

DEFINITION OF TERRORISM

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I. DEFINITION AND ITS ELEMENTS

The difficulty of defining terrorism¹ as a crime (whether under municipal or international law) has been frequently emphasized, and need not be elaborated upon in this paper. Rather, we shall start by considering the type of definition to be adopted.

The very notion of “definition” has more than one meaning. First, there is the classical definition in the sense which that term has in logic: *definitio per genus et differentiam*. Here one would show the features that terrorism shares with a broader category of occurrences and those which distinguish it from that category. An effort is made in this paper to formulate the elements of a classical definition. However, even if one is successful in that task, the classical definition should be supplemented by the enumeration of various acts that constitute terrorism. If that enumeration is part of an instrument which is a source of international law, it usually raises problems similar to those of legislative definitions in municipal law.

The combination of the classical definition with one that exhibits some, or attempts to exhibit all of the various acts to which the word “terrorism” applies, is found in different documents. This approach characterizes several texts adopted by the International Conference for the Unification of Penal Law.²

In the Geneva Convention for the Prevention and Punishment of

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¹ The bibliography on terrorism is vast. It is sufficient to cite here A. Sottile, “Le terrorisme international”, 65 *Recueil des Cours* 87 (1938—III), and *Legal Aspects of International Terrorism* (A. E. Evans and J. F. Murphy eds., 1978). For a brief presentation, see R. A. Friedlander, “Terrorism”, in 9 *Encyclopedia of Public International Law* 371 (R. Bernhardt ed., 1986).

² Quoted in UN Doc. A/C.6/418, 2 November 1972, “Measures to Prevent International Terrorism etc., Study Prepared by the Secretariat”, paras. 22—26.

Terrorism (1937)³ the definition containing the basic elements of the notion (Article 1, paragraph 2) is followed by an explanatory enumeration of offences (Article 2). This Convention, however, did not enter into force.

The new version of the Draft Code of Offences against the Peace and Security of Mankind (being elaborated by the International Law Commission of the United Nations in the eighties) first resorts to a very general definition of terrorist acts and then states what constitutes them.⁴ No definition or any of its elements were included in the original Draft Code (1954, Article 2 (6)).⁵

Other instruments, though general in their regulation of the prevention and punishment of terrorism, avoid any broad definition, while limiting themselves to enumerating certain categories of terrorist acts. A case in point is the Washington Convention of 1971⁶ drawn up under the auspices of the Organization of American States (Article 1). The enumeration is more detailed and specific in the European Convention on the Suppression of Terrorism⁷ sponsored by another regional organization, the Council of Europe (Article 1); but that instrument also lacks a comprehensive definition.

In most treaties dealing with terrorism there is, however, no room for such a definition since they deal exclusively with a particular kind or kinds of terrorist acts. These are acts committed on board an aircraft, in particular the unlawful seizure of aircraft (Tokyo and Hague Conventions of 1963⁸

³ League of Nations Docs. C.94.M.47.1938.V and C.222.M.162.1937.V. 7 *International Legislation* 862 (M. O. Hudson ed., 1941); reproduced in UN Doc. A/C.6/418 (*supra* note 2), Annex I.

⁴ ILC, 37th Sess., 1985, Third Report on the Draft Code of Offences against the Peace and Security of Mankind, UN Doc. A/CN.4/387, 8 April 1985, at 40, point D.

⁵ Adopted by the International Law Commission (ILC), 9 UN *GAOR*, Supp. (No. 9), at 11–12.

⁶ Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance, signed at Washington on 2 February 1971, reproduced in UN Doc. A/C.6/418 (*supra* note 2), Annex V.

⁷ Adopted at Strasbourg, 10 November 1976, opened for signature on 27 January 1977, 15 *I.L.M.* 1273 (1976). See also the Agreement concerning the Application of this Convention among the Members of the European Communities, Dublin, 4 December 1979, 19 *I.L.M.* 325 (1980). Elements of the definition of terrorism are also to be found in treaties of extradition. See, e.g., UK-USA Supplementary Extradition Treaty, 23 December 1986, 87 *Dep't St. Bull.* 89 (1987). The rules on international terrorism adopted by the International Law Association (ILA) contain a "working definition" (Article 2); ILA Report, 61st Conference 6 (Paris, 1984). See also draft articles on extradition in relation to terrorist offences submitted to ILA Conferences at Seoul 1986 (Article I) and Warsaw 1988 (Article III).

