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### **International Terrorism and Violation of Human Rights: A Legal Panacea**

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#### ***Abstract***

*Terrorism is an international crime, a menace which today forms one of the greatest concerns of private citizens, nations and even the international community. It affords and exacerbates the problem of gross violations of human rights. Holding perpetrators of acts of terrorism accountable for their actions is even of a greater concern. This is a serious problem which nations and the international community grapple with. The essence of this research is to expose and elucidate on the menace which will make for a better understanding of the effects, consequences and implications thereof. In the end, it was found that terrorism, although fraught with definitional issues, is a crime under international law and perpetrators must be held responsible for their actions. It is acknowledged that the war against terrorism is one yet to be won. But that only when won can sustainable development be assured.*

*Keywords: Terrorism, Human Rights, Crime, International Community, Law.*

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## **Introduction**

Terrorism constitutes serious violation of fundamental human rights such as is enshrined in the Constitution and the International Bill of Rights.<sup>1</sup> It violates specific human rights treaties such as the Convention on the Prevention and Punishment of the Crime of Genocide, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. While it is clear that terrorism provides the breeding-ground for gross violations of human dignity, there is yet no established definition as to the precise meaning and scope of terrorism.<sup>2</sup> Sufficient to note is the fact that terrorism is a crime under international law because it is considered so grave that it is generally prohibited by all the members of the international community. Acts of terrorism are considered by the international community as a whole and not merely by one of its members to have violated the fundamental principles embodied in the international instruments. This is a matter of fact and of law, the only question being “what amounts to terrorism or acts of terrorism?”

## **Definition**

Terrorism has over the years become a knotty issue both in national and international spheres. This has made efforts at curbing and addressing the menace elusive. Reasons are that terrorism is fraught with definitional issues. There is the difficulty in defining the concept; perceptions vary in terms of differentiating a terrorist from a freedom fighter. This is so owing to the fact that what amounts to terrorism may well be considered as an act of patriotism by the perpetrators. Should terrorism be confined to acts of violence against persons or should attacks on property also come within the ambit of

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<sup>1</sup> See Chapter IV of 1999 Constitution of the Federal Republic of Nigeria (as amended 2011), see also *United States and Consular Staff in Tehran (United States of America v Iran)*, Judgment 24 May 1980, (1980) ICJ Reports, where the International Court of Justice notes “Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter...as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights”.

<sup>2</sup> J Rehman, *International Human Rights Law*, (England: Pearson Education Limited 2010) p. 880

terrorism?<sup>3</sup> Other factors that bedevil the definition of terrorism are not only the varied perceptions over the characterisation of terrorist acts, but also the purpose and motivation behind such acts, and the variable identity of the perpetrators.<sup>4</sup> Indeed, the issue has been so controversial that divisions have emerged not only in the proposed definitions but more fundamentally as to whether it is worthwhile attempting to define such an elusive concept.<sup>5</sup> Professor Bassiouni makes the point that:

There is...no internationally agreed upon methodology for the identification and appraisal of what is commonly referred to as ‘terrorism’, including: causes, strategies, goals and outcomes of the conduct in question and those who perpetuate it.<sup>6</sup>

Generally speaking however, terrorism is the systematic use of terror, often violent, especially as a means of coercion. It includes all those violent acts which are intended to create fear and that deliberately target or disregard the safety of non-combatants (civilians). Some definitions now include acts of unlawful violence and war. The term terrorism is used to define criminal acts based on the use of violence or threat thereof and which are directed against a country or its inhabitants and calculated to create a state of terror in the minds of the government officials, an individual or group of persons, or the general public at large.<sup>7</sup> The earliest and the most prominent definition was advanced through the 1937 Convention for the Prevention and Punishment of Terrorism.<sup>8</sup> According to Article 1(2) of the Convention:

In the present Convention, the expression ‘acts of terrorism’ means criminal acts directed against a State intended or

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<sup>3</sup> Shaw, *International Law* ( England: Cambridge University Press, 2008) p. 1159

<sup>4</sup> J Rehman, *op cit* p. 881

<sup>5</sup> *Ibid*

<sup>6</sup> Bassiouni, ‘A Policy-Oriented Inquiry into the Different Forms and Manifestations of “International Terrorism”’ in Bassiouni (ed), *Legal Responses in Terrorism* (Martinus Nijhoff, 1988) p. xvi

<sup>7</sup> E Oji, “Understanding the Concept and Content of International Criminal Law”, (2008) 16 NJIS p.35

<sup>8</sup> The Convention for the Prevention and Punishment of Terrorism, 16 November 1937, 19 League of Nations Official Journal (1938)23 reprinted 27 UN GAOR, Annex I, Agenda Item No. 92, UN Doc. A/C.6/418 (1972).

calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.

