UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

AN ANALYSIS OF KENYA'S RESPONSES TO INTERNATIONAL TERRORISM, 1980 – 2005

BY

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THIS DISSERTATION IS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF MASTER OF ARTS IN INTERNATIONAL STUDIES, AT THE INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES, UNIVERSITY OF NAIROBI

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This dissertation is my original work and has not been presented for a degree in any other university

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This dissertation has been submitted for examination with my approval as a university supervisor

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Professor Olewe Nyunya

Dedication

This work is dedicated to the innocent people who lost their lives or were negatively affected by the December 31st, 1980; August 7th, 1998 and the November 22nd, 2002 Paradise hotel, Kikambala (and the unsuccessful shooting of the Arkia airline plane at take off at Moi International airport, Mombasa) terrorist attacks.

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Abstract

This study investigates the phenomenon of terrorism, its development through time and space, nature and typologies as well as its counter-terrorism measures at global, regional and national (Kenyan) levels. It seeks to establish Kenya's counter-terrorism performance The study examines various responses put in place over the years to deal with international terrorism and terrorism threats in Kenya: legal (legislative), diplomatic, military, judicial, cooperation, and political responses. It explores counter-terrorism responses in countries which have previously either been targets of terrorism, or suspected of state sponsorship of terrorism. It further explores the effectiveness of institutions put in place to fight terrorism in Kenya and the challenges faced.

It identifies domestic politics, corruption, lack of an anti-terrorism law, and inefficient institutions as some of the major challenges facing counter-terrorism efforts in Kenya. States' national interests, independence, and sovereignty also emerge as hurdles to be surmounted before the war on terror is finally won. It establishes that terrorism is not a new phenomenon, is evolving in perspective and above all that it cannot be eradicated; only contained to some extent. It establishes that there is need for multidisciplinary and multifaceted approaches and cooperation in studying and combating terrorism as no one country on its own has what it takes to eliminate terrorism. International cooperation emerges as the way to go to win the war as the phenomenon is transnational and respects no boundaries nor is there any one state able single handedly to fight it. Kenya's performance regionally emerges to be above average; has so far tried to implement UNSCR 1373(2001), but is above all awaited to show total commitment in her counter-terrorism campaign by enacting an anti-terror law.

Abbreviations

NGO's	-	Non-governmental Organizations
IGO's	-	International Governmental organizations
UN	-	United Nations
USA	-	United States of America
CTC	-	Counter-Terrorism Committee
OAU	-	Organization of African Unity
AU	-	African Union
PLO	-	Palestinian Liberation Organization
PLF	-	Palestinian Liberation Front
PIJ	-	Palestinian Islamic Jihad
GIA	-	Algeria's armed Islamic group
ARC	-	Action Pour La Renaissance De La Corse
RSU	-	Revolutionary socialist unity
PAN AM	-	Pan American airline
FALN	-	Armed Forces of National Liberation
RAF	-	Red Army Faction
IJ	-	Islamic Jihad
JRA	-	Japanese Red Army
IRA	-	Irish Republic Army
AQ	-	Al-Qaeda
AIAI	-	Al-Itihad Al-Islamiya
AP	-	Army of Palestine
SAM	-	Surface to Air Missile
SAS	-	Special Air Service
NCTC	-	National Counter Terrorism Centre
NSAC	-	National Security Advisory Committee
NSIS	-	National Security Intelligence Service
ATPU	-	Anti-Terrorism Police Unit
GSU	-	General Service Unit
KRA	-	Kenya Revenue Authority
KPA	-	Kenya Ports Authority
DOD	-	Department of Defense (Kenya army, navy, and air force)
IPS	-	International Political Systems
HIV	-	Human Immuno-Deficiency Virus
AIDS	-	Acquired Immune Deficiency Syndrome
IGAD	-	Inter-Governmental Authority on Development
PSC	-	Peace and Security Council of African Union
IGO	-	Intergovernmental Organization
EU	-	European Union
OAS	-	Organization of American States
US	-	United States of America
CJTF-HOA	-	Combined Joint Task Force-Horn of Africa
NATO	-	North Atlantic Treaty Organization
9/11	-	Denotes September 11th 2001 Terrorist Attacks In The US

UAV'S	-	Unmanned Aerial Vehicles
UN-CTC	-	United Nations Counter Terrorism Committee
CTED	-	Counter-Terrorism Executive Directorate
CBK	-	Central Bank of Kenya
KNHRC	-	Kenya National Human Rights Commission
MANPADS	-	Man Portable Air Defense Systems
TFG	-	Transnational Federal Government of Somalia
FDI	-	Foreign Direct Investment
ATB	-	Anti-Terrorism Bill, 2006
AML	-	Anti-Money Laundering
ICAO	-	International Civil Aviation Organization
SAM	-	Surface to Air Missiles
RAF	-	Royal Air Force

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CHAPTER ONE: THE PHENOMENON OF TERRORISM: AN INTRODUCTION

1.1 Background To The Problem

The International Relations scholars often look at international relations in terms of the mix of conflict and cooperation in relationships among nations[1]. The international (political) system comprises of (sovereign) states (and their governments), and non-state actors, such as multinational corporations, non-governmental organizations (NGOs), international governmental organizations (IGO's), political groups, terrorist groups, leaders and individuals a ll o f w hich interact closely.[2] The International Political System is anarchic with about 200 sovereign states all equal, at least in theory, and recognizing no authority over them.[3] However in practice, the preponderance power of the United States enables it to control world politics and foreign polices of most (sovereign) states. To ensure their survival and security, states invariably attempt to maximize their power. This is done through the balance of power politics where weaker states form political alliances to check the power of stronger states.

Huntington observes that human history is the history of civilizations. He identifies five major civilizations in the 20th C and 21st C: Sinic (Chinese), Japanese, Indian, Islamic and Western (but quickly adds two minor ones: Orthodox Latin American and African civilizations). To a very large degree, the major civilizations in human history have been closely identified with the world's great religions: Confucianism (China), Hinduism

[1] Goldstein, J., International Relations, 4th edition, Longman Publishers, 2001 New York, USA P.5
[2] Ibid, PP. 11-15
[3] Shaw, M N., International Law, 5th edition, Cambridge University Press, 2003, Cambridge, United Kingdom, P.5

(India), Christianity (Western), Islam (Arabic),[4] with exception of Buddhism. He uses the clash of civilization paradigm to explain emerging World Order and the phenomenon of international terrorism. He observes that the level of violence between Islam and Christianity over time has been influenced by technological (industrial revolution) change, economic developments, demographic growth and intensity/resurgence of religious commitment (Islamic fundamentalist).[5] Indeed it is the West's simultaneous efforts to universalize its values and institutions, to maintain its military and economic superiority, not to mention intervention in conflicts in the Muslim world (including Israel -Palestinian conflict) that has generated intense resentment among Muslims. Terrorism (and nuclear weapons proliferation) has then become the weapon of the (non-Western) weak.[6] The dangerous clashes of the future will continue to rise from the interaction of Western arrogance, Islamic intolerance and Sinic assertiveness. It is no wonder terrorism has been viewed as a tool of foreign policy in international politics.

Terrorism is a method of war[7] and a species of conflict[8] (indeed violence). The regulation of the use of force is one of the central aspects of international law and part of *Jus cogens*. The United Nations seeks to suppress acts of aggression and breach of peace, except in self-defense.[9] Michael Walzar[10] observed that war was just if the conduct matched the political objectives and was limited to the objectives – and unjust if its conduct was outside

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[4] Huntington, S.P. The Clash of Civilizations: And The Remarking of World Order, Simon & Schuster inc., 1996, London, United Kingdom, PP 42 - 47
[5] Huntington, S.P., Ibid, P.211
[6] Crenshaw, M., "Defining Future Threat: Terrorism & Nuclear Proliferation," in, Terrorism: Interdisciplinary Perspectives. (ed), by Yonah, Alexander, John Jay Press, 1977, New York, USA, P. 298.
[7] Gilbert,P., Terrorism, Security & Nationality. Routledge, 1994, London, United Kingdom, P. 7
[8] Quincy Wright, "The Nature of Conflict" in the Western Political Quarterly, IV (2) (June 1951), P.15
[9] See Charter of the United Nations, Article 2(4)
[10] Walzar, M., Just and Unjust Wars. 3rd edition, Perseus Books Group, 2000, New York, USA

the known recognized rules and norms, for instance, if non-combatants were killed in the process of war. The rise of international terrorism has posited new challenges to the system as states and international organizations struggle to deal with this phenomenon while retaining respect for the sovereignty of states and for human rights.[11]

Counter-terrorism measures can be classified under international, regional and national responses.[12] Over the last few decades, the UN has put in place several conventions towards fighting international terrorism. However most states have to date not ratified the conventions nor agreed on a comprehensive international legal framework for combating terrorism.[13] This is explained partly by the assertion that one's terrorist is another's freedom fighter[14] and the general lack of consensus as to definition of terrorism.

Pursuant to the terrorist attacks in the US on 11th Sept. 2001(9/11), the UN Security Council passed Resolution 1373 thereby unequivocally condemning international terrorism and called on UN member states to work together to forestall terrorism which UN recognized as a threat to international peace and security. UN member states since then are required to give yearly report to the UN Security Council Counter-Terrorism Committee (UN-CTC) on measures they have put in place to implement Resolution 1373. There are also twelve UN backed counter-terrorism Conventions/Protocols (all of which Kenya has ratified). Regionally, in Africa, African Union member states collectively adopted

[11] Shaw, M. N. International Law, OP Cit, P.42
[12] Mboya, H. T., MA Thesis (Unpublished 2004, IDIS, University of Nairobi) P.11
[13] Mwagiru, M.,"Conference Paper: The Nationalization of Terrorism: National Responses To Terrorism Through National Legislation," Presented at the Symposium on Responding To Terrorism (University of Nairobi, IDIS, 1st July 2003 Nairobi, Kenya) P.1
[14] Wardlaw, G., Political Terrorism 2nd edition 1990, Cambridge University Press, Cambridge, United Kingdom, P.3

convention on the prevention and combating of terrorism during the 35th Assembly of Heads of States of OAU in Algiers in July 1999. In 2001, during the Dakar Declaration against terrorism, African States swore to continue fighting terrorism. The Peace and Security Council of African Union (Article 4 Africa Union Constitutive Act) ensures compliance, harmonization and coordination of efforts towards combating international terrorism, and requires member states on annual basis to report steps taken to respond to terrorism. In line with resolution 1373 of the UN, African States undertook to domesticate/align their municipal legislations taking into account the previous 12 conventions on the war against terror.

On her part, pursuant to the US Embassy terrorist bombing in 1998, the Kenya Government revamped her security apparatus, institutions and established others to deal with international terrorism (indeed the 1980 terrorist attack at Norfolk Hotel was blamed on the PLO, and not much in way of counter-terrorist measures were put in place as it was treated as an isolated incident unlikely to recur). Then followed the 2001 terrorist attacks at Kikambala hotel and attempted shooting of an Israeli airline plane after take off from Mombasa Airport. Overall, there have been legislative, judicial, military, diplomatic (cooperation), legal, political responses against terrorism internationally, regionally and nationally (Kenya). This study appraises the responses and their efficacy in the light of sporadic terrorist attacks in Kenya and suspected terrorist cells in the country.

1.2 The Problem Statement

Terrorism has today become one of the contemporary world's major problems, alongside poverty, HIV/Aids amongst others. Today's terrorists take advantage of the greater openness of the society, globalization, and the explosion of information and weapon technology. This is a threat to all mankind. It is a lot easier today than earlier for movement of people across porous borders with concealed weapons which may be used in terrorist attacks. Lack of adequate security and immigration laws and other measures at borders compounds the problem of international terrorism. Since the 1970's a fairly consistent anti-western trend has existed, marked by the rise in fundamentalism, shifts in power within Muslim countries from more pro-western to more anti-western governments, the emergence of a quasi-war between some Islamic groups and the West.[15]

The problem of terrorism is multi-dimensional. The issues it raises in politics have to do with self-determination, political independence, sovereignty, jurisdiction, security and the growing interface between conventional diplomacy and the diplomacy of terrorism. In finance and economics, it raises issues to do with destruction of property, decreased investment (if persistently attacked), and money laundering and transfer. Legally it raises fundamental questions in the area of international criminal law, national penal law, and human rights law.

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[15] Huntington S.P., The Clash of Civilizations. Op Cit, P.185

This study examines the underlying factors to causality of international terrorism and the counter-terrorism responses and other measures put in place to manage the scourge. The study seeks to answer the question – why do so many incidents of international terrorism occur inspite of the various combative measures globally, regionally, sub-regionally, and nationally? Is it because such measures are not adequate, or is it that the counter-terrorism institutions and agencies in place are inefficient, ineffective and more or less paper tigers that terrorists continue to strike with impunity?

Globally and regionally, measures put in place to counter international terrorism include-legal responses, diplomatic responses, judicial (court) responses, military responses, international cooperation, and political responses. At the global level, the UN passed resolution 1373 as a direct response to the 9/11 terrorist attacks and it requires IGO's- like AU, EU, OAS, etc- to implement the resolution by coming up with mechanisms to fight international terrorism. Sub-regional IGO's have by extension echoed the regional ones in unequivocally condemning terrorism and included clauses in their legal instruments requiring member states to pass anti-terror legal regimes and cooperate by sharing intelligence in countering terrorism. The US (supported by other NATO members) leads the war on terror by virtue of her superpower status, capability and being targeted mostly by international terrorists.

To date, Kenya has had three terrorist attacks: in December 1980 at Norfolk hotel, Nairobi; in August 1998 at the US Embassy, Nairobi; and in Paradise hotel, Kikambala near Mombasa in November, 2002. As a response to the 1998 bombing by terrorists of the US

Embassy in Nairobi, the Kenya Government came up with a national counter-terrorist strategy, revamped security institutions, and created others (e.g. Anti-Terrorism Police Unit) and put in place other counter-terrorist measures to combat the threat. The National Security Advisory Committee (NSAC) was established for overall Counter-Terrorism Policy and guidance matters, assisted by the National Counter-Terrorism Centre (NCTC), which is charged with coordinating national resources in the fight against terrorism.[16] Notwithstanding the international, regional and national counter-terrorism measures and efforts, international terrorism incidents and acts (and fear of the same) have continued to recur in Kenya affecting social-economic development. The question is- why have terrorist attacks (and fear of the same) continued to recur in Kenya inspite of the country's ratification of all the twelve UN-sponsored Conventions/Protocols, putting in place all other globally prescribed counter-terrorist responses cited above, and putting in place (and revamping) counter-terrorist institutions (military, police-ATPU, customs, immigration, NSIS, KAA, KPA, navy, etc)? Is it because the above measures are inadequate and counter-terrorist institutions moribund (paper tiger) that incidents of terrorism and fear of the same continue to recur? Or why does this state of affairs continue to obtain? This study critically analyses the efficacy of the counter-terrorism responses and looks at why terrorism continues to affect Kenya inspite of the counter-terrorism responses (and institutions) put in place.

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[16]Interview with NCTC Official who prefers to remain anonymous, Nairobi, September 8th, 2006

1.3 The Objectives

In evaluating the adequacy or otherwise of the various responses against international terrorism the study has the following objectives: -

i)   To examine how the US-led donor community has impacted on (multilateral) counter-terrorism efforts.

ii)   To critically evaluate Kenya's responses to international terrorism and its continued threat

iii)   To examine institutions revamped or put in place to fight international terrorism

iv)   To deepen understanding of the major challenges facing counter-terrorism responses in Kenya.

1.4 The Hypotheses

i)   Successful and effective implementation of counter-terrorism measures are highly depended on donor assistance.

ii)   The donor presence leads to a rise in terrorist acts.

iii)   Donor assistance has no effect on counter-terrorism responses

iv)   Corruption, lack of (effective) legal regime and ineffective counter-terrorism institutions impact negatively on the counter-terrorism responses

1.5 Justification of The Study

The international political system is anarchic and the elements therein, the states, are at least in theory equal, with no supranational authority above them. All states are perpetually preoccupied with matters concerning their security, survival, and continued existence. Common problem threatening states existence today include HIV/AIDS, poverty and international terrorism, amongst others. These are indeed an antithesis to the fabric of life of the existentiality, growth and economic development of modern states, including Kenya. There is therefore need to conceptualize this threat in all aspects and at all levels – internationally, regionally and naturally. This leads to greater understanding, appreciation and preparedness to deal (combat) with any international terrorist incidents and terrorists. This study leads to appreciation of the fact that the states are the main actors in international affairs, but there are other structurally important elements, the non-state actors such as political organizations, terrorist groups, international governmental and non-governmental organizations which are also vital actors in the international political arena. It is vital therefore to carry out research on any phenomenon that is a threat to state(s) existentiality in general for better and informed responses. It is also worth noting that the cost of international terrorism in terms of lives lost, wanton destruction of property, fear and despondency, is colossal. Kenya's national interests and economy experienced a set back as tourism industry, a leading foreign exchange earner stagnated as aviation industry was negatively affected. This further negatively affected other sub-sectors of the economy depended on tourism, for instance, transportation and agriculture.

The national security of any country is paramount. Kenya has experienced three terrorist attacks – the Norfolk hotel, US Embassy bombing and Paradise hotel bombing, almost certainly confirming presence of terrorist cells in the country. To date little has been researched on international terrorism and particularly why the prevalent terrorist attacks in spite of the US and allied states led counter-terrorist efforts coupled with those of the Kenya Government. Most studies done and therefore available literature is largely Western in orientation. There is little literature on terrorism and its effects on Africa (Kenya) as well as the efficacy of African (Kenyan) responses. This study attempts to fill this gap   The study further explores whether the counter-terrorist measures and institutions put in place measure up to the task or are a mere public relations gimmick on the part of the Kenya government. It provides additional literature. It explores whether the counter-terrorism institutions in place are effective or moribund, and thus in need of revamping.

1.6 Limitations

There is no study that is so perfect that it has no limitations.[17] "Much information that would be helpful and relevant in countering terrorism is not accessible to the scholar. Both the terrorist organizations and the intelligence organizations responsible for countering terrorism d epend h eavily o n s ecrecy f or t heir e ffectiveness. S o t he s cholar h as t o work without access to much important information"[18] The Kenyan Security environment is not radically different from the Western one captured above and the effectiveness of Kenyan

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[17] Mugenda, O M& Mugenda, A.G., Research Methods: Quantitative and Qualitative Approaches. ACTS Press, 1999,Nairobi, Kenya, P.125

[18] Davis J.M., 'Countering International Terrorism: Perspective from International Psychology' in Stout, C.E(ed) Psychology of Terrorism: Coping With The Continuing Threat (Praeger Publishers, 2004,London, UK) P.117

security apparatus in the war on terror being depended on secrecy – Kenya Police/Anti-Terrorist Police Unit and the National Security Intelligence Service (NSIS) certainly have to safeguard information and data in their possession. Indeed world over, information on terrorism is treated secretly and sensitively. The war on terror is basically an intelligence war. The researcher is then at a loss as to how to gather much needed data. Terrorism being a security issue is treated with a lot of sensitivity and both foreign diplomatic missions and government officials found it hard to unreservedly volunteer information – and whenever they did, requested for anonymous treatment or citation of the same in a manner not necessarily compromising state security in any way.

1.7 Literature Review

There has been no singly agreed upon definition of terrorism by scholars. Terrorism phenomenon has all the same attracted attention from some scholars who have analyzed the phenomenon, its root causes, forms, manifestations and possible strategies to address it. It is no wonder then that there have been different perspectives to the study: economic, political, sociological and psychological.

Wardlaw[19] an Australian criminologist and specialist on terrorism, special warfare and public order, approached terrorism as a political phenomenon. He gave perspectives on different definitions, history, theory, operation, effects as well as counter terrorist policy issues such as role of intelligence agencies, armed forces, development of anti-terrorist legislation and international treaties. He also touched on the developments in the strategic

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[19] Wardlaw, Grant: Political Terrorism. OP Cit.

dimension of terrorism such as issues surrounding state involvement in international terrorism and importance of hostage taking.

Michael Walzer[20] examined the question of morality, and just and unjust wars. His manuscript 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. He felt that in war, forces should be used morally and lives protected. He argued that terrorism is immoral as it kills innocent bystanders – noncombatants.

Ranjit Pachnanda[21] examined causes, manifestations, types and psyche of terrorist, international terrorist groups and where they mostly operated, measures, tactics and strategy to counter terrorism. He cites some of the commonly known international terrorist organizations as the Armed Forces of National Liberation (FALN), Red Army Faction (RAF), Black September, Palestinian Liberation Organization (PLO), Al-Fatah, Hezbollah, Islamic Jihad, Japanese Red Army (JRA), Hamas, Al-Qaeda.

Samuel Huntington[22] gives an interpretation of the evolution of global politics after the Cold War and a framework, a paradigm, for viewing global politics meaningful to scholars and policy makers alike. He explored clash of civilizations, the relation between power and culture; question of shifting balance of power among civilizations, conflicts generated

[20] Walzer, Michael. Just and Unjust Wars. Op Cit

[21] Pachnanda, R. K., Terrorism And Response to Terrorist Threat OP Cit
[22] Huntington, S. P. The Clash of Civilizations. OP Cit

by western universalism, Muslim militancy, and Chinese assertion. He sees western civilization as declining in relative power while others like Arabic and Chinese civilizations, the challenger civilizations, to be on the rise, a scenario he sees to lead to strained and often highly antagonistic relations. Culture and pioneer questions, he observed, underlie conflicts between the Occidental and the Orient, and further that international terrorism and nuclear weapons are the weapons of the non-western weak. To him therefore, the different structures/elements (civilizations) perpetually strive for maximum power (and wealth), a situation that leads to conflict and terrorist acts by the weak to check hegemonic advances of preponderant power (US).

Chris Stout[23] gives a psychology perspective to understanding international terrorism and terrorist. He explores how terrorists come to be, and what, if anything, can be done in response or prevention. He confirms that terrorism is very complex phenomenon and for it to be understood, it should be studied interdisciplinarily. He does not believe that there is anyone book that teaches a reader everything there is to know on terrorism. He further provides perspectives on what kind of a person becomes a terrorist, a leader of terrorist group, motivation for joining terrorist groups and what can be done to reduce such motivation. Indeed there is no such thing as psychology terrorism, may be "Psychologies of terrorism" meaning there is no one perspective and as such it is not easy to provide generalizations on the subject. Paul Gilbert[24] explored terrorism, security and nationality issues and how they could be applied to the problems of terrorism, state violence and

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[23] Stout, C.E.(ed).. Psychology of Terrorism: Coping With The Continuing Threat (Praeger,2004,London,United Kingdom), OP Cit
[24] Gilbert, P., Terrorism. Security & Nationality. OP Cit

national identity. He examined the reasons for political violence and asserts the justifications put forward by its perpetrators – ethnicity, nationality and interests of the state. He saw terrorism as morally wrong and an unjust war as it impacted negatively on non-combatants. He cited oppression, struggle for political power, denial of political rights, and lack of fair share of resources as some of the causes of violence (terrorism)

Martha Crenshaw[25] examined some terrorist acts committed in Africa thereby noting that African states like Libya and Sudan had been accused by the international community for state-sponsorship of terrorism. Liberation struggles on the African continent leading to attainment of independence then becomes controversial as on one hand (western view) the acts are viewed as terroristic while from the view point of the oppressed Africans, the likes of ANC and Mau Mau, in South Africa and Kenya respectively, remain as revered liberation organizations that fought for independence and self-determination.

Walter Laqueur[26] explored the history of terrorism, origins of both old and new terrorism and the geographical spread of the main terrorist organizations, the demands of the major terrorist groups and the various interpretations of the phenomenon. Alex Schmidt[27] gathered literature of about 100 definitions of terrorism in an attempt to unravel what the phenomenon was.

