***Chapter 2***

## Disputing Terrorism

#### A. PERSPECTIVISM AND POLITICAL VIOLENCE

“Terrorism” is a polysemic, emotionally laden term. Belligerent groups could be labeled “terrorist” by some and “freedom” or “guerrilla” fighters by others. Similarly, the same organization or group could be labeled “terrorist” by some and “humanitarian organization” by others. Hence, depending on which perspective people take in a given conflict, and how the international community reacts to the conflict in question, members of different organizations or groups might end up being classified in a negative sense as terrorists or in a positive sense as freedom fighters. Such perspectivism partly explains why so much disagreement exists on the meaning, justification, or excuse of terrorism.

For example, those who support the so-called martyrdom operations, namely, suicide bombings employed by Hezbollah, Hamas, and Islamic Jihad against Israeli civilians, consider them martyrs (*shahids*), holy warriors or jihadists, or simply Islamic guerrilla fighters or mujahideen engaged in an asymmetric conflict against a more powerful enemy. By contrast, those who oppose the indiscriminate use of violence against innocent civilians consider them terrorists or murderers. Thus, the controversy on how to use the term “terrorism” appropriately, or whether it can be so used, seems endless.

Different actors in various conflicts continue to use and manipulate the meaning of the term “terror.” According to Raymond Aron, for example, the term “terror” has been used in contemporary parlance in four different contexts. First, “by the Germans to designate the bombing of cities” during World War II; second, “by those seeking to conserve an established power . . . to stigmatize the action of the resistants or nationalists”; third, “by all authors to characterize one of the aspects of totalitarian regimes”; and

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“lastly by usage to designate the relation of dual impotence between the two great powers armed with thermonuclear bombs.”1

Over 109 definitions of terrorism have been offered by several scholars and social policy experts. They, however, have identified two significant traits among these definitions, namely, the use of violence or force for political purposes.2 In the light of these findings, I suggest that terrorism could arguably be understood as a species of political violence that is inexcusable and, hence, morally unjustifiable, since terrorists deliberately or recklessly inflict harm on combatants and innocent noncombatants alike. Such a deliberate infliction of harm or the threat of it for political purposes frequently causes widespread fear or indignation among intended audiences. Still, while terrorists have control over their actions, they have no control over how an audience might react to their terrorist acts. So their intention to intimidate an audience could be unpredictable and, at times, might simply backfire.

Again, my working definition of terrorism is this: the use of political violence by individuals or groups who deliberately or recklessly inflict substantive undeserved harm or threaten to do so on those who can be conceived of as innocent noncombatants beyond reasonable doubt, aiming at influencing a domestic or an international audience. I am assuming that the terms “innocent noncombatants,” “innocent civilians,” and “innocent bystanders” are interchangeable because they refer to the same class of people, namely, those who are innocent by virtue of being legally and morally inculpable of substantive wrongdoing and, hence, deserving of no violence or punishment. Since they are guiltless or harmless, they belong to the class of those whom I call impeccably innocent.

As any proposed definition or characterization of terrorism, mine is also contestable. While it would be naïve to pretend to settle definitional disputations about terrorism once and for all, I can still try to present reasonable and hopefully persuasive arguments to defend my working definition of terrorism. In doing so, I will need to explain the nature of undeserved harm, what a threat means, and who the innocent noncombatants are beyond reasonable doubt. I will explore the nuances of these concepts as my argument unfolds in later chapters.

Other proposed definitions or characterizations of terrorism face similar challenges. So to try to avoid endless debates among those who hold different definitions and characterizations of terrorism, I hope to demonstrate that my definition of terrorism coheres with our deep-seated intuitions, especially regarding the presumption of innocence of those who can be characterized as evidently guiltless or harmless noncombatants.

Definitions are important for attempting to isolate distinctive characteristics of acts of terrorism vis-à-vis other acts that might be morally and legally impermissible but need not be classified as terrorist acts, such as tyrannicides,

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sabotages, kidnappings, extortions, or simply incontrovertible acts of murder. One can view any of these acts as terrorism if the perpetrators of the act deliberately or recklessly harm or threaten to harm innocent civilians as a way of promoting domestic or international political goals.

For example, one might describe the assassination of prime minister Yitzhak Rabin of Israel in 1995 by Yigal Amir, a lone-wolf Jewish religious zealot who was vehemently opposed to Rabin’s peace initiative with the Palestinians, as an act of terrorism. Also, the assassination of Egyptian President Anwar Sadat in 1981 by members of Islamic Jihad can be similarly described. In the eyes of their assassins, as heads of states, Rabin and Sadat were promoting questionable policies. Because their assassins were hoping to change those policies, they targeted them.

