

Comment

Terrorism: I Know It When I See It

Aaron J. Noteboom [\[FN1\]](#)

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[First Deputy Fire Commissioner of New York City] Feehan and his men had just reached the World Trade Center Plaza when United Flight 175 crashed into the second tower Objects began raining down An airplane wheel, minus its tire, landed 10 yards away from Feehan and his group as they ducked and dodged across the plaza A man emerging from the lobby of 2 WTC was cut in half by a falling sheet of glass. [Deputy Commissioner Fitzpatrick] tried not to concentrate on the body parts strewn on the ground.

He couldn't ignore the jumpers. They were flying out of the black gash in the side of the North Tower, from floors 94 through 99, where the plane had struck, as well as from the floors above. Danny Suhr, a fireman from Engine 216, became the first FDNY casualty as he rushed toward the North Tower and was flattened by a female jumper. Bodies were landing with audible rushes of air, muffled thuds and thick red splashes that looked like paint. [\[FN1\]](#)

It is difficult to imagine, let alone measure, the terror felt by the innocent victims and citizens caught up in the terrorist attacks of September 11, 2001. However, it is easy to measure the economic impact of the terrorist attacks; in the week following the attacks, roughly one-third of the world's 12,000 commercial airplanes sat idle, costing the airline industry ten billion dollars. [\[FN2\]](#) One study forecasts that the United States will lose 1.6 million *554 jobs as a result of the attacks. [\[FN3\]](#) While the attacks were aimed at the United States, the effects were felt worldwide--173 of those killed were from thirty-seven foreign countries. [\[FN4\]](#)

In response to this threat to international peace and security, the United Nations (U.N.) denounced the terrorist attacks (U.N. Resolution 1368) and called upon all member states to take action to stamp out terrorism (U.N. Resolution 1373), but the U.N. failed to provide a definition of terrorism. Currently, the United Nation's Ad Hoc Committee on Terrorism is finalizing a comprehensive international treaty on terrorism. [\[FN5\]](#) However, the issue of defining terrorism remains a sticking point for the committee. [\[FN6\]](#)

Consider the current problems surrounding some other definitions in this area. The September 11 attacks were committed by “terrorists” but are an “act of war” [\[FN7\]](#) rather than a terrorist act. Yet, the people responsible will most likely be charged with “crimes against humanity” [\[FN8\]](#) not “war crimes.” [\[FN9\]](#) The United *555 States has gone to war against terrorism although the United States Congress has never declared war. The people captured in that war are not “prisoners of war” but “detainees,” [\[FN10\]](#) even though they are being held in a military prison waiting to be tried, possibly by military tribunals. Further, although they are being called detainees, there is strong political pressure to afford them the rights of prisoners of war under the Geneva Convention. [\[FN11\]](#) Finally, the United States has declared that its war on terrorism draws no distinction between those who commit terrorist acts and those who harbor terrorists. [\[FN12\]](#) In light of that policy, the consequences of defining terrorism could be deadly for countries harboring groups that may suddenly fall under the definition of terrorism.

This Comment explores the strengths and weaknesses of the legal definitions of terrorism used by the United States and the international community and applies the lessons learned from those definitions to the proposed U.N. definition. Part I discusses the phenomenon of terrorism and the various shapes and forms that terrorism takes. Part II provides a brief overview of the United Nations and the nature of international law to create a context for analyzing current definitions of terrorism and the proposed U.N. definition. Part III looks at the international debate over defining terrorism. Part IV examines the strengths and weaknesses of the current definitions of terrorism offered by the *556 United States and the international community. And finally, Part V provides a critical analysis of the proposed United Nations’ definition of terrorism and demonstrates that while such a definition is a good start, it falls short of what is needed to truly eliminate terrorism.

I

The Phenomenon of Terrorism

Terrorism attracted international attention and gained prominence in the 1960s with the hijacking of several commercial airliners and again in 1972 at the Munich Olympic Games with the kidnapping and assassination of nine Israeli athletes by Black September terrorists. [\[FN13\]](#) Since then, terrorist acts and terrorist groups have grown in number and have become ever more sophisticated and deadly. Currently, the United States State Department recognizes twenty-eight active Foreign Terrorist Organizations (FTOs) operating across the globe from Peru to the Middle East, each of which numbers anywhere from eight to almost 50,000 members. [\[FN14\]](#) Since 1968 over 14,000 terrorist acts *557 have been committed worldwide. [\[FN15\]](#)

Terrorist groups are well trained. During the 1960s and 1970s, the Soviet KGB ran more than a dozen terrorist training camps around the world. [\[FN16\]](#) In the 1970s, the notorious School of the Americas (run by the United States military) offered formal military training to Latin American leaders and groups engaged in legitimate struggles for self-determination and informal instruction in torture after class. [\[FN17\]](#) Many of its students went on to form brutal dictatorships and commit human rights atrocities. [\[FN18\]](#) In the *558 1990s over a dozen countries offered terrorist training camps. [\[FN19\]](#) In such camps terrorists learned guerilla warfare, the use of explosives, assassination techniques, ambushes, how to raise money, recruiting techniques, communications skills, and weaponry, including the use of shoulder- fired rockets and surface-to-air missiles. [\[FN20\]](#)

Terrorist groups are well-funded. Some terrorist groups receive financial backing from governments while others rely on financial contributions from the public, usually given to charities established as fronts for the organization. [FN21] For example, the Irish Republican Army openly collected hundreds of thousands of dollars in funds each year from Irish-Americans through Irish Northern Aid (NORAID) until pressure by the British government forced the United States to crack down on the organization. [FN22] Other terrorist groups draw funding from legitimate financial investments and illegitimate traffic in narcotics. The financial worth of the business investments of the Palestinian Liberation Organization (PLO) has been estimated at over five billion dollars. [FN23]

There are three basic categories of terrorism, although there are innumerable forms of terrorism (biological, economic, hostage taking, bombings, assassination, and so forth). Those categories are domestic terrorism, international terrorism, and state terrorism.

Domestic terrorism, as defined by the Federal Bureau of Investigation (FBI), [FN24] is:

[T]he unlawful use, or threatened use, of force or violence by a group or individual based and operating entirely within the [state] or its territories without foreign direction committed *559 against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. [FN25]

An example is the release of sarin nerve gas into the Tokyo subway system by members of Aum Shinrikyo. [FN26] However, even domestic terrorism can have international effects given domestic terrorism is often targeted at foreign businesses, diplomats, or tourists. [FN27] The most important aspect of the definition of domestic terrorism is that it is wholly domestic in nature. In other words, there is no external influence from foreign states. As a general rule, the United Nations has no authority to intervene in matters that are purely domestic in nature. [FN28]

International terrorism, as defined by the FBI,

involves violent acts or acts dangerous to human life that are a violation of . . . criminal laws . . . [and that] appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping. International terrorist acts occur outside the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which the perpetrators operate or seek asylum. [FN29]

The September 11 attacks by al Qaeda members against the United States is of course the most recent example. The line between international terrorism and state-sponsored terrorism is often blurred. Although states may not directly support terrorism, their complicity or failure to take action against such groups indirectly supports international terrorism. For this reason, it is appropriate that any proposed U.N. definition recognize the role of state sponsored terrorism in aiding international terrorist groups.

