

Defining 'Terrorism' in the Context of International Law

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There is no internationally accepted legal definition of terrorism. The term terrorism, however, is commonly and regularly used, also in international relations. States often use the term in contradicting ways and their judgement of whether a terrorist act occurred depends on their interests or on the angle they view the situation from, rather than on an analysis of the situation based on a concept of terrorism. As a result, an analysis of the use of the term terrorism does not lead to a congruent concept of terrorism, which could be enshrined in international law and commonly be used in the international community.

In this paper I will therefore address the question of how we should define terrorism in the context of international law, in other words how terrorism should be defined for the practical use in the international community.

In the first part of the paper I will discuss the problem that we face with regard to a legal definition of terrorism in the international community at the moment, discuss the need of an internationally accepted legal definition of terrorism, and try to set out requirements such a definition has to meet. In the second part of the paper I will try to apply these requirements and define terrorism in accordance to them.

I.

The problem we face with regard to a definition of terrorism in the context of international law is that, on the one hand, there is no internationally accepted definition of terrorism and states continue to disagree about such a definition, while, on the other hand, an internationally agreed definition of terrorism is necessary, today probably more than ever before.

Despite several attempts, starting in 1937, the international community up until now has failed to reach an agreement whenever it has addressed the question of how terrorism can be defined for legal purposes. Current negotiations on a comprehensive convention on terrorism clearly demonstrate that states still disagree as to what should legally be considered terrorism. As a result, the international community up until now has also failed to agree on any legal instrument that deals with terrorism in general. The only instruments the international community has managed to agree upon up to today are 12

conventions and protocols,¹ which address specific forms of violence, such as hijacking of aeroplanes, hostage taking etc., that are often used in the context of terrorism, yet that do not necessarily always constitute terrorist acts. Due to the fact that these instruments only define the offence they deal with, no general definition of terrorism can be extracted from either of them. Hence, what we have in the international community at the moment is this piecemeal approach to terrorism, yet no internationally agreed definition of it.

We on the other hand, however, need an internationally agreed legal definition of terrorism. The need for a definition has been doubted in the literature, particularly in the legal literature. Stressing the inability of the international community to agree on a definition of terrorism and referring to the piecemeal approach the states do agree upon authors like Levitt² and Baxter³ argue that it is possible and better to continue the way the states do at the moment and combat terrorism without defining the term. For, they continue, terrorism does not have any legal significance.

The main problem with these arguments, in my view, is that they exclusively focus on law enforcement. Law enforcement may be possible, perhaps less effective in terms of co-operation and co-ordination yet possible, without a definition of terrorism. From a legal point of view, we can split terrorist offences into offences that are already recognised as crime by national or international law, such as murder, manslaughter, or crimes against humanity, and enforce the law on the basis of these. Terrorism, thus, may internationally not yet have

¹ Convention on Offences and Certain Acts Committed on Board Aircraft, Tokyo 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal 1971, and the Protocol thereto for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, Montreal 1988; Convention on the Prevention and Punishment of Crimes Against International Protected Persons, including Diplomatic Agents, New York 1973; International Convention Against the Taking of Hostages, New York 1979; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome 1988, and the Protocol thereto for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Rome 1988; International Convention for the Suppression of Terrorism Bombings, New York, 1997; International Convention for the Suppression of the Financing of Terrorism, New York, 1999. All available at: <http://www.unodc.org/unodc/en/terrorism_conventions.html> (last visited: December 2004).

² Geoffrey Levitt, "Is terrorism worth defining?", in: *Ohio Northern University Law Review*, Vol.13 (1986), pp.97-116.

