

**REDEFINING TERRORISM: CAN STATE ACTORS COMMIT AND BE RESPONSIBLE FOR ACTS OF  
TERRORISM?**

**NJUGUNA CATHERINE WANJIRU**

SUPERVISED BY:

**ASSOCIATE PROFESSOR CATHLEEN POWELL**



Thesis presented for the approval of Senate in partial fulfilment of the requirements for the  
Masters of Law in International Law in the Department of Public Law.

WORD COUNT:

18312

**FEBRUARY 2022**

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

## DECLARATION

I, **CATHERINE WANJIRU NJUGUNA**, hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorise the University to reproduce for the purpose of research either the whole or any portion of the contents in any manner whatsoever.

Signed by candidate

.....  
CATHERINE WANJIRU NJUGUNA

**Date: 13<sup>th</sup> February, 2022**

## ACKNOWLEDGMENTS

Writing this thesis was a demanding and tireless task considering it was resumed 6 years after I completed my coursework and the COVID-19 pandemic had rocked the world. It taught me that you have to remain determined and focused on the mission to achieve a specific goal.

I recognize that the completion of this thesis would not have been easily achieved if it was not for the great advice, support, favour, and encouragement from my supervisor, family and friends to which regard is due. I am also indebted to all the authors whose written work played a vital part in its success.

I extend my sincere gratitude to my supervisor Associate Professor Cathleen Powell for approving to supervise me 6 years later. She never lost hope in me. Her valuable guidance and support will always be cherished.

Special appreciation goes to my family for the sacrifices they made for me to complete my studies. May God bless them. I remain forever indebted to you.

A special thanks to my Husband, Simon and my daughter, Abigail. You were the greatest support system for me. I can now say that we finally did it. I love you so much and appreciate your love.

Finally, to God who made it possible for me to pursue and finally complete my Masters.

## **LIST OF ACRONYMS AND ABBREVIATIONS**

GA	General Assembly
UN	United Nations
USA	United States of America
ICSFT	International Convention for the Suppression of Financing of Terrorism
SC	Security Council
STL	Special Tribunal for Lebanon

## **ABSTRACT**

This dissertation seeks to give a more extensive definition of terrorism through a more innovative interpretation and use of the existing international legal systems, while not jeopardizing its foundations in the process. The dissertation also undertakes a proper evaluation of the elements of terrorism.

The research study tests the hypothesis that states can commit terrorism. The aim of the dissertation is to demonstrate the need to redefine terrorism comprehensively in the international sphere and establish whether state actors can commit acts of terrorism. The study adopts a discourse analysis to investigate the research questions and puzzle out the exclusion of ‘state terrorism’ from the discussion of terrorism in the mainstream literature while focusing on representative politics. In the instant case, the consequences of recognizing terror acts by non-state actors and not by the State or its agents.

From the analysis and preceding discussions, this study affirms that excluding states or their agents as potential perpetrators of terrorism is a deliberate representation without a proper legal backup and that most definitions fail to appreciate the objective test in defining terrorism.

## TABLE OF CONTENTS

Declaration.....	ii
Acknowledgments .....	iii
List of Acronyms and Abbreviations .....	iv
Abstract.....	v
<b>CHAPTER ONE: INTRODUCTION</b> .....	<b>8</b>
1.1 BACKGROUND .....	8
1.2 DEFINING TERRORISM AND ITS ELEMENTS.....	8
1.2.1 Customary Approach.....	8
1.2.2 United Nations Approach .....	10
1.2.3 Regional And National Approaches .....	16
1.2.4 Objective Definition Of Terrorism .....	19
1.3 PROBLEM STATEMENT .....	20
1.4 RESEARCH OBJECTIVES.....	21
1.5 SIGNIFICANCE OF THE STUDY .....	21
1.6 RESEARCH METHODOLOGY .....	21
1.7 CHAPTER BREAKDOWN.....	22
<b>CHAPTER TWO: LITERATURE REVIEW</b> .....	<b>24</b>
2.1 INTRODUCTION .....	24
2.2 THEORETICAL FRAMEWORK .....	26
2.3 PUTTING STATE TERRORISM INTO PERSPECTIVE: STATE AGENT ACTIONS AND TERRORISM .....	27
2.4 THE STATE AND ITS RIGHT TO USE FORCE.....	35
2.5 CONCLUSION AND RESEARCH GAP .....	41
<b>CHAPTER THREE: LEGITIMATE STATE VIOLENCE VIS A VIS STATE TERRORISM</b>	<b>42</b>
3.0 INTRODUCTION .....	42
3.1 STATE TERRORISM.....	42
3.2 THE DIVERGING POINT OF STATE VIOLENCE AND STATE TERRORISM.....	45

3.3 CHALLENGES ASSOCIATED WITH DISTINGUISHING STATE TERRORISM FROM LEGITIMATE STATE VIOLENCE.....	48
3.4 CONCLUSION .....	50
<b>CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS .....</b>	<b>51</b>
4.0 CONCLUSION .....	51
4.1 RECOMMENDATIONS.....	55
<b>BIBLIOGRAPHY .....</b>	<b>57</b>
LIST OF CONVENTIONS .....	57
LIST OF STATUTES.....	57
BOOKS.....	58
JOURNAL ARTICLES .....	59
OTHERS.....	62



## CHAPTER ONE: INTRODUCTION

### 1.1 Background

Although terrorism has evolved both in its form and components over time, it is neither a foreign concept nor a new ideology; its existence is traceable to the French revolution of 1794.<sup>1</sup> Surprisingly, the term remained legally undefined for an exceptionally long time despite its cognizance in the international community. That is, it had no comprehensive definition under international law.<sup>2</sup> Therefore, the discussions on the issue had little legal relevance at a global level.<sup>3</sup> With such a definitional vacuum, terrorism became a marvel denounced by all for being brutal and ferocious but legally comprehended by none. Consequently, and with its increasing threats, it became necessary for the international community to embark on a definitional framework to combat terrorism in all its forms effectively.<sup>4</sup> However, as will be noted in the subsequent discussion herein, the definitional approach that states took did not view states as potential actors of terrorism. Therefore, this study focuses on the place of States in the definitions of terrorism.

### 1.2 Defining terrorism and its Elements

#### 1.2.1 Customary Approach

Undeniably, there is no consensus on one universal legal definition of the term ‘terrorism.’<sup>5</sup> Nonetheless, there has been some discussion about the possibility of the existence of a customary definition. The discussion is traced to the somewhat contentious 2011 judgment of the Special

---

<sup>1</sup> Gus Martin and Fynnwin Prager, *Terrorism: An International Perspective* (SAGE 2019), 261.

<sup>2</sup> Robert P Barnidge Jr., *Non-State Actors and Terrorism: Applying the Law of State Responsibility and the Due Diligence Principle* (Cambridge University Press 2008), 129.

<sup>3</sup> *ibid*, 130.

<sup>4</sup> *ibid*, 109.

<sup>5</sup> Gregor Bruce, ‘Definition of Terrorism Social and Political Effects’ (2013) 21 *Journal of Military and Veterans’ Health* 26, 27.

Tribunal for Lebanon (STL), which found that a definition of ‘transnational terrorism’ has existed in customary international law, at least, since 2005.<sup>6</sup>

The STL recognized three vital elements in their finding that would otherwise describe transnational terrorism.<sup>7</sup> First, there must be perpetration of a criminal act (such as hostage-taking, murder, arson, kidnapping, among others) or threatening of such an act. Second, there must be an intent to spread fear or panic among the wider population, which would usually involve the creation of public danger to coerce an authority, whether national or international, to take some action or refrain from taking it.<sup>8</sup> Lastly, and for the sake of the question that was before them for determination, the act must possess some transnational element.<sup>9</sup>

The STL based its decision on relevant United Nations (UN) policies, conventions, treaties, practices, and norms, including those of the General Assembly (GA), as well as national and international jurisprudence.<sup>10</sup> However, its decision, as well as its underlying legal basis, is problematic to the extent that even though there are sector-specific treaties that address specific criminal means and methods terrorists usually employ, none of the STL's references, individually or collectively, contain a comprehensive definition or establishes a general international crime of ‘terrorism.’ Some treaty offenses, like hijacking or hostage-taking, may have been entrenched under the customary law; however, in the absence of a general crime of terrorism within the instruments, no parallel customary rule can arise from those instruments. Moreover, a correct reading of anti-terrorism instruments reveals that there is no agreement on a common definition of

---

<sup>6</sup> Ben Saul, ‘Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism’ (2011) 24 *Leiden Journal of International Law* 677, 678.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

<sup>9</sup> UN Special Tribunal for Lebanon (Appeals Chamber), *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/I, 16 February 2011, para. 85.

<sup>10</sup> *ibid.*

terrorism.<sup>11</sup> The consensus seems to be that a standard definition of terrorism is evolving.<sup>12</sup> The STL, therefore, prematurely declared its existence within the instruments.

### **1.2.2 United Nations Approach**

The UN treated terrorism as a social phenomenon and did not find the need to define it for an exceptionally long time.<sup>13</sup> This was until 2001 when there was an attack on the United States of America (USA). Before then, the UN's focus was on facilitating the self-determination of various nation groups, a focus that clouded its need to deal with terrorism decisively.<sup>14</sup> Needless to say, the member states were hesitant to include acts of the struggle for self-determination in the description of terrorism, as this would work against their commitment to helping States that required liberation.<sup>15</sup> With such commitments, it became problematic to arrive at a universally accepted definition of terrorism. For instance, in 1972, the General Assembly (GA) set up an ad hoc committee on terrorism; however, the committee's attempts to find a comprehensive approach to terrorism were futile. It made no substantive progress on defining terrorism.<sup>16</sup>

After the 9/11 attacks, the UN changed its ambivalent attitude towards terrorism, which was followed by the UN Security Council (SC) passing several resolutions. Some of these included resolution 1368, which required 'the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and SC resolutions, in particular, resolution 1269

---

<sup>11</sup> (Saul, 2012, p. lxxi).

<sup>12</sup> *ibid.*

<sup>13</sup> Nicholas Rostow, 'Before and after: The Changed UN Response to Terrorism Since September 11th Symposium: Terrorism: The Legal Implications of the Response to September 11, 2001' (2001) 35 *Cornell International Law Journal* 475, 479.

<sup>14</sup> *ibid.*

<sup>15</sup> Jose E Alvarez, 'The UN's War on Terrorism Order from Chaos: Contexts for Global Legal Information IALL 21st Course on International Law Librarianship: Papers and Presentations' (2003) 31 *International Journal of Legal Information* 238, 240.

<sup>16</sup> Eva Herschinger, 'A Battlefield of Meanings: The Struggle for Identity in the UN Debates on a Definition of International Terrorism' (2013) 25 *Terrorism and Political Violence* 183, 190.

(1999) of 19 October 1999,<sup>17</sup> and Resolution 1373 which required states to ‘prevent and suppress the financing of terrorist acts’ thereby placing an obligation on states to fight terrorism.<sup>18</sup>

In further effort to combat terrorism, the UN SC on 12<sup>th</sup> November 2001 passed resolution 1377, which declared that acts of international terrorism constituted one of the ‘most serious threats to international peace and security.’<sup>19</sup> Although a clear universal definition of terrorism seemed necessary at this time, it was never defined even with the declaration.<sup>20</sup> Consequently, dealing with terrorism remained problematic, mainly because there was a need to harmonize both the domestic and international instruments that attempted to describe the term.<sup>21</sup>

Generally, there are varying descriptions putting meaning to the term ‘terrorism’ within the UN instruments.<sup>22</sup> However, these are not intended to imply the existence of a universally accepted definition of the term.<sup>23</sup> Such descriptions are meant to serve as guiding benchmarks, thus assisting states in carrying out specific duties and obligations under the instruments and related legislation. Such examples are provided here as illustrations. The first example is the GA A/RES/49/60 of 17 February 1995(hereinafter, GA resolution 49/60), which seeks to criminalize various armed activities considered ‘terrorist’ in nature. More accurately, it declares certain acts unjustifiable.

‘Acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them. (para. 3).’<sup>24</sup>

---

<sup>17</sup> United Nations Security Council Resolution 1368 paragraph 4, U.N.Doc. S/RES/1368(Sept 12, 2001).

<sup>18</sup> Paul C Szasz, ‘The Security Council Starts Legislating’ (2002) 96 The American Journal of International Law 901, 904.

<sup>19</sup> United Nations, Security Council Resolution 1377, Annex, U.N. Doc. S/RES/1377(Nov.12, 2001).

<sup>20</sup> Szasz (n. 18)

<sup>21</sup> Reuven Young, ‘Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation’ (2006) 29 BC Int’l & Comp. L. Rev. 23, 24.

<sup>22</sup> *ibid.*

<sup>23</sup> Although that is one of the desired but currently elusive objectives of the draft Comprehensive Convention on International Terrorism (Comprehensive Convention).

<sup>24</sup> UNGA Resolution 49/60 (9 December 1994): Declaration on Measures to Eliminate International Terrorism, para. 12.