For an act to fall within the provisions of this Convention or to be regarded as an act of terrorism, such act had to come within the ambit of the aforementioned definition. The acts which the present Convention concerns itself with are those that are directed against a State party and the activity making up the act must involve one of the enumerated actions in Articles 2 and 3 of the Convention namely “any wilful act causing death or grievous bodily harm or loss of liberty” to specified category of public official, “wilful destruction of, or damage to, public property” or “any wilful act calculated to endanger the lives of members of the public”. Unfortunately, this definition together with the 1937 Convention was not adopted. Thus reliance cannot be had to it.

Over the years there have been developments on the definitional issues surrounding the term terrorism. The UN General Assembly as well as the Security Council has addressed the issue of terrorism on several occasions.<sup>9</sup> In its Resolution 51/210, the General Assembly established an Ad Hoc Committee:

To elaborate an international convention for the suppression of terrorist bombings and subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.<sup>10</sup>

The mandate for the Ad Hoc Committee has been renewed annually by the General Assembly. During its 56<sup>th</sup> session, a working-group of the Committee produced the following definition of terrorism.

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<sup>9</sup> J Rehman, *Op cit* p.884

<sup>10</sup>See “Measures to Eliminate International Terrorism” General Assembly Resolution No. 51/210 of 17 December 1996, UN Doc. A/RES/51/210 at para.9

Article 2

- 1) Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes;
  - a) Death or serious bodily injury to any person, or;
  - b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
  - c) Damage to property, places, facilities or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or abstain from doing any acts.<sup>11</sup>

From this definition it is noticed that it becomes a criminal offence to make serious and credible threats to commit the offences (as stated in Article 1), organise or direct others to commit such offences or contribute to these offences.<sup>12</sup> The draft bans a wide range of criminal behaviour and prohibits any exceptions regardless of “political, philosophical, ideological, racial, ethnic or religious considerations”<sup>13</sup> that may have been the motivating factor. Although from the foregoing there is no concise universally accepted definition of terrorism, it is clear the acts that amount to or make up the term terrorism. There is also consensus on the fact that terrorism is a crime under international law.

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<sup>11</sup> Measures to Eliminate Terrorism: Report of the Working Group Fifty-Sixth Session, 29<sup>th</sup> October 2001, UN Doc. A/C.6/56/L.9 annex I.9. Text available at: <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/248/17/PDF/N0224817.pdf?OpenElement> last visited 12 September 2014.

<sup>12</sup> *Ibid* article 2(2)(3)(4).

<sup>13</sup> *Ibid* article 5

In the next sub-head, the concept of international crimes which terrorism is part of shall be considered. This will make for a better understanding of the gravity and enormity of the crime of terrorism as an international crime, other related crimes shall be cursorily considered, the reason for the prohibition of terrorism and why perpetrators must be held accountable shall also be considered.

### **What are International Crimes?**

In the international community there are certain acts which are regarded and treated as being so grave that they are generally prohibited by all the members of the international community. They are considered by the international community as a whole and not merely by one of its members to have violated the fundamental principles which are now so deeply rooted in the conscience of mankind that they have become particularly essential rules of general international law.<sup>14</sup> They are conducts which are commonly viewed as serious atrocities and the perpetrators of such conducts must be criminally accountable for their perpetration. They are grave breaches of international norms and principles from which no derogation is allowed and therefore are known as international crimes.