³ Richard R. Baxter, A Sceptical Look at the Concept of Terrorism, in: *Arkon Law Review*, Vol.7 (1973/74), quoted in: Christian Walter, Defining Terrorism in National and International Law, available at: <<http://edoc.mpil.de/conference-on-terrorism/present/walter.pdf>> (last visited: December 2004).

significance in the context of law enforcement. It, however, has strong political significance and this is what renders a definition inevitable. This is the case first of all, because states act directly in reaction to terrorism. They act immediately on the basis of someone being considered a terrorist or something being considered terrorism. The Security Council even requires them to do so — not necessarily legally yet politically —, when it, for example, states that all States “shall prevent and suppress the financing of terrorist acts, deny safe haven to those who finance, plan, support or commit terrorist acts, shall prevent the movement of terrorists or terrorist groups by effective border controls etc.”.⁴ Also, the term terrorism has strong political significance given that the use of the term involves enormous power to change the political situation, power constellation and cooperation within states as well as internationally. A state that is accused of being involved in terrorism may find itself politically isolated as well as for example economically damaged. All these facts, relating to the strong political significance of the term terrorism, alone give reason enough to hold that a definition is necessary. A commonly agreed definition however becomes even more urgent due to the fact that many States deliberately misuse the term to pursue purposes that have no relation to terrorism, such as pursuing economic interests or suppressing internal opposition.⁵ An internationally agreed legal definition would of course not assure that state interests no longer influence states’ decision to act or refrain from acting in reaction to terrorism. However, I think it would limit states’ ability to pursue other purposes in the name of fighting terrorism. Due to the way the system of international law works, a definition of terrorism will not, of course, guarantee this. However, it would give other states a legal and also stronger political basis to criticise these states, to put pressure on them, to politically react in one way or another. It would help to make states more accountable for their action, and help to make sure that actions can only be

⁴ S/RES/1373 (2001), available at: <<http://www.un.org/terrorism/sc.htm>> (last visited: December 2004).

⁵ Human Rights Watch recently published a list of states, and described the way in which these states misuse the term terrorism for purposes that have no relation to terrorism. *Opportunism in the Face of Tragedy: Repression in the name of anti-terrorism*. Available at: <<http://www.hrw.org/campaigns/september11/opportunismwatch.htm>> (last visited: December 2004).

carried out in the name of fighting terrorism, when it is actually directed against that phenomenon.⁶

Facing this problem of the need for an internationally accepted legal definition on the one hand, and the difficulty of achieving agreement concerning a definition on the other hand, what requirements do we have to keep in mind when defining terrorism for the practical use within the international community?

First of all, a definition for practical use has, of course, to aim at grasping and presenting the distinct features of the phenomenon. It has to aim at describing terrorism without including cases of violence that cannot be considered terrorism or excluding cases of violence that do have to be considered terrorism. That first requirement it has in common with definitions for purely theoretical purposes and definitions in general. Other than a definition that only serves theoretical purposes, a definition for practical use, in addition, however, has to be applicable to the international community to be of any use. But what requirements exactly follow for a definition from the need for applicability?

In the context of applicability the requirement most commonly referred to, is acceptability — the fact that states have to be able to agree on the definition. I think, the focus on acceptability has, however, to be dealt with with caution. It hitherto generally led to incomprehensive definitions, to definitions that include cases of violence that cannot be classified as terrorism, or to definitions that no longer capture the phenomenon of terrorism.⁷

Generally speaking, it is certainly true that the need for a definition to be acceptable to states has to be kept in mind when defining terrorism for the context of international law. Due to the way international law works, a definition can only be introduced and will only be binding if it is accepted by states.

⁶ Further arguments for the need of a definition of terrorism, which I will leave aside for now, can be derived from the context of prevention.

⁷ See for example Alex P. Schmid who defines terrorism as “the peacetime equivalent of war crimes”. Proposed in a report for the United Nations Crime Branch in 1992. Quoted at <http://www.unodc.org/unodc/terrorism_definitions.html> (last visited: December 2004). Ninian Stephen proposes to focus on the fact that terrorism attacks “defenceless people”, Towards a Definition of Terrorism, in: Tony Coady/ Michael O’Keefe (ed.), *Terrorism and Justice. Moral Argument in a Threatened World*, Melbourne: Melbourne University Press, 2002, pp.1-7.

However, it is no secret that state interest does not guarantee a responsible and morally acceptable policy and this also applies in the context of terrorism, which we can clearly see when we look at the way many states use the term to pursue a range of unrelated purposes. I therefore believe that acceptability should not be used as an independent criterion that outweighs other considerations. It may neither outweigh theoretical considerations about what terrorism is, nor practical considerations such as considerations about the effects a definition of terrorism would have, for example, on human rights when states act on the grounds of that definition. Acceptability, in my view, may only be decisive — and that’s what I mean in saying that we have to bear acceptability in mind —, firstly if there is more than one convincing approach to a definition — if there is doubt as to what should be included in or excluded from a definition — and secondly if the definition it suggests is supported by other considerations. If, for example, acceptability involves using a very narrow concept of terrorism, than that definition might be used in the event that the cases which are excluded are already reasonably regulated in international law. Other considerations may be human rights protection.

