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Právnická fakulta

**IS IT POSSIBLE TO PRODUCE A SATISFACTORY DEFINITION THAT
DISTINGUISHES THE 'FREEDOM FIGHTERS' FROM 'TERRORIST'?**

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One man's terrorist is another man's freedom fighter.

Gerald Seymour¹

¹ Gerald Seymour is a British writer who first used this quote in his book *Harry's Game* in 1975.

INTRODUCTION

Terrorism is a global problem and nowadays it takes on enormous proportions. Adequately, states take action against it. However, the counterterrorism can never be efficient unless all states of the international community unite. There are many definitions of 'terrorism' whose pitfalls lie in enabling peoples' right to self-determination. The main problem is that national liberation movements as well as terrorist organisations tend to resort to violence including civilian victims to draw the world's attention to their own causes through media. Yes, in this way, it is at the very least effective, but hardly justifiable. As Fletcher explains: 'Those who opt for terror always believe their cause is just. Sometimes it is, sometimes not. No American would be happy about branding the Boston Tea Party an act of terrorist aggression against British property. Nor would any Frenchman accept a description of the *maquisards* of the French Resistance as terrorists.'² On most cases the determination who is terrorist turns out to be very subjective.

In addition, the absence of a generic definition causes that news media in their reports on violent acts tend to avoid using the term 'terrorist' in order to stay impartial. In Editorial Guidelines of BBC is noted that

the word "terrorist" itself can be a barrier rather than an aid to understanding. We should convey to our audience the full consequences of the act by describing what happened. We should use words, which specifically describe the perpetrator such as "bomber", "attacker", "gunman", "kidnapper", "insurgent", and "militant". We should not adopt other people's language as our own; our responsibility is to remain objective and report in ways that enable our audiences to make their own assessments about who is doing what to whom.³

²G.P. Fletcher, 'Defining terrorism' (Project Syndicate, 2005) <http://www.project-syndicate.org/commentary/fletcher9000/Czech> (last visited 18 January 2011)

³BBC, 'Editorial guidelines' (BBC, 2012) <http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidelines-war-practices-accuracy/#use-of-language> (last visited 7 April 2012).

Nevertheless, reading news about an attack of freedom fighters and its consequences, we do not tend to condemn it so severely in comparison to attacks of terrorists, which exude more negative feelings than sympathy.

In this essay, my intention is to find essential features that would help demarcate the two terms, which are so often confused in the everyday life.

In the first part of the essay, I will begin by describing the current development of the generic definition of 'terrorist' in the Draft Convention and further, I will outline different opinions of Western and Islamic states. This section will be followed by an analysis of national liberation movements, how it is regulated in the international law in particular the use of force by peoples exercising the right to self-determination and the right to self-determination itself. I will then go on to discuss the objective definition, which should consider the difference between the 'freedom fighters' and 'terrorist'. In the final section I will conclude by a general overview of discussed topics.



DEFINITION OF 'TERRORIST'

The meaning of the terms 'terrorism' and 'terrorist' did change a lot in the history. Once the author of a terror was a revolutionary in a state, next time it was a state, which terrorized its own population.⁴ The precise perception of the terrorism thus is not deep-rooted. Beyond various definitions in sectoral instruments and scholar works, throughout the 20th century and still up to now, there are international attempts to produce one legal generic definition of 'terrorism'. Even now, almost eleven years after the terror attacks on the World Trade Center in New York, the Sixth Committee of the UN General Assembly is still working on the definition in the Draft Comprehensive Anti-terrorism Convention. In the informal text of the Article 2(1), the work Coordinator provides the following definition of 'terrorist':

Any person commits an offence within the meaning of this Convention if that person, **by any means, unlawfully and intentionally**, causes:

(a) **Death or serious bodily injury to any person**; or

(b) **Serious damage to public or private property**, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to **result in major economic loss**, when the **purpose** of the conduct, by its nature or context, is **to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act**.⁵

⁴See B. Hoffman, *Inside terrorism* (New York: Columbia University press, 2006) 3-20.

