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INTRODUCTION

Terrorism has become a global phenomenon, but all attempts in the past for arriving at an internationally accepted definition of terrorism have proved futile. Among the many problems terrorism poses is a familiar crux of international law: the failure of attempts by the community of nations to find an acceptable legal definition of terrorism¹. This ambivalence is primarily due to two reasons. Firstly, a 'terrorist' in one country may be viewed as a 'freedom fighter' in another; secondly, it is known that some states encourage various criminal acts being carried out in another state. Hence, there is an obvious lack of political will to any universally acceptable definition of terrorism.

Organised crime group² means 'a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing serious crimes or offences to obtain, directly or indirectly, financial or other material benefit'.

It manifests in many forms. As per UN Convention, transnational organised crime comprises :

- A group of three or more persons that was not randomly formed;
- Existence of such a group for a period of time;
- Acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration;
- In order to obtain, directly or indirectly, a financial or other material benefit.

Since most 'groups' of any sort contain three or more people working in concert and most exist for a period of time, the true defining characteristics of organised crime groups under the UN Convention are their profit-driven nature and the seriousness of the offences they commit.

HISTORICAL UNDERPINNINGS AND THE CHANGING NATURE OF TERRORISM

Terrorism is not a single phenomenon. It does not spring from any single ethnic or religious group, but it has existed in almost every part of the world. Since 1990, there may have been a shift in prevalent motives, but also, and more significantly, in structure and method. Terrorists today rely on trans-national networks of various groups, sometimes working in symbiosis with organized crime groups, such as drug and arms traffickers. Hierarchical structures are avoided

¹ Draft Code of Crimes Against the Peace and Security of Mankind: Report of the International Law Commission, 43d Sess., U.N. Doc. A/46/10 (1991).

² General Assembly resolution 55/25 of 15 November 2000, United Nations Convention against Transnational Organized Crime; art 2

as far as possible. Supported by modern technology and globalization, the trend towards transnational terrorist structures and the increasing awareness that terrorism needs to be countered at the multilateral level-started well before September 11, 2001.

The resolutions sponsored by the United States and adopted on September 12, 2001 by the United Nations Security Council (Res. 1368)³ and General Assembly (Res. 56/1)⁴ stressed the need for "all states to work together" in a showing of "international cooperation" in order to eradicate acts of terrorism. One such legal tool may be the International Criminal Court ("ICC"), which came into being on July 1, 2002 following the sixtieth ratification of the Rome Statute on April 11, 2002⁵.

In a landmark resolution adopted in 1991 the United Nations General Assembly stated that it "unequivocally condemns, as criminal and unjustifiable, all acts, methods and practices of terrorism wherever and by whoever committed." Rather than attempt to define terrorism, the resolution simply listed in its preamble the "existing international conventions relating to various aspects of the problem of international terrorism."

Even the United Nations has been unable to come up with an official definition of the terrorism that is universal and acceptable to all member countries. The difficulty in defining what exactly constitutes terrorism acts as a barrier in international cooperation against terrorism. The international law concerning terrorism has developed haphazardly and now consists of an unsystematic hodge-podge of treaties concerning specific modes of terrorism .

Irrespective of these constraints, we can say that, Terrorism is a state of terror, panic and a fear psychosis, created by an individual or a group of people in order to force, coerce or blackmail the authorities, using violent methods to accept their demand or to attain political, religious or ideological goals.

Based on its review of state practice and indicators of *opinio juris*, the Appeals Chamber declared that the customary international law definition of terrorism consists of "the following three key elements: (i) the perpetration of a criminal act (such as murder, kidnapping, hostage taking, arson, and so on), or threatening such an act; (ii) the intent to spread fear among the population (which would generally entail the creation of public danger) or directly or indirectly

³ U.N. SCOR, 56th Sess., 4370th mtg., U.N. Doc. S/RES/1368 (2001)

⁴ U.N. GAOR, 56th Sess., 1st plen. mtg., Agenda Item 8, U.N. Doc. A/RES/56/1 (2001).

⁵ Rome Statute of the International Criminal Court, U.N. Doc. A/CONE183/9 (1998)

coerce a national or international authority to take some action, or to refrain from taking it; (iii) when the act involves a transnational element."

Unable to reach consensus on a general definition, the international community has instead proceeded over the past thirty years to adopt a dozen separate counter-terrorism conventions that impose an obligation to prosecute or extradite in cases of hostage-taking, hijacking, aircraft and maritime sabotage, attacks at airports, attacks against diplomats and government officials, attacks against U.N. peacekeepers, use of bombs or biological, chemical or nuclear materials, and providing financial support to terrorist organizations.