⁸ Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963, 58 *Am. J. Int'l L.* 566 (1964); reproduced in UN Doc. A/C.6/418 (*supra* note 2), Annex II.

and 1970,⁹ respectively), other unlawful acts against the safety of civil aviation (Montreal Convention of 1971¹⁰), murder and other violent acts against different categories of official persons (Convention on Internationally Protected Persons of 1973¹¹), taking of hostages, (Convention of 1979¹²), use of nuclear material for causing or threatening death, serious injury or exercising pressure (Nuclear Material Convention of 1979¹³), torture and similar acts (Convention of 1984¹⁴), and terrorist acts against and on board ships and platforms, including injury to or murder of persons (Convention and Protocol of 1988¹⁵).

To clarify the meaning of the term “terrorist act”, it is necessary to identify the effect obtained through the commission of the act, the means used, the targets (victims) and the perpetrators. These four elements of the definition of terrorism are analyzed in Sections II—V below.¹⁶

⁹ Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, 10 *I.L.M.* 133 (1971); reproduced in UN Doc. A/C.6/418 (*supra* note 2), Annex III. E. McWhinney, “Hijacking of Aircraft”, 54 *Institut de Droit International, Annuaire* 520 (1971—I).

¹⁰ Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, 10 *I.L.M.* 1151 (1971); reproduced in UN Doc. A/C.6/418 (*supra* note 2), Annex IV. See also Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention, done at Montreal on 24 February 1988, 27 *I.L.M.* 628 (1988).

¹¹ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December 1973, text annexed to UN GA Res. 3166 (XXVIII).

¹² International Convention against the Taking of Hostages, opened for signature at New York on 18 December 1979, text annexed to UN GA Res. 34/146; 18 *I.L.M.* 1456 (1979).

¹³ Convention on the Physical Protection of Nuclear Material, opened for signature at Vienna and at New York on 3 March 1980, 18 *I.L.M.* 1422 (1979).

¹⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature at New York on 10 December 1984, annexed to UN GA Res. 39/46. Its draft is reproduced in 23 *I.L.M.* 1027 (1984).

¹⁵ Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation, Rome, 10 March 1988, and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (same date), 27 *I.L.M.* 672 and 685 (1988). M. Halberstam, “Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety”, 82 *Am. J. Int’l L.* 269 (1988).

¹⁶ T. M. Franck and B. B. Lockwood, Jr., “Preliminary Thoughts towards an International Convention on Terrorism”, 68 *Am. J. Int’l L.* 69, at 72–82 (1974), distinguish the following elements: actors, range of acts, international component, motive and intent, victims. On the definition, see also S. Sucharitkul, “International Terrorism and the Problem of Jurisdiction”, 14 *Syracuse J. Int’l L. & Com.* 141, at 142–55 (1987), and J. F. Murphy’s paper in the present volume.

II. EFFECT OF TERRORIST ACT

An act is considered terrorist when its aim is to achieve a common or general danger, to induce fear or intimidation, thereby creating pressure for the fulfilment of the purpose or policies of the perpetrator, in particular the satisfaction of his demands.

Article 1, paragraph 2, of the Geneva Convention of 1937 admits the possibility of creating "a state of terror in the minds of particular persons". Whether this phrase implies the limitation of the effect to one specific person alone, in contradistinction to a category of persons, is debatable. It cannot be ruled out that such can be the aim of the violent action undertaken by the perpetrator. As a rule, however, especially in view of the means used (Section III below), the effect goes beyond a particular person, but in a specific case that may not be the perpetrator's intention, as he was concentrating on one person alone.

The qualification of danger, fear or intimidation as common and general is relative by its nature. The size of the group affected will differ depending on the purpose and possibilities of the perpetrators: from a whole nation or the inhabitants of a territory to a restricted group such as the passengers using a means of transportation that has become the object of unlawful seizure.

On the other hand, the notion of an "isolated" act of terrorism, sometimes referred to, is neither clear nor useful in defining the crime under consideration. Whatever it means, an "isolated" act of terrorism can have the effect described in this Section.