One of the strengths of GA resolution 49/60 is that the GA adopted it through consensus rather than vote.<sup>25</sup> Accordingly, it enjoys a relatively high level of legitimacy; nevertheless, it is not legally binding. Notably, the unjustifiable acts identified in this resolution possess most, if not all, of the elements that the STL identified in its judgement. However, it falls short of a definition because it expressly states that those acts are unjustifiable rather than that they amount to terrorism. Notwithstanding, GA Resolution 49/60 recognized the importance of progressive development and codification of anti-terrorism norms (see paragraph 12). The Resolution laid a significant foundation for the formulation of the International Convention for the Suppression of Financing of Terrorism (ICSFT) 1999.<sup>26</sup> The ICSFT, under Article 2, describes terrorism financing as follows:

‘1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such 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>27</sup>

This refined description is an advancement in relation to previous descriptions because even the state can be culpable for financing terrorism, from its plain reading. Unlike most previous descriptions, it is not unidirectional in viewing States as the targets rather than perpetrators. Nevertheless, following political sensitivity, most universal anti-terrorism instruments do not

---

<sup>25</sup> ‘Ben Saul, ‘Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism’ (2011) 24 *Leiden Journal of International Law* 677, 679.’

<sup>26</sup> International Convention for the Suppression of the Financing of Terrorism opened for signature on 9 December 1999, 2178 ILM 229(entered into force in April 2002).

<sup>27</sup> *ibid.*

include an exact definition of terrorism.<sup>28</sup> Article 2 of the ICSFT above is a good example. Another example is traced to 2004, when the SC<sup>29</sup> through Resolution 1566, described terrorism as:

‘criminal acts including against civilians committed with the intent to cause death or serious bodily injury or taking 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 abstain from doing any act which constitutes offences within the scope of and as defined in the international conventions and protocols relating to terrorism.’<sup>30</sup>

Briefly, Resolution 1566 aimed at assisting States in meeting their obligations under SC Resolution 1373 of 2001 which required them to take domestic legislative action in fighting terrorism.<sup>31</sup> Given that resolution 1566 was adopted under Chapter VII of the UN Charter, it could be argued that it is legally binding on all UN member states. However, in practice, any such suggestion that there is an underlying obligation to accept and implement a specific definition of ‘terrorism’ is likely to be vehemently dismissed by the States.<sup>32</sup> Resolution 1566, nonetheless, has had a significant impact in influencing and assisting in the harmonization of some terrorism definitions in national laws.<sup>33</sup> It has also been influential in closing gaps in domestic criminal frameworks regarding such offenses. Importantly, it is now part of the body of norms influencing how terrorism offenses are dealt with and classified.<sup>34</sup> Three key elements similar to those of STL can be picked from this description: criminal act, subject, and intent.

Another attempt at describing terrorism is found in Article 2 of the Draft Comprehensive Convention.<sup>35</sup> While this document is still under scrutiny, there are some notable differences

---

<sup>28</sup> Ben Saul, ‘Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism’ (2011) 24 *Leiden Journal of International Law* 677.

<sup>29</sup> United Nations Security Council Resolution 1566, pmb., U.N Doc. S/RES/1566(Oct.8,2004).

<sup>30</sup> *ibid.*

<sup>31</sup> United Nations Security Council Resolution 1566, pmb., U.N Doc. S/RES/1566(Oct.8,2004).

<sup>32</sup> See the Security Council's Counter-Terrorism Committee's S/2016/50 survey.

<sup>33</sup> Reuven Young, ‘Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation’ (2006) 29 *BC Int’l & Comp. L. Rev.* 23, 25.

<sup>34</sup> (Young, 2006),

<sup>35</sup> Draft comprehensive convention on international terrorism: [New York]: UN, 28 Aug. 2000.

between its text and the one the GA and SC use. For instance, it is more specific than the GA's Declaration of 1994 and the SC's Resolution 1566, in mentioning property damage as a crime.<sup>36</sup> However, it is less inclusive in expressing the grounds that will never justify terrorist acts.<sup>37</sup> This could be because the Draft Comprehensive Convention as a conceivably legally binding treaty is subjected to a more robust negotiation and scrutiny process than the preceding resolutions.

Notably, the problem of defining terrorism is not unique to contemporary society. The advancement in the definition can be well appreciated by looking back at some of the historical moments where the definition was given some noticeable consideration. For instance, in 1935 at a conference in Copenhagen, terrorism was described as,

‘international criminal acts directed against the life, physical integrity, health or freedom of a head of state or his spouse or any person holding the prerogatives of a head of state as well as crown prince’s, members of the constitutional, legislative or judicial bodies [if the perpetrator creates] a common danger or a state of terror that might incite a change or raise an obstacle to the functioning of public bodies or a disturbance to international relations.’<sup>38</sup>

Although this description was coined several decades ago, it is essential to appreciate it to understand the historical thinking on the issue of terrorism. This description is different from the description in Resolution 1566 and several contemporary definitions to the extent that it is very specific on the target of terror attacks. That is, the target has to be the head of a State or an equivalent . This description leaves out all other possible targets, including civilians.

Moreover, heads of State are likely to cite this description to punish those that try to challenge their governments.<sup>39</sup> Similarly, in 1937, the League of Nations defined terrorism under Article 1(2) of the Convention for the Prevention and Punishment of Terrorism as ‘criminal acts directed

---

<sup>36</sup> M Cherif Bassiouni, *Draft Comprehensive Convention on International Terrorism*, U.N. Doc. A/C.6/55/1 (28 Aug. 2000) (Brill Nijhoff 2001) <[https://brill.com/view/book/9789004478428/B9789004478428\\_s033.xml](https://brill.com/view/book/9789004478428/B9789004478428_s033.xml)> accessed 18 October 2021.

<sup>37</sup> *ibid.*

<sup>38</sup> Barnidge Jr (n. 2), 132.

<sup>39</sup> *ibid.*

against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.’<sup>40</sup> Like the Copenhagen definition, this description places the State at the receiving end, meaning that it is unidirectional as it views States only as targets and not potential perpetrators.

Several states viewed the definition of terrorism under this convention as being too broad and general. Accordingly, the Convention received only 25 ratifications as most states opted not to sign it.<sup>41</sup> For instance, Britain did not sign the Convention citing unforeseen difficulties with drawing up the implementing domestic legislation.<sup>42</sup> The definition was also criticized for ignoring the acts directed against civilians, as its focus was on the acts against States.<sup>43</sup> Notwithstanding, it became a reference point for subsequent contemporary political and legal discussions on terrorism.<sup>44</sup>

To summarize, many UN-related legal instruments have tried to define and assign different but interconnected meanings to the word terrorism. The common thread running across these definitions or descriptions is that they are quiet on the status of the States as a terrorist actor. Nonetheless, without a precise and discrete definition of terrorism that is universally accepted, there is a high possibility that States will violate human rights and hide under the veil of the fight against terrorism.<sup>45</sup> Put differently, it will be challenging for the States to act as the referees on terrorism matters while they too have the potential of being perpetrators.

---

<sup>40</sup> Convention for the Prevention and Punishment of Terrorism, Nov.16, 1937, League of Nations Doc. C546M.383 (1937). Article 1(2).

<sup>41</sup> Reuven Young, ‘Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation’ (2006) 29 BC Int’l & Comp. L. Rev. 23, 24.

<sup>42</sup> Arnold K Amet, ‘Terrorism and International Law: Cure the Underlying Problem, Not Just the Symptom Keynote Address to the 22nd Annual Fulbright Symposium - Confronting Complexity in International Law’ (2013) 19 Annual Survey of International & Comparative Law 17, 18.

<sup>43</sup> Javier Rupérez, ‘The United Nations in the Fight against Terrorism’ [2006] United Nations Counter-Terrorism Committee Executive Directorate 22, 23.

<sup>44</sup> *ibid.*

<sup>45</sup> Kent Roach, *Comparative Counter-Terrorism Law* (Cambridge University Press 2015), 368.



### 1.2.3 Regional and National Approaches

Many regional organizations and States have counter-terrorism instruments that include their definitions of terrorism that reflect respective regional objectives and priorities.<sup>46</sup> Within the UN system, however, none are proposed to constitute a generally agreed-upon definition of terrorism.<sup>47</sup> Notably, there are four major approaches utilized to define terrorism across various regions and States. The first approach entails a definition that expressly exempts armed national liberations or self-determination struggles from the description of terrorism. An example of this approach is the Convention of the Organisation of the Islamic Conference on Combating International Terrorism (CICCIT),<sup>48</sup> which defines terrorism as,

‘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 imperilling 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 or independent States.’<sup>49</sup>

CICCIT proceeds to distinguish between what is considered unlawful, criminal activities by terrorists, and the use of violence in the context of what is regarded as a justifiable battle against foreign occupation, aggression, or dominance, exempting the latter from criminal procedures.

Article 2(a) of CICCIT states:

‘All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State.’<sup>50</sup>

---

<sup>46</sup> Ben Saul, ‘Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism’ (2011) 24 *Leiden Journal of International Law* 677, 678.

<sup>47</sup> *ibid.*

<sup>48</sup> Convention of the Organisation of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999 Deposited with the Secretary General of the Organization of the Islamic Conference). Accessed at [www.cfr.org/terrorism-and-the-law/...Islamic...oic...terrorism/p24781](http://www.cfr.org/terrorism-and-the-law/...Islamic...oic...terrorism/p24781).

<sup>49</sup> *ibid* at Article 1(2).

<sup>50</sup> *ibid*

Notably, the description in this convention presents the following elements. First, there must be violence or threat thereof. Secondly, the violence or threat thereof must be part of a criminal plan. This implies that the act of violence or threat thereof must be independently illegal in the domestic setting. Thirdly, the act must be perpetrated to create some form of panic or danger within the population. Unlike the previous descriptions, this convention gives less emphasis on the motives or intentions as long as the other elements identified herein can be pinpointed. Similar definitional approaches are found in the Arab Convention for the Suppression of Terrorism 1998<sup>51</sup> and the Organisation of African Unity (OAU) Convention on the Prevention and Combating of Terrorism.<sup>52</sup> They all expressly exempt armed national liberations or self-determination struggles from their description of terrorism. Arguably, the unique political history of the regions informs their choice to make this exemption.<sup>53</sup>

The second approach is the one that makes references to sectoral conventions against terrorism when defining terrorism.<sup>54</sup> Some of the citable instruments in this regard include the Council of Europe Convention on the Prevention of Terrorism (adopted 16 May 2005, entered into force 1 June 2007). Article 1(1) states;

‘Article 1(1): For the purposes of this Convention, "terrorist offence" means any of the offences within the scope of and as defined in one of the treaties listed in the Appendix (i.e., all of the sectoral conventions).’

---

<sup>51</sup> Arab Convention for the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998 (Deposited with the Secretary General of the League of Arab States). Accessed at [https://www.unodc.org/tldb/pdf/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/tldb/pdf/conv_arab_terrorism.en.pdf).

<sup>52</sup> Organisation of African Unity (OAU) Convention on the Prevention and Combating of Terrorism, Algiers, 14 July 1999.

<sup>53</sup> Basil Davidson, *Modern Africa: A Social and Political History* (3rd edn, Routledge 2013), page 128.

<sup>54</sup> Christian Walter, ‘Defining Terrorism in National and International Law’ (2004) 1 *Terrorism as a challenge for national and international law: Security versus liberty* 24, 36.

The third approach is the hybrid approach.<sup>55</sup> This approach makes references to other instruments dealing with terrorism while at the same time giving a description that reflects their priorities and goals. An example is the ‘Shanghai Convention on Combatting Terrorism, Separatism and Extremism (adopted 15 June 2001, entered into effect 29 March 2003).’ Article 1(a) cross-refers to existing anti-sectoral treaties. However, a definition is provided in article 1(b), which reflects regional priorities:

‘any other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict or to cause major damage to any material facility, as well as to organize, plan, aid and abet such act, when the purpose of such act, by its nature or context, is to intimidate a population, violate public security or compel public authorities or an international organization to do or to abstain from doing any act, and prosecuted in accordance with the national laws of the Parties.’

Notably, this description introduces the idea of persons involved in active hostilities. The preceding descriptions herein did not attempt to make this exemption; that is, they only talked of civilians without specifying their involvement in active hostilities or not.

The final approach is the one that views terrorism from a criminal justice perspective.<sup>56</sup> Here, the description is tailored down to specific elements (as would be expected of any other regular crime), which must be present in a description of terrorism.<sup>57</sup> Briefly, the first element that must be present is harm or threat of harm. Essentially, the harm must independently constitute a crime under domestic laws. This appears in the Financing Convention, among other instruments that have

---

<sup>55</sup> Jacqueline S Hodgson and Victor Tadros, ‘The Impossibility of Defining Terrorism’ (2013) 16 *New Criminal Law Review* 494, 500.

<sup>56</sup> *ibid*

<sup>57</sup> *ibid*

attempted to define terrorism.<sup>58</sup> The second element is the target. The ‘subjects’ of terrorist attacks in international law entail non-combatants, civilians, and the general public.<sup>59</sup> It is impracticable for an act to be considered an act of terrorism where there are no targets involved. Harm must be directed or threatened on a target. Third, there must be the presence of intimidation or coercion in the act or conduct in question. That is, the purpose of the act or conduct occasioning harm must be to intimidate a population or coerce a government or international organization into doing or abstaining from doing something.<sup>60</sup> This element is present in the preceding three approaches utilized in defining terrorism. The final element is the guilty mind, which unfolds in the form of intention and motivation. The perpetrators must not only commit the act but anticipate the consequences stemming from the act. The anticipation of the act and its intended consequence builds on the *mens rea* aspect of the crime.

#### **1.2.4 Objective Definition of Terrorism**

The definition of terrorism based on specific elements such as the ones highlighted above is commonly referred to as the ‘objective definition’ of terrorism.<sup>61</sup> The objective and dictionary definition is sometimes used interchangeably because they focus on the ultimate result of an act.<sup>62</sup> That is, for an act to amount to terrorism, it must manifest terrorising results characterised with extreme anxiety and fear.<sup>63</sup>

---

<sup>58</sup> Babatunde F Obamamoye, ‘Counter-Terrorism, Multinational Joint Task Force and the Missing Components’ (2017) 15 *African identities* 428, 430.