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[25] Crenshaw, M., (ed) Terrorism in Africa, Dartmouth Publishing Company Limited, 1993, England, United Kingdom
[26] Laqueur, Walter (ed) Voices of Terror, Reed Press, 2004, New York, USA
[27] Schmidt, Alex, Political Terrorism (Amsterdam, 1983)

Ian Lesser,[28] et al, traced recent evolution of international terrorism, offered perspectives on the future directions of terrorism, and proposed strategies for its containment, in USA. He felt that terrorism was/is a changing threat and that terrorists were now organizing themselves in new, less hierarchical structures thereby making use of amateurs to a far greater extent than in the past. He observed that the forgoing rendered much previous analysis of terrorism obsolete and complicated the task of intelligence gathering and counter-terrorism. He suggested military, diplomatic, prosecutorial/judicial and cooperation between countries (and numerous government agencies) as some of the necessary responses against terrorism.

Alexander Yonah[29] looked at definitional and historical perspectives, political, strategic, legal, media perspectives in relation to terrorism, and challenges and future implications of international terrorism. He posited that the study of international terrorism should be multidisciplinary in approach. Johnnie Carson[30] saw Kenyan coastal peoples (Arabs and Swahili) who are historically, culturally, and linguistically linked to Arabian Peninsula as sympathizers of terrorists targeting Western interests. Coastal Muslims feel economically and politically marginalized. It's no wonder then that their youth are readily recruited to radical Islamism and terrorism. He recognized cooperation, legislation, military, diplomatic, and additional resources as some suitable counter-terrorism responses in Kenya, East Africa and in the greater Horn of Africa region. He cited domestic politics,

[28] Ian Lesser, et al, Countering The New Terrorism, Rand, 1999, Washington DC, USA

[29] Yonah, Alexander, et al , Terrorism: Interdisciplinary Perspectives, John Jay Press, 1977, New York
[30] Carson. J., Kenya: 'The struggle against terrorism' in Rotberg, Robert(ed) Battling Terrorism in the Horn of Africa' World peace Foundation, 2005, Massachusetts, US, PP.173-192

bureaucracy, corruption, and inefficient counter-terrorism institutions (police, customs, immigration, etc) as some hurdles facing the war on terror in Kenya.

Robert Rotberg[31] observed the Horn of Africa (Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and Yemen) to have 149million people (more than half of whom are Muslims), to be generally politically unstable, has paucity of resources and unfulfilled desires for rapid economic advancement, experience high corruption levels and poor governance. Terrorism (Al-Qaeda cells) is prevalent in the vulnerable countries along the Red Sea and the Indian Ocean, is best interdicted from a holistic regional perspective as the threat is transnational and respects no boundaries. He posits that finding and neutralizing existing and potential pockets of Al-Qaeda demands concerted diplomatic, intelligence, law enforcement, cooperation, and military initiatives/responses. He urges for cooperation between individual states' security forces in the region (military and police) with the U.S.Central Command's Combined Joint Task Force-Horn of Africa (CJTF-HOA) based in Djibouti's camp Lemonier. Menkhaus,[32] saw Somalia to be a collapsed state in the orbit of Wahhabism Islamic fundamentalism- with a long, unpatrolled coastline, hundreds of unmonitored airstrips facilitating untracked movement of foreign jihadists, terrorists and illicit business transactions. He cites a radical Islamist organization, Al Itihad Al Islamiya (AIAI) to provide a potential for Al-Qaeda. Somalia's extreme poverty (only a handful of rich warlords and businessmen), unemployment, desperation, and resentment -all make it an ideal terrorist recruiting ground.

[31]Rotberg I, R., 'The Horn of Africa and Yemen: Diminishing the Threat of Terrorism' in Rotberg, R(ed) Battling Terrorism In the Horn of Africa, world peace foundation, 2005, Massachusetts, USA, PP.1-7

[32] Menkhaus K.J.,'Somalia and Somaliland: Terrorism, Political Islam, and State Collapse' in Rotberg, R(ed) Battling Terrorism In The Horn of Africa. world peace foundation, 2005,Massachussets, US, PP.23-45

To fight terrorism, the U.S. policy has been to use the local militia whom they subcontract to hunt for suspected terrorists. As the Transnational Federal Government (TFG) establishes itself in Somalia, the U.S.will be compelled to reconcile its support for state building with its operational reliance against the state building process. Overall, Somalia has been viewed as a safe haven, trans-shipment point, recruitment site, and a base for attacks on international targets inside the country. Since 9/11, and in partnership with regional states, Western states engaged in much more vigilant monitoring of Somali businesses, money transfers, shipping, and cross border movements, including freezing assets of Islamic charities and remittance companies suspected to have links with Al-Qaeda. Commenting on Djibouti and the war on terror, Schermerhorn[33] notes that the Government adopted an aggressive immigration campaign to remove aliens and weed potential terrorists, closed suspected terrorist-linked financial institutions and shared security information on terrorism in the region. A counterterrorist committee to enhance coordination and action on information on terrorist organization was also set up. Carney[34] submits that both internal and international terrorism have existed in the Sudan. Significant numbers of 'Afghan-Arabs'who had fought the USSR in Afghanistan including Osama bin Laden were invited into Sudan (Khartoum) by a leading politician, Hassan Turabi, to live there. Turabi aimed not only to create a modern Islamist state in Sudan, but also to advance political Islam worldwide. Sudan featured in the US list of state sponsors of terrorism because it offered sanctuary, gave facilities, and offered training venue to a broad range of Middle East and neighbouring terrorist organizations. In 1996, the political leadership

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[33] Schermerhorn,L.,Djibouti: 'Special Role in the War on Terror' in Rotberg,R(ed) Battling Terrorism In The Horn of Africa.worldpeace foundation,2005,Massachussets,US,PP.49-61

[34] Carney,T., 'The Sudan: Political Islam and Terrorism' in Rotberg,R(ed) Battling Terrorism In The Horn of Africa,worldpeace foundation,2005,Massachussets,US,PP.119-136

forced Osama bin Laden to leave Sudan due to US pressure - as well as most other radical Islamist groups suspected of terrorism. The US pressured Sudan to cooperate on issues involving terrorism. To date, Sudan has ratified all twelve counterterrorism conventions. Efforts to fight terrorism in Kenya must be holistic in approach as terrorism does not respect international boundaries, hence the Horn of Africa region initiative. In all, Huntington clash of civilization paradigm explored earlier offers a prism through which to appreciate contemporary international relations, world politics, and international terrorism.

1.8   Theoretical Framework

The study uses structuralism theory of international relations which is closely associated with the Peace Research Paradigm and is concerned with structures that give rise to relationship within society that lead to conflicts. The leading scholar of Peace Research Paradigm is a Swedish, Johan Galtung. Other leading scholars to have contributed aspects to the structuralism theory include Marx Weber, Karl Marx, and Lenin amongst others. Marx Weber[35] gave the concept of stratification of society into varied classes which struggle over scarce economic resources, political power and prestige. He concluded that the history of all societies up to the present is the history of the class struggle. Lenin[36] applied the general notion of stratification and class struggle to the international relations of the late 19th C and early 20th C to explain imperialism concluding that war was

[35]Handerboss, M, et al., Sociology: Themes And Perspectives, 4th edition Collins Educational Publishers, 1995, London, United Kingdom, PP.36-37.
[36] Groom, A J R., "Paradigms In Conflict: The Strategist, the Conflict Researcher and the Peace Researcher', in Burton J. & Dukes F (eds), Conflict: Readings In Management And Resolutions. Macmillan, 1990, London, United Kingdom,P.8

inevitable between the exploitative capitalists and the labourers. Structuralism defines reality in terms of relationships between elements.

This school of thought points out that emphasis must be given to the whole since this has an impact greater than the sum of its parts and must therefore be taken into consideration in any empirical theory of behavior at whatever level.[37] Structural factors (elements) are vital to consider when dealing with questions of conflict and changes. Indeed 'structural violence' is now part of every scholar's conceptual lexicon. Galtung,[38] clearly believed that structural violence came about due to persistent inequalities (in society) above all in distribution of power, either between different groups and or nations in the international system. Structural violence is not necessarily overt and is built into structures. Structuralists agree that conflict is an objective phenomenon (don't have to perceive it for same to exist) and emerges from a real clash of interests.[39] Conflict can be resolved by structural change and to that extend then peace research is revolutionary.

International terrorism fits into the structuralism frame work in that some of its causes and even manifestation are imperialism, colonialism, political persecution, inequalities, economic exploitation, class struggle, abuse of human rights[40] and racialism as depicted by clash of civilizations throughout human history. The West led by US depicts the successful civilization which has outclassed and ashamed the old Arabic civilization. Civilization

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[37] Ibid, P.80
[38] Gultung, J., 'Violence, Peace and Peace Research' In Journal of Peace Research, Vol.6 No. (1969)

[39] Groom, A.J.R., Op Cit, P.93

[40] Pachnanda, R.K., Terrorism and Responses to Terrorism. Op Cit P.9

and culture refer to the overall way of life of a people and major civilizations in human history have been closely identified with world's great religions. Imperialism, economic exploitation, abuse of human rights by the West over the years has indeed built conflict in the structure of oppressed peoples who due to the political and military might of the West could hardly resist. The Western civilization has come to be identified with Christianity and Arabic civilization with Islam. Historical facts of colonialism and territorial occupation, of the West have resulted to the weapon of the (non-western) weak, terrorism,[41] in all its manifestations and forms such as class struggle, power struggle, fundamentalism, organized crime, kidnappings, bombings, hijackings, hostage taking,[42] and so on. The weak nations and terrorist organizations (elements in the international political system) use international terrorism as a means of leverage against the preponderant power of the West.

1.9 Definition of Terms and Concepts

Terrorism - Violent actions inflicted upon secondary targets that may be conducted by an individual, group, or government with the wider purpose of attracting attention, gaining support, or forcing concessions from the primary target on personal or political issues.[43] Perpetrators of terrorism normally select, either purposefully or in discriminatively, illegitimate secondary targets (such as non-combatants and civilians) and

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[41] Huntington, S, P., The Clash of Civilizations, Op Cit, P.188

[42] Pachnanda, R.K.. Terrorism and Responses to Terrorism. Op. Cit P.10-11

[43] Miller C.A., A Glossary of Terms and Concepts in Peace and Conflict Studies, University for Peace, (ed) by King M.E., P.41

target them with bombings, hijackings, and other violently coercive methods. Terrorism has also been defined as the use of violence against random civilian targets in order to intimidate or create generalized pervasive fear for the purpose of achieving political goals.[44]

Terrorist   - A terrorist is/was anyone who attempts(ed) to further their views by a system of coercive intimidation.[45]

International Terrorism   - Is the threat or use of violence for the political purposes when such action is intended to influence the attitude and behaviour of a target group other than its immediate victims and its ramifications transcend international boundaries.[46]

Islamic Fundamentalism   -   Reversion to the so-called 'pure,' traditional (pristine) form of Islam (devoid of customary inclusions) as a guide to socio-cultural, political, economical and legal order-of life.

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[44]Yonah, A._ International Terrorism: National. Regional and Global Perspectives. Praeger Publishers, 1976,New York, USA, P.4
[45] Murray,J.,A new English Dictionary on Historical Principles(Oxford,1919)
[46]Goodby J., 'Collective Security Work? Reflections of the European Case.'in Crocker C.A.et al, Managing Global Chaos: Sources and Responses to International Conflict. Lynne Rienner Publishers, London, UK, PP.239-240

Non-Combatants - Refers to the civilians, or the military when off duty and unarmed; or when the military is armed but impartial between two warring parties, for instance during peacekeeping.[47]

Combatant - Is a soldier (or civilian) in the battlefield against an enemy[48]

Terrorist Organization - A group which practices or has subgroups which practice terrorist acts

Terrorist target - Refers to either hard or soft susceptible to attack highly ranked personages in a government, diplomatic service, or installations, or building, representing western presence and interests.

Counter-terrorism - Concept that captures all efforts put towards fighting terrorism; the chain from collection of intelligence, processing to get actionable reports which determine threat level, through to course of action desired to disrupt, deter, deny, or destroy terrorism.

Counter-terrorism institutions - To mean, and include, all security concerned government bodies and agencies notably Kenya Police (Anti-terrorist police Unit and GSU),the military, NSAC (National Security Advisory Committee), NSIS (National

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[47] Stern, J., The Ultimate Terrorists, Harvard University Press, 1999, Massachusetts, USA PP.13-14.
[48] Ibid, P.13

Security Intelligence Service), Immigration, Customs (KRA), Ministry of Foreign Affairs, A-Gs Office, Kenya Ports Authority, Kenya Airports Authority, National Counter-Terrorism Centre, amongst others.

Legislation   -   Refers to the Anti-Terrorism laws.

1.10 Methodology

The study will adopt a case study method. It will utilize both primary and secondary data and will basically be qualitative in approach { though responses of accurate figures (and therefore quantitative approach) will be sought}. Primary data will be collected through interviews with members of diplomatic corps (using unstructured questionnaires to allow freedom of responses from interviewees) – especially those representing countries that have experienced terrorism in the recent past, suspected of state-sponsorship, or lead the war against international terrorism (notably US, Israel, UK, Tanzania, Libya, Sudan). Such interviews will provide data/information on the various counter-terrorism institutions and responses/measures put in place in their countries and their impact. Another set of other countries (diplomats) known to have had no terrorist attacks in the past will also be interviewed to see what counter-terrorism institutions and responses, if any, are in place-and whether same are US-led/inspired or not. Deductions will then be made.

Also to be interviewed will be Kenyan officials particularly those attached to the Office of the President, Internal Security, and the key security departments/agencies notably the Kenya Police-ATPU, the military-Army, Navy, Air force, National Security Intelligence Service, National Counter-Terrorism Centre. Other security related institutions from which data will be collected are the KPA, KAA, immigration, Customs, national disaster centre, amongst others. From the foregoing, it will be seen if these institutions are effective and adequate, or otherwise. Academicians and UN officials, Nairobi office, will also be interviewed.

Secondary data will be obtained from Library research - from books, journals, periodicals, magazines, newspapers, seminars/conference papers, UN, OAU/AU, IGAD reports and other documents, Laws of Kenya - Acts of Parliament (including Bills yet to be tabled in parliament), as well as unpublished scholarly works on terrorism. Kenya government ministries/agencies reports/documents will also be used. Also to be used as reference material will be internet sources.

1.11 Chapter Outline

Chapter One   :   **The Phenomenon of Terrorism: An Introduction-**
Comprises the Research Proposal, Introduction/background information on the phenomenon of terrorism, problem statement, and the framework of the research in general.

Chapter Two :   **An Anatomy of Terrorism** – This chapter contextualizes the phenomenon of international terrorism. It explores definitions, origins, typologies, emerging trends, causes and underlying factors to terrorism.

Chapter Three: **Responses to Counter-Terrorism: Comparative Picture** - This chapter examines the centrality of the US in the war against terror; Counter-terrorism experiences of the United Kingdom, and Israel; UN conventions/Protocols on Counter-terrorism a nd o ther measures/responses; e xamines o ther R egional (efforts) Organizations towards fighting terrorism – OAU/AU, OES (EU), League of Arab states, IGAD, and the Kenyan counter-terrorism experience.

Chapter Four: **International Terrorism: The Kenyan Experience.** Explores the historical perspective of terrorism in Kenya; Kenya's centrality in the region in the war on Terrorism; an analysis of counter-terrorism measures and institutions/agencies put in place to fight terrorism in line with UNSCR 1373(2001); challenges faced; an analysis of research findings on various perspectives held by certain diplomatic missions on Kenya's counter-terrorism efforts.

Chapter Five: **Summary, Conclusions, and Recommendations.**

CHAPTER TWO: AN ANATOMY OF TERRORISM

2.01 Introduction

Terrorism, one of the most widely discussed issues of our time, remains one of the least understood.[49] At base terrorism is a moral problem and this has been a major stumbling block to the serious study and analysis of the phenomenon. What is described as terrorism by one group may be variously regarded as heroism, foreign policy, or justice by others.[50] It has been argued that one man's terrorist is another man's freedom fighter. Interpretation of terrorism carries the flavour of some moral judgment and therefore subjectivity. Terrorism can be precipitated by governments, groups or individuals against other individuals, sub-national groups or even governments.

Terrorism is a violent phenomenon and it is probably no mere coincidence that it gives in response, rise to violent emotions such as anger, irritation and aggression. It has been variously interpreted as (class) struggle, revolution, movement and a process. These interpretations are due to the fact that the character of terrorism has changed greatly over the last century. Those who employ terroristic-type tactics include political, ethnic and religious crusaders, criminals and the mentally disturbed.[51] Victims and the ultimate targets are usually often unrelated. Terrorism uses media publicity it generates to create wider psychological impact by reaching a wider audience and creating fear and feeling of vulnerability. Terrorist actions are covert, incalculable and unpredictable.[52] Many scholars

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[49] Laqueur, W., The Age of Terrorism. Little Brown and Company, Boston, USA, P.1
[50] Wardlaw, G., Political Terrorism. OP Cit. P.5
[51] Wardlaw, G., Ibid, P. Xiv (Preface)
[52] Schmidt,A.,Political Terrorism,(Amsterdam, 1983) P.10

do not share a common working definition of the term 'terrorism' though they share certain understanding about the phenomenon.[53]   Defining terrorism is more than an academic exercise.[54]   The definition inevitably determines the kind of data we collect and analyze, which in turn influences our understanding of trends and predictions about the future. How we define terrorism profoundly influences how we respond to it.[55]   The explanation of motivations and root causes of terrorism are often shunted aside and preference given to deterrence and security measures which in themselves may be inadequate to deal with terrorism. This study is generally concerned with the employment of terror as a weapon of psychological warfare for political ends and the responses evoked thereby to manage the phenomenon. To respond to (international) terrorism efficiently, timely and effectively, it is paramount to appreciate the phenomenon in its various facets origins, nature, forms, development, and causality - to cite a few dimensions.

2.02 Terrorism Defined

Terrorism has become a permanent phenomenon of the contemporary world society. It emerged as a global problem in the late 1960s, remained a serious problem in the 1990s and will continue to confront the nations of the world well into this century. There is however no singly agreed upon definition of terrorism; only a general consensus exists. It

[53] Oketch, E. L. A. 'The Diplomacy Of Terrorism: A Critical Analysis of The Nairobi And Dar-es-Salaam Bombings of August 7th 1998', M.A. Dissertation, (Unpublished, University Of Nairobi, IDIS, 2001).
[54] Stern, J., The Ultimate Terrorism, Harvard University Press, Massachusetts, USA.,P.12

[55] Stern, J., Ibid, P. 12

means different things to different analysts and ones terrorist is said to be another's freedom fighter.[56] Terrorism is a concept whose definition is more often subjective, ideological and depended on the circumstances within which the definition is being made.[57] The case of Chechnya in Russia is an apt illustration, where before 9/11, the US appeared to regard the Chechnya rebels as freedom fighters and repeatedly accused the Russian Government of using excessive force on them. However after 9/11 in its effort to get Russia's support, the US appeared to have acquiesced in Russia's fight against 'terrorists' in Chechnya. Another example are the 'Mau Mau' fighters in colonial Kenya. For supporters of decolonization and independence, the Mau Mau were "liberators" and "freedom fighters" while for colonial authorities, they were terrorists. Defeating terrorism as a wicked international force must, therefore, begin with a conceptual attack.[58]

The most logical way of defining the concept, terrorism, is to delineate the common ingredients that cut across all the definitions either directly or indirectly. Before doing that, it is however necessary to sample a few definitions.

Stern[59] defines terrorism as an act or threat of violence against non-combatants with the objective of exacting revenge, intimidating, or otherwise influencing an audience.

[56] Mazrui. A. A., Cultural Forces in World Politics. James Currey 1990 London, United Kingdom, P.233
[57] Nyinguro, P. O., 'International Terrorism: Conceptual Problems, Recent Responses And US Hegemony,' Conference Paper, University of Nairobi, IDIS, 1st July 2003, PP.3 - 4
[58] Nyinguro, P. O., Ibid, P.4
[59] Stern, J., The Ultimate Terrorists. OP, Cit. P.11

Deutsch[60] views terrorism as the tactic of using an act or threat of violence against individuals or groups to change the outcome of some process of politics. Alexander[61] defined terrorism as the use of violence against random civilian targets in order to intimidate or create generalized pervasive fear for the purpose of achieving political goals. Wilkinson[62] observed that terrorism entailed the systematic application of murder and destruction with an objective of terrorizing individuals, groups, communities or governments into conceding to the terrorists' political demands. Roskin[63] defined terrorism as 'the use or threatened use of violence for political purpose to create a state of fear that will aid in exhorting, coercing, intimidating or otherwise causing individuals and groups to attain their behaviour. Paust[64] posits that terrorism involves the international use of violence or the threat of violence by the precipitator(s) against an instrumental target in order to communicate to a primary target a threat of future violence. Kegley and wittkopf[65] say terrorism refers to 'criminal acts and threats against a targeted actor for the purpose of arousing fear in order to get the target accept the terrorist demand.' Thornton[66] defined terrorism as the use of terror as 'a symbolic act designed to influence political behaviour by extranormal means entailing the use or threat of violence.' Terrorism has also been defined

[60] Deutsch. K., The Analysis Of International Relations, Prentice-Hall Inc. 1989 London, UK, P.192
[61] Alexander. Y., International Terrorism: National Regional and Global Perspectives, Praeger Publishers, 1976, New York, USA. P.4

[62] Wilkinson. P., Terrorism and the Liberal State. New York University Press, 1986, New York, USA, P.51
[63] Roskin M G and Barry N.O., The New World of International Relations. Prentice-Hall, 1997, New Jersey, USA, P. 233

[64] Paust J. J., 'A definitional Focus' in Interdisciplinary Perspectives (ed) Alexander. Y., The John Jay Press, 1977, New York, USA, P.21

[65] Kegley, C.W. and Wittkopf, J. A., World Politics: Trend and Transformation. St. Martins, 2001, New York, USA, P.222

[66] Thornton, T.P., 'Terrorism as a weapon of political agitation' in Eckstein. H., (ed) Internal War. Collier-Macmillan, 1964, London, United Kingdom, P.73

as a weapon of psychological warfare for political ends.[67] Mazrui[68] says terrorism is the deliberate creation of specialized terror among civilians, through the use of violence, in order to promote political ends, whether it is revolutionary terrorism by opponents of government or state terrorism by governments themselves. Donald Hanle[69] saw terrorism to be 'deliberate attempt to create terror through a symbolic act involving the use of threat of abnormal lethal force for the purpose of influencing a target group or individual.' Terrorism has also been defined as 'the threat or use of violence for political purpose by individuals or groups, whether acting for or in opposition to established governmental authority, when such actions are intended to shake, stun or intimidate a target group wider than the immediate victims.'[70]   The government of the United States of America defines terrorism as 'a perpetrated violence against non-combatant targets by sub-national groups or clandestine agents usually intended to influence an audience.'[71] It is abundantly clear that even different agencies/departments of one nation (read US) may not overlap in definition of the concept terrorism. The definitions sampled above conceptualize terrorism in its intrinsic and general features.