⁵Ad Hoc Committee Report A/57/37, *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*, <http://www.un.org/documents/ga/docs/57/a5737.pdf> (last visited 20 March 2012).

This Article (emphasis added) does not present much difficulty and states are uniform to it. Nor the attitude to terrorism is the problem. All states in the international community are consistent that it should be suppressed. However, terrorism is interpreted in various ways and the Sword of Damocles, which hangs above reaching consensus, is exceptions to this definition, if any.⁶ The big issue is who can be responsible for terrorism. Should the acts of members of national liberation movements and the acts of so-called ‘state terrorism’⁷ be qualified as terrorism?

On the one side, there are the most of developing countries, mainly states of the Organisation of Islamic Conference, and these countries assert that the fight for national liberation can never be considered as terrorism because it aims to realize one of the basic rights recognised at the international level, the right to self-determination. On the contrary, they attribute the terror character to the violent acts of states which are addressed to suppress the previously mentioned right or which take place during occupation.

On the other side, there are developed Western states that represent other point of view. According to them, nothing can justify the use of certain damnable means such as attacks against civilians, which should be proscribed under any circumstances. As for ‘state terrorism’, they do not want to include it in the legislation on terrorism because they find it sufficiently regulated in the present international law, within the regulation of the use of force.⁸


These conflicting opinions are summarized in a Draft Article 18 of Comprehensive Anti-terrorism Convention. In the paragraph 1 the Article exempts ‘other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the

⁶ B. Saul, ‘Attempts to Define Terrorism in International Law’, (2005) 52 *Netherlands International Law Review* 57, 78.

⁷ See N. Quéniwet, ‘The World after September 11: Has It Really Changed?’ (2005) 16 *The European Journal of International Law* 561.

⁸ V. Bílková, ‘Proč stále nemáme univerzální právní definici terorismu?’ (Natoaktual.cz, 2005) http://www.natoaktual.cz/proc-stale-nemame-univerzalni-pravni-definici-terorismu-pe7-na_analyzy.aspx?c=A051116_102902_na_analyzy_m02 (last visited 10 April 2012).

purposes and principles of the Charter of the United Nations, and international humanitarian law' from the Convention competence as well as 'activities of armed forces during an armed conflict'.⁹ To put it another way, for the object of the essay, this Article enables peoples to struggle for their right to self-determination. However, how can we objectively decide who is a terrorist and who is a freedom fighter? In order to produce an effective and useful definition that would enable demanded exceptions, at the very first place we should lay down objective rules, which would distinguish 'freedom fighters' from 'terrorists'.



⁹ Text suggested by Coordinator; Ad Hoc Committee Report A/57/37, *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*, <http://www.un.org/documents/ga/docs/57/a5737.pdf> (last visited 20 March 2012).

NATIONAL LIBERATION MOVEMENTS AND THE PEOPLES' RIGHT TO SELF-DETERMINATION

Above, I have discussed the Draft Convention definition of 'terrorist' and now in this part of essay I will turn my attention to peoples who struggle for the right to self-determination, freedom fighters.

In the Oxford English Dictionary 'freedom fighter' is defined as 'a person who fights for freedom or liberation; a person who takes part in a resistance movement against the established political system of a country'.¹⁰ Legally, according to Bedjaoui, the freedom fighters are combatant members of national liberation movements. The status of a national liberation movement provides this organisation a legal capacity and related rights, which originate from recognition of the legitimacy of the liberation struggle. The national liberation movement is guaranteed eligibility for the aid of other states and an observer status at United Nations.¹¹ As far as combatant members of the national liberation movements are concerned, they are granted the status of freedom fighters that ensures them to be treated as prisoners of war in the case of capture.¹² This legislation is a part of the international humanitarian law, particularly Geneva Conventions and its additional Protocol I that deal with the protection of victims of international armed conflicts. In the Article 1(4) of the Protocol is stated that the Protocol I is also applied on 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination'.¹³ In the course of discussions of Draft Convention, all delegations had underlined that 'the integrity of international humanitarian law should be respected and

¹⁰ "freedom, n.". OED Online. November 2010. Oxford University Press.

