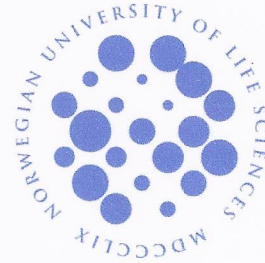


# The Illegitimacy of the Freedom Fighter and the Terrorist

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NORWEGIAN UNIVERSITY OF LIFE SCIENCES  
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Master Thesis 30 credits 2014





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# **THE ILLEGITIMACY OF THE FREEDOM FIGHTER AND THE TERRORIST**

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## **ABSTRACT**

This thesis explores whether “terrorism” can be defined non-ambiguously based on objective criteria and supplemented with a rules based labeling framework and application methodology. Furthermore, this thesis asks, if it is possible that “terrorism” can be defined, and a framework of application devised, then why is it that the international community has yet to do so? Along the way, there is a discussion about the theoretical workings of any label of deviance as well as the international system for labeling “terrorism”. And, there is an exploration into Objectives Analysis and how this can help us understand whether or not the “war on terror” is making positive or negative gains towards its espoused objectives of decreasing incidences of “terrorism” while increasing global stability. This thesis then posits a definition for “terrorism” along with an application methodology. Then lastly, it applies the framework to past and present examples of groups using violence towards larger political and ideological goals.

This Thesis is built upon the belief that every human being has, as a last resort, the right to take up arms, to fight, kill and die in the pursuit of being treated in accordance with the United Nations Declaration of Human Rights, but only so long as they do so in accordance with the laws and rules governing warfare and the use of violence.

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# THE ILLEGITIMACY OF THE FREEDOM FIGHTER AND THE TERRORIST

## CHAPTER 1

### Introduction

#### 1.1 Overview

Since 1963, the United Nations along with other international organizations have formulated 13 conventions related to the suppression of international terrorism.<sup>1</sup> Yet the United Nations, specifically the General Assembly, has been unable to establish a commonly accepted legal definition for the word. “Terrorism” in all its actual and semantic forms has powerful implications; yet there is no consensus on a definition, no broadly shared understanding of what the word means.

The word “terrorism” is widely used and carries tremendous impact in wide ranging discussions. The meaning of the term is disputed among scholars, while in the international community there is no shared legal definition of the term. An internationally renowned Dutch scholar in Terrorism Studies and former Officer-in-Charge of the Terrorism Prevention Branch of the United Nations, Alex Peter Schmid, observed that “There continues to exist considerable uncertainty about what is the right way to think about the problem {Terrorism}. At the same time, many authors seem fatigued about the need to still consider basic conceptual questions.” {Schmid, 1988, p. 1} Schmid observed further complications in the discourse surrounding “terrorism” in that “The perception of political terrorism as a practical problem requiring urgent solution has led to poorly defined, ideologically biased, conceptually skewed research.” {Schmid, 1988, p. 180} and “There are probably few areas in the social science literature in which so much is written on the basis of so little research.”

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<sup>1</sup> The Convention on Offences and Certain Other Acts Committed On Board Aircraft (1963); The Convention for the Suppression of the Unlawful Seizure of Aircraft (1970); The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); The Convention on Prevention and Punishment of Crimes against Internationally Protected Persons (1973); The Convention against the Taking of Hostages (1979); The Convention on the Physical Protection of Nuclear Material (1980); The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988); The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988); The Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); The Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991); The International Convention for the Suppression of Terrorist Bombings (1997); The Convention for the Suppression of Terrorist Financing (1999); and The International Convention for the Suppression of Acts of Nuclear Terrorism (2005).

{Schmid, 1988, p. 177} Even though Schmid was writing 25 years ago his words, unfortunately, still ring true.

Founder and Executive Director of the International Policy Institute for Counter-Terrorism and Deputy Dean of the Lauder School of Government and Diplomacy at the Interdisciplinary Center in Herzliya, Israel, Boaz Ganor, argues that an “objective, internationally accepted definition of terrorism is a feasible goal, and that an effective struggle against terrorism requires such a definition. The sooner the nations of the world come to this realization, the better”. {Ganor, 2002, p. 289}

“Terrorism” is a word that has yet to be collectively defined and carries tremendous consequences, a term that exists in an environment that is politically and ideologically driven where conceptual questions are ignored as they loom large. There is general consensus that action should be taken towards the neutralization of “terrorism” and that “terrorism” threatens global security and is a problem that requires global cooperation if it is ever to be addressed. Yet there is still no consensus on a definition. In his article “Terrorism and the Blind Men's Elephant”, Silke (2007) describes “terrorism”:

*In a child's story from India, three blind men approach an elephant. Unable to see the whole creature, they must touch it to discover what it is like. One man clutches the elephant's trunk and comes away believing elephants are writhing snake-like creatures. The second man grabs the elephant's tail and thus believes elephants are thin wispy creatures. And finally the third man touches one of the elephant's massive legs and comes away thinking elephants are huge tree-like creatures. Afterwards, talking among themselves about the elephant, the men, for obvious reasons, can come to no agreement about what kind of animal it is.*

*The story is a source of considerable amusement to children, who laugh at how the three men have allowed themselves to be misled. Focused only on one aspect of the elephant, they have missed the reality of the creature.*

*For us, terrorism is like that huge hidden elephant, and we are like blind men, clutching at it to identify and define what manner of animal is before us. Sadly, just like the three blind men, we seem to have failed badly at this task. Terrorism distinguishes itself from other serious crimes in that despite having been recognized as a phenomenon for several decades, there still remains enormous ambiguity over just what ‘terrorism’ actually is.*

*However, this is not to say that we are without hope. Taking the parable of the blind men, I suggest that what we currently have is a collection of accounts based on partial perceptions of the phenomenon before us. (I would also say that some of these accounts come from an entirely different animal, which has strayed close to our elephant, and just adds confusion to our already somewhat befuddled perceptions!) {Silke, 2007, p. 12}*

Academic and Deputy Director at the National Centre for Peace and Conflict Studies (NCPACS), Richard Jackson (2009), claims that most scholars, instead of

trying to define the word, prefer to use it “without defining it, on the misguided assumption that it is widely understood and accepted”. {*Jackson, 2009, p. 1*} This culture of assumption concerning the term creates a pervasive environment that “plays into the hands of those experts from the operational antiterrorist camp who have a ‘we-know-it-when-we-see-it’ attitude that easily leads to double standards which produce bad science and also, arguably, bad policies.” {*Schmid, 1988, p. 1*} Bad policies, in turn, only perpetuate the very problem to which these policies are purportedly designed to alleviate.

The claim here is twofold: that (1) a lack of international agreement upon a non-ambiguous definition of “terrorism” based upon discernible, observable criteria is a major contributing factor toward the above mentioned double standards, bad science and “arguably, bad policies”<sup>2</sup>; and (2) an application framework and methodology must supplement the definition of “terrorism” to avoid politically motivated application of the term.

Surrounding the subject of “terrorism” there has been an atmosphere of “tolerate[d] studied confusion, cultivated distrust, and verbal irresponsibility”. {*Johnson, 2006, p. 18*} Too long has the cliché “one man’s terrorist is another’s freedom fighter” been met as an unanswerable conundrum. It is not a conundrum, and it is time to do more than say that “terrorism” is a disputed term. This thesis will examine the possibility of going beyond the cliché and crafting a more functional definition of “terrorism.”

The first obstacle in defining terrorism is transcending the fallacy of this cliché, which rests on the idea that “terrorism” cannot be separated from “cultural relativism”. According to Ganor (2002), “the free world must understand {that} ‘cultural relativism’ applied to terrorism – whatever the terrorists’ goals – will lead only to

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<sup>2</sup> An example of bad policy is Security Council Resolution 1373. Passed as a reflex response to September 11, 2001, the resolution asserts that any act of international terrorism “constitute [s] a threat to international peace and security” and that the “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations”. The resolution goes on to provide a list of actions that member states must take towards the elimination of “terrorism”. The resolution requires member states to act specifically in diminishing the capacity of the “terrorist”, and yet there is a standing lack of agreement on what “terrorism” is. It is akin to a high profile murder in which the public demands an arrest and the district attorney demands the police chief make an arrest, period (no matter who takes the fall). The police chief is, then, afforded almost supreme power in creating all rules and regulations as to the way that the investigation, trial and sentencing of the accused will take place. The chief with this freedom can at once please his boss, the DA, and the anxious public. Simultaneously, the police chief can use those new powers to eliminate the capacity of any opposition to the chief’s position and regime. This reactionary Resolution is an example of dangerous legislation that requires specific legal action to be taken against something that has yet to be collectively defined. It is as if one was given orders to eliminate bears, with bears defined as a four-legged mammal, and then given carte blanche freedom to do so as one sees fit. The result will, at best, be much unnecessary violence and loss of life and, at worst, throwing the ecosystem, system or framework out of synch.



more terrorism.” {Ganor, 2002, p. 290} If we are to avoid cultural relativism from being imbued in the label of “terrorism” and avoid policies that only lead to more “terrorism,” then the term must be defined based on objective<sup>3</sup> criteria and supplemented with an application framework and methodology. Any attempt to deal with the definition and label of terrorism must be a two-part conception of justice because “an agreement on a political conception of justice is to no effect without a companion agreement on guidelines of public inquiry and rules for assessing evidence”. {Rawls, 1993, p. 139}

Firstly, the aim of this thesis is to create an objective definition of the word “terrorism” that is backed by a criterion based application methodology. Secondly, this thesis explores the functioning of the label of “terrorism” and its framework of application in the international community. Lastly, this thesis asks the question: if it is possible to create an internationally agreed-upon definition of terrorism, why has that not been done?

The belief here is that to fully understand something one must understand it in the actual and the theoretical. Examined here will be not only an analysis of the evolution of the functioning of the label of “terrorism” and its framework of application in the international community, but also an exploration of the theoretical functioning of any label of deviance and its framework for application. This thesis will bring the theoretical and the actual together so as to better understand both, so as to understand the whole rather than two separate parts.

## **1.2 Structure of thesis**

This section of the Introduction will give a short outline of the thesis:

Chapter 2 contains an analysis of the theoretical side to labels of deviance, the word/definition/ label relationship. Also posited is “Objectives Analysis” -- an analytical methodology designed to ascertain whether or not any system or framework is making positive gains towards its espoused objectives. In other words, is the system doing what it is supposed to be doing? In the case of the international system for labeling the “terrorist”, the question being asked is whether the system is making positive gains towards decreasing the instances of “terrorism” while increasing global stability?

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<sup>3</sup> Objective in this thesis is used as meaning that any criteria used to determine whether or not a group is considered to be "terrorist" must be observable and factually verifiable.

Chapter 3 will inquire about the present definitions of “terrorism” and “terrorist,” the usage of these related terms and the functioning of the labeling application framework. This includes how, presently, the measure most often used to identify and label a “terrorist” is built around motive and intent rather than action/deed. Lastly, discussed will be views expressed by some academicians and American courts.

Chapter 4 will propose the methodology to be used and assumptions made in designing an alternative definition supplemented by an application framework and methodology. Finally, it will discuss how the posited framework clears up some of the common conceptual misgivings and misunderstandings surrounding the subject of “terrorism”.

Chapter 5 will test the proposed definition and application framework against several historical examples of groups and associated individuals who have walked the thin line between “freedom fighter” and “terrorist” (i.e. Nelson Mandela and the ANC, IRA, Hezbollah and the Weather Underground).

Chapter 6 will present conclusions.

## CHAPTER 2

### Theoretical discussion

As stated in the introduction, analysis will be undertaken in both the actual and theoretical realm. This Chapter starts with the theoretical analysis with its objective being to provide a foundation on which will be overlaid an understanding of the actual.

#### **2.1 Labeling theory**

In considering the definition of “terrorism,” this thesis examines labeling theory, an analytical approach associated with the work of sociologists like American Howard Saul Becker.

Labeling theory suggests that some definitions or descriptive terms should be rejected because they are merely “labels,” or tags, which tend to segregate people who are accused of some forms of deviant behavior. In other words, if you label a person as a “deviant,” thus separating him from the main stream, you are casting him out, and causing him to become a deviant. Levine addressed the power of a label in this way:

*“The fact of the transformative power of names - including labels, characterizations, and definitions - needs no further elaboration here; what is important for our purposes is the observation that some labels acquire so much additional weight (contextual meaning) that their official use may have unanticipated, transformative consequences”. {LeVine, 1995, p. 49}*

Labeling theory seems to shed some light on the power and some of the danger associated with the term “terrorism” as it is frequently used. Perdue (1989) wrote that “Terrorism” as it is commonly used today is not a defined term so much as a label of defamation, which tends to dehumanize those to whom it is applied. ‘Terrorism’ is a label of defamation, a means of excluding those so branded from human standing. When applied in a one-sided fashion to those who struggle against established political structures, it is a means of organizing both the perceptions and reactions of others in the world community. Once so defined, those affected may become international lepers. Hence their objectives, ideology, and historical reason for being will be dismissed out of hand. Paradoxically then, the very label of terrorism has of itself assumed a terrifying power.” (Perdue, 1989, p. 4)

The history of the word “terrorism” does illustrate the point that the term has “terrifying power.” Part of the power might be explained by the way the word is used as a label of deviance, with “deviance” being defined as the fact or state of departing from usual or accepted standards or codes of conduct. Becker claims that it is “easily observable that different groups judge different things to be deviant. This should alert

us to the possibility that the person making the judgment of deviance, the process by which that judgment is arrived at, and the situation in which it is made may all be intimately involved in the phenomenon of deviance. To the degree that the common-sense view of deviance and the scientific theories that begin with it assume that acts that break rules are inherently deviant and thus take for granted the situations and processes of judgment, they may leave out an important variable. If scientists ignore the variable character of the process of judgment, they may by that omission limit the kinds of theories that can be developed and the kind of understanding that can be achieved.” {Becker, 1966, p. 10}

Becker argues that deviance is very often labeled and identified by looking at a “society and asking whether there are any processes going on that reduce its stability, thus lessening its chance of survival. They label such processes deviant or identify them as symptoms of social disorganization. They discriminate between those features of society that promote stability (and thus are “functional”) and those which disrupt stability (and thus are “dysfunctional”) {...} The question of what the purpose or goal (function) of a group is and, consequently, what things will help or hinder the achievement of that purpose, is very often a political question, with different factions disagreeing and maneuvering to have their own definition of the group’s function accepted.” {Becker, 1966, p. 11}

Regardless of the specific deviant behavior being discussed, the key point from Becker is that a label simultaneously creates and is created by the deviant behavior at issue. And when a term ceases to serve as a definition, and functions primarily as a label, we can assume that it will be applied in an inherently political way. In a political context, the label, being more powerful than an ordinary word, can bring the consequences of jurisprudence.

*“It makes a considerable difference, especially in Israel, whether an act of violence is called terrorism or not. Not only is there a financial stake - the state of Israel and various public insurance schemes compensate victims of terrorism - but more important, an act of terrorism so defined becomes available for use for the political ends of a variety of players on both the international and the Israeli/Palestinian political scene, whereas an ordinary criminal act, so defined under statutory law, is much less amenable to political translation”.* {LeVine, 1995, p. 3}

In other words, there are situations where the word “terrorism,” despite the confused definitions, takes on official meanings and carries “very serious real life implications” {Gunning, 2009}), including arrest, torture (aka enhanced interrogation techniques), detainment without due process or charge, assassination by hellfire missiles, sanctions, invasion and having your assets frozen. It is the label, not the

word or the definition of “terrorism”, which is the Holy Grail in legitimizing and creating ones response, and it is the label that is today “the greatest threat to world peace and civil society { ... } not the behavior to which the {label} is applied.” {Whitbeck, 2001, p. 12}

Deviance can become “not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an ‘offender.’ The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label { ... } Since deviance is, among other things, a consequence of the responses of others to a person's act, students of deviance cannot assume that they are dealing with a homogeneous category when they study people who have been labeled deviant. That is, they cannot assume that these people have actually committed a deviant act or broken some rule, because the process of labeling may not be infallible; some people may be labeled deviant who in fact have not broken a rule. Furthermore, they cannot assume that the category of those labeled deviant will contain all those who actually have broken a rule, for many offenders may escape apprehension and thus fail to be included in the population of ‘deviants’ they study.” {Becker, 1966, p. 9}

There is a general consensus that “terrorism” is a deviant behavior that according to the UN “is never justified”. But beyond that it remains difficult to tightly define the term. Labeling theory illustrates how a word like this can take on so much baggage, as a powerful, emotionally-charged term with significant consequences, making it difficult to achieve a consensus definition.

A final observation drawn from labeling theory is that international society would be well served to examine the labeling processes. When a powerful term is used, understanding requires that we know who are the labeled, who are applying the label, and to what ends the label is being applied. In the case of this term, it is worth asking whether official proceedings that apply the label “terrorist” actually are creating positive movement towards less “terrorism” and more international stability. “We can no longer tolerate studied confusion, cultivated distrust, and verbal irresponsibility,” and we can no longer be fooled or confused into thinking “one man’s terrorist is another’s freedom fighter.” {Johnson, 2006}

## **2.2 Systemic progression**

Theoretically it can be said that all systems and frameworks are composed of these elements: system objectives, the system output, and the separate but connected effects of the system. We might illustrate a system in this way:

(Systemic objectives → Systemic output) → Effects

First, the systemic objectives are the goals of the system. Second, the output is the networks of rules, guidelines, laws, infrastructure and actions taken toward reaching the systemic objectives. The effects are what the system actually is achieving and the side effects of this achievement.

For example, if my systemic objectives are to make chocolate candy, then any action taken towards realization of making chocolate including the chocolate itself would be considered the systemic output (this would include all aspects of the endeavor from the factory to the equipment and labor). The effects of the system might include somebody making money, or people getting fat, or a neighborhood near the factory starting to smell of chocolate.

In practice of course, all systems are more nuanced and have processes that involve many more parts than what theoretically is required. Even though analysis here will use the above simple model, it is still of immense importance to identify all the parts of a system, to sketch out and understand their interactions fully, or analysis will fail.

Let us keep this analytical approach in mind as we look at the international system for applying the term “terrorism” and examine how the word is presently analyzed and understood. According to Jarvis, it might be described as a system with three parts, being limited by the three domineering questions that is, the causation, definition and response to “terrorism”(Jarvis 2009) (in this case the question of causes covers discourse concerning the word). The system might be described in this way:

Word → Definition → Response

The international system and framework for applying the word “terrorism” is, if understood this way, incorrect and incomplete. This summary of the application does not take into account the way “terrorism” is often used as a label and the process of transformation that occurs when the word becomes a label. By omitting the idea of the label, and the transformation that brings, we also omit the “process of judgment” which leads to limitations of “the kinds of theories that can be developed and the kind of understanding that can be achieved.” {Becker, 1966, p. 10}

A more correct way to understand and analyze this particular framework for visualizing the definitional process includes the further step of treating the word as a label:

Definition does not in this case drive the response but is the bridge that spans the transformation of the abstract idea that is the word into a label with legal implications. The simple word and the powerful label are two different things. The word “terrorist” may be something that you call others to hurt their feelings, or to turn others against them. But applying the label of “terrorist” to a group or individual potentially has far greater consequences. In law or sociology, a label is a generalization that tends to place someone in an official category or other defined class.

### 2.3 Espoused and actual objectives

When thinking about how systems and frameworks function on a theoretical level, it is helpful to start with a discussion of “espoused” and “actual” objectives, what Robert K Merton (1957) called manifest and latent functions.<sup>4</sup> “Espoused” objectives can be defined as the objectives that are publicly proclaimed while “actual” objectives can be understood as the collective motivation of the group designing, building and administering the system or framework.

“Espoused” objectives can be considered to mirror the collective societal will because, in order for system implementation to occur, it must be sanctioned by the society on which it will be placed. The collective societal unit will not (except in cases of extreme duress) accept or sanction a system whose objectives it believes to be contrary to societal goals and values. Thus the cross-section or group that is designing, building and administering a system has a tendency to tell the societal unit what it wants to hear.

