), p. 12.

<sup>13</sup> Ibid.

<sup>14</sup> The 'Truman Doctrine' was contained in President Harry Truman's message to Congress on March 12<sup>th</sup>, 1947. 'Text in public papers of Presidents of the United States', Harry S. Truman, 1947, (Washington, D.C.; Government Printing Office, 1963), pp. 176-80.

The focus of this study is the post September 11<sup>th</sup> 2001 period when, unlike in the past incidents in which US interests abroad were the main targets of terrorist attacks, terror was unleashed right within the US soils. This brought a new dimension not only within the US national security circles, but also had far reaching implications on her foreign policy as well. Indeed, for the first time in the history of the UN, the world peace body in Security Council Resolution 1368 of 12<sup>th</sup> September 2001, qualified any acts of International Terrorism as threats to international peace and security.<sup>15</sup> This study therefore appraises state responses to international terrorism in the context of the prevailing US hegemony and the implications that this could have on multilateral counterterrorism efforts.

### **1.01 LIMITATIONS OF THE STUDY**

Insofar as this study is set to realize its stated objectives, it would be foolhardy to remain oblivious to certain bottlenecks that were encountered. First and foremost, terrorism being a security issue is a subject that is treated with a lot of sensitivity. Some people thus found it hard to unreservedly volunteer information. Secondly, an elaborate research on terrorism is a gigantic task that needs a lot of input in terms of time, human resources and finances, factors that were in short supply. Despite these handicaps, the quality of the research was not affected in any way. The study therefore relied more on secondary sources of information and utilized the available resources without necessarily compromising state security and the confidentiality of the informants from whom the necessary information was sourced.

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<sup>15</sup> See P. Teixeira, 'The Security Council at the Dawn of the 21<sup>st</sup> Century: To What extent is it willing and able to maintain International Peace and Security?' – UN Institute of Disarmament Research, Geneva, 2003, p. 86.

## 1.02 STATEMENT OF THE PROBLEM

Terrorism presents a different kind of conflict from the interstate use of force that constitutes the bases for the laws of war, with the exception of civil wars. While terrorism today could be taken as the ultimate threat by non-state actors against the organizing system of territorial states, there are no grounds for concluding that the state-based system established by the UN Charter is incapable of dealing with this problem.<sup>16</sup> The strategies and tactics of terrorism have recently become integral components in both the domestic and foreign realms of the modern state.<sup>17</sup> Terrorism is the cancer of the modern world... its growth is inexorable until it poisons and engulfs the society on which it feeds and drags it down to destruction.<sup>18</sup> Terrorism aims at the very heart of civilization.<sup>19</sup>

When states join the international system, they do so without any reservations, fully aware of their rights and obligations under international law. It is on this basis that they expect protection from unwarranted attacks against their territorial integrity or political independence.<sup>20</sup> However, this is only to the extent that the attacks are perpetrated by other states. This leaves states vulnerable to attack by loosely organized groups and individuals operating independently that are increasingly becoming associated with terrorism.

States have on the other hand proved unequal to the task of making international law protect them, since they have failed to create a global treaty against terrorism.<sup>21</sup> This is explained by the absence of consensus on the

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<sup>16</sup> See editorial comments by Jonathan I. Cherney, *American Journal of International Law* 1-186 249-411, (2000), p. 838.

<sup>17</sup> M. Stohl and G. A. Lopez, *International Dimensions of State Terrorism*, (New York; 1984, p. 55).

<sup>18</sup> P. Johnson 'The Cancer of Terrorism', in Benjamin Netanyahu ed., *Terrorism* (New York; 1986) p. 31.

<sup>19</sup> Uri Ra'anan et al, *Hydra of Carnage, International Linkages of Terrorism*, (Massachusetts; Lexington Books, D.C. Heath & Co/ Lexington, 1986), p. 15.

<sup>20</sup> See Article 2 (4) of the Charter of the UN. 1945.

<sup>21</sup> M. Mwagiru: *The Nationalization of Terrorism: National Responses to Terrorism Through National Legislation*: (Nairobi: 2003), p. 1.

conceptualization of terrorism and *ipso facto* what constitute legitimate and legally sanctioned responses. Furthermore, many governments either support terrorism or engage in it themselves, an eventuality that has compromised their role in the war against terror. Indeed, the one known treaty under the auspices of the League of Nations (LN) – The Convention for the Prevention and Punishment of Terrorism (1937) was ratified by only one state; others such as the European Convention on the Suppression of Terrorism (1977),<sup>22</sup> the Organization of American States (OAS) Convention to Protect and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance (1971), and the Agreement on the Application of the European Convention for the Suppression of Terrorism (1979) are regional in scope.

While states have been unable to create a functional legal regime to combat terrorism during peacetime, there is a treaty regime that forbids terrorist - like acts during wartime. In particular are the Geneva Conventions (1949) and the Protocols Additional to the Geneva Conventions (1977). However, the treaties are essentially piecemeal and do not contain a comprehensive regime against terrorism, nor provide a comprehensive identity for the offence.<sup>23</sup>

In modern times, terrorists have been able to execute their activities discreetly and with enhanced efficiency. Faster air transportation, easier access to weapons of mass destruction (WMD) and improved communication technologies exemplify the increasingly sophisticated nature of the terror network, as it exists today. Due to its covert nature, terrorist actions are incalculable and unpredictable.<sup>24</sup>

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<sup>22</sup> A. Cassese, 'The International Community's Responses to Terrorism', *International and Comparative Law Quarterly*, Vol. 38, (1989), pp. 598-599.

<sup>23</sup> M. Mwangi Op cit. p. 4.

<sup>24</sup> M. Taylor, *The Terrorist*, (London; Brassey Defence Publishers, 1988), p. 71.



Mbitiru in a commentary likens a terrorist to a virus, which mutates in the body, migrates and hibernates to await the right climate.<sup>25</sup> Acts of terror have resulted in profound socio-economic and political problems that not only paint a grim picture of the future of the modern state system, but also place the prospects of global peace and security in jeopardy.

Today, groups that employ terror tactics span the globe. Organized 'criminal' groups such as the Euskadi ta Askatasuna (ETA) fighting for the freedom of the Basque Homeland in Spain, Tamil Tigers of Ee lam in Sri Lanka, the Mafia in Italy, the drug barons of Bogota in Colombia, the Checka of Russia, Sendero Luminoso (Shining Path) in Peru, Khmer Rouge in Cambodia, Al Qaeda of Saudi fugitive businessman Osama bin Laden, the Sinn Fein armed wing in Northern Ireland, Germany's Baader-Meinhof Group, the French Action Directe (AD), the Palestinian Hamas, the Kurdish Workers Party (PKK), Italy's Red Brigades (RB) among others, continue to use terrorist tactics thus affecting international relations in a manner unknown before. In addition, the Palestine-Israel conflict has always remained a theatre for terrorist activities.

As much as terrorism has become a matter of concern in all countries, the US, especially after September 11<sup>th</sup> 2001, appears to be defining the parameters of the war against terrorism and has made it the centerpiece of its foreign policy and diplomatic engagements with other actors in the world today. While this posture is attributable to its past encounters with terrorists, US leadership could have implications on the success or failure of counterterrorist efforts. As a state, the US has national interests to defend and promote and thus its

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<sup>25</sup> *Daily Nation*, Nairobi, 30th June, 2003, p. 14.

conceptualization of and responses to international terrorism may largely reflect the values it seeks to enhance in the international system.

Reactions to American dominance is often a perverse blend of admiration, awe and envy on one hand and seething hatred, disgust and contempt on the other.<sup>26</sup>

While generalizations on this issue are especially perilous, it is untrue that Americans are loved and admired around the world. While anti-Americanism used to be driven by what America did, "now it is also motivated by what America is".<sup>27</sup> America today exemplifies the world's market – dominant minority.<sup>28</sup>

Americans have attained enormous wealth and economic power wildly disproportionate to their tiny numbers. The world over, the US is seen as the engine and principal beneficiary of global marketization. For this reason, the US has earned the envy, fear and resentment of much of the rest of the world. It has been argued that the US disproportionately prospers from the spread of global capitalism around the world. This study therefore evaluates state responses to international terrorism in the light of the US leadership and the implications that this could have on coalition building in the war against terror.

### **1.03 OBJECTIVES**

In assessing the impact of multilateral diplomacy on state responses to international terrorism, this study seeks;

- (i) To critically evaluate how states have responded to the threat of international terrorism.

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<sup>26</sup> A. Chua, *World on Fire*, (New York; Doubleday, 2003), p. 235.

<sup>27</sup> *Financial Times*, December 7<sup>th</sup> 2001, p. 23.

<sup>28</sup> A . Chua, *op cit*, p. 230.

- (ii) To examine how US leadership has impacted on multilateral counterterrorism efforts.
- (iii) To recommend alternative responses to International terrorism.

#### **1.04 LITERATURE REVIEW**

The literature review will focus on responses to international terrorism generally, but with special attention to the measures that the US has adopted in the war against terror. This is owing to the fact that the US' interests and allies have suffered some of the most devastating terrorist attacks in recent times. This has made the US to assume an automatic leadership in combating terror, an eventuality that has made it important to critically evaluate some of the measures so far adopted and the effect that they could have on forging a common front in counterterrorism.

The Counterterrorist business is currently unregulated.<sup>29</sup> Terrorism as a tactical – even strategic - tool to gain personal, social or political ends can never be eliminated.<sup>30</sup> There have been few efforts to organize an effective global mechanism to combat terrorism, partly because so many governments either support terrorism or engage in it themselves.<sup>31</sup>

How governments respond to the problem of terrorism is a function of how the power elites perceive the constraints facing them vis-à-vis the interests they seek in the international and domestic arenas.

Given access to technology and resources, an actor like the US is capable of launching a world-wide campaign against terror while a state like Kenya, faced

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<sup>29</sup> J. Stack, *Policy Choices*, (Guilford, Connecticut; Dushkin Publishing Group, Inc., 1985), p

<sup>30</sup> D. Hiro, *War Without End*, (London; Routledge, 2002), p. 411.

<sup>31</sup> S. L. Spiegel Op cit p. 484.

with numerous handicaps is unlikely to go beyond the efforts it has so far been able to make towards the same without risking internal stability as it shifts resources from core areas of development to security in the wider context. In as much as States have adopted different responses and with varying degrees of success, it is important to note that most responses by states have been reactionary in nature and aimed at addressing the immediate threat rather than long term policy-based. It is in this context that such responses have often had negative implications on human rights and civil liberties. Furthermore, such instantaneous responses have tended to be inadequate in terms of addressing the factors that underlie most terrorist acts and which could form the basis of a long-term policy strategy in combating the vice.

As terrorists have refined their tactics in tandem with the advanced technological developments witnessed in recent times, the international community has also stepped up the counterterrorism campaign and responded to acts and threats of terrorism with ever increasing sophistication. In this regard there have been both immediate and long-term responses. The immediate responses include the hunting, assassination and arrest of persons suspected to have terrorist links, the banning of various terrorist organizations, the freezing of bank accounts and the seizure of assets owned by terrorist groups.

To the extent that these methods have frequently been employed, they tend to ignore terrorism in the absence of an immediate threat. On the other hand, there have been long-term measures instituted as part of a sustainable response strategy in the war against international terrorism. In a weekly radio address, President Bush said, "We have pursued terrorists across the world, destroying their leadership and denying them sanctuaries...we are working with other

governments to break up terror cells and stop planned attacks, on virtually every continent.<sup>32</sup> The literature review therefore shall mainly focus on the national, regional and international responses adapted by States in the war against terrorism.

Broadly, counterterrorism measures can be classified under national, regional and international responses. Before examining the long-term measures put in place, it is important to give a general overview of the immediate responses to acts of terror in recent times. In the aftermath of September 11<sup>th</sup> 2001 attacks in Washington, D.C., New York, and Pennsylvania, President Bush signed Executive Order 13228 establishing the Office of Homeland Security (OHS) to lead, oversee and coordinate a comprehensive national strategy to protect the nation against domestic terrorism. In addition, the President signed an Executive Order E.O.13099, (63, Fed.Reg.45167) which sought to freeze assets owned by Bin Laden and his accomplices. It also prohibited US firms from doing business with them. The US also issued travel advisories to Americans abroad as Federal buildings and installations came under constant surveillance. A Homeland Security Council (HSC) including subordinate councils similar in structure and functions with the existing National Security Council (NSC) system was created as well. Also set up was the Terrorist Threat Integration Center (TTIC) to coordinate counterterrorism activities. In Kenya, the Government responded to the 1998 bomb attack on the US embassy in Nairobi by creating the Anti-Terrorism Police Unit within the Police Department. At the time of writing this paper, the Suppression of Terrorism Bill 2003 is due for debate in parliament. Apart from creating additional governmental bureaucratic units to combat

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<sup>32</sup> *East African Standard*, (Nairobi; August 9<sup>th</sup> 2004) p. 13.

terrorism, states have often adopted military strategies. These have either been pre-emptive or retaliatory in nature. A case in point is the 1986 bombing of Libya by the Reagan administration for her alleged complicity in the bombing of a German discotheque, La Belle, in which American soldiers were killed.<sup>33</sup> In the same token US forces bombed the military intelligence headquarters of Iraq in 1993 in reaction to an attempt on former US president George Bush's life during a visit to Kuwait. A similar act of revenge involved Golda Meir, who chaired the "Committee X" that approved the systemic hunting down and killing of members of the Black September Organization (BSO), the group responsible for the Munich Olympics massacre of Israeli athletes. Following the bombings of the US embassies in Nairobi and Dar-es-Salaam in August 1998, suspected terrorist training bases in Afghanistan and an alleged chemical production facility, al-shifa, in Sudan suffered severe missile attacks from the US. A US military Onslaught, *Operation Enduring Freedom* was also launched in early 2001 against the Taliban regime accused of harboring Al Qaeda since 1996. In March 2002 *Operation Anaconda*, designed to destroy remote Al Qaeda hiding places and crush the remnants of the organization, was launched. Similar operations have also been conducted in the Philippines, Yemen and Georgia as part of the military responses to global terror. Apart from the military strikes, the US, Britain and other Western powers have conducted joint military missions, exercises and deployments to counter terrorism in such places as Djibouti and Colombia. Important issues have however emerged on the long-term goals and costs of US military strategy and whether military force is necessarily effective in some instances.

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<sup>33</sup> *The New York Times*. 'Pentagon Details Two Pronged Attack', April 15<sup>th</sup> 1986.