<http://www.oed.com/view/Entry/74395?redirectedFrom=freedom%20fighter> (accessed January 06, 2011).

¹¹ M. Bedjaoui (ed.) *International law: Achievements and Prospects* (Geneva: UNESCO, 1991) 108.

¹² *Ibid*, 109.

¹³ *Additional Protocol I*, 1977, <http://www.icrc.org/ihl.nsf/full/470?opendocument> (last visited 24 January 2011).

preserved'.¹⁴ Thus, freedom fighter should be treated as prisoner of war providing that the national liberation movement, which the freedom fighter belongs to, declared to be bounded by Geneva Conventions and its Protocol I and simultaneously a state that seized the freedom fighter has to be a party to the mentioned treaties.¹⁵ The national liberation movements' struggle for the exercise of their right to self-determination, which is guaranteed in the United Nations Charter and their fight is legitimised as an exemption in other international instruments such as Definition of Aggression in the Article 7 and Declaration on Principles of International Law concerning Friendly Relations.

The essential argument of the use of force by a national liberation movement is the statement of self-defence. They assert to protect their right that they had before the incursion of oppressor and that such a status is a persistent act of aggression.¹⁶ According to this plea, it can be hardly acknowledged the right of the use of force to ethnic groups, which try to secede.¹⁷

However, as time went on, the United Nations have felt a growing need to combat terrorism. It is detected in Halberstam's article¹⁸, where she compares General Assembly resolutions since 1970s. It shows resolutions where the exceptions on the prohibition of the use of force were gradually diminished to no exceptions. For this reason, it seems that the

¹⁴ GA L31/55, *All Views, All Legal Arguments Now on Table for Comprehensive Anti-Terrorism Convention, General Assembly Ad Hoc Committee Chair Says at Session's Close*, <http://www.un.org/News/Press/docs/2010/I3155.doc.htm> (last visited 24 January 2011).

¹⁵ W. D. Verwey, 'The International Hostages Convention and National Liberation Movements', (1981) 75 *American Journal International Law* 75.

¹⁶ M. Dixon and R. McCorquodale, *Cases and Materials on International Law* (Oxford: Oxford University Press, 4th ed., 2003) 559.

¹⁷ R.L. Griffiths, 'International Law, the Crime of Aggression and the *Ius Ad Bellum*', (2002) 2 *International Criminal Law Review* 301, 360.

¹⁸ M. Halberstam, 'The Evolution of the United Nations Position on Terrorism: From Exempting National Liberation Movements to Criminalizing Terrorism Wherever and by Whomever Committed' (2002) 41 *Columbia Journal of Transnational Law* 573.

United Nations has resigned to take into consideration freedom fighters, at least in these resolutions.

The time period of 1970s is not chosen by accident. At that time, the Palestinian Liberation Organisation (PLO) was invited as a special observer to the United Nation in 1974. It was only 18 months after Black September¹⁹, which happened during the Olympic Games in Munich. It was a massacre where 11 Israeli athletes were taken hostages and after long negotiations and a botched attempt at salvation, they were finally killed. Nobody could doubt that PLO's main aim was the right to self-determination.