“Espoused” objectives are very easy to pinpoint. Those building and/or administering the system will openly state the “espoused” objectives. Unlike the open, visible and traceable “espoused” objective, “actual” objectives cannot be identified with certainty, only hypothesized and presumed, because no can know the motivations behind any action save the actor himself. (Senechal De La Roche) Even

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4 Peter Berger (1963) gives some examples to clarify the difference between manifest and latent functions “manifest” function of antigambling legislation may be to suppress gambling, its “latent” function to create an illegal empire for the gambling syndicates. Or Christian missions in parts of Africa “manifestly” tried to convert Africans to Christianity, “latently” helped to destroy the indigenous tribal cultures and this provided an important impetus towards rapid social transformation. Or the control of the Communist Party over all sectors of social life in Russia “manifestly” was to assure the continued dominance of the revolutionary ethos, “latently” created a new class of comfortable bureaucrats uncannily bourgeois in its aspirations and increasingly disinclined toward the self-denial of Bolshevik dedication (nomenklatura).” {Berger, 1963, p. 78}

when the actor proclaims his intentions, one can never be sure whether he is speaking the truth or simply saying what he thinks his audience wants to hear. In any case, “actual” objectives will always be the unknown variable. “Actual” objectives may dictate what the system is doing while “espoused” objectives represent what the system is supposed to be doing.

As we examine the international definition of “terrorism”, it is relevant to ask whether the international system for labeling “terrorism”, including the “war on terror” and its associated jurisprudence, is doing what it is supposed to be doing. That is, is it reducing instances of “terrorism” while increasing global stability?

The Iraq war provides a recent and relevant example of “espoused” and “actual” objectives. It was the espoused objectives that drove the willingness of the American people to sanction and accept the invasion. Two of the major points in the Bush Administration’s espoused objectives were: (1) a relationship between the Hussein Regime and Al Qaeda, including collaboration in planning the Sept 11 attacks;<sup>5</sup> and (2) Iraqi possession of weapons of mass destruction and intent to allow for the use of the weapons in attacks on the western world<sup>6</sup>. Both of these points proved to be false.<sup>7,8</sup> In this case, historical hindsight lets us hypothesize about the Bush Administrations actual objectives and theorize that they had to do with securing the Iraqi oil supplies and furthering a US military presence in the region. It seems probable that had the Bush Administration had espoused its actual “objectives” the American public would not have sanctioned the invasion. In this case it was

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<sup>5</sup> Vice President Cheney on multiple occasions espoused that there was “overwhelming evidence” of a relationship between Saddam and Al-Qaeda”. That this relationship “stretched back through most of the decade of the '90s {...that} The Iraqis provided bomb-making expertise and advice to the Al-Qaida in connection with the original World Trade Center bombing in '93{...} an Iraqi intelligence officer met with Mohammed Atta, one of the ringleaders of the September 11 terrorists attacks on the United States, just five months before the synchronized hijackings and mass killings were carried out” {Meet the Press September 14, 2003}

<sup>6</sup> Secretary of State Collin Powell espoused before the UN on February 5, 2003 that “Saddam Hussein's regime is cooperating with a branch of the Al-Qaeda organization that is trying to acquire chemical weapons and stage attacks in Europe

<sup>7</sup> The 911 commission concluded that there was no evidence of an Al-Qaeda Iraq connection or any evidence “indicating that Iraq cooperated with Al-Qaeda in developing or carrying out any attacks against the United States.” {pg 66} This conclusion is consistent with the findings of various investigations into specific aspects of the Saddam Hussein/Al-Qaeda relationship, including those conducted by the Central Intelligence Agency, Defense Intelligence Agency, Federal Bureau of Investigation, and National Security Council. There is also much evidence that the Bush Administration knew this claim was false when it was espoused.

<sup>8</sup> A UN inspection team after 18 months of searching for WMD’s in Iraq found no evidence and on November 15, 2005 issued a report that concluded “that Saddam had neither nuclear, chemical and biological weapons nor solid plans to build such weapons.” Also there is much evidence that the Bush Administration knew there were no WMD’s pre invasion.



impossible to make positive gains towards the “espoused objectives” as there was no connection to Al-Qaeda and no WMD’s to destroy.

Whether a system is in fact making positive gains towards what it is supposed to be doing (towards the “espoused” objectives) may at times be correlated to the disparity between its “espoused” and “actual” objectives. When the “espoused” and “actual” objectives are in synch<sup>9</sup>, the system and framework have a better chance of running smoothly. In synch objectives suggest transparency concerning the motivations for the design, implementation and sustainment of a particular system. Transparency of motivations helps to transform participants and stakeholders into informed pieces that can individually or collectively apply pressure to the framework. A common vision may make it easier to agree on how to revise or fine tune the tactics, rules and laws governing system operations.<sup>10</sup>

This thesis theorizes that frameworks and systems with in synch objectives over the long run may have a better chance to produce cost acceptable positive gain towards the espoused objectives. A framework with out of synch objectives<sup>11</sup> may become increasingly inefficient, as elements push toward different goals, eventually producing negative movement towards the “espoused” objectives.<sup>1213</sup>

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<sup>9</sup> In synch can be defined as when the two objectives overlap and move forward non-divergently in a close enough proximity to their perspective and particular “social and political time and space” {Cox, 1983} as to facilitate inherent dialogue and adaptability within the system and framework. An in synch framework will periodically undergo inherent internal readjustments to keep pace with the “social and political time and space” in which it operates. A visual representation of an in synch system can be found in appendix C.

<sup>10</sup> A change in objective is far more serious than a change in governing tactics, rules and laws. An objective change is the building of a new framework as changing tactics is renovation of the old.

<sup>11</sup> Out of synch objectives can be defined as “espoused” and “actual” objectives moving forward divergently. Divergent objectives will at first produce positive gains towards “espoused” objectives with ever increasing costs and inefficiency eventually transitioning from positive to negative gains towards the espoused objectives (towards what the system is supposed to be doing).

<sup>12</sup> One of the professors, upon reading this section, made the comment that in synch objectives do not necessarily mean a smooth running system, that in synch objectives still might end up producing a by way of mistakes in design negative movement towards the espoused objectives. In the short term this is a possibility, but in the long term in synch objectives will either spur inherent and internal readjustments against the mistakes or the system be rejected by the societal unit as a failure. If these adjustments are not made and the system continues, it is out of synch. Let us take in example the US “war on drugs.” It is clear that the policies emanating from this war have made substantial negative gains towards the lessening of the impact of illicit drugs in the US. But still today on the federal level, the system has refused any internal and structural readjustments. This would imply that the administrators of the system have actual objectives different from the espoused objectives. In this case we see individual states taking matters into their own hands, as many states have taken steps such as legalizing marijuana. Individuals voting or working towards system implementation may in fact be working for the “right reasons”; meaning that DEA officers may in fact be doing their jobs with actual objectives that mirror espoused objectives of the war on drugs. This makes no difference, as it is not actual objectives of the individuals working for a particular framework that is driving the system rather than the actual objectives of the framework as whole that is driving the system.

## 2.4 Objectives Analysis

“Objectives Analysis” is a theory that might be developed to assess whether a framework has actual and espoused objectives that are in synch with one another. Here is the larger question that the theory would help to explore: is the system being analyzed doing what is supposed to be doing? In other words, is the system making positive movement towards the “espoused objectives”?

In the case of the international system for labeling “terrorism,” the question becomes: is the system decreasing instances of “terrorism” while increasing global stability?

To answer this question, the systemic output is examined and compared to the espoused objectives. This will highlight the movement created by the effects in relation to the system doing what it is supposed to be doing.<sup>14</sup> This relationship can be expressed as:

“Espoused” objectives = movement of effects

Systemic Output

If the movement observed is positive gain with acceptable cost, then the system can be assumed to have “espoused” and “actual” objectives that are in synch. The system appears to be doing what it is intended to do, and both the objectives and the implementing actions seem to be aligned with real and expressed goals.

If the movement produced is positive but for the high associated costs, then the system might be in synch but in need of internal structural adjustments. But if the

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13 Frameworks and systems will always favor “actual” objectives over “espoused” objectives and will divert necessary resources from the achievement of “espoused” objectives if “actual” objectives require the same resources. Over time a framework with out of synch objectives will collect resources meant for all aspects and parts of the system in coffers that are only accessible by a smaller cross section or particular group in the societal unit (this translates into a smaller cross section or particular group to have higher relative gains against the gains of the societal unit as a whole).

<sup>14</sup> Although “actual” objectives drive the systemic output (response), which in turn drives the effects, actual objectives are also the unknown variable. The unknowable nature of the actual objectives is the reason why it is the knowable “espoused” objectives that are used as measurement against systemic movement. The formula illuminates a murky reflection of the “actual” objectives found in the effects of the system. The reflection seen in the effects can lead in some cases to speculation and hypothesizing that may in fact be very close to “actual” objectives. Though it is impossible to know for sure. In the end “actual” objectives in certainty are unknowable and only an idea of the shape is knowable. I.E. One may look at the two Gulf Wars and their effects and hypothesize what the actual objectives were. One may presume that in the first Gulf War the actual objectives were to carve out permanent US military bases in the Middle East. Or in the case of the second war presume that “actual” objectives had to do with securing oil supplies. The point is that we can never know for certain the actual objectives but we can easily know the “espoused” objectives, which in the case Gulf War I was to liberate Kuwait and in Gulf War II was because of weapons of mass, destruction, an Iraqi Al Qaeda connection and to topple a tyrant and bring democracy to the Middle East.

system produces resistance, or these adjustments are refused, then one possible explanation is that the objectives are largely out of synch, even if there is some degree of overlap.<sup>15</sup>

If the movement produced is negative in relation to espoused objectives then one must ask whether the structure has been set up incorrectly, so that the system does not work, or might there be a disconnect between the espoused objectives and other actual objectives that are in fact shaping the outcomes? In other words, our proposed “Objectives Analysis” approach will look not only at what is being done, but attempt to understand the process by searching for signs that real but unstated objectives are tending to shape how the system is operating.

If a system is not understood correctly, then it is possible that the analysis will focus on objectives drawn from the wrong part of the system. That is the case with the typical analysis of “terrorism,” which tends to focus on the search for a definition rather than what might be understood as the application of a label. The objectives found in the broad search for a definition of “terrorism” will differ from the objectives that shape specific efforts to formally label a specific group as “terrorist.” The effort to find a generally understood definition and specific initiatives to identify classes to be known as “terrorist” are different processes, taking place in very different environments and administered by very different groups.

Those searching for a definition include elements from academia, the legal establishment, military personnel, political organizations, and to an extent the public. However, politicians tend to be the primary players engaged in applying a label. An analysis using the wrong formula will fail to correctly illuminate how the system in reality functions. If we ask the wrong questions, we will never get the right answers.

In the case of an international framework for imposing a label of “terrorism” in specific situations, the primary “espoused” objectives are decreasing the incidences of “terrorism” while increasing global security and stability. Associated activities include the “war on terror” and the movement seen in the effects of this war. The formula to track whether the system is doing what it is supposed to be doing -- that is, making positive movement towards decreasing incidences of “terrorism” while increasing global stability – could be expressed as:

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<sup>15</sup> The degree of overlap in an out of synch system is directly correlated to the inefficiency and cost of the system; the larger the overlap, the less costly a system will be, while a smaller overlap will increase the cost and inefficiency of the system. Overlapping objectives will always produce positive gains towards “espoused” objectives. Non-overlapping objectives will always produce negative gains towards “espoused” objectives.

## “Espoused” objectives of label application

### Effects of War on Terror

The present public discourse does not seem to include some element of what we are calling “Objectives Analysis.” The current discussion does not lead to an understanding of whether the war on terror is meeting its publicly stated goals, and few seem to be asking whether those stated goals are the true objective of some of the actions apparently directed toward limiting terrorism. Perhaps the discussion is muddled in part because the word “terrorist” has become a vague but pejorative label rather than a clearly defined term. There seems to be no understanding of the way in which the label of terrorism is applied, the intended purpose of the label and the associated consequences.

**Present definition, usage/application of term “terrorism”**

**3.1 Evolution of the term “terrorism”**

Placing the motive and intent behind an action over the actual act and deed is a line of thought that has been recurring since the beginnings of what has become known as “terrorism” (i.e. the French Revolution and its “Reign of Terror”) and is found not only in the general discourse concerning “terrorism” but also in the form of the jurisprudence that is applied to the actual “terrorist.” Conceived by Robespierre during the French Revolution was the Revolutionary Tribunal (Peoples Court). This extra-legal tribunal was designed to deal with “enemies” of the state, yet was different from the regular courts. “Ordinary courts assessed a defendant’s behavior; but the People’s Court treated ‘enemies’ or those with ‘impure’ hearts. Motive, not behavior, was its chief concern, and the ordinary rules of evidence (those developed to assess behavior) were scrapped as impediments to accomplishing the new task. Conventional notions of guilt or innocence thus became irrelevant.”{Rapoport, 2008, 2090}

Motive over behavior is a line of thought that still plagues the subject of “terrorism” as evidenced in the first attempt to reach an internationally agreed upon definition. In 1937, the League of Nations Article 1.1 in the Convention for the Prevention and Punishment of Terrorism defined:

*“acts of terrorism” as criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.”*

The inclusion of the phrase “intended or calculated to” is what makes this definition motive/intent driven. This definition of “terrorism” hinges on the intent to “create a state of terror” -- not on the act itself. The applicability of the term depends on the intent of the alleged terrorist.

If instead “acts of terror” were defined as “*criminal acts directed against a State that create a state of terror in the minds of particular persons or a group of persons or the general public*”, the definition would be action/deed oriented. The applicability of the word “terrorism” would be based on whether a specific act did or did not create terror in the minds of the people. In this case some sort of quantitative survey could identify if a specific act did or did not create terror or fear in the general public. The removal of the phrase “intended or calculated to” transforms this definition from motive/intent to an action/deed based definition, making the word

“terrorist” applicable in a much different way.<sup>16</sup>

The above examples are international definitions of terrorism, which are almost always motive/intent driven. National definitions of “terrorism” while also generally being motive/intent driven are based on action/deed. In India in 2003, as a result of a Supreme Court ruling (*Madan Singh vs. State of Bihar*), Alex P. Schmid's definition was adopted by the Indian government: “defin[ing] acts of terrorism veritably as ‘peacetime equivalents of war crimes.’”<sup>17</sup> This definition is based clearly on action/deed. The definition is specific and criteria driven, as “war crimes” are very clearly demarcated in the Geneva Convention.

Action/deed based definitions such as the Indian definition tend to be the exception rather than the status quo. Generally definitions are motive/intent driven, meaning that they carry a phrase (usually in the first sentence), a disclaimer such as “terrorist” acts must be committed “with the aim of ...” or “committed with the intent to cause....” These disclaimers make any stated action dependent on the motive, intent and aim associated with the action, thus making it a motive/intent based definition.

There are found among member states of the UN a number of prevailing definitional views -- and much disagreement. Most of the advanced industrial Western states and some Latin governments support a position that "terrorism" is defined and constituted by the criminal acts taken against governments by individuals or groups. Considering that view to be too narrow and further broadening the definition such that “terrorism” includes criminal acts as well as acts of governmental groups that violate human rights and reinforce policies, such as apartheid, is a position advanced primarily by the African states. Contrastingly, a variety of developing nations and Arab states hold the view that “terrorism” resides in the motivation of the actor and the context of the act. This perspective claims that to consider terrorism narrowly is to label inappropriately a freedom fighter as a terrorist. [Stohl & Lopez, 1984]

With contention, the most recent attempt to create an internationally agreed definition is UN Security Resolution 1566. As its League of Nations predecessor, the definition contains the veritable disclaimer that accompanies definitions built around motive and intent. That is, the stipulation that for something to be considered

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<sup>16</sup> If the measure of whether or not one was a “terrorist” rested in the act of creating fear among the general public, rather than the intent to create fear, could one reasonably charge the architects of the 2008 financial crisis of 2008 with “terrorism”?

<sup>17</sup> Supreme Court of India appellate jurisdiction criminal appeal No. 1285, 2003

“terrorism” it must be must be “committed with the intent to...provoke a state of terror in the general public or in a group of persons or particular persons....”<sup>18</sup>

### 3.2 Frameworks, ambiguity and malleable application

In 1972, the permanent United States representative to the United Nations, Ambassador Charles Yost, commented: “The fact is, of course, that there is a vast amount of hypocrisy on the subject of political terrorism. We all righteously condemn it - except when we or [our] friends are engaging in it. Then we ignore it or gloss over it or attach to it tags like ‘liberation’ or defense or ‘national honor’ to make it seem like something [other] than what it is.” (The Christian Science Monitor, 1972: 20).

The ability to apply and remove the term “terrorist”, when beneficial, is illustrated throughout US foreign policy. Discussing the Iranian dissident group called the MEK (Mujahedin-e Khalq, aka People's Mojahedin Organization of Iran) and the way in which they have been recently delisted by the US as a foreign “terrorist” organization, Greenwald (2012) concludes that “a country or group goes on the list when they use violence to impede US interests, and they are then taken off the list when they start to use exactly the same violence to advance US interests. The terrorist list is not a list of terrorists; it’s a list of states and groups, which use their power to defy US dictates rather than adhere to them.” Further illustrating the point is how Iraq, under Saddam Hussein, was listed by the US as “terrorist” in the 1980s when they allied with the Soviets, then subsequently was removed from list when the US wanted to pit Iraq against Iran, and then was relisted in the early 90s when the US wanted to attack Iraq. {Brulin, 2011} These are not isolated incidents, and there are many other examples. This is important because, if the criterion behind the definition of “terrorism” was of the action/deed ilk rather than motive/intent, it would be much harder to keep up such a politically motivated system of labeling.

The word "terrorism has become so subjective as to be devoid of any inherent meaning. At the same time, however, the word is extremely dangerous, because many people tend to believe that it does have meaning and many others use and abuse the

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<sup>18</sup> UN Security Resolution 1566 defines terrorist acts as: “Criminal acts, including against civilians, committed *with the intent to* cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international convention and protocols relation to terrorism, are under no circumstances justifiable by consideration of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.” (Ital added for emphasis.)

word by applying it to whatever they hate as a way of avoiding and discouraging rational thought and discussion and, frequently, excusing their own illegal and immoral behavior.”{Whitbeck, 2001, p. 1 }

There is a critical difference between definitions crafted using an action/deed perspective than definitions crafted using motive/intent. Action/deed frameworks are better at producing definitions that rely on some sort of observable criteria, are more objective, and thus less able to be politically manipulated and arbitrarily applied. Motive/intent frameworks can be applied more liberally, with less empirical evidence, and are therefore more subjective. This is because intent can very rarely be proven based on objective, observable and verifiable criteria. How does one prove or disprove whether or not an action was committed with “the intent to cause fear”?

Reflecting the complex meaning of “terrorism” and exemplifying the application of “terrorism” under a motive/intent based definition is the example of a Bronx street gang member, who was in 2002 charged with “terrorism”, rather than murder for his involvement in the shooting death of a 10-year-old girl. The “terrorism” charges were available due to an anti-terrorism law enacted after September 11. Under this statute “terrorism” is committed whenever one acts with the "intent to intimidate or coerce a civilian population," but the law gives no further clarification or definitional parameters. The district attorney argued that the defendant’s violence in essence promoted the gang’s objective to intimidate and coerce not only other gangs but also the whole community at large. The defendant was found guilty on all charges. {Greenwald, 2012 }

The defendant appealed his conviction and, while unable to articulate what “terrorism” is, the appellate court concluded that “terrorism” charges are inappropriate for the defendant because acts of gang violence” do not match our collective understanding of what constitutes a ‘terrorist’ act.” Although the appellate court could not define “terrorism”, they did insist that there is in fact a "collective understanding” of what constitutes a “terrorist act” and that the Legislature did not intend for the crime of terrorism to cover the illegal acts of a gang member committed for the purpose of coercing or intimidating adversaries.

