3. A SEMIOTIC APPROACH TO A LEGAL DEFINITION OF TERRORISM*

I. INTRODUCTION

Terrorism is not a new phenomenon. It has appeared in many different forms throughout the ages and become one of the “plagues of modern society.”\(^{1}\) It is hard to believe that a word like terrorism, which is used so frequently these days in different contexts (including casual, colloquial, political, and legal discourses) does not have a universally accepted definition.\(^{2}\) The academic literature on defining terrorism is vast.\(^{3}\) At the United Nations, an unending debate has

\* This chapter originally appeared as an article in 9 ILSA Journal of International and Comparative Law 357–89 (Spring 2003). The original article has been revised, updated, and expanded to include analyses and interpretations of literary representations of terrorism such as Joseph Conrad’s classic novel, The Secret Agent, written in 1907 concerning terrorist acts committed in 1894, and cinematographic representations of terrorism such as the movie Hotel Rwanda that appeared in 2005 covering the recent genocide and terrorist acts in Rwanda in 1994 . . . I would like to thank Professors Aaron Schwabach and Richard Scott of the Thomas Jefferson School of Law and Professor Malvina Halberstam of the Benjamin N. Cardozo School of Law for reading earlier drafts of the original article. Special thanks to Professor Cherif Bassiouni for his insightful comments about the article. I delivered a shorter version of that article for a War, Crimes, and Terrorism Conference: The Role of International Courts and Tribunals that I organized at the University of Nice School of Law in France on July 17, 2002. The conference included Judge Claude Jorda of the International Criminal Tribunal of the Former Yugoslavia, Judge Lucius Caflisch of the European Court of Human Rights, and Judge Rosalyn Higgins of the International Court of Justice, as well as leading scholars in the field such as Professors Catharine MacKinnon, Malvina Halberstam, William Ginsberg, and Norman Silber. A different version of that article was also delivered at the American Branch of the International Law Association on Oct. 24, 2002 in New York for a panel devoted to September 11th and the War on Terrorism.


3. Alex Houen, Terrorism and Modern Literature, From Joseph Conrad to Ciaran Carson 7 (2002) (Footnote 19 lists the following sources dealing with terrorism:

Decoding International Law. Susan Tiefenbrun.
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focused on whether terrorism should or can be defined. Some argue that as there is no agreement about what conduct is prohibited or what uses of force, by whom, and in what circumstances certain acts are considered to be terrorism, any attempt at a definition is doomed to failure. Others argue more rationally that normative responses to prohibited conduct can only be devised with agreement or consensus as to what conduct is actually prohibited. It is not enough to say, as U.S. Supreme Court Justice Potter Stewart once did of pornography, “we know it when we see it.”


5. See Susan Tiefenbrun, Legal Semiotics, supra Chapter 2 of this book and earlier in 5 Cardozo Arts & Ent. L.J. 89 (1986) (discussing the application of semiotics to the law and the meaning of deconstruction).

6. In the US Antiterrorism Act of 1990, the United States defines the term international terrorism to mean activities that: “(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping; and (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.” (US Antiterrorism Act of 1990, Pub. L. No. 101-519, 104 St. 2250 (codified at 18 U.S.C. § 2331 (Supp. 1991)), cited in U.S. Federal Legal Responses to Terrorism 74–75 (Yonah Alexander & Edgar H. Brenner eds., 2002).

7. Yonah Alexander et al., ETA: Profile of a Terrorist Group 4 (2001). “The ETA proclaims the right of the Basque people to self-rule and the use of the most appropriate
arguably falls within the laws of war. In the U.N. debate about the definition of terrorism, the West was—and still is—concerned that a definition could be used to include State-sponsored terrorism, while the Third World is concerned that a definition emphasizing non-State actors might fail to differentiate between terrorism per se and the struggle for national liberation. Clearly, the basic problem in this quest for a definition “is the lack of a single criterion determining the fundamental component elements of the definition of the term ‘terrorism.’”

A semiotic approach to defining terrorism is designed to uncover the basic structural elements of the meaning of the term. As previously noted in Chapter 2, semiotics is the science of signs. A semiotic approach to the meaning of the term terrorism involves decoding its multiple codes and includes an investigation of its hidden meanings and connotations as well as denotations in order to means to achieve its goal.” Id. at 4. Recently a terrorist attack occurred in Madrid, and the Spanish government blamed the Basque separatist group ETA for a car bomb that exploded outside the Madrid office of a unit of infrastructure company Grupo Ferrovial SA. This was the latest apparent flare-up in ETA’s violent campaign against a planned bullet train linking the Basque region to Madrid. The bomb shattered windows and destroyed parked cars, but no one was hurt. See Thomas Catan, Madrid Blames Bomb on ETA, WALL STREET J., Feb. 10, 2009, at A12.

8. Christopher L. Blakesley, Terrorism, Drugs, International Law, and the Protection of Human Liberty 17, 20 (1992). Blakesley defines terrorism as “violence aimed at innocents (or non-combatants) to gain an edge over, or to coerce, a third party. This is different from justifiable and legal revolutionary violence, which seeks liberation from oppression or restriction on one’s own sovereignty (assuming such acts of revolutionary violence fall within the laws of war)” (cited in Douglas J. Davids, Narco-Terrorism: A Unified Strategy to Fight a Growing Terrorist Menace 2 (2002)). See also Louis Rene Beres, The Legal Meaning of Terrorism for the Military Commander, Conn. J. INT’L. L. 9 (1995), with Beres arguing that the failure of insurgents to comply with the laws of war does not convert these military forces into terrorists, but it does make them guilty of war crimes and possibly even crimes against humanity. Cherif Bassiouni argues convincingly that terrorist methods can occur during armed conflict; therefore, terrorism can be included under war crimes. I maintain that terrorism can be included under war crimes only if the five elements of the definition of terrorism (discussed in this chapter) are present.

9. Higgins, supra note 2, at 17. Higgins concludes that the term terrorism has no specific legal meaning. Id. at 27.

10. Id. at 16. Statement cited in Higgins by the representative of Mexico to the United Nations during the U.N. debate on the definition of terrorism.

11. Any attempt here at a definition of semiotics is at best preliminary and partial. See Tiefenbrun, supra note 5, for a history of semiotics as it applies to the law. See also COLLECTED PAPERS OF CHARLES SANDERS PEIRCE 335 (Charles Harshone & Paul Weiss eds., 1960). By semiotics or semiosis, Peirce means the interplay of three subjects: a sign, its object, and its interpretant. See also Umberto Eco, A THEORY OF SEMIOTICS 7 (1976), citing Ferdinand de Saussure’s definition of semiotics: “a science that studies the life of signs at the heart of society.”
expose the deep structure of the term and unravel its complexities. Each element of the definition would act as a sign for the identification of a terrorist act. The elements of the definition are either necessary or sufficient for the act to be deemed a terrorist act.

At least two major obstacles must be overcome to arrive at a universally accepted definition of the term. First, it is necessary to distinguish between three different conceptions of terrorism: terrorism as a crime in itself, terrorism as a method to perpetrate other crimes, and terrorism as an act of war. When terrorism is conceived of as a crime, its elements and defenses can be identified and analyzed. When terrorism is conceived of as a method to perpetrate other crimes, terrorism will sometimes overlap with other crimes such as crimes against humanity, genocide, war crimes, rape, etc. When terrorism is conceived of as an act of war, the laws of war will cover the legal responses to it. State responses to terrorism require the balancing of a State’s right to defend itself proportionally against threats of the illegal use of force or acts of aggression, as included under the U.N. Charter norms.12

The second obstacle is the need to resolve the term’s underlying paradoxes. Terrorism is a phenomenon steeped in varying and often conflicting political and ideological beliefs. Given that States have fundamental rights to self-defense and self-determination, we can ask whether terrorism is legitimate if it is perpetrated in self-defense or in an attempt to achieve self-determination.

This chapter will uncover five basic elements of the crime of terrorism that are deeply embedded in each of the many definitions proposed by the United States in its laws, and by many other nations, scholars, and international organizations such as the United Nations. This chapter will attempt to show that under certain circumstances requiring the presence of the basic five elements of the crime, terrorism can be included in other specifically defined international crimes such as war crimes, crimes against humanity, and genocide. I will also look comparatively at the U.S., English, French, European, and Canadian definitions of terrorism as well as the U.N.’s attempt to define terrorism in its seventeen multilateral conventions. I will also examine different definitions proposed by leading scholars in the field of international law and the law of terrorism. Finally, I will look at two different literary and cinematographic representations

of terrorism: Joseph Conrad’s novel *The Secret Agent* (1907) and the more recent movie *Hotel Rwanda*. By applying semiotic analysis to these literary texts, I will attempt to tease out their hidden legal issues in order to shed light on the complex problem of terrorism.

This chapter will distinguish between international and domestic terrorism and will uncover the existence of three different conceptions of terrorism that have profound implications for the adjudication of terrorist acts. Terrorism is conceived of as a crime, as a method, and as an act of war. These different conceptions of terrorism lead us to question which tribunal would be appropriate to try international terrorists. Finally, I will focus on the paradoxical nature of terrorism which complicates the establishment of a universally accepted definition of the term.

**II. ELEMENTS OF THE CRIME OF TERRORISM**

*Black’s Law Dictionary* defines terrorism as: “the use or threat of violence to intimidate or cause panic, especially as a means of affecting political conduct.”

Scholars have attempted to further define the term, resulting in many different definitions that can all be reduced to five basic structural elements:

1. The perpetration of violence by whatever means;
2. The targeting of innocent civilians;
3. The intent to cause violence or with wanton disregard for its consequences;
4. The purpose of causing fear, coercing, or intimidating an enemy;
5. The undertaking in order to achieve some political, military, ethnic, ideological, or religious goal.

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16. See id. “It is difficult to classify the term ‘terrorism’ or provide it with a clear definition or interpretation . . . Nonetheless, the majority of the definitions have a common basis—terrorism is the use of violence and the imposition of fear to achieve a particular purpose, generally entailing the aspiration to overthrow an existing regime, or fight it, and where the persons forming the group organize in a tightly controlled structure . . . need to determine whether the activities of the particular group are morally supported by the state.”
17. These basic five elements are a variation of Blakesley’s elements. Blakesley, *supra* note 8, at 37. Blakesley’s five elements include “conducting the above acts without justification or excuse” but do not include “ethnic or ideological” goals (termed “benefits” in
Normally the violence associated with terrorism is perpetrated without justification or excuse in an aim to gain publicity for the cause.\textsuperscript{18} The European anarchists at the end of the nineteenth century called their violent acts “propaganda by the fact,”\textsuperscript{19} thus describing their own bloody deeds with euphemistic irony. In this sense terrorism is similar to extreme forms of civil disobedience\textsuperscript{20} in which the perpetrators resort to violence to gain publicity for a cause that is presumably their objection to an unjust law or an example of societal oppression. Normally State-sponsored terrorists do not seek publicity, but individual terrorists thrive on publicity for their cause.\textsuperscript{21} State responses to acts of civil disobedience have sometimes resulted in the use of force. Similarly, the peacetime use of terrorism by a State against passive resistance is arguably justified in order to maximize compliance to a new State policy.\textsuperscript{22} However, I will attempt to show that terrorism in any form and for whatever reason is unjustified.