By listing the dozen counter-terrorism conventions in the preambular clauses of numerous U.N. General Assembly and Security Council counter-terrorism resolutions, which confirm that acts of terrorism are criminal and unjustifiable, the United Nations has arguably crystallized the acts prohibited by those Conventions into customary international law crimes. Yet, there are significant gaps in the coverage of these anti-terrorism conventions.

Coming to the Transnational Organised crime, On November 15, 2000, the United Nations Convention against Transnational Organized Crime (UNTOC) was adopted by the United Nations General Assembly and is appointed to serve as the most significant mechanism for fighting Transnational Organised crime internationally. The first of its kind, the convention identified TOC as criminal actions that cannot be sufficiently combated by pacts tailored to a single commercial enterprise⁶.

The Ad Hoc Committee was established by the United Nations General Assembly to deal with this problem by taking a series of measures against transnational organized crime. These include the creation of domestic criminal offences to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation, and technical assistance and training.

ICC'S LEGAL PROWESS

The ICC offers a highly legitimate venue for investigating and prosecuting murderous acts or crimes against humanity⁷. The ICC statute provides that the prosecutor can investigate and prosecute "acts of murder" or "other inhumane acts, committed deliberately as part of

⁶ "The Global Regime for Transnational Crime". Council on Foreign Relations. Council on Foreign Relations. Retrieved September 8, 2015.

⁷ See M. Cherif Bassiouni, "The Universal Model: The International Criminal Court," in M. Cherif Bassiouni, ed., *Post-Conflict Justice* (Ardsley, NY: Transnational Publishers, 2003), pp. 813-828.

widespread or systematic attack directed against any civilian population" (Article 7). Although terrorism is not encoded as an official act or crime under the ICC statute, it can be interpreted as an act of murder committed in connection with a systematic attack against the civilian population. Clearly, the September 11 attacks would fall under this category, as legal scholar Roy Lee has suggested⁸. Even if the United States would never allow the ICC to exercise jurisdiction over these cases (since the acts were committed on US soil), other such cases may arise.

Although the ICC currently has jurisdiction over only the most serious crimes⁹, the International Law Commission's 1994 Draft Statute for the ICC proposed the inclusion of another category of crimes within the Court's jurisdiction: "treaty crimes," i.e., offenses criminalized under various treaty regimes, including terrorism, drug trafficking, apartheid, and grave breaches of the four 1949 Geneva Conventions. The Rome Statute's Preparatory Committee, however, felt strongly that the Court's statute should define the crimes within its jurisdiction, rather than simply list them as the International Law Commission's Draft had done. The failure to reach a consensus on the definition of the treaty crimes prevented terrorism from falling under the Court's jurisdiction.

Under Article 5 of the Rome Statute the ICC has jurisdiction to try individuals charged with committing genocide, crimes against humanity, war crimes, or the crime of aggression. The ICC may exercise jurisdiction over these crimes in three situations: (1) a State Party refers a situation to the Prosecutor in accordance with Article Fourteen of the Rome Statute, (2) the United Nations Security Council refers a situation to the Prosecutor (in accordance with Chapter VII of the Charter of the United Nations), or (3) the Prosecutor initiates an investigation in accordance with Article Fifteen of the Rome Statute. In addition, a private party may petition the Court to open an investigation¹⁰.

If the Prosecutor investigates the allegations and determines that one or more individuals should be charged and prosecuted, then proceedings before the ICC can begin. Perhaps most importantly though, the Rome Statute asserts jurisdiction over defendants only if either the

⁸ Roy Lee, "An Assessment of the ICC Statute," *Fordham International Law Journal* 25, no. 1 (2002): 750-766

⁹ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331

¹⁰ Each year since it was founded, the ICC has received about 1,000 private-party petitions, but 14 years into its existence, it has never opened an investigation on that basis. See Communications, Referrals and Preliminary Examinations, ICC <https://web.archive.org/web/20110418121307/>

“State on the territory of which” a crime was committed or “the State of which the person accused of the crime is a national” has ratified the statute.

ICC’S INABILITY TO DEAL WITH TERRORISM

Even though jurisdictional matters seem to preclude action in the ICC, one might hope that other tribunals could and would act. Unfortunately, that also seems unlikely. Before any tribunal could have an impact on terrorist leaders, those leaders have to be brought before the court. This requires some sort of police or military action. The ICC, however, does not have its own force; it relies on State cooperation¹¹.

