THE DIPLOMACY OF TERRORISM: A CRITICAL ANALYSIS OF THE NAIROBI AND DAR ES SALAAM BOMBINGS OF AUGUST 7TH 1998

BY

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DECLARATION

THIS DESSERTATION IS MY ORIGINAL WORK
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DR. MAKUMI MWAGIRU

DEDICATION

IN MEMORY OF MY LATE PARENTS
MR. THEODORE ALOICE OGUMA OKETCH (TARIMBO)
MRS. JERUSHA MARY AKINYI OKETCH

Even now the Forefathers and the Foremothers still live
They are not overcome by the power of the whirlwind
The day that sealed their eyes did not conquer them
Even the tall boulder that stands over them
Casts only a modest shadow over their resting place
They are the great voice that carries the epics
The ancestors have come to listen to our songs
Overjoyed they shake their heads in ecstasy
With us they celebrate their eternal life
They climb the mountain with their children
I honour those who gave birth to us
They are the mystery that envelops our dreams
They are the strange truth of the world
                    (In Praise of the Ancestors, by Mazisi kunene)

Dear Mum and Dad,
There is a power that unites us, even in your eternal rest. To think of you is to experience a new morning every moment. Your memories illuminate my mind with knowledge and they refresh my life with your spirit. To think of you is to cast away fears of feelings displayed or hopes betrayed. Dad, I continue to keep the fort as you said I should. And mum, you said that I should never forget, even in the darkest hours of despair, the strength that comforted me in the desolation of other times

To my brother Fred and my sisters Vicky and Angie,
To be with you guys is to forget time. Moments with you are so precious, so enchanting...It doesn't matter the darkness of my days, the fatigue of my body or the tiredness of my spirit. With you it all melts away and a new freshness is injected into my life. Thank you for being there and sharing laughs with me.

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time. Have a good one. I thank my first year colleagues for their support and suggestions and those who went before me, Connie Mumma, Charles Mwaura, Jerry Owiti, Mwashuruti, Summit, Tom Mboya, Anita and the Late Kizito.

Special thanks go to a number of people who contributed to the production of this work. To my brother Fred and sisters Angie and Vicky for the suggestions and support. Fred thanks for keeping me company at home, Vicky for your big sisterly advice and Wednesday afternoons at Technofrigo. For Angie, small sis, source of inspiration and best friend, I cannot begin to thank you for everything that you have done for me. Thank you for hanging out in my room and for tirelessly listening to me go on and on about my dreams, hopes and fears-ours is an unfinished tale. I also thank my relatives for the spiritual, material and financial support. Mrs. Susan Owino, a great woman that, who has been like a mother to me and a friend. Thank you, for everything and for making Sunday afternoon such bliss. To my brother in law Bobby and Nephew Owen, thank you for the support and laughter. I also thank my sister in law Christine for the support and care. To Hulda for being a real cousin, Mr Ooko, Mr and Mrs Ogana thank you for letting me invade your house every now and again. Thank you Alice, a special cousin who tirelessly typed and retyped my work and let me use her computer with such generosity. I also thank my other cousins Lina, Rehms, Cindy, Fredy, Edna, Susie, Tom, Winnie and Betty.

To Arthur Oduma for giving me both shoulders to lean on, lending an ear to my ravings and for an open heart. Thank you for your close interesting my work, the laptop, printer and all the material help. I enjoyed every minute of it. I forever treasure the friendship of Angie, Linda, Gonza, Arthur, Elseba, Eunice, Njeri, Yobo Rutin, Carol, George, Steve, Norbert, Pato and Tony. I also thank in a special way Joy Masheti and the Theatre crew for constant drama on and off stage.

I owe every gratitude to God, for walking with me, keeping me well and being good and gracious to me. Give me courage amidst the tempest of the changing years. God Bless you all.

Love Emma

ABSTRACT

This study investigates the terrorism phenomenon, its development over the years, the diplomacy of terrorism, the responses to terrorism and the efficacy of the legal regimes put in place to combat it. It particularly looks at the problems that African States have in the face of terrorism.

The study reaches the conclusions that terrorism is not a new phenomenon but it has evolved over the years. Terrorism cannot be stopped but it can be controlled and managed. There is also need for a multifaceted approach to combat terrorism including diplomatic, financial and legal approaches.

The study establishes the need for a co-ordinated approach to the problem of terrorism by all states. It also establishes the need for a common working definition of the term 'terrorism.' It also establishes the need to address terrorists in international law as common enemies of mankind and terrorism as a crime against humanity with the need for universal jurisdiction.

The study confirms the importance of existing legal frameworks that have been put in place to combat terrorism. However these are not adequate and face a myriad of problems addressed in the study. They therefore need to be strengthened in order to bring terrorists to justice and discourage the culture of impunity.

In this regard the study examines at length responses to terrorism and the legal regimes. It advocates for effective sanction mechanisms that can discourage the culture of impunity and credibly threaten punishment for those who engage in terrorism. It also advocates for the creation of an International Criminal Court to try all International crimes such as terrorism. It also affirms the rights of human beings, including the right to life, the right to security and the right to live a life free from fear.

Passive and active measure should be seen as integral elements of a coherent strategy that must attract sustained public support vitally important to its success.

ABBREVIATIONS

A.J.I.L	American Journal of International Law
A.SI.L	American Society of International Law
B.D.I.L	British Digest of International Law
B.Y.I.L	British Yearbook of International Law
Cmnd	Papers presented at the command of His/Her Majesty (UK)
E.A.C	East African Community
EU	European Union
GAOR	United Nations General Assembly Official Records
ICAO	International Civil Aviation Organisation
ICJ	International Court of Justice
ILC	International Law Commission
ILC yearbook	International Law Commission Yearbook
IMT	International Military Tribunal
LN	League of Nations
LN OJ	League of Nations Official Journal
LNTS	League of Nations Treaty Series
OAS	Organisation of American States
OASTS	Organisation of American States Treaty Series
OFM	Office of Foreign Missions
Proc A.S.I.L	Proceedings of the American Society of International law
SCOR	Security Council Official Records
T.I.A.S	United States Treaties and Other International Acts
UN	United Nations
UN Doc	United Nations Documents
UNTS	United Nations Treaty Series
YBUN	Yearbook of the United Nations

TABLE OF CONTENTS

TOPIC   **PAGE**

CHAPTER ONE THE TERRORISM PHENOMENON

CHAPTER TWO THE HISTORY AND ORIGINS OF TERRORISM

CHAPTER THREE INTERNATIONAL LAW AND LEGAL RESPONSES TO TERRORISM

CHAPTER FOUR THE CASE STUDIES OF THE NAIROBI AND DAR ES SALAAM BOMBINGS OF AUGUST 7TH 1998

CHAPTER FIVE THE EFFICACY OF COUNTER TERRORISM MEASURES

CHAPTER ONE   THE TERRORISM PHENOMENON

INTRODUTION

The Westphalia treaty gave rise to sovereign and independent states pursuing their own interests.[1] Grotius attributed a legal character no less to natural law than to positive law. He advocated for the use of international law and diplomacy to manage conflict that would arise inevitably between states. The states were able to act independently and there was no interference in the internal affairs of the states. In the realist framework on the other hand history is seen as a sequence of cause and effects and ethics is a function of politics and morality a product of power. Therefore politics is a constant struggle for power, which is defined by interest. The state was therefore the only actor and the state had the right to wage war.

The basis of the state is legitimacy, where legitimacy is the characteristic of the exercise of political power when that power is believed to be in accordance with certain principals and practices. When applied normatively power is judged worthy of acceptance according to some set of standards, like right or justice; positively when power is exercised within the limits laid down by the law; descriptively when power is accepted by the people. Legitimacy is crucial for the operation of government and for the survival of the political system. The first legitimisation of the state is order. Order is the normality, safety and peace that

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[1] Hedly Bull, The Anarchical Society: A Study of Order in World Politics (London: Macmillan, 1977)
    1977)

can be attained in a political system. That order has to be just. Justice is a firm

and enduring will to give each one his right. Aristotle observed that justice

belongs to the polis, and justice is the ordering of political association.

The second legitimisation of the state is freedom or liberty. The purpose

of the state is to secure human freedom. Thomas Hobbes argued that there were

values to be gained by letting oneself be governed. Hobbes defined the basic

political motivation in humans as a struggle for dominance over others. He called

upon the sovereign to place a check upon the people's appetites and their capacity

to do harm to each other.[2] Hobbes argued for a power to keep all in awe. This

power would need to be a limited control government with a complete but narrow

monopoly of coercive authority. This argument appealed to Realists and indeed

forms part of the heritage of Realism.[3]

Locke on the other hand argues for the limits of state power and these

limits are grounded on the law of nature and reason. He argues that there are

inalienable rights of man. The state exists for the purpose of the preservation of

lives of its citizens, liberties and estates (properties). Locke thought co-operation

more natural and less fragile than the picture painted by Hobbes. His approach

appealed to Idealists.[4]

From 1648, there has been a slow evolution of mass participation in the

process of politics. However, Alex de Tocqueville observed that by the mid 19th

century ordinary governments were breaking down either through impotence or

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[2] Thomas Hobbes, Leviathan (Oxford: Basil Blackwell, 1947) pp. 80-84.
[3] See Clive Perry, 'The function of Law in the International Community' in Marx Sorensen (ed) Manual of Public International Law. (Dar es Salaam, Tanzania Publishing House, 1968) pp.1-55: 13

[4] 'The Function of Law in the International Community, Ibid, pp. 13-15, 22

tyranny. Hobbes advocated for the use of law, no matter how tyrannical to control the appetites of the people. Some members of different states viewed their governments as tyrannical.

Therefore, the structures of the political system encouraged structural conflict. Conflict arises when two or more parties have incompatible goals about something[5]. The causes of political conflict include the illegitimacy of governments and regimes. This illegitimacy arises where governments are not able to provide order, peace and liberties. Other causes of illegitimacy include the structure of the constitution, lack of participation in politics and lack of justice. Structural conflict and violence can be seen as stages in the evolution and development of the conflict that emerges as behavioural conflict. Political frustration or deprivation is often the key to the impetus to violence. Protest combined with terror becomes war against the state.

DEVELOPMENTS IN THE CONDUCT OF WAR

War was once an institution in the sense that it had established rules, norms, etiquette and standardised strategies and tactics. Although there are still some rules of war that exist today like the 1949 Geneva Conventions, the forms and use of force for political purposes have proliferated and range from *intifadas*, terrorism, guerrilla warfare and war between organized armies. Forms and use of force have proliferated. The subject of contention is usually the continued existence of a state or a regime. In classical thought the use of force was governed by the just war doctrine as articulated by Grotius and St. Augustine. War was

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[5] C.R Mitchell, The Structure of International Conflict. (London, Macmillan, 1998) pp 15-25

illegal unless it was prosecuted for a just cause, which involved essentially, a wrong inflicted on a state or a right denied illegally.

Until the beginning of the 19th Century there were attempts to put in place rules to guide the conduct of war but these were evasive. Attempts to lay down specific humanitarian rules to be applicable in time of war were the *Lieber Code* of 1863, the 1864 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field and the 1874 International Declaration Concerning the Laws and Customs of War.[6] At the end of the 19th Century the first International Convention that restricted the use of force was signed. This was the Convention with Respect to the Laws and Customs of War on Land, 1899, drafted by the first International Peace Conference in Hague. It restricted destructive elements of hostilities and called for the protection of civilians. Contemporary international law prohibits the use of force and aggressive wars. It obliges states to resolve disputes by peacefully. The regulation of the use of force is one of the central aspects of international law and part of *jus cogens*. Rules of international law that regulate use of force are called *jus ad bellum*. The primary purpose of the United Nations is to suppress acts of aggression and breach of peace.[7] There is however no consensus about the precise scope of the ban of use of force, or the exception of Art 2(4) specified in Art 51, which is on self-defence. The use of force is allowed in certain conditions. These include self-defence against on going attack against territory, in response to an act of threat against

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[6] Levie Howard, 'History of the Law of War on Land' in *The International Review of the Red Cross*, Vol. 82, June 2000, No. 838 pp. 339-351:341
[7] Art 2(4) of the UN Charter

states interests and when there is instant and overwhelming necessity and leaving no time for deliberation as stated in *The Caroline.*

Michael Walzar[8] was concerned with the causes and the conduct of war. A war was just if the conduct matched the political objectives and was limited to the objectives. It became unjust if its conduct was outside the known recognized rules and norms, for example if non-combatants were killed in the process of war. International legal structures aim specifically to promote and consolidate relations of peace by outlawing war.[9]

THE TERRORISM PHENOMENON

Terrorism is a method of warfare. The evolution of the tactics and the techniques used by the various groups is seen as a reaction to the vast changes within the local, regional and global environment over the last three decades. This change has come about because of the growth of information technology, the availability of arms and light weapons.

Terrorism is rooted in the belief that violence is legitimised when it becomes a form of public protest designed to compel government entities to act in a particular way. Terrorism can be a self-perpetuating system where a significant social group are in extreme discontent because many of its members feel politically, economically and socially oppressed. They may feel bitterly frustrated in the non-attainment of some cherished religious, national or ethnic ambition.[10] They therefore feel that their cause is just. The legitimacy of a cause does not in

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[8] Michael Walzar, Just And Unjust Wars, (Washington, Gilbert Meilaender, 1977) pp.53-53
[9] Art 2(4) of the UN Charter
[10] Deutshe Karl, The Analysis of International Relations (London, Prentice – Hall Inc, 1989) p. 201

itself legitimise the use of certain forms of violence especially against the innocent. Violence has no place or justification except in the United Nations Charter's exception to the use of force laid out in Art 51, on self-defence.

Terrorism then is predicted upon ideological motivation and political action where ideology is a set of ideas that form the basis of an economic or political theory or that are held by a particular group or persons. Terrorism is not only a political problem *per se*, but a psychological and moral problem, especially when it takes innocent lives. It is also fundamentally a legal problem. It is a violation of the international criminal law. Terrorist acts constitute an attack equally upon the individual separately considered; the society in which the individual lives; the state to which the individual belongs and the international community of which the individual is a part.[11]

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.[12] Terrorism can also be defined as the sub-state application of violence or threatened violence intended to sow panic in a society, to weaken or even overthrow the incumbents and to bring about political change.[13]

There are different types of terrorism. These include state terrorism where those in power use terroristic activities to suppress challenges to their authority. This is also seen when governments respond to terrorist acts by using terroristic means. There is 'terrorism from below', where individuals or groups hope to change the status quo through terrorism. Nationalist terrorism is aimed at liberation from foreign rule. This occurs when liberation groups employ terrorism as a strategy within their wider overall strategy of fighting for liberation by use of

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[11] Inter American Juridical Committee, Statement of reasons for the draft Convention on Terrorism and the Kidnapping of Persons for the Purposes of Extortion, October 5, 1970.
[12] Deutshe Karl, The Analysis of International Relations. Ibid, p 192
[13] Laqueur W, "Post-Modern Terrorism" *Foreign Affairs* Sept/Oct 1999, pp 24-36

force. Terrorism also includes cyber-terrorism that essentially tries to destroy vital information by penetrating information technology infrastructures. Narco-terrorism is the co-operation between drug traffickers and terrorist groups in their activities.

Terrorism is a strategy of the weak against the apparently strong[14]. International terrorism covers state sponsored terrorism against foreign countries through the transcending of national boundaries. Iran for example supports a variety of terrorist groups including the Lebanese Hizballah, HAMAS and Palestinian Jihad, which oppose the Middle East peace process through violence. Co-operation between various terrorist groups is seen in the Al Qaida terrorist group that is a collection of terrorists from Egypt, Lebanon, Afghanistan and many other states.[15] It also refers to attacks against foreign nationals or properties in the terrorists' own country or anywhere else and thus the concept of extra-territoriality. The Iran hostage crisis is an example of a terrorist attack carried out on US citizens in Tehran.

State sponsored terrorism shifts the focus from the individual to an entity because the target of a terrorist attack is the state and not necessarily those who are physically injured. The concern shifts from punishing the individual to inducing states supporting terrorists to cease such support. Thus the matter shifts from domestic criminal law to public international law and specifically international criminal law, especially the norms regarding the maintenance of international peace and security. The injury to a national is considered by

[14] A detailed definition of this is provided by Hoffman "Is Europe Soft on Terrorism?" *Foreign Policy*, Summer 19991, pp 62-79
[15] Patterns of Global Terrorism, US Department of State Publication, No. 10610, p. 31

international law to be an injury to the state of which the individual is a national. Also in the modern view the basis of state responsibility for acts of private individuals is not complicity with the perpetrator only but the failure of the state to perform its international duty of preventing the unlawful act or failure to arrest the offender and bring the individual to justice. It differs from other forms of terrorism because the attacks are more lethal, the scope of operation is more sophisticated and the political consequences for the target government tend to be greater. Law enforcement is more difficult as terrorists are supported with diplomatic assets and are given intelligence support. Governments support terrorism but they do so in the context of deniability as they try to conceal their involvement through diplomatic language. For example, during the Reagan years, Libya was accused of supporting terrorism, a fact that Libya denied saying that there was no evidence of such actions. The US has also been accused of terrorism by supporting regimes that are oppressive and terroristic in nature for example providing support to the Contras in Nicaragua and RENAMO in Mozambique who were accused of being terrorist. The US denied these allegations claiming that it was containing Communism.

Classic terrorism aimed at the elimination of individuals. The ancient tactics of tyrannicide have been preached and practised for many centuries. Terrorists thought that with the ruler dead, the government and its policies would change. This belief informed the struggle for the self-determination of people as they tried to rid themselves of tyrannical or imperial rule. Originally self-determination meant determination from alien and foreign rule. The terrorists interpreted self-determination to be: determination from internal rule, for example

oppressive dictatorial rule and from external rule of those governments they claimed interfered with the internal affairs of their states. However freedom from oppressive rule does not have to give rise to the use of violence. The peaceful revolution in Philippines led to the fall of the oppressive and corrupt rule of the Marcos. The most common excuse for terrorism is that it is a last resort when all else fails. It is not easy to reach the 'last resort,' because even politics is an art of repetition.[16] This new form of self-determination has arisen after the end of the Cold War, as protest against oppressive and dictatorial internal rule. Another age-old form of terror is that of rulers against some or many of the subjects. These same subjects become embittered and resort to terrorist acts and the process becomes cyclic because the government resort again to terrorist acts in a bid to control the people.

The bombings of the US Embassies in Kenya and Tanzania in August 1998 were powerful reminders that the threat of International terrorism still confronts the world. The US Embassies in Kenya and Tanzania were bombed almost simultaneously on the morning of August 7 1998, killing over two hundred and ninety one people and wounding five thousand in Nairobi and killing ten and wounding seventy seven in Dar es Salaam. Such crimes as the ones committed by terrorists are so heinous that they cannot be ignored by human society. The perpetuators of these acts were communicating to the world their aims, goals and grievances.

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[16] Michael Walzar, "Terrorism: A Critique of Excuses," in Steven Luper-Foy (ed.) Problems of International Justice. (London. Westview Press, 1988) pp. 237-247:239

THE DIPLOMACY OF TERRORISM

The process of communication is central to the workings of the international system. Contemporary diplomacy is global, diverse and complex.[17] The diplomacy of terrorism is a mixed diplomacy where it becomes a communication channel through which the use or threatened use of violence is transmitted to other parties. It is a form of track-two informal diplomacy because these non- state actors challenge the assumption that states are the only actors in the international system. The diplomacy of terrorism is a new kind of diplomacy that challenges the normal conventional diplomacy. A whole new question of the legitimacy of the state arises. Terrorists have goals towards which their behaviour is directed. Most terrorists are trying to change the status quo. They have grievances about the political system and they are trying to change this through terrorist acts, like hostage taking, kidnapping and murder. They challenge the legitimacy of the leadership in question and the political status quo.

The diplomacy of terrorism is highly effective in the sense that the process centres on the source of violence, the victim of violence and the audience who are direct or indirect witnesses to the violence. The necessary concomitant of terrorism is fear and the ultimate objective is coercion.[18] The methods used are thus very unorthodox: there is the use of force or the threatened use of force, the targets are unknown therefore anyone can be a victim of a terrorist act. The weapons that are in use can cause massive destruction and thus there is massive spread of fear.

One aim of terrorism is expression. Terrorists act to vent their accumulated feelings of bitterness, rage and frustration on their governments. Some of their attainable aims include eliminating some key person or group that they see as their adversaries. The Serbian Black Hand killed Archduke Franz Ferdinand because they were afraid he would make political concessions and thus

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[17] Brian White, 'Diplomacy', in John Baylis and Steve Smith (eds.): The Globalisation of World Politics: An Introduction to International Relations. (Cambridge, Oxford University Press, 1997) pp.220-267: 250

[18] E.V. Walter, Terror and Resistance: A study of political violence (Cambridge, Oxford press, 1969) p9

weaken the spirit of the nationalist movement in Bosnia. Other examples are the killing of Indira Gandhi and Aldo Moro.

Since the 19th Century more hopes have been placed in the indirect effects of terrorism. Russian anarchists argue that when people are close to a revolutionary mood a spectacular act of terrorism serves as a signal to trigger off their pent up emotions. This is known as propaganda by deed. Terrorists also aim at getting the attention of the public to their cause through the mass media and rousing fear. There is a symbiotic relationship between the media and terrorism. State sponsored terrorism seeks minimum exposure because most states sponsor terrorism though they deny this when they are accused as it goes against international obligations. Non-state terrorism seeks to draw maximum exposure in order to make their demands and grievances known and most importantly to generate support for their cause. The status of terrorists as non-state actors challenges the Realist assumption that the only states are the only important actors in the international system. Societies easier access to and increased reliance on the media renders terrorists psychological impact more pervasive and persuasive, than in the past. Terrorism gains immediacy, thus the terrorist is a creation of the mass media through magnification and enlarged beyond his powers. The governments of some states have resorted to negotiations and diplomacy. Others have resorted to retaliation, dialogue, concessions, use of military, rescue missions, use of sanctions and prosecution. For example the US bombed Libya in 1986 in retaliation to a terrorist attack and the US has placed sanctions on Afghanistan for harbouring dissident terrorist Osama Bin Laden.

Quiet diplomacy has helped in issuing warnings that have pre-empted terrorist actions. Terrorism acts as a communication strategy, a kind of public information. Quiet diplomacy might also be useful in encouraging states to fulfil their International obligations with respect to combating terrorism. Terrorism will continue to develop and flourish as a tool within broader conflicts. For example in a war between two states over territory, the states may employ terrorism in a

bid to win. Therefore it is the mandate of diplomacy in solving problems to consider carefully the small, disaffected group.[19]

The continuing incidence of terrorism requires explanation. Modern international terrorism emerged as a structural response by national liberation movements to the far greater conventional military power of the imperial rulers. Old-fashioned imperialism has been terminated, bringing an end to an important structural basis for terrorism. The growth of post-colonial international terrorism has seen this pattern of warfare diffused around the planet and has been adopted more widely even though its original *raison d'être* has largely subsided.

The main danger of terrorism is the escalation into something more destructive than mere terrorism *per se*. The danger is in terrorist acts triggering off into a more dangerous armed conflict. This is especially true with state sponsored terrorism.

THE PROBLEM

Terrorism has become the world's problem Today's terrorists take advantage of greater openness and the explosion of information and weapons technology. This is a threat to all mankind. The environmental conditions for terrorists have therefore changed. The availability of information technology, weapons and the easier movement of people across borders have enhanced terrorism. It is easier for one to cross into another state's territory with weapons and commit crimes due to the lack of adequate immigration laws and lack of adequate security at the borders.

The problem of terrorism is multidimensional. The issues it raises in politics have to do with self- determination, political independence, jurisdiction, security and the growing interface between conventional diplomacy and the diplomacy of terrorism. In economics it raises issues to do with the destruction of properties, the spread of a lack of confidence in an economy, and the association terrorism has with drug trafficking and money laundering. Legally it raises

fundamental questions in the area of international criminal law, national penal law and human rights law.

This study will seek to examine the place of terrorism in international criminal law, the efficacy of the legal safeguards currently in place to combat terrorism and the lawful responses admissible after a terrorist attack has taken place and the problems that African states encounter in the face of terrorism. It will also examine some of the measures that can be taken to discourage the culture of impunity that has characterised perpetrators of terrorism. It will begin with the premise that a major contributing factor to the world community's difficulties in combating terrorism is the lack of co-operation among states, which has created a milieu in which terrorism can flourish. Controversy surrounds the definition of the term 'terrorism'. Some feel that the validity of their cause, for example the right to self-determination and resistance to an oppressive totalitarian regime justifies the resort to terrorism.

Despite the challenge of terrorism to the basic institutions of the world community, the family of nations has not produced a comprehensive plan of anti terrorist action. Existing international treaties like the Convention for the Suppression of Terrorist Bombings require ratification in order for states to be bound and some states do not ratify these treaties. There is the absence of international regulation and control in the proliferation of small arms and light weapons therefore giving terrorists the tools to perpetrate their acts. Lack of international co-operation is another factor in the encouraging impunity and making the existing international legal regimes insufficient in controlling terrorism. The efforts to control terrorism throughout the world, for example through the use of multilateral treaties, have been unsuccessful to date because countries are unwilling or unable to develop a system of effective sanctions against perpetrators of terrorism. Much experience has shown that democratic

societies seldom take effective measures against potential threat. 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.[20]

Due to the *ad hoc* nature of terrorist attacks everyone can be a victim and this makes people feel vulnerable and insecure. Once insecurity spreads and terror becomes a real danger the authorities are no longer blamed for disregarding human rights in their fight against terror. Violence triggers off counter-violence and greater repression.

There are some norms that are fundamental to the whole existence of the international community. These together with peremptory norms or *jus cogens* are based on the premise that human society must have a set of rules that govern behaviour. An international crime occurs from the breach of an international obligation considered essential for the protection of fundamental interest of the international community. An international crime arises from a serious breach of international obligations on peace and security, safeguard rights to self-determination or protecting and safeguarding the human being. Political terrorism is therefore an international crime as it goes against the UN Charter because it goes against human rights and fundamental freedoms that are universal and therefore making the problem of terrorism a global issue.[21] It goes against the Universal Declaration of Human Rights because it goes against the right to life,

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[20] Alexander Yonah (ed.), International Terrorism: National, Regional and Global Perspectives. (New York, Praeger Publishers, 1997)

[21] See Article 1 of the UN Charter

liberty and the security of persons and everyone has the right to protection by the law against terrorist attacks.[22]

The Nuremberg War Crimes tribunal declared that the murder of non-combatants (civilians) and the killing of hostages were crimes against humanity. Terrorist acts kill innocent civilians and it also involves the taking of hostages and therefore it is a crime against humanity. The Nuremberg trials set out the precepts that form the foundation of individual criminal responsibility. Developments in human rights law have conferred some measure of legal responsibility on the individual now considered a subject of international law.[23] It is now universally accepted that the individuals who commit international crimes are individually responsible and liable for punishment and the plea that the offender was following orders is no longer admissible.[24]

It can be noted that international law is not only inadequate to deal with terrorism, as it has also been used to legitimise terrorism.[25] This is seen when counter terrorist measures are taken (where these measures are terroristic in nature) and states justify them using legal terms like the right to self-defence and hot pursuit. Other issues raised are state policies and practices that may be considered a violation of international treaty obligations. This is clearly seen when there is state-sponsored terrorism. The above issue also includes the lack of implementation of international obligations. There is abuse of diplomatic immunity and the absence of international regulation and control in the traffic of arms. There is a lack of adequate mechanisms for the peaceful resolution of conflicts and protection of human rights. One of the greatest shortcomings is the lack of international co-operation in the prevention and control of terrorism. These issues make it difficult to control terrorism and a situation has arisen where terrorists go scot-free after committing outrageous crimes. Existing international norms may not be sufficient to control terrorist violence.

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[22] See Article 3, 28, 12 of the Universal Declaration of Human rights
[23] Lauterpacht E, International Law Vol.2, (Cambridge, Cambridge University Press, 1975) p.492
[24] Article 7 of the Charter of International Military Tribunal
[25] For a review of how the UN has been coping with terrorism see Abraham D. Sofaer, 'Terrorism and the Law', Foreign Affairs. July 1986, pp. 57-89.

Problems in international law are further compounded by states like the US, UK, France, West Germany and other liberal democracies that have practised terror and violence in varying degrees.[26] Also it is clear that terrorists are driven by thirst for action rather than by the rational consideration of the consequences; past failures therefore do not in any way act as a deterrent in the future.