Having talked about acceptability in general, more specifically: In current debates states’ opinions are directly contradicting each other and no concrete requirements as to what should be included in or excluded from a definition can be found, that will solve those disagreements. The issues of disagreement are, as they were almost 70 years ago, first of all whether and when state action can be considered terrorism, and secondly whether and to what extent violent acts carried out during a struggle for national liberation, self-determination and independence should be excluded from a definition of terrorism.⁸

⁸ The issues of disagreement have been the same ever since the states started to legally address terrorism in the international community. The degree of disagreement clearly decreased over the time, yet recent negotiations about Article 18 (2) and (3) of the “Draft Comprehensive Convention on Terrorism” show that the same issues of disagreement come up again as soon as legal consequences are to be linked to the definition. (I hold, that the problems the states have in agreeing on the “Draft Comprehensive Convention on Terrorism” are representative for the problems the states nowadays would have agreeing on a general legal definition of terrorism, despite the fact that the discussions in the context of the “Draft Comprehensive Convention on Terrorism” are about the scope of the convention and the offence of terrorism as subject to the convention and not about a general definition of terrorism.)

While it is impossible to derive from these issues concrete requirements that would solve the disagreements and make the definition acceptable to all states,

I believe that two more general requirements can be derived from them, which may increase the likelihood of agreement. Terrorism is to be defined first of all impartially and secondly in a way that captures and highlights the characteristics of terrorism that make it play the role in our moral thinking it does. By impartially I mean that a definition has to apply to everyone equally. To be impartial, a definition may further not include definitional aspects that require subjective interpretation and thus make the decision of whether an act of terrorism occurred dependent on subjective judgement.

I am not arguing that states will necessarily agree on a definition that is impartial and sheds light on the features of terrorism that give the phenomenon the significance it has in our moral thinking. Negotiation will still be necessary and states will still have to change their positions or better preferences. However, given that different states seem to advocate and defend different groups, — some attempt to protect those who fight against governments and others attempt to protect the governments that fight the insurgents — a definition that makes clear why and that terrorism is so morally appalling and is not biased in any way

The first issue is about state terrorism (Article 18 (2)). One group of states insists on excluding from the scope of the “Draft Comprehensive Convention of Terrorism” “activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law” (proposed by the Australian coordinator Richard Row at the end of October 2001 session of the Working Group of the Sixth Committee). These states, in other words, want to make sure that acts carried out by state forces can hardly ever be considered terrorism, given that state forces carrying out their duties will pretty much always be governed by international law. It will always be possible to argue that international law - be it humanitarian law or human rights law - to some extent regulates the states forces’ action and thus governs their activities — as in armed conflicts so in peace time situations. The other group of states does not accept that such wide situations will be excluded from the scope of the definition, just because international law rules them. These states insist that acts carried out by state forces in their duties may not be excluded from the scope of the convention just because this action is governed by international law but may only be excluded if these acts are in conformity with international law. In other words, the acts may only be excluded from the scope if they do not violate international law (proposal by the state members of the Organisation of the Islamic Conference (OIC)).

The second issue the states always had and also currently have trouble agreeing on touches the issue of struggle for self-determination and national liberation (Article 18 (3)). Some states seek to include the paragraph into the conventions that “the activities of armed forces during an armed conflict, as those are understood under international humanitarian law, which are governed by that law, are not governed by this convention” (proposal of the coordinator Richard Row). Other states, in contrast, insist that in situations of armed conflicts the activities of “parties to the conflict” rather than those of armed forces have to be excluded from the scope of the convention. These states furthermore insist that the situation of armed conflict explicitly includes “situations of foreign occupation” (proposal of the OIC). For details see: A/C.6/58/L.10 Annex II, available at: <<http://www.un.org/law/terrorism/>> (last visited: December 2004).

