ARTICLES

INTERNATIONAL CRIMINAL LAW: A WEAPON IN THE ARSENAL OF THE WAR ON TERROR

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This article begins with the premise that the threat posed by global terrorism will be mitigated by addressing it as a criminal enterprise and not as a war in the strict sense of armed conflict. The concept of a "war on terror" has been adopted as an all-encompassing rhetoric to describe contemporary efforts at combating terrorist activity, be they military, judicial or otherwise. Thus, the apparent conflict between the stated premise and the title and theme of this article is illusory in that the rhetorical concept of warfare is being applied to the concepts of international criminal law being discussed.

The key concept is that of the natural evolution of the criminality of terrorism at international law. Whilst such criminalisation is still evolving, existing tools of international law-enforcement are available and are effective to varying extents. This article discusses that evolution and the current impact on global terrorism of international cooperative arrangements in the form of extradition and mutual assistance as well as the barriers to effective application thereof. The likely enhancement of such arrangements by the adoption of international conventions is subsequently discussed in light of efforts by the international community to date to criminalise terrorism generally and provide for international prosecutorial mechanisms. More conclusively

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this article serves to demonstrate the value of international criminal law in this regard and the enormous potential of its arsenal of investigative and procedural tools in prosecuting a successful war on terror.

I. TERRORISM: TOWARD INTERNATIONAL CRIMINALITY

For behaviour to invoke criminality at international law and thus constitute an international offence, two broad elements are requisite. The behaviour or action must entail the criminal liability of the perpetrator and the criminalisation of the act must emanate from treaty or custom.[1] The latter element appears to distinguish the process of establishing international criminality from that of domestic jurisdictions in that 'the practice of States is the conclusive determinant in the creation of international law [including international crimes] and not the desirability of stamping out obnoxious patterns of human behaviour'.[2] The inclusion of terrorism as an offence under international criminal law has been delayed by the requirement of State practice or conventional adoption although history evidences attempts at such criminalisation and suggests an evolution toward its inclusion.

An early attempt at the international criminalisation of terrorism was made by the League of Nations in 1937 via the adoption of a *Convention for the Prevention and Punishment of Terrorism*. This Convention was subsequently abandoned as the result of a lack of ratification due largely to definitional and political differences. In the evolution of the criminalisation of terrorism at international law, these differences as to a precise definition of the crime and concerns as to political exceptions to criminality have remained to some extent.

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1 Ilias Bantekas & Susan Nash, *International Criminal Law* (2nd ed, 2003) at 4.

2 Yoram Dinstein, 'International Criminal Law' (1985) 20 *Israel Law Review* 206 at 221 in Ilias Bantekas & Susan Nash, *International Criminal Law* (2nd ed, 2003) at 5.

II. TERRORISM: A MATTER OF DEFINITION

A traditional view as to the inhibitions on the evolution of terrorism as an international crime is that 'terrorism has avoided criminalisation for want of a precise definition'.[3] This was certainly the case in respect of the 1937 Convention wherein the definition provided of an "act of terrorism" did not adequately distinguish the offence from a common crime and did not establish the specific *mens rea* of the terrorist offence.[4] Definitional concerns have surfaced in the International Criminal Court's consideration of the international criminality of terrorism. These concerns have prevented the inclusion of terrorism as an offence within the jurisdiction of the Court to date. United Nations analyses of the issue emphasised as follows:

> Lack of agreement on a well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image. Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative.[5]

The preamble to the *Rome Statute of the International Criminal Court* broadly describes the categories of crime over which the Court has jurisdiction as 'unimaginable atrocities that deeply shock the conscience of humanity'.[6] Further, Article 1 of the *Rome Statute* describes such crimes as 'the most serious crimes of international concern'.[7] An analysis of terrorist atrocities of the modern era arguably satisfies these jurisdictional requirements in light of the global reach and scale of such events. Notwithstanding this contention, terrorist crimes currently fall within the jurisdiction of the Court only if the elements of the particular acts also constitute one of the four crimes currently

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3 Nicola Roxon MP, 'International Criminal Law: a Weapon We Should Design Better and Use More; a Call From Down Under to Reinvigorate Debate Over International Criminal Laws', Speech Presented at the UK-Australia Future Leaders Dialogue (Sydney, 2004) at 9.