III. MEANS RESORTED TO BY TERRORISTS

The effect achieved by the act (Section II) is closely linked to the means employed. Only certain means can bring about the sense of common or general danger, fear or intimidation and the resulting pressure favourable to the purposes or policies of the perpetrator, and to his demands. The main instrument that can have various facets (depending on circumstances) is violence used against different targets, especially against people who are defenceless and have no reason to expect any use of force against them. The latter element (i.e., the non-expectation) shows a difference with regard to the factual situation of persons who happen to find themselves in the area of combat in an armed conflict or in the theatre of war (legally these persons are also protected, but by another set of rules, not limited to terrorism).

Usually, a terrorist act consists of the use of, or threat of violence in a

manner that attracts public attention.¹⁷ In most instances, it consists of killing or injuring a person or persons, depriving them of liberty, or subjecting them to other degrading treatment. It may also involve destruction of material objects (property) such as buildings, transportation networks, and their elements, with or without connection to acts committed against a person or persons.

Several instruments referred to above (notes 2 to 15) contain an enumeration of the various types of violence constituting acts of terrorism. Some of these concentrate on one category alone and thus contain a fairly detailed regulation (notes 8 to 15). Some of the earlier instruments, though concerned with the general notion of terrorism and not any specific facet, lay accent on the use of bombs and other explosives or the propagation of an epidemic,¹⁸ while omitting the deprivation of liberty and taking of hostages as an act of terrorism. Forty years later another instrument mentions, in the first place, kidnapping.¹⁹ All these differences in emphasis, or selective approaches, are understandable: they reflect the problems of a period or epoch and the particular preoccupations of the drafters. Nonetheless, in instruments having a general function or objective (in contrast to instruments dealing with only one or some categories of terrorism) the definition should be complete and exhaustive.

IV. VICTIMS OF TERRORISM

Turning to the victims of terrorism, it should be stated at the outset that they are not limited only to the persons directly affected by the violence resorted to by the perpetrator, e.g., those killed or injured by an explosion, or those deprived of liberty as a result of hijacking or hostage taking.

To determine more precisely who falls under the heading of victim one must consider the interplay of two factors. One is the purpose that is served by the terrorist act. The other is the indiscriminate use of violence inherent in that act.

The result sought by the instigators and executors of the terrorist act creates a situation affecting certain persons, groups of persons, organiza-

¹⁷ Y. Dinstein, "The International Legal Response to Terrorism", in 2 *Le Droit international à l'heure de sa codification. Études en l'honneur de Roberto Ago* 139, at 140 (1987), assumes that acts of terrorism may also be committed clandestinely. That assumption eliminates the element of public attention.

¹⁸ Cf. Article 1 of the text adopted by the Fourth International Conference for the Unification of Penal Law, Paris 1931, *Actes de la Conférence* (Paris: Recueil Sirey, 1933), quoted in UN Doc. A/C.6/418 (*supra* note 2), para. 24.

¹⁹ Cf. Article 1, OAS Convention of 1971, *supra* note 6.

tions or institutions. The spectrum of victims depends on the breadth of the purpose pursued: from a restricted group to all the inhabitants of a territory when the aim is to change its status forcibly, or even a whole nation if the perpetrators want to upset the existence and functioning of a State. The degree to which a person becomes a victim differs from case to case, the consequences of the act never being identical for all those involved. The wider the range of the persons affected, the greater the possibility of differentiation among victims.

While the aim of the terrorists facilitates the identification of the victims, at any rate in certain situations (e.g., members of a particular group, nationality or religion), one of the features of the terrorist act, namely the indiscriminate use of violence, complicates any categorization of its victims. Whatever the intended target (if there is room for introducing that notion), the terrorist act, by definition is directed against random persons with whom, until that action began, the terrorist had no relation. A frequent instance is the seizure of an aeroplane: the immediate victims are, apart from the crew, the passengers, usually a random group.²⁰ By striking at people totally unconnected with the purpose the terrorist has in mind, he exercises pressure on those who are his actual target. Those who suffer directly and immediately, in one way or another, from the terrorist act may be entirely divorced from the avowed purpose of the terrorists. That is the consequence of the indiscriminate resort to violence so characteristic of terrorist acts.

Some instruments limit the victims to official persons, e.g., the text on terrorism adopted by the Sixth International Conference for the Unification of Penal Law (1935), Article 1;²¹ the OAS Convention (1971), Article 1; and the Convention on Internationally Protected Persons (1973). The Geneva Convention of 1937 concerned in the first place official persons (Article 2 (1)), but it equally covered “[a]ny wilful act calculated to endanger the lives of members of the public” (Article 2 (3)).