Some other definitions focus on the international dimension, whose responses are the focus of this study. The French government defines international terrorism as a "heinous act of barbarism committed in foreign territory". The US government views international

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[67] Wardlaw, G., Political Terrorism. OP Cit. P.9

[68] Mazrui.A.A.,Cultural Force in World Politics,Op Cit, P.233
[69] Hanle D.J., The Newest Face of Warfare, Pergamon-Brasseys, 1989, Washington DC, USA P.104

[70] US State Departments Office For Combating Terrorism.
[71] See Title 22 of the US Code, Section 2656f(d)

terrorism as 'terrorism involving the citizens or property of more than one country,'[72] while

its Office for Combating Terrorism define international terrorism as "terrorism conducted

with the support of a foreign government or organization and/or directed against foreign

nationals, institutions or governments. International terrorism has involved groups seeking

to overthrow specific regimes, to rectify national or group grievances, or to undermine

international order as an end in itself.'[73] With respect to international terrorism the

conceptual controversy is further deepened by the insistence that acts related to self-

determination should not be classified as terrorism. The Non-aligned Group,

commissioned by the UN General Assembly in 1973 to look at terrorism, excluded

'freedom fighting' and cautioned that their definition 'should not, however, affect the

inalienable right to self determination under colonial and racist regimes.'[74] The Non-

aligned Group defined terrorism in its international dimension as "...Acts of violence

committed by a group of individuals which endanger human lives and jeopardize

fundamental freedoms the effects of which are not confined to one State."[75] At an

international conference convened by the UN Secretary General in 1987, participants

agreed to identify terrorism as a crime except 'those fighting for the right to self-

determination against foreign and racist regimes.[76] Just like any other form of conflict,

terrorism gets internationalized mainly through the 'CNN factor'. According to Mwagiru,

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[72] Ibid
[73] US State Departments Office for Combating Terrorism
[74] See 28th Session/A/9029 of UN General Assembly, 1973
[75] See Proceedings of the 28th session/A/9028 of UN General Assembly, 1973
[76] See 194th Meeting of UN General Assembly, Report No. A/42/832 of December 7th 1987

'to the extent that terrorists have always sought a wider audience than their local targets, it has always been internationalized.'[77]

A Synoptic examination of the foregoing varied definitions reveal some core elements of the phenomenon of terrorism in both its domestic and international dimensions. Terrorism is firstly, rational behaviour. To this extent, terrorists analyze, plan and behave in a sensible manner.[78] Terrorist acts comprise actions calculated to produce political effects. It has been acknowledged that the bombings of US Embassies in Nairobi and Dar-es-salaam and the 9/11 were the result of elaborate and sophisticated planning. Also as an aspect of rational behaviour, it is premeditated and predictable. Secondly, apart from being rational, terrorism is an illegal activity. It is criminal, perpetrated by people with no legal authority nor legal sanctions to inflict pain or mete out any punishment to citizens. In this context, terroristic acts however rational are subversive[79] as it is only legitimate and established government that can employ instruments of violence to punish offenders. Thirdly, terrorist's acts target non-combatants in most cases. The direct targets are not the main target. Targeting civilians makes it difficult for terrorists to get support even from those who may sympathize with their cause. Terrorism thus becomes an evil and despicable activity which cannot be sympathized with. Its tactics include hijackings, hostage taking, kidnapping, assassinations, extortion, arson, and bombings, to cite some.

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[77] Mwagiru, M., 'The Nationalization of Terrorism: National Responses to Terrorism Through National Legislation,' Conference Paper, Unpublished, IDIS, July 1st 2003, P.1
[78] Roskin M. G., and Berry N. O., OP Cit, P.240
[79] Nyinguro, P. O. OP Cit, P.7

Despite the agreed upon ingredients of the concept, definition and identification of terrorists still depends on national (self) interests, who is doing the definition and the reason for doing (defining) it. Further, to the extent that there exists as many definitions as there are scholars on the subject, adopting a common position on counter-terrorism has remained elusive. States have proved unequal to the task of making an international law acceptable and ratified by all, to protect them against the scourge of international terrorism.[80] There is absence of consensus on the conceptualization of terrorism and what indeed constitutes legitimate and legally sanctioned responses. Further more, some governments either support terrorism or engage in it themselves, an eventuality that has compromised their role in the war against terror. This exhibition of double standards makes it difficult to maximize collective support for the fight against the vice. The US is a case in point, even as it leads the crusade against international terrorism. The Contra insurgents who fought against the Socialist Sandinista regime (F.S.L.N) in Nicaragua in the 1980s illustrate the subjectivity with which terrorism is regarded. To Sandinistas, the Contras were criminal terrorists bent on the violent overthrow of a legitimate government. To Reagan (US President), who supported them, the Contras were Nicaraguan 'freedom fighters.'[81] In South Africa, while the black majority hailed Nelson Mandela and the ANC activists as liberator freedom fighters, the minority white regime regarded them as terrorists. In the volatile Middle East, while Israel insists that groups such as the Hamas, Hezbollah, and the Palestinian Liberation Front (PLF) are terrorist organizations, Arab countries consider them to be freedom fighters. Wardlaw aptly sums up the scenario, thus, 'without a basic definition it is not possible to say whether the phenomenon we call

[80] Mwagiru M., OP Cit, P.1
[81] Spiegel, S. L., World Politics in a New Era. Harcourt Brace Publishers, 1995, London, UK, P.475

terrorism is a threat at all, whether it is a phenomenon of a different nature to its predecessors, and whether there can be a theory of terrorism.'[82]

2.03 The Origins of Terrorism

The term 'terrorism' is relatively new, though the phenomenon to which it refers is not.[83] The terms 'terrorism' and 'terrorist' have their roots in the French Revolution (1792 – 1794) which was a 'reign of terror'. It is however generally believed that systematic political terrorism is a recent phenomenon dating back to the last century. The Middle East experienced the first acts of terrorism. The *sicarii*,[84] *a* religious sect active in the Zealot struggle in Ancient Palestine (AD 66-73) was a highly organized (religious) sect consisting of men o f the lower orders who fought against the Romans.[85] They (Sicarii) used their favourite weapon, the (Sica), which was a short sword to unleash violence in the form of assassinations, hit and run attacks, which were unpredictable in order to create psychological fear among the Roman colonizers. They attacked in crowded places and on holidays. The Sicarii believed that God alone was Lord and political allegiance was refused to any earthly power. Another religiously (Islamist) inspired terrorist sect were the 'Assassins,'[86] an offshoot of the Ismaelis who appeared in the 11th Century and were suppressed by the Mongols in the 13th Century. The Assassins developed a religious

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[82] Wardlaw, G., Political Terrorism. OP Cit, P.3

[83] Wardlaw G., Ibid, P.18
[84] Wardlaw G., Ibid P.18
[85] Stewart. S., The Great Roman Jewish War. Harper, 1960, New York, USA, P.10.   See Also Laqeuer W., The Age of Terrorism OP. Cit, P.12

[86] Laqueur. W., The Age of Terrorism. P.13

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doctrine justifying the murder of their religious and political opponents (Seljuks) and were based in Persia and Syria. They (Assassins) operated in complete secrecy and the terrorist fighters (also known as *fidaiin*) were disguised as strangers or even Christians. As the group was too small to carry out open battle, they used planned, systematic, long-term campaign of terror, and their victims ranged from prefects, governors to caliphs. Their major weapon was the dagger. Secret societies also existed for centuries in India and the Far East. The 'Thugee'[87] (thugs) sect existed in India and strangled their victims with a silk tie, often seen as an act of sacrifice to the goddess *Kali*. However, their (thugee) political aims, if any, were not easily discernible. In the 16th and 17th centuries, by means of tyrannicide doctrine, assassination became both an ideological statement and a political weapon. The biblical warning 'they that live by the sword shall perish by the sword'[88] provided the moral and philosophical rationale for the theory of tyrannicide that was widely practiced in Italy, Spain and France during the Renaissance Age.

However, the origins of the doctrine can be traced back much further[89] – resistance to despotism was frequently justified in the writings of ancient Greek and Roman authors. Plato (429 – 347B.C.) and Aristotle (384 – 322 B.C.) regarded tyranny as a pervasion and the worst possible form of government.

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[87] Laqueur. W., Ibid, P.13 - 14
[88] The Holy Bible, New Testament, Gospel According to St. Mathew 26:52
[89] Laqueur. W., Voices Of Terror. Reed Press, 2004, New York, USA, P.8

Historically it is probable that one of the most important of all terrorist movements was the 'Narodnaya Volya' which operated in Russia between 1878 and 1881 (Russian Revolution) and vehemently opposed the Tsarist authority. To *Narodnaya Volya*, terrorism was a new cost-effective form of struggle which would overthrow the Tsarist tyranny.[90] To them, terrorism was ethically a better choice than allowing the carnage that would result from a mass insurrection. Death of innocent people as a result of terroristic activity had to be accepted as an inevitable consequence of war, preferable to the slaughter which would accompany a mass struggle. However *Narodnaya Volya* soon faded giving rise to Social Revolutionary Party in Russia which opened a new wave of terror in 1902 with the terroristic assassination of Sipyagin, the Russian Minister of the Interior. Terrorism was then in Russia as a tool to supplement and strengthen the revolutionary potential of the masses. However, although there existed other isolated examples of terrorism, its systematic manifestation did not emerge until the French Revolution (1892 – 1894). Robespierre, Saint-Just, and the Committee of Public Safety played a vital role in the organization and direction of what came to be known as the Reign of terror.[91] Also radical nationalist groups such as the Irish, Macedonians, Serbs and Americans used terrorist methods in their struggle for national independence.[92] There was also "propaganda by

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[90] Wardlaw. G., Political Terrorism. OP Cit, P.19
[91] Singh, Baljit, 'Definitional and Historical Perspectives' in Yonah. A., (ed) Interdisciplinary Perspectives, John Jay Press, 1977, New York, USA, P.6.
[92] Wardlaw. G., Political Terrorism, OP Cit, P.22

deed" in the 1890s in Italy, France, Spain and the US.[93] 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. The Germans, Yugoslavs, Japanese and British also engaged in some terrorist activity. The Union of Death Society popularly known as the Black Hand was a Secret Serbian terrorist Organization used by the Serbian government as an official instrument of national foreign policy against the Austrian-Hungarian Empire. In Ireland the Dynamiters were a group that used bombings as a technique. 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). Indeed a high tide of terrorism was experienced in Western Europe from 1890s. The exploits of Ravachol, Auguste Vaillant and Emile Henry between 1892 and 1894 created an enormous stir, and because the bomb throwing by individuals coincided with a turn in anarchist propaganda favouring violence, the impression of a giant international conspiracy was created, which in actual fact never existed.[94] There were a great many attempts on the lives of leading statesmen in Europe and America between the 1880s and the first decade of 20th Century. Presidents Garfield and McKinley were among the victims; there were several unsuccessful attempts to kill Bismarck and the German emperor; French President Carnot was assassinated in 1894, Antonio Canovas (Spanish Prime Minister) in 1897, Emperess Elizabeth (Zita) of Austria in 1898 and King Umberto of Italy in 1900.

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[93] Laqueur W., The Age of Terrorism, P.15
[94] Laqeuer W., Ibid, P.18

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. However some terrorist groups did not fit the ideological pattern of the left, like the Irish and Armenians who were considered Right Wing. Despite its long history of use in many countries, political terror failed to score any significant successes after the French Revolution until 1921 [95] – when the British were forced to bow to the terrorist campaign in Ireland and granted that country independence under the terms of the Irish Treaty.

In the years following the First World War terrorist movements, like those in Italy and Hungary, were considered nationalist-separatist and right-wing. The period after 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 (US President) championed the use of international law and organizations to solve problems of the day through the use of legal regimes and instruments. The 1937 Conference in Geneva under the League of Nations after the assassinations of the King of Yugoslavia and French Minister in Marseilles in 1934 led to two conventions (against terrorism): 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 but few states ratified. The outbreak of World War Two hindered further success of the covenant. The League of Nations was unable to gather the necessary support in its bid to stop terrorism, and some states continued to sponsor terrorism – Iran, Syria, Libya, and Sudan among others.

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[95] Singh, Baljit, OP Cit, P.7

The period after World War II saw re-emergence of political terrorism on the International scene.[96] Terrorism became one of the many tools used within the larger arena of nationalist movements for independence. From its minimal application in India to a substantial reliance upon it in many countries like Algeria, Cyprus and Kenya, political terrorism encompassed a wide range of activities, including intimidation, abduction, sabotage, selective assassination and indiscriminate killing.

During the 1960s and after, political terrorism appears to have entered into another phase marked by its trans-national (border) character and its emergence as a self-sufficient strategy.[97] Terrorists began to widely operate independently of the larger political arena. These developments were largely due to revolution in communication – radio, satellite, television, air travel, and tourism. The growth in international tourism leads to different nationals aboard flights which is attractive to skyjackers (terrorists). Over the period, rapid escalation in skyjackings led to international action through increased security measures, extradition agreements, and other tough-minded responses to terrorist demands forced a decline.

2.04: Typologies of Terrorism

Terrorism can be restricted to the domestic boundary or can spread to international boundaries[98] Pachnanda identifies three classes of terrorism: domestic, international and state-sponsored terrorism. To Pachnanda, individual terrorism is committed by private

[96] Singh, Baljit., Ibid, P.7
[97] Ibid, P.7
[98] Pachnanda R. K., Terrorism And Response To Terrorist Threat, OP Cit, P.36

persons, either individually or in an organized group which aims at terrorizing a specific class of the population, a given nation or any human being, for the purpose of striking at an established regime against a certain state or at the idea of the state. He further adds that individual terrorism targets its most vulnerable victim – the individual person – in its extreme term, but the final victim is always the state – sometimes representative objects such as embassy buildings, nuclear installations, airlines to cite a few. When terroristic acts by dissidents do not involve any element of another state or its nationals, it is purely domestic. He observes that international terrorism is an act of terrorism that has clear international consequences and includes incidents in which terrorists indulge in terror and violence by going abroad to strike their targets, elect victims or targets because of their connection to a foreign state. State terrorism is directed by the regime in power and carried out by the state organs against its targets, which include: a minority which could be religious, ethnic or political; all the citizens of the state, or population of an occupied state. The aim of state terrorism is to ensure the subjects obedience to the regime in power and strengthen its authority over them (subjects).

Thornton distinguishes two broad categories of the use of terror – enforcement terror and agitational terror.[99] Enforcement terror is used by those in power who wish to suppress challenges to their authority, while agitational terror describes the activities of those who wish to disrupt the existing order and ascend to political power themselves. According to the foregoing analysis, enforcement terror has to do with activities of the incumbents while

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[99] Thornton T. P., 'Terror as a weapon of political agitation' in Eckstein H., (ed.), Internal War (London: Collier-Macmillan, 1964), P.72.

agitational terror has to do with those of the insurgents - against any political regime. A similar distinction is observed by May who divides terrorism into two kinds: the regime of terror and the siege of terror.[100] The former refers to terrorism in the service of established order, while the latter refers to terrorism in the service of revolutionary movements. May acknowledges that the regime of terror is the more important of the two but notes how the siege of terror is what grips our attention: 'revolutionary terrorism, derivative and reflexive though it may be, exposes a level of perception into the universe of killing and being killed that may be even more revealing than state terrorism.'[101] It however deserves mention that commentators and scholars tend to focus on the insurgent rather than on the incumbent variety.

While terrorism may be divided, without much argument, into gross categories as foregoing, such categorization is scarcely precise enough for more sophisticated conceptual analysis of the phenomenon under study. Although there have been other attempts to devise typologies which provide more precise definitions of subgroups of terrorism (like by Hacker F. J., {1976}, Mickolus {1978}, and Merari.A.,{1978}), it is that devised by Wilkinson which is accepted by many scholars as providing the clearest framework currently available for discussing terrorism. He advanced and drew a distinction between four types of terrorism – criminal, psychic, war and political terrorism.[102] Criminal terrorism is conducted for material gain (profit): Psychic terrorism has mystical, religious, or magical ends (connotations); War terrorism is the use of terrorism as a strategy to

[100] May, W. F., 'Terrorism as Strategy and ecstasy', Social Research 1974, 41, 277 - 98

[101] May W. F., Ibid, P.277

[102] Wilkinson, P., Political Terrorism (London: Macmillan, 1974), PP.32 - 44

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destroy an enemy militarily; and political terrorist is the systematic use of threat of violence to secure political goals. These typologies are derived from the objectives and aims of the terrorists. Wilkinson's analysis distinguishes between political terror and political terrorism. He observes that political terror is neither systematic nor organized and is often difficult to control, while political terrorism 'is a sustained policy involving the waging of organized terror either on the part of the state, a movement or faction or by a small group of individuals. Systematic terrorism invariably entails some organizational structure however rudimentary, and some kind of theory or ideology of terror.'[103] He further divides political terrorism into revolutionary terrorism, sub-revolutionary terrorism and repressive terrorism.[104] He saw revolutionary terrorism as the use of 'systematic tactics of terroristic violence with the objective of bringing about political revolution,'[105] while sub-revolutionary terrorism as terror used 'for political motives other than revolution or governmental repression.'[106] Whereas revolutionary terrorism seeks total change, sub-revolutionary terrorism is aimed at more limited goals such as forcing the government to change its policy on some issue, warning or punishing specific public officials, or retaliating against government actions seen as reprehensible by the terrorists. Wilkinson defined repressive terrorism as 'the systematic use of terroristic acts of violence for the purposes of suppressing, pulling down, quelling, or restraining certain groups, individuals or forms of behavior deemed undesirable by the oppressor.'[107] Repressive brand of

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[103] Wilkinson P., Ibid, PP. – 17 - 18

[104] Wardlaw G., Political Terrorism. OP Cit, P.14
[105] Wilkinson P., Ibid, P.36
[106] Wilkinson P., Ibid, P.38
[107] Ibid P.40

terrorism relies heavily on the services of specialized agencies (the secret security *apparat* – CIA, Mossad, KGB etc)

Miller[108] advanced the political violence movement model (P.V.M) in conceptualizing terrorism. He argued that political violence is either domestic and intrastate, or international in nature. He saw phenomena referred to as 'insurgency', 'political terrorism', 'international terrorism' and 'guerrilla warfare' as interrelated forms of conflict. He saw political terrorism as a form of political violence, a low intensity conflict, that involves the acts of destroying property, killing, injuring, or kidnapping individuals or threatening to do the same, for the primary purpose of intimidating persons, organizations, governments or groups of states to modify their behaviour to comply with the politically oriented desires of the perpetrators.

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 practice establishment terrorism. Most African leaders who seized power after independence practiced establishment terrorism in a bid to further their control and personalize 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 practiced by the White Supremacy Regime in South Africa, covert and overt official terrorism like those seen in Stalinist Russia and genocidal

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[108] Miller. J. A., 'Political terrorism, and insurgency; an interrogative Approach' in Yonah. A., (ed), Terrorism: Interdisciplinary Perspectives. John Jay Press, 1977, New York, USA, PP 66 - 69

terrorism like that practiced by Nazi Germany against Jews.[109] Cassese[110] differentiates the types 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.

2.05 Terrorism: Emerging Trends.

Terrorism has over the years changed, as it is dynamic. Quantitative analysis over the years pits the traditional (old) terrorism against the contemporary (new) terrorism. There has been a move from rural to urban operations. Over the years the urban drift evident in most societies has led to urban terrorism more and more supplanting rural guerilla tactics as the major force in revolutionary warfare.[111] The move has also ensured a plethora of limitless terrorist targets in the populated urban centers as opposed to rural areas.

Although the total volume of terrorist incidents worldwide declined in the 1990s the percentage of terrorist incidents with fatalities has increased.[112] International terrorism's overall trend has been towards increased lethality unlike traditional terrorism earlier. Terrorists have become more adept at killing, their weapons becoming smaller more sophisticated, and deadlier – for instance the bomb used in the Pan Am 103 in 1988 was a dual- timer/barometric pressure detonation device constructed from less than 300 grams of semtex plastic explosive and concealed in a small radio. Terrorists have greater access to

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

[111] Wardlaw G., Political Terrorism, P. 53
[112] Rand Corporation St. Andrews Chronology (database), 1991 – 1996. See also US Department of State, Patterns of Global Terrorism 1996 Report

these weapons through alliances with some rogue states like Syria, Libya, and Iran which have been cited by US Department of State as sponsors of international terrorism, a characteristic lacking in the traditional terrorism. The state sponsors train, equip, finance and logistically facilitate terroristic operations by certain terror groups as a foreign policy strategy.[113]

Another trend which has revealed itself in recent years is the emergence of working relations between terrorist groups from divergent political, ethnic, and geographical backgrounds.[114] There is evidence of international linkages and cooperative efforts in the fields of training, procurement of weapons and forged documentation (passports, Visas, identity cards etc), reconnaissance of airline routes and targets, and the actual operations. The Al-Qaeda operatives are believed for instance to have had support from the Somalia based Al Itihad Al-Islamiya (AIAI) terrorist organization during the 1998 bombings of the US Embassies in Kenya and Tanzania, as well as during the 2002 Paradise Hotel and attempted Arkia airline plane terrorist attacks.

Organizational structure o f terrorist organizations h as, a nd w ill c ontinue t o c hange f rom hierarchical (traditional) toward information-age network designs. Within groups, 'great-man' leaderships will give way to flatter decentralized designs, which are heralded as effective alternatives to traditional bureaucracies because of their inherent flexibility,

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[113] Jenkins B. M., 'International terrorism: A new mode of conflict' in Carlton D and Schaerf C., (eds), International Terrorism and World Security (London: Croom Helm, 1975), PP. 13 - 49

[114] Wardlaw G., Political Terrorism, OP Cit, P.55

adaptiveness, and ability to capitalize on the talents of all of its members.[115] Indeed terrorist groups are embracing netwar. Netwar refers to an emerging mode of conflict (and crime) at societal levels short of traditional military warfare, in which the protagonists use network forms of organization and related doctrines, strategies, and technologies attuned to the information age.[116] The terrorist organization gets dispersed but its small groups (cells) and individuals communicate, coordinate and conduct their campaigns in an internetted manner, often without a precise central command – as opposed to traditional terrorist organizations with developed formal, stand-alone hierarchies. This adaptability enables the survival of the terrorist group even should some of their leading operatives be arrested by security forces. Terrorist groups in the Middle East which have diverse origins, ideologies and organizational structures can roughly be categorized into traditional and new generation groups. Traditional groups date back to the late 1960s and early 1970s and were formally or informally linked to the PLO, were relatively bureaucratic, nationalist or had a Marxist agenda. The most new-generation groups arose in the 1980s and 1990s and have fluid organizational forms and rely on Islam as a basis for their radical ideology. The successful counter-terrorism campaigns by Israeli and Western agencies have curtailed operational abilities of most traditional terrorist groups. In contrast, the newer and less hierarchical Hamas, Palestinian Islamic Jihad (PIJ), Hizbullah, Algeria's Armed Islamic Group (GIA), Egyptian Islamic Group (IG), and Osama bin Laden's Arab Afghans have become the most active organization around the Middle East.

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[115] Michael. Z., and Edwards S., ' The networking of terror in the Information age' in Arquilla J., and Ronfeldt D., (eds), Networks and Netwars, RAND, 2001, Pittsburgh, USA, P.31

[116] Michael Z and Edwards S., Ibid. P. 6

Technological developments have revolutionalized the form and magnitude of acts of terror, and so are the counter-terrorism measures currently in place that have become increasingly sophisticated. Modern transportation (aviation) has made it possible for terrorist to move efficiently, strike their targets far away from their base, and escape easily and fast after an attack. That air transport involves nationals of many countries enables terrorists to spread fear across the globe by a single strike. Advanced communication channels have enabled terrorists to broaden their audiences, and speedily. They can also receive operational orders and instructions on impending terrorist acts covertly and instantaneously. New technologies have greatly reduced transmission time, cost, and increased substantially the scope and complexity of the information that can be shared.[117] Terrorists have engaged in cyber-terrorism and subversion, over and above using encryptions for intra-communication - a major challenge to counter-terrorist efforts. But the security forces have also been able to use advanced technology to track them down like the advanced surveillance equipments and cameras. Technology has also led to the manufacture of highly small and portable concealable weapons for mass destruction. Terrorists are also able to transfer large sums of money electronically for their operations. This has seen world governments enact anti-money laundering legislations.