State terrorism is terrorism committed by a political body. State terrorism can generally be separated into two categories, those acts committed against its own citizens (internal) and those *560 acts committed against foreign states/citizens (external). [FN30] Internal state terrorism includes arrest,

detention for indefinite periods of time, summary deportation, torture, rape, and murder. Such terrorism is particularly brutal and has resulted in the death of millions of innocent people. During the twelve years of Stalin's leadership, between forty to fifty million Soviet citizens were imprisoned, with fifteen to twenty million of those dying as a result of starvation, disease, and execution. [\[FN31\]](#) Unlike international terrorism, states prefer anonymity. Therefore, state terrorism is generally practiced in secret. Even when it becomes public, other states are hesitant to interfere in what are considered the domestic affairs of the offending state, believing that such interference could open the door to similar intrusions in their own countries. [\[FN32\]](#)

External state terrorism involves the state supporting terrorist groups' attacks on foreign states/citizens usually through funding, training, or offering its territory as a safe haven. The level of state involvement may vary from directing the group's attacks to providing the group safe haven. The Taliban's refusal to hand over Osama bin Laden despite a request by the United Nations (U.N. Resolution 1267) is an example of state-sponsored terrorism. This Comment will focus primarily on the definition of terrorism as it relates to international terrorism and state terrorism because the United Nations' authority does not extend to matters that are essentially domestic in nature (domestic terrorism).

II

Overview of the United Nations and International Law

A. The United Nations

Formed just after World War II, the United Nations has become the primary international body for dealing with international issues of aggression. The purpose of the United Nations, as defined by its charter, is to protect international peace and security and to promote human rights. [\[FN33\]](#) The United Nations is composed of seven bodies [\[FN34\]](#) with the three most important being *561 the Security Council, the General Assembly, and the International Court of Justice. The Security Council is made up of five permanent members (China, Russia, France, Great Britain, and the United States) and ten members elected from the General Assembly to serve on a two-year basis. [\[FN35\]](#) Decisions by the Council require nine affirmative votes. The General Assembly is composed of 189 members. [\[FN36\]](#) Membership is open to all "peace loving" states that accept the obligations of the charter. [\[FN37\]](#)

The Security Council has the primary responsibility for determining threats to international peace and security [\[FN38\]](#) and may authorize the use of sanctions or military force to restore or eliminate any threat to international peace and security. [\[FN39\]](#) All United Nations members must carry out the decisions of the Security Council. [\[FN40\]](#) Any member who does not may face suspension of its rights and privileges as a United Nations member. [\[FN41\]](#) Importantly, the United Nations may not involve itself in matters that are essentially within the domestic jurisdiction of a state. [\[FN42\]](#) States always have the right to defend themselves. States may take action to defend themselves until the Security Council has taken measures necessary to restore international peace and security. [\[FN43\]](#) Thus, any U.N. definition of terrorism, as it relates to international and state-sponsored terrorism, should be defined as a threat to international peace and security so as not to escape the reach of the United Nations.

*562 B. International Law

The Statute of the International Court of Justice (ICJ) recognizes the following sources of international law: conventions (treaties, declarations, covenants), international custom as evidence of a general practice of law, general principles of law as recognized by civilized nations, and the judicial teachings and decisions of legal scholars. [\[FN44\]](#) International law is unique because whether a state follows the law is based on the state's willingness to follow and enforce the law. Indeed, even the ICJ is restricted in its jurisdiction, in that the parties must consent to have their matter settled before the court. [\[FN45\]](#) In that regard, the international community is limited in its ability to force a rogue nation to follow international law. However, the benefits that flow from following international law are so great that the vast majority of states comply with the law.

Treaties and conventions are the primary source of international law. Only states who have signed and whose legislatures have ratified such treaties are bound to follow them. In other words, a treaty cannot be enforced against a state that has not consented to be a member of the treaty. According to the Vienna Convention on Treaties, a state that has signed a treaty but not yet ratified it is bound not to frustrate the purpose of the treaty until that state has made clear its intention not to be bound by the treaty. [\[FN46\]](#) This concept of *pacta sunt servanda* provides that nations are bound to abide by the promises they make and forms the basis for treaty enforcement. Generally each treaty contains sanctions for failure to comply. Sanctions may range from economic sanctions to exclusion from the benefits of the convention. This Comment will look at how terrorism has been defined by international conventions including the proposed United Nations convention on terrorism and by the United States.

*563 III

The International Debate Over Defining Terrorism

A. Early Definitions

The debate over a legal definition of terrorism is not new. The first attempt by the international community to draft a definition was made by the League of Nations in 1937, but the convention never materialized and, as a result, the proposed definition was not adopted. [\[FN47\]](#) The League suggested the following definition: "All 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 or the general public." [\[FN48\]](#)

In 1999, the United Nations came close to offering a definition when it included the following language in a declaration entitled *Measures to Eliminate Terrorism*:

1. [The United Nations] [s]trongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed;
2. [The United Nations] [r]eiterates that 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 circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them. [\[FN49\]](#)

As a starting point, this definition has merit, but it is problematic in several ways. First, it fails to define what the “acts, methods and practices” of terrorism are, thereby allowing states to recognize or not recognize acts as terrorism when it suits their political interests. A definition that can be so easily manipulated so as not to apply at all, is in essence no definition.

Second, the definition contemplates a threefold requirement for an act to be considered terrorism: (1) the act must already be established as criminal, (2) the perpetrator must have intended the act to provoke a state of terror, and (3) the act must have been done for political purposes. Often the law lags behind the *564 criminal. Developing states, from which terrorist groups operate, may not have established such acts, methods, and practices as criminal. By requiring that the acts, methods, and practices be criminalized, the definition has essentially established another layer of criminality. It is not necessary that the means used to commit terrorism be criminal, if terrorism itself is a crime. Such a requirement would be the equivalent of saying that one could not commit murder, unless the means by which one killed were already a crime. The purpose of defining terrorism should be to give a clear, legal understanding of what constitutes terrorism so that the act itself can then be criminalized. Thus terrorism itself must be thought of as the crime. The method one chooses to commit the crime does not change the end result that a crime has been committed.

Furthermore, a large group of terrorist acts might fall outside of the second prong of this definition. A group may not intend to cause terror, but rather only intend to coerce the policy or actions of other states. Terror may only be an incidental “benefit” of the act.