<sup>59</sup> Moira Lynch, “Resorting to Authoritarian Habits”: Anti-Terrorism Laws, State Violence, and Human Rights Prosecutions in Democratic Spain’, *Human Rights Prosecutions in Democracies at War* (Springer 2019), 125.

<sup>60</sup> Michel Gueldry, Gigi Gokcek and Lui Hebron, *Understanding New Security Threats* (Taylor & Francis 2019), 177.

<sup>61</sup> Jordan J Paust, ‘Terrorism’s Proscription and Core Elements of an Objective Definition’ (2010) 8 *Santa Clara Journal of International Law* 51, 54.

<sup>62</sup> John Richard Thackrah, *Dictionary of Terrorism* (Routledge 2013), 304.

<sup>63</sup> *ibid.*

According to Paust, the objective definition of terrorism makes no exclusion for the persons or entities that can perpetrate acts of terrorism.<sup>64</sup> He explains that terrorism is a serious crime that requires an all-encompassing international criminal proscription.<sup>65</sup> The proscription must anticipate perpetrators of any status (i.e., government agents or private persons).<sup>66</sup> In addition, it must appreciate that an act of terror can occur in any socio-political context (for example, during peace to war).<sup>67</sup> The objective definition, therefore, becomes a perfect choice for advancing a comprehensive definition of terrorism given that states have been excluded systematically as perpetrators of terrorism from the various legal instruments that have attempted to define terrorism in the past.<sup>68</sup> This deliberate exclusion makes the previous definitions of terrorism incomplete and uncertain.

### 1.3 Problem Statement

The legal obligation and duties bestowed on states regarding their subjects entitle them to reasonable use of physical force within their respective territories.<sup>69</sup> This resulting right has been, on some occasions been described as the state's monopoly to use force.<sup>70</sup> However, this right can be easily exploited to violate human rights, especially by leaders committed to using state machinery in advancing their personal agenda of clinging to state power and thwarting democracy.<sup>71</sup> Undeniably, when the intention of using state violence changes from protecting the citizens to inflicting fear and intimidating the populace, it stops being legitimate. Of a greater

---

<sup>64</sup> Jordan J Paust, 'Terrorism's Proscription and Core Elements of an Objective Definition' (2010) 8 Santa Clara Journal of International Law 51, 52.

<sup>65</sup> *ibid.*

<sup>66</sup> *ibid.*

<sup>67</sup> For example, from peace to war.

<sup>68</sup> Julia Jansson, *Terrorism, Criminal Law and Politics: The Decline of the Political Offence Exception to Extradition* (Taylor & Francis Limited 2021), 11.

<sup>69</sup> Richard English, 'The Future Study of Terrorism' (2016) 1 European Journal of International Security 135, 141.

<sup>70</sup> Joseph Pugliese, *State Violence and the Execution of Law: Biopolitical Caesurae of Torture, Black Sites, Drones* (Routledge 2013), 23.

<sup>71</sup> Upendra D Acharya, 'War on Terror or Terror Wars: The Problem in Defining Terrorism 2008 Sutton Colloquium Edition: The War on Terror and Its Implications for International Law & Policy' (2008) 37 Denver Journal of International Law and Policy 653, 677.

concern is what happens when those illegitimate actions check out all the boxes on the elements of terrorism. Do these actions automatically advance to constitute state terrorism? Where is the line drawn? This study attempts to answer these questions through an examination of state terrorism. More accurately, this research revisits the question as to whether state actors can be responsible for terrorism following certain types of violence that they might exhibit towards the citizens. The study concludes by recommending a definition of terrorism that is more exhaustive and inclusive of some striking issues on terror.

#### **1.4 Research Objectives**

The central objective of this research study is to redefine terrorism. For specific objectives, this study aims to;

- a) analyse the existing international legal system and scholarly work that defines terrorism, and
- b) analyse instances where the state's use of violence becomes illegitimate and the challenges associated with striking a balance on the same.

#### **1.5 Significance of the study**

The study identifies problems with defining terrorism and the impact it has had on both the domestic and international community. The study assesses whether the definitions of terrorism present in the international legal instruments are conclusive to exclude state actors as the perpetrators of terrorism. The study hopes to contribute to the never-ending debate on the need to redefine terrorism.

#### **1.6 Research Methodology**

This research employs a qualitative method of data collection. Terrorism is not a new phenomenon that would require the collection of new primary data. This, therefore, explains why the

quantitative approach or method of data collection is not utilized in this study. The emerging problem concerning the definition of terrorism relates to interpretation. This does not require new data but an analysis of the already existing materials on the subject. Accordingly, the choice to settle on a qualitative research method is to obtain different but complementary data on terrorism to the best understanding of the research problem and give a presentable analysis. Thus, arriving at a relatively informed conclusion on the issues that are subject to this study.

## **1.7 Chapter Breakdown**

### **Chapter one: Introduction**

This chapter introduces the study's background information and formulates the problem's statement, the objectives, and research questions. More importantly, the chapter briefly outlines the central elements of terrorism derivable from the various international legal instruments that have attempted to define terrorism. The chapter finally explains why it is essential to settle on the objective approach to defining terrorism instead of the broad approach, which historically has excluded states as potential actors of terrorism.

### **Chapter two: Literature Review**

This chapter investigates each research question to meet the formulated research objectives. More accurately, this chapter discusses the literature related to the definition of terrorism with a particular interest in 'state terrorism.' It mainly focuses on the work of other scholars and the existing international legal systems on the definition of terrorism. The discussion is divided into four subsections. The first subsection is the introduction, followed by the theoretical framework. The third subsection is the analysis of whether state agents can be perpetrators of terrorism. The final part is the conclusion.

### **Chapter three: Legitimate state violence vis a vis state terrorism.**

This study utilizes the findings in the reviewed literature to distinguish legitimate from illegitimate use of force by state actors. The chapter also addresses the challenges surrounding this distinction.

### **Chapter four: Conclusion and Recommendation**

This is the final chapter and concludes on the study's findings, and makes recommendations on the way forward.



## CHAPTER TWO: LITERATURE REVIEW

### 2.1 Introduction

Before the year 2008, ‘terrorism studies’ was fairly a small area of study; more accurately, it was a segment of security studies.<sup>72</sup> However, in the contemporary context, it has received more attention and is now an area of study in itself. It has its own special journals, research centres, books, experts, scholars, study programs, conferences, and funding opportunities *inter alia*.<sup>73</sup> Terrorism studies is reported as one of the most rapidly expanding research area, with several books and articles on the subject getting published every year.<sup>74</sup> However, the exclusion of ‘state terrorism’ from the mainstream discussion is becoming a growing concern.<sup>75</sup> State terrorism is neglected as a potential area that can sustain a systematic research study. Jackson observes that this problem was also noticeable during the Cold War.<sup>76</sup> The exclusion is perplexing and puzzling considering the genesis of the term ‘terrorism’ and its connection to States.<sup>77</sup> Wright notes that ‘state terrorism’ is not only more severe than ‘non-state terrorism’ but also more or similarly destructive.<sup>78</sup> Although there is a tactical exclusion of ‘state terrorism’ in the conventional literature on terrorism, Wright notes that states have committed more terrorist acts than non-state actors.<sup>79</sup> The only difference is that states have the mechanisms to legitimize their actions to

---

<sup>72</sup> David Miller and others, *Critical Terrorism Studies since 11 September 2001: What Has Been Learned?* (Routledge 2016), 70.

<sup>73</sup> Khaled Al-Kassimi, ‘Critical Terrorism Studies (CTS):(State) (Sponsored) Terrorism Identified in the ( Militarized) Pedagogy of (US) Law Enforcement Agencies’ (2019) 5 *Cogent Social Sciences* 1, 69.

<sup>74</sup> Richard Jackson, *Routledge Handbook of Critical Terrorism Studies* (Routledge 2016), 34.

<sup>75</sup> *ibid*, 50.

<sup>76</sup> Richard Jackson, ‘The Ghosts of State Terror: Knowledge, Politics and Terrorism Studies’ (2008) 1 *Critical Studies on Terrorism* 377, 376.

<sup>77</sup> E Mylonaki, ‘Terrorism: International Perspectives’ in RD Morgan (ed), *The Sage Encyclopedia of Criminal Psychology* (Sage 2019) <<https://openresearch.lsbu.ac.uk/item/86606>> accessed 21 May 2021.

<sup>78</sup> Joshua Wright, ‘State Terrorism: Are Academics Deliberately Ignoring It?’ (2019) 6 *Journal of Global Fault lines* 204, 206.

<sup>79</sup> *ibid*, 2010.

become acceptable in the eyes of the public.<sup>80</sup> On the other hand, non-state actors lack such mechanisms and are likely to face condemnation at any slightest occurrence of a terrorist act.

One striking concern is how terrorism can be redefined to encompass ‘state terrorism’ when there are diverging and irreconcilable opinions on what constitutes terrorism. The first class of opinions strongly believes that states do not qualify as actors of terrorism under the existing legal framework and interpretation.<sup>81</sup> On the other hand, there is an emerging opinion that states can commit terrorism, thus state terrorism.<sup>82</sup> Experience suggests that there are several developments and refinements in the definition of terrorism, but ‘state terrorism’ is still excluded from the discussion. This deliberate attempt to exclude states as potential actors of terrorist acts has been attributed to political biases surrounding the subject.<sup>83</sup>

Governments have been hesitant to develop a legally binding definition of terrorism. Where they have made attempts to define the term, the focus has been on non-state actors to the exclusion of state agents as perpetrators of terrorism.<sup>84</sup> These difficulties arise from the fact that the term is politically and emotionally charged.<sup>85</sup> Regardless of the differences between governments on the definition of terrorism, there is a general understanding that any deliberate attack on innocent civilians (or non-combatants), irrespective of one's cause, is unacceptable.<sup>86</sup> At a later stage of this discourse, we shall consider whether such attacks should fit into the definition of terrorism, especially when they are actions of state agents and exhibit elements of terrorism, as captured in

---

<sup>80</sup> Ruth Blakeley, *State Terrorism and Neoliberalism: The North in the South* (Routledge 2009), 17.

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

<sup>83</sup> HHA Cooper, ‘Terrorism: The Problem of Definition Revisited’ (2001) 44 *American Behavioral Scientist* 881, 889.

<sup>84</sup> Bruce Broomhall, ‘State Actors in an International Definition of Terrorism from a Human Rights Perspective Symposium: Terrorism on Trial’ (2004) 36 *Case Western Reserve Journal of International Law* 421,427.

<sup>85</sup> Albert J Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature* (Routledge 2017), 537.

<sup>86</sup> *ibid.*, 600.

our introductory chapter. Accordingly, this chapter discusses the literature related to the definition of terrorism with a particular interest in ‘state terrorism.’ It mainly focuses on the work of other scholars and the existing international legal systems on the definition of terrorism.

## **2.2 Theoretical Framework**

This study employs discourse analysis to investigate the research questions and puzzle out the exclusion of ‘state terrorism’ from the discussion of terrorism in the mainstream literature. Discourse analysis is a method of investigation or research that researchers utilize to study the relationship between written texts or spoken words and their social context.<sup>87</sup> This method has also been described as the analysis of language beyond what ordinarily appears in the sentence.<sup>88</sup> Succinctly, discourse analysis is a form of critical theory explaining the connection between the text, social phenomena, and political processes. Specifically, the theory focuses on representative politics, the apparent political or philosophical upshots or consequences of embracing one form of representation over the other. In the instant case, the consequences of recognizing terror acts by non-state actors but not by the state or its agents.

In particular, the focus is on the representation (or non-representation, which is a form of representation) of state terrorism in the mainstream discussion of terrorism. The theory is employed to comprehend and understand the relationship between politics, power, and knowledge concerning ‘state terrorism’. As Diversi and Moreira note, the creation of knowledge and its transmission is never an exclusively neutral exercise;<sup>89</sup> there are always interests and agendas,

---

<sup>87</sup> Barbara Johnstone, *Discourse Analysis*. Hoboken (NJ: John Wiley & Sons 2018), 7.

<sup>88</sup> Michael McCarthy, Christian Matthiessen and Diana Slade, ‘4 Discourse Analysis’, *An Introduction to Applied Linguistics* (Routledge 2013), 70.

<sup>89</sup> Marcelo Diversi and Claudio Moreira, *Between Talk: Decolonizing Knowledge Production, Pedagogy, and Praxis* (Routledge 2016), 111.

which are never apparent on the face of the work.<sup>90</sup> Schweiger, Diversi and Moreira also note that knowledge is the starting point of any literature work; and that the more significant task is to unveil the motivation behind it.<sup>91</sup> This study partly seeks to explore and unveil the beneficiary of the exclusion of states as potential perpetrators of terrorism. It is the position in this study that the absence of ‘state terrorism’ in the mainstream literature on terrorism and the perception that the subject is not of any importance in explorative research is a deliberate representation. The forces behind such representation aim at entrenching and maintaining dominant power structures, allowing a segment of the elite and state to conduct hegemonic projects.<sup>92</sup> The theoretical approach herein is critical in deconstructing and dismissing the explanation that has always been put forward as a justification for excluding states or their agents as potential perpetrators of terrorism. This perspective remains a barrier to redefining terrorism.