The conditions laid down by the Hague Convention for the Recognition of Guerrillas as lawful belligerents are so tightly drawn that in practice they do not cover the international political terrorist. Under Article 1 they would qualify for lawful belligerent status if they were in the service of a *de jure* or *de facto* government, carry arms openly and obey the laws and customs of war. Those who act on behalf of their governments commit an international crime and sanctions must be taken against such individuals and states. The state then becomes responsible and must pay restitution or compensation.

Terrorists are regarded as *francstireurs* (irregular) and when they are caught, governments may dispose of them as they wish.[27] The problem that arises then is that some states do not consider terrorism as a crime and some support terrorism and they therefore do not do much to repress it. These states include Iran, Syria, Iraq, Cuba, Libya, North Korea and Sudan.

OBJECTIVES OF THE STUDY

1. To investigate the effect and the problems that African states encounter in the face of terrorism – with a case study of the terrorist acts carried out in Nairobi and Dar es Salaam and the specific legal problems arising from the acts

2. To deepen the understanding between conventional diplomacy and the diplomacy of terrorism.

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[26] Wingman and Winn, The Theatre of Terror. Mass Media and International Terrorism, (New York, Longman, 1994) p. 241

[27] Paul Wilkinson, Political Terrorism, (London, Macmillan, 1974) p143

3. To investigate the efficacy of the legal regimes available for combating terrorism.

HYPOTHESES

1. Lack of efficient legal regimes leads to a rise in terrorist acts
2. Lack of efficient legal regimes does not lead to a rise in terrorist acts
3. Lack of efficient legal regimes has no impact on terrorism

JUSTIFICATION OF THE STUDY

There is a growing problem of international terrorism. Terrorism has increased and become more urban. This is serious because more activities are focused in the urban areas and everyday more and more people are moving to the urban areas in search of a better life. The audience of the terrorist act thus becomes wider and the prospect of loss of life higher. African states and indeed the whole world will continue to be vulnerable unless mechanisms are put in place to safeguard against acts of terrorism. These mechanisms include the ratification of existing treaties, the development of extradition treaties, the strengthening of constitutions, immigration laws and penal laws.

As terrorism is a multidimensional problem the study will look also at other aspects of the problem. Terrorism threatens to unleash a dialectic of violence, which may ultimately destroy liberal, industrial and pluralistic societies. It is an assault on the state and its causes and consequences can well determine the future of the world community.

ACADEMIC JUSTIFICATION

Little has been researched on terrorism and international law especially in regard to African states. This study will investigate the legal problems which terrorist acts present. Many of the documents that touch on terrorism are in the form of documents and treaties that seek to combat terrorism. There has been little research on the legal problems that arise with the terrorist act as regards to African states, which constitute in many cases, the victim states as regards the

terrorist attacks. As victim states what options are left open for them to punish those who carry out terrorist attacks and combat the problem of terrorism. As terrorism violates universal human rights it is a global problem and therefore an examination of terrorism would then give rise to generalisations on effective ways to combat terrorism and the lawful responses that can be taken after a terrorist attack.

In the 1960s and 1970s scholars like Alexander[28] became interested in the study of political violence. They were inspired by the theories of survival for the fittest by Darwin and the psychological theories of Freud, on the sources of conflict. It was an attractive new field of study. These studies looked deeply into conflict behaviour. Other scholars tried to define terrorism: it's origins, nature, aims and development. Many scholars studied terrorism, through the study of group behaviour and presented interesting pictures of the terrorist's profile. These profiles showed the terrorists background, education, psychological makeup and even the physical makeup.

Some researchers like Ashton,[29] based their study within the framework of economics. Some concentrated on unequal exchange and unequal distribution of property. They explained terrorism by looking at the break-up of traditional society and traditional way of life. Others like James and Zakaria[30] claimed that the terrorism was a social consequence of rapid economic development. They looked at the role the US played in the development of the modern world and the relationship between the US and terrorism.

Cross national studies included studies on terrorist acts, in different countries, for example developed vs. less developed, democratic vs. undemocratic and western vs. communist. These studies were extremely statistical. They included the works of Laqueur,[31] Schmidt[32] and Wilkinson.[33]

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[28] Alexander Yonah, International Terrorism; National, Regional and Global Perspectives, (New York, Praegar Publishers, 1997)
[29] Ashton Carter, Catastrophic Terrorism: Tackling the New Danger, (New York, Zelikow Publishers, 1994)
[30] James Hoge and Zakaria Fareed, The American encounter- The US and The Making of the Modern World, (New York, Basic Books, 1997)
[31] Laqueur Walter, The Age of terrorism, (Toronto, Little Brown and Company, 1987)
[32] Schmidt Alex, Political Terrorism, (Amsterdam, 1985)

The frustration-aggression theory argued by Dollard et al was applied to the terrorist's behaviour. These scholars saw a great connection between aggression and frustration. They tried to explain why if all things are held equal (such as the perception of injustice and oppression) why some people turned to terrorism while others turned to politics and other social outlets. These claims raised counter arguments as others argued that the terrorists were born criminals. These arguments led to literature on terrorist personality.

Many scholars studied societies in general in order to examine what kind of societies encouraged terrorism. Much of the above literature has gone a long way in explaining the origin, development aims, characteristics and nature of terrorism.

Crenshaw[34] has examined the issue of terrorism in Africa by studying the terrorist acts committed in Africa at some length. She notes that African states like Libya and Sudan have been accused by the international community, for state support of terrorism. Others have been known to use terrorism in their struggle for independence, like the liberation movements like the ANC. In the struggle for independence in Kenya the colonial government and the *Mau Mau* liberation movement were accused of using terrorist techniques. However these are controversial as the question of the self-determination of peoples and the conduct of war arises. Another experience of African states has been the rampant use of terror-violence by African governments, for example the apartheid government in South Africa, who are accused of lacking legitimacy in the eyes of the people. These governments have used terrorism to stay in power and preserve the status quo.

However the question of the legal problems that terrorist acts present to African states and as a whole the rest of the world needs researching into. The other experience that this study will investigate is the use of African states as the theatre of terrorism in broader conflicts. For example when Islamic fundamentalists are trying to coerce the US into some action, they carry out

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[33] Wilkinson Paul, Political Terrorism. (London, Macmillan, 1974)

[34] Crenshaw Martha, Terrorism in Africa, (England, Dartmouth Publishing Company Limited, 1993)

terrorist acts in Africa in a bid to hit out at the US but in actual fact they attack innocent Africans who are then drawn into a conflict they were not involved in. African states then become the third party, the innocent bystander and the victim state. Recent developments have shown a dramatic shift of terrorist attacks directly on those they are in conflict with. The September 11th 2001 terrorist attack showed that it is possible to carry out an attack on the more developed states despite their advanced security systems. It also demonstrated a shift from attacks on victim states, considered soft targets because of their lack of adequate security measures, to more developed states. It does not mean however that future terrorist attacks will be carried out only directly on those the terrorists are in conflict with but could include an attack on others not directly involved.

THEORETICAL FRAMEWORK
PLURALISM IN INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

Pluralism came into being with the gradual acceptance of toleration in the aftermath of the wars of religion that ravaged Europe during the 16th and 17th centuries. McDougal has been greatly associated with Pluralism. He sees the overriding goal of the dignity of man in international law where international law is linked power and social processes. Pluralist jurisprudence sees the world as complex as states are not the only actors. There is a vast array of non-territorially based actors, governmental organizations, non-governmental organizations, political parties, terrorist groups and gangs and above all individuals.[35] These actors try to escape from the power of the state. Pluralism presupposes toleration and posits values like diversity and dissent.[36] Pluralism is broad, multidisciplinary and eclectic in its approach as compared to other approach. Pluralists see the law as dynamic and hence it must be looked at in the face of an ever-changing society. The purpose of International Law is to search for the expression of

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[35] McDougal R, Reisman W,"International Law in Policy Oriented Perspective", in McDougal R. and Johnson M (ed.) The Structure and Process of International Law. (London, Martinus Nijhoff, 1986) 103-129:103

[36] Giovanni Sartori,"Understanding Pluralism" Journal of Democracy, (Oct 1997, Vol. 8, No 4) pp 50-64

human dignity. The application of a law of human dignity is a function of authoritative decision-making about policy choices. There are thus many interactions that need to be studied. It clearly recognises the role of non-state actors as important in the International System. In this particular case the non-state actors are terrorists. Terrorists are important non-state actors who influence the International System. Non-state actors try to circumvent from state power. Pluralists believe that the goal of International Law should be the dignity of man. When terrorists groups operate there is great loss of human life; the curtailing of individual freedoms and man's dignity is lost.

International law should deal with terrorism effectively in order to ensure the dignity of man in the face of terrorist acts. International law is seen as the most prestigious way to deal with problems and thus pluralism emphasises the rules and structure in international society. Therefore pluralists advocate for the use of international laws to fight the threat of terrorism.

The question of the legitimacy of the state arises as the terrorists are actually rebelling from state power. The rise of terrorism indicates a crisis in the environment. This crisis is further exacerbated by political, economic and social tumult. Terrorists have a perceived threat to identity and survival. They feel they are small groups who have no other option than to use terrorism to bring about political change. It is actually an indicator of the break down of communication. The terrorist actors act like a political opposition. The running theme in most terrorist groups is that of war in order to bring political change.

Terrorists are important non-state actors as they have incredible power, which is enhanced by a strategy of anonymity, which is a strategy to confuse the enemy. They also lack moral restraint because of what they perceive to be their struggle and the fact that they recruit young people who have radical, dogmatic and intolerant views.

Terrorists undermine the rule of law and the legitimacy of democratic governments. They benefit greatly from the weakness of law enforcement.

Pluralism in International Relations is rooted in the World Society paradigm, which provides a critique of the very essence of power politics.[37] It sees the complex interrelationships in the international system in the image of a cobweb. These relationships must be based on the concept of legitimacy. Legitimate relationships are beneficial and right. The conceptual basis of World Society paradigm revolves around the theory of human need[38] and the means of satisfying them. Human needs are an important part of human beings that relate to growth and development.[39] To retain legitimacy governments must satisfy these needs and if they fail to do so they will be forced to undergo change through violence and conflict.[40] Pluralism in International relations makes a distinction between values, needs and interests while Pluralism in International Law sees no difference between them and is concerned with human dignity. If human needs were satisfied there would be a free, peaceful and abundant society. By satisfying those needs conflict in society can be avoided or resolved.

Therefore Pluralism in International law and Relations critiques the essence of power politics by advocating that the state is not the only important actor in the international system. There are other non-state actors like terrorists who are centres of power. These non-state actors penetrate the state's territory and reduce its autonomy as they challenge the dominance of the state. Therefore there is a constant shift of relevant actors. The human is held in high esteem because of human rights and dignity. Human needs are important as they relate to growth and development. The question of the legitimacy of the government arises in both international law and relations. The rise of non-state actors indicate a crisis in the political system where governments are not providing human needs therefore change is undertaken violently.

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[37] Burton J.W. Dear Survivors (Massachusetts, Frances Pinter, 1982) p54
[38] Burton J.W "World Society and Human Needs" in Light M. and Groom A.J.R. (Eds.) International Relations: A Handbook of Current Theory (Massachusetts, Pinter Publishers, 1985) Ch 3
[39] Burton J.W. Global Conflict: The Domestic Sources of International Crises, (Wheatsheaf Books, 1984) pp139-141
[40] Rosati J.A, Carroll D.J and Coate R.A,"A Critical Assessment of The Power of Human Need in World Society" in Burton J.W and Dukes F (Ed) Conflict Reading In Management and Resolution (London, Macmillan, 1990) pp156-176

METHODOLOGY

Primary data will consist of field visits to Dar es Salaam, interviews with knowledgeable people, immigration officials, and government and embassy officials. Eyewitness accounts, and Reports that will consist of proceedings of Parliament, court testimony, reports of governmental departments and agencies. Data will also be obtained from UN and US reports and documents.

Secondary data will include library research, that is: Texts, journals, newspapers, periodicals, magazines and seminar papers. Laws of Kenya and Tanzania and International Conventions that deal with terrorism

LITERATURE REVIEW

Much of the literature is on the definition of terrorism. Alex Schmidt[41] for example has gathered literature of over 100 definitions of terrorism.

Other scholars like Wilkinson[42] and Laqueur[43] have written extensively in a bid to point out the difference between terrorism, guerrilla warfare, revolutions and belligerents. This has gone a long way in explaining the different forms of the use of force that are being employed in the international system.

Scholars like Rummel and Tanter[44] were interested in cross-national research. These researches pointed out the differences and similarities of terrorist acts across nations. The research is important as it raises generalisations about terrorism.

Scholars like Laqueur[45] and Ashton[46] have written on the sociology of terrorism. These scholars, in a bid to discover the underlying causes and drives that led a person into terrorism, look closely at the background of terrorists, their

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[41] Alex Schmidt, Political Terrorism (Amsterdam, 1983)
[42] Wilkinson Paul, Political Terrorism, (London, Macmillan, 1974)
[43] Laqueur Walter. The Age of Terrorism (Toronto, Little Brown, 1987)
[44] Rummel and Raymond Tanter, Transnational Terror, (New York Praeger, 1980)
[45] Laqueur Walter, The Age of Terrorism, Op Cit.
[46] Ashton Carter, (ed.) Catastrophic Terrorism: Tackling The New Danger. (New York, Zelikow Publishers, 1994)

environments and perceptions of the world. They discovered the difficulties in reaching generalisations as some terrorists came from both rich and poor backgrounds, they were also highly learned and uneducated, both young and old.

In the 1960s scholars like Eugene,[47] Winn[48] and Alexander,[49] became interested in the study of political violence. It was an attractive new field of study. These studies looked deeply into conflict behaviour. Other scholars tried to define terrorism; it's origins, nature, aims and development. Many scholars studied terrorists as group behaviour and presented interesting pictures of the terrorist's profile. These profiles showed the terrorists background, education, psychological makeup and even the physical makeup. They tried to look at the origins of groups, the cohesion factors that were working in the groups. They looked at the process of entry, exit and re-entry into the groups.

Some researchers like Ashton[50] and Hoge[51] based their study within the framework of economics. Some concentrated on unequal exchange and unequal distribution of property that inevitably led to frustrations and the motivation to aggression. . They explained terrorism by looking at the break-up of traditional society and traditional way of life. This important factor seemed to explain the fact that terrorism has become more urban. Others claimed that the terrorism was a social consequence of rapid economic development.

Cross- national studies, like the works of Alexander,[52] Richard,[53] Laqueur, Uri, Pfalzgraff et al,[54] included studies on terrorist acts, in different countries, for example developed vs. less developed, democratic vs. undemocratic and western vs. communist. These studies were extremely statistical and lacked any critical analysis of the gathered data.

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[47] Walter Eugene. Terror And Resistance-A study of Political Violence. (Oxford, Oxford University Press, 1969)
[48] Winn C and Weimann C. The Theatre of Terror. Mass Media and International Terrorism. (London, Longman, 1994)
[49] Alexander, Ibid.
[50] Ashton, Ibid.
[51] Hoge James and Fareed Zakaria, The American Encounter-The US and The Making Of The Modern World (New York. Basic Books, 1997)
[52] Walter Eugene, Ibid.
[53] Haass Richard, Conflict Unending. US and Regional Disputes. (New Haven, Yale University Press, 1990)
[54] Pfaltzgraff et al, International Linkages Of Terrorism: The Witnesses Sneak. (Toronto, Lexington Books, 1986)

Scholars like, Wilkinson and Pfaltzgraff[55] et al applied the frustration-aggression theory to the terrorist's behaviour. They saw a great connection between aggression and frustration. They tried to explain why if all things are held equal (such as the perception of injustice and oppression) some people turned to terrorism while others turned to politics and other social outlets. These claims raised counter arguments as others argued that the terrorists were born criminals (the nature nurture debate). These arguments led to literature on the terrorist personality. They however did little to explain how such behaviour can be controlled or suppressed.

Scholars like St. Augustine, Aquinas, Vitoria and Grotius argue that a just war can only arise out of the necessity to restrain and correct a wrongdoing of others on behalf of the public good. They argue that a just war in its conduct cannnot establish an unjust peace.

Michael Walzar[56]examined the question of just and unjust wars. He says that central to the morality of war is the tension between two judgements that one has to make. One is about the circumstances that it is permissible to wage war and the other is about what is permissible to do in the conduct of war. His work is rich in historical examples and he thinks of the responsibilities that must be carried out in war in order to create a moral regime. His just war doctrine is to protect lives and use force morally. He argues that terrorism is immoral as the act kill innocent bystanders -non-combatants. He advocates that International law should be used to regulate conflict and aggression.

Brad[57] argues the moral question in the use of force. He says one is justified to use force to protect the innocent from unjust attack, restore rights wrongfully denied through intervention, for example in the case of Racism in Apartheid South Africa, and the re-establishment of an order necessary for decent life. However the goals must be limited and the conduct just.

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[55]Pfaltzgraff, Ibid.
[56] Michael Walzar, Just and Unjust Wars, (London, Gilbert Meilaender, 1977)
[57] Roberts Brad, Armed Rogues: Is there A Moral Case? Thoughts On War And Peace. (Oxford, Oxford University Press, 1987) p25

Kaplan and Katzenbach[58] say that states pursue their own interests but their behaviour must be within the normative standards. States are not at liberty to violate norms without others penalising them who have an interest in maintaining those norms. McDougal[59] argues that states are not the only actors in the international system. There is a complex inter-relation between actors and all must be involved in the power process where decision-making should be located amongst all actors.

Falk[60] agues that international law has an important role in the international conflict. It provides a communication link between the parties in conflict and each party is thus able to make concessions honourably. Tunkin[61] argues that foreign policy and diplomacy are indeed supported by international law and it guides states so that there is peaceful co-existence between them.

Some Realists do not see the place of law in the International Relations. For example Morgenthau[62] and Kennan argue that states pursue their national interests therefore legal questions are irrelevant, as legal obligations must yield to national interest. They saw international law as too abstract for the unpredictable international system.

Crenshaw[63] has examined the issue of terrorism in Africa by studying the terrorist acts committed in Africa at some length. She notes that some African states like Libya and Sudan have been accused of supporting terrorism by the international community. Others have been known to use terrorism in their struggle for independence, like the liberation movements like the ANC and in Kenya, the colonial government and the *Mau Mau* liberation movement were accused of using terrorist techniques. Another experience of African states has been the rampant use of terror-violence by African governments, who are accused

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[58] Kaplan and Katzenbach, The Political Foundations Of International Law. (Indiana, John Wiley and Sons, 1961)

[59] McDougal (1986) 'International Law in Policy Oriented Perspective' op. cit

[60] Falk R.A, The Status of International Law In International Society, (Princeton University Press, 1979)

[61] Tunkin G.I, Theory of International Law, (Harvard, Harvard University Press, 1974)

[62] Morgenthau, Politics Among Nations; A Struggle For Power And Peace, (New York, Macmillan, 1993)

[63] Martha Crenshaw (ed.) Terrorism In Africa, (England, Dartmouth Publishing Company Limited, 1993)

of lacking legitimacy in the eyes of the people. These governments have used terrorism to stay in power and preserve the status quo.

Most of the scholars cited above studied societies in general in order to examine the kind of societies that encouraged terrorism. This literature has gone a long way in explaining the origin, development, aims, characteristics and nature of terrorism. It also looks at the question of war and when it is just or unjust. The literature also examines the place of law in the international system and the role it plays, especially in resolving conflict. It examines Pluralism in international law and international relations.

There has been literature on the terrorist acts committed in Africa that seeks to examine state-sponsored terrorism and terrorism committed by liberation movements. Little has been done on the legal and other problems that African and victim states encounter in the face of terrorism.

Therefore this study seeks to examine the legal regimes in place that deal with the problem of terrorism and specifically the problems that African countries have in the face of terrorism.

CHAPTER OUTLINE

Chapter one will constitute this proposal, which specifies the problem of research and how the study will be undertaken. Chapter Two seeks to examine the terrorism phenomenon while paying special attention to its origin, development, nature, aims and causes. Chapter three will examine the place of terrorism in International law, the international and national legal regimes in place to combat it, the constitutions and municipal laws of both Kenya and Tanzania that deal with the question of terrorism. It will also examine counter-terrorist measures. Chapter four will be the case study examining the events as they occurred and the problems experienced by the African states. Chapter five is a critical analysis of all the preceding chapters. Chapter six will be the conclusion.

CHAPTER TWO

THE HISTORY AND ORIGINS OF TERRORISM

INTRODUCTION

Terrorism, one of the most widely discussed issues of our time, remains one of the

least understood[1]. This chapter examines the origins of terrorism, its nature and

evolution. Many people consider terrorism to be a new phenomenon because it was only

after the Second World War that urban terror began to attract general attention. This was

because of the violent nature of terrorism. The diverse nature of targets also heightened

the possibility of everyone being targets and therefore the feeling of vulnerability arose.

However, seen in historical perspective, urban terror is no more than a revival of certain

forms of political violence that had been used previously in many parts of the world.

There seems to be a discrepancy between terrorist doctrine and practice. Terrorism has

been interpreted as a struggle and prologue to a revolution. It has also been seen as a

revolution or a movement. These interpretations are due to the fact that the character of

terrorism has changed greatly over the last century. This is seen in the changes in method,

the aims of the struggle and the people involved. The origins and underlying causes of

terrorism are complex and varied.

In an attempt to respond to terrorism efficiently, timely and effectively it is

paramount to understand it by going back to its origins and history. Contemporary

terrorism can only be understood in its historical context. The explanation of motivations

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[1] Walter Laquer, The Age of Terrorism. (Boston, Little Brown and Company, 1987) p. I

and root causes that can be understood from studying history are often shunted aside[2] and preference is given to deterrence and security measures which are in themselves inadequate to deal with terrorism. The history of a group is important to that group because it is part of that group's identity. The history justifies the conflict the group finds itself in. The emergence of conflict does not only integrate but it also helps to establish group identity, clarifies group boundaries and contributes to group cohesion. There then emerges some degree of group hostility for the out-group(s). Discord and opposition within-groups helps to hold the groups together by providing inner relief and making the unbearable bearable. Conflict then becomes the central explanatory category for the analysis of social change or progress. Such an examination of the history of terrorism will enable an understanding of the history of terrorist conflicts and the people who make up terrorist groups.

THE NATURE OF TERRORISM

The etymological root of the concept of terror is from the Latin word *terrer*, which means to frighten or cause to tremble. Terrorism emerged in Ancient Palestine but the term gained currency during the French Revolution. The period between 1792-1794 was known as the 'Reign of Terror' where terror was the order of the day.[3] The Reign of Terror was identified with state action wherein terror was used as a means of political oppression and social control. As the Revolutionary Government became entrenched, terror was institutionalised and legalised. These incidents constituted the earliest form of state terrorism. The term terrorism acquired a wider meaning as a system of terror and a

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[2] Helen Purkitt, "Dealing with Terrorism: Deterrence and The Search For An Alternative Model" in Michael Banks (ed.) Conflict In World Society: A New Perspective (Sussex, Wheatsheaf Books, 1984) pp 161-173 : 168

terrorist became one who tried to further his views through a system of coercive intimidation.

Many scholars do not share a common working definition of the term 'terrorism', though they share certain understandings about the phenomena. Alex Schmidt has gathered literature of over one hundred definitions.[4] Terrorism is defined amongst others as the use of violence or force or threat of use of violence or force. It has a political content, and the element of fear or terror. It also has psychological effects where importance is given to symbolism. The terrorist groups have symbols that they relate their struggle to. For example, The Black Hand had the symbol of a black hand that was used as a symbol to identify the group and it also communicated the colour black for death. Victims and the ultimate targets are often unrelated. Terrorism is criminal and uses the publicity it generates as a weapon. The terrorist relies on the media so as to create a wider psychological impact by reaching a wider audience. The media helps to enhance the terrorists' power by creating fear and vulnerability amongst the audience. While the media on the other hand relies on terrorism as terrorist acts are newsworthy. With the development of technology, each television channel can be at the scene of a terrorist act and compete with other channels in highlighting the news. The actions taken are repetitive or serial in nature. Due to its covert nature terrorist actions are incalculable and unpredictable.[5]

[3] D.M. Schlagheck, International Terrorism (Lexington, Lexington mass Books, 1988) p.18
[4] Alex Schmidt, Political Terrorism, (Amsterdam, 1983) p10
[5] Maxwell Taylor, The Terrorist (London, Brassey Defence Publisher, 1988) p. 71

TYPOLOGIES OF TERRORISM

Wilkinson has tried to solve the problem of definitions by creating typologies. These typologies are derived from the objectives and aims of the terrorists. He distinguishes between criminal terrorism conducted for profit, psychic terrorism of a religious cult that uses different interpretations of religious doctrine to wage terrorist attacks, war terrorism, which is the use of terrorism as part of a military strategy and political terrorism for political goals. He divides political terrorism into epiphenomenal terrorism, repressive terrorism and revolutionary terrorism. Epiphenomenal terrorism is those terrorist acts that are a by - product of insurrections. Repressive terrorism is practised by despotic regimes that try to maintain power through the use of terrorism and the creation of fear amongst the populace in order to control them. The revolutionary terrorist has political ambitions and tries to form a government while the sub revolutionary terrorist has limited political goals. [6]

Sederberg has distinguished between establishment or pro-regime and dissident or anti regime terrorism. The government or those terrorist groups in the society who are in favour of the status quo practise Establishment terrorism. Most African leaders who ceased power after independence practised establishment terrorism in a bid to further their control and personalise the state. Dissident terrorism is that terrorism that is aimed at disrupting the operations of the government and it is anti-establishment. Dissident terrorism is further divided into criminal, nihilist, nationalist and revolutionary forms. Establishment terrorism is divided into vigilante terrorism as practised by the white supremacy regime in South Africa, covert and overt official terrorism like those seen in

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[6] Paul Wilkinson, <u>Political Terrorism</u>. (London, Macmillan, 1974) pp. 32-44.

Stalinist Russia and genocidal terrorism like that practised by Nazi Germany against Jews.[7]

Another comprehensive typology is given by Cassese[8] who differentiates the different type of terrorist groups by their relation to the state. He differentiates those terrorist groups that have state support, sponsorship, or toleration and those terrorist actors without state support, sponsorship or toleration.

Terrorism is usually directed against governments but it is also frequently aimed at ethnic groups, classes or parties. The aims dissident terrorist groups are varied and range from attempts to overthrow governments, attempts to seek redress for various grievances to terrorist acts committed during liberation and secession struggles. Terrorist groups over history have consisted of the educated middle class but there has been working class, agrarian (in the struggle for land) in Spain and the US and trade union terrorism. Nationalist and separatist groups, in some cases like the IRA and the PLO, have witnessed massive popular support and this has weakened the middle class element considerably. Some terrorist groups have arisen because of some political failure like inequality and oppression, while other militant groups have chosen terrorism before other options have been tried.