B. The Current Debate

The United Nations first took up the issue of combating terrorism in 1972 when the General Assembly created the Ad Hoc Committee on International Terrorism that has since passed numerous resolutions and several declarations to eliminate terrorism. [FN50] Until recently, however, efforts to combat terrorism have lagged, primarily as a result of the inability of member states to come to a consensus as to what constitutes a terrorist act. The classic debate over the years is captured in the popular saying “One man’s terrorist is another man’s freedom fighter.” Recent debate among the General Assembly over U.N. Resolution 1373 has illustrated that, for many states, the adage still holds true. [FN51]

*565 Countries such as Syria, Libya, and Iraq have stressed the need for any definition to recognize the distinction between terrorist acts and the legitimate struggle of an occupied people for liberation. Speaking on behalf of the Arab group, Libya told the General Assembly that:

We cannot condemn terrorism and fight it when it hits one country and turn a blind eye when it hits other countries. It is unacceptable to label as terrorism the struggle of peoples to protect themselves or to attain their independence, while at the same time ignoring real terrorism and its many faces--such as occupation [FN52]

On the other hand, Israel has stated that “terrorism was defined by what one does, not by what one does it for.” [FN53]

Still, Libya’s argument is not without merit. Terrorism is a global problem, and any definition must not favor western states, but must be applicable to all states. Undoubtedly, there are instances when

people must rise up against an oppressive government. The right to self-determination is a right universally recognized in the Universal Declaration of Human Rights [\[FN54\]](#) and the United Nations Charter. [\[FN55\]](#)

Libya has also identified what it considers to be other forms of terrorism to include: aggression, establishment of military bases on the territories of others, massacres, acquisition of weapons of mass destruction, training with extreme elements and facilitating their arrival in other countries to carry out extreme acts and unilateral *566 coercive measures against other countries. [\[FN56\]](#) Iraq has accused the United States of practicing state terrorism through economic sanctions and of practicing environmental terrorism by using uranium depleted ammunition during the Gulf War. [\[FN57\]](#)

Perhaps what constitutes a terrorist act depends on the perspective one takes. Consider the following statements by Muamar Al-Qadhafi: “Those who use missiles or fighter planes and rockets are legitimate. Those who use explosives or small bombs are considered terrorists.” [\[FN58\]](#) Some of Libya’s and Iraq’s suggested definitions might be at the edge of what westerners have traditionally thought of as terrorism. Yet, they are important to consider because they demonstrate not only the range of definitions but also the politics and consequences of defining terrorism. Most importantly, their very existence challenges the notion that the West has a monopoly on what acts should be thought of as terrorism.

C. U.N. Resolution 1373

Renewing and fueling the current debate over terrorism is U.N. Security Council Resolution 1373. [\[FN59\]](#) Passed in response to the September 11th terrorist attacks, the resolution is the most aggressive and detailed measure taken towards eliminating terrorism to date. The Security Council reaffirmed from previous resolutions that any act of international terrorism “constitute [s] a threat to international peace and security” [\[FN60\]](#) and declared that the “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations.” [\[FN61\]](#) However, nowhere in the Resolution did the Security Council provide a legal definition for what constitutes an “act, method, or practice of terrorism.”

The Resolution provides a list of actions that member states must take in order to eliminate international terrorism. It calls upon member states to prevent and suppress the financing of terrorism by freezing funds, criminalizing the collection of funds for *567 terrorist acts and prohibiting their nationals from providing any form of financial support to terrorist groups. [\[FN62\]](#) States are further directed to prevent the commission of terrorist acts by providing early warning to other states, denying safe haven, and preventing the use of their territories to those who finance, plan, support, or commit terrorist acts. [\[FN63\]](#) States must also ensure that terrorists and terrorist groups are brought to justice either by trying them under domestic law, if the state has established such acts to be serious criminal offenses, or extraditing them. [\[FN64\]](#) In addition, states must take measures to ensure that refugee status is not granted to those who organize or facilitate terrorist acts and cannot refuse to extradite alleged terrorists based on claims of political motivation. [\[FN65\]](#) Generally, for political offenses, extradition is left to the discretion of the state. The decision to grant or refuse extradition rests in the state’s sovereignty.

The Resolution also provides that states submit a report to the Counter-Terrorism Committee established by the Security Council on the steps that they have taken to implement Resolution 1373 within ninety days after its adoption (no later than December 27, 2001). [\[FN66\]](#) By itself, the Resolution does not create international criminal law under which terrorists could be tried by an international tribunal, but rather it tasks individual member states to create their own laws to punish terrorists and terrorist supporters. Suspected terrorists could either be tried by the member state's own domestic law or extradited in accordance with international extradition treaties to another state against which a terrorist act was committed. Until a definition of terrorism is agreed upon, countries will be able to skirt enacting Resolution 1373.

IV

Current Definitions

A. United States' Definition of Terrorism

While the international community has struggled to come to a consensus as to what constitutes terrorism, individual nations have not had the same difficulty. The United States has developed ***568** extensive, detailed, domestic legislation defining terrorism and terrorist groups. Indeed, the United States may suffer from having too many definitions resulting in overlap, confusion, and ambiguity. [\[FN67\]](#) The definitions run from fairly simple to extremely complex. Each definition has unique ramifications and is only applicable to specific areas of law. For example, the definition of terrorism as provided in the Foreign Relations Authorization Act only applies to an annual country report that the Secretary of State is required to produce each year and present to Congress. [\[FN68\]](#)

The federal crime of terrorism is defined in 18 U.S.C.S. § 2332. The statute defines the crime by giving a laundry list of statutes that, if violated, would constitute terrorism. The list of statutes includes acts ranging from the destruction of energy facilities to the use of weapons of mass destruction. [\[FN69\]](#) The statute is useful in ***569** illustrating the scope of terrorist acts, but it provides little guidance towards drafting a useable international definition.

Although the definition of terrorism in the Foreign Relations Act has no application beyond the annual country report, it is useful to look at in terms of what its strengths and weaknesses would be if it were to be applied at the international level. The definition states the following:

- (1) the term "international terrorism" means terrorism involving citizens or the territory of more than 1 country;
- (2) the term "terrorism" means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; and
- (3) the term "terrorist group" means any group practicing, or which has significant subgroups which practice, international terrorism. [\[FN70\]](#)

The strength and weakness of this definition is its simplicity. Its straightforward approach makes its application rather easy, yet, it also potentially excludes large areas of terrorism. In contemplating the

classic notion of terrorism, the violent attack on an unsuspecting civilian population, the definition fails to keep up with the ingenuity of humans to develop ever more sinister ways of terrorizing their neighbors. For example, environmental terrorism and economic terrorism fall outside the definition. Perhaps nothing more is needed when the definition's only purpose is to be used in the compilation of an annual country report. However, any United Nations' definition must balance the competing interests of simplicity, completeness, and flexibility.

Another problem with the Foreign Relations Act definition is that it may not include as terrorism attacks on military personnel, *570 such as the bombing of the Marine barracks in Beirut or the bombing of the Khobar towers in Saudi Arabia. The term "noncombatant" is problematic, because by its mere inclusion, it implies that combatants are excluded. When is a soldier a combatant? Soldiers are often the most visible representation of a country beyond the country's borders. Their presence in foreign countries is often a source of tension. As such, soldiers are likely targets of terrorist attacks. Countries may differ about the status of soldiers as combatants or noncombatants. Is the outbreak of hostilities the point of demarcation or is occupation of a country by a foreign nation's military enough? Consider the problems associated with peacekeepers actively enforcing peace through the use of military force. There is no easy answer to the problem. The solution may be to further clarify what makes a soldier a combatant. Any United Nations definition should recognize the vulnerability of soldiers and thus seek to afford them maximum protection.