V. PERPETRATORS

The term “perpetrator” is used in its broad sense. It covers any person who plans or executes a terrorist act, instigates it, incites to it, disseminates propaganda in favour of terrorism, assists in the commission of the act, is

²⁰ There have been cases of aerial hijacking where there was some link to the target (route of the flight, nationality of the air carrier).

²¹ *Actes de la Conférence* 420 (Paris: Pedone, 1938), quoted in UN Doc. A/C.6/418 (*supra* note 2), para. 26.

an accomplice, organizes a conspiracy with a view to the commission of a terrorist act or participates in such a conspiracy, establishes an association for the same purpose or is a member of it.²²

The perpetrator can be a single person, a group of persons, or an organization.

The debatable point is whether a State can be regarded as a perpetrator of the crime of terrorism. The question is usually described as one of State terrorism, though that particular term has several shades of meaning.²³ There is a division of opinion on this matter among Governments and jurists.

Some States, especially (though not exclusively) those ruled by authoritarian, totalitarian or racist regimes, inflicted in the past or still inflict terror on their own or foreign populations for purposes of domination. Here terror becomes an instrumentality of government and of retaining political power. The entire scheme is often on a large and complex scale.

However, State conduct consisting of such policies (as opposed to the conduct of individuals) cannot be judged on the basis of international penal law relating to the crime of terrorism. The relevant law is that dealing with the protection of human rights and fundamental freedoms and/or — in case of armed conflict — the law of belligerent occupation and protection of the civilian population.²⁴

²² In the strict sense, inciters or instigators, and aiders and abettors, are not “perpetrators”, yet they bear criminal responsibility for their acts.

²³ E.g., the Special Rapporteur of the ILC, Doudou Thiam, distinguishes between “State-sponsored terrorism” and “another form of terrorism which is also known as State terrorism”. The former, which is dealt with in his Report, “involves the participation of the authorities of one State, and it must be directed against another State. These are the two elements which give it its international dimension”. The latter “is reflected in the relations between a State and its nationals when that State uses terror as an instrument of government, as dictatorships often do”. UN Doc. A/CN.4/387, *supra* note 4, para. 136. However, today his second category of State terrorism equally has its “international dimension” because of the international protection of human rights and the principle of self-determination.

²⁴ War crimes are a different legal category than crimes of terrorism, though in some situations there may be some similar features. War crimes and the penal responsibility which they involve are governed by a branch of law which does not comprise the various rules relating to terrorism.

Article 51, para. 2, of Protocol I additional to the Geneva Conventions of 1949 on the protection of victims of war, 72 *Am. J. Int'l L.* 457 (1978), provides that “[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”. These acts, if they fall under the heading of Article 11, para. 4, and Article 85, para. 3, constitute “grave breaches” of Protocol I and are subject to criminal proceedings. Other instances of spreading terror among the civilians are also criminal. All these acts, whatever their particular qualification under Protocol I, are war crimes, even if the conflict constitutes an undeclared war. Acts spreading

Certain instances of resort to force in international relations have also been regarded as State terrorism. This qualification is again subject to doubt, and to clarify the problem it is useful to quote some passages from the Declaration on Principles of International Law adopted by the UN General Assembly (1970).²⁵ The Declaration contains, *inter alia*, the following statement of law: "Every State has the duty to refrain from organizing, instigating, assisting or participating in . . . terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to . . . involve a threat or use of force." According to the Declaration, this duty falls under the prohibition of threat or use of force as expressed in Article 2, paragraph 4, of the UN Charter.

Further, the same Declaration states that "no State shall organize, assist, foment, finance, incite or tolerate . . . terrorist . . . activities directed towards the violent overthrow of the regime of another State . . ." That obligation is part of, or derives from, the principle of non-intervention, and a State that breaks that rule bears responsibility under the said principle.

How, then, should one assess State terrorism? Is it a legal phenomenon? Is State terrorism a legal notion?