Still, there are relevant differences between Rabin’s and Sadat’s assassinations. First, Rabin was an elected official of the parliamentary democracy of Israel. A lone wolf murdered him with the intention of forestalling the rapprochement policy toward Palestinians. Militant Islamists opposed to Sadat’s tyrannical rule and recognition of the State of Israel murdered him. As a result, they conspired to promote regime change in Egypt. In the eyes of those who opposed their policies, both Rabin and Sadat were conceived of as enemies and not necessarily as innocent. However, the fact that some people conceive of them as enemies is insufficient to justify killing them.

Next, consider whether one can conceive of an act of sabotage as a terrorist act depending upon the intention of those who perform the act or its consequences. For example, when groups opposed to the US presence in Iraq blew up oil pipelines presumably intending to harm innocent civilians in order to put pressure on US forces to withdraw from Iraq, their acts could be described as terrorism. Nevertheless, if one could reasonably demonstrate that they did not intend to harm innocent civilians, the above-mentioned acts might not be conceived of as terrorism but rather as sabotage. Determining that these are nonterrorist acts is insufficient to exculpate the perpetrators for having killed innocent civilians, but it could be a mitigating factor if and when they are brought to justice.

Nonterrorist acts of sabotage, for example, are those committed by disgruntled employees against their current or former employers, or spontaneous acts of violence by individuals or groups against private or public places with no real political objective in mind. Similarly, one might classify acts of kidnapping as terrorism depending on the intention of the perpetrators and the consequences of their acts. If the persons being kidnapped are innocent civilians rather than combatants, and the kidnappers intend to influence a given political outcome, such as the withdrawal of US forces from Afghanistan or the release of Al-Qaeda prisoners from Guantánamo Bay prison, then one might conceive of their act as a terrorist act.

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If kidnappers, however, are members only of a mafia or a gang who are requesting a ransom for their own benefit, then their act is just a domestic criminal act. Both kidnapping acts are despicable acts of violence against innocent civilians, but one is a terrorist act that can be described also as an act of war, which is proscribed by international criminal law, while the other one is just a domestic crime. Still, a kidnapping act could also be an act of piracy such as those that are being committed by Somali pirates who seize ships in the Indian Ocean and the Gulf of Aden demanding hefty ransom for releasing those who have been kidnapped. International law, however, proscribes piracy. Since pirates do not represent anybody other than themselves, they are considered as *hostis humani generis* or enemies of humanity. They are international outlaws. Therefore, they can be apprehended and punished by any nation.

Legal definitions are important for holding individuals accountable when they violate domestic or international law. However, we can offer a connotative or a denotative definition of a term. We can define a term by focusing on its meaning or by focusing on its referent. In the first case, we can provide an account of the term “terrorism” by explaining, for example, that “terrorism is unexcused and, therefore, unjustified political violence against the innocent.” In the second case, we can provide an account of the term “terrorism” by singling out particular acts that people openly or tacitly agree to label as terrorist acts. Presently, there is no non-question-begging universally accepted connotative definition of terrorism in international law. There is, nonetheless, ubiquitous agreement on a denotative aspect of terrorism. This ubiquitous agreement is shown by the multilateral conventions and protocols sponsored by the UN designating certain acts as terrorist acts. The UN has approved fourteen universal legal instruments and four amendments to prevent terrorist acts.3

Unfortunately, some states have not become signatories to some of these conventions, treaties, and protocols, and others, even though they are signatories, have failed to ratify some of these legal instruments. Hence, they are not necessarily bound by them. As members of the UN, however, they are bound by customary international law. That is, the unwritten body of rules that supervenes upon state practice and *opinio juris*. While state practice describes how states actually behave, *opinio juris* describes whether they act according to binding legal obligations.4 Yet to establish whether states act from expediency or from recognizing their legal obligations can, at times, be rather challenging.

Despite some general agreement on the denotative aspect of terrorism, substantial disagreement remains regarding its connotation. Whatever meaning we agree on, the term “terrorism” will likely have an impact on its denotation or referent. Consequently, definitional disputations whether legal or not are quite vexing. They might be too broad or too narrow, or they might beg the

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question by assuming that which needs to be proved. For example, that terrorism is categorically impermissible while other kinds of political violence, such as a just war to repeal and punish an aggressor, might not be so.

Some definitions are more controversial than others. Still, that should not prevent us from classifying certain acts as being morally and legally inexcusable and, therefore, unjustifiable regardless of whether we single them out as terrorism. For example, war crimes and crimes against humanity are heinous acts that have been recognized as such by international humanitarian law (IHL) since the establishment of the Nuremberg Charter in 1945 for prosecuting war criminals after World War II.