Application of the definition of terrorism provided in the terrorism chapter of the United States Criminal Code like the definition in the Foreign Relations Act is very limited. The definition is only used to determine eligibility for collecting rewards for reporting acts of terrorism [FN71] and determining standing to bring a civil claim for damages. [FN72] Still, there are valuable lessons that can be learned by applying the definition to the international arena. The statute defines "international terrorism" as activities that:

- (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
- (B) appear to be intended --
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which *571 their perpetrators operate or seek asylum. . . . [FN73]

This definition is more precise than the Foreign Relations Act definition, but there are still several gaps. The requirement that there be "violent" or "dangerous" acts again arbitrarily limits those acts that may be considered terrorism. At the same time, the definition expands the concept of what might be considered terrorism by enacting the lower standard of proof; acts must only be shown to "appear to be intended" rather than showing actual intent. The lower standard may make sense in the civil context in

which this definition is applied. Not only do terrorist acts tend to speak for themselves (intent is self-evident), but the very nature of many terrorist acts destroys the terrorist and much of the evidence.

It would seem illogical to remove what are clearly terrorist acts from the definition of terrorism because intent could not be factually proved, but there is a problem with using a lower standard of proof in an international definition. [FN74] Generally, terrorist statutes not only criminalize the act but also criminalize the planning, preparation, and support of terrorism. Any time a standard is lowered there is a potential for abuse. Under a lower standard, governments zealous in stamping out terrorism, or simply opposition, could knock down the doors of citizens based on little more than appearance. Indeed, there is some concern as to whether countries are already abusing the lack of a definition to go after opposition groups under the guise of eliminating terrorism. [FN75] Consider what has already happened in the United States since September 11, 2001. Over 1200 persons have been detained and imprisoned in an “immigration sweep.” [FN76] Many of those prisoners have been held incommunicado and have spent months in solitary confinement. Only around 100 have been *572 charged with crimes and another 460 with immigration violations. Many have been denied release pending FBI “approval,” even after an immigration judge granted bail.

The point of analyzing the Criminal Code’s definition is to illustrate the potential danger that a loosely worded definition can create. While apprehending terrorists is an important goal, it should not be done by sacrificing important civil/human rights. Rights that disappear the very moment they are most needed are not rights at all. Appearance of intent would be much easier to prove and would allow for greater and earlier government intervention. But it also opens the door to potential abuse. Proof of actual intent offers the greatest measure of protection against governmental abuse while offering the greatest measure of protection to terrorists. It should not be forgotten that governments are still the largest purveyors of terrorism. [FN77] An international definition on terrorism must not only define who is the terrorist but also guard against enticing governments to become terrorists themselves.

B. The International Community’s Definition of Terrorism

1. The Twelve United Nations Conventions and Protocols Relating to Terrorism

While the United Nations currently has no single convention addressing terrorism, there are twelve conventions and protocols relating to various aspects of terrorism. [FN78] Since the conventions *573 and protocols take a similar approach as the United States’ definition for the federal crime of terrorism they will not be analyzed here. They address individual aspects or acts of terrorism such as aircraft hijacking or financing terrorist activities but provide no overall definition of terrorism. As a result, there are several gaps. In order to cover those gaps, the United Nations is currently drafting a comprehensive convention on terrorism, which will be discussed in Part V below.

2. Regional Conventions on Terrorism

An important aspect of international law is the existence of regional agreements between nations. Regional organizations are encouraged to handle local disputes before submitting them to the United Nations for resolution. [FN79] Often neighboring countries are able to come to a consensus on issues

based on shared values or interests where worldwide consensus is not possible. There are seven regional agreements on terrorism. [FN80] This section *574 will analyze the strengths and weaknesses of two of those conventions: the European Convention on the Suppression of Terrorism and the Convention of the Organization of the Islamic Conference on Combating International Terrorism.

a. European Convention on the Suppression of Terrorism

The convention came into effect in 1977 and at that time was only the second regional agreement on terrorism. Not surprisingly, the scope of the convention is rather limited. The convention primarily relates to extradition. It outlines a number of offenses [FN81] that will not be considered “political offences” for the purpose of extradition. [FN82] The implication is that those offenses are terrorism. Listed offenses range from the unlawful seizure of an aircraft to the use of a parcel bomb. The problem with the convention is that it gives signatories the option of recognizing those offenses as political offenses and thereby allows states to *575 refuse extradition. [FN83]

The importance of the convention is that it was one of the first to recognize that terrorism is not a “political offence” but rather a crime that subjects the perpetrator to extradition. The lesson is that terrorism is never justifiable, regardless of the motivations behind it. Nevertheless, the convention stops well short of what is required in a modern definition of terrorism.

The convention suffers from several flaws that should be avoided in a United Nations definition. First, the statute lists acts which are to be considered terrorism. When dealing with lists there are two doctrines of statutory interpretation. The first, *expressio unius est exclusio alterius* is based on the principle that to express one is to exclude all others. In other words, by specifically listing acts of terrorism, the treaty has thereby removed all other acts from the definition of terrorism. The second doctrine *eiusdem generis* is based on the principle that the specific can be generalized. In other words, the list is not exclusive but rather is representative of other like or similar acts that would be considered terrorism. The question remains, how like or similar must an act be? Would anthrax placed into an envelope be similar enough to a parcel bomb to fit within the treaty? No list can encompass every terrorist act. A definition should not focus too heavily on identifying any specific act but rather focus on the effect or end result of that act, which is the resulting terror. Second, the convention lacks flexibility to keep pace with the ever-evolving terrorist. The world should be so lucky that terrorists would choose to only use a “bomb, grenade, rocket, automatic firearm or letter or parcel bomb.” [FN84] The convention does include a “catch-all” clause that permits a state to not recognize as a political offense any “serious offence involving an act of violence . . . against the life, physical integrity or liberty of a person.” [FN85] But even this may fail to catch such terrorist acts as biological and chemical terrorism or economic terrorism. A definition must guard against limiting its application by its own language such as the requirement for “violence” or the use of lists. Third, the convention fails to address those responsible for the planning, preparation, support, and funding of terrorism. Finally, the convention includes lawful acts of war (use of bombs, rockets, and automatic *576 firearms) without clarifying when those acts would be unlawful. The inclusion of such acts only blurs the line between terrorism and legitimate struggles for self-determination as discussed above.

b. Convention of the Organization of the Islamic Conference on Combating International Terrorism

“Convinced that terrorism cannot be justified in any way, and that it should therefore be unambiguously condemned in all its forms and manifestations, and all its actions, means and practices, whatever its origin, causes or purposes, including direct or indirect actions of States” [\[FN86\]](#) the member states of the Organization of the Islamic Conference adopted the following definition of terrorism:

“Terrorism” 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. [\[FN87\]](#)

The definition then goes on to list a number of conventions that, if violated, would also constitute terrorism. [\[FN88\]](#)

Whereas the European Convention on the Suppression of Terrorism *577 is an example of what not to do when constructing a definition, the Islamic Conference is an example of what should be done. Ironically, the majority of definitions (both U.S. and international) fail to mention the resulting terror. The attacks on the World Trade Center and Pentagon are, in their simplest form, murder, a crime already defined. Still, the greatest damage of terrorism is not the act itself but the terror that results from the act. The Islamic Conference definition recognizes that terrorist acts are generally committed with the aim of “terrorizing people.” The definition could go further and recognize that acts, which are likely to result in terror, should also be considered terrorist acts. In a similar vein, the definition wisely includes threats, which is appropriate considering bomb scares have been a terrorist favorite for years. In addition, the definition includes attacks upon the environment. Finally, the convention includes acts endangering the “stability” of an independent state, which would cover economic terrorism.