### **2.3 Putting State Terrorism into Perspective: State Agent actions and Terrorism**

A brief analysis reveals that several prominent scholars have recognized the place of terrorism as a political tool capable of being employed by any actor with no exception for States or their agents.<sup>93</sup> Despite this recognition, most scholars fail to conduct systematic research on ‘state terrorism’ beyond the cognizance that its perpetrators have no limitations. For instance, Lanqueur confirms that states have by far and large committed the most outrageous acts of terrorism, including but not limited to murder, material, and social destruction, more than any other ‘actor’ of terrorism; but deliberately avoids conducting an empirical study on ‘state terrorism.’<sup>94</sup> He

---

<sup>90</sup> Elisabeth Schweiger, ‘Listen Closely: What Silence Can Tell Us about Legal Knowledge Production’ (2018) 6 *London Review of International Law* 391, 400.

<sup>91</sup> *Ibid*, 402.

<sup>92</sup> Ruth Blakeley, *State Terrorism and Neoliberalism: The North in the South* (Routledge 2009), 113.

<sup>93</sup> Virginia Page Fortna, ‘Is Terrorism Really a Weapon of the Weak? Testing the Conventional Wisdom’ (Working Paper, Columbia University 2017), 10.

<sup>94</sup> Walter Laqueur, *A History of Terrorism: Expanded Edition* (Transaction Publishers 2016), 30.

openly states that state terrorism is not an area he is interested in venturing into or investigating.<sup>95</sup> This trend is also witnessed in the work of Wilkinson, who explains that recognizing states/regimes' nature of using violence, intimidation, and coercion to maintain control and power, is the first step towards a deeper understanding of the broader international and historical drifts of terrorism.<sup>96</sup> He asserts that states or regimes tend to use coercive power, which accounts for terror on a massive scale.<sup>97</sup> Although Wilkinson recognizes the atrocities states commit (which border on terrorism), he, like Laqueur and other prominent scholars on terrorism studies, deliberately chooses to focus on non-state types of terrorism rather than 'state terrorism.'<sup>98</sup>

The trend is not limited to Wilkinson and Lanqueur or any other prominent authors in terrorism studies. It can also be seen in the international instruments that have attempted to define or describe terrorism as a means of combating the menace.<sup>99</sup> Notably, most of these instruments limit the definition of terrorism to non-state actors, excluding state agents as potential perpetrators: something Abubakar and Varin describe as an 'actor-based' definition of terrorism.<sup>100</sup> Some scholars have argued that state agents who apparently engaged in actions, which are technically terrorist in nature, can face the consequences of their actions under war crime, and crime against humanity laws *inter alia*.<sup>101</sup> While this is supposed to justify States' exclusion, it does not exonerate States from acts of terrorism. More importantly, such assertions are a strong representation of the political biases surrounding 'state terrorism' as a subject of research. The said

---

<sup>95</sup> *ibid.*

<sup>96</sup> Paul Wilkinson, *Terrorism & the Liberal State* (Macmillan International Higher Education 2015), 125.

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.*

<sup>99</sup> Refer to the discussion in chapter one

<sup>100</sup> Caroline Varin and Dauda Abubakar, *Violent Non-State Actors in Africa: Terrorists, Rebels and Warlords* (Springer 2017), 300.

<sup>101</sup> Ben Saul, 'Terrorism, Counter-Terrorism and International Humanitarian Law' 1, 43. See also Sambuddha Ghatak, 'The Role of Political Exclusion and State Capacity in Civil Conflict in South Asia' (2018) 30 *Terrorism and Political Violence* 74, 87.

representation has contributed to the absence of state terrorism in the mainstream discussion and the lack of a robust definition of terrorism.<sup>102</sup>

Jackson takes an analytical approach to explore the silence on state terror within the mainstream discourse on terrorism. His work reveals that state terrorism is only noticed for its absence in the mainstream discussion.<sup>103</sup> The only time the discussion on state terrorism appears is when it is recognized for missing in the mainstream literature. Like Abubakar and Varin, Jackson attributes the ‘state terrorism’ absence to the adoption of an actor-based approach in defining terrorism, an approach that excludes the State or its agents as potential actors of terrorism. Experience suggests that most terrorism definitions border on ‘violent acts carried out exclusively by non-state actors.’<sup>104</sup> The objective approach to defining terrorism has either been neglected or simply ignored. However, knowing the genealogical background of the term terrorism,<sup>105</sup> it is not only illogical to exclude states or their agents as perpetrators of terrorism, but also it is a legal mistake.

Wright explores two types of critique on the silence on state terrorism. He refers to the first type as the intrinsic critique or the first order critique.<sup>106</sup> Under the first critique, the absence of state terrorism is attributable to a lack of political neutrality in research and the disregard of empirical evidence on the extent and form of state terrorism.<sup>107</sup> The second critique, also known as the second-order, reflects on the broader ethical and political repercussions of state terrorism as laid out by the current discourse. This second critique is supported by the work of Jackson, who delves

---

<sup>102</sup> *ibid*, 88.

<sup>103</sup> Richard Jackson, ‘The Ghosts of State Terror: Knowledge, Politics and Terrorism Studies’ (2008) 1 *Critical Studies on Terrorism* 377, 380.

<sup>104</sup> *ibid*.

<sup>105</sup> Noel O’sullivan, *Terrorism, Ideology and Revolution: The Origins of Modern Political Violence* (Routledge 2019), 185.

<sup>106</sup> Joshua Wright, ‘State Terrorism: Are Academics Deliberately Ignoring It?’ (2019) 6 *Journal of Global Faultlines* 204, 219.

<sup>107</sup> *ibid*.

into how the current discourse on state terrorism is utilized as a political weapon.<sup>108</sup> He concludes that the absence of state terrorism works as an enabler to some hegemonic schemes of the state.<sup>109</sup> That is, the omission of ‘state terrorism’ acts as an enabler for the state to deflect attention from its terrorist conduct through the legitimization of their actions, which are otherwise terrorism. Jackson explains that ‘an explorative study on this area has the benefit of subverting the representation created by the absence of state terrorism and opens space for articulating alternative ideas and knowledge to deconstruct the dominant opinion and channel in a new practice, which will encompass an all-inclusive but discrete definition of terrorism.’<sup>110</sup> There is a need for a new approach in defining terrorism that adopts the objective definition which does not exclude states as perpetrators of terrorism. The new approach is the correct approach and the best method to deal with contemporary forms of terrorism, which are often committed by the States but go unpunished due to the politically biased definition of terrorism that has existed with us for the longest time now.

Martin recognizes states as sponsors of terrorism but does not openly recognize them as the original perpetrators.<sup>111</sup> He explains that ‘actors’ of terrorism significantly depend on the state for support and assistance, and when they receive it, we end up with ‘state-sponsored terrorism’ and not ‘state terrorism.’ A paradox emerges from Martin’s attempt to fit within the biased political representation of ‘absence of state terrorism’ and still maintains that states can only sponsor terror acts. Technically, sponsoring a terrorist act is terrorism, and therefore, the party involved in the

---

<sup>108</sup> Richard Jackson, *Routledge Handbook of Critical Terrorism Studies* (Routledge 2016), 116 <[https://books.google.com/books/about/Routledge\\_Handbook\\_of\\_Critical\\_Terrorism.html?id=IZ\\_7CwAAQBAJ](https://books.google.com/books/about/Routledge_Handbook_of_Critical_Terrorism.html?id=IZ_7CwAAQBAJ)> accessed 15 April 2020.

<sup>109</sup> *ibid.*

<sup>110</sup> *ibid.*

<sup>111</sup> Gus Martin, *Understanding Terrorism: Challenges, Perspectives, and Issues* (SAGE 2010), 400.

sponsorship is an ‘actor of terrorism regardless of the person's legal identity.’<sup>112</sup> Daniel Byman shares Martin’s position and explains that state inaction or any tolerance is as good as any direct assistance terrorism actors receive for their operations.<sup>113</sup>

Martin and Byman’s approach of ‘inaction’ is problematic in two parts. First, the state can fail to act due to insufficient information on a terrorist scheme. This cannot automatically qualify a state as an ‘actor’ of terrorism. States must have information about terrorist activities before they can be accused of failing to act. Where they do not have such information, accusing them of inaction becomes illogical. Secondly, states are made up of several security agencies, and failure of one agency to act does not necessarily make a state a perpetrator of terrorism, especially when individual negligence can be established. The work of Martin is a step towards the recognition of states as ‘actors’ of terrorism. Suppose a state can sponsor a terror act, in that case, it unquestionably becomes a perpetrator of terrorism, especially if it has hidden motives such as instilling fear or intimidating the public into doing or not doing something. This position justifies why it is necessary to abandon an actor-based definition of terrorism. Importantly, taking an exclusionary approach is a representation that demonstrates the presence of bias in dealing with terrorism.

Bruce Broomhall contributes to the discussion by looking into the question of whether state actors can be included in the definition of terrorism at an international level.<sup>114</sup> Broomhall notes that the definition of terrorism raises both intriguing and problematic questions. He explains that they are intriguing because of the international community’s effort to deal with terrorism in all its forms

---

<sup>112</sup> Paulo Casaca and Siegfried O Wolf, *Terrorism Revisited: Islamism, Political Violence and State-Sponsorship* (Springer 2017), 127.

<sup>113</sup> Daniel Byman, ‘Understanding, and Misunderstanding, State Sponsorship of Terrorism’ [2020] *Studies in Conflict & Terrorism* 1, 7.

<sup>114</sup> Bruce Broomhall, ‘State Actors in an International Definition of Terrorism from a Human Rights Perspective Symposium: Terrorism on Trial’ (2004) 36 *Case Western Reserve Journal of International Law* 421, 428.



categorically. On the other hand, they are problematic because a robust definition of terrorism is destined to conflict with states' interests associated with the 'absence of state terrorism.'<sup>115</sup> Broomhall recognizes the contentious debate at the international level on the regulation of state agents' actions meeting the elements of terrorism or whether to limit the regulation to non-state actors. Apart from the nature of the status of a State, Broomhall observes that there is no other convincing explanation for the exclusion of State agents as perpetrators of terrorism. Notwithstanding, he openly decides not to delve into the issue of whether State agents should be considered 'actors' of terrorism.<sup>116</sup> Instead, he focuses on the proposed definition at the international level and its consequences on human rights concerns.<sup>117</sup> His deliberate refocus contributes to the knowledge gap on whether the State or its agents can perpetrate acts of terrorism.<sup>118</sup>

Bruce Hoffman takes a different philosophical angle. To him, the term terrorism is an extremely negative and pejorative term only used when referring to one's worst enemy.<sup>119</sup> From Hoffman's idea of terrorism, it would practically be impossible to consider state actors responsible for terrorism against their own state. Can a State be its own enemy or opponent? Can a State disagree with itself? He explains that while it is true that there can be several instances where there are disagreements within the State, probably from rival political parties, it will not be practically possible to find a State disagreeing with itself. Hoffman's explanation is incomplete because while it is correct that it is impractical for the State to disagree with itself, it is not the case that the State cannot direct its terrorist acts against another target which is not itself. Notably, his definitional

---

<sup>115</sup> *ibid*, 430.

<sup>116</sup> *ibid*, 431.

<sup>117</sup> *ibid*, 432.

<sup>118</sup> *ibid*, 433.

<sup>119</sup> Bruce Hoffman, *Inside Terrorism* (Columbia university press 2017), 67.

approach runs away from the objective approach in defining terrorism.<sup>120</sup> Hoffman's definition is sending one clear message on terrorism that the acts of terrorism can be perpetrated exclusively by non-state actors. But what would mass killing by police forces amount to, especially when they are not legitimate? An example is the 2013 mass killing witnessed in South Sudan following political differences.<sup>121</sup> The killing and fear imposed on citizens were not from an outside enemy or opponent but within the state.<sup>122</sup> State actors took part in the killing as well.<sup>123</sup> From Bruce Hoffman's perspective, would this kind of killing be terror acts considering that they exhibit the elements of terrorism?<sup>124</sup> There was violence, fear, and threat to all citizens, which made some flee outside the country seeking safety.<sup>125</sup>

Claridge David, in his article titled '*State terrorism? Applying definitional model*': *Terrorism and Political Violence*<sup>126</sup> defines terrorism as the

'systematic threat or use of violence, whether for, or in opposition to, established authority, with the intention of communicating a political message to a group larger than the victim group by generating fear and so altering the behaviour of the larger group. Either the victim or the perpetrator, or both will never be operating within the military context.'<sup>127</sup>

Claridge's definition is interesting because relatively new elements can be picked out of it, that is, terrorism must exhibit systematic acts (this feature appears in the South African definition of terrorism<sup>128</sup> as well), and this is distinguished from Wilkinson's sporadic, indiscriminate acts of

---

<sup>120</sup> See discussion in chapter one on the objective definition.

<sup>121</sup> Fritz Nganje, 'The Rhetoric and Practice of the International Responsibility to Prevent Mass Atrocities: Reflections on South Africa's Peacebuilding Role in South Sudan (2005–2013)' (2017) 26 *African Security Review* 271, 278.

<sup>122</sup> *ibid.*

<sup>123</sup> *ibid.*

<sup>124</sup> See chapter one for elements of terrorism

<sup>125</sup> Enough Project, 'South Sudan' (*The Enough Project*, 2017) <<https://enoughproject.org/conflicts/south-sudan>> accessed 21 May 2021.

<sup>126</sup> David Claridge, 'State Terrorism? Applying a Definitional Model' (1996) 8 *Terrorism and Political Violence* 47, 51.

<sup>127</sup> *ibid.*, 52.

