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The Dynamics of Terrorism and International Criminal Law

Richard Suofade Ogbe, Ph.D*

Abstract

This paper seeks to analyse and showcase the contemporary applicable prevailing developments vis-a-vis the concept of terrorism under international criminal law. It showcases the jurisprudence for the criminalization of terrorism under international criminal law. This paper further seeks to critique the advancement of the idea of terrorism in international law and highlights some contemporary developments with emphasis on aspects relevant to international criminal law. This paper equally seeks to analyze the fundamental distinction between terrorism as a treaty crime and terrorism as an international crime. One intriguing problem is a generally accepted definition and structural exponential concern and analysis of terrorism under universal jurisprudence. Despite the problems of definition and distinction, the contemporary generally accepted trend is the criminalisation of international terrorism in any form or structure to guarantee international peace and security.

Keywords: International Criminal Law, Criminalization, Crimes, Terrorism and terrorist acts, International law and Jurisprudence.

1.0 INTRODUCTION

What has largely triggered the conversation on terrorism on a global scale is the advice to states to access and build up their legal and normative structures in the aftermath of the September 2001 attacks on the United States.¹ The emphasis is on the understanding of the definition of terrorism and the subsequent reawakening arising from the differences in international criminal law perceptions. One key development is the evolutionary manner the concept of international terrorism is now being taken as an international crime.² The presentation of terrorism as an international crime appears significant both as a progressive development of international criminal law and in the light of the attention the concept has elicited in the aftermath of the events of September 2001. The international community needs to deal with the associated problem of the enforcement of anti-terrorist laws, which is the only measure to curb its spread.³

2.0 CONTEXTUAL UNDERSTANDING OF TERRORISM AND TERROR - VIOLENCE

The concept of terror and terror-violence are two related words, and they both have wide differing meanings and forms in international law.⁴ In other words, there has been no universally accepted understanding and definition of these terms in international criminal law. Recent developments show that there have been no efficient internationally coordinated anti-terrorist measures, sanctions and judicial decisions in the fight against terrorism.⁵ What has compounded the controversy surrounding the definition and understanding of these terms

*Lecturer, Niger Delta University, Faculty of Law, Amassoma, Yenagoa, Bayelsa State, Nigeria; ogberich@yahoo.com & drogbe@ndu.edu.ng; 08038698054

¹ Theodor Meron, 'International Criminalization of internal Atrocities', *American Journal of International Law*, (89) (3) (2011) 563

² Barbara Yarnold, *Doctrinal Basis for the International Criminalization Process*, *Temple International and Comparative Law Journal*, (8) (1) (1994) 96

³ Theodor Merona, 'Is International Law Moving Towards Criminalization'. *European Journal of International Law*, (9) (1) (1999) 21

⁴ Shuchi Furuyan, 'The Criminalization of International Law', *Japanese Yearbook of International Law*, (58) (7) (2019) 10

⁵ Beatrice Bonafe, 'Constitutional Judicial Overview and International Obligations of Criminalization', *International Criminal Law Review*, (21) (40) (2021) 616

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is the clumsy legal framework and the highly politicized usage of the term terrorism in the aftermath of the 2001 September terrorist attacks. This is in addition to the diverse opinions that the term terrorism is without any significant legal relevance and that it is just a convenient way of alluding to activities which methods some people consider illegal.⁶

The question as to whether there is any need to define the term terrorism may be misplaced despite the plethora of definitions. Like in other fields of law, it is not unusual that there is no universally accepted definition of the term terrorism. Under international criminal law the mandatory requirements include the principle of legality which suggests that there is no crime without law.⁷ Accordingly, you can only talk about the subjugation and oppression of any criminal act in any criminal jurisdiction if the act talked about is adequately defined and there is a clear understanding of its concept. Again, the argument that bothers on the concept of efficiency has the international community's support and agreement that the definition issue is not only needed, but desirable.⁸

However, the argument of a unanimous definition of terrorism may not be desirable. It is not the multiplicity of definitions that compounds the problems. The plethora of definitions is based on the multifarious legal instruments set up by different governments for different purposes for different jurisdictions.⁹ In most cases, these are only meant to serve as working definitions to deal with specific issues at a time. States define terrorism in their different laws for different reasons and circumstances.¹⁰ Despite the foregoing, states make frantic measures to deal with terrorism because it cuts across national borders. In other words, in spite of the unnecessary confusion generated arising from unanimity in the definition of the term