There is a symbiotic relationship between the media and the new terrorism. The media dimension in terrorism has, however, been a source of conflict with both the government and the public pulling in opposite directions. While the public has a right of unfettered access to information, the government has always maintained tight control on the type of information that reaches the public – on terrorist issues/incidents – as it can have negative

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[117] Michael Z and Edwards S, Ibid PP. 35 - 36

impact in handling a terrorist incident like the US Diplomats hostage taken in 1979-80 in Tehran, Iran, where two attempts made by US security forces to rescue the captives were televised live and turned unsuccessful. The terrorist act alone is nothing, publicity is everything.[118] They use the media to air their grievances and reach their audiences – what has come to be known as the 'CNN factor'. This has resulted in the internationalization of terrorism where events happening in one part of the world are transmitted instantaneously to other parts of the World.[119]

There is also an increasing trend where the Americans and their interests are the number one target. This is due to the superpower status of the US, her foreign policies especially in Middle East conflicts, and her pre-eminent position in contemporary World politics. The US also has commercial and military presence all over the globe which readily provides terrorist targets. The US Air force which in many ways epitomizes American power – as the Royal Navy did in the heydays of British Empire – has, for instance, symbolic value as a target of terror. Conversely it also occupies a central position in the counter-terrorism campaign.

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[118] Laqueur W., ' The futility of Terrorism' Happers (March 1976) P.104

[119] Gergen 'Diplomacy in a Television Age: The dangers of Teledemocary' in Serfaty S., (ed). The Media and Foreign Policy. (London; Macmillan 1990), PP. 47 - 63

2.06 Terrorism: Causes and Underlying Factors.

Terrorists are more willing than states to violate the norms of the international system because unlike states, they do not have a stake in the system.[120] Theories have been advanced to explain the increasing cases of (international) terrorism in the contemporary world. One school of though has sought to explain this phenomenon in the post Cold War power realignments globally. The end of Cold war in 1989 saw a marked increase in cases of terrorism internationally. S ome a ttributed t his t o t he n eed to r edress t he i mbalances, contradictions and tensions in the evolving international system. Terrorism thus aimed at redefining the distribution of power assets in the global system.

The foregoing view, however, may not sufficiently explain the prevalence of the phenomenon. Indeed terrorism is a multi-causal phenomenon and its prevalence cannot be explained exclusively by structural power extrapolations. Another school of though aligns itself to the nature and nurture debate,[121] or, as it is sometimes characterized, the inherency/contingency debate. Those arguing for the nature view contend that human beings are by nature violent and aggressive, and that this derives from an innate drive in human being for domination.[122] Similar views are also expressed by Kennan who asserts that human nature is irrational, selfish, obstinate, and tends to violence.[123] For the nature

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[120] Goldstein J. S., International Relations, OP Cit, P. 170

[121] Webb K., 'Conflict: Inherent and Contingent Theories' in World Encyclopaedia of Peace, Vol.1 (Oxford: Pergamon Press, 1986) PP. 169 - 174

[122] Mwagiru M., Theory, Processes and Institutions of Management, Watermark Printers, 2000, Nairobi, Kenya, P.17

[123] Kennan G. F., Realities of American Foreign Policy, (Princeton, New Jersey; Princeton University Press, 1954) P.48

school, violence (terrorism) is inevitable since it is in the nature of human beings to be violent. The nurture school posits that on the contrary human beings are not violent and aggressive by nature – violence and aggression are conditioned by the environment in which people find themselves. Proponents of *Tabula Rasa* theory hold that Man is born an empty vessel and that any influences on their character are a product of the environmental conditions where they are nurtured.

The Psychological theories of frustration-aggression and relative deprivation[124] also attempt to explain causation of terrorism, a form of conflict. Aggression is the result of frustration, and all frustration is aggression. Relative deprivation is the discrepancy between value expectation and value achievement, that is, between what people believe they are rightly entitled to, and what they are capable of getting and retaining. To elaborate using the Israeli-Palestinian conflict and thus Palestinian Liberation Organization (PLO) terrorists – the suicide terrorists are frustrated by poverty and hopelessness, with frustration leading to anger against Israel as the perceived source of their problems.[125] McCauley argues further that the 9/11 terrorists could as well have been angry, not about their own personal experience of frustration and insult, but about the frustrations and insults experienced by their group and people. The belt of Muslim states from Morocco to Pakistan, he observes, is run by governments supported by police and military power but with little public support which also have Western leanings and support. Political threat to

[124] Mwagiru M. Theory, Processes and Institutions of Management. OP Cit, PP. 21 - 22
[125] McCauley C., 'Psychological Issues in Understanding Terrorism And The Response To Terrorism' in Stout ES,(ed) Psychology of Terrorism: Coping with the Continuing Threat, Praeger, 2004, Connecticut, USA, P.40

the state is not tolerated: imprisonment, torture, and death are the tools of the state against political opposition. So fundamentalist Muslims take refuge in mosques just like the political opposition in Poland under communism took refuge in the Catholic Church. The result has been that a brand of Islamic fundamentalism, suicide terrorists, have campaigned relentlessly to institute *sharia* law and Islamic governments (combine state and religion) in the Arab World and overthrow secular governments and the non-Muslims (West).

It has been argued that it is difficult to ascertain all causes of terrorism since 'the causation of human action has as yet been most incompletely explained by modern Psychology, Genetics, Sociology and related disciplines.'[126] Pachnanda observes that generally, terrorism may be caused by one factor or a set of factors at one place and another factor or a set of factors at another place. These causes include colonialism, Communalism, racialism, obscurantism, political persecution, human rights violation, economic exploitation, unemployment, alienation, communication gap, and an overall moral decay of society.[127] He further posits that 'freedom fighters and 'terrorists' belong to different nationalities, ethnic groups, religions, ideologies or indoctrinations. Stout[128] argues that violence and terrorism may be caused by poverty, injustice, repressed political systems, and culture change.

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[126] Pachnanda, Terrorism And Responses to Terrorism Threat. Op Cit, P.9
[127] Ibid, P.9
[128] Stout C E., (ed)., Psychology of Terrorism: Copying With The Continuing Threat,Op Cit, P. xvi(introduction)

Mallin argued that there are social, racial and political causes of terrorism.[129] He saw the causes as diverse with often one cause overlapping another or several causes. He saw terrorism as a disease (of modern society); a virus growing in an ill body - whose effects of the virus can sometimes be ameliorated, but there is no certain cure.

He cited social cause to be for instance when Uruguayan young people (or any nationals or section of same) are denied their rightful place in a society. Racial cause resulted, for instance, when Blacks and Indian populations due to oppression in USA (or in any country) became militant against the ruling elite. On political cause, Mallin, cited examples of Israelis seeking independence from Great Britain; Cubans seeking freedom from dictators Batista and Castro; Algerians seeking independence from France, or Palestinians seeking self-determination from Israeli/US. Indeed the September 1972 hostage taking of Israeli athletes from an Olympic village in Munich, Germany, by Palestinian Black September terrorist organization had political connotation (aim) via military (war) means. The Palestinians succeeded in publicizing their cause, much in the same way the incident boosted their morale.

Poverty has also been advanced as a single most predominant cause of terrorism. Jared Diamond proposed that America should strive to combat the forces of poverty and hopelessness i nternational t errorism f eeds.[130] Also a fter the 9/11, a former World Bank President James Wolfensohn joined Koffi Annan, the UN Secretary General and the British

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[129] Mallin Jay., 'Terrorism as a military Weapon' in Yonah A.,(ed) Terrorism : Interdisciplinary Perspectives The John Jay Press,1977,New York,USA,PP. 92-94

[130] Washington Post, January 13th, 2002, P.B1

Chancellor of the Exchequer Gordon Brown, in calling for a $50 billion increase in foreign aid to poor countries calling it "an insurance policy against future terrorism".[131] This view however was faulted by a commentator for the 'Japan Times', Gregory Clark, who dismissed the liberal notion that addressing the problem of poverty will solve the problem of terrorism. Clark observed that terrorist attacks will continue as long as the US continued its overseas 'meddling' and hypocritical support of oppressive regimes.[132] Further, the poverty dimension is invalidated by the emerging fact that most of the people behind terror activities are not poor by any standards – Osama bin Laden, a terror-Lord for instance is believed to be wealthy and so is his (Egyptian) deputy, Al-Zawahir.

Radical Islamism with its emphasis on Holy War (Jihad) inspired by a medieval Muslim theologian Ibn Taymiyyah of the 13th C has today taken the Islam fundamentalism dimension,[133] a cause of terrorism. He believed that Islam needed to be restored to its pristine glory. Other Muslim clergy after him notably Abdullah Azzam played vital historical role as the precursor and mentor of contemporary Jihadism. Azzam in most respects inspired Osama bin Laden whose declaration of war against crusaders and Jews was published in 1998. In short, Islamic fundamentalism calls for overthrow of Islamic secular governments, introduction of Sharia law and Islamic States where Islam is practiced in its traditional pristine way. It calls for overthrow and destruction of Israeli State due to oppression of Palestinians (Arabs) by Israelis and the West led by US. The Arab terrorists have advocated terroristic tactics as they cannot face the West in a conventional war. However in all fairness, it is not only Islam that is closely related to

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[131] International Herald Tribune, January 31st, 2002
[132] Japan Times, January 22nd, 2002.
[133] Laqueur, W(ed)., Voices Of Terror. Reed Press, 2004, New York, USA

causality of terrorism. Many historical and contemporary terrorist groups evidence a strong religious component, mostly by dint of their membership.[134] Until the 19th Century, as Rapoport points out in his seminal study of what he terms 'holy terror,' religion provided the only justification for terrorism.[135] Later in the 19th C, new concepts of nationalism and self-determination emerged and terrorism witnessed a marked transformation from a mostly religious to a predominantly secular phenomenon. Religion has provided a kind of legitimacy and an imperative for adherents to commit terroristic acts. The young Jewish extremist, Yigal Amir, who assassinated Israeli Prime Minister Yitzak Rabin, said, 'I have no regrets.... i acted alone and on orders from God'.[136] Today Amir's words could aptly reflect views of the Islamic Hamas Fedayeen, the Muslim Algerian terrorists, the Japanese followers of Shoko Asahara in the Aum Shirinkyo sect who perpetrated the 1995 (sarin) gas attack on the Tokyo Subway, or the American Christian Patriots who bombed the Alfred P. Murray Federal Office Building in Oklahoma City. Also the overwhelmingly Catholic IRA resisting continued British occupation of Northern Ireland employs terrorristic acts.

Huntington observes that conflict between the West and Islam is on broader inter-civilizational issues such as weapons proliferation, human rights and democracy (governance), control of oil, migration, Islamist terrorism, and Western intervention (in Arab States like in the Israeli-Palestinian conflict). He views the scenario as one of clash of civilization (in World Politics), where Islamic (Arabic) civilization is convinced of

[134] Hoffman B., Inside Terrorism, Columbia University Press, 1998, New York, USA, P. 87.
[135] Rapoport D.C., 'Fear and Trembling', in Three Religious Traditions; America Political Science Review, Vol.78, WO.3, September 1984, P.659

[136] The New York Times, November 8th, 1995.

superiority of their culture and obsessed, with the inferiority of their power, whereas, the West is convinced of the Universality of their culture and superiority of power. He also argues that the resentment of the Oriental towards the Occidental is predicated on the historical rivalry between Christendom and Islam (Crusades and Jihads), colonialism and imperialism by the West and the eventual domination of the post colonial political structuring of the Middle East, not to mention the bitterness and humiliation the Islamic Civilization has suffered in the hands of the West over accomplishments in the last two centuries. The Orient has resulted into the weapon of the (non-Western) weak,[137] terrorism, to check the advancement of the West by instilling psychological fear in them.

The prevalence of terrorism in contemporary society can also be explained by the proliferation of small illicit arms and the increasingly porous nature of national borders, influx of refugees especially from troubled spots and collapsed states with no law and order. Further, institutional weaknesses especially on the manning of entry control points coupled with endemic corruption have made it easy for terrorist elements to execute their activities with little hindrance.[138]

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[137] Huntington, S.P., The Clash of Civilizations: And The Remarking Of World Order, Op Cit,P.188
[138] Mboya H. T., State Responses to International Terrorism, M. A Thesis Unpublished, 2004, University of Nairobi, IDIS, OP Cit, P. 42

2.07 Conclusion.

It is abundantly clear that international terrorism has emerged as the scourge of the post-Cold War world, and is likely to exist into the distant future, if current trends are anything to go by. International responses, whether bilateral or multilateral, are not likely to be effective if they are not rooted in proper conceptualization of the phenomenon especially its origins and causes.[139] There is no simple or quick method to eliminate terrorism.[140] The lack of consensus as to a singly agreed upon definition; lack of legal regime acceptable and ratified by all the members of the UN coupled with national interests of most states have made total and serious cooperation by all member of UN a far-fetched dream. What is required is a genuine and sincere appraisal of the problem devoid of double standards and transcending narrow selfish national interests.

The US and other great powers have to stop employing counter-terrorist strategies that may suggest double standards or alienate other members of the internal community in order to forge a formidable international alliance against terrorism. The US has to broaden its conception of terrorism beyond her national interests – whether this is tenable, only time will tell.

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[139] Nyinguro, P. O., OP Cit, P.18

[140] Odera J. A., 'Conference Paper', 'Terrorism Within a Regional Security Framework: African Perspectives', , Unpublished, IDIS, University of Nairobi, July 2003 Nairobi, Kenya, P.16

CHAPTER THREE: RESPONSES TO COUNTER-TERRORISM:COMPARATIVE PICTURE.

3.01 Introduction

There is no single definition of terrorism that has been accepted by the United Nations or in any bilateral or multilateral convention. This has been a drawback in the fight against international terrorism. Terrorism is a political, psychological, moral and legal problem. It is the willful taking of human life, purposeful commission of bodily harm and the infliction of severe mental distress by force or threat of force. The goals of terrorism include the overthrow of order, disruption of government, demonstration of strength and solidarity building within the movement.[141] The causes of terrorism include social inequality, political disenfranchisement, economic depression, ethnicity, relative deprivation, repression, poverty, unemployment and alienation.[142]

The terrorist threat confronts decision-makers world over with a complicated set of problems and it is clear that it has to be counteracted. Indeed political decision-makers will not wait for a consensus to emerge among scholars before they take the measures they deem necessary to combat terrorism.[143] The US in a long time has taken measures such as isolating states that sponsor terrorism, the use of multilateral and bilateral treaties, the

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[141] Richard, F., '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
[142] Oketch E.L., M.A. Dissertation Unpublished, Op Cit, P.69

[143] 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

development of extradition treaties and the beefing up of security at all entry and exit routes of airports and around other important facilities. What is baffling and incomprehensible is why, acting together, the states of the world cannot agree on a comprehensive international legal framework for combating terrorism much as they are threatened by the scourge.

Since the end of the Cold War, no single phenomenon has captured the attention of scholars, policy-makers, statesmen and the world community in general as terrorism has. The US is undoubtedly the major target of international terrorism, and her Truman Doctrine of 'Containment of Communism' appears to have been replaced by the Bush Doctrine of 'Containment of Terrorism.'[144] Counter-terrorism is increasingly defining the patterns and directions of inter-state relations as well as the priorities and instruments of foreign policy for many states the world over. Overall there have been national, regional and international responses – covering military, legal, economic, diplomatic (cooperation) responses.[145] There have also been judicial, legislative and political responses although other policy-makers have divided responses into immediate and long-term responses. This chapter looks at these responses and other counter-terrorist efforts as employed at state level led by the hegemonic US, then UK, and Israel; internationally under the UN; and regionally under other regional organizations such as OAU/AU, Council of Europe, League of Arab states, OAS, IGAD - to cite a few.

[144] Nyinguro, P.O., Conference Paper, Unpublished, OP Cit, P.2

[145] Nyinguro, P.O., Ibid, PP 12 - 15

3.02   The US Counter-Terrorism Experience

The US security interests have been threatened by terrorism, both directly and indirectly, but the stability and survival of the US as a society has never been seriously threatened by terrorism – and is unlikely to be.[146]   In the current international political system, the US is indeed the hegemonic (or indispensable, dominant, or pre-eminent) power.[147] Hegemony is the holding by one state of preponderant power in the international system, so that it can single handedly dominate the rules and arrangements by which international political and economic relations are conducted. Krauthammer[148] observed that America is in a position to reshape norms, alter expectation and create new realities.

The most visible and controversial elements of US counter-terrorism policy have involved the use of force, including air power in various forms. The US no doubt has been accused of 'unilateralism' rather than 'cooperation' in adherence to UN Conventions and the rule of law. This was exemplified in the 1986 Operation El Dorado Canyon against Libya during the Reagan Administration when Tripoli was accused of involvement in the bombings of a Berlin discotheque frequented by US military personnel. The US bombing was widely condemned and viewed as not in consonant with article 51.[149] The necessity of self-defense was not instant, overwhelming, leaving no choice for means and no moment for deliberation. Further more, the attack by whatever means of villages, towns, dwellings or

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[146] Lesser I.O, 'Countering the new terrorism: implications for strategy' in Arquilla J., David R., et al (eds) The New Terrorism. RAND, 1999, Washington D.C, USA, P.111

[147] The term 'the indispensable nation' was coined by President Clinton in a White House Speech on December 5th 1996. See White House Press release, remarks by the President while announcing new cabinet at: http://www.hri.org/news/usa/usia/92-12-index.usia.html.
[148] A passage by Charles Krauthammer in, *Time*, March 5th 2001, P.41
[149] See UN General Assembly Resolution 41/38 November 20th 1986

buildings, which are undefended, is prohibited.[150] The US has supported, financed, and

trained groups that are widely regarded as terrorists, such as the Contras in Nicaragua, the

Mujahideen (including Osama bin Laden) in Afghanistan, UNITA in Angola, and Samuel

K. Doe in Liberia.[151] The US has been either directly or indirectly involved in activities

aimed at assassinating foreign leaders over the years notably Patrice Lumumba, Fidel

Castro, Muamar el-Gadaffi and Saddam Hussein[152] – a clear case of terroristic acts.

The US continues to even enlist support of 'friendly tyrants' in its war against terrorism.

The US has toned down its criticism of Musharraf's government (Pakistan) that came to

power through undemocratic means. Earlier on, US had toned down criticism of USSR

and Syria as state sponsors of terrorism. Currently also, the US has literary showered up

the non-democratic sheikhdoms in the Middle East in exchange for favours in its war

against Iraq (and terrorism). In Africa, the US arguably is encouraging undemocratic

tendencies through the support of anti-terrorist legislations that violate basic human rights.

This move on the part of the US may be counter productive in the war on terror as it may

end up increasing anti-American feeling even more. Though denied from Washington, the

US seems to increasingly associate terrorism to Islam. The US has also undertaken more

personalized application of surveillance on individuals implicated in terrorist acts against

US citizens, for instance, the 1987 capture of Fawaz Younis a Lebanese terrorist near

Cyprus and his subsequent trial and imprisonment in the US, the interception of an

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[150] See Article 25 of the Hague Regulations, 1954

[151] Deshowitz A.M., Why Terrorism Works (New Haven, Yale University Press, 2002) P.7

[152] Blum W., 'Killing Hope: US Military and CIA Interventions since World War II',
http://www.members.aol.com/bblumb/assass.html.

Egyptian aircraft carrying terrorists involved in the *Achille Lauro* hijacking and their seizure; and the capture in Pakistan of Mir Aimal Kansi after the 1993 shooting outside the CIA headquarters in Virginia. The strikes against the bin Laden infrastructure in Afghanistan provide a more recent example.

The thrust of US counter-terrorism policy has been the application of economic sanctions against state sponsors, multilaterally where possible, and domestic legislation.[153] The Omnibus Terrorism Act of 1986 made terrorist attacks on US citizens abroad a federal crime and authorized extra-territorial arrest and trial in US courts. Counter terrorism legislation developed under the Clinton Administration reflects the changing nature of terrorism and focuses on transnational threats, weapons of mass destruction, and terrorist funding sources. Like many of its allies, the US has been committed in principle to the policy of 'no negotiations' with terrorists – a policy that has been overwhelmed on numerous occasions by the pressure for resolution. Indeed negotiations were integral to the release of the hostages in Tehran, and the US has negotiated officially and unofficially for the release of hostages in Lebanon, including the notorious arms-for-hostages deal with Iran. There has also been a refocus of intelligence collection and analysis on terrorist risks, and target hardening came as a response to the hijackings of international airliners in 1970s and 1980s, often with loss of American lives. The current worldwide airport/air travel (security) hardening has its origins in this era. Counter-terrorism efforts worldwide have led to cooperation between states (sharing of intelligence) notably with Britain, France, and Israel, but broadly with most affected states in the world. The US has had her national

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[153] The list of state sponsors subject to varying sanctions includes Libya, Iran, Iraq (formerly), Cuba, North Korea, Syria and Sudan.

interests to take care of in the counter terrorism efforts. By extension, the West while attempting to sustain its pre-eminent position and defend its interests has always sought to portray them as interests of the 'world community'. With the collapse of communism, the West viewed its ideology of democratic liberalism as triumphal globally and hence universally valid.[154] The Orient is opposed. The US has also been viewed to use diplomacy (rather than war) quite often in its anti-terrorism campaign. The task of diplomacy according to Kennan[155] is to take 'the awkward conflicts of national interest' and deal with them on their merits with a view to finding solutions least unsettling to the stability of international life.

The US National Strategy for Combating Terrorism adopts the 4D (defeat, deny, diminish and defend) strategy, and calls for defeating terrorist organizations of global reach through the direct or indirect use of diplomatic, economic, information, law enforcement, military, financial, intelligence, and other instruments of power.[156] After the 9/11 terrorist attacks, the US government came up with the National Strategy for Homeland Security to focus on preventing terrorist attacks within the US, and the National Strategy for Combating Terrorism to identify and defuse threats before they reach US boarders. The US believes in international efforts to combat terrorism - where states are weak but willing to fight terrorism, US will support them to built institutions and capabilities, and also convince reluctant states to fight terrorism.[157]

[154] Huntington S.P., Clash of Civilizations, OP Cit, P.31
[155] Kennan G. F., American Diplomacy 1900 – 1950, New American Library, 1951, New York, USA P.94

[156] The United States National Strategy For Combating Terrorism Document, February 2003, P.15

[157] Ibid, P.12

3.03   The United Kingdom Experience

Much of Britain's experience of terrorism and counter terrorism has involved the struggle against nationalist revolutionaries in the heyday of the British Empire as well as in the intense period of decolonization after 1945. It had been more of an internal than an international problem. After the 1969 revival of political violence in Northern Ireland Britain faced a serious domestic terrorist challenge. In its counter-terrorism campaign, Britain has often used internal security agencies more than the Military. These include the Special Air Service (SAS), the Scotland Yard, the Royal Ulster Constabulary as well as the Security Service (MI-5). In deed, despite the British military experience with counter insurgency during the colonial days, there is a strong preference at all levels to give the police forces the central role in countering terrorism.[158] As and when the military is called upon, it is seen to be 'acting in support of the civil authority.' The Royal Air Force (RAF) basic doctrine also makes no mention whatsoever of counter terrorism as a role for it. The British counter-terrorism approach is thus different from the American where the Air Force, Navy and Army are at the forefront in combating the scourge.