Under present international law, States are not in a position to commit the crime of terrorism because that law does not provide for the criminal responsibility of States for acts that otherwise could or would constitute

terror among civilians during non-international armed conflicts are prohibited under Article 13, para. 2, of Protocol II, *ibid.*, 502. Though Protocol II does not contain provisions on repression of breaches, the criminal nature of such breaches is beyond doubt in view of identical Article 3 of the Geneva Conventions. Protocol II is an elaboration of that Article (Article 1, para. 1). On Protocol I, see C. J. Greenwood's paper in the present volume.

In the United Nations some delegates suggested the exclusion of the laws of war and, generally, the law on the use of force by States from the debate on terrorism, 27 UN GAOR C. 6, 15 November 1972, 1359th Mtg., at 267, para. 3 (Poland) and 16 November 1972, 1362nd Mtg., at 288, para. 20 (Netherlands), respectively. On the separation of terrorism from war crimes, see R. R. Baxter, "A Skeptical Look at the Concept of Terrorism", 7 *Akron L. Rev.* 380 (1974), especially at 381, 383–84 and 385–86, and L. C. Green and J. Lador-Lederer, in ILA Report, 60th Conference (Montreal, 1982), at 354, paras. 1–3. The distinction has been maintained by the Rapporteur of the ILC, A/CN.4/387 (*supra* note 23), para. 126; for his views on civil strife and terrorism, see *ibid.*, paras. 151–54. On the other hand, Article 3 of the Resolution adopted by the International Law Association admits the possibility of terrorist acts falling under the heading of laws of war, ILA Report, 61st Conference (Paris 1984), at 6, 7 and 315.

See also papers by O. Schachter and L. C. Green in the present volume.

²⁵ GA Res. 2625 (XXV), 24 October 1970.

the material elements of a terrorist act. It is clear that by making this statement one moves on the plane of law rather than facts. For the involvement of some Governments in the commission of acts of terrorism by individuals or groups is a fact. The policies pursued by these Governments, combined with the power of the State and the means at its disposal, make that fact a recurrent possibility.

State action may incite, direct or assist the terrorists in the commission of their crimes. However, it is difficult to refer, in a legal sense, to State terrorism, for up to now the law has not provided for the criminal responsibility of the State for its authorship of, or links with, terrorism. The State bears international responsibility which is different from criminal responsibility, whether under domestic or international penal law.

Hence, acts of States are not, by legal definition, acts of terrorism. They fall under a different category. They may, and should, cause the criminal responsibility of persons who are organs or agents of the State and who perpetrate these acts. But responsibility of official persons cannot be identified here with that of the State. The State always acts through human beings, and their acts lead to the responsibility of the State. Yet that responsibility is not criminal and thus the State, in legal terms, cannot and does not appear as a criminal terrorist.

The law may change and States may agree to introduce the concept of criminal responsibility of the State, including criminal responsibility of the State for acts of terrorism. Municipal law of some countries provides for the criminal responsibility of legal persons. There are jurists who maintain that there is no conceptual obstacle to such a development in international law. But that is a matter for the future, and one may wonder whether international law should take such a turn.

The law in force at present distinguishes between State responsibility and criminal responsibility of individuals. The former is not penal in its nature and consequences, while the official capacity of the individual does not relieve him of responsibility for committing a criminal offence.

The Draft Code of Offences against the Peace and Security of Mankind, adopted by the International Law Commission in 1954, lists the following among those offences: "The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State" (Article 2 (6)). The words "encouragement" and "toleration" imply a relationship between the State and the terrorists, and thus introduce a distinction between the two. On the other hand, the term "undertaking" seems to point to the State itself as direct perpetrator of the terrorist act; consequently, the State would bear criminal responsibility.

This interpretation, however, must be rejected in light of Article 1 of the Draft Code which provides for the punishment of the responsible individuals, not of States. Articles 3 and 4 also assume the responsibility of natural persons alone, a rule that is clearly stated in a parallel instrument, *viz.*, the Draft Statute for an International Criminal Court²⁶ (Article 1). The Court, if it ever comes into being, would be competent to judge terrorists — whether “constitutionally responsible rulers, public officials or private individuals” (Article 25), but not any State or Government as such. The proceedings before the International Military Tribunals in Nuremberg and Tokyo after the Second World War were not trials of Germany or Japan, but trials of official persons who committed various crimes on behalf of their respective States.