THE SYNTALITY OF TERRORIST GROUPS

An examination of the terrorist syntality shows a variety of features. Generalisations are limited because a lot depends on the historical and cultural context, the purpose and character of the terror and the targets. With a few notable exceptions,

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[7] Peter Sederberg, Terrorist Myths (Englewood Cliffs, Prentice-Hall, 1989) pp. 44-67.
[5]Cassese, "The International Community's Legal Response to Terrorism", International and Comparative Law Quarterly, 1989, Vol. 38 pp 598-599

women have played a relatively minor role in terrorist violence in the last fifty years and

female terrorists still form a minority in the international community as a whole although

conditions are now favourable for their greater involvement. These conditions include the

availability of technological know how and training and changes in attitude that

considered men superior and fighters while women stayed at home.[9] In most cases the

women have been supporting the men as opposed to playing an active part in operational

roles assigned in many terrorist organisations. There have been notable exceptions like

Leila Khalid and Fusako Shigenobu who were highly effective leaders in the Popular

Front for the Liberation of Palestine (PFLP) and the Japanese Red Army respectively and

they were instrumental in initiating training in Lebanon in the early 1970s. In some states

there are only a handful of women terrorists, like in Ireland and Japan. While in Russia,

just over a quarter of the terrorists are women. In West Germany in the Baader Meinhoff

Organisation and the Movement Two June, women constitute a third of the operation as

opposed to support.[10] The Weather Underground, a group splintered from the Students

for a Democratic Society (SDS) in the US, included Dohrn one of the most sought after

women terrorists. The growing role of women terrorists is of recent date.[11]

Although terrorism emerged in the lower cadres of society in Ancient Palestine,

there has been the increased involvement of the middle class and the rich. The majority of

active terrorists are young and despite minor variations, urban terrorism remains a

predominantly male phenomenon.[12] Except for individuals affiliated with Palestine,

Germany and Japanese organisations, the usual urban terrorist is between twenty-two and

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[9] Daniel E. Georges, Abeyie, 'Women as Terrorists" in <u>Perspectives on Terrorism</u> p 71
[10] Charles Russel and Bowman Miller, 'Profile of a Terrorist' in <u>Perspectives of Terrorism</u> p 50
[11] Walter Laqueur, <u>The Age of Terrorism</u> Op Cit, p79

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twenty-five years of age. In Brazil and Argentina where terrorism has been a way of life since the early 1970s, individual terrorist cadres average twenty three to twenty four years respectively. The same is true for Spain, Italy, Iran, Turkey and Northern Ireland. While the precise explanation is not available on the older status of Palestinian and West German terrorists, the possible reason lies in the composition of terrorist groups. If the group is composed of students then they are younger and if the terrorist group is composed of professionals then they are much older.[13]This is because the young are usually zealous, passionate, impressionable, fast, may follow instructions blindly and easily pass unnoticed. In a study of terrorist groups in Italy, terrorists of the left have shown fairly normal personalities while those of the extreme right were more frequently psychopathological. Ideology played a lesser role among terrorists of the right and these terrorists were of lower educational background than of the left.[14] Due to this minimal education the terrorists of the right may not have been able to couch their struggle in philosophical terms. Substantive numbers of terrorists are students and many have been arrested at University. Training of these terrorists tends to be in humanities like law, history, sociology, philosophy and political science and therefore they are able to explain the nature of their groupings and the issues that inform them.[15]

The mystical element is important to most terrorist groups as seen in Russia, Ireland and Arab areas. Their belief in their cause has a deeply religious quality and they

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[12] Russel and Miller, Op Cit, p.49
[13] Russel and Miller, Ibid, p. 47
[14] F. Ferracuti and F. Bruno, "Psychiatric Aspects of Terrorism in Italy" in I.L Barak-Glantz and C.R. Glantz (eds.) The Mad, The Bad And The Different. (Lexington, Lexington Mass Books, 1981) p.199
[15] Russel and Miller, Op Cit, p 59

believe that they are the ones who should bring deliverance to the people, akin to the symbol of Christ's deliverance of the people from the bondage of sin.

The group syndrome, which is the trait of terrorists of like minds always seeking to form groups, has existed everywhere with the exception of lone or individual terrorists. The role of groups is very important due to the sense of history, identity and symbols, although groups have played lesser roles in mass based terrorist groups like the IRA and the Palestinians. Most of the groups are small so as to reduce the risk of detection. Small groups of political militants often show certain common characteristics: the most basic being the fundamental purpose of any political organization to maintain itself.[16] They acquire certain mental attitudes, a momentum of their own, a certain cohesion and solidarity and a group or family syndrome. The terrorist groups also tend to split due to the role of ambitions, the change in strategy and the confrontation between moderates and extremists. Terrorists seek survival and as society transforms the conflicts the terrorists find themselves in also transform and the group has to take into account extreme elements, opposition and radicals so as to prevent a split within the group and ensure its survival. Groups that have split up include the Weather Underground from the Students for a Democratic Society and The Real IRA (Irish Republican Army) is a split from the original IRA.

Terrorism is a specific manifestation of political violence and there are some similarities between terrorist groups. Similarity in-groups include the operation in -groups under the banner of a cause, which is highly idealised, and conviction held on the rightness of claims. Terrorist units tend to develop out of a situation of deprivation like

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[16] James Wilson, Political Organization. (New York, Harper, 1973) p 39.

poverty, minority status, disenfranchisement or prejudice. They have the belief that they

cannot achieve their goals any other way like lacking access to a responsive social system.

The terrorist groups are also usually led by charismatic figures and to the out- group the

leader appears insane. However it is important to trace terrorism to its roots in order to

understand it better.

THE ORIGINS OF TERRORISM

The Middle East experienced the first acts of terrorism. The earliest known

example of a terrorist movement was that of the Jewish Zealots. This was a highly

organized religious sect consisting of men of the lower orders who fought against the

Romans in Ancient Palestine.[17] The Zealots used violence the in form of assassinations,

hit and run attacks, which were unpredictable in order to create psychological impacts and

achieve emancipation from Roman rule. The targets held symbolic value and attacks took

place publicly and on holy days.[18] During Holy Days many people gathered in the holy

places and it was possible to attack without being noticed.

In AD 68 a second group of Zealots emerged the *Sicarii*. The group got its name

from the short sword, the *sica*. They used assassinations to bring about a Jewish uprising,

because they were held in bondage. They usually attacked in crowded places. They gave

the fatal blow then mingled in the crowd making it impossible to know who had

committed the murder. This technique gave them an aura of mystery and it spread great

fear among the populace. They were an extremist, nationalist, anti-Roman party and their

victims were the moderates, the Jewish peace party.[19]

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[17] S. Stewart, The Great Roman Jewish War (New York, Harper, 1960) p 10
[18] D.M.Schtagheck, International Terrorism (Lexington, Lexington mass books, 1988) p.16.
[19] Walter Zaqueur, The Age of Terrorism (Boston, little Brown and Company, 1987) p. 12

Between the 11th and the 12th Century a new group of terrorists emerged. This

group was known as the Assassins and they were based in Persia and Syria. The

Assassins were an offshoot of the Ismailis and were suppressed by the Mongols in the

13th Century. The Byzantine Empire excelled, developed and endured from the 5th –15th

century by dint of its mastery in psychopolitical warfare and diplomacy. Alongside it

existed other expansive superpowers among them the Western Christian Commonwealth,

Persia, a variety of powerful Islamic caliphates (from the 7th Century). It was a Middle

Kingdom surrounded by other empires of lesser entity including the Arars, Bulgars,

Petchenegs, Russians and Seljuk Turks who never ceased transgressing imperial

boundaries and threatening the capital. As the group was too small to carry out open

battle they used a terrorist campaign. Their victims ranged from prefects, governors to

caliphs. The terrorist fighters, also known as *fidainn* went about in disguise and used the

dagger as their weapon of choice. These fighters were prepared to undertake political

murder as their religious duty.[20] The Assassins wanted to defend their religious autonomy

against the Seljuks who wanted to suppress them. The assassins and their fierce

reputation entered European folklore by way of the crusaders and the travels of Marco

Polo.[21]

By means of a tyrannicide doctrine, especially as it developed in the 16th and 17th

Centuries, assassination became both an ideological statement and a political weapon.

The Biblical warning 'they that live by the sword shall perish by the sword'[22] provided

the moral and philosophical rationale for the theory of tyrannicide that was widely

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[20] B. Lewis, The Assassins: A Radical Sect in Islam, (London, Weidenfeild and Nicholson, 1967) p.8
[21] Friedlander. R.A, Terrorism, Vol. 1(New York, Oceana Publications Inc, 1979) p.6
[22] The Holy Bible, Matthew 26:52

practised in Italy at the time of the renaissance and daringly preached in Spain and France during the age of Absolutism.[23] The leading disciple of the tyrannicide doctrine as the remedy to political despotism was the Spanish Jesuit scholar Juan de Mariana. His major work, *Regis Institutione*, (1599), was banned by the French authorities. He proclaimed the right of rebellion and the remedy of assassination. To save the fatherland the prince should be killed by the sword as a public enemy.[24] The political assassin is often a solitary actor, taking on the self appointed role of judge, jury and executioner and cloaking himself in the robe of martyrdom. Political assassins have frequently seen themselves as the chosen instruments of a popular legitimacy to be employed in the destruction of illegitimate regimes and tyrannical rulers. Until quiet recently actions by individuals that would today be described as terrorists were subsumed under different labels. It was only in the 4th decade of the 20th Century that the assassination of a head of state was formally declared a criminal act of terrorism.[25]

The terms *Sicarii* and *Fidainn* re-emerged in use in the middle of the 20th Century. In Palestine, the anti-British terrorists took on the name *Sikarikim*, while *Fidalin* was reclaimed by Egyptian guerrillas fighting the British along the Suez Canal during the 1950s.[26] These terms acted as important symbols for the groups as they felt oppressed and felt unified in their struggle against the British.

Between 1793 and 1794 "terrorism" as a term was used to refer to the "Reign of Terror" in France. This term gained currency during the French Revolution. A terrorist was one who tried to further his views by a system of coercive intimidation. The

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[23] Curtness B, 'Due Process of Rebellion' Vol. 7 1960 Valpo Law Review
[24] Burckhardt c, The Civilisation of the Renaissance in France: An Essay, (Rome, Phaidon ed., 1965) p.38
[25] European Convention on Extradition, E.T.S., 24, (1957) Art 3

Jacobins used the word "terrorism " while referring to themselves in a positive light. The term quickly spread to Europe and became popular.

Other relatively small groups of terrorists emerged like the Thugs, Red Spears and the Ku Klux Klan. A dramatic rise in terrorist movements and targets was seen after the French Revolution and the rise of nationalism. The use of terrorism was connected with the rise of democracy and nationalism. This is because of the ideas of the enlightenment that were spread by the to increased mass participation and the spread of democracy. Grievances have always existed but complaints against tyrannical leadership were kept in check by governments. The appeal of Nationalism and democracy was thus enticing as it advocated for justice, liberty and the growth of legitimate governments with increasing power. With this enlightenment, people realised their rights and some demanded for them through the use of terrorism as a strategy.

The most prominent protagonists of individual and collective violence as a means of destroying governments and societal institutions were the Russian anarchists of the latter 19th Century. The Russian radical Alexander Semoslovevic wrote, 'force only yields to force' in 1861.[27] He argued that government violence should be met with popular violence and terror would provide the mechanism of change in the Russian societal process. The Russian revolutionaries fought an autocratic government in 1878-81 and again in the early 20th Century. Radical nationalist groups such as the Irish, Macedonians, Serbs and Americans used terrorist methods in their struggle for national independence.

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[26] Walter Laqueur, Terrorism. (Boston, Little, Brown and Company, 1978) p.12
[27] Venturi F, Roots of the Revolution: A History of the Populist and Socialist Movements in the 19th Century Russia. (New York, F. Haskell Trans, 1966) p. 287

There was also the Anarchist movement of "propaganda by deed" in the 1890s in Italy, France, Spain and the US.[28] This is where a specific and spectacular act of violence was committed in the hope of sparking off a revolution or spreading information to the general public. Systematic terrorism began in mid 19th Century with the use of the most significant example of organized, non-governmental fear inducing violence. *Navodnaya Volya* or "the People's will" operated in Russia from 1878 to 1881[29]. *Navodnaya Volya*, was greatly influenced by the anarchists of the time. Michael Bakunin and Sergei Nechayev were the most celebrated spokesmen of the revolutionary anarchism. The writings of Bakunin and Nechayev and the Revolutionary Catechism published in 1869 were important influences. Bakunin propagated the effectiveness of propaganda by deed. A spectacular act of violence was carried out to spur on a revolution. The Revolutionary Catechism described techniques that revolutionaries should follow. It was a kind of instructions manual that was very popular amongst revolutionaries and terrorists. The assassinations of the Tsar Alexander the Second in 1881 and the first Minister Peter Stolypin in 1911 led to a period of counter repression. The tsarist secret police, the *Okhrana*, unleashed a fierce programme of counter terror against the militant revolutionaries that did not abate until the outbreak of the Second World War.

The Union of Death Society, popularly known as the Black Hand, was a secret Serbian terrorist Organisation used by the Serbian government, as an official instrument of national foreign policy against the Austrian-Hungarian Empire. In the early 20th century Russia again witnessed terrorism through the Social Revolutionary Party. This group carried out political assassinations. The Russian anarchist writers spread their

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[28] Walter Laqueur, The Age of Terrorism, p15.

influence into Western Europe. The violence by terrorist groups grew and emerged

, sporadically. In Ireland the Dynamiters were a group that used bombings as a technique.

Turkey witnessed the growth of the Armenians and the Macedonian IMRO. Hungary

experienced terrorism from the Red Arrow, Romania the Iron Guard and in France

terrorism was carried out by Fascist groups like the Action Direct, Action Pour la

Renaissance de la Corse (ARC) and the Revolutionary Socialist Unity (CRSU).

The character of terrorism was different in its support for specific segments of the

population. In the United States, there was working class terrorism practised by the

Molly Maguires. In Spain there was industrial and agrarian terrorism in the fight for

ownership of industries and land and in the demand for rights. Rich land owners and

industrialists were often key targets. However, these terrorist attacks were all tied to the

rise of democracy and nationalism.

The terrorist tradition has continued to this day. Secret societies, which carried

out terrorist acts also existed for centuries in India and the Far East. In the case of India

and Poland terrorism continued well after the achievement of independence, due to

continued grievances that the attainments of independence did not seem to resolve. The

question of land always brings with it collective memories and bitter feuding over

ownership.

The high tide of terrorism in Western Europe was the Anarchist propaganda by

deed in the 1890's. The exploits of Ravachol, Auguste Vaillant and Émile Henry

between 1892-1894 created an enormous stir. Individuals began throwing bombs and this

coincided with a turn in anarchist propaganda favouring violence; therefore the

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[29] G.Wardlaw, Political Terrorism (Cambridge, Cambridge University Press, 1982) pp. 19-21.

impression of a giant international conspiracy was created.[30] Attempts were made on the

lives of statesmen, like Germany's Bismarck and French President Carnot. Until the First

World War terrorism was thought to be a left wing phenomenon, due to the anarchist

propaganda that was very influential and seen to stem from the left. Left wing terrorism

supports the more extreme form of socialism while Right wing terrorism supports the

more conservative or traditional policies in the group. However, some terrorist groups did

not fit the ideological pattern of the left. These groups included the Irish and the

Armenians who were considered Right wing.

In the years following the First World War terrorist movements, like those in Italy

and Hungary were considered nationalist-separatist and right wing. However the period

after the First World War was one of relative calm because anarchism had outgrown its

terrorist phase and it was a period of mass parties both on the left and right. Idealism as

propagated by Woodrow Wilson championed the use of international law and

organisations to solve the problems of the day through the use of instruments and legal

rules. The 1937 Conference in Geneva under the League after the dual assassination of

the Yugoslavian King and the French Minister in Marseilles in 1934 resulted in two

conventions. The Prevention and Punishment of Terrorism and the Creation of an

International Criminal Court were promulgated and adopted by the League Council on

May 27th 1937. These efforts bore no fruits due to the controversy that dogged the nature

of their provisions. India ratified the Convention on the Prevention and Punishment of

Terrorism, while the Convention on the Creation of an International Criminal Court

received no ratification. The outbreak of World War Two also hindered the success of the

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[30] Laqueur, Ibid, p 18.

covenant. There was thus a bid to control terrorism on an international basis following the assassination of King Alexander of Yugoslavia and Barthlow in Marseilles in April 1934. The term terrorism was first used in an international penal law commission held on 26-30th 1930 in response to an increase in terrorist activity following World War One.[31] However, this bid ran into problems because the League of Nations was unable to gather the necessary support in its bid to stop terrorism. Some states continue to sponsor terrorism and these include Iran, Iraq, Syria, Libya and Sudan.

DEVELOPMENTS IN TERRORISM AFTER WORLD WAR TWO

All through history there have been individual terrorists. These individuals work on their own to protest some grievances or communicate some political objective. After World War Two Liberation movements in Africa like South Africa's African National Congress (ANC) and Kenya's *Mau Mau* and groups in Asia found that simple acts of violence against their colonial masters could demoralise the imperial order out of proportion to the strictly military significance of the violence.[32] This is because they instigated great fear and loss of life.

After World War II, terrorist acts became increasingly urban. For many years urban terrorism had been overshadowed by guerrilla wars like those seen in China. The urban terrorist strategy started to prevail in Palestine, and Cyprus. The rural guerrilla tries to occupy rural areas but this is impossible for the urban terrorist except in some very rare cases. One such case was in mid 1956 when Algerian National Liberation Front (FLN) tried unsuccessfully to seize an urban area, the Casbah section of the Algiers slums. The

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[31] Frank and Lockwood, 'Preliminary Thoughts About an International Convention on Terrorism 68 A.J.I.L. 69 (1974)
[32] F.Fanon, The Wretched of the Earth, (Harmondsworth, Penguin, 1967) p. 48.

French army destroyed these urban terrorists. The Algerian war then continued mainly in the countryside. A guerrilla leader aims at building up military units, occupying zones and eventually forming a government. In urban areas the environment is totally different and calls for a different strategy. Many times guerrilla warfare has employed terrorist tactics. For example the killing of thousands of South Vietnamese village headmen in the late 1950s was a systematic terrorist strategy within the general strategy of the North Vietnamese. While guerrilla fighters have often employed terrorist means, the terrorists have never actually used guerrilla tactics except in some exceptional cases like the FLN. In the case of FLN the terrorists learned that publicity was crucial to their strategy. The Algerian FLN leader Abane Ramdane asked, "is it better for our cause to kill ten of the enemy in the countryside of Telergma where no one will speak of it or one in Algiers that will be mentioned the next day in the American press?[33]

Theoreticians like Mao, Castro and Guevara argued that guerrilla action should best take place in the countryside and that urban terrorism was regarded as a supplementary form of warfare.

After 1960, there was a dramatic shift as urban terrorism became more attractive and feasible. This was largely due to the emergence of urban terrorist groups in Europe, North America and Japan. The defeat of the rural guerrillas in Latin America saw a shift towards the possibility of urban groups being more successful. With the development of technology and the information age, terrorism has developed significantly. Terrorist acts are increasingly urban, targets are diverse and the weapons used are sophisticated. The late 20th century witnessed the growth of networking amongst terrorists internationally.

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[33] G. Fairbrain, <u>Revolutionary Guerrilla Warfare</u>. (Harmandsworth, Penguin, 1974) p. 287.

The inclination of the centrifugal terrorist organisations to ally with their peers has led to the development of informal networks and has influenced both training and operations. In 1974 several representatives from terrorist groups like the Basques, Irish, Croatians, Britons, Welsh and Catalans gathered to discuss their mutual needs. In 1974, representatives of terrorist groups from Uruguay, Bolivia and Chile met in Buenos Aires to establish a junta for revolutionary cordination.[34]

Modern international terrorism emerged as a structural response by national liberation movements to the far greater conventional military power of the imperial rulers. Old fashioned terrorism has been largely terminated bringing an end to an important structural basis for international terrorism. The original reason for the emergence of terrorism was to fight tyranny, however the political system of tyranny has been done away with. Terrorism as a strategy has been adopted more and more widely even if the original reason has subsided.

THE DEVELOPMENT IN THE CONDUCT OF TERRORISM

The range of targets for terrorist attacks is limitless and one can compare the targets of traditional revolutionaries with contemporary terrorists. Originally railroads, bus systems and power supplies were favourite targets to disrupt an occupying power local and national governments leaders were also favourites. Assassinations have been the oldest method used by the terrorists. With the growth of tyrannicide it was deemed that the death of a tyrannical leader would lead to a change of government and political system. This was seen for example when the Anarchists assassinated Tsar Alexander the

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[34] Anable D, 'Terrorism-Loose Net Links, Diverse Groups, No Central Plot' in J Elliot and L Gibson, Contemporary Terrorism, (Garthersburg, MD Bureau of Operations and Research, International Association of Chiefs of Police 1978)

second in 1881. During the 19th and 20th Century, many revolutionaries made the assassination of the minister of interior their chief aspiration, political leaders and influential men were also popular targets.

It is has been noted that modern terrorists largely ignore government leaders. In many countries hydroelectric and other utilities are ignored by terrorists despite their economic importance. The police, the army and those charged with defence and securities are also ignored.

Conventional war is normally understood as violence between identifiable combatants in the service of belligerent nations. If terrorism were a special case of war being waged by inferior forces one would expect combatants to remain the main targets of violence. The armies and police force would be the main victims. The targets are increasingly non-military and the police are far from being a principal target of terrorism. In the period 1968-1986, police forces and individual policemen were targets of terrorist violence on only twenty-seven occasions, less than zero point five percent of the time.[35]

The most important target for the modern terrorist has been the diplomat. When the UN was first established it had fifty-one members who constituted the sovereign states at the time. By 1988 the total number of member states increased to one hundred and fifty nine.[36] Almost all UN members have diplomatic missions abroad. The vast post-war expansion of people entitled to privileges and immunities has placed a heavy burden of responsibility on the agencies that administer the institution of diplomatic immunity. Receiving states have a special responsibility under the Vienna Convention on

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[35] Rand Corporation Database, Occupational Character of Targets, 1968-1986

[36] G MaClanahan, Diplomatic Immunity: Principles. Practices and Problems. (New York, St Martins Press, 1989) p 141.

Diplomatic Relations of 1961, 'to take all appropriate steps top protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.'[37] Terrorists regard diplomats as prime targets because the attacks on them serve two objectives; to get publicity for themselves and their cause and to put pressure on legitimate governments. Diplomats are favourite targets followed by businessmen, airlines and private citizens though there is an overlap among the above categories. The greatest increase in victimisation involves businessmen and ordinary civilians because it is more difficult for states to provide individual protection for all. In 1968 diplomats were targeted in forty percent of the cases and citizens in thirteen percent. Due to the increase of attacks on diplomats the UN adopted Conventions on the Protection and Punishment of crimes Against Internationally Protected Persons including diplomats. This convention calls for the prosecution or extradition of offender. The second line of action was to increase the security arrangements for diplomats.

In 1986 the diplomats targeted constituted twenty-seven percent, a drop from the forty percent while citizens constituted thirty seven percent a rise from thirteen percent.[38] However in the years 1994-1999, total terrorist attacks by region were highest in Western Europe with six hundred and sixty six attacks, Latin America with five hundred and ninety four attacks, and least attacks in Eurasia and Africa with one hundred and thirty one and one hundred and thirty respectively. The high figure in Western Europe was accounted for by the Northern Ireland problem. During the same period, the highest number of casualties was recorded in Asia, with eight thousand eight hundred and six, Africa with five thousand seven hundred and five, Latin America with six hundred and

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[37] Article 22

eight and seven in North America. The high number of casualties in Asia was accounted for by the Aum Shinrikyo cult that released Sarin nerve gas into Tokyo subways in 1995. The attack killed twelve and injured over six thousand people. The high figures in Africa were accounted for by the Nairobi and Dar es Salaam bombings of 1998. In the same period one thousand five hundred and ninety two business people were attacked, one hundred and ninety four diplomats, one hundred and seven government officials and forty military personnel. Terrorism makes the world its battlefield and it recognises no boundaries to the conflict, no neutral nations.[39]

In the case of the location of terrorist acts it has been noted that it occurs more widely in Europe then Latin America and the Middle East. Asia and Africa have also experienced terrorism but fall behind Europe, Latin America and the Middle East. This is because in Europe and the Middle East there is greater availability of more sophisticated weapons and the ongoing conflicts in the Middle East and Northern Ireland frequently employs terrorism. Throughout the history of terrorism there has been a move from rural to increasingly urban terrorism. There are also different kinds of terrorism practised in different areas. Africa has witnessed state terrorism carried out by the state against its own citizens. While in the Middle East the brand of terrorism is known as religious fundamentalism, which depends on the interpretation of Islam.

The countries in Europe where terrorism originally took off have continued to experience terrorism. These countries include France, Italy, Spain, West Germany, Greece, and the United Kingdom. Over the years it is clear that terrorism can happen

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[38] Ibid.
[39] B.Jenkins,"High Technology Terrorism and Surrogate War", Rand Paper Series, No. P-5339 (1975) p.8

anywhere except in effective dictatorial regimes. Terrorism in Spain gathered strength

only after Franco died while Terrorism in West Germany increased tremendously after the

Social Democratic or left of centre governments came into power.

The Middle East is significant due to its growth in terrorist activity. Terrorism is

not an essentially Middle East problem. Many think that terrorism from the Middle East

is aimed only at Americans. This is far from the case as a lot of terrorist acts are carried

out within the region against the regions own citizens (Palestinians v. Israelis). There are

also more anti-American terrorist incidences in Europe and Latin America.[40]

In Latin America, terrorism is concentrated in Argentina and Colombia.

Terrorism here is tied to drug trafficking. In the case of Africa liberation groups employed

terrorism in the fight for independence. Not all conflict is bad but when it targets innocent

bystanders it becomes an indiscriminate attack and therefore criminal. This is because the

strategy ceases to be legitimate and becomes terrorist in nature. The state was also seen

to employ terrorist techniques in oppressing the people and furthering police states.

Modern terrorists increasingly call the media to talk about the objectives,

grievances, strategies and the like before or after committing a terrorist act. A terrorist act

alone is nothing, publicity is everything. [41]The media and terrorism share a symbiotic

relationship. Contemporary terrorists have become exposed to new opportunities for

exerting mass psychological impacts through the media as a result of technological

advances in communications and transport. The potential for propaganda has increased

due to technological innovations, which include the wide reach of news items and the

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[40] US State Department Records 1980-1985. The terrorist incidences in Latin America were 369, and
Western Europe 458, as compared to the Middle East that had only 84 incidences.
[41] Laqueur, 'The futility of Terrorism' *Happers* (March 1976) p. 104

ability of instant replay. The terrorist act is dramatic, newsworthy and there is immediacy and diffusion of the act because of technological advances. Terrorist acts are then aimed at the audience, where targets are chosen for their symbolic meaning, and the media can be activated and manipulated. For example media coverage while terrorist acts are in progress are useful to the terrorists as they can describe the operational activities of the police or tricks planned by the law enforcement officials. Tactical information may assist terrorists unnecessarily. The governments then find themselves in a disadvantaged position as their choice is either in censorship or letting the terrorists use the media. For example the Tehran hostage crisis in November of 1979 to January of 1981 where fifty-two hostages were held in various conditions of humiliation and discomfort was televised continuously. The United States government position was clearly disadvantageous, as they seemed impotent as regards the situation. The United States made two unsuccessful military attempts to rescue the hostages, which were also televised. The hostages were finally released after a complex agreement was signed and at a moment decided by the Iranians.

One pattern of international terrorism has seen Americans as number one targets. The number of US nationals attacked has remained relatively low, nevertheless, by measure of some observers, American citizens have continued to be the number one target of "terrorists" worldwide.[42] Most media oriented terrorists use American citizens as targets because the US broadcasting system is the most sophisticated and the plight of the targets will attract massive publicity. When victims are selected in states other those from which the perpetrator comes from, it is because they belong to ideologically

strategic enemy nations. Irish terrorists target British as Britain is seen to be an illegitimate occupier of Northern Ireland. Americans are targeted by Puerto Ricans, Spaniards by Basques for analogous reasons.

The price of weapons has decreased significantly and the choice of targets more widespread, therefore increasing the operation and transportation costs. Traditional terrorists were more poor and relied more on robberies and gifts to finance their operations. The modern terrorist can finance operations through government sponsorship, wealthy individuals sympathetic to their cause and connections with drug traffickers. The Basque Fatherland and Liberty (ETA) was founded in 1959 with the aim of establishing an independent homeland based on Marxist principles in the Spain Basque Region and South West France. It has received sanctuary in Cuba and trained in Libya, Lebanon and Nicaragua. The Continuity Irish Republican Army (CIRA) was formed in 1994 as a clandestine armed wing of the republican Sinn Fein, a political Organisation dedicated to the reunification of Ireland. It is suspected of receiving funds and arms from sympathisers in the US.[43]

The traditional weapon of the terrorist has been the dagger and handgun. The invention of dynamite and the first time bomb encouraged *Narodnaya Volya* to use them in the1880s in large-scale. However these explosives were highly effective though dangerous in preparation. Many terrorists spent long hours trying to improve and make the devices smaller. The idea of the letter bomb first appeared in use by the Russian terrorists in 1880. The traditional terrorists did not perfect the art of using the letter bomb;

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[42] Livingstone and Arnold, 'Democracy Under Attack' in N. Livingstone and T. Arnold (eds.) Fighting Back: Winning The War Against Terrorism, (Lexington, Lexington Mass Books, 1986) p.30
[43] Patterns of Global Terrorism, Op Cit, p.68

it was perfected and grew in use by modern terrorists. Following major wars, arms were

in great supply all over the world and terrorists got hold of them. After World War Two

explosives that have been created are more effective, reliable and more powerful. In the

1970s and 1980s the most effective and popular weapon for the terrorist has been the car

bomb. This was especially seen in Lebanon, Northern Ireland and Palestine. The bomb,

automatic machine guns and hand grenades remain the most popular weapon for the

terrorist.