The intermediate appellate court concluded that the “terrorism” charges were inapplicable, threw them out, reduced the sentence, and let stand the murder conviction. The higher appellate court went much further. It reversed the conviction on all of the counts - including the non-terrorism counts - and ordered a new trial. Essentially the high appellate court said a retrial on all counts was necessary because



the anti-terror statute brought in a different type of jurisprudence, one that allowed a large body of evidence that would under ordinary laws have been “largely, if not entirely inadmissible { ...and} created a reasonable possibility that the jury’s findings were prejudicially influenced.”<sup>19</sup>

*“Any time a standard is lowered there is a potential for abuse. Under a lower standard, governments zealous in stamping out terrorism, or simply opposition, could knock down the doors of citizens based on little more than appearance.” {Noteboom, 2002, p. 10}*

With over 109 collected definitions of “terrorism”, Alex Schmid (1988), pointed out some of the “contested issues and unresolved conceptual problems that arise when trying to define terrorism such as the ‘narrow’ vs. ‘broad’ definition, guerilla vs. terrorism relationship, terrorism without terror problem, the communication function of terrorism, the normative vs. analytical definition and the symbolic vs. material target issue. And, of course, there is the importance of making a distinction between terrorism, assassination and sabotage and the fact that the term terrorism cannot be detached from the question of who is the defining agency.”{Schmid, 1988, p. 4}

As we explore the term “terrorism” let us consider that generally it is accepted “that terrorism and national liberation are two extremes in the scale of legitimate use of violence. The struggle for ‘national liberation’ would appear to be the positive and justified end of this sequence, whereas terrorism is the negative and odious one.” {Ganor, 2002, p. 299} This line of thought suggests it is impossible that a group could be at once freedom fighter and terrorist, but this is simply incorrect, as a “freedom fighter” may very well also be a “terrorist” and vice versa. The terrorist may be defined as any group using illegitimate tactics in their struggle, i.e. purposeful attacks on civilian and non-combatant populations. The “freedom fighter” may be defined as any group fighting with the motive/intent of resisting occupation, oppression or to be treated in compliance with the UN human rights convention.

In this respect the two titles are judged separately and measured by different criteria, the “terrorist” is measured by acts actually taken while the “freedom fighter” by the motives and intent behind the action. Let us not fail to recognize that a freedom fighter can be a terrorist, and terrorist a freedom fighter (i.e., IRA, PLO, Nelson

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<sup>19</sup> The appellate court held: “By proceeding on the terrorism theory, the People were able to introduce evidence about numerous alleged criminal acts committed by members of the SJB gang over the course of three years. Without the aura of terrorism looming over the case, the activities of defendant's associates in other contexts would have been largely, if not entirely, inadmissible. Based on the record, it is apparent that the volume of proof regarding unrelated assaults, murders and other offenses created a reasonable possibility that the jury's findings were prejudicially influenced. Hence, the spillover effect requires reversal and a new trial on the underlying offenses.”

Mandela and the ANC) and that one era's terrorist can be the next generation's Nobel Peace Laureate.<sup>20</sup>

### **3.3 It is possible to lessen the confusion**

Confusion surrounding the problem of terrorism will not be easy to resolve. However, progress toward a non-ambiguous, widely accepted definition built around discernible and observable criteria can be made. The framework and definition to be posited rests on the necessity of removing motive and intent from the definition. Only in this way can the dangerous tool of labeling "terrorism" be sure to be used responsibly, and applied only in a manner consistent with an internationally agreed upon definition, supplemented by a application framework and methodology. The following chapter will discuss and examine the methodology and theory that could support this development.

### **3.4 Pure sociology**

The idea that motive and intent have no place in the exercise of understanding "terrorism" was extensively explored by sociologist Donald Black in what he called "pure terrorism" ("pure terrorism" will be discussed in depth later). "Pure terrorism" is an extension of Black's "pure sociology", which argues that intent and motives have no place in the exercise of sociology. The irrelevancy of motive and intent is the core point that separates Donald Black's "Pure Sociology" from "classical" and "modern" sociological thinking.

Black (2002) claims that the conception of social reality that is found in "classic," and foundational sociological theory (Weber, Durkheim and Simmel) is "largely psychological (a matter of subjectivity), the classical logic of explanation is largely teleological (a matter of means and ends)" (Black, 2000 p. 344). Black claims "sociology is the "interpretive understanding of social action "and that "subjective understanding is the specific characteristic of sociological knowledge" ([1922] 1978, Volume 1: 4, 15; see also 8; Ringer 1997: 1, 92). Human behavior is "action" only if it has "subjective meaning" (Black, 2000 p. 344) and that this paradigm of subjective understanding is still exemplified in modern sociology.

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<sup>20</sup> By 1996 four persons once known as "terrorists" received Nobel Peace Prizes. Menachem Begin and Anwar Sadat shared one (1978) for leading Israel and Egypt to a peace treaty. Nelson Mandela (1994) was indispensable in leading South Africa to reconciliation. And, Yasser Arafat (1996) was still in charge of an active "terrorist" organization, the Palestine Liberation Organization (PLO), when he signed the Oslo Peace Accords (1993).

*Virtually all sociology explains human behavior as a means to an end—a goal or purpose. Teleology is the super paradigm of sociology (Black 1995: 861-863). But it is bad science: Like the goal or purpose of society as a whole, the goal or purpose of human behavior of any kind is unobservable and unknowable (see idem: 861-864) {...} Pure sociology thus violates common sense by removing humans from human behavior {...} {Pure sociology} does not assume, assert, or imply that people have particular purposes or preferences, intentions or motives. (Black, 2000 p. 34)*

The study of terrorism may be regarded as a sociological undertaking. Such study is generally exercised under auspices of classical sociological thinking, in that one generally describes “terrorism” as a “means to an end” measured by the motives and intentions behind the actions taken. It appears that much of the sociology surrounding “terrorism” is “bad science” because the motive/intent behind “terrorist” acts “*is unobservable and unknowable.*” Therefore what is needed is a framework that does not *assume, assert, or imply that people have particular purposes or preferences, intentions or motives*” *where does this quote begin??* behind the acts of violence committed by groups towards larger political or ideological agendas.

### **3.5 How might different conceptual lenses be applied to better define “terrorism”?**

This section will look beyond the commonly used label and explore other perspectives that might serve to better define “terrorism.” According to Schmid (2004), there are five conceptual lenses commonly used to define “terrorism”:

- (1) Terrorism as=and crime;
  - (2) Terrorism as=and politics;
  - (3) Terrorism as=and warfare;
  - (4) Terrorism as=and communication; and
  - (5) Terrorism as=and religious fundamentalism.”
- {Schmid, 2004, p. 197}

These five conceptual lenses can be grouped together based upon what central measure is involved. The key question is whether any specific lens is framed by motive/intent or action/deed. Three of these five lenses can be considered as framed by motive/intent: terrorism as politics, terrorism as communication and terrorism as religious fundamentalism. The remaining two are framed by action/deed: terrorism as crime and terrorism as warfare.

Also according to Schmid (1992), there are four distinct areas of discourse in which one or more of the above lenses may be put into place:

- (1) The academic discourse.
- (2) The state's statements. This is the official discourse on terrorism by those who speak in the name of the state.

- (3) The public debate on terrorism. Given the way our open societies are structured, this arena is largely co-extensive with the views and suggestions met in the media.
  - (4) The discussion of those who oppose many of our societies' values and support or perform acts of violence and terrorism against what they consider repressive states".
- {Schmid, 1992, p. 7}

Among these areas of discourse we find a variety of people with different objectives in defining "terrorism." For example, "Lawyers desperately require definitions in order to prosecute and sanction 'terrorists'. They must distinguish terrorism in precise legal terms from other forms of crime. Social scientists aim to describe this phenomenon in a way that will better our sociological and psychological understanding of it and enable us to face this modern challenge more successfully (Waldron 2004, p. 6). And, of course, heads of state and politicians often adopt definitions that serve their national, political or ideological agendas." {Meisels, 2009, p. 332}

The different objectives in defining "terrorism" will correspond and determine whether one is best served using a frame of motive/intent or of action/deed. A motive/intent frame at its core is an exploration into why one does what he does and to what ends such action has been taken. Such a framework will illuminate the cause and the type of ideological drive. A motive/intent frame is essential to the academic or social scientist holding the objective of a deeper understanding of the actor by way of explanation.

An action/deed framework is at its core focused on observable and objective criteria that make clear what acts objectively define a specific label of deviance (like "terrorism"). Action/deed frameworks can be considered relatively objective, with observable criteria with which to identify and label individuals and groups that partake in behavior of deviance. A lawyer looking for a definition that is precise in a legal context may be wise to use an action/deed framework due to its tendency to produce observable and objective criteria.

If the goal of the politician is to objectively apply criteria to identify the "terrorist", while at the same time protect the sanctity of such a powerful label from abuse and misuse, then the an action/deed framework would best serve best. Unfortunately politicians do not necessarily share this objective. It appears that in many cases politicians choose to define "terrorism" based on a motive/intent framework rather than by action/deed.

Motive/intent frameworks can further the confusion surrounding the definition

of “terrorism” because motive/intent frameworks are more easily manipulated as they are more subjective than the criteria-driven action/deed frameworks. One cannot prove but can merely hypothesize regarding the motive and intent behind any action. These hypotheses cannot be tested so there can be multiple and even opposing claims made regarding the intentions of any action. Not only can such hypotheses not be proven, but more dangerous, nobody can disprove them. Thus, to an extent, some claim of truth can be made regarding all hypotheses that attempt to explain motive or intent. Because they do not rest on empirical evidence, motive/intent frameworks tend to be malleable and capable of serving many different types of objectives.

The looser definition is perhaps why politicians tend to gravitate towards motive/intent frameworks. While we can never be sure about the objectives of politicians, we can assume that generally their “actual” objectives are served better by the use of a motive/intent frame rather than one of action/deed.

**Framework development and assumptions**

**4.1 Pure terrorism**

As discussed above, a definition of “terrorism” might reflect an evaluation of motive and intent, or be focused solely on action and deed. Schmid (1984) succinctly asserts that motives are not a necessary component of “terrorism.” He claims that:

*Motives are entirely irrelevant to the concept of political terrorism. Most analysts fail to recognize this and, hence, tend to discuss certain motives as logical or necessary aspects of terrorism. But they are not. At best, they are empirical regularities associated with terrorism. More often they simply confuse analysis. {Schmid, 1984. P. 100}*

Black (1995) agrees with Schmid about the necessity of removing motive/intent from the sociological equation. In this belief he extended his “Pure Sociology” to terrorism in what he called “Pure Terrorism.” He defined “Pure Terrorism” as “self-help by organized civilians who covertly inflict mass violence on other civilians.” (Black, 2004 p. 16) This view is also shared by Seneschal De La Roche (2004), who said: “what resides in the minds of the actors lies beyond the reach of an outside observer. And to impute or to infer these mental elements only introduces uncertainty and complexity into our efforts to distinguish one form of violence from another. An ideal definition of terrorism should address only readily observable features”. {Seneschal De La Roche, 2004 p. 2}

This thesis agrees that considerations of motive and intent do create confusion when we try to define “terrorism.”

**4.2 Terrorism as warfare and terrorism as a tactic**

If one removes motive and intent from the equation, then the alternative for understanding the meaning of “terrorism” is through one of Schmid’s two conceptual lenses that can be considered to be of the action/deed ilk. This reasoning suggests that “terrorism” is either a criminal act or an act of war.

The FBI defines “terrorism” as a crime: “the unlawful use of force or violence against persons or property to intimidate or coerce a government or civilian population in furtherance of political or social objectives.”<sup>21</sup>

But discussing “terrorism” as a criminal act in a specific jurisdiction does not help us to understand the problem in general, nor does it suggest a definition able to

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<sup>21</sup> <https://www.ncjrs.gov/App/publications/Abstract.aspx?id=107703>.

transcend specific jurisdictions (which is the aim of this thesis). Silke (2007) points out a conceptual problem of using a definitional framework that equates “terrorism” with crime. “The inclusion of ‘unlawful’ clearly implies a legal contravention is a defining feature. But whose legal code is being transgressed? The laws of an occupying military power? A representational and democratically elected government? A communist regime? A fascist dictatorship? Not all laws emerge from a legitimate or humanitarian power base. And even when they do, not all laws will be judged as fair and reasonable by most observers.” {Silke, 2007, p. 22}

If we agree that an understanding of “crime” must always depend on a specific jurisdiction, the concept does not suggest a general understanding of the meaning of “terrorism.” Thus the only remaining lens available for objectively crafting an internationally acceptable definition is: terrorism as warfare.

In a review of 109 definitions, Schmid (1982) found that “Eighty-three per cent agreed that violence was a defining feature but only 5 per cent could label such violence as being criminal, and just 30 per cent could view such violence in martial terms. What then is the interpretation of the majority? ‘Political violence’ is the quick and ready reply, but such a description could just as easily be applied to conventional warfare. So we now have a scenario where the majority can see warfare as political violence, while also seeing terrorism as political violence, but then fail to see terrorism as warfare!” {Silke, 2007, p. 22}

The assumption here is that war is the use of violence in the pursuit of larger ideological and or political goals, a state of open, armed, often-prolonged conflict carried on between nations, states, groups or parties. In this context, “terrorism” becomes a tactic used in war. It is a tactic that has been deemed deviant and outside the agreed upon laws and rules governing the use of violence during war, and so, in this context, “terrorism” equates to war crimes, which in turn equates to the illegitimate use of violence.

The assumption that “terrorism” refers to actions falling outside the principals and ethos of the Geneva Convention, as applied to non-governmental entities and groups engaging in warfare, makes the process of definition somewhat easier. That is because, even if there is a lack of clarity about what “terrorism”, “there is broad international agreement about what actions count as war crimes. It would be wise to profit from this consensus”. {Elfstrom, 1986, p. 260}} Even if we can consider “terrorism” as a tactic, there still is the problem of the label of terrorism itself.

Gearty (1991) claims:

*“Terrorism is in essence no more than a particular and discernible method of subversion: in other words that it is a tactical use of violence against an established order, regardless of its moral worth. If it were possible to follow this line consistently, the subject would be relatively straightforward. There would be available a value-free basis for the examination of the actions of groups and individuals, which would allow conclusive determination as to whether their orientation brought them within the sphere of terrorism. Unfortunately, matters are not so simple. The major difficulty is that identifying a terrorist is not simply a matter of ticking off items on a checklist of violent attributes. The label itself is inevitably value-laden. Its meaning is molded by government, the media and in popular usage, not by academic departments. The word resonates with moral opprobrium and as such is, as far as the authorities and others are concerned, far too useful an insult to be pinned down and controlled. The manipulators of language are no respecters of academic integrity, and, simply to keep up, political scientists who believe a definition is possible have had to broaden their attempts so extensively that the exercise becomes rather pointless”. {Gearty, 1991}*

### **4.3 Moral disaster of war, the changing nature of violence and shared rules**

Shared rules that extend to all groups engaging in political violence are absolutely necessary, Smith (2007) argues. That is because “If two enemies are bound by shared rules of war, then each warring party, despite massive enmity for each other, can be certain in their expectations that their enemies will follow the rules. This allows enemies to view each other as agents capable and willing to bind themselves to publicly recognizable rules each can take to be reasonable {...} This is to be contrasted with cases in which two enemies fail to be bound by shared rules of war. In such a case, each party confronts the other as utterly alien and not the sort with whom society is possible.” {Smith, 2007, p. 9}

If we are going to limit the moral disaster of the wars and violence of the future, it does seem critical that participants in violent action comply with widely shared rules of engagement. The shared rules and trust provided to states by the Geneva Convention should be extended to all parties who participate in violence in the pursuit of larger political or ideological goals, and thus who can be said to partake in war. The Geneva Convention is an ideal framework as it is an already existing “political conception of justice.” {Rawls, 1993} It embodies principles that all reasonable parties have accepted, and will continue to accept concerning the conduct of war and its related activities. It leaves little room for objections based on doctrines that are “reasonable politically speaking” since its validity is already widely accepted. A definition of “terrorism” applied to all groups and framed by shared rules based on the principals and ethos of the Geneva Convention should be non-controversial.

To be clear, just because a proposition should be non-controversial does not mean there will be no public debate. Many times, especially in politics, a proposal



that should be non-controversial is artificially manufactured into controversy. However, and at least as a starting point, an approach based on the Geneva Convention should have widespread acceptance because the Convention has long been established as an accepted “political conception of justice” that deals with the proper conduct in war. An extension of these established principals should be accepted by all reasonable parties, especially parties that are signatories to the Convention.

But we must recognize that, while this extension of the Convention should be relatively non-controversial, controversy in fact seems inevitable. We have already seen the United States deny the rights of the Geneva Convention to the “enemy combatants” that they capture in their “war on terror.” As we explore why it is that something that should be non-controversial turns out to be extremely controversial, we might consider our proposed theory of Objectives Analysis. It may be that the actual objectives of the parties manufacturing controversy are not immediately apparent from their public statements.

#### **4.4 Corrigible and Incurrible**

We can further understand the meaning of “terrorism” by breaking it into two categories: corrigible and incurrible activity. This thesis agrees with Wilkinson (2006) when he claims that “a distinction that must be heeded when looking at groups using ‘terrorism’ {(tactics that have been deemed illegitimate)} is between potentially corrigible terrorism – where there is a real possibility of finding a political/diplomatic pathway out of the conflict by addressing its underlying causes, thus very probably reducing, if not ending, the terrorist violence spawned by the conflict – and incurrible terrorism. In the latter case the movement/group has such absolutist and maximalist aims and poses such a major threat to the lives and well being of civilian communities that the only recourse is to use all possible measures to suppress the group before it can wreak more mayhem.” {Wilkinson, 2006, p. 4}

It is clear there is a sub-section of the population engaging in a type of deviant behavior that by all standards most people regard as not acceptable by society at any time, under any circumstances. It is widely agreed that groups such as Al-Qaeda are and should be considered incurrible. Incurrible groups typically have no intention or interest in following any shared rules or cultivating any atmosphere of shared rules and trust (in most cases, though there are exceptions to the rule: see the Weather Underground).

These incurrible groups should be dealt with extreme prejudice. Even so, we

must not allow them to trick the rest of us from compliance with agreed upon rules of war applicable to all parties and participants who use violence in the pursuit of their larger ideological and political goals. To do anything else would be, as the cliché says, “letting the terrorist win” because, as according to Smith, (2007) ‘terrorism’ is especially objectionable because terrorist acts threaten two very valuable things: valuable shared rules of war and valuable trusting relationships between both international allies and nations at war.” {Smith, 2007, p. 2.}

The belief here is that the “terrorist” is “defined by the rationalization, logic and perception of how to effect change” {Garrison, 2004, p. 263} and that the incorrigible groups are the statistical anomaly lying outside the standard bell curve of terrorists generally. Wilkinson (2006) claims “most insurgent leaders view terrorism as a useful auxiliary weapon. They are realistic enough to recognize that terrorism alone is going to be insufficient to deliver their strategic goals and that it is a faulty weapon that often misfires and may ultimately prove counterproductive.” {Wilkinson, 2006, p. 8}

#### **4.4.1 A potential impact of defining a tactic as “terrorism”**

In examining the implications of frameworks for defining violence, one consideration is whether an approach to defining “terrorism” seems more or less likely to encourage groups to employ actions and tactics that are considered outside the accepted rules and laws governing warfare (terrorism).

Ganor (2002) claims “only a definition agreed upon by most countries in the world – and which entails operative action against terrorist groups different from that directed against guerrilla groups – will move these organizations to take ‘cost-benefit’ considerations into account when choosing the mode of activity appropriate to attaining their ends. When the damage incurred by organizations due to their engagement in terrorism is greater than the damage they incur due to their involvement in guerrilla activities.” {Ganor, 2002, p. 297}

Ganor’s approach suggests that groups will make cost benefit analyses as they consider whether to use one tactic over the other. But it would be a mistake to assume that the best or easiest way to affect this analysis is to opt for the approach that results in the most damage. But if we instead assume that most groups use “terror” tactics only as a last resort to reach their objective, rather than first a first choice, then the equation takes on different quality.

“Terrorism is not a philosophy or a movement. It is a method.” {Wilkinson,

2006, p. 16} It is a method that has for the most part proven historically ineffective. The question then becomes, why do groups who are making decisions rationally continue to use tactics that are not only historically ineffective, but that may also “have the effects of uniting and hardening a community against the terrorists, of triggering a violent backlash by rival groups or of stinging the authorities into more effective security measures in the ensuing period?” {Wilkinson, 2006, p. 49}

Presently: “Terrorism functions as a low-cost, potentially high-yield and relatively low-risk method of struggle for the perpetrators.” Wilkinson, 2006, p. 7} In an environment where the benefits of *not* using violent tactics are inconsistent, there may be a consistency in the effects a group can expect to achieve when using “terror” tactics. In other words, groups may be able to accurately gauge the response and effect of a specific illegitimate (terrorist) act. And yet they will not be able to predict how and for how long they will benefit if they elect to abstain from such tactics. For this reason “terror” tactics may remain an attractive option as long as the reward for abstaining from such tactics is inconsistent.

