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Reflection Group on the Definition of Terrorism

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Introduction

Terrorism is not confined to the national boundaries for a long time and is becoming one of the primary problems of humanity. Terrorist does not only target a state or one society, but targets the world and legacy of humanity including the values of freedom, democracy and human rights. In Sergey Nechaev's words he "is a doomed man ... He is an implacable enemy of this world, and if he continues to live in it, that is only to destroy it more effectively…no place for any romanticism, any sentimentality, rapture, or enthusiasms" (Nechaev 1869: 68-70).

In order to create effective counterterrorism policies, cooperation of international actors is required. The states as the members of international society are aware of the necessity for international measures in order to deal with the problem that cannot be solved via unilateral actions. There are also substantial steps taken for cooperation that may be harbinger of a common definition of terrorism as a major step for solution.

In this report, we aim to scrutinize the necessity for a common definition of terrorism made by international community preferably through United Nations. In order to attain this objective this report explains the historical background and legitimization sources of terrorism along with a critique on their validity. Then, this study will clarify the concept of terrorism and distinguish the phenomenon from the other types of crime and political violence. Finally, this report will assert the need and attempts for a common definition of terrorism and provide an agreeable definition by different parties in the international community.

Historic Perspective: "root causes" and attempted "justifications" of terrorism

Historically, the word 'terrorism' was first used during the French Revolution (Laqueur 1978 and 1987), which ironically is seen by many as the beginning of modern-day democracies. This paradox makes it worthwhile to examine the political perspectives of both sides of the Revolution in France. A brief historical examination of terrorism will show the impact of the

French Revolution on subsequent terrorism, and how actions have been justified through history, as well as the changing methods, tactics and nature of terrorism. Thus, the use of the terms 'terrorism' and 'terrorist' is of relatively recent origin. The 1798 supplement of the dictionary of the Academia Francaise indicated the meaning of terrorism as '*régime de la terreur*', literally 'a regime of terror' (Laqueur 1978: 6).

Terrorism, as it is now understood, was used by the post-Revolution Jacobin dictatorship as an instrument of political oppression, originating from the ruling class rather than from individual subject groups. Laqueur (1978: 6) suggested that the Jacobins were the first to use the term 'terrorism' in a positive sense when they corresponded with each other. The general perception amongst the instigators of the French Revolution seems to have been that terrorism was a justified weapon for overthrowing a corrupt privileged regime in order to introduce the new political ideas of '*Liberté*', '*Egalité*', '*Fraternité*', as there was no other alternative. This approach encouraged the Jacobins to take brutal measures against their opposition, which in turn prompted the use of forms of terrorism against the Jacobins, given that the concept of 'terrorism' was generally unacknowledged in those days.

It did not take long to recognize the coercive, ruthless features of terrorism. An important ideological statement of early terrorism, was *Der Mord* by Karl Heinzen published in 1849. His interpretation of terrorism was as follows:

> If to kill is always a crime, then it is forbidden equally to all; if it is not crime, then it is permitted equally to all. We do not desire any killing, any murder, but if our enemies are not of the same mind, if they can justify murder, even going so far as to claim a special privilege in the matter, the necessity compels us to challenge this privilege; and it is no great step from this necessity to becoming Robespierre and to the adoption of Robespierre's role, condemning hundreds of thousands to the scaffold in the interest of humanity (Heinzen 1849: 54-55).

Many terrorist organizations have subsequently justified their violence by arguing that they are a subject to violence in the first place from the ruling body and their objective is to overthrow authoritarian regime. However, the justification with the claim of being against authoritarian rules is not plausible.

The terrorist activities do not only concentrate on the authoritarian countries but often take place in the democratic countries.

Secondly, it is not acceptable to use violence and brutal ways even for a noble cause. A noble cause such as ending the authoritarian repression cannot legitimize the violent means.