The structural elements of the definition of terrorism need further analysis. What actually constitutes violence? The dictionary definition of violence includes unjust or unwarranted use of force (usually accompanied by fury, vehemence, or outrage), as well as physical force unlawfully exercised with the intent to harm.\textsuperscript{23} But there is a broad spectrum to the definition of violence. Some courts have held that violence is not limited to physical contact or injury, but may also include picketing in a labor dispute conducted with misleading signs, false statements, erroneous publicity, and veiled threats by words and acts.\textsuperscript{24} Violence has many forms and degrees of severity. An act is violent only if it causes harm to persons and things,\textsuperscript{25} but violence in any form can inspire terror in its victims and in those people who are indirectly affected by it. What is an “innocent civilian?” There is no agreement as to who is actually included in this category,\textsuperscript{26} but we are tempted to say “we know an innocent civilian when we see one.” If only one innocent civilian is killed or seriously injured

\footnotesize{Blakesley’s listing). Blakesley’s elements also do not include the word fear, which is key to the definition of the term terrorism.}
\footnotesize{18. See Walter Laqueur, Reflections on Terrorism, Foreign Affairs 65 (1986), at 86–88 (cited in Davids, supra note 8, at 2).}
\footnotesize{19. Bourrinet, supra note 1, at 4.}
\footnotesize{20. See infra Chapters 6, 7, and 8 on the nature of civil disobedience. See also Susan W. Tiefenbrun, Classic Greek Themes in Contemporary Law: On Civil Disobedience, Jurisprudence, Feminism and the Law in the Antigones of Sophocles and Anouilh, 11 Cardozo Stud. L. & Lit. 35 (1999); see also Susan Tiefenbrun, Semiotics and Martin Luther King’s “Letter from Birmingham Jail,” 2 Cardozo Stud. L. & Lit. 255 (1992).}
\footnotesize{21. Bassiouni, supra note 2, at 29.}
\footnotesize{22. Id. at 32.}
\footnotesize{23. Black’s Law Dictionary, supra note 13, at 1564.}
\footnotesize{24. Id.}
\footnotesize{25. Bassiouni, supra note 2, at 8.}
\footnotesize{26. Id. at 15.}
during an act of war motivated by self-defense, will this be enough to call it a terrorist act? What are the legitimate defenses to the unintentional killing of an innocent civilian during wartime? Is collateral damage from the use of force during wartime a legitimate defense to killing innocent civilians? These are only some of the questions that the element of violence against innocent civilians raises as we attempt to propose a universally accepted definition of terrorism.

The element of *intent* or *wanton disregard* is less troublesome because of established definitions used by the courts to determine the mental state of an accused. What is more troublesome is the element of *fear*, which is not a legal term but a psychological phenomenon manifested by various signs and symptoms such as trembling, shaking, sweaty palms, etc. Intimidation, which was established as a common law tort in England in 1964, is unlawful coercion that produces harm.

The manifold purposes of terrorism include the accomplishment of a political, military, ethnic, ideological, or religious cause. The overriding purpose is a necessary element of the definition. Political, ethnic, ideological, and religious goals are not troublesome within the definition of terrorism. However, the accomplishment of a *military goal* is controversial. If a military goal is added to the definition of terrorism, this places a burden on combatants never to use terrorism during wartime. Individuals, small groups, and States have been known to commit terrorist acts in the context of wars of national liberation.

### III. The Many Definitions of Terrorism

Even though there are many definitions of terrorism available for legislative purposes, terrorism per se has never been explicitly defined in any of the seventeen existing multilateral anti-terrorism conventions. Moreover, the multilateral conventions are not applicable to State-sponsored terrorism—they apply only to

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30. Bassiouni, *supra* note 2, at xxvi. The Convention for the Suppression of the Financing of Terrorism, Article 2.1 (b), U.N. Doc. A/54/109 (Dec. 9, 1999) proposes an indirect definition of terrorism: “Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.” *Id.*
terrorism committed by individual actors. The absence of a universally accepted definition of terrorism and the inapplicability of multilateral anti-terrorism legislation to State-sponsored terrorism reflect the deeply political nature of the term and the absence among nations of commonly shared values 31 about the rule of law, the legitimacy of goals, and the means to achieve these goals. For example, the international community cannot agree on whether the intimidation or actual attack on an “innocent civilian” is a necessary or simply a sufficient element of the definition. It also cannot agree on who should be included in the category of “innocent civilians” or “diplomats” or “civilian installations” or “legitimate targets.” 32 Finally, the international community cannot agree on whether terrorism is illegal under all situations or whether it is sometimes permissible to achieve a legitimate goal. Some international organizations proclaim that the right to self-rule legitimizes the use of the most appropriate means (including terrorism) to achieve the goals of liberation and independence. 33

A. U.S. Definitions of Terrorism

In the United States there is general confusion about what constitutes terrorism. 34 The United States has shifted its conception of terrorism as a “crime” to terrorism as an “act of war.” 35 In the past, the United States classified international terrorism as a crime and applied legal means as the primary tool to fight it. 36 More recently however, the United States has moved away from reactive counter-terrorism law enforcement methods towards more proactive techniques to fight international terrorism. This shift has occurred because the United States now perceives terrorist acts as acts of war. 37 In its “war against terrorism,”

31. Id. at 15.
32. Id.
33. Alexander et al., supra note 7, at 4; see also id. at 6 (“Between 1963 and 1965 the terrorist organization adopted the principles of revolutionary war because it was influenced by the successes of the independence war in Algeria and the Cuban revolution. Marxist theory was predominant in its ideology. ETA’s purpose was to change the state through an uprising of the people, the destruction of the oppressor state, and finally, the assault to power”).
37. Id.
the United States uses expanded law enforcement and intelligence agencies such as the FBI and CIA to fight terrorism—and these agencies have their own definitions of the term.

In the U.S. federal system, each state determines what constitutes an offense under its domestic criminal or penal code. States define terrorism generically as a crime. For example, the Arkansas Criminal Code provides that “a person commits the offense of terroristic[sic] threatening if, with the purpose of terrorizing another person, he threatens to cause death or serious physical injury or substantial property damage to another person.” 38

The U.S. Congress has not been able to reach a consensus on a working definition of terrorism. 39 The executive branch has also not developed a coordinated position on the meaning of the term. 40 The absence of a generally accepted definition of terrorism in the United States allows the government to craft variant and vague definitions that can result in an erosion of civil rights and the possible abuse of power by the State in the name of fighting terrorism and protecting national security.

1. U.S. 1996 Anti-Terrorism Act’s Definition of Terrorism In the 1996 U.S. Anti-Terrorism Act and Effective Death Penalty Act, 41 the United States defines international terrorism as:

[T]he unlawful use of violence against the United States, citizens of the United States or any other nation, outside the boundaries of the Unites States, apparently intended to intimidate or coerce a civilian population, influence government policy, or to affect the conduct of a government for political or social objectives. 42

This definition includes the five basic elements outlined above, but does not list specific terrorist acts that can be classified as criminal. 43 The advantage of not listing specific acts as terrorist acts is that as new forms of technology are created, new forms of terrorist acts are likely to develop, and this law will still cover these new modalities. The disadvantage of not listing specific acts as terrorist acts is that it will be left up to policy makers to determine who is and who is not committing terrorist acts. A subjective definition leaves too much room for political bias to affect the decision.
Despite the inclusion of a definition of terrorism in the U.S. 1996 Anti-Terrorism Act, some civil libertarians have attacked this law, basing their objection on a dubious claim that the Act does not contain a definition of terrorism. A more valid claim might be that the Act does not explicitly designate specific acts constituting terrorism. Civil libertarians have expressed a legitimate fear that the alleged absence of a definition will have the following deleterious result: that “terrorism” will be whatever the Secretary of State decides it is, with the possibility the Secretary may designate a foreign group as a terrorist organization if the Secretary “finds that the group ‘engages in terrorist activity’ that threatens the security of United States nationals or the national security of the United States.”\textsuperscript{44} The absence of a universally accepted definition of terrorism and the failure to list specific acts as terrorist acts could cause this bad result in other countries besides the United States.

2. The 2001 United and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (U.S. Patriot Act)\textsuperscript{45} President George Bush of the United States actually defined the term terrorism in an anti-terrorism act known as the U.S. Patriot Act: “For crimes to be defined as ‘terrorist acts’ the government must show that they were calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct.”\textsuperscript{46} However, this definition requires insight into the mental state of the perpetrator, does not specifically identify the necessary element of violence, and reduces the purpose clause to achieving political goals (i.e., influencing government conduct).

Some civil libertarians have objected to the erosion of civil liberties in the 2001 Patriot Act because it authorizes executive detention on the mere suspicion that an immigrant has at some point engaged in a violent crime or provided humanitarian aid to a proscribed organization. It is noteworthy and highly symbolic that President Barack Obama ordered the closing of Guantanamo Detention Center within one year as one of his very first executive acts because of the perceived abuse of power allowed by the Patriot Act. Provisions in this Act authorize guilt by association and give the government power to deny entry to aliens for reasons that are arguably “pure speech” acts.\textsuperscript{47}


\textsuperscript{44} James X. Dempsey & David Cole, Terrorism & the Constitution: Sacrificing Civil Liberties in the Name of National Security 119 (1999). See also Binimow & Bunk, supra note 41.
\textsuperscript{46} Id. at §802 (9) (5)(b), p. 396. See also 18 U.S.C.A. section 2331 (j) (B).
\textsuperscript{47} Dempsey & Cole, supra note 44.
Financing of Terrorism (1999), was signed into law on October 26, 2001 as Title III of the U.S. Patriot Act. This statute requires the Secretary of the Treasury to implement numerous changes under a strict timetable in order to follow the trail of those who finance terrorism. Due diligence measures require the identification of the beneficial owners of bank accounts.

The United States has designated a variation on the domestic form of terrorism called global terrorism. For example, President George Bush signed Executive Order 13244 on September 23, 2001 requiring U.S. persons to block the assets of a new category of sanctioned parties, known as “specially designated global terrorists” (SDGTS). This category includes individuals, organizations, charities, and business entities as well as U.S. persons, U.S. citizens and permanent residents, and both U.S. corporations and their non-U.S. branches. The Office of Foreign Assets Control of the U.S. Department of the Treasury implements the executive order. President Bush threatened to freeze assets and transactions of banks and other financial institutions that refuse to share information about terrorists. An action to freeze assets was also taken by the U.N. Security Council on October 15, 1999 under Chapter VII of the U.N. Charter via Resolution 1267. Similar actions were taken against Osama bin Laden on December 19, 2000 pursuant to Security Council Resolution 1333.

4. FBI’s Definition of Terrorism Since 1980, the Federal Bureau of Investigation (FBI) has defined terrorism as: “the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in the furtherance of political or social objectives.”

The FBI definition does not include the basic five elements because it omits the necessary element of intent and limits the purpose to the achievement of “political or social objectives.” Moreover, the definition does not specifically include or exclude State-sponsored terrorism. If the definition of terrorism does not include the element of intent to coerce or intimidate, then any criminal (such as the Son of Sam) who kills just for the sake of bloodthirsty violence could be deemed a terrorist.