Ironically, had the Axis Powers won the war, they presumably could have tried the Allies for war crimes and crimes against humanity too.5 In his interview with Errol Morris for the documentary *The Fog of War*, Robert S. McNamara, who was a captain in the USAAF responsible for analyzing bombing efficiency during the latter part of World War II, candidly admits that if the United States had lost the war, he and his superiors would have been tried for crimes against humanity for their firebombing of Japanese cities that resulted in the estimated deaths of one million civilians.6 Similarly, US General Curtis LeMay, who implemented the policy of firebombing Japanese cities, admits to McNamara that if they had lost the war, they probably would have been prosecuted as war criminals.

McNamara then asks a rather pointed question: “what makes it immoral if you lose and not immoral if you win?”7 For some, morality is not about winning or losing. For example, one could argue that morality is about fulfilling our duties by preventing deliberately harming the innocent and by deliberately helping the needy whenever possible. And yet there is no universal consensus on any particular view of morality.

Despite different conceptions of morality, states, by virtue of their membership in the international community, are bound not only by the UN Charter but also by IHL. The terms “international humanitarian law,” “international law of armed conflict,” and “the laws of war” are sometimes used interchangeably to refer to the *jus in bello* or the rules governing interstate and, to some extent, intrastate armed conflicts.8 These rules prohibit the targeting of civilians, whether innocent or not, when they are caught in the midst of armed conflicts. A civilian, according to IHL, is essentially any person who does not belong to the armed forces, militias, or volunteer corps, and who does not spontaneously take arms to resist an invading force in a nonoccupied territory.9

The UN has been effective in focusing on achieving a consensus on the criminality of certain acts in addition to the ones already identified by international criminal law, such as genocide, war crimes, and crimes against humanity.10 Such a consensus is evidenced by the conventions, treaties, and

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protocols that foster cooperation among states regarding the nature and criminality of certain acts; for example, those proscribed by laws against aircraft hijackings, against targeting internationally protected persons, against the taking of hostages, against terrorist bombing of public places and people, against the financing of terrorism, and against nuclear terrorism, to mention only a few.11

International cooperation can also prove effective in trying those convicted of any of the already mentioned crimes under the aegis of international law. Even though not all those considered terrorists by some will be successfully tried under international law—at least some will. While admitting that selective justice is arbitrary and hence unfair, we can always argue that, in practice, it is preferable to have imperfect justice than no justice at all.

Those who are trying to defend or excuse the use of political violence by certain groups for presumably worthy goals might argue against the idea of classifying these groups or organizations as terrorist. It is lamentable that those who hastily embrace the use of political violence for presumably worthy goals, such as wars of national liberation or against viciously oppressive regimes, tend to ignore that their goals might not justify the means used in trying to achieve them. For example, when they deliberately, indiscriminately, or recklessly target combatants and innocent noncombatants alike, their violence could be as vicious as that used by their oppressors.

By refusing to distinguish between their enemies or adversaries and the innocent, groups who engage in political violence quite often embrace a policy of collective punishment to try to spread terror among the general public. Despite the contestability of terrorism, IHL proscribes the practice of collective punishment. Protocols I and II to the Geneva Conventions state, “Acts or threats of violence the primary purpose of which is to spread terror among the civilian populations are prohibited.”12 While the first Protocol applies only to international armed conflicts, the second applies to intrastate armed conflicts as well. Therefore, the use or threat of violence against the civilian population, whether in interstate or intrastate armed conflicts, is prohibited by international law. Unfortunately, the enforcement of individual responsibility under international criminal law for serious violations of human rights abuses in peacetime as well as in wartime remains erratic.13

**B. DEFINITIONS OF TERRORISM**

#### 1. Terrorism Internationally Defined

Controversies about terrorism in international law have a long ancestry. One could argue that the efforts to try to formally achieve an international

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consensus on a general definition of terrorism goes back to the 1937 Convention for the Prevention and Punishment of Terrorism sponsored by the League of Nations.14 Article 1 (2) of the convention defined acts of terrorism as follows: “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.”15 However, the Convention was never adopted.