Going by the experiences in Afghanistan and Iraq, especially after the overthrow of the Taliban regime and Saddam Hussein respectively, the use of military force has often proved problematic. Military action not only causes civilian casualties as well as collateral damage to the economic infrastructure in the target country, but also has the potential of sparking off counter-violence. This provides a fertile ground for recruiting more terrorists. According to Walzer, "genuine liberation can come only through a politics that mobilizes the victims of brutality and takes careful aim at its agents ... once tyranny is repudiated, terrorism is no longer an option. For what lies behind the excuses of officials and militants alike, is the predilection for a tyrannical politics."<sup>34</sup>

Retaliation as a strategy should be constrained by the same moral principles that rule out terrorism. Repression and retaliation always take terrorist forms. Inasmuch as no effort should be spared in combating terrorism, the operationalization of the war by using extra-judicial methods is increasingly reducing states' claim to moral authority in combating the vice.

Apart from national legislations seeking to either address terrorism generally or certain specific forms of acts of terror, there have also been legal responses in the form of international law, international conventions, protocols and treaties. One of the earliest international Conventions was in 1937 following the assassinations of Alexander I of Yugoslavia and the French foreign minister Louis Berthou in Marseilles. It was called the "Convention for the Prevention and Punishment of Terrorism."<sup>35</sup> Others include the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental

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<sup>34</sup> M. Walzer, 'Terrorism; A Critic of Excuses', in Steven Luper – Foy (ed) *Problems of International Justice* (London; Westview Press, 1988), pp. 237-47.

<sup>35</sup> LNDLOC. C 546 (1) M. 383 (1) 1937. V.

Shelf, done at Rome on 10<sup>th</sup> March 1988<sup>36</sup>; The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction of 1997; the Convention of the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10<sup>th</sup> March 1988<sup>37</sup>, the Convention on the Physical Protection of Nuclear Material, adopted at Vienna in 1979<sup>38</sup>; the Convention on the Marking of Plastic Explosives for the purpose of Detection done at Montreal on 1<sup>st</sup> March 1991; the Convention on the Prevention and Punishment of crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the UN on 14<sup>th</sup> December 1973 in New York<sup>39</sup>; The UN Law of the Sea Convention of 1982 and its related provision on piracy at sea; The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation concluded at Montreal on 23<sup>rd</sup> September 1971<sup>40</sup>; The Convention on Offences and Certain other Acts Committed on Board Aircraft, signed at Tokyo on 14<sup>th</sup> September 1963<sup>41</sup>, and The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16<sup>th</sup> December 1970.<sup>42</sup>

Following the recent upsurge in terrorist activities, the UN has also put in place a number of Conventions that oblige members to prosecute offenders or extradite them to permit prosecution for terrorism-related crimes. Such Conventions include the International Convention for the Suppression of the Financing of Terrorism adopted at New York by the General Assembly of the UN on 9<sup>th</sup> December 1999, the International Convention against the Taking of Hostages,

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<sup>36</sup> UNTS, Vol 1678, I-29004., p. 201.

<sup>37</sup> UNTS, Vol. 1678, I-29004, p. 201.

<sup>38</sup> UNTS, Vol 1456, p. 101.

<sup>39</sup> UNTS , Vol. 1035, I-15410, p. 167.

<sup>40</sup> UNTS, Vol.974, I-14118, p. 177.

<sup>41</sup> UNTS, Vol. 704, p. 219.

<sup>42</sup> UN Treaty Collection, [http: //untreaty.un.org/English/Terrorism.asp](http://untreaty.un.org/English/Terrorism.asp).



adopted by the General Assembly of the UN on the 17<sup>th</sup> December 1979 in New York<sup>43</sup>; the International Convention for the Suppression of Terrorist Bombings adopted at New York by the General Assembly of the UN on 15<sup>th</sup> December 1997 and the Convention on the Prevention and Punishment of the Crime of Genocide of 9<sup>th</sup> December 1948.<sup>44</sup> On 28<sup>th</sup> September, 2001 the UN Security Council adopted Resolution 1373 requiring all states to "Limit the ability of terrorists and terrorist organizations to operate internationally" by freezing their assets and denying them safe haven. On January 16<sup>th</sup> 2002, the Security Council passed Resolution 1390 requiring UN Members to freeze funds of individuals, groups, undertakings and entities having links with the Taliban and Al Qaeda. By specifically focusing on the Taliban and Al Qaeda, however, this resolution is deficient to the extent that it does not create a broad framework for combating terrorism perpetrated by other groups. Resolution 1269 on the other hand reaffirms that the suppression of acts of international terrorism, including those in which states are involved, is essential to the maintenance of international peace and security. In 1994, the 6<sup>th</sup> (legal) Committee of the General Assembly of the UN prepared the most comprehensive draft resolution on terrorism.<sup>45</sup>

The Charter of the UN also addresses the problem of terrorism from the perspective of states. Thus according to the proper interpretation of the Charter, if a state directly sponsors a terrorist act against the territorial integrity or political independence of another state, such an act would be in violation of the Charter. In its interpretation of Article 2 (4) of the Charter, the Security Council, through Resolution 748 also recognized that every state has the duty to refrain from

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<sup>43</sup> UNTS, Vol. 1316, 1-21931, p. 205.

<sup>44</sup> UNTS, Vol. 78, p. 277.

<sup>45</sup> See 'The Declaration on Measures to Eliminate Terrorism', Resolution 49/60 of 9<sup>th</sup> December 1994.

organizing, instigating, assisting or participating in activities of civil strife or terrorist acts in another state.<sup>46</sup> Hence, in the view of the Security Council, the prohibition of the use of force contained in Article 2 (4) includes state sponsorship, support, or toleration of terrorism.<sup>47</sup> While no attempt was made before 2001 to take the issue of terrorism to the Security Council of the UN, this changed following the September 11<sup>th</sup> 2001 attacks on the US. On September 28<sup>th</sup> 2001, in response to the events in New York and Washington DC, the Security Council of the UN had at its 4,385<sup>th</sup> meeting, adopted Resolution 1373 (2001) that sought to curtail acts of terror in its different forms and manifestations.<sup>48</sup> While in the past the Security Council would require to take certain actions related to a particular situation and in which the resolutions would lapse when the issues in question were resolved, Resolution 1373 (2001) does not seem to have any explicit or implicit time limit. Indeed to the extent that increasing interest has been given to mechanisms that will make the implementation of Resolution 1373 (2001) more effective, emphasis has been placed on the need to intensify the fight against terrorism by different actors and exchanging information with the Counterterrorism Committee. This was the highlight of the Vienna Declaration of March 2004, concluded at the follow-up meeting to the UN Counterterrorism Committee Special Meeting of 6<sup>th</sup> March 2003, hosted under the auspices of the Organization for Security and Cooperation in Europe (OSCE) in cooperation with the UN office on Drugs And Crime attended by representatives of the international, regional and sub-regional bodies of the UN system. Furthermore on 20<sup>th</sup> January 2003, the Security Council adopted

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<sup>46</sup> See UN Doc. A/8028 supp. No. 28 (1970).

<sup>47</sup> A.C. Arend and R. J. Beck, *International Law and the Use of Force*, (London & New York; Routledge, 1993), p. 146.

<sup>48</sup> P. Teixeira, *Op cit* p. 87.

Resolution 1456 (2003) which called for the UN Counterterrorism Committee to take action with states, which had not submitted their reports or were late in submitting the report and keep the Council informed.

In its Resolution 1373 (2001), the Security Council called upon all states to submit their first report to the Counterterrorism Committee within 90 days and thereafter, according to a timetable proposed by the Committee, on steps taken to implement the resolution and the determination of governments to tackle terrorism. Pursuant to the said Security Council resolution, states have submitted reports outlining the measures, which they have already put in place and those, which they intend to take to comply with their obligation under Resolution 1373. The new measures include the enactment of antiterrorism laws and the introduction of Anti-money laundering laws to ensure that the financial institutions of states are not used as conduits for money intended for terrorist activities. Other measures include the establishment of bodies mandated to ensure adherence to Resolution 1373 (2001). In this regard, Malawi for instance has set up an Inter-ministerial Committee on Terrorism and Botswana has established a National Anti-terrorism Committee to oversee the implementation of Resolution 1373 (2001). There has also been a requirement that states revise existing laws in a bid to ensure that they are consonant with the requirements of Resolution 1373 (2001). In its report, Swaziland indicated that it was in the process of amending the Money-Laundering Act and the Serious Offences (Proceeds of Crime) Act, to make them sufficient in responding to terrorism. At the national level, individual countries have also passed anti-terrorism legislations.

After September 11<sup>th</sup> Britain passed the Anti-Terrorism Crime and Security Act 2001. It provides for the detention of foreign nationals suspected of involvement in terrorist activities indefinitely and without charge. Constables can also arrest without a warrant anyone they suspect of being a terrorist and hold him for 48 hours without allowing access to a lawyer. They can also fingerprint, photograph and search suspects for distinctive body marks without their consent. In 2002 India's Prevention of Terrorism Act was passed amidst stiff opposition from a wide section of the community due to its negative implications on individual liberties. Similarly, Pakistan's Act has been used to illegally detain and extradite terror suspects to the US without the due process. In Uganda the Anti-Terrorism Act 2002 has been used to repress political dissent while in Tanzania Muslims have widely protested against the Prevention of Terrorism Act 2002, which they claim targets their religious freedom. Other countries that have passed anti-terrorism legislations include Australia, Philippines, Indonesia, Ethiopia and Sudan among others.

In the US, the Rewards for Information Program was established by the 1984 Act (PL 98-533) to help combat terrorism. On a similar note, International Emergency Economic Powers Act permits the imposition of restrictions on economic relations once the president declares a national emergency owing to threats to the US national security, foreign policy or economy. Section 505 of the International Trade and Security Act of 1985 authorizes the banning of imports of goods and services from any country supporting terrorism. Prohibitions are also placed on the sale of arms to any country the president certifies as not cooperating fully with US anti-terrorism efforts (P.L.104 - 132). The enactment of Anti-Terrorism and Effective Death Penalty Act of 1996 (P.L.104 - 132) further

creates a legal category of Foreign Terrorist Organizations (FTOs) and bans funding, granting of visas and other material support for them. Following the September 11<sup>th</sup> 2001 attacks, the USA PATRIOT Act of 2001 (P.L.107 - 56) further strengthened the 1996 Act. In addition, President Bush responded with Executive Order 13224 that froze the assets of 27 individuals and organizations known to be affiliated with the Al Qaeda network of Saudi fugitive businessman Osama bin Laden. Furthermore, the US responded by curtailing certain liberties especially of immigrants. The worst hit were people of Arab origin or those bearing Islamic identities. Many have been arrested and detained incommunicado pending repatriation, a process in which allegations of torture have been cited, thus eliciting investigations of the Justice Department. The US response to this has been the utter disregard of human rights as exemplified by the Justice Department spokeswoman Barbara Comstock's statement, "We make no apologies for finding every legal way possible to protect the American public from further terrorist attacks".<sup>49</sup> According to Gary Hart, however, "one of the great issues of democratic societies in the New World of the early 21<sup>st</sup> century is achieving a proper balance between security and liberty."<sup>50</sup> The UN Secretary General has also repeatedly cautioned states, as they adopt strategies to fight terrorism, that, "while we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self defeating if we sacrifice other key priorities - such as human rights - in the process."<sup>51</sup>

On 13<sup>th</sup> November 2001 President Bush signed a controversial military order allowing for non-US citizens suspected of involvement in "international terrorism"

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<sup>49</sup> *Daily Nation* (Nairobi; 4<sup>th</sup> June, 2003, p. 15.

<sup>50</sup> *Daily Nation* (Nairobi; 11<sup>th</sup> July, 2003). P. 9.

<sup>51</sup> *Daily Nation* (Nairobi; 18<sup>th</sup> November, 2003). P.9.

to be tried by special military commissions which would expressly bypass the normal rule of evidence and other safeguards in the US criminal justice system. The commissions could operate in secret and pass death sentences, which could not be appealed against in a higher court, a key fair trial requirement under international law. President Bush cited the danger to national safety posed by international terrorism claiming that, it was not practicable to try terrorists under the principles of law and the rules of evidence that apply in the US' domestic criminal justice system.<sup>52</sup>

Covert action involving intelligence gathering, sharing of intelligence information and infiltration of terrorist groups has also been employed especially by official intelligence agencies of various states. In Spring 2001, CIA operatives traveled to Northern Afghanistan, and exchanged intelligence for cash and weapons.<sup>53</sup>

Programs have also been established to strengthen intelligence-gathering capacities of small countries such as Kenya. In recent times, the toppling of regimes said to either harbor terrorists or weapons of mass destruction has been experienced. The involvement of the US in the overthrow of Saddam Hussein in Iraq and the replacement of Mullah Omar's Taliban regime in Afghanistan by one that is led by Hamid Karzai are cases in point. Heightened security checks at airports and other vital installations in the US and Western Europe is commonplace.

Travel advisories warning of terrorist threats to foreign nationals have also been put in place. New Zealand, Britain and the US went on record as declaring Kenya unsafe for tourism. New Zealand would not even permit her cricket team to play

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<sup>52</sup> A. A. I. Hassan, 'National Legislations and International Terrorism; A comparative analysis'. paper presented at the Eastern and Southern African, Colloquium on Measures to Combat and Eliminate Terrorism, (Nairobi; 2004), p. 4.

<sup>53</sup> *Washington Post*, 20<sup>th</sup>, January, 2002.

in Nairobi despite enhanced security provided by South African Security teams. The effects have been devastating especially on Kenya's Tourism Sector. This runs the risk of alienating friends in the war against terror. In an article in the *Sunday Nation*<sup>54</sup> Carson declares that the real threats to Kenya's economy are not public warnings or the actions of security forces, but the terrorists and their sympathizers – and the appearance that Kenya is not doing enough to stop them. He sought to dispel the fact that Kenya was hit because of her relations with the US and instead attributed the attacks to the fact that there were Kenyan terrorists taking advantage of the society's openness. He went further to prescribe conditions that Kenya needed to fulfill before the travel advisories instituted by his government could be lifted. The paradox, however, lies in the fact that despite its sophisticated anti-terrorism machinery, terrorists still attacked the US.

The international community has also responded to terrorism through the application of economic sanctions. This can either be unilateral – like in the case of US bans on trade and investment relations with Cuba and Iran – or multilateral such as the one mandated by the UN following the bombing of Pan Am 103 in Lockerbie, Scotland. Experience with sanctions has however shown that they are difficult to enforce especially where states are dealing with strategic interests and allies.

Regional organizations have also adopted various conventions on terrorism. These include the OAS Inter-American Convention Against Terrorism, adopted on 3<sup>rd</sup> June 2002; The OAU Convention on the Prevention and Combating of Terrorism adopted at Algiers on 14<sup>th</sup> July 1999; The Convention of the

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<sup>54</sup> *Sunday Nation*, (Nairobi; 1<sup>st</sup> June, 2003), p. 5.