52. United States Department of Justice, FBI, Terrorism in the United States, 1988 (Terrorist Research and Analytical Center, Counter-Terrorism Section, Criminal Investigative Division, Dec. 31, 1988), at 34, cited in Terrorism and the Law, supra note 34, at 4, n.7.
5. U.S. State Department’s Definition of Terrorism  The U.S. Department of State defines terrorism as: “premeditated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents, usually intended to influence an audience.”53 This definition includes all five elements and the requisite intent, but it limits the purpose to “politically motivated” goals. The U.S. State Department’s definition arguably excludes terrorism committed by a State because it lists only “sub-national groups or clandestine agents.” However, if the term agents refers to “agents of the State,” then State-sponsored terrorism is included in this definition.

6. U.S. Department of State’s Definition of International Terrorism  The U.S. Department of State defines the term international terrorism as: “terrorism involving citizens of the territory of more than one country.”54 The requirement of more than one country in this definition refers to both perpetrators and victims. The U.S. Department of State also defines the term terrorist group to mean “any group practicing, or that has significant subgroups that practice international terrorism”.55 Because international terrorism refers back to terrorism, which includes only subnational groups or clandestine agents, arguably the Department of State’s definition of international terrorism does not cover State-sponsored terrorist acts, unless the term agents refers to the State.

B. England’s Definition of Terrorism  The United Kingdom has undergone an evolutionary process in defining terrorism. England defined terrorism in the English Prevention of Terrorism (Temporary Provision) Act of 198456 and in the English Prevention of Terrorism (Temporary Provision) Act of 1989 as follows: “Terrorism means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.”57 However, this definition is overly broad, does not include the element of intent, expansively includes “civilians” in the category of “any section of the public” (which could include combatants), and limits the goal to “political” benefit. The perpetration of violence without the requirement of intent could produce odd results. For example, demonstrators for a political cause who end up in a brawl might be deemed

54. Id.
terrorists. An accidental killing by the police or the army, which is hardly an act of terror, might still fall within this definition.58

In 1996, Lord Lloyd defined terrorism as “the use of serious violence against persons or property or the threat to use such violence, to intimidate or coerce a government, the public, or any section of the public, in order to promote political, social, or ideological objectives.”59 This definition remedies the deficiencies of the earlier one that placed limitations on goals and modifies the act of violence by describing it as “serious violence.” However, it maintains the element of “civilians” in the broad category of “any section of the public” and still falls short of including an element of intent.

In the 1999 Prevention of Terrorism Bill, the British government defined terrorism even more broadly to include expressions of extremism by groups such as the Animal Liberation Front that had only one issue as its cause.

The more recent United Kingdom Terrorism Act of 200060 defines terrorism in Section (1):

Terrorism means the use or threat of action where the action falls within subsection (2) (i.e. violence, serious damage, endangering life, etc.) and (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

Terrorist action is further defined in Section 1(2) as:

Acts involving serious violence against a person, serious damage to property, acts that endanger a person’s life, other than that of the person committing the action; acts that create a serious risk to the health or safety of the public or a section of the public, or acts designed seriously to interfere with or disrupt an electronic system.61

Thus, English law continues to omit the element of intent in its definition of terrorism. Moreover, it specifically lists certain acts as being terrorist acts, such as environmental terrorism, biological terrorism, and even computer hacking. English law on terrorism is extraterritorial and covers terrorist actions outside the United Kingdom and those committed by the government of a country outside of the United Kingdom.62

As a matter of comparative law, U.S. law and UK law are quite different with regard to the definition of terrorism. The UK Terrorism Act of 2000 provides a

58. See Gross, supra note 15, at n.20.
60. United Kingdom Terrorism Act of 2000, Ch. 11 § 1(1) (July 20, 2002).
61. TERRORISM AND THE LAW, supra note 34, at 4–5.
62. Id. at 6.
broad definition of the criminal act of terrorism (“serious violence against a person, serious damage to property, acts that endanger a person’s life”) and also specifically names certain terrorist acts (“acts that create a serious risk to the health or safety of the public . . . or disrupt an electronic system”). In contrast, the U.S. 1996 Anti-Terrorism Act includes the element of intent but softens the requirement by adding the adverb apparently to the element of intent (“apparently intended to intimidate or coerce a civilian population. . . .”). As previously noted, the U.S. law on terrorism does not specifically list the acts that constitute terrorist criminal acts.

The English approach to terrorism may have odd but beneficial results. If Greenpeace were to threaten to disrupt a government computer system (e.g., to put pressure on Iraq for dealing with its Kurd population in an inhumane manner), the Greenpeace movement would be committing an act of terrorism. As odd as this result may seem given its laudable purpose, in my view the identification of the Greenpeace organization’s act as a terrorist act would be correct in this instance because terrorist acts are not justified, even if they are committed for humanitarian purposes.

C. France’s Definition of Terrorism
The French coined the term terrorism during the French revolution in the period following the fall of Robespierre in 1793–94 under the infamous Reign of Terror. The French dictionary definition of terrorism is “violence committed by an organization in order to create a climate of insecurity or in order to overthrow the established government.” This definition eliminates the elements of intent and harm to innocent civilians and limits the purpose to the achievement of political goals. In France, the term terrorism is also included under the definition of crimes against humanity. As a result of the famous Klaus Barbie case, a new

63. Id.
64. David B. Kopel & Joseph Olson, Preventing a Reign of Terror: Civil Liberties Implications of Terrorism Legislation, 21 OKLA. CITY U.L. REV. 247, 251 (1996). The term terrorism was conceived during the French Revolution when the government created a reign of terror to execute political opponents, requisition their property, and impose terror over the remainder of the population until they yielded to the government.
66. Id.
67. See Leila Sadat Wexler, The Interpretation of the Nuremberg Principles by the French Court of Cassation: From Touvier to Barbie and Back Again, 32 COLUM. J. TRANSNAT’L L. 289 (1994). As a result of the French court’s decision in the Barbie case, the court found that to be guilty of a crime against humanity, a person had to intend to take part in carrying out a common plan by systematically committing inhumane acts and illegal persecutions in the name of a state practicing a hegemonic political ideology. Because Vichy, France could not be considered a hegemonic state, Touvier could not, as a matter of law, have committed a crime against humanity. Sadat points out that there is no requirement to prove a
law defining crimes against humanity had to be adopted in the French Criminal Code. The term *terrorism* is specifically defined in the French Criminal Code:68

“Acts are terrorist acts when they are intentionally committed by an individual entity or by a collective entity in order to seriously disturb law and order by intimidation or by terror.”69

Unlike the U.S. law, which does not list particular acts as being terrorist acts, the French law specifically names and describes the acts constituting terrorism. Article 421-1 of the French Criminal Code lists the following acts as terrorist acts:

- Attempted murder, assault, kidnapping, hostage-taking on airplanes, ships, all means of transport, theft, extortion, destructions, and crimes committed during group combat, the production or ownership of weapons of destruction and explosives including the production, sale, import and export of explosives, the acquisition, ownership, transport of illegal explosive substances, the production, ownership, storage, or acquisition of biological or chemical weapons, and money laundering.

Article 421-2 of the French Criminal Code70 continues the list of terrorist acts to include environmental terrorism: “... Placing in the air, on the ground, under the ground and in the water (including territorial water) any substance that would put the health of man and animals or the environment in danger.”

Article 421-2-1 of the French Criminal Code71 makes it illegal to belong to or participate in a group formed for the purpose of planning one of the terrorist acts named above.

Article 421-2-2 of the French Criminal Code72 makes it illegal for anyone to finance a terrorist organization by intentionally providing, collecting, or managing funds of any value whatsoever—or by giving advice for the purpose of

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69. Translations of Article 421-1 and other pertinent Articles of the French Criminal Code are provided by Susan Tiefenbrun. The term *ordre public* refers to “public policy” or to “law and order.”


financing terrorism—if that person knows these funds are going to be used fully or partially for the purpose of committing terrorist acts, whether or not the terrorist act actually occurs.

Article 421-3 of the French Criminal Code\(^73\) sets forth penalties ranging from six years to life imprisonment for the commission of a terrorist act. Article 421-4 of the French Criminal Code\(^74\) adds monetary penalties to the prison sentence. For example, a convicted terrorist imprisoned for fifteen years might also be required to pay a monetary penalty of 225,000 Euros. If an alleged terrorist is convicted of killing one or several people, the terrorist would be sentenced to imprisonment for life and would be required to pay a penalty of 750,000 Euros. Article 421-5 of the French Criminal Code\(^75\) provides that an alleged terrorist who is sentenced to ten years of imprisonment must also pay a penalty of 225,000 Euros.

Article 422-1 of the French Criminal Code provides an exemption for informants. Anyone who has attempted to commit a terrorist act, but who informs the administrative and judicial authorities in advance of the commission of the act and facilitates the avoidance of the terrorist act and the identification of the other guilty parties will be immune from imprisonment and penalties.

Article 422-2 of the French Criminal Code permits the reduction of a prison sentence by half for anyone who committed a terrorist act or aided a terrorist act if that person, either by warning or informing the administrative or judiciary authorities, enabled the terrorist act to be avoided, enabled anyone’s death or permanent injury to be avoided, or provided the names of the other guilty parties. A life sentence will be reduced to twenty years for such assistance.

Article 422-5 of the French Criminal Code expressly requires that corporations (personnes morales) engaging in terrorist activities pay monetary penalties. Article 422-6 of the French Criminal Code\(^76\) includes confiscation of property as a penalty for any person or corporation engaging in terrorist activity.

Article 422-7 of the French Criminal Code\(^77\) provides that any financial penalties imposed on the terrorists will be given to the victims’ funds.

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Article 434-2 of the French Criminal Code\textsuperscript{78} imposes a five-year prison sentence and a fine of 75,000 Euros on anyone attempting to harm the fundamental interests of the nation by a terrorist act.

Article 434-6 of the French Criminal Code\textsuperscript{79} imposes a penalty of three years imprisonment and 45,000 Euros for anyone aiding a terrorist who receives a ten-year prison sentence. Aiding and abetting may be found if a person simply offers a terrorist lodging, subsidies, means of subsistence, or any other form of assistance. The penalty for aiding and abetting can be increased to five years of imprisonment and 75,000 Euros. However, relatives of the terrorist (parents, brothers, sisters and their spouse) and the spouse of the terrorist or the person with whom the terrorist is living are not included in the list of potential aiders and abettors.

D. European Nations’ Definitions of Terrorism

The European Convention on the Suppression of Terrorism\textsuperscript{80} was signed by 17 out of 19 Member States of the Council of Europe in January 1977. According to this treaty, all States must treat assassination, hostage taking, bomb attacks, and hijacking (major terrorist offenses) as “common crimes” and cannot refuse extradition. However, an escape clause was inserted into the European Convention on the Suppression of Terrorism permitting the contacting State to reserve the right to regard a certain offense as a political one. This escape clause would enable that State to withhold extradition. The Member States of the European Union strengthened this provision via the European Convention on Extradition.\textsuperscript{81}

E. Canada’s Definition of Terrorism

Canada has recently made strong legislative proposals in an attempt to combat terrorism. The Canadian Anti-Terrorism Act takes aim at terrorist groups, but also seeks to strike an appropriate balance between respecting Canadian values of fairness and respect for human rights and protecting Canadians and the global community from terrorism. This balance is accomplished by providing what

\begin{itemize}
  \item \textsuperscript{78} Article 434-2 (Ordonnance No. 2000-916 du 19 septembre 2000 art. 3 Journal Officiel du 22 septembre 2000 en vigueur le 1er janvier 2002).
  \item \textsuperscript{81} Paul Wilkinson, Terrorism Versus Democracy: The Liberal State Response 193 (2001).
\end{itemize}
the Canadian Department of Justice refers to as checks and balances in the form of “clear definitions”\(^{82}\) of terrorism.