After a long hiatus, the International Law Commission resumed its work on the Draft Code, and it decided again to limit its eventual application to individuals. The point was debated, yet it cannot be said that the term “individuals” covers private persons alone and excludes individuals acting in an official capacity and/or on behalf of the State. The Special Rapporteur emphasized that most of the offences dealt with in the Draft Code could not be committed by private individuals because they lacked the required means, those means being at the exclusive disposal of the State.²⁷ But it should be added that this is not necessarily the case with terrorism: experience has shown that many terrorist acts were committed without State support. The Rapporteur submitted alternative articles dealing with the persons committing the offences: individuals or State authorities.²⁸ Nonetheless the reference to “State authorities” did not amount to introducing the notion of criminal responsibility of States. That concept was incorporated earlier into another text of the International Law Commission, *viz.*, in Article 19 of the future draft Convention on the International Responsibility of States (1976).²⁹

The conclusion is that the notion of State terrorism as a crime committed by the State, in contrast to official persons, does not exist in positive international law. In terms of law, in contrast to the language of politics and diplomacy, the State cannot perpetrate the crime of terrorism.

²⁶ Revised draft prepared by the 1953 Committee on International Criminal Jurisdiction, 9 UN GAOR, Supp. (No. 12), at 23.

²⁷ UN Doc. A/CN.4/387 (*supra* note 4), paras. 12 and 13. For the text of the 1954 Draft Code, *see supra* note 5.

²⁸ UN Doc. A/CN.4/387, Part III (Draft Articles), at 37. *See also*, UN Doc. A/CN.4/398 and ILC Report, 40 UN GAOR, Supp. (No. 10).

²⁹ ILC Report, 31 UN GAOR, Supp. (No. 10), at 226. For a critical appraisal of the concept, *see* K. Marek, “Criminalizing State Responsibility”, [1978–79] *Revue Belge de Droit International* 460.

State involvement in terrorist acts, whether committed by its organs or agents or by private individuals and their organizations, is an established fact of national and international life. For its involvement in international terrorism, in whatever form and to whatever degree, the State bears international responsibility because such involvement, irrespective of motives and purposes, constitutes a breach of international law and is, therefore, an internationally wrongful act.³⁰

VI. INTERNATIONAL NATURE OF TERRORISM

The foregoing considerations on the elements of the definition may be supplemented by a brief explanation on when terrorism ceases to be an internal (national, domestic) phenomenon and acquires an international (transnational³¹) nature.

Certain basic features are common to any type of terrorism. They are the effect of the act (Section II) and the means resorted to by terrorists (Section III).³² Terrorism becomes international when in its personal or territorial scope it affects the duties and/or rights of more than one State: the act occurs in at least two States, or its consequences cross the boundary of a State, or there are persons of different nationalities among perpetrators and/or victims.

To be more specific,³³ terrorism is international when one of the following features is present:

The perpetrator of the crime or its victim is an alien in the State where the act was committed or its effect materialized; the same applies to the instigators and accomplices.

³⁰ This conclusion makes it preferable not to speak of "State terrorism" under present international law. The term, however, is much in use. Whenever it is employed it can denote no more than an act of terrorism for which State officials or agents are personally and individually responsible, while their State bears international (i.e., non-criminal) responsibility.

³¹ Some prefer this term *e.g.*, 27 UN GAOR C. 6, 1365th Mtg., 20 November 1972, at 312, para. 43 (Belgium).

³² The ILC Rapporteur, Doudou Thiam, who mentions these two features, adds a third one, viz., methods; UN Doc. A/CN.4/387, *supra* note 4, para. 134.

³³ The "working definition" in Article 2 of the ILA resolution, *supra* note 7, refers to "an international element" and then indicates when that element is deemed to exist. The description is not exhaustive, but without it the abstract mention of the "international element" would not be sufficient as it could encounter the same difficulties or doubts as the "foreign element" in some definitions of private international law. Various circumstances conferring international character on terrorism have been mentioned during the UN debates; *see, e.g.*, 27 UN GAOR C. 6, 20 November 1972, 1365th Mtg., at 307, para. 5 (India).

The act takes place in more than one State. Several possibilities come into account here. For example, the commission of the crime began in one country and was completed in another. In particular, the preparation of, or complicity in, the act of terrorism took place in a country other than that in which the offence itself was committed. Another possibility is that the act of terrorism was perpetrated in one country, but all or some of its effects, could be felt in another.

The offence, though it occurred in one State alone and involved exclusively the nationals of that State, was aimed at another State, an international organization, or an entity that has a status under international law.