Organization of the Islamic Conference on Combating International Terrorism adopted in Ouagadougou on 3<sup>rd</sup> April 2002; Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism adopted at Minsk on 4<sup>th</sup> July 1999; The Arab Convention for the Suppression of Terrorism, adopted in Cairo on 22<sup>nd</sup> April 1998; The (South Asian Association for Regional Cooperation) SAARC Regional Convention on the Suppression of Terrorism, adopted in Katmandu on 4<sup>th</sup> November 1987; The European Convention on the Suppression of Terrorism, adopted in Strasbourg on 27<sup>th</sup> January 1977; and The OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, adopted in Washington D.C on 2<sup>nd</sup> February 1971.

The regional approach, however, differs from the global piecemeal approach. The above regional treaties provide a comprehensive approach of dealing with terrorism rather than merely outlawing specific acts or atrocities, as is the case with the global treaties by the UN specific organizations. After the incidence of September 11<sup>th</sup> 2001, the General Assembly by its Resolution 56/1 of September 18<sup>th</sup> 2001 called for "international cooperation among states in dealing with violent or terrorist offences." The Organization of American States meeting of ministers of foreign affairs resolved that "terrorist attacks against the US were attacks against all American states and that in accordance with all relevant provisions of the inter-American treaty of reciprocal assistance (Rio treaty), all states shall provide reciprocal assistance to address such attacks. The organization of American states thus negotiated and adopted on June 3<sup>rd</sup> 2002 The Inter-American Convention Against Terrorism.



Abduction as a strategy in counterterrorism has on certain occasions been applied. In 1985, following the hijacking of Achille Lauro, the US attempted to abduct the hijackers. Likewise in 1976, during the Entebbe rescue operation, the Israeli commandos killed all the hostage takers. Where abductions have occurred, abducting states have failed to secure jurisdiction over the terrorists, as abduction falls outside the provisions of the treaty that governs extradition. Assassination as a counterterrorism strategy on the other hand has proved problematic to the extent that a person is presumed innocent until proved otherwise. In addition, it negates the rights of the accused to life and to a fair trial as stipulated in law. When Abu Jihad, the deputy PLO chairman was killed in 1988, the Security Council of the UN formally condemned Israel for her involvement in the death in Resolution 611 of April 25<sup>th</sup>, 1988.<sup>55</sup>

Extradition has been employed in recent times as a response to international terrorism. Extradition involves the repatriation of a person suspected or convicted of a crime by a state where he/she has sought refuge to the state that asserts jurisdiction over him/her. This strategy has been applied to address the problem of criminals who flee a country to evade prosecution for crimes allegedly committed in the country that asserts jurisdiction over them. Oketch asserts that, 'extradition has historically been an important tool to penetrate the protective cloak that state sovereignty offers an individual against the police power of the fugitive's own state as the latter's authority does not extend into the jurisdiction of another state.'<sup>56</sup> Extradition, however, is only possible to the extent that there exists a treaty between the countries involved. Even in cases where such treaties exist, extradition can only be effected for an offence specified

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<sup>55</sup> Security Council Resolution 611, April, 25<sup>th</sup> 1988. Also see *The New York Times*, April 17<sup>th</sup> 1988 p. 16.

<sup>56</sup> E. L. Oketch Op cit p. 89.

in the treaty. In addition, the offence must be a crime in both countries and it must be expressly stipulated in the treaty. In a case where extradition is effected, the fugitive can only be tried for the specific offence that necessitated the extradition.

Extradition as a strategy is an issue that is founded on the principle of *Pacta Sunt Servanda* (good faith) and is thus difficult to enforce. This has been compounded by the fact that not all states have extradition treaties with each other and thus terrorists have been able to circumvent prosecution by seeking refuge in countries with no provisions for extradition. A state can only request another to hand over an alleged offender due to the principle of territorial sovereignty. In a case where the state to which such a request has been placed refuses to yield, most states have often resorted to illegal methods such as abduction, which apart from contravening the principles of sovereignty and territorial integrity violates the rights of the alleged offender. In the *Attorney General vs. Eichmann*, a German national and the head of the Jewish office of Gestapo, who was the author of the 'Final Solution', a policy in which millions of Jews were killed, his abduction in 1960 by Israeli agents while he was in Argentina sparked a row of sorts, with Argentina protesting at the violation of her territorial integrity and sovereignty.<sup>57</sup>

The use of diplomacy to help create an international coalition against terror is a central component in the way states respond to terrorism. In the wake of September 11<sup>th</sup> 2001 attacks, the UN declaration that acts of international terrorism constitute a threat to international peace and security, and NATO Secretary General's invocation of Article 5 of the NATO Treaty on mutual defense

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<sup>57</sup> See L. C. Green, 'The Eichmann case', *Modern Law Review* Vol. 23 (1986), pp. 507-512.

provision could be viewed as part of a wider diplomatic strategy in combating terrorism. Furthermore, to the extent that Counterterrorism can only be effective within a multilateral and collaborative framework, Coalition-building among states is central in forging a common front against terror.

The use of diplomacy to help create a global anti-terror coalition is a central plank in the US' policy response to international terrorism. In incidents of terror involving sub - national groups, implementing a policy response of constructive engagement is however compounded by the absence of channels and mutually accepted rules of conduct between governmental entities and the groups in question. Increasingly, however, governments appear to be pursuing policies that involve verbal contact and even direct negotiation with terrorist groups or their representatives. Colombia's experience with the Revolutionary Armed Forces of Colombia (FARC) is a case in point. Some people though are skeptical of the value of engaging with terrorists. The former CIA director James Woolsey once noted, "Increasingly, terrorists don't just want a place at the table, but rather to destroy the table and all sitting there, possibly with weapons of mass destruction."<sup>58</sup>

On another level, the US administration has enlisted state sponsors of terrorism in a broader Islamic coalition against Al Qaeda and its followers. Libya and Sudan are the new partners in combating terror. Likewise, the US talks with Iran concerning the formation of a post-Taliban coalition government in Afghanistan could be viewed as part of the diplomatic initiatives aimed at forging a coalition of states in the war against terror. In the same light, the US engagement in the Middle East peace process constitutes part of the diplomacy associated with

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<sup>58</sup> See 'Terrorism, The Future, and US Foreign Policy', CRS issue brief updated, 11<sup>th</sup> April 2003. Order Code IB95112. p.8.

multilateralism in combating terrorism. Critics however point out that such initiatives detract from the imperative of taking a principled stand on international terrorism in all its guises.

This study seeks to critically evaluate state responses to international terrorism in the context of the prevailing US hegemony and how this impacts on coalition – building in the war against terror, a void that little has been written on.

### **1.05 JUSTIFICATION OF THE STUDY**

In an anarchic international system with no supranational authority, states are perpetually preoccupied with matters concerning their survival and security. It is on this basis that states in modern times are in a frenzy trying to find solutions to such common problems as HIV/AIDS, poverty, environmental degradation, drug trafficking and international terrorism, which by their nature represent the very antithesis of the rationale of statehood.

The state as the unit of analysis, upon which this study is anchored, has for centuries, but especially since the 1648 Treaty of Westphalia, remained an enduring feature of the international political system whose absence is hardly contemplated. Article 1 of the Montevideo Convention on Rights and Duties of States (1933) lays down the most widely accepted criteria in the formulation of statehood. The state is conceived on the basis of a permanent population, a defined territory, government and capacity to enter into relations with other states.<sup>59</sup> The element of territory has however been contentious especially following the case in which Israel was admitted to the UN in spite of disputes over her borders. In similar circumstances, Burundi and Rwanda were admitted

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<sup>59</sup> M. N. Shaw Op cit, p. 138.

to the UN at the 17<sup>th</sup> session of the General Assembly. It is a legal entity recognized under international law as the fundamental decision making unit of the international legal system.<sup>60</sup>

While it is acknowledged that there are other actors besides the state in the international system, the state especially according to realism remains by far the most important actor. This explains why this study focuses on the US, the leading power in the present comity of states. As the only superpower in the current "unipolar" international system, possessing the necessary resources and technology to launch a worldwide campaign against terror, the US has emerged as the natural leader in a coalition of states united in combating terrorism. As much as terrorism has sometimes been attributed to agents of the state in what is referred to as *state terrorism*, largely the state has remained the principal target of terrorist attacks. Furthermore, it is only the state, which happens to possess the necessary institutional machinery and resources that can be mobilized at short notice in the war against terror.

By focusing on the state is not, however, to preclude non-state actors from the realm of this research. Terrorism does not necessarily rely on state structures in order to perpetuate itself and is increasingly becoming identified with non-state actors. Undermining or even destroying states 'viewed' as sponsors of terrorism may thus not be the logical action to take towards eliminating the menace, as undermining the Soviet state was a successful step towards defeating Communism.

Inasmuch as a lot has been documented on terrorism from a general perspective, this study specifically seeks to address the phenomenon from the dimension of

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<sup>60</sup> D. S. Paap, *Contemporary International Relations: Frameworks for Understanding*, (New York: Macmillan Publishing Co., 1991), p. 26.

the leading role of the US in the war against terror, an aspect on which little has been written.

As a contribution to scholarship, this study is an additional input to the catalogue of literature on terrorism. It seeks not only to analyze counterterrorism in the context of the unilateral-multilateral debate, but also lays the foundation upon which future studies can be based. In this respect, it will serve the purpose of generating new debate on issues of international security and global leadership. Furthermore, to the extent that this study seeks to proffer recommendations on other ways of addressing international terrorism, it is an effort aimed at enhancing the capacity of states to combat terrorism as a policy blueprint.

Insofar as much of the documented literature on responses to international terrorism have largely ignored the impact of hegemonic leadership on multilateral counterterrorism efforts, this study seeks to fill this gap.

## **1.06 THEORETICAL FRAMEWORK**

Classical realism revolves around the concepts of power and interest as the rationale of statehood. According to this school of thought, a rational political actor is one who acts to promote his or her interests.<sup>61</sup> Statesmen think and act in terms of interest defined as power.<sup>62</sup> Realism further posits that the cardinal responsibility of every state is to ensure its own security. Realist apologists argue that states are the most important actors in the international system, a view that has however been faulted by subsequent studies that take cognizance of other actors besides the state. To them, in a world of nations-state over whom there is

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<sup>61</sup> T. A. Coulumbis and J. H. Wolfe, *Introduction to International Relations*, 4<sup>th</sup> ed., (New Jersey; Prentice-Hall, 1978), pp. 6-7.

<sup>62</sup> H. J. Morgenthau, *Politics Among Nations*, 6<sup>th</sup> ed., (New Delhi; Kalyani Publishers, 1991), p. 5.

no superior authority, the power of the nation-state remains the ultimate arbiter. To the extent that realism is state-centric and seems to focus on power politics to the exclusion of other important variables, the realist tradition has furnished an abundant basis for the formation of what is termed a neo-realist approach to international relations theory on which this study is based. Leading proponents of neo-realism include Kenneth Waltz, Kindermann, Robert Gilpin, Stephen Krasner, Barry Buzan, Michael Doyle and Andrew Linklater among others.

Neo-realism attempts to refine and reinvigorate classical realism as earlier propagated by Morgenthau, E. H. Carr, Arnold Wolfers and George Kennan among other like-minded scholars. A neo-realist theory would inject greater rigor into the realist tradition by defining key concepts more clearly and consistently, and developing a series of propositions that could be subjected to empirical testing and investigation.<sup>63</sup>

Neo-realism has embraced work that is termed structural realism. Power according to them remains a key variable, although it exists less as an end in itself than a component of political relationships. They argue that it is the structure of the international system that shapes the political relationships that take place among its constituent units. By structure, emphasis is on the distribution of capabilities among the units making up the international system.

According to Gilpin, states engage in cost-benefit calculations about alternative courses of action available to them.<sup>64</sup> An international system is in a condition of equilibrium to the extent that its major actors are satisfied with the territorial, political and economic status quo.<sup>65</sup> The aftermath of the Cold War saw this

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<sup>63</sup> J. E. Dougherty and R. L. Pfaltzgaraff, Jr., *Contending Theories of International Relations*, (New York; Harper Collins Publishers, 1990). P. 119.

<sup>64</sup> R. Gilpin, *War and Change in World Politics*, (New York; Cambridge University Press, 1981), pp. 9-11.

<sup>65</sup> Dougherty et al Op cit p. 122.

state of equilibrium seriously disturbed as the US emerged as a hegemon and enjoyed unchallenged intervention in world affairs. This state of affairs heralded major global power realignments, with 'new' wars increasingly being fought on a civilizational incompatibility platform. Indeed, with the end of the Cold War, aspersions have been cast on America's sometimes manifestly unilateralist approach in world affairs and its openly abrasive foreign policy. To the extent that neo-realism acknowledges the centrality of the State, besides other actors, it provides a holistic approach to international relations. This makes it suitable for this study on the phenomenon of terrorism which involves both State and non-State actors.

### **1.07 HYPOTHESES**

- (i) Multilateral diplomacy has a positive impact on State responses to international terrorism.
- (ii) Multilateral diplomacy has no impact on state responses to international terrorism.
- (iii) Multilateral diplomacy negatively impacts on state responses to international terrorism.

### **1.08 METHODOLOGY**

The study will adopt the case study method. It will rely on both primary and secondary sources of information. The primary data will entail interviews with members of the diplomatic corps, especially those representing countries that have experienced terrorism in the recent past, UN officials based in Nairobi, Government of Kenya officials particularly those attached to the ministry of



Foreign Affairs and the security agencies. Qualitative data sampling method shall be used since terrorism is an issue that has security implications and some 'sensitive' materials on the subject are not in the public domain. Secondary sources on the other hand will involve a critical review and examination of existing literature on terrorism. Library research on both published and unpublished materials, books, periodicals, newspapers, US State Department reports and documents from the Congressional Research Service, bulletins, magazines and any other writings deemed relevant to the study shall be extensively employed.

## **1.09 CHAPTER ORGANIZATION**

Chapter One: Comprises, the **Introduction**. It provides background information on the phenomenon of terrorism and the framework of the research in general.

Chapter Two: **An Anatomy of Terrorism**, attempts a conceptualization of terrorism, explores the factors that explain the prevalence of terrorism in the present society, its different types, and the religious dimension in terrorism.

Chapter Three: **The Terrorism Dilemma: Trends and developments**, analyses International Terrorism as a migration policy issue and the technological dimension in terrorism.

Chapter Four: **Counterterrorism: A case study of the US**. This is a critical appraisal of the impact of US leadership in the war against terrorism as viewed against a background of the rules governing the use of armed force in international law.