<sup>128</sup> South Africa, Act no 33 of 2004

gruesome terror.<sup>129</sup> His definition passes the objective test since the definition is not based on an actor but rather on the events that cumulatively amount to terrorism. However, he does not rule out the possibility of a terror act occurring spontaneously without planning and scheming.<sup>130</sup> He nevertheless insists that there must be some elements of strategy and systematic planning.<sup>131</sup> The requirement for systematic planning, seen singularly as the determinant for terrorism, will likely rule out states from being perpetrators of terrorism unless it can be evinced that the state took its time to plan and orchestrate the terror plan. The second characteristic identifiable from the above definition is intention (though not new), which according to Claridge is the most problematic to prove using hard evidence. However, he concedes that in some instances, circumstantial evidence can be adduced to show intention.<sup>132</sup>

Mahmoud Eid outlines conditions that must be met before an act of terror can be considered 'state terrorism.'<sup>133</sup> The conditions are similar to the ordinary elements of terrorism or rather an objective definition, except that in the place of a non-state actor, the actor or perpetrator must be a state agent.<sup>134</sup> The elements Eid lists are like those of Claridge David, and they match the incidences where the state has used force through the police officers to instil fear in demonstrating citizens. This is quite familiar in African countries where despotic leaders in power often try to use the police force in their own interest in cases where the citizens are demonstrating against their regime.<sup>135</sup> An example is Kenya and Uganda, especially during the elections period.<sup>136</sup> Claridge

---

<sup>129</sup> Paul Wilkinson, *Terrorism versus Democracy: The Liberal State Response* (Taylor & Francis 2011), 243.

<sup>130</sup> *ibid*

<sup>131</sup> *Ibid*, 244.

<sup>132</sup> Wilkinson, *Ibid* (n. 91), 246.

<sup>133</sup> Mahmoud Eid, 'Understanding Terrorism', *Violence and Society: Breakthroughs in Research and Practice* (IGI Global 2017), 17.

<sup>134</sup> See the discussion in chapter one on elements of terrorism and objective definition.

<sup>135</sup> Sarah Jenkins, 'The Politics of Fear and the Securitization of African Elections' (2020) 27 *Democratization* 836, 861.

<sup>136</sup> Jacqueline Klopp and Prisca Kamungi, 'Violence and Elections: Will Kenya Collapse?' (2007) 24 *World Policy Journal* 11, 15.

in his article, gave an excellent example of this using the killings that took place in the Santa Cruz Massacre.<sup>137</sup>

Thomas Perry Thornton describes terrorism as ‘a symbolic act designed to influence political behaviour by extra normal means, entailing the use or threat of violence.’<sup>138</sup> Although Thomas does not openly and specifically categorize state agents as actors of terrorism, it is conceivable from his definition that ‘state terrorism’ exists. States have used extranormal means involving the use of force, violence, and threat to ‘influence political behaviour’ on citizens.<sup>139</sup> For instance, in 2007/2008 post-election violence witnessed in Kenya, the police force was accused of using extra-judicial punishment to bring order into the nation or rather silence the dissatisfied citizens. In the process of doing this, many citizens were murdered. The report states that most of the deaths were caused by the police officers using live bullets to fire on demonstrating citizens.<sup>140</sup> Under the lens of the objective definition of terrorism, these illegal acts should amount to terrorism.

## 2.4 The State and its Right to use Force

Historically states have employed force in forcing populations into aligning with the wishes and demands of the regime of the day *inter alia*.<sup>141</sup> Several examples are available to illustrate this

---

<sup>137</sup> ‘On 12 November 1991 Indonesian soldiers opened fire on a crowd demonstrating in favour of independence for East Timor. Three or four thousand people had gathered at the Santa Cruz cemetery in the Timorese capital, Dili. As the crowd entered the cemetery Indonesian troops opened fire, and then moved into the cemetery attacking survivors with clubs and bayonets, altogether killing between 150 and 270 people. Despite the Indonesian claim that the crowd was armed with knives and grenades and had tried to seize the weapons of the troops present, numerous eyewitness reports that the crowd was unarmed and demonstrating in a peaceful manner. After the massacre, there was a number of arrests and disappearance.’ See also The Report by the special rapporteur on Extrajudicial, Summary or Arbitrary Execution on his visit to Indonesia and East Timor 3 to 13 July 1994 (United Nations 1994) par 21.

<sup>138</sup> Thornton, Thomas Perry. "Terror as a weapon of political agitation." *Terrorism-Critical Concepts in Political Science* 3 (1964), 64.

<sup>139</sup> Bryson Ometo, ‘Improving Police Accountability in Kenya: Curing the Shortcomings of the IPOA in Bringing an End to Police Brutality in the Country’ (Social Science Research Network 2020) SSRN Scholarly Paper ID 3568251 <<https://papers.ssrn.com/abstract=3568251>> accessed 19 October 2021.

<sup>140</sup> GSDRC, ‘Ballots to Bullets: Organised Political Violence and Kenya’s Crisis of Governance’ (GSDRC) <<https://gsdrc.org/document-library/ballots-to-bullets-organised-political-violence-and-kenyas-crisis-of-governance/>> accessed 21 May 2021.

<sup>141</sup> Mikkel Thorup, *An Intellectual History of Terror: War, Violence, and the State* (Routledge 2010), 200.

point. For instance, violence was the readily available means that the colonial powers used to force their colonies to submit to their demands and provide free labour.<sup>142</sup> European colonial masters, for example, used violence to establish their empires and thwart any form of uprising (whether for independence or otherwise) that would then be a threat to their existence and operations.<sup>143</sup> Another perfect example is during World War II, when civilians within the German cities were bombed to incite the larger population to rebel against Hitler.<sup>144</sup> A similar occurrence was witnessed during the Cold War in the Latin American States, where violence, torture, and even in some extreme cases, disappearances were employed to not only intimidate but also to curtail any form of opposition or resistance to the ruling regime.<sup>145</sup>

Recent examples can be seen when the police use excessive force, including live bullets on protesting unarmed civilians expressing their frustrations with the ruling government.<sup>146</sup> The orders usually come from the State, and armed force is typically meant to silence the opposing political groups.<sup>147</sup> While the state would quickly come to the defence of the police, citing the need to have law and order, justifying the state violence, it is clear that the use of live bullets is normally meant to instil fear beyond the direct victims of state violence. However, if non-state actors were to commit similar acts, where violence is utilized to intimidate or instil fear to the audience beyond their immediate victim, the acts would quickly be viewed as acts of terrorism.<sup>148</sup>

---

<sup>142</sup> Dierk Walter, *Colonial Violence: European Empires and the Use of Force* (Oxford University Press 2017), 302.

<sup>143</sup> *Ibid*, 310.

<sup>144</sup> Ruth Blakeley, *State Violence as State Terrorism* (Routledge 2016), 19.

<sup>145</sup> Marie-Christine Doran, 'The Hidden Face of Violence in Latin America: Assessing the Criminalization of Protest in Comparative Perspective' (2017) 44 *Latin American Perspectives* 183, 191.

<sup>146</sup> Tessa Diphooorn and Naomi van Stapele, 'What Is Community Policing?: Divergent Agendas, Practices, and Experiences of Transforming the Police in Kenya' (2021) 15 *Policing: A Journal of Policy and Practice* 399, 402.

<sup>147</sup> *ibid*.

<sup>148</sup> David Claridge, 'State Terrorism? Applying a Definitional Model' (1996) 8 *Terrorism and Political Violence* 47, 50.

Whilst state violence is frequently accorded legitimacy and is never questioned as terrorism, acts of non-state actors would not be viewed with a similar lens.<sup>149</sup> Some have argued that the state has the legal right to use violence or force as opposed to non-state actors.<sup>150</sup> Notably, there are considerable materials that suggest that state actors are capable of perpetrating terrorism.<sup>151</sup> According to Jarvis and Lister, most state violence, particularly those against local populations, is intended to have a terrorizing effect and may result in far higher fatalities than non-state terrorism.<sup>152</sup>

There is a common misconception that since the very existence of a State relies on its monopoly to use violence, it cannot perpetuate terrorism.<sup>153</sup> Accordingly, the proponents of this notion mistakenly believe that a fundamental difference exists when the acts of terrorism are committed by the state *vis a vis* when the non-state personnel commits them.<sup>154</sup> Put differently, an assumption is made that States have permission to use violence on their populations, whether in pursuit of illegal objectives or otherwise. At the same time, the non-state actors are not accorded such rights, whether pursuing legal political objectives or otherwise.<sup>155</sup> Subsequently, the former qualifies as state violence and the latter as terrorism.<sup>156</sup> To address this challenge, terrorism must be redefined in an objective rather than subjective manner. The objective definition reduces the chances of discrimination based on ‘actor.’ The focus of an objective definition is the events themselves and the consequences of those events, whether intended or otherwise.

---

<sup>149</sup> *ibid.*

<sup>150</sup> Melanne A Civic and Michael Miklaucic, *Monopoly of Force: The Nexus of DDR and SSR* (National Defense University Press 2011), 56.

<sup>151</sup> *Ibid.*

<sup>152</sup> Lee Jarvis and Michael Lister, ‘State Terrorism Research and Critical Terrorism Studies: An Assessment†’ (2014) 7 *Critical Studies on Terrorism* 43, 49.

<sup>153</sup> Alex Schmid, ‘Repression, State Terrorism, and Genocide: Conceptual Clarifications’ (2019), 30.

<sup>154</sup> Michael Stohl, *The Politics of Terrorism, Third Edition*, (3rd edition, CRC Press 2020), 37.

<sup>155</sup> *ibid.*

<sup>156</sup> *ibid.*

Notably, the distinction between state violence and terrorism is made based on the perpetrator. State violence occurs when the state is the perpetrator, but terrorism occurs when the perpetrator is a non-state actor.<sup>157</sup> The correct distinction should be made based on the nature of the act(s) in question. Killing one hundred people by State operatives or by non-state operatives does not make any difference when the other objective element of terrorism exists and can be proved. Therefore, the State should not be granted too much leeway regarding its illegitimate use of violence. Secondly, an erroneous assumption is made that since the state holds the monopoly or rather has the legal right to use violence, then all state violence is permissible. The international human rights law limits the extent to which the State can use violence or rather exercise its right to use armed force on its citizens.<sup>158</sup> Accordingly, on this lens alone, not all State violence will be perceived to be permissible. The drafters of the international instruments on human rights foresaw that the States are likely to abuse their right to use force on the citizens, thus, the limitation.<sup>159</sup>

The current challenges in explaining state terrorism are linked to the failure to have a consensus on the definition of terrorism, as noted in the earlier chapter of this study. Nevertheless, the discussions suggest that there are common elements of terrorism that scholars agree on.<sup>160</sup> Interestingly, the agreed elements form the bedrock of the objective approach of defining terrorism. However, despite the general understanding on certain common core characteristics of terrorism, a set of scholars insist that terrorism perpetrated by the state should never be equated to that perpetrated by non-state actors.<sup>161</sup> Walter Laqueur is one of such scholars who explains that political terrorism and state oppressions present certain differences that should be viewed against

---

<sup>157</sup> *ibid.*

<sup>158</sup> Blakeley, *Ibid* (n. 145), 58.

<sup>159</sup> Felipe Gómez Isa and Koen de Feyter, *International Protection of Human Rights: Achievements and Challenges* (Universidad de Deusto 2006), 147.

<sup>160</sup> Daniel Byman, 'Defining Terrorism: Toward a Working Definition' [2014] Georgetown University 1, 3.

<sup>161</sup> *ibid.*

the lens of purpose, motive, and general effect.<sup>162</sup> To him, an attempt to equate the two is a recipe for disastrous confusion.<sup>163</sup> This assertion disagrees with the objective approach to defining terrorism, which indicates that excluding certain acts or actors from the definition of terrorism will create confusion and result in uncertainty.<sup>164</sup> Laqueur has taken the actor-based approach to define terrorism, instead of the objective approach. Even if we assume that there were fundamental differences in motive, purpose, and effect of terrorism committed by state and those committed by the non-state actors, as Laqueur argues, it is undeniable that the core characteristics of terrorism would not change irrespective of the perpetrator. The terrorizing effect will still reach the population regardless of the perpetrator. Essentially, the effect is even worse when the state causes it as the population is left more vulnerable and helpless. Ideally, the state and population or citizens have a social contract where the people are supposed to submit their sovereignty to the state, which in turn is supposed to protect them from any form or kind of harm.

Therefore, the argument Laqueur is putting forward is part of the misconception scholars have adopted to give moral legitimacy to state violence. He emphasizes that the existence of States is defined with their monopoly to use violence against their population. To strip them of this right would mean they would lose control, and there will be zero chances of maintaining even the minimum law and order on which civilization is anchored.<sup>165</sup>

Bruce Hoffman shares in the ideology of Laqueur and explains that underappreciating the differences between non-state and state violence or equating victims of violence perpetrated by non-state and state actors amounts to ignorance of the factual reality.<sup>166</sup> For instance, more deaths

---

<sup>162</sup> Laqueur, *Ibid* (n. 95), 34.

<sup>163</sup> *ibid*.

<sup>164</sup> J Paust, *Ibid* (n. 42), 55.

<sup>165</sup> Walter Laqueur, 'Reflections on Terrorism' (1986) 65 *Foreign Affairs* 86, 92.