Besides, there is confusion between the justification and excuses for the terrorist activities. Terrorist movements try to justify their violence with social, economic and political causes such as economic crises, unemployment or the corrupting effects of governmental institutions or lack of political representation. Yet, these problems are not the real causes of terrorism. **Actually, these problems are exploited by the terrorist organizations, as means for their propaganda.**

The argumentation of running all the means but the brutal way to reach political objectives is far from reality. In a democratic country all groups have at least one of the means such as political parties, interest groups and organizations to attain their objectives. Nevertheless,

terrorist organizations regard these means too slow to reach their goals. They do not want in to exhaust in other channels of pressure. The main rationale using terrorism instead of democratic ways is its effectiveness. They think that terrorism is the quickest way to get what they want.

Indeed, the connection between terrorism and so-called "objective factors" is rather tenous. "There is a great deal of terrorism without injustice and oppression and a great deal of oppression without terrorism."

Terrorism a bigger risk to civilizations

UN resolution 1617 in 2005 clearly indicates that terrorism poses a greater threat to human civilizations. Security Council Resolution 1671 state that;

> Reaffirming that terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed; and reiterating its unequivocal condemnation of Al-Qaida, Usama bin Laden, the Taliban – and associated individuals, groups, undertakings and entities – for ongoing and multiple criminal terrorist acts aimed at causing the death of innocent civilians and other victims, destruction of property and greatly undermining stability,

> Reaffirming the need to combat by al means, in accordance with the Charter of the United nations and international law, threats to international peace and security caused by terrorist acts, stressing in this regard the important role the United Nations plays in leading and coordinating this effort, ..

What makes terrorism a different kind of crime?

There is some consensus among scholars that political violence covers all collective organized attacks against a regime, and that the perpetrators of such acts may include competing political groups and also incumbent governments.

However, in order to prevent confusion we need to distinguish "terrorism" from other crimes, guerrilla action, and conventional war. Jenkins has suggested the nature of a terrorist act consists of the following elements:

> ... all terrorist acts are crimes - murder, kidnapping, and arson. Many would also be violations of the rules of the war, if a state of war existed. All involve violence or the threat of violence, often coupled with specific demands. The violence is directed mainly against civilian targets. The motives are political. The actions generally are carried out in a way that will achieve maximum publicity. The perpetrators are usually members of an organized group, and unlike other criminals, they often claim credit for their act. And finally the act is intended to produce effects beyond the immediate physical damage (Jenkins 1980: 2-3).

Thus, the terrorist activities consist of conventional crimes, in addition it has a political aspect that these crimes are used for panic and fear in the target society order to convince state authorities about their demands.

Terrorism can be distinguished from guerilla warfare and conventional war. In general it is accepted that terrorism is the first of a three-step development which may progress through guerrilla warfare to conventional warfare (Crozier 1960: 163).

The first phase involves the use of 'strategic offensive and the insurgents' strategic defensive', during which guerrilla tactics are secondary to conventional mobile warfare. Hence, terrorism is a rather limited strikes against symbolic targets to cause panic and anxiety. In contrast, guerrilla warfare exists in larger scale of attacks against rather selective targets which are mainly against military and government institutions.

Secondly, terrorism is indiscriminate but guerrilla war could be more discriminate. For example, a terrorist attack to World Trade Centre in New York in a few years ago had resulted many civilian casualties, whereas, the guerrilla concentrates mainly in military targets.

From the analysis of literature referred to in this report, terrorism can be distinguished from other forms of violence and political violence by the following characteristics.

First, although terrorism is legally a crime like murder, arson or kidnapping, its aim is to achieve a political goal. The fact that, unlike ordinary criminals, terrorists often claim credit for their acts, means that the crime of terrorism can be differentiated from non-political crime.

Second, terrorism differs from other kinds of political violence due to its deliberate and systematic use of coercive intimidation and the indiscriminate nature of its violence.

Third, terrorism is not a synonym for guerrilla warfare and similarly it should not be confused with anarchism.