**Chapter Five: Conclusions and Recommendations.** This is a diagnosis of the salient issues in the preceding chapters and proffers suggestions on strengthening the war on terror.

# CHAPTER TWO

## 2.00 AN ANATOMY OF TERRORISM.

### 2.01 Terrorism: A conceptualization.

The conceptualization of terrorism is important since it is upon the proper definition of terrorism that consensus can be reached on what should constitute legal and universally agreeable responses to acts of terror. In addition, clarity in the contextual application of the term will be assured.

Many scholars do not share a common working definition of the term "terrorism", though they share certain understandings about the phenomenon.<sup>66</sup> Defining terrorism is more than an academic exercise.<sup>67</sup> It is a practical tool to combat terrorism.<sup>68</sup> The definition inevitably determines the kind of data we collect and analyze, which in turn influences our understanding of trends and our predictions about the future.<sup>69</sup> Indeed to the extent that terrorism has become the most talked about subject in the contemporary society, its conceptualization has remained elusive and an issue at the core of a raging debate with no single definition being universally embraced. Without a basic definition, it is not possible to say whether the phenomenon called terrorism is a phenomenon of a different nature from its predecessors and whether there can be a theory of terrorism.<sup>70</sup> Reference to terrorism is thus superfluous, and this explains why most responses to the menace have often revolved around the use of force on non-combatants, rather than terrorism as a specific and well defined crime. Furthermore, most responses are deficient to the extent that they tend to focus

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<sup>66</sup> E. L. Oketch (2001), *The Diplomacy of Terrorism: A critical analysis of the Nairobi and Dar es Salaam Bombings of August 7<sup>th</sup> 1998*, p. 30-MA dissertation, University of Nairobi.

<sup>67</sup> J. Stern, *The Ultimate Terrorists*, (Massachusetts, Cambridge; Harvard University Press, 1999), p. 12.

<sup>68</sup> *Saturday Nation*, Nairobi, January, 8, 2005. p. 9.

<sup>69</sup> J. Stern, Op cit p. 12.

<sup>70</sup> G. Warlaw *Political Terrorism; Theory, Tactics and Countermeasures*, (London; Cambridge University Press, 1995), p. 5.

on the persons involved in terrorism rather than the factors that engender acts of terror. This brings us to the twin questions, 'when should the use of force be justified and when should it be classified as terrorism?'

Terrorism is a moral problem<sup>71</sup> and this creates difficulty over the definition of the phenomenon. Any attempt at a definition relies on the assumption that some forms of political violence can be rationalized but not others. The UN for instance recognizes the principle of self-determination in its granting of independence to colonial territories and peoples.<sup>72</sup> Likewise, Article 51 of the Charter of the UN recognizes the inherent right of individual or collective self-defense if an armed attack occurs against a member of the UN, until the Security Council has taken the measures necessary to maintain international peace and security.<sup>73</sup>

Many people and states thus rely on their moral perceptions and individual judgment regarding certain incidents of violence and whether they qualify as acts of terror or not. In the same breath, it can be argued that acts of terror eventually tend to be rationalized when the parties concerned ultimately agree to share values. This is illustrated well by the liberation struggles, which though classified as "terrorist" by the colonial authorities produced independent states that are legally recognized under international law.

In as much as acts of terror are normally rationalized on the basis of expressing displeasure at oppression, persecution, territorial disputes, anarchy, colonial domination and authoritarian rule among other considerations, there are instances when terrorism is not motivated by acts of injustice. This negates any pretensions to justice over certain issues in which terrorists have an interest.

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<sup>71</sup> J. J. Lambert, *Terrorism and Hostages Under International Law*, (Cambridge; Grotius Publications, 1990), pp. 13-14.

<sup>72</sup> See General Assembly Res. 1514 (XV), December 14<sup>th</sup>, 1960.

<sup>73</sup> See Article 51 of the Charter of the UN, 1945.

Terrorism is therefore criminal in all its forms and manifestations. It not only lacks justification in the context of the Just War<sup>74</sup> doctrine which provides rules that regulate the use of armed force, but also in relation to the rule of proportionality which provides that armed force should be used as sparingly as is consistent with achieving the required national objectives.<sup>75</sup>

While non-combatants should not be targets in any war, terrorism has assumed an amorphous nature that has no bounds as to the particular audience it should be aimed at.

This has made it lose any claim to legitimacy however valid the issues at stake might be. Furthermore, the UN maintains that no one shall be subject to torture and other cruel, inhuman or degrading treatment or punishment.<sup>76</sup>

Varied opinions abound on what terrorism is and by implication, what it is not. In the same breath, it has remained a contentious issue when it comes to differentiating between ordinary criminal acts that could be prosecuted under the existing general penal code and those associated with terrorist elements. This difficulty in conceptualization has not only made it impossible to create a global treaty against terrorism, but also militated against the adoption of a common multilateral approach in responding to the menace. Indeed this has led to what Mwagiru calls the Nationalization of Terrorism through national legislation.<sup>77</sup>

To the extent that national anti-terrorism laws entirely target non-state actors such as groups and individuals, they fall short of addressing state terrorism that is often rationalized based on addressing threats to national security. Furthermore, the rule of sovereign immunity in international law makes municipal

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<sup>74</sup> M. N. Shaw Op cit, p. 778.

<sup>75</sup> See 1874 Brussels Declaration on Laws and Customs of War. <http://www.yale.edu/lawweb/Avalon/war/westeu/we002.htm>, Article 12.

<sup>76</sup> See 1984, UNTS Vol. 1465, p. 85.

<sup>77</sup> See M. Mwagiru. Op cit, p. 2.

law deficient especially when dealing with terrorism from the perspective of other states. In international law, it is impossible for states to subject each other to local jurisdiction. The only exception is where states are engaged in commercial activities (*acta jure gestionis*), but not where they are involved in acts of state (*acta jure imperii*).<sup>78</sup>

Notwithstanding the difficulties in conceptualization, attempts have all the same been made to give terrorism some semblance of identity that sets it apart from other forms of violence. Terrorist acts can be collapsed into two categories: those emanating from domestic politics and those that originate from international politics. Even though the first category of terrorism is more frequently experienced and pervasive, the media's preoccupation with spectacular events obtaining on the international scene has been at the expense of highlighting acts of terror perpetrated by agents of the state. Terrorism is a concept whose definition is more often subjective and ideological. These are informed by clashes of interest and struggles in which one group seeks to displace another at one level while the besieged seeks to sustain its privileges at another.<sup>79</sup> Reference to one's actions as terrorist is thus informed by differentiated and ideologically defined value systems.<sup>80</sup>

According to Mazrui,<sup>81</sup> in matters of terrorism and counterterrorism, it is difficult to be objective.

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<sup>78</sup> See R. Higgins, 'Certain Unresolved Aspects of the Law of State Immunity', 29 *Netherlands International Law Review*, 265, 267-70, 1982.

<sup>79</sup> M. Katumanga, 'Facing Emerging Threats from Terrorism; Some Thought on Alternative Menu of Responses', (Nairobi, 2003), p. 2.

<sup>80</sup> Ibid.

<sup>81</sup> A. A. Mazrui, *Cultural Forces in World Politics*, (London; James Currey, 1990), p. 233.

One person's terrorist is another person's freedom fighter.<sup>82</sup> The Contra insurgents who fought against the Socialist Sandinista regime (F.S.L.N) in Nicaragua in the 1980s illustrate the subjectivity with which terrorism is regarded. To Sandinistas, the Contras were criminal terrorists bent on the violent overthrow of a legitimate government. To Reagan, who supported them, the Contras were Nicaraguan 'freedom fighters'.<sup>83</sup> In South Africa, while the black majority hailed Mandela and his fellow ANC activists as liberation fighters, the minority white regime regarded them as terrorists. Likewise, in Kenya, the Mau Mau was a terrorist outfit according to the British Colonial Authorities, yet to the majority of the Kenyan populace it symbolized the spirit of resilience in the struggle for freedom. In the case of the Middle East, while Israel insists that groups such as the Hamas and the Palestinian Liberation Front (PLF) are terrorist organizations, Arab countries consider them as freedom fighters.

With respect to international terrorism, the conceptual controversy is further deepened by the insistence that acts related to self-determination should not be classified as terrorism.

The non-aligned group for instance excluded 'freedom fighting' and cautioned that their definition 'should not, however, affect the inalienable right to self determination under colonial and racist regimes'.<sup>84</sup> At an international conference convened by the UN Secretary General in 1987, participants agreed to identify terrorism as a crime except 'those fighting for the right to self determination against foreign and racist regimes'.<sup>85</sup>

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<sup>82</sup> Ibid.

<sup>83</sup> S. L. Spiegel, *World Politics in a New Era*, (London; Harcourt Brace Publishers, 1995) p. 475.

<sup>84</sup> See 28<sup>th</sup> session/A/9029 of UN General Assembly, 1973.

<sup>85</sup> See '194<sup>th</sup> Meeting of UN General Assembly', December 7<sup>th</sup>, 1987, Report No. A/42/832.

Semantically terrorism evolved in the 18<sup>th</sup> century. As a word, it has Franco-Latin roots; it is drawn from the Latin verb *terrere*, meaning 'to tremble' and French suffix, *isme*, meaning 'to practice'. *Régime de la terreur* (1793-4) - from which the English word is coined – was adopted as a way to establish order following the 1789 French Revolution. Semantics notwithstanding, defining terrorism remains controversial and subject to different interpretations. As hinted before, there is a labyrinth of definitions. The meaning of terrorism was given in the 1798 supplement of the *Dictionnaire* of the Académie Française as 'système, régime de la terreur'.<sup>86</sup> In its wider sense, terrorism is the tactic of using an act or threat of violence against individuals or groups to change the outcome of some process of politics.<sup>87</sup> A terrorist was anyone who attempted to further his views by a system of coercive intimidation.<sup>88</sup> In Mazrui's view, 'terrorism' is the deliberate creation of specialized terror among civilians, through the use of violence, in order to promote political ends, whether it is revolutionary terrorism by opponents of government or state terrorism by governments themselves.<sup>89</sup> According to Oruka,<sup>90</sup> terrorism is the intentional infliction of suffering or loss on one party by another party which has no authority or legitimacy to do so, or which appears to have authority or legitimacy but has in fact deprived the sufferer of the minimum ethical consent necessary to recognize such authority or legitimacy. In other words, terrorism is illegitimate infliction of suffering or loss on another, or else it is punishment beyond a reasonable maximum.<sup>91</sup> The US government and others have generally defined terrorism as 'the use or

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<sup>86</sup> *Dictionnaire, Supplément* (Paris, an VII, 1798) p.775.

<sup>87</sup> K. Deutsch. *The Analysis of International Relations*, (London; Prentice-Hall inc., 1989), p. 192.

<sup>88</sup> J. Murray, *A New English Dictionary on Historical Principles*, (Oxford; 1919).

<sup>89</sup> Mazrui Op cit p. 228.

<sup>90</sup> H. O. Oruka, *Punishment & Terrorism in Africa*, 2<sup>nd</sup> ed., (Nairobi; Kenya Literature Bureau, 1976), p. 47.

<sup>91</sup> *Ibid.*



threatened use of violence for political purpose to create a state of fear that will aid in exhorting, coercing, intimidating or otherwise causing individuals and groups to alter their behavior.<sup>92</sup> To Wilkinson<sup>93</sup> terrorism entails the systematic application of murder and destruction and the threat of murder and destruction with an objective of terrorizing individuals, groups, communities or governments into conceding to the terrorists' political demands.

Alexander<sup>94</sup> defines terrorism as the use of violence against random civilian targets in order to intimidate or create generalized pervasive fear for the purpose of achieving political goals. Goldstein<sup>95</sup> defines terrorism as political violence that targets civilians deliberately and indiscriminately. Schmidt and Jongman<sup>96</sup> define it as 'an anxiety – inspiring method of repeated violent action, employed by clandestine individual groups or state actors for idiosyncratic, criminal or political reasons ... whereby the direct targets of violence are not the main targets.' Kegley and Wittkopf<sup>97</sup> say terrorism refers to 'criminal acts and threats against a targeted actor for the purpose of arousing fear in order to get the target accept the terrorists' demand.' Donald J. Hanle<sup>98</sup> defines it as 'deliberate attempt to create terror through a symbolic act involving the use of threat of abnormal lethal force for the purpose of influencing a target group or individual. While the definitions sampled above view terrorism in its general features, some examine the phenomenon in its international dimension, which is the focus of this study.

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<sup>92</sup> M. G. Roskin, and N. O. Berry, *The New World of International Relations*, (New Jersey; Prentice-Hall, 1997), p. 233.

<sup>93</sup> P. Wilkinson, *Terrorism and the Liberal State*, (New York; New York University Press, 1986), p. 51.

<sup>94</sup> Y. Alexander, *International Terrorism; National, Regional and Global Perspective*, (New York; Praeger Publishers, 1976), p. 4.

<sup>95</sup> J. S. Goldstein, *International Relations*, (New York; Harper Collins College Publishers, 1994), p. 169.

<sup>96</sup> A. Schmidt and J. A. Jongman, *Political Terrorism*, (New Brunswick; Transaction Books, 1988), p. 28.

<sup>97</sup> C. W. Kegley and E. R. Wittkopf, *World Politics; Trend and Transformation*, (New York; St. Martins, 2001), p. 222.

<sup>98</sup> D. J. Hanle, *Terrorism; The newest Face of Warfare*, (Washington; Pergamon – Brassey's, 1989), p. 104.

## Conceptualizing International Terrorism

International terrorism is the threat or use of violence for political purposes when such action is intended to influence the attitude and behavior of a target group other than its immediate victims and its ramifications transcend international boundaries.<sup>99</sup> When a domestic concern acquires international characteristics, internationalization has occurred.<sup>100</sup> The July 22<sup>nd</sup>, 1968 hijacking of an Israeli passenger airliner flying from Rome to Tel Aviv by terrorists belonging to the Popular Front for the Liberation of Palestine (PFLP) marked the advent, according to the director of the Rand Corporation's Terrorism Research Unit in Washington, D.C., of the modern era of international terrorism.<sup>101</sup> According to Mwangi, "to the extent that terrorists have always sought a wider audience than their local targets, and as long as they have never discriminated on the identity of these targets, it has always been internationalized."<sup>102</sup> The non-aligned group commissioned by the UN General Assembly in 1973 to look at terrorism, defined it in its international dimension as 'acts of violence committed by a group of individuals who endanger human lives and jeopardize fundamental freedoms the effects of which are not confined to one state.'<sup>103</sup>

The US government on the other hand views international terrorism as "terrorism involving the citizens or property of more than one country."<sup>104</sup> To the extent that there exist as many definitions of terrorism as there are scholars who have written on the subject, adopting a common position on counterterrorism has

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<sup>99</sup> J. Goodby, 'Can Collective Security Work? Reflections of the European Case' in Crocker C. A. et al, *Managing Global Chaos: Sources and Responses to International Conflict*, (London; Lynne Rienner Publishers), pp. 239-240.

