

# Agreeing to Disagree: Cultural Relativism and the Difficulty of Defining Terrorism in a Post-9/11 World

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On February 3<sup>rd</sup> 2005, during an interview on Al-Jazeera television, Syrian Information Minister Mahdi Dakhlallah did not mince his words. Reacting to U.S. characterizations of his State as a sponsor of terror, he rejected what he called the “selective definition” of terrorism. After praising the U.S. pursuit of “liberty and democracy” he insisted, “[l]iberties cannot be exported on tanks or planes or promoted through murder and destruction.” Paradoxically, in a post-9/11 world where there is an unprecedented international joint response to counter-terrorism, there is still no universal, permanent and comprehensive definition of terrorism. This essay exposes the legal and political issues arising from the tension created between the universal agreement to coordinate counter-terrorism efforts on the one hand, and the proliferation of culturally relativistic definitions of terrorism on the other.

To accomplish this task, there are a number of worthy questions that cannot be addressed in this essay as they fall outside its scope. These include the counter-terrorism measures themselves, the changing nature of terrorism throughout history<sup>1</sup>, and the various forms of resistance to foreign occupation. Legal texts on terrorism will be referred to only insofar as they highlight the difficulties of defining terrorism in a post-9/11 world. The

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1. For example, consider how previous generations positively *embraced* terrorism. See Daniel Lazare, *We Are All Terrorists*, 29 RADICAL SOC’Y: REV. CULTURE & POL. 13 (2002).

question of whether Bush's war on terrorism can legally be considered a "war" will not be thoroughly addressed. I will also not examine the merits and shortcomings of cultural relativism except insofar as it is a method that allows us to complicate the concept of terrorism, as it is (mis)understood in different contexts. For our purposes, cultural relativism is understood to mean the principle that one must not judge others using the standards of one's own culture, as each culture must be analyzed on its own terms.

The tension between the common universal condemnation of terrorism and the particular conflicting definitions of the term is of considerable theoretical and practical importance.<sup>2</sup> After the September 11<sup>th</sup> attacks on the United States, a united front against terrorism was declared through a combination of police action as well as a general commitment to prevent future attacks. It was not long before the United Nations (U.N.) among others signaled dangers of violating international law and fundamental freedoms in the course of an unprecedented "war" on terrorism. In addition, there is a remarkable legal interest in defining terrorism, as terrorism violates the values enshrined by the U.N. Charter and other international norms, such as: respect for human rights, the rule of law, rules of war that protect civilians, tolerance, and peaceful resolution of conflict. The U.N. High-Level Panel on Threats, Challenges and Change (U.N. Panel) notes in its report<sup>3</sup> that the failure of the U.N. to develop a comprehensive strategy to fight terrorism has been constrained by the inability of Member States to agree on an anti-terrorism convention including a definition of terrorism. This undermines the U.N.'s normative and moral stance. As a result, the U.N. has been unable to send an unequivocal message that condemns terrorism.<sup>4</sup>

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2. New York Times correspondent Todd Purdum wrote: "One of the problems of conducting the sort of broad, global war on terror that Mr. Bush envisions is that terrorism is not so much a system of belief as a situational, shifting set of means to achieve some larger goal." Todd S. Purdum, *What Do You Mean, 'Terrorist'?*, N.Y. TIMES, Apr. 7, 2002, § 4, at 1.

3. In 2003, the U.N. Secretary General asked these eminent persons from around the world to present recommendations regarding current threats to international peace and security. Their report is currently being discussed by U.N. member states. *Follow-up to the Outcome of the Millennium Summit*, U.N. General Assembly, 59th Sess., Agenda Item 55, at 1, U.N. Doc. A/59/565 (2004), available at <[www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf)>.

4. There are also huge financial interests in defining terrorism. In 2002, the three biggest weapons makers in the U.S. – Lockheed Martin, Boeing and Northrop Grumman – reportedly received one out of every four dollars the Pentagon spent on everything from rifles to rockets, prompting one researcher to state that "the biggest beneficiaries of the Administration's 'war on terror' may be the 'destroyers,' not the rebuilders." William D. Hartung, *Making Money on Terrorism*, NATION (Feb. 23, 2004), available at <[www.thenation.com/doc/20040223/hartung](http://www.thenation.com/doc/20040223/hartung)>.

An important but obvious problem, then, quickly presents itself: States cannot adequately counteract a phenomenon that they absolutely agree must be eliminated, as long as they fundamentally disagree on its very definition.<sup>5</sup> While definitions of terrorism abound, most center on two elements: extreme fear, and the use of violence for political purposes. However, in the search for a complete and agreed definition, two (controversial) legal objections are raised. First, that any definition should include the use of armed forces by a State against civilians. Second, that a definition of terrorism should safeguard the right of peoples to resist foreign occupation, as contained in the U.N. Charter. The extent of confusion regarding the definition of terrorism and its distinction from the right to self-determination cannot be overstated. For example, at a meeting of the Organization of the Islamic Conference in 2002, the Malaysian Prime Minister suggested that all attacks on civilians, including “human bomb attacks by Palestinians” should be considered as terrorism. He later said his comments had been taken out of context and the final conference declaration rejected attempts to link terrorism to the struggle of the Palestinian people in the exercise of their inalienable right to establish their independent State.