#### **4.4.2 Last resort tactics and capacity shortfalls**

If we assume most groups using terrorist tactics do so only as a last resort, and that most groups would “fight fairly” if they were in a position to do so (using last resort tactics implies that one is not in a position to use any other tactic), then we must ask ourselves what are the factors that push groups into last resort mode.

The assumption that most groups choose last resort tactics out of necessity rather than want suggests a group does not have the capacity to undertake a “fair fight” (whether that capacity shortage comes in the form of weaponry, manpower, funding, media coverage or community support makes no difference). Shortages in capacity are deeply intertwined with legitimacy and shared rules and trust. Silke (2007) claims that one-reason groups use last resort tactics is that “they lack the manpower and industrial resources required to win conventional battles. And any attempt to do so, would be the height of madness”. {Silke, 2007, p. 18} The claim here is that among corrigible groups a major factor for the use of last resort tactics (“terrorism”) is the lack of capacity to do otherwise, and that this lack of capacity is directly correlated to the absence of a pathway to legitimacy based on shared rules and trust. When groups are denied access to legitimate methods of funding, recruitment, business dealings and media coverage, they have less capacity to aspire to the fair fight, and are more likely to be drawn to nefarious ways of funding, recruitment, weapons procurement and gaining media attention.

However, when there is a consistent pathway to legitimacy – one that is built on shared rules and trust and is open to any group – when there is the potential for groups to legitimately raise funds, recruit, procure weapons and access the media, this will in turn increase their capacity to attack a military convoy rather than a school.

#### **4.4.3 Pathway to legitimacy**

The international community presently provides pathways to being considered “legitimate.” But too often the available pathway is shaped not by shared rules and trust so much as by the political whims and objectives of a particular nation state. Let us again refer to Greenwald’s conclusion (2012) concerning the US foreign terrorist list. He says, “a country or group goes on the list when they use violence to impede US interests, and they are then taken off the list when they start to use exactly the same violence to advance US interests. The terrorist list is not a list of terrorists; it’s a list of states and groups, which use their power to defy US dictates rather than adhere to them.”

There are a number of problems with a pathway to legitimacy that is a function of the whims of the geo-political agendas of particular nation states. First, a pathway built on a single clique’s political objectives may never develop shared rules or trust because groups cannot be sure that the game will not change at a moment’s notice. They may fear that legitimacy will be removed arbitrarily, and regard implementation of the pathway as inconsistent.

Second, this kind of political pathway is not open to all groups but only to groups willing to make certain concessions not necessarily having anything to do with foregoing the illegitimate use of violence. In other words, choosing not to engage in terrorism may not be enough to open the pathway.

Finally, it may even at times be that what the sponsoring nation-state wants in return for “legitimacy” is in fact acts of illegitimate violence (terrorism)<sup>22</sup>.

This thesis suggests that it would be better if the pathway to legitimacy were proffered on the basis of action and deed, guided by a non-ambiguous rules-based application framework methodology and operating in an atmosphere of shared rules and trust. Then, the majority of groups who are corrigible would have a viable option and thus be able to forego last resort tactics. The availability of this type of pathway

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<sup>22</sup> It is not uncommon for Nation states to contract out to groups to commit acts of illegitimate violence in their stead i.e. Sudanese government and the Janijiweed or the various Death Squads supported by the Reagan administration during the 1980s in countries like Honduras and El Salvador.

could illuminate, separate and isolate the corrigible from the incorrigible.

Making available a pathway to legitimacy that is based on action and deed in this way would be the clearest approach to distinguish the corrigible from the incorrigible. Furthermore, if the corrigible are to be convinced that it is in their overall interest to “play by the rules”, there must be a pathway that is open to all groups, regardless of whether their enemy is the State of Israel or the Islamic Republic of Iran.

*“Terrorist organizations have a long pre-terroristic history, and are products of a prolonged process of delegitimation with the powers that be { ... }. Terrorism is a direct behavioral extension of non-terroristic opposition politics. It is the most dramatic part of a longer political process of delegitimation undergone by an opposition movement vis-à-vis the regime. Only a small splinter fraction of the opposition movement reaches terrorism, which is the highest peak of the process, and it usually does not stay terroristic too long. The full story of terrorism is therefore not simply the climax of the radicalization process, in which terrorist practice is resorted to by a small group, but the process of delegitimation in its entirety. {Sprinzak, 1991, p. 50}*

“Legitimate” groups in the approach proposed here would be those that, through the use of the application framework, have been found to not be “illegitimate.” That is, we are talking about a de facto legitimacy rather than a defined legitimacy. In the context of alleviating capacity shortages, groups not found illegitimate would be afforded the right to operate as any legal organization is allowed to operate. They would be allowed free and open solicitation of funds from willing donors without fear of having either their or the donors’ assets frozen. They would be permitted to deal with any legitimate business in the procurement or sale of legal technology, hardware, weaponry or commodities. They would have the legal right (if not the immediate means) to undertake marketing, advertising and/or recruitment campaigns.

An open and available route to legitimacy would offer groups the capacity to avoid last “resort tactics” (illegitimate tactics). Those groups that take advantage of the legitimate path would prove themselves corrigible and should be accepted as de facto legitimate, while the rest demonstrate that such tactics and actions are a matter of choice and not necessity. Illegitimate tactics selected as a result of want rather than necessity are a clear declaration of living “by another rule than that of reason and common equity.” Such a declaration is a clear indication of being “dangerous to mankind” and epitomizing Locke’s “savage beasts with whom men can have no society nor security.” {Locke, 1690}

The absence of a pathway to legitimacy, and the implication that some groups have no legitimate recourse, serves as both a ceiling and an undercurrent. The lack of

a path prevents groups from rising to the occasion of the “fair fight.” At the same time it pulls them deeper into the need to function in illicit underhanded ways to make up for their capacity shortfalls.

Furthermore, over time this momentum can breed interconnectedness and intertwining among groups fighting for some larger ideological or political objective and others seeking merely financial gain (i.e. the mafia or cartel). As interdependence and interconnectedness grow, groups may start to accept into their ranks people who otherwise would be shunned. Over time we see a hardening of the heart of the organization, and in many cases there is a transformation in which the means of, say, selling drugs become the ends of the organization in question {Collier}.

Instead of throwing fundraisers, a group might start engaging in illicit activities such as selling drugs, prostitution, hostages, blood diamonds and extortion. Instead of bringing attention and recruits to their cause through legitimate media campaigns, they might partake in theatrical violence intended to make the news, spread the name of the organization and bring media attention to the particular conflict.

Even where there is no linkage with criminal groups, anti-social action can be expected when the choices are either to give up on a cause one is willing to die for or initiate last resort tactics allowing one to continue the fight. The present system in many cases encourages the descent from corrigible to incorrigible rather than catalyzing the rise from incorrigible to corrigible.

A system that limits access for some is not able to foster an environment where a utilitarian consideration, in either the positive or the negative, is prevalent among groups using violence towards political or ideological ends. Typically today there is no consistency in the condemnation of illegitimate tactics. As long as states provide support to some groups using illegitimate tactics, other groups will know that it is not the issue of tactics that will “turn them into wanted and extraditable terrorists and will undermine the legitimacy of their political goals.” {Ganor, 2002, p. 303} On top of this, groups cannot be sure that if they do in fact cease using illegitimate tactics that they will be allowed to shed the label “terrorist.” For example, the current US system for labeling a group as “terrorist” appears to rarely provide decisions based on tactics actually used.

If society is to encourage groups to make utilitarian decisions regarding the potential use of illegitimate tactics, it must create a path to legitimacy based on an evaluation of actual action, shaped by the standards of the Geneva Convention, and

built on transparency and trust. The international adoption of such a system “and its concomitant separation from political aims – could motivate the perpetrators to reconsider their intentions, choosing military targets over civilian targets – guerrilla warfare over terrorism – both because of moral considerations and because of ‘cost-benefit’ considerations”. {Ganor, 2002, p. 302}

A pathway to legitimacy that is open to all and based on an evaluation of actual action, shaped by the standards of the Geneva Convention, and built on transparency and trust is necessary if we are going to control violence and limit the moral disaster of war. However, we must recognize that the proposed pathway can work only to an extent. There will always be groups that have been beaten, groups that are in their “last throes” and groups dangerously close to losing their war. The proximity of defeat may push groups into last resort tactics even when a pathway to legitimacy is available. The most dangerous animal is a cornered animal. But the concern that desperate groups in their last moments may revert to “terror” tactics should not deter us from reducing the spread of violence by appropriate pathways to legitimacy

#### **4.5 Shifting focus from “terrorism” to the Illegitimacy of violence**

This thesis has presented the view that there are two types of frameworks that might be used when defining “terrorism”: action/ deed and motive/intent. Of the two, an action/deed framework is the better choice for defining “terrorism” objectively because it applies observable criteria. But the problem remains that, regardless of the framework on which we might try to craft a more effective definition, the term “terrorism” today is entrenched in its “semantic power to stigmatize, delegitimize, denigrate, and dehumanize those at whom it is directed” {Saul, 2002, p. 3.} The widespread understanding of the term is intertwined with perceptions of motive and intent.

Given the intensity of confusion and emotion surrounding the term “terrorism” and the label “terrorist,” it might prove more fruitful to move forward in another way. A better way to achieve the understanding we are seeking might be to define the “illegitimacy” of violent acts and deeds used towards larger political or ideological goals, and to put aside use of “terrorism”.<sup>23</sup>

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<sup>23</sup> Some might argue that it would be advantageous to define “terrorism” rather than trying to convert to and then define a different but equal variable. The better half of this thesis has been relying on the assumption that the word “terrorism” has picked up so much extra meaning and has become too stigmatized to be used in a fair and balanced way. So to turn around and use this term in spite of arguments made here would be (1) disproving my own argument, or (2) a lack of academic integrity.

This thesis proposes a theoretical framework that rests in the belief that the nature of violence is changing and the “key to the control of violence is the reconstruction of {its} legitimacy.” {Arendt, 1970}<sup>24</sup> What Arendt meant by this is that if the way in which we understand and legitimize violence does not keep up with a changing world, if we continue to rely on outdated frameworks of understanding, then we will not be able to control the violence of the future. In order to control the violence of the future, we must reconstruct the framework of legitimization of violence being used. Unfortunately, any attempt to reconstruct or define “legitimacy” seems to lead to discussion that invariably ripples back to reliance on intent and motive. Therefore this thesis will not attempt to define “legitimacy” but instead will seek a definition of what is “illegitimate.”

If a group is not found to be illegitimate they should be treated as de facto legitimate because “when there are widely shared rules, a natural default assumption of rule-followers is that others are also rule-followers. Thus, even if an organization has failed to sign a treaty declaring commitment to widely shared rules, others may reasonably expect that the organization and its members are also committed to the widely shared rules”. {Smith, 2007, p. 16}<sup>25</sup>

#### **4.6 Framework assembled and illegitimacy defined**

Using violence in ways that are not in accordance with international laws, treaties, rules of engagement and conventions is the mark of illegitimacy.

“Illegitimacy” here is defined as:

*State/group affiliated or sponsored ideological, political or policy driven violent/military/ militant activity whose actions ultimately target the civilian population and/or violates accepted and agreed international laws, treaties, rules of engagement and conventions governing the use of violence and general conduct in war.*<sup>26</sup>

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<sup>24</sup> Globalization and increased access to information and technology is altering the nature of violence, allowing for an ever increasing of the ability third party and group initiated violence.

<sup>25</sup> In other words, questions of legitimacy should reflect the basic principle that you are innocent until proven guilty, meaning that the status of legitimacy must be treated as a de facto condition and be infringed upon only if one is found to be illegitimate. The system does not affirm legitimacy (just as a court of law cannot find a defendant innocent). The framework and definition provide the standards for judging the illegitimacy of violence used by a particular group at a given time based on the actual tactics used and actions taken. “In practical matters, the burden of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition either any limitation of the general freedom of human action or any disqualification or disparity of privilege affecting one person or kind of persons, as compared with others.” {Mill, 1869}

<sup>26</sup> While this framework is judging violence, it also concedes that violence can be perpetrated on a population through deprivation of basic necessities and environmental destruction I.E. Sanctions, corporate made pollution and mineral extraction.



Determination of illegitimacy, as defined above, can be achieved through a criterion based application methodology set forth as proposed by this thesis called the “Articles of Illegitimacy” (see Addendum A). The “Articles of Illegitimacy” are rules governing conduct in war. The approach is based on the very simple principle that if you follow the rules you will be treated as de facto legitimate, and if you do not you will be considered to be illegitimate.

The proposed “Articles of Illegitimacy” are designed to function on three aspects in the attempt to limit the “moral disaster of war,” that is:

- (1) The necessity of declaring of hostilities.
- (2) The protection of civilian and non-combatants and the avoidance of collateral damage.
- (3) The pathway to legitimate means of making up capacity shortages.

#### **4.6.1 Declaring of hostilities**

Both The Hague and Geneva Conventions require a declaring of hostilities yet neither specifies what must be contained within a particular declaration of war. This lack of specificity may have to do with the fact that during the “political time and space” in which these conventions were written and ratified it was clear that “proper” wars were carried on between nation states. Hence declarations would by their nature name another specific state. Apparently it was assumed that, if France declares war on Germany, then the specifics of this declaration name the state of Germany as the enemy, and the theatre of operations would be defined by Germany’s recognized borders or occupied territory.

As stated earlier, the nature of violence is changing. The present world is not one of only nation states going to war with nation states. The present involves an amalgamation of nation states, multi-national corporations, ethnic groups, and ideologies that more and more frequently drive the engagement of violence towards larger purposes. All these groups except nation states can and have the propensity to be border transcendent.<sup>27</sup> Because many of the actors engaging in war (using violence towards larger political or ideological ends) tend to be border transcendent it becomes of utmost importance that any declaration require specifics concerning the theatre of operations. If my country declares war on Al-Qaeda, or my group declares war on

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<sup>27</sup> Some might argue that a diaspora could be a border transcendent arm of a nation state. Though this would be incorrect as a diaspora may or may not be loyal to the present government of the nation state in question, and the diaspora in fact has its own independent existence outside and unconnected from the nation state. Finally, it has its own collective will and identity that is also not necessarily connected to the nation state in question. The Diaspora is an entity that is separate but related to the nation state from whence it came.

Exxon Mobil, there is no intrinsic and obvious understanding of where violence may take place as both Exxon Mobil and Al-Qaeda can be found in some sense operating in almost every country.

Neither The Hague nor the Geneva Conventions specifically says that one cannot declare war on an ideology or ephemeral enemy (i.e. capitalism, communism, terrorism or drugs). It may not have seemed to be an issue in the “political time and space” {Cox, 1983} when the conventions were crafted. Previously, in the Westphalian system, nation states went to war with other nation states or colonial holdings, not against ideologies (e.g., Islam, Capitalism, and Communism).<sup>28</sup> There was no reason or thought to prohibit ephemeral enemies,<sup>29</sup> but today, just as there is a modern necessity of requiring the naming of a theatre of operations, there is a need that belligerents be required to name specific and non-ephemeral enemies.

If we believe that the nature of violence is changing, and that this change has to do with the increased ability of non-state, border-transcendent actors to engage in organized violence, then it becomes clear that the idea of the declaration needs to evolve in parallel. The concept of a declaration of war should to be revamped to address the border transcendent nature of the belligerents of the future. It is no longer sufficient to require just a declaration of war. Now it is necessary to specify what details must be included in the declaration. Article I of the “Articles of Illegitimacy” sets out the parameters for declaring war (see Appendix A).

In order to avoid being labeled illegitimate any group using violence must make a declaration of hostilities that includes: the reasons behind the decision to engage in violence, the entity at whom the violence is exactly directed (who is the enemy and why) and the specific theater of operations.

Below is an example of a declaration that meets specificity requirements. It is a statement by the group “The Movement for the Emancipation of the Niger Delta” (M.E.N.D.), published on March 14, 2011:

*The Movement for the Emancipation of the Niger Delta (M.E.N.D) will soon commence with simultaneous bomb blasts and attacks on oil installations*

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<sup>28</sup> One might argue that the cold war was a war against communism, against an ideology. While this statement would not be incorrect it is also not correct. The cold war was against not communism per se but the countries that practiced (or leaned towards practicing) communism. That is the enemy was not communism rather than the Soviet Union, North Vietnam and Cuba.

<sup>29</sup> When these conventions were drafted, the days of ephemeral enemies were in the past a mark of the unenlightened society, the days of the crusades and religious wars. I imagine the drafters of both of these conventions at the time could have never imagined never “War on Drugs or the “War on Terrorism”, and so there was no need to make such a prohibition.

*in the Niger Delta and other strategic locations in Abuja and Lagos states of Nigeria.*

*Due to our commitment to avert avoidable loss of lives, advance warnings for immediate evacuation as previously will be issued and a final warning thirty (30) minutes prior to the blasts, after which will follow a statement of claim in line with our modus operandi.*

*The Movement for the Emancipation of the Niger Delta (M.E.N.D) advises the general public in the strongest of terms, to stay clear from all political gatherings or meetings of any sort.*

*It should be recalled in our last Independence Day bomb blast that it was due to the callousness of the Nigerian security services and ignorance of the general public that led to the fatality.*

*Again, anyone who chooses to ignore this warning does so at their own peril as the aftermath of these blasts will be catastrophic.*

*The government of Goodluck Jonathan has shown its unwillingness to address the key issues of the Niger Delta but chosen instead, to continue doling out bribes to thugs and plunder the resources of the Niger Delta into his presidential campaign while deceiving the world and Nigerians that there is peace in the Niger Delta.*

*Our revolution like our fellow brothers in Northern Africa will start with the crippling of the Nigerian oil industry to flush out all Western oil companies operating in the Niger Delta region and the simultaneous bomb blasts never anticipated in the history of this country.*

*The Movement for the Emancipation of the Niger Delta salutes the courage and dedication of its fighters who have against all odds persisted in the fight for justice. (The Times of Nigeria <http://www.thetimesofnigeria.com/article.aspx?id=3198>)*

M.E.N.D. in this declaration meets the proposed specificity requirements.

They name specific actors who are definitively and actively involved in the conflict (i.e., Nigerian military, government and oil companies working inside Nigeria), a specific theatre of operations (Nigeria) and the reasons they have taken it upon themselves to resort to violence (i.e., the unwillingness of the government to address the problems of the Niger Delta and that there is already conflict raging despite what the government claims).

This declaration makes clear the reasons why the group has opted to use violence. It clearly states the theatre of operations and is exact in who are the belligerents. This information in the public sphere limits potential confusion over the issue of whom and what are considered acceptable targets (notice targets are deemed acceptable not necessarily legitimate).<sup>30</sup> In this case, government officials (directly

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<sup>30</sup> Targets are not deemed acceptable/illegitimate based solely on the declaration. Articles V and VI of the framework lay out parameters that supersede the targets listed in the declaration thus preventing a group from listing say “Jews” as the enemy.

involved in policy making concerning the oil extraction), military and oil company personnel, and the associated infrastructure and equipment are named as acceptable combatants and targets.

The Declaration is important in three aspects:

- (1) Public knowledge of who are considered combatants, and thus are at risk of being captured or killed, allows an informed cost/benefit analysis of whether or not it is personally worth it to an individual to take a job that would fall under combatant status (i.e. take a job working for Exxon in Nigeria, a position as a cabinet member or enlisting in the Nigerian army).
- (2) The declaration binds the action to specific targets and geographical locations, lessening the chances that the conflict would inadvertently, accidentally or purposefully spill over to neighboring countries and involve people not directly involved in the conflict.
- (3) The specifics listed in the declaration are self-determinate, meaning that the group itself names the combatants and the theatre of operations. It is more likely that a group will follow rules of which they themselves are the authors. If they cannot follow rules that they wrote themselves, then we can assume that they will not follow any set of rules.<sup>31</sup>

The declaration is an indicator as to whether a group will turn out to be incorrigible or corrigible. A group that cannot put aside maximalist aims for the purposes of the declaration most likely will not follow the agreed upon rules governing the use of violence. If a group claims that its enemy is any and all Americans, regardless of geography, and regardless whether they are civilian or military, it can be assumed the group is planning the purposeful killing of civilians, is planning to act in a manner that is strictly prohibited and considered illegitimate. (It is worth noting that this is an assumption. Even though a group may be expected to act in a certain way, ultimately in an action/deed framework judgment must be held until the group does in fact act illegitimately.)