<sup>100</sup> Koehn and J. Nye eds., *Transitional Relations and World Politics*, (Cambridge: M. A. Harvard University Press, 1981), p. 6.

<sup>101</sup> B. Hoffman, *Inside Terrorism*, (New York; Columbia University Press, 1998), p. 67.

<sup>102</sup> See M. Mwangi Op cit p. 1.

<sup>103</sup> See proceedings of the 28<sup>th</sup> Session/A/9028,, 1973 of the UN General Assembly.

<sup>104</sup> See Title 22 of the US Code, Section 2656.

remained elusive. This has made different parties to perceive responses to terrorism within the narrow prism of their national interests. Furthermore, existing literature has largely ignored the implications that this sort of partisan definition of terrorism could have on multilateralism in the war against terror, an anomaly that this study seeks to redress.

## **2.02 PREVALENCE OF TERRORISM: UNDERLYING FACTORS**

Terrorists are more willing than states to violate the norms of the international system because unlike states, they do not have a stake in the system.<sup>105</sup> Various theories have been advanced to explain the increasing cases of terrorism in the world today. One school of thought has sought explanations to this phenomenon in the post cold war global power realignments.

In the bipolar system, the most general law of equilibrium is that "the goal of chief actors is to avoid finding themselves at the mercy of a rival."<sup>106</sup>

The end of the cold war in 1989 witnessed a marked increase in the cases of international terrorism. Some attributed this to the need to redress the imbalances, contradictions and tensions in the evolving international system. Terrorism thus aimed at redefining the distribution of power assets in the global system. This view, however, in as much as it is normative may not sufficiently explain the prevalence of terrorism. Terrorism is a multi-causal phenomenon and thus its prevalence cannot be explained exclusively by structural power extrapolations. Terrorism is engendered by policies that exclude sections of the society. To give people a stake in the economy, to prove to them that

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<sup>105</sup> J. S. Godstein Op cit p. 170.

<sup>106</sup> R. Aron, *Peace and War* (New York; Doubleday, 1966), p. 36.

government is in business of including them in formal society, is to put the terrorists out of business.<sup>107</sup>

Another school of thought on the other hand advances the view that draws a link between terrorism and man's inherently evil nature. Those who argue for the nature view contend that human beings are by nature violent and aggressive, and that this derives from an innate drive in human beings for domination.<sup>108</sup> Similar views have been expressed by Kennan who asserts that human nature is irrational, selfish, obstinate, and tends to violence.<sup>109</sup> It is difficult if not impossible to effect basic changes in the individual, and few people will ever "have an abstract devotion to the principles of international legality capable of competing with the impulses from which wars are apt to arise."<sup>110</sup> However, it should be noted that man is not consistently evil, a view that has been reinforced by the proponents of the *Tabula rasa* theory. According to this theory, man is born an empty vessel and that any influences on character are a product of the environmental conditions where one is nurtured.

The prevalence of terrorism in contemporary society can also be explained by the proliferation of small illicit arms and the increasingly porous nature of national borders. This situation is made worse by the high incidences of refugee influx, especially from collapsed states in which law and order have broken down. In addition, institutional weaknesses especially on the manning of entry control points coupled with endemic corruption have made it easy for terrorist elements to execute their activities with little hindrance.

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<sup>107</sup> H. de Soto, *The Other Path., The Economic Answer to Terrorism*, (New York; Harper and Row Publishers, 1989), p. \*\*\*

<sup>108</sup> M. Mwagiru, *Theory, Processes and Institutions of Management*, (Nairobi; Watermark Printers (K) Ltd., 2000), p. 17.

<sup>109</sup> G. F. Kennan, *Realities of American Foreign Policy* (Princeton, New Jersey; Princeton University Press, 1954), p. 48.

<sup>110</sup> Ibid.

There are not only few people trained in counterterrorism, but they are also ill equipped. In recent times however, there have been efforts aimed at training security personnel on intelligence gathering and other counterterrorist measures, though this program is made difficult by the lack of enough funds especially in the less developed countries.

Most recent acts of terrorism have however had a link to the Middle East crisis pitting the Israelis against the Palestinians. This situation is made worse by the absence of commitment in finding a lasting solution to the problem, a situation that has seen US role of mediation in the conflict come into serious doubt.

Another school of thought has attributed the prevalence of terrorism to poverty. Jared Diamond proposed that America should strive to combat the forces of poverty and hopelessness international terrorism feeds.<sup>111</sup> Not long after September 11<sup>th</sup> 2001, former World Bank President James Wolfensohn joined the UN Secretary General, Kofi Annan and the British Chancellor of the Exchequer Gordon Brown, in calling for a \$ 50 billion increase in foreign aid to poor countries, calling it "an insurance policy against future terrorism."<sup>112</sup> This view was however faulted by Gregory Clark, a commentator for the *Japan Times*, who dismisses the liberal notion that addressing the problem of poverty will solve the problem of terrorism. In Clark's opinion, terrorist attacks will continue as long as the US continues its overseas "meddling" and hypocritical support of oppressive regimes.<sup>113</sup> The poverty dimension is further invalidated by the fact that most of the people behind terror activities are not poor by any standards. Terror Lords such as Bin Laden are known to be fabulously wealthy.

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<sup>111</sup> *Washington Post*, January 13<sup>th</sup> 2002, p. B1.

<sup>112</sup> *International Herald Tribune*, January 31<sup>st</sup> 2002, p. 1.

<sup>113</sup> *Japan Times* January 22<sup>nd</sup>, 2002.

There is no single antidote that could be prescribed to cure the ills of terrorism. This is explained by the fact that terrorism is a multi-causal phenomenon. This calls for a deeper understanding of the factors that engender acts of terror. The corollary of the moralist thesis is that the only known means of reducing the likelihood of terrorism is a reduction of the grievances, stresses and frustrations underlying it.<sup>114</sup> As long as the world treats the Palestinian question and a plethora of other issues affecting the international community in isolation rather than as manifestations of the single phenomenon of terrorism, the war on terror is far from being won.

### **2.03 TERRORISM: TYPOLOGIES**

Terrorism thrives on the strength of fear. Terrorism can assume either a physical or a psychological form. In its physical dimension, terrorism is exemplified by such acts as hostage taking, abductions, assassinations, poisoning, sabotage, hijacking and military aggression, other than that which is permissible under international law. Even though most acts of terror have often taken physical forms, the psychological impact on the victims remains immense.

Varied approaches have been applied in identifying the different types of terrorism. While some base this categorization on the relation that exists between terrorist groups and the state, others identify terrorism with the motives and its different manifestations.

Sederberg draws a distinction between pro-regime and anti-regime terrorism. In his analogy, he classifies those terrorist groups who are in favor of the status quo as practicing establishment terrorism. Anti-regime terrorism on the other hand

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<sup>114</sup> W. Laqueur Op cit p. 6.

seeks to disrupt operations of the government in order to bring about a new order. According to Sederberg dissident terrorism is further categorized into criminal, nihilist, nationalist and revolutionary forms. Establishment terrorism on the other hand is also divided into vigilante terrorism as practiced in Apartheid South Africa by the white regime, covert and overt official terrorism like those seen in Stalinist Russia and genocidal terrorism like that practiced by Nazi Germany against the Jews.<sup>115</sup>

From the motivational perspective, there are acts of terror that are informed by factors obtaining in the domestic scene of individual states, while others can only be explained by the dynamics of global power politics. A modern trend in terrorism is of loosely organized and self-financing international networks such as the Al Qaeda. Another strain that has become common in recent times is that which is underpinned by religious or ideological factors. In this category are such radical groups as the Armed Islamic Group in Algeria and the American Christian Patriots that have always proclaimed the 'divinity' of their acts.

Terrorism is rooted in the belief that violence is legitimized when it becomes a form of public protest designed to compel government entities to act in a particular way.<sup>116</sup> This view is reinforced by moralists' claim that terrorism is the natural response to injustice, oppression and persecution.<sup>117</sup> The validity of a cause, however, does not in itself legitimize the use of certain forms of violence especially against civilians. Terrorism is an act of rational behaviour; terrorists analyze, plan and behave in a rational manner.<sup>118</sup> The bombing of US embassies in Dar-es-salaam and Nairobi in 1998 and the September 11<sup>th</sup> 2001 attacks on

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<sup>115</sup> P. Sederberg, *Terrorist Myths*, (Englewood Cliffs; Prentice-Hall, 1989), pp. 44-67.

<sup>116</sup> E. L. Oketch Op cit p. 5.

<sup>117</sup> W. Laqueur Op cit p.6.

<sup>118</sup> M. G. Roskin and N.O. Berry, Op cit, p. 240.

the US were the results of years of sophisticated planning. As an act of rational behavior, its motives can be identified.

Some terrorist acts are aimed at subverting established governments or regimes in order to produce friendly ones that would be considerate to the terrorists' interests. While subversion could be the motive of guerillas fighting a home government, it could also be the aim of one state to undermine a foreign regime.<sup>119</sup> Following the election victory of Zapatero in Spain and his pledge to withdraw Spanish troops from Iraq, the militants opposed to the US presence in Iraq achieved victory in influencing policy through the Madrid train bombing. Further illustrations of this fact include Indonesia using terrorist agents in East Timor, North Korea's involvement in a bombing incident which killed high ranking South Korea officials in Burma in 1983 and the US using the Contras to undermine the Sandinistas in Nicaragua in the 1980's.<sup>120</sup> "Terrorism for subversion" is supposed to prove to the citizens that their government can neither protect them nor provide the economic necessities of life. National liberation movements employ terrorist tactics to 'free' their people from "alien" rule or to gain independence.

In the contemporary world, these groups would include the Tamils in Sri Lanka, the Kurds of Iran, Iraq and Turkey, the Sikhs in India, the Basques of Spain, the Timors of East Timor before independence and the Mau Mau of Kenya's pre-independence era.

Others include the liberation movements in Palestine, Algeria and Indonesia among other countries. Terrorist tactics have also been employed by

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<sup>119</sup> P. O. Nying'uro, 'International Terrorism; Conceptualization Problems, Recent Responses and US Hegemony', Nairobi, 2003, p. 6.

<sup>120</sup> M. G. Roskin Op cit p. 240.



revolutionary groups to weaken the target regimes. When terrorism is employed as a means to revolution, the motive is to get the target intimidated and paralyzed. However, sometimes the group employing terrorist tactics may not be interested in the complete replacement of the regime and may be content with reforms, that is, to have their government make or unmake certain policies. The Islamic group in Egypt would fit within this category.

In contemporary International politics, terrorism has been employed as part of an anti-imperialist strategy. In this case, terrorists target the foreign patron of their own government to weaken patron–client links. The Mujahedin in Afghanistan employed terror tactics aimed at scaring the Soviet patrons of the government in Kabul and also to intimidate the Kabul government into breaking relations with the USSR. They targeted Soviet civilian and military personnel. The Soviets finally withdrew leaving the communist regime in Kabul vulnerable. The armed Islamic group in Algeria has used terror tactics like kidnapping and slitting throats of European tourists in order to isolate the French - backed secular regime in Algeria.

Some regimes employ terrorism to repress their domestic opponents or potential opponents. This has sometimes been referred to as targeted killings. History is replete with the policy of targeted killings dating back to the days of King David and the zealots of *Masada* who freely killed opponents. Similar incidents were characteristic of the Israeli Defence Forces, the Mossad and the ShinBet security service. The death squads that terrorized regime opponents in Elsalvador in the 1970s and 1980s, it is believed, were sponsored by the regime. The same can be said of the infamous “disappearances” in Argentina in the 1970s. Countries such as Libya, Iran, Iraq, Bulgaria and Israel have sometimes pursued their opponents

abroad using terror tactics. The assassinations of Hamas leaders Sheikh Ahmad Ibrahim Yassin and his successor Rantinsi by Israeli intelligence are cases in point.

## **2.04 THE RELIGIOUS LINK TO TERRORISM**

With the disintegration and collapse of the Soviet Union as a World Superpower, ideological issues have taken a back seat and it is thus inconceivable that terrorism has an ideological dimension. Furthermore, no evidence has emerged of terrorists seeking to institute or advance a particular ideological perspective, apart from some terrorists seeking justification for their acts in religion.

Unlike fascism, capitalism or socialism, terrorism is not an ideology but a method which is open for deployment by individuals, groups and governments alike. Many historical and contemporary terrorist groups evidence a strong religious component, mostly by dint of their membership.<sup>121</sup> The Jewish terrorist organizations in pre-independence Israel, the Muslim dominated FLN in Algeria, the overwhelmingly catholic IRA, and the predominantly Muslim PLO are among the several groups with a significant religious component. In modern times, the Al Qaeda chief, Osama bin Laden has often invoked the name of Allah and jihad in his acts of terror aimed at the US and its allies. While for some of these groups, it is the political rather than the religious aspect of their motivation that is dominant, in some instances the religious imperative is quite strong. Apart from legitimization, religion has often been used to rally support and inflame fanaticism among followers towards a given cause. It is simply a tool used to whip up

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<sup>121</sup> B. Hoffman Op cit p. 87.

emotions and evoke a sense of religious brotherhood and by extension a need for solidarity.

While some have come to associate modern acts of terror with Islam, it has been manifested in all the world's major religions and in some instances, small sects and cults as well. In his confessions to the police, Yigal Amir, the young Jewish extremist who assassinated Israeli Prime Minister Yitzhak Rabin said, "I have no regrets ... I acted alone and on orders from God".<sup>122</sup> Today Amir's words could aptly reflect the views of the Islamic Hamas *fedayeen*, the Muslim Algerian terrorists, the Japanese followers of Shoko Asahara in the Aum Shinrikyo sect who perpetrated the 1995 sarin gas attack on the Tokyo subway, or the American Christian patriots who bombed the Alfred P. Murray Federal office Building in Oklahoma City.

The nexus between religion and terrorism is not new. More than two thousand years ago, the first acts of what we now describe as "terrorism" were perpetrated by religious fanatics.<sup>123</sup> Until the 19th century, as Rapoport points out in his seminal study of what he terms 'holy terror', religion provided the only justification for terrorism.<sup>124</sup> However with the end of divine monarchical rule in Europe at the beginning of the 19th century, followed by the emergence of new concepts of nationalism and self-determination, terrorism witnessed a marked transformation from a mostly religious to a predominantly secular phenomenon. This process of "secularization" was given fresh impetus by the national liberation movements that arose after the Second World War to challenge continued western rule in Asia, the Middle East and Africa. Not until 1980 – as a result of

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<sup>122</sup> *The New York Times*, 8<sup>th</sup> November 1995.