⁶ Ben Saul, 'International Terrorism and Terrorists as a European Crime: The Policy Rationals for Criminalization', *European Journal of Crime, Criminal Law and Criminal Justice*, (11) (4) (2003) 329

⁷ James Edwards, 'Criminalization without Punishment', *European Journal of Criminal Law and Criminal Justice*, (23) (2) (2017) 73

⁸ Niger Abisova, 'Basis of Criminalization and Decriminalization of International Law', *Baku State University Law Review*, (2) (1) (2015) 63

⁹ Lindsay Farmere, 'Territorial Jurisdictional Criminalization', *University of Toronto Law Journal*, (63) (2) (2013) 231

¹⁰ *Ibid*, 237

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terrorism, states must take a coordinated step to agree on where, how and when to arrest, detain or extradite alleged terrorists for a more successful fight, against terrorism.¹¹

The modern trend is to stipulate typical elements that can strengthen the discourse and provide a better understanding of terrorism instead of looking for a universally accepted definition. Whether you look at terrorism cumulatively or alternatively, it generally has divergent elements, even though the substance of some elements is less contentious than that of others.¹²

For instance, under *objective* elements¹³, there is some unanimity on the acts that should be considered terrorist acts, which include murder, mass killing, bombing, hijacking, etc. unless carried out through lawful and legally authorized means.¹⁴ Two *subjective* elements must be proved for any act to be considered an international terrorist act.¹⁵ They include intent and motive.¹⁶ The case of intent corresponds with the possibility of any underlying criminal offence. In other words, the act must be committed with a definite and specific purpose in mind. This means unfurling terror among a certain population or exterminating the foundational structure of the country is not the fundamental aim of the act itself. The primary aim is to the effect of a terrorist act. Motive as a basis for any criminal conduct must not be a personal end but must be premised on cultural, political, dogmatic, or religious sentiments for it to be taken seriously at the international level.

terrorist act.¹⁷ An individual can commit a terrorist act alone without the support and collaboration of any terrorist groups.¹⁸ However, such an act would be considered an act of terrorism if it was motivated or controlled by a coordinated set of ideas that gingered the

¹¹ Hanie Randhawa, 'International Criminalization, Sovereignty and the Historical Evolution of International Crimes', *European Journal of Criminal Law and Criminal Justice*, (14) (5) (2022) 476

¹² Dustina Lewis, 'Criminalization of Humanitarian Acts in Counterterrorism Frameworks: Key Components and Concerns', *American Society of International Law*, (112) (6) (2019) 269

¹³ *Ibid*, 272

¹⁴ *Ibid*, 276

¹⁵ *Ibid*, 279

¹⁶ *Ibid*, 283

¹⁷ Zdzisława Galickina, 'International Law and Terrorism', *Romanian Journal of International Law*, (1) (2) (2003) 136

¹⁸ *Ibid*, 142

individual to recognize and relate with a group which carries out or believe similar actions. The multifarious definitions of terrorism have been triggered by a combined understanding of these elements in the forms of soft law, conventions and domestic legislation.¹⁹

3. 1. INTERNATIONAL TERRORISM AND THE IMPORT OF INTERNATIONAL CRIME

Despite the hurdles associated with getting a universally accepted understanding of the concept of international terrorism, the 20th century witnessed its general disapproval by the international community, which was achieved through international criminal law.²⁰ This evolutionary measure was materialised on the basis of the pre-existing customary and treaty rules of international law, which categorized such acts as either terrorist act or which shared some elements with it. However, it also devoted large attention to the evolution of novel rules, which eventually materialized in a plethora of international legal documents which deal considerably with major aspects of international terrorism. And terrorist activities²¹

The only first issue of concern was the obscurity of the definition of international terrorism so long as its criminalization is concern. What now follows are issues surrounding who is criminally liability for the alleged act done, jurisdictional matters, duties by states as well as other international actors, the magnitude of international cooperation and support from state actors in criminal affairs, amongst others.²² The foregoing procedure and structure are on the basis of the categorization of the type of act that has been internationally criminalized.²³ From the onset, it may be very safe to describe these acts as international crimes. This is important because of these acts constitute a very serious threat to international peace and security as well