#### **4.6.2 Conduct in war; Protection of civilian and non-combatants and the avoidance of collateral damage**

It is the belief here that when engaged in a conflict “the right of belligerents to adopt means of injuring the enemy is not unlimited” {Annex to the Hague Convention in Regulations Respecting the Laws of War on Land Section I—on Belligerents states-Chapter 1—On the Qualifications of Belligerents, Protocol I 1977 article 35}.

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<sup>31</sup> Although the rules are self-determinate this does not mean that there are not certain parameters as to what are considered legitimate self-determinate rules. As mentioned one cannot name an ephemeral enemy such as capitalism, communism, or terrorism, and the theatre of operations must be specific; it cannot be open regions such as the West, or Africa or Europe. Articles VI and VII of the Articles of Illegitimacy (Appendix A) give specific parameters of what may and may not be considered accepted targets regardless of what a group may list in their declaration.

The Geneva and Hague Conventions extensively cover one's conduct in war and lay out a set of detailed and observable criteria-based regulations that determine if a state or group is using tactics, weapons or engaging in action that has been deemed illegitimate.

Both conventions prohibit indiscriminate attacks on civilians and destruction of food, water and other materials needed for survival {Hague Convention 1899 article 26-27, Protocol I 1977 articles 51 and 54}. Also prohibited are weapons that cause superfluous injury, and the Hague Convention prohibits the use of chemical weapons {Hague Convention 1899 article 23 Geneva Conventions Protocol I 1977}<sup>32</sup>.

The two conventions both stress that when engaged in conflict that parties to the conflict must distinguish between combatants and civilians. Also, care must be taken to avoid civilian casualties, and this includes the forewarning of cities and towns before an attack so as to allow civilians and non-combatants time to evacuate.

Both Conventions prohibit the use of internationally known emblems or emblems of other countries in the attempt to commit perfidy {Hague Convention 1899 article 23 Protocol I 1977 article 37, 85} and both conventions require that parties to the conflict in question:

- (1) Have a command structure in which there is responsibility of subordinates,
  - (2) Display a distinctive emblem,
  - (3) Carry arms openly, and
  - (4) Conduct operations in accordance with the laws and customs of wars.
- {Hague Convention 1899 article 1, Protocol I 1977 article 4}.

Together the two conventions lay out a strong foundation of what is and is not acceptable in war; in fact "the rules of war prohibit not only violence against captives but also hostage-taking as well as most other atrocities committed by terrorists."  
{Bremer, 1987, p. 3}

The proposed "Articles of Illegitimacy" does not claim to make any improvements to the already existing and accepted rules governing conduct in war. In this respect the rules laid out in The Hague and Geneva Conventions are sufficient. The rules set forth in the "Articles of Illegitimacy" are not intended to be comprehensive, which is why the "Articles" requires adherence not only to its own

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<sup>32</sup> While the Geneva Conventions does not specifically prohibit the use of chemical weapons, their use is prohibited by series of treaties, including the Hague Declaration concerning Asphyxiating Gases, the Geneva, Gas Protocol, the Chemical Weapons Statute of the International Criminal Court and it is accepted that the use of chemical weapons is prohibited under customary international law.

rules but also to all rules and regulations found in the Geneva Conventions.

#### **4.6.3 Pathway to legitimate means of making up capacity shortages**

The proposed “Articles of Illegitimacy” present the criteria for identifying groups that are acting in an illegitimate manner, while Article IX (Assured Benefits of not being found Illegitimate) provides the incentive and the possibility to aspire to the “fair fight.” The guarantee is that, if a group makes a proper declaration and follows the rules of engagement, it will be offered the possibility of a legal and legitimate pathway to make up for the shortfalls in capacity that forced them to use “last resort” (illegitimate) tactics in the first place. The language provides assurances that a group found de facto legitimate will be afforded the ability to operate openly and publically in respect of business dealings, finances, recruitment and media campaigns.

On the other hand, groups not meeting the requirements of de facto legitimacy will be considered illegitimate and be denied the advantages of operating openly and publically, and will be made subject to the jurisprudence and action that today is reserved for the “terrorist.”

The proposed framework would clear up some of the “dilemmas” found in the discourse surrounding “terrorism” (i.e. guerilla/terrorist, incorrigible/corrigible and freedom fighter/terrorist). The framework makes distinguishing between the “terrorists”, the guerilla and the freedom fighter unnecessary. As a result of action taken, groups are either in violation of the framework or they are not. They are either objectively illegitimate or not. Attaching the word “terrorist” to a group cannot make them illegitimate any more than attaching the word “freedom fighter” can remove that illegitimacy.

Wilkinson (2006) claims that a major characteristic of the incorrigible is “absolutist and maximalist aims” {Wilkinson, 2006, p. 4} which result in ephemeral enemies and large open regions as theatres of operations. The required specificity of the declaration disallows such enemies and theatres of operations, and in so doing suggests that “absolutist and maximalist aims” cannot and will not be accepted. This, in conjunction with the possibility of legitimate avenues of alleviating shortfalls in capacity, could result in a tendency for the corrigible to move towards the fair fight while the incorrigible do not.

*By narrowing the definition of terrorism {...} we leave room for a ‘fair fight’ between guerrillas and state armies. Thus we set a clear moral standard that can be accepted not only by Western countries, but also by the Third World and even by some of the terrorist organizations themselves. When such a*

*moral distinction is internationally applied, terrorist organizations will have yet another reason to renounce terrorism in favor of guerrilla actions. {Ganor, 2009, p. 289}*

#### **4.7 Hostages versus prisoners of war, assassinations, suicide bombings and proportionality**

The proposed objective framework may limit misrepresentations presently used in a politically motivated way to de-legitimize groups. Taking hostages implies that a criminally minded group has taken captive an innocent bystander who happened to be in the wrong place at the wrong time. But parties that are listed as combatants in a formal, specific declaration of hostilities cannot by definition be “innocent bystanders at the wrong place at the wrong time.” If captured, listed parties should be treated as prisoners of war rather than as hostages that were kidnapped. (This means that these captured individuals must be treated in accordance with the rules in the Geneva Conventions governing POWs.) On the other hand, captured individuals not listed as party to the conflict would be considered hostages.<sup>33</sup>

The same logic follows for assassination. If a group kills an important person in the command structure of the enemy (that is, groups that have been named in the declaration), this act should be considered an assassination rather than “terrorism.” Assassination is a tactic, with which some might disagree, yet historically it has been used and accepted in the context of conflict and war, and it can be addressed in that context.<sup>34</sup>

The way in which suicide bombers are generally discussed is another situation where there could be a shift in understanding about what is illegitimate. The tactic of suicide bombing is not necessarily illegitimate. The illegitimacy of suicide bombing does not reside in the tactic itself, but rather depends on whether the target of the bombing is consistent with a qualifying declaration.

A suicide bomber blowing up a Sbarro’s restaurant in Tel-Aviv is different than a suicide bomber blowing up a Marine barracks in Beirut. One may be

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<sup>33</sup> Between 1982 and 1992 Hezbollah was said to have kidnapped 96 foreign nationals and 21 Lebanese citizens, though all of the 117 people captured by Hezbollah cannot be considered kidnappings. If following the framework, capturing of David S. Dodge, president of the American University in Beirut on June 19, 1982 is and should be considered a kidnapping and illegitimate. This individual by all measures is considered a non-combatant. On the other hand, the capturing of CIA Beirut Station Chief William Francis Buckley in 1984 is not a case of kidnapping rather than the taking of a prisoner of war as the target was the CIA station chief in the middle of the theatre of operations and representing a country that was actively and militarily involved in the conflict at hand, thus making him a combatant and acceptable target.

<sup>34</sup> Fabian Escalante, who was long tasked with protecting the life of Castro, estimated the number of assassination schemes or attempts by the CIA to be 638 (Campbell, Duncan (August 3, 2006). “638 ways to kill Castro.”

considered illegitimate but the other not. Let us remember that Japan's Kamikaze pilots were effectively "suicide bombers", yet the Kamikaze is widely considered as a tactic of war and rarely described as "terrorist" or "illegitimate". I could find no scholarly academic work making this point, but perhaps it is because it is obvious. The Kamikaze were members of a recognized armed force using conventional weapons (although unconventionally) against personnel of an enemy military fighting force, in a theatre of combat operations, during a declared war. <sup>35</sup>

As we consider whether a tactic complies with the framework, we must address the concept of proportionality. In modern speak, "proportionality" may suggest that one side is using small arms and the other side drops a ten-ton bomb on them. But it is a mistake to get caught up in this kind of debate regarding proportionality. According to international law, proportionality refers "to the balance to be struck between the achievement of a military goal and the cost in terms of lives {...} Chapter VII of the UN charter requires that the use of violence be in self defense and that it be proportionate to the unlawful aggression that gave rise" {Gardam, 1993, p. 391} to the violence in question.

The requirement that objectives be weighed against the number of lives lost may focus particularly on non-combatants and civilians, as the killing of enemy combatants or soldiers is one of the main objectives in war. (Sometimes that is how one wins, by killing more of the enemy soldiers than they kill of yours.). If this is the case, then UN requirement seems to broaden the idea of proportionality to include things like civilian infrastructure. If an attack destroys civilian infrastructure that is necessary for survival, then in the ensuing weeks or months there will be many civilian deaths as a result of the destruction of the infrastructure. Thus, even if the explosion that destroyed the actual infrastructure did not kill anyone, the results of the attack could be considered disproportionate because of the ensuing civilian deaths.

Let us take the Israeli/Palestinian conflict as a way to explore the concept of proportionality. Israel is quite often accused of responses that are out of proportion. They are so labeled because Israelis are using weaponry that is far more powerful than that of the Palestinians. But this is not why their responses are illegitimate and out of proportion. They are illegitimate and out of proportion when the Israelis respond to a

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<sup>35</sup> The Kamikaze remains largely unexamined by social scientists. Silke notes, "[t]oday, many discussions of suicide terrorism make a passing, throwaway reference to the kamikaze as a precursor, but little real analysis and comparison is made." (Silke (2006) pg. 42) Only three social scientists, Mia Bloom, Peter Hill and Robert Pape mention the kamikazes in their work on suicide attacks. Hill and Pape dedicate a total of seven pages, while Hill devotes a whole chapter. None talk about the Kamikaze in terms of being considered an illegitimate or legitimate tactic, or in terms of being "terrorism."



few rockets fired from Gaza with air strikes that result in civilian deaths than not and the destruction of necessary civilian infrastructure. If the Israelis responded with air strikes that leveled a building killing only combatants and resulted in little damage to necessary civilian infrastructure, their action should not be considered illegitimate even if the destructive power of the airstrikes were way out of proportion to the rockets fired by the Palestinians.

This framework based on UN principles and The Hague and Geneva Conventions is a suggested starting point. If the framework were adopted internationally of course it would be subject to debate, and most probably would be modified in the process. But what is most important, and a key point of this thesis, is that the adoption of shared rules of any kind would represent a significant improvement on the current situation where there are no rules to provide critical guidance.

#### **4.8 Framework shortcomings**

The framework suggested here does have shortcomings. Certainly there will be detracting opinions and criticisms. The topic of violence is charged with emotion, and we are trying to codify something heavy with philosophy, ethics and moral viewpoints that intertwine ideology in many different ways for many different people. These three points are among those that might serve as a basis for criticism of this framework:<sup>36</sup>

- (1) State terrorism is not addressed.
- (2) The framework arguably may be seen as legitimizing and encouraging violence.
- (3) The framework does not address what many see as a central point to any discussion revolving around “terrorism.” That is the terrorist’s objective of creating fear.<sup>37</sup>

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<sup>36</sup> Two questions might be raised: (1) how does the framework prevent multiple interpretations of legitimacy; and (2) who would control the process of determining illegitimacy? In response to the first query, the framework does not have to prevent multiple interpretations of legitimacy because it does not attempt to define “legitimacy” In fact, the key reason the framework is structured to define “illegitimacy” is to sidestep the problem of preventing the myriad interpretations of “legitimacy” that inevitably would come about. The same issue does not arise with a framework focused on interpretations of “illegitimacy.” Different interpretations of “illegitimacy” are less likely when the meaning is so clearly set forth and defined in the Articles of Illegitimacy and Geneva Conventions. Regarding the second, the assessing of illegitimacy, to be functional, would have to be controlled by the UN or similar future international governing body that is independent of any particular nation state.

<sup>37</sup> It has also been brought as a criticism that this framework does not address the level of rebel organization and the problem of “lone wolfs” inside organizations. The issue of “lone wolfs” is not specifically addressed in the text but is addressed in the articles of legitimacy (Appendix A, specifically Article VIII, 8.01 (iii)). The level of organization of a particular group is irrelevant, as the organizational structure of any given group does not affect the hard facts of the violence that they perpetrate. A very organized group may in fact perpetrate illegitimate acts of violence or refrain from these same acts just as easily as a lesser-organized group. Now one might argue this is not true as a less organized group will have less control over its members and cells and hence more chance of rogue elements acting

In examining the first of these questions, let us refer to the second paragraph of this thesis, which referenced an analogy, made by Silke, (2007) who later in the same article claims:

*“To further complicate matters, the majority have also committed themselves to addressing state terrorism - the terrorist acts of a government toward its own people - within the larger concept of terrorism itself. Referring back to the parable at the start of the article, I cannot help but feel that state terrorism is actually a rhinoceros, which has strayed close to our terrorism elephant. So while there are similarities between the two, they are ultimately, two entirely different creatures”.*{Silke, 2007}

With this in mind, not addressing “state terrorism” was not an oversight but rather a purposeful decision regarding the shaping of the framework.

To those who may claim that the framework encourages or will bring about more violence, the reply is that this framework is designed to rein in violence by making it more likely that actors already intent on using violence will do so in a relatively responsible way. The framework attempts to limit their violence to specific to people and places involved in the grievances that drive the violence in the first place. It would offer an alternative to allowing endless borderless wars against an emotional state (terror) in which anyone can attack anybody, anywhere. The claim of this thesis is that a specific and objective framework, coupled with a legitimate pathway to reducing capacity shortfalls, will reduce the chaotic nature of conflicts and limit the “moral disaster of war” as it impacts the non-combatant and civilian.

Also an intentional choice, and not an oversight, was the omission of an examination of the intent to create fear, or “terror.” An essential point is that the framework does not define “terrorism” or identify the “terrorist.” Rather, the framework defines what is “illegitimate” and identifies users of illegitimate tactics, therefore making the criterion of creating terror unnecessary and redundant considering the tactics generally used to create terror are deemed illegitimate by the framework. How does one create terror on a population if not through the purposeful attack on civilians and non-combatants?

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unilaterally. Again this is irrelevant, because if lack of organization leads to the “lone wolf” acting on his own, the organization in question is still responsible to take action against said “lone wolfs” according to Article VIII, 8.01 (iii). So if the group cannot deal with rogue elements as required, they will be considered illegitimate regardless of the level of organization.

Application of the Framework

In this Chapter, the proposed framework will be applied to selected groups that represent historical and current examples of those who have used political violence. The groups were chosen to represent the varying classificatory assessments made by the framework, i.e. **Incorrigible and Illegitimate, Incorrigible and De Facto Legitimate, Corrigible and Illegitimate, and Corrigible and De Facto Legitimate.** In addition, groups were chosen for other factors that illustrate different points and nuances of the framework. Each group has its own special considerations and factors, which will be discussed at the end of the analysis of each group.

The framework contains 3 criteria that must be met if a group is to avoid being deemed “illegitimate”:

- (1) There is a qualifying specific declaration.
- (2) All actions fall within the narrow scope of the declaration.
- (3) All actions must abide by not only the “Articles of Illegitimacy” but also the rules laid out in the Geneva Conventions.

Each group will be discussed and evaluated in a two-part fashion. For each group, analysis will begin with an examination of the declaration and then will evaluate the actions and deeds reportedly taken by the group.<sup>38</sup> The preliminary assessment based on the declaration will determine whether or not a group should be considered “corrigible” or “incorrigible.”<sup>39</sup> The assessment based on action and deeds actually committed will determine whether or not a group should be considered illegitimate or de facto legitimate.<sup>40</sup>

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<sup>38</sup> In-depth discussion of every group is not necessary, but more detailed discussion of certain groups (such as Hezbollah) is included to illustrate specific points related to the framework.

<sup>39</sup> The corrigibility/incorrigibility of a group is only a tool to help predict whether or not a group will commit illegitimate acts of violence. If a group is “incorrigible” it is likely to have maximalist aims and ephemeral enemies. The question of corrigibility is directly related to the ability of a group to meet the requirements of the declaration. If a group cannot put aside its maximalist aims and ephemeral enemies, then they can be considered incorrigible. Groups that can meet the requirements of the declaration should be considered corrigible. Knowing whether or not a group is corrigible or incorrigible is important as it facilitates anticipation of the way a group is likely to act. Incorrigible groups can be expected to use violence in an illegitimate manner (though the expected behavior is not always the actual behavior, e.g., The Weather Underground).

<sup>40</sup> The framework requires an assessment of groups to determine whether or not they should be considered illegitimate or de facto legitimate. The assessing body needs to be an international and accepted governing body (such as the UN). How does this framework assure that this assessment is made uninfluenced by subjective geopolitics? It is improbable that subjective geopolitics could be completely removed from the equation. But it is possible to lessen the amount of geopolitical labeling as compared to that found in the present system for labeling “terrorists.” This framework lessens geopolitical labeling because it assesses groups on actual observable and verifiable deeds measured against the rules of war as outlined in the Geneva Conventions. Evaluating observable, verifiable

## 5.1. The Movement for the Emancipation of the Niger Delta (M.E.N.D)

M.E.N.D is one of the largest militant groups in the Niger Delta region of Nigeria. The organization claims to expose exploitation and oppression of the people of the Niger Delta, as well as the devastation of the natural environment by public-private partnerships between the Federal Government of Nigeria and corporations involved in the production of oil in the Niger Delta.

### 5.1.1 Declaration

M.E.N.D and their declaration were touched upon above in Section 4.6.1.

**Assessment:** M.E.N.D's declaration meets the standards for specificity. M.E.N.D should be considered **Corrigible**.

### 5.1.2 Actions

Out of over 30 attacks that occurred between 2006 and March 4, 2013 (for complete list of attacks and sources see Appendix B), only one involved civilian and non-combatant casualties. Also, only one attack can be considered to have been perpetrated on a target that would clearly fall outside of the declared theatre of operations and participants to the conflict as per the many declarations made at various times since 2006 (i.e. oil companies, their personnel and infrastructure, the Nigerian Military and the Government of Nigeria).

The attack that killed civilians was the 2010 bombing of an Independence Day parade in Abuja that killed 12 and injured 17<sup>41</sup>. M.E.N.D issued a warning that the parade was to be attacked both 2 days before and 30 minutes before the bombing. These warnings urged civilians to stay away and said that those attending the celebrations would be there at one's "own peril."

The attack that targeted parties and a theatre of operations outside those named in the declaration was an alleged attack on the Presidential Palace in Equatorial Guinea on February 20, 2009<sup>42</sup>. The government of Guinea claims M.E.N.D was behind this attack but M.E.N.D denies it. There were no casualties.

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actions according to the terms of specific rules and regulations regarding legitimacy is less likely to be arbitrary than the present framework for labeling "terrorism".

<sup>41</sup> <http://www.france24.com/en/20101002-nigerian-militants-claim-deadly-independence-day-bombing-mend-50-years-car-bombs>

<sup>42</sup> [The Guardian \(Nigeria\). February 20, 2009.](#)

Under the framework, these two attacks would fall short of being “illegitimate” as neither had the non-combatant and civilian population as their primary target. In the case of the Independence Day bombing, if non-combatants were the ultimate targets, then presumably M.E.N.D would not have warned the very people they were trying to kill. Because civilians were not the ultimate target of the attack, and also because forewarning was given, it is arguable that the civilian casualties incurred should be considered collateral damage. Although any loss of civilian and noncombatant life is regrettable, the idea of collateral damage is a long established and is accepted as a by-product of any war.