Britain has been broadly supportive of US-led diplomatic, economic, and military initiatives in the war on terror, notably in providing logistical support for the 1986 Operation El Dorado Carryon on Libya. London has had to severe relations on several occasions with state sponsors like Libya, Syria and Iran. Elite units such as the SAS have on a few occasions advised forces of other countries on hostage rescue operations, notably

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[158] Lesser I.O., 'Countering the new terrorism: Implications for strategy', OP Cit, P-115

in Mogadishu (1977) and Lima (1996 – 1997). To date neither the IRA terrorism nor the Middle Eastern terrorism on British territory poses an existential threat. British counter-terrorism efforts have been largely considered successful. Following bomb explosions in Birmingham pubs in November 1974 killing 20 people, the UK government enacted the Prevention of Terrorism (Temporary Provisions) Acts of 1974 and 1976.[159] The IRA was thought to have been responsible. The 1974 Act proscribed IRA and made display of support for it illegal, and gave the police powers to arrest and detain terrorist suspects for 48 hours in the first instance, with possibility for 5 days extension; gave police powers to carry out security checks on travellers entering and leaving Great Britain. The Act faced criticism from civil liberties groups who argued that it infringed on constitutional rights of suspects who should be presumed innocent until otherwise proven. The Act placed burden of proof on the accused in that a terrorist suspect had to establish their innocence. This is controversial as telling a suspect the evidence on record against them would prejudice security or the informants life, while at the same time the suspect will find it difficult to prepare their defense as they would not know the evidence against them – there is no easy solution to this problem world over.

3.04   The Israeli Experience

For Israel terrorism and counter-terrorism efforts are existential concern. Terrorism is an extension of war and counter-terrorism is often discussed as part of a 'war paradigm.'

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[159] Wardlaw G., Political Terrorism. OP Cit, PP.126 - 128

Israel's exposure to terrorism is long-standing and intensive. Israel adopts the policy of 'no negotiation' with terrorists, and the doctrine of pre-emption and prompt retaliation. It is however known that due to pressure Israel has had on occasions to negotiate with a variety of Palestinian and Shiite groups over prisoner exchanges and other matters. Not all terrorist attacks on Israel provoke a response, and much of Israel's counter-terrorism activity is aimed at pre-emption, prevention and disruption rather than simple retaliation.

The difference between Israel and America approaches to counter-terrorism in the past is that the former had been definably 'offensive' while the latter has had the luxury of being 'defensive' or reactive in character.[160] Developments over the past decade suggests that this distinction has lost much of its validity, as Israeli policy has become more complex and US policy more aggressive. Terrorism is classified by Israel as a first-order threat to the security of the state and any successful terrorist incident, no wonder then, is viewed as a failure of counter-terrorism policy. The Israeli policy makers spend enormous energy on reassurance and management of terrorism as a public relations problem as well as a physical threat. Currently, the counter-terrorism priorities are (in this order): Intelligence, operational capabilities for counter-terrorism, and protection. There is strong intelligence emphasis on humint over technical means. Operational capabilities include the capacity for preventive action, both covert and military. Protection implies measures for close-in defense and the mitigation of damage and casualties. Like the US, Israel has traditionally viewed the application of sanctions and, ultimately, the use of force against state sponsors

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[160] This Distinction is made in Wise, Charles and Sloan, Stephen, 'Countering Terrorism: The US and Israel Approach,' Middle East Review, Spring, 1977.

and terrorist leaderships as a central component of counter-terrorism strategy. The Israel Air force bombed the PLO headquarters at Hamman-Lif near Tunis in October 1985 thereby disrupting routine workings of PLO and sending a strong signal of resolve.[161] In this regard therefore the response was military in all fairness. Israel has also carried out air raids in Southern Lebanon and at other times used unmanned aerial vehicles (UAV's). Hisbullah, a terrorist organization pitted against Israel (Southern Lebanon) has responded to the superior Israeli military and air power through horizontal kind of attacks like the 1994 devastating bombing of Jewish Centre in Buenos Aires. Israel counter-terrorism strategy is partly viewed as successful as to date terrorism whose aim is to eliminate the Israeli State has not succeeded. Factors such as Israeli geography, the intermixture with Arab populations, and the capacity and resolve of regional terrorist networks (and their supporters) are a cause of worry to Israeli policy-makers. In sum Israel is viewed to have employed, and continues to employ military responses, bilateral and multilateral cooperation, judicial, legislative, and political responses among others in the long-term - just like most states afflicted by international terrorism

3.05   The United Nations and The War on Terrorism

Contemporary terrorism is increasingly an international as well as a domestic phenomenon. Due to the nature of international relations, attempts to fight terrorism at global level will always tend to focus on legal and treaty obligations rather than action-oriented measures.[162]

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[161] Wardlaw G., Political Terrorism. Op Cit, P.122
[162] Wardlaw G., Ibid, P.103

An international military, police or anti-terrorist strike force is an idea whose time has not yet come, and is unlikely to be a reality in the near future even, due to national interests, independence, and sovereignty of states. The UN has placed treaty obligations on states to act in prescribed way in certain situations – but is faced by problem of inability for enforcement.

The UN Charter, article 2(4)[163], declares that '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.' This provision is regarded as a principle of customary international law and binding upon all states in the world community.[164] States thus must refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state and must not encourage the formation of armed bands for incursion into another state's territory. However, UN declarations are not binding legally on member states (and enforcement machinery is lacking). But that UN endeavors to enhance/maintain international peace and security its activities are very welcome.

Until the 20th C there were no major efforts at international cooperation to control terrorism, even though many governments in the 19th C were seriously challenged by terrorist groups. The first attempts to stimulate international cooperation took place within the League of Nations (the precursor of the UN). Following the assassinations of King Alexander I of Yugoslavia and French Foreign Minister Louis Barthou in Marseilles in

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[163] UN Charter, Article 2(4)
[164] Schacher O. and Smit H., Intemational Law Cases and Material. 3rd edition St. Paul, 1993, P.893.

October 1934, the League considered two measures dealing with terrorism. The first was the 1937 Convention for the Prevention and Punishment of Terrorism which criminalized international incidents involving heads of state and other internationally protected persons.[165] Under the convention, acts of terror included, *inter alia*, attempts on the life, physical well-being, or freedom of heads of state, their family or that of government officials proscribed. It required state parties to punish and prevent acts of terrorism and recognized the principle of *aut dedere aut judicare*. The League of Nations at the behest of France proposed the creation of an international criminal court to try terrorist crimes.[166] The convention was only ratified by India by the outbreak of the World War II. It indeed suffered from lack of a consensus on a universally accepted definition of terrorism. 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.

The UN has sought to tackle international terrorism in a comprehensive fashion, since its formation in San Francisco in 1945. In 1972, the General Assembly (of UN) set up an *ad hoc* committee on terrorism[167] and in 1994 a declaration on measures to eliminate international terrorism was adopted,[168] condemning 'all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed', noting that 'criminal acts intended or calculated to provoke a state of terror in the general public, a group or person or persons or particular persons for political purposes are in any

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[165] Article 1(2) of the Convention
[166] The League of Nations Journal, Vol.15 (1934)
[167] See General Assembly Resolution 3034 (xxvii)

[168] See General Assembly Resolution 49/60 (1994)

circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.' The UN has also called on states to refrain from supporting terrorism in any way, and to cooperate in apprehending and prosecuting or extraditing perpetrators of terrorist acts, and to cooperate with other states in exchanging information and combating terrorism.[169] An *ad hoc* committee was established in 1996[170] to elaborate international conventions on terrorism. This led to the 1997 Convention for Suppression of Terrorism Bombing And the 1999 Financing of Terrorism Convention.[171]

The Security Council (of the UN) has also been active in dealing with terrorism threat.[172] It has in particular characterized international terrorism as a threat to international peace and security. In resolution 731 (1992) the Security Council criticized Libya for failure to extradite suspected terrorists in the bombing of an aircraft, referring it as 'an act of international terrorism that constitute threats to international peace and security'. In Resolution 1070 (1996) adopted with regard to Sudan it reaffirmed that 'the suppression of acts of international terrorism, including those in which states are involved, is essential for the maintenance of international peace and security'. In Resolution 1368 (2001) adopted one day after the 11th September 2001 terrorist attacks upon the World Trade Centre, the Security Council noted that it was 'determined to combat by all means threats to international peace and security caused by terrorist attacks.' Resolution 1373 (2001)

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[169] See General Assembly Resolution 51/210 (1996) and Resolution 55/158 (2001)
[170] See General Assembly Resolution 51/210
[171] See Report of 6th Committee, 2002, A/56/593 and Resolution 57/27 (2003)

[172] See Resolution 579 (1985) where it condemned unequivocally all acts of hostage taking, terrorism in all its forms, whenever and by whoever committed.

further reaffirmed Resolution 1368 (2001) and condemned terrorism unequivocally. It

urged all states to cooperate in the fight on terrorism, but crucially the UN Security Council

established a Counter-Terrorism Committee[173] to monitor implementation of the resolution.

States were called to report to the committee on measures they had taken to .fight terrorism

(implement Resolution 1373). The Counter-Terrorism Committee (CTC) was also to

prepare model laws as appropriate (on terrorism) and examine the availability of various

technical, financial, legislative a nd o ther p rogrammes t o facilitate t he i mplementation o f

Resolution 1373. By March 2003 the CTC had received 328 reports, reviewed and

responded to 226 of them, and 7 states had not submitted a report, while 39 states were

over three months late in submitting a second report.

The UN success in the war on terror is also seen considering that it has supported the

enacting of twelve Conventions[174] against terrorism in all its manifestations: Convention

On Offences And Certain Other Acts Committed On Board Aircraft,

1963('Tokyo'Convention); Convention For The Suppression Of Unlawful Seizure Of

Aircraft, 1970 ('Hague Convention); Convention For The Suppression Of Unlawful Acts

Against The Safety Of Civil Aviation, 1971 ('Montreal Convention'); Convention On The

Prevention And Punishment Of Crimes Against Internationally Protected Persons,

Including Diplomatic Agents, 1973 ('Diplomats Convention'); International Convention

Against The Taking Of Hostages 1978 ('Hostages Convention'); Convention On The

Physical Protection Of Nuclear Material, 1979 ('Nuclear Convention'); Protocol For The

Suppression Of Unlawful Acts Of Violence At Airports Serving International Civil

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[173] Shaw M N., International Law, OP Cit, P.1051
[174] Aust, Anthony., Implementation Kits For The International Counter-terrorism Conventions, Criminal Law Section, Commonwealth Secretariat, London, UK, PP. 1 - 2

Aviation, Supplementary To The Montreal Convention, 1988 ('Montreal Protocol');

Convention For The Suppression Of Unlawful Acts Against The Safety Of Maritime

Navigation,1988('Rome Convention');Protocol For The Suppression Of Unlawful Acts

Against The Safety Of Fixed Platforms Located On The Continental Shelf, 1988 ('Rome

Protocol'); Convention On The Making Of Plastic Explosives, 1991 ('Explosives

Convention'); International Convention For The Suppression Of Terrorist Bombings, 1997

('Bombings Convention'); International Convention For The Suppression Of The

Financing Of Terrorism, 1999 (Financing Convention'). At least ten of the twelve

conventions deal with the prosecution of terrorist offences.

The Convention On Offences And Certain Other Acts Committed On Board Aircraft[175] was

negotiated under the auspices of the ICAO, adopted at Tokyo in Sept 1963, entered into

force of December 11th 1969, and as at September 2002, 173 states had signed it. It deals

with powers of the aircraft commander, unlawful seizure of aircraft (inadequately), powers

and duties of states. It does not however provide for extradition of offenders. It is

generally about safety while in flight, and though it does not appear to have been aimed at

combating international terrorism, it has had the prohibitive effect and generally leans in

that direction. It however fails to define or create particular offences (leaving the

municipal laws to do that). It for instance fails to oblige parties to punish hijacking, merely

requiring them to take all appropriate measures for the safety of the aircraft.

The Convention For The Suppression Of Unlawful Seizure Of Aircraft was enacted in

Hague following rapid increase in number, 122 in all, of aircraft hijackings. It was enacted

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[175] See Tokyo Convention, Sept 14th 1963

in 1970 courtesy of ICAO and entered into force in October 1971 and by September 2002 had 175 signatures. It obliges parties to follow *aut dedere aut judicare* rule (extradite or prosecute). The unlawful seizure of an aircraft is declared to be an extraditable offence in any extradition treaty existing between contracting parties.[176] It makes it unlawful for a person on board to force or threaten to exercise control of the aircraft, parties are asked to severely punish offenders, to extradite or prosecute and to assist each other with criminal proceedings. The law of the requesting state shall apply in connection with the institution of criminal proceedings brought pursuant to the offences in question.

The Convention For The Suppression Of Unlawful Acts Against The Safety Of A Civil Aviation, came into force in Sept. 1971, courtesy of ICAO in Montreal, Canada, and had by Sept. 2002, 176 signatories. In establishes a number of offences[177] and obliges members to either punish or extradite. 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 act, or destroy air navigation devices, or communicate information he knows to be false, thereby endangering safety of an aircraft.

There was also a convention reached to protect internationally protected persons, the Convention On The Prevention And Punishment Of Offences Against Internationally Protected Persons, Including Diplomatic Agents 1973. Their safety is vital for smooth maintenance of normal international relations between states. They are indeed a terrorist

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[176] Convention For The Suppression Of Unlawful Seizure Of Aircraft, 1971, article 8

[177] Convention For The Suppression Of Unlawful Acts Against The Safety Of A Civil Aviation, 1971, article 1.

target all the same. It has a lot in common with Provisions of the Vienna Convention on Diplomatic Relations 1961. 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,[178] among others. It cites murder, kidnapping, any violent attack, or threat of same, or an attempt to commit any such attacks, or being an accomplice, to any of them, an offence. The principle of *aut dedere aut judicare* applies.[179]

The 1978 International Convention Against The Taking of Hostages is in line with the purposes and principles of the Charter of the United Nations concerning the purposes and principles of security and the promotion of friendly relations and cooperation among states. Hostage taking has in more recent times become a favoured weapon of the terrorist and this convention was indeed timely. The convention was adopted by the UN General Assembly in December 1979 and entered into force in June 1983. By September 2002 it had 110 signatures. It clearly states that taking of hostages is an offence of grave international concern. The principle of *aut dedere aut judicare* applies. This Convention is directed towards political acts of terrorism and the taking of hostages for private gain (extortion).

It was (still is) spine chilling to think of nuclear weapon in the hands of terrorists. A Convention on the Physical Protection of Nuclear Materials was adopted in October 1979 entering into force in February 1987 – and had 74 signed parties by September, 2002. The Convention in its preamble is set to avert the potential dangers posed by the unlawful

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[178] Convention On The Prevention And Punishment Of Offences Against Internationally Protected Persons, Including Diplomatic Agents 1973,article 1

[179] Convention On The Prevention And Punishment Of Offences Against Internationally Protected Persons, Including Diplomatic Agents 1973, article 7

taking and use of nuclear material by the adoption of effective measures to prevent, detect, and punish such offences. It is based on the Diplomats Convention, and articles 7 to14 contain penal provisions while articles 2 to 6 contain the measures. The rule of *aut dedere aut judicare* applies to the convention. States are also obliged to assist each other on criminal proceedings matters.

Growing concern to threats on airport security, after the terrorist attack at Rome airport in January 1986 led to an international conference at Montreal which in February 1988 adopted the 'Montreal Protocol, entering into force in August 1989. This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. It advocates for enhanced airport safety and security and cites offences in its article 2.[180] The extradition provisions of the convention apply to this protocol, and so is the principle of *aut dedere aut judicare.*

On October 7th 1985, an Italian cruise ship *Achille Lauro* was seized by four terrorists from the Palestinian Liberation Front, off Egyptian Coast and held hostage with tourists on board, most of them US nationals. The terrorists sought the release of 50 Palestinian Prisoners from Israeli jails. Pursuant to the foregoing, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 was adopted in Rome courtesy of the IMO (and supported by UN). A Protocol of the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf was adopted the same day. The Convention generally follows the Hostages Convention with respect to

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[180] Articles 2 of Montreal Protocol 1988

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provisions. All acts of international terrorism connected with maritime affairs are condemned under the Convention. The Convention does not apply to listed entities like warships. The principle of *aut dedere aut judicare* (prosecute or extradite) applies to the convention. It establishes a legal regime applicable to acts against international maritime navigation similar to the regimes established against international aviation. It makes it illegal for any person to seize, exercise control over a ship by force or threat or intimidation, or perform any act of violence against a person on board a ship, or destroy a ship or cause damage to its cargo, or place or cause to be placed on a ship by any means a device (explosives) likely to destroy it or its cargo.[181] The additional protocol establishes a legal regime applicable to acts against fixed platforms on the continental shelf. It makes it illegal to seize, exercise control over a fixed platform by force or threat, or through intimidation, or destroy a fixed platform or cause damage to endanger its safety, or places or c auses to be placed on a fixed platform by any means a device (explosive) likely to destroy that fixed platform or endanger its safety.[182]

The sabotage of civil aircraft by terrorists grew markedly in the 1980's. In 1985 were 13 acts of sabotage killing 473 people.[183] On 21st December 1988 Boeing 747 aircraft of Pan American Airways (flight 103) exploded over Scotland killing all 259 passengers on board, and 11 on land (residents of Lockerbie). The Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991, was then conceived. This convention is

[181] Convention For The Suppression Of Unlawful Acts Against The Safety Of Maritime Navigation 1988,article 3

[182] Article 2, Protocol For Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on continental shelf, 1988
[183] Milde M., ' Draft Convention on the marking of Explosives' Annals of Air and Space Law, (1990), PP 155 - 179

very different from the other 11, in that it is not directed at the arrest and prosecution of terrorists, but at better detection of a particularly dangerous explosive used by terrorists and other criminals.[184]   It therefore does not create any offences, though the implementing legislation will have to. The convention tackles the problem posed by the difficulty of detecting **unmarked** plastic explosives, and obliges state parties to take necessary and effective measures to prohibit manufacture[185] and movement[186] of unmarked explosives, as well as general control.

The international Convention for the Suppression of Terrorist Bombings was a US initiative, after the bombing of the Federal building in Oklahoma City. The Convention was adopted by the UN General Assembly in December 1997, entering into force in May 2001. It was generally as a response to widespread use of bombs in terrorist attacks, particularly in public places. It makes it an offence to deliver, place, discharge or detonate an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transportation system or an infrastructure facility.[187]   The convention appears to expand the legal framework for international co-operation in the investigation, prosecution and extradition of persons who engage in terrorist bombings. Each state party is obliged to criminalize the acts in article 2(1) in their municipal legislation, taking into account the grave nature of the offences.   The *aut dedere aut judicare* principle applies.

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[184] Aust, Antony, <u>Implementation Kits For The International Counter-Terrorism Conventions.</u> Criminal Law Section, Common Wealth Secretariat London, United Kingdom, OP Cit, P.224

[185] Convention On The Marking Of Plastic Explosives For The Purpose Of Detection, 1991,article 2
[186] Convention On The Marking Of Plastic Explosives For The Purpose Of Detection, 1991,article 3

[187] Convention For The Suppression Of Terrorist Bombings, 1997,article 2(1)

The UN also adopted an International Convention for the Suppression of the Financing of Terrorism in December 1999, which aims at preventing terrorism by cutting off the funds, which terrorists need in order to carry out their crimes. Its provisions are similar to those on 'Bombings Convention'. It obliges state parties to take appropriate measures in their domestic legislations for, identification, detection, freezing or seizure and forfeiture of any funds used or allocated to commit terrorist acts. Further obligates states to forfeit terrorists' funds and consider compensating the victims of terrorist attacks with the funds, to cooperate, coordinate their actions in prosecution as well as for mutual legal assistance. Principle of *aut dedere aut judicare* applies (article 10)). State parties are also obligated to afford one another great assistance in criminal investigation,[188] criminal or extradition proceedings. State parties are further obligated to cooperate in licensing of all money-transmission agencies, and in detecting and monitoring the physical cross-border transportation of cash and bearer negotiable instruments. It urges state parties as they cooperate in seeing the success of this instrument, to do in a manner consistent with the principles of sovereign equality and territorial integrity of states and that of non-intervention in the domestic affairs of other states.[189]

Despite the foregoing measures by the UN at fighting terrorism and bringing about international peace and security it is hard to see what real effect they would have on many political hijackings[190] and terrorist acts where great powers have national interest(s). The major drawbacks are that the states which are well-known sanctuaries of political hijackers are not signatories to the various UN conventions while the legal regimes suffer from a

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[188] International Convention For The Suppression Of The Financing Of Terrorism, 1999, article 12
[189] International Convention For The Suppression Of The Financing Of Terrorism, 1999, article 20

[190] Wardlaw G., Political Terrorism. Op Cit, P.116

fundamental weakness of a lack of an enforcement clause. [191] There is no mechanism by which states who do not fulfill their obligations under the conventions can be sanctioned. But then given the realities of world politics, may be if an enforcement clause were to be added, many if not all of the states that are signatories would withdraw their support. All in all, many states and scholars alike feel that it is better to have an accord which at least sets some requirements, albeit unenforceable, than lack of one at all. That terrorists have not been deterred by the conventions existence has made some scholars to view them as a mere collection of high statements of principle devoid of any real impact.

3.06   Regional Organizations and The War on Terrorism

The UN Charter recognizes the existence of Regional and Sub-regional intergovernmental organizations,[192] which should deposit their instruments with the UN Secretary General. Indeed these Regional entities have made commendable efforts in fighting terrorism notably the OAU/AU, Council of Europe, OAS, League of Arab States, and IGAD – to cite a few.

The OAU adopted a Convention on the Prevention and Combating Terrorism in Algiers in 1999. In the preamble the states parties observed that terrorism violated human rights,

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[191] Ibid, P. 116

[192] The Charter of the UN, article 52 to 54

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cannot be justified under any circumstances and offered to cooperate in its fight. It also

recognizes that terrorism and organized crimes like illicit traffic of arms, drugs and money

laundering have growing links and undertook to eliminate it in all its forms and

manifestations. State parties undertake to refrain from any acts aimed at organizing,

supporting, financing, committing or inciting to commit terrorist acts, or providing

weapons, havens for terrorists, or issuing visas and other travel documents.[193] States

parties are obligated to develop and strengthen methods of monitoring and detecting illegal

cross-border importation of materials for committing terrorist acts; develop and strengthen

methods of controlling and monitoring land, sea, and air borders, customs and immigration

checkpoints to be able to preempt any infiltration by terrorists; promote the exchange of

information and expertise on terrorist acts and establish data bases for collection, storage

and analysis of terrorist related information; prosecute or extradite terrorist suspects;

exchange information regarding terrorist suspects groups, their leaders, training camps,

source of funding, acquisition of arms;[194] promote co-operation among themselves in

matters with regard to investigation; conduct and exchange of research finding on

terrorism. Further, the State Parties are obligated to cooperate and assist each other in

criminal investigations related to any judicial proceedings on terrorist acts and, in

particular, in examination of witnesses, gathering and analyzing evidence, conducting

inspections, searches, seizures and tracing assets of evidentiary value, and in service of

judicial documents. In sum, state parties are obligated to extend to each other the best

possible mutual police and judicial assistance for any investigation, criminal prosecution or

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[193] OAU Charter, article 4(1)
[194] OAU Charter, Article 5(1)(a)

extradition proceedings relating to any terrorist act.[195] The Peace and Security Council (PSC) of OAU/AU is responsible for harmonizing and coordinating continental anti-terrorist efforts. It should be realized that the OAU/AU had/has no standby strike force in the event of any terrorist attack and as such it has only been able to rally state parties to legal and cooperation responses, as opposed to military response.