Halberstam begins her analysis with GA resolution adopted in 1972 called Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes. Based on the resolution, Halberstam concludes that 'prohibition against terrorism did not apply to those fighting for self-determination.'²⁰ However, take into account that this resolution was adopted shortly after the Black September and PLO's clear objective was self-determination, it might be assumed that these measures against terrorism applied to national liberation movements but only to those that use inadequate means of fight, as expressed in the title of the resolution, the means of international terrorism that 'endangers or takes innocent human lives or jeopardizes fundamental freedoms'.²¹ And this might be a crucial difference between terrorists and freedom fighters. Freedom fighters should not endanger or take an innocent human live or compromise fundamental freedoms. However, for the purposes of the definition it would be better to avoid using the phrase 'innocent' and substitute it by the term 'civilian' as Ganor suggests. Firstly, the use of the term 'innocent' is

¹⁹ B. Hoffman, *Inside terrorism* (New York: Columbia University press, 2006) 70.

²⁰ M. Halberstam, 'The Evolution of the United Nations Position on Terrorism: From Exempting National Liberation Movements to Criminalizing Terrorism Wherever and by Whomever Committed' (2002) 41 *Columbia Journal of Transnational Law* 574.

²¹ GA Res. 27/3034, <http://www.un.org/documents/ga/docs/27/ares3034%28xxvii%29.pdf> (last visited 10 April 2012).

very subjective and the determination of a victim whether falls within the category of ‘the innocents’ would only depend on the view of definer and secondly, it would be easily abused in a ‘political game’.²² For instance, such a definition of terrorism is provided by Agnew. He includes civilians as a pivotal aspect of definition and, furthermore, he emphasizes that terrorists violate international humanitarian law. He defines terrorism as ‘the commission of criminal acts, usually violent, that target civilians or violate conventions of war when targeting military personnel; and that are committed at least partly for social, political, or religious ends.’²³

Similar to Ruggiero, the former left-wing participants in violent political actions in Italy defended their opinion that ‘terrorism... inflicts mass violence on civilians, irrespective of their specific, individual responsibility’ and as opposed to ‘armed struggle’, ‘it is random and does not target precise actors whose conduct is deemed wrongful.’²⁴

Not only the identity of victims, in particular civilians, but also the right to self-determination itself limits the justification of the armed struggle, therefore, in the following subsection I will address it more in detail.

THE RIGHT TO SELF-DETERMINATION

The right to self-determination is a controversial criterion of a creation of a new state. One of the first waves of its development was the establishment of new states after the World War I, the main supporter of the right of self-determination was the American president Woodrow Wilson in its Fourteen points. During World War II the Atlantic charter, whose signators were the United States and the Great Britain, guaranteed to respect peoples in choice

²² B. Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' (2002) Vol. 3, No 4 *Police practice and research* 294.

²³ R. Agnew, 'A general Strain Theory of Terrorism', (2010) 14 *Theoretical Criminology* 132.

²⁴ V. Ruggiero, 'Armed Struggle in Italy: Limits to the Analysis of Political Violence', (2010) 50 *British Journal of Criminology* 711.

of the form of government and changes just according to wishes of the concerned peoples.²⁵ Then, in 1945 the UN Charter came into being and in its Article 1 and 55 it referred to ‘the principle of equal rights and self-determination’. However, at that time it was meant to be provided just for states and its peoples to self-determine within their state, it did not have the intention to entitle dependant peoples to be independent.²⁶

In the course of decolonisation the sense of the self-determination moved and it encompassed especially colonies. The Declaration on Principles of International Law stated: ‘all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.’²⁷ Furthermore, colonies had the choice how they exercise their right of self-determination, i.e. ‘the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people’²⁸ and the Declaration at the same time set the principle of the territorial integrity and political unity of sovereign and independent states which limits of the right to self-determination. The principle of territorial integrity was ensured by *uti possidetis*. The principle of *uti possidetis* was used during the process of decolonisation in order to maintain the peace and stability of the international community. It means to retain boundaries given.

Later, through the Helsinki Final Act, the African Charter on Human and Peoples’ Rights and other documents²⁹ the right to self-determination appeared connected not only to colonial peoples. And nowadays the question whether the self-determination of all peoples is

²⁵The Atlantic Charter, 1941, <http://www.nato.int/docu/basicxt/b410814a.htm> (last visited at 7 December 2010)

²⁶R. Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1995) 112.