The alleged attack on the palace in Equatorial Guinea also does not constitute an attack on civilian and non-combatant populations because a presidential palace is not generally considered to be a civilian space. Also relevant is the fact that there were no casualties (if the attack had targeted, say, a tour group visiting the palace, then it should be considered illegitimate).

The attack on the palace would appear to be in violation of the framework because it fell outside of M.E.N.D’s declared theatre of operations. However, in this other factors to be considered include:

- (1) This is only an alleged attack and the framework operates with the core tenet of “innocent until proven guilty.” In other words, an action must be verified before it can be used as a basis for assessing a group as illegitimate.
- (2) It was not an attack on civilian and non-combatants.
- (3) There were no casualties.

**Assessment:** Based on the actions of M.E.N.D, the framework does not support labeling the group as illegitimate. Thus, Mend should be considered as De Facto Legitimate.

The framework and its two-part assessment (of the declaration and of actions) support a finding that M.E.N.D should be classified as **Corrigible and De Facto Legitimate.**

### 5.1.3 Special considerations

Special considerations and factors involved in choosing M.E.N.D as an example group include:

- (1) M.E.N.D’s involvement in piracy.

(2) The claims that M.E.N.D is unable to sufficiently control their cadres.

M.E.N.D. is heavily involved in piracy, but when the acts of piracy actually committed by M.E.N.D are analyzed, one finds that these acts are perpetrated on belligerents listed in the declaration. These acts of piracy are contained within the specific theatre of operations listed. Acts of piracy committed by M.E.N.D have generally targeted vessels involved with the extraction and transportation of oil in the Niger Delta. M.E.N.D's acts of piracy cannot be considered illegitimate if they fall within the narrow scope of the declaration and are not in violation of the Articles of Illegitimacy or the Geneva Conventions.<sup>43</sup>

The amount of command and control that a group is purported to have is a non issue if the group's members are not committing acts that (1) are perpetrated on targets that fall outside of the specifics listed in the declaration, or (2) are in violation of the accepted rules and laws governing the use of violence (i.e. using prohibited weapons or attacking civilians). If they meet these two criteria then any group should be considered to have enough command and control of their cadres.

The issue of command and control becomes relevant if and when a group has elements that act outside the terms of the declaration or accepted rules and laws of warfare. When such a case arises, a group has the responsibility to have at least a minimum of command and control to be in compliance with Article VIII, 8.01 (ii) and (iii) of the Articles of Illegitimacy (which state that a group must have an internal system to arrest and hold accountable such rogue elements, and consequently turn over the perpetrators to the international community for prosecution). Failure to have this minimum amount of command and control will result in the group being considered illegitimate. In this sense, whether or not a group does in fact have this minimum amount of command becomes abundantly clear and more importantly objectively verifiable. A group either has enough command and control to hold rogue elements accountable and turn them over to the international community, or they do not.

## **5.2. Hezbollah**

Hezbollah (the party of God) was formed in reaction to the Israeli invasion of Lebanon in 1982. Hezbollah historically has claimed to exist as defense against and resistance to Israeli aggression and the occupation of Lebanese and Palestinian lands.

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<sup>43</sup> In the proposed framework all actions are judged based upon certain criteria. Meaning that just because an action takes place on the high seas, it should not be considered as piracy unless (1) it is perpetrated outside the narrow scope of the declaration, and (2) tactics used are in violation of the Articles of Illegitimacy or in violation of the Geneva Conventions

Since 1992 Hezbollah has been an accepted Lebanese political party continually holding about 10% of the Lebanese parliament.

### 5.2.1 Declaration

Although Hezbollah had been engaged in political violence since 1983, they did not make their declaration until 1985 when Sheikh Ibrahim al-Amin read a statement at the al-Ouzai Mosque in West Beirut. Afterwards it was published as an open letter. Below are pertinent excerpts from the letter:

*We declare openly and loudly that we are an umma, which fears God only and is by no means ready to tolerate injustice, aggression and humiliation. America, its Atlantic Pact allies, and the Zionist entity in the holy land of Palestine, attacked us and continue to do so without respite. Their aim is to make us eat dust continually. This is why we are, more and more, in a state of permanent alert in order to repel aggression and defend our religion, our existence, our dignity. They invaded our country, destroyed our villages, slit the throats of our children, violated our sanctuaries and appointed masters over our people who committed the worst massacres against our umma. They do not cease to give support to these allies of Israel, and do not enable us to decide our future according to our own wishes {...}*

*Let us put it truthfully: the sons of Hezbollah know who are their major enemies in the Middle East - the Phalanges, Israel, France and the US. The sons of our umma are now in a state of growing confrontation with them, and will remain so until the realization of the following objectives:*

*(a) to expel the Americans, the French and their allies definitely from Lebanon, putting an end to any colonialist entity on our land;*

*(b) to submit the Phalanges to a just power and bring them all to justice for the crimes they have perpetrated against Muslims and Christians;*

*(c) to permit all the sons of our people to determine their future and to choose in all the liberty the form of government they desire. We call upon all of them to pick the option of Islamic government, which, alone, is capable of guaranteeing justice and liberty for all. Only an Islamic regime can stop any further tentative attempts of imperialistic infiltration into our country.*

*These are Lebanon's objectives; those are its enemies.*

*We reject both the USSR and the US, both Capitalism and Communism, for both are incapable of laying the foundations for a just society”.*

*With special vehemence we reject UNIFIL as they were sent by world arrogance to occupy areas evacuated by Israel and serve for the latter as a buffer zone. They should be treated much like the Zionists”.*

Hezbollah, like M.E.N.D, meets the specificity requirements with its declaration. In the first paragraph Hezbollah names as “their major enemies in the Middle East - the Phalanges, Israel, France and the US.” The group lists three objectives though only the first is pertinent to this discussion as it definitively names

Lebanon as the theatre of operations. Later on in the statement it is said that Hezbollah rejects capitalism and communism, but this should not be construed as them naming “capitalism” or “communism” as enemies. Rejection of something does not necessarily mean that one is at war with what has been rejected. Lastly, Hezbollah rejects UNIFIL (United Nations Interim Force in Lebanon), but then disclaims that this specific rejection includes listing UNIFIL as an enemy when they say “they should be treated like the Zionist” who earlier in the first paragraph were named as enemies.<sup>44</sup>

**Assessment:** Hezbollah’s declaration meets the specificity requirements and the group should be considered Corrigible.

### 5.2.2 Actions

Hezbollah is a group that has acted in varying ways depending on the time period. Therefore, here Hezbollah will be assessed using the following periods and stages:

- (1) The Early Years (inception of the group – the Lebanese elections of 1992)
- (2) The Political Entrance (1992-2006)
- (3) The Present (2006-present)

### The Early Years

Even before Hezbollah openly declared itself (1985), it had staged attacks that the United States and many other western countries used and still use as the justification for the application of the label of “terrorist.” Included were two Suicide Bombings (1982 and 1983) against the IDF (Israeli Defense Forces) headquarters in Tyre, Lebanon {Norton, 2007, pg 80}; the 1983 bombing of the US embassy in Beirut {Norton, 2007, pg 71}; the 1983 bombing of the US Marine Barracks in Beirut; and the bombing of base a French paratrooper base also in Beirut. {Norton, 2007, pg 71 }

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<sup>44</sup> It has been asked, “how does one know that this declaration reflects the real opinion of Hezbollah?” Whether or not a declaration reflects the real intentions of group is not the point. The point is that a group publically declares who, what, and why they are fighting. That a group publically states their espoused objectives is an important piece in assessing whether or not they should be considered illegitimate. If a group makes a declaration that is at odds with their actual objectives, then it will very quickly become clear that this is the case as the group will perpetrate acts on targets that fall outside of the declaration, thus proving to the world that they are in fact illegitimate. If they do not perpetrate acts on targets outside the specifics of the declaration, then whether or not the declaration is lip service becomes irrelevant. The relevant point is whether or not a group’s actions follow the declaration; not whether in heart or mind they agree with the declaration.



These attacks took place during the Lebanese civil war and all (excepting the embassy bombing) targeted military personnel that were both inside the war zone and actively engaging in the war in question (in the case of the IDF bombings, they were attacks on an occupying army in occupied territory). Attacks on military personnel, equipment and infrastructure inside and active in a war zone can hardly be considered illegitimate and according to UN principles attacks on an occupying army is acceptable conduct.

The embassy bombing cannot be considered illegitimate because:

- (1) The country represented by the embassy (US) was actively and militarily involved in the civil war that was going on.
- (2) The location of the embassy was in the country in which the war was taking place.

This is not to say that Hezbollah cannot be considered illegitimate during this period. But the point is that these specific actions cannot be used under the proposed framework to support a finding of Hezbollah as illegitimate (although these actions were used by the US and other Western countries to label Hezbollah “terrorist”). On the other hand, under the posited framework, actors wishing to label Hezbollah illegitimate would have the option of referring to Hezbollah’s program of kidnapping, which began in 1982 {Norton, 2007, pg 73}, <sup>45</sup> or to focus on 1985 and the hijacking of TWA flight 847 <sup>46</sup> in making the case that the group should be considered illegitimate.

**Assessment:** Based upon Hezbollah’s actions during this period, the group is found to be Illegitimate based on their kidnapping program and the hijacking of TWA flight 847.

Under the framework and its two-part assessment (that of the declaration and actions) Hezbollah during this period should have been considered **Corrigible and Illegitimate**.

### **The Political Entrance -- 1992-2006**

In 1989, the Taif Accord was signed in Taif, Saudi Arabia, ending the 15-year Lebanese civil war. The Accord resulted in a parliamentary democracy that was to be split along confessional lines, with the 128 seats of parliament divided equally between Christians and Muslims, and proportionally between its denominations and

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<sup>46</sup> Smith, William E. June 24, 2001. Terror Aboard Flight 847. TIME Magazine.

26 regions. This brought about an atmosphere in which Hezbollah made a cost benefit analysis in which one option was the continuation of illegitimate tactics on a war weary population even while knowing that the Shia (Hezbollah's main base of support) for the first time would be guaranteed a political voice. The alternative was to move away from illegitimate tactics and into the political arena as one of the major political parties representing the Lebanese Shia (this opportunity mirrors the idea of a pathway to a legitimately making up capacity shortfalls). They chose the latter.

Hezbollah during this period did forego acts of political violence that would under the proposed framework be considered illegitimate. The violence perpetrated by Hezbollah during this period was almost exclusively in the context of attacks on Israeli soldiers and military equipment in what until 2000 was Israeli occupied Lebanese territory. It is abundantly clear that attacks on personnel of an occupying army are not considered illegitimate.<sup>47</sup>

**Assessment:** Based upon Hezbollah's actions during this period, the group cannot be determined to be illegitimate and should be considered as De Facto Legitimate.

Use of the framework and its two-part assessment (that of the declaration and actions) supports a finding that Hezbollah during this period should have been classified as

**Corrigible and De Facto Legitimate**

### **The Present -- 2006-2013**

During this stage, Hezbollah's relevant actions include:

- (1) The 2006 cross border raid into Israel, in which three IDF soldiers were killed and two captured, precipitating Israel to launch what has become known as the "Second Lebanese War."
- (2) The 2005 assassination of Prime Minister Rafic Hariri.<sup>48</sup>
- (3) The 2010 clashes with a number of opposition political parties.

The raid by Hezbollah in 2006 cannot be considered illegitimate because: (1) the targets were military personnel and the IDF still could be considered an occupying

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<sup>47</sup> It has been claimed by the US government that Hezbollah carried out two attacks in Argentina: the 1992 bombing of the Israeli embassy in Buenos Aires, and the 1994 bombing of a Jewish community center also in Buenos Aires. The UK, US, Israel and Argentina all claim that Hezbollah was behind the 1994 car bombing by two Palestinians of the Israeli embassy in London. These claims were denied by Hezbollah and have not been proven beyond a reasonable doubt. Discernible and verifiable proof that a group in fact did perpetrate an attack that would be the lynchpin in the labeling of illegitimacy is required in this system that works on the idea of being innocent until proven guilty.

<sup>48</sup> Although many accused Hezbollah of this action, there were also other parties accused i.e. Syrian Intelligence and Israeli Mossad. The UN Special tribunal, which investigated the assassination, indicted four members of Hezbollah. Though the tribunal never claimed that Hezbollah was responsible, but for the purposes of this analysis it will be included.

army as they still occupied a piece of Lebanese land called the Sheba Farms; and (2) the objective was to capture Israeli soldiers in the hopes of facilitating a prisoner swap, a tactic with a historical precedence. Hezbollah did cross into Israeli territory, but Lebanon and Israel were (and are still) engaged in a declared war against one another.

The assassination of Rafic Hariri, if perpetrated by Hezbollah, also cannot be considered illegitimate. This was an assassination of an individual who was involved in the highest levels of decision-making in Lebanon, an individual who could be seen as falling under listed enemies as per Hezbollah's declaration. He was in league with the three enemies listed by Hezbollah in their declaration (US, France and the Phalanges). Assassination however unpleasant is a tactic that has a historical precedent, including the the assassination of Mahmoud Al-Mabhouh by Israeli Mossad in Dubai on January 19, 2010<sup>49</sup>.

The 2010 clashes were in response to a Lebanese government move to shut down Hezbollah's telecommunication network. Hezbollah leader Hassan Nasrallah said the government's decision to declare the group's military telecommunications network was illegal and a "declaration of war" on the organization. Mr. Nasrallah demanded that the government revoke the demand. The clashes that occurred cannot be considered illegitimate under the framework because they were initiated in response to the government's demand for removal of legal hardware and because Hezbollah immediately made a declaration of war. The fighting was between Hezbollah militias and militias belonging to other political parties. Civilians and non-combatants were not purposefully targeted. This was an internal Lebanese problem, and Hezbollah is considered a legitimate political party inside and operating in Lebanon.

**Assessment:** Based upon Hezbollah's actions during this period, the group cannot be found as being illegitimate and should be considered as De Facto Legitimate.

Use of the framework and its two-part assessment (of the declaration and actions) supports a finding that Hezbollah during this period should have been classified as

**Corrigible and De Facto Legitimate**

### **5.2.3 Special considerations and factors**

Special considerations and factors that played into choosing Hezbollah as an example

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<sup>49</sup> Another possible assassination example is Yasser Arafat. In December 2012 Mr. Arafat's body was exhumed for testing for polonium-210. This test is being done under the suspicion that Arafat was poisoned by Israeli Mossad

group include:

- (1) Hezbollah provides an example of a group that has at various stages in its existences and evolution moved in and out of being (according to the posited framework) classifiable as illegitimate. This highlighting the reality that once illegitimate does not mean always illegitimate.
- (2) Hezbollah is a group that inside Lebanon is considered a legitimate political party while at the same time much of the world considers it to be “terrorist”.
- (3) Hezbollah and its program of kidnapping illustrate the difference between hostages and prisoners of war.
- (4) Hezbollah is a group that this author, along with many in the western world, regards as having nefarious objectives that should be considered illegitimate. But, according to the posited framework, presently Hezbollah cannot be labeled illegitimate. The point is that a judgment of illegitimacy should not be made based on personal feelings of observers, or on the motives and intent of the group, but rather rests on actions actually perpetrated.

### 5.3 Al-Qaeda

Al-Qaeda, "The Base," is a global militant Islamist organization founded by Osama bin Laden at some point between August 1988 and late 1989. Its origins can be traced to the Soviet invasion of Afghanistan. It is a Sunni movement calling for global Jihad and a strict interpretation of Sharia law. Operating with many decentralized cells, the group has been designated as a terrorist organization by the United Nations Security Council, NATO, the European Union, the United Kingdom, the United States and various other countries.

#### 5.3.1 Declaration

Al-Qaeda issued their last declaration on February 23, 1998, in the newspaper Al Quds al Arabi in which it was stated:

*“The ruling to kill the Americans and their allies -- civilians and military -- is an individual duty for every Muslim who can do it in any country in which it is possible to do it.... [E]very Muslim who believes in God and wishes to be rewarded to comply with God's order to kill the Americans and plunder their money wherever and whenever they find it”.*

**Assessment:** Based upon this declaration, Al-Qaeda should be considered **Incorrigible**. The declaration does not meet the specificity requirements since it claims as its theatre of operations “any country in which it is possible” to kill Americans. Also, it urges the purposeful targeting and killing of civilians and non-combatants, which is strictly prohibited.

#### 5.3.2 Actions

Actions that Al-Qaeda has committed over the years include but are not limited the bombings of:

- 1993 World Trade Center (Wright 2006, pg 174).
- 1994 Bojinka, Philippine Airlines Flight 434 (Wright 2006, pg 178).
- 1998 US embassy in Tanzania and Kenya (Lough 2008).

**Assessment:** Based upon Al-Qaeda's actions, the group should be considered **Illegitimate** because the listed attacks targeted civilian and non-combatants.

Use of the framework and its two-part assessment (that of the declaration and actions) supports finding that Al-Qaeda should be considered **Incorrigible and Illegitimate**.

### 5.3.3 Special considerations and factors

Al-Qaeda was chosen as an example because this is a group that by a wide margin is considered in almost all areas of the world, by almost all people and all governments, to be the quintessential example of a "terrorist" group. Al-Qaeda is both **Incorrigible and Illegitimate** and hence should be met with extreme prejudice. It epitomizes Locke's "savage beasts with which men can have no society or security." {Locke, 1690}.

## 5.4 The Weather Underground

The Weather Underground Organization (WUO) was an American radical left organization that split from the Student Democratic Society (SDS) on the Ann Arbor campus of the University of Michigan. Its goal was to create a clandestine revolutionary party for the overthrow of the US government.

### 5.4.1 Declaration

The Weather Underground declared war on "Amerikan Imperialism" on May 21, 1970.<sup>50</sup> The declaration gave no other information as to whom or why the group was fighting. As discussed, under the framework one's enemy cannot be an ephemeral enemy such as "Amerikan Imperialism" or "Soviet Communism." Furthermore, the group in 1970 stated that "all Americans" are potential targets {Documentary The Weather Underground (2002)}. Such a claim is inconsistent with the requirement that

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<sup>50</sup> <http://www.lib.berkeley.edu/MRC/pacificviet/scheertranscript.html>

targets named in the declaration be specific and not include non-combatant and civilians.

**Assessment:** The declaration of the Weather Underground does not meet any of the specificity requirements and, like the declaration of Al-Qaeda, lists civilians and non-combatants as belligerents. Like Al-Qaeda, The Weather Underground had maximalist aims. Based upon their declaration The Weather Underground should be considered **Incorrigible**.

#### 5.4.2 Actions

On October 7, 1969, the group committed its first act when they blew up a statue in Chicago built to commemorate police casualties incurred in the 1886 Haymarket Riot. There were no injuries or casualties.<sup>51</sup> This action was taken three days prior to the “Days of Rage”, an advertised and promoted violent protest in which the group openly invited any and all to descend on Chicago for the expressed purpose of violently confronting the police. Berger (2006) pg 128.

The protest failed to draw as many as people as the Weathermen had anticipated, and the two or three hundred who did attend committed property damage and vandalism before encountering police barricades. The rioting lasted 30 minutes, and when the tear gas cleared there were multiple injuries to both police and rioters, but no fatalities. A selection of attacks perpetrated by the Weather Underground follows.

- February 16, 1970. A bombing of the Park Police substation in the Upper Haight neighborhood of San Francisco killing one officer and wounding a second.<sup>52</sup>
- June 9, 1970. A bomb exploded in the NYC Police Headquarters. The explosion was preceded by a warning about six minutes prior to the detonation, and followed by a WUO claim of responsibility. No injuries or fatalities were recorded<sup>53</sup>.
- May 19, 1972. On Ho Chi Minh’s birthday, the Weather Underground placed a bomb in the women’s bathroom in the Air Force wing of the Pentagon. The damage caused flooding that destroyed computer tapes holding classified information. No injuries or fatalities were recorded. {Ayers (2003) pg 257}

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<sup>51</sup> The statue was rebuilt and unveiled on May 4, 1970 (coincidentally, the same day as the Kent State massacre), only to be blown up by the Weathermen a second time on October 6, 1970. The statue was rebuilt once again and Mayor Richard J. Daley posted a 24-hour police guard to protect it. However the statue was later destroyed again a third time.

