Chapter 1

Politico-Legal Reflections on International Terrorism and Preclusions from Wrongfulfulness

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1 – Terrorism, of the sort we are dealing with here, that spills over and disregards borders, is a crime, a wrongful event with no possible cause for justification. Terrorism is never excusable or tolerable in Law.

Nor is terrorism acceptable during armed conflict, whether international or internal, or in the framework of so-called wars of colonial or national liberation, or as the display of resistance against illegal occupation. During armed conflict, the contenders are authorised to fight; the legal system does indeed recognise the right to resist occupation forces, even after occupation has taken place and is effective; and peoples whose capacity to exercise self-determination is denied are entitled to fight to obtain it and seek and receive support from friendly, allied States: but not terrorism, terrorism is an odious crime against humanity which must be eradicated from the face of the Earth.

The High Level Panel appointed by the Secretary-General of the United Nations to examine proposals for reforming the U.N. Charter notes the existence

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1 Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, article 4 A (2) and 4 A (6) (BOE(Spanish Official Gazette) of 5 September 1952); Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, articles 43-44 and 96 (BOE of 26 July, 7 and 9 October 1989); Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (A/RES/2625 [XXV], 24 October 1970), The principle of equal rights and self-determination of peoples, fifth paragraph.

of opinions which reject the definition of such acts as “terrorism” because they fall within the right to resist an illegal occupier or which emphasise so-called “State terrorism”. The Panel goes on to reject the objectives of terrorism on the basis that if the use of force against civilians by the armed forces of a State is already more than regulated (and prohibited) by International Law, in relation to the right to resist, then as the Panel wisely states: “[this] is not the central point: the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians”; “Attacks that specifically target innocent civilians and non-combatants must be condemned clearly and unequivocally by all.” And it is significant, given its character as the United Nations main organ, that the Secretary-General included this opinion in his preparatory Report on the World Summit of Heads of State and Government (September 2005), clearly stating that: “It is time to set aside debates on so-called “State terrorism”... And the right to resist occupation must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians”.

While fully aware of the difficulties in obtaining a generally accepted definition, I adopt the description of terrorism offered by the Panel and accepted by the Secretary-General who urged world leaders to do the same:

“any action [in addition to the acts already specified in the treaties in force on certain aspects of terrorism] constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organisation to do or abstain from doing any act”.

3 A More Secure World: Our shared responsibility. Report of the High-level Panel on Threats, Challenges and Change (A/59/565), 2 December 2004, p. 53 (paragraphs 160 and 161). There were 16 members in the Group representing all the continents, a wide range of experience and expertise and “groups”: 4 from Europe (France, Norway, The United Kingdom of Great Britain and Northern Ireland and Russia), 3 from America (Brazil, the United States and Uruguay), 3 from Africa (Egypt, Ghana and Tanzania), 5 from Asia (China, India, Japan, Pakistan and Thailand) and 1 from Oceania (Australia) (Ibidem, p. 1, paragraph 2).


5 Vid. ad ex. DÍAZ BARRADO, C.M., El marco jurídico internacional de la lucha contra el terrorismo, in Grupo de Trabajo no. 6/04: Lucha contra... op. cit. (note 2), pp. 53-80.

6 In larger freedom... (A/59/2005) cit., p. 29 (paragraph 91); A more secure world... (A/59/565) cit., p. 54 (paragraph 164). The following twelve international treaties are currently in force condemning different aspects of terrorism: Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo 14 September 1963 (BOE of 25 December 1969); Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague 16 December 1970 (BOE of 15 January 1971); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal 23 September 1971 (BOE of 10 January 1974); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, includ-