Terrorist activities in Canada have always been treated as criminal offenses. Under the Canadian Criminal Code, terrorists can be prosecuted for hijacking, murder, and other acts of violence. The Canadian government has signed twelve U.N. conventions and protocols\(^{83}\) related to terrorism and has ratified ten, including those that protect against harming aircraft, civil aviation and airports, international shipping, and internationally protected persons and diplomats. They also address the safety of nuclear material and the prevention of taking of hostages and terrorist bombings. According to its Department of Justice, Canada plans to ratify the remaining two U.N. counter-terrorism conventions dealing with the suppression of both terrorist financing and terrorist bombings. Canada also expects to ratify the Convention on the Safety of United Nations and Associated Personnel Convention (1994), ensuring the safety of U.N. personnel (including peacekeepers) from attacks against their person, official premises, private accommodations, and modes of transport. Canada proposes to amend its Criminal Code to implement these U.N. conventions and to establish provisions aimed at disabling and dismantling the activities of terrorist groups and those who support them.

Canadian law defines a \textit{terrorist activity} in its Criminal Code as an action taking place either within or outside of Canada that “is an offense under one of the ten United Nations anti-terrorism conventions and protocols”\(^{84}\) or is an “act or omission, in or outside Canada, that is committed for a political, religious, or ideological purpose, objective or cause” and that “intentionally causes death or serious bodily harm to a person by the use of violence, endangers a person’s life, causes serious risk to the health and safety of the public, etc.”\(^{85}\)

This Canadian definition of terrorism does not explicitly include the word \textit{violence}, but it is implied in the descriptive term “seriously harming or endangering.” Although the element of “innocent civilians” is not designated with particularity, the broad terms \textit{a person} and \textit{people} imply civilians.

The element of intent is also not specified but merely implied vaguely in the words “an action is taken.” Some insight into the element of intent implied in these words can be gleaned by looking at the list that Canadian law provides of specific acts of terrorism. Unlike the definition of terrorism in U.S. law, the Canadian law lists specific terrorist acts, including the disruption of an essential


\(^{83}\) See infra Part III(F) for discussion of UN Definitions of Terrorism in Conventions, Protocols, and Resolutions.

\(^{84}\) Canadian Criminal Code, R.S., 1985, C-46, Section 83.01 (1)(a) contains the definition of the “terrorist activities” under the United Nations anti terrorism conventions.

\(^{85}\) Section 83.01 (1) (b), supra note 84, defines the term “terrorism”.

service, facility, or system. It is interesting to note that in an effort to balance civil rights with the protection of national security, Canadian law does not include under the definition of a terrorist act the disruption of an essential service during a lawful protest or a work strike, if the action does not intend to cause serious harm to persons. The emphasis on intent as a condition of terrorist activity in this context strongly supports the view that the element of intent is implied in the definition of terrorism under Canadian law. The element of “fear, coercion or intimidation” is not specified explicitly, but implied in the term threatens. The Canadian definition specifically designates the purpose of the terrorist action as political, religious, or ideological and omits military and ethnic purposes.

Canadian law permits the designation of groups as terrorist groups if their activities meet the definition of terrorist activity.

The Canadian Criminal Code makes it a crime to knowingly collect or provide funds (either directly or indirectly) to carry out terrorist crimes. The maximum sentence for this offense is ten years. It is also a crime to knowingly participate in, contribute to, or facilitate the activities of a terrorist group. Participation or contribution can include knowingly recruiting into the group new individuals for the purpose of enhancing the ability of the group to aid, abet, or commit indictable offences. The maximum prison sentence for the offense of participating or contributing is ten years while the maximum for facilitating is fourteen years. Anyone who instructs another to carry out a terrorist act or an activity on behalf of a terrorist group (“leadership” offense) carries a maximum life sentence. Finally, anyone knowingly harboring or concealing a terrorist can receive a maximum ten-year sentence.

A careful analysis of the Canadian definition of terrorism with respect to the five necessary elements shows that the definition is not as clear as the Canadian Department of Justice would have us believe. It is, however, more specific than U.S. law, which does not list with particularity any acts of terrorism.

F. U.N. Definitions of Terrorism

The United Nations and other international organizations have failed for decades to reach agreement on a common universal definition of terrorism. Nonetheless, U.N. General Assembly and Security Council resolutions repeatedly affirm the U.N.’s determination to combat terrorism in all its forms “irrespective of motive, whenever and by whomever committed.”

The U.N. definition of terrorism contained in a critical 1991 General Assembly Resolution reflects the consensus of the General Assembly and resolves the issue of whether terrorism constitutes a legal response by a State to safeguard its undeniable right to self-determination and self-defense. The General Assembly Resolution “unequivocally condemns, as criminal and unjustifiable, all acts, methods and practices of terrorism, wherever and by whoever [sic] committed.”

The U.N. General Assembly’s definition contained in its Resolution 1991 has reappeared in several subsequent resolutions. This definition makes it clear that even though all people have certain rights (the right under racist regimes or alien domination to self-determination, the right to freedom and independence, and the right to struggle legitimately to achieve this end), people fighting against colonial domination may not resort to the acts proscribed in the antiterrorism conventions.

In December 1999, the U.N. General Assembly Resolution 54/109 defined terrorism as:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature, that may be invoked to justify them.

Kofi Annan further reinforced the U.N. blanket prohibition of terrorism: “Terrorism strikes at the very heart of everything the United Nations stands for. It presents a global threat to democracy, the rule of law, human rights and stability . . . the methods and practices of terrorism [are] criminal and unjustifiable—whoever commits them and wherever they occur.”

The coexistence of a proliferation of antiterrorism conventions and the increase in terrorist acts in 2001 and 2002 indicate the legislative failure by the United Nations to deter acts of terrorism. The international community has been trying to define terrorism since 1937 when the League of Nations first drafted the Convention for the Prevention and Punishment of Terrorism that was signed by twenty-four nations, but ultimately ratified by only India. The United Nations began drafting antiterrorism conventions in the 1960s because of a high
incidence of aircraft hijackings. The United Nations has continued to draft specific antiterrorism conventions for the past sixty-two years to respond to different kinds of terrorist attacks against civilians, diplomats, civilian aircrafts, commercial maritime navigation, and sea-based platforms involving the use of explosives and weapons of mass destruction.\textsuperscript{93}

There are currently seventeen specialized international U.N. conventions on terrorism,\textsuperscript{94} three international conventions on the control of weapons of mass

\textsuperscript{93} Bassiouni, supra note 2, at 1.

\textsuperscript{94} The U.N. conventions on terrorism, and one draft convention on the Suppression of Acts of Nuclear Terrorism are as follows:

- Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312;
- Convention Against the Taking of Hostages [Hostage-Taking Convention], Dec. 17, 1979, 18 I.L.M. 1456;
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction [BWC Convention], Apr. 10, 1972, 11 I.L.M. 309;
destruction; two international conventions containing general U.N. provisions; two U.N. draft comprehensive conventions on terrorism; and eight regional conventions against terrorism that have been developed by the Organization of American States, the Council of Europe, the South Asian Association for Regional Cooperation, the League of Arab States, the Organization of African Unity, the Commonwealth of Independent States, and the Organization of the Islamic Conference.95 There are also international humanitarian law conventions on the prevention and punishment of torture related to terrorist acts. In addition, there are twenty-one international crimes conventions whose commission involves terrorism. Thus, terrorism is included in many different laws prohibiting crimes and human rights violations and covered under international humanitarian law conventions. Nevertheless, the increase in international terrorism and the magnitude of the tragic events that occurred in the years 2001 and 2002 bear witness to the failure of these international conventions to deter the crime.

What is needed is not more laws but better enforcement of existing norms. Due to the political nature of terrorism, States have not been able to reach an agreement on a comprehensive convention that would include all types of terrorist acts and that would apply to State-sponsored terrorism.96 Moreover, as terrorism has been committed in the past by many State actors during the time of war or revolution, many States prefer to leave the definition of terrorism as vague as possible. More conventions will have to be adopted in the future to prevent against the threat or use of weapons of mass destruction, cyberterrorism, and other new forms of terrorism.97 The many existing terrorism laws would be more efficiently collected in one comprehensive multilateral convention.

Nevertheless, the protections that are needed against terrorism will not be adequately provided simply by the creation of new norms. What is needed is the effective enforcement of existing laws, the adoption of one universally accepted definition of terrorism, the agreement by all nations that terrorism must be prohibited irrespective of its motivation, and the application of the existing laws to State-sponsored terrorist acts.98

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95. Bassiouni, supra note 2, at xxviii.
96. Id. at xxv.
97. Id. at xxvi–xxvii.
98. Wilkinson, supra note 81, at 13: “The difference between state and factional terrorism is that the former is more lethal and may be antecedent to, and a contributory
In December 1999, the U.N. General Assembly adopted by consensus the text of a draft of the International Convention for the Suppression of the Financing of Terrorism in which terrorism was indirectly defined in the same terms as the U.N. General Assembly Resolution 54/109 described above:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious, or other nature, that may be invoked to justify them.99

This definition in the U.N. Convention for the Suppression of the Financing of Terrorism does not specifically refer to acts of violence but refers instead to “criminal acts.” The definition arguably includes the element of targeting innocent civilians in the term general public. It includes the element of intent via the words “intended or calculated to provoke.” The requirement of coercion or intimidation is included in the term terror. However, this definition does not include State-sponsored actors. Moreover, the definition expands the motivation of terrorism to almost any possible cause other than military. The definition does convey very clearly that the root cause or motivation of the terrorist act does not provide any justification whatsoever for terrorism. In other words, according to the United Nations, the ends do not justify the means.

G. Scholars’ Attempts at A Definition of Terrorism

One terrorism expert has produced a working definition of terrorism that still falls short of including all five elements: “Terrorism is defined as the calculated employment or the threat of violence by individuals, sub-national groups, and state actors to attain political, social, and economic objectives in the violation of law, intended to create an overwhelming fear in a target area greater than the victims attacked or threatened.”100

This definition does not specifically include the targeting of innocent civilians and limits the perpetrator’s motivations to illegal political, social, and economic purposes. This definition opens the door for States to engage in terrorism by simply declaring that the purpose of the terrorist activity is justified by a legal political, social, or economic goal.