<sup>52</sup> <http://www.sfweekly.com/2009-09-16/news/time-bomb/>

<sup>53</sup> The Weather Underground. Washington DC: US Government Printing Office. 1975. pp. 31–32, <http://www.usasurvival.org/docs/WeatherUndergrnd.pdf>

**Assessment:** Based on its actions, the Weather Underground cannot be found to be illegitimate and should be considered as De Facto Legitimate because none the actions had as the primary target civilian populations but rather they were directed against those with police or military affiliations<sup>54</sup>. The group did not perpetrate any attacks in which civilians and noncombatants were the ultimate target of the violence. There were two fatalities and a number of injuries as a result of their attacks, but these all involved on-duty police officers. If one has declared war against “Amerikan Imperialism” it is reasonable to expect that on duty military and police personnel are acceptable targets, even if the group did not specifically say so.

Use of the framework and its two-part assessment (that of the declaration and actions) support a finding that The Weather Underground should have been considered **Incorrigible and De Facto Legitimate.**

### 5.4.3 Special considerations and factors

The Weather Underground was chosen as an example group because it is found to be Incorrigible and De Facto Legitimate. Such a status bears the question of which part of the framework holds precedent, the requirement for a declaration or the assessment of the actions taken? As stated earlier, this is an action/deed framework and in the end the actions of the group override the necessity of the declaration. In this case, the group said all “Americans are legitimate targets” but it took care to avoid civilian and non-combatant casualties.

The group failed in meeting the specificity requirements of the declaration, and its maximalist aim suggest that the group should be considered Incorrigible. And, although an incorrigible group typically is expected to use violence in an illegitimate fashion, this was not the case with the Weather Underground.

Based on the assessment on both levels, what we have is a group that is incorrigible (meaning that they failed to meet the specificity of the declaration), yet through its actions cannot be found to be illegitimate.

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<sup>54</sup> It is worth noting that members of the Weather Underground did perpetrate a number of bank robberies. Bank robberies should not affect whether or not a group is considered illegitimate. Bank robberies are not covered by the Articles of Illegitimacy or the Geneva Conventions as they do not have the civilian population as its target. Bank robberies certainly are an infraction of most all legal codes and should be dealt with as criminal infractions rather than as action leading to a finding of illegitimacy. Also presumably these bank robberies were undertaken as a function of making up capacity shortfalls in having the funds to operate. If the group was allowed to fundraise legitimately and openly then there is the very real possibility that they would not have robbed banks at all.

This brings us to the question of how does a government deal with an incorrigible group whose actions cannot be found to be illegitimate? In the case of The Weather Underground, under the proposed framework, the US government would have two choices:

- (1) They could attack and try to dismantle the group under the US criminal code (as it is clear that the actions taken are in violation of a number of domestic laws); or
- (2) Once The Weather Underground openly declared war on the US government, then the government would have every right to engage in a war against the group.

A state of war would mean that the US government would have the right to attempt to destroy the group and kill its members using all weaponry and tactics allowed under the laws and rules governing conduct in war. This is the beauty of the declaration, because once war is declared it allows both sides to attempt to destroy the opposing side using any tactic and or weapon that is allowed by the rules of war.

## **5.5 Provisional Irish Republican Army (PIRA)**

The PIRA was a paramilitary organization whose aim was to remove Northern Ireland from the United Kingdom and bring about a socialist republic within a united Ireland by force of arms and political persuasion. It emerged out of the December 1969 split of the Irish Republican Army over differences of ideology and the question of how to respond to violence against the nationalist community. The violence perpetrated by the group continued until 1997, when a final ceasefire preceded the 1998 “Good Friday Accord” that ended the war.

### **5.5.1 Declaration**

On June 28, 1939, an announcement was reported in the Glasgow Herald under the headline “I.R.A. Declaration of War on England”

*“The Irish Republican Army, aided by all the Irishmen in New York and all the countries of the world has formally declared war on England {...} The I.R.A., the statement continues is carrying on a war “with an expeditionary force of secret agents in London and other English cities”. Hostilities will be continued “until the British Government recognizes the Republic of Ireland, withdraws its troops from Irish cities, ceases to influence Irish policies; and sets free all men women now serving long terms in English Jails because of their part in the recent bombings.”*

**Assessment:** The declaration of the PIRA meets required specificity. It clearly states the war is with England and implies that the theaters of operation are England and Ireland. Also stated are clear, concise objectives: Britain’s recognition of the



Republic of Ireland and the withdrawal of its troops from Irish cities. Based upon this declaration, the PIRA should be considered **Corrigible**.

### 5.5.2 Actions

Below is an analysis of select actions (out of a list numbering in the tens of thousands) attributed to the PIRA:

- July 21, 1972.-Twenty-two bombs exploded in the space of eighty minutes in Belfast, killing nine people (including two British soldiers) and injuring 130. {Brien, (1999) pg. 107}
- March 4, 1972. A bombing of the Abercorn Restaurant in the Belfast city center killed 2 and injured 130.<sup>55</sup>
- 1974-1976. The IRA deliberately killed 91 protestant civilians.<sup>56</sup>
- November 21 1974. Two pubs were bombed in Birmingham, England, killing 21 and injuring 182. There were no military targets associated with either of the pubs.
- February 17, 1978. La Mon restaurant near Belfast was attacked with an incendiary bomb. When the attack took place there were 450 diners, hotel staff and guests inside the building. 12 were killed and 30 injured.<sup>57</sup>
- October 12, 1984. An attack on Margaret Thatcher and her cabinet was carried out at the Grand Hotel in Brighton, England.<sup>58</sup>

**Assessment:** Based upon the numerous deliberate attacks on civilians and non-combatants, the PIRA should be considered **Illegitimate**.

Use of the framework and its two-part assessment (that of the declaration and actions) support a finding that the PIRA should have been considered as **Corrigible and Illegitimate**.

### 5.5.3 Special considerations and factors

The PIRA was fighting for a cause that is considered by almost all people in all quarters as a legitimate form of struggle. The PIRA was exercising a UN confirmed right; that is, they were fighting against occupation. At the same time, the PIRA was purposefully attacking civilians, a tactic that is regarded by almost all

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<sup>55</sup> <http://cain.ulst.ac.uk/othelem/glossary.htm>

<sup>56</sup> <http://cain.ulst.ac.uk/othelem/glossary.htm>

<sup>57</sup> <http://cain.ulst.ac.uk/sutton/chron/1978.html>

<sup>58</sup> This attack walks the line of what can be considered illegitimate. On one hand an assassination attempt on the Prime Minister in which the only fatalities were part of the government entourage cannot be considered illegitimate. But had the circumstances been a little different, the attack very much could have been considered illegitimate. The bomb blast caused the mid-section of the building to collapse into the basement, leaving a gaping hole in the hotel's façade. Firemen said that many lives were likely saved because the well-built Victorian hotel remained standing. (BBC "On This Day" 1984) If the hotel had collapsed, the civilian death toll would have been very high thus making the act illegitimate.

people in all quarters as illegitimate, and considered by the UN to be unjustifiable at any time. The point made in choosing the PIRA as an example group is that the cause of the struggle (i.e. the fight against occupation) can never justify certain tactics (i.e. the purposeful attacking of civilians). Under the framework, although one may wholeheartedly agree with the cause of a group, the evaluation of whether a group should be considered illegitimate must set aside the avowed purpose and focus solely on actions taken. In this case, even though the PIRA was fighting against occupation, the tactics they used would mean that they should have been considered illegitimate.

## **5.6 African National Congress (ANC)**

The ANC is a South African political party and Black Nationalist organization founded in 1912 as the South African Native National Congress. The group had as its main goal the maintenance of voting rights for black Africans in Cape Province. It was renamed the African National Congress in 1923. From the 1940s it spearheaded the fight to eliminate apartheid. The ANC was banned from 1960 to 1990 by the white South African government; during these three decades it operated underground and outside South African territory.

### **5.6.1 Declaration**

I could find no publically printed declaration made by the ANC. With the benefit of historical hindsight and for the purposes of this analysis, we will extrapolate and hypothesize what a declaration made by the ANC might have looked like. It can be assumed that the biggest grievance of the ANC was the policy of apartheid, and that the ultimate goal of the group was the dismantling and overthrow of the apartheid system. It can also be assumed that the listed theatre of operations would have been South Africa. If ANC had publically made a declaration stating that the enemy of the group was the South African government and the system of apartheid, with the theatre of operations being South Africa, then the group should have been considered corrigible.

Historical hindsight strongly supports the statement that the ANC was in fact Corrigible. If the ANC were in fact incorrigible, then their maximalist aims would have propelled them to continue their campaign of political violence even after the fall of apartheid. This did not happen, and in fact, after the fall of apartheid, the ANC ceased their campaign of violence. This fact supports the assumption that the aim of the group was the fall of Apartheid, a goal that is specific and far from maximalist, making the ANC a group that should have been considered corrigible.

**Assessment:** Based on historical hindsight, the ANC should have been considered **Corrigible**.

### 5.6.2 Actions

Listed below are some of the actions taken by the ANC:

- May 20, 1983. A car bomb was detonated on Church Street in the South African capital of Pretoria. The claim was that the target was South African Air Force headquarters. The bomb was set off at the height of rush hour killing mainly civilians.<sup>59</sup>
- December 23, 1985. At the height of Christmas shopping, a bomb was placed in a shopping center trashcan and detonated in the town of Amanzimtoti, killing five. There were no military targets associated with this attack.<sup>60</sup>
- June 15, 1986. A bomb was detonated in a bar on the Durban beach-front, killing three civilians and injuring 69. {Chicago Tribune, June 15 1986}
- June 4, 1988. A bomb was detonated outside a Bank in Rodenport, a suburb of Johannesburg, killing three and injuring 19. {NY Times June 04, 1988}
- July 2, 1988. A car bomb detonated in the parking lot of Ellis rugby stadium during a match, killing two and injuring 37. {Chicago Tribune July 03, 1988}
- 1985--1987. There was a campaign to mine rural roads used by farmers in what was then the Northern Transvaal. The ANC estimated 30 landmine explosions resulting in 123 deaths, while the government submitted a figure of 157 explosions resulting in 125 deaths. {Documentary: Confronting the Truth}
- 1979—1989. The Truth and Reconciliation Committee found that torture was “routine” and was official policy, as were executions “without due process” at ANC detention camps: {Documentary: Confronting the Truth}

**Assessment:** Based on the above actions, the framework finds the ANC should have been considered **Illegitimate**.

Use of the framework and its two-part assessment (that of the declaration and actions) support a finding that the ANC should have been considered as **Corrigible and Illegitimate**.

### 5.6.3 Special considerations and factors

The ANC was chosen as an example group because, like the PIRA, the ANC was fighting for a cause that most people in all quarters saw as just. The ANC was fighting to bring down and dismantle a system that few believed to be a just system of governance; that is, the ANC was fighting to bring about the end of apartheid.

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<sup>59</sup> BBC May 20, 1983

<sup>60</sup> <http://www.sahistory.org.za/dated-event/amanzimtoti-blast-kills-five>

However, as with the PIRA, regardless of the cause, and regardless of how wrong and unjust was apartheid, the purposeful attacking of civilians and non-combatants is never justified and is the mark of a group that should be considered illegitimate. The ANC also was chosen as an example group so as to allow a discussion of Nelson Mandela.

When there is talk about Nelson Mandela, often the conversation has as its theme a political prisoner unjustly imprisoned for 26 years by the white apartheid government. In reality, this is not the case at all. Mr. Mandela was the co-founder and leader of Umkonto we Sizwe (armed militant wing of the ANC) which perpetrated dozens of attacks that, according to the posited framework, are considered illegitimate. In his book, *Long Walk to Freedom*, Nelson Mandela wrote that, as a leading member of the ANC's executive committee, he had while in prison "personally signed off" in approving many of the acts listed above. This is not to judge Mr. Mandela or say that after his release from prison he did not work tirelessly for peace. This is only to say that he and his group, according to the framework, should have been considered illegitimate, should have had their leaders arrested and sentenced to prison. The South African Government (however wrong the policies of apartheid) had every right to imprison Mandela and any others found to be involved in such illegitimate acts of political violence.

## 5.7 Overview

Below is a chart of the groups that have been evaluated and the conclusions reached.

|                             |              |                |                |                       |
|-----------------------------|--------------|----------------|----------------|-----------------------|
| 5.1 M.E.N.D                 | ✓ Corrigible | Incorrigible   | Illegitimate   | ✓ De facto Legitimate |
| 5.2 Hezbollah               |              |                |                |                       |
| ❖ Early Years               | ✓ Corrigible | Incorrigible   | ✓ Illegitimate | De facto Legitimate   |
| ❖ Political Entrance        | ✓ Corrigible | Incorrigible   | Illegitimate   | ✓ De facto Legitimate |
| ❖ Present                   | ✓ Corrigible | Incorrigible   | Illegitimate   | ✓ De facto Legitimate |
| 5.3 Al-Qaeda                | Corrigible   | ✓ Incorrigible | ✓ Illegitimate | De facto Legitimate   |
| 5.4 The Weather Underground | Corrigible   | ✓ Incorrigible | Illegitimate   | ✓ De facto Legitimate |
| 5.5 PIRA                    | ✓ Corrigible | Incorrigible   | ✓ Illegitimate | De facto Legitimate   |
| 5.6 ANC                     | ✓ Corrigible | Incorrigible   | ✓ Illegitimate | De facto Legitimate   |

Based on the six groups evaluated:

- Four were found to be Corrigible (M.E.N.D, Hezbollah (all phases), PIRA and ANC) and two to be incorrigible (Al-Qaeda and The Weather Underground).
- Three groups were to be found to be De facto Legitimate (M.E.N.D, Hezbollah (for two of its three phases) and The Weather Underground), while three found to be Illegitimate (Al-Qaeda, PIRA and ANC).

The chart illustrates that only one of the selected groups -- Al-Qaeda -- is both Incorrigible and Illegitimate. The sample is small but does suggest that perhaps only a minority of groups viewed as "terrorist" are using illegitimate violence towards maximalist goals that cannot be reached or achieved. In other words, the majority of groups using violence in an illegitimate fashion are doing so within a conflict that has specific and achievable goals. This leads to a hope that groups like these can be convinced to forego illegitimate tactics and seek a pathway to legitimacy through making up capacity shortfalls.

Groups that are incorrigible and illegitimate, like Al-Qaeda, are few and far between. What appears to be needed is a system that can encourage the corrigible groups to move from being Illegitimate to De Facto Legitimate. A punishing "war on terror" seems to achieve the opposite effect.

## CHAPTER 6

### Conclusion

The objectives of this thesis were, firstly, to create an objective definition of the word “terrorism” that is backed by a criterion based application methodology. Secondly, was the exploration into the functioning of the label of “terrorism” and its framework of application in the international community. Lastly, asking the question: if it is possible to create an internationally agreed-upon definition of “terrorism”, why has that not been done? This thesis also posited an “Objectives Analysis” so as to have an approach from which to question whether the international system and framework for defining “terrorism” and labeling “terrorists” is making positive movement towards its purported goal of decreasing incidences of “terrorism”, while increasing global and international stability.

The construction of the application framework and definition was undertaken in a logical progression encapsulating a number of assumptions in an effort to clear the way of many of the conceptual struggles and hurdles standing in the way of an objective definition and criteria-based application methodology that can be accepted by all “reasonable” people. This Chapter recaps the logical progression and assumptions used in constructing a definition and framework.

The progression began with accepting that there are two types of frameworks that can be used to define “terrorism”: action/deed and motive/intent. Both types of frameworks may be valid depending on who is defining “terrorism” and for what purpose. A motive/intent framework at its core is an exploration into why one does what he does and to what ends such action has been taken. Such a framework will illuminate the cause and the type of ideological drive, and is essential to the academic or social scientist holding the objective of a deeper understanding of the actor.

On the other hand, an action/deed framework focuses on observable and objective criteria and makes clear what acts fall within the parameters of a specific label of deviance (like “terrorism”). Action/deed frameworks identify and label individuals and groups based upon observable actions actually taken. A lawyer looking for a precise legal definition is wise to use an action/deed framework.

According to Schmid (2004), there are five conceptual lenses used when defining “terrorism”. Three of these five conceptual lenses can be considered motive/intent lenses: terrorism as politics, terrorism as communication and terrorism as religious fundamentalism. And two may be considered as measured by action/deed: terrorism as crime and terrorism as warfare.

The central building block of the posited definition and application methodology is that it be criteria based and objective. These points are characteristic of action/deed frameworks. This leaves us with two of Schmid's conceptual lenses that for potential application: terrorism as crime and terrorism as war.

Terrorism as crime has the inherent problem of having "a legal contravention as a defining feature. But whose legal code is being transgressed? The laws of an occupying military power? A representational and democratically elected government? A communist regime? A fascist dictatorship? Not all laws emerge from a legitimate or humanitarian power base. And even when they do, not all laws will be judged as fair and reasonable by most observers." {Silke, 2007, p. 22}

An analysis of terrorism as crime will not lead to criteria that can transcend the national character of specific nation states and their individual sets of laws and jurisprudence. Thus approaching "terrorism" as crime will not lead to a definition and application methodology able to transcend the particular individualities of the nation states of the world. This leaves us with "terrorism" as war as the most applicable lens to be used.

The assumption here is that war is the use of violence in the pursuit of larger ideological and or political goals, a state of open, armed, often-prolonged conflict carried on between nations, states, or parties. In this context, "terrorism" becomes a tactic used in war. Because it is a tactic that has been deemed deviant and outside the agreed upon laws and rules governing the use of violence during war, "terrorism" may be equated to war crimes, which in turn equates to the illegitimate use of violence. The illegitimate use of violence is something that has been codified and examined in the longstanding and affirmed political conception of justice of the Geneva Conventions, an accepted set of principles and an ethos that can easily be extended to all groups partaking in violence for political and or ideological purposes.

In seeking a definitional approach capable of wide acceptance, this thesis observed that the term "terrorism" is emotionally charged and intertwined with motive and intent. The term has taken on the feel of a motive/intent variable while the framework being assembled is based on action/deed. Motive/intent variables are no more compatible with action/deed frameworks than mechanical parts using the metric system are compatible with a car built using the imperial system. Unexpected,

unpredictable, uncontrollable and dangerous results can be expected when one uses a variable in an incompatible system or framework.<sup>61</sup>

The incompatibility of motive/intent variables with an action/deed framework means that term “terrorism” must be placed on the sideline. For the exploration to go forward we must choose an action/deed variable with a meaning that is roughly equal to that of “terrorism.” This thesis has argued that “terrorism” equals war crimes, which in turn equals “the illegitimate use of violence.” Using Euclid’s first common notion that “Things equal to the same thing are equal to each other”, allows us to accept that “terrorism” is essentially equal to the action/deed variable “the illegitimate use of violence”. And so, “the illegitimate use of violence” is what the framework defines and is the measure on which the framework functions.

Our approach leaves behind the pejorative and dangerous term “terrorism” in all its forms. Instead, we turn to the long established and accepted principles and ethos of the Geneva Convention, to guide and infuse into the criteria based application framework. Rather than attempting to define “terrorism”, the framework defines what is “illegitimate”; and rather than labeling the “terrorist”, it verifies what groups may be considered “illegitimate” at a given time based on actions actually taken.

The posited framework demonstrates that it is possible to create a definition that can serve as an alternative to that of “terrorism.” Because it operates on action/deed rather than motive/intent as the primary measure, this definition that can be objectively defined and supplemented by a non-ambiguous criterion-based labeling methodology. There is a widespread view that a shared definition is necessary to allow positive gains towards the purported objectives of the international community in addressing “terrorism” -- that is, decreasing instances of “terrorism” while increasing global stability.