4 Bantekas & Nash, above n 1 at 17.

5 Julian Ku, "Can International Law Fight Terrorism?" in *Opinio Juris*, 14 March 2005: <http://lawofnations.blogspot.com/2005/03/can-international-law-fight-terrorism.html> at 7 December 2006.

6 Rome Statute of the International Criminal Court preamble.

7 Rome Statute of the International Criminal Court art 1.

within the subject-matter jurisdiction, to wit, genocide, war crimes, crimes against humanity or aggression.[8] Arguably, the latter crime of aggression may more closely satisfy the elements of contemporary terrorist acts but agreement on a definition of this crime and conditions for the exercise of jurisdiction over it is yet to be reached.

Many delegates to the 1996 Preparatory Committee on the Establishment of an International Criminal Court emphasised that crimes to be adjudicated by the Court must be precisely defined, consistent with the universal legal principles of *nullum crimen sine lege* and *nullum poene sine lege*.[9] At the 1998 Rome Conference, which adopted the Statute and the jurisdictional dictates therein, consensus could not be reached as to a definition which would facilitate the inclusion of terrorism within the Court's jurisdiction. This definitional impasse prompted the League of Arab States to oppose the inclusion of terrorism within the Statute and its eventual non-inclusion compelled Sri Lanka and Turkey to abstain from voting to adopt the Statute.[10]

Attempts have been made at the international level to overcome this impasse by providing a broadly acceptable definition of terrorism. A contemporary multilateral attempt appears in Article 5 of the 1998 *Convention for the Suppression of Terrorist Bombings*, as follows:

> … criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.[11]

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[8] Madeline Morris, "Prosecuting Terrorism: the Quandaries of Criminal Jurisdiction and International Relations" in Wybo P. Heere (ed), *Terrorism and the Military: International Legal Implications* (2003) 136.

[9] Preparatory Committee on the Establishment of an International Criminal Court, 1st Session 27th Meeting, 12 April 1996, discussed in Roy S Lee (ed), *The International Criminal Court: The Making of the Rome Statute-Issues, Negotiations, Results* (1999).

[10] Kriangsak Kittichaisaree, *International Criminal Law* (2002) 227.

[11] *Convention for the Suppression of Terrorist Bombings,* opened for signature 12 January 1998, UN Doc A/RES/52/164 (2001).

The substantive *mens rea* elements of the criminal acts envisaged within this Convention are reflective of the definition provided in the 1937 Convention. This definition goes further in emphasising the abject criminality of the acts and suggesting a scope of punishment which is reflective thereof. Importantly, the definition attempts to negate the political exception to criminality which has hindered the broad criminalisation of terrorism at international law to date.

III. TERRORISM: INTERNATIONAL CRIME OR POLITICAL EXCEPTION

Resistance to the inclusion of international terrorism within the jurisdiction of the International Criminal Court has centred on a fear of politicisation of the Court[12] and long-held notions of political exceptions to criminality in the context of struggles for self-determination. The latter is reflective of the provisions of United Nations General Assembly Resolution 3103 (1973), which explicitly provides legitimacy to struggles for the implementation of self-determination and independence from colonial and alien rule,[13] and Article 7 of General Assembly Resolution 3314 (1974) which provides an exception to the definition of "aggression" at international law in respect of national liberation movements.[14]

In the post-colonial and post-Cold War periods, with the demise of predominant regimes exercising colonisation and occupation, the international community has been less supportive of localised insurgency against central national governments.[15] This has served to arguably lessen the weight afforded to Resolution 3103 and Article 7 of Resolution 3314 where national liberation may not be the apparent or principle motivation behind violent action. This recognition on the part of the international community is

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[12] Kittichaisaree, above n 10.

[13] Basic Principles of the Legal Status of the Combatants Struggling against Colonial and Alien Domination and Racist Regimes, GA Res 3103, UN Doc A/9120 (1973).

[14] *Definition of Aggression*, GA Res 3314 (XXIX), 29 UN GAOR (2319th mtg) UN Doc A/Res/3314 (1974).

[15] Kittichaisaree, above n 10 at 228.

particularly the case in respect of terrorist acts and the justifications previously afforded to violent insurgent action are being denied by way of international convention. General Assembly Resolution 53 (1995) effectively adopts a definition of terrorism which negates justifications for terrorist violence on 'political, philosophical, ideological, racial, ethnic, religious or any other'[16] grounds. The broad exclusionary terminology clearly also applies where national liberation is the motivation. This terminology is adopted in subsequent terrorism Conventions such as the aforementioned *Convention for the Suppression of Terrorist Bombings*.