will both make it harder to argue why anyone should reasonably apply this kind of violence and may make it more likely for the definition to be accepted.⁹

Besides acceptability there is, finally, one further requirement that like acceptability is derived from the fact that a definition for use in international law, other than definitions for purely theoretical purposes, has to be applicable in addition to grasping the phenomenon. Due to the reasons I gave for the necessity of a definition, this involves recognising that states will act on the basis of the definition and also that the fight against terrorism is used to justify and may legally or politically justify specific and perhaps extreme measures, if in doubt — let's say that two definitions seem to be equally logical or we are not sure about either of them — a definition for practical use has to be based on a more narrow rather than wider interpretation of terrorism.

To conclude, a definition for practical use in the international community first of all has to aim at capturing the phenomenon as precisely as possible. At the same time, however, it has to be applicable to the international community. This means it has to be acceptable to states. However, acceptability can only be decisive if there are other considerations that support the definition suggested by acceptability. More specifically, a definition for the context of international law has to be impartial and explicitly refer to the characteristics that make terrorism play the role in our moral thinking it does. Finally, if in doubt we should choose a more narrow interpretation of terrorism rather than a wider.

II.

So what is terrorism and how can we define it in the context of international law in accordance to the requirements laid out in part one of the paper?

I think, to understand what terrorism is and to subsequently define it for the context of international law, five definitional aspects are both necessary and sufficient: (1) the aspect of violence itself, (2) the intention to carry out the act, (3) the aim that is pursued with the act, (4) the target the act is directed against, and

⁹ Definitions in practical legal approaches fail to meet these requirements, as does the definition given in the "Draft Comprehensive Convention of Terrorism". This at least leaves the possibility open that a definition

(5) the extent of violence. Each of these aspects addresses a specific characteristic of terrorism. I will focus on aspects four and five, because they, and the first in particular, are the most contentious, and because, I believe, they are crucial with regard to the current disagreement in the international community. Anyway, given that an act will have to meet all the conditions expressed by all the aspects in order to be an act of terrorism, I will briefly, and without going into detail about any arguments, mention what I understand by aspects (1), (2), and (3), before I deal with aspects (4) and (5).

(1) First of all, terrorism is a **form of violence**. This is widely accepted both in academic literature and in practical approaches.¹⁰ In my view, this includes the threat to use violence as well as the use of violence. The threat to use violence, I believe, can only constitute terrorism if it is reasonable to believe that the person or group of persons who threatens violence would be able to succeed in carrying it out.

(2) Secondly, to be an act of terrorism, I hold, the act or threat of violence has to be carried out **intentionally**. Most recently questioned by David Rodin,¹¹ Intention — at least general intention — is, I believe, necessary to be able to talk of terrorism. This characteristic of terrorism, the fact that the damage does not occur accidentally but is calculated as part of a tactic, is one reason for why we hold that terrorism is so morally appalling.

that meets these requirements is more likely to be successful.

¹⁰ This is accepted in academic and practical definitions. See for example EU Council Framework Decision on Combating Terrorism of 13 June 2003, available at: <http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_164/l_16420020622en00030007.pdf> (last visited: December 2004), or Draft Comprehensive Convention on Terrorism, A/C.6/58/L.10, A/C.6/57/L.9, A/C.6/56/L.9, A/C.6/55/L.2, available at: <<http://www.un.org/law/terrorism/>> (last visited: December 2004). It is only questioned by few authors, such as Carl Wellmann, who includes non-violent action in his definition of terrorism. His approach however contradicts our common understanding of the phenomenon as well as the requirement to, if in doubt, define terrorism in a narrow rather than wider sense. Carl Wellmann, "On Terrorism Itself" in: *Journal of Value Inquiry*, Vol.13 (1979), pp.250-258, pp.251/252. Igor Primoratz replies to Wellman more comprehensively in: Igor Primoratz, What is Terrorism, in: Igor Primoratz (ed.) *Terrorism. The Philosophical Issues*, Houndmills/ New York: Palgrave Macmillan, 2004, pp.15-27, pp.16/17.

¹¹ David Rodin, Terrorism without Intention, in: *Ethics*, Vol.114 no 4 (July 2004), pp.772-791.