Terrorist tactics have also changed over the years. Kidnapping for political

purposes and the extortion of money has been practised since time immemorial.

Assassination has also been used as a terrorist technique since time immemorial. From

these practises there developed the system of hostage-taking in exchange for fellow jailed

terrorists, political demands and money. For example the Entebbe hijackers in July 1976

demanded the release of fifty-three 'freedom fighters' held in different countries world -

wide. A modern and dramatic technique used by modern terrorists after World War Two

has been that of hijacking aeroplanes. The hijacking of planes decreased dramatically in

the 1980s due to more effective security measures and bilateral pacts, like the US-Cuban

agreement of 1969, which curbed the number of US aircraft that had been forced to land

in Cuba throughout the 1960s. There have also been a number of multilateral treaties like

The Tokyo, Hague and Montreal Conventions that have helped curb hijacking. With the

decline in hijacking of aircraft there was a dramatic rise in the attack of embassies. This is

seen for example in the 444 days occupation of the US embassy in Tehran by terrorists.

To date diplomatic missions continue to be a popular target for terrorist. There is now the

increased threat of nuclear and bacteriological-biological terrorism as a threat not only to individual states but also to the whole world as a whole.

When the history and evolution of terrorism is surveyed it becomes clear that terrorist tactics, targets, weapons, motivations and the nature of terrorists have changed dramatically over the centuries. Contemporary terrorism has therefore developed and moved far away from its origins. In the 19th Century it was used as a struggle against tyrannical governments and yet in the contemporary era terrorism has failed to take root in despotic and dictatorial regimes. The character of terrorism has changed over the years with the shedding of restraints, the deliberate choice of bystanders who are innocent victims and the in the growth of international terrorism. In a bid to create effective counter-terrorist measures it is important to take into consideration the legal responses put in place to combat terrorism.

CHAPTER THREE

INTERNATIONAL LAW AND LEGAL RESPONSES TO

TERRORISM \

INTRODUCTION

Definitions of terrorism have proliferated over the years and a definitional

consensus so far has proved unsuccessful. No single definition of terrorism has been

accepted by the United Nations or in a general multilateral treaty. This does not mean

that a working definition is not beyond reach. In any case political decision-makers will

not wait for a consensus to emerge among scholars before they take the measures they

deem necessary to combat terrorism.[1] These measures include isolating states that

sponsor terrorism, the use of multilateral and bilateral treaties, the development of

extradition treaties and the beefing up of security at all entry and exit and around

important facilities.

Working definitions of terrorism focus on both the terrorist act and the terrorist

actor. A terrorist act has the qualities of violence, whether threatened or actual, a political

objective and an intended audience. Therefore random acts of violence should not be

considered terrorist in nature. Random acts of violence are not necessarily terrorism in

nature because terrorism is a method of combat in which random or symbolic victims

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[1] US National Advisory Committee on Criminal Justice Standards and Goals, Report of the Task Force on

Disorders and Terrorism, US State Department, Washington DC, 1976, p.3

serve as instrumental targets of violence. These instrumental victims share group or class characteristics that form the basis for their selection for victimisation. Through previous use of violence or the credible threat of violence, other members of that group or class are put in a state of chronic fear (terror) therefore they are the target of terror. The purpose of this indirect method of combat is to immobilise the target of terror in order to produce disorientation and /or compliance or to mobilise secondary target demands, like a government, or targets of attention like public opinion, to changes of attitude or behaviour favouring the short or long term interests of the uses of this method of combat.[2] Therefore a random act of violence does not count as a terrorist act because there is no 'target of terror' that is, where the act of violence has a more immediate and direct purpose. For instance, an act of hijacking well not fall under an act of terrorism if hijackers only purpose is to get to a destination which is not intended by the aircraft. Such a situation is governed by the 1970 Hague Convention for the Suppression of Illegal Seizure of Aircraft.[3]

From 1960, international terrorism was seen to pose a major threat to the world. This was partly due to the rise in terrorist acts and the advancement of technology that enabled terrorists to have access to better, more sophisticated and wider reaching weapons.

The causes of terrorism that sprung from the 1960s include the historical patterns of the time. The pattern created by nuclear stalemate saw the rise of low risk methods of

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[2] Fletcher J, 'International Terrorism: The Nature of the Problem- A Keynote Address to the 6th Symposium on Forensic Sciences,' Adelaide, Australia, March 1979.

struggle like guerrilla warfare and terrorism. Another seed from the 1960s were the ideological shifts, which informed the terrorist movement. Islamic fundamentalism for example arose out of the reaction against westernization and modernisation. The Vietnam War played a pivotal role as it radicalised the youth and led them to more violent behaviour. Technological advances, including mass communication and improved air travel and weapons helped the terrorists. [4]

The conventional wisdom is to ignore terrorism until and unless a threat is posed. Once confronted with a threat the typical response is to apply deterrence strategy under crisis decision-making. Explanations of motivations and root causes are shunted aside and yet these are important [5] because the elimination of root causes can help in the fight against terrorism. The terrorist threat confronts decision-makers with a complicated set of problems and it is clear that it has to be counteracted. To act effectively against terrorism one must first think clearly about it. The roots of terrorism are found in widespread poverty, unemployment and alienation. The causes of terrorism seen in the long term include social inequities, political disfranchisement economic depression, while in the short term the causes are found in ethnicity, relative deprivation and repression. Relative

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[3] 860 U.N.T.S 105, 10 I. L.M.. 133 (1971) Article 1

[4] Rushworth M. Kidder, "Why Modern Terrorism? Three Causes Springing from the Seeds of the 1960s", in Charles W. Kegley Jr (ed.) International Terrorism: Characteristics Causes and Controls (London, Macmillan, 1990) p. 137-138.

[5] Helen Purkitt, "Dealing with Terrorism: Deterrence and the Search for an Alternative Model", in Michael Banks (ed.) Conflict in World Society. A New Perspective on International Relations (Sussex, Wheatsheaf Books, 1984) pp 161-170:168.

deprivation is the discrepancy between value expectation and value achievement. The idea of a reference group emerges and terrorists compare themselves with this reference group. It is subjective mobilisation seen through the recruitment of terrorists into a group therefore elevating relative deprivation to group level. This is one justification that terrorist groups use to inform their actions. Relative deprivation is not just what people get but also what they think they rightly deserve. The goals of terrorists include the overthrow of order, disruption of government, demonstration of strength and solidarity building within the movement [6] Terrorists become terrorists at least initially for reasons associated with politics. After a while they continue to be terrorists for no reason other than the fact that they are terrorists. As terrorist groups try to achieve their goals the conflict that they are involved in transforms itself constantly. They may even abandon their political goals but continue unleashing the terror they are used to and which is a way of life for them.

Terrorism can be controlled by united action. Although in responding to terrorism the international community must consider the ideological aims of groups because some may be open to compromise while others may not. The international community must also consider the relative isolation of the group since more isolated groups are easier to deal with than those enjoying mass support. Groups with virtually no support can be dealt with without going against public opinion or risking further rebellion from the public.

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[6] Richard Falk, " Revolutionaries and Functionaries: The Dual Face of Terrorism", in Charles W. Kegley Jr (ed.) International Terrorism, Characteristics, Causes and Controls (London, Macmillan, 1990) pp 17-39

The international community must consider if the terrorist action is part of an overall strategy and the significance of external support.

Terrorism is the wilful taking of human life, purposeful commission of bodily harm and the infliction of severe mental distress by force or threat of force. The victim is selected randomly or calculated and therefore the act is premeditated and criminal. Terrorism is a political, psychological, moral and legal problem. To discard legality as the primary focus means an emphasis is placed on political and diplomatic alternatives. Without the recognition of the rule of law, "might" will make "right" regardless of the ethical, moral or legal basis of the act.

Responses to terrorism can be legal. Legal responses combine repression and reconciliation. Domestic legal remedies include the creation of new laws and a military force, while international legal remedies fight the problem of ideological diversity of states, the absence of sovereign authority and tries to encompass regional pacts.

Repressive responses include behaviour regulation, conciliation, non-military pressure, improved security, military reprisals, pre-emptive strikes, retribution campaigns and military intervention. Conciliatory responses include making concessions, the use of negotiations and reforms. This chapter will examine the legality of terrorism, the treaties currently in place to curb terrorism and the counter terrorist measures that are used in the face of terrorism. It will also examine the controversy surrounding counter terrorism, as the international community must fight terrorism without stooping to it. It is ironical because resistance to terrorism is done by a combination of repression and retaliation that often take terroristic forms.

THE MORAL IMPLICATIONS OF TERRORISM

Terrorism is a moral problem[7] and this poses great difficulty over the definition of

the phenomenon. Any efforts towards a definition are predicated on the assumption that

some classes of political violence are justifiable while others are not. For example, the

UN recognises the principle of Self-determination[8] in its declaration on The Granting of

Independence to Colonial territories and peoples.[9] The General Assembly recognises the

right to self-determination by the virtue of which they freely determine their political,

guerrilla movements involved in clandestine activities aimed at forcing the incumbent

authorities to concede to their demands. Their acts are seen as emancipating the rest of

the citizens. Behaviour will or will not be viewed as terrorist depending on the observer.

Different users find it more or less easy to utilise definitions that focus on behaviours and

their effects as opposed to the factors tempered by considerations of motives and

politics.[10] As a result many people prefer to evaluate a particular act as being terrorist-

oriented by making a moral judgement about the act. It is an attack on innocent

bystanders in the pursuit of some political objective. Politics is an essential part of the

basic machinery of civilisation and rejecting politics as terrorists do, seeks to make

civilisation unworkable. Terrorists claim to resort to terrorism as a last resort, while there

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[7] Lambert J J, Terrorism and Hostages Under International Law. (Cambridge, Grotius Publications, 1990)

pp. 13-14

[8] Wardlaw G, Political Terrorism, (Cambridge, Cambridge University Press, 1989) p. 4

[9] G.A Res. 1514 (XV) Dec 14th 1960

[10] Harris D.J., Cases and Materials on International Law 4th ed. (London, Maxwell, 1989) pp 117-124 *Supra*

note 3

are many of political options that can be chosen and tried but they reject these. Terrorism is in fact the first option because in politics there are many options. These options have to be repeated severally without being declared a failure on the first attempt, because politics is an art of repetition.[11]

Both Hobbes and Locke treated violence as the antithesis of politics and characteristic of the archaic realm of the state of nature. Therefore in the end terrorism tends towards despotism. Terrorism does not take root in dictatorial on totalitarian states because there is little politics that is exclusionary and not participatory. It takes root in political system other than totalitarian states. And yet, it is ironic because in democratic states for example, participation and the airing of views are tolerated and yet the terrorists choose recourse in violence. They do it precisely because terrorism is a form of expression albeit an undemocratic one.

Terrorism is usually justified on the grounds that it arises from situations of repression, economic deprivation, oppression, ethnic persecution, class cleavage, territorial disputes, anarchy, colonialism and lack of political participation. These conditions give rise to grievances that need to be addressed. However there is terrorism without injustice and many times parties to a conflict may not be able to reach a compromise acceptable to all. For example a terrorist may ask for the release of fellow terrorists who have been jailed for crimes they have committed and have been justly punished.

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[11] Walter Laqueur, 'Terrorism: A Critique of Excuses' in Steven Luper-Foy (ed) Problems of International Justice, (London, Westview Press, 1988) pp. 237-247 ;242.

Traditionally it was accepted that in order to wage a just war one had to have causes that were just, act within the norms of war and limit the use of force. The just war doctrine is a major moral tradition of western culture that encompasses and represents attitudes, beliefs and patterns of behaviour from across the breath of that culture over time. Every human culture has generated some analogue of just war tradition: a consensus of belief attitudes and behaviour that defines the terms of justification for resort to violence and the limits, if any, to be set on the use of violence by members of that culture. It is widely held that non-combatants should not be targets in any war. If terrorism is to be taken as a method of warfare, it has been accused of deliberately seeking innocent, non-combatant targets. Terrorists regard themselves as the possible remedy to the evils of the establishment and assert the legality of their actions. They solemnly claim sovereignty's trappings and mannerisms.[12] Terror-violence directed against non-combatants becomes a criminal act. Political passion however deeply held cannot be a justification for criminal violence against innocent persons. Effective implementation of laws rests on impermissibility of general excuses for violence and illegality. Terminologies and rhetoric such as just and unjust struggle, self-determination and guerrilla tactics must be addressed. If the law prohibits the justification of terroristic violence by such rhetoric, one way of protecting people would be to devise ideological and diplomatic strategies that utilise education, public opinion and advise to counter simplistic justifications based on dichotomous distinctions between just and unjust. Broad excuses for murder and human suffering need opposition. The justness of ones political

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[12] Harris, <u>Cases and materials on International Law.</u> Op Cit, *Supra Note* 4

causes does not justify the means utilised.[13] Terror suppresses the free expression of all viewpoints and free participation of all persons in the political process.

Terrorism has been defined as a strategy of the weak against the strong[14] yet terrorism is weak vis a vis the opposing state and the movement's weakness vis a vis its own people.[15] Therefore terrorism is unable to mobilise massive support rules out other options like mass demonstration, strikes and non-violent resistance. Terrorists then claim to be representing the downtrodden who cannot speak for themselves and yet it is just an excuse to resort to violence as they may only be representing themselves. For example The Armed Islamic Group (GIA) is an Islamic extremist group that aims to overthrow the secular Algerian regime and replace it with an Islamic state. Its activities began in 1992 after the Algerian people voided the victory of the Islamic Salvation Front (FIS-which is the largest Islamic party) in the first round of legislative elections in 1991. Therefore it represents itself, as most of the people do not want an Islamic state.[16] Another example is Qibla, a small radical Islamic group led by Achmad Cassiem and inspired by Iran's

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[13] 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 Feb 2, 1971 Art 2, T.I.A.S No 8413 UN DOC A/ C.6 / 418 s Note 23

[14] Detailed definition of this is provided by Hoffman, "Is Europe Soft on Terrorism?" *Foreign Policy* Summer 1991, pp 62-79.

[15] Michael Walzer, 'Terrorism: A Critique of Excuses' in Steven Luper - Foy (ed.) Problems of International Justice (London, Westview Press, 1988) pp. 237-247:240

[16] Patterns of Global Terrorism. Op Cit, p.61

Ayatollah Khomeini that seeks to establish an Islamic state in South Africa. It only has an estimated two hundred and fifty members and operates in Cape Town.

Terrorism is also justified by terrorists on the basis that is achieves the political ends that it set out to achieve without necessarily involving all the persons considered to be oppressed or represented by the terrorists. Even if this were the case one cannot justify the means by the end. It still involves the unlawful taking of the life. It is a denial of humanity of the victims.

The Universal Declaration of Human Rights is seen as the basic document of human rights. It has economic, social, cultural and political rights that all human beings are entitled to without distinction. It was intended to create binding obligations and has had a catalytic effect on the development of International Human Rights Law. It therefore possesses legal standing as states agreed that human rights are fundamental rights. It has also provided the basis for the development of customary international law and the basis for development of comprehensive treaty regime of Human Rights. These include the Genocide and Refugees treaties. The Universal Declaration of Human Rights is said to be part of *Jus cogens*. The Universal Declaration of Human Rights states that everyone has the right to life and liberty and the security of persons and no one shall be subject to torture or cruel, inhuman or degrading treatment or punishment.[17]

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[17] Arts 3 and 5 G.A. Resolution 2174 (III)

In 1948 the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide where under it, is a criminal act under international law to intend to destroy in whole or part, a national racial, ethnic or religious group.[18]

The preamble of the International Covenant of Civil and Political Rights emphasises right to enjoy freedom from fear[19] and everyone has the right to life.

The 25th Session of the UN General Assembly produced a Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, which imposed upon every member state the duty to refrain from organising, instigating, assisting or participating in activities of civil strife or terrorist acts in another state.[20]

The Charter of the UN contains no general provision regarding the legal effects of the General Assembly resolutions and resolutions have no binding force. However they are formal invitations to states to take action that is open to them to accept. Resolutions of the General Assembly incorporating declarations of rights and principles are not in themselves acts creative of new rules of international law, for the General Assembly has no general legislative power. These declarations amount to the interpretation of the rules or principles that the Charter already contains and which are in consequence binding upon member states. Declarations may contribute to the formation of customary rule or lead to

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[18] G.A. Res. 260A (111) 3 UN Doc A/ 870 (1948) 78 U.N.T.S 277 (1951)

[19] G.A. Res. 2200 (XXI) 21, UN GAOR, UN DOC A/6316, Supp No. 16, 1966

[20] G.A. Res. 2625 Art 1 XXV, 25 UN GAOR, UN Doc A/ 8028 Supp No.28 (1970)

the creation of machinery for the control of the application by states of the principles they embody and therefore accelerate the creation of customary rules.[21]

Terrorism is therefore a violation of all the basic human rights principals that have been promulgated by the world community dating from the end of the Second World War. Terrorism offends both collective and individual freedom and dignity. It constitutes serious violations of fundamental rights and freedoms and most elemental principals of the security of the individual.[22]

This eventually leds to the place of terrorism in international and national law. If indeed terrorism is not justifiable under any circumstances because of the means it employs, then its status in international law should follow that it is an impermissible criminal act.

TERRORISM IN INTERNATIONAL LAW

International law is that body of legal rules considered binding by states and other international persons in their mutual relations. International law is enforced through a variety of means although it is mostly self enforced through voluntary compliance. The consent of states to international legal norms provides the main means of enforcing such norms as the predictability and mutual benefit from reciprocal observance serve as the best interests of states. Most states observe international law than break it. Therefore international law is self enforced out of self-interest and violations do not void the law

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[21] Max Sorensen, Manual of Public International Law, (Dar es Salaam, Tanzania Publishing House, 1968) p.162

[22] UN DOC A/C.6/ 418 at 7, 9, 41

even if not enforced. After World War Two the treaty has become the prime source of International Law.

Many scholars assume that terrorism is illegal and therefore focus their discussions on questions of permissible response.[23] Terrorist acts are said to be forbidden and constitute violations of customs, general principals of law and provisions of law and provisions of prohibitory conventions

General principles of law [24] are a source of international law referring to general principals of law common to the municipal legal systems of states. Nearly all the worlds domestic legal systems have banned many actions taken by terrorists, which include murder, assault, maiming, arson, kidnapping and destruction of property[25]. Therefore under general principles of international law the acts committed by terrorists are considered prohibited and thus impermissible as a violation of the said principals.

Piracy from the 16th Century were considered common enemies of humanity (*hostis humani generis*), outlawed and considered a crime against humanity. Similarity has been drawn between privacy and terrorism. Though the two may be similar in their acts of violence and undermining of the rule of law, each must be considered a different crime. Terrorism falls under Art 3 common to the Geneva Conventions of 12 Aug. 1949 for the Protection of War victims and of Additional Protocol 2 thereto of 8 June 1977.

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[23] Anthony Clark Arend and Robert J. Beck, " Responding to Terrorism" in International Law and The Use Of Force. (London, Routledge, 1993) p 143

[24] Statute of the ICS Art 38 (1) (a), (b)+(c)

[25] John Murphy, State Support of International Terrorism. (Toronto, Little Brown, 1985) pp. 11-14.

The Common Art 3 of the Geneva Conventions also prohibits acts against persons not taking part in hostilities not of an international character.

PRE-WORLD WAR TWO EFFORTS TO CONTROL INTERNATIONAL TERRORISM

Before World War Two efforts had been made in various for to deal with the problem of international terrorism on a more or less universal basis.[26] Need had been realised from the very early times to have concerted efforts by states in the 19th Century. If they were to have any chance of achieving their immediate goals both state and group terror required a strong impact upon vast audience.[27] This political terrorism especially towards the last quarter of the 19th century had become an instant means of communication, aided and abetted by technology especially s a result of the industrial revolution and the capability of the media.[28] It was realised that deprived of mass communication, terrorism was a tool for the impotent, in so far as terror violence relied almost exclusively on psychological impact to convey its message. Attempts to deprive terrorists of publicity were in vain as the terrorist act is always as newsworthy.

Dating from the late 18th century and the eve of the French Revolution, Western Europe had a long tradition of granting asylum to political offenders.[29] The rapid growth of a European wide revolutionary tradition in the decades that followed the Congress of

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[26] Lambert J J, Terrorism and Hostages in International Law, Op Cit, p.28

[27] Ibid, p. 30

[28] Friedlander R.A, Terrorism, Vol.1 (New York, Oceana Publications, 1979) p.66

[29] Ibid, p.73

Vienna (1814) influenced Western Europe governments to modify their position on granting of asylum, due to the up shoot in acts of terrorism following the industrial revolution. The change in attitude vis a vis asylum was for the purpose of preserving societal order.[30] In 1833 the Belgian government promulgated a law providing for the non- extradition of political offenders, including acts of terrorism. This principle was incorporated into a Franco-Belgian treaty in 1844.[31] An attempt on the life of French Emperor Napoleon the third led to a restrictive limitation on the political offence doctrine[32] and the restriction was further narrowed as a result of the assassination of the American Presidents Abraham Lincoln and Garfield Tod. The *attentat* (attempt) clause made the murder or attempted murder of any head of state of his /her family a common crime. It was incorporated by France and Belgium into their extradition treaties and accepted by Luxembourg, Russia and Sweden in 1870, 1912 and 1918 respectively. It was also accepted into numerous US conventions sine 1882.[33] Similar provisions were adopted by a number of Latin American states at the beginning of the 20th Century.[34]

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[30] Ibid, *Supra Note* 11

[31] Deere L.S, 'Political Offences in the Law and Practice of Extradition," 27 A.J.I.L 247 (1933)

[32] Ibid, pp 252-258

[33] Moore J.B, 'Terrorism' *4th International Law Digest,* 352 (1906) p. 355

EFFORTS TO COMBAT TERRORISM BETWEEN THE FIRST AND SECOND WORLD WAR

Renewed concern on the question of terrorism arose with the third International

Conference for the Unification of Penal Law, held at Brussels in 1930 and the fourth

conference held in Paris in 1931.[35] In 1934, the fifth conference at Madrid went so far as

to divide terrorism into two basic classifications: political and social. In between the two

world wars a number of conferences for the unification of penal law addressed the issue

of terrorism but neither drafted a convention nor took the concrete steps to address the

problem. No treaty has been able to gather global acceptance on the question of terrorism.

The assassinations at Marseilles on Oct. 9 1934 of King Alexander of Yugoslavia

and Louise Barthow, foreign minister of the French Republic led the League of Nations in

drafting the Convention for the Prevention and Punishment of Terrorism.[36] The

convention defined terrorism broadly to include criminal acts directed against a state and

intended to create a state of terror in the minds of particular groups of persons or the

general public [37]. Under the convention acts of terror violence included *inter alia* ,

attempts on the life, physical wellbeing, or freedom of heads of state, their immediate

family or that of governmental officials was proscribed. It required state parties to punish

and prevent acts of terrorism and recognised the principle of *aut dedere aut judicare*. The

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[34] Bassiouni M.C, International Terrorism and Political Crimes 4th ed. (Minnesota, St Paul, 1975) pp 460-461

[35] Ibid, *Supra Note* 16, p.476

[36] L.N. Doc C. 546 (1) M. 383 (1) 1937.V

League of Nations at the behest of France proposed the creation of an international criminal court to try terrorist crimes.[38] The League of Nations drafted an accompanying convention that dealt specifically with the creation of an International Criminal Court.[39]Due to the approach of World War Two, the convention only received ratification form India. The convention also suffered from lack of a universally accepted definition of terrorism. At this time also the League of Nations was slowly crumbling. The convention was not listed among the conventions for which the League of Nations was depository and it sank into obscurity when the UN came into existence.

EFFORTS TO COMBAT TERRORISM IN THE POST WORLD WAR TWO PERIOD

After the Second World War there was an upsurge in the acts of terrorism as terrorism was somewhat institutionalised, more brutal and global.[40] The escalation of terrorist acts was attributed to the pronounced ethnic and national fragmentation, intensification of religious fundamentalism in the Middle East and rapid development in technology, communications and modes of travel. The United Nations Charter was signed on June 26th 1945 at San Francisco. The UN replaced the League of Nations and the Charter proclaimed its purpose as being *inter alia*, 'promoting and encouraging respect

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[37] Art 1 (2) of the Convention

[38] *The League of Nations Journal*, Vol 15 (1934)

[39] L.N. Doc C. 574(1) M. 384 (1) 1937 V

[40] Alexander Yonah, International Terrorism: Political and Legal documents. (London, Martinus Nijhoff Publishers, 1992) p. IX

for human rights and fundamental freedoms for all.[41] Article 51 of the Charter permits

'the inherent right of individual or collective self defence.' The statute forms juridical

basis for the recognised norm of forcible self-help and historic remedy of humanitarian

intervention.[42] These two principles were demonstrated in the Entebbe Raid by Israel, on

July 3rd 1976 and the West German Commando rescue operation at Mogadishu, Somalia

on October 18th 1977.[43]

TERRORISM CONVENTIONS

The Convention on Offences and Certain Other Acts Committed

On Board Aircraft.[44] The increase in instances of aircraft hijacking and sabotage as

well as other offences directly affecting the safety of air navigation in the 1960s prompted

the adoption of this convention. It was realised that the Customary International Law

rules on criminal jurisdiction did not sufficiently give states wide powers to deal with

offenders and that extradition arrangements were inadequate. This convention applies to

acts affecting in-flight safety, authorises restraint of persons believed to be committing or

about to commit acts against the safety of the aircraft and requires contracting states to

take custody of offenders. The convention provides that offences committed on aircraft

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[41] The Charter of The United Nations, T.S. 993, 3 Bevans 1153

[42] Lillich R, 'Forcible Self Help by States to Protect Human Rights' *Iowa Law review* Vol.53 (1967) p.325

[43] Krishbacher C, 'The Entebbe Operation; A Legal Analysis of Israel's Rescue Action' Vol. 12, *Journal of International Law and Economics,* 57 (1977) p. 83

[44] Tokyo Convention, Sept. 14, 1963, 20 UST 2941, T.I.A.S. No. 6768, 704, U.N.T.S.

registration of the aircraft.[45] It imposes no obligation to extradite. The convention though not specifically stating that it is aimed at combating international terrorism has the underlying objective of curbing offences related to aircraft.

The Convention for the Suppression of Unlawful Seizure of Aircraft[46]

This convention does not apply to aircraft used in military customs or police services and only applies if the place of take off or place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the state of registration of the aircraft. The unlawful seizure of aircraft is declared to be an extraditable offence in any extradition treaty existing between contracting states.[47] It makes it unlawful for a person on board to force on threaten to exercise control of the aircraft, parties are asked to severely punish offenders, to extradite or prosecute and assist each other with criminal proceedings. In connection with the institution of criminal proceedings brought pursuant to the offences in question, the law of the requesting state shall apply in all cases.

The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.[48]

This convention was concluded at a diplomatic conference on Air Law at Montreal under the auspices of the International Civil Aviation Organisation (ICAO) in

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[45] Article 16

[46] Hague Convention, Dec 16 1970, 22 U.S.T., 1641, T.I.A.S., NO. 7192, 860 U.N.T.S. 105

[47] Article 8

[48] Montreal Convention Sept 23 1971, 24 U.S.T, 565, T.I.A.S No. 7570, 974 U.N.T.S. 177

1971. It makes it an offence for any person to perform acts of violence against persons on board aircraft, place an explosive devise or be an accomplice to such acts. It calls for severe penalties, extradition or prosecution and assistance in criminal proceedings. Unlike The Hague Convention it deals with acts performed outside the aircraft. It contains similar provisions for punishment or extradition as the Hague Convention but deals with terrorist actions other than hijacking like bombing and sabotage. The Hague Convention is important as it discourages acts before they are committed and is not passive on the question of placing obligations or states. The Hague Convention obligates states to take measures to establish jurisdiction over the offences in those cases where the alleged hijacker is present in its territory and does not wish to extradite him/her. If applied properly The Hague Convention is expected to do away with safe havens for hijackers. The Tokyo Convention deals generally with offences committed on board aircraft and does not require a state to prosecute or extradite a hijacker. The Protocol for the Suppression of Unlawful Act of Violence at Airports Serving International Civil Aviation supplements the Montreal Convention and extends the provisions of the Montreal Convention to encompass terrorist acts at airports serving International Civil Aviation. The Tokyo Convention restated in treaty form already existing customary international law principals rather than break new ground. The Hague Convention expanded this due to growing problems and inadequacy of the hortatory, admonitory, anti-hijacking provisions contained in the Tokyo Convention. The Montreal Convention was intended as a supplement to the more specific hijacking prohibitions and protective controls contained in the Hague Convention.