IV. 9/11: A WATERSHED EVENT IN THE INTERNATIONAL CRIMINALISATION OF TERRORISM

Prior to the attacks on the United States of 11th September 2001, terrorism was largely viewed by the international community as a localised problem of the individual State.[17] Since that date terrorism has been recognised as a global phenomenon which demands an international response. Technological advancements in the areas of communications and transportation as well as a shift from largely political to largely religious motivations have seen terrorism evolve from a localised issue to a global concern. This evolution demands a corresponding evolution on the part of international law in the international criminalisation of terrorism in a bid to effectively counter the threat. Such evolution commenced in the aftermath of the events of September 11th with the adoption by the United Nations Security Council of Resolution 1373 (2001) which cited measures to combat international terrorism due to such activity constituting a threat to international peace and security.[18] The move toward recognition of terrorism as transnational crime is described as follows:

> [T]errorism ceased to be of domestic concern and became international, not only because Al-Qaeda is an internationally

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[16] *Measures to Eliminate Terrorism*, GA Res 53, UN Doc A/Res/5/53 (1995).

[17] Adel Maged, 'International Legal Cooperation: an Essential Tool in the War Against Terrorism' in Wybo P Heere (ed), *Terrorism and the Military: International Legal Implications* (2003) 157.

[18] Ibid 178.

> organized [*sic*] body but because for the first time, the representative organs of the international community sought to address terrorism as a crime that harmed the international community as a whole.[19]

Where terrorism was excluded as an international crime subject to the jurisdiction of the International Criminal Court in 1998, anti-terrorist sentiment post 11th September 2001, as well as a willingness on the part of States to identify international terrorism as a threat to international peace and security, is likely to change that position.[20] This is evidenced by agreement as to the definition of terrorism employed in the *Convention for the Suppression of the Financing of Terrorism* as well as broad acceptance of the aforementioned Resolution 1373 and the narrowing of differences in respect of a definition in the context of the *Draft Comprehensive Convention on Terrorism.* Notwithstanding these developments, the inclusion of terrorism as a generic crime within the jurisdiction of the International Criminal Court will ultimately depend on the ability of States to agree to a broadly acceptable definition.[21]

V. EXTRADITION AND MUTUAL ASSISTANCE: THE FIREPOWER IN THE ARSENAL

In light of the identified global nature of the contemporary terrorist threat, its effective prevention and control depends on mutual cooperation between States in investigating terrorist violence and threats thereof. Such cooperation involves processes for securing evidence across international boundaries for prosecution and/or extradition of the offenders.[22] When States cooperate in good faith the mechanisms of law enforcement are potentially 'the most appropriate means of responding to non-

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19 M Sornarajah, 'Terrorism as a Transnational Crime' in *Singapore Journal of Legal Studies* (2004) 390, 404.

20 Helen Duffy, The War on Terror and the Framework of International Law (2005) 128.

21 Ibid.

22 UNCJIN, *Annex to Resolution on Measures Against International Terrorism* (1999: <http://www.uncjin.org/Standards/Rules/unrule22/unrule22.html> at 13 December 2006.

State sponsored terrorism'.[23] The same modalities and techniques currently employed for inter-State cooperation in respect of domestic crimes may be applied to the investigation and prosecution of international terrorists.[24]

The modalities of mutual assistance and extradition are not currently contained in a single international convention but rather are scattered in the provisions of a number of bilateral and multilateral regional conventions and arrangements. This scattering of arrangements does not recognise the global nature of the threat and is potentially an impediment to the successful investigation and prosecution of international terrorists. In 1990 the United Nations recognised this potential impediment in publishing a model treaty on mutual legal assistance. This model treaty is yet to be given practical international effect and an international extradition convention is still lacking although the European Union developed and implemented a European Arrest Warrant in a bid to overcome the formalities and obstacles associated with extradition arrangements.

VI. "EXTRADITE OR PROSECUTE": THE UN CALL TO ARMS

A general reluctance on the part of States to exercise universal jurisdiction, and in the absence of an international judicial body exercising jurisdiction over evolving international crimes such as terrorism, agreement has been required on cooperation in criminal matters.[25] The inclusion in treaties of a provision espousing the obligation to extradite or prosecute persons accused of certain specified offences is an example of such agreement. The obligation to extradite was traditionally non-existent at international law other than as an obligation arising under treaty. Termed *aut dedere aut judicare*, obligatory extradition largely requires the aforementioned agreement between States but has also surfaced as an aspect of universal

[23] Maged, above n 17.