On the other hand, there is a theoretical interest in defining terrorism. The widely held correlation between terrorism and non-State actors prompted some thinkers to evaluate State power against liberal tolerance. Realist theories of the State maintain that the concept of the State is a fabrication, a name given to a broad set of institutions and affiliations which, like terrorism, has no subjectivity or agency proper but spoken of as if it did. Some say that a State needs an “other” called terrorist for it to exist.<sup>6</sup> Edward Said goes so far as to advise doing away with the term “terrorism” altogether because of its “exceptionalistic” nature, i.e. because

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5. For example, in 2004 the Security Council adopted an important resolution (1566) that established a working group to consider “the possibility of establishing an international fund to compensate victims of terrorist acts and their families, which could consist in part of assets seized from terrorist organizations, their members and sponsors.” S.C. Res. 1566, U.N. SCOR, 59th Sess., 5053rd mtg. at 3, U.N. Doc. S/RES/1566 (2004), available at <[www.daccessdds.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement](http://www.daccessdds.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement)>. Needless to say, without a clear understanding of who the terrorist is – especially in relation to who is a freedom fighter and who is a victim etc. – the resolution caused a lot of controversy.

6. Violence is not only a characteristic of terrorism, but it also goes hand in hand with the concept of the State defined by, among other things, its monopoly of power. Timothy Mitchell notes that the State’s fictive status as agent is maintained through the installation of boundaries that produce rather than reflect difference. Timothy Mitchell, *The Limits of the State: Beyond Statist Approaches and Their Critics*, 85 AM. POL. SCI. REV. 77, 90-1 (Mar. 1991).

discursive rules are broken when dealing with terrorism and the discourse is thus structured by prohibitions: of investigating root causes (as this is considered a justification of the act, excusing the violence), of interrogating the relation between State actors that confront terrorists and the terrorists themselves etc.<sup>7</sup> In a similar vein, Michel Foucault described terrorism as a linguistic sign<sup>8</sup> that has no meaning by itself but is powerfully charged in application and deployment. In its early stages, the field of “terrorist studies” aimed at fixing unrelated practices (assassination, hijacking, bombing) under one term “terrorism” with supposedly a definitional rigor and analytical coherence. However, this categorization under “terrorism” served the proliferation of discourse on terrorism at the expense of limiting its application.<sup>9</sup> Therefore, it is not surprising that “terrorism” is still not defined, because its very malleability serves multiple political interests through its varied opportunistic applications – such as deflecting criticism from official governmental figures and onto extremist “others,” and to indicate particular practices as outside the scope of political negotiation and contestation.

What legal and political issues in the U.S. and abroad are raised by definitional debates on the meaning of terrorism? Short of providing a resolution to the tension between the will to counter terrorism, on the one hand, and the lack of consensus on a definition of terrorism on the other, I aim at making this tension explicit through an analysis of the legal and political issues at stake. First I examine what the international community agrees should be done in a post-9/11 world (I), only to then expose the relativistic understandings of the concept of “terrorism” that stand in the way of such a joint response (II).

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7. The discourse on terrorism assumes that we act as if the term “terrorist” is a confirmed reality, that “you know [it] when you see it.” Lonnie Adam Troyer, *The Location of Terrorism: Counterterrorism, American Politics, and the Docile Citizen* 12 (2005) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with the University of California, Berkeley, library). Said suggests that terrorism, at best, ought to be treated “as other historical and social phenomena are considered, as something created by human beings in the world of human history” *Id.*

8. It is a “sign under which acts and individuals tied to violence are made to appear by others through language [as] the product of . . . discursive practices of those who oppose them . . . .” Lonnie Adam Troyer, *The Location of Terrorism: Counterterrorism, American Politics, and the Docile Citizen* 10 (2005) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with the University of California, Berkeley, library).

9. The word “terrorist” is a word that became used by counter-terrorists – people who studied and/or opposed perpetrators of political violence.

## AGREEING. . . : UNIVERSAL CONDEMNATION OF TERRORISM

Following September 11<sup>th</sup>, 2001, the world became keenly aware of the need to unite against terrorism. There was this sense that if terrorists could attack the U.S. they could strike anytime, anywhere. If States did not agree to unequivocally condemn terrorism, we would not have seen the rapid expansion of counter-terrorism measures since 9/11.

### *A. Expanded domain of counter-terrorism. . .*

Counter-terrorism takes two forms. One is curative and involves such measures as diplomacy and police work. The other is preventive and looks at eradicating the root causes of terrorism. I will examine these in turn.

#### *1. Post 9/11 “war” against terrorism*

Although the post-9/11 “war” against terrorism has sparked considerable debate, there is general agreement that, regardless of what such a “war” might look like, we know we will have won it by signs that are relative and, more importantly, non-conventional – we do not expect to see, for example, a formal surrender or a signature on a peace treaty.<sup>10</sup> The historian Walter Laqueur identifies two ways in which terrorism has changed since 9/11 - the choice of targets (innocent civilians) and the motives (global struggle against an Enemy, the West). Likewise, the U.N. Panel notes two new dynamics. One, Al-Qaida is the first instance of an armed non-State network with global reach and sophisticated capacity. Two, the threat that terrorists will seek to cause mass casualties creates unprecedented dangers.<sup>11</sup>

Michael Walzer, coeditor of *Dissent*, argues for a multilateral “war” against terror that is not unlike humanitarian intervention – in that

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10. The measures of success include: “a decline in attacks and in the scope of attacks; the collapse of morale among the terrorists, the appearance of informers and defectors from their ranks; the rallying of opportunists, who have the best nose for who’s winning, to our side; the silence of those who once made excuses for terror; a growing sense of safety among ordinary people.” Michael Walzer, *Five Questions About Terrorism*, 49 *DISSENT* 5, 9 (2002). Ignatieff warns that “a war on terror that succeeds tactically – taking out this potential terrorist, breaking up that potential cell – while failing strategically, further enraging the Arab populace, is not a success.” Michael Ignatieff, *Lesser Evils*, *N.Y. TIMES*, May 2, 2004, § 6 (Magazine), at 46.