²⁷Declaration on Principles of International Law concerning Friendly Relations, 1970, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement> (last visited at 9 March 2012)

²⁸ *Ibid.*

²⁹ See M. N. Shaw, *International Law* (Cambridge, Cambridge University Press, 6th ed., 2008) 251-257.

a principle of international law or jus cogens is discussed.³⁰ But still there are some ambiguities which remain unanswered.

Self-determination is divided into the internal and the external self-determination. The Supreme Court of Canada in *Re Secession of Quebec* describes the internal as ‘the right to self-determination exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states.’³¹ Thus, people pursuing its political, economic, social and cultural development in the state who respects human rights and rights of minorities do not have the right to the external self-determination. Accordingly, scholars, Higgins included, imply that ‘there is no legal right of secession where there is representative government.’³² Only exemption as Canadian Court further adds on ‘where this is not possible, in exceptional circumstances..., a right of secession may arise’³³ i.e. the right to external self-determination.

Having a look at recent events, the International Court of Justice (ICJ) dealt with the legal opinion on the situation in Kosovo, where the declaration of independence was pronounced as the right of self-determination. The scope of consideration was whether this declaration is complied with the international law. The ICJ concluded that it was legal to declare independence because the actors did breach neither the peremptory rules of general international law (jus cogens) such as use of force or act of aggression nor UN Security Council resolution 1244(1999), which governs the interim regime of Kosovo but not determine the final status of Kosovo and its Constitutional Framework based on this resolution. Thus, the ICJ found that the declaration of independence does not breach any international legal rule and therefore is not prohibited.³⁴

³⁰ See J. Summers, *Peoples and International Law* (Leiden: Brill, 2007) 387-392.

³¹ *Reference re Secession of Quebec* [1998] 2 SCR 217 at [122].

³² R. Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1995) 117.

³³ *Reference re Secession of Quebec* [1998] 2 SCR 217 at [122].

³⁴ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion), 2010, http://www.icj-cij.org/homepage/pdf/20100722_KOS.pdf (last visited at 9 March 2012)

However, it is still not clear under what circumstances right to secession exists. Particularly, it can be inferred from the ICJ's Advisory Opinion on Kosovo 2010 and its separate opinions. From the narrow approach one can feel a reluctance to clarify the right to secession in the post-colonial context, the relationship between the principle of territorial integrity and sovereignty and the right to self-determination.³⁵ In the Opinion the ICJ just gave an advice on the compliance of the declaration of independence with the international legal order. But the essential question is what the legal consequences of such declarations are. Only clear fact is that the declaration of independence should not be put equally to the right of the state to secede.³⁶ There is no choice but to wait. In the same way Warbrick hits off: 'So long as it remains an undefined political doctrine, the idea of self-determination looks to be an inherently destabilising notion.'³⁷

Nevertheless, to sum up for the purposes of this essay, the self-determination theoretically consists of the internal and external self-determination. The external self-determination means the right to secession and a creation of a new state. Compared to it, the internal self-determination relates to peoples living in democracies. Hence, the peoples asserting their political, economic, social and cultural development in states that respect human rights and rights of minorities do not have the right to strive for the independence. For this reason, in legal terms, such peoples are not allowed to claim the right to self-determination externally through the use of force and thus, having the right to the external self-determination conditions the legitimacy of national liberation movement's warfare. This presumption would narrow the range of eligible actors by excluding movements in democratic countries such as ETA, IRA, National Liberation Front of Corsica etc. These organisations ought to be considered as terrorist organisations in contrast to the others, such as Arab spring freedom fighters.

³⁵ M. Mammadov, "'Traditional Gap' in the ICJ's Advisory Opinion on Kosovo' (2010) 44 *Caucasian Review of International Affairs* 313, 315.