These conventions were reached after a spat of aeroplane hijackings in the 1960s. There was also a convention reached to protect internationally protected persons. **This is the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents**[49]. This was adopted at the UN in New York in response to the request made in the General Assembly with regard to the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. Internationally protected persons include heads of states and governments, foreign affairs ministers, members of their families and those accompanying them, representatives or officials of states among others.

Meanwhile spectacular acts of terrorism like the killing in Munich on 6th September 1972, of 11 Olympic Israeli competitors by Arabs led to a more narrowly focused approach.

In Sept. 25th 1972, a draft for The Convention for the Prevention and Punishment of Certain Acts of International Terrorism was introduced[50]. The US argued that the convention was directed against national liberation armies, as its coverage was limited to any person who unlawfully kills, causes bodily harm or Kidnaps another person. They wanted these acts to meet different conditions first. These conditions included the fact that the acts must be committed or

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[49] Dec. 14, 1973, 28, U.S.T., 1975, T.I.A.S., NO. 8532, 1035, U.N.T.S. 167

[50] UN DOC A/ C.6 / L.850 1972

take effect outside the territory of a state of which the alleged offender is a national, or take effect outside the state against which the act was directed, unless knowingly directed against non-nationals of the state. They also argued that the act must not be committed either by or against a member of the armed forces of a state, in the course of military hostilities. It was also argued that the act must damage the interests of or obtain concessions from a state or International Organization.

The first condition was considered a loophole that excluded most terrorist attacks within Latin America and elsewhere against transnational business personnel and facilities. The proposal faced opposition from Arab States, China and African states because it went against the legitimate struggle of the people under the yoke of colonialism and alien domination.

The 1978 International Convention Against the Taking of Hostages.

This convention is in line with the purposes and principles of the Charter of the United Nations concerning the purposes and principles of the security and the promotion of friendly relations and co-operation among states. The preamble clearly states that the taking of hostages is an offence of grave international concern and that all acts of hostage taking should result in extradition or prosecution. Hostage taking, attempts to commit an act of hostage taking or participation in the act is an offence. Parties are required to make these offences punishable under their domestic laws. This convention is not concerned with all acts of abduction or kidnapping of international dimension, rather it is drafted to include only those offences that are directed towards compelling some acts of forbearance from a third party. It is also directed at political acts of terrorism and the taking of

hostages for private gain. The International Convention against the Taking of Hostages[51] provides that any person who seizes or detains and threatens to kill, injure or detain another person in order to compel a third party, a state or intergovernmental organization, a natural or juridical person, or a group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages within the meaning of this convention.

Great fear arose with the threat that nuclear weapons could be stolen by terrorists and used to terrorise the whole world. **A Convention on the Physical Protection of Nuclear Materials opened for signature on March 3rd 1980.** This convention criminalises the unlawful possession, use, and transfer of nuclear material, its theft, or threat of use. This convention was to prevent the theft of and lay out the protective measures to prevent the use of nuclear material, especially by a terrorist group. **The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and an additional protocol for the suppression of Unlawful Acts against the safety of Fixed Platforms Located on the Continental Shelf.** This convention was adopted after the 1985 *Achille Lauro* hijacking. All acts of international terrorism connected with maritime affairs are condemned under the convention. The convention does not apply to listed entities like warships. It provides that the state party in the territory of which the offender or alleged offender is found shall, if it does not extradite him, be obliged without exception to

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[51] 34. UN GAOR Supp. No. (39) at 23, U.N DOC A /34 /39 1979.

prosecute. It establishes a legal regime applicable to acts against international maritime navigation similar to the regimes established against international aviation. It makes it illegal to seize or exercise control over a ship by force, threat or intimidation. To perform an act of violence against a person on board that is likely to endanger the safe navigation of the ship, or place a destructive device on board. The additional protocol establishes a legal regime applicable to acts against fixed platforms on the continental shelf. All the conventions require that a state party apprehend an alleged offender in its territory to either extradite the person or submit the case to its own authorities for the purposes of prosecution.

The Convention on the Making of Plastic Explosives for the Purpose of Identification provides for chemical marking to facilitate detection of plastic explosives, for example, to combat aircraft sabotage.

The convention is designed to control and limit the use of unmarked and undetectable plastic explosives that was negotiated in the aftermath of the Pan An 103 bombing. Parties are obligated in their respective territories to ensure effective control over 'unmarked' plastic explosive, i.e. those that do not contain one of the detection agents describing in he Technical Annex that is an integral part of the convention.

Generally speaking each party must take necessary and effective measures to prohibit and prevent the manufacture of unmarked plastic explosives, prevent its movement, take effective control over possession and transfer of unmarked explosives. Those unmarked explosives not held by the police or military should be destroyed, marked or rendered ineffective within three years. The convention does not itself create new offences that would be subject to a prosecution or extradition regime, although all

states are required to ensure that provisions are complied within the territories. This convention was agreed on March 1991.

The International Convention for the Suppression of Terrorists Bombings agreed on December 1997 expands the legal framework for international co-operation in the investigation, prosecution and extradition of persons who engage in terrorist bombings. Each state party is under obligation to adopt such measures as may be necessary to establish it as a criminal offence under its domestic laws and to make those offences punishable by appropriate penalties, which take into consideration the grave nature of the offence. It provides that a state party may establish its jurisdiction over an offence therein when the offence is committed against a national of that state or against a state or government facility of that state abroad, including an embassy or other diplomatic or consular premises of that state. In the negotiations for this convention differences emerged between developed and developing states on the meaning of terrorism. A new group emerged that was made up of the victim states that the convention did not address. This convention creates a regime of universal jurisdiction over the unlawful and international use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause bodily harm or extensive destruction of a public place.

In 1985 the General Assembly adopted a resolution[52] that defined terrorism as an act that takes innocent human lives, jeopardises fundamental freedoms and seriously impairs the dignity of human beings. It invites states to harmonise domestic legislation

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[52] G.A. Res. 40/61 40. UN GAOR Supp. (NO. 53) at 301, UN DOC A/ 40 / 53/ 1985

with the existing international conventions, fulfil international obligations and prevent the

organisation of acts directed towards other states. The inalienable right of self

determination provides that the struggle of national liberation movements be conducted in

accordance with purposes and principals of The Charter and the Declaration on Principals

of International Law Concerning Friendly Relations and Co-operation Among States in

Accordance with the Charter of the United Nations. This imposes the duty to refrain from

organising, instigating, assisting or participating in activities of civil strife or terrorist acts

in another state.

Regional conventions include the Convention to Prevent and Punish the Acts of

Terrorism Taking the form of Crimes Against Persons and Related Extortion That are of

International significance (Organisation of American States OAS)[53]. The preamble to the

OAS treaty expresses concern over the adoption of general standards that will

progressively develop international law as regards co-operation in the prevention and

punishment of acts of terrorism. Article two states that kidnapping, murder and other

assaults against the life and personal integrity of those persons who have special

protection, as well as extortion in connection with those crimes shall be considered

common crimes of international significance. It calls for the extradition of alleged

offenders. State parties are called to co-operate in preventing and punishing crimes

contemplated under Article two. The OAS convention does not confer automatic

jurisdiction of any of the acts enumerated under the convention's provisions, it does

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[53] Convention of Feb 2 1971, 27 US.T. 3949, T.I.A.S., No. 8413 O.A.S.T.S. No. 37 at 6, OAS, DOC

OEA/Ser A/17

impose an obligation on the contracting states to endeavour to have the contemplated criminal acts included in their penal laws, if not already so included. This provision seeks to establish a uniform standard of dealing with offenders under the convention.

Another regional convention is the European Convention on the Suppression of Terrorism[54] and Agreement on the Application of the European Convention for the Suppression of Terrorism[55]. The European convention under the *attentat* clause thereto provided for the protection of heads of state and their immediate families. The convention was adopted in response to the escalating cases mainly involving terrorist agencies against heads of state and their immediate families. The Organisation of African Unity Charter has provisions prohibiting acts of terrorist nature perpetrated by one state against another or by unrestrained group of extremists granted political asylum in one member state against another member state. At the national level states refrain from defining terrorism in their criminal statutes and instead prosecute terrorist crimes under statutes covering murder, kidnapping, explosives and the causing of serious bodily for mental harm. Terrorism under national law is punishable under offences against public order. This includes all those who go armed in public without lawful occasion, or one who is in control of any firearm, weapon, or ammunition, explosive material without lawful occasion is guilty of an offence. Terrorism is also punishable under the assembling for the purpose of unshipping, carrying or concealing goods subject to customs duty and liable to forfeiture under any law regarding customs. Offences against the person includes

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[54] Opened for signature Jan 27 1977, 1978 Gr. Brit. T.S. No. 93 (md. 7390, Europe T.S. No. 90)

[55] Dublin Agreement Dec. 4, 1979

malicious aforethought to cause death, murder, conspiracy to murder and offences against life and health. Assaults and intimidation are also illegal. Offences against liberty include kidnaping, abduction and wrongful confinement. Terrorist acts are also punishable under malicious injuries to property and the destruction of properties by explosives.

The UN Charter prohibits members to take forcible action against the territorial integrity and political independence of other states.[56] As customary law dictates this has generally applied to non-member states of the UN. However if the terrorist act in question lacked state involvement that action would not appear self evidently to have contravened the UN Charter. Hence the only prohibition against terrorist acts contained within Art 2(4) would seem to apply to acts performed with manifest state involvement[57]. Therefore the Security Council in March 1992 clearly construed that Art 2(4) of the United Nations prohibition to encompass state sponsorship, support and toleration of terrorism. With the end of the Cold War, there is hope of a comprehensive treaty on terrorism because states in the UN can now effectively support treaties instead of voting against treaties for the sake of opposition due to the West-East ideological divide.

RESPONDING TO TERRORISM

In the face of a terrorist act it is impossible to protect people against random and indiscriminate attack. Thus resistance has to be supplemented by some combination of repression and retaliation that in itself can be dangerous as repression and retaliation often

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[56] UN Charter Art 2(4)

[57] Anthony Clark Arend and Robert J. Beck, op cit, p. 147.

take terroristic forms.[58] Retaliation as responses to terrorism should be constrained by the

same moral principles that rule out terrorism. Therefore the response must be aimed at

the terrorists themselves only. The conventional response is to contain the immediate

threat and to deter future acts by punishing those who have committed terrorist acts. This

response usually ignores terrorism in the absence of an immediate threat. The response is

short and medium term as it tries to control the problem and also deter future acts.

Terrorism comes into focus only when it emerges as a policy crisis requiring an

immediate response.[59] Governments try to control the threat before them by instituting

crisis management procedures. Political terrorism poses a challenge to the legitimacy of

authorities and credibility of their claims to protect citizens.

State practice has shown that states respond forcibly to an act of terrorism through

military strikes against terrorist bases and against states involved in terrorism. The US air

raid on Libya in 1986 is one such example. The half-hour bomb raid struck terrorist-

linked targets in Tripoli and Benghazi.[60] There has been the assassination of terrorists

especially during rescue bids and the abduction of suspected or would be terrorists. In

1985 the US attempted to abduct the *Achillo Lauro* hijackers. In the 1976 Entebbe Raid

incident, all the hostage takers were killed by the Israeli commandos, who stormed the

airport to secure their release.

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[58] Michael Walzar, 'Terrorism; A Critique of Excuses,' Ibid. p. 243.

[59] Helen Purkitt, 'Dealing With terrorism; Detterence and The Search for an Alternative Model,' Ibid. p.

163

[60] Gordon, 'Pentagon Details Two Pronged Attack' The New York Times, April 15th 1986

When abductions of terrorists have occurred the action has been futile, as the abducting states have failed to get jurisdiction over the terrorists. Abductions go against the regulations and procedures dictated by extradition treaties. The states that carry out abductions do so in the name of self-defence. Such action was clearly seen when Israel intercepted a Middle East Airlines flight in August of 1973, looking for Palestinian terrorists. Such abductions are considered terrorist in nature and have received condemnation for their forcible action.

Assassinations have been problematic because everyone is to be considered innocent until proven guilty. Assassination takes away the right to life and the right to a fair trial. Khalil El Wazir alias Abu Jihad had been Al Fatah's military chief and served as PLO co-ordinator with the leaders of the *intifada* and was responsible for a series of lethal terrorist operations against Israel. When Khalil El Wazir was assassinated in 1988 by Israel the Security Council formally condemned Israel in Resolution 611 of April 25 1988. [61]

Military strikes against terrorist bases are done to incapacitate them. Such strikes have been problematic as they are considered armed aggression and they also may involve the killing of innocent bystanders. The regulation on use of force by international law is *'jus ad bellum.'* Article 2(4) of the UN Charter contains a general and central obligation of the prohibition of unilateral use force by states. There is no consensus on the precise scope of the ban on the use of force or the scope of the exception of article 2(4) as

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[61] S.C. Res. 611, UN SCOR, Res. and Dec 43:15, UN DOC S/ INF / 44 1988, also see PLO Accuses Israel in Killing of Senior Arafat Deputy in Tunis, The New York Times, April 17th 1988 p. 16

specified in Article 51 on self-defence. There are two schools of thought on the issue, the permissive and the restrictive one. The permissive school says that the Charter did not change the law on use of force and pre Charter law is still valid. The Restrictive school maintains the UN Charter altered radically the law on the use of force, which is banned except in self-defense. The permissive school sees the total ban on the use of force as a denial on the right of states to protect them, while the restrictive school argues that primary aim of international law is to maintain peace and security. The permissive school argues that Article 2(4) prohibits force against territorial, political independence or force contrary to the practise of international laws on force. Force outside these is permissible.[62] The US carried out a military strike in 1986 against Libya. The aerial bombings allegedly lacked discrimination and were condemned while some like Boyle[63] have argued that states may respond only to those attacks that occur within their own territory. While others like Sofaer[64] have argued that one attack on a states national abroad may justify the states forcible response. Under Art 51 of the UN Charter self defence could only be exercised in the event of an actual or perhaps at least imminent 'armed attack' against the state itself.[65] Other scholars have argued that the terrorism

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[62] Bowett Derek, Self-defense in International Law, (Manchester, Manchester University Press, 1958) pp 200-207 and Brownlie I, International Law and the Use of Force by States, (New York, Oxford University Press, 1963) pp 330-337

[63] Boyle, 'Remarks' *Proceedings American Society of International Law*, (1987) p.294

[64] Abraham Sofia, "Terrorism, the law and the National Defence," *Military Law Review*, Vol. 95 (1989)

[65] Boyle, ibid. p. 294.

phenomenon does not fit within the normal concepts of self-defence under Art 51.[66]

Military responses are considered lawful when on a scale equivalent to what would be an armed attack if conducted by government forces. In *The Caroline*, in 1837 a group of insurgents in Canada who fought against the Canadian, that is British government, chartered the Caroline, a vessel then in the port of Schlosser in the US. *The Caroline* was to carry supplies to the insurgents. Upon receiving the news of the danger, a British force was sent from Canada to US territory and it seized the arms of *the Caroline* and destroyed it. The US complained of violation of her territorial supremacy. The US secretary of state required the British government to show their existed in *the Caroline* incident 'a necessity of self defense, instant and overwhelming force leaving no choice of means and no moment for deliberation.' The principle of proportionality was also emphasised. This started the process of narrowing self-preservation to self-defense. This case laid out the parameters for self-defense in customary international law.[67]

Responses must be made close in time to the actual terrorist attack.[68] Military force must be used as a last resort after the exhaustion of peaceful remedies. Responses are also to be proportional that is either tit for tat or accumulative where a series of small actions may warrant one high counteraction or the use of deterrent proportionality.

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[66] John Murphy, State Support of International Terrorism. (Toronto, Little Brown, 1985) pp. 11-14.

[67] Moore J, *Digest of International Law*, Vol. 2, 1906, p. 409 (Washington, G.P.O)

[68] Schachter, "The lawful Resort to Unilateral use of Force", *Yale Journal International law*, Vol. 10 (1985) p.292

Deterrent proportionality does not however provide a ready reference point for the calculation of a proportional response.[69]

The proper targets of a terrorist counterattack should be the terrorists themselves and so the use of discrimination is advocated. Counter terrorist attacks must not target innocent people, or those the terrorists claim to be representing, as this would be indiscriminate and therefore also terrorist in nature. The targets chosen must be verifiably connected with illegal activity. Chosen targets must thus be virtually free of civilian presence and the response must be proportional to the alleged injury. After a terrorist attack short-term security measures making it more difficult to access targets helps. A number of multilateral agreements contain binding provisions that prohibit specific actions typically carried out by terrorists. Most conventions have come about due to a reaction to a specific event, for example, aircraft hijacking, aircraft sabotage and attacks on internationally protected persons. They advocate for the prosecution or extradition of an alleged offender. They call for information sharing. This includes the beefing up of security measures. Security efforts are usually beefed up. There is an increase in tactical and intelligence capabilities, and increased legal sanctions. The authorities are also faced with the contingent threat of future actions. Authorities must approach the terrorist threat through politics, legal regimes and security measures. Treaties go along way in ensuring long term measures to fight terrorism.

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[69] Roberts, "Self Help in Combating State Sponsored Terrorism: Self-defense and Peacetime Reprisals", *Case Western Reserve Journal International Law*, Vol. 12, 1986, pp 203-267.

EXTRADITION

Extradition is the delivery of a person suspected or convicted of a crime, by a state where he/she has taken refuge to the state that asserts jurisdiction over him/her. Its purpose is to prevent criminals who flee a country from escaping punishment. Extradition first became common in the 19th Century. International law does not recognise extradition as an obligation in the absence of a treaty, although a state may refuse asylum to a fugitive as a matter of courtesy and honour an extradition request. In classical international law there was no argument in extradition but there were arguments on the rationale and morality. Grotius argued that the state of refuge should punish the criminal or send him to a state asking for him. Vatel argued that extradition is a clear duty backed by international law. Pufendorf on the other hand argued that extradition is an imperfect obligation and there should be a special agreement to make it possible. Contemporary practise shows that there should be an agreement. Virtually all extraditions take place under the authority of bilateral treaties. Treaties may differ and some are formulated so that a nation is not obligated to extradite. This can be done by the enumerative method where offences are named and defined therefore it is limiting because extradition is confined to those offences named and there must be double criminality. Extradition can only occur for an offence specified in the treaty. Fugitives for political crimes are not usually surrendered. Terrorism has been excluded from political crimes in connection

with norms of extradition.[70] Extradition laws also preclude the piling on of additional charges that were not specified earlier in the extradition warrant. This Doctrine of Speciality ensures that the person extradited can only be persecuted for the offence he was extradited for and it is based on good faith. It protects the requested states from abuse of legal process and the individual from unsuspected offences.

International criminal law deals with piracy, war crimes, and crimes against peace and security. It also deals with crimes against humanity (genocide), counterfeiting, illicit traffic in drugs and engaging in slave trade. Engaging in such acts is attributed to the individual and not the state. International criminal law suggests that there are specific legal prohibitions applying directly to individuals and violation to which they are held directly responsible.

In the absence of an extradition treaty an unofficial extradition (rendition) depends on the relations of the state involved and the general attitude towards extradition held by the state hosting the fugitive. The offenee must be listed in the agreement, the fugitive tried for the extradited offence and no other (the principal of speciality) and the offence must be a crime in both states (the principal of double criminality). Therefore problems arise when a requesting state punishes terrorism by the death penalty and the requested state does not punish in this way. Terrorism may not be considered a crime by states that sponsor it. Relevant limitations that exist include the prohibition of extradition where the death penalty could be imposed by the requesting state, the prohibition of extradition of

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[70] 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, Feb 2 1971 Art 2, T.I.A.S No 8413

nationals and the political offence exception. International crimes should not benefit from being characterised as political offences but should be the object of mandatory extradition for prosecution in the requesting state in the absence of prosecution in the requested state.[71]

Extradition has historically been an important tool to penetrate the protective cloak that state sovereignty offers an individual against the police power of the fugitives own state as the latter's authority does not extend into the jurisdiction of another state. To attempt to inject that authority into another state is interference in its domestic affairs and a violation of the state's authority. Not all states have extradition treaties with all other states and therefore states are considered safe havens or sanctuaries for fugitives from certain states. Such states include Sudan and Afghanistan. Efforts to codify this area have been partially successful. The 1907 Central American Republics Convention, The Convention on Extradition (1933) drafted by the Conference of American States, The European Convention on Extradition (1957) and the Inter –American Convention on Extradition (1981). In the absence of a universal agreement it cannot be said that there is a right to extradition, an obligation to extradite being self- imposed through treaties or as a matter of comity between states. The cumbersome practise of extradition has paradoxically become the means by which prosecution is thwarted. States must have a treaty and observe the body of rules relating to extradition imposed by international law and municipal law that govern conditions for extradition and its consequences. The

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UN DOC A/ C.6 /418 Note 23

process of extradition is lengthy as it involves the communication between states through diplomatic missions, the process of apprehending the alleged offender, returning the offender and the possibility of denial of extradition through the statute of limitation. States have begun relying on other means including the misuse of immigration laws and resort to unlawful seizure of persons. Even when an extradition treaty exists the process is lengthy and states often resort to the use of immigration laws to expel the person or they seize the person unlawfully. For example Ocalan has been the leader of the Kurdistan Workers Party (PKK) in turkey and when faced with a number of charges he escaped top Kenya. In 1999 he was abducted by Turkish government forces from Nairobi and expelled from Kenya to face trial in Turkey. These methods are incompatible with the concept of fairness and the second practise violates International due process of law and should not be encouraged.

CONCLUSION

Anti-terrorism instruments rely solely on the municipal law of each state for the prevention and punishment of the target crimes. Common provisions to prosecute or extradite make the listed offences punishable under domestic law. States are urged under treaties to take steps to prevent the stated offences and render assistance to each other in connection to criminal proceedings.

Shortcomings in treaties are as a result of political compromises, therefore many provisions are obscure and ambiguous. This is seen in the question of jurisdiction and the

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[71] US v. Toscanino, 500 F.2d 267 (2d Cir 1974), US v. Lira 515 F.2d 68 (2d Cir 1975), In re Extradition of David, 395 F. Supp 803 (E.D 11 1975)

definition of terrorism. There are also differing interpretations of terrorism and the tendency of states to search for loopholes in the law. There is a lack of enforcement machinery to secure compliance by state parties that fail to live up to obligations. There has been a time lag between treaty signing and the necessary legal follow up to treaty ratification. Some sign with no serious intention of ratifying the treaty.[72] Treaty signing without ratification is a way of opting out of an international law making venture via the treaty route. The greater the number of states that take part in treaty making, the greater the compromises, and the greater the convention will be vague and general.[73]

Clearly there are various problems faced in responding to a terrorist attack. To examine more closely the terrorism challenge, the next chapter will examine the case studies of the Nairobi and Dar es Salaam bombings of August 7th 1998.

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[72] O. Schachter, M Nawaz, J. Fried, Towards Wider Acceptance of UN Treaties (UNITAR 1971) p.24

[73] An example is the UN General Assembly Resolution on Friendly Relations and Co-operation Among States in Accordance with the UN Charter.

CHAPTER FOUR

THE CASE STUDIES OF THE NAIROBI AND DAR ES SALAAM

BOMBINGS OF AUGUST 7TH 1998

INTRODUCTION

The bombings of the US embassies in Kenya and Tanzania in August of 1998 were powerful reminders that the threat of international terrorism still confronts the world. There were two hundred and seventy three international terrorist attacks during 1998, a drop from the three hundred and four attacks recorded in 1997. However the total number of persons killed or wounded in terrorist attacks was the highest on record: seven hundred and forty one persons died and five thousand nine hundred and fifty two people were injured [1]

Most of the casualties in 1998 resulted from the devastating bombings of the Nairobi and Dar es Salaam US embassies. These attacks demonstrated more than ever that terrorism is a global phenomenon. Those suspected of carrying out the attacks were from the Middle East. The target was the US and its properties (the embassies in Kenya and Tanzania) but majority of those affected were the citizens of Kenya and Tanzania.

This chapter examines the legal problems that arose from the terrorist attacks of the US embassies in Nairobi and Dar es Salaam. It also examines the efficacy of the counter terrorism responses that were undertaken by the governments of Kenya, Tanzania and the US.

TERRORISM IN KENYA: A HISTORICAL OVERLOOK

The bombing of the US embassy in Nairobi in 1998 took the country by surprise, as the attack was not expected at all. However this attack triggered off memories of similar terrorists attacks that had been undertaken in the country.

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[1] Patterns of Global Terrorism 1998, United States, Department of State Publication No. 10610, p. 1

At the time of the outbreak of the Algerian war in 1954,the only independent Africa states were Egypt, Ethiopia, Liberia and South Africa .By the year 1962 virtually all the British, French and Belgian colonies had either obtained independence or would do so in the next few years. After 1965 all of Asia was independence with the exception of the Portuguese governed territories and what was then known as the Sahara. While independence was attained peacefully in some countries in other cases challenges to new government took the form of armed conflicts, driving people from their homes and often across borders. There was a great domination from one ethnic group over another and upheavals that followed coups and attempted coups in the new African states [2]

Kenya's transition from colonial rule to independence was not accomplished easily or peacefully. Between 1945 and 1963 many political groups were formed. Initially African politics remained in the hands of moderate leaders in the Kikuyu Central association (KCA) and Kenya African Union (KAU). Africans had been subjected to racial discrimination and restricted in their political rights, they were also alienated from their land and had taxes and settler policies imposed on them. African discontent emerged and spread through political parties, labour unions and informal protest organisations. In 1946 a group of dissatisfied soldiers formed the 'forty groups'. They organized opposition to Europeans and their policies were extreme. They were joined by freedom fighters and they made their base in Mount Kenya and the Aberdare forests.

The British colonialists called it 'Mau Mau' and considered it a dangerous terrorist movement. The freedom fighters wanted to return to the Africans land owned by the settler Europeans and to gain independence in the shortest time available. Some of their violent acts included the raiding of shops to collect guns, the killing of African traitors and European settlers.[3] They also fought the British troops who flew into the country when a 'state of emergency' was

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[2] The State of the World Refugees 50 Years of Humanitarian Action, (UNHCR, Oxford University Press, 2000) p. 44

[3] Kaggia Bildad, Roots of Freedom 1921-1963 (Nairobi, East African Publishing House, 1975) p. 15

93

declared in 1952.[4] *Mau Mau* went on the offensive in reserve areas and Nairobi, they targeted chiefs and their supporters, African police and those who refused to take oaths. They operated at night and assaulted or killed white individual loyalists, set fire to homes and schools and attacked police patrols. The British counter intelligence strategy included better intelligence, aggressive patrolling, air reconnaissance and bombing, creating fortified emergency villages, detention camps and deportation.[5] To anathematise *Mau Mau*, European words like terrorist, gangster and thugs conveyed the impression that the *Mau Mau* was a criminal organisation beyond the pale of normal politics.[6] By mid 1955 the *Mau Mau* declined due to counter insurgency and their own internal problems. The British militarily defeated *Mau Mau* in four years 1952-1956 but found the political challenge it posed a more thorny issue. Though the colonial government came to accept the legitimacy of the constitutional African nationalism in Kenya, they completed rejected *Mau Mau* as a regression to the past, condemned the guerrillas as terrorists and justified counter insurgency, detention and rehabilitation as necessary antidotes to this political and spiritual sickness.[7]

Through the efforts of politicians and freedom fighters Kenya gained independence in 1963. According to a typology created by Sederberg the *Mau Mau* would fall under dissident or anti regime terrorism of the revolutionary form that seeks to overthrow the existing regime [8]. However, according to Wilkinson who derives his typologies from the objectives and aims of the terrorists' the *Mau Mau* world fall under war terrorism as it was part of a military strategy to gain independence or epiphenomenalism terrorism as the terrorism employed by the Mau Mau is a by product of the insurrection during the fight for independence.[9].