11. Hence the Panel recommends controlling the supply of nuclear, radiological, chemical and biological materials, as well as building robust global public health systems. *Follow-up to the Outcome of the Millennium Summit*, U.N. General Assembly, 59th Sess., Agenda Item 55, at 45, U.N. Doc. A/59/565 (2004), available at <[www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf)>.

commitment should be general and in the sense that “war” includes many possible engagements. These include real war, police work, diplomacy and ideological work.<sup>12</sup> The latter differs from the previous three in that it cannot be conducted by the State, because it needs to be done democratically. It involves “delegitimizing the culture of excuse and apology, probing the religious and nationalist sources of terror.”<sup>13</sup> Because terrorists rely on a friendly environment, and because such an environment is created culturally and politically, any “war” on terrorism must transform this environment so that wherever terrorists go they will be opposed. This requires prevention, including addressing the root causes of terrorism.

## 2. Prevention

Walzer rightly notes that “the ‘war’ against terrorism is not backward looking and retributive, but forward looking and preventive.”<sup>14</sup> In order to do this, it must eradicate root causes of terrorism. Not everyone agrees on the relative importance of each of the root causes (let alone what they are)<sup>15</sup>, but everyone agrees that any serious counter-terrorism effort must at least address, if not eradicate, circumstances under which terrorism flourishes.

One of the main root causes of terrorism is religious extremism. And this is not by all means exclusive to any one religion. For example, Gush Emunim, the Jewish Settlers Movement, has more in common with Taliban

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12. First, real war is one (necessary) part of this metaphorical “war.” In ensuring that such a war is just, Walzer emphasizes that in fighting terrorism we must not aim at innocent people – that is what the terrorists do. We must avoid overestimating the smartness of our smart bombs, which means no matter how technologically advanced they are, there will still be serious risks on the civilian population, and those risks must be reduced as much as possible, by application of the proportionality rule: Collateral damage should not be disproportionate to the value of the military victory sought. Police work must be done within the constraints needed in order to preserve freedom and civil liberties. Diplomacy aims to isolate and punish States that support terrorism. Although terrorist networks are transnational, they cannot survive without the physical shelter, the ideological patronage, and the funding provided by States. Although there is no *causus belli* to justify going to war with these States, there are legitimate forms of political and economic pressures short of war that can be applied onto them. Michael Walzer, *Five Questions About Terrorism*, 49 *DISSENT* 5, 8-10 (2002).

13. *Id.* at 9.

14. *Id.* at 8.

15. Potential root causes of terrorism are most likely a variety of conditions that frustrate basic human needs. Staub lists them as follows: poverty, relative deprivation, and sense of injustice; difficult life conditions, including great social and cultural change; traditional and repressive societies; us-them differentiation, devaluation and ideology; failure to raise inclusively caring children who humanize people outside their group. Ervin Staub, *Notes on Terrorism: Origins and Prevention*, 8 *PEACE & CONFLICT: J. PEACE PSYCHOL.* 207, 209-12 (2002).

than it does with ultra-orthodox Jews in terms of political action.<sup>16</sup> This highlights the dangers of rising (counterproductive) Islamophobia in the post-9/11 “war” on terror. Media bias against Muslims and Arabs especially after 9/11 radicalized moderate Muslims, as they further perceived themselves as victims of injustice. Inter-religious dialogue is a key feature of counter-terrorism efforts, to avoid a so-called clash of civilizations.

We must also recognize that nearly all terrorists are late adolescents or young adults, or started their terrorist careers during this phase of their lives.<sup>17</sup> Some scholars emphasize the need to promote economic development and increase literacy and secular education.<sup>18</sup> Others emphasize the negative effects of structural invisible violence – the unequal social systems that prevent the satisfaction of basic human needs.

However, even in reasonably well-off societies, dissatisfaction can still arise and people in such societies also can potentially use force against civilians.<sup>19</sup> Reactionary Islam appeals to both the poor masses as well as those with significant religious and economic resources. After all, Osama bin Laden comes from one of the wealthiest and most powerful families in Saudi Arabia. The answer, then, could be that reactionary Islam is attractive to some Muslims simply because it is the only version of Islam taught. Or perhaps the problem is not in the Islamic teachings themselves but rather in the way they are expressed in Arabic – in the form of

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16. Gush Emunim has been involved in the premeditated killing of Arabs and the assassination of Prime Minister Rabin. Likewise, the Taliban also aims at changing the world and imposing theocratic rule. On the other hand, ultra-orthodox Jews (although also fundamentalist) believe in retreating from the world and oppose Zionism because they are opposed to human efforts to establish a theocracy on earth. These parallels illustrate how much divergence can be based on the same religious tradition.

17. These young persons see their choices as limited by the available possibilities, which in turn are determined by culture. The narrative about one’s life and ideals is, as some have described, culturally determined. Lois T. Flaherty, *Youth, Ideology, and Terrorism*, 27 *ADOLESCENT PSYCHIATRY* 29, 50 (2003). Extremist groups are likely to appeal to youth in societies that are unable to supply the latter with a healthy sense of self. In a post-9/11 world, if we want to understand the dynamics of terrorism, we must focus on the importance of a victim identity in perpetuating and legitimizing violence against those who are perceived to be the enemies, especially in areas where a sense of community has been lost, such as refugee camps. *Id.* at 55-56.