³⁶ *Ibid* 316.

³⁷ C. Warbrick, 'Recognition of states' (1992) 41 *International and Comparative Law Quarterly* 473, 480.

OBJECTIVE DEFINITION

Regarding the Draft Convention definition of ‘terrorism’ and its exemptions, it fails to draw the objective distinction between the ‘terrorism’ and ‘freedom fighters’. It is necessary that the definition includes it in order to avoid disparate interpretations of the legitimate armed struggle. Otherwise the unanimously recognized right to self-determination would become obsolete with regard to the prohibition of the use of force under any motive. Only political means would come into question. However, as Higgins and O’Reilly in their article admit: ‘Unfortunately, the right to self-determination has rarely been achieved without recourse to the use of force, in the form of a war of national liberation.’³⁸ Thus, in order to maintain the right of self-determination alive, especially for those peoples under illegitimate governments, the legal definition of ‘terrorism’ has to include the previously discussed aspects of the difference between ‘freedom fighter’ and ‘terrorist’, i.e. the right to external self-determination as well as civilians.

Boaz Ganoz objects that most researchers, who incline to the conclusion that the definition of terrorist cannot be reached, rely completely on ‘the subjective outlook of the definer’³⁹. They define it according to their perception how the terrorist behaves, looks like, which is not objective, and therefore, it cannot create an objective definition.

He also rejects an approach of states that support terrorism and call it the assistance to national liberation movements. These states suggest exclusion of ‘freedom fighters’ from the definition by virtue of political motives.⁴⁰

In the same way, the Security Council in its Resolution 1566(2004) condemned ‘criminal acts’ which are ‘under no circumstances justifiable by considerations of a political,

³⁸ N. Higgins and K. O’Reilly, ‘The Use of Force, Wars of National Liberation and the Right to Self-Determination in the South Ossetian Conflict’ (2009) 9 *International Criminal Law Review* 567, 574.

³⁹ B. Ganor, ‘Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?’ (2002) Vol. 3, No 4 *Police practice and research*, 287.

⁴⁰ *Ibid* 288.

philosophical, ideological, racial, ethnic, religious or other similar nature'⁴¹ This phrase have gradually occurred more often in other UN documents against terrorism. Also Halberstam on the grounds of her research of UN resolutions commented that this damnation of forenamed motives 'marks a significant change from the early U.N. resolutions that condemned acts of terrorism in one paragraph and reaffirmed the right to self-determination in another, leaving room for the argument that the prohibition against terrorism did not apply to national liberation movements.'⁴² It is necessary to admit that national liberation movements can no longer insist on the excuse of their terror acts while they seek the right to self-determination.

For the purposes of definition, Ganoz analogically suggests to extend the law of wars on non-conventional conflicts where conflict parties consist of a nongovernmental organisation and a state. The same way as the laws of war contrast soldiers and war criminals, we should also differentiate terrorism and guerrilla warfare. The crucial point of his defining is the stress on the targets of attacks, neither any motive nor any aim. Therefore, war criminals and terrorists are those who deliberately attack civilians and civilian targets (civilians used by a state as an intentional shield of military objects are excluded), whereas soldiers and freedom fighters attack military targets. Which military targets can be subject to the attack are determined in Additional Protocol I to Geneva Conventions. In Article 52, paragraph 2 is specified that 'military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage'. Thus, as long as the freedom fighters would destroy these objects, they could not be accused of terrorism. Further, national liberation movements that are currently more like terrorists could abandon the practice of killing innocent and non-aligned people in order not to be labelled as terrorists.

⁴¹SC Resolution 1566(2004), *Threats to international peace and security caused by terrorist acts*, <http://www.un.org/Docs/sc/unscreolutions04.html> (last visited at 11 April 2012).