The International Law Committee (ILC) in its Draft Articles on State Responsibility provides clarification and further defines international crime in Article 19 (2) thereof thus: “any internationally wrongful act which results from the breach by a state of an international obligation so essential for the protection of fundamental interests of the international community as a whole, constitutes an international crime”. It went on to provide that on the basis of international law in force, an international crime may result from:<sup>15</sup>

- a) A serious breach of an international obligation of essential importance for maintenance of international peace and security;
- b) A serious breach of an international obligation of essential importance for safeguarding the right of self determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;

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<sup>14</sup> E Oji, ‘Understanding the Concept and Content of International Criminal Law’, (2008) 16 *NJS* p.1

<sup>15</sup> Article 19(3) 1996 Draft Article on State Responsibility

- c) A serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;
- d) A serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting the pollution of the atmosphere or the seas.

The above provisions are so compelling that they have crystallised into what is today regarded as peremptory norms of international law. These peremptory norms or the *jus cogens* as they are also called are fundamental principles of international law which are accepted by the international community of states as norms from which no derogation is ever permitted. It was the judgments of the Permanent Court of International Justice (PCIJ) that shows the earliest application of peremptory norms as non derogable. The earliest case was in the matters between the United Kingdom and Germany in 1923, stating that sovereignty cannot be an excuse to derogate from peremptory norms. Also, by virtue of Article 53 of the 1969 Vienna Convention on the Law of Treaties, any treaty that conflicts with a peremptory norm is void.

Finally these peremptory norms are also regarded as obligations owed *erga omnes*. They are owed towards all by all. Consequently, any state has the right to complain of a breach. The concept was recognised in the International Court of Justice's (ICJs) decision in the *Barcelona Traction case*<sup>16</sup> as follows:

...an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-a-vis another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.  
[at 34] Such obligations derive, for example, in

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<sup>16</sup> Barcelona Traction, Light and Power Co. Case ICJ (1970) 3 at paragraph 33

contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law... others are conferred by international instruments of a universal or quasi-universal character.

The dicta of the ICJ in that case provides four examples of obligations owed *erga omnes* – the outlawing of acts of aggression, the outlawing of genocide, protection from slavery and protection from racial discrimination.

Apart from terrorism, other international crimes include genocide which is defined generally as the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious, or national group, though what constitutes enough of a “part” to qualify as genocide has been subjected to much debate and series of arguments which the present writers do not wish to explore. A legal definition is found in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG).<sup>17</sup> Apartheid/racial discrimination is yet another form of international crime. It is a system of racial segregation which is enforced through legislation.<sup>18</sup> Slavery or slave trade is another form of international crime which is prohibited by the international community as a whole.<sup>19</sup>

### **Acts of Terrorism and Human Rights Violation**

Terrorism and acts of terrorism form grave attack on the fundamental human rights of individuals. They constitute serious assault on human dignity. Such fundamental human rights as right to life, integrity, personal liberties and freedom are violated. The international community has acted with great vigour to adopt international instruments and standards in order to combat the menace. These instruments include those dealing with the prohibition of hostage-taking, the protection of internationally protected persons as well as

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<sup>17</sup> See article 1 and 2 of the CPPCG, also Article 6 of the Statute of the ICC

<sup>18</sup> See article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination 1966, also Article 1 of the International Convention on the Suppression and Punishment of the Crime of Apartheid 1973.

<sup>19</sup> See article 4 of the Universal Declaration of Human Rights 1948

the criminalisation of aerial and maritime terrorism. These types of instruments shall now be discussed singularly.

First, on hostage taking there is the International Convention on the Taking of Hostages, adopted by the General Assembly of the United Nations in 1979.<sup>20</sup> Although the Convention denounced hostage taking as a terrorist offence and a crime in international law, it is still laced with references to human rights, appealing to humanitarian norms and laws.<sup>21</sup> The taking of hostages being synonymous with arbitrary deprivation of liberty, was originally confined to armed conflicts. The Preamble of the Hostage-Taking treaty recognises that ‘everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights’.<sup>22</sup> Hostage taking is an ‘offence of grave concern’ to the international community and has become a matter of immediate urgency to prevent, prosecute and punish all acts of taking of hostages.<sup>23</sup> The convention regards hostage taking *inter alia* as seizure, detention and threats to kill or harm individuals with an objective of compelling third parties to undertake or abstain from particular actions.<sup>24</sup> By the definition proffered by the Convention, the human rights dimension of preserving individual liberty and the right not to be exploited is well articulated. The humanitarian frame of reference is reflected in the obligations of the State party in possession of the hostages. The undertaking is to engage in all appropriate measures, *inter alia*, to secure their release and facilitate their departure.<sup>25</sup>