<sup>123</sup> B. Hoffman Op cit. p. 88.

<sup>124</sup> D. C. Rapoport, 'Fear and Trembling,' *Terrorism in Three Religious Traditions; American Political Science Review*, Vol. 78, No. 3, September, 1984, p. 659.

the repercussions of the revolution in Iran the previous year – do the first “modern” religious terrorist groups appear.<sup>125</sup>

The salience of religion as the major driving force behind international terrorism in the 1990s is evidenced by the fact that the most serious acts of the decade have all had a significant religious dimension. They include the March 1995 nerve gas attack on the Tokyo subway system perpetrated by a Japanese religious cult, the April 1995 bombing of Oklahoma city Federal office Building by Christian Patriots, the 1993 bombing of New York city’s World Trade Center by Islamic radicals, the assassination of Israeli premier Yitzhak Rabin by a Jewish religious extremist, the 1996 truck bombing of a US air force barracks in Dhahran, Saudi Arabia by religious militants opposed to the reigning al-Saud regime; the attacks by Hamas suicide bombers; the machine-gun and hand-grenade attacks by Egyptian Islamic militants on a group of western tourists killing 18, outside their Cairo hotel in April 1996; the massacre in November 1997 of 58 foreign tourists and four Egyptians by terrorists belonging to the Gamat al-Islamiya (Islamic Group) at the Temple of Queen Hatshepsut in Luxor, Egypt; the series of 13 bombings that shook Bombay in India in February 1993, killing 400 people in reprisal for the destruction of an Islamic shrine in that country; the December 1994 hijacking of an Air France passenger jet by Islamic terrorists belonging to the Algerian Armed Islamic Group (GIA) who plotted unsuccessfully to blow up themselves over Paris. For the religious terrorist, violence is first and foremost a sacramental act or divine duty executed in direct response to some theological demand or imperative.<sup>126</sup>

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<sup>125</sup> B. Hoffman Op cit p. 90.

<sup>126</sup> Ibid p. 94.

The role of clerical authority in sanctioning terrorist operations has always been critical to the Shia organizations. The *fatwa* (edict) issued in 1989 by Ayatolla Khomeini imposing the death sentence on Salman Rushdie, the author of the *Satanic Verses*, is a case in point. Similarly, Sunni extremists who bombed the New York City's WTC in 1983 specifically obtained a *fatwa* from Sheikh Omar Abdel – Rahman before planning their attack. Though Muslim clerics have lent their support for self-martyrdom, Islamic law forbids suicide. Following the 1983 suicide attacks on the US Marines and French paratroop headquarters, Hussein Musawi said, "I proclaim loud and clear that the double attack of Sunday is a valid act. And I salute at Death's door, the heroism of the *kamikazes*, which they are; they are now under the protection of the All powerful one and of the angels".<sup>127</sup>

Militant Sunni fundamentalists have also tended to portray their struggle in similar uncompromising terms. As recently as 1996, Fadlallah, Hizbollah's spiritual leader, justified Islamic terrorism on the grounds of self-defense. "We are not preachers of violence", he declared; "Jihad (holy war) in Islam is a defensive movement against those who impose violence".<sup>128</sup>

Adopting the same tone, Moghni maintains that there is no relation whatsoever between Islam and terrorism.<sup>129</sup> Islam literally implies complete submission to God and its root word in Arabic connotes peace.<sup>130</sup>

Violence is thus a distortion of Islamic teachings. Similar characteristics attributed to Islamic terrorist groups are equally apparent among the Jewish terrorist movements. That many of these groups draw their inspiration from the

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<sup>127</sup> Quoted in draft copy of the 'US Department of Defense commission of the Beirut International Airport Terrorist Act' of October 23<sup>rd</sup>, 1983, p. 38.

<sup>128</sup> Quoted in Laura Marlowe; A fiery Cleric's Defense of Jihad, *Time*, New York, 15<sup>th</sup> January, 1996.

<sup>129</sup> A. Moghni, *Islam and Terrorism*, (Delhi; Markazi Maktaba Islami, 1989), p. 13.

<sup>130</sup> *Ibid*, p. 13.

late Rabbi Meir Kahane who in 1980 called upon the Israeli government to establish an official 'Jewish terrorist group' whose sole purpose would be to "kill Arabs and drive them out of Israel and the occupied territories."<sup>131</sup> The same volatile messianic visions of redemption were also evident during the 1994 case of the Patriarchs Massacre when Dr. Baruch Goldstein, an American-born, ultra-nationalist, orthodox Jew entered the Ibrahim mosque, and opened fire on Muslim worshipers. The assassination in 1995 of Rabin exuded the same blend of religious fervor coupled with intense hatred towards Israel's secular government, its elected leaders and the peace process that would return God-given lands to the Arabs. Like Goldstein, Amir also believed that he was fulfilling God's will.

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<sup>131</sup> *The New York Times* 15<sup>th</sup> Many 1980, quoted in Bruce Hoffman, *The Jewish Defense League; Terrorism, Violence and Insurgency Journal*, vol. 5, no. 1, Summer 1984, p. 13.

## **CHAPTER THREE**

### **3.00 THE TERRORISM DILEMMA: TRENDS AND DEVELOPMENTS.**

#### **3.01 INTERNATIONAL TERRORISM AND MIGRATION.**

International terrorism is a migration issue because of its cross-border nature. It touches on a host of issues including migration policy, national security, integration, ethnic affairs and citizenship. International terrorism thus brings into sharper focus the degree to which national immigration policies continue to be relevant in an increasingly border-less world. Just as globalization has made it possible for goods, capital and services to be diffused with fewer restrictions around the world, international terrorism has acquired a supranational dimension beyond the reach of most national law enforcement agencies. The upsurge in terrorist activities especially in the wake of the September 11<sup>th</sup> 2001 attacks on the US thus reinforces the urgency for governments to re-examine their counterterrorism policies particularly in terms of intelligence gathering and sharing within and among affected states and the tightening of immigration rules. In the aftermath of the September 11<sup>th</sup> 2001 terrorist attacks on the US, a number of states have come up with a number of legislative, policy and administrative changes. These include the extradition of persons with terrorist links for prosecution in their home countries; rescinding their residence status, including citizenship; and the detention of those found to have contravened immigration rules based on the possibility that some might pose risks to state security. However, where punitive measures are involved, there is a thin line delineating these from the curtailment of individual rights and freedoms enshrined in, for example the International Covenant on Civil and Political Rights.

The principles of proportionality and necessity inherent in International law are to varying degrees considered by states seeking to counter international terrorism. This has brought to the fore accusations that certain counterterrorism policies are extreme and exhibit the very attributes associated with terrorism. One of the difficulties associated with measures to combat international terrorism is the formulation of an appropriate universally accepted definition of "terrorism." In Africa for example, political leaders have had to grapple with what occurred during the various wars of liberation against colonial imperialism and as a result have often taken a restrictive approach, frequently leading to a definitional compromise.

Since September 11<sup>th</sup> 2001, more attempts have been made at national, regional and international levels to strengthen or introduce policy and legal measures against international terrorism. To the extent that the different states employ different standards and policies relating to cross - border movements of persons, national immigration policies may only serve as a means for addressing international terrorism rather than terrorism sponsored by states against their own citizens. While immigration authorities can contribute to national/international intelligence through direct encounters with migrants, there is the need to ensure adequate security without compromising the rights of persons to be internationally mobile.

States have instituted more stringent measures in a bid to close loopholes that can be exploited by terrorists. These include increased border and entry control. The US and other governments have taken steps to strengthen border control as away of diminishing the potential of a terrorist attack on their territory following the events of September 11<sup>th</sup> 2001. These measures include legislative and



administrative reform, increased staffing levels at the Ports of Entry (POE), joint border exercises and training with neighboring countries, increased funding for border control and management and increased interaction with other relevant arms of the government. While in some instances, legislation has been revised, in others entirely new legislation has been enacted to address aspects of border management that the existing legislations appear not to sufficiently address. The US has for instance enacted far-reaching legislation aimed at overhauling the existing system to ensure early detection and notification of imminent threats, greater coordination between agencies at National and Local levels, and ever more strict entry conditions.

In Europe, the long-term aim of the European commission is to integrate all the elements of border management. As part of this strategy, it is intended to develop joint training and reciprocal personnel exchanges within the Schengen area. In European Union, important criminal law instruments to combat Terrorism, including the framework decisions on combating terrorism and the European Arrest Warrant,<sup>132</sup> have been enacted.

A framework decision on the freezing of assets has been pursued and an EU-wide cooperation mechanism consisting of seconded national experts has been created. In order to strengthen the operational cooperation between member states, and between the EU and the US, common strategies have been adopted especially in relation to investigations and the prosecution of terrorists. Other measures instituted as part of the anti-terrorism campaign include the enactment of the US Maritime Transportation Antiterrorism Act. This act deals with the

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<sup>132</sup> Council framework decision 2002/584/JHA of 13TH June 2002 on the European arrest warrant and the surrender procedures between member states (*official Journal L 190*, 18.07.2002).

enhancement of security measures for handling cargo and containers and is designed to provide offshore protection of US borders.

The shifting of borders has become increasingly noticeable after September 11<sup>th</sup> 2001. Traditional border control regimes are increasingly shifting the locality of that control abroad or further away from their immediate physical borders. A number of countries have been criticized for interfering with the individual right to freedom of movement under International Law. Nevertheless, it must be recognized that a state has the right to determine who may enter and exit territory. What is important is the need for a balance between legitimate security concerns and individual rights and freedoms. Pre-clearance processes are already employed in Australia, New Zealand and the USA. Under the Enhanced Border Security and Visa Entry Reform Act, the US is to consider the feasibility of establishing a program enabling foreign national travelers to the US to submit voluntarily to a pre-clearance procedure that determines whether they are admissible to the country under the Immigration and Nationality Act. The UK immigration service is currently considering the introduction of an Authority to Carry (ATC) scheme whereby the personal details of passengers checking in for journeys to the UK would be checked against Home office records. This process of screening passengers in advance of arrival would allow the immigration service to make more effective and efficient use of resources.

Passenger pre-inspection where immigration and customs officers who do full clearance for entry to the country of destination are stationed abroad at airports, inspecting passengers departing for the officer's country have been instituted. Advance passenger information also allows for passenger manifests to be sent by the airlines ahead of flights to the immigration authorities for pre-checking before

arrival. In the UK the immigration (passenger information) Order 2000 extended immigration officers' powers to require carriers to provide data on passengers arriving in and departing from the UK. Australia's Advanced Passenger Processing (APP) enables passengers listed on passenger manifests to go through a pre-clearance process in which personal data is cross-matched with visa data. Information encoded in the passports machine – readable zone is again checked at point of entry to Australia and cross-checked against Australia's alert lists. In the US, an advanced passenger information system (APIS) allows for the checking of previous criminal record, security and immigration factors relating to passengers listed on passenger manifests. Canada on the other hand implemented its passenger information system at Canadian Airports on October 8<sup>th</sup> 2002 to collect advance passenger information. There have been carrier sanctions making carriers accountable for embarking and delivering undocumented or improperly documented migrants. This has provided an extra security cordon against terrorism.

Improved information and identification systems involving identification papers that incorporate special electronically readable codes and are more resistant to forgery have been instituted. Part of this process involves the use of technology allowing identification through biometrics, (use of unique personal data such as facial structure, hand geometry, and fingerprints). While some critics have attempted to label biometrics as a risk to personal privacy, their inherent ability to safeguard data has led them to be recognized as "privacy enhancing technologies" by the EU.

Regionally, several areas are currently engaged in migration related dialogues, which inter alia, grapple with issues generated by concern over the movement of

terrorists. In the Asia Pacific context, at the October 2002 meeting of the Asia Pacific Economic Cooperation Forum (APEC) in Mexico, 21 heads of state endorsed tough new measures to stamp out international terrorism. These included tightening transport and cargo safety across Asian trouble spots. APEC members endorsed the Secure Trade in the APEC Region (STAR) initiative committing member states to accelerate measures for antiterrorist protection and safety on passenger planes and at airports. Container security would also be strengthened in an effort to restrict the transportation of explosives and other illegal goods. APEC leaders also decided to deny terrorists access to the world's financial system and where possible, to use the money trail to locate and apprehend suspects.

In 1998, the organization of American states set up an "inter-American Committee Against Terrorism" (CICTE) to further hemispheric cooperation to combat terrorism. The UK's new Antiterrorism, Crime and Security Act, which received Royal assent on 14<sup>th</sup> December 2001 allows individuals to be detained for up to 7 days without a court appearance. In Germany, the government has approved the lifting of "religious privilege" which gave religious groups protected status under the law of association. In UK, the government has imposed restrictions on the dissemination of information and has forbidden the wearing of badges and uniforms of terrorist groups. The government has also prohibited membership of any designated terrorist organization. France's special antiterrorism unit can hold suspects for questioning for 96 consecutive hours, of which the first 24 hours may include having no contact with a lawyer.

In summary, many believe that the events of September 11<sup>th</sup> 2001 have shifted focus of migrant, refugee and asylum policies to such an extent that antiterrorist

efforts take priority. Conservative voices have been given more strength in arguing against liberal immigration and refugee policies. There is also a danger that too heavy an emphasis on entry control can skew or militate against a balanced migration policy. The stricter the conditionalities of visa issuance, the greater the potential for deterring *bona fide* visitors including investors. This could impact negatively both on a nation's wealth and how it is perceived from the outside as a welcoming nation. It is one thing to have good border control, but without appropriate entry and exit systems, improved data collection and sharing, secure travel documents and their issuance, and the collection of appropriate statistics, the overall value of the process is lessened.

While the collection of data about terrorism is useful, the value of its collection is enhanced if there's a capacity to pass that information onto other countries for their own use and to take information from those countries in return and enrich one's own sources of information. Partnerships with other states and organizations should generally enhance border practice and procedure.

It may matter less that a country has sophisticated measures in place to counter global terrorism from without than to fail to address the grievances of diasporas within the community. To the extent that it may not be possible to eliminate extremism within these communities, better understanding and accommodation of the needs of immigrants is likely to lead to greater reciprocal cooperation. Dialogue is an essential part of this process. Whatever arrangements are made, the collection and exchange of data can be in breach of the rights of the individual, but balancing the interests of a state with the rights of the individual can surmount this. In addition the measures employed must be founded on

sound legislative principles that allow for great openness that is important in enhancing public confidence in those measures.