If such a definition is possible and if such a definition is necessary in the effort to make positive movement towards the purported goal, then why has not such a definition and framework been designed and implemented? If answering this question from the standpoint of talking about a label of deviance (i.e. the label of “terrorism”) it would be wise to draw from Labeling theory. Labeling theory suggests that labels of deviance are applied and “identified by looking at a society and asking whether there are any processes going on that reduce its stability, thus lessening its chance of

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<sup>61</sup> An example of variables being used with incompatible systems: September 23, 1999, NASA lost a \$125 million Mars orbiter because a Lockheed Martin engineering team used the Imperial units of measurement while the NASA was using the metric system when performing a key spacecraft operation.



survival. They label such processes deviant or identify them as symptoms of social disorganization. They discriminate between those features of society that promote stability (and thus are “functional”) and those which disrupt stability (and thus are “dysfunctional”) {...} The question of what the purpose or goal (function) of a group is and, consequently, what things will help or hinder the achievement of that purpose, is very often a political question, with different factions disagreeing and maneuvering to have their own definition of the group’s function accepted.” {Becker, 1966, p. 11}

Labeling theory in this context is suggesting that smaller political factions may control the objective behind the application of a label, may control the system and framework designed and implemented to be the vehicle of application, as well as the legislated consequences of being labeled deviant and that the controlling faction may or may not have objectives that align with the wider society. In context of the question why has such a definition and system for labeling “terrorism” not been devised, labeling theory would suggest the answers lay in the objectives of those controlling the system. If they lie in the objectives of the faction controlling the framework, then it would be wise to use “Objectives Analysis” as the analytical tool with which to answer the question.

"Objectives Analysis" would suggest that such a definition and framework has not been reached is because the objectives of the international system for labeling terrorism are out of synch. In other words, the actual objectives are not simply to decrease “terrorism” while increasing global stability but rather to do something else.

The effects of the present international framework for labeling “terrorism”, including the war on terror and the associated jurisprudence, can provide enough information to allow speculation on what the actual objectives of the system may be. We can theorize that one reason the international community has not agreed upon an objective definition is because nation states want the ability to each craft their own ambiguous definitions for the purpose of addressing their particular domestic and geo-political objectives.

The posited definition and framework, if accepted internationally, would make it more difficult for nation states to label groups they support as “freedom fighters” and ones they do not as “terrorist.” It could mean that leaders of nation states would have to condemn groups that they support while accepting less favored groups as De facto Legitimate.

In conclusion, the term “terrorism” in all its forms is entrenched in its “semantic power to stigmatize, delegitimize, denigrate, and dehumanize those at

whom it is directed” {Saul, 2002, p. 3.}, In some situations the term has become a powerful official label carrying extreme consequences that affect not only the intended target of the label but also the collateral damage of the associated jurisprudence and war on “terror”.

A step toward decreasing incidences of the illegitimate use of violence while increasing global stability may be to be more careful in how we use the word “terrorism.” In particular it could be productive to move away from the label “terrorist”. We may get closer to understanding and be able to draw important distinctions if we use define and label with terms that are less charged.

The research supporting this thesis and a study of the example groups leads to the idea that all groups engaged in the “illegitimate use of violence” are not the same. While some are beyond reach, for other groups and individuals there is the real possibility of creating a pathway through which to legitimately alleviate the conditions, which drive them to using “terror” tactics in the first place.

The value of stepping away from over-charged terminology, and possibility of creating distinctions among perpetrators of violence, suggest there is a need for more study of both official systems and casual approaches to applying the label “terrorism.” Better approaches would avoid sweeping terms and lead to judgments based on assessments of specific actions taken.

Finally, this thesis has attempted to look at the difficult idea that, if there are just wars, then surely there are other situations in which violent acts are just. All violence is not the same, and there are times and ways in which all have the right to fight, kill and die in endeavoring to be treated in accordance with the UN Human rights charter. The language we use can shape how we approach these issues, so it is worth seeking shared definitions and moving away from the term "terrorist," which is too over-burdened to allow discourse and create understanding.

## **APPENDIX A**

### **ARTICLES OF ILLEGITIMACY**

The following draft “Articles of Illegitimacy” are proposed as a starting point, based on the ethos and spirit behind the Geneva Conventions. The “Articles” are designed to be a simplified and user friendly set of rules and regulations from which to determine whether or not a particular group at a certain time should be considered “Illegitimate”. While not yet comprehensive, these “Articles” suggest the type of agreement that could be adopted internationally. These “Articles” are intended to stimulate discussion and thought on how to create a better system for identifying those groups that are intent on using violence in an illegitimate fashion regardless of any concessions or willingness of the other side to negotiate and compromise concerning the grievances being fought over.

## ARTICLES OF ILLEGITIMACY

### **Article I. Declaration of War**

**Section 1.01** A declaration of war must be made, posted in public forum, distributed to media outlets for reprint, and include the following:

- (i) Makes the case that action is reactive*
- (ii) defines the opponent clearly - cannot be an idea or ideology (i.e. the West, Communism, Capitalism or Terrorism), who must be directly and specifically involved in the region of conflict*
- (iii) Define the region of conflict clearly*

**Section 1.02** The addition of opponents and/or regions requires a reposting of the declaration incorporating the changes

### **Article II. Operational Activities**

**Section 2.01** Operational activities must meet the following criteria

- (i) Demonstrates clearly that all reasonable endeavors are being taken to avoid civilian and non-combatant collateral damage*
- (ii) When operational activities take place in areas of probable high civilian clustering, all reasonable endeavors must be made to warn civilians and non-combatants of imminent danger. Warnings must be specific as to time and place*
- (iii) When warnings prove insufficient and high clustering of civilians remain in danger zone, action must be aborted and/or tactics changed to avoid civilian and non-combatant collateral damage*
- (iv) Operational activities must be contained to opponents and regions specified in the declaration of war*

### **Article III. Access to Region of Conflict**

**Section 3.01** Total, unhindered access to the region of conflict must be provided to:

- (i) Aid organizations*
- (ii) Medical organizations*
- (iii) International monitors*

**Section 3.02** All reasonable endeavors must be made to provide security for and protection of these organizations (regardless of nomenclature)

#### **Article IV. Establishment of Civilian Exit Routes and Safe Zones**

**Section 4.01** The following must be established in the region of conflict:

- (i) Civilian and non combatant safe zones*
- (ii) Routes to safe zones*
- (iii) Routes from safe zones that exit the region of conflict*

**Section 4.02** All reasonable endeavors must be undertaken to provide security for and protection of all established safe routes and zones

#### **Article V. De facto de Legitimizing Tactics**

**Section 5.01** The use of the following tactics automatically de legitimizes any group or state found using them:

- (i) Purposeful targeting of civilians and or non-combatants*
- (ii) Child soldiers*
- (iii) Rape*
- (iv) Consistent out of proportion civilian/legitimate death/casualty ratio*
- (v) Non-compliance with the Geneva Convention*
- (vi) Purposeful destruction and/or poisoning of resources (i.e. destruction of cattle, crops, salting the earth, use of chemicals to defoliate an area and/or the purposeful use of non conventional weaponry to alter the natural environment so as to gain a strategic advantage over your opponent*
- (vii) Use of non discriminatory weaponry (i.e., radiological, chemical or biological)*

#### **Article VI. De facto Legitimate Targets**

**Section 6.01** The following are legitimate targets, as they are participants' voluntarily taking part in the action:

- (i) Personnel, sites, bases and equipment located within the declared zone of conflict belonging to any military, firm, group or company involved directly or indirectly in the action (excluding personnel, sites, bases and equipment belonging to Aid organizations, medical organization and approved international monitors.*

## **Article VII. De facto Illegitimate Targets**

### **Section 7.01 The following are illegitimate targets:**

- (i) Civilians, non-combatants, infrastructure necessary to civilian populations i.e. water salinization plants, flour mill, milk factory, medical and aid personnel, equipment and infrastructure (including medical personnel, equipment and infrastructure belonging to military and or fighting groups and forces (i.e., military medevac's and forward operating hospitals)*

## **Article VIII. Other Requirements**

### **Section 8.01 The following are required for a group to not be considered illegitimate:**

- (i) open channel for negotiations (i.e., must not have a blanket refusal policy to meet with opposing side), to include that, upon request, must send emissaries for negotiations*
- (ii) internal system to arrest and hold accountable rogue elements and/or individuals who, at their own behest and outside of the command authority, violate any point under Article V above*
- (iii) rogue elements and/or individuals, outside of the command authority, that violate any point under Article V above must be handed over to the International Court Of Justice for investigation and if merited prosecution*

## **Article IX. Assured Benefits of not being found Illegitimate.**

### **Section 9.01 Groups found to be legitimate (i.e., are in compliance with Articles I through VIII above will be assured the following benefits:**

- (i) freely and openly solicit funds from willing donors without worry or fear of either the groups or donors assets being frozen*
- (ii) unrestricted access for business dealings with any legitimate business in the procurement and/or sale of legal technology, hardware, weaponry and/or commodities*
- (iii) unrestricted access to legally undertake marketing, advertising and/or recruitment campaigns*

## **Article X. Consequences of Non-compliance and/or Illegitimacy**

### **Section 10.01 Groups engaged in fostering violence found not to be in compliance with the Articles above will be subject to the following consequences:**

- (i) Freezing of assets belonging to the group an/ or state, its members, known direct or indirect donors*

- (ii) Sanctions on the ability to conduct any business buying and selling of any goods or services*
  
- (iii) Sanctions on the ability to partake in any sort of marketing, advertising and/or recruitment campaigns*

## **APPENDIX B**

### **THE MOVEMENT FOR THE EMANCIPATION OF THE NIGER DELTA (M.E.N.D.)**

#### **LIST OF ATTACKS 2006 TO 2013**

##### **2006**

May 10, 2006, an executive with the United States-based oil company Baker Hughes was shot and killed in the southeastern city of Port Harcourt.

October 2, 2006, 10 Nigerian soldiers were killed off the shore of the Niger Delta when their patrol boat was hit by a M.E.N.D mortar. Earlier in the day their patrol boat was hit by a M.E.N.D mortar shell. Nigerian/Royal Dutch Shell convoy was attacked in the Port Harcourt region. ([^ Brenna, Jarle \(June 2, 2006\). Vi frykter det verste Norsk borerigg angrepet utenfor Nigeria. VG Nett.](#))

##### **2007**

May 1<sup>st</sup> M.E.N.D attacked Chevron's Oloibiri floating production, storage, and offloading vessel off the coast of the southern Bayelsa state. After one hour of fighting with security boats, resulting in the death of 10 people, M.E.N.D seized six expatriate workers. (Oil worker kidnappings continue in Nigeria. Oil & Gas Journal. May 1, 2007)

May 3<sup>rd</sup> M.E.N.D seized eight foreign hostages from another offshore vessel. The hostages were released less than 24 hours later, stating they had intended to destroy the vessel and did not want more hostages.

May 7<sup>th</sup> captives were taken from a pipelaying barge of Nimbe area of Bayelsa they were released 23 days later.

On May 8<sup>th</sup> three major oil pipelines (one in Brass and two in the Akasa area) were attacked. An e-mail statement from a M.E.N.D spokesperson said, "Fighters of the Movement for the Emancipation of the Niger Delta (M.E.N.D) attacked and destroyed three major pipelines in Bayelsa state... We will continue indefinitely with attacks on all pipelines, platforms and support vessels."

On November 13<sup>th</sup> M.E.N.D militants attacked Cameroonian soldiers on the disputed Bakassi peninsula, killing more than 20 soldiers; (BBC News Online. November 14, 2007).



## 2008

May 3<sup>rd</sup> M.E.N.D attacked Shell-operated pipelines in Nigeria. (Tan, Sophie May 6 2008) Bloomberg L.P.)

June 20<sup>th</sup> M.E.N.D naval forces attacked the Shell-operated Bonga oil platform.

September 14<sup>th</sup> M.E.N.D inaugurated Operation Hurricane Barbarossa with an ongoing string of militant attacks to bring down the oil industry in Rivers State. (*Pflanz, Mike (September 15, 2008). Nigerian militants launch 'Hurricane Barbarossa' against oil*

September 20<sup>th</sup> M.E.N.D released a statement proclaiming that their militants had launched an "oil war" throughout the Niger Delta against both pipelines and oil production facilities, and the Nigerian soldiers that protect them. In the statement M.E.N.D claimed to have killed 22 Nigerian soldiers in one attack against a Chevron-owned oil platform. (*Nigeria militants warn of oil war. BBC News Online. September 14, 2008*)

September 27<sup>th</sup> a week after declaring an oil war and destroying several significant oil production and transportation hubs in the delta the group declared a ceasefire until "further notice" upon the intervention of Ijaw and other elders in the region. (*Al Jazeera. September 21, 2008*)

## 2009

January 30<sup>th</sup> M.E.N.D called off its ceasefire (*BBC News Online. January 30, 2009*)

February 7<sup>th</sup> Equatorial Guinea blamed M.E.N.D for an attack on the presidential palace in Malabo. M.E.N.D denied involvement. (*The Guardian (Nigeria). February 20, 2009*)

May 15<sup>th</sup> a military operation undertaken by a Joint Task Force (JTF) began against M.E.N.D in response to the capturing of Nigerian soldiers and foreign sailors in the Delta region. (*Walker, Andrew (May 27, 2009) BBC News Online*)

June 18–21 M.E.N.D claims responsibility in attacking three oil installations belonging to Royal Dutch Shell in the Niger Delta. In a campaign labeled by the group as "Hurricane Piper Alpha", Chevron was also warned that it would "pay a price" for allowing the Nigerian military use of an oil company airstrip. (*Izundu, Uchenna (June 23, 2009). Oil & Gas Journal*)

June 18<sup>th</sup> M.E.N.D claimed they had blown up a Shell pipeline, as a warning to Russian president Dmitry Medvedev who was arriving to Nigeria the next day and to any potential foreign investors (*CNN. June 19, 2009*)

July 6<sup>th</sup> M.E.N.D claimed responsibility for an attack on the Okan oil manifold. In a separate action on the same day, the group said that three Russians, two Filipinos and an Indian were seized Sunday from the Siehem Peace oil tanker about 20 miles (32 km) from the southern port city of Escravos (*CNN. July 6, 2009*)

July 11<sup>th</sup> Lagos Rebels attacked and set on fire the Atlas Cove Jetty on Tarkwa Bay. Five workers were killed in the strike. (*London Telegraph, July 13 2009*)

Oct 7<sup>th</sup> M.E.N.D claimed that they would resume hostilities against the Nigerian oil industry, the Nigerian Armed Forces and its collaborators with effect from (no time specified) hours, Friday, October 16, 2009," the group's spokesman, Jomo Gbomo, said in a statement.

(<http://www.istockanalyst.com/article/viewiStockNews/articleid/3559015#>)

Oct 25<sup>th</sup> M.E.N.D announces unilateral truce and accepts the government's proposal for reintegration. (*BBC News Oct 25 2009*)

## **2010**

Jan 30<sup>th</sup> M.E.N.D called off its unilateral truce and threatened an "all-out onslaught" against the oil industry. (*BBC News Jan 30 2009*)

October 1<sup>st</sup> Two bombs exploded at Abuja during a parade. 12 killed 17 injured. Bomb was 1 KM away from President Goodluck Jonathan. M.E.N.D claimed responsibility and also claim to have sent warning in the form of an email to a journalist half-an-hour before the bombs detonated.

November 8<sup>th</sup> Gunmen raid an oilrig off Nigeria, kidnapping three.

November 15<sup>th</sup> M.E.N.D attack on an Exxon Mobil oil platform, kidnapping seven Nigerian workers (*Allen, Kate. Toronto Star, 9 Nov 2010*)

## **2011**

March 16<sup>th</sup> A bomb exploded on an oil platform in southern Nigeria. This is for the first M.E.N.D attack on a major bombing campaign.

<http://www.romandie.com/infos/news2/110316202339.ouy84vgk.asp>

## **2012**

December 17<sup>th</sup> 5 Indian sailors aboard the SP Brussels were captured by M.E.N.D militants. All 5 men were released on January 27, 2013 for an unknown amount of ransom.

December 18<sup>th</sup> 4 South Korean oil workers from an oil plant in the Niger Delta. All 4 men were released on December 23.

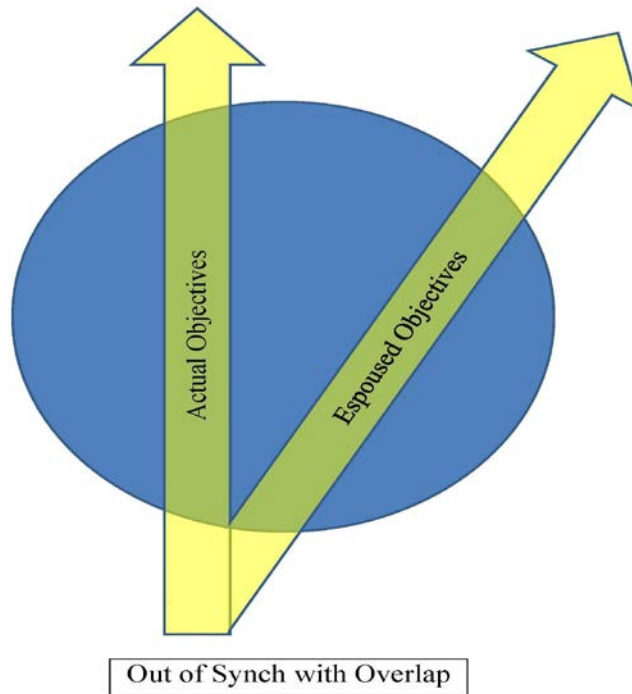
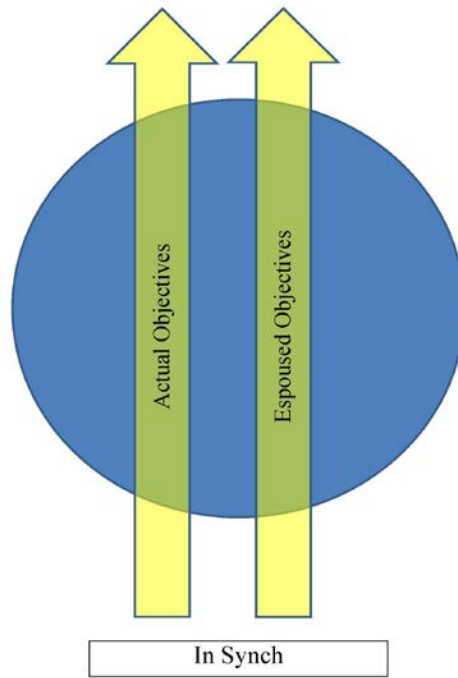
### **2013**

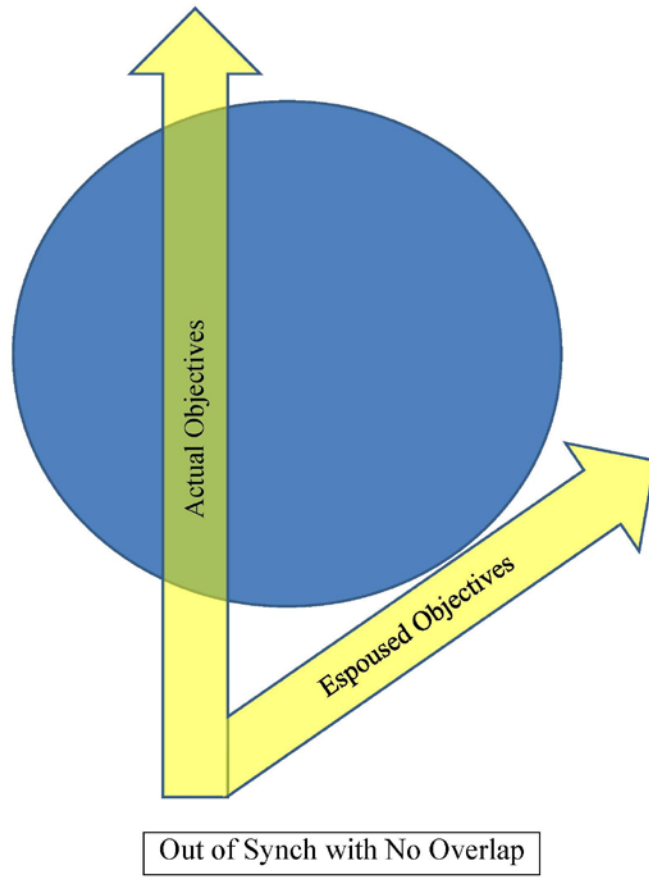
February 5<sup>th</sup> Destruction of an oil barge operated by an Indian company.

March 4<sup>th</sup> M.E.N.D militants were responsible for sabotaging an oil pipeline operated by Royal Dutch Shell.

**APPENDIX C:**

**SYSTEM DIAGRAMS**





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