Terrorism is a specific method of struggle rather than a synonym for all political violence or insurgency. According to Wilkinson (1989: 453) 'terrorism is a special kind of violence, a weapons system that can be used on its own or as part of a whole repertoire of unconventional warfare.' The methods of terrorism have been employed by a variety of groups internationally including governments, political factions, criminal gangs and even religious movements and cults (Taylor 1989; Rapaport 1989).

Agreement on exceptions to any definition of terrorism has proved more difficult than agreement on the definition itself. In particular, two controversies have plagued the debate: whether national liberation or self-determination movements should be exempt, and whether State violence causing terror should be covered.

International humanitarian law (IHL) is the appropriate legal framework for dealing with all self-determination conflicts (through the universal application of Protocol I), and for internal rebellions rising to the level of an armed conflict. Those who target military objectives in accordance with the laws of war would thus not be liable to prosecution as 'terrorists', but would be accorded combatant immunity. Any breaches of the laws of war would be punishable as war crimes (including under specialized prohibitions on acts of terror, spreading terrorism and measures of terrorism under IHL) 121 or as crimes against humanity. All

violent acts committed in connection with an international or internal armed conflict, whether by State or non-State forces, should be excluded from the scope of any general international crime of terrorism, to prevent such a crime interfering in the carefully constructed parameters of permissible violence in IHL.

Most of us are familiar with the phrase "All is fair in love and war," and in an armed conflict, in which the killing of enemy troops is considered an acceptable means to an end, it may seem that the concept of a "crime" is out of place. But there are countless treaties that declare otherwise, signed by almost every nation in the world.

The Hague laws and Geneva Conventions are some of the most widely applied of these international agreements. The IVth Convention is relative to the Protection of Civilian Persons in Time of War. Any form of physical violence or degradation to civilians is prohibited. An armed force may not attack civilians, nor use them as a "human shield" to render a location protected from attack. According to Hague Convention, it is illegal to attack a defenseless person or place; it is illegal to attack a building that is being used as a hospital.

In December 18, 1972 the UN General Assembly approved resolution (3034) on terrorism, which affirmed the right of self-determination of all peoples suffering from colonization, racism and all forms of foreign domination, supporting its legal struggle launched by national liberation movements in accordance of goals, principles and resolutions of the U.N. In February 2, 1974 the U.N. approved resolution (3314), that legalized the armed struggle of peoples under foreign occupation.

The concept of state terrorism is controversial. Military actions by states during war are usually not considered terrorism, even when they involve significant civilian casualties. The Chairman of the United Nations Counter-Terrorism Committee has stated that the Committee was conscious of the 12 international Conventions on the subject, and none of them referred to State terrorism, which was not an international legal concept. If States abused their power, they should be judged against international conventions dealing with war crimes, international human rights and international humanitarian law. Former United Nations Secretary-General Kofi Annan has said that "The use of force by states is already thoroughly regulated under international law". However, he also made clear that, "...regardless of the differences between governments on the question of definition of terrorism, what is clear and what we can all agree on is any deliberate attack on innocent civilians, regardless of one's cause, is unacceptable and fits into the definition of terrorism." [1]

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[1] The French delegation expressed reservations on the 14th preamble paragraph of the resolution which includes "States" in the list of entities susceptible to condemnation for Terrorism in as far as the acts are committed outside of armed conflicts. The French delegation argued its reservations are based on purely legal considerations. It recalls that if the objective of the exercise is an international convention on terrorism which would include penal sanctions against authors of terrorist crimes, States which are not penally responsible, cannot as such be subject to penal sanctions. With regards to the activities of armed forces, the French delegation believes that para 13th of the preamble clearly recalls that the international humanitarian framework applies to all actions by these forces accomplished within the context of official duty. It is in that context that war crimes and other crimes committed by armed forces can be sanctioned. The French delegation added that one can agree that crimes committed by members of the armed forces outside of the line of duty can be considered as terrorism (i.e. clandestine torture centers, extra-judiciary killings and other activities such as "death squadrons". However, it is the individual penal responsibility of the authors of such crimes that is considered, and not those of the State. In that regard, mention of "States" in para 14th of the preamble can therefore not be legally binding.