Second, crimes against internationally protected persons, itself a crime within general international law, also constitutes a serious violation of the rights of the individuals concerned. These individuals are targeted and victimised as a consequence of their official positions. These crimes against internationally protected persons continue to be one of serious global concern. In 1973, the United Nations General Assembly adopted by consensus, Resolution 3166 (XXVIII) attached to which is the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including

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<sup>20</sup> 1316 United Nations Treaty Series 205; 18 International Legal Materials 1460 (1979)

<sup>21</sup> J Rehman, *Op Cit* @898

<sup>22</sup> Preamble to the International Convention Against the Taking of Hostages

<sup>23</sup> *Ibid*

<sup>24</sup> Article 1 of the International Convention Against the Taking of Hostages

<sup>25</sup> *Ibid* article 3 (1)

Diplomatic Agents.<sup>26</sup> This Convention (also known as the New York Convention) represents the most far-reaching global instrument dealing with crimes committed against internationally protected persons. It has in the words of Dembinski as cited by Rehman<sup>27</sup>, three primary functions:

- a) To make sure that every person committing or participating in a crime covered by the convention will be tried or extradited and will not remain unpunished;
- b) To dissuade in this way possible offenders from committing these crimes and finally;
- c) To secure a minimum of international co-operation in preventing them.

Third, on maritime terrorism there is the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. The Convention was born out of the need to curb maritime terrorism, as conducted in the hijacking of the *Achille Lauro* and involving the unfortunate murder of a disabled Jewish man, Leo Klinghoffer on board the *Achille Lauro*.<sup>28</sup> Also aerial terrorism can lead to substantial violations of human rights and indeed trigger serious international conflicts. It was the September 11, 2001 bombing that actually triggered what is widely today known as the ‘war-on-terror’. The international community has taken a bold step towards frustrating and eliminating terrorism and terrorist activities. There is emphasis on freezing the assets of those involved in terrorist actions in order to prevent them from receiving vital financial support. The International Convention for the Suppression of the Financing of Terrorism 1999, as its name suggests, aims at suppressing all forms of funding and financing of terrorism. States are under an obligation to deny a safe haven to those who finance terrorists and to bring to justice all those who have been engaged in the financing of terrorism.

### **Accountability for Terrorism**

Acts of terrorism amount to international crime and therefore perpetrators must be accountable for their commission. They must be arrested and made to face the legal punishments prescribed by the law creating the offences which

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<sup>26</sup>Adopted 14 December 1973, entered into force 20 February 1977

<sup>27</sup> J Rehman *Op Cit* @ 899

<sup>28</sup> For detailed report of the incident see McCredie, “Contemporary Uses of Force against Terrorism: The United States Response to Achille Lauro: Question of Jurisdiction and its Exercise” 16 *Georgia Journal of Comparative and International Law* (1986) 435

they have committed especially acts of terrorism. Punishment must be justifiable and for that reason the goals which are sought to be achieved must be specified. Elizabeth Oji<sup>29</sup> citing Iwarimie-Jaja set out elaborately the following justification for punishment:

1. **Prevention:** this is the theory of intimidation targeted at deterring the specific offender. Here the punishment is used to deter the offender from committing further crimes.
2. **Restraint:** this theory is also called the theory of incapacitation, disablement or isolation from society, in order to protect society from the dangerous acts of such persons. Usually the offenders when found guilty are given lengthy prison terms, are executed or imprisoned for life, so that they cannot commit further crimes against the society. Opponents of this theory are of the view that restraint without rehabilitation may be dangerous to society since criminals imprisoned may one day be returned back to the society.
3. **Rehabilitation:** this is the theory of correction or treatment. It postulates that the correction or reformation of the convict is the purpose of punishment. Corrective measures aimed at reformation are directed towards the individual offender. When punishment rehabilitates the convict, the presumption is that he or she will become a better person capable of going back into the society with very little or completely eradicated criminal tendencies. Opponents of this theory are of the view that it is not totally correct to regard this treatment or correction as punishment since the aim is to make life better and pleasant for the future. The opposition stems from the fact that the theory has not shown much satisfactory results in most countries of the world. But the advocates of this theory say that once it is determined that the conducts of the perpetrators of terrorism and other international crimes are influenced by antecedent causes or factors, therapeutic measures should be applied to effect change in the behaviour of the person treated.
4. **Deterrence:** at times this theory is called the general prevention theory. The reason behind this theory is that the punishment imposed