(3) With regard to the **aim** that is pursued with the act of terrorism, I hold, that this aspect of the definition is clearly necessary to determine whether an act of violence is a terrorist act.¹² I further think, the two important features of terrorism in the context of its aim are firstly that it attempts to influence the behaviour of an audience and secondly that it focuses on the public in contrast to the private sphere. To make the distinction between the public and the private sphere part of the definition means to exclude all cases of violence that are carried out to reach private goals, such as bank robbery to stock up private capital or various kinds of blackmail carried out for private purposes. These cases are usually included by definitions that only focus on the fact that terrorism influences behaviour but that do not distinguish between the public and the private at all.¹³ To make the distinction between the public and the private also means that the aim is not limited to only some aspects of the public sphere, which is the case if we say, as many authors do, that the aim of terrorism is to pursue political or ideological purposes.¹⁴ Terrorism, thus, does not only mean political terrorism but for example also includes religious terrorism. The aim of terrorism may then be described as ‘to influence the political or societal behaviour of an audience.’ ‘Societal’ refers to society in general and describes behaviour that relates to the structure of a society or groups within a society, and thus includes the political but also religion, for example.

¹² Definitions that exclude the aspect of the aim all together or limit it to the aim to intimidate people or induce fear on them (e.g. US State Department, Pattern of Terrorism issued in April 2004: “The term terrorism means the premeditated politically motivated violence perpetrated against non combatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”; or Alex P. Schmid: “peacetime equivalent of war crime” see above) fail to recognise that terrorism is a tactic as well as that it is distinct from cases in which violence is carried out for its own sake, for the sake of violence itself. Compare also Tony Coady, The Morality of Terrorism, in: *Philosophy*, Vol.60, (January, 1985), pp.47-69, pp.47-49.

¹³ See for example Igor Primoratz: terrorism is “the deliberate use of violence, or threat of its use, against innocent people, with the aim of intimidating some other people into a course of action they otherwise would not take”, Igor Primoratz, op.cit., p.24. Poland holds that a certain form of violence against innocents constitutes an act of violence if it leads to a tactical advantage. *Terrorism Research Center*, see above.

¹⁴ See for example David Rodin: “Terrorism is the deliberate, negligent, or reckless use of force against noncombatants, by state or nonstate actors for ideological ends and in the absence of a substantively just legal process.”, David Rodin, op.cit., p.775; or Tony Coady: Terrorism is “the organised use of violence to attack non-combatants (‘innocents’ in a special sense) or their property for political purposes”, Tony Coady, Defining Terrorism, in: Igor Primoratz (ed.) *Terrorism. The Philosophical Issues*, Houndmills/ New York: Palgrave Macmillan, 2004, pp.3-14, p.5.

With these aspects, which I have sketched, in mind, I will now move on to the main focus of the second part of my paper, which is the aspect **(4)** the target¹⁵ that terrorist acts are directed against.

This aspect is crucial to capture terrorism. It is also crucial in view of the requirement that a definition for use in international law has to explicitly illuminate the characteristics of terrorism that make it a morally appalling phenomenon. This is because it illuminates the fact that terrorism is morally significant in the way we experience it because “the targets it (terrorism) attacks are morally inappropriate”.¹⁶ How the target is defined, therefore, also plays a significant role in respect of the acceptability of the definition.¹⁷

So, what is the target that distinguishes a terrorist act from other acts of violence? One understanding held in the philosophical literature is that terrorism is the use of force against innocents.¹⁸ “Innocents” is here used in a rather “technical”¹⁹ sense and describes all those people that are not engaged in the evil that the terrorists fight against - or in other words as Igor Primoratz puts it “those who are not responsible” for it “in any plausible sense of the word”.²⁰ Furthermore, to identify who is innocent and who is not, this account is agnostic about the justice of the terrorists’ position. It assumes that someone is no longer innocent if she is engaged in the situation which is fought against, regardless of whether only the perpetrators themselves think the situation is unjust or if other

¹⁵ I intentionally chose the term “target” over “victim”. The term “target” implies that it is decisive to look at who the act was intentionally directed against rather than who was hit, in order to decide whether an act of violence can be considered a terrorist act.