According to the Rome Statute, States Parties are supposed to cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court¹². As the Court was planned, assistance of member states was axiomatic. In practice, however, this has not been the case. In some areas, the tyrants have been able to avoid capture by the forces of State Parties.

The ICC's failure to bring to justice perpetrators of heinous crimes within its jurisdiction has not gone unnoticed. The court's inability to ensure the arrest of such alleged criminals has led to several proposals to revamp the Rome Statute's reliance on State Parties' cooperation in making arrests and punishing such persons. These proposals include use of private bounty hunters, improving incentives for voluntary surrender, trial in absentia, leveraging asset seizures and travel restrictions into arrests, and, of course, the development of an international police force¹³. Each of these proposals is problematic to serve that purpose.

The debate over an international police force to effectuate arrests for the ICC is the predictable fruit of a fundamental flaw in the ICC itself, a flaw that has been apparent from the start. The ICC is a freestanding court, independent of any polity or true political accountability. It is a creature of the treaty between its states parties, not an institution embedded in a legitimate, functioning, political system¹⁴. Even if the International community has succeeded in the “war on terror”, it is likely to make the terrorists turn increasingly to unconventional weapons, such as cyberterrorism.

¹¹ See Rome Statute of the International Criminal Court, July 17, 1998, art. 89

¹² Id. art. 86

¹³ Mary Margaret Penrose, No Badges, No Bars: A Conspicuous Oversight in the Development of An International Criminal Court, 38 TEX. INT'L L.J. 621 (2003)

¹⁴ Ronald J. Rychlak & John M. Czarnetzky, How the International Criminal Court's Inability to Deal with Terrorism Is Leading to Calls for International Policing, 87 Miss. L.J. 577 (2018) pg.589

TRANSNATIONAL ORGANIZED CRIME: A GROWING THREAT TO NATIONAL AND INTERNATIONAL SECURITY

The Transnational organized crime (hereafter TOC) poses a significant and growing threat to national and international security, with dire implications for public safety, public health, democratic institutions, and economic stability across the globe. Not only are criminal networks expanding, but they also are diversifying their activities, resulting in the convergence of threats that were once distinct and today have explosive and destabilizing effects. Developing countries with weak rule of law can be particularly susceptible to TOC penetration.

TOC groups' primary goal is economic gain and they will employ an array of lawful and illicit schemes to generate profit. Crimes such as drug trafficking, migrant smuggling, human trafficking, money laundering, firearms trafficking, illegal gambling, extortion, counterfeit goods, wildlife and cultural property smuggling, and cyber-crime are keystones within TOC enterprises. The vast sums of money involved can compromise legitimate economies and have a direct impact on governments through the corruption of public officials.

TOC penetration of states is deepening, leading to co-option in a few cases and further weakening of governance in many others. The apparent growing nexus in some states among TOC groups and elements of government—including intelligence services—and high-level business figures represents a significant threat to economic growth and democratic institutions. In countries with weak governance, there are corrupt officials who turn a blind eye to TOC activity. In countries with weak governance, there are corrupt officials who turn a blind eye to TOC activity.

TOC networks insinuate themselves into the political process in a variety of ways. This is often accomplished through direct bribery; setting up shadow economies; infiltrating financial and security sectors through coercion or corruption; and positioning themselves as alternate providers of governance, security, services, and livelihoods. As they expand, TOC networks may threaten stability and undermine free markets as they build alliances with political leaders, financial institutions, law enforcement, foreign intelligence, and security agencies. TOC penetration of governments is exacerbating corruption and undermining governance, rule of law, judicial systems, free press, democratic institution-building, and transparency.

Combating TOC internationally proves difficult because so many governments and economies benefit enormously from TOC. For example, the Russia government benefits from money

gained through cybercrime and through ties between TOC and its energy exporters. China's economy also benefits from cybercrime as well as from counterfeiting. Terrorists and insurgents increasingly are turning to TOC to generate funding and acquire logistical support to carry out their violent acts.

NEXUS BETWEEN TERRORISM & TRANSNATIONAL ORGANISED CRIME

The nexus between terrorism and transnational organised crime is, by nature, complex and dynamic. Where ties exist between terrorism and transnational organised crime, a range of peripheral and facilitating crimes are often also present. These manifest themselves in various ways, and are shown to have distinct characteristics in different regions. Growing numbers of case studies reveal that the Nexus has impacts across the globe.