18. *Id.* at 56.

19. Walzer, for example, is against the “misery and inequality” argument, stating that Africa has the worst inequalities and yet “the African diaspora is not a friendly sea in which terrorists swim.” He finds root causes in the failure of state building and economic development in the Islamic world, which he interprets as Islam’s failure to modernize itself. Michael Walzer, *Five Questions About Terrorism*, 49 *DISSSENT* 5, 6 (2002).

exaggerated, extreme formulations that should not be taken literally.<sup>20</sup>

The “root causes” discourse at the U.N. has played out as follows. General Assembly Resolution 42/159 acknowledged that the cause of terrorism is often the “misery, frustration, grievance and despair” that leads people to seek radical change. The resolution identified the root causes of terrorism as occupation, colonialism and racism.<sup>21</sup> The U.N. International Conference on Financing for Development (2002) warned of the link between poverty and violence. The U.N. Panel lists characteristic environments and contexts where terrorism flourishes, which may be conceived as root causes. These are: “environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse” and contexts of “regional conflict and foreign occupation.” The Panel also notes that terrorism profits from a weak State capacity to maintain law and order.

With prevention and root causes consisting of such diverse possibilities, it is already clear that the “war” on terrorism faces many limitations. Serious limitations also come from liberal values and international norms. The next section focuses on what these limitations are.

### ***B. . . .But with serious limitations:***

#### *1. Liberalism, democracy and civil rights*

It is often said that limitations to counter-terrorist efforts only serve the interest of the terrorists - for example, political asylum and the constitutional protections of free speech. Michael Ignatieff describes defeat in a “war” on terror as a situation in which: “we would lose our identity as free peoples.”<sup>22</sup>

In dealing with international terrorism post-9/11, the standard response by governments and the population at large has been to see law, at

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20. Adam L. Silverman, *Just War, Jihad, and Terrorism: A Comparison of Western and Islamic Norms for the Use of Political Violence*, 44 J. CHURCH & ST. 73, 90 (2002).

21. Foreign occupation is a form of terrorism because it involves political violence against an entire group of civilians. This idea is not uncontroversial. As we shall see infra, no international legal document distinguishes between state terrorism and other types of terrorism. This is so in order to draw attention to the need to address root causes of terrorism – including foreign occupation – and to avoid selective endorsement and implementation of texts that condemn terrorism. And yet it was exactly this that took place, when only two states, the U.S. and Israel, rejected General Assembly Resolution 42/159. See G.A. Res. 42/159, U.N. GAOR, 42nd Sess., 94<sup>th</sup> mtg., U.N. Doc. A/RES/42/159 (1987), available at <[www.un.org/documents/ga/res/42/a42r159.htm](http://www.un.org/documents/ga/res/42/a42r159.htm)>.

22. Michael Ignatieff, *Lesser Evils*, N.Y. TIMES, May 2, 2004, § 6 (Magazine), at 46.

worst, as irrelevant and, at best, as a backup to the military response.<sup>23</sup> Does a “war” on terrorism, then, necessarily erode liberal values? Liberal/American values and necessary constraints of police work in the “war” against terrorism do not have to be mutually exclusive.<sup>24</sup> But thinking about lesser evils is unavoidable when democracies fight terrorism: “The question is not whether we should be trafficking in lesser evils but whether we can keep lesser evils under the control of free institutions.”<sup>25</sup> Nevertheless, dirty hands need not be lawless.<sup>26</sup> For example, preventive detention of terrorist suspects does not preclude surveillance upon release – it is “better . . . to let a few bad characters go than to continue to run a global network of detention facilities that, right now, are an open invitation to abuse.”<sup>27</sup>

I believe the upside of Western liberalism is that, even if challenged, debated and sometimes bent a little along the way, a yardstick that restrains abuse in countering terrorism also offers the hope of constructing a definition of terrorism that is more fair, more universal, and by extension more relevant.<sup>28</sup> Such a yardstick includes existing international norms.

23. Maxwell O. Chibundu, *Commentary: For God, for Country, for Universalism: Sovereignty As Solidarity in Our Age of Terror*, 56 FLA. L. REV. 883, 898 (2004). The post-9/11 world has been described as an age marked by insecurities generated by the overriding fear of terrorism. The resort to military force by the U.S. threatened to abandon law as a tool in the “war”: “The President repeatedly spoke of American justice in terms of the extrajudicial killings of alleged terrorists. He measured success in the ‘war against terrorism’ less by enumerating how many attempts had been foiled, or how many perpetrators effectively were prosecuted and imprisoned, but more by counting up how many were ‘no longer around’ to trouble us.” *Id.* at 894. This is why Ignatieff observed that the chief impact of terrorism on democracy has been to strengthen the executive branch of government over the legislative and judiciary, and to increase the exercise of secret government. Michael Ignatieff, *Lesser Evils*, N.Y. TIMES, May 2, 2004, § 6 (Magazine), at 46.

24. Walzer writes:

“If we can’t make that case (that police work can be done within constraints for the sake of freedom), then we have to be ready to consider modifying the constraints. It isn’t a betrayal of liberal or American values to do that; it is in fact the right thing to do, because the first obligation of the state is to protect the lives of its citizens . . . and American lives are now visibly and certainly at risk. Again, prevention is crucial. Think of what will happen to our civil liberties if there are more successful terrorist attacks.”

Michael Walzer, *Five Questions About Terrorism*, 49 DISSENT 5, 8 (2002).