East Africa had its first taste of Middle East terror in July 1976 when a group of Arab terrorists hijacked an Air France plane from Athens Airport in Greece via Libya to Kampala,

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[4] Gideon S. Were and Derek.A.Wilson, East Africa Through A Thousand Years (Ibadan; Nigeria Publishers Limited, 1986) pp 188-189.
[5] Clayton Anthony, Counterinsurgency in Kenya (Manhattan, Sunflower university Press, 1984) pp. 23-27
[6] Official Situational Reports issued during the Emergency, See PRO CO 822/455
[7] Marshall Clough, Mau Mau Memoirs: History, Memory and Politics (London, Lynne Rienner Publishers, 1998) p. 25
[8] (See chapter 2 on Typologies)
[9] See chapter 2 on Typologies

Uganda, during General Idi Amin's Dada's rule. The Hijackers demanded the release of fifty-three Palestinian 'freedom fighters' held in prisons in West Germany, France, Switzerland and Kenya Reports said that the Kenyan government had arrested five Palestinian terrorists early in 1976 and dispatched them to Israel. The terrorists demanded the fifty-three to be brought to Entebbe airport.[10] Kenya rejected the claims of the hijackers. During the hijack incident the then President of Uganda Idi Amin was accused of collaborating and supporting the terrorists. After futile attempts to negotiate with the terrorists the Israeli government sent its commandos to Uganda and they staged a daring rescue of the Israeli hostages. About one hundred Ugandan soldiers were killed and eleven Mig jets destroyed in the raid. All the hijackers were killed.[11].

The Israeli military raid on Uganda's Entebbe airport on July 3 1976 had one purpose: to rescue the Israeli passengers who were being held hostage. The Israeli action is always cited as support for the right of a state to take military action to rescue its nationals facing mortal danger within the borders of another state but to do so solely for humanitarian purpose.[12]

The Israel government also said it would consider introducing the death penalty for convicted terrorists as a way of discouraging future guerrillas raids and hijacks aimed at securing terrorists release[13]. Idi Amin on the other hand claimed that his territorial sovereignty had been violated and accused Kenya of siding with Israel. There were reports that Kenyans were being massacred in Uganda after the Entebbe Raid. Reports stated that there had been purging within the Uganda army and about two hundred and forty-five Kenyans had been victimized.[14] Kenya responded to this by placing an embargo on goods to Uganda for a while until the problem was solved.

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[10] The Daily Nation 29th June 1976 'Entebbe hijackers demand release of 53 freedom fighters and say 'free five in Kenya', p1
[11] The Daily Nation, Monday July 5th 1976 'Commandos kill 100 Ugandans', Pg 1
[12] Scheffe David, 'The Great Debate of the 1980's in Right v. Might International Law and the Use of Force (New York, Council on Foreign Relations Press, 1989) pp 1-19: at p 4
[13] The Daily Nation. 7th July 1976 p. 1
[14] Daily Nation. July 10th 1976 p. 1

A bomb explosion rocked Kenya on March 1st 1975 just before the murder of former Nyandarua Member of Parliament J.M. Kariuki. The M.P was known to be outspoken and vibrant. He had a lot of support from the *wananchi*. His murder added to the growing number of unsolved political murders that have dogged Kenya. The bomb exploded in a bus belonging to the now defunct Overseas Trading Company (OTC) at the company's bus station in Nairobi killing twenty-seven bus passengers. It was not known who committed the terrorist act. Immediately after the bomb attack and the murder of J.M there were several days of riots and unrest within the Nairobi city.

On December 31st 1980, a bomb exploded at the Norfolk hotel in Nairobi killing twenty people and injuring over a hundred. The bomb was planted by a Moroccan, Qaddura Mohamed Abdul el Hamud a member of the Popular Front for the liberation of the Palestinian (PFLP) guerrilla movement. The bomb demolished one wing of the hotel on Harry Thuku road, and occurred at about 8.45 pm as guests were gathered at the new-year eve buffet dinner in the Eland Dining Room. The then police commissioner Ben Gethi said most of the dead were foreigners. He argued that the explosion was not a bomb dropped from an airplane. Immediately after the bomb explosion citizens came to the rescue of those inside the hotel. Rescue fire fighters who arrived at the scene some time after the explosion were frustrated by low water pressure that hampered efforts to bring the fire under control.[15] Investigations were hampered as the hotel mainly catered for white settlers and foreigners and so the police were not able to establish who the targets were. The Red Brigades and German terrorists were first suspected due to the presence of Italian and German tourists at the hotel. Some claimed that the bomb was aimed at the Jewish block family who own the hotel while others claim it was in retaliation because Kenya had allowed the Israeli's to refuel in her capital, Nairobi after the 1976 Entebbe Raid.[16]. Police then started looking for the occupant of Room 7, which was directly above the dining room and is said to be the place where the bomb

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[15] The Daily Nation. January 2nd 1981, 'Air strike theory Denied, p. 1
[16] The Daily Nation, January 5th 1981 p. 1

detonated. It was discovered that the occupant, one Qaddura Mohammed Abdul el Hamid had left the hotel and flew to Jeddah only hours before the blast had occurred. He was said to have flown in on a Maltese passport. The incidence was reported in the media for about a month and then the story died down. The terrorist was never brought to book and only added to the list of terrorists who commit crimes with impunity because the international community has not developed effective mechanism to combat international terrorism.

In 1992 during the agitation for the repeal of section 2A of the Kenya Constitution that made the country a de jure one party state several acts of terrorism were committed. During the one party state period dissenting views were not tolerated and it was felt by a section of the population that the president had clung to power for too long, just like most of the other African leaders were doing. There was growing support for freedom of expression both from the citizens and leaders from foreign states, especially donor states. On February 6th 1992 a homemade bomb damaged the toilets of Jogoo House A. This building houses the Ministry of Education and KANU (the ruling party) key offices. Responsibility was claimed by a group called God's Oppressed Army, who made demands that included the immediate resignation of the president and the release of all political prisoners.[17] On March 23rd of the same year, the same group detonated a bomb in Nairobi's City Hall toilets. The City Hall houses the offices of the Nairobi Mayor and those of the city councillors. It also houses City Hall's key offices that deal with Water and Land Rates.[18]. On March 25th 1992, there were two bomb scares at the Attorney Generals office and the Income Tax Department.[19]. Another bomb exploded in Nairobi's Eureka bar on Tom Mboya street killing one man.[20]

These bombs added tension to the already charged political climate. The homemade devices were of small magnitude and were made from fertilizer-based explosives like ammonium Nitrate fuel oil. They were a means of expression by a section of the citizens that showed their

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[17] The Daily Nation. 7th February 1992 p I
[18] The Daily Nation. 24th March 1992, p I
[19] The Daily Nation, March 26th 1992, p I
[20] The Daily Nation. Nairobi, 3rd June 1992, p I

dissatisfaction with the political system at the time. This group of terrorist would fall under Wilkinson's political terrorists and Sederberg's dissident terrorists. [21]. These bomb attacks ended with the repeal of section 2A.

TERRORISM IN TANZANIA: A HISTORICAL OVERLOOK

Tanzania hosted a number of liberation movements in the struggle for independence in South Africa. These movements used Tanzania territory for training and regrouping. Tanzania also acted as a safe haven for these movements that were being sought by the South African white regime government. It also hosted one of the most active Palestinian Liberation Organization (PLO) offices in East Africa. These liberation movements were known to use terrorist techniques in their fight for independence. The PLO on the other hand was considered a terrorist organization until it was recognized as a legitimate representative of the Palestinian peoples.

The US embassy in Tanzania was originally built and used as an embassy by the Israelis. The then President of Tanzania Julius Nyerere severed relations with Israel in sympathy with the Arabs following the 1967 six-day Yum Kippur War with Israel that saw Arab forces humiliated at Golan Heights.

The most notable terrorist attack in Tanzania was the killing of Mozambican freedom fighter Eduardo Mondlane in the 1960s. He was the leader of the Front for the Liberation of Mozambique (FRELIMO). He was killed when a parcel bomb delivered to him blew up in his face killing him instantly. No one claimed responsibility for the act. In 1980 an attempt was made to blow up the Selander Bridge that links the city to the posh northern residential suburbs of Oyster Bay and Msasana where the former President Julius Nyerere used to live. It was not known who committed the act.

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[21] (See chapter 2)

THE INTERNATIONALIZATION OF THE TERRORIST ACTS IN NAIROBI AND DAR ES SALAAM, AUGUST 1998.

When a domestic concern acquires international characteristics, internationalisation has occurred.[22] They include the universalization of human rights, the media, ethnicity and ethnic relations, the provision of humanitarian aid and the entry of third parties into the conflicts as facilitators or mediators. These broaden the conflict and in our case, the terrorist attack, making it complex by bringing in external actors and perspectives.

Within the domain of human rights, individuals are addressed directly by international law. The main object of human right and humanitarian law has been the protection of the individuals' rights, freedom and dignity. Human rights law sets limits to state sovereignty with respect to all persons subject to its authority while international humanitarian law is the law of armed conflicts that influence the relationship of belligerents so as to guarantee human rights.[23] Individuals are now regarded as subjects of law with human rights that need to be protected even though the state remains the guardian of human rights. The international community has pronounced the criminality of genocide, war crimes, crimes against humanity and the Additional Protocol 2 of 8th June 1977 common to the General Conventions of 12th August 1949 also names terrorism as a criminal act. Lauterpatch also notes that recognition of human rights has taken place indirectly through the recognition of crimes against humanity.[24] Human rights are universal and therefore when a person commits a terrorist act, like the Nairobi and Dar es Salaam US embassy bombings, there is gross violation of human rights and this becomes a concern of everyone.

[22] Koehan and J. Nye Leds, Transitional Relations and World Politics. (Cambridge, M. A. Harvard University Press (1981) p. 6

[23] Gasser H. P. International Law: A Concise Introduction (Vienna, Paul Haupt, 1993) p. 78
[24] Lauterpatch E. International Law, Vol 2 (Cambridge, Cambridge University Press, 1975) p. 516

The media played a big role in internationalising the terrorist attacks in East Africa by broadcasting and printing reports on the bombings all over the world. Therefore the international community was reminded of the threat that terrorism poses.

Humanitarian aid flowed into both countries after the terrorist attacks. Israeli, British, US and South African teams flew into Kenya and Tanzania to help conduct investigations and help in the rescue missions. They also brought with them medical supplies and specialized equipment.

The entry of third parties made the terrorist attacks more complex. This is because those suspected to have committed the acts fled to different states. The US asked for the extradition of all suspects to the US to face trial. This process of extradition requires extradition treaties, which if not in existence require informal processes of surrendering the suspects to face trial. Therefore States like Britain, South Africa and Germany entered the conflict as third parties because those suspected of bombing the embassies in Kenya and Tanzania had fled into their states thus internationalising the problem of terrorism.

THE KENYAN EXPERIENCE

At 10.30 am on the morning of 7th August 1998 a yellow pickup made its way along the Haile Selassie Avenue and made a sharp turn in to the US embassy premises. The driver tried to gain access in to the US embassy underground parking but was denied entry. He then drove to the back of the embassy and parked in an alley between the embassy and Ufundi Cooperative House.
The driver backed his pickup with its rear facing the US embassy. Reports say that two Arabs jumped out of the track and engaged embassy guards in an argument and then there was a brief exchange of fire[25]

A few minutes later there was a low intensity explosion and then a major bomb blast. Ufundi Cooperative House took the brunt of the blast and caved in trapping people inside while killing others instantly. The major blast shook the whole city and all buildings within a 150m radius

had their windows shattered. Flying shrapnel of boulders and glass injured most of the people around the scene. Citizens were the first to respond and they used their bare hands to save those trapped inside buildings. The police arrived an hour later, armed with guns and batons and they drove away those trying to help. Many people were injured because the US embassy in Nairobi was built in a down town area of the city centre. The bomb attack killed two hundred and ninety one people and injured over five thousand innocent people [26].

THE TANZANIAN EXPERIENCE

In Tanzania, a bomb explosion occurred at about 10.40 a.m. A blue water tank reportedly drew up to the US embassy gates just before the explosion that rocked the four-storey building occurred. The Tanzanian blast occurred almost simultaneously with the Nairobi one. The blast ripped through the northern wing of the embassy at the junction of Ali Hassan Mwinyi Road and Laban road in the exclusive Oyster Bay suburb. Because it is a suburb area the extent of those injured was not as devastating as in Nairobi, where the embassy area was teeming with people. The bomb attack killed 10 Tanzanians and injured seventy-seven people [27].

The Tanzanian bomb caused minor damage to German diplomatic buildings nearby. The French embassy was also slightly damaged. The Tanzanian Prime Minister, Fredrick Samuye said the perpetrators were foreign hired mercenaries and immediately ordered tight security at the country's border posts and major international airports of Dar es Salaam, Mwanza and Kilimanjaro, with passengers being thoroughly scrutinized. [28]

On the same day as the bomb attack, Tanzanian police reportedly arrested fourteen people of different nationalities on suspicion of their involvement in the Dar es Salaam attack. Some suspects were arrested as they prepared to cross into Kenya at Namanga having left Dar es Salaam in a

[25] The Daily Nation. August 8th 1998, p 1 – 4.
[26] Patterns of Global Terrorism, Op Cit, p. 6
[27] Patterns of Global Terrorism 1998, Ibid p. 7
[28] In an interview with the Ugandan paper, The Monitor, 8th August 1998, p.2

hurry. They had spent the whole day at a mosque in Northern Tanzania, Arusha but Tanzanian security men had closely monitored their movements [29]

THE SIGNIFICANCE AND VALUE OF THE VIENNA CONVENTIONS

The Vienna Convention on Diplomatic Relations signed on 18th April 1961 came into force in April 1964, while the Vienna Convention on Consular Relations was signed on 24th April 1963 and came into force on 19th March 1967.

Together they constitute the starting point for any discussion of contemporary practice on diplomatic and consular privileges and immunities. Two important principles are stated in the preambles of both conventions. One is that of an agreement on privileges and immunities that contributes to the development of friendly relations irrespective of differing constitutional and social systems. The other is that privileges and immunities are not intended to benefit individuals but to ensure the efficient performance of functions.

The two Vienna Conventions set forth the system of immunities and privileges for diplomats and consuls principally in terms of functions it is intended to cover, the premises, the persons, customs duties, records and communications and certain other provisions. In matters not regulated by the Vienna Conventions, the rules of customary international law continue to apply.

The 1961 convention defines the premises as "the buildings or part of buildings and the land ancillary thereto irrespective of ownership, used for the purposes of the mission including the residence of the mission."[30] These premises 'shall be inviolable'. Agents of the receiving state may not enter them, except with consent from the head of mission.[31] Further the premises shall be immune from search, requisition, attachment or execution.

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[29] The Weekly Review (Nairobi) August 14th 1998, Special Issue N⁰ 1205, p.9

[30] Article 1
[31] Article 22

The highest degree of privilege and immunity is enjoyed by diplomatic agents defined in Article 1 as heads of mission and diplomatic staff. Their persons shall be inviolable[32] and they are not liable to any form of arrest or detention. The receiving state must treat them 'with due respect' and take all appropriate steps to prevent any attack on their person(s), freedom and dignity.

THE NAIROBI AND DAR ES SALAAM US EMBASSIES

The Nairobi and Dar es Salaam US embassies were the least secure of the two hundred and sixty embassies in the world. None met the US security standards set after a bomb ripped through the US embassy in Beirut in 1983, killing two hundred and forty soldiers and diplomats.

Almost all governments are thinking and improving security arrangements for their diplomatic missions. After the Beirut bombing of the US embassy, the then secretary of state Shultz asked congress for four point four billion dollars to finance anti-terrorist measures at US foreign service posts with 2 billion eventually being approved.[33]

Some of the US security standards set after 1983 include the building of the embassies in relatively secure areas away from city centres. They also included the incorporation of fortified perimeter walls around the embassies and the leaving of considerable space of about two hundred meters between the perimeter walls and the actual embassy building. Also suggested was the incorporation of greater security checks like a heavy steel protective door, video cameras for constant surveillance, the presence of marine guards and paramilitary escorts. The training of diplomats included a much greater emphasis on security against terrorism. Such training teaches diplomats greater awareness of possible danger in the office, at home, on the way to work and during holidays and leisure hours. They are trained that the threat extends to all diplomatic staff and not just the head of mission. In certain hazardous areas such as Beirut and Kabul, American Foreign

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[32] Article 29
[33] The Daily Nation, Nairobi 9th August 1998 p. 8

Service officers have received a twenty-five percent or more salary bonus in recognition of the problem of personal security.[34]

Towards the end of 1982, the Office of Foreign Missions (OFM) was established in the Department of State as directed by the Foreign Missions Act of 1982.[35] The purpose of the act was to meet a serious growing imbalance between the treatments accorded to official missions of the US and that treatment made available to foreign government missions in the US. The act would also provide mechanisms whereby the operations of the foreign missions and the benefits available to them from Federal, State and Local Authorities, public utilities and private persons may be cleared through the Government and adjusted according to US needs abroad as well as national security interests at home. Foreign governments would thus have an incentive to provide fair, equitable and non-discriminatory treatment to US missions and personnel in their territory.[36]

The security of diplomatic mission premises and personnel is another area in which OFM helps foreign missions in the U.S. The OFM's assistance is intended to stimulate efforts of host governments to provide effective security services to US posts and government personnel. It seeks through fast reasoned reaction to the legitimate security needs of the Washington diplomatic community to encourage similar responsiveness to US embassy requirements on the part of host government abroad. Therefore the hosting government has responsibility to provide security for different missions. In the case of the Nairobi and Dar es Salaam embassies, they clearly did not meet the US security standards, as they did not have outfitted features like tall re-enforced perimeter walls, fortified buildings or increased security and screening measures. The bulk of the money allocated for security upgrading of US embassies around the world after the Beirut bombing of 1983, mostly went to US embassies in the Middle East and Latin America[37]. The US embassy in

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[34] Harold Bean, 'Diplomats and Terrorist 11- Overseas Security: Our People are Key' (Washington, Institute for the Study of Diplomacy, 1987) pp. 25-28
[35] Title II of the Department of State Authorization Act Fiscal Years 1982 and 1983 (22 US Code 4301) et seq.
[36] U.S Senate, Committee on Foreign Relations, The Foreign missions Act of 1982, Report, 30 Nov 1981, 97th Cong, 1st Sess (Washington, Government Printing Office, 1981) pp 1-2

[37] The Daily Nation, Nairobi 9th Aug 1998

Kenya was located in downtown Nairobi while the rest of the embassies in other parts of the world were located in remote areas with large spaces between the perimeter walls and fortified buildings. The Dar es Salaam embassy was located in the suburb area of Oyster Bay but had less security features than in other US embassies in Africa, like Lagos and Harare.[38]

THE SUSPECTS IN THE US EMBASSY BOMBINGS IN NAIROBI AND DAR ES SALAAM.

Initial reports said that Arab looking men were seen driving the car bombs to the scene of the attacks and they were also seen filming the Nairobi US embassy four days prior to the attack. Because of the magnitude and effect of the attacks and the eyewitness reports, all fingers pointed towards the Middle East terrorist groups. The weapon choice of the terrorist usually acts as a thumbprint that security officials can use to identify the perpetrators of the crime. For example Lebanese terrorists prefer the use of the car bomb and the bombs that exploded at the US embassies in Nairobi and Dar es Salaam were powerful car bombs. The bombs were made of semitex H, a mouldable material easy to assemble in an enclosure. The end of the Cold War has made it easier to start terrorist movements without government help. This is because as a significant part of the Warsaw Pact's arsenal – tones of semitex, the Czech made explosive and tens of thousands of Kalashnikovs – found their way on to the international black market.[39]. Modern technology has therefore created new vulnerable key points in all societies. The terrorist capacity is the adoption of semitex as a plastic explosive of choice. It is odourless, hard to detect and it is more powerful than TNT and has enormous destructive powers as was seen in the Nairobi and Dar es Salaam bombings. It is also malleable and thus easy to disguise from security checks.[40].

[38] The East African, August 19th –16th 1998, p.3.
[39] The Economist London, August 15-21st 1998. "Target America "The New Terrorism: Coming Soon to a City Near You" p 17-19
[40] Paul Wilkinson, Technology and Terrorism (London, Frank Cass, 1993) pp 3-5

"The Islamic Army for the Liberation of the Holy places" claimed responsibility for the Nairobi and Dar es Salaam bombings. However US officials believe this to be a cover name for Osama Bin Laden's Al Qaida.

Al QAIDA

Al Qaida or the base was established by Bin Laden in 1990 to bring together Arabs who fought in Afghanistan against the Soviet invasion. It has helped, through finance, recruitment and training, Sunni Islamic extremists for the Afghan resistance. Its current goal is to establish the Muslim State throughout the world. It works with allied Islamic extremists groups to overthrow regimes deemed non-Islamic and remove westerners from Muslim countries. It issued a statement in February 1998 under 'The World Islamic Front for Jihad against Jews and Crusaders' saying all Muslims must kill US citizens and aliens everywhere.'[41] Its membership ranges from seven hundred to several thousand and includes Sunni Islamic extremists, Egyptian Islamic Jihad, Gamma at Al Islamic and Haricot Ul Mujihidin [42].

Bin Laden and his key lieutenants reside in Afghanistan and the group maintains terrorist training camps there. Bin Laden is said to have inherited around three hundred million dollars that he uses to finance the group. Al Qaida also maintains moneymaking businesses, collects donations and illicitly siphons funds from donations to Muslim charitable organisations.[43] Al Qaida also seems to get funding from the opium poppy crop grown in the rugged Afghan terrain.[44]This group is best explained using the enemy system theory.

THE ENEMY SYSTEM THEORY

The enemy system theory was developed to help explain intractable conflict and was used to explain the Cold War in the early 1990s before the collapse of the Soviet Union. It is a fusion of

[41] Patterns of Global Terrorism, Op Cit, 1998
[42] Ibid, p. 82
[43] Ibid, p. 83
[44] Usinfo.state.gov/topicalpol/terror/01100311

development psychology and international relations theory. The enemy systems theory was developed by psychiatrists and international relations practioners as a model to explain the complexities of group behaviour in regard to antagonistic group relationships. It emphasises the hypothesis that humans have a deep-rooted psychological need to dichotomise and to establish enemies and allies.[45] This happens on individual and group level. Identification with these ethnic or national groups largely determines how we relate to people within our in-groups and with those of out-groups. Therefore the members of Al Qaida see US citizens, mostly, and other Christians occupying holy places of Islam as members of the out-group with whom they are in competition and conflict. This kind of relationship is largely determined by the historic relations between these groups. Members of groups in conflict first identity themselves, then they suffer from negative identity, which occurs when individuals suffer from low self-esteem through narcissistic injuries. These individuals therefore turn to maladaptive groups such as criminal and terrorist organisations to try to regain lost self-esteem. This leads to ethno nationalism that is the identity of an individual to their ethnic or natural groups. In this case we see the divide between US-Western –Democratic and Middle East – Muslim. The central problem is to locate the source of the hatred and this usually lies in some historical animosity. It is said that the US has been occupying the areas in the Middle East, home of Islam's holiest shrines. For example the US led a coalition of forces to drive Iraq out of Kuwait and it has from then on maintained a military presence of servicemen in Saudi Arabia, home to Islam's holiest shrines.[46]

This animosity leads to ethnic or national victimization where the group feels their survival is at stake. This leads to the next concept of egoism of victimisation, which is the incapacity of an ethno-national group as a direct result of its own historical traumas, to empathise with the suffering of another group.[47] These groups do not take responsibility for victims created by their own actions.

[45] Vamik D Volkan, 'An Overview of Psychological Relationships' in Vamik Volkan et al (eds) The Psychodynamics of International Relationships: Volume 1: Concepts and Theories (Lexington, Lexington Books, 1990) p. 31
[46] The Economist, London, August is 21st 1998 'Target America' p. 23
[47] John Mark, 'The Psychodynamics among National Groups in Conflict' in Volkan et al The Psychodynamics of International Relationships, Ibid, p. 125.

As the group, Al Qaida, feels wronged it has no compunction about committing violence against other groups, like the Kenyan and Tanzanian citizens. These groups continue their unjustifiable activities in the name of group preservation as passivity ensures the continuation of victimization.[48].

The group also enters complicated mourning as they cannot get over their loses and are also not disposed towards compromise.[49] Terrorist groups then demonise and dehumanise out-groups. Demonisation is the mechanism for projecting negative images onto enemies. Dehumanisation means groups regard enemies as less than human, and also because of their acts become less human themselves.

This is an important theory as it offers a combination of developmental psychology within International Relations theory. It also transcends the realist paradigm by using communal or ethno-national groups as an important unit of analysis and therefore it is plural in nature.[50]

INTERNATIONAL RESPONSES TO THE NAIROBI AND DAR ES SALAAM BOMBINGS

THE MILITARY RESPONSE

In view of limitations that follow both from article 2(4) and Article 51 of the Charter, a state may act in individual self-defence only if an armed attack occurs against it. Under the charter there is no room for self-defence even if the most fundamental and vital rights of the state have been endangered or violated in a manner that does not constitute armed attack.[51] Any preventive, anticipatory or pre-emptive use of force prior to the occurrence of armed attack is not action regarded as self-defence is considered illegal.

To pre-empt additional attacks the US launched military strikes against terrorist targets in Afghanistan and Sudan on 20th August 1998. The military strikes targeted an alleged chemical weapons plant in Al Shifa Northwest of Khartoum and suspected terrorist training camps in

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[48] J. Montville, 'The Psychological Roots of Ethnic and Sectarian Terrorism' in Volka, 1990, p. 170
[49] Volcan, Op Cit, p. 43
[50] Also see chapter 1 on theoretical Framework
[51] Kelsen, "Collective Security and Collective Self Defence Under the Charter of the UN,' 42 A.J.I.L 783 1948 p. 784

Afghanistan in Khost. Britain, Germany and other US allies backed these strikes while Russia argued against the strikes saying it could create a dangerous precedent.

While Article 51 gives a right to self-defence, a right to use necessary and proportional force to defend against armed attack as laid out in *The Caroline*,[52] the right does not allow retaliation for past attacks. An attack on territory of a state perpetrating terrorism cannot be a proportional or necessary response to defend against an act of terrorism already committed. The US cannot retaliate proportionally to the bombings of its embassies in Nairobi and Dar as Salaam.

The U.S argued that the strikes had an important impact on terrorist planning activities, which it rendered ineffective. The facility in Sudan was targeted as it produces the precursors that result in the production of VX nerve agent and Bin Laden has been financing the plant. The US missiles aimed at targets in Afghanistan landed in Pakistan, killing six people. Pakistan lodged a complaint with the Security Council for the presumed violation of its airspace by US missiles. The basic rule for the status of airspace above land territory and the territorial sea is that it is an integral part of state territory and falls under the exclusive jurisdiction of the subjacent state. The regime of the airspace is determined by the laws and regulations of the subjacent state, which is free to permit or forbid the over flight of foreign aircraft [53].

In Afghanistan twenty-six people were killed and forty wounded. Sudan protested to the UN Security Council against the strike, claiming the Al Shifa plant was used to make medicines. It also claimed the US was trying to kill Osama Bin Laden who was present during the attacks. The then US security Advisor, Samuel Berger argued that the US was only trying to render the camps ineffective. [54] After the September 11th attacks in New York and Washington, the US response has been to build a diplomatic coalition against terrorism. Governments around the world condemned the attacks and agreed to co-operate in combating terrorism by destroying safe havens,

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[52] See Chapter 3
[53] Max Sorensen, Manual of Public International law (Tanzania, Tanzania Publishing House, 1968) p. 344
[54] http://wwwpbs.org/newshour/bb military/july-dec/berger.)

strengthening legal regimes and freezing terrorist assets. The UN General Assembly on October 1st 2001 began a weeklong debate on terrorism and counter terrorism measures. The US military response has been air reconnaissance by spy planes that have bombed military targets and training camps in Afghanistan, insertion by units of ground troops, surveillance teaming with local intelligence and extraction of Laden.[55]

LEGAL RESPONSES

Following the bombings of the US embassies in Nairobi and Dar as Salaam, the US obtained evidence implicating Osama Bin Laden and Al Qaida. One Mohammed Sadie Howaida was arrested in Palestine as he tried to make his way into Afghanistan because an anomaly was noticed in his passport and he was deported to Kenya. Under questioning he admitted being the mastermind of the attacks.[56]. Others arrested included Mamdouh Mahmud Salem, near Munich Germany. The US attorney's office in New York filed a sealed complaint against him in connection with the bombings. [57].