Contemporary legal scholars, such as Cassese and Duffy, have argued that the international community has nonetheless reached a tacit consensus on a general definition of international terrorism as described in UN General Assembly resolution A/RES/49/60 on December 9, 1994.16 Paragraph 3 of the Annex builds upon the 1937 definition by defining terrorism as follows: “Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.”17 Based on this definition, Cassese argues that international terrorism may constitute a war crime, a crime against humanity or, if neither of those two, at least a discrete crime if it fulfills the following three conditions: (1) the act must be a crime under domestic legal systems, (2) those who perpetrate it aim at spreading terror to influence government behavior and (3) they are politically motivated.18

Although approved by the UN General Assembly, the above-mentioned definition is nonbinding because it is not a treaty, convention, or protocol signed and ratified by member states. Hence, its *jus cogens* status as a global international norm is controversial.Despite contemporary concerted international efforts to fight terrorism, some states still avoid their international obligations for politically expedient reasons, for example, by focusing on the ambiguity of the term “terrorist” and its congener “freedom fighter.” Neither of these two terms is defined in international law. As a result, these terms are neither legally binding nor legally meaningful. Other states neglect their international obligations because they have neither the will nor the resources to discharge their obligations.

The emphasis on the criminality of certain acts might seem a welcome development in promoting a global consensus on a definition of international terrorism. And yet governments, either democratic or authoritarian, can always criminalize the behavior of some of their alleged political opponents by enacting controversial antiterrorist legislation labeling their behavior as terrorist acts. If there is a real risk that certain behavior might be unjustifiably criminalized as terrorist acts by liberal constitutional democracies that more often than not adhere to the provisions of the rule of law, it is even more likely that such a risk would increase exponentially under authoritarian governments that show virtually no respect for the provisions of the rule of law.

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The newly proposed legislation on terrorism by the People’s Republic of China is a good illustration of the above-mentioned risk under an authoritarian government. China has adopted new antiterrorism legislation to amend current criminal laws. By trying to align their newly proposed definition of terrorism with those adopted by other countries, the Chinese government is trying to inch closer to an international understanding of terrorism. That seems to be a positive development by Chinese officials in recognizing the value of international law for their domestic law. The new law defines “terrorist acts as those which are intended to induce public fear or to coerce state organs or international organizations by means of violence, sabotage, threats or other tactics.” 19

The new Chinese law defining terrorism uses open-ended expressions, such as acts “intended to induce public fear” or “threat or other tactics.” By using these expressions, the mere reporting of a natural catastrophe that induces public fear might be conceived of as terrorism under the new Chinese legislation. Similarly, a peaceful protest by those who object, for example, to corrupt government practices or the mere threat of strike by workers demanding better working conditions might be also classified as terrorism.

In this way, the Chinese government can use their newly enacted legislation to stifle peaceful political dissent at home. For example, Chinese government officials have consistently and publicly accused and continue to accuse the Dalai Lama, the Tibetan spiritual leader in exile and a wellknown pacifist advocate of Tibet’s autonomy, to be responsible for promoting self-immolations or what Chinese officials call “terrorism in disguise.”20

With their new legislation, the Chinese authorities have now the tools to legally charge the Dalai Lama with instigating terrorism. Ironically, the new legislation might also be used against workers who publicly demand fair wages and better working conditions. So what seems like a welcome development in Chinese’s domestic law has actually created a legal precedent for silencing their political opponents and legitimate workers’ demands.

The Chinese experience is not the exception but rather the norm of authoritarian governments for dealing with the threat of terrorism at home. On January 31, 2014, the Saudi authorities promulgated the Penal Law for Crimes of Terrorism and Its Financing whereby they criminalize not only violent acts but also speech in a rather broad sense. For example, the following nonviolent acts, among many others, are criminalized: any act intended to “insult the reputation of the state,” “harm public order,” or “shake the security of society.” According to Human Rights Watch, the Saudi law fails to “clearly define” any of the already mentioned crimes.21

What lessons can we learn from the newly proposed or enacted legislation against terrorism? I think that citizens in general, but especially those of us living in liberal constitutional democracies, should be vigilant about

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government efforts to adopt broad definitions of terrorism that might end up undermining our fundamental civil and political rights. In addition, we should voice our concerns about the potential or actual abuses that might be perpetrated by any government, whether democratic or authoritarian, against their citizens whose only crime might be to peacefully and publicly express their disagreement with controversial government policies.

#### 2. Terrorism Scholarly Defined

I propose next to explore typical definitions of terrorism offered by some leading scholars and social policy experts, and of others found in documents sponsored by domestic institutions and regional organizations. In doing so, I wish to demonstrate how daunting it is to achieve an international consensus on the meaning of such a highly contestable term.

Fixing the meaning of the term “terrorism” is a challenging enterprise. It is rather difficult to come up with a non-question-begging definition that ordinary reasonable people could agree on. A good definition must fulfill the following conditions: it should not be so broad that it would include acts that are not ordinarily classified as terrorism, such as acts of sabotage, kidnapping, and assassinations motivated by self-regarding reasons alone; it should not be so narrow that it would exclude acts that are ordinarily classified as terrorism, such as acts of deliberately targeting or recklessly harming innocent civilians for political purposes; and it must conform with people’s ordinary use of the term “terrorism.”