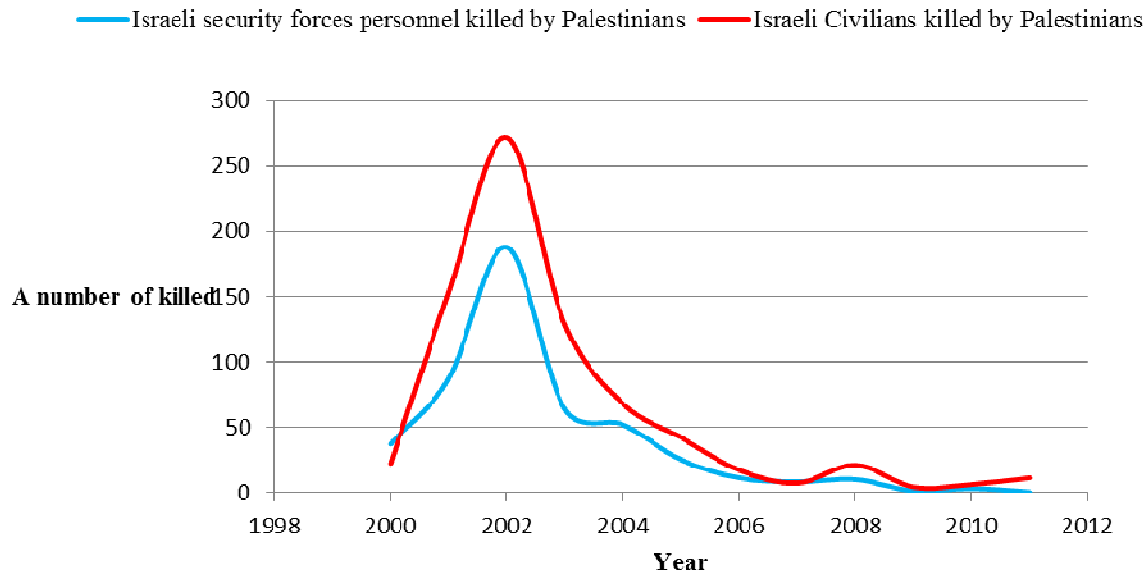
⁴² M. Halberstam, 'The Evolution of the United Nations Position on Terrorism: From Exempting National Liberation Movements to Criminalizing Terrorism Wherever and by Whomever Committed' (2002) 41 *Columbia Journal of Transnational Law* 581.

The Graph below shows the statistics of victims of Palestinian violence and terrorism since September 2000 in Israel and the occupied territories.⁴³ Within the 11-year period 2000-2011 it states that 1,238 Israelis were killed in terror attacks, out of which 752 civilians, the rest of attacks were aimed at security forces. The number of wounded civilians in 2001 was 153, it tended to decline in direct proportionality and in 2007 there were only 7 killed civilians. Comparing the proportion of the number of civilians to the number of security forces in every year, it can be observed that apart from the year 2007 there were much more civilians killed than those people in security forces. Considering Palestinian organisations as national liberation movements whose ultimate goal is undoubtedly the right to self-determination. The explanation of the statistics might be that they are not motivated to differentiate between the civilian and the military targets, especially, because definitions do not regard it at all and on the contrary, their punishments are identical.

Israeli security forces personnel and civilians killed by Palestinians within September 2000 - February 2012		
Year	Israeli security forces personnel killed by Palestinians	Israeli Civilians killed by Palestinians
2011	0	11
2010	3	6
2009	1	4
2008	10	21
2007	8	7
2006	11	17
2005	25	42
2004	52	68
2003	64	129
2002	188	272
2001	87	153
2000	37	22
Total	486	752

⁴³B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, 'Statistics' (tbselem.org, 2012) <http://old.btselem.org/statistics/english/> (last visited 16 April 2012).

Israeli security forces personnel and Israeli civilians killed by Palestinians
within September 2000 - February 2012



Data source: <http://www.btselem.org/statistics> (Graph made by author).