Cherif Bassiouni, who is one of the world’s leading experts in the field of international criminal law, has proposed a definition of terrorism that specifically includes State-sponsored terrorism, which is conceived of not explicitly as a

100. Terrorism and the Law, supra note 34, at 7.
crime but rather as a “strategy,” and which specifically excludes the intent of the perpetrator and the targeting of innocent civilians:

Terrorism is an ideologically-motivated strategy of internationally proscribed violence designed to inspire terror within a particular segment of a given society in order to achieve a power-outcome or to propagandize a claim or grievance, irrespective of whether its perpetrators are acting for and on behalf of themselves, or on behalf of a state.\textsuperscript{101}

By referring to the “ends” as a “power outcome,” a “claim,” or a “grievance,” Bassiouni’s definition cleverly eliminates the consideration of the worthiness of the goals or the claimed justifications for terrorist acts. Arguably, the definition does not specifically include the element of intent. However, as the act is conceived of as a “strategy,” which requires a mental process, the intent element is presumed. Moreover, the phrase “designed to inspire terror” evokes the premeditated intent of the actor. If the element of intent were absent from this definition, a person could presumably be condemned as a terrorist if, in the course of a carefully conducted attack not specifically intended to produce fear and not specifically targeted at innocent civilians, a bomb blast did cause fear in the population and the accidental injury of one or two civilians. The element of intent should be a necessary requirement in the definition of terrorism in order to exclude justifiable attempts at self-defense not involving intentional terrorist acts.

Bassiouni’s definition also does not include the targeting of innocent civilians but refers instead to “a particular segment of a given society.” This broad designation of a particular segment of the population could include the military, especially if acts of international terrorism are claimed to arise in the context of a conventional war or armed conflict of either an international or a non-international character. Bassiouni specifically states that international terrorism arises in the following contexts:

1. Armed conflicts of an international character or of a non-international character:
   a) conventional wars;
   b) wars of national liberation;
   c) conflicts against settler regimes, when the intended power outcomes is either the removal of the settlers or transfer of power from settler group to indigenous population;
   d) resistance against foreign occupation and/or colonial regimes.
2. International political conflicts, which may or may not involve armed conflict or non-international character.\textsuperscript{102}

\textsuperscript{101. Bassiouni, supra note 2, at 16–17.}
\textsuperscript{102. Id. at 18.}
By excluding the innocent civilian element, Bassiouni’s definition of international terrorism would include an attack on combatants as well as noncombatants during an armed conflict. Arguably, an intentional attack on combatants during an armed conflict with the aim of inspiring fear (or terror) within the population of combatants should not be deemed terrorism—rather it is war, pure and simple. Bassiouni’s definition of international terrorism is brilliantly articulated, but would be enhanced if it included the element of innocent civilians in peacetime as well as wartime. Bassiouni uses the word terror rather than fear to define international terrorism, thereby preserving the original denotation of the Latin word terrore (fear producing).

Bassiouni’s definition of terrorism requires the act of violence to be “internationally proscribed.” He carefully lists fourteen specific acts of terrorism (including aggression, war crimes, crimes against humanity, genocide, apartheid, unlawful human experimentation, torture, slavery and slave-related practices, piracy, unlawful acts against the safety of maritime navigation, kidnapping of diplomats and other internationally protected persons, taking of civilian hostages, serious environmental damage, or serious violations of fundamental human rights).

103. Many scholars and journalists include innocent civilians in their definition of terrorism. See Caleb Carr, The Lessons of Terror (2002). Carr is a military historian who defines terrorism as “the contemporary name given to, and the modern permutation of, warfare, deliberately waged against civilians with the purpose of destroying their will to support either leaders or policies that the agents of such violence find objectionable” (cited in Stephen Yagman, Defining the Weapon of Terrorism, supra note 4. See also William Pfaff, The Politics of Terrorism, or Civilians vs. Civilians, Int’l Herald Trib. 8, (Jan. 10, 2002), at op ed page. Pfaff defines as “a form of politico-military combat that attacks civilians . . . because terrorists can’t get at the political and military figures they really want to kill. Terrorism is the weapon that oppressed populations have always employed against those they consider their oppressors, usually because it is the only weapon available.” Note that Yagman objects to Carr’s insistence on “civilians”:

There have been numerous attacks on the military that surely can be characterized as terrorism: the Japanese attack on Pearl Harbor, the attack on the American garrison at Kobat Towers in Saudi Arabia, the terrorist attack on the U.S.S. Cole, while it was moored in Yemen . . . during France’s horrific repression in Algeria, France regularly and openly employed military terrorism against innocent civilians to make concessions to France. American military bombing of a mental hospital in Grenada in . . . 1984 was allegedly fought to free American medical students studying in Grenada. America’s bombing, with Thatcher’s assistance, of Libyan Col Muammar Al al Qaddafi’s family’s home in Tripoli to get even for what Reagan claimed was Qaddafi’s terrorism in which one of Qaddafi’s small children was murdered; President Clinton’s bombing of a pharmaceutical factory in Sudan, where an innocent night watchman was murdered.

These are all military terrorist acts conducted upon innocent civilians.

104. Bassiouni, supra note 2, at 18.
The advantage of this specific listing is the establishment of clarity and certainty in the law. However, the disadvantages are important to recognize. New forms of terrorist acts that develop with the advancement of technology (such as computer hacking) are not specifically included and may fall afoul of the definition, although this list is very broad and seems to cover the unanticipated act of terrorism under such umbrella categories as “aggression,” or “serious violation of fundamental human rights.” Yet absent from this list is “the use of weapons of mass destruction,” which will necessarily (if not intentionally) inflict harm on innocent civilians. Does that mean that the use of the A-bomb during wartime is a terrorist act because it necessarily resulted in the killing of innocent civilians? There may be a political reason to exclude the use of weapons of mass destruction from the list of proscribed terrorist acts.

IV. WHAT IS THE DIFFERENCE BETWEEN INTERNATIONAL AND DOMESTIC TERRORISM?

International terrorism is covered under the seventeen U.N. multilateral antiterrorism conventions that provide legal measures (albeit in a piecemeal and ad hoc fashion) against different manifestations of international terrorist conduct such as hijacking, hostage taking, and violence against diplomats or internationally protected persons. For a terrorist act to be deemed international, the act of violence must contain an international element, be directed against an internationally protected target, or violate an international norm. Internationally proscribed conduct applicable to terrorist violence includes aggression, war crimes, crimes against humanity, genocide, apartheid, unlawful human experimentation, torture, slavery, piracy, hijacking and sabotage of aircraft, kidnapping of diplomats, taking of civilian hostages, serious environmental damage, or serious violations of fundamental human rights.

Domestic terrorism is harder to define than international terrorism because it is usually included in State criminal statutes under acts committed by common criminals. Some States define terrorism as a crime, while others define it as an “act of war,” and most States consider terrorism to be a

105. Id. at 17.
107. Bassiouuni, supra note 2, at 18.
108. Id. at 19.
109. Raimo, supra note 36, at 1481 (discussing the shift in the United States away from reactive counter-terrorism law enforcement methods and towards more proactive techniques to fight international terrorism because the United States now perceives of terrorist acts as acts of war).
method used to commit other more specifically defined crimes against the person or against property.

International terrorism, like domestic terrorism, is a method used to perpetrate other crimes, and as such, it is arguably included under the category of other international crimes—but only if the five necessary structural elements of terrorism are present. Typical tools of modern international terrorism are explosive and incendiary bombings; shooting attacks and assassinations; hostage taking and kidnapping; hijacking; narco-terrorism; cyberterrorism information warfare; and the use of nuclear, chemical, or bacteriological weapons. Terrorists can be convicted of committing war crimes, crimes against humanity, genocide, torture, and even piracy (i.e., the Achille Lauro incident) if they committed these crimes by using terrorist methods. Thus, international terrorism is an elusive concept that overlaps with other international crimes, but that can be included in the definitions of these other crimes if the five necessary elements are present (such as the intentional use or threat of violence for political, religious, or ideological purposes resulting in innocent civilians being harmed).

V. TERRORISM IS NOT ONLY A CRIME BUT A METHOD TO ACHIEVE SELF-DETERMINATION

One of the underlying causes of the resurgence of terrorism in the 1960s and 1970s was the development of social movements dedicated to achieving self-determination or the revolutionary transformation of the socioeconomic order and the concomitant belief by these groups that terrorism was an effective and legitimate weapon to realize their goals. In the 1990s during the course of tragic ethnic wars in the Balkans and in Rwanda, mass terror was used as a weapon on both sides of the respective conflicts, requiring the establishment of

110. Davids, supra note 8, at 2.
112. Wilkinson, supra note 81, at 13. See also Superterrorism: Biological, Chemical, and Nuclear (Yonah Alexander & Milton Hoenig eds., 2001).
ad hoc international tribunals\textsuperscript{114} (and later an international criminal court)\textsuperscript{115} to bring to justice the perpetrators of genocide, crimes against humanity, and war crimes.\textsuperscript{116}

Terrorism per se is not listed as a crime under the subject matter jurisdiction of the ad hoc tribunals.\textsuperscript{117} In the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Article 5 defines crimes against humanity, including “crimes committed in armed conflict, whether international or internal in character, and directed against any civilian population, including murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhumane acts.” Even though this description of crimes against humanity contains all five elements of the definition of terrorism, it fails to name or include terrorism as a crime against humanity.

Similarly, the Statute of the ICTY at Article 3 defines war crimes or “violations of laws or customs of war,” but it does not include the term terrorism per se. Nevertheless, under the definition of war crimes, the Statute of the ICTY prescribes the “employment of poisonous weapons, the wanton destruction of cities, towns or villages, or devastation not justified by military necessity; an attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; and the seizure or destruction or willful damage done to institutions dedicated to religions, charity, and education, the arts and sciences, historic monuments and works of art and science.” This definition of war crimes also contains most of the elements of terrorism, including the use of violence with intent to harm innocent civilians (i.e., “undefended towns”), but does not include the necessary elements of fear, intimidation, and coercion for the purpose of accomplishing a political, military, ethnic, ideological, or religious goal. Moreover, in order for terrorism to be a war crime, the terrorist act has to be perpetrated during an armed conflict. If these last two elements plus the requirement of an armed conflict were included in the act constituting a war crime, that war crime as defined above could also be deemed a terrorist act.


\textsuperscript{116} Wilkinson, supra note 80, at 48.

\textsuperscript{117} See Statute of the ICTY, supra note 114, at Art. 5 defining “Crimes Against Humanity.”
The Statute of the ICTY at Article 4 defines \textit{genocide} as “acts committed with intent to destroy in whole or in part, a national, ethnical, racial or religious group.” The definition of genocide does not specifically include terrorism per se. Nevertheless, if a genocidal act were perpetrated with the intent of furthering a cause by intentionally inspiring fear through violence committed on an innocent civilian population, such a genocidal act would necessarily also be a terrorist act.

Similarly, the Rome Statute of the International Criminal Court\textsuperscript{118} has long lists of elements of different crimes such as crimes of aggression, war crimes, crimes against humanity, and genocide, but terrorism per se is not specifically listed as a crime. Nevertheless, many of the criminal acts listed that can cause terror among the civilian population could arguably be included under the categories of aggression, war crimes, crimes against humanity, and genocide, such as enforced disappearance of persons, rape, apartheid, and other inhumane acts of a similar character intentionally causing great suffering or serious injury to a person including both physical and mental health.\textsuperscript{119}

The implication of conceiving terrorism as a method (i.e., strategy or tool) rather than as a crime is that terrorism can be included in other international crimes of aggression, war crimes, crimes against humanity, genocide and piracy, or torture if the acts of terror and violence also fulfill the five structural elements of the definition of terrorism.