¹⁹ Sakari Melander, 'Criminalization, Crime and its Limitations', *Peking University Law Journal*, (5) (1) (2017) 65

²⁰ Ahmad Qureschi, 'Combating International Terrorism', *Florida Journal of International Law*, (29) (1) (2017) 24

²¹ *Ibid*, 29

²² Asli Bali, 'International Law, Crimes and the Challenge of Terrorism', *Journal of Islamic Law and Culture*, (19) (4) (1998) 125

²³ *Ibid*, 176

as their ability to corrode the sanctity of humanitarian standards and principles.²⁴ Even though the scale of violence is considered to be minimal and less destructive in specific circumstances, the contradiction and variation will not significantly classify the concept.

Under international law, the foregoing will demand a further distinction to specifically show the nuance that exists between international treaty crimes and international crimes to deal with individual criminal liability. This paper will now briefly consider terrorism as a treaty crime and terrorism as an international crime.

3.2. TERRORISM AS A TREATY CRIME

There are certain acts, irrespective of the fact they are very serious crimes of international concern, that are not accorded international criminal liability because, by the provisions of some particular treaties, the exclusive jurisdiction of the states has been eroded.²⁵ The general implication of these treaties gives states parties the obligation to proscribe certain acts as treaty crimes which make them criminal offences under their own national law. State parties are also obliged to cooperate with other state parties when such acts are being investigated and convicted persons are being punished.²⁶ Accordingly, what this further means is that state parties can equally prosecute and extradite criminal liability on the basis of treaty crimes premised on the principle of *aut dedere aut prosecute*, notwithstanding the fact that such crimes do not have international criminal liability.

Many anti-terrorism conventions consider international terrorism as a treaty crime.²⁷ Most of these conventions are premised on similar or only slightly diversified jurisdictional systems. This paper will consider two jurisdictional titles for the state parties.²⁸ The first title has to do with a sequence of specific titles in which state parties have jurisdictional obligations such

²⁴ Reneo Beresi, 'International Law and Nuclear Terrorism', Georgia Journal of International and Comparative Law, (24) (1) (1994) 12

²⁵ Ibid, 26

²⁶ Christian Much, 'International Criminal Court, Criminality and Terrorism as International Crimes', Michigan State Journal of International Law, (14) (2) (2006) 129

²⁷ Victor Tadros, 'Justice, Crime and Terrorism', European Journal of Crime, Criminal Law and Criminal Justice, (10) (4) (2007) 129

²⁸ Ibid, 123

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assectoral, personal identity, and security issues, amongst others.²⁹ The second title has to do with a general clause that allows or empowers a state party to exercise jurisdiction when the offender is found on the territory of such a state.³⁰

Special titles differ slightly in the different conventions and circumstances. There are clauses in these conventions which do not disallow states from exercising any criminal jurisdiction in line with states' domestic laws, which suggest that prosecution may be premised on them in contradistinction to specific conventional provisions. These titles contained in the conventions play complementary roles to those of national law. The only nuance is a situation when a convention mandates a state to exercise jurisdiction, whereas it is optional for the state according to its municipal laws.³¹

By the principle of *aut dedere aut prosequi*, the second title because of its specific direct relationship to international crimes has wider acceptance and has been so noted and recognized by anti-terrorist conventions.³² This now carries with it the toga of conventional universal jurisdiction.³³ What this implies is that by this universality principle, states are allowed to assume jurisdiction to fight serious offences in line with the concept of universal jurisdiction and undertake criminal prosecution whether or not there is any special trace to the crime or the offender.³⁴ All states are equally obliged to work in line with the principle of traditional customary universal jurisdiction which allows them to establish jurisdiction in their municipal laws premised on these conventions.³⁵ The conventional universal jurisdiction principle in addition to the principle of *aut dedere* now generates a novel system of mandatory universal jurisdiction. It needs to be noted that the principle of *aut dedere* is an obligation.³⁶ It

²⁹ Ibid, 128

³⁰ Ibid, 130

³¹ Bagher Shambo and Seyed Sajadi, 'Investigating Piracy, Crime and Terrorism in the international Legal System', *Journal of Policy and Law*, (10) (1) (2017) 132