The necessity and attempts for a common definition

Since acts of terrorism have become more international and are no longer confined to a particular country's borders, attempts have been made by many differing nations to create an international law relating to such crimes. However, such attempts have failed each time due to the fact that each country has a different perspective upon the definition of the phenomenon and different interests in seeing particular groups and activities curtailed.

There is no doubt that in order to fight against terrorism there is a need for international co-operation. Nevertheless, as explained above, there is no clear consensus on the definition of terrorism among the international community. Thus, the members states of the UN have not been able to agree on a definition of international terrorism.

This hampers world-wide co-operation against terrorism. Consequently, individual countries which are subject to terrorist attacks set their own agenda and often implement their response in isolation.

Some encouraging steps towards cooperation on countering terrorism

This does not mean that there is no development at all. There is an attempt to alleviate the problems of lack of comprehensive definition through listing the terrorist organizations and the crimes that are associated with the terrorist activities. These attempts include the inhibition of the means that nourish terrorism and ease terrorist activities. These listing attempts are taken by the individual countries such as the US and Britain but also by the organizations such as the European Union and United Nations.

The listing activities are attempts to reach a consensus on which organizations can be defined as terrorist organizations. Thus, these listing attempts of these countries itself is an important evident for the need of common definition.

Moreover, listing the crimes that are associated with terrorism may be used for a definition for the terrorist activities. Eventually, the common characteristics of the organizations and common crimes accepted as terrorist activities may serve as elements of a common definition.

Notwithstanding the lack of common definition, the UN adopted some resolutions on terrorism. Resolution 1566 condemned both terrorism and attempts to justify it. This resolution also established a global terrorist list, after the 1267 resolution about Al Qaeda. The terrorism, its perpetrators, accomplices and its financiers were criminalized with The Security Council Resolution 1373. Besides, the Convention on Suppression of the Financing of Terrorism was adopted.

These cooperation steps at UN level are important, yet reaching to a common definition is vital for permanent solutions. The idea to response terrorism with the existing laws and regulations on the conventional crimes is not plausible. The terrorism as mentioned above is different from conventional crimes and can only be solved with regulations and laws that

address terrorism and terrorist activities. The criminalization of terrorist activities, as a result of a concrete international definition, could restrict the operation of the perpetrator, whether acting individually or as a group, and result in the reconsideration of terrorism as the best way to achieve certain objectives.

PAM delegates met in Istanbul, Turkey on 30 January 2009 in the framework of a **Reflexion Group on Terrorism** to work toward a common understanding of what terrorism is. To help in that endeavor they heard interventions from **Mr. Walter Gehr**, Chief, Counter Terrorism Legal Services Section I, Terrorism Prevention Branch, Division for Treaty Affairs, UNODC as well as from **Mr. Mahmood Ayub**, UN Resident Coordinator in Ankara, **Mr. Sedat Laciner** (Assoc.Prof.), Director of International Strategic Research Organisation (Turkey), **The Hon. Angela Napoli,** Member of the Anti-Mafia Committee, MP (Italy) and **Mr. Mutlu Koseli** (Ph.D), Major, Turkish Police Department & International Analyst on Terrorism. They convened again in Rome on 12 March 2009 in an informal setting (a Drafting Group) to pursue work towards a common definition of Terrorism. The Palestinian delegation was represented by The Hon. Zuhair Sanduka in Istanbul and by The Hon. Tayseer Quba'a in Rome. A proposal for a definition was reached in Rome and is spelt out in the draft resolution annexed to this report.

Definition

Having considered different views and definitions of terrorism and other forms of political and non-political violence, this report is now able to offer its own definition of terrorism.

Terrorism can be defined as violence or the threat of violence, induced by political, ideological, religious or ethnic motives. Terrorist actions are carried out or designed to achieve maximum publicity, and to produce effects beyond the immediate damage to people, property and the environment. The methods used are extreme, destruction is ruthless, and the behavior is not constrained by the rules of war. The nature of violence is such so as to provoke fear and intimidation.