¹⁶ David Rodin, op.cit., p.777.

¹⁷ Most practical legal approaches, such as the definition of terrorism of the “Draft Comprehensive Convention of Terrorism” fail to characterise terrorism by its target and thus fail to illuminate the moral significance of the phenomenon. These definitions generally follow a similar structure. The “Draft Comprehensive Convention” can be taken as an example. It reads with regard to the aspect of the target: “Any person commits an offence within the meaning of this convention if that person, by any means, unlawfully and intentionally, causes: a) Death or serious bodily injury to any person or (b) serious damage to public or private property”. (It further specifies the property, but that is not important at this point.) The target in this definition is pretty much everyone. The definition does not capture that an act becomes terrorism, because it is directed against people that are morally inappropriate targets. It instead states that an act is a terrorist act because it *unlawfully* targets someone. In many situations this coincides with our moral intuitions of what targets are morally inappropriate. (It for example is unlawful and morally inappropriate to target civilians in warfare.) Yet, it first of all does not necessarily coincide, and it secondly does not express the moral significance and thus ignores a distinct feature of terrorism.

¹⁸ Igor Primoratz gives a clear account of that approach in “What is terrorism” op.cit., pp.17-21.

¹⁹ Tony Coady, *Defining Terrorism*, p.10.

²⁰ Igor Primoratz, op.cit. p.18.

people think so too. In other words, this understanding of terrorism does not question the terrorists' view of the situation they fight against. It does not look at the situation that is fought against at all, but decides whether a terrorist act occurred only on the basis of the question of whether the people targeted are in the chain of agency of, or engaged in, that situation. Deciding on these grounds, it relies on the assumption that what makes a violent act a terrorist act is the fact that violence is directed against people that cannot in any plausible sense of the word, be held responsible for the situation that in the view of the terrorists justifies the use of violence. The focus here is on the engagement.

I agree that violence used against all those that are innocent in the sense used here will constitute a terrorist act. I also agree that a definition based on this understanding would be fairly impartial, and thus to a large extent meet the requirement of impartiality I formulated in the context of acceptability. I say fairly impartial because there remains a moment of relativity, which comes in when we have to decide who is engaged in the situation. For, with regards to certain cases people that hold different concepts of responsibility might come to different solutions. However, by not judging the justice of the situation that is involved, it extinguishes the largest and most important factor of relativity and arbitrariness. Moreover, in the context of humanitarian law the international community successfully uses a concept of engagement in order to decide who may legally be targeted in an armed conflict. This shows a common understanding, which further diminishes the problem.

So, I agree that the cases of violence the view I discussed covers are terrorist acts, and that it is fairly impartial. I do not, however, agree that the assumption it is based on comprehensively captures the phenomenon of terrorism. I do not agree that what constitutes a terrorist act can be limited to the fact that violence is directed against people that cannot be held responsible for the situation that in the view of the terrorists justifies the use of violence. I think, we can formulate examples where violence is used against people that are non-innocent according to the described use of the word and the acts in these examples would still have to be considered terrorism. Let's for example imagine a case of religious

terrorism, where the perpetrators hold that practising a certain religion is an evil and injustice, which has to be fought. The people they fight against as well as the people they want to influence are those who practice that religion. If the perpetrators now plant a bomb in the place where people come together to practice their religion the perpetrators deliberately attack the people that are carrying out the act, which they consider to be so evil that it has to be fought with violence. They target those people that are engaged in, part of the chain of agency of the situation the terrorists fight against. In this way they target non-innocents according to the understanding of innocence in the sense just discussed. However, despite the fact that the terrorists target non-innocents in this sense, we have to and do consider such an act a terrorist act. The reason for this is, I think, that we do not accept that living a life according to a certain religion and actively practising this religion, can possibly be considered an evil or injustice at all, or, more generally, a situation that could possibly justify the use of violence.