Another regional convention is the European Convention on the Suppression of Terrorism, which was opened for signature in January 1977 and came into force in August 1978.[196] In its preamble it recognizes effective measures against terrorism to include extradition, prosecution and punishment. It however provides exemption from extradition if the requested State has substantial grounds for believing that the reason for requesting the extradition is for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that the person's position may be prejudiced for any of the foregoing reasons.[197] The contracting States are obligated by this convention to afford one another widest measures of mutual assistance in criminal matters (investigation) regarding terrorist acts. The assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or offence inspired by political motives. On the face of it, the European Convention seems a worthwhile contribution to regional attempts to combat terrorism.[198] It is however flawed in that not all members of the Council of Europe have ratified it and in any case it does not

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[195] OAU Charter, article 17
[196] OAU Charter, Article 5(1)(a)
[197] European Convention on the Suppression of Terrorism, article 5

[198] Wardlaw G., Political Terrorism. OP Cit, P.114

contain enforcement provisions for breaches by signatories. There is thus no guarantee that it would be adhered to in the cruel test of a crisis. France for instance put her national self-interest before international (regional) treaty obligations when in 1977 she permitted Abu Doud to leave the country very well aware that he was wanted by both Germany and Israel for his part in the 1972 Munich Olympic Games terrorist attack on Israeli athletes and subsequent massacre during a failed rescue attempt. All in all the convention provides a mechanism for European cooperation in the fight against terrorism.

The Organization of American States (OAS) concluded at Washington the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance in February 1971 (which was registered by OAS in Oct. 1986). OAS General Assembly strongly condemned acts of terrorism especially the kidnapping of persons and extortion in connection with that crime.[199] The Contracting States undertook to cooperate among themselves by taking all the measures they may consider effective under their laws, especially those established in the convention to prevent and punish acts of terrorism, notably kidnapping, murder, and other assaults against the life or physical integrity of those persons to whom the State has duty according to international law to give special protection, as well as extortion in connection with those crimes.[200] The motive for committing foregoing offences shall not need to be proved for same to be considered as common crimes of international

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[199] OAS General Assembly Resolution 4, of June 30, 1970

[200] OAS Convention To Prevent And Punish Acts Of Terrorism Taking The Form Of Crimes Against Persons And Related Extortion That Are Of International Significance, 1971, article 1

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significance. The convention however does not have an enforcement clause nor have all the member states of OAS ratified and here lies its drawback.

The Arab Convention on Terrorism adopted in April 1998 under League of Arab States seeks to promote mutual cooperation in the suppression of terrorist offences which poses a threat to the security and stability of the Arab Nation. It also denounces all forms of violence and terrorism and advocates the protection of human rights. The convention however does not view armed struggle against foreign occupation and aggression for liberation and self-determination as a terrorist act.[201] The Contracting States undertake not to organize, finance or commit terrorist acts or be accessories thereto in any way. They are obligated to pass national legislations against terrorism. They are obligated to prevent the use of their territories as bases for planning, organizing, executing, attempting or taking part in terrorist attacks in any manner whatsoever, or training, arming, financing or providing any facilitation to terrorist acts. Contracting States are further obligated to develop and strengthen systems for the detection of the movement, importation, exportation, stockpiling and use of weapons, munitions, explosives and monitoring their passage through customs and across borders.[202] They are further obligated to secure their borders and entry points overland, sea, air, to prevent illicit entry thereby; target-harden vital installation and enhance security for diplomatic and consular persons; share information among the contracting states on terrorist groups to thwart their schemes; establish data bases for accumulation and analysis of terrorist-related information, updating

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[201] Arab Convention on Terrorism, article 2(a)

[202] Arab Convention on Terrorism, 1998,article 3(3),

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such information regularly. The principle of *aut dedere aut judicare* applies, and contracting states are obligated to arrest and prosecute or extradite terrorist suspects. Contracting states undertake to promote cooperation among themselves and to provide assistance with respect to measures for the investigation and arrest of fugitives suspected or convicted of terrorist offences in accordance with municipal laws of each state. In extradition, however, same may not be permissible if the offence for which it is requested is of a political nature or relates solely to a dereliction of military duties. Contracting States are further obligated to cooperate on judicial (prosecutorial) matters, in seizure of assets and proceeds derived from terrorist offences (investigation); in gathering and preservation of evidence; as well as in the protection of witnesses and experts.[203] This convention undoubtedly is an attempt at combating terrorism. However a contracting state may denounce this convention only by written request addressed to the Secretary General of the League of Arab States should it be necessary to protect her national interests. In any case not all Arab States have ratified or will do so, and there lies its weakness just like in any other Convention.

The Inter-Governmental Authority on Drought and Development (IGAD), a Sub-Regional organization, has also resolved to combat terrorism in the Horn of Africa region by outlining a draft implementation plan to counter-terrorism in the region. The Agreement establishing IGAD recognizes the need to act collectively to preserve peace, security and stability and to take effective collective measures to eliminate threats to regional cooperation, peace and stability. The draft plan observes that severe conditions of poverty,

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[203] Arab Convention on Terrorism, 1998, article 37

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depravation and injustices provide fertile breeding ground for terrorist extremism in Africa, and further that pooling resources together and cooperation are essential to effectively counter terrorism threat. The draft plan advocates for member states of IGAD to ratify and implement regional and international instruments for the prevention and combating of terrorism. These include the OAU Convention on the Prevention and Combating of Terrorism, 1999, as well as the twelve UN counter-terrorism conventions highlighted earlier. The IGAD draft plan on combating terrorism also urges member states to develop effective anti-terrorism legislations, as well as against organized crimes often linked to terrorism, notably, money laundering, corruption, drug trafficking, and arms trafficking; assess and implement measures to freeze funds and other assets of terrorists; verify activities of charitable organizations. Further, the draft plan obligates member states to enhance operational capacity to counter illegal cross-border movement; incorporate additional security measures to detect forged travel documents and share such information on criminals/terrorists and their activities through computer-networking; take measures to prevent proliferation of small arms, importation, exportation, stock-pilling use of arms, munitions, explosives; establish a regional data bank or terrorism centre and exchange such information through interaction amongst various counter-terrorism security agencies (police, military), legislative authorities, judicial authorities and financial authorities. Member states through the IGAD Draft also undertake to cooperate in the war on terror and to offer mutual legal assistance, extradition, training and expertise, thereby enhancing international cooperation through international meetings for the exchange of knowledge and experience. The public support should be sought through education programmes. The Draft recognizes that the region lacks resources and mandates the IGAD secretariat to

approach donors and other agencies to assist member states in capacity building and with technical assistance.

3.07   International Terrorism: The Kenyan Experience

Incidents of terrorism abound throughout history, though it was not until the late 1960s that terrorism emerged as force with a place in international politics.[204]   Three waves of terrorism have been identified to coincide with important developments in international politics – the 1967 Israeli-Arab war, secondly the 1979 return of Ayatollah Khomeini to Iran and the subsequent fall of the Shah, and finally the period associated with Osama bin Laden (and Al Qaeda) and the Palestine *intifada* after the Gulf war in 1991.[205]   It is the last wave that is especially important with respect to international terrorism in Kenya.

The British colonized Kenya as a protectorate before 1920 and thereafter as a colony up to 1963 when it gained independence.   In the 1950s the 'Mau Mau' freedom fighters were branded as terrorists by the British whereas the Africans viewed them as freedom fighters. Kenya has witnessed three major terrorist attacks targeting Western interests but where Kenyans have suffered loss of lives and property – Norfolk hotel bombing (1980), the 1998 US Embassy bombing and the Kikambala Paradise hotel bombing (2002).   In its counter-terrorism campaign, Kenya has often used internal security agencies more than the military.

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[204] Harmon C., Terrorism Today (Portland: Frank Cass, 2002) P.2

[205] Otenyo E., 'New Terrorism: Toward Explaining Cases in Kenya' African Security Review Vol. 13 Issue 3 (2004) P.77

These include the various detachments of the police (the Israeli-trained *recce* unit commandos, the CID, Interpol, the General Duty officers, the Administration Police Unit, and recently the Anti-Terrorism Police Unit), and the NSIS. The Kenyan terrorism threat has never been an existential concern. Largely Kenyan approach to counter-terrorist in the past has arguably been reactive rather than proactive. The Kenyan counter-terrorism efforts have largely been donor driven. Terrorist attacks of 1980 and 1998 were not matched by correspondingly serious counter-terrorist measures. It was only after 9/11 terrorist attacks in the US and the Kikambala hotel bombing that serious counter-terrorist measures and institutions were revamped or put in place, largely due to pressure from the Western governments.[206] These institutions include the NCTC, DoD (Department of Defence), Detachments of Kenya Police (ATPU, Tourism Police Unit, Diplomatic Police Unit, and Marine Police Unit), Kenya Airports Authority, Kenya Civil Aviation Authority, Kenya Ports Authority, Immigration Department, Customs and Excise Department (KRA), NSIS, Ministry of Tourism, Ministry of Foreign Affairs and the Attorney General's Office (Anti-Terrorism Prosecution Unit).

Some analysts have viewed responses to terrorism in Kenya just like in most other developing countries to be Western (or US) led and not necessarily UN-driven. This ties in well with their national (Western) interests. This line of thought has been enriched by assertion that international terrorism is a foreign phenomenon which does not target Africans and their interests as such. But other analysts have argued that Western presence and interests are beneficial (for instance, tourism and foreign direct investments) at least

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[206] Interview with an ATPU Official who prefers to remain anonymous, Nairobi, August 22nd, 2006.

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economically to the developing world and as such international terrorism should be jointly tackled by all. "There are no two ways about it. The formulation of anti-terror legislation as well as putting in place other counter-terrorism measures is not a matter in which Kenya, or for that matter, any other country has a real choice. It is an obligation (complete with the prospect of sanctions!) incumbent on every member of the international community".[207]

Indeed Kenya needs secure and safe environment, and basic human rights and dignity of its citizens and their visitors and is thus obligated to put in place measures to counter international terrorism, now and in the future. Other than legislation (which Kenya is yet to put in place due to domestic politics), other responses to international terrorism put in place in Kenya include: inter-services cooperation and sharing of terrorism-related intelligence, establishment of the NCTC for overall coordination of all efforts and resources geared towards fighting terrorism, international cooperation with other states in sharing intelligence, in investigations, in apprehension and extradition of suspects. Other responses/measures put in place in Kenya to counter terrorism are judicial (prosecutorial), diplomatic/political, and legislative. Kenya has ratified all the twelve UN-supported counter-terrorist protocols/conventions,[208] the AU anti-terror Protocols and the IGAD draft plan on counter-terrorism.

In her counter-terrorism efforts, Kenya has closely cooperated with the international community, notably, US, UK and Israel. There has been significant increase in intelligence

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[207] Nyegenye J. M., 'Conference Paper': 'The evolution of the anti-terrorism bill 2006' At a Stakeholders Consultative Workshop on Draft anti-terrorism Bill 2006, (Karen, Nairobi 15th –17th February 2006)

[208] Aust, Anthony, Implementation Kits for the International Counter Terrorism Conventions, OP Cit, PP.302-303

cooperation between Kenya and the US, though more guarded and less visible to the public.[209] After the 1998 terrorist attacks on the US Embassy and the 2002 Kikambala paradise hotel (Israeli-owned), the Kenyan investigators partnered with those from the US and Israel. The 1998 suspected terrorists were even extradited for trial in the US as Kenya did not want to be involved in what appeared to be a along, complex and sensitive judicial procedure.

3.08 Conclusion

Responses to international terrorism have variously been categorized as national (domestic), regional and global (international) in perspective; immediate and long-term, as well as, defensive and offensive. In such categorizations, responses to terrorism will depend on the prevailing circumstances of the particular terrorist incident, but overall, responses will either (singly or jointly) be: military (retaliations), legislative, judicial (prosecutorial), political (negotiations), economic (sanctions), and/or diplomatic cooperation between states (exchange of terroristic information). M ilitary responses a re either pre-emptive, disruptive or retaliatory in nature and are both preventive (proactive) as well as reactive. The use of specially trained military or police commando anti-terrorist units fall here. All the states have military and police forces for their protection internally and externally. Legislative or legal responses cover municipal anti-terrorism laws, regional and international (UN) conventions/protocols against terrorism. Indeed a thread seems to

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[209] Carson J., Kenya: 'The Struggle against terrorism' OP Cit, P.177

run through the international (UN), regional and national legal/treaty provisions/requirements and generally the municipal law can be said to be a miniature of the international (UN) anti-terrorism treaties.

Judicial responses cover setting up of special anti-terrorism courts and prosecution department due to the special nature of the terrorism offences, as well as extradition procedure. Political (negotiations) response is a vital one in that offering minimal concessions even if the state in question has a policy of 'no negotiation' with terrorists has gone a long way to hold matters in check. Indeed even the leading 'no concession' states, Israel followed by US, are known to have negotiated with terrorist groups behind the scenes. At other times through regional and international (UN) pressure, terrorism sponsors have in the past undergone through economic sanctions by the Security Council as happened for instance to Libya after the 1989 Pan Am (103 flight) terrorist attack. Diplomatic (cooperation) response which is underlain by political will is kind of a support factor to most of the foregoing responses. It entails exchange of information between forces/intelligence agencies of different states, inter-security services cooperation against terrorism, assistance in investigation, court and extradition proceedings, Interpol role, and so on.

All in all, it will be ill advised to hold that the above cited measures will wipe-out terrorism from the face of the earth. The rhetorical condemnation of terrorism is easier to deliver than the considered measures that will reduce the problem. In any event, inter-state cooperation, new legal treaties on extradition, greater sharing of intelligence through

agencies like Interpol and the international association of chiefs of police are all measures repeatedly advocated, frequently discussed, and only occasionally implemented.[210] Rather than only treat symptoms of an illness, states of the world in order to fight terrorism need to have concerted efforts at reducing socio-economic inequalities and exploitation disparities in employment and educational opportunities, political oppression and alienation etc. Above all, states must rise above partisan national self-interests to come up with a definition of terrorism acceptable to all, as a starting point to effectively responding to international terrorism.

[210] Pachnanda R.K., Terrorism & Responses To Terrorism Threat, OP Cit. P.197 - 8

CHAPTER FOUR: INTERNATIONAL TERRORISM: THE KENYA COUNTER-TERRORISM EXPERIENCE

4.01 Introduction

The numerous ethnic and religious groups within Kenya, coupled with immigrants have been mooted as a factor predisposing Kenya to terrorism. Kenya is home to people of Arabic, Jewish and European descent (and their interests) in addition to its forty-plus constituent tribes.[211] Any animosity between these groups could import violence into Kenya from their original homelands.[212] It is also home to refugees of varied ethnic and religious backgrounds from neighboring war torn countries – thanks to Kenya's relative peace in the war-torn Horn of Africa region. This tranquility has enabled Kenya since her independence in 1963 to concentrate on social, political and economic developments almost uninterrupted.

Kenya is the regional economic powerhouse of the greater Horn of Africa; it is also the most stable and reliable democracy in the area.[213] It is also the largest non-oil and non-mineral based economy in sub-Saharan Africa, broadly diversified across sectors such as agriculture, tourism, small-scale manufacturing, transportation, and banking. Kenya's tourist sector is sophisticated and highly developed, making it one of the premier

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[211] Munene, Macharia ' Conference Paper' National Institutional Responses to Terrorism (University of Nairobi, IDIS, 1st July 2003)p.6

[212] Kariuki, M., KTN Television Documentary, 'Patterns of Global Terrorism'

[213] Carson J., Kenya; 'The struggle against terrorism; OP Cit, P.174

destinations for European and American travellers – thanks to the country's fine beaches and national parks. Kenya is also home to the largest number of international companies and foreign diplomatic missions in the region and hosts one of the United Nations' four regional headquarters – the only one outside US or Western Europe. A ll these p rovide Kenyan and international terrorists with a variety of reasonably soft but high value targets. Kenya's relatively high level of corruption a nd t he m arginalization o f i ts l argely c oastal Islamic c ommunity c ontinue t o m ake i t o ne o f t he p rincipal r ecruiting grounds for local terrorists sympathizers and supporters.[214] Kenya's geo-political location on Indian Ocean and proximity to the Middle East ensures regular US and European military presence further providing targets to international terrorists both on land, air and sea. Kenya has to date had three major terrorist attacks with measurable loss of lives and property – thanks to her strong pro-Western policies.[215]

4.02 Terrorism In Kenya: A Historical Perspective

In the Berlin Conference (1884-85) the partition of Africa into 'spheres-of-influence' between the leading European powers occurred. Kenya on her part became a British protectorate up to 1920 and a colony thereafter up to 1963 when she attained independence. Just like the colonization, independence was not attained peacefully but through armed conflict. The colonialists were the first to commit terroristic acts on the Kenya Africans before they surrendered in the face of superior European firepower. Western colonialism led to loss of land, political, social, economic domination, and overall exploitation.

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[214] Carson J., Ibid, P.173
[215] Ibid, P.174

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Arguably the foregoing amounted to terroristic acts as loss of lives and property occurred as well.

African discontent emerged and spread through political parties, labour unions and informal protest organizations. Political parties like the Kikuyu Central Association (KCA) and Kenya African Union (KAU) sprang up. In 1946 a group of dissatisfied soldiers who had taken part in the World War I and II formed the 'forty group'. They organized opposition to Europeans and their policies were extreme. They were joined by other freedom fighters ('terrorists' in the British view) and made their base in Mt. Kenya and the Aberdare forests. The British colonialists called it 'Mau Mau' and considered it a dangerous terrorist movement.[216] They demanded the return of land owned by the European settlers to the Africans and independence in the shortest time possible. Some of their violent acts included raiding of shops to steal guns, killing of African traitors and European settlers.[217] They also targeted chiefs and their supporters, African police officers and those who refused to take oath. They operated at night and killed whites and their loyalists; set homes on fire and even attached police patrols. The British government declared a state of emergency between 1952 and 1956 when the Mau Mau were defeated militarily – thanks to the British counter-intelligence strategy, aggressive patrols, air reconnaissance and bombings. Detention camps were created for those arrested. The British to anathematize Mau Mau branded them as gangsters, thugs and terrorists. It has been argued that the British excessive force meted on the African freedom fighters amounted to a terroristic act as no legitimate government kills and bombs its subjects due

[216] Oketch. E.L., M.A. Dissertation unpublished, OP Cit, P.106

[217] Kaggia,B., Roots of Freedom 1921-1963 (Nairobi, East Africa Publishing House,1975),P. 15

to discontence arising out of poor governance and exploitation. According to the Sederberg w ho c ame u p w ith e stablishment o r p ro-regime t errorism t ypology, Mau Mau would fall into the latter, while the British acts fall into the former.[218]

East Africa had its first taste of the Middle East terror in July 1976 when PLO terrorists hijacked an Air France plane from Athens Airport and forced it to fly to Libya and finally to Entebbe, Uganda, during General Idi Amin's rule. The hijackers demanded release of Palestinian 'freedom fighters' held by Israel. A fter futile attempts to negotiate with the terrorists the Israeli government sent its commandos to Uganda and they managed to stage a daring rescue of the Israeli hostages. About 100 Ugandan soldiers were killed and 11 Mig jets destroyed in the raid. All the hijackers were killed.[219] Idi Amin was accused for supporting the terrorists and he in turn accused Kenya for offering logistical support to the Israeli commandos and relations between the two countries became frosty for a while.

A bomb explosion rocked Kenya on March 1st 1975 before the murder of the late former Nyandarua Member of Parliament J.M.Kariuki, who was outspoken, vibrant and populist. The bomb may have been targeted at him and exploded in a bus belonging to the now defunct Overseas Trading Company (OTC) at the company's bus station in Nairobi killing twenty-seven people. It was not known who committed the terrorist act. After the bomb attack and the murder of J. M. Kariuki riots and unrest hit the city of Nairobi for a while.

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[218] Sederberg P., Terrorist Myths, OP Cit, PP. 44 - 67
[219] The Daily Nation, Monday July 5th , 1976, ' Commandos kill 100 Ugandans' P.1

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 terrorist Qaddura Mohamed Abdul el Hamud a member of the Popular Front for the Liberation of the Palestinian (PFLP) guerilla movement. The blast occurred at about 8.45pm just as the guests (tourists) gathered for the new year buffet dinner in the Eland dinning room. The hotel was then Israeli-owned. Some claimed that the attack had to do with the Jewish Block-family ownership while others claimed that it was in relation because Kenya had allowed the Israelis to refuel at her capital, Nairobi, before and after the 1976 Entebbe raid.[220] The terrorist Qaddura Mohammed had used a forged Maltese passport although he was a Moroccan. To date, he has never been brought to book but 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. Dissenting views wanted a return to multiparty politics and a possible regime change. There was growing support for freedom of expression both from the citizens and leaders from foreign states, especially donor community of states. On February 6th 1992 a home made bomb damaged toilets at the Jogoo House 'A' which housed Ministry of Education and KANU (the ruling party) key offices. A group calling itself the 'God's Oppressed Army' claimed responsibility and demanded the immediate resignation of the President and

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[220] The Daily Nation, Nairobi, January 5th 1981. P.1

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the release of all political prisoners.[221] On March 23rd same year, the same group detonated a bomb in Nairobi's City Hall toilets. On March 25th 1992, there were bomb scares at the Attorney Generals Offices and at the Income Tax Department.[222] Another bomb exploded in Nairobi's Eureka Bar along Tom Mboya Street killing one man.[223] The foregoing devices were made from ammonium nitrate based fertilizer laced with fuel/oil. These bomb attacks saw the repeal of Section 2A of the constitution and return to multiparty democracy.

More than any other country in Sub-Saharan Africa, Kenya has felt the devastating effects of international terrorist attacks. On or about 10.30am on August 7th, 1998 Al Qaeda terrorists drove a small bomb-laden panel truck to the American Embassy at the junction of Moi and Haile Selassie Avenues in Nairobi. The blast extensively damaged the Embassy and destroyed completely an adjacent building. Two hundred and fourteen people died and over five thousand (5,000) people were injured and wounded. One terrorist was apprehended by Kenya police and later extradited for trial to the US.

Just over four years later, on November 22, 2002 Al Qaeda terrorist struck Kenya again. Terrorists drove an explosive filled land cruiser into a lobby of the Paradise Hotel (Israeli-owned) in Kikambala to the north of Mombasa. The blast killed sixteen Israeli and Kenyan citizens. At the same time as the bombing of the hotel went on, two terrorists standing in

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[221] The Daily Nation, Nairobi February 7th 1991, P.1
[222] The Daily Nation, Nairobi March 26th 1991, P.1
[223] The Daily Nation, Nairobi, June 3rd 1992, P.1

different locations fired shoulder launched surface-to-air missiles at an Israeli charter flight that had taken off from Moi Airport Mombasa returning to Tel Aviv with tourists from the Paradise hotel but missed. The two terrorist attacks have since resulted in even closer collaboration between the US, Israel and Kenya, especially in the military and intelligence areas.

On August 1st 2003 the Kenya police acting on intelligence from the Kenyan intelligence community apprehended two suspected Al Qaeda suspects at a cyber cafe in Mombasa. One of them was suspected to have had taken part in both the 1998 and 2002 terrorist attacks, Fazul Abdullah Muhammed, the Al Qaeda's most senior leader in East Africa.[224] Due to police incompetence and failure to thoroughly search upon arrest suspects of such an offence, terrorism, one of the suspects detonated a hand grenade killing himself and one arresting officer and seriously injuring the other arresting police officer thereby enabling Fazul to escape in the ensuing confusion. A nearby police van was extensively damaged in the terrorist attack.