³² Ibid, 138

³³ Ibid, 142

³⁴ Gilbert Guillaune, 'Terrorism, Crime and International Law', *International and Comparative Law Quarterly*, (53) (3) (2004) 539

³⁵ Emil Konstantinor, 'International Terrorism, Crime and International Law', *German Yearbook of International Law*, (31) (5) (2009) 306

³⁶ Ibid, 317

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is only limited to the parties to the convention and therefore it does not have universal application.³⁷

State parties now have an obligation in accordance with the conventions against terrorism to establish jurisdiction over the suspects staying within their jurisdictions.³⁸ The contemporary war against terrorism demands that state parties initiate criminal proceedings against individuals in competent judicial courts. The obligation to prosecute is sacrosanct, notwithstanding the power of state parties to extradite such persons. Very recently, many conventions now indicate clauses that suggest that prosecution should be done in accordance with the standards of national laws in case extradition does not take place or it is declined. Such a clause may hinder the efficient application of conventional obligations as a result of national standard variations. This type of clause may, therefore, greatly weaken the obligations of states to prosecute.³⁹ This does not detract from the fact that states have a sacrosanct obligation to investigate the case in good faith in line with a minimum standard of diligence and forthrightness.⁴⁰ This means that any capricious and haphazard prosecution premised on arbitrary reasons can derail the object and purpose of the convention, which may constitute as a violation of states' obligations under international law.⁴¹ Other teething concerns may occur as regards the hope that no unbiased prosecution can be expected arising from the states' protection of the alleged person. Other compounded problems may be how and who to determine the most suitable remedies for the purposes of prosecution.⁴²

³⁷ Ibid, 319

³⁸ Ana Salinas de Frias, 'The State Fight against Crime and International Terrorism', *Revista Espanola de Derecho Internacional*, (68) (20) (2016) 27

³⁹ Patrick Schneider, 'When Protest Goes to Sea: Theories and Theorizing Maritime Violence, Terrorism and Piracy in the cases of Nigeria and Somalia', *European Journal of Crime, Criminal Law and Criminal Justice*, (51) (4) (2020) 289

⁴⁰ Ibid, 292

⁴¹ Stohl Michael, 'Terrorism, Crime and Criminals: The Implications for Community Police and Policing', *Crime, Law and Social Changes journal*, (3) (4) (2008) 64

⁴² Ibid, 68

There are problems affecting the efficient application of the anti-terrorist conventional system, which include:⁴³ the inadequate ratifications or accessions by states to the conventions, which hamper the attainment of its purpose; the inadequate operation of the treaties; and the prevalence of too many flaws and technicalities. The events of the year 2001 September have triggered discussion within the international community for a novel and all-inclusive international framework and mechanism for the war against terrorism.⁴⁴ The good news is that some of these inadequacies have been taken care of in the new convention, more concerted effort is still needed to deal with the issues surrounding a unanimous definition of the concept of international terrorism and its scope of application. Effort is equally needed in the area of mutual international support and cooperation in the prevention, suppression, and prosecution of the crime of terrorism.⁴⁵ One possible development will be the expansion of the jurisdiction of the International Criminal Court to adequately cover the crimes of international terrorism.

4.1, UNIVERSAL JURISDICTION AND THE DYNAMICS OF THE CRIME OF TERRORISM

This part of the work analyses the dynamics of the acts of terrorism via the lens of the magnitude of jurisdiction, which is more profound and comprehensive than that stipulated by the conventional system. The principle of universality obligates states to use their jurisdiction to prosecute crimes regarded as offensive to the international community, even though there is yet no unanimity on the crimes that are grouped under universal jurisdiction. However, there is a large unanimity on the proposition that international terrorism is a subdivision of

⁴³ Codruta Jucana Stefanian and Calina Stefan Georgia, 'The Challenge of Crime, Terrorism and Transnational Organized Crimes, American Journal of Crime, Criminal Law and Criminal Justice, (3) (3) (2011) 311

⁴⁴ Mathieu Deflem, 'Europol and the Policing of International Crime and Terrorism: Counter-Terrorism in a Global Periscope', Justice Quarterly, (23) (3) (2006) 342

⁴⁵ Ibid, 352

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war crimes and a crime against humanity, which can be imputed international criminal liability.⁴⁶