Notably absent from the definition is the requirement that the terrorist act have the purpose of intimidating or coercing a government or group of persons to do or not do a particular thing. While the majority of terrorist groups may be trying to affect a government’s behavior (e.g., the removal of U.S. forces from the Middle East, the creation of a Palestinian homeland), a small minority may not. How would the revenge sought by Oklahoma bomber Timothy McVeigh fit into such a definition?

Most importantly, the convention condemns terrorist acts supported indirectly or directly by states. State terrorism cannot be ignored. Its use is widespread and dwarfs all other forms of terrorism. Sadly, this very fact makes the inclusion of such a term in a United Nations’ definition unlikely. States are not inclined to approve a definition that “officially” recognizes them as a terrorist state. Overall the definition does a good job at creating a broad and encompassing umbrella of what terrorism is without being overly vague.

Analysis of Proposed United Nations' Definition

In response to the need for a definition and more complete convention addressing terrorism, the United Nations convened a working group to draft a convention relating to terrorism. Since September 11, 2001, work has accelerated. The following is the proposed definition of terrorism as it applies to the comprehensive convention on terrorism:

Article 2

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
 - (a) Death or serious bodily injury to any person; or
 - (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment: or
 - (c) Damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.
2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.
3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
4. Any person also commits an offence if that person:
 - (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of this article;
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of this article;
 - (c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity *579 or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
 - (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article. [\[FN89\]](#)

The Convention goes on to state that each party is required to criminalize offenses set forth in Article 2. None of the offenses in Article 2 will be considered “political offences” for the purpose of extradition. [FN90] Further, application of the convention is limited to acts of international terrorism in that it does not apply “where the offence is committed within a single State, [or] the alleged offender and the victims are nations of that State.” [FN91]

This Comment has identified some traits that make up a strong definition and should be found in the United Nations’ definition. Those traits included simplicity, flexibility, completeness, and neutrality. The U.N.’s proposed definition hits the mark on simplicity and neutrality, but falls short on flexibility and completeness. One of the overall requirements for a United Nations’ definition was that it be universally neutral in its application, meaning that it would not tend to favor one country over another. That goal appears to be met here primarily because the definition is limited in terms of what might be considered terrorism. The definition is also worded clearly and organized in a logical manner, making its application clear.

The definition falls short in terms of its completeness, even though it does include some important aspects ignored by other definitions. It includes as terrorists those who plan, facilitate, direct, and support terrorist offenses. It includes acts against the environment and economy. It also includes threats as terrorist acts, which are some of the cheapest, easiest, and most effective forms of terrorism. Yet it falls short in other areas. It only applies to attacks upon persons that cause death or serious bodily injury. Excluded altogether are acts such as kidnapping, hostage taking, and psychological torture. Terrorist acts do more than just kill or seriously injure people. They traumatize people. They terrorize people.

***580** The definition also fails to protect soldiers above the general protection from unlawful killings and serious bodily injury. Current laws governing soldiers in war are based on antiquated forms of warfare and are found in the Hague Resolution and Geneva Convention. Such laws are seriously outdated and add as much confusion as clarity in defining who is a “combatant.” [FN92] By ignoring the issue of soldiers, the U.N. has ensured that future attacks on soldiers who are not combatants will continue to fall outside the definition of terrorism, including potential attacks against U.N. peacekeeping forces.

Also the definition fails to recognize that terrorism is a threat to international peace and security and that terrorism must be distinguished from legitimate acts of self-determination. Presumably those two elements would be addressed in the preamble to the convention, which has not been finished at this time. These elements have generally been located in the preamble of international texts such as U.N. Resolution 1373 or the Convention of the Organization of the Islamic Conference on Combating International Terrorism.

The biggest failure of the convention is that it does not recognize state-sponsored terrorism. Until state-sponsored terrorism is recognized and addressed, there can be no real impact on eliminating terrorism.

The definition also lacks flexibility. The requirement of criminality limits terrorist acts to those that have been recognized by a country’s government as criminal. By doing so, the definition misses the bigger picture. It is not the individual act that is terrorism. The definition relies too heavily on who and

what are attacked, when it is the overall terror, or fear that results from the act that is terrorism. Bringing about terrorism is a crime regardless of how it is committed.

***581** This definition could be considered the minimum definition of terrorism. Clearly terrorist acts will reach beyond this definition. However, bringing together a consensus on a wider, more inclusive definition may be impossible.

Conclusion

Is this whole idea of defining terrorism simply an exercise in semantics? Have countries really been prevented in their efforts to eliminate terrorism because there was no existing legal definition? As long as countries acted within the bounds of international law and observed international human rights standards, they were free to attack terrorism however they pleased. And even if countries acted outside of those bounds, it is unlikely that they would face anything harsher than criticism by human rights watch groups and other countries. Defining terrorism is really about taking away countries' excuses not to go after terrorists. The trick is to define terrorism in such a way that states and the international community can pursue legitimate terrorists without unleashing the beast of state terrorism in the process. Only time will tell if the U.N.'s definition is effective. Although the U.N. definition does not go as far as it could, it is a step in the right direction.

***582** Appendix A: United Nations Resolution 1373

The Security Council, Reaffirming its resolutions 1269 (1999) of 19 October and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C., and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and perpetration of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that 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,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in ***583** their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

***584** (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery, or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosive or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not ***585** recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms- trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

S.C. Res. 1373, U.N. SCOR, 56th Sess., U.N. Doc. S/RES/1373 (2001), available at <http://www.un.org/News/Press/docs/2001/sc7158.doc.htm> (Sept. 28, 2001).

[FN1]. Third-year law student, University of Oregon, Operations Editor, Oregon Law Review, 2002-03. My thanks to Professor Ibrahim Gassama.

[FN1]. Evan Thomas, The Day that Changed America, Newsweek, Dec. 31, 2001/Jan. 7, 2002, at 40, 54.

[FN2]. Alex Frew McMillan, Airlines Worldwide Face \$20B Tab, at <http://www.cnn.com/2001/BUSINESS/asia/09/17/asia.airlines/index.html> (Sept. 17, 2001) (reporting the financial impact of the September 11, 2001 terrorist attacks on the airline industry as determined by the International Air Transport Association, which represents 266 airlines worldwide).