[24] Ibid 162.

[25] Bantekas & Nash, above n 1, 9.

jurisdiction in various human rights instruments.[26] In these instances, such as Article 5 of the *Convention against Torture*, the obligation arises in respect of certain offences that are 'so serious that states are obliged to extradite persons found on their territory or to submit them for prosecution in their own state'.[27]

The development of conventional machinery for the application of extradition provisions is occurring in line with the evolutionary nature of transnational crime. This is serving to override a reliance on identified crimes as follows:

> Crime is evolving and sometimes modern forms of crime cannot be readily slotted into the list of yesteryear. However in the UN area several Conventions have included extradition articles which State Parties to the Convention can use instead of a bi-lateral where appropriate and which have the effect of adding crimes to extant treaties … [f]urther where extradition is conditional upon the existence of a treaty the convention may form the legal basis.[28]

Since the terrorist attacks of September 11, 2001, Security Council resolutions including Resolution 1373 (2001), have asserted a positive duty on member States to deny safe-haven to terrorists and to bring them to justice, which is an assertion of the obligation of *aut dedere aut judicare*. The Hague *Convention against Hijacking* provides a formula for the application of the obligation to hijacking including such activity by terrorists and this formula has been incorporated into the International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind.[29] This incorporation implies a tacit recognition of the application of the principle to terrorist crime generally although the Draft Code specifically provides for the crimes of genocide, crimes against humanity, crimes against United Nations and associated personnel and war crimes.

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[26] Duffy, above n 20, 107.

[27] Ibid.

[28] Annabelle Bolt, 'Mutual Legal Assistance Treaties', *Speech to the International Association of Prosecutors* (July 2003): <http://www.iap.nl.com/speeches_annual_conference_2003_washington/mutual_legal_assistance_treaties_speech_by_annabelle_bolt.html> at 7 December 2006.

[29] Luc Reydams, Universal Jurisdiction: International and Municipal Legal Perspectives (2004) 75.

The *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* provides for the prosecution of aircraft bombers. Specifically Article 7 provides:

> The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution.[30]

Similar provisions have been built into other terrorism conventions as an apparently standard mechanism for dealing with terrorist offences in the exercise of universal jurisdiction. By implication, this places terrorism on the list of "serious offences" at international law, alongside those addressed under the various human rights instruments exercising universal jurisdiction in the extradition or prosecution of perpetrators and those cited in the International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind. Further, an argument exists that the principle of extradite or prosecute represents an emerging rule of customary international law in light of its adoption in an increasing number of multilateral treaties and conventions[31] including the contemporary terrorism conventions. This contention suggests that the mechanism of extradition and the application of the principle in the international arena will be an effective weapon in the war on global terror.

VII. FIREPOWER RESTRAINED: PRACTICAL LIMITATIONS OF EXTRADITION

The prosecute or extradite structures of the terrorism convention have a built in limitation in that they do not provide for the situation in which the State that has custody of the terrorist suspect in fact sponsored the crime[32] or is politically adverse to

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[30] Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, opened for signature 23 September 1971, 24 UST 654, 974 UNTS 177 (1973) art 7.

[31] Maged, above n 17, 165.

[32] Morris, above n 8, 135.

the requesting State. Notwithstanding these political dimensions, extradition is a complex mechanism requiring the satisfaction of a series of conditions or criteria before a request for extradition can be addressed. The offence for which extradition is sought must be an "extraditable offence" as recognised by both States and must satisfy the "double criminality" requirement in that both States recognise the offence as a crime which is punishable to comparative degrees of severity. The latter requirement is potentially problematic in respect of terrorism offences in that a universal definition of terrorism is yet to be determined and 'the prescription of terrorist acts and their constituting elements vary from one country to another'.[33]

The classic obstacle to any extradition is the political offences exception wherein a State may deny extradition where it is determined that political or humanitarian necessity motivated the alleged criminal acts subject of the extradition request. In *Re Castioni* it was held that extraditions are not valid under the political exceptions rule if the crimes were 'incidental to and formed a part of political disturbances'[34] however the political motive behind an offence has been held to be irrelevant where the offence is likely to involve injury or death to members of the public.[35] In *T v Immigration Officer* the applicability of the exception to international crimes was questioned. In that case it was held that:

> [Previously] those who used violence to challenge despotic regimes often occupied high moral ground, and were welcomed in foreign countries as true patriots and democrats. Now much has changed. The authors of violence are more ruthless, their methods more destructive and undiscriminating; their targets are no longer ministers … but the populace at large … the courts here, as in other legal systems, must struggle to apply a concept which is out of date.[36]

This jurisprudence is reflected to some extent in contemporary international terrorism conventions.