If this is true, then terrorism with regard to its target is not sufficiently defined as the use of violence against innocents in the sense used above, where only the engagement decides upon innocence or non-innocence. Terrorism, then, rather seems to be, and thus needs to be defined as, the use of violence against people who cannot possibly be held to be responsibly for any injustice, which can possibly be used to justify the use of violence. The focus here lies not only on the chain of agency but also on the injustice, on the situation the terrorists fight against. That way it still makes sense to define terrorism as the use of force against innocents. Yet, innocence should not be interpreted only in respect of engagement. We, in addition, have to assess the situation the targets are held responsible for by the perpetrators of violence, in order to decide who is innocent and who is not. The impact of that, of course, is that we no longer fully accept the judgement of the terrorists with regard to the situation and that we now somehow have to decide what situations deprive people of their immunity and what situations don't.

Tony Coady addresses this problem briefly. Using the term non-combatants in the technical sense of innocent, he writes, “where an ideology of either a state or an insurgent group is sufficiently bizarre, it may be impossible to take seriously their classification of combatants and non-combatants, just because we find their rationale for resort to violence too bizarre.”²¹ The way I read this is that we have to accept the view of the perpetrators, as long as we can somehow understand — and that does not mean that we share that view — that one could believe that the situation constitutes injustice that may justify resort to violence. I think that approach is convincing first of all in that it does not ask whether violence is actually justified in that situation or not, but only excludes all cases where it is just not possible to understand that someone can hold that injustice occurred which could possibly be used to justify the resort to violence. In my view this is convincing because it is not the question whether the use of violence is actually justified or not that decides whether the act of violence is a terrorist act or not, but rather the question of whether the people that are targeted can be held to be non-innocents because they are involved in a situation of injustice. I also think this approach is convincing because, by only excluding situations for which we are no longer able to understand that one can believe that they constitute situations of severe injustice, it keeps a relatively high degree of impartiality. It is not based on one specific moral understanding, and to judge whether a situation is absurd requires relatively little moral judgement. Having said that it is relatively impartial, the problem with this approach, however, is that bizarre or let’s say absurd remain vague and relative terms. We still need to apply some kind of moral understanding in order to decide what is absurd or bizarre and what might possibly be seen as injustice. If we base our understanding of who is innocent, and thus the definition of terrorism, on either of these terms, we will still end up with a definition that does not meet the requirement of impartiality, but allows for relativism and ultimately arbitrariness.

Having said that, I wonder whether we can stick to the positive aspects of the approach, yet render it more impartially. A solution might be to refer to

²¹ Tony Coady, *Defining Terrorism*, p.12.

internationally agreed standards as to what may possibly constitute injustice, in other words, to interpret the terms “bizarre” or “absurd” in a way that relies on internationally accepted standards. That is to say that the idea that injustice occurred is absurd or bizarre, only if we cannot somehow understand that one could possibly believe that some kind of international accepted right or regulations were violated. By internationally accepted rights I mean all rights that the international community accepts as existing rights. This does not mean that only those rights are accepted, which states enshrine or regard as legally binding. This is important to note, given that many rights, such as many human rights set out in the Universal Declaration of Human Rights of 1948, are accepted as having political and moral authority, and yet are often said not to be legally binding. It requires further research to finally decide whether referring to internationally accepted rights and regulation gives us enough ground to impartially decide whether the situation the terrorists act against can be considered to count as injustice. From the perspective I have now, however, I believe it does. Human rights have been declared and are accepted in the sense I have described. So has, for example, the right to self-determination and independence, which seems to be of particular importance in the context of terrorism. It is accepted as a general right, although it is highly controversial whether and what legal consequences follow from that right. So is, for example the right to seek asylum. Also, for both international and internal armed conflicts all sorts of regulations have been set out that are internationally accepted. Having said that, I think we could replace the terms “absurd” or “bizarre” and say that the non-innocent are only those who are engaged in, or caused a situation that one may possibly view as involving some kind of violation of internationally accepted rights or regulations.

Let me sum up what this means with regard to the target of terrorism. Terrorism is the use of force against innocents. Innocents are all those who cannot possibly be held to have done evil or perpetrated a situation of injustice that someone may possibly consider justifies the use of violence. This way, innocents are either people who are not part of the causal chain of agency relating to the situation the

terrorists fight against. Innocents are also those who are responsible for the situation, as long as the situation cannot possibly be understood as involving violation of internationally accepted right or regulations.

From that interpretation of innocent does, of course, not follow that all use of violence against non-innocents is justified. It may in our view often be morally appalling and unjustified. I am just saying that violence that is used against non-innocents in the sense I use the term, is not terrorism but some other kind of (political) violence.