Extradition of the suspects was accomplished with the co-operation of Kenya and Tanzania in whose jurisdiction the terrorist suspects were located. Decision Directive FDD 77 set explicit requirements for initiating this method of returning terrorists to stand trial in the US. The four men who faced trial were Mohammed Rashid Al Owhali, Kaflan Khamis Mohammed (TZ) charged with murder, Mohammed Saddiq Odeh (from Jordan) and Wadih el Hage (US citizen) charged with conspiracy for their role in the bombings. The four went on trial and were convicted on 29th May 2001 to face life imprisonment. Khamis Mohammed also faces execution in connection with eleven deaths in Tanzania. Problems arose as he was extradited from South Africa to face trial in the US.

After the extradition, South Africa wanted to deny the extradition on the grounds that specific or formal conditions were not met. This denial related to the penalty and punishment ability of the relator who was to face the death penalty. South Africa does not punish by the death penalty.

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[55] Newsweek, October 8th 2001, pp 35-44.
[56] The Daily Nation Kenya, August 19th 1998 p. 1

Other suspects are still awaiting extradition in London. Bomb related indictments have been issued against fugitives including Osama Bin Laden. However these suspects are hiding in Afghanistan under the protection of the ruling Taleban militia, the Islamic Emirate. The Taleban refused to extradite him saying there is no strong evidence linking Osama to the bombing, therefore making Afghanistan safe haven for terrorists. This proves the difficulty of enforcing jurisdiction.

Kenya could have applied objective territorial principle over the terrorists because although the bombing was commenced in other states it was completed in Kenya and Tanzania and it produced grave harmful consequences to the social and economic order. Also according to the passive nationality principle, jurisdiction could be assumed by the states, in this case Kenya and Tanzania, in which the persons suffering injury are nationals. This is because each state has a right to protect her citizens. The US could claim jurisdiction of the terrorists because each state may exercise jurisdiction over crimes against its security and integrity or vital economic interests.

The terrorists could therefore have been tried in Kenya and Tanzania but where tried in the US because the US argued that they were the ultimate targets and they said a US trial would avoid retaliation by the terrorists. The terrorist act went against the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents and the International Convention for the Suppression of Terrorists Bombing, which allows for universal jurisdiction but has not come into force. Therefore the victim states and the citizens of Kenya and Tanzania are not addressed by these conventions.

American Lawyers John Burris & Company, Stern and Walker, Heron and Heron, signed on two thousand eight hundred claimants (victims) from Kenya and Tanzania and filed a lawsuit in New York seeking millions of dollars in compensation from the US government. They claim the US bears responsibility because it exercised negligence by maintaining lax security at the bombed facilities and ignoring warnings that the embassies were going to be likely targets. Apparently the Israeli intelligence told the US of a possible attack on its mission in East Africa but also advised

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[57] http://www.pbs.org/newshour/bb/africa/July-Dec 98/bombings

them that the informant was unreliable.[58] The suit also relies on a January 1999 Report by the US government appointed panel that determined collective failure by administrators and congresses over the years that left the diplomatic missions vulnerable.

REGIONAL RESPONSES

The East African Community position on security matters has to be traced back to the position under the pre treaty East African co-operation intergovernmental arrangement. Through tripartite programmes and activities, intergovernmental arrangements sought to achieve the promotion of peace security and good neighbourliness in the region. Mr. Wilbert Kahwa [59] said the legal basis for security as an area of co-operation is provided under the objectives of the community, the fundamental principles and co-operation in political matters. The objectives of the community being to develop policies and programmes aimed at widening and deepening co-operation among partner states in among other fields, defence and security for mutual benefit. The community is therefore expected to ensure the promotion of peace, security and stability within and good neighbourliness among the partner states[60]. The fundamental principles include peaceful existence, good neighbourliness and peaceful settlement of disputes. [61]. Co-operation in political matters is sub-divided into political affairs, regional peace, security and defence.[62]

A security committee was formed and the programmes adopted by the council of ministers for implementation by the Partner states in 1997. An operational programme for combating terrorism in East Africa defines terrorism and stipulates both prophylactic and preventive measures both at national and regional level. Its adoption for appropriate implementation measure came in the wake of the terrorist bombing of the US missions in Nairobi and Dar as Salaam in August 1998 and the indiscriminate bombings in Kampala in early 1999. At the national level each member state is urged to computerize all exit and entry points, build a database on terrorism, come up with specific

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[58] The Haaretz. Jerusalem, 12th Aug 1998
[59] Legal Counsel to the EAC in an Interview on 21st may 2001
[60] Art 5 (1) of the EAC Treaty
[61] Art 6 (b) and 6 (c) of the EAC Treaty

legislation to address terrorism, and the exchange of information. At the regional level member states should hold regular periodic and ad hoc meetings to review terrorism trends, harmonise their visa and entry requirements, create a disaster management centre and the harmonization of laws relating to terrorism and extradition.

In the operational programme for combating terrorism in the East African Co-operation region, terrorism is defined as the calculated use of or threat of use of force / violence to influence an audience an audience motivated by political, religious economic /social as eliminate source of religious economic /social as criminal goals. The programmes aim at endeavouring to eliminate sources of grievances that may lead to the use of terrorism and create public and media awareness on terrorism. The sub committee on disaster management has the of considering terrorism as major factor in it's operational programme. The East African Community seeks to establish a forensic centre for materials collected from scenes of incidents of terrorist attacks.

After the Nairobi and Dar es Salaam bombings the East African Community was forced to look at terrorism as a major security matter and just not refugee problems, conflict and meantime disasters.

NATIONAL RESPONSES

Following the bombings, Kenyan and Tanzania immigration authorities have reactivated the forgery Defection Unit at all major airports in order to detect counterfeit documents. Most of the problems have been blamed on the pressure from airlines and tour operators to clean passenger's documents.[63] Some of the problems cited include the lack of terrorist profiles and the easy availability of fake passports. The forgery Detection Unit is currently developing a computer base for use at all entry points with ultra violet scanners and a collection of forged genuine passports.

The airport is vulnerable, as it is a transit point and therefore extremely busy and terrorist pass by unnoticed. Also cited as a problem is the bad blood between the Kenyan Airports Authority who are

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[62] Chapter 23 of the EAC Treaty
[63] John Ole Nangurai is in charge of Jomo Kenyatta International

responsible for the security at the airport and the Immigrations Department. Several companies import explosives for quarrying activities through the Mombasa Port and therefore explosive for terrorist activities can pass through undetected

A senior official[64] argued that the terrorist attacks occurred due to the failure of different departments that are supposed to work in a liaison but do not. The duty of the immigration department is to verify travelling documents and issue passports to Kenyan citizens. The department is faced with lack of adequate time to process relevant documents, lack of screening equipment and occupation that allows criminals to infiltrate the country. The department also lacks terrorist profiles and the backing of the Security and Cargo Department to ensure that explosives and other arms are not imported into the country. Another major problem is the existence of terrorist cells in states that are comprised of genuine citizens who have lived there for years and these are difficult to detect.

There is also the lack of an early warning system that would alert authorities on imminent threats. The case studies clearly demonstrate the current problems that terrorism causes globally and the special problems that African States face. The terrorist attacks and the counter terrorism measures affected all states directly or indirectly. In the next chapter I intend to give a critical analysis of these case studies and the place of terrorism in international law.

Airport Immigration Section, In an Interview)
[64] (Dan Opan, chief immigration officer .The Kenyan Ministry of Foreign Affairs and international co-operation in an interview on 19th June 2001)

CHAPTER FIVE

CRITICAL ANALYSIS OF THE EFFICACY OF COUNTER TERRORISM MEASURES

INTRODUCTION

The serious study of terrorism has been hindered by the fact that when terrorism is compared with other manifestations of political violence, it seems to be of minor importance. However, the reactions to terrorism depend largely on the response it encounters from both the public and the authorities.[1]

In chapter two it clearly emerged that seen from a historical perspective, terrorism is not a new or unprecedented phenomenon. Whereas modern technology has made a great difference as far as the character of terrorist operations are concerned, the basic issues concerning terrorism, that is, the political, moral and legal are not new. Although terrorism has developed as a response to oppression and persecution more often in the 19th than in the 20th century, it is not a natural response to injustice, oppression and persecution. Indeed terrorism occurs more in open societies than in effective dictatorial or totalitarian states.[2]

Chapter three it clearly demonstrates that before the First World War, terrorism was recognised as a crime and punished through its acts. Those who committed terrorist acts were punished for committing murder, or kidnapping. Between the two World Wars efforts were made to define terrorism and punish it under a generally accepted multilateral treaty, however these efforts failed. After World War Two, terrorism attacks rose sharply and it became an important issue of concern for most governments. Several conventions were adopted in a bid to fight it. Great debate arose on whether terrorism attacks give rise to self-defence as espoused in Article 51 of the UN charter and therefore the use of military strikes in a bid to pre-empt further attacks. Debate has also

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[1] Walter Laquer, The Age of Terrorism (Toronto, Little Brown and Co., 1987) p. 1
[2] See chapter 2 for further details

arisen on the fact that counter terrorism measures are usually terrorist in nature and therefore it is not possible to fight terrorism with terrorism as this only perpetuates it. Questions then arise as to what are the permissible responses in the face of a terrorist attack.[3]

An examination of the Nairobi and Dar es Salaam bombings show that terrorism is a global problem. This examination clearly demonstrated, the vulnerability of all societies when faced with terrorist attacks. It also emphasizes the important role that the media plays in internationalising terrorism and the questions that are raised in international law. These questions include the place of terrorism in international law, the question of extradition, the efficacy of anti terrorism conventions and the legality of counter terrorism measures like military strikes.[4] This chapter also underscores the fact that over the last fifty years the third world has been the scene of a growing number of low intensity or unconventional conflicts, including guerilla insurgency and terrorism due in part to a myriad of internal and regional political, social and economic cleavages, this instability has also been fostered by various international actors. For example, the Ayatollah Khomeini promoted fanatic violence in Middle East through his interpretation of Islam.[5] Therefore most developing countries are dragged into conflicts that they were not a part of in the first place. The intended victims, audience and objects of intimidation were the US citizens and government but as the case studies showed most of the victims were the Kenyan and Tanzanian citizens.

This chapter examines the efficacy of anti terrorist measures as demonstrated in the two case studies. This examination will begin with the status of terrorism in international criminal law.

TERRORISM IN INTERNATIONAL CRIMINAL LAW

International law as earlier defined in chapter 3 is that body of legal rules considered binding upon states and other international persons in their mutual relations. It is founded primarily on treaties and customs, as well as general principles of law recognised by civilized nations and it is subsidized by judicial decisions and the works of legal scholars. Modern international law is linked

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[3] See chapter 3
[4] See chapter 4

116

to the evolution of the modern territorial state system that emerged in Western Europe from the peace treaties of Westphalia in 1648.

While international law governs relations among states and applies to states as subjects of that law, international criminal law suggests that there are specific legal prohibitions applying directly to individuals and for violation of which they are held directly responsible. Therefore in a limited sense individuals are subjects of law. International criminal law is a hybrid between international law and criminal law.[6]

A crime is an unlawful conduct that attracts response of penal sanction. Not all-unlawful conduct is criminal thus municipal criminal law emphasizes both illegality and penal sanctions in defining crime. Similarly international law maintains this distinction between illegality and criminality. The International Law Commission defined an international crime as 'an internationally wrongful act in breach of an international obligation so essential for the protection of fundamental interests of the international community, that its breach is recognised as a crime by the community as a whole.[7] International crimes are violations of obligations of agreed *jus cogens* (peremptory norms) that are accepted and recognised by the international community of states as a whole from which no derogation is permitted.

An international crime must contain either an international or transnational element or a partial international element.[8] It must constitute an offence against the international community and alternatively affect the interests of more than one state. There is no consensus in history of international crime. Some scholars trace it back to ancient Egypt, the Hebrew prophets and the age of classical Greece,[9] while others hint at medieval origins.[10]

[5] Richard Shultz, 'Recent Regional Patterns', in Ra'anah et al, Hydra of Carnage: International linkages of terrorism – The witnesses speak. (Lexington, Lexington Books, 1987) pp 95-125:95

[6] Cherif Bassiouni. International Criminal law: *A Draft International Criminal Code* (1980) p21

[7] International Law Commission Draft Articles on State Responsibility, *Yearbook of the International Law Commission,* Vol. 2 (1976) Article 19 pt 2 pp 73 ff.

[8] Cherif Bassiouni (ed) International Criminal Law (New York, Transnational Publishers Inc, 1986) p. 2

[9] Robert Friedlander "The foundations of International Criminal Law: A Present Day Inquiry" Case – W. Res. J. *International Law*, 1983 p.18

[10] Green L.C., 'International Crimes and the legal Process" *International Law Quarterly,* Vol. 29, (1980) pp 570-571

World War One triggered the strong development of International Criminal Law. International crimes found expression on 28th May 1915, in the joint three power declarations of France, Britain and the former Soviet Union, condemning the Turkish government for the massacre of its Armenian citizens as crimes against civilization and humanity for which all members and complicit agents of the Turkish government would be held responsible.[11]

The notion of international crime was espoused in the 1919 Report of the Commission on the Responsibilities of the Authors of War and Enforcement of Penalties for Violations of the Law and Customs of War, which recommended the establishment of a high tribunal with jurisdiction to try offences against humanity. The 1937 conference in Geneva under the League of Nations, after the dual assassinations of Yugoslavian king and the French Minister in Marseilles in 1934 due to an act of terrorism, led to further developments in the field of international criminal law.[12] Vicious atrocities committed during World War Two shocked the conscience of the international community and the US, Great Britain, France and the former Soviet Union signed, on August 8th 1945 an agreement for the establishment of an International Military Tribunal (Nuremberg) and The Charter for the International Military Tribunal for the Far East (Tokyo). These tribunals clearly demonstrated the need for international criminal procedures and are landmark precedents highlighting the responsibility of the individual under international law.

From the French Revolution (1778) political offences became non extraditable and this is contained in all treaties (political exemption). International crimes do not fall under the exception of political offences. This is because though they may be politically motivated they go against international law. International crimes offend the common morality of mankind and its' conduct is recognized by an international treaty as an international crime. These are for example, genocide, war crimes and slavery.

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[11] Egon Schwelb, 'Crimes Against humanity,' Vol. 23 BYIL (1946) pp. 178-181
[12] See chapter 3

International criminal law is that area of law dealing with piracy, war crimes, crimes against peace and against humanity (genocide) and such other specified crimes as counterfeiting, illicit traffic in dangerous drugs and engaging in slave trade.

Similarity has been drawn between piracy, which from the 16th century has been considered a crime against humanity and terrorism.[13] International terrorism is a violation of all the basic human rights principles that have been held by the world community since the Second World War. It goes against the Universal Declaration of Human Rights, The International Covenant of Civil and Political Rights, The Convention on The Prevention and Punishment of The Crime of Genocide and The UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations. The anti terrorist conventions also emphasizes the fact that terrorism has developed in such a way that it should be separately considered as an international crime and should be specified as such and not mentioned under other crimes. For example, the violations of Article 3 Common to the Geneva Conventions of 1949 and the Additional Protocol II of 1977 include, violence to life, health and physical or mental well being of persons, collective punishments, taking of hostages, acts of terrorism, outrages upon personal dignity (rape, enforced prostitution, assault), pillage and threats to commit any of the above acts.

Therefore, terrorism should be specified as a crime against peace and against humanity.

THE DEVELOPMENTS IN HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

It is now generally accepted that Human Rights Law and Humanitarian Law are distinct but interrelated bodies of law. Both contain proscriptions against torture, genocide, slavery and extra judicial killings that are regarded as having achieved the status of *jus cogens* and obligations *erga omnes*. As obligations toward the international community as a whole and they are by their nature the concern of all states. In view of the importance of the rights involved all states can be held to

have a legal interest in their protection.[14] The two bodies of law have the basic objective to protect human life and dignity that is most evident in Article 3 common to the Geneva Conventions and as supplemented by Additional Protocol II of 1977. Article 3 is concerned, as is Human Rights law with the relationship between a state and its nationals. Article 3 imposes obligations on both state and non-state players, whereas human rights are enforceable only against the state.

Through both customary and conventional law a gradual criminalisation of acts constituting serious human rights violations has occurred, together with an import from international humanitarian law of the principle of individual criminal responsibility and the duty of states to punish or extradite perpetrators[15].

Article 3 of the Geneva Conventions and Additional Protocol II do not make express provision for criminal responsibility for their violation and are not subject to the obligation to exercise universal jurisdiction that attends to grave breaches. This is because the content of customary law applicable to internal armed conflict is debatable. As a result the only offences committed in internal armed conflict for which universal jurisdiction applies are crimes against humanity and genocide.[16] Therefore acts of terrorism committed during internal armed conflict would not draw universal jurisdiction. However the statutes and jurisprudence of the International Criminal Tribunals and the Rome Statute are accepted as affirming developments in international humanitarian law. The Rome Statute provides that serious violations of Article 3 and of protocol II are international crimes and above all the criminality of the acts that they proscribe under national law.[17]

Whereas the Yugoslav tribunal has jurisdiction to prosecute persons responsible for the internal armed conflict, reference to armed conflict is excluded in the Rome statute, with the effect

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[13] See chapter 3
[14] Barcelona Traction light and Power Company Limited, judgment, I.C.J. Reports 1970 p.32 cited in Hans-Peter Gasser, 'Ensuring Respect for the Geneva Conventions and Protocols; The role of Third states and the UN' in Hazel fox and Michael Meyer (eds) Armed Conflict and the New Law, Vol 2 (1993) pp 18-40.
[15] See Convention on the Prevention and Punishment of the Crime of Genocide (1948), Convention for the Suppression of Terrorist Bombings 1988
[16] Theodor Meron, 'International Criminalisation of Internal Atrocities', American Journal of International Law, Vol. 89, July 1995, p 570

that the international criminal court will have jurisdiction over such crimes committed in internal or international armed conflict and also in peacetime. This is an important development because terrorism can be, with the adoption of the Rome Statute, tried as an international crime with universal jurisdiction. The Rome statute lists persecution on political, racial, national, ethnic, cultural, religious, gender or other grounds as a specific crime, while the Rwanda statute requires the crimes listed to be committed as part of a widespread or systematic attack against any civilian population. Therefore the Rome statute covers the actions of non-state forces and also covers isolated attacks on any population[18].

Human rights are considered fundamental or natural to any individual as defined by civilized nations, they are inalienable and essential if the state is to be counted among the civilized. These rights are expressed in various treaties like the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), International Covenant for Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966) American Covenant of Human Rights (1969), Universal Declaration of Human Rights (1948) and the African Charter of Human and Political Rights. Since 1945 Human Rights issues have become less and less matters essentially within the domestic jurisdiction of states because international law has broadened its scope. Human rights are thus universal and the concern of all.

Terrorism is therefore internationalised, as it is a violation of human rights, which are universal, and international humanitarian law. However violations of human rights and international humanitarian law occur because enforcement measures are not vigorous enough. Human rights law also gives rise to problems of jurisdiction. Many states have continued to ignore their responsibility of safeguarding human rights, more so because such violations of human rights are committed by states themselves. Failure to conduct prosecutions for human rights violations would serve to 'legitimise' such actions and it has been observed that warring parties, aware of the limited concern

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[17] Rome Statute of the International Criminal Court, 17th July 1998, Art 8. para 2(a) and (c)).
[18] Rome Statute. Article 7, paras 1 and 2(a).

of the international community, are undeterred and hardly observe any restraints in their treatment of civilians.[19]

TERRORISM AND THE CULTURE OF IMPUNITY

A lengthy catalogue of atrocities serves as a tragic reminder of the fragility of commitments made by the international community since the end of the Second World War to ensure greater respect and protection for human life. Millions of innocent lives have been lost in war, at the hands of oppressive governments and terrorism in flagrant violations of the laws developed to protect human beings and to regulate the conduct of states towards their citizens. None fulfilment of obligations accepted by the majority of states to prosecute and punish genocide, grave breaches of humanitarian law and other crimes against the most fundamental human rights like terrorism, has created a safe environment for the architects of such inhumane policies.

The poor record of persecutions in national courts even in the face of clear obligations to prosecute or extradite offenders shows that the international order that has evolved since 1945 has lacked a real commitment and political resolve on the part of most members of the international community to use their domestic systems to bring those responsible of committing offences to justice. Therefore impunity is not a natural phenomenon but the product of a failure by individual states to bring all perpetrators of human rights violations to justice.

The granting of blanket amnesties for human rights violations further compounds this problem of the inability to deter human rights violations[20]

In the case of terrorism it has been noted with concern that states that sponsor terrorism have been offering safe havens for a growing number of terrorists. Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria have been named as state sponsors of terrorism. Afghanistan has recently joined the list (since August 1998) as not fully co-operating with US anti terrorism efforts.[21] In the case of

[19] Olonisakin F, 'An International War Crimes Tribunal for Africa – Problems and Prospects, *African Journal of International and Comparative Law*, Vol. 9, December 1997 pp. 822-835: 824.
[20] See Arriaza N.R. (ed) Impurity and Human Rights in International Law Practice (New York, Oxford University Press, 1975) pp. 1-8
[21] Patterns of Global Terrorism. 1998. US Department of State Publication, p. 111

the Nairobi and Dar es Salaam bombings key mastermind Osama Bin Laden and his associates are said to be in hiding in Afghanistan. Afghanistan has refused extradite them to the US to face trial and has also refused to prosecute them.

The murderers of US diplomats Cleo Noel and George Moore and Belgian Chargé Guy Eid in Khartoum 1975, were surrendered to the Sudanese government who handed them over to the Egyptian government and then they were quietly released.

No one was ever penalized for seizing the American embassy in Tehran in 1979 – 1981. In fact the US instituted proceeding before the International Court of Justice on 29th Nov 1979. The court was asked to find that Iran was violating international obligations and was obliged to release the hostages to pay reparation and to put the persons responsible on trial[22]. The court unanimously called on Iran to redress the situation and to carry out the steps ordered as necessary to restore the situation. Iran refused to follow the court's orders and decision and the case shifted to non-legal spheres[23]

In the Pan Am 103 bombing of 1988, two hundred and fifty nine people on board and eleven others on the ground at Lockebie, Scotland were murdered. The suspected terrorists Abdel Basset Ali al Megrahi and Lamen Khalifa Fhimah, Libyan nationals, lived free in Libya as the Libyan government refused to extradite them to stand trial. According to the active nationality principle Libya could claim jurisdiction over the two prime suspects because they were her nationals. However Libya did not prosecute them and only handed them over for trial in April 1999 after over a decade of sanctions placed on Libya, by the international community.

Suicide bombers, like those from Israel and Lebanon, commit terrorist acts and die in the process, leaving no possibility for prosecution. This leaves the impression that nothing was done to punish those who committed the attacks and the culture of impunity develops further.

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[22] Marian Lloyd, *Digest of US Practice in International Law* 1979, Department of state (Washington Government printing office, 1983) pp 581-582.
[23] McClanahan G, *Diplomatic Immunity*, (New York, St. Martins Press, 1989) pp. 9-10

History therefore abounds with examples of terrorists, who escape prosecution. There are also cases of successful arrests for example, some of the suspected terrorists of the Nairobi and Dar es Salaam bombings were apprehended after committing the acts and attempting to flee the countries.

The apprehension of offenders includes formal and informal processes as well as illegal methods of return. Extradition is the only formal or legal method of apprehending an alleged offender. The question of jurisdiction over the terrorist then arises.

BASES OF JURISDICTION OVER TERRORIST CRIMES

In the event that a suspected terrorist is arrested there are various principles of jurisdiction upon which a state may claim its ability or competence to try him. By the subjective territorial principle, a state has jurisdiction to prosecute and punish crimes commenced within its territory but consummated in the territory of another states.[24] This principle is weak because in the case of state sponsored terrorism, it is highly unlikely that the state will surrender its nationals to face trial for the attack. A state where an offence was commenced or consummated has no legal basis to go into another state without its permission to effect an arrest. If it does this it will go against the principle of territorial sovereignty and set a bad precedent where states will enter the territory of others with no regard for territorial sovereignty. The state where the alleged offender has sought refuge may refuse to extradite him/her. This means that those accused of terrorist acts can go unpunished because they are being protected by the host state. The requesting state may then resort to illegal methods of return like kidnapping[25]. This problem is clearly seen in the Nairobi and Dar es Salaam bombings where key suspect Osama Bin Laden and fellow associates have sought refugee in Afghanistan and the ruling Taleban has refused to extradite or prosecute them[26]. The fear of potential reprisals associated with extradition of a perceived terrorist militates against the efficacy of the subjective territorial principle of jurisdiction. In this case a state that originally extradited a

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[24] Starke J.G., Introduction to International Law (London, Butterworths and Co., 1998) p. 205.
[25] See Eichmann v Israel in this chapter
[26] Patterns of Global Terrorism, Ibid, p. 9

person may surrender or extradite the offender to a third state. The re-extraditing state must secure the consent of the extraditing state. The doctrine of specialty is extended to such cases. The original state has a continual interest in the process of re-extradition. The problem of the death penalty may arise. If the original state that extradited the alleged offender has no death penalty it must give conditions that it must express explicitly at the time of extradition and cannot ask for the recommendation of mercy.

The objective territorial jurisdiction principle allows states to apply territorial jurisdiction to offences commenced in other states but either consummated or completed within their territory that have produced harmful consequences to the socio-economic order in their territory. (This is also known as the effects principle). Suspects of the 1998 bombings were found in Kenya and Tanzania even if the materials for the bomb were acquired elsewhere. The effects were felt in Nairobi and Dar es Salaam, meaning that Kenya and Tanzania could claim jurisdiction over the terrorists. Kenya and Tanzania did not claim jurisdiction even if they suffered more from the terrorist attacks because it was the US embassies that were targeted. Also there was fear of a retaliatory attack. The US also had the necessary resources to try the suspects as compared to Kenya and Tanzania. The objective territorial jurisdiction is incorporated in the UN Convention of Offences and Certain Other Acts Committed on Board Aircraft,[27] UN Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the UN Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents[28]. Personal jurisdiction principle arises from some quality attached to the person involved in a particular legal situation that justifies a state in exercising jurisdiction over him. This only occurs when a person suspected of some misdeed enters the territory of the concerned state voluntarily or as a result of successful extradition proceedings.

The active nationality principle occurs when jurisdiction is assumed by the state of which the person against whom proceedings are taken is a national. This principle is captured in the

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[27] 704 U.N.T.S., 219, 2. I.L.M. 1042 (1963) Art 4 and 14

International Convention for the Suppression of Terrorist Bombings.[29] This principle is weak in combating international terrorism, as a state sponsor of terrorism will not prosecute its own nationals that it has sponsored. Also it is not a guarantee that a state trying its own national will do so fairly.

In the passive nationally principle, jurisdiction is assumed by the state of which the person suffering injury or civil damage is a national because each state has a right to protect its citizens. However extradition is essential in this principle and no state is under any legal obligation to extradite offenders. The protective jurisdiction principle recognizes that each state may exercise jurisdiction over crimes against its security and integrity or its vital economic interests. It is fraught with enforcement problems when applied to international terrorism, as it has to be exercised at the option of the state where the alleged offenders is residing. This was one of the reasons the US claimed jurisdiction over the terrorists in the Nairobi and Dar es Salaam bombings.

The universality principle gives each state jurisdiction to try persons considered *hostis humani generis*. Such crimes are deemed to be offensive to the international community as a whole.[30] The punishment of offenders takes place irrespective of their nationality or wherever they happened to carry out their criminal activities. Pirates by custom of immemorial origin have been declared *hostis humani generis*.[31] Piracy is also the only international crime recognized by customary international law.[32] Therefore piracy *jure gentium* provides the case where universal jurisdiction has been applied with positive results. Once apprehended the alleged terrorist is subjected to the legal processes in the state that has exercised jurisdiction over him/her.

[28] UN 1035, U.N.T.S., 167, 13 I.L.M. 41(1974) Art 3
[29] 37, I.L.M 249 Article 6
[30] Shaw M.N. International Law, (Cambridge, Grotius Publications, 1999) p. 256.
[31] Fenwick R. International Law (New York, Appleton- Century-Croft, 1965) p. 504
[32] McNair L.J. International Law Opinions. Vol. I (Cambridge, Cambridge University Press 1956) p.265.)

INTERNATIONAL LEGAL AND POLICY RESPONSES TO TERRORISM.