\section*{VI. INTERNATIONAL CRIMES ARE ALSO METHODS OF COMMITTING TERRORISM}

Just as terrorism is both a crime and a method to perpetrate other crimes, the reverse is true—under certain circumstances, international crimes of genocide, war crimes, and crimes against humanity can also be considered methods of terrorism intentionally designed to intimidate and cause fear in a given civilian population.\textsuperscript{120} The right circumstances constitute the presence of the five

\begin{itemize}
\item \textsuperscript{119} Rome Statute of International Criminal Court, \textit{supra} 115, at Article 7.
\item \textsuperscript{120} Bassiouni, \textit{supra} note 2, at xxvi:
\end{itemize}

International crimes such as genocide, crimes against humanity, war crimes, and torture are strategies of terror violence designed to instill terror within a given civilian population. How else could one describe the policies and practices carried out in Cambodia, the former Yugoslavia, Rwanda, and Sierra Leone, to name only a few of the most egregious examples. However, these international crimes are a result of state
structural elements of terrorism. Unless a genocidal act includes acts of violence and the intent to inspire fear in the civilian population for the purpose of accomplishing a political cause, the genocidal act will not be deemed a terrorist act. Similarly, rape, torture, piracy, and other crimes can also be deemed methods of accomplishing terrorism only if the five elements of terrorism are present. Arguably, even if the subject matter jurisdiction of the ad hoc tribunals does not specifically cover terrorism under the list of triable crimes, terrorism as a method may nevertheless be included under the subject matter jurisdiction of the tribunal because it provides the means to perpetrate the specifically delineated crimes. This is also true of the International Criminal Court. But without a consensus as to what terrorism means and without a commonality of values, some States prefer to keep the definition of terrorism in multilateral and domestic legislation as vague and ambiguous as possible. This will not prove to be an effective legal response to terrorism. This indeterminacy in the law brought about by a vague or nonexistent definition of terrorism can result in a multiplicity of interpretations and the instability of the legal system.

Policy and which are committed by state officials, i.e. the military, the police, other forces under the command of public officials. The commission of these crimes depends on the availability of state resources, financial and otherwise. Yet, these crimes are not considered part of what is commonly referred to as “terrorism” by the international community. The reason, as mentioned above, is that states, which are the regulators, have seen fit to not include themselves in the context of “terrorism.” Nevertheless, international crimes committed by states which constitute terror-violence should be deemed part of that category.

Id.

121. Catharine A. Mackinnon, Sex Equality: Rape Law 906 (2001): “Rape in conflict is also used as a weapon to terrorize and degrade a particular community and to achieve a specific political end. In these situations, gender intersects with other aspects of a woman’s identity such as ethnicity, religion, social class or political affiliation. The humiliation of pain and terror inflicted by the rapist is meant to degrade not just the individual woman but also to strip the humanity from the larger group of which she is a part.” Id.

122. See Michael P. Scharf, Editorial: The Case for an International Trial of the Al-Qaeda and Taliban Perpetrators of the 9/11 Attacks, Newsletter of the Interest Group on International Organizations of the ASIL, at 12–15 (Spring 2002) (discussing the advantages and disadvantages of expanding the jurisdiction of the ICTY to cover terrorist acts committed on Sept. 11, 2001 in the United States and to include them under war crimes, crimes against humanity, and genocide by simply amending the temporal and geographic jurisdictional limitation).

123. Bassiouni, supra note 2, at xxvi.
VII. If Terrorism Is Not Only a Crime, But a Method or an Act of War, Then What Court Should Try International Terrorists?

Should international terrorists be tried in a military court, a U.S. district court, ad hoc international tribunal, or permanent international criminal court? This question is left open by the failure of the international community to define terrorism or to include it as a crime in the jurisdiction of existing international courts. If terrorism is not listed specifically as a crime in the statutes of either of the two ad hoc tribunals (ICTY and ICTR) or in the statute of the new International Criminal Court, the question remains as to where international terrorists can be tried.

In order to try terrorists in either of the two ad hoc international tribunals, the temporal and geographic limitations imposed on the subject matter jurisdiction of these tribunals would have to be expanded by amendment, and terrorism would have to be presumptively included under the definitions of crimes. Even if the International Criminal Court included terrorist acts as crimes, the terrorist act of September 11, 2001 committed in the United States could not be adjudicated there for at least two good reasons: (1) the United States has not ratified the Rome Treaty establishing the International Criminal Court, and (2) the terrorist act occurred before the actual establishment of the International Criminal Court.

Trying terrorists in the U.S. district courts may be a viable solution, but one not without problems, including the potential for undesirable disclosure of sensitive evidence that might endanger national security. Other issues include the security of judges and witnesses and the fairness of trying foreigners in an American court when a heinous terrorist act is committed on U.S. soil.

It is beyond the scope of this study to analyze the relative merits of adjudicating international terrorist suits in each of these tribunals, but it is noteworthy to recognize that the problem of where to try terrorists has arisen primarily because of the failure of the international community to establish a universally accepted definition of terrorism and the failure of the courts to recognize that terrorism is actually included in other defined international crimes.

VIII. The Paradoxes Inherent in the Meaning of Terrorism

The main problem in defining the term terrorism is not its overlap with other crimes but the paradox inherent in the meaning of the word. President Ronald Reagan noted this paradox when he coined the proverbial statement: “One man’s terrorism is another man’s freedom fighter”; there is also the poetic parallelism

articulated by the international law scholar Cherif Bassiouni: “What is terrorism to some is heroism to others.” The paradox is related to the distinction between terrorism (which is illegal) and revolutionary violence (which some will argue is justifiable and inevitable to achieve self-determination). The antinomy in the term terrorism is based on the coexistence of the conflicting rights of self-defense and self-determination on the one hand, and the fundamental right to the protection of human rights on the other. Another manifestation of this paradox is the State’s obligation to protect the national security of its people, which, if zealously enforced through overly broad legislation, may be in direct conflict with the State’s obligation to protect its citizens’ civil liberties.

Article 51 of the U.N. Charter provides the right to individual or collective self-defense if an armed attack occurs against a member of the United Nations. Moreover, every nation has a right to self-determination. In 1979, Algeria, Libya, and a few other countries wanted the United Nations to make an exception in one of its multilateral conventions against hostage taking for national liberation movements in which peoples are fighting against colonial domination, alien occupation, and racist regimes in the exercise of their right of self-determination. However, the Western countries rejected this demand on the grounds that even armies may not take civilian hostages because such an act would violate the Geneva Convention. A balance must be established between the right of a democracy to defend itself against terrorism and the duty of the State to preserve civil liberties and human rights. The difficulty of achieving this delicate balance has resulted in the proliferation of global treaties and declarations aimed at combating international terrorism despite the abysmal failure by the international community to define terrorism and prohibit State-sponsored terrorist acts. The time has come to take a more active approach to defining terrorism.

IX. LITERARY AND CINEMATOGRAPHIC REPRESENTATIONS OF TERRORISM

A. Joseph Conrad, The Secret Agent (1907)

1. An Ironic Method Ever since 9/11 and the devastating terrorist attack on the World Trade Center in New York and on the Pentagon in Washington, more

125. Bassiouni, supra note 2, at 15.
128. See Gross, supra note 15, at 89.
and more people are reading Joseph Conrad’s classic and prophetic novel about anarchists, terrorists, and secret agents who plotted to cause violent destruction around the world at the turn of the century. Theodore Kaczynski, the infamous Unabomber, actually kept a copy of The Secret Agent at his bedside.129 The Secret Agent is a book that illustrates not only the five structural elements of terrorism described above, but the complex workings of semiotics.

In the Author’s Note,130 Conrad explains his artistic purpose and his intentional use of irony to convey indirectly and through his own highly mediated messages the paradoxical nature of terrorism: “Even the purely artistic purpose, that of applying an ironic method [emphasis added] to a subject of that kind [the bombing of the Royal Observatory in Greenwich in 1894 by the anarchist Martial Bourdin] was formulated with deliberation and in the earnest belief that ironic treatment alone would enable me to say all I felt I would have to say in scorn as well as in pity.”131

Irony is the appropriate rhetorical device to convey the semiotic and symbolic essence of terrorism. Both irony and terrorism have many different forms or signifiers. Irony uses words that say one thing, but mean another, thus requiring interpretation and decoding (which is the essence of semiotics). Irony enables the author and the narrator to gain distance from the events described by the use of double intention, paradox,132 and satire, among many other tropes and figures that Conrad deftly uses. In the Author’s Note of 1920, Conrad’s insistence on telling merely a “simple tale” reveals his own uneasiness about the reception of his book and the possible perception of his own involvement with characters of this morally reprehensible type.133 As the Royal Greenwich Observatory represents the sacred values of science, any effort to blow it up is a symbol of throwing “a bomb into pure mathematics.”134

Recently the devastating terrorist bomb attacks on seven targets in Mumbai, India (including the Taj Mahal Palace and Towers, which is a well-known luxury hotel) reflect the semiotic and symbolic nature of terrorism. After the attack, the owner of the Taj Mahal Palace said, “I have a feeling that our hotel was one of the targets specifically because the terrorists know the iconic [emphasis added] role it plays for Indians.”135 Apparently this hotel that first opened in 1903 was

130. Conrad, supra note 129, at 3.
131. Id. at 8.
132. Id. at xxxv. Stephen Marcus refers to the “satire” in Conrad’s novel at xxxi.
134. Conrad, supra note 129, at 35.
built by a Parsi industrialist Jamsetji Tata after he was refused entry to a Mumbai hotel with a strict Europeans-only policy. Ironically, it was built precisely to counter ethnic and racial oppression—the very ideals motivating the terrorists to attack innocent civilians inside the hotel.

Conrad's prevailing ironic method is to focus on the differences between appearances and reality, and to make “a very large distance between the way things appear to the persons in the story and the way they are made to appear to the reader.”136 For example, Verloc’s hat and heavy overcoat, which he wears even inside the house, are symbols of his physical and mental “frowstiness.”137 People think he wears his coat inside because he likes the outdoor life, but it is due to his frequentation of foreign cafes. The hat appears and reappears throughout the novel as a symbol, even transforming itself into a beggar’s pot to receive coins. Ossipon decodes the hat to signify “chaos,” but it could mean something else. Thus, using symbols creates room for multiplicity of meaning and indeterminacy of interpretation.

Conrad’s irony is manifested in the setting up of great plans that lead to nothing, such as the failed bomb that manages to blow up only the bomber. This kind of irony is also close to another that creates expectations which are falsified.138 In the opening scene at the Embassy, Privy Councillor Wurmt questions the effectiveness of the English police, but their vigilance turns out to be greater than Wurmt had ever expected.

Another form of irony used by Conrad is foreshadowing, in which he makes an earlier passage or episode presage a later one. For example, when Stevie has an office job, the office boys induce him to let off fireworks on the stairs. Their persuasiveness forebodes Verloc’s influence on Stevie, and the fireworks foreshadow the explosive Stevie will end up carrying that ends up causing his death.