25. Michael Ignatieff, *Lesser Evils*, N.Y. TIMES, May 2, 2004, § 6 (Magazine), at 46.

26. This is why, for example, Ignatieff warns that, “instead of defending a failed ID system, civil libertarians should be trying to think of a better one.” *Id.*

27. *Id.*

28. Human rights create a space for exposing abuse such as that which occurred in Abu Ghraib prison, for example. In a framework that regards liberal values as given, human rights, although violated, are still relevant as a yardstick by which to hold the key players

## 2. *By international norms*

International law provides several means of legal protection against terrorism. There is clear condemnation of terrorism by the International Court of Justice. Currently, there are at least twenty global or regional treaties pertaining to the subject of international terrorism.<sup>29</sup> The International Criminal Court Statute of 1998 in Article 7 describes crimes against humanity as acts “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>30</sup> The nature of terrorist acts is such that they can be included in this category. In Article 8 the statute also describes war crimes as grave violations against persons and property protected by the terms of the Geneva conventions, which govern during occupation.<sup>31</sup> The nature of terrorist acts committed during a military aggression puts them under this category.

The General Assembly has adopted several resolutions of relevance to the issue of terrorism. In some of these resolutions (54/110, 55/158 and 57/567) one can find some elements of a “definition” of terrorism, namely the state of terror and the motivation behind terrorist acts deemed inexcusable. Resolution 42/159 (1987) condemns international terrorism but also reaffirms “the principle of the self-determination of peoples as enshrined in the Charter of the United Nations.”<sup>32</sup> Furthermore, Resolution 39/159 (1984) evokes the “inadmissibility of the policy of State terrorism and any actions by States aimed at undermining the socio-political system

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accountable in the fight against terrorism. It would be naïve to forget or dismiss the fact that human rights are politicized more often than not, but the very fact that such a yardstick *exists* is not to be overlooked.

29. Interestingly, the Arab Convention on the Suppression of Terrorism (1998) has adopted all the separate, dispersed criteria of terrorism found in other conventions. It defines terrorism as “any act or threat of violence” (as in the European Convention on the Suppression of Terrorism, 1977). Arab Convention for the Suppression of Terrorism (1998), available at <[www.al-bab.com/arab/docs/league/terrorism98.htm](http://www.al-bab.com/arab/docs/league/terrorism98.htm)>. It states that terrorist acts are those that seek “to sow panic among people, causing fear” (as in the League of Nations Convention of 1937 that never entered into force) or placing their lives in danger (as in the European Convention). *Id.* See also DOLLY HAMAD, AL-IRHAB AD-DAWLI: DIRASA QANOUNIYYA MOUQARANA [INTERNATIONAL TERRORISM: A COMPARATIVE LEGAL STUDY] 29-35 (2003).

30. Rome Statute of the International Criminal Court, art. 7 (1998), available at <[www.un.org/law/icc/statute/rome.htm](http://www.un.org/law/icc/statute/rome.htm)>.

31. *Id.* at art. 8.

32. G.A. Res. 42/159, U.N. GAOR, 42nd Sess., 94th plenary mtg., at 2, U.N. Doc. A/RES/42/159 (1987), available at <[www.un.org/documents/ga/res/42/a42r159.htm](http://www.un.org/documents/ga/res/42/a42r159.htm)>. In addition, it deems legitimate the movements of “peoples under colonial and racist regimes and other forms of alien domination.” *Id.*

in other sovereign states.”<sup>33</sup> The same resolution also reaffirms the inalienable right of all peoples to self-determination, just as Resolution 44/29 (1989) on “measures to prevent international terrorism” which in addition unequivocally condemns as “criminal and unjustifiable” all acts, methods and practices of terrorism, “wherever and by whomever committed.”<sup>34</sup>

The General Assembly is not the only U.N. body to address terrorism. It comes as no surprise that, since 9/11, the Security Council has become stronger, often at the expense of other U.N. bodies, especially the General Assembly. Security Council resolution 1566 (2004), which was adopted under chapter seven, was interpreted by some as forging a definition of terrorism – which ought to be the competence of the General Assembly. In its operative paragraph 1, the Council condemns “all acts of terrorism irrespective of their motivation, whenever and by whomsoever committed,” thus choosing to focus on the act, not the perpetrator.<sup>35</sup> In operative paragraph 3, the Council further discerns the common elements of all acts of terror<sup>36</sup> and states that they “are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.”<sup>37</sup>

In order to avoid a situation where the Security Council is so

33. G.A. Res. 39/159, U.N. GAOR, 39th Sess., 102nd plenary mtg., at 2, U.N. Doc. A/RES/39/159 (1984), available at <[www.un.org/documents/ga/res/39/a39r159.htm](http://www.un.org/documents/ga/res/39/a39r159.htm)>. It reaffirms “the obligation of all states to refrain in their international relations from the threat or use of force against the sovereignty, territorial integrity and political independence of any State,” and “resolutely condemns policies and practices of terrorism in relations between states as a method of dealing with other states and people.” *Id.* at 1. It demands that “all States take no actions aimed at military intervention and occupation, forcible change in or undermining of the socio-political system of States, destabilization and overthrow of their Governments, and, in particular, initiate no military action to that end under any pretext whatsoever and cease forthwith any such action already in progress.” *Id.* at 2.

34. G.A. Res. 44/29, U.N. GAOR, 44th Sess., 72nd plenary mtg., at 1-3, U.N. Doc. A/RES/44/29 (1989), available at <[www.un.org/documents/ga/res/44/a44r029.htm](http://www.un.org/documents/ga/res/44/a44r029.htm)>.