Several principles of international law may have the effect of mutilating against any meaningful attempts to fight terrorism. For example, because of the principle of territorial sovereignty, a state can only request another to hand over an alleged offender residing there. If the requested state refuses to extradite the alleged offender then the requesting state has few options at its disposal.[33]

These options include illegal methods of return and this includes abduction, which violates sovereignty and territorial integrity, disrupts world political order, and violates the human rights of the alleged offender. It also includes informal surrender and the use of immigration laws. In the case of *The Attorney General of Israel v Eichmann*[34] the accused was a German national and was the head of the Jewish office of the German Gestapo. He was the administrator of the Final Solution, the policy that led to the extermination of millions of Jews in Europe under Nazi Germany. In 1960 Eichmann was found in Argentina by agents of the Israel government and abducted to Israel to stand trial for crimes against humanity without the knowledge of the Argentina government. Following the incident there were widespread protests that his abduction was a clear act of flouting the principle of territorial integrity and sovereignty.[35] In the Eichmann case the District court of Jerusalem relied not only upon an extended protective principle but also upon the universality principle in trying a German for crimes committed outside the territory of Israel, at a time three years or more before there was any state of Israel. The court found it had jurisdiction because of the universal character of the crimes in question and the specific character as being designed to exterminate the Jewish people.[36]

Treaties on terrorism represent important steps both in the development of a general corpus of international crimes towards a more specific goal of suppressing international terrorism. This

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[33] Harris D.J, Cases and Materials on International Law, (London, Sweet and Marwell, 1991) pp. 201-202.

[34] Green L.C, 'The Eichmann Case' Modern Law Review Vol. 23 (1986) p. 507
[35] Ibid. p 512)
[36] 56, AJIL, 805, 808 (1962).

approach avoids the definitional morass surrounding the concept of terrorism and seeks instead, the low-level agreement on the prohibition of the specific acts. Inspite of the positive aspects attributed to the anti-terrorism treaties there are a number of issues that have not been addressed.

One of the major issues the anti terrorism conventions fail to address is the very definition of terrorism itself. This is because the treaties, other than the International Convention on the Suppression of Terrorist Bombings (1998) do not expressly contemplate the fighting of terrorism but certain specified categories of crimes. These are for example, hostage taking and hijacking.

Anti terrorism conventions assert the right to self determination by liberation groups as employed by liberation Tamil Tigers of Eelam, which is fighting for succession from Sri Lanka. In fact the UN recognizes the principle of self-determination.[37] Indeed this was a cornerstone of the General Assembly's decolonisation policy of 1960 and 1970's in its Declaration on the Granting of Independence to Colonial Territories and Peoples.[38] The conventions are reluctant to include liberation activities explicitly under the corpus of terrorist acts. This is because terrorism is a moral problem and predicated on the assumption that some classes of political violence are justifiable while others are not. In the case of liberation groups, it has been noted that they may use terrorism in their overall strategy to achieve self-determination. For example, this was clearly seen with African National Congress (ANC) in its liberation struggles in South Africa. In the Sixth Committee on Terrorism in 1972 the representative of Cuba stated that they would reject a draft that implied that national liberation movements were illegal by virtue of having used violence to achieve their ends.[39] The representatives of Oman and other developing states supported Cuba's position as some developing states were still struggling for independence while many developing states had achieved independence through the use of violence.

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[37] Wardlaw G, Political Terrorism, (Cambridge, Cambridge University Press, 1989) p. 4
[38] G.A. Res. 1514 (XV) Dec 14, 1968.
[39] UN G.A.O.R, 27th Sees. C.6 (1358th mtg) Para 1. UN. DOC A/C.6/SR 1358 (1972)

The conventions do not establish a mechanism for the imposition of sanctions or other specific ways of dealing with states whose actions hamper the realization of punishing those who engage in terrorism.

Conventions are also not in force in many regions of the globe where terrorist acts are endemic. Lebanon, Iran and Syria for example are not party to the Hostages Convention. Anti terrorist conventions, like The Hague, Tokyo and Montreal Conventions are silent on state sponsored terrorism. This is a serious weakness as states sponsor, tolerate and support terrorism. The United Nations Charter in Article 2(4) provides that all member states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any manner inconsistent with the purposes of the UN.

A subject of international law is an entity capable of possessing international rights and duties and having the capacity to maintain its rights by bringing claims with respect to breaches of international law. [38] Classical International Law limited international legal personality to states only and denied the individual any position in the international legal system. It is now universally accepted that individuals who commit international crimes are individually responsible and liable for punishment and the plea that the offender acted in pursuance of the orders of the state is no longer admissible.[39] This is because of developments in the field of human rights law that have conferred on the individual a measure of legal personality by establishing that the individual has an international duty to respect human rights and a breach of this duty calls for individual prosecution.

LEGAL IMPLICATIONS FOR ACTS ARISING FROM A TERRORIST ATTACK.

There are a number of important questions in law that arise from the terrorist act and the response to it. One important question is whether a terrorist act undertaken solely by a state organ constitutes a terrorist attack or an act of war. Another question that arises is whether, as in the case

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[38] Brownlie I, Principle of Public International Law. 4th ed. (Oxford: Clarendon Press, 1990) p. 60
[39] See Article 7 of the Charter of the IMT

of Nairobi and Dar es Salaam, a terrorist act directed against such state targets as military and diplomatic installations and personnel can be categorized as simple acts of terrorism or acts of war. For example the September 11th terrorist attack on the US was a combination by terrorists of suicidal fever, technical skill and sophistication. American passenger aircrafts were first hijacked and then used to bomb the twin towers of the World Trade Centre. This attack led to the eventual collapse of the one hundred and ten storey buildings and the subsequent death of over six thousand people of mixed nationality. The US government immediately called the terrorist attacks an act of war and promised a quick response as it gave rise to the need for self defence. Equally disturbing in international law is the question on whether acts of terrorism give rise to self-defence.

In reacting to the terrorist attacks in Nairobi and Dar es Salaam, the US military struck a chemical plant in Sudan and terrorist training camps in Afghanistan, claiming that the action was in self-defense.[40] The US response raised the question of the use of force in International law.

USE OF FORCE IN INTERNATIONAL LAW.

Traditionally, the compulsive means of settlement of disputes, other than war were retortion, reprisals, pacific blockade and armed intervention. Prior to the Kellogg-Brand Pact and Charter of the UN states enjoyed a wide freedom of recourse to war in circumstances where their paramount interests were at stake. International law never defined the permissible causes of war and the State remained for centuries the sole judge of what constituted a valid and sufficient cause. States attached significance to the existence of a Just cause of war. Discussions on just and unjust causes of war reflected actual practice of states and preoccupations of governments and rulers. The first treaties to contain any significant prohibition on the use of force by states are the Covenant of the League of Nations of 1919 and the Kellogg-Brand Pact of 1928 and finally the UN Charter of 1945.

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[40] See chapter 4.

THE KELLOGG-BRIAND PACT

The outlawry of war by the Kellogg-Briand Pact had been preceded and prepared by the less general prohibitions contained in the Covenant of the League of Nations. The Covenant provided for a moratorium on the exercise of the right to wage war. In the Article 12, members agreed that they would submit any dispute likely to lead to war to arbitration or inquiry by the League. The Kellogg-Brand Pact [41]in article 1 condemned recourse to war for the solution of international controversies and renounced it as an instrument of national policy in their relations with one another. In Article two it urges states to solve despites and conflicts by pacific means. It also maintained the right of states to go to war in self-defence or against a violator of the treaty. The Pact now embodies a customary rule of international law and it played a great role in the decisions of international tribunals and municipal courts in the trials of the war criminals of the defeated Axis Powers charged with the waging of war. The question of the use of force that did not constitute war still remained, under the Pact, an open problem.

THE CHARTER OF THE UNITED NATIONS

The Charter of the UN deals with the use of force by states in several provisions, but the basic rule is found in Article 2 (4):

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.

The use of the terms 'threat or use of force' encompasses also the use of armed force short of war. Article 2(4) is universally binding. The exceptions from the rule of Article 2(4) are found in

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[41] Also known as the General Treaty for the Renunciation of War and which is also known under the name of Pact of Paris, was signed on 27ᵗʰ August 1928, 94 LNTS, Vol. 57 *Hudson, International Legislation,* Vol. 4, p. 2522

Articles relating to employment of force by the organization itself in Articles 24, 39 – 50, use of force by regional institutions under regional arrangements in Article 53 and individual states acting in self-defence in Article 51.

Differing views have arisen on the express meaning of Article 2(4). The Traditional school preserves the key normative provision of the UN Charter Article 2(4) as the cornerstone of International law and asks members to refrain from the threat or use of force. They argue that the UN Charter should be read to forbid the use of every conceivable measure of self-defence against aggressive acts that fall short of classical armed attacks across sovereign borders.[42]

The Neo-realists view the current state of international law differently. The world has changed and Art 2(4) was originally fit into the larger scheme of peacekeeping, decision-making and enforcement under the Charter. But the Charter mechanisms, especially collective self-defence has decayed and the circumstances guiding the Charter drafters in 1945 have changed dramatically. Neo-realists do not advocate for the abandoning of Art 2(4), they advocate for a principle of reciprocity justified by Art 51. The debate between the Traditionalists and the Neo-realists was tested in a court of law with the case of *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v United States of America).[43] While some traditionalists believe that the World Court strengthened the classical rules on the use of force with its 1986 ruling, others contend that the court threw a wrench into the long running debate of Art 2(4). The World Court premised its ruling against the US on a distinction between armed attack and the use of force. The court ruled that if acts of force fall short of an armed attack under Art 51, then countermeasures including forcible countermeasures but not armed counterattack might be taken only by the victim state. The court therefore introduced the concept of forcible countermeasures which fall short of armed counterattack and further banned a third state from participating in forcible countermeasures against an aggressor state. Two dilemmas arise; at what point do forcible countermeasures violate the ban

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[42] Sheffee David, 'The Great Debate of The 1980s' in Hoffman et al, Right v Might – International Law and the Use of Force. (London, Council of Foreign Relations, 1986) pp. 1-19: 3

on use of force and may third states only respond to aggression against an ally when a classical armed attack occurs.

SELF DEFENSE UNDER THE UNITED NATIONS CHARTER

The law of self-defence that finds expression in Article 51 of the UN Charter has been interpreted in two conflicting views. The permissive school argues that Article 51 does not regulate, let alone restrict the right to self-defence in situations other than the occurrence of such attack. Therefore self-defence can be resorted to on violation by the force of arms, right to territorial integrity and political independence and the protection of nationals.[45] The restrictive school interprets Art 51 to mean that self-defence offers protection against the illegal use of force and not against other violations of law. A state may act in self-defence only when an armed attack occurs against it. Consequently any preventive, anticipatory or pre-emptive use of force prior to the occurrence of an armed attack cannot be regarded as action in self-defence. The concept of collective self-defence is founded upon the right of individual states to take action in self-defence. There is a customary right to aid third states, which have become the object of unlawful use of force. When some unattacked states come to the aid of an attacked state, such measures cannot be called 'self'-defense.[46] Kelsen also argues that it is collective defence and not collective self-defense.[47]

It has been accepted that the right to self-defence is subject to limitations of 'necessity' and 'proportionality.' It was also argued that the right to self-defence if an armed attack does not

[43] Judgements on the Merits, 1986 ICJ REP: 14, also published in *International Legal Materials*, Vol. 25, September 1986, pp 1023- 1289

[45] (See chapter 3 and also Bowett D. W, Self Defence in International law. (Manchester, University Press, 1958) p. 24

[46] Brownlie, International Law and the Use of Force By States, (Oxford: Clarendon Press, 1963) pp 330 - 331

[47] Kelsen, Law of the United Nations: A Critical Analysis of its Fundamental Problems (London: Stevens, 1950) p 792

[48] See *The Caroline* as cited in Chapter 3 and 4)

mean only if an armed attack occurs but the right to self-defence is available only when the necessity of the self-defence is instant, overwhelming and leaving no choice of means and no moment of deliberation. [48]

Armed attack occurs when armed forces of one state, regular or irregular armed bands composed of private individuals, controlled by and in fact remaining under the orders of the state, start using violence in or against the territory of another state and its forces. In 1956 the UN refused to regard the intrusion into Israel territory by the Fedayeen Units operating from Egyptian territory as an armed attack by Egypt against Israel.

It has also been argued that large scale continuing campaigns of terrorist attacks like the one the US has experienced at the hands of Muslim fundamentalists, would give rise to self-defense. [49] This view emphasizes the permissive interpretation of Article 2(4) and the exception in Article 51.

THE UNITED STATES USE OF FORCE AFTER THE NAIROBI AND DAR ES SALAAM BOMBINGS

The US used missiles to strike Afghanistan and Sudan eleven days after the Nairobi and Dar es Salaam bombings. [50] The US claimed that the attacks were in self-defence with the aim of protecting herself and her allies and at the same time preventing further attacks. This is not the first time that the US has used military strikes against terrorists.

In recent years the US commitment to the law of the Charter (restrictive view) has come into serious question, principally because of an array of actions the US has taken and of the justifications it has claimed for them. [51] This is supported by evidence that the US has generally moved to 'unilateralism,' rather than the 'co-operation' reflected in the rule of law. This was clearly seen when the US brought down a friendly Egyptian plane in an attempt to capture a suspected terrorist, refusal of the US to appear in the Nicaragua case, termination by the US after forty years of its

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[49] Rowles, 'Military Responses to Terrorism: Substantive and Procedural Constraints in International Law', *Proceedings of the American Society of International Law* (1987), pp 294.

[50] For further details see chapter 4

declaration accepting the compulsory jurisdiction of the International Court. In a number of cases the justification depended on assertions the US has not sought to prove and that have not been widely accepted. For example, President Regan described the bombing of Libya by the US in 1986 as fully consistent with Art 51 of the UN Charter because the US viewed the terrorist attack against it as an armed attack justifying their bombing raid on Libya as a pre-emptive action. The bombing of Libya was widely condemned and the claimed justification widely rejected.[52] It was argued that the bombing was not inevitable or necessary nor did it 'succeed', because after the attack not a single terrorist was arrested and the attack led to the loss of civilian life. The use of force by the US remained itself a most serious violation of human rights as it gives the alleged offenders no chance to face trial and it assumes the alleged terrorists are guilty. The attack also deprives them of life before ascertaining guilt or innocence.

States do not behave as if there was no law governing them. In fact states using force always justify their actions in legal terms such as legitimate self-defence. When the US strikes against Afghanistan and Sudan are examined closely it is clear that the actions did not fall under the limitations implied in the famous *Caroline* dictum. The necessity of self-defence was not instant, overwhelming, leaving no choice for means and no moment for deliberation. In fact, the US, Kenya and Tanzania resorted to the legal means available in a bid to arrest alleged offenders. The bombings of Nairobi and Dar es Salaam and the lapse between them and the military strikes against Sudan and Afghanistan showed that there was time for deliberation. The US struck an alleged chemical plant and terrorist training camps. The US claimed a right to self-defence therefore applying the rules regulating war and the use of force. The Hague Conventions of 1954 have detailed provisions regarding the protection of what is termed cultural property. The law of land warfare draws a distinction between defended and undefended places. The attack or bombardment,

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[51] Henkin L 'Use of Force, Law and US Policy' in Henkin et al, Right v Might, Ibid, pp 37 – 70: 50

[52] See UN G. A. Res 41/38 Nov 20 1986 and Resolution of Condemnation in the Security Council 5/18016/Rev 1st April 1986.

by whatever means, of towns villages, dwellings or buildings, which are undefended, is prohibited,[53] meaning the action against the chemical plant at least was illegal as no one can tell if the training camps were protected.

The US strikes also led to the death of several civilians in Afghanistan and Pakistan. The Hague Conventions Articles 23, 25, 27 and 28 state that the non-combatant members of the armed forces who do not take part in the fighting, wounded or sick combatants and civilian persons cannot be attacked. The military strikes killed innocent civilians and therefore the attacks were indiscriminatory.

Attacks against terrorists are a violation of their human rights as it deprives them of the right to life and a fair trial. The universality of human rights and their inalienability means that everyone has (especially states) the duty to protect human rights. States cannot claim to be protecting human rights on one hand and denying others the same rights on the other hand.

Therefore force is not a solution to terrorism or a significant deterrent to it. In fact any action that is preventive, anticipatory or pre-emptive cannot be regarded as action in self-defence. The right of self-defence does not allow for retaliatory measures. Responses to the use of force by terrorists cannot be a proportional response. This emerged clearly after diplomatic attempts to extradite Osama Bin Laden who is accused of masterminding the September 11th terrorist attacks failed. The US government began a concerted air reconnaissance where it claims that it has been striking military targets, terrorist training camps, airports and other facilities in a bid to weaken the government and prepare the way for the insertion of ground troops to extradite Osama bin Laden. The ruling Taleban on the other hand claims that there has been massive loss of civilian life and the action taken by the US is terrorist in nature. The insertion of ground troops goes against the territorial integrity and sovereignty of Afghanistan. When the military strikes against Afghanistan are looked at closely they raise fears of a contagion effect where such strikes would lead to counter strikes. It seems as if Laden is elusive and therefore the attack on the Afghanistan state sponsor

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[53] Art 25 of the Hague Regulations, 1954

136

might prove to be more convenient. The continuous strikes against Afghanistan have drawn concern from some nations therefore weakening the diplomatic coalition that had already been created to combat terrorism. Some feel that it is an attack on the Muslim population and this has led to riots by Muslims in Afghanistan, Pakistan and Indonesia, with an anti- American sentiment clearly emerging. Granted that the efforts to combat terrorism are to be long term in order to be successful it is apparent that some diplomatic measures were not followed to conclusion. The Taleban government specifically asked for evidence linking Laden to the attacks and if they saw this evidence they would hand him over to a third neutral Muslim state but the US reiterated that the time for negotiation was over. Perhaps if the US did not react they feared to look impotent. However it must be noted that in the end it is the Afghanistan people suffering the most as they have been internally displaced, and have become refugees, they have lost their source of livelihood, their lives and security. Close examination also shows that such an air strikes may not lead to the arrests of those responsible and such strikes do not deal with the problem of terrorists cell existing not only in Afghanistan but all around the world. The air strikes have also led to one of the greatest humanitarian crisis in the world.[41]

Therefore under the restrictive view that is favoured by states as seen in their practice, the UN Charter's Article 2(4) and its exception in Article 51, does not consider terrorist attacks as armed attacks attracting self-defence.

THE IMPACT OF THE MEDIA AND TECHNOLOGY ON TERRORISM

The media is an indispensable link of communication. The challenge of the media is to stay focused on ferreting out the truth while respecting the situations where secrecy is necessary like when it comes to responses to terrorism or co-ordinated rescue activities during rescue bids in the case of hijackings. There is a symbolic relationship between the media and terrorism where

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[41] Usinfo.stae.gov/topicapol/terror, Newsweek, October8th 2001, The Daily Nation 7-24th October 2001

terrorists rely on the media to further their terror inspiring goals and the media utilize terrorist acts as worthy news items.[54]

Technology has made the media an indispensable device by which an individual or groups can magnify their power and influence over society within a short period of time and with relatively little effort. Technology has developed in such a way that news items can gain immediacy and widespread dissemination. When the news of a terrorist attack has taken place, it creates an impact on those watching or reading because of the intensity, duration and salience, which provide societal effects. Public opinion is affected by the language reporters' use and their attitudes towards the terrorists[55] while at the same time the news items encourage further terrorist incidences.[56] For example, hijacking received its first impetus from the seizure of an EI A1 aircraft by Palestinians in 1968. A wave of hijackings followed shortly after and evidence supports that hijacking spreads as a result of publicity.[57]

The media coverage of terrorism internationalises the problem of terrorism. Through the dissemination of terrorism attacks, the terrorism issue becomes a global issue. Therefore this means that it must be combated collectively and its jurisdiction therefore becomes is universal. Terrorism through the media is internationalised as a crime; it has a global reach, thus making it a crime against all humanity. Technology enhances the availability of arsenals to terrorists with an almost limitless universe of attacks. This makes humanity vulnerable to terrorism. This means that as much as terrorists have used technology to their advantage, technology can be used to fight terrorism. For example, the development of security systems that can protect important facilities and screening mechanisms at all entry and exit points.

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[54] Cherif Bassiouni 'Prolegomenon of Terror Violence', *Creighton Law Review,* Vol. 12, (1986) pp 145 – 760.
[55] Weimann, 'Redefinition of Image: - The impact of Mass Mediated Terrorism', *International Journal of Public Opinion Research* (1992) pp, 16 – 29:20
[56] See Chapter 2 on the Contagion Effect and Neil Livingstone, The War Against Terrorism, (Lexingston, Lexington Mass Books, 1982) p. 63
[57] Holden R, 'The Contagiousness of Aircraft Hijacking,' *American Journal of Sociology,* Vol. 11, 1986, p. 902

CONCLUSIONS

All conventions that proscribe acts of international terrorism do not advocate for universal jurisdiction, except the UN Convention for the Suppression of Terrorism Bombings,[58] which is different as it advocates for the universality of jurisdiction for terrorist acts. Terrorism is a serious threat to world order and it is therefore imperative that the offenders regardless of their nationality are punished whenever they are found. International terrorism will become subject to universal jurisdiction if governments enter into agreements prohibiting it and refuse to accord protection to terrorists. International terrorism violates fundamental human rights and freedoms. It also goes against humanitarian laws.

There is vital need for strategies to credibility threaten punishment for those engaged in terrorism. This can be achieved through the adoption of all anti terrorist conventions and the Rome Statute that emphasizes the need for the universal jurisdiction of terrorist acts. From the foregoing discussion it is apparent that terrorism has developed into a crime against humanity and should be specified and punished as such. Efforts to combat terrorism by use of force are not the solution to the scourge of terrorism as retaliatory attacks usually take terroristic forms[59] and pre-emptive actions are not seen as actions in self-defence in international law. Lawful responses should therefore be encouraged.

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[58] 860 U.N.T.S. 10 I.L.M (1998) Art 6.
[59] See Chapter 3 on responses to terrorist attacks

CHAPTER SIX

CONCLUSIONS

It is clear from the discussions that one must develop a realistic understanding of the nature and character of terrorism and counter terrorism, that must translate into congruent, policy, strategy and operational capacity.

The terrorism phenomenon cuts across many levels of analysis, from the psychological states of individuals through the sociology of groups, internal action of politics within states to the governments of targeted countries and of states that support, sponsor, host, train and shelter terrorist organizations.

There needs to be a clear understanding of open systems and their relationship to terrorism. Terrorists can hurt weak governments more than those of the great powers although they can frustrate and embarrass the later by making them look impotent despite their superior strength. States in Africa and the rest of the developing countries should consider themselves especially vulnerable due to the lack of resources and technological know how to put up an active defence system. By the very fact that they are vulnerable makes them easy targets and prey for any international terrorist. All states however, must take an active role in ensuring that they are constantly monitoring, networking with other states and beefing up security to minimize attacks. States must rethink the presumptuous view that states should not take action unless a clear and present danger exists. The very nature of terrorism precludes the notion of clear and present danger in conventional terms. Therefore states must constantly think of an active defence in place of a purely reactive and essentially passive posture with the reminder of the Nairobi and Dar es

Salaam bombings it is apparent that appropriate protective barriers and security screens around critically important targets are needed.

Economic sanctions are often ineffective and military reprisals involve a danger that established governments will be equated with terrorists for harming innocent people. Terrorists kill and harm innocent citizens much more than they damage governments and yet all governments are expected to protect their citizens. Therefore the international community must use a combination of various tools including international sanctions, multilateral pressure and isolation, concerted diplomatic intelligence, law enforcement campaigns and international laws.

Despite the fact that political, cultural and religious attitudes towards the legal and moral justification of using force and violence vary widely within the international community, concerted efforts have led to success in some cases. For example there has been relative success in combating most state sponsors of terrorism but a recent emergence of loosely organized, international networks of terrorists has been witnessed. These terrorist networks share a vision of global 'jihad' against the west, especially the US and Middle Eastern regimes that they perceive to be 'un – Islamic.' This loose alliance has sought safe havens in areas where they can work with relative impunity. These terrorists seek refuge where government territorial control is weak, like in Lebanon or where a government or a powerful faction is sympathetic, like in Afghanistan. Through diplomacy, international and domestic legislation, intelligence sharing and strengthening law enforcement, like-minded states will be able to curb the ability of terrorists to move, plan, raise funds and operate. It is important here to mention that since terrorism is a form of protracted conflict, it might further the goals of states in combating

terrorism to consider the use of informal track two-diplomacy. This would involve the use of problem solving workshops where the influential members of the groups in conflict can discuss their problems. This would go a long way in influencing the opinion of the different groups and enabling each party to listen to the opposite side and reach their own solutions to their conflict in a manner they deem legitimate where the solutions are not arrived at by third parties to the conflict.

Several governments have improved their co-operation in dealing with terrorists, for example, pooling information, tightening controls at international and national border points, creation of a computer pool with the latest information of terrorist groups and movements and the extradition accused terrorists. Every state should develop a training programme to ensure airport security, bomb detection, maritime security, VIP protection, hostage rescue and crisis management.

The diffuse nature of the problem of terrorism has made it difficult to develop coherent legal standards in this area. However, the beginning point would be to develop a common analytical framework in the study of terrorism so as to aid in the understanding of the terrorism phenomenon. The lack of key definitions and agreement of fundamental questions need to be remedied.

Existing international treaties, conventions and regional agreements related to the problem of countering terrorism should be reviewed. For example, there is need to clarify diplomatic privileges to prevent abuse. There is need for the strengthening of measures against civil aviation and the drafting of agreements for the extradition of terrorists who seek asylum in other states. International rules on terrorism are extremely important in the fight against terrorism. This is clear because according to state practice

most states adhere and follow international rules more than break them. However, every state must take the responsibility of ratifying signed treaties so that they can come into force and create universal jurisdiction. An international community without rules would bring about anarchy, as each state would act the way it wanted due to the lack of s single authority. In such a system any state would be able to behave according to its own dictates. Such a system would encourage violence, because in the end might would make right.

Ad hoc tribunals created to prosecute acts against humanity usually operate within a specified timeframe. Terrorism falls under Art 3 common to the Geneva Conventions of 12th August 1949 for the Protection of War Victims and of Additional Protocol 2 thereto of 8th June 1977. The creation of an international criminal court with jurisdiction to prosecute international crimes, like that of terrorism would ensure that the crime of terrorism is properly defined, it would be able to solve the problem of jurisdiction and arguments that are often advanced over where the trial of suspected terrorists should be held.

Scholars in the field of unconventional low intensity conflicts shall probably never arrive at a single coherent theory of international terrorism but an acceptable solution can be reached through the combination of the tools already cited.

All societies should be made aware of the dangers of violence. Conflicts may not only be seen as disrepute and dysfunctional but also as a useful means of resolving disputes within society and between societies. Although specific conflicts must be evaluated on the basis of probable or actual outcome, by weighing the gains of conflicts in terms of values at stake versus the risks and costs of the conflict. A society that

glamorises violence is a society in danger of becoming immune to violence and tolerating it. Such a society reduces its moral opposition to acts of violence. In this regard, governments, public servants and churches should lead the struggle in ensuring that good values are shared and shaped in the society and help if necessary in reconstruction of the society.

There is general agreement that, however vital passive measures may be, they are not likely to be adequate in isolation from active steps. Taken together, passive and active moves should be seen as integral elements of a coherent strategy that must attract the sustained public support vitally important to its success.

The terrorism challenge and various other forms of low intensity warfare are likely to grow in the years to come as a result of the multiplicity of actors prepared to resort to such means, the numerous conflict issues, the increasing availability of sophisticated weapons technologies and the consequent lethality of the threat. Such factors combined with the numerous international and transnational linkages among the perpetrators of low intensity warfare, enhance the need for a strategy to prevent such operations at their source. There is vital need for a strategy to credibly threaten punishment for those engaged in such activities and to defend societies from such attacks.

Finally, further research is needed in the field of biological and chemical terrorism. Terrorists have used chemical and biological attacks before and can do it again. Terrorists have been experimenting with chemicals such as mustard gas and hydrogen cyanide and biological weapons like anthrax nerve gas and small pox. Such uses of biological and chemical weapons would lead to massive loss of life. Early research must be made into the protection of radioactive agents like plutonium, cobalt and uranium 235

and combined with the proper training of personnel and the public in case of such an attack. Further research is also need in the medical field so that the necessary drugs to combat various diseases are made available before such terrorist attacks are carried out.

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