### **3.02 TECHNOLOGY AND THE WAR ON TERROR**

Technological developments witnessed in recent times have revolutionized the form and magnitude of acts of terror in the contemporary society. The same is true for the counterterrorism measures currently in place that have become increasingly sophisticated. Recent acts of terror have assumed a more discreet and efficient form. Modern transportation and advanced communication channels have accorded terrorists new ways of reaching and even expanding their audiences. Terrorists thus can now strike at targets all over the globe far from their bases of operation. Air transport has especially made it easier for terrorists to move efficiently. This has not only made it possible for terrorists to strike any target in whatever location in the world, but also facilitated easy escape after such attacks. Furthermore, the fact that air transport happens to be used by nationals of different countries makes it possible for terrorists to spread fear across the globe by a single act. In the same breath, the speed with which news is relayed across the globe instantaneously has accorded terrorists the best medium of reaching a large audience in a matter of seconds.

The development of the media over the last three or so decades has seen it become an important transnational actor in its own right.<sup>133</sup> There is a symbiotic relationship between the media and terrorism, where terrorists rely on the media to further their terror - inspiring goals and the media utilize terrorist acts as

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<sup>133</sup> M. Mwagiru, *Theories, Processes and Institutions of Management*

worthy news items.<sup>134</sup> Technology has especially enhanced the role of the media in diffusing information, a development that terrorists have exploited to pass across their message to as wide an audience as possible. What has come to be known as 'the CNN factor' essentially means that events happening in one part of the world are transmitted instantaneously to other parts of the world.<sup>135</sup> This has resulted in the internationalization of terrorism. Public opinion is affected by the language reporters use and their attitudes towards the terrorists.<sup>136</sup> While at the same time the news items encourage further terrorist incidences.<sup>137</sup> Hijacking received its first impetus from the seizure of an El Al aircraft by Palestinians in 1968. Thereafter, courtesy of publicity, a series of hijackings followed.<sup>138</sup> According to the contagion hypothesis, media attention given to terror - violence encourages further incidents of terror - violence.<sup>139</sup> Although this hypothesis would not appear entirely susceptible to empirical verification, at least with respect to ideologically motivated individuals, concern over this contagion effect has been repeatedly expressed.<sup>140</sup>

The media dimension in terrorism has, however, been a source of conflict with both the government and the public pulling in opposite directions. While the public has a right of unfettered access to information, the government has always maintained tight control on the type of information that reaches the public.

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<sup>134</sup> C. Bassiouni, Prolegomenon of Terror Violence, *Creighton Law Review*, Vol. 12, 1986, pp 145-760.

<sup>135</sup> See Gergen 'Diplomacy in a Television Age; The Dangers of Teledemocracy' in S. Serfaty (ed), *The Media and Foreign Policy*, (London; Macmillan, 1990), pp. 47-63..

<sup>136</sup> Weimann, 'Redefinition of image', *The impact of Mass Mediated Terrorism, International Journal of Public Opinion Research*, 1992, pp. 16-29.

<sup>137</sup> See N. Livingstone, *The War Against Terrorism*, (Lexington; Lexington Mass Books, 1982), p. 63.

<sup>138</sup> R. Holden, 'The Contagiousness of Aircraft Hijacking,' *American Journal of Sociology*, Vol II, 1986 p. 902.

<sup>139</sup> L. Z. Freedman and Y. Alexander eds., *Perspectives on Terrorism*, (Wilmington, Delaware; , Scholarly Resources Inc 1983). P. 184.

<sup>140</sup> See Mendelsohn, "Socio - Psychological Perspectives on the Mass Media and Public Anxiety", *Journalism Quarterly* (1963): 513.

Accusations have thus been leveled on the government for its interference in the freedom of the press.

Technology has also seen the manufacture of highly portable and easy to conceal weapons that are capable of causing massive destruction. This has created a major handicap when it comes to the use of conventional methods of searching suspects. In the same breath, a lot of research is being conducted discreetly on biological and other lethal forms of warfare, an eventuality that is scary especially if such technology were to end up in the hands of terrorists. Likewise, technology has made it easy for terrorists to transfer colossal sums of money that they use to further their activities. This has seen world governments enact stringent laws that prohibit money laundering and other ways that terrorist networks use to finance their activities. Of interest is the fact that technology has even made it easier for terrorists to not only fake travel documents, but also disguise their physical identities. Also worth mentioning is a new dimension known as cyber – terrorism in which terrorist networks are able to access the software that enables them to not only access vital data, but also disrupt such systems.

Despite these observations, technology is still an indispensable tool in combating terrorism as exemplified by the hi-tech surveillance equipment currently in use in vital installations, airports and other places considered as high-risk targets.



# CHAPTER FOUR

## 4.00 COUNTER TERRORISM: A CASE STUDY OF THE US

### 4.01 US HEGEMONY: A CRITICAL APPRAISAL.

Hegemony is the holding by one state of a preponderance of power in the international system, so that it can single – handedly dominate the rules and arrangements by which international political and economic relations are conducted.<sup>141</sup> One increasingly sees the US designated as the hegemonic (or indispensable, dominant, or preeminent) power.<sup>142</sup> A passage by Charles Krauthammer in *Time* best captures the spirit:

“America is no mere international citizen. It is the dominant power in the world, more dominant than any since Rome. Accordingly, America is in a position to reshape norms, alter expectation and create new realities. How? By unapologetic and implacable demonstrations of will”<sup>143</sup>

The idea of hegemony is not new as such. It was experienced in earlier epochs. The hegemon’s status is also never permanent, but keeps shifting in tandem with the transformations experienced in global power relations and capabilities that by their nature are never static.

Hegemonies can be either regional or global in nature. Hegemony can also be limited to specific aspects of capabilities such as military, economic or technology. In the same breath, hegemony can also be manifested as a collectivity or on individual basis. Alongside hegemony, the practice of Balance of Power (BOP) emerged in which states banded together to countervail the strongest.

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<sup>141</sup> The Three Instances of Hegemony in the History of the Capitalist World Economy, *International Journal of Comparative Sociology* 24[1-12], 1984: 100-108.

<sup>142</sup> The term “the indispensable nation” was coined by president Clinton in a White House speech on December, 5<sup>th</sup> 1996. see White House press release, remarks by the President announcement of new cabinet offices Dec. 5, 1996, at <http://www.hri.org/news/usa/usia/92-12-index.usia.html>.

<sup>143</sup> *Time*, March 5<sup>th</sup> 2001, p. 42.

In international law, however, the idea of 'equality' of states is presumed. The UN Charter in Article 2 (i) proclaims that it is based on the principle of the sovereign equality of all its members. For some observers, however, the permanent members of the Security Council constitute a collective hegemony within the UN. The General Assembly of the UN in 1979 passed a resolution entitled "inadmissibility of the policy of Hegemonism in International Relations".<sup>144</sup>

The US has however used the UN to assert its authority through a combination of voting power in addition to leadership. In recent times, the US commitment to the law of the Charter has come into serious question because of an array of acts in which the US has been involved and the ground on which it has justified its acts. This is supported by evidence that the US has generally moved to 'unilateralism' rather than 'cooperation' reflected in the rule of law.<sup>145</sup> In Niebuhr's observation, although the mission of preserving and extending democratic self-government had greater validity than some other forms of national messianism, Americans must abandon their illusion of a special national innocence and righteousness and must resist the temptation to claim virtue for the exercise of power than the facts warrant.<sup>146</sup> The US bombing of Libya during Reagan administration was widely condemned and regarded as not being consonant with Article 51.<sup>147</sup> The necessity of self-defense was not instant, overwhelming, leaving no choice for means and no moment for deliberation.<sup>148</sup> Furthermore, the attack by whatever means, of towns, villages, dwellings or

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<sup>144</sup> G. A. Res. 34/103. Dec 14<sup>th</sup> 1979.

<sup>145</sup> E. L. Oketch Op cit p. 134.

<sup>146</sup> R. Niebur, *The Irony of American History*, (New York; Scribner's, 1952), p. 35.

<sup>147</sup> See UN G. A. Res. 41/38 Nov. 20th 1986.

<sup>148</sup> See Caroline case.

buildings, which are undefended, is prohibited.<sup>149</sup> The US has supported, financed, and trained groups that are widely regarded as terrorist, such as the Contras in Nicaragua, the Mujahideen in Afghanistan, UNITA in Angola, and Samuel K. Doe in Liberia.<sup>150</sup> American terrorist groups include the Black Panthers, the Revolutionary Action Movement and the Black Liberation Army. The US has been either directly or indirectly involved in activities aimed at assassinating foreign leaders over the years. Leading names in the hit list are; Fidel Castro, Patrice Lumumba, Muammar el-Qaddafi, and Saddam Hussein.<sup>151</sup>

The US is at the center of the war against terror for two main reasons. First, it appears to be the major target of international terrorism in recent times. For instance, in 1991 out of the 413-recorded terrorist bombings, more than half involved the US. In 1988, out of 96 diplomats targeted by terrorist, 42 were Americans.<sup>152</sup> It is the most open and technologically dependent country in the world, and its power attracts the hatred of the enemies of freedom everywhere.<sup>153</sup>

The second reason why the US feels obliged to lead the war on terrorism is that, as the world's sole superpower, it has responsibility for international peace and security. As a superpower, its interests also span the globe. Furthermore, it is the only country with the unique combination of economic, military, diplomatic, political and even technological resources to wage the war on terrorism.

As the US searches for allies in its war against terrorism, will it still enlist the support of 'friendly tyrants' and with what sort of implications on multilateral

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<sup>149</sup> See Article 25 of the Hague Regulations, 1954.

<sup>150</sup> A.M. Deshoitz *Why Terrorism Works*, (New Haven; Yale University press, 2002), p. 7.

<sup>151</sup> W. Blum, 'killing Hope; US military and CIA Interventions Since World War II', <http://members.aol.com/bblum6/assass.htm>.

<sup>152</sup> US Department of State, "Terrorism; Threat Assessment, Countermeasures and Policy," in US Foreign Policy Agenda, Vol 6, No. 3, Nov, 2001, p. 15.

<sup>153</sup> *Economist*, 15-21 September, 2001, p. 15.

counterterrorism effort? If the US diplomatic record is anything to go by, then this is likely to be the case. The US has for instance toned down its criticism of Musharraf's government that came to power through undemocratic means. The US has literally shored up the non-democratic sheikdoms in the Middle East in exchange for favors in its war against Iraq.

The US is encouraging non-democratic tendencies especially in Africa through support for anti-terrorist legislations that violate basic human rights. Suffice it to observe that such behavior on the part of the US might be counter productive in the war against terror because it may end up increasing anti-American feelings even more. Second, America's counterterrorist policy is also similar to the communist containment policy in its drift towards "International McCarthyism."<sup>154</sup>

Just as the war against communism degenerated into witch-hunting and misguided labeling of any critic of US policy, however genuine, as communist, the US current war on terror may also degenerate into a situation where any critic of the US general policy in the world is labeled terrorist. Statements such as, "You are either with us or with the terrorists", and the "axis of evil" which have resonated from Washington betray this McCarthaistic behavior.

Applying McCarthyism as part of the counterterrorism policy might negatively affect US interests and policy. One, given the conceptual controversy about who is a terrorist and who is not, stereotyping leading to wrong assumptions about a state's terrorist credentials may prevail. Wrong targets may be punished. Two, McCarthyism may end up alienating even America's best friends, especially in the Muslim world. Indeed, part of this McCarthyism is increasingly associating

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<sup>154</sup> Senator Joseph McCarthy (Republican of Wisconsin) accused the Democratic party of twenty years of treason when he alleged that under Presidents Roosevelt and Truman, avowed communists and pro-communist sympathizers occupied influential positions in government.

terrorism with Islam despite denials from Washington. Such tendencies may weaken such moderate Muslim regimes like Egypt, Vis-à-vis Islamic militants who loathe US policies in the Middle East. The result may be a situation where terrorists start winning moderate popular support. It may also strengthen opponents of the US that invoke Islam in their Anti-American Pronouncements.

American leadership in the war against terror, however justified, faces problems from another quarter. As a state with its national interests to propagate, US responses to terrorism must of necessity be anchored firmly on the US National interest grid. The reality, however, is that US national interest does not necessarily coincide with that of other countries, either individually or severally.

President Bush in his national security statement declared that, "the US national security strategy will be based on a distinctly American internationalism that reflects the union of our values and our national interests."<sup>155</sup> Yet, US' interests and values are not necessarily acceptable to all other states. According to Stéphane Rozès, "France sees itself as carrying universal values into the international sphere, just as America does. But in this case, the French see the Americans harnessing their superpower status not to the greater interest of the world, but to its own national interests."<sup>156</sup> In the same breath Brian Eno in a commentary asserts that, "too often, the US presents the 'American way' as the only way, insisting on its kind of free market Darwinism as the only acceptable model of human progress."<sup>157</sup> Of interest, however, is the fact that what is universalism to the west may be imperialism to the rest. According to the "end of history thesis", advanced after the collapse of communism, "we may be

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<sup>155</sup> *Newsweek*, December 2002 – February 2003, p. 30.

<sup>156</sup> *Time*, January 20<sup>th</sup> 2003, p. 22.

<sup>157</sup> *Ibid* p. 24.

witnessing," Fukuyama argued, " ... the end of history as such; that is the end point of mankind's ideological evolution and the universalization of western liberal democracy as the final form of human government."<sup>158</sup> The central problem in the relations between the west and the rest is, consequently, the discordance between the west's – particularly America's – efforts to promote a universal western culture and its declining ability to do so.<sup>159</sup> Fukuyama further argues that, "the collapse of communism exacerbated this discordance by reinforcing in the West the view that its ideology of democratic liberalism had triumphed globally and hence was universally valid."<sup>160</sup> The US believes that non-Western people should not only adopt Western ideals of liberal democracy, but also embody them in their institutions.

The west while attempting to sustain its pre-eminent position and defend its interests has always sought to portray those interests as the interests of the "world community." This has become the euphemistic collective phrase to give global sanction to actions reflecting the US' interests and those of other western powers. It is this presumed universality of the Western liberal orthodoxy that poses a grave challenge to US interests and world peace in general.

No idea is more central to the Realpolitik approach to foreign policy than the concept of national interest. According to the Secretary of State Charles Hughes, foreign policies are not built on abstractions. They are the result of practical conceptions of the national interest arising from some immediate exigency or standing out vividly in historical perspective.<sup>161</sup> Writing on the eve of World War II, a leading American Historian Charles Beard, called the principle of national

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<sup>158</sup> S. P. Huntington *The Clash of Civilization and the Remaking of World Order*, (New York; Simon & Schuster, 1997), p. 31.

<sup>159</sup> Ibid, p. 183.

<sup>160</sup> Ibid.