35. S.C. Res. 1566, U.N. SCOR, 59th Sess., 5053rd mtg. at 2, U.N. Doc. S/RES/1566 (2004), available at <[www.daccessdds.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement](http://www.daccessdds.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement)>.

36. *Id.* According to this resolution, all acts of terror are:

“Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.”

37. Many feared that this text may contradict the right to self-determination enshrined in the Charter.

empowered that it encroaches on the competence of the General Assembly, the U.N. Panel emphasizes the “unique legitimacy” of the General Assembly “in normative terms,” being that it is the only U.N. body where all states are represented and decisions are taken democratically. Therefore the Panel recommends, first, the arrival at a consensus definition within the General Assembly (as opposed to the Security Council) and, second, the rapid completion of negotiations on a comprehensive convention on terrorism.<sup>38</sup>

If the U.N. Panel recommendations are adopted, terrorism will be described as follows:

Any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.<sup>39</sup>

However, until this or any other proposed definition is agreed upon, the meaning of the word “terrorism” remains up for grabs and at best, relativistic and incomplete.

## . . . TO DISAGREE: RELATIVISTIC DEFINITIONS OF “TERRORISM”

### *A. The importance of cultural relativism*

Cultural relativists emphasize that the cognitive processes of naming, meaning and categorization are context-dependent and are inevitably laden with social values, motives and interests carried by the society from which they emerge.<sup>40</sup> Terrorism is no exception. Lazare describes the Bush administration’s attitude towards debate on terrorism in the days after 9/11 as follows: “If Osama Bin Laden was a terrorist. . . then anybody who disagreed was a coward, a traitor, or limp-wristed relativist.”<sup>41</sup> Either you

38. *Follow-up to the Outcome of the Millennium Summit*, U.N. General Assembly, 59th Sess., Agenda Item 55, at 48, U.N. Doc. A/59/565 (2004), available at <[www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf)>.

39. *Id.* at 49.

40. Cristina Jayme Montiel & Mustafa K. Anuar, *Other Terrorisms, Psychology, and Media*, 8 PEACE & CONFLICT: J. PEACE PSYCHOL. 201, 201 (2002).

41. Daniel Lazare, *We Are All Terrorists*, 29 RADICAL SOC’Y: REV. CULTURE & POL. 13, 18 (2002).

were with the U.S. or you were a terrorist. The malleable words “terrorist” and “terrorism” became loyalty tests for the counter-terrorists. There was no room for relativism, because this was “the paralysis of analysis.”<sup>42</sup>

Not surprisingly, many scholars react by suggesting that a definition of terrorism ought to take into account global structural violence and so-called U.S.-legitimized acts of terror. Their arguments can be analyzed under two main headings: state terrorism and the related freedom-fighter dilemma.

### *1. Definition must include State as well as non-State actors*

It is as if it goes without saying that the term “terrorism” is associated with the use of force by non-State actors. For example, Laqueur writes that terrorism “suffocates in a dictatorship, which itself practices a form of terrorism, but wearing uniforms and insignia.”<sup>43</sup> That there is a form of terrorism that wears uniforms and insignia has prompted many thinkers to argue for a definition of terrorism that includes State terrorism.

State use of force against civilians is regulated by the Geneva Conventions and other instruments, and if on a sufficient scale, constitutes a war crime or a crime against humanity. However, those acts that they encompass can be restated as being terrorist acts, criminalized by international law. Otherwise, the practical result is a one-sided position that only considers Palestinians, for example, who lack a state, to be terrorists.

### *2. One man's terrorist is another's freedom fighter*

When Israel responds to suicide bombers by killing innocent Palestinian civilians, it is not regarded as “terrorist” because it is a state accountable to the norms of international law. If Israel sees its military campaign in the West Bank as a parallel to Bush's offensive on Al Qaeda, then there is merit in appreciating that, much in the same way, Palestinians claim affinity with the historical revolt of the American colonists against the occupying power. Historical narratives show how both the U.S. and Israel supported the organization and growth of so-called freedom-fighting groups (Taliban and Hamas respectively) that eventually turned against them and were consequently categorized as terrorists.<sup>44</sup>

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42. *Id.* at 19.

43. Walter Laqueur, *World of Terror*, NAT'L GEOGRAPHIC, November 2004, at 72, 80.

44. Cristina Jayme Montiel & Mustafa K. Anuar, *Other Terrorisms, Psychology, and Media*, 8 PEACE & CONFLICT: J. PEACE PSYCHOL. 201, 203 (2002). In this regard, Lazare writes that “the more widely modern society deploys terror, the more it denies that that is

The distinction between terrorist and freedom fighter is further complicated by the fact that the origin of the word “terrorism” comes from the period in France after its revolution, which became known as “the Terror.” In 1794, Robespierre sounded the call to arms in order to save the Republic from tyrants who sought to restore the monarchy.<sup>45</sup>

The freedom fighter dilemma in Islam is particularly complicated by a recontextualization of the Koran ideas of *jihad* (struggle) and *shahadat* (martyrdom) by terrorist groups.<sup>46</sup> But such a recontextualization is not exclusive to Islam.<sup>47</sup> In fact, the western norms of “just war” on the one hand, and the Islamic norms on the other, can both be readily recontextualized in order to justify terrorism.<sup>48</sup> Through recontextualization, conditions of the past that once allowed for certain acts are overlaid onto the conditions of the present, by identity-based groups so as to maintain their sub-cultural boundaries.<sup>49</sup> This is why some propose a definition of terrorism that not only offers an explanation from a law enforcement perspective, but also accounts for the structural components as well.<sup>50</sup>

Bearing recontextualization in mind, a definition of terrorism should distinguish between terrorism and the legitimate right to resist occupation. Some conventions make that distinction,<sup>51</sup> as well as the U.N. Charter.<sup>52</sup>

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what it is doing.” Daniel Lazare, *We Are All Terrorists*, 29 RADICAL SOC'Y: REV. CULTURE & POL. 13, 16 (2002).