For example, consider Bruce Hoffman’s definition of terrorism:

Terrorism1:df “the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change.”22

An immediate difficulty with this definition is that the use of violence per se might or might not be morally justified depending on who is being targeted and the political change that one is trying to bring about. Under Hoffman’s definition, individuals or groups who use discriminate violence against military targets of an oppressive regime to establish or reestablish a constitutionally democratic regime are considered terrorists and, therefore, their behavior is morally and legally disqualified. They are considered criminals rather than freedom fighters.

Those who subscribe to this definition must on pain of contradiction object to all partisan or insurgent groups, such as those who fought the Nazi occupation in Europe, those who participated in Third World liberation movements irrespective of their goals and tactics, and even those who participated in the North and South American wars of independence during the eighteenth and

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nineteenth centuries. Under Hoffman’s definition, even George Washington could have been conceived of as a terrorist by the British. Perhaps even President Lincoln during the American Civil War would fit Hoffman’s definition. He allowed the Union general William Tecumseh Sherman to carry out an indiscriminate campaign of terror against Confederacy troops and civilians in the South during the American Civil War, inflicting collective punishment on a whole population, neglecting, at times, the distinction between culpable and inculpable individuals.

One might think that an advantage of Hoffman’s definition is that it appears to allow for the possibility that states, as well as nonstate agents, can be held responsible for terrorist acts. According to him, however, “terrorism is . . . perpetrated by a subnational group or non-state entity.”23 This assumption is unwarranted. Hoffman distinguishes between the term “terror” conceived of as state-sanctioned violence against a government’s alleged political opponents and the term “terrorism” conceived of as violence perpetrated by nonstate agents against their alleged political opponents.24 While this distinction might be useful at times to avoid the ambiguity of the term “terrorism,” it might be viewed erroneously other times as a virtue rather than as a vice to try to justify the infliction of terror upon a government’s alleged political opponents.25

It is evident, however, that states have used indiscriminate political violence that could be conceived of as terrorism because they, like nonstate agents, have targeted innocent civilians and peaceful opponents domestically and internationally. In addition, states oftentimes provide financial and military support to foreign governments knowing or at least suspecting that these governments have engaged in terrorist violence against their citizens. Despite public statements to the contrary, such a policy can be accurately described as a policy of abetting terrorism.26

One can describe the following events as typical examples of statesponsored terrorism or simply state terrorism: the use of rampant political violence by the Jacobins against their alleged opponents during the French Revolution, especially during the Reign of Terror from 1793 to 1794; the political violence unleashed by the Bolsheviks during and after the Russian Revolution, especially during the Stalinist period of the 1930s; the one perpetrated by National Socialism in Nazi Germany and Fascist regimes elsewhere in Europe during the 1930s and 1940s; the one orchestrated by Mao against all those who were opposed to his policies of forced collectivization during the Chinese Cultural Revolution in the late 1960s; the campaign of terror and annihilation against the civilian population carried out by the Khmer Rouge in Cambodia during the 1970s; the death squads sponsored by some Latin American governments against leftist insurgents and peaceful opponents during the 1970s and 1980s; the indiscriminate use of violence by

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the Burmese military regime, nowadays Myanmar, against peaceful demonstrators in 1988; the Tiananmen Square massacre that resulted from the use of deliberate indiscriminate violence by the Chinese Army against peaceful demonstrators in 1989; and the genocide of the Tutsi population sponsored by Hutu extremists governing Rwanda in 1994. The list could go on ad nauseam. As a result of state-sponsored terrorism, millions of innocent civilians and peaceful opponents have lost their lives. Many have been tortured. Others have disappeared with no consolation for their loved ones. And many others have been incarcerated for prolonged periods of time under harsh conditions by despotic governments or ill-advised government officials.

By trying to be morally and legally neutral, Hoffman’s definition winds up being too broad and too narrow. Any deliberate violent act with the intent of causing fear in order to bring about political change would be a terrorist act according to his definition. Consider, for example, a group of individuals who object to a government’s domestic or foreign policy and decide to burn the flag and effigies of government officials as they march along while threatening to use physical violence in the future if their demands are unmet. Under Hoffman’s definition, their act could be classified as terrorism. Such an act, however, is better described as an act of political protest, which is legally allowed by liberal constitutional democracies worldwide. Even though his definition per se is silent regarding the use of violence by state or nonstate agents, his decision to restrict its applicability only to nonstate agents makes it too narrow.