<sup>161</sup> A. Beard, *The Idea of National Interest*, (New York; Macmilan, 1934), p. 1.

interest "an inescapable rule for the nation – a rule written in the nature of things."<sup>162</sup> The task of diplomacy according to George Kennan is to take "the awkward conflicts of national interest" and deal with them on their merits with a view to finding solutions least unsettling to the stability of international life.<sup>163</sup> In 1971 President Nixon declared that the nation's overseas objective "is to support our interests over the long run with a sound foreign policy". America's "interest must shape our commitments, rather than the other way around".<sup>164</sup>

Notwithstanding its ambiguous nature the concept of national interest has established itself as part of the lexicon of diplomacy thus successfully resisting efforts by opponents of *Realpolitik* to eliminate it. The term national interest underscores the essentially competitive and sometimes violent nature of the international environment within which foreign policy operates. Implicit in the doctrine is the idea that all states have "interests" which they seek to protect and promote – if necessary by reliance upon armed force. National interest of states can either be conflictual or harmonious in nature. As a member of the international state system, the US has interest to which it is devoted. Some of these are so intimately related to the preservation of its independence and well-being as to require protection by reliance upon armed force when necessary.<sup>165</sup>

In exploring the US' leading role in combating international terrorism vis-à-vis the national interests it seeks to protect and promote in the international system, a number of questions immediately come to mind; how is the national interest of the US to be defined? What are its principal components? As much as these are difficult questions to give straight forward answers to, subjectivism has

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<sup>162</sup> Ibid pp. 4, 21, 548.

<sup>163</sup> G. F. Kennan, *American Diplomacy; 1900 – 1950*, (New York; New American Library, 1951), p. 94.

<sup>164</sup> A Report to the Congress by Richard Nixon', Washington D.C., February 25<sup>th</sup> 1971, p. 13.

<sup>165</sup> C. V. Crabb Jr., Op cit 167-168.

characterized the concept of national interest and by extension the war on terror. As a matter of fact, every individual and group advocating a course of action on foreign affairs equates its prescriptions with the "national interest", while contrary proposals are viewed as being adverse to it.<sup>166</sup> An analysis of the concept of the US national interest can broadly be classified into three categories; the preservation of national security, ideological principles with which the US is identified and the domestic policies of the US.

Events since September 11<sup>th</sup> 2001 however challenge this view of the universal acceptance of US values which some consider as imperialist. Mohammad Atta, and several of the hijackers who participated in the attacks on the US, lived and studied in the west. Not only were they not seduced by Americanism, but were also sufficiently repelled by it to be willing to take the battle to the American doorstep.

In summary, international responses, whether bilateral or multilateral, are not likely to be effective if they are not rooted in proper conceptualization of the phenomenon, its origins and causes. What is required is a sincere appraisal of the problem. The international community must settle on a definition and conceptualization that transcend partisan interests of individual states. In this regard, the onus lies much more with the US, which has for reasons given above, assumed the role of leadership in the fight against terrorism. In order to forge a formidable international alliance against terrorism, the US has to avoid employing counterterrorist strategies that may suggest double standards or alienate other members of the international community. It will have to broaden its conception of terrorism beyond US national interest.

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<sup>166</sup> Ibid p. 170.



There is every possibility that the US may use the war on terror to push its national interest through. Using terrorism as an excuse and applying international McCarthyism, the US may seize the opportunity to gain unfettered access to strategic spots it once could not reach because of one reason or another and to shape the domestic structures of states to reflect American socio-political and economic values, thereby safeguarding its global hegemonic status. Already US unilateral invasion of Taliban's Afghanistan and Saddam Hussein's Iraq have availed the US crucial opportunities as a sole superpower. It has the unique opportunity to preside over the rewriting and the restructuring of the two countries' constitutions to its liking as it did Japan's after the 2<sup>nd</sup> world war. It can now use Iraq to monitor its interests in the all-important Middle East. Afghanistan is similarly important for the US interests in central Asia. Furthermore, the penetration of sovereign states' intelligence communities through joint ventures between the Central Intelligence Agency (CIA) and the Federal Bureau of Investigations (FBI) on the one hand and the law machineries in other countries on the other, in the name of jointly hunting for terrorists as has happened in Malawi and Kenya provides the US with an excellent opportunity to make those states as vulnerable to US global projects as much as possible.

#### **4.02 THE RIGHT OF SELF DEFENSE AND THE US-LED WAR AGAINST TERRORISM**

Traditionally, the compulsive means of settlement of disputes, other than war were retortion, reprisals, pacific blockade and armed intervention.<sup>167</sup> In the pre

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<sup>167</sup> E. L. Oketch Op cit p. 130.

Kellog-Briand pact (1928) and the Charter of the UN (1945) period, states enjoyed great leeway when it came to recourse to war.

It was until the League of Nations Covenant (1919) and the Kellog-Briand Pact came into force, followed by the UN Charter that significant sanctions were placed on unilateral resort to war by states.

The legitimate resort to force under the UN system is restricted to self defense under Article 51 and Collective Security Action under chapter VII of the UN charter.<sup>168</sup> The resorts to force in both these situations are limited by the customary law requirement that it be proportionate to the unlawful aggression that gave rise to the right. Proportionality is a fundamental component of the law on the use of force and the law of armed conflict [the *jus ad bellum* and the *jus in bello*].<sup>169</sup> The doctrine of proportionality is founded on the principle that belligerents do not enjoy unlimited choice of means to inflict damage on the enemy. It thus provides protection to civilians from the collateral effects of armed conflict.<sup>170</sup> It has however been difficult to assess proportionality. In its proper interpretation, invoking Article 51 after an attack has ended is impermissible. Furthermore, self-defense may only be exercised against an attack by a state. This has been a source of contention especially in the light of increasing terrorist attacks attributed to loosely organized groups such as Al Qaeda. Self-defense in addition can only be exercised against an actual attacker. The US has failed to provide this proof, thus the war against the Taliban regime has sometimes been viewed with reservations.

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<sup>168</sup> I. Brownlie, *International Law and the Use of Force by States*. (Oxford: Clarendon Press, 1963), pp. 351-52

<sup>169</sup> AJIL, July 1993, Vol 87 No. 3.

<sup>170</sup> 'Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflict,' opened by signature December 12<sup>th</sup>, 1977, 1125 UNTS 3.

While defending the US-led attack against Al Qaeda and the Taliban, the North Atlantic Council, the governing body of North Atlantic Treaty Organization (NATO), invoked Article 5 of its Charter to justify the US use of armed force. On October 1, NATO Secretary General, Lord Robertson reported that the US had presented to NATO Council “compelling” and “conclusive” evidence that the attacks were the work of Al Qaeda protected by the Taliban and that the invocation of Article 5 was therefore “confirmed”.<sup>171</sup> Self-defense is permissible only “until the Security Council has taken measures necessary to maintain International Peace and Security.” Since the Council took such measures in Resolution 1373 of September 28<sup>th</sup> 2001, the right of self-defense has been superseded. The ICJ however maintains that a claim of a right to the use of armed force in self-defense must be supported by credible evidence of an armed attack and the attacker’s identity.<sup>172</sup>

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<sup>171</sup> Statement by NATO Secretary General, Lord Robertson, Brussels, Belgium, October 2<sup>nd</sup>, 2001.

<sup>172</sup> ‘Military and Paramilitary Activities in and Against Nicaragua’ (Nicar. v. US), merits 1986 ICJ Rep. 14, 119-21, 127. paras. 230-34, 248-49[June 27].

# CHAPTER FIVE

## 5.01 CONCLUSIONS AND RECOMMENDATIONS

The war against terror needs to be based on a proper conceptualization of the phenomenon of terrorism. This would mark a positive departure from the present situation in which most responses have been based on what interests are at play. This can better be achieved through a body like the UN, which has the trappings of what it takes to gain universal acceptability. It is upon a universally acceptable definition of terrorism that adequate sanctions can be instituted in combating terror.

The US has come under criticism for her role of assembling a global alliance against terrorism while at the same time reserving to itself the right to decide how to use that force, including when and where it should be used.<sup>173</sup> The US policy of basing military actions merely on a claim of self-defense in the absence of a broader Security Council authorization is counterproductive in terms of attaining global sanction and legitimacy necessary for coalition-building. By taking military actions without authorization by the UN Security Council, and without legally binding other states to support such actions through Council decision, the US risks alienating partners, especially moderate ones, in the war against terror. In addition, the US failure to use the resources of the Security Council undermines the view that the Council and the UN provide the best fora for responding to threats and breaches of the peace, which strengthens the notion that states may freely act outside the UN system.

Despite the flaws of the UN, no one has proposed a better system for serving the interests of world peace and security in the face of the agenda of international

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<sup>173</sup> Unilateralism and US Foreign Policy – A US – European symposium. II EUR. *Journal of International Law* 1-186. 249-411 (2000).

terrorist groups. The US should initiate a policy of strong adherence to the Charter and help make the Security Council central to the international community's responses to terrorism. This would better defend the US than the 'multilateral' charade it is currently engaged in, whereby states only become relevant to the extent that they fall within the US designs and national interest. Advocates of global community believe that reliance upon supranational organizations often permits America's foreign policy goals to be achieved more effectively than a policy of "unilateralism". Resentments, frustrations and suspicions that have frequently characterized American relations with other states could be avoided if America's intervention in world affairs were to be channeled through multilateral agencies. This would divorce American initiatives from political objectives. As the US seeks to bolster the receptivity of other societies of its influence, and win the battle of minds of men against competing ideologies, it will only succeed to a large extent if its policies are implemented within a context of concern for the global community. The US must of necessity demonstrate that there exists a beneficial congruence between its interests and those of the rest of the world community.

Good intelligence remains the first line of defense against terrorism. Use of computers play a large role in assisting Western governments keep track of terrorists and their movements around the globe, although severe restraints still exist in the US with respect to the collection and sharing of intelligence data about domestic terrorists. To the extent that technology has revolutionized warfare in general and provided terrorists with lethal weapons and techniques of causing destruction, there is an urgent need to ensure that more stringent conditions are put in place to safeguard the use of certain forms of technology.

This will make it increasingly hard for terrorists to have access to such technologies that could cause widespread destruction. On the other hand, governments should be involved in more research on security – enhancing technologies such as the development of anti-ballistic missiles.

Regardless of the perception of the US of its military and economic strength relative to any other state, it cannot win this “war” alone or with the uncertain support it has constructed outside the UN system. Efforts to combat terrorism must get universal acceptability and must not appear to respond primarily to the threats posed to the hegemon and its allies. Efforts to control terrorism through the use of multilateral treaties have been unsuccessful because countries are unwilling or unable to develop a system of effective sanctions against perpetrators of terrorism. Only when the threat becomes clear and present are the authorities and the public sufficiently aroused to agree to the adoption of measures likely to put an end to terrorism, or at least to cause a drastic decline in terrorist activities.<sup>174</sup> Furthermore, the use of track two diplomacy involving individuals outside the domain of government bureaucracy is as vital as the need for a proper conceptualization.

In order to take full advantage of existing avenues for cooperation in combating terrorism, or to build new ones, states will have to abandon the support of terrorism as a component of their foreign policies. All states the world over are vulnerable to terrorism. This calls for an impartial assessment of the threat of terrorism without designating others as more vulnerable than the rest. Non-westerners also do not hesitate to point to the gaps between Western principle and Western action. Hypocrisy, double standards, and “but nots” are the price of

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<sup>174</sup> Y. Alexander. (ed) *International Terrorism: National Regional and Global Perspectives*. (New York: Praeger Publishers. 1997).

Universalist pretensions. Democracy is promoted but not if it brings Islamic fundamentalists to power; non proliferation is preached for Iran and Iraq but not for Israel: free trade is the elixir of economic growth but not for agriculture; human rights are an issue in China but not with Saudi Arabia; aggression against oil owning Kuwaitis is massively repulsed but not against non-oil owning Bosnians.<sup>175</sup> When it comes to the prevalence of terrorism, a break with the present tradition in which most responses have revolved around the use of force from the victim – suspect perspective must be made. This requires mechanisms to be put in place to allow for an impartial assessment of the factors that engender acts of terror.

On the religious dimension, blanket labeling and designation of certain religions as being made up of terrorists is likely to diminish the support required in the war against terror and alienate allies, especially moderate ones in the Muslim world. Furthermore, a shift in policy must be adopted to win the cooperation and support of religious fundamentalist groups associated with terrorism, if any meaningful results are to be realized in the war against terror. Adopting a militant and discriminatory posture in the war against terror may only jeopardize the goodwill of the various religious groups and aggravate the situation further.

On migration, to the extent that states have the right to grant admission into territory and safeguard their national security, the war on terror must be carefully weighed against the interests of asylum seekers, refugees and *bona fide* immigrants. The problem of terrorism should thus not be used as an excuse to create unnecessary territorial barriers, instead more cooperation and partnership

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<sup>175</sup> S. P. Huntingotn. Op cit, p. 184.

should be fostered in the gathering and sharing of information on terrorist threats.

The UN needs to have a military wing of its own if multilateralism is to be achieved and to liberate it from the perception that it is an appendage of the US foreign policy, held hostage by the permanent members of the Security Council. Terrorism is a manifestation of latent conflict and so long as it is still being addressed from the suspect – victim level, it will not be possible to delve into and address its root causes. According to Brian Eno, “America as a gated community wont work, because not even the world’s sole Superpower can build walls high enough to shield itself from the intertwined realities of the twenty first century... there is a better form of security, “reconnect with the rest of the world, don’t shut it out; stop making enemies and start making friends.”<sup>176</sup>

Comments attributed to a senior administration official indicated that the CIA “got out of the human intelligence business in favor of technical collection after the fall of the Soviet Union.”<sup>177</sup> The CIA’s inability to gather human intelligence about foreign threats is highlighted. The US spends more than 90% of its \$ 35 billion annual intelligence budget on spying gadgetry rather than gathering human intelligence and yet the priciest gadgets are not always the ones suited for fighting the terrorist threat.<sup>178</sup>

An America that seeks to establish an international criminal jurisdiction of sorts is out of touch with the realities of global security and power polemics. An America that would act unilaterally and invent new doctrines on preventive military action runs the risk of isolating itself.

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<sup>176</sup> *Time*, January 20<sup>th</sup> 2003, p. 24.

<sup>177</sup> *Time*, March 11<sup>th</sup> 2002, p. 26.

<sup>178</sup> *Ibid* pp. 26-27.



As much as the US takes the lead in combating terror, the war should assume greater multilateralism lest it be perceived as 'their war' into which other states are conscripted by default. The war against terrorism must be fought and won with ideas rather than be transformed into a showcase of the latest war machines. Alliances and increased concerted action through the UN and other regional bodies of similar nature must be encouraged. In addition there should be the development of an effective missile defense system and improved intelligence collection, analysis and sharing among world government.

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