45. Robespierre said: “Terror is nothing other than justice, prompt, severe, inflexible; it is therefore an emanation of virtue; it is not so much a special principle as it is a consequence of the general principle of democracy applied to our country’s most urgent needs.” Lois T. Flaherty, *Youth, Ideology, and Terrorism*, 27 ADOLESCENT PSYCHIATRY 29, 33-34 (2003).

46. Adam L. Silverman, *Just War, Jihad, and Terrorism: A Comparison of Western and Islamic Norms for the Use of Political Violence*, 44 J. CHURCH & ST. 73, 74-75 (2002).

47. *Id.*

48. *Id.*

49. *Id.*

50. Terrorism would thus be “the systematic use of violence by actors who have a subcultural identity attachment” and is one way that “subcultural actors attempt to resolve the disputes between themselves and the larger culture or between themselves and other subcultures.” *Id.* Terrorism would be “an attempt to assert the constitutive and regulatory subcultural norms of the actors onto the larger culture and/or other cultures.” *Id.* at 84. Still, the lack of response by Muslim leaders has led many non-Muslims to interpret this silence as condoning the actions of so-called Islamic terrorism. Even Islam’s lack of centralized authority does not excuse individual scholars who fail to speak out. This has led one scholar to suggest that the answer lies in the intimidation felt by many in the Muslim world by the violent elements within their communities. *Id.* at 88.

51. Consider for example the preamble and article 12 of the International Convention Against the Taking of Hostages (1979). See International Convention Against the Taking of Hostages, art. 12 (1979), available at <[www.unodc.org/unodc/en/terrorism\\_convention\\_](http://www.unodc.org/unodc/en/terrorism_convention_)

One can debate the views of the Taliban on the West being evil, and those of the Black Liberation Army on how all blacks are oppressed, and say that their leaders are structuring reality for their followers in a way that resonates with the followers' experience and legitimizes their terrorism. But then where does one draw the line? If one man's terrorist is *not* another man's freedom fighter, then *what* is he?

### ***B. Possible objections***

Critics of cultural relativism contend that its proponents present arguments that stand in the way of effective counter-terrorism action.<sup>53</sup> Laqueur concedes that a universal, acceptable definition of terrorism is impossible but that "informed, reasonable people discussing the subject will generally agree 90 percent of the time as to what constitutes terrorism and what does not."<sup>54</sup> Other thinkers emphasize the common elements: that all terrorists are radical, that they all have a political agenda – which differentiates them from criminals such as gangs and persons engaged in organized crime and drug trafficking. These thinkers argue that, regardless of other nuances that cultural relativism makes explicit, one must not lose sight of the need to spare civilians in all cases.<sup>55</sup> This, they say, is already

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hostages.html>. Similarly, article 19 of the International Convention for the Suppression of Terrorist Bombings (1997) and article 21 of the International Convention for the Suppression of the Financing of Terrorism (1999), which refer to the UN principles, which include of course the principle of the right of peoples to self-determination. See International Convention for the Suppression of Terrorist Bombings, art. 19 (1997), available at <[www.unodc.org/unodc/en/terrorism\\_convention\\_terrorist\\_bombing.html](http://www.unodc.org/unodc/en/terrorism_convention_terrorist_bombing.html)>. See International Convention for the Suppression of the Financing of Terrorism, art. 21 (1999), available at <[www.un.org/law/cod/finterr.htm](http://www.un.org/law/cod/finterr.htm)>.

52. The Charter prohibits states from violating the right of peoples to self-determination for any reason, and it urges them to refrain from the threat or use of force against the territorial integrity or political independence of any state. See U.N. CHARTER art. 1, para. 2, art. 51, art. 55, available at <[www.un.org/aboutun/charter/](http://www.un.org/aboutun/charter/)>. In Article 103 it also notes the cancellation of any international agreement that breaches or does not implement this right. See U.N. CHARTER art. 103, available at <[www.un.org/aboutun/charter/](http://www.un.org/aboutun/charter/)>. Hence, terrorism should not be equated with the legitimate, internationally protected right of peoples to self-determination.

53. Following 9/11, Stephen Jukes, the high-ranking editor of Reuters, adopted a policy of prohibiting use of the words "terrorism" and "terrorist" other than in a direct quote. The *Cleveland Plain Dealer* accused Reuters of a "timid relativism." Daniel Lazare, *We Are All Terrorists*, 29 RADICAL SOC'Y: REV. CULTURE & POL. 13, 14 (2002).

54. *Id.*

55. Although few would argue today against the need to protect civilians, it is worth noting that George Orwell was critical of this so-called immunity of the civilian, stating that war is not any more humanized that way; if the goal is to educate the masses to the horrors of modern warfare, then the most effective way is to expose them to those horrors as directly as possible. *Id.* at 15.

the case for states in international law – without the need, then, to include their actions in an eventual definition of terrorism.