<sup>166</sup> Bruce Hoffman, *Inside Terrorism: Third Edition* (Columbia University Press 2017), 44.



and destruction has occurred in the hands of the national armed forces while exercising monopoly of power, than it has on the hands of terrorists who lack such powers.<sup>167</sup> Even though more casualties have occurred in the hands of armed forces while employing violence, Hoffman argues that it is common knowledge that there is a qualitative difference between the violence the national armed forces use in contrast to those used by the terrorists.<sup>168</sup> For instance, non-state actors are likely to attack spontaneously or impulsively and without any form of warning. In contrast, states are likely to give a warning before resorting to using violence.<sup>169</sup> However, such warnings can also be construed as threats made to intimidate the population into doing something they would not do in a free will society. Hoffman explains that the qualitative difference in the two sets of violence emanates from the historically established norms and rules that prohibit certain kinds of weapons and out-laws certain types of attacks on specific targets.<sup>170</sup> He contends that, by contrast, terrorists have shown no regard to these established norms and rules.

The contention Hoffman is putting forward would be more convincing if it could be demonstrated that in all instances that states have employed violence, they have never violated even a single rule or norm, including those captured in the Geneva conventions and the UN Charter.<sup>171</sup> The factual reality is that states themselves have violated these norms and rules not just once but in several instances.<sup>172</sup> It is reported that even in the instances where the States normally have the legal backing to use violence, their conduct during such operations has not always been to the set

---

<sup>167</sup> Blakeley, *Ibid* (n. 145), 22.

<sup>168</sup> Hoffman, *Ibid* (n. 167), 45.

<sup>169</sup> *ibid*.

<sup>170</sup> Ruth Blakeley, 'State Violence as State Terrorism' in Marie Breen-Smyth (ed), *The Ashgate Research Companion to Political Violence* (Ashgate 2012), 71 <<https://kar.kent.ac.uk/24178/>> accessed 22 May 2021.).

<sup>171</sup> *ibid*.

<sup>172</sup> *ibid*.

standards or legitimate.<sup>173</sup> Essentially, states must operate under certain limitations otherwise, they stand to abuse their power and entitlement.

## **2.5 Conclusion and Research Gap**

A brief overview of the literature reveals that state terrorism is receiving pervasive silence despite its genesis linked to the French Revolution. The silence is a barrier in redefining terrorism due to the already existing political bias, especially at the international level where states are the dominant actors. Second, scholars have either deliberately or technically decided to ignore the objective approach of defining terrorism. This could be aimed at meeting a political purpose or otherwise. Third, states or their agents have the potential and capabilities of committing terror acts. However, they have been deliberately excluded as actors of terrorism. Such exclusions only speak to the misconceptions, mistakes, and contradictions bordering the actor-based definition of terrorism. More accurately, the exclusion suggests a lack of political neutrality on research and a total disregard of empirical evidence on the extent and form of state terrorism. Concisely, the exclusion is a legal mistake. Fourth, the deliberate choice of the scholars to avoid deep investigation on ‘state terrorism’ suggests that there is the likelihood of unspoken intimidation of scholars by the states. Accordingly, this creates a knowledge gap, which this study attempts to bridge.

---

<sup>173</sup> HR Jacqueline, ‘The Strategic Use of State Repression and Political Violence’, *Oxford Research Encyclopedia of Politics* (2016), 12.

## **CHAPTER THREE: LEGITIMATE STATE VIOLENCE VIS A VIS STATE TERRORISM**

### **3.0 Introduction**

While adopting various examples, this chapter illustrates instances where state terrorism can be depicted, then proceeds to demonstrate instances where the government's actions surpass the legitimate use of state violence, thus crossing over to state terrorism. When the State utilizes violence exhibiting the elements of terrorism identified in chapter one with a clear intention of creating fear and suppressing any political oppositions,<sup>174</sup> then, that type of violence in its nature can safely be said to be state terrorism. This chapter also challenges the exclusion rule on state terrorism. That is, it contests the exclusive legal entitlement of the states to use violence. More accurately, it demonstrates that the monopoly of violence which states enjoy is not in itself a justification for excluding states from terrorism studies; neither is it a justification for states to utilize the violence in whichever way they choose.<sup>175</sup> The discussion proceeds to highlight some of the challenges associated with distinguishing state terrorism from other forms of legitimate violence. It notes that the challenge of making the distinction usually relates to the aspects of motive and agency.

### **3.1 State Terrorism**

There is no single universally accepted description of state terrorism. At best, scholars continue to disagree as to whether state terrorism exists. Notwithstanding, in this study, state terrorism is defined as the use of force or violence by state officials, institutions, or agents (especially the police and armed forces) to harm, intimidate, and/or coerce citizens into doing or not doing something,

---

<sup>174</sup> and the utilization of the force encompasses all the elements necessary to have an objective definition of terrorism

<sup>175</sup> 'While not the subject of this chapter, it should be highlighted that in contesting states' claims to a monopoly on violence, particularly when violence is used in illegitimate ways, it is rational to grant legitimacy to non-state actors engaged in violent opposition to state oppression. States employ the principle of self-defense to legitimize their use of force, which they claim is a lawful use of force. As a result, non-state actors resisting illegitimate state violence should be granted the same right, namely, the right to use violence in self-defense when they are illegitimately assaulted by state agents.'

without any legal justification and with the intention of instilling fear beyond the victims receiving the direct abuse. The definition adopted in this study is formulated based on the objective definition of terrorism discussed in chapter one. This definition has been carefully arrived at to depict all the elements that would sustain an objective definition of terrorism. The aim is to distinguish all the legitimate use of force on the part of the state from the illegitimate ones.

This definition is slightly different from that of Comb, who, while defining state terrorism, notes that different forms/ classes of state terrorism exist.<sup>176</sup> In his first classification, he associates state terrorism with the element of intimidation, where he notes that the government is determined to suppress any form of opposition and dissent, something which the government does through taking full control of the media and misusing the police force.<sup>177</sup> This study disagrees with Comb to the extent that taking full control of the media may not necessarily be an act of terrorism for the following reasons. Taking control of the media to suppress dissent is more of an attack on democracy<sup>178</sup> than an act of terrorism. Secondly, and needless to state, while one of the elements of terrorism is actual bodily harm (refer to chapter 1), taking control of the media cannot even with remote imagination occasion actual bodily harm. However, this study is alive to the fact that in ensuring that a complete shutdown of the media is achieved, there is a likelihood of the police force employing violence that can result into actual bodily harm. Besides, the practice of shutting down the media is an art that several nations at some point in history have adopted.<sup>179</sup> Precisely, it is extremely important to stick to the objective test approach in defining terrorism. Sticking to

---

<sup>176</sup> CC Combs, 'Terrorism by the State (From Terrorism in the Twenty-First Century, P 76-98, 1997, Cindy C. Combs-See NCJ-170150)', 16.

<sup>177</sup> *ibid*, 20. See also Michael Stohl, Richard Burchill and Scott Englund, *Constructions of Terrorism: An Interdisciplinary Approach to Research and Policy* (Univ of California Press 2017), 53.

<sup>178</sup> Which predicate that citizens are informed and have right to express themselves through the media among other platforms.

<sup>179</sup> Marius Dragomir, 'Control the Money, Control the Media: How Government Uses Funding to Keep Media in Line' (2018) 19 *Journalism* 1131, 1140.

the objective interpretation facilitates the distinction between illegitimate and legitimate state violence. Without a straightforward checklist to make the differences, it would be extremely difficult to hold the government liable for their actions that would otherwise amount to terrorism. They would quickly justify them as legitimate actions necessary for the protection of the interest of the larger population.

The second classification of Comb involves coerced conversion, which entails the government's commitment to changing the national lifestyle.<sup>180</sup> This form of coercion was witnessed in Kenya in 2020 when the government placed a curfew running from 7 pm to 5 am as one of the measures to control the spread of Covid-19.<sup>181</sup> Several persons who apparently broke the curfew rule received serious beatings from the police; some even died.<sup>182</sup> There was a complete change in the lifestyle of the nation. Ordinarily, police officers are supposed to arrest and present suspects in court when they are convinced that a suspect has broken the law of the land.<sup>183</sup> However, when the officers decide to resort to violence to enforce executive orders and the violence results in the deaths of several citizens, besides sending terrorizing fear across the nation, then such actions constitute state terrorism in the lens of objective definition of terrorism. Another point of departure from Comb's position is that changing a nation's lifestyle alone, even through coercion, may not necessarily amount to state terrorism, especially where no one is harmed. All the elements in the objective interpretation or definition of terrorism must exist concurrently to qualify the acts of a state as acts of terror.

---

<sup>180</sup> Combs, *ibid* (n. 130), 30. See also Richard Jackson, Marie Breen Smyth and Jeroen Gunning, *Critical Terrorism Studies: A New Research Agenda* (Routledge 2009), 34.

<sup>181</sup> Ometo (n. 140).

<sup>182</sup> 'Kenya: Police Brutality During Curfew' (*Human Rights Watch*, 22 April 2020) <<https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew>> accessed 25 January 2021.

<sup>183</sup> *ibid*.

Finally, according to Comb, the last classification of state terrorism is genocide, whereby the state deliberately exterminates an entire class or ethnic or religious group for ideological reasons.<sup>184</sup> To this extent, this study agrees with him that such actions would amount to state terrorism as the other elements necessary in objective definition would automatically be present in an attack of the nature described. Notably, the phenomenon of state terrorism remains contentious as it is difficult to strike with certainty the diverging point for legitimate violence and the illegitimate violence of a state. This is partly because violence need not amount to genocide to be terrorism. Also, genocide can be carried out without the intention of instilling fear in a group other than the target group.

### **3.2 The Diverging Point of State Violence and State Terrorism**

Despite the contentions on legitimate and illegitimate state violence, the diverging point of state violence and state terrorism can be established from nature of violence involved. That is, state terrorism is a form of state violence that entails ‘illegal targeting of persons that the state has a responsibility of protecting with a sole purpose and intention of instilling widespread fear among them beyond the direct victim.’<sup>185</sup> The underlying objective of state violence of this nature usually is to attain a specific political goal more accurately; it is usually aimed at curtailing the political oppositions of any kind. This understanding is important in distinguishing between the regular incidences of the legitimate use of violence by state and state terrorism.

The second test in establishing the diverging points of legitimate from illegitimate violence can be found in the lens of the objective definition of terrorism.<sup>186</sup> That is, where the action of a state exhibits all the elements necessary to establish an objective definition of terrorism (see discussion in chapter one), then such acts immediately stop being legitimate and become criminal acts that

---

<sup>184</sup> *ibid.*

<sup>185</sup> Tal Becker, *Terrorism, and the State: Rethinking the Rules of State Responsibility* (Hart Pub 2006), 370.

<sup>186</sup> Paust, *ibid.* (n. 42). See also John Richard Thackrah, *Dictionary of Terrorism* (Routledge 2013), 310.

must be termed as state terrorism.<sup>187</sup> However, where one or several elements such as harm and intimidation or coercion are absent in a State's action, then we can end up with other crime but not state terrorism.

In chapter one, this study briefly outlined the elements of terrorism, which collectively formed the basis for objective definition. One of such elements was the requirement for a target or a victim. When defining terrorism, another element needs to be added to the checklist to make the objective definition complete. That is, the additional element with regards to state terrorism ought to be an audience. For state terrorism, the victim or subject alone is not sufficient. The state must also target a certain audience to which it intends to send a terrorising message.

An isolated case of state terrorism can be found when the state resorts to publicly torturing its victims regardless of the act being outlawed internationally, with the sole goal of instilling fear in the audience.<sup>188</sup> Put differently, while states can covertly utilize torture to torment a specific individual, if the state uses it with the primary aim of instilling fear on an audience beyond the direct victim of violence, then the torture amounts to state terrorism. Historically, torture was outlawed, and it was used publicly by the governing regimes as a form of punishment to the rebels and as a means to deter criminal behaviour.<sup>189</sup> Some states still illegally use torture as a means to compel individuals to behave in a certain way by making sure that their audience either hear the process of torture or see the outcome of torture on the victim.<sup>190</sup> The primary purpose of conducting torture usually is to force certain behaviour out of the victim. However, when it is

---

<sup>187</sup> Anthony Richards, *Conceptualizing Terrorism* (Oxford University Press 2015), 100.

<sup>188</sup> Tao Browne, 'Torture and Terrorism' (2018) 11 *On Politics* 113, 116.

<sup>189</sup> Francesca Laguardia, 'Deterring Torture: The Preventive Power of Criminal Law and Its Promise for Inhibiting State Abuses' (2017) 39 *Human Rights Quarterly* 189, 190.

<sup>190</sup> Guillermo Trejo, Juan Albarracín and Lucía Tiscornia, 'Breaking State Impunity in Post-Authoritarian Regimes: Why Transitional Justice Processes Deter Criminal Violence in New Democracies' (2018) 55 *Journal of Peace Research* 787, 799.

conducted in public, its effects are far-reaching. In Guatemala, for instance, the state employed public torture during the counterinsurgency war of 1980.<sup>191</sup> They allowed the media to take and publish pictures of the victims of torture and share them with the public. A chilling fear was entrenched among the population.<sup>192</sup>

Without a vast audience beyond the immediate victims, such actions would simply have amounted to regular criminal activities. It would not be easy to consider the actions as terrorism as some fundamental ingredient would be missing.<sup>193</sup> For instance, if specific members of armed forces were to use torture without official sanction from the state and take a further step of concealing the information without any other person knowing about it, then the actions would simply be criminal acts of the group rather than state terrorism. On the other hand, if such an incident was sanctioned by higher authorities but perpetrators and higher officials went to considerable measures to conceal it, we would conclude that it was an act of state violence, as it was plainly committed on behalf of the state.<sup>194</sup> However, if there was no audience to witness it, we could not say it was state terrorism. In practice, the majority of torture performed by state agents is part of a larger pattern of governmental repression, and frequently, state terrorism.<sup>195</sup> Nonetheless, it is critical to distinguish between criminal behaviours committed by individuals, state violence, and state terrorism, reserving the term for acts that are both sanctioned at some level by the state and intended to or have the effect of terrifying a broader audience.