4.03 Kenya's Centrality in The Region in The War on Terrorism

The Horn of Africa region (Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan) and Yemen comprises of about 149 million people more than half of whom are Muslims. In the global battles for freedom, democracy and against terrorism, these seven nation states astride the Red Sea, the Gulf of Aden, and the Indian Ocean share a common enemy. They also

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[224] Carson J., Kenya: 'The Struggle against terrorism' OP Cit, P.190

roughly share a paucity of resources and unfulfilled desires for rapid economic advancement, shared poverty, poor governance, centuries old Muslim-Christian accommodation and sometimes antagonism and underdevelopment. This complex web provides a lasting menu for potential terrorists. It is little wonder then that Al Qaeda has struck twice in Kenya, at least once in Somalia, and once in Yemen. Johnnie Carson,[225] a former US Ambassador of Kenya posited that Kenya had more than any other country in the Sub-Saharan Africa felt the devastating effects of terrorism.

It is widely believed that Al Qaeda cells exist in Yemen, Somalia, Kenya, Sudan and beyond into Tanzania and Comoros, particularly along the East Coast amongst the largely Muslim adherents. Kenya's political and economic stability has continued to ensure that Western foreign direct investments (FDI) alongside other interests, diplomatic missions, tourism and military presence provides high value soft targets. Above all, the fairly relatively heavy concentration of local and foreign media for publicity and thus internationalization of terrorist acts is ensured in Kenya, more than in the neighbouring states.[226] Indeed in the greater Horn of Africa conflict zone only Djibouti and Kenya are peaceful and stable. The Western countries have consequently concentrated their counter-terrorism in either of the two countries as their bases. The US has a military camp at Lemonier in Djibouti. Germany also has surveillance planes based in Djibouti to patrol and monitor the region. The British and US naval vessels also patrol the 5,500 miles long coastlines of the greater Horn of Africa and Yemen. Johnnie Carson observes that no

[225] Ibid, P 180.

[226] Interview with EU Delegation Official who prefers to remain anonymous, Nairobi, September 5th 2006

country in the greater Horn of Africa region is as important to, and has had such a persistent record of strong relations with the US as Kenya. The US Embassy in Nairobi is the largest US Embassy in the Sub-Saharan Africa and second largest in Africa. This underlies Kenya's importance and centrality in the region and in the war on terror. In any case, the terrorist threat is more palpable in Kenya than in other parts of greater Horn of Africa region and Yemen.

The battle against terror in the vulnerable countries along Red Sea and the Indian Ocean is best prosecuted from a holistic perspective. The threat is transnational and respects no boundaries. In any event, none of the international land or sea borders presents an effective barrier to infiltrators. Drugs, arms smugglers, and even cattle rustlers criss-cross almost anywhere at will. The regional Inter-Governmental Authority on Development (IGAD) organization tries weakly to organize relevant common responses. Finding and neutralizing those existing and potential pockets of Al Qaeda demands concerted diplomatic, intelligence, law enforcement and military initiatives as US efforts alone are insufficient to deal with Al Qaeda and homegrown terror in the region.

4.04 Measures and Institutions: An Analysis of Kenya's Implementation of United Nations Resolution 1373(2001)

Although Kenya like any other country has had various legislations and institutions to fight crime (including terrorism) and ensure law and order, it was the 9/11 terrorist attacks in the US that led to the UN Resolution 1373 (2001) which bound all nation-states to implement

the same. This had led to regional as well as sub-regional efforts, all echoing UN Resolution 1373 (2001). The UN-CTC (United Nations Counter Terrorism Committee) was mandated to monitor countries implementation of UN Resolution 1373 (2001). Pursuant to Security Council Resolution 1535 (2004), the Counter-Terrorism Executive Directororate (CTED) was entrusted with the task of carrying out on-site visits to member states of the UN in order to monitor their implementation UNSCR 1373(2001).

A delegation composed of representation of the CTED, Interpol (ICPO), the European Union (EU), the World Customs Organization (WCO), the International Civil Aviation Organization (ICAO), and the CommonWealth Secretariat visited Kenya between 2nd and the 6th May 2005 and conducted talks with various Kenyan authorities (security audit).

States are required to establish terrorist acts as serious criminal offences and ensure that the punishment reflects the seriousness of the acts.[227] Kenya to date has no anti-terrorism law, per se. Efforts have however been put in this regard. In 2003 Kenya introduced a Suppression of Terrorism Bill, which was not enacted by the parliament, the key law making body. Some stakeholders notably the civil society and KNHRC cited erosion of gains made in areas of human rights law and democracy in the bill and this coupled with its opposition the Kenya Muslims made the government to quietly shelve it. Some politicians simply rebuffed the idea that any Kenyans were involved in terrorism. Others were concerned that acknowledging that Kenya had a home-grown terrorism problem (and therefore legislating) would undermine the country's image and reputation and would

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[227] UNSCR 1373 (2001), Sub paragraph 2(e)

devastate the country's international tourism industry. The Draft Anti-Terrorism Bill, 2006 has since been published and a stakeholders consultative meeting held in February 2006. It will soon be table in parliament for possible enactment. Other legislations to be reviewed to be more useful in fighting terrorism are: Banking Act (Cap. 488), Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994, Fugitive Offenders Pursuit Act (Cap. 87), Extradition (Contiguous and Foreign Countries) Act (Cap. 76), Extradition (Common Wealth Countries) Act (Cap. 77); Capital Markets Authority Act (Cap. 485A); Insurance Act (Cap. 487); Official Secrets Act (Cap. 187); Criminal Procedure Code (Cap. 75); Penal Code (Cap. 63); Civil Procedure Code (Cap. 21) and Evidence Act (Cap. 80).[228] Also proposed for enactment (and the bills are ready) are the Anti-Money Laundering and Proceeds of Crime Bills both of which will help fight terrorism.[229] Kenya's ability to prosecute terrorist crimes is limited to available offences under its current penal code, such as murder, conspiracy, possession of firearms, offensive weapon, ammunition and incendiary material or explosives, some of which offences are bailable. Other penalties include death, imprisonment, recommendation for removal from Kenya, fines and forfeiture. The Anti-Terrorism Bill 2006, covers offences like weapon training, directing a terrorist organization, possession of article for terrorist purposes, collection of information for terrorist purposes amongst others, necessarily to fight terrorism acts. Also at present, Kenya relies on its Criminal Procedure Code (CPC) and the Evidence Act. The CPC provides for various criminal procedure measures which are relevant to counter terrorism and which provides the national authorities with far-reaching powers so as to prevent the Commission of offences. Police can arrest without an order from a magistrate and without

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[228]Interview with a NCTC Official who prefers to remain anonymous, Nairobi, September 8th 2006
[229] Ibid

a warrant provided that the conditions stipulated in the CPC for such an arrest are satisfied. However the CPC lacks the necessary procedures to investigate sophisticated terrorist crimes such as terrorist financing. Thus the new anti-terror law to be enacted should increase the investigative capacities necessary to combat terrorist. It should also provide the national investigative authorities with greater powers of investigation, particularly in cases of urgency. Again, the CPC generally governs the offences under the penal code either tried in the High Court or in a subordinate court. The High Court may play a role in the criminal proceedings such as those pertaining to property tracking and attachment (of property). Furthermore, due to the absence of an anti-terror law, successful prosecution is often hampered by inadequately trained police officers in contrast to the professionally trained prosecutors.[230] Thus Kenyan authorities should improve prosecution capacities.

On international cooperation in criminal matters, Kenya can extradite suspected criminals pursuant to the Fugitive Offender Pursuit Act (Cap 84), the Extradition (Commonwealth Countries) Act (Cap. 77), and the Extradition (Contiguous and Foreign Countries) Act (Cap. 76). The Extradition (Commonwealth Countries) Act Chapter 77 provides for the extradition to other Commonwealth countries on a reciprocal basis, while the Extradition (Contiguous and Foreign Countries) Act Chapter 76 provides for the extradition of criminals where there is an agreement with another country. In addition after the 1998 US Embassy bombing Kenya proved her willingness to cooperate at international level even in cases where no extradition agreement existed by waving all local legal and extradition procedures and releasing the terrorist suspects Mohamed Sadiq Odeh and al-Owahili to the

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[230] UN-CTED Report on Kenya dated 2nd to 6th May, 2005,P.4

US FBI and intelligence officials.[231] At international cooperation level, Kenya again is a party to all twelve international conventions and protocols on the prevention and suppression of international terrorism. However Kenya needs to enact an anti-terror legislation domesticating the above international instruments. Kenya has also ratified the OAU/AU Convention on the Prevention and Combating of Terrorism and is collaborating bilaterally and multilaterally with other countries within the following programs: Eastern and Southern Anti-Money Laundering Group (ESAAMLG), Interpol Sub-Regional Bureau for Eastern Africa based in Nairobi, and East Africa Heads of Narcotics and Drug Committee Protocol, and the East Africa Police Chiefs Association.

On financial matters, for effective implementation of UNSCR 1373 (2001) paragraphs 1 (a, b, c, d) and 2 (c, d, e), States are required, *inter alia*, to prevent and suppress the financing of terrorist acts by depriving terrorists of their financial means and in protecting their national financial system against terrorists' use. States are required to have legislation including an anti-money laundering law,[232] delineating procedures for detection of suspicious transactions and measures for the freezing or seizure of any funds and assets used or allocated for the purpose of committing terrorist acts. States are also required to monitor financial transactions, including alternative methods of money transfers. On her part, Kenya became party to the international Convention for the Suppression of the Financing of Terrorism of 1999 in June 2003. However presently, this convention is not fully incorporated in the domestic law,[233] and currently Kenya may not have the capacity

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[231] Carson J., Kenya; 'The struggle against terrorism', Op Cit, P.181
[232] UNSCR 1373(2001), paragraph 1
[233] UN-CTED Report on Kenya dated 2nd to 6th May, 2005, Op Cit, P. 6

and measures adequate to trace and deal with suspected terrorist finances. Legislation enacted by Kenya in the future should meet international best practices and standards pertaining to combating the financing of terrorism. On the structures for monitoring the financial sector, the CBK carries out inspection programmes to ascertain that financial institutions are combating money laundering and financing of terrorism. It has a Banking Fraud Investigation Unit, made up of police officers trained and knowledgeable in financial transactions and investigation to fall back to in case of need. However, the Kenyan financial sector is confronted with various challenges; a liberalized and cash based economy, and lack of comprehensive legislation. 'Parallel banking' and alternative remittance avenues, inadequate exposure among law enforcement and judicial officers and an unstable neighbouring country.[234] Furthermore, monitoring the financial sector is bedeviled by existence of bank secrecy regulations, particularly where an order from the court is lacking. In instances of urgency, inability to acquire a court order may prejudice investigations on suspected terrorist finances. At present Kenya has put in place the following measures and bodies to monitor the financial sector for combating money laundering and the financing of terrorism: The National Task Force (NTF), a multi-disciplinary task force on Anti-Money Laundering coordinated by the Ministry of finance while the CBK serves as its secretariat; the Narcotics Drugs and Psychotropic Substance (Control) Act No. 4 of 1994 which criminalized money laundering in 2001 in relation to proceeds of drug trafficking crime; establishment of an Anti-narcotics Unit, and Anti-Terrorism Units at the Criminal Investigative Department (CID); the Penal Code; the Public Officers Ethics Act (2003) which aims at minimizing corruption among Public

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[234] Ibid, P.7

Servants; establishment of Kenya Anti-Corruption Commission; Strengthening of the Revenue collection system; strengthening of Anti-Narcotics, Anti-Fraud and the Anti-Terrorism Units within the Police force; prudential regulations on combating money laundering and various circulars on related subject issued by the CBK to the banking sector. Notwithstanding the foregoing, Kenya needs to enact an Anti-Money Laundering legislation to provide (the now lacking) coordinated legal and institutional framework to combat money laundering in general and monitor the financial sector more effectively in particular. The non-financial sector and the non-profit institutions such as Non-Governmental Organizations (NGOs) and Charities need to be regulated. There are at present over 4,000 NGOs, including Charities in Kenya, and some may be used for funds transfer or as fronts to terrorist organizations, thus the need to control the sector

Kenya has also put in place mechanisms for freezing, seizure and confiscation of assets and funds suspected to be for terrorists' purposes. The Narcotics Drugs and Psychotropic substances control Act N. 4 of 1994, for instance, makes provision for forfeiture of property owned or acquired by a person who has committed an offence in the Act. Also, Penal Code provides for the forfeiture of any property in connection with the commission of an offence.[235] Penal Code also provides for the suspension or forfeiture of the right to carry on business. However the above measures are depended on court order(s), and there appears to be no clause in place in any law which provides for interim freezing of funds originating from legal sources and suspected to be intended to fund terrorist activities. Delay in obtaining court order by police through an application in court may result in the

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[235] The Penal Code, Chapter 63, Laws of Kenya, Section 29 (See also Penal Code Sections 118 and 119), Printed and Published by the Government printer, Nairobi, Kenya, PP: 27 and 57.

completion of a suspicious transaction and the funds being lost for law enforcement purposes. Furthermore Kenya should also have in place national measures (now lacking) which ensure the freezing of assets of listed individuals and entities (under the UNSC Resolutions) linked to Al-Qaeda and Taliban pursuant to the 1267 Sanctions committee – in addition to UNSCR 1373.

In the area of law enforcement services, States are required, *inter alia*, to have an effective law enforcement machinery to implement the anti-terrorist measures, to conduct anti-terrorist investigations and to cooperate on anti-terrorist matters at the international level.[236] Member states' law enforcement agencies should be structured in an efficient manner so as to be able to take maximum advantage in terms of efficiency of material means and personnel dedicated to the fight against terrorism. In this regard, Kenya has a national Counter Terrorism Strategy which identifies the key players in the counter-terrorism efforts as: The Kenya Police; the Armed Forces; the Kenya Airports Authority (KAA); the Kenya Ports Authority (KPA); the Kenya Civil Aviation Authority (KCAA); the Immigration Department; the Customs and Excise Department; the National Security Intelligence Service (NSIS); the National Counter Terrorism Centre (NCTC); the Ministry of Foreign Affairs, and Attorney General's Offices[237] – to cite the leading ones.

The NCTC inaugurated in 2004, creates a kind of joint terrorism task force, wherein representatives from a number of key criminal, intelligence, and other security related

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[236] UNSCR 1373(2001), paragraphs 2(b) (e,f,g), 3 (a,b,c),and 4
[237] The NCTC (2204) Strategy Document (Unpublished) PP.3-7

departments and agencies of the Kenya government have been brought together under a singled director. The NCTC is an organ of the National Security Advisory Committee (NSAC) under the Office of President and draws officers from various government departments who are jointly the focal point of Kenya's Counter-terrorism effort. The NCTC's main objective is to coordinate national counter-terrorism resources through integrated threat analysis and operations.

The Police force is employed in Kenya for the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders, and the enforcement of all laws and regulations with which it is charged.[238] The Police apart from enforcing law and order in relation to terrorism undertake surveillance, detection, investigation, arrest and prosecution. Specialized police units have been established to directly deal with terrorism threat and include the Anti-Terrorism Police Unit (ATPU), the Tourist Police Unit, the Marine Police and the Diplomatic Police Unit. Interpol has also been revamped. So far, Counter-terrorism incidents to have occurred in Kenya have been dealt largely by the internal security agencies notably the Police and the NSIS. The Armed Forces (Navy, Army and the Air force) principally guarantee peace and security from external armed threats. The military enhances intelligence collection and surveillance, patrols the coastline of Kenya in the absence of a coast guard. The Armed forces notably the Army is home to special units for use in an anti-terror situation where the police units may be handicapped, or may need

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[238] The Police Act, Chapter 84 Laws of Kenya, Section 14, P.6

reinforcements especially by air. During the 1998 US Embassy terrorist bombing the military coordinated rescue efforts at the scene.

The Kenya Ports Authority has introduced and enforced standing procedures for screening employees, vendors, port users, ships crews. Indeed various identification entry badges are already in use. Search requirements for vehicles and personnel at entry and exit points and critical areas such as the container terminal, the oil terminal areas, and the computer block are in place. There are also visual surveillance of ships' movements from signal stations and harbour patrols by marine police on 24 hours basis. The Kenya Navy warships are on standby always at the adjoining Mtongwe Navy base in case of any terrorist threat at sea. However similar high security standards have not been put in place in smaller sea and lake ports like Shimoni, Lamu, Kisumu and they require attention. The Kenya Airports Authority h as a lso p ut i n p lace c onsiderable a nti-terror m easures – many of them at the behest of the donor community states notably the US, UK and Israel. After the terrorist bombing of the paradise hotel, Kikambala, in November 2002, there was growing evidence that a small number of individuals in the Muslim Community in Mombasa, Malindi and Lamu had aided or abetted the principal offenders (terrorists).[239] Pressure by the US, UK and Israel led to travel advisories warning British and American citizens not to visit Kenya. British and Israel airlines stopped flying to Kenya. The KAA has since put in place certain counter-terrorism measures at the Nairobi and Mombasa international airports, notably, inspection of all vehicles entering the airports, additional police officers both from General Duty and G SU Unit to patrol the landing and take-off paths of aircrafts and t he a irport

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[239] Carson J., Kenya; 'The Struggle against terrorism' OP Cit, P. 188

perimeter – the KWS patrols the flight path within the national parks; enhanced control of access to all restricted areas; additional officers deployed at the emergency operation centre to enhance close circuit television (CCTV) surveillance; enhanced passenger profiling and screening for passengers and cargo; aviation security training and awareness led by the US and UK; and installation of observatory watch towers using state of the art equipments like binoculars.[240] However, smaller airports however busy like Wilson and Lokichoggio have lesser security standards and are soft targets relatively. The Kenya Civil Aviation Authority (KCAA) reinforces the KAA in the airport security. Largely, the KCAA is concerned with the security of airplanes on entering Kenya's airspace through to landing as well as take-off (while airborne). It has target-hardened the two main airports against terrorism. It surveils Kenyan airspace and secures all air traffic control facilities and equipment against sabotage or terrorist attacks. KCAA works closely with the Kenya Air force, KAA, the Police, NSIS amongst other agencies. The NSIS works in close tandem with all other security related agencies and departments to create counter-terrorism infrastructure to accumulate data, identify terrorists and disrupt their support networks.

The Customs and Excise Department of the Kenya Revenue Authority and the Immigration Department are also critically vital in counter-terrorism efforts. The Immigaration department guards against illegal entry and residency of aliens, vets issuance of travel documents and monitors movement and residency of aliens, who may be suspected of terrorist activities. The Customs and Excise department is mandated to check and inspect

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[240] The NCTC Strategy Document (2004), unpublished, PP. 6-7

imports and exports and has a duty to ensure that goods and equipments that may assist terrorists do not enter the country.

For effective implementation of paragraphs 2 (b), (g), 3 (a, b, c) and 4 of the UNSCR 1373 (2001), States are required, *inter alia*, to effectively deny safe haven to terrorists and to control their borders in order to prevent the movement of terrorists, the commission of terrorist acts and the entry of material that could be used to carry out terrorist attacks. The customs, border control and civil aviation authorities play a deterrence role that extends to the control of people and goods crossing borders, the identification and detention/seizure of terrorists, weapons of mass destruction (WMD), arms, ammunition, precursors for making into such weapons, propulsion systems and financial instruments, including cash, that might be used to finance terrorism.[241] Kenya is surrounded by some neighbours who are politically unstable and this coupled with a long border with Somalia exceeding 600Km poses a major challenge for the Kenyan border enforcement authorities. The immigration and customs authorities need better communication than is enjoyed at the moment as both are very key in counter-terrorism efforts. Both require enhanced capacity and efficiency and information on (listed) terrorists, suspected merchandise and other persons should be readily shared between the two agencies. It also deserves mention that Kenya has ratified all five international conventions relating to civil aviation.[242] The provisions of the Tokyo, Hague and Montreal conventions have been domesticated and given effect in domestic

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[241] UN-CTED report on Kenya Dated 2nd to 6th May, 2005, Op Cit, P.13

[242] These are Tokyo Convention (ratified 1970), The Hague Convention (ratified in 1977), The Montreal Convention (ratified in 1977), Montreal Supplementary Protocol (ratified in 1995), and the Convention on the Marking of Plastic Explosives for Purpose of Detection (see Chapter 3 herein)

law.[243] There is however need for national legislation to be enacted to make the provisions of the Montreal Supplementary Protocol and the MEX Convention applicable in Kenya domestic law. On civil aviation security, the KAA serves as both the operator and regulator, although it does not have sufficient legal authority to ensure appropriate implementation of aviation security measures. KAA has usurped the KCAA's regulatory function and there is need for Kenya to clearly separate the functions of the national level regulatory authority responsible for the development, maintenance and oversight of aviation security regulations, policies, and practices from those of the entity responsible for implementing security controls at Kenyan airports. Kenya has also adopted a number of security measures to prevent man portable Air Defense Systems (MANPADS) attacks like the one aimed at Arkia Plane after take off at Moi international airport Mombasa in November 2002. Kenya in future has to ensure strict controls are in place regarding import, export, transfer and storage of MANPADS. Kenya also continues to ensure that policies and procedures for cooperation with other states with regard to requests for special security arrangements for specified flights (like Israeli airlines planes), the sharing of threat information relating to the civil aviation security of other states, and the exchange of information regarding aviation security programmes. The international civil aviation authority (ICAO) did a security audit of JKIA in June 2004 in line with international standards. The KCAA has since been implementing the recommendations. Concerns remain, however, regarding the level of security controls at other smaller airports. There is for instance evidence of serious deficiencies at Wilson Airport in Nairobi, which has numerous daily flights to neighboring Somalia, and was sometime back the targeted site for

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[243] The Protection of Aircraft Act, Chapter 68, Laws of Kenya

a terrorist plot to use a Somali-bound aircraft to attack the then nearby US Embassy in Nairobi. In early 2005, an explosion suspected to be a bomb also occurred at the cargo area of the Wilson Airport and was suspected to have been targeted at a senior official of the then newly formed TFG of Somalia.

It however needs mention that despite having done all the foregoing, some in the Western Governments feel Kenya is not doing enough, fast, to fight terrorism. So the questions that beg for answers are: Does Kenya have the capacity to fight international terrorism? Does Kenya have the willingness in the first place to wage war on terror? How is Kenya's scorecard in fighting terrorism so far and what more if any, needs to be done? 'Terrorists have always left little doubt that their beef is with the western imperialism and capitalism, personified in America'.[244] This implies that terrorists target Western people and their interests wherever they are, and whoever is closely associated with them. One then cannot help but observe quite simplistically and logically that presence of Western interests anywhere is likely then to lead to more terror attacks than otherwise. Kenya may thus not have had experienced such number of terrorist attacks were it not for her being a surrogate to Western interests. Nevertheless, it should be quickly noted that such presence has largely been beneficial to Kenya, just like to any other developing country. This is quite so considering the economic sphere where quite a number of sectors, notably, aviation and tourism, not to mention banking and other foreign direct investments are western owned, either directly or indirectly. Thus the Kenyan government has a duty to guarantee safety both of her citizens and visitors alike. Counter-terrorism efforts then becomes a preserve for both of them. However, Kenya on her own may not have the capacity necessary to

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[244] The Daily Nation Editorial, Nairobi, Monday, September 11, 2006, P.8

wage war on terror as it requires lots of resources and expertise not available to the Kenya Government. Kenya benefits from receiving technical assistance, equipments, and training from various donor states and organizations to enhance her capacity to fight terrorism.[245] Kenya without donor states assistance does not have the necessary capacity to fight terrorism.[246] Kenya certainly has had the willingness to fight terrorism but limited in capacity. There are however differences in counter-terrorism priorities between the governments of developing countries like Kenya and the donors.[247] Again, there is no counter-terrorism model that can apply to all countries in all circumstances though there are certain minimum standards which all states should be expected to adhere to. One of the 'traditional' approaches to counter-terrorism relies on the use of intelligence agencies, the police and the judiciary. It however does not address the root causes of terrorism and is thus piecemeal in approach. 'Kenya's anti-terrorism efforts have made progress over the past several years. Nevertheless, some crucial measures remain in the pipeline and further comprehensive steps need to be taken within a designated time frame in order to ensure that Kenya can implement the provisions of UNSCR 1373 effectively and in full'.[248]

4.05 Challenges

International terrorism poses dangers both to the Western Community as well as to moderate pro-western countries like Kenya. It is upon this realization that the current as

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[245] UN-CTED report on Kenya Dated 2nd to 6th May 2005, OP Cit, P.19

[246]Interview with Officials from UK and EU delegation who prefer to remain anonymous, Nairobi, September 5th 2006

[247] The Daily Nation, Nairobi, Monday, September 11,2006, P.12

[248] UN-CTED report on Kenya, OP Cit, P.17

well as the former regimes embraced necessary counter-terrorism measures. However for fear of a backlash from Kenya's Islamic Community and need to safeguard the country's image and reputation as a destination of international tourism, some high ranking officials in the Kenya Government rejected the notion of a homegrown terrorism problem.