[FN3]. Simon Avery, Study: Attack Will Wipe Out 1.6 Million Jobs this Year, at <http://www.latimes.com/news/nationworld/wire/sns-worldtrade-jobs.story> (Jan. 11, 2002) (citing report conducted by the Milken Institute, a Santa Monica-based economic think-tank, that the United States will lose 1.6 million jobs in 2002 as a result of the September 11 terrorist attacks. Of those jobs lost,

760,000 will be lost as a direct result of the terrorist attacks [2/3 of those in travel and tourism] and the remaining jobs will be lost due to a ripple effect).

[FN4]. See Victims by Country and Citizenship, September 11, 2001 Victims, at http://www.september11victims.com/september11victims/COUNTRY_CITIZENSHIP.htm (last modified May 12, 2002).

[FN5]. U.N. GAOR, 56th Sess., 26th mtg., U.N. Doc L/2993 (2002). A twenty-seven article draft of the convention on international terrorism is in limited distribution as Annex I to A/C.6/56/L.9.

[FN6]. See U.N. GAOR, 56th Sess., 25th mtg., U.N. Doc. L/2992 (2002); U.N. GAOR, 56th Sess., 24th mtg., U.N. Doc. L/2991 (2002).

[FN7]. See President George W. Bush, Address to a Joint Session of Congress and the American People (Sept. 20, 2001) (stating that on “September the 11th, enemies of freedom committed an act of war against our country”), available at <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html> (last visited Nov. 15, 2002).

[FN8]. Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic, and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal (“The Nuremberg Charter”), Aug. 8, 1945, art. 6, para. (c), 59 Stat. 1544, 82 U.N.T.S. 279.

[FN9]. War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or person on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

Id. at art. 6, para. (b).

[FN10]. John Mintz, On Detainees, U.S. Faces Legal Quandary; Most Experts Say al Qaeda Members Aren’t POWs but Taliban Fighter Might Be, Wash. Post, Jan. 27, 2002, at A22.

[FN11]. See id.; John Mintz, Debate Continues on Legal Status of Detainees, Wash. Post, Jan. 28, 2002, at A15. The Bush administration recently decided to give Taliban detainees the protection of the Geneva Convention as prisoners of war because Afghanistan is a party to the treaty. However, the detainees will not be classified as prisoners of war but rather as “unlawful combatants” because they were not part of a recognized military. Al Qaeda detainees will not be given the protections of the Geneva Convention but are promised to be treated humanely. See Taliban Detainees to Get Geneva

Conventions Protection, CNN, at <http://www.cnn.com/2002/US/02/07/ret.factsheet.facts/index.html> (Feb. 7, 2002).

[FN12]. See Karen DeYoung, *Allies Are Cautious On 'Bush Doctrine,'* Wash. Post, Oct. 16, 2001, at A1.

[FN13]. Cindy C. Combs, *Terrorism in the Twenty-First Century* 168 (Charlyce Jones Owen et al. eds., 2d ed. 2000).

[FN14]. U.S. Dep't of State, *Foreign Terrorist Organizations*, at http://www.state.gov/www/global/terrorism/fto_1999.html (last modified Jan. 19, 2001). Under the Antiterrorism and Effective Death Penalty Act of 1996, 8 U.S.C.S. § 1189 (Law. Co-op. 1997), the Secretary of State is authorized to designate Foreign Terrorist Organizations based on the following three criteria: (1) the organization must be foreign; (2) the organization must engage in terrorist activity as defined by 8 U.S.C.S. § 212 (a)(3)(B) (Law. Co-op. 1997) of the Immigration and Nationality Act; and (3) the organization's activities must threaten the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States. As of October 8, 1999 the following organizations were labeled as FTOs:

- Abu Nidal Organization (ANO)
- Abu Sayyaf Group (ASG)
- Armed Islamic Group (GIA)
- Aum Shinrikyo
- Basque Fatherland and Liberty (ETA)
- HAMAS (Islamic Resistance Movement)
- Harakat ul-Mujahidin (HUM)
- Hizballah (Party of God)
- Gama'a al-Islamiyya (Islamic Group, IG)
- Japanese Red Army (JRA)
- al-Jihad
- Kach
- Kahane Chai
- Kurdistan Workers' Party (PKK)
- Liberation Tigers of Tamil Elam (LTTE)
- Mujahedin-e Khalq Organization (MEK, MKO, NCR, and many others)
- National Liberation Army (ELN)
- Palestine Islamic Jihad-Shaqaqi Faction (PIJ)
- Palestine Liberation Front-Abu Abbas Faction (PLF)
- Popular Front for the Liberation of Palestine (PFLP)
- Popular Front for the Liberation of Palestine-General Command (PFLP-GC)
- al-Qa'ida
- Revolutionary Armed Forces of Colombia (FARC)
- Revolutionary Organization 17 November (17 November)
- Revolutionary People's Liberation Army/Front (DHKP/C)
- Revolutionary People's Struggle (ELA)
- Shining Path (Sendero Luminoso, SL)
- Tupac Amaru Revolutionary Movement (MRTA)

Id.

[FN15]. Fed. Bureau of Investigation-Counterterrorism Threat Assessment and Warning Unit Counterterrorism Div., *Terrorism in the United States 1999: 30 Years of Terrorism a Special Retrospective Edition*, at <http://www.fbi.gov/publications/terror/terror99.pdf>. (last visited Mar. 17, 2002) [hereinafter *FBI Counterterrorism*].

[FN16]. Combs, *supra* note 13, at 97.

[FN17]. Torture was not on the syllabus at the School of the Americas. But neither, according to soldiers who studied there, was it explicitly condemned. “Our instructors were people who served in Vietnam,” said Ernesto Urien, Julio César’s brother, who studied at the School for [sic] the Americas while an Argentine Army officer in the 1970s. “In informal talks the theme of torture would come up, and they’d say, ‘Do what you must to get what you need. The tools you choose, legal or illegal, are up to you.’”

Tina Rosenberg, *Children of Cain: Violence and the Violent in Latin America* 114 (1991).

[FN18]. Some of the School of America’s (SOA) more infamous graduates include Roberto D’Aubuisson (El Salvador--planned and ordered the execution of Archbishop Oscar Romero and organized Death Squads) and Manuel Noriega (Panama--drug trafficking and murder). School of the Americas Watch, *SOA graduates*, at <http://www.soaw.org/> (last visited Feb. 23, 2002). Heavy criticism and scrutiny by human rights groups led to reform at the School of Americas. Every student now receives human rights instruction. Students are screened before acceptance to the school, which includes screening by their own government’s human rights commissioners. Oversight of the school has also been increased to include review by a Board of Visitors comprised of diplomats, retired military officers, civilian academics, and legal specialists. The Board has reviewed the School’s operations biannually since 1996. Col. Glenn R. Weidner, USA Commandant, *The U.S. Army School of the Americas*, at <http://carlisle-www.army.mil/usamhi/usarsa/COMDT/SOAREV.htm>.

[FN19]. Combs, *supra* note 13, at 106.

[FN20]. See *id.* at 108-11.