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33 Maged, above n 17, 164.

34 [1891] 1 QB 149.

35 Baader-Meinhof Group Terrorist Case (1977) 74 ILR 493, 498.

36 [1996] AC 742, 752–753 (Lord Mustill).

The exception has been exploited by terrorist suspects to the extent that the international community has begun to directly or indirectly invalidate the exception in respect of international terrorism. As stated in preceding paragraphs, a number of terrorism conventions have attempted to remove the political dimension as a justification for terrorist activity and the *European Convention on the Suppression of Terrorism* has narrowed the scope of the political offence exception by defining political offences in negative terms.[37]

An international extradition convention addressing the global problem of international terrorism is still lacking and the need for such conventional uniformity became apparent in the aftermath of the terrorist attacks in Bali and Kenya in 2002 at which times the investigation and prosecution of those responsible was hindered. It is the patently realistic notion of State-sponsored terrorism which has contributed to the impetus toward a supra-national authority for the judicial and procedural handling of terrorist offences[38] such as the International Criminal Court. Where such jurisdiction is provided to the International Criminal Court, mechanisms such as the extradition of terrorists may be streamlined such that the above limitations are removed or diminished.

VIII. MUTUAL ASSISTANCE: INTERNATIONAL COOPERATION IN THE FIGHT

Mutual assistance arrangements are used to obtain evidence and other legal cooperation from other States and are usually formalised by way of bilateral or multilateral treaties. In contemporary application, these applications appear to be less formal than in the case of extradition and tend to be more discretionary.[39] Further, the requirement of double criminality in extradition arrangements does not usually exist in respect of mutual assistance agreements but some treaties provide that the information provided shall not be used for the investigation and

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[37] Ibid 172.

[38] Morris, above n 8, 135.

[39] Duffy, above n 20, 115.

prosecution of non-treaty offences.[40] The United Nations *Model Treaty on Mutual Legal Assistance* creates a framework for States in the negotiation of bilateral or multilateral agreements.[41]

An argument exists that effective law enforcement and judicial cooperation is requisite in suppressing international terrorist activity and the international community should act promptly in facilitating such cooperation and overcoming all procedural obstacles.[42] If applied appropriately, mutual legal assistance can serve as a highly effective tool in the war on terror since it would 'harmonize [*sic*] States' judicial efforts in investigating international crimes of terrorism and locating its perpetrators and tools'.[43]

IX. FIREPOWER RESTRAINED: LIMITATIONS OF MUTUAL ASSISTANCE

States have shown a reluctance to provide mutual legal assistance in respect of investigations and prosecutions where the crime may attract the death penalty in the requesting State. Since the attacks of September 11, 2001, European States 'have indicated their unwillingness to provide mutual assistance if the evidence would be used towards the application of the death penalty'.[44] Human rights concerns such as these have traditionally impeded mutual assistance cooperation and such concerns have been expressed in treaty-based mutual assistance arrangements. The *Inter-American Convention against Terrorism* precludes the obligation of mutual assistance if the request is made for the purpose of conducting a prosecution on discriminatory grounds.[45]

Generally, another barrier to the application of mutual assistance arrangements is the aforementioned political exception rule although contemporary crime-specific terrorism conventions, as

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[40] Bantekas & Nash, above n 1, 232.

[41] Model Treaty on Mutual Assistance in Criminal Matters (1991) 30 ILM 1419.

[42] Maged, above n 17.

[43] Ibid 165.

[44] Ibid 140.

[45] Ibid 141.

well as domestic jurisprudence on the issue, provide that political justifications are generally no longer valid where terrorist violence is involved. Issues as to the requested-state control of domestic investigations and the priorities afforded to investigations to be conducted on behalf of requesting states may also arise in the investigation of international terrorism. Such issues may delay the execution of requests for mutual assistance and thus hinder international efforts to combat the crime.[46]

It is considered that a comprehensive convention on terrorism will overcome the procedural and political obstacles to effective international cooperation whilst preserving the desirable protections of human rights.