Consider next Virginia Held’s definition of terrorism, which seems to compensate for some of Hoffman’s deficiencies:

Terrorism2:df “political violence that usually involves sudden attacks to spread fear to a wider group than those attacked, often doing so by targeting civilians. It most resembles small wars.”27

Held’s definition of terrorism improves over Hoffman’s because hers underscores the tragic component of targeting civilians. In addition, she allows for state and nonstate agents to be held responsible for terrorist practices. Held justifies the use of political violence depending on the goal that one is trying to achieve and how one goes about achieving it. Thus, according to her, “terrorism” can have a positive or negative connotation, since it resembles political violence as used in wars, especially intrastate wars.

One of the fundamental problems with Held’s definition is that there are laws which regulate the practice of interstate wars, namely, the laws of war or law of armed conflict (LOAC).28 The legal regulation of small or intrastate wars is highly contestable. The common practice in international law is to understand the concept of war as “armed conflict between political units.”29

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The expression “political unit” is frequently understood as referring to states, but, as I have already argued, that need not be so. Thus, the traditional conception of war in international law, which refers to interstate armed conflicts, automatically excludes Held’s conception of terrorism as resembling small wars. Belligerents in intrastate armed conflicts, such as civil wars, are mainly protected by Article 3 common to the 1949 Geneva Conventions and by the 1977 Geneva Protocol II related to noninternational armed conflicts.30

Nation-states, however, have been reluctant to extend the full protection of the LOAC or of international humanitarian law (IHL) to intrastate armed conflicts, such as civil wars.31 Still, some progress has been made in that direction, especially with the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda authorized by chapter VII of the UN Security Council, and with the establishment of the International Criminal Court.32

Held and like-minded scholars could always contend that their proposed definition is an invitation for a paradigm shift in our understanding of terrorism. That is, they are offering to switch from a statist and legalist model where the state has a monopoly on the legitimate use of political violence to a nuanced one where nonstate agents might enjoy some kind of legitimacy in their use of political violence. In doing so, Held and those who think like her are exploring the possibility of morally justifying political violence as in the case of urban or rural guerrilla groups in intrastate armed conflicts.

The term “terrorism,” however, appears to carry greater negative connotation than the term “war.” It is a trademark of terrorism that frequently those who practice it make no effort to discriminate between targeting culpable individuals and combatants and targeting innocent noncombatants. Therefore, they sometimes target those who ought not to be so targeted. One can level similar charges against the behavior of states that engage in wars. There is ample historical and empirical evidence to substantiate the claim that, in war, the majority of victims are innocent civilians rather than combatants. The harm caused to innocent civilians, however, is euphemistically described as “collateral damage.” Collateral damages are nonintended consequences during an armed conflict. Whether one might justifiably describe the harm inflicted on innocent civilians during an armed conflict as nonintended consequences oftentimes remains contestable, depending on which side of the conflict one is on.

Still, one can plausibly argue that a substantive difference exists between terrorism and war, including so-called small wars. States have progressively tried to contain wars by means of international law, including the LOAC or IHL, and international human rights law. Unlike states, contemporary terrorist groups, such as those who promote suicide bombings, have no qualms about using indiscriminate violence. In their eyes, their goals justify using political violence against innocent and noninnocent alike.

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Some of the terrorist groups already mentioned adopt a rather fauxManichean view of the world—either you are a supporter of their view and hence a friend, or you are critical of their view and hence an enemy. In religiously inspired terrorism, such as the one that Al-Qaeda advocates, no room exists for the innocent in what appears to be an eschatological conflict between their belligerent view of Islam and the differing views of the rest of the world. According to Held’s definition of terrorism, since most, if not all, bombing campaigns in a given war aim not only at destroying strategic objectives but also at spreading fear among the general populations, one might describe such bombing campaigns as terrorism. So the scope of Held’s definition is too broad.

We can always try to shift our focus from open-ended definitions or characterizations of terrorism to internationally legally entrenched definitions of terrorism. Consider, for example, Brian M. Jenkins’s tidy definition of terrorism based on ICL:

Terrorism3:df “would comprise all acts committed in peacetime that, if committed during war, would constitute war crimes.”33

This is a pithy definition of terrorism. Nevertheless, since this definition is based on international law, it suffers from similar shortcomings associated with the conception and implementation of international law. For example, strong nations design international law oftentimes neglecting the legitimate aspirations and needs of weak nations.

Given the predominance of state sovereignty in international affairs, powerful states comply with the principles and rules of international law when it is expedient for them to do so. By contrast, weak states are forced to comply with the dictates of international law because powerful states make sure that they do so. Otherwise, respect for international law would be precarious, leading to possible anarchy in the international community. An anarchical state of affairs would benefit no one, especially weak states. So despite the frequent double standard demonstrated by the behavior of powerful states, it is nonetheless in the best interest of weak states to abide by the principles and rules of international law.