This paper now goes further to address the controversy as to whether terrorism is a war crime or crime against humanity. At the outset, it needs to be stated that while war crimes are a classification restricted to armed conflict, the same cannot be said of crimes against humanity.⁴⁷ This aspect will, however, be dealt with later, as for the time being we will limit ourselves to situations of armed conflict. Another point that needs clarification is whether acts of terrorism during armed conflict are enclosed under international humanitarian law and international criminal law.⁴⁸ This is because these acts are outlawed under international or non-international circumstances. These laws also criminalize acts of terrorism by providing that during armed conflict, any attack on civilians and other protected persons with the main purpose of spreading terror, may constitute war crimes. The fact that the ICC statute does not classify terrorism as one of the war crimes is not problematic since, in the statute, the list of the prevailing rules of customary law is incomplete. It is less controversial to state that the Geneva Conventions of 1949 classify war crimes as terrorist acts which equally gives mandatory universal jurisdiction so long as the said acts constitute grave breaches of the Geneva Conventions.

The question is when can terrorist acts, whether committed in time of peace or during war time constitute crimes against humanity? The answer is that so long as these acts are taking part in a systemic widespread attack against a civilian population, and the offender must be aware of his participation and collaboration in the said widespread or systematic attack, such acts will constitute crimes against humanity.⁴⁹ Again, the victims of such crimes must

⁴⁶ Alexandra Doucea, 'Tackling Terrorism as a Threat to National Security', *European Journal of Public Order and National Security*, (3) (4) (2015) 4

⁴⁷ Mathieu Dflem, 'Reading terrorism and terrorists', *European Journal of Public Order and National Security*, (4) (6) (2017) 8

⁴⁸ *Ibid*, 13

⁴⁹ Emilio Vianor, 'Unholy Alliances to Crime and their Threat: The Convergence of Terrorism and Organized Crime', *European Journal of Crime, Criminal Law and Criminal Justice*, (3) (8) (2009) 97

consist of both civilians and other officials, as well as members of the armed forces. The proposition that there should be no restriction on the categories of victims is germane in line with the dynamics of contemporary international human rights law and humanitarian law.⁵⁰

4.2.THE DYNAMICS OF CUSTOMARY INTERNATIONAL LAW AND THE CRIME OF TERRORISM

This part of the paper discusses international terrorism as a crime under customary international law. It needs to be stated from the outset that many international conventions have designed wide structured international anti-terrorist legal regime even though it is still controversial whether such legal framework can have the required impact on those states that have not acceded to treaties outside the contemplation of customary law.⁵¹ Notwithstanding the foregoing proposition, there are a lot of adumbrations that suggest that conventional principles are regarded as an extension of the prevailing international customary law that is still evolving. One principle that readily comes to mind is the principle of extradition or prosecution principle.⁵² Moreover, one argument is the consideration of many treaties which are homogenous, which is taken to be a confirmation of the acknowledgement by the majority of the international community that it is relevant, compelling and legal to facilitate condemnation of a specific crime based on universal jurisdiction and criminal liability.⁵³ This is because conventions could also be considered declaratory instruments that are meant to institute universal jurisdiction, largely recognized by the international community as a support for customary law.⁵⁴

⁵⁰ Ibid, 99

⁵¹ Yara El Siwi, 'Terrorism, Crime and Threat Mitigation', *Journal of Financial Crime Journal*, (24) (4) (2018) 963

⁵² Lena Raxter, 'Prosecution of Terrorism in International Criminal Law', *European Journal of Crime and Criminal Justice*, (12) (1) (2021) 46

⁵³ Loana Celina Pasca, 'Is Terrorism an International Crime?', *Journal of Eastern Criminal*, (4) (1) (2020) 178

⁵⁴ Noemie Galao, 'The Formation of a Customary International Crime and Global terrorism', *International Criminal Law Review*, (15) (4) (2015) 669

There is unanimity on the relevance of the need for an effective structure in the war against international terrorism, even by international political organs like the UN Security Council or the General Assembly, regional organizations and states as regards the customary law principle of universality. One additional move is to take or consider international terrorism as a crime under customary international law. The only shortcoming of this proposition is the lack of unanimity on the definition of the concept of terrorism. This is notwithstanding the discordant arguments that under international customary law there seems to be a generally adopted definition of terrorism as an international crime which is still going through some form of evolution.⁵⁵ This does not mean that the issue of the universality of international terrorism, even under international customary law, is without problems. This includes the incompatible claims of jurisdiction, the difference in the standards of prosecution from state to state as well as problems of fair and equitable trial of suspects.⁵⁶