*1. Existing stronger legal framework for State's use of force*

Since 1945, the UN Charter, Geneva Conventions, Rome Statute and other texts have constrained State actions, by distinguishing between combatants and civilians, by calling for proportional use of force and by living up to basic humanitarian principles. But while a legal framework exists for states, the norms governing use of force by non-State actors today are political, not legal. Hence scholars, including the UN Panel, stress the need for the UN to achieve the same degree of normative strength concerning non-State use of force as it has concerning State use of force. Therefore, the objection that a definition of terrorism should include the use of force by States against civilians is, they claim, no longer compelling.<sup>56</sup> However, being that a “legal framework” already exists to regulate State use of force, it does not logically imply that the definition of terrorism should not include State terrorism. *That* would be a political definition of terrorism, because it would be unjustifiably one-sided. A comprehensive, universally agreed definition of terrorism should focus on the act itself, not the perpetrators or their motivation. Terrorism is not the exclusive realm of non-State actors. Correspondingly, resistance to foreign occupation should also spare civilians. If innocent civilians are truly to be spared, then it makes no sense to uphold a State/non-State dichotomy in a definition of terrorism. It would be a double standard to do so.

*2. Resistance to occupation should spare civilians*

Then again, the following objection can appear: In defining terrorism by focusing on the act (killing of civilians) rather than the perpetrator (state or non-State actor) one risks holding the occupier and the occupied to the same standard. Columnist Cal Thomas once wrote: “Bin Laden complains about the killing of ‘innocents’ by American and Israeli forces, although he ignores the attacks on innocents by his PLO and other terrorist friends.”<sup>57</sup> The flipside of this argument, of course, is that while it is easier to condemn someone like bin Laden, it is much harder to seriously compare, let alone equate, the State terrorism practiced by an occupier with what

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56. *Follow-up to the Outcome of the Millennium Summit*, U.N. General Assembly, 59th Sess., Agenda Item 55, at 48, U.N. Doc. A/59/565 (2004), available at <[www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf)>.

57. Cal Thomas, *Bin Laden Points at Lebanon*, at <[www.jewishworldreview.com/1104/thomas\\_2004\\_11\\_02.php3](http://www.jewishworldreview.com/1104/thomas_2004_11_02.php3)> (visited, Dec. 3, 2005).

may genuinely hold as the actions of a freedom fighter, as guaranteed by the UN Charter.

Because it is much easier to agree on specific condemnable actions than on motivations, the international community has opted for a case-by-case regulation of international terrorism.<sup>58</sup> Harvard Professor Jessica Stern advocates a definition of terrorism that focuses on the act, not the perpetrator.<sup>59</sup> If terrorism simply means: “deliberately targeting non-combatants with the aim of instilling fear,” then it is a method, an act, used by nonstate actors as well as states. If the act is all that matters, regardless of the motives, then although Stern’s definition has the merit of extending the domain of terrorism to encompass states, it essentially indicates that a freedom fighter targeting civilians is a terrorist – or, more correctly, *engages in terrorism*. Similarly, Walzer argues against the existence of a “freedom fighter dilemma,” and states that you know terrorism when you see it.<sup>60</sup> He even registers his opposition to what he calls a culture of excuse and apology.<sup>61</sup> He responds to the claim that terrorism is the weapon of the weak by stating that nonviolent mass mobilization – such as the movement led by Ghandi – proved a far more effective weapon of the weak.<sup>62</sup>

In answering the second objection – namely that a definition of terrorism must safeguard the right of resistance of peoples under foreign occupation – the UN Panel rightly notes that, notwithstanding the fact that such a right is contested by some, the point remains that “there is nothing in the fact of occupation that justifies the targeting and killing of civilians.”<sup>63</sup> Going even further, the Panel wisely recommends that:

Neither of these objections (state terrorism and freedom fighter) is weighty enough to contradict the argument that the strong, clear normative framework of the United Nations surrounding State use of force must be complemented by a normative framework of equal authority surrounding non-State use of force.<sup>64</sup>

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58. Maxwell O. Chibundu, *Commentary: For God, for Country, for Universalism: Sovereignty As Solidarity in Our Age of Terror*, 56 FLA. L. REV. 883, 890 (2004).

59. Todd S. Purdum, *What Do You Mean, ‘Terrorist’?*, N.Y. TIMES, Apr. 7, 2002, § 4, at 1.

60. Michael Walzer, *Five Questions About Terrorism*, 49 DISSENT 5 (2002).

61. *Id.*

62. *Id.* at 7.

63. *Follow-up to the Outcome of the Millennium Summit*, U.N. General Assembly, 59th Sess., Agenda Item 55, at 48, U.N. Doc. A/59/565 (2004), available at <[www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf)>.

64. *Id.*

A definition of terrorism that includes state terrorism, focusing on the act itself and preserving the right of resistance of foreign occupation *is* possible. More importantly, such a definition owes its possibility to the due regard for cultural relativism, liberalism and democracy, since the welfare of innocent civilians is spared without double standards and without equating occupier with occupied. In the Middle East for example, a comprehensive, universal, legal definition of terrorism would shatter the illusion that only Israel is concerned with terrorism and only Palestinians are concerned with the right to self-determination. That Israel is a sovereign state does not give it a green light to destroy innocent Palestinian lives; its "war" against terrorism becomes understood by all as not only directed against, say, Hamas, but also *against itself* every time it commits acts of state terrorism. Correspondingly, that groups like Hamas are in fact resisting foreign occupation does not exempt them from respecting innocent civilians. In order to not equate occupier with occupied, a definition of terrorism should include state terrorism as well as a focus on the act itself of targeting innocent civilians, regardless of the perpetrators and their motivations. Otherwise, everyone will just have to agree to disagree.