In extreme cases, the Nexus is seen as having a direct negative impact on security, contributing to the erosion of political, economic and social stability and development. Even in regions considered more stable and secure, the relationship between terrorist and criminal activities has been well documented and has acted as an enabler of terrorism. This relationship takes on a variety of manifestations that are displayed in different ways depending on whether the Nexus relates to an organization itself, or a transaction between two independent groups (i.e., a criminal group and a terrorist cell or group). At its most basic level, however, the Nexus pertains to the interaction between the two elements of organized crime and terrorism.

Terrorists engage in organised crime to support themselves financially. Drug trafficking, money laundering, human trafficking and extortion are the main organised crimes by which terrorists generate money. Organised crime groups and terrorists often operate on same network structures. Terrorists thrive under the cloak of transnational organised crime groups. Both organised crime groups and terrorist groups operate in areas with little governmental controls weak enforcement of laws and open borders. Both often use similar means of modern technology to communicate.

These groups may provide smuggled arms and explosives to terrorist groups in exchange for drugs or diamonds, etc. Terrorist groups make use of smuggling networks established by organised crime to move operatives around the world. Criminal groups also provide money laundering services. Terrorist groups controlling the terrain tax drug traffickers in return for protection.

Organised crime and terrorism thrive on ineffective governance, poor checks and balances. They have developed a symbiotic relationship. But neither are all terrorist acts organised crime, nor are all organised criminal acts terrorism; in most developed countries, organised crime thrives with little or no terrorist activities, and in most developing countries, terrorism exists along with varying levels of organised criminal activity.

CYBER TERRORISM: A GROWING SENSE OF VULNERABILITY

Cyberterrorism, a term first coined by Barry Collin in the 1980s , is the convergence of terrorism and cyberspace. It involves an attack over a computer network(s) for the political objectives of terrorists to cause massive destruction or fear among the masses and target the government(s). Cyberterrorism aims to invade cybernetworks responsible for the maintenance of national security and destroy information of strategic importance. It is one of the biggest threats to the security of any country , capable of causing loss of life and humanity, creating international economic chaos and effecting ruinous environmental casualties by hacking into various critical infrastructure (CI) systems.

The European Union's Convention on Cybercrime, also called the Budapest Convention , is the sole binding international convention on cybercrimes. It aims at harmonising domestic laws, including an international cooperative framework, and also proposes to improvise investigation techniques on cybercrimes for member states. India is not part of this treaty.

UN Global Counter-Terrorism Strategy is another international convention to combat cyberterrorism. The strategy manifests the commitment of all UN member states to eliminate terrorism in all forms. The resolution aims to expand international and regional cooperation and coordination among states, private players and others in combating cyberterrorism, and also seeks to counter the proliferation of terrorism through cybernetworks. The 2018 resolution over the sixth review of the strategy asks member states to ensure that cyberspace is 'not a safe haven for terrorists. It urges member states to counter terrorists' propaganda, incitement and recruitment, including through cyberspace.

Cyberspace has developed as a decentralised network of communication, without any restriction over geographical boundaries of any country. Therefore, international regulation and cooperative cybersecurity framework is essential to deal with cyberterrorism effectively. Since the current framework is incapable of dealing with the menace, it is time to strengthen international law to equip it to deal with cyberterrorism. India must also think about reforming

its legal framework or legislating exclusive cybersecurity legislation, which may provide provisions for cyberterrorism . A terrorist's ability to control, disrupt, or alter the command and monitoring functions performed by cyberterrorists on the cyber space systems could threaten regional and possibly national security. Its high time that, cyberterrorism should be recognised as a global threat and should be dealt by ICC, since it's a nexus of Terrorism and Transnational organised crime. The threat of cyberterrorism may be exaggerated and manipulated, but we can neither deny it nor dare to ignore it.

CONCLUSION

Given these factors, it is important that states and international organizations begin to consider ways of extending the ICC's moral stature and legal effectiveness to counter global terrorism and its nexus with transnational organised crime. Concerns will undoubtedly arise-for instance, that such a move would overextend the ICC's legal mission and its effectiveness as a global player. Still, it has become clear that the campaign against global terrorism and transnational organised crime has for too long sidelined this central emergent actor of international society. Moreover, by focusing far too much attention on military solutions, the campaign has tended to exacerbate a dynamic of violence. Yet the old skin of these "war on terror" images needs to be shed, by devising new political solutions. The result in this case will be a mode of countering terrorism along with the transnational organised crime that is both ethical and politically feasible. Also, it is the need of the hour to check the future threats like cyberterrorism. To this end, therefore, the India and other nations will need to see the ICC as a potential ally and an important source of legitimacy in the struggle against global terrorism. In this way, the war on terrorism and transnational organised crime can be given the makeover that it needs.