There is a final question to be addressed relating to defining the target. This is whether violence directed against property can constitute a terrorist act. Without going into detail, there cannot be any doubt that violence targeting property can constitute terrorism. We can come up with all sorts of examples, such as the use of force against closed public places during the night or chemical factories or nuclear power stations etc. I think the only condition an act of violence against property has to meet to be considered a terrorist act is that it is carried out focusing on innocents. Some authors²² further clarify that only attacks on certain properties can be considered terrorism. Jenny Teichman inter alia claims that violence against property can only be considered terrorism, "if it (the property) is needed for life itself".²³ I agree that some kind of differentiation is necessary as to what use of violence against property can be considered terrorism. However, I believe that it is not the property or more generally the target that makes the difference, but the kind of violence that is used. We can come up with examples where the use of violence against the same piece of property constitutes an act of terrorism in one case yet not in another. Similarly, we can come up with examples in which violence against innocents does constitute an act of terrorism in one case though not in another. We, for example, would not call it a terrorist act if someone threw bags with paint on people with the aim to get media coverage and influence the peoples' social behaviour. However, we would of course call it a terrorist act, if someone planted a bomb in a bus to reach the

²² See for example Igor Primoratz, *op.cit.*, p.21; or Jenny Teichman, How to Define Terrorism, in: *Philosophy*, Vol.64 no 250 (October 1989). pp.505-517, p.512.

same aim. Thus some kind of further differentiation is necessary, yet, I think, the differentiation is not about the target, but about the extent or nature of the violence itself.

(5) What extent does an act of violence have to reach to constitute a terrorist act?

This aspect is widely ignored in the academic literature, less so in practice. It seems clear to me that a violent act has to involve a certain degree of seriousness in order to classify as a terrorist act. This does not necessarily mean that the extent of the actual destruction needs to be serious. The consequences of certain acts, such as arson, can be limited if people manage to react quickly enough. However, no matter how early they stop the fire, the act will still constitute terrorism. I initially thought that an act of violence, rather than causing a certain amount of destruction, by its nature or context has to have the capacity to reach the aim intended by the perpetrator. That, however, obviously does not work, given that the way people react to attacks does not necessarily correspond to the aim of the perpetrators. So, what I want to suggest is that the act of violence to constitute terrorism, by its nature or context has to have the capacity to threaten or substantially shock people. We probably have to focus on whether the act can have such effects on the public in general, given that some very sensitive people may be shocked or feel seriously threatened, if someone painted their fences in order to influence their environmental behaviour. "By its nature" could mean that the act of violence is serious in its consequences. It could also mean that the means of violence in themselves are serious. The latter for example applies to air bombing or planting bombs in general. With the term "by its context" I mean that the context could render an act of violence a terrorist act even if the violence is of minor extent or, for example, is directed against property that is not necessary to live or not used altogether. An act of violence that is carried out in the forest close to a village could, for example, constitute

²³ Quoted in Igor Primoratz, *op.cit.*, p.21.

terrorism, if the perpetrator combines it with a warning that further more harmful attacks will follow, if his or her conditions will not be met.

Having discussed the different aspects that are necessary to define terrorism, I propose to define terrorism as “the intentional use or threat of violence against innocents with the aim to influence the political or societal behaviour of an audience, when it may reasonably be argued that the act of violence by its nature or its context has the capacity to threaten or substantially shock people.”²⁴

To conclude, this definition may not solve the problem we face, that the international community, on the one hand, does not manage to agree on a legal definition of terrorism and that we, on the other hand, urgently need a definition. However, I have tried to meet the requirements that I set up in reference to the necessity of a definition as well as in reference to the fact that a definition has to be acceptable. Despite the fact that my definition may possibly increase the likelihood of agreement, states will have to change their positions. However, I believe that they are able to do so. In most cases this requires them to change preferences rather than give up essential convictions.

²⁴ A legal definition will, of course, have to include several additional paragraphs in which some of the terms, such as innocents or the distinction between public and private, will have to be specified in the way I suggested. Having specified how the definitional aspects have to be understood, I will not engage in this task at this point.