As an example of a definition, which does not regard it at all, the United Kingdom definition of terrorism in the Terrorism Act 2000 might be mentioned. There is ‘terrorism’ defined in the section 1 as ‘the use or threat of action where the use or threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause.’⁴⁴ By reason that this definition does not specify that the government should ‘be democratic or legitimately established,’ it can be inferred that ‘the threat or use of action against an undemocratic or illegitimate government anywhere in the world for a political, ideological or religious purpose is therefore terrorism according to the TA 2000.’⁴⁵

⁴⁴United Kingdom Terrorism Act 2000, s 1

⁴⁵B. Brandon, ‘Terrorism, human rights and the rule of law: 120 years of the UK’s response to terrorism’ (2004) *Criminal Law Review* 988.

In the same way, in 2000 Al Qaeda blew up a destroyer USS Cole and the most of public considered the killing of mariners on the board as a terrorist attack. Unfortunately, the same thinking is in the directions of military tribunals of the president George Bush, which do not differentiate between the attacker who assaulted a civilian and the attacker whose intention was to injure or kill a soldier.⁴⁶

Ganor therefore on the base of the extension of laws of war suggests this definition: 'Terrorism is the intentional use of, or threat to use, violence against civilians or against civilian targets, in order to attain political aims.'⁴⁷ This definition differentiates terrorist from other criminals by mentioning political aims and it directs the struggle for self-determination into the more legitimised way of guerrilla warfare which he defines as 'a violent struggle using (or threatening to use) violence against military targets, security forces, and the political leadership, in order to attain political aims.'⁴⁸ These definitions set objective criteria how to make a distinction between a terrorist and a freedom fighter. These definitions do not determinate which organisations are terrorist, it classifies a particular event as 'guerrilla activity' or 'terrorism'.⁴⁹ 'In this way it would be possible to exclude legitimate self-determination units, who comply with the laws of armed conflict, from being unfairly treated and stigmatized as terrorists.'⁵⁰

⁴⁶ G.P. Fletcher, 'Defining terrorism' (Project Syndicate, 2005) <http://www.project-syndicate.org/commentary/fletcher9000/Czech> (last visited 18 January 2011)

⁴⁷ B. Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' (2002) Vol. 3, No 4 *Police practice and research* 294.

⁴⁸ Ibid 295.

⁴⁹ Ibid 297.

⁵⁰ B. Saul, 'International Terrorism as a European Crime' (2003) 11 *European Journal of Crime, Criminal Law and Criminal Justice* 323, 337.

CONCLUSION

The United Nations position on terrorism is clear and tends to make no exceptions to the use of force under any motive. Nevertheless, there will be no effective fight against terrorism unless there is a generic definition that would be accepted by both Islamic and Western countries. Their most important and at the same time most difficult task is to find an agreement in their conflicting opinions in particular concerning the right to self-determination.

To conclude, there is a possibility to produce a satisfactory definition that would distinguish the 'freedom fighters' from 'terrorist'. The first aspect is the self-determination. It is a free choice of peoples, nevertheless limited by territorial unity and sovereignty of other states. This right is still being formed and shaped and it is waiting for the clarification. Its development in the course of 20th century has had a progressive character and the right to self-determination has an unquestionable position among other norms of the international law. The right to external self-determination is related to peoples under oppression. Whereas those national liberation movements in democratic countries can use the force under no circumstances and such peoples can achieve the independence only through political process. Therefore, in the case they resort to armed struggle, they would be considered as terrorists.

The second aspect is based on the extension of the laws of war to non-conventional conflicts. The essential emphasis is on the term 'civilian' as the victim of a terrorist attack. If it would be enacted, as a consequence, the national liberation movements would realise that the end can no longer justify the means. Their fight needs rules and should be aimed only at military targets. In general, those who would attack civilians or civilian targets would again be considered as terrorists.

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