[FN21]. U.S. Dep’t of State, *Foreign Terrorist Organizations*, *supra* note 14.

[FN22]. See Combs, *supra* note 13, at 96.

[FN23]. See *id.* at 90.

[FN24]. The FBI’s definition of domestic and international terrorism provides a useful, straightforward guide for understanding the basic concepts of terrorism. While there are numerous definitions of terrorism, the FBI uses the definition provided in the Code of Federal Regulations which defines terrorism as “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.” 28 C.F.R. § 0.85 (2001). The FBI then further divides terrorism into domestic and international terrorism.

[FN25]. See FBI Counterterrorism, *supra* note 15.

[FN26]. U.S. Dep't. of State, Foreign Terrorist Organizations, *supra* note 14. In March of 1995 members of Aum Shinrikyo, a Japanese religious cult, released sarin gas into the Tokyo subway system killing twelve and injuring 6,000. *Id.*

[FN27]. See United Nations Office for Drug Control and Crime Prevention, Terrorism, at <http://www.odccp.org/terrorism.html> (last visited Dec. 4, 2001).

[FN28]. U.N. Charter art. 51.

[FN29]. See FBI Counterterrorism, *supra* note 15.

[FN30]. See Combs, *supra* note 13, at 66.

[FN31]. *Id.* at 68.

[FN32]. *Id.* at 69-70.

[FN33]. U.N. Charter pmb1.

[FN34]. U.N. Charter art. 7, para. 1. The United Nations consists of the General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat. *Id.*

[FN35]. U.N. Charter art. 23, para. 1.

[FN36]. United Nations List of Member States, at <http://www.un.org/Overview/unmember.html> (last visited Feb. 4, 2002).

[FN37]. U.N. Charter art. 4, para.1.

[FN38]. *Id.* at art. 24, para. 1.

[FN39]. *Id.* at arts. 41-42.

[FN40]. *Id.* at art. 25.

[FN41]. *Id.* at art. 5.

[FN42]. *Id.* at art. 2, para. 7. However, a recent exception has been noted in cases of crimes against humanity and humanitarian intervention. The U.N. has intervened in several instances where the conflict was essentially domestic in nature to include Rwanda, Somalia, and Yugoslavia. For a detailed description of how the exception has evolved and the legal basis for such an exception see the courts reasoning in *Prosecutor v. Tadic*, Appeals Chamber, International Criminal Tribunal for the Former

Yugoslavia, 1995 Case No. IT-94- 1-AR72 (Oct. 1995), <http://www.un.org/icty/tadic/appeal/decision-e/51002.htm> (stating “there is a common understanding ... that the ‘threat to the peace’ of Article 39 may include, as one of its species, internal armed conflicts”) (Oct. 2, 1995).

[FN43]. U.N. Charter art. 51.

[FN44]. Statute of the International Court of Justice, June 26, 1945, art. 38, para. 1, 59 Stat. 1031.

[FN45]. *Id.* at art. 36, para. 1.

[FN46]. Vienna Convention on the Law of Treaties, May 23, 1969, art. 18, para. (a)-(b), 1155 U.N.T.S. 331.

[FN47]. United Nations Office for Drug Control and Crime Prevention, Definitions of Terrorism, at http://www.odccp.org/terrorism_definitions.html (last visited Jan. 3, 2002).

[FN48]. *Id.*

[FN49]. Measures to Eliminate International Terrorism, G.A. Res. 51/210, U.N. GAOR, 51st Sess., U.N. Doc. A/RES/51/210 (1997).

[FN50]. For a detailed history of the United Nations work on terrorism see Measures to Eliminate International Terrorism, U.N. GAOR 6th Comm., 56th Sess., Agenda Item 166, U.N. Doc. A/C.6/56/2.22 (2001), at <http://www.un.org/law/cod/sixth/56/current> (last visited Feb. 23, 2002).

[FN51]. See U.N. GAOR, 56th Sess., 14th plen. mtg., U.N. Doc. GA/9922 (2001) (“Acts of pure terrorism, involving attacks against innocent civilian populations should be differentiated from legitimate struggles of peoples under colonial, alien or foreign domination for self-determination and national liberation”), <http://www.un.org/News/Press/docs/2001/ga9922.doc.htm> (Oct. 2, 2001); U.N. GAOR, 56th Sess., 16th plen. mtg. U.N. Doc. GA/9924 (2001) (“Foreign occupation [is] one of the most serious forms of terrorism ... [t]herefore, resistance against Israeli occupation [is] legitimate.”), <http://www.un.org/News/Press/docs/2001/ga9924.doc.htm> (Oct. 3, 2001); U.N. GAOR, 56th Sess., 17th plen. mtg., U.N. Doc. GA/9925 (2001) (stressing the need “to distinguish between terrorism ... and acts of national resistance against foreign occupation”), <http://www.un.org/News/Press/docs/2001/GA9925.doc.htm> (Oct. 3, 2001); U.N. GAOR, 56th Sess., 19th and 20th plen. mtgs. U.N. Doc. GA/9927 (Oct. 4, 2001) (“The indiscriminate murder of innocent civilians to advance political or religious objectives was terrorism, no matter how its apologists sought to label it.”), <http://www.un.org/News/Press/docs/2001/ga9927.doc.htm> (Oct. 4, 2001); U.N. GAOR, 56th Sess., 49th plen. mtg. U.N. Doc. GA/9962 (2001) (“It is unacceptable to label as terrorism the struggle of peoples to protect themselves or to attain their independence”), <http://www.un.org/News/Press/docs/2001/ga9962.doc.htm> (Nov. 12, 2001).

[FN52]. U.N. GAOR, 56th Sess., 49th plen. mtg. U.N. Doc. GA/9962 (2001), <http://www.un.org/News/Press/docs/2001/ga9962.doc.htm> (Nov. 12, 2001).

[FN53]. U.N. GAOR, 56th Sess., 19th & 20th plen. mtgs. U.N. Doc. GA/9927 (2001), <http://www.un.org/News/Press/docs/2001/ga9927.doc.htm> (Oct. 4, 2001).

[FN54]. See generally Universal Declaration of Human Rights, G.A. Res 217A, U.N. GAOR, 3rd Sess., Pt. I, Resolutions, at 71, U.N. Doc. A/810 (1948).

[FN55]. U.N. Charter art. 1, para. 2.

[FN56]. See supra note 52.

[FN57]. U.N. GAOR, 56th Sess., 19th and 20th plen. mtgs, U.N. Doc. GA/9927 (Oct. 4, 2000), at <http://www.un.org/News/Press/docs/2001/ga9227.doc.htm>.

[FN58]. W. Michael Reisman, International Legal Responses to Terrorism, 22 Hous. J. Int'l L. 3, 8 (1999).

[FN59]. U.N. Resolution 1373, infra Appendix A.

[FN60]. See U.N. Resolution 1373, infra Appendix A, at pmb1.

[FN61]. See id. at art. 5.

[FN62]. See id. at art. 1.

[FN63]. See id. at art. 2.

[FN64]. See id. at art. 2, para. (e), art. 3, para. (g).