Notwithstanding that a great deal is known about Al Qaeda's key leaders in Kenya, domestic politics and a host of systemic problems and bureaucratic shortcomings have slowed and sometimes derailed the fight against terrorism in Kenya and the region.[249] Progress has also been stifled by widespread corruption, inefficiency, and sometimes sheer incompetence throughout various levels of Kenya's bureaucracy especially in the police force, customs (KRA) and immigration departments.[250] The high level of corruption was evident pursuant to the 1998 US Embassy terrorist attack when investigations discovered that lax immigration procedures had led to at least one terrorist to obtain fraudulently Kenyan identification and travel documents thereby remaining in the country while doing business for more than two years prior to the terrorist attacks. Much more seriously, Kenyan police officers had Fazul Abdullah, who was suspected of US Embassy bombing, in their custody on two different occasions but let him get away. In July 2002 he had been arrested and taken into custody in Mombasa for attempting to make a purchase with a stolen credit card and escaped when taken to his house by police to recover stolen goods. All this was despite the fact that his photograph had been circulated widely for his role in the 1998 US Embassy terrorist attack. He was again put in custody but escaped on August 1st 2003 when police had arrested from a cyber cafe next to Central Police Station,

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[249] Carson J., Kenya; The Struggle against Terrorism' OP Cit, P.183 - 4
[250] Ibid, P.184

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Mombasa, two Al Qaeda suspects. One died after detonating a grenade - thanks to police laxity for failure to do a thorough search on them. Also dead was one police officer and another seriously injured, while Fazul Abdullah managed to escape despite his role again in the Paradise hotel bombing in November 2002. This speaks volume about inefficiency and ineffectiveness of some Kenyan counter-terrorist institutions and officials. It is widely believed that during his first arrest, Fazul bribed low-level Kenyan police officers into setting him free, while improper police procedures and sheer incompetence led to his escape after the second arrest.[251] Sloppy police procedures may also have led Saleh Ali Saleh Nabhan to escape on at least one occasion. Further, that seven terrorist suspects accused of bombing Kikambala Paradise Hotel were acquitted in June 2005 after over two years of judicial proceedings reflect ineptitude on the part of the Kenya's judicial authorities for failure to convict, and police for failure to apprehend other leading terrorist suspects and as such Kenya's anti-terrorist reputation among Western governments will not improve.[252]

Most of the Muslims living along Kenya's coast have deep cultural, historical, religious, and linguistic ties with Saudi Arabia and the Gulf States, and are thus sympathizers if not supports. Reflecting on the Huntington's clash of civilization paradigm notably between the Arabic and Western Civilizations, makes the Muslim Arabs (also Swahilis) view themselves as "US" against "them" (Western). It is thus not easy for the coastal Muslims to report on the terrorist suspects in their midst, again for fear of repercussions. Kenya's Muslim Community holds economic grievances against the Nairobi Government, led

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[251] Ibid, P.184

[252] Ibid, P.185

largely by ethnic Africans, for not providing their fair share of national resources. They feel that their standards of living have been on the decline since the 1960s. A small group within them have come under the influence of radical Islamic thinking, with radical Imams preaching a stricter adherence to Islam, a greater disdain for Western culture, and a strong abhorrence of the US as an anti-Islamic state. The emergence of Al Qaeda in Kenya is an outgrowth of the alienation and radicalization of a small number of Kenyan Muslims.

After the Mombasa terrorist attacks, officials in Washington and Nairobi had different perceptions about the continuing terrorist threat (and the necessary response to combat it). Washington terrorist experts felt that another terrorist attack was imminent in Kenya and that the Kenyan government was moving too slowly in upgrading the country's security and detaining Kenyans suspected of supporting terrorist activities. On the other side, many senior and mid-level Kenyan officials accused the US of exaggerating the threat and portrayed their country as a victim of international terrorism. Many blamed terrorist problem on outsiders, especially Somali due to absence of a central authority, presence of organized warlords and Islamist organizations like Al-Itihad Al-Islamiya (AIAI), the proliferation of small arms combined with Kenya's long and porous northern border.[253] That Kenya is part of the greater Horn of Africa conflict zone faces challenge for counter-terrorism efforts.[254] Somalia is home to AIAI and Al Qaeda cells, Sudan is listed by US as a state-sponsor of international terrorism, Eritrea/ Ethiopia quarrel and fight over disputed border. These and other regional conflicts have ensured almost constant flow of refugees

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[253] Ibid, P.188
[254] Odera J. A., 'Conference Paper', 'Terrorism within a regional security framework: African Perspectives', Unpublished, University of Nairobi, IDIS July 1st 2003, P.14

across borders to Kenya especially and therefore the ease with which terrorists can hide amongst refugees and/or transport weapons for use in terrorist attacks. Conflict-ridden regions also have to contend with the rise of other crimes like drug trafficking, and illicit proliferation of arms all of which perpetuate conditions of terrorism to flourish thereby constraining capacity for security monitoring and other law enforcement activities.

The requirement on international cooperation by UNSCR 1375 (2001) appears to apply and work efficiently at international level. At continental (regional) and sub-regional levels, difficulties of cooperation and information exchange become evident due to rivalries between states. The Horn of Africa region is no different. There is assumption that member states will always be in a continuous state of dialogue.[255] Terrorist manipulate such lack of cooperation and regional differences.

The African experience with respect to counter-terrorist measures suggests that there are serious gaps in policy responses and implementation. At the policy level, African governments (read Kenyan) have definitely made progress in adopting counter-terrorism measures. The big challenge lies, however, in an incapacity to match policy with real action against terrorism on the ground.[256] In this respect, responding to terrorism is as difficult as responding to poverty, hunger and disease, where intentions and declarations remain just that.

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[255] Ibid, P.14

[256] Ibid, P.16

At the present time Kenya has not enacted an anti-terrorism law and this greatly weakens her legal and operational capacities to combat terrorism.[257] Furthermore there is need to harmonize other existing legislation with the proposed Anti-Money Laundering and Proceeds of Crime Bill. Kenya apparently has not given high priority to legislating against international terrorism in the face of other more pressing issues. In any case many more Kenyans die as a result of HIV/Aids, road traffic accidents, malaria and other causes rather than from terrorism which is not even targeted against their interests in the first place. These and similar considerations appear to have made Kenya not move with speed like her neighbours Uganda and Tanzania to legislate against the scourge. All in all, the Anti-Terrorism Bill, 2006 has been published and debated upon by the key stakeholders to take on board their suggestions before it is tabled for possible enactment in parliament soon. Further that Kenya just like any other country is independent and sovereign means that no other state or authority can dictate and/or enforce such an enactment of a legislation. But since it is still in the best interest of Kenya to have an anti-terrorist law such legislation will soon occur.

Lack of witness protection programme, or even law coupled with the current bar on confessions from suspects in Kenya also negates counter-terrorism (prosecution) efforts, just like fighting other serious crimes. In terrorism, sometimes the only evidence could be a confession, that is subsequently corroborated, yet currently in Kenya it cannot be admitted as (in) evidence – thanks to the Criminal Law Miscellaneous Amendments Act No. 5 of 2003.

[257] UN-CTED Report on Kenya, OP Cit, P.17

4.06 Analysis of Findings

In line with the objectives and hypotheses of this study cited in Chapter one herein, data was gathered from the field to ascertain precise positions on the responses to the phenomenon of international terrorism in Kenya. The sampling frames were Embassies and High Commissions physically resident here in Kenya, as well as selected leading Kenyan security-related counter-terrorism institutions. Simple random sampling technique was employed to select the foreign missions and Kenyan institutions for interviews. Questionnaires were administered on forty six[258] foreign Diplomatic Missions out of which only fourteen[259] responded either by filling or inviting the researcher for an interview, and also to fourteen Kenyan Security related institutions.[260] The data collection exercise lasted from early August through to mid-September 2006.

It emerged that more than two-thirds of the foreign missions in Kenya considered the subject of (International) terrorism too sensitive to divulge any information on. One diplomatic official aptly summarized the mood of the rest when he observed that 'terrorism is too sensitive to comment on. I'd have commented on sports or some cultural event, but

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[258] These included Algeria, Dec Congo, Ethiopia, Egypt, Libya, Morocco, Nigeria, Sudan, South Africa, Tanzania, Uganda, Zambia, Czech, Denmark, France, Belgium, Germany, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Turkey UK, Russia, Serbia, Cuba, Canada, Columbia, USA, Chile, Bangladesh, China, Israel, India, Iran, Korea, Philippines, Saudi Arabia, Thailand, Sri Lanka, Australia, Japan, Yemen and European Union Delegation

[259] These are Algeria, Tanzania, Zambia, Czech, Germany, Italy, Turkey, UK, Sudan, Iran, Philippines, Thailand, Australia and European Union Delegation.

[260] These are KAA, KCAA, KPA, NCTC, and AG's Office, Kenya Navy, Kenya Air force, ATPU, Tourist Police Unit, Diplomatic Police Unit, Interpol, Customs & Excise Department, Investigation Department and the National Disaster Centre.

not terrorism.'[261] Many officials from foreign missions declined either to comment on responses to the scourge either in their countries or give any views on Kenyan situation. Countries that had experienced incidents of terrorism in the past were noted to have put in place better and elaborate measures and counter-terrorism institutions as opposed to those not to have experienced terror attacks or credible threats. The First Secretary, Zambian High Commission in Nairobi, felt that Kenya was way ahead of his country and others in the region, because having been hit three times in the past by terrorists, it had no option but to put in place measures and counter-terrorist institutions.

There is no formal US leadership within the community of international partners of Kenya either regarding counter-terrorism or other aspects.[262] The international cooperation against terrorism in Kenya is useful and might have helped to prevent new attacks over the last years. Kenya may not have attained its present level of preparedness and mitigation to counter-terrorism and its threats without donor assistance. Kenya has no capacity on her own without donor assistance to fight terrorism.[263] The foreign position obtains, notwithstanding that Western presence and interests being the target of international terrorism have led to an increase in terrorism incidents in Kenya, in association with other contributory factors.[264] Kenya, may take too long to attain the necessary capacity to fight terrorism. Donor assistance ranges from training, technical assistance in various fields to

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[261] A Bangladesh Embassy Official who requested for anonymity and declined an interview, Nairobi, August 23rd,2006

[262] Germany Embassy Official who prefers to remain anonymous in an interview, Nairobi, September 8th 2006

[263] Researchers interview with EU Delegation Official who prefers anonymity, Nairobi, September5th 2006

[264] British and EU Delegation Officials who requested to remain anonymous in an interview, Nairobi, September5th 2006

supply of equipments and hardware. Indeed donor assistance has had positive impact on counter terrorism efforts.

It further obtained that even with the foregoing assistance from the donor community, Kenya somehow lacked the political will to fight terrorism, or else it was not top in its priorities.[265] The foregoing gathers credence considering that Tanzania and Uganda, Kenya's leading neighbours have long enacted anti-terrorism law whereas Kenya has not. Some of Kenya's counter-terrorism institutions were noted to be inefficient and ineffective in the counter-terrorism war[266] – as they translated to little actuality on the ground, notably the National Disaster Centre, amongst others. This echoes earlier observations elsewhere.[267] However it was also felt that regionally and relatively, Kenya's counter-terrorist measures and responses (including institutions) were above average. But globally Kenya lagged way behind. The Kenyan counter terrorism institutions though bedeviled with corruption were noted to be 'improved with medium effect.[268]

The challenges in the counter-terrorism war in Kenya were cited as corruption, lack of an anti-terrorism law, (some) inefficient counter-terrorism institutions, persistent poverty and unemployment, lack of resources, bad governance (and all its consequences), and lack of adequate political will. Lack of an enforcer of international, regional, and sub-regional

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[265]Interview with a British High Commission Official who prefers to remain anonymous, Nairobi, September5th 2006

[266] Ibid

[267] Munene M., 'Conference Paper,' OP Cit, PP.11 – 15 Cites Kenyan Police, the Military, Immigration to be under equipped, under trained, corrupt and thus ineffective in the war on terrorism

[268] Interview with EU Delegation official who prefers to be anonymous, Nairobi, September5th 2006

Protocols/Conventions owing to independence and sovereignty of states' who are answerable to no other authority above them, also impedes the counter-terrorism efforts and responses.

Though generally terrorists may not be equated with Islam, *per se*, a small clique of firebrand Islamic fundamentalists has been the cause of quite a lot of terrorist attacks in the last few years. Al Qaeda terrorists belong here. Some divergent views from the rest led notably by Iran, posited that Terrorism was not a Kenyan problem but Western's, who should even compensate victims of terrorist attacks. Further observed that the real terrorists are the West led by US and Israel, as evident in the Palestinian Israeli conflict, where many Arab 'freedom fighters' have lost their lives. Phrases quite often in use – 'International Community' is a misnomer as it only on the ground translates to US, EU and Israeli interests, while 'terrorist' should be clearly defined to exclude 'freedom fighters', like the Southern Lebanese and Palestinian Arabs.[269]

International peace and order will continue to be threatened at least in the foreseeable future due to selfish national interests of the leading world powers who would want the symptoms rather than causes of a disease treated. The US, EU and Israel among other supporters will need a re-look and possible review of their foreign polices on such global issues like the Israeli -Arab conflicts in the Middle East and US imperialist advances in Iraq and Afghanistan in the guise of fighting international terrorism. Reversal of the double standards of the hegemonic US and her allies in the EU, change of conduct and

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[269]Interview with a senior Iran Embassy Official who prefers to remain anonymous, Nairobi, August 23rd, 2006

treatment of other countries with dignity on the part of the West will generate confidence in the West, and understanding globally. Ratification of more and more Protocols/Conventions internationally, regionally and sub-regionally is only part of solving the crisis and way forward but much more is needed, namely, dialogue and not war; international cooperation, and not branding other states terrorists so as to advance one's national interests as the US and allies are doing, otherwise international terrorism will be a reality and a threat to world peace and security for a few more centuries to come.

4.07 Conclusion

The Kenyan counter-terrorism efforts are on course, though progressing slowly. The donor community assistance has played a vital role in the fight on terrorism in Kenya. But Kenya now needs to realize that the assistance from donors is geared towards enabling Kenyan institutions attain a certain level of sustainable capacity and therefore able on her own, to wage the anti-terror campaign. Thus the counter-terrorism security related institutions need further coordination, training equipments and funding for sustenance and to be able to do what they were created to do in the first place. Above all Kenya needs to enact an anti-terror law. Without such legislation Kenyan authorities cannot claim to be committed in fighting international terrorism. Kenya needs to come up with a comprehensive legislation that strikes the delicate balance between security and safety on the one hand, and the basic human rights and dignity of the person (terrorist suspects) on the other. Only concerted efforts will win the war on terror.

CHAPTER FIVE: SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS.

5.01 Summary

Responses to war against terror needs to be based on a proper conceptualization of the phenomenon of terrorism. National interests should not take centre-stage. International bodies like UN which has the trappings of what it takes to gain universal acceptability should lead the way. It will be upon a universally acceptable definition of terrorism that adequate sanctions can be instituted in combating terrorism.

The US-led alliance unilateral actions against terrorism have come under heavy criticism for above everything else, reserving to itself the right to decide how to use that force, when and where it should be used.[270] The US actions on claims of self-defense in the absence of a broader Security Council authorization is counter-productive and will not lead to global sanction and legitimacy necessary for coalition building against terrorism. In addition, US failure to use resources of the Security Council undermines the view that the UN Security Council provides the best forum for responding to terrorism and other threats to international peace and security, which strengthens the notion that states may freely act outside the UN system and get away with it. In deed the absence of an enforcer in reference to international, regional, and sub-regional legal instruments contributes to non-compliance of the same international protocols/conventions and a bottleneck in the war on terror.

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[270] Unilateralism and US foreign policy- Aus-European symposium IIEUR, Journal of International Law 1-186,249-411(2000).

International terrorism violates fundamental human rights and freedoms, and goes against humanitarian law. It is a serious threat to world order, peace and security and it is therefore imperative that offenders regardless of their nationality are sought and punished. To achieve the foregoing, international terrorism will become subject to universal jurisdiction – courtesy of governments entering into agreements bilaterally and multilaterally to prohibit it and further refuse to accord protection to terrorists.

Efforts to combat terrorism by force may not be the best solution to the scourge as retaliatory attacks usually take terroristic forms and pre-emptive actions are not seen as actions in self-defense in international law. Lawful responses should therefore be encouraged.

Kenya on her part has no option but to partake in international efforts in fighting terrorism pursuant to the UNSCR 1373(2001). Not even the hegemonic US has an option as terrorist experts share a degree of skepticism about technology as a 'solution' in counter-terrorism.[271]

5.02 Conclusions

The research analysed Kenya's responses to international terrorism from 1980 to 2005. To do so logically, it also explored the experiences of the US, UK and Israel as countries

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[271] Lesser, Ian et al., Countering The New Terrorism, Op Cit, P.143

known to have had terror attacks in the past, and which lead the world in counter-terrorism efforts. In analyzing Kenya's responses (performance), the benchmark was largely the UNSCR 1373(2001). Data was gathered from the field to deny or reinforce certain positions in line with the objectives and hypotheses of the study.

The study concludes that the US-led donor community has had positive impact on counter-terrorism strategy and a clear plan on how to proceed in the anti-terror campaign. Kenya's efforts and responses are commendable but progressing slowly. This has however been the cause of discomfort with the West especially in that Kenya is yet to enact an anti-terrorism law, *per se*. Kenya's legal response was found wonting as her neighbours Uganda and Tanzania have since enacted anti-terror laws. However Kenya was noted to be in the process of enacting such a law as the Anti-Terrorism Bill, 2006 was debated on by various stakeholders in February this year, and is to be tabled in parliament soon for possible enactment. Kenya's counter-terrorism institutions were observed to have 'a medium effect' in the anti-terror campaign. Kenya was rated as above average regionally in her efforts, responses, and ability of counter-terrorism institutions in the anti-terror war. Not many countries in the region have inaugurated such counter-terrorism institutions Kenya has.

It further emerged that Western presence and their interests through international organizations, foreign missions, multinationals (foreign direct investments), military training camps, tourism, and so on, had provided terrorists with high-value targets in Kenya. Terrorists were said not to target Kenya, *per se*, but the West. However Kenya being a surrogate of the West was perpetually threatened and had been attacked thrice by

terrorists. Kenya has no option but to team up with the West in fighting terrorism as she also benefits from the Western presence through tourism, donor assistance in various development projects, and employment in their investments (multinational concerns), among others.

Major challenges in the counter-terrorism efforts emerged to be corruption, lack of anti-terrorism law, inefficient counter-terrorism institutions, persistent unemployment, lack of resources, bad governance, and lack of adequate political will. Above all, lack of an anti-terror law at the present was singled out as a major drawback in the campaign.

Kenya's anti-terrorism efforts have made progress over the past several years. Nevertheless, some crucial measures remain in the pipeline and further comprehensive steps need to be taken to fully and effectively implement the provisions of UNSCR 1373(2001)

5.03 Recommendations

All states the world over are vulnerable to international terrorism. They should therefore abandon the support of terrorism as a component of their foreign policies pursuant to their national interests. They should further put on hold national interests in search for an acceptable definition of terrorism thereby confer jurisdiction over the phenomenon on all nation-states as any efforts piecemeal cannot holistically and effectively fight the scourge.

On the religious dimension, labelling certain religions as being made up of terrorists is likely to diminish the support so required in the anti-terror war, and may alienate other prospective allies even, especially moderate Muslim world. A policy, universally, should be adopted to win the cooperation and support of religious fundamentalist groups associated with terrorism if any meaningful results are to be realized in the anti-terror war. Kenya being part of international community should not only support the foregoing, but endeavour to put the following measures into practice.

Officials in Nairobi must recognize that effectively dealing with terrorism requires a coordinated security response from the police, military, and intelligence services, as well as a comprehensive social, economic, and political response that focuses on Kenya's Muslim population. The foregoing institutions and others like customs, immigration, border patrol and coastal protection units should be strengthened, well funded and trained to meet the challenge. The government must also reduce the social and economic marginalization of the country's about three million Muslims, which is the hot and humid breeding grounds of East African terrorism. The West should support such Kenyan measures due to their many interests in the region.

Both bilateral and multilateral efforts between Kenya and her development partners (donors) should go along way in actualizing the foregoing. The US may wish, as it is in her interests also, to re-establish a permanent diplomatic presence in Mombasa (consulate)

and expand American outreach to the Muslim Community by establishing public health and educational centres for the Muslim populace.

Kenya should use the cordial existing relations with the West and seek further assistance to improve its border and coastal security, strengthen i ts passport and immigration s ystem, strengthen its judicial and legal systems (enact effective legislation), and improve its counter-terrorism programmes and capacity. Kenya, with or without donor assistance has no option but to travel along this path. Kenya should also push for efforts to ensure that Somalia gets a legitimate central political authority thereby stemming the proliferation of small arms and other weapons, illegal immigrants (terrorists), and flushing o f suspected terrorists who have chosen Somali as a safe haven.

Priority should be given to the enactment of the necessary pieces of legislation which remain at the drafting stage (ATB, AML, etc), including the amendments necessary to effectively i mplement the p rovisions of UNSCR 1373(2001). In so doing, Kenya should take cognizance of her obligations under international law, in particular international human rights, refugee, and humanitarian law. Kenya should further ensure that provisions of international Protocols/Conventions she is signatory to are implemented in full. On law enforcement aspects, Kenya needs to improve the investigation and prosecution capacities for sophisticated terrorist offences more so in areas of terrorism financing, money laundering and transfer. For smooth flow of terrorism information, National Central Bureau (NCB-Interpol Kenya Office) should install the new 1-24/7 Communication System. The counter-terrorism institutions and officials must closely share information between

themselves as well as with their counterparts in other states'. Kenya should also adopt necessary legislative, administrative and operational measures for the control of the legal import and export of weapons and ammunition (including MANPADS);increase Customs and Immigration technical knowledge to detect cash and other financial instruments conveyed across borders; identify WMD, precursors, propulsion systems, SAM and their parts. The country needs also to ensure consistent application of ICAO Annex 17 security standards in all airports to the extend practicable

Indeed none of the foregoing actions will end the threat or eliminate the potential for another catastrophic terrorist attack on their own, but if implemented together will help strengthen Kenya's anti-terrorism posture. For Kenya, as well as all states', the time to act and implement UNSCR 1373(2001) is now for tomorrow could be rather late.

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