5.1.THE ADVANCEMENT OF INTERNATIONAL TERRORISM AFTER 2001 SEPTEMBER

The international community has continued to grapple with the endemic challenge of the war against terrorism in spite of the potential successes recorded.⁵⁷ The cumulative response of the international community to the attacks of September 2001 against the United States of America was not only instantaneous but expeditious.⁵⁸ Many regional bodies immediately day after the attacks proactively expressed and communicated their condemnation and sympathies to the government and people of the USA. One of these regional bodies was the response by the European Council, who, on 21 September 2001, at its extraordinary meeting, expressed its disapproval and displeasure to the horrific attack.⁵⁹ The European Council

⁵⁵ Samraggi Chakraborty, 'Terrorism and the international Criminal Justice System', *Indian Journal of Law and Justice*, (130 91) (2022) 402

⁵⁶ Geert Jan Knoopson, 'International Crime and Terrorism in International Criminal Law', *Maastricht Journal of European and Comparative Law*, (10) (2) (2003) 151

⁵⁷ Briana Drommond, 'International Law, Terrorism and UK Nuclear Deference Policy', *Pecs Journal of International and European Law*, (2) (3) (2021) 46

⁵⁸ Benny Saul, 'International Terrorism and Criminalization', *European Journal of Crime*, (11) (4) (2003) 323

⁵⁹ *Ibid*, 328

created legal agenda which introduced a seamless European arrest warrant and moved to accept a unanimous definition of terrorism.⁶⁰

The international community, through such bodies like United Nations and others made many declarations towards a more pragmatic war against terrorism. One core declaration was an effort at identifying presumed terrorists anywhere in the world, including their financiers. The idea of methodically collating and sharing relevant data amongst member states in the fight against terrorism has been a burning discussion. Another thing is how to enforce all extant international conventions on terrorism as well as locating and destroying the sources of the funding of terrorism.⁶¹ It is believed that one core method of fighting terrorism is to freeze all funds and financial assets of known terrorists and terrorist organizations.⁶² This move is closely related to the measures to prevent such funds from getting into the hands of persons who may use it for terrorist purposes. This may include monitoring the movement of money and other money laundering activities. There have also been calls for a broader definition of money laundering to keep the search light on the money laundering activities terrorists, including some international non-financial sectors, in line with relevant provisions of the UN Convention on Transnational Organized Crime, 2000.

5.2. SUPPRESSION OF THE FINANCING OF TERRORISM

What remains to be said here is the concerted calls to consider financing⁶³ of terrorist acts as grave criminal offences and developing a strong legal framework and necessary political will to hold terrorists to account for their diabolical activities in the interest of international peace and security.⁶⁴ This calls for the needed cooperation and support from national judicial authorities, who should be ready to expeditiously do the needful and avoid technical justice

⁶⁰ Ibid, 332

⁶¹ Matija Kovac, 'international Law, Terrorism and Criminalization', Croatian Annual of Criminal Law and Practice, (14) (1) (2007) 283

⁶² Ibid, 287

⁶³ Kimmo Nuotio, 'Terrorism as a Catalyst for International Peace, Criminalization and Reform of Criminal Law, Journal of International Criminal Justice, (4) (5) (2006) 1012

⁶⁴ Ibid, 1017

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and do substantive justice.⁶⁵ There are calls for a drastic review of criminal sanctions meant to dissuade terrorist activities. The observation is that the present sanctions provided for in the various terrorism laws cannot serve as a deterrent to would-be terrorist offenders.⁶⁶

The understanding and contention is that the existing criminal penalties for terrorist acts are disproportionate.⁶⁷ The summary of the foregoing is that there needs to be unanimity of opinions on the urgency of the international community to protect the sanctity of international transport and make border system control more efficient as well as to enhance the prowess of Member States to deal with the consequences of terrorist attacks which include the need to dissect the circumstances which aid and abet the support and recruitment into terrorism and terrorist acts in the world.⁶⁸ This is the only way the international community can have enduring and consistent peace and security.⁶⁹