On the other hand, the mere fact that the perpetrator has fled to another country, while all the elements of his crime were strictly internal, does not turn the act of terrorism into an international one. Several definitions of the latter include that situation,³⁴ but that is not correct. The crime remains what it was, i.e., an internal one,³⁵ though the case becomes international when extradition proceedings are instituted, or when there is a conflict of jurisdictions.

VII. IRRELEVANCE OF PURPOSE OF TERRORISM

In the debates on international terrorism, much time has been devoted to examining its purposes and aims, and also to the motives and reasons that prompt its perpetrators. Are these factors part of the definition?

The answer is negative: an act that combines the elements described in Sections II—V above constitutes the crime of terrorism irrespective of the purpose it serves or the motives behind it. The negative answer is not altered by the fact that the end sought by the instigators and executors of the act influences the effect to be achieved (the scope of the common danger, Section II above) and determines the category and also the number of victims (Section IV above). Elucidating the meaning of the elements constituting the definition of terrorism does not amount to adding to them the objective of the terrorist act.

Equally, the multifarious causes of terrorism are no exception to the prohibition and criminality of violence falling under this heading. In

³⁴ See, for instance, UN Doc. A/C.6/418 (*supra* note 2), para. 6, and the texts cited *supra* note 33.

³⁵ During the UN debate the representative of Iraq said that "if the perpetrator of a criminal act in one country took refuge in another, the internationality was an *ex post facto* element of the crime", 27 UN GAOR C. 6, 16 November 1972, 1361st Mtg., at 279, para. 6. Actually, the internationalization concerns here the procedural and jurisdictional side, not any component of the crime itself.

particular, there is no aim, motive or reason that would justify terrorist attacks against human lives or material objects. The criminality of terrorism is absolute.

The purposes and motives of terrorism are varied. More often than not they are political, and some Governments and writers would limit the notion of a terrorist act to that which has a political colouring. It is difficult to accept this standpoint. Experience shows that there are crimes lacking political motives or objectives, yet fulfilling the criteria of terrorism. The obvious example is some cases of the unlawful seizure of aircraft. The definition of terrorism which indicates the political purpose of the crime is not incorrect,³⁶ provided it does not regard that purpose as the necessary ingredient.

The insistence on the political nature of terrorism involves yet another danger. It may weaken or even eliminate the responsibility of the perpetrator. This can lead to legitimizing the act itself.

Political terrorism is not a political offence.³⁷ The political cause, aim, motive or reason of terrorism does not put in motion certain guarantees such as the granting of asylum,³⁸ protection against extradition, expulsion or deportation,³⁹ etc. Some treaty stipulations explicitly describe terrorism as a common crime, regardless of motive.⁴⁰ Such provisions corroborate a rule of general law and do not create any particular deviation from the

³⁶ Cf., in particular, texts adopted by the Third, Fifth and Sixth International Conferences for the Unification of Penal Law, respectively: "for the purpose of propounding or putting into practice political or social ideas" (Article 2), "with a view to destroying any social organization" (Article 1), and "calculated to cause a change in or impediment to the operation of the public authorities or to disturb international relations" (Article 1). The texts of the Conferences are reproduced in UN Doc. A/C.6/418 (*supra* note 2), paras. 23, 25 and 26.

³⁷ Much has been written on the relationship between politics and terrorism. As to the legal aspects, see M. C. Bassiouni, *International Terrorism and Political Crimes* (1975).

³⁸ But several Governments disagree. The representative of Costa Rica, while admitting the criminality of terrorism "under ordinary law" and the irrelevance of "its political or social aims", made two "exceptions", one of them being "the right of asylum, a tradition of which the Latin American countries were proud". That right "should be respected", 27 UN GAOR C. 6, 20 November 1972, 1366th Mtg., at 315, para. 5. The context seems to show that Costa Rica's reservation might not be absolute. According to Mexico, despite her declared determination "to repress acts which are in themselves abominable", the instruments on combating terrorism "should not infringe or limit in any way the right of territorial or diplomatic asylum, which is so deeply rooted in the traditions of the countries of Latin America"; 27 UN GAOR, Plen. Mtgs., 18 December 1972, A/PV.2114, para. 300.

³⁹ See papers by T. Stein and C. Van den Wyngaert in the present volume.