Even if the international community were to achieve consensus regarding the above-mentioned definition of terrorism, one might still consider it too broad because almost any act of sabotage or political assassination would seem to fall under it. In addition, the definition appears too narrow because it focuses on the criminal aspect of the acts in question and neglects the political objectives of terrorism. The rationale behind Jenkins’s definition is as follows: if ICL classifies the acts as crimes during wartime, namely, during a stressful situation under which one might try to justify or excuse some acts as a matter of necessity, ICL should classify the same acts as

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crimes during peacetime when presumably no emergencies exist to justify or excuse them.

While terrorists oftentimes intend to inflict terror on their victims, it is not necessarily only terror for the sake of terror. Terrorism is violence aimed primarily, although not exclusively, at achieving a given political outcome. Even though the probability of terrorists’ achieving their political goals by solely using violence, whether discriminate or not, is frequently rather slim, their infliction of violence and the threat of it perpetuate a state of war to prevent their enemies from enjoying a state of peace.

Even the term “peace” is elusive because it typically refers to the absence of formal hostilities between states. From the point of view of terrorist groups, however, once they have publicly declared war or simply engaged in political violence against an identified enemy, for example, a given government, group, or even an institution, a state of peace no longer exists between them and their alleged enemies.

The concepts of crimes against peace, war crimes, and crimes against humanity are well entrenched in customary international law. So the norms against some of these crimes have acquired the status of peremptory norms or *jus cogens*,such as those against aggression, genocide, slavery, and torture.34 These norms aim at protecting fundamental values recognized by the international community. Moreover, another fundamental norm can only modify them. Therefore, they create universal obligations or obligations *erga omnes* that are owed by each state to the international community.35

However, the above-mentioned norms are highly controversial because no undisputable mechanism exists for ranking them. Consequently, if there is a clash between two fundamental norms, and there is no universal consensus as to which one should take precedence over the other, then there seems to be no certain and uncontestable way to settle a dispute. The likelihood is that powerful states will ultimately decide such a dispute. If there is a serious ideological clash among powerful states, it is likely to result in a stalemate or détente as was the case during the so-called Cold War between the former Soviet Union and the West.

Under conditions of uncertainty regarding the letter of international law, powerful states find it easier to promote and, hence, impose their selfregarding views of international law on weak states. Such an imposition has been the norm rather than the exception. A good illustration of the already mentioned biased approach is when those who are tried for war crimes are the ones who have lost a war even though the victors might have committed similar crimes. Hence, those who are vanquished are prosecuted and convicted by the rules of so-called “victor’s justice.” As McNamara has pointedly implied, those who are classified as war criminals would depend, in part, on who the vanquished ones are in a given armed conflict.

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#### 3. Terrorism Institutionally Defined

Consider next the definition of terrorism by a domestic institution, such as the US Department of State, in order to establish national and international policies to deal effectively with the looming threat of terrorism. The US Department of State defines terrorism as follows:

Terrorism4:df “means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”36

There are several problems with this definition. First, like Hoffman’s definition, it is too narrow because it counts as terrorism only acts perpetrated by nonstate agents. As I have already argued, states have engaged and continue to engage in what might be aptly described as state terrorism. Thus, to always privilege the state over nonstate agents seems one-sided because both can engage in morally questionable practices that one can fittingly describe as terrorism.

Perhaps it is more feasible to hold states rather than nonstate agents accountable for their behavior, especially if these are liberal constitutional democracies where the rule of law prevails. But powerful states can oftentimes try to hide behind their notion of sovereignty by choosing to skirt or just ignore the universal jurisdiction of certain aspects of international law.37

Second, the idea of noncombatant immunity is controversial because it begs the question by assuming what needs to be proved, namely, that civilians and off-duty unarmed military personnel pose no threat to anyone. In addition, they are assumed to be innocent in a morally and legally relevant sense. That is, they are assumed to be guiltless or harmless. This assumption, however, is unwarranted because there are plenty of civilians who could be contributing directly to a war of aggression against another state or some of its people. For example, government officials and politicians who, despite being civilians, are instrumental in making decisions in favor of an aggressive war. Moreover, civilians working in munitions factories and scientists involved in the planning and developing of weaponry to continue with the war effort present a real threat to the enemy. Even if one were to conceive of them as innocent in a moral and legal sense because they might have been coerced to work in these projects, they still would be presenting a real threat to the enemy. Therefore, their civilian immunity is compromised.