5.3. THE NEED FOR A STRUCTURED COUNTER-TERRORISM LEGAL FRAMEWORK BY COUNTRIES

Arising from the ratification of the Convention for the Suppression of the Financing of Terrorism in 2004, many countries are now parties to the 13 global anti-terrorist conventions even though some of these countries do not still have a structured legal framework and regime for an effective fight against terrorism.⁷⁰ Some of the anti-terrorism laws by some

⁶⁵ Cherif Barriouni, 'Efficient National and International Policy against Organized Crime and Terrorist Criminal Activities', *Maastricht Journal of European and Comparative Law*, (4) (10) (1990) 16

⁶⁶ Naome Nuberg, 'Terrorism, Crime and International Criminal Justice: Bleak Prospects and Progress for a Future Together', *Santa Clara Journal of International Law*, (80) (1) (2010) 42

⁶⁷ *Ibid*, 47

⁶⁸ Sanchez Alejandro Fria, 'Bringing Terrorists and Terrorism to Justice in the context of Armed Conflict: Relationship between International Humanitarian Law and the United Nations Conventions against Terror and Terrorism', *Maastricht Journal of European and Comparative Law*, (52) (1) (202) 85

⁶⁹ *Ibid*, 92

⁷⁰ Timar Stephenson, 'International Crime, Criminal Law and the Response to International Terrorism', *University of New South Wales Law Review*, (27) (1) (2009) 465

states are either watery or too porous.⁷¹ There are crucial frantic measures put in place for the purposes of fighting terrorism adopted by states in their Criminal Codes that need to be enforced or reviewed.⁷² These laws should also contain provisions that criminalise any form of financing of terrorist activities by states, individuals or groups under any guise.

6.0 CONCLUSION

No doubt, international terrorism and terrorist activities are a massive threat to international peace and security.⁷³ This paper calls for the criminalization of all forms of terrorism, no matter the diverse obstacles and disagreements as regards jurisdiction, definitions, procedures, liability, etc. This paper submits that different array of academic and legal arguments on the primacy of considering international terrorism as a crime based on treaty negotiation as opposed to seeing it as a crime of customary international law with universal criminal jurisdiction, only has minimal consequences.⁷⁴ This submission appears to be well-founded based on the surprising reluctance of states to technically reach a consensus on a generally acceptable definition of international terrorism.

The foregoing submission is equally based on states' strong disposition to structure future international agreements based on the many international law treaties and principles, which enjoin states under international law to prosecute persons who perpetrate the gravest international crimes.⁷⁵ It is also not clear whether the international community will take any measure to undertake any convention that will consider implementing any jurisdictional paradigm shift to allow international judicial bodies to prosecute and try international crimes like terrorism.

⁷¹ Ibid, 472

⁷² Ibid, 47

⁷³ Marinar Aksenovan, 'Analyzing the concept of Terrorism, International Offence or Domestic Governance Mechanism', *Journal of Conflict and Journal and Security Law*, (20) (40) (2015) 285

⁷⁴ Ibid, 289

⁷⁵ Kathleen Malowy-Duus, 'Humanization of Terrorism, Crime and International Criminal Law: Equal justice for Victims, Just Treatment of Accused and Fundamental Human Rights at the ICC', *Santa Clara Review of International Law*, (80) (1) (2020) 72

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The international community has witnessed several responses as a result of the September 2001 terrorist attack against the United States. One such response is from the European Union. The joint anti-terrorist fight by EU member States despite their initial problems in reaching consensus, is commendable. The major challenges faced by these member states are that of enforcement of generally agreed commitments and obligations, including how to harmonize their national legislations for the purposes of uniformity in their fight against terrorism.⁷⁶ One key problem that has stood against the smooth implementation of generally accepted obligations is the contentious definition and interpretation of the contents of terrorism by international bodies like the United Nations, the Security Council, etc.

In spite of the foregoing, there is no doubt that the international community is making concerted efforts to fight all terrorist acts and actions.⁷⁷ Indeed, terrorism is now generally seen as a grave offense that harms and endangers the fundamental interests of the whole international community.

⁷⁶ Ibid, 79

⁷⁷ Jonathan Hafetz, 'Terrorism and Terrorist Activities as International Crime: Mediating between Justice and Legality', *Maastricht Journal of European and Comparative Law*, (24) (3) (2015) 189