---

<sup>191</sup> Yuichi Kubota, 'Explaining State Violence in the Guatemalan Civil War: Rebel Threat and Counterinsurgency' (2017) 59 *Latin American Politics and Society* 48, 50

<sup>192</sup> *ibid.*, 51.

<sup>193</sup> Blakeley, *ibid.* (n. 103), 4. See also Jon Bailes and Cihan Aksan, *Weapon of the Strong: Conversations on US State Terrorism* (Pluto Press 2012), 118.

<sup>194</sup> Trejo, Albarracín and Tiscornia, *ibid.* (n. 141), 800. See also Jeroen Gunning, 'A Case for Critical Terrorism Studies? 1' (2007) 42 *Government and Opposition* 363, 400.

<sup>195</sup> *ibid.*



### 3.3 Challenges Associated with Distinguishing State Terrorism from Legitimate State Violence

Undoubtedly, distinguishing state terrorism from legitimate state violence remains a recurring challenge. This challenge partly results from the need to establish the intention of the state.<sup>196</sup> That is, whether the violence employed is intended or is a means of instilling fear in the audience beyond the direct victim or it is simply intended to restore order and law where the conduct of the citizens threatens the State's peace. The State must protect its citizens from any threat that is likely to create disorder in the country.<sup>197</sup> However, when the state's intention is the former and is accompanied by the rest of the elements of terrorism in the objective definition of terrorism, then the illicit use of the violence will constitute state terrorism.<sup>198</sup> But, if it is the latter, the State's actions will fall under the legitimate use of violence. That is, where the acts are not meant to harm or intimidate the population into doing something that they would otherwise fail to undertake in their freewill. Notwithstanding, there are some categories of illegitimate/ unlawful action by the state that is not terrorism, such as hushed up torture.<sup>199</sup>

Sometimes the intention of the state can be very ambiguous. In Kenya, for instance, in 2007-2008, after the presidential election results were disputed, several Kenyans across the country went to the streets to demonstrate and communicate their dissatisfaction with the results.<sup>200</sup> The state, through the police, responded to the demonstrations and ended up killing several unarmed civilians

---

<sup>196</sup> *ibid.*

<sup>197</sup> Laqueur, *ibid* (n. 71), 33. See also Paul J Smith, *Terrorism and Violence in Southeast Asia: Transnational Challenges to States and Regional Stability* (Routledge 2015), 112.

<sup>198</sup> Assuming the actions meet the elements of ideal terrorism elucidated in chapter one. More accurately, the objective definitional approach.

<sup>199</sup> See the discussion on page 47.

<sup>200</sup> Opolot Okia, 'The Role of the Police in the Post-Election Violence in Kenya 2007/08' (2011) 28 *Journal of Third World Studies* 259, 266.

using live bullets.<sup>201</sup> It was unclear whether the pure intention of the state was to bring back law and order in the country or it was a scheme to silence the opposition by instilling fear in citizens that would otherwise want to demonstrate. Similar occurrences were witnessed in 2017 after the general elections which involved the killing of children, being the worst form of brutality, a state can direct on its citizens. Discerning the intention and motive of the state in situations like this remains problematic. Fortunately, with strict adherence to the objective approach, it is possible to make the distinction. The task is just to identify or establish whether the elements of the terrorism outlined previously exist, i.e., whether there is serious bodily harm that would independently constitute a crime; whether that harm was intentional and geared towards sending a terrorizing effect to the citizens; whether there was some form of coercion or intimidation requiring the citizens or the subjects to behave in a certain way; whether there are subjects or victims; and whether the act was meant to reach a far audience beyond the individual receiving the direct attack.<sup>202</sup>

Precisely, if it can be established that the state is illegally targeting individuals that it has a responsibility of protecting with the sole purpose, motive, and intention of instilling widespread fear among them beyond the direct victim, then the state will not only be perpetrating a crime of illegal use of violence, but its actions would constitute state terrorism. Interestingly, whenever the state is exposed, the state would quickly cover up its illegal actions as the ‘necessary legal measures’ for protecting the rest of the citizens.<sup>203</sup> Sometimes this approach the state is taking is illogical. For instance, the police used live bullets in Kenya during the electioneering period that killed a child below eight years.<sup>204</sup> It is beyond logic to claim that such an action was meant to protect citizens.

---

<sup>201</sup> Ibid, 267. See also Kieran McConaghy, *Terrorism and the State: Intra-State Dynamics and the Response to Non-State Political Violence* (Palgrave Macmillan UK 2017), 154.

<sup>202</sup> In the case of the State, the intention can be derived from circumstantial evidence since getting it directly from the state may not be achievable.

<sup>203</sup> Blakeley, *ibid* (n. 103), 5. See also Nauzanin a Knight, *State Terrorism in Iran: Understanding the Case of the Iranian Bahá’i Community* (Universal-Publishers 2015), 79.

The message was clear: anyone can be killed. Nevertheless, it is essential to note that intention is a critical element in distinguishing legitimate state violence from illegitimate violence, which would otherwise amount to state terrorism if it exhibited other features of terrorism. However, intention cannot be considered in isolation; other elements that are the basis for the objective definition of terrorism must also be looked at when making the distinction. This is so because, as illustrated, intention can be extremely difficult to prove.

### **3.4 Conclusion**

Summarily, the discussion reveals that states have often employed violence against the population they have a duty of protecting to advance their political objectives and suppress any form of opposition. In most instances, such use of violence would constitute state terrorism because it is used to coerce the population into agreeing or complying with the ruling elites' wishes through the instillation of fear among the citizens beyond their immediate victim. Notably, they will fit the description of state terrorism because they exhibit the elements of terrorism in an objective definition. The presence of the elements of terrorism and outright intention to create or cause terrorizing effects among citizens creates the distinction between the other forms of legitimate state violence, which the state has the monopoly to exercise, and state terrorism. This distinction would explain why much of the state's violence on its citizens would amount to state terrorism. Sadly, states would be reluctant to advance the agenda that includes states as actors of terrorism, as their continued exclusion benefits them. The states under despotic leadership get to achieve their illegal agenda without any legal sanctions that a non-state performing the same acts would face.

---

<sup>204</sup> *ibid.*

## CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

### 4.0 Conclusion

This research study set out to prove the hypothesis that states can commit terrorism. The aim was to demonstrate the need to redefine terrorism comprehensively in the international sphere and establish whether state actors can commit acts of terrorism. The study adopted discourse analysis to investigate the research questions and puzzle out the exclusion of 'state terrorism' from the discussion of terrorism in the mainstream literature. The theory focuses on representative politics.<sup>205</sup> In the instant case, the consequences of recognizing terror acts by non-state actors and not by the state or its agents. From the analysis and preceding discussions, this study affirms the hypothesis and concludes in seven parts.

First, the absence of a uniform definition of terrorism for legal purposes has far-reaching consequences. For example, it may facilitate the politicization and abuse of the term "terrorism" to deter non-terrorist (or even non-criminal) activity. As a result, in the course of their counter-terrorism operations, states may, for example, violate the rights of their own or other countries' residents, such as those guaranteed by international human rights legislation. The absence of harmonization of national and regional anti-terrorism legislation can obstruct rather than facilitate international cooperation, since various regions tend to adopt definitions that serve their respective goals and priorities.

Second, a justification for excluding states or their agents as potential perpetrators of terrorism is a deliberate representation without a proper legal backup. This representation is political and is meant to influence the creation of knowledge and its transmission.<sup>206</sup> Moreover, there are always

---

<sup>205</sup> McCarthy, *ibid* (n. 65), 71.

<sup>206</sup> Diversi and Moreira, *ibid* (n. 66) 114.

interests, and agendas, which are not apparent in the choice to represent other forms of terrorism instead of state terrorism.<sup>207</sup> However, the true motivation behind this form of representation remains ambiguous and contentious.<sup>208</sup> Significantly, the perspective or representation that argues that state terrorism does not exist remains a barrier in redefining terrorism.

Third, most definitions fail to appreciate the objective test in defining terrorism.<sup>209</sup> This study preferred the objective approach over the other approaches as this is the sure way to investigate the acts of states at the domestic level. Fourth, state terrorism has been receiving pervasive silence despite its existence for several decades. The silence is a barrier in redefining terrorism both at the international and domestic levels.<sup>210</sup> Governments have been reluctant to formulate an agreed-upon, legally binding definition of terrorism. Even where they have, the focus has been on non-state actors to the exclusion of state agents as perpetrators of terrorism.<sup>211</sup> This trend is also common in the international sphere. Accordingly, 'state terrorism' has received cursory treatment on a scholarly scale. These difficulties stem from the term's political and emotional connotations.<sup>212</sup> Regardless of the differences, governments' definition of terrorism, there is a general understanding that any deliberate attack on innocent civilians (or non-combatants), irrespective of one's cause, is unacceptable.<sup>213</sup>

---

<sup>207</sup> Schweiger, *ibid* (n. 67), 401.

<sup>208</sup> *Ibid*, 402.

<sup>209</sup> See the discussion in chapter one.

<sup>210</sup> Cooper, Harold HA. "Terrorism the Problem of Definition Revisited." *American Behavioural Scientist* 44.6 (2001): 881-893.

<sup>211</sup> Bruce Broomhall, 'State Actors in an International Definition of Terrorism from a Human Rights Perspective Symposium: Terrorism on Trial' (2004) 36 *Case Western Reserve Journal of International Law* 421, 427.

<sup>212</sup> Albert J Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature* (Routledge 2017).

<sup>213</sup> *Ibid*.

Fifth, the ideal definition of terrorism is composed of five distinguishable elements.<sup>214</sup> The first feature is with regards to the ‘harm caused’, which the standard is of ‘serious bodily injury to constitute a crime independently.’<sup>215</sup> This independent unlawfulness presumes a reference to applicable domestic law.<sup>216</sup> The second element is the ‘victims or the targets’: the ‘targets’ of terrorist attacks in international law entail non-combatants, civilians, and the general public.<sup>217</sup> The third component is intimidation and coercion; there must be a targeted audience being intimidated or coerced.<sup>218</sup> The fourth is the guilty mind (*mens rea*).<sup>219</sup> The last element is the intention/motivation; that is, the perpetrators not only commit the act but also anticipate the consequences of the said unlawful act. The definition of terrorism based on the foregoing elements is commonly referred to as the objective definition of terrorism.<sup>220</sup> The objective definition approach makes no exclusion for the persons or entities that can perpetrate acts of terrorism. The objective definition is a perfect choice for advancing a comprehensive definition of terrorism, given that states have been excluded systematically as perpetrators of terrorism on the various legal instruments that have attempted to define terrorism in the past.<sup>221</sup> This deliberate exclusion makes the previous definitions of terrorism incomplete and uncertain.

---

<sup>214</sup> Susanne Martin and Leonard B Weinberg, ‘Terrorism in an Era of Unconventional Warfare’ (2016) 28 *Terrorism and political violence* 236.

<sup>215</sup> Babatunde F Obamamoye, ‘Counter-Terrorism, Multinational Joint Task Force and the Missing Components’ (2017) 15 *African identities* 428. See also Andrew Silke, *State Terrorism* (Routledge London/New York 2019).

<sup>216</sup> Caroline Varin and Dauda Abubakar, *Violent Non-State Actors in Africa* (Springer 2017).

<sup>217</sup> Moira Lynch, ‘“Resorting to Authoritarian Habits”: Anti-Terrorism Laws, State Violence, and Human Rights Prosecutions in Democratic Spain’, *Human Rights Prosecutions in Democracies at War* (Springer 2019).

<sup>218</sup> Ayisha Khurshid and Ahdi Hassan, ‘Semantic Complications in the War on Terror Discourse and Manipulation of Language by State and Non-State Actors’ (2020) 7 *International research journal of management, IT and social sciences* 162.

<sup>219</sup> See discussion in chapter one.

<sup>220</sup> Jordan J Paust, ‘Terrorism’s Proscription and Core Elements of an Objective Definition’ (2010) 8 *Santa Clara Journal of International Law* 51, 54.

<sup>221</sup> Julia Jansson, *Terrorism, Criminal Law and Politics: The Decline of the Political Offence Exception to Extradition* (Taylor & Francis Limited 2021), 11.

Sixth, states' right to use violence can be easily exploited to violate human rights, especially by despotic leaders committed to using state machinery in advancing their personal agenda of clinging to state power and thwarting democracy.<sup>222</sup> When the intention of using state violence changes from protecting the citizens to inflicting fear and intimidating the populace, it stops being legitimate. Briefly, the distinction between legitimate state violence and terrorism is established by the objective test. Moreover, suppose it can be established that the state is illegally targeting individuals that it has a responsibility of protecting with the sole purpose, motive, and intention of instilling widespread fear among them beyond the direct victim. In that case, the state will not only be perpetrating a crime of illegal use of violence, but its actions would constitute state terrorism. However, establishing the intention can be challenging. This distinction would explain why much of the state's violence on its citizens would amount to state terrorism.