X. COMPREHENSIVE TERRORISM CONVENTION: TAKING THE OFFENSIVE

Security Council Resolution 1373 (2001) imposes a positive duty on all member States to fully cooperate in the war on terror. This cooperation extends to mechanisms such as extradition and mutual assistance but the aforementioned limitations are a potential hindrance to the successful investigation and prosecution of international terrorists. Deliberate non-cooperation could potentially subject the State to sanctions pursuant to Chapter VII of the *United Nations Charter*.[47] It is these hindrances and the potential for Security Council intervention in the enforcement of cooperation which has prompted calls for an international instrument to give practical effect to Resolution 1373. A comprehensive convention on terrorism would potentially serve to establish tighter networks of international cooperation for 'preventing, suppressing and prosecuting' an identified and conclusively defined international crime of terrorism.[48] An argument exists that a comprehensive convention would assist in pushing international law further

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[46] Ibid 166.

[47] Ibid 179.

[48] Georges Abi-Saab, 'There is No Need to Reinvent the Law' in *Crimes of War: International Law since September 11* (Sept 2005): <http://www.crimesofwar.org/sept-mag/sept-abi.html> at 13 December 2006.

'from the concepts and methods of "the international law of coexistence" … towards the more cooperative vision and model of "the international law of cooperation" based on the ideas of common interests and values'.[49] A comprehensive convention is advantageous in that it would contemplate a structure of rules to facilitate cooperation between States and reduce the current problems associated with diverse legal traditions and disparate political views.[50]

The need for a comprehensive convention has been expressed broadly as evidenced by a statement by United Nations Secretary-General Kofi Annan calling on Member States to 'cut through the political debates on "State terrorism" and the "right to resist occupation" and agree to complete a comprehensive convention outlawing terrorism in all its forms'.[51]

XI. CONCLUSION

The war on terror will be better fought by approaching it as an international crime, and applying the weapons of cooperative law enforcement and judicial processes, than by engaging it in armed conflict. This is reflective of the criminality of contemporary international terrorism. Terrorism is evolving as an international crime, in light of its impact on the global community, and this is evidenced by its inclusion in a number of international criminal-type treaties and conventions. This evolution has not allowed for its specific inclusion within the jurisdiction of the International Criminal Court to date. Such inclusion is arguably appropriate to overcome procedural and political differences and provide a mechanism for the prosecution of State-sponsored terrorism where complicity precludes the State from proceeding to prosecution. Obstacles to its jurisdictional inclusion are primarily related to defining the crime and the elements thereof and residual recognition of political exceptions to its criminality. The

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[49] Ibid.

[50] Maged, above n 17, 179.

[51] United Nations Information Service, *Secretary-General Kofi Annan Launches Global Strategy against Terrorism in Madrid* (11 March 2005) UN Docs SG/2095: <http://www.unis.unvienna.org/unis/pressrels/2005/sg2095.html> at 7 December 2006.

former obstacle is gradually being removed as States agree on an appropriate definition and the latter is being denied validity in convention and domestic State practice. The attacks on the United States of 11th September 2001 have galvanised the global community to address what is now recognised as an international problem constituting a threat to international peace and security.

Extradition and cooperative mutual assistance arrangements are the arsenal in this war on terror. Used appropriately and effectively, these weapons have the potential to suppress and respond to terrorism by aligning States' efforts and installing functional cross-border mechanisms. Both arrangements have been subjected to obstacles in their application. These obstacles, such as the requirement of double criminality and the political exception rule, have largely been identified as antiquated and irrelevant in respect of the modern threat of terrorism. Convention and practice are attempting to overcome such obstacles but procedural mechanisms and reluctance or aversion on the part of requested-states to apply such mechanisms remain. A comprehensive convention on terrorism would serve to remove these obstacles and align States' efforts by reducing the problematic diversity of legal and political constraints. Notwithstanding the progress to date in criminalising terrorism at international law and providing frameworks for international cooperation, these steps can only serve to suppress or mitigate the problem. As one commentator has stated, '[t]he war on terrorism is like the war on crime. It will always be with us'.[52]

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[52] Meredith Alexander, 'International Law Scholars Debate Criminal, Military Pursuit of Terrorists' in *Stanford Report* (26 September 2001): <http://newsservice.stanford.edu/news/2001/september26/lawdebate-926.html> at 13 December 2006.