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<sup>29</sup> *Responsibility for Crimes under International Law* (Lagos: Odade Publishers 2013) p.280

on the convict is necessary in order to deter or prevent others from committing the crime. Some factors that comprise the deterrence theory include: loss of life, liberty, or money held out to discourage others lest the same unfortunate fate is meted out on them.

5. **Education:** the imposition of punishment on a convicted person under this theory is to educate the public such that when people attend a trial or an execution of sentence, it is expected that they will be able to distinguish between good and bad conduct.
6. **Retribution:** this theory is also known as the revenge or retaliation theory. It appears to be the oldest theory of punishment. Here the perception is that the society revenges the harm it has suffered or the pain inflicted upon it by the convict through the punishment meted out. Retribution as a punishment upholds and maintains respect for the law and suppresses acts of private vengeance.
7. **Eugenic:** the eugenic theory refers to punishment applied in order to improve a breed or specie or to eliminate the defective genes which exist in the convict so that he or she will discontinue the criminality and the offspring will stop living criminal life.
8. **Expiation:** this theory suggests that punishment is good for the convict because it makes up for the sins or crimes on earth. This theory has become irrelevant in present times.
9. **Sedation:** this theory is based on the fact that punishment must be a necessary measure of pain inflicted on the convict and therefore if society does not punish the criminal, other members of the society will take vengeance.

These theories for the justification of punishment set out above are rather lengthy and can be compartmentalised into fewer theories. V. D Mahajan<sup>30</sup> gave a succinct classification of the purpose of punishment to include the deterrence, preventive, reformatory, retributive and compensation theories.

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<sup>30</sup> Jurisprudence and Legal Theory, (Lucknow: Eastern Book Coy. 1987) p.161

## **Conclusions**

In the foregoing, the concept of terrorism has been considered. The definitional problems owing to ideological differences have also been brought to bear. At the same time, a great measure of consensus exists on the absolute criminalisation of terrorism and acts of terrorism. Acts of terrorism and their implications on human rights was also considered. The need to hold perpetrators accountable and the justifications for the punishment were also x-rayed. The 21<sup>st</sup> century appears to encapsulate the war-on-terror. Worthy of mention at this point is the fact that as this war-on-terror gained momentum, human rights violations were exacerbated and the principles of international humanitarian law were abused. This is evident in the commencement of the bombardment of Afghanistan by United States and United Kingdom in October 2001 following the September 11 terrorist attacks on the USA. Furthermore, another disturbing element emerging from the war on terror was the decision of the United States to transfer captured individuals from Afghanistan to Camp X-ray (subsequently Camp Delta), a detention camp at the US naval base at Guantanamo Bay, Cuba.<sup>31</sup> This notwithstanding, the war on terror is a war that must be continued if terrorism and acts of terrorism is to be eradicated. What must be done and which must be emphasised is that States, non-State actors, the international community and municipal authorities must ensure compliance with established norms of international human rights and international humanitarian law. The violation of human rights caused by the terrorists and their activities shall not in any way warrant a disregard of human rights and humanitarian laws. Also those engaged in combating terrorism shall not be exonerated by that fact if their actions amount to an abuse of human rights. Thus the fact that a person has been found committing an act of terrorism shall not put his/her human rights into abeyance or entitle the terrorism combatant to the violation of the person's human rights without consequences. This is without prejudice to the fact that terrorism and acts of terrorism are prohibited in all entirety and that stricter eradication measures are welcome.

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<sup>31</sup> Steyn, "Guantanamo Bay: The Legal Black Hole" 53 ICLQ (2004) 1 @p.7