Conrad insists with irony that he is merely telling a “simple” tale of a very complex, contradictory, and ambiguous phenomenon known as terrorism. The source of this tale is a terrorist act that actually occurred at the end of the nineteenth century at the time of the anarchist movement in Europe and the United States. Conrad recalls in the Author’s Note: “‘The Secret Agent’—I mean the tale—came to me in the shape of a few words uttered by a friend in a casual conversation about anarchists or rather anarchist activities.”139

137. Id. at 103.
138. Id. at 106.
139. Conrad, supra note 129, at 5.
Anarchism originated after the French Revolution and is often associated with the name of Mikhail Bakunin, who is considered to be its founder. Bakunin was expelled in September 1872 from the International Working Men's Association because he opposed the running of the organization and objected to the Marxist belief that a proletarian revolution could happen without incendiary acts. Bakunin insisted that “the passion for destruction is a creative passion,” a theory adopted by the Professor in Conrad's novel.

Conrad invented imaginary characters who, like Molière's stereotypes, actually represent certain people in English society, as well as certain social and cultural ideas of Conrad's time. One critic argues that Conrad's characters represent national mentalities: Vladimir is the Russian; The Professor is the American; Winnie Verloc and the Assistant Commissioner are British. The central focus of *The Secret Agent* is based on a real historical event that is shrouded in a literary and satiric representation. “It is almost a parody of Dostoevsky....” In fact, the whole novel is based on an interplay of truth and fiction, reality and fantasy, in which stylistically lighthearted comedy combine with the power of ironic tension to convey a deeply tragic message about the instability and disintegration of European society by the spread of terrorism.

Conrad paints comedic caricatures of British aristocracy as well as not-so-funny and very dangerous anarchists, secret agents, terrorists, nihilists, spies, double agents, counter spies, police spies, and agents provocateurs, all of whom terrorize the people by the frequency of their dynamite “outrages,” (which is what revolutionary and terrorist assassinations and bombings were called at that time). Many of the characters in the novel have comic names based on the rhetorical device of play on words. For example, Stott-Wartenheim's name in German suggests a stutterer staying at home; Verloc in French is “syphilitic.” The German Chancelier d'Ambassade Wurmt is in fact a worm, and finally Ossipon is a medical student whose name in Latin means “old bones.”

Conrad’s story depicts the inanity of a faulty bombing that results in destroying nothing more than the man who carried the bomb. Vladimir is the instigator of the bombing, who says that “the attack must have all the shocking senselessness of gratuitous blasphemy” (in the manner of André Gide’s famous *acte gratuit*).

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140. *Id.* at xlii
142. *Id.*
143. *Conrad, supra* note 129, at lxiv.
144. Bertoud, *supra* note 133, at 104.
146. *Conrad, supra* note 129, at xxxii.
148. *Conrad, supra* note 129, at 34.
Like the faulty terrorist bombing that accomplishes almost nothing, Conrad compares himself to the absurd existentialist hero, Sisyphus, “who did get periodically his stone to the top only to see it roll down again.” Thus, in Conrad’s idiom, the act of terrorism is represented as being intricately allied to the notions of absurdity, senselessness, and meaningless violence.

2. The Symbols of Terrorism Terrorist attacks such as the one on September 11, 2001 have an intensely symbolic nature. “The Pentagon is a symbol, and the World Trade Center is, or was, a symbol, and an American passenger jet is also a symbol—of indigenous mobility and zest, and of the galaxy of glittering destinations.” The September 11 attacks “were not targeted at women and children. The real targets were America’s icons of military and economic power.” Osama bin Laden’s name is a “stock symbol of everything loathsome and hateful to the collective imagination.” Arguably, the “entire event of September 11 amounted essentially to a monumental collision of symbols, metaphors and other shadowy ‘figures.’” The terrorist attack of 9/11 was experienced and expressed in the media most frequently through symbolism, especially by the rhetorical figure of hyperbole. Writers are interested in terrorism because of its symbolic nature and its mediation through a profusion of dramatic literary tropes and figures. Conrad’s The Secret Agent reveals the semiotic nature and symbolic world of terrorism. The very fabric of the novel is made up of signs, symbols, and icons that formally represent hidden meanings. Verloc’s code designation is the triangle or delta, which becomes his sign of secrecy and enclosure. The triangle is also the device of safety that Verloc seeks in isolation and hiding; it symbolizes human solitude and indifference. For example, Winnie looks at Ossipon “under the falling mist in the darkness and solitude of Brett Place, in which all sounds of life seemed lost as if in a triangular well of asphalt and bricks, of blind houses and unfeeling stones.” In contrast to Verloc’s triangular symbol, Stevie (Winnie’s half-witted brother) continuously draws concentric circles as if he wants to bring order and arrangement into the fragmented society where he is an outsider. The circle is a symbol of perfection and infinity, and Stevie’s ideal world is one of disorganized perfection, an irrational harmony, a

149. Id. at lxv.
150. Houen, supra note 3, at 2.
151. Id. at 3.
154. Id. at 5.
155. Id. at 7.
plan of a utopia. Thus, the two symbols (the circle and the triangle) may be the two poles of an axis on which the world of the novel revolves.

Conrad paints portraits of anarchists and pictures of terrorists who symbolize different types or subcategories of terrorism. His imagery is the “symbolic equivalent of the theme of fragmentation” of London in particular and of European society in general. This theme of fragmentation is expressed in the novel by “the varied forms of self-enclosure (secrecy, ignorance, foolishness, madness, etc) and of physical dismembering (explosion, butchering, islands, etc.).” Conrad uses the words secret, knowledge, private, and fool so often that they come to symbolize man’s very condition in London at the turn of the century. The title of the novel focuses the reader’s attention on the word secret, which occurs in the novel with noticeable frequency. Repetition in literary discourse is a sign of a significant theme. Secrecy and deception are an integral part of terrorist acts, and, ironically, secrecy is a necessary feature of semiotics where deeper meanings (signifieds) are hidden below the deceptive surface of the signifier or actual physical form of the word. To arrive at the deeper meanings, we must decode and interpret the surface; to understand the meaning of the terrorist act, we must uncover the plot shrouded in mystery and secrecy. Terrorist language is riddled with the word secrecy. For example, when Verloc responds to his wife’s accusation of his having killed the boy who carried the bomb, Verloc repeats the word secrecy at least three times:

In sincerity of feeling and openness of statement, these words went far beyond anything that had ever been said in this home, kept up on the wages of a secret industry eked out by the sale of more or less secret wares: the poor expedients devised by a mediocre mankind for preserving an imperfect society from the dangers of moral and physical corruption, both secret, too, of their kind.

Who are these people who Conrad caricaturizes in the novel and who symbolize terrorists? Mr. Verloc is a shopkeeper who does business in pornography in London and who is also a professional spy in the pay of the Russian Embassy. He keeps the Russians informed about any anarchist plots in London, and he also informs the English police about Russian anti-anarchist plots. Ironically, the

158. Fleishman, supra note 156, at 197.
159. Id. at 198. Fleishman’s brilliant analysis of the symbolic world of The Secret Agent must be read by all those who enjoy literature, appreciate semiotics, and want to learn more about symbolism.
160. Id. at 189.
161. Id.
162. Id. at 190: (citing all the repetitions of the word secret in the novel): “secret ardor,” “secret scorn,” “secretly much affected,” “secret griefs,” “secretly outspoken thought,” “secrecy of his heart,” “secret liberation,” “secret weakness,” “secret fear,” “secret of good nature,” “secret of guilty breasts,” and “secret habits of mind.”
163. Conrad, supra note 129, at 258.
household of this spy Verloc is “a bastion of British upper-working class/lower-middle class respectability.” Verloc is described by Conrad as a “fat pig,” endowed with an “air of moral nihilism common to keepers of gambling hells and disorderly houses.” Verloc is the two-sided contradictory character who is both a family man and a terrorist. He is deeply involved with the anarchists in plotting revolution and committing acts of violence, terrorism, and oppression of the weak—all in the name of helping the oppressed and the weak. Verloc’s duality is the fruitful creation of Conrad’s ironic method, which is in itself a metaphor of terrorism.

Who are some of Verloc’s cronies? Michaelis is Conrad’s true anarchist. He frequents Verloc’s shop when released on parole after having spent fifteen years of his life sentence in solitary confinement as punishment for the small part he played in a terrorist escape from jail in which a policeman was killed. Michaelis’ complicity in the terrorist crime was negligible, and he did not kill the policeman. Nevertheless, he received a life sentence. As a result of his arguably unjust and harsh punishment, Michaelis is now withdrawn and writing “night and day in a shaky, slanting hand an Autobiography of a Prisoner which was to be like a Book of Revelation in the history of mankind.” He has become a writer, living in his “tiny cage in a litter of manuscript,” and he looks “angelic.” He has a “Marxian, Utopian, Anarchistic, and Socialistic spirit and lives only on raw carrots and milk.” He reminds one of Strelnikov, the perfect, politically driven Marxist revolutionary in Pasternak’s novel Doctor Zhivago. Strelnikov also lives only on bread and water like Mohatma Gandhi, the vegetarian civil disobe-dient. Michaelis is a revolutionary optimist who, like Verloc, is very fat. He wants the “end of all private property because the (inherent viciousness) of private property can lead only to further oppression.” Michaelis says “Capitalism [is] doomed in its cradle, born with the poison of the principle of competition in its system. The great capitalists devouring the little capitalists . . . and in the madness of self-aggrandisement only preparing, organizing . . . making ready the lawful inheritance of the suffering proletariat.”

164. Id. at 18–19. See also Barbara Arnett Melchiori, Terrorism in the Late Victorian Novel 74–83 (1985) for an interesting analysis of Conrad’s The Secret Agent, Conrad’s use of irony and caricature, and why Conrad renders the London anarchists as “physically repulsive.”

165. Houen, supra note 3, at 40. Michaelis claims, “History is dominated and determined by the tool and production—by the force of economic conditions. Capitalism has made socialism, and the laws made by the capitalist for the socialist are responsible for anarchism.” Conrad, supra note 129, at 73.

166. Conrad, supra note 129, at 91.

167. Id. at 102.

168. Id. at 244.

169. Id. at xliii.

170. Id. at 47.
Karl Yundt is the prototype of the “old terrorist” with a foreign accent, “dried throat and toothless gums”\(^{171}\) who is possibly a caricature of Bakunin himself and clearly one of Verloc’s cronies. He is and has been an “all-but moribund veteran of dynamite wars,” who once “had been a great actor in his time . . . the famous terrorist” who “never in his life raised personally as much as his little finger against the social edifice . . . no man of action . . . an orator of torrential eloquence, sweeping the masses along in the rushing noise and foam of a great enthusiasm.”\(^{172}\) Yundt is bloodthirsty and full of talk about destruction: “I have always dreamed . . . of a band of men absolute in their resolve to discard all scruples in the choice of means, strong enough to give themselves frankly the name of destroyers, and free from the taint of that resigned pessimism which rots the world. No pity for anything on earth, including themselves, and death enlisted for good and all in the service of humanity. . . .”\(^{173}\) Yundt is like any good novelist, not a man of action but a gifted orator with the capacity to corrupt via the power of words.