Finally, state agents can be perpetrators of terrorism through the lens of both the objective and dictionary definitions of terrorism. The dictionary definition of terrorism, which is largely an objective approach, focuses on the ultimate result of an act<sup>223</sup>. For an act to amount to terrorism, it must evince terrorising results characterised with extreme anxiety and fear. Concisely, whether taking the dictionary, objective or the broad approach to terrorism, the constant element is that the result must be terrorizing or creating intense anxiety and exceptional fear. This approach, therefore, is fundamental to distinguish terrorism from ordinary intimidation or threat. Emphasis while making the distinction of acts of terror must also be on intention. Terror acts are well planned, and the intention is usually to send a chilling effect of fear and terror.<sup>224</sup> Therefore, the

---

<sup>222</sup> Upendra D. Acharya, War on Terror or Terror Wars: The Problem in Defining Terrorism, 654 DENV.J.INT'L L. &POL'Y Vol37:4(2009).

<sup>223</sup> John Richard Thackrah, *Dictionary of Terrorism* (Routledge 2013), 304.

<sup>224</sup> Andreas Wenger and Alex Wilner, *Deterring Terrorism: Theory and Practice* (Stanford University Press 2012), 48.

acts of the state that are aimed at sending fear to the populace exhibit an essential element of terrorism. The international conventions that have tried to define terrorism that were reviewed in this study all emphasize the idea of intention, except one.<sup>225</sup> Therefore, we conclude that intention is one of the most crucial elements of terrorism. Precisely, these findings back up the choice to settle on an objective definition approach that makes no exclusion on grounds such as the perpetrator of the act.

#### **4.1 Recommendations**

Based on the foregoing discussions, this study makes five recommendations with reference to the objectives and aim of the instant study. First, when states commit or engage in acts that have terrorizing effects, they should face similar legal consequences that non-state actors would have met if they were undertaking the act in question. That is, the states should not be excused from terror acts just because they are the perpetrators. Criminal actions must be dealt with without any form of discrimination on legal status.<sup>226</sup> Second, more research needs to be undertaken about terrorism to create awareness and facilitate human rights protection. The existing literature is limited.<sup>227</sup> Further research in this area is urgent to reveal how the exclusionary approach has led to massive violations of human rights, which go unpunished because the violators are state agents.

Third, terrorism is continuously changing in form and ideology; therefore, the research must also respond and embrace the new changes while adopting new measures and means of dealing with the metamorphosed phenomenon.<sup>228</sup> The legal measures such as recognizing state agents as

---

<sup>225</sup> See the discussion in chapter one. Convention of the Organisation of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999 Deposited with the Secretary General of the Organization of the Islamic Conference). Accessed at [www.cfr.org/terrorism-and-the-law/...Islamic..oic...terrorism/p24781](http://www.cfr.org/terrorism-and-the-law/...Islamic..oic...terrorism/p24781)

<sup>226</sup> Zoi Aliozi, 'A Critique of State Terrorism' (2012) 6 *The Crit: A Critical Studies Journal* [i], 60.

<sup>227</sup> *ibid.*

<sup>228</sup> Louise I Shelley, *Dirty Entanglements: Corruption, Crime, and Terrorism* (Cambridge University Press 2014), 97.



perpetrators of terrorism cannot be postponed or procrastinated. States have mastered the use of fear and intimidation to achieve their desired agenda of the day. This can only stop if the state's agents are legally recognised as potential actors of terrorism so that whenever the state resort to the use of force and intimidation meant to pass a terrorizing chill, they can be held liable.

Fourth, the definition of terrorism should never be limited to the actor-based approach but should be based on the nature of the actions in question.<sup>229</sup> To do away with the current limitation, we must advance to an objective definition of terrorism. This is the more feasible way of protecting the innocent population from manipulation by the ruling regimes into complying with their demands and wishes. Consequently, it will be legally practicable to refer to the actions of the state beyond their legitimate use of violence as state terrorism. Moreover, it is important to point out that the mere fact that states enjoy exclusive right to use violence, it is not always the case that all forms of violence perpetrated by the state will be legitimate and in the interest of the population that they have a duty to protect.

Finally, 'state terrorism' should be defined as the use of force or violence by state officials, institutions, or agents (especially the police and armed forces); to harm, intimidate, and or coerce citizens into doing or not doing something, without any legal justification and with the intention of instilling fear beyond the victims receiving the direct abuse. Importantly, the definition should be adopted at the international level, to assist in protecting human rights that are subject to violation following the illegitimate exercise of state power.

---

<sup>229</sup> Alex P Schmid, *The Routledge Handbook of Terrorism Research* (Taylor & Francis 2011).

## **BIBLIOGRAPHY**

### **LIST OF CONVENTIONS**

Arab Convention for the Suppression of Terrorism signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998 (Deposited with the Secretary-General of the League of Arab States). Accessed at [https://www.unodc.org/tldb/pdf/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/tldb/pdf/conv_arab_terrorism.en.pdf)

Convention for the Prevention and Punishment of Terrorism, Nov.16, 1937, League of Nations Doc. C546M.383 (1937)

Convention of the Organisation of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999 Deposited with the Secretary-General of the Organization of the Islamic Conference).

General Assembly Resolution 49/60, U.N Doc.A/RES/49/60 (Dec.9, 1994).

International Convention for the Suppression of the Financing of Terrorism opened for signature 9 December 1999, 2178 ILM 229(entered into force on April 2002).

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

The Convention for the Prevention and Punishment of Terrorism, 19 BRIT.Y.B.INT'L. L 214,215(1938).

The East African Protocol on Peace and Security accessed on [www.eac.int](http://www.eac.int) › home › protocols.

United Nations, Convention on Measures to Eliminate International Terrorism. G.A Res 49/60, U.N Doc.A/RES/49/60 (Dec.9, 1994).

### **LIST OF STATUTES**

South Africa Act No. 33 of 2004

The Republic of Kenya, Prevention of Terrorism Act, 2012

## BOOKS

Barnidge R, *Non-State Actors and Terrorism: Applying the Law of State Responsibility and the Due Diligence Principle* (TMC Asser Press 2007) <<http://centaur.reading.ac.uk/6677/>> accessed 30 January 2020

Bassiouni MC, *Draft Comprehensive Convention on International Terrorism, U.N. Doc. A/C.6/55/1 (28 Aug. 2000)* (Brill Nijhoff 2001)  
<[https://brill.com/view/book/9789004478428/B9789004478428\\_s033.xml](https://brill.com/view/book/9789004478428/B9789004478428_s033.xml)> accessed 18 October 2021

Crenshaw M, *Terrorism in Context* (Penn State Press 2010)

Davidson B, *Modern Africa: A Social and Political History* (3rd edn, Routledge 2013)

Diversi M and Moreira C, *Between Talk: Decolonizing Knowledge Production, Pedagogy, and Praxis* (Routledge 2016)

Eid M, 'Understanding Terrorism', *Violence and Society: Breakthroughs in Research and Practice* (IGI Global 2017)

Jackson R, *Routledge Handbook of Critical Terrorism Studies* (Routledge 2016)  
<[https://books.google.com/books/about/Routledge\\_Handbook\\_of\\_Critical\\_Terrorism.html?id=IZ\\_7CwAAQBAJ](https://books.google.com/books/about/Routledge_Handbook_of_Critical_Terrorism.html?id=IZ_7CwAAQBAJ)> accessed 15 April 2020

Jackson R and Pisiou D, *Contemporary Debates on Terrorism* (Routledge 2018)

Johnstone B, *Discourse Analysis* (John Wiley & Sons 2018)

Jongman AJ, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature* (Routledge 2017)

Laqueur W, *A History of Terrorism: Expanded Edition* (Transaction Publishers 2016)

Lynch M, “Resorting to Authoritarian Habits”: Anti-Terrorism Laws, State Violence, and Human Rights Prosecutions in Democratic Spain’, *Human Rights Prosecutions in Democracies at War* (Springer 2019)

Martin G, *Understanding Terrorism: Challenges, Perspectives, and Issues* (SAGE publications 2017)

McCarthy M, Matthiessen C and Slade D, ‘4 Discourse Analysis’, *An Introduction to Applied Linguistics* (Routledge 2013)

Miller D and others, *Critical Terrorism Studies since 11 September 2001: What Has Been Learned?* (Routledge 2016)

Mylonaki E, ‘Terrorism: International Perspectives’ (Sage 2019)

O’sullivan N, *Terrorism, Ideology and Revolution: The Origins of Modern Political Violence* (Routledge 2019)

Silke A, *State Terrorism* (Routledge London/New York 2019)

Varin C and Abubakar D, *Violent Non-State Actors in Africa* (Springer 2017)

Weber M, *From Max Weber: Essays in Sociology* (Routledge 2013)

Wilkinson P, *Terrorism versus Democracy: The Liberal State Response* (Taylor & Francis 2011)

*Terrorism & the Liberal State* (Macmillan International Higher Education 2015)

*Political Terrorism* (Macmillan International Higher Education 2016)

#### **JOURNAL ARTICLES**

Al-Kassimi K and Simons G, ‘Critical Terrorism Studies (CTS):(State)(Sponsored) Terrorism Identified in the (Militarized) Pedagogy of (US) Law Enforcement Agencies’ (2019) 5 Cogent Social Sciences 1586813

Alvarez JE, 'The UN's 'War'on Terrorism' (2003) 31 International Journal of Legal Information 238

Broomhall B, 'State Actors in an International Definition of Terrorism from a Human Rights Perspective' (2004) 36 Case Western Reserve Journal of International Law 421

Bruce G, 'Definition of Terrorism Social and Political Effects' (2013) 21 Journal of Military and Veterans' Health 26

Byman D, 'Understanding, and Misunderstanding, State Sponsorship of Terrorism' [2020] Studies in Conflict & Terrorism 1

Claridge D, 'State Terrorism? Applying a Definitional Model' (1996) 8 Terrorism and Political Violence 47

Cooper HA, 'Terrorism: The Problem of Definition Revisited' (2001) 44 American Behavioral Scientist 881

Diphoom T and van Stapele N, 'What Is Community Policing?: Divergent Agendas, Practices, and Experiences of Transforming the Police in Kenya' (2021) 15 Policing: A Journal of Policy and Practice 399

English R, 'The Future Study of Terrorism' (2016) 1 European Journal of International Security 135

Ghatak S, 'The Role of Political Exclusion and State Capacity in Civil Conflict in South Asia' (2018) 30 Terrorism and Political Violence 74

Hodgson JS and Tadros V, 'The Impossibility of Defining Terrorism' (2013) 16 New Criminal Law Review 494

Jackson R, 'The Ghosts of State Terror: Knowledge, Politics and Terrorism Studies' (2008) 1 Critical Studies on Terrorism 377

Joshi S, 'Sub-State Actors' Threats to International Security' [2019] Understanding New Security Threats

Khurshid A and Hassan A, 'Semantic Complications in the War on Terror Discourse and Manipulation of Language by State and Non-State Actors' (2020) 7 International research journal of management, IT and social sciences 162

Mani VS, 'International Terrorism: Is a Definition Possible?' (1978) 18 Indian Journal of International Law 206

Martin S and Weinberg LB, 'Terrorism in an Era of Unconventional Warfare' (2016) 28 Terrorism and political violence 236

Nawaz MK and Singh G, 'Legal Control of International Terrorism' (1977) 17 Indian J. Int'l L. 66

Nganje F, 'The Rhetoric and Practice of the International Responsibility to Prevent Mass Atrocities: Reflections on South Africa's Peacebuilding Role in South Sudan (2005–2013)' (2017) 26 African Security Review 271

Obamamoye BF, 'Counter-Terrorism, Multinational Joint Task Force and the Missing Components' (2017) 15 African identities 428

Paust JJ, 'Terrorism's Proscription and Core Elements of an Objective Definition' (2010) 8 Santa Clara Journal of International Law 51

Saul B, 'Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism' (2011) 24 Leiden Journal of International Law 677

Saul, Ben, "Terrorism, Counter-Terrorism and International Humanitarian Law" (May 11, 2016). Oxford Guide to International Humanitarian Law, B. Saul, D. Akande, eds, Oxford University Press, UK, Forthcoming, 2018, Sydney Law School Research Paper No. 16/37, Available at SSRN: <https://ssrn.com/abstract=2778893>

Schweiger E, 'Listen Closely: What Silence Can Tell Us about Legal Knowledge Production' (2018) 6 London Review of International Law 391

Sorel J-M, 'Some Questions about the Definition of Terrorism and the Fight against Its Financing' (2003) 14 European Journal of International Law 365

Starke JG, 'The Convention for the Prevention and Punishment of Terrorism' (1938) 19 Brit. YB Int'l L. 214

Szasz PC, 'The Security Council Starts Legislating' (2002) 96 American Journal of International Law 901

Walter C, 'Defining Terrorism in National and International Law' (2004) 1 Terrorism as a challenge for national and international law: Security versus liberty 24

Wilson T, 'State Terrorism' [2019] The Oxford Handbook of Terrorism 331

Wright J, 'State Terrorism: Are Academics Deliberately Ignoring It?' (2019) 6 Journal of Global Faultlines 204

Young R, 'Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation' (2006) 29 BC Int'l & Comp. L. Rev. 23

## **OTHERS**

Draft comprehensive convention on international terrorism: [New York]: UN, 28 Aug. 2000

Fortna VP, 'Is Terrorism Really a Weapon of the Weak? Testing the Conventional Wisdom' (Working Paper, Columbia University 2017)

Ometo B, 'Improving Police Accountability in Kenya: Curing the Shortcomings of the IPOA in Bringing an End to Police Brutality in the Country' (Social Science Research Network 2020) SSRN Scholarly Paper ID 3568251 <<https://papers.ssrn.com/abstract=3568251>> accessed 19 October 2021

UN Special Tribunal for Lebanon (Appeals Chamber), *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/I, 16  
February 2011