[FN65]. See id. at art. 3, paras. (f)-(g).

[FN66]. See id. at art. 6.

[FN67]. See 18 U.S.C.S. § 2331(1) (Law. Co-op. 1991 & Supp. 2002); 18 U.S.C. § 2339A (1994); 18 U.S.C. § 3077(1) (1994); 22 U.S.C.S. § 2656f(d) (Law. Co-op. 2000); 22 U.S.C.S. § 2708(j)(1) (Law. Co-op. 2000).

[FN68]. See 22 U.S.C.S. § 2656f (Law. Co-op. 2000).

[FN69]. (i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnapping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder,

kidnap, or maim person abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnapping), 1992 (related to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems), 2155 (relating to destruction of national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title;

(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or

(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.

18 U.S.C.S. § 2332b (g)(5)(B) (Law. Co-op. 1991 & Supp. 2002).

[FN70]. 22 U.S.C.S. § 2656f(d).

[FN71]. 18 U.S.C. §§ 3071-3077 (1994).

[FN72]. See 18 U.S.C.S. § 2333 (Law. Co-op. 1991 & Supp. 2002).

[FN73]. 18 U.S.C.S. § 2331(1) (Law. Co-op. 1991 & Supp. 2002).

[FN74]. The potential for abuse in regards to this statute is virtually non-existent as the definition only applies in determining when civil suits are permitted and when rewards for information are authorized. See 18 U.S.C.S. § 2333 (Law. Co-op. 1991 & Supp. 2002); 18 U.S.C. § 3077(1) (1994).

[FN75]. U.S. Human Rights Report Aims Criticism at 3 Nations, Int'l Herald Trib., at <http://www.iht.com/articles/50149.html> (Mar. 5, 2002) (citing the U.S. State Department's annual report on human rights that China is cracking down on Muslims under the pretext of attacking terrorism); see U.S. Dep't of State, Country Reports on Human Rights Practices, <http://www.state.gov/g/drl/rls/hrrpt/2001/> (Mar. 3, 2002).

[FN76]. Amnesty Int'l, *Amnesty International to Tour Jails Housing Post September 11 Detainees--But Access to Federal Detention Facility "Stonewalled"*, at http://www.amnestyusa.org/news/2002/usa02052002_2.html (Aug. 2, 2002).

[FN77]. See Combs *supra* note 13, at 66.

[FN78]. Texts of the twelve United Nations conventions and protocols relating to terrorism listed below are available at <http://untreaty.un.org/English/Terrorism.asp>:

United Nations Convention Deposited with the Secretary-General of the United Nations

1) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Dec. 14, 1973).

2) International Convention against the Taking of Hostages (Dec. 17, 1979).

3) International Convention for the Suppression of Terrorist Bombings (Dec. 15, 1997).

4) International Convention for the Suppression of the Financing of Terrorism (Dec. 9, 1999).

United Nations Conventions Deposited with Other Depositaries

1) Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, Sept. 14, 1963).

2) Convention for the Suppression of Unlawful Seizure of Aircraft, (Hague, Dec. 16, 1970).

3) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, Sept. 23, 1971).

4) Convention on the Physical Protection of Nuclear Material (Vienna, Mar. 3, 1980).

5) Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, Feb. 24, 1988).

6) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, Mar. 10, 1988).

7) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, Mar. 10, 1988).

8) Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, Mar. 1, 1991).

[FN79]. See U.N. Charter arts. 33, 52.

[FN80]. Additional information on Regional Conventions on terrorism (including some texts) is available at United Nations Treaty Collection: Conventions on Terrorism, <http://untreaty.un.org/English/Terrorism.asp>. The following is a list of regional conventions deposited with the United Nations:

Regional Conventions on Terrorism

1) Arab Convention on the Suppression of Terrorism (Cairo, Apr. 22, 1988).

2) Convention of the Organization of the Islamic Conference on Combating International Terrorism (Ouagadougou, July 1, 1999).

3) European Convention on the Suppression of Terrorism (Strasbourg, Jan. 27, 1977).

4) OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Person and Related to Extortion that are of International Significance (Washington, D.C., Feb. 2, 1971).

5) OAU Convention on the Prevention and Combating of Terrorism (Algiers, July 14, 1999).

6) SAARC Regional Convention on Suppression of Terrorism (Kathmandu, Nov. 4, 1987).

7) Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism (Minsk, June 4, 1999).
Id.

[FN81]. European Convention on the Suppression of Terrorism, Jan. 27, 1977, art. 1, 1137 U.N.T.S. 93, available at <http://untreaty.un.org/English/Terrorism.asp>.

(a) An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft ...;

(b) An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation ...;

(c) A serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

(d) An offence involving kidnapping, the taking of a hostage or serious unlawful detention;

(e) An offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;

(f) An attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Id.

[FN82]. Id.

[FN83]. See id. at art. 13.

[FN84]. Id. at art. 1.

[FN85]. Id. at art. 2.

[FN86]. United Nations, Annex to Resolution No: 59/26-P Convention of the Organization of the Islamic Conference on Combating International Terrorism, at <http://www.oic-un.org/26icfm/c.html> (last visited Nov. 4, 2001).

[FN87]. Id.

[FN88]. Any violation of the following conventions is considered terrorism: Convention on “Offences and Other Acts Committed on Board of Aircrafts” (Tokyo, 1963); Convention on “Suppression of Unlawful Seizure of Aircraft” (Hague, 1970); Convention on “Suppression of Unlawful Acts Against the Safety of Civil Aviation” (Montreal, 1984); Convention on the “Prevention and Punishment of Crimes Against Persons Enjoying International Immunity, Including Diplomatic Agents” (New York, 1973); International Convention Against the Taking of Hostages (New York, 1979); The United Nations Law of the Sea Convention (1988); Convention on the “Physical Protection of Nuclear Material” (Vienna, 1979); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation-Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, 1988); Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf (Rome, 1988); Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome, 1988); International

Convention for the Suppression of Terrorist Bombings (New York, 1997); Convention on the Marking of Plastic Explosives for the purposes of Detection (Montreal, 1991). Id.

[FN89]. Draft Comprehensive Convention on International Terrorism, 6th Comm., 56th Sess., Agenda Item 166, U.N. Doc. A/C.6/56/L.9 distr. ltd. (on file with the Oregon Law Review).

[FN90]. Id. at art. 14.

[FN91]. Id. at art. 3.

[FN92]. The Hague Resolution entered into force in 1907 and the Geneva Convention (IV) in 1949. While the method of warfare and types of weapons have changed dramatically since that time, the conventions have not. The Geneva Convention was updated in 1978 with the Protocol Additional (No. I) to the Geneva Convention, which expanded the rights of civilians and combatants but did little to further clarify what qualifies as a combatant. See generally Convention (No. IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1910 U.K.T.S. 9; Convention (No. IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T.S. 3114, 75 U.N.T.S. 287; Protocol Additional (No. I) to the Geneva Convention of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (WITHOUT ANNEXES), June 8, 1977, 16 I.L.M. 1391.