⁴⁰ See examples in UN Doc. A/C.6/418 (*supra* note 2), para. 27. See also Article 2 of the OAS Convention, *supra* note 6. The ILA resolution on terrorism adopted in Paris in 1984 excludes political motivation as a ground for exculpation; Article 4, *supra* note 7.

possibility of placing terrorism under the rubric of political offences. That possibility is not one of law.

The basic truth that terrorism cannot be resorted to under any circumstances, however justified or legitimate the policies pursued, should not be blurred by any distinctions between “national terrorism” and “terrorism motivated, for instance, by the exercise of the right to self-determination”,⁴¹ or between the “acts of international terrorism falling within ‘the common law’” and “the alleged terrorism of national liberation movements”.⁴² The word “alleged” especially creates an ambiguity and may lead to justification of criminal violence by denying the nature of terrorism to acts which are in fact terrorist.⁴³ The same is true of the view of some States that, in trying to define international terrorism, “the right to self-determination and independence . . . should not be affected”.⁴⁴ Such dichotomies could mean that recourse to terrorism is allowed in order to implement some right. Still worse is the assertion that “peoples struggling to liberate themselves from foreign oppression and exploitation had the right to use all methods at their disposal including force”.⁴⁵ These and similar opinions are erroneous not only as far as terrorism is concerned. They attack the very fabric of law by extending the legitimacy of the goal to the means used. There is no exception to the prohibition of international terrorism, and the discussion of the right to self-determination (or any other right) in that context results in confusion and can easily lead either to the rejection of the right or to the admissibility of the otherwise criminal means, both alternatives being unacceptable.⁴⁶

⁴¹ 27 UN GAOR C. 6, 9 November 1972, 1355th Mtg., at 245, para. 4 (Saudi Arabia).

⁴² Report of the *Ad Hoc* Committee on International Terrorism, 1979, 34 UN GAOR, Supp. (No. 37), para. 89. The States holding this view are not identified in the Report.

⁴³ The position cited refers to an effort “to avoid confusion between a struggle — even an armed struggle — against oppression and heinous acts which, whoever committed them, were utterly impermissible”, *ibid.*, note 42 *supra*.

⁴⁴ Report of the *Ad Hoc* Committee on International Terrorism, 1973, 28 UN GAOR, Supp. (No. 28), para. 37. The States holding this view are not identified in the Report.

⁴⁵ *Ibid.*

⁴⁶ The confusion caused by considering the problem of terrorism in the context of self-determination or liberation movements has been emphasized by some States during the UN debates; *see, in particular*, 27 UN GAOR C. 6, 13 November 1972, 1357th Mtg., at 257, para. 54 (Greece) and 20 November 1972, 1365th Mtg., at 313, para. 51 (Belgium).

The UN Secretariat’s study on terrorism (A/C.6/418, para. 11) distinguishes terrorism from revolutionary mass movements. It may be observed that this is a correct (and obvious) distinction, and terrorism must also be distinguished from other occurrences where force and violence are used, such as civil strife or war, uprising or various belligerent or quasi-belligerent activities. The doings of some terrorist groups display a continuity and a consequence that give them the nature of systematic operations of

Nor can the origins or causes of international terrorism have any bearing on its definition. This is far from denying the importance of their study, but the matter is external to clarifying the notion of terrorism. It is a different inquiry.

VIII. CONCLUSION

Terrorism is a crime by virtue of international law. As to the relevant sources, chronologically one should first refer to the general principles of law recognized by civilized nations. They provide for criminal responsibility for acts of terrorism. Then come several treaties, both multilateral and bilateral, which regard terrorism as a crime. Most of them concentrate on acts of terrorism taking place in particular circumstances or against specific categories of persons. As a whole these treaties constitute more than partial regulations: though they are binding on the contracting parties alone, they have created a network of legal obligations that amounts to a body of law which influences further developments.

Adherence to some general principles of law, implementation of treaties, expression of legal conviction in some non-mandatory resolutions of international organizations — have all led to a practice which, in spite of all the setbacks and failures, contributes to the development of universal law on our subject. In that field, defining terrorism is one of the tasks in elaborating the law and bringing it to perfection.

long and persistent duration, in contrast to random acts. Nonetheless they do not bring terrorism within the ambit of the foregoing notions. *See supra* text at note 23, and note 24.