As Michael Walzer contends, “The relevant distinction is not between those who work for the war effort and those who do not, but between those who make what soldiers need to fight and those who make what they need to live, like all the rest of us.”38 Private contractors who deliver ammunitions and armaments to one of the parties involved in a conflict, or who engage in the detention and cross-examination of the enemy, are helping in the war

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effort. More importantly, they are acting as soldiers usually act. Sometimes they might be acting as mercenaries. Civilians who take sides in a given armed conflict by being informants and collaborationists with government organizations might engage in serious human rights abuses of peaceful opponents or innocent civilians. If so, they could lose their civilian immunity too. Moreover, military personnel, whether voluntary or conscripted, could always, in principle, be a threat to those who are opposed to the state and policies that they are bound to defend. Consequently, they are fair game in armed conflicts.

Rather than focusing on a domestic definition of terrorism, that might or might not be accepted by other members of the international community, one could focus instead on an effort by a regional organization, such as the Organization of the Islamic Conference (OIC) (presently the Organization of Islamic Cooperation), to foster consensus among its members on a commonly accepted definition of terrorism. It is somewhat paradoxical that some regional organizations, such as the OIC, support the right of selfdetermination of oppressed people, but they also repudiate the practice of terrorism.39 The OIC defines terrorism as follows:

Terrorism5:df “means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.”40

In the preamble of the same document the OIC states:

Confirming the legitimacy of the right of peoples to struggle against foreign occupation and colonialist and racist regimes *by all means* [my italics], including armed struggle to liberate their territories and attain their rights to selfdetermination and independence in compliance with the purposes and principles of the Charter and resolutions of the United Nations.41

A clear tension exists between their commitment to fighting international terrorism and to supporting the right of self-determination of oppressed people “to struggle . . . by all means” to achieve their independence. If by “by all means” they mean absolutely “whatever it takes” to accomplish such a goal, including the targeting of noncombatants, then their position is incongruous. The law of armed conflict, UN treaties and protocols, and international human rights law forbid the targeting of noncombatants. By contrast, if by

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“by all means” they mean all actions “in compliance with the purpose of the Charter and resolutions of the United Nations,” then their position is coherent, provided that they impartially condemn all acts of terrorism, especially those identified as terrorist acts by the UN treaties and protocols.

Moreover, the OIC definition of terrorism is too broad because almost any act of dissent by a disaffected person or group could fall under the rubric of terrorism, including those who exercise their right of freedom of speech to protest against the leaders of a given state or their questionable policies. Apparently, the OIC has agreed on casting a wide net to describe terrorism as aiming not only at developing effective policies to deal with domestic and international acts of political violence but also at stifling peaceful political dissent at home. In addition to the draconian nature of shariathat sanctions cruel and inhumane punishments, leaders of Islamic states who embrace the supremacy of sharia have frequently manipulated and still manipulate the application of such law to perpetuate themselves in power. The plasticity of sharia, without the checks and balances of the rule of law, promotes authoritarian and, oftentimes, tyrannical regimes.42

The OIC definition, however, is also too narrow because by disregarding the “motives or intentions” of individuals or groups who engage in violent acts, member states neglect to address the political component of terrorism. We must remember that terrorism aims at promoting political goals domestically or internationally. Whether those goals are morally and politically desirable might be an open question. But what does not seem open to question is the categorical objection against targeting innocent noncombatants. Allowing for the targeting of innocent noncombatants would amount to sanctioning a policy of violating the physical, psychological, and moral integrity of those who are innocent beyond reasonable doubt. That is, they are impeccably innocent. Adopting such a policy would be equivalent to sanctioning murder.

#### D. SUMMARY

In this section, I explored the contestability and nuances of the term “terrorism.” I underscored that, despite discrepancies among different definitions of terrorism, they all seem to share a significant trademark—the use of violence or force for political purposes. I distinguished between terrorism, sabotage, and kidnapping to illustrate the unique features of terrorist acts. Next, I argued that although member states of the UN have been unable to agree on a universal legally binding definition of international terrorism, their disagreements have not prevented them for achieving consensus on several legal instruments or “sectoral” conventions against specifically designated terrorist acts. I moved next to explore previous international legal efforts at

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trying to define terrorism within the boundaries of international law. I subsequently explored various scholars’ and social experts’ definitions of terrorism. I argued that either their definitions are too narrow by focusing primarily on violence perpetrated by nonstate agents, or they are too broad by including destruction of property and fear. I also argued that a definition based on international criminal law suffers from the weakness of international law. Lastly, I argued that institutionally based definitions of terrorism, such as some typically offered by national government organizations or by international organizations, have similar shortcomings as the ones offered by different scholars.