Ossipon is the youngest of the terrorists who is also the principal writer of propagandist leaflets. He is a former student of science whom Conrad satirically describes as a “mongrel” physical type, a mixture of the Negro and the Mongolid. He is nothing at all like the pure terrorist Vladimir who is contrastingly represented by Conrad as a man of breeding.\(^{174}\) Both these characters are parodies of types drawn from the scientific theories prevalent at the time. In his own writings and pamphlets, Ossipon exposes the hypocrisies and vices of middle-class morality. He describes prostitution as the enslavement of working-class girls and the exploitation of women in the service of bourgeois, unfaithful men. But in the end Ossipon also ends up hypocritically living off of “silly girls with savings-bank books.”\(^ {175}\)

The Professor is the terrorist par excellence who builds the bomb Stevie drops in the Royal Greenwich Observatory. The Professor is a solitary figure, undernourished and unhealthy but “supremely self-confident.”\(^ {176}\) He is a scientist, and *The Secret Agent* is arguably a critique of science itself.\(^ {177}\) The Professor is like H.G. Wells’ creatures (Conrad dedicated his book to Wells). He is an agent of destruction, always carrying a detonator with him, working to improve the mechanism that would cause the explosion. He is a man of science, an inventor trying to invent a detonator that “would adjust itself to all conditions of action,

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171. *Id.* at 42.
172. *Id.* at 46.
173. *Id.* at 42.
174. *Id.* at 35.
175. *Id.* at 249.
176. *Id.* at 59.
177. *Houen, supra* note 3, at 41.
and even to unexpected changes of conditions.”\textsuperscript{178} He is the perfect nihilist who despises everyone, including the revolutionists.\textsuperscript{179} He is the agent of death. The Professor says that ordinary people “depend on life, which . . . is . . . open to attack at every point; whereas I depend on death, which knows no restraint and cannot be attacked.”\textsuperscript{180} The Professor is not an advocate of intimidation—he wants total destruction, a true terrorist. His dream is “of a world like shambles, where the weak would be taken in hand for utter Extermination . . . Exterminate, Exterminate! That is the only way of progress . . . First the great multitude of the weak must go, then the only relatively strong . . . Every taint, every vice, every prejudice, every convention must meet its doom.”\textsuperscript{181} The Professor’s insidious belief is prophetic of the dangerous theory of eugenics that Hitler relied on to exterminate the Jews and all those whom Hitler believed were physiologically and “scientifically” inferior. The Professor believes “the world is mediocre, limp, without force. And madness and despair are a force. And force is a crime in the eyes of the fools . . . who rule the roost. You are mediocre . . . Everybody is mediocre. Madness and despair! Give me that for a lever, and I’ll move the world.”\textsuperscript{182}

The Professor’s words echo the famous \textit{Catechism of the Revolutionist} (possibly written by Bakunin and clearly read by the Professor): “The revolutionary enters into the world of the state, of class, and of so-called culture, and lives in it only because he has faith in its speedy and total destruction.”\textsuperscript{183} The Professor, then, is the ultimate terrorist who incorporates the beliefs of anarchists and nihilists. He is a remnant of Robespierre, the product of Nietzsche who was arguably “one of the earliest and certainly the greatest of modern intellectual terrorists.”\textsuperscript{184} Nietzsche believed the fulfillment of nihilism is achieved with the advent of the active terrorist.\textsuperscript{185} Like Conrad who contrasts the man of words (Verloc) and the man of action (the Professor), Nietzsche distinguishes the “Propagandist” who is committed to a “sublime test of the power of words” from the “Terrorist” who is “committed to “Acts.”\textsuperscript{186}

\begin{thebibliography}{99}
\bibitem{178} Conrad, \textit{supra} note 129, at 61.
\bibitem{179} Hay, \textit{supra} note 145, at 251.
\bibitem{180} Conrad, \textit{supra} note 129, at 63.
\bibitem{181} \textit{Id.} at 244.
\bibitem{182} \textit{Id.} at 248–49.
\bibitem{183} \textit{Id.} at lxxix. \textit{See also} Houen, \textit{supra} note 3, at 54 (citing \textit{Friedrich Nietzsche, The Will to Power} 35 (Walter Kaufman & R.J. Hollingdale trans., 1968)). In this work written between 1883 and 1888, Nietzsche discusses “the most terrifying form of Nihilism” which is “existence without meaning or aim, recurring inevitably without any finale of nothingness: the ‘eternal recurrence.’”
\bibitem{184} Id. at lxxix. \textit{See also} Houen, \textit{supra} note 3, at 54 (citing \textit{Friedrich Nietzsche, The Will to Power} 35 (Walter Kaufman & R.J. Hollingdale trans., 1968)). In this work written between 1883 and 1888, Nietzsche discusses “the most terrifying form of Nihilism” which is “existence without meaning or aim, recurring inevitably without any finale of nothingness: the ‘eternal recurrence.’”
\bibitem{185} Houen, \textit{supra} note 3, at 56 (citing \textit{Sergei Kravchinsky, Underground Russia} 4 (Smith & Elder, trans. 1883)).
\bibitem{186} Kravchinsky, \textit{supra} note 185, at 33.
\end{thebibliography}
3. Representation of the Five Elements of the Crime of Terrorism in *The Secret Agent* The first element of the crime of terrorism is the perpetration of violence by whatever means. The band of anarchists, nihilists, and terrorists in *The Secret Agent* are all united by one singular aim: the commission of violence by throwing a bomb in a public place to generate publicity for their political and social causes.

The second element of the crime of terrorism is the targeting of innocent civilians. In the novel, the anarchists do so by aiming the bomb not at a military target in a time of war, but at the Royal Conservatory in a time of peace.

The third element of the crime of terrorism focuses on intentionality. The intention of the terrorists is to cause serious violence and destruction without any regard for the consequences. Even though the bomb created by the Professor actually and ironically hurts only the bomber (and eventually his sister, who commits suicide), the intent of all the conspirators is to cause much wider damage.

Fear is the fourth element of the crime of terrorism. For some of the conspirators, the purpose of this bomb outrage is to cause the public to be frightened enough to think about the social ills that are being perpetrated upon them by the government leaders in the very same society these terrorists abhor. For others, the goal is total destruction, with this bomb being just one of a series that will soon follow.

The last element of the definition is the achievement of an ideological goal. Here the terrorists’ arguably laudable goal is to wipe out the oppression of the masses. Vladimir and Privy Councillor [sic] Wurmt, for example, object to the “general leniency of the judicial procedure”\(^\text{187}\) in Britain. “This country is absurd with its regard for individual liberty,”\(^\text{188}\) decries Vladimir. But how can this goal to wipe out the oppression of the masses possibly be accomplished by detonating bombs in public places that result in harm to the innocent, the oppressed, and the weak? This is the great irony inherent in terrorism itself.

**B. Hotel Rwanda**

*Hotel Rwanda* is a film directed by Terry George and written by Keir Pearson and Terry George. It is the story of the savage and terrifying genocide that took place in Rwanda in 1994 when in ninety days more than eight hundred thousand people were slaughtered. The cause of this genocide was ethnic differences between the Tutsis and the Hutus who were forced to be friends, neighbors, and even husbands and wives under the European rule.

The trouble started when the European colonial powers put certain people in power without recognizing traditional tribal boundaries. The Belgians favored

\(^{187}\) *Conrad*, supranote 129, at 55.

\(^{188}\) *Id.* at 64.
the Tutsis, who were in the minority, because they were taller, thinner, and more handsome people than the Hutus, who were in the vast majority. For years in Rwanda under the rule of the Belgians, Tutsis were in minority rule, and Tutsis killed Hutus from time to time. Now due to the power of the media, the Hutus were in control. Armed troops prowled the nation for the sole purpose of killing Tutsis, and people were in mortal fear for their lives. Hatred between the Hutus and the Tutsis festered, exacerbated by blaring radio propaganda to wipe out “the cockroaches” (the Tutsis). When the president of Rwanda’s plane was shot down from the skies over Kigali, his death marked the start of an orchestrated campaign of terror leading to genocide. “It is time to cut the tall trees,” called out the voices on the radio, encouraging the Hutus to wield clubs and machetes to kill Tutsis and rape their women.

A U.N. peacekeeping force was present (represented by Colonel Oliver, played by Nick Nolte), but even though he begged his U.N. superiors for help and intervention, he was largely ignored. Paul Rusesabagina, the manager of the Hotel des Mille Collines, a luxury hotel that was the best establishment in the Rwandan capital frequented by generals and dignitaries visiting Kigali, informed the corporate headquarters in Brussels of the growing tragedy and chronic terrorist attacks on innocent civilians, but Brussels also simply ignored his pleas.

This is a movie about grandiose indifference toward the people of the Third World and the horrors of terrorist attacks on innocent civilians by other civilians of a different tribe living together in Rwanda. Despite many signs that a genocide was about to occur, including the extensive and vicious terrorist attacks with machetes and axes perpetrated upon the citizens of Rwanda, the international community refused to undertake a humanitarian intervention that could have saved the lives of these innocent victims.

_Protein Rwanda_ is not only the vivid depiction of the massacre per se, but also the tale of one man, a hero who saved the lives of over 1,200 people by being selfless. Paul Rusesabagina (played by Don Cheadle) is a quiet, steady, competent, and even elegant man living in a time of utter turmoil and chaos in his country. Paul is a Hutu, married to a Tutsi named Tatiana (played by Sophie Okonedo). He speaks French and was trained well in hotel management in Belgium. People come to be “guests” in the Hotel Des Mille Collines by the chance of war. Paul is greatly concerned about his own family, but he manages to save as many people as he possibly can from the terrorist attacks by hiding them in his hotel. He is pragmatic and uses his skills of diplomacy, bribery, lying, blackmail, flattery, and pure deception to save his family and those who come to his hotel for help.

_Protein Rwanda_ is a riveting drama about the horrors of terrorism that result in almost unimaginable atrocities. In this film we see Rwanda through the eyes of its good citizens, including their powerlessness in the face of an overwhelming evil and the difficulties they experience when normalcy is restored once again after the terrorism is over.
X. CONCLUSION

*Terrorism* is a term that exists in a context of signs and symbols producing vagueness and indeterminacy. For example, it is quite common to say that since September 2001 a “war on terrorism” has been led by the United States supported by a coalition of over one hundred countries. We use the term *terrorism* frequently but without knowing what it means. A semiotic approach used to define terrorism has uncovered five basic and necessary structural elements that must be present to identify a violent or aggressive act as terrorism. The paradoxical nature of the concept of terrorism renders the establishment of an acceptable definition difficult, but not much different from the work that judges must do in the typical “hard case,” as defined by Ronald Dworkin. Balance is the essence of the law iconographically represented by the scales of justice. Judges understand the sensitive nature of prioritizing two conflicting rights of equal importance. Who is to say that the right of self-determination or the right of self-defense against an armed attack is more important than the right of civilians to live in a safe environment or to enjoy their own fundamental human rights and basic civil liberties?

It is possible to decenter this paradox and to reduce the definitional difficulty by proposing a categorical prohibition on the use of terrorism, no matter how lofty the purpose may be and no matter how worthy the political or ideological cause may seem to those oppressed by tyrannical regimes. There is no justification for terrorism. It is not defensible to argue that terrorism needs to be viewed from a political context and that the “motivation” of the actor and the sociological context in which the act occurs must be taken into consideration. Such an approach would legitimize terrorist acts by claiming that the ends justify the means when this Macchiavelian principle simply does not comport with the